

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
William H. Seals, Jr., Circuit Court Judge

ORIGINAL

Case No. 2009-CP-26-5743

Hotel and Motel Holdings, LLC, Respondent,

v.

BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., Mozingo &
Wallace Architects, LLC, Kersi S. Shroff, and Shroff Management,
Inc., Defendants,

of whom

BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., Appellants,

v.

First Palmetto Savings Bank, F.S.B., Jack Jones, Donald D. Godwin,
and Bhupendra Patel, Respondents.

RECORD ON APPEAL

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Kathryn M. Cook, Bar No. 1371
James E. Lewis, Jr., Bar No. 77698
COOK & ROY, LLC
P.O. Box 4086
North Myrtle Beach, South Carolina 29597
Telephone: 843-663-1200
Attorney for Appellants
BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a American Motel of Myrtle Beach, Inc.

Audra M. Byrd, Bar No. 76719
R. Wayne Byrd, Bar No. 1068
P.O. Box 2116
Myrtle Beach, South Carolina 29578
Telephone: 843-213-5500
Attorneys for Respondents Hotel and Motel
Holdings, LLC, Jack Jones and Donald
Godwin

William H. Short, Jr., Bar No. 5091
P.O. Box 11889
Columbia, South Carolina 29211
Telephone: 803-779-3080
Attorney for Respondent First Palmetto
Savings Bank, FSB

William W. DesChamps, Jr., Bar No. 1658
William W. "Trey" Deschamps, III, Bar No. 77150
Deschamps Law Firm
P.O. Box 2402
Myrtle Beach, South Carolina 29577
Telephone: 843-448-2391
Attorneys for Respondent Bhupendra Patel

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-26-5743

First Palmetto Savings Bank, F.S.B.,

Plaintiff,

vs.

BJC Enterprises, LLC, Wendy J. Bellamy,
Americana, Inc. A/K/A Americana Motel
Of Myrtle Beach, Inc., Mozingo + Wallace
Architects, LLC, Kersi S. Shroff,
and Shroff Management, Inc

Defendants.

CONSENT ORDER
SUBSTITUTING
PLAINTIFF

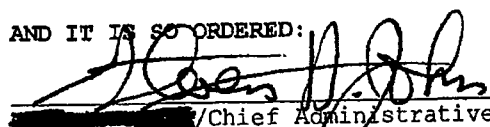
HORRY COUNTY
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MELANIE HUGGINS
CLERK OF COURT

Pursuant to the Motion of the Plaintiff, First Palmetto Savings Bank, F.S.B., to substitute Plaintiff pursuant to SCRCP Rule 25(C) and with the consent of proposed substitute Plaintiff, Hotel & Motel Holdings, LLC and all parties to the action who are not in default.

IT IS HEREBY ORDERED THAT:

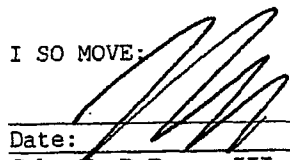
Hotel & Motel Holdings, LLC shall be substituted as Plaintiff for First Palmetto Savings Bank, F.S.B. in the above captioned matter and the Amended Lis Pendens, Amended Summons and Notice, and Amended Complaint with Exhibits that was attached to the Motion as Exhibit "D", shall be filed by substituted Plaintiff, Hotel & Motel Holdings, LLC and served upon the appropriate parties to the action pursuant to SCRCP Rule 5.

AND IT IS SO ORDERED:


_____/Chief Administrative Judge
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CIVIL ACTION NO: 2009-CP-26-5743

I SO MOVE:


Date: _____

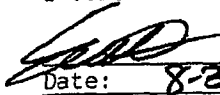
John R. DuBose, III, Esquire
Attorney for the Plaintiff First
Palmetto Savings Bank, F.S.B.

I CONSENT:

Date: _____

Susan MacDonald, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
Attorney for the Defendant
Kersi S. Shroff, and Shroff Management, Inc.

I CONSENT:


Date: 8-3-09

Scott B. Umstead, Esquire
Scott B. Umstead, PA
Attorney for the Defendant Mazingo & Wallace Architects, LLC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CIVIL ACTION NO: 2009-CP-26-5743

I SO MOVE:

Date:

John K. DuBose, III, Esquire
Attorney for the Plaintiff First
Palmetto Savings Bank, F.S.B.

I CONSENT:

Susan MacDonald
Date: _____
Susan MacDonald, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
Attorney for the Defendant
Kersi S. Shroff, and Shroff Management, Inc.

I CONSENT:

Date: _____

Scott B. Umstead, Esquire
Scott B. Umstead, PA
Attorney for the Defendant Mazingo & Wallace Architects, LLC

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2009-CP-26-05743

HOTEL & MOTEL HOLDINGS, LLC,)
)
Plaintiff,)
)
vs.)

BJC ENTERPRISES, LLC, WENDY J.)
BELLAMY, AMERICANA, INC. a/k/a)
AMERICANA MOTEL OF MYRTLE)
BEACH, INC., MOZINGO AND)
WALLACE ARCHITECTS, LLC, KERSI)
S. SHROFF, and SHROFF)
MANAGEMENT, INC.,)
)
Defendants.)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO
DISMISS FILED ON BEHALF OF THIRD
PARTY DEFENDANTS JACK JONES,
DONALD GODWIN, AND BHUPENDRA
PATEL**

BJC ENTERPRISES, LLC, WENDY)
BELLAMY, AND AMERICANA, INC.)
A/K/A AMERICANA MOTEL OF)
MYRTLE BEACH, INC.,)
)
Third Party Plaintiffs,)
)
vs.)

FIRST PALMETTO SAVINGS BANK,)
F.S.B., JACK JONES, DONALD D.)
GODWIN, AND BHUPENDRA PATEL,)
)
Third Party Defendants.)

HORRY COUNTY
10 OCT 15 PM 2:01
JELLY-WARD
CLERK OF COURT

This matter comes before the Court upon the Motions of Third-Party Defendants Jack Jones ("Jones"), Donald Godwin ("Godwin"), and Bhupendra Patel ("Patel") for an Order Dismissing or Striking the Third-Party Complaint filed by Defendants/Third-Party Plaintiffs Wendy J. Bellamy, BJC Enterprises, LLC and Americana, Inc. (collectively "Third-Party

Plaintiffs’’). A hearing was held before the Court on the matters on Thursday, September 23, 2010 at the Horry County Courthouse. Present at the hearing for Plaintiff Hotel & Motel Holdings, LLC, Jones and Godwin were Audra M. Byrd and R. Wayne Byrd. Third-Party Plaintiffs were represented at the hearing by Kathryn M. Cook. William W. DesChamps, Jr. and William W. DesChamps, III appeared at the hearing on behalf of Patel. William H. Short appeared on behalf of Third-Party Defendant First Palmetto Savings Bank, F.S.B. Also present at the hearing was Susan P. MacDonald, representing Kersi S. Shroff and Shroff Management, Inc.

Jones and Godwin filed and served a Motion to Dismiss the Third-Party Complaint pursuant to Rules 12(b)(6), 12(b)(8), and 14, SCRCP. Jones and Godwin supported their Motion by asserting the Third-Party Complaint was improper under Rule 14, SCRCP, as the causes of action therein were not derivative in nature, Jones and Godwin’s liability to Third-Party Plaintiffs was not dependent on the outcome of Plaintiff’s claims against Third-Party Plaintiffs, and continued joinder of the third-party claims against Godwin and Jones would unduly complicate the original action to collect under certain promissory notes, mortgages, and other loan documents.

Patel also filed and served a Motion to Dismiss the Third-Party Complaint pursuant to Rules 12(b)(6) and 14, SCRCP, wherein he asserted the same issues and arguments as Jones and Godwin. Patel also asserted that Rule 14(a), SCRCP, does not allow Third-Party Plaintiffs to assert a separate and independent claim even though the claim arises out of the same general set of facts as the main claim, the damages Third-Party Plaintiffs may recover from Patel are unaffected by the outcome of the suit between Plaintiff and Third-Party Plaintiffs, and the Third-Party Complaint is improper as it does not state any allegations that Patel’s liability to Third-

Party Plaintiffs was dependent on the outcome of Plaintiff's claim against those Third-Party Plaintiffs. Patel also asserted that Third-Party Plaintiffs' cause of action for civil conspiracy should be dismissed pursuant to Rule 12(b)(6), SCRPC, as the Third-Party Complaint sought to recover damages for the particular acts of Patel, and likewise sought to recover damages on an alleged conspiracy by Patel to do those particular acts.

Third-Party Plaintiffs argue that all claims asserted against Third-Party Defendants are dependent on Plaintiff's action against Third-Party Plaintiffs to collect under the subject promissory notes and foreclose on the subject mortgages because the claims affect Plaintiff's ability to recover the relief demanded in its Complaint.

FINDINGS OF FACT

This action was originally brought by First Palmetto Savings Bank. Hotel & Motel Holdings, LLC was later substituted as Plaintiff in the action when the loan documents at issue were purchased by Hotel & Motel Holdings. In this action, Plaintiff Hotel & Motel Holdings LLC, as owner of the subject mortgages, seeks to foreclose on certain properties secured by the mortgages.

A. The Third-Party Claims.

While the Third-Party Complaint does not identify with specificity which claims are being asserted against which Third-Party Defendants, counsel for Third-Party Plaintiffs clarified at the hearing that the Third-Party Complaint asserts causes of action against Patel for Civil Conspiracy, Conversion, Interference with a Contractual Relationship, and Intentional Infliction of Emotional Distress. It further appears to the Court that the claims against Godwin are Civil Conspiracy, Conversion, Interference with a Contractual Relationship, and Intentional Infliction of Emotional Distress. Finally, the causes of action that Third-Party Plaintiffs assert against

Jones are Civil Conspiracy, Conversion, Interference with a Contractual Relationship, Intentional Infliction of Emotional Distress, and Breach of Fiduciary Duty.

Third-Party Plaintiffs assert additional third-party claims against First Palmetto Savings Bank and counterclaims against Hotel & Motel Holdings, LLC for Breach of Contract, Fraud, Breach of Contract Accompanied by Fraud, and Violation of the South Carolina Unfair Trade Practices Act.

B. The Substantive Allegations of the Third-Party Claims.

Third-Party Plaintiffs' cause of action for Civil Conspiracy alleges that Jones, Godwin, and Patel entered into a common scheme and conspiracy to deprive and take the property of Third-Party Plaintiffs under the guises of Plaintiff's foreclosure action. Further, Third-Party Plaintiffs allege in their cause of action for Civil Conspiracy that Third-Party Defendant First Palmetto Savings Bank assigned the subject notes, mortgages, and guaranties, in furtherance of the alleged conspiracy.

Third-Party Plaintiffs' cause of action for Fraud alleges that First Palmetto Savings Bank and Plaintiff Hotel & Motel Holdings acted fraudulently in procuring Third-Party Plaintiff Bellamy's execution of a personal guaranty in 2008, thereby encumbering additional property of Bellamy. Third-Party Plaintiffs allege the procurement of the personal guaranty was in furtherance of an alleged conspiracy to deprive and take the property of Third-Party Plaintiffs.

Third-Party Plaintiffs' cause of action against First Palmetto Savings Bank for violation of the South Carolina Unfair Trade Practices Act alleges that First Palmetto Savings Bank and Hotel & Motel Holdings divulged private, confidential information regarding Third-Party Plaintiffs' loans and utilized the private information to the detriment of Third-Party Plaintiffs.

Third-Party Plaintiffs' cause of action for Conversion alleges that Jones, Godwin, and Patel conspired to take and convert the real estate and income-producing assets owned by Third-Party Plaintiffs. Further, the Third-Party Complaint asserts the alleged conversion was all in furtherance of the scheme to make it impossible for Third-Party Plaintiffs to perform under the subject notes.

Third-Party Plaintiffs' cause of action for Interference with a Contractual Relationship alleges that Jones, Godwin, and Patel interfered with rental contracts between Third-Party Plaintiffs and renters, as well as the contractual lending relationship between Third-Party Plaintiffs and Third-Party Defendant First Palmetto Savings Bank.

Third-Party Plaintiffs' cause of action for Intentional Infliction of Emotional Distress alleges that Jones, Godwin, and Patel engaged in extreme and outrageous conduct in conspiring to convert and steal the assets and properties of Third-Party Plaintiffs.

Finally, Third-Party Plaintiff Bellamy's cause of action for Breach of Fiduciary Duty alleges that Bellamy executed a durable power of attorney in favor of Jones, and rather than carrying out his fiduciary duties to Bellamy, it is alleged that Jones engaged in extreme and outrageous conduct in conspiring to convert and steal the assets and properties of Third-Party Plaintiffs.

CONCLUSIONS OF LAW

The Court reviewed and used the case law supplied by counsel at hearing while rendering its decisions. More specifically, the Court carefully reviewed the following cases: *Burnsed v. Greene*, 291 S.C. 59, 351 S.E.2d 910 (Ct. App. 1986); *Robbins v. First Fed. Sav. Bank*, 249 S.C. 219, 363 S.E.2d 418 (Ct. App. 1987); *Beach v. Hudson*, 298 S.C. 424, 380 S.E.2d 869 (Ct. App. 1989); *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 445 S.E.2d 446 (1994);

Laughlin v. Dell Fin. Servs. L.P., 465 F. Supp. 2d 563 (D.S.C. 2006); *Brown v. Shredex, Inc.*, 69 F.Supp.2d 764 (D.S.C. 1999).

Under Rule 14, SCRCP, a “third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability.” *First Gen. Servs. of Charleston, Inc.*, at 442, 445 S.E.2d at 447. In addition, the outcome of the main action must in some way impact the third-party defendant’s liability. *Id.* In determining whether there exists a proper third-party claim, the Court must determine whether Third-Party Plaintiffs have causes of action against Godwin, Jones, and Patel that would impose liability upon Third-Party Defendants for all or part of Plaintiff Hotel & Motel Holdings’ claim for Foreclosure. Rule 14, SCRCP, “does not contemplate an institution of a new cause of action against a third-party defendant in which the third-party defendant is liable to the defendant on a cause of action independent of the original cause of action; rather, [Rule 14] intends that the third-party defendant be liable to the defendant for such damages for which the defendant may be liable to the plaintiff.” *Laughlin*, 465 F.Supp.2d at 566.

In rendering a decision on the Motions of Jones, Godwin, and Patel under Rule 14, SCRCP, the Court looks at the causes of action asserted in Third-Party Plaintiffs’ Amended Answer, Counterclaims, and Third-Party Complaint in conjunction with the causes of action asserted in Plaintiff’s Complaint. Plaintiff, as the alleged owner of the subject loan documents, seeks to foreclose the subject mortgages. Third-Party Plaintiffs have alleged that the assignment of the loan documents to Plaintiff was not valid, in part, as a result of the factual allegations giving rise to the third-party claim for civil conspiracy against Jones, Godwin, and Patel in the Third-Party Complaint.

After reviewing the pleadings, motions and memoranda submitted to the Court and hearing the arguments of all counsel present at the hearing, the Court finds that based upon the pleadings, Third-Party Plaintiffs' claims against Jones, Godwin and Patel for Conversion, Interference with a Contractual Relationship, and Intentional Infliction of Emotional Distress are not proper under Rule 14(a), SCRCP, as those third-party claims are separate and independent causes of action. Similarly, Third-Party Plaintiff Bellamy's claim for Breach of Fiduciary Duty against Jones is not proper under Rule 14, SCRCP. Likewise, the third-party claims for Fraud and Violation of the South Carolina Unfair Trade Practices Act are not proper under Rule 14, SCRCP. Third-Party Plaintiffs would be entitled to seek relief under these causes of action regardless of the outcome of Plaintiff's foreclosure action and without regard to whether Third-Party Plaintiffs are found liable under the terms of the loan documents.

Therefore, the third-party claims for Conversion, Interference with a Contractual Relationship, Intentional Infliction of Emotional Distress, and Breach of Fiduciary Duty against Jones, Godwin, and Patel are improper under Rule 14(a), SCRCP, because they are not dependent upon the outcome of the Plaintiff's claim against the Third-Party Plaintiffs. In addition, the third-party claims for Fraud and Violation of the South Carolina Unfair Trade Practices Act are improper under Rule 14, SCRCP, in that they are independent causes of action, not impacted by the outcome of the foreclosure matter.

In contrast, in their Civil Conspiracy cause of action, Third-Party Plaintiffs allege that Jones, Godwin, and Patel entered into a scheme to procure the fraudulent assignment of loan documents to Hotel & Motel Holdings. The facts, as alleged in the pleadings, do appear to state a valid third-party claim since the outcome of the foreclosure action may impact the liability of Third-Party Defendants under this cause of action. Similarly, in their third-party claims for

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Breach of Contract and Breach of Contract Accompanied by Fraud, Third-Party Plaintiffs assert facts that, if true, may impact the liability of Third-Party Defendants. Therefore, it is

ORDERED, ADJUDGED, AND DECREED that the third-party causes of action against Jones, Godwin and Patel for Conversion, Interference with a Contractual Relationship, and Intentional Infliction of Emotional Distress are stricken from Third-Party Plaintiffs' Amended Answer, Counterclaims, and Third-Party Complaint. Third-Party Plaintiffs are prohibited from seeking recovery in this action from Jones, Godwin and Patel under those theories of liability as the third-party causes of action for Conversion, Interference with a Contractual Relationship, and Intentional Infliction of Emotional Distress are dismissed from this proceeding. It is further

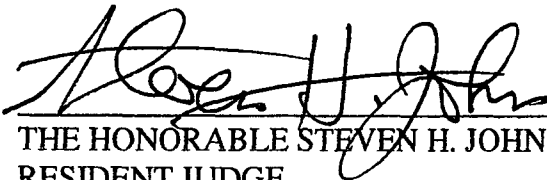
ORDERED that the third-party cause of action against Jones for Breach of Fiduciary Duty is stricken from Third-Party Plaintiffs' Amended Answer, Counterclaims, and Third-Party Complaint. Third-Party Plaintiffs are prohibited from seeking recovery in this action from Jones under this theory of liability as the third-party cause of action for Breach of Fiduciary duty is dismissed from this proceeding. It is further

ORDERED that the Third-Party Plaintiffs' cause of action for Civil Conspiracy against Jones, Godwin, and Patel is proper under Rule 14, SCRCP. Therefore, Third-Party Plaintiffs may proceed with the third-party Civil Conspiracy cause of action at this stage in the proceeding. It is further

ORDERED that the Third-Party Plaintiffs' causes of action for Fraud and Violation of the South Carolina Unfair Trade Practices Act is stricken from Third-Party Plaintiffs' Amended Answer, Counterclaims, and Third-Party Complaint as it is not proper under Rule 14, SCRCP. It is further

ORDERED that the Third Party Plaintiffs' causes of action for Breach of Contract and Breach of Contract with Fraud are proper under Rule 14, SCRCP. It is further

ORDERED that at this time, the Court declines to rule upon the Motion to Dismiss of Jones, Godwin, and Patel, made pursuant to Rule 12(b)(6), SCRCP. However, nothing herein shall operate to prevent any party from seeking dismissal of the remaining causes of action in accordance with the applicable procedural rules.


THE HONORABLE STEVEN H. JOHN
RESIDENT JUDGE
FIFTEENTH JUDICIAL CIRCUIT

October 15 2010
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2009-CP-26-5743

HOTEL & MOTEL HOLDINGS, LLC,)
Plaintiff,)

vs.)

BJC ENTERPRISES, LLC, WENDY J.)
BELLAMY, AMERICANA, INC. a/k/a)
AMERICANA MOTEL OF MYRTLE)
BEACH, INC., MOZINGO AND)
WALLACE ARCHITECTS, LLC, KERSI)
S. SHROFF, and SHROFF)
MANAGEMENT, INC.,)

Defendants.)

**ORDER REGARDING APPOINTMENT OF
RECEIVER**

FILED
HORRY COUNTY
09 DEC 31 PM 4:14
MELANIE HUGGINS-WARD
CLERK OF COURT

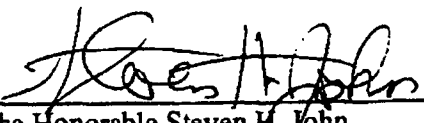
This matter comes before the Court upon the Motion of Plaintiff Hotel & Motel Holdings, LLC seeking the appointment of a receiver. Specifically, Plaintiff seeks the appointment of Mr. Bhupendra Patel as receiver. A hearing on the matter was held before the Court at the Horry County Courthouse on Tuesday, December 8, 2009. Appearing on behalf of Plaintiff Hotel & Motel Holdings, LLC was R. Wayne Byrd, Esquire and Audra M. Byrd, Esquire of the law firm of Turner Padget Graham & Laney P.A. Present for Defendants BJC Enterprises, LLC, Wendy J. Bellamy and Americana, Inc. was Kathryn M. Cook, Esquire of the law firm of Cook & Roy, LLC. After review of the Court's file and hearing the arguments of counsel, the Court find as follows:

1. Plaintiff's Motion for the Appointment of a Receiver is GRANTED.
2. The Court does not find Mr. Bhupendra Patel to be an appropriate receiver for the property in this case, and the parties are encouraged to select a mutually-agreeable receiver for

[Handwritten signature]

the property. If the parties are not able to agree upon a receiver, the Court may appoint a receiver of its choosing for the property.

Based upon the foregoing, the Court has been advised that the Motion and the issues raised therein have been resolved by the parties.


The Honorable Steven H. John
Chief Administrative Judge
Court of Common Pleas
Fifteenth Judicial Circuit

December 23, 2009.
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

HOTEL & MOTEL HOLDINGS, LLC,)
Plaintiff,)

vs.)

BJC ENTERPRISES, LLC, ET AL.,)
Defendants.)

**ORDER GRANTING MOTIONS TO
DISMISS FILED ON BEHALF OF THIRD-
PARTY DEFENDANTS BHUPENDRA
PATEL, JACK JONES AND DONALD
GODWIN**

BJC ENTERPRISES, LLC, ET AL.,)
Third Party Plaintiffs,)

vs.)

FIRST PALMETTO SAVINGS BANK,)
F.S.B., JACK JONES, DONALD D.)
GODWIN, AND BHUPENDRA PATEL,)

Third Party Defendants.)

FILED
HORRY COUNTY
11 APR 21 PM 4:45
MELANIE HARRIS, CLERK OF COURT

These matters come before the Court upon the Motions of Third-Party Defendants Bhupendra Patel ("Patel"), Jack Jones ("Jones"), and Donald Godwin ("Godwin") for an Order dismissing the third-party claim against them for civil conspiracy which was alleged by Defendants/Third-Party Plaintiffs Wendy J. Bellamy, BJC Enterprises, LLC and Americana, Inc. (collectively "Third-Party Plaintiffs"). A hearing was held before the Court on the matters on Thursday, April 14, 2011 at the Horry County Courthouse. Present at the hearing for Plaintiff Hotel & Motel Holdings, LLC, Jones and Godwin was Audra M. Byrd. William W. DesChamps, Jr. and William W. DesChamps, III appeared at the hearing on behalf of Patel. Third-Party Plaintiffs were represented at the hearing by Kathryn M. Cook. William H. Short, Jr. appeared on behalf of Third-Party Defendant First Palmetto Savings Bank, F.S.B ("First

[Handwritten signature]

Palmetto"). Also present at the hearing was Susan P. MacDonald, representing Kersi S. Shroff and Shroff Management, Inc.

RELEVANT PROCEDURAL HISTORY

This commercial foreclosure action was originally brought by First Palmetto. The Summons and Complaint were filed with the Court on June 11, 2009. Subsequently, an Amended Summons and Complaint were filed with the Court wherein Hotel & Motel Holdings, LLC was substituted as the plaintiff. According to the Amended Complaint, Hotel & Motel Holdings, LLC purchased the mortgages which are the subject of this action, and assignments of the mortgages have been recorded with the Office of the Horry County Register of Deeds.

Thereafter, Third-Party Plaintiffs answered the Amended Complaint, and later filed an Amended Answer, Counterclaims and Third-Party Complaint. The Third-Party Complaint alleged the following causes of action against Patel, Jones and Godwin: civil conspiracy, conversion, interference with contractual relationship, and intentional infliction of emotional distress/outrage. Third-Party Plaintiffs asserted an additional third-party claim against Jones for breach of fiduciary duty. With regard to Third-Party Defendant First Palmetto, Third-Party Plaintiffs alleged causes of action for breach of contract, fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act.

In addition to its third-party claims, Third-Party Plaintiffs asserted the following counterclaims against Hotel & Motel Holdings, LLC: breach of contract, fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, interference with contractual relationship, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act.

In response to the third-party claims, Patel, Jones and Godwin filed and served motions to strike and to dismiss pursuant to Rules 12(b)(6), 12(b)(8), and 14, SCRCPP. After a hearing before the Honorable Judge Steven H. John on Thursday, September 23, 2010, the third-party causes of action for conversion, interference with contractual relationship, intentional infliction of emotional distress, breach of fiduciary duty, fraud, and violation of the South Carolina Unfair Trade Practices Act were stricken as improper third-party claims under Rule 14, SCRCPP. In his Order dated October 15, 2010, Judge John ordered those claims to be stricken from the Third-Party Complaint, but Judge John expressly declined to rule on the Rule 12(b)(6), SCRCPP Motions of Patel, Jones and Godwin.

Thus, the only Motions presented to this Court for hearing on April 14, 2011 were the Rule 12(b)(6), SCRCPP Motions to Dismiss the third-party claim for civil conspiracy as to Patel, Jones and Godwin. Prior to the hearing on these matters, the Court was presented with memoranda both in support and in opposition of the Motions. Notably, Jones and Godwin included as attachments to their memorandum certain deposition excerpts and an affidavit. The Court expressly excludes from its consideration these attachments, as well as any reference thereto in the memorandum. Moreover, prior to hearing arguments from counsel, the Court explicitly limited counsel to arguments based on matters contained within the pleadings in this action.

STANDARD OF REVIEW

A trial court may properly grant a motion to dismiss for failure to state facts sufficient to constitute a cause of action when the facts alleged in the complaint, along with all reasonable inferences deducible therefrom, do not entitle the plaintiff to recovery on any theory of the case. McCormick v. England, 328 S.C. 627, 632-33, 494 S.E.2d 431, 433 (Ct. App. 1997). When

deciding a motion to dismiss pursuant to Rule 12(b)(6), SCRPC, the Court may only consider the allegations set forth on the face of the complaint. Dye v. Gainey, 320 S.C. 65, 67, 463 S.E.2d 97, 98 (Ct. App. 1995). "The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief." McCormick, 328 S.C. at 633, 494 S.E.2d at 433-34.

CONCLUSIONS OF LAW AND ANALYSIS

A civil conspiracy claim consists of three elements: (1) a combination of two or more persons; (2) joining for the purpose of injuring the plaintiff; (3) which causes special damage to the plaintiff. Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005); McMillan v. Oconee Memorial Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). "[I]n civil conspiracy, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design." Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (citing Pye v. Estate of Fox, 369 S.C. 555, 567-68, 633 S.E.2d 505, 511 (2006) ("The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.")).

A civil conspiracy claim requires one to plead additional acts in furtherance of the conspiracy as opposed to reasserting other claims contained in the complaint. Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) rev'd on other grounds, 283 S.C. 155, 321 S.E.2d 602 (1984). In addition, "because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." Hackworth, 385 S.C. at 115, 682 S.E.2d at 874.

A. Additional Acts in Furtherance of the Conspiracy.

To state a cause of action for civil conspiracy, one must plead additional acts in furtherance of the conspiracy which are distinct and separate from the other wrongful acts alleged in the complaint. Todd, 276 S.C. at 293, 278 S.E.2d at 611. Stated differently, in order to maintain a civil conspiracy claim, the plaintiff must do more than incorporate the allegations contained in other claims, allege the existence of a civil conspiracy, and pray for damages resulting from the conspiracy. Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 583 S.E.2d 15, 31 (Ct. App. 2000). If the party fails to plead separate acts in furtherance of the conspiracy, the civil conspiracy claim shall be dismissed. Hackworth, 385 S.C. at 116, 682 S.E.2d at 875.

In their civil conspiracy cause of action, Third-Party Plaintiffs begin by incorporating by reference the allegations which also form the basis of their counterclaims and third-party claims for breach of contract, fraud, breach of contract accompanied by a fraudulent act, conversion, interference with contractual relationship, violation of the South Carolina Unfair Trade Practices Act, and intentional infliction of emotional distress. Then, in Paragraph 113, Third-Party Plaintiffs make the conclusory allegation that the plaintiff and Third-Party Defendants "entered into a common scheme and conspiracy to deprive, steal and take property" belonging to Third-Party Plaintiffs. This allegation of what is essentially conversion is repeated throughout the pleading and forms the basis of Third-Party Plaintiffs' claims for breach of contract, conversion, interference with contractual relationship, violation of the South Carolina Unfair Trade Practices Act, and intentional infliction of emotional distress. It is clear that Third-Party Plaintiffs have predicated their conspiracy cause of action on the same facts as those contained in their remaining claims. Indeed, in Paragraph 113 of their Third-Party Complaint, Third-Party

Plaintiffs assert that the allegations of civil conspiracy are "further set forth in the defenses, counterclaims and Third-Party claims above and below."

Moreover, the act allegedly taken in furtherance of the conspiracy is described in Paragraph 114 of the Third-Party Complaint as follows: "Third-Party Defendant Bank assigned the note, mortgages, guaranties, and other security interests to Plaintiff . . . in a less than arm's length transaction and induced Defendant Bellamy to sign over a Power of Attorney to Third-Party Defendant Jones." This allegation is set forth almost verbatim in Paragraphs 86(b), 88 and 94 of Third-Party Plaintiffs' breach of contract cause of action and appears only to relate to actions allegedly taken by First Palmetto.

A thorough review of the pleading reveals that the allegations of Third-Party Plaintiffs in support of their civil conspiracy claim are the same as those alleged in support of their other defenses, counterclaims and third-party claims. Third-Party Plaintiffs make no additional or independent allegations of acts done in furtherance of the conspiracy and instead rely on the exact allegations contained in their remaining causes of action. Nothing in the civil conspiracy cause of action informs Patel, Jones, or Godwin of what acts in furtherance of the alleged conspiracy they are being accused of taking, and as a result, Third-Party Plaintiffs have not sufficiently alleged acts in furtherance of the civil conspiracy. Therefore, the third-party claim of civil conspiracy must be dismissed.

B. Special Damages.

A viable civil conspiracy claim must contain an allegation of special damages resulting to the plaintiff. Special damages are defined as those which are the natural, but not necessary or ordinary, consequences of a defendant's conduct. Hackworth, 385 S.C. at 116, 682 S.E.2d at 875. Because special damages are never implied at law, they must "be specifically alleged in the

complaint to avoid surprise to the other party.” Id.; see also, AJG Holdings, LLC v. Dunn, 706 S.E.2d 23, 28 (Ct. App. 2011) (“Special damages must be properly pled, or the claim for civil conspiracy will be dismissed.”). Moreover, Rule 9(g) of the South Carolina Rules of Civil Procedure requires special damages be specifically stated in the pleadings.

“If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.” Hackworth, 385 S.C. at 117, 682 S.E.2d at 875. (citing Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989) (“The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred.”)). Stated differently, “the damages alleged must go beyond the damages alleged in the other causes of action.” Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006).

In the Third-Party Complaint, the only reference to special damages made by Third-Party Plaintiffs is contained in Paragraph 115 wherein it is alleged that the purpose of the civil conspiracy was to cause them special damages. There is no allegation whatsoever as to whether the special damages were actually incurred by Third-Party Plaintiffs, and if so, what the alleged special damages are. Additionally, Third-Party Plaintiffs conclude their civil conspiracy claim by requesting, in Paragraph 116, the exact relief as is requested in nearly every other claim: “a judgment of actual, consequential, and punitive damages.”

Based on the foregoing, Third-Party Plaintiffs have failed to plead special damages unique to the civil conspiracy claim, and indeed, they have failed to make any allegation that they have actually incurred damages as a result of the alleged conspiracy. Nothing contained in the Third-Party Complaint informs the third-party defendants of what the special damages are

alleged to be. Therefore, Third-Party Plaintiffs have failed to properly plead their claim of civil conspiracy, and it must be dismissed as a matter of law.

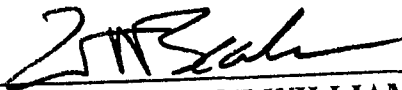
CONCLUSION

After careful review of the pleadings and hearing arguments of counsel, this Court concludes it has properly considered the Third-Party Complaint, as well as the Motions to Dismiss filed by Patel, Jones and Godwin, and Third-Party Plaintiffs have failed to state facts sufficient to constitute a cause of action for civil conspiracy against Patel, Godwin and Jones. As such, the third-party claim for conspiracy as it relates to Patel, Godwin and Jones must be dismissed pursuant to Rule 12(b)(6), SCRPC.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the third-party claim for civil conspiracy against Bhupendra Patel, Jack Jones and Donald Godwin is hereby dismissed.

AND IT IS SO ORDERED.



THE HONORABLE WILLIAM H. SEALS, JR.
Presiding Circuit Court Judge for the
Fifteenth Judicial Circuit

Dated this 20 day of April, 2011.

Mary, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

HOTEL & MOTEL HOLDINGS, LLC,)

Plaintiff.)

vs.)

BJC ENTERPRISES, LLC, ET AL.,)

Defendants.)

BJC ENTERPRISES, LLC, ET AL.,)

Third Party Plaintiffs.)

vs.)

FIRST PALMETTO SAVINGS BANK,)
F.S.B., JACK JONES, DONALD D.)
GODWIN, AND BHUPENDRA PATEL.)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

**ORDER DENYING DEFENDANTS/THIRD-
PARTY PLAINTIFFS' MOTION FOR
RECONSIDERATION OF ORDER**

FILED
HORRY COUNTY
2011 NOV 30 PM 3:18
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter comes before the Court upon the Motion of Defendants/Third-Party Plaintiffs BJC Enterprises, LLC, Wendy J. Bellamy, and Americana, Inc. (collectively "Third-Party Plaintiffs") seeking an Order reconsidering the previous Order of this Court granting the Motion to Dismiss the third-party claim for civil conspiracy filed by Third-Party Defendants Bhupendra Patel ("Patel"), Jack Jones ("Jones"), and Donald Godwin ("Godwin"). For the reasons set forth below, the Motion for Reconsideration of Order is DENIED.

RELEVANT PROCEDURAL HISTORY

This commercial foreclosure action was originally brought by First Palmetto Savings Bank, F.S.B. ("First Palmetto"). The Summons and Complaint were filed with the Court on June 11, 2009. Subsequently, an Amended Summons and Complaint were filed with the Court

wherein Hotel & Motel Holdings, LLC was substituted as the plaintiff. According to the Amended Complaint, Hotel & Motel Holdings, LLC purchased the mortgages which are the subject of this action, and assignments of the mortgages have been recorded with the Office of the Horry County Register of Deeds.

Thereafter, Third-Party Plaintiffs answered the Amended Complaint, and later filed an Amended Answer, Counterclaims and Third-Party Complaint. The Third-Party Complaint alleged the following causes of action against Patel, Jones and Godwin: civil conspiracy, conversion, interference with contractual relationship, and intentional infliction of emotional distress/outrage. Third-Party Plaintiffs asserted an additional third-party claim against Jones for breach of fiduciary duty. With regard to Third-Party Defendant First Palmetto, Third-Party Plaintiffs alleged causes of action for breach of contract, fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act.

In addition to its third-party claims, Third-Party Plaintiffs asserted the following counterclaims against Hotel & Motel Holdings, LLC: breach of contract, fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, interference with contractual relationship, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act.

In response to the third-party claims, Patel, Jones and Godwin filed and served motions to strike and to dismiss pursuant to Rules 12(b)(6), 12(b)(8), and 14, SCRPC. After a hearing before the Honorable Judge Steven H. John on Thursday, September 23, 2010, the third-party causes of action for conversion, interference with contractual relationship, intentional infliction of emotional distress, breach of fiduciary duty, fraud, and violation of the South Carolina Unfair

Trade Practices Act were stricken as improper third-party claims under Rule 14, SCRPC. In his Order dated October 15, 2010, Judge John ordered those claims to be stricken from the Third-Party Complaint, but Judge John expressly declined to rule on the Rule 12(b)(6), SCRPC Motions of Patel, Jones and Godwin.

Thus, the only Motions presented to this Court for hearing on April 14, 2011 were the Rule 12(b)(6), SCRPC Motions to Dismiss the third-party claim for civil conspiracy as to Patel, Jones and Godwin. By Order dated April 20, 2011, and filed with the Horry County Clerk of Court on April 21, 2011, this Court granted the Motions to Dismiss the third-party claim for civil conspiracy. It is this Order that Third-Party Plaintiffs seek reconsideration of pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure. In their Motion for Reconsideration, Third-Party Plaintiffs allege the Court erred in the following six particulars:

1. Finding Third-Party Plaintiffs merely reasserted other claims contained in their Complaint rather than pleading acts committed by Patel, Jones and Godwin for the purpose of causing injury to Third-Party Plaintiffs;
2. Finding Third-Party Plaintiffs failed to plead special damages resulting from the combined acts of Patel, Jones and Godwin, independent of the damages sustained by Third-Party Plaintiffs resulting from their separate claims against Plaintiff and First Palmetto based on other causes of action not asserted against Patel, Jones and Godwin;
3. In failing to find Third-Party Plaintiffs had specifically pled damages for conspiracy beyond, separate and independent of the damages pled to have been sustained by them as a result of other causes of action which are not asserted against Patel, Jones and Godwin;
4. In failing to distinguish between the claims against Plaintiff and First Palmetto that are not asserted against Patel, Jones and Godwin but which have common factual acts and

omissions that constitute the basis of separate and distinct causes of action as to Plaintiff and First Palmetto;

5. In failing to find that Third-Party Plaintiffs pled wrongful acts distinct and separate as to Jones, Godwin and Patel which constitute conspiracy but which constitute causes of action for interference with contractual relationships, outrage, breach of contract, breach of contract with fraud, fraud, and violation of the South Carolina Unfair Trade Practices Act against Plaintiff and First Palmetto; and
6. In failing to find the pleadings of Third-Party Plaintiffs put Patel, Jones, and Godwin on notice of the acts and omissions by them which constitute conversion.¹

CONCLUSIONS OF LAW AND ANALYSIS

A civil conspiracy claim consists of three elements: (1) a combination of two or more persons; (2) joining for the purpose of injuring the plaintiff; (3) which causes special damage to the plaintiff. Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005); McMillan v. Oconee Memorial Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). “[I]n civil conspiracy, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design.” Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (citing Pye v. Estate of Fox, 369 S.C. 555, 567-68, 633 S.E.2d 505, 511 (2006) (“The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.”)).

A civil conspiracy claim requires one to plead additional acts in furtherance of the conspiracy as opposed to reasserting other claims contained in the complaint. Todd v. S.C. Farm

¹ Although the word “conversion” appears in the Motion for Reconsideration, it seems this was a typographical error, and the word “conversion” should presumably read “civil conspiracy.” The third-party claim for conversion was previously stricken and was not the subject of this Court’s Order dated April 20, 2011.

Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) rev'd on other grounds, 283 S.C. 155, 321 S.E.2d 602 (1984). In addition, "because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." Hackworth, 385 S.C. at 115, 682 S.E.2d at 874.

A. Additional Acts in Furtherance of the Conspiracy.

To state a cause of action for civil conspiracy, one must plead additional acts in furtherance of the conspiracy which are distinct and separate from the other wrongful acts alleged in the complaint. Todd, 276 S.C. at 293, 278 S.E.2d at 611. Stated differently, in order to maintain a civil conspiracy claim, the plaintiff must do more than incorporate the allegations contained in other claims, allege the existence of a civil conspiracy, and pray for damages resulting from the conspiracy. Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 583 S.E.2d 15, 31 (Ct. App. 2000). If the party fails to plead separate acts in furtherance of the conspiracy, the civil conspiracy claim shall be dismissed. Hackworth, 385 S.C. at 116, 682 S.E.2d at 875.

Third-Party Plaintiffs allege the Court erred in finding Third-Party Plaintiffs merely reasserted other claims contained in their Complaint rather than pleading acts committed by Patel, Jones and Godwin for the purpose of causing injury to Third-Party Plaintiffs. However, a review of the Third-Party Complaint reveals that Third-Party Plaintiffs begin their civil conspiracy claim by incorporating by reference the allegations which also form the basis of their counterclaims and third-party claims for breach of contract, fraud, breach of contract accompanied by a fraudulent act, conversion, interference with contractual relationship, violation of the South Carolina Unfair Trade Practices Act, and intentional infliction of emotional distress. Then, Third-Party Plaintiffs make the conclusory allegation that the plaintiff and Third-Party Defendants "entered into a common scheme and conspiracy to deprive, steal and take property"

belonging to Third-Party Plaintiffs. This allegation of what is essentially conversion is repeated throughout the pleading and forms the basis of Third-Party Plaintiffs' claims for breach of contract, conversion, interference with contractual relationship, violation of the South Carolina Unfair Trade Practices Act, and intentional infliction of emotional distress.

Clearly, Third-Party Plaintiffs have predicated their conspiracy cause of action on the same facts as those contained in their remaining claims. Indeed, in Paragraph 113 of their Third-Party Complaint, Third-Party Plaintiffs assert that the allegations of civil conspiracy are "further set forth in the defenses, counterclaims and Third-Party claims above and below." Moreover, the acts allegedly taken in furtherance of the conspiracy is described in Paragraph 114 of the Third-Party Complaint as follows: "Third-Party Defendant Bank assigned the note, mortgages, guaranties, and other security interests to Plaintiff . . . in a less than arm's length transaction and induced Defendant Bellamy to sign over a Power of Attorney to Third-Party Defendant Jones." This allegation is set forth almost verbatim in Paragraphs 86(b), 88 and 94 of Third-Party Plaintiffs' breach of contract cause of action and appears only to relate to actions allegedly taken by First Palmetto.

As an additional basis for reconsideration, Third-Party Plaintiffs allege the Court erred in failing to find that Third-Party Plaintiffs pled wrongful acts distinct and separate as to Jones, Godwin and Patel which constitute conspiracy, but which constitute other causes of action against Plaintiff and First Palmetto. However, a careful review of the pleading reveals that there are no allegations of wrongful conduct on the part of Jones, Godwin and Patel which are separate and distinct from those wrongful acts alleged in support of their other defenses, counterclaims and third-party claims. Third-Party Plaintiffs make no additional or independent allegations of acts done in furtherance of the conspiracy and instead rely on the exact allegations contained in

their remaining claims and defenses. In addition, it appears that the acts that are alleged do not relate to any conduct on the part of Patel, Jones or Godwin.

Third-Party Plaintiffs also allege the Court erred in failing to distinguish between the claims against Plaintiff and First Palmetto that are not asserted against Patel, Jones and Godwin. This alleged error is without merit for the reasons set forth above. Specifically, the Court finds the allegations constituting the conspiracy cause of action are the same as those forming the basis of the remaining claims and defenses of Third-Party Plaintiffs. Although various third-party claims have been previously stricken as improper under Rule 14 of the South Carolina Rules of Civil Procedure, this does not affect the Court's analysis. The act of this Court in striking some claims against some Third-Party Defendants cannot remedy a failure on the part of Third-Party Plaintiffs to plead sufficiently the requisite elements so as to state a cause of action for civil conspiracy. The fact remains that the civil conspiracy claim is merely a recitation of the allegations constituting Third-Party Plaintiffs' other causes of action, and there are no separate acts alleged in furtherance of the conspiracy. As a result, the cause of action for civil conspiracy fails as a matter of law.

B. Special Damages.

A viable civil conspiracy claim must contain an allegation of special damages resulting to the plaintiff. Special damages are never implied at law, and they must "be specifically alleged in the complaint to avoid surprise to the other party." *Id.*; see also, AJG Holdings, LLC v. Dunn, 706 S.E.2d 23, 28 (Ct. App. 2011) ("Special damages must be properly pled, or the claim for civil conspiracy will be dismissed."). Moreover, Rule 9(g) of the South Carolina Rules of Civil Procedure requires special damages be specifically stated in the pleadings.

"If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed." Hackworth, 385 S.C. at 117, 682 S.E.2d at 875. (citing Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct. App.1989) ("The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred.")). Stated differently, "the damages alleged must go beyond the damages alleged in the other causes of action." Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006).

Third-Party Plaintiffs allege the Court erred in finding they failed to plead special damages resulting from the combined acts of Patel, Jones and Godwin and failing to find they had specifically pled damages for conspiracy beyond, separate and independent of the damages resulting from other causes of action. However, the only reference to special damages made by Third-Party Plaintiffs is contained in Paragraph 115 of the Complaint wherein it is alleged that the purpose of the civil conspiracy was to cause them special damages. There is no allegation whatsoever as to whether the special damages were actually incurred by Third-Party Plaintiffs, and if so, what the alleged special damages are. Additionally, Third-Party Plaintiffs conclude their civil conspiracy claim by requesting, in Paragraph 116, the exact relief as is requested in nearly every other claim: "a judgment of actual, consequential, and punitive damages."

Based on the foregoing, Third-Party Plaintiffs have failed to plead special damages unique to the civil conspiracy claim, and indeed, they have failed to make any allegation that they have actually incurred damages as a result of the alleged conspiracy. Nothing contained in the Third-Party Complaint informs the third-party defendants of what the special damages are

alleged to be. Therefore, Third-Party Plaintiffs have failed to properly plead their claim of civil conspiracy.

As a final basis for reconsideration, Third-Party Plaintiffs allege the Court erred by failing to find the pleadings of Third-Party Plaintiffs put Patel, Jones, and Godwin on notice of the acts and omissions by them which constitute conversion. Presumably, the third-party plaintiffs' reference to "conversion" was an error and should have read "civil conspiracy." For the reasons set forth above and in its prior Order, the Court finds that Third-Party Plaintiffs have failed to plead additional facts in furtherance of the conspiracy, and therefore, nothing in the civil conspiracy cause of action informs Patel, Jones, or Godwin of what acts in furtherance of the alleged conspiracy they are being accused of taking. Similarly, there are no allegations in the Third-Party Complaint which would inform Patel, Jones and Godwin of the special damages they are being accused of causing.

CONCLUSION

After careful review of the pleadings and hearing arguments of counsel, this Court concludes it has properly considered the Third-Party Complaint, the Motions to Dismiss filed by Patel, Jones and Godwin, and the Motion for Reconsideration. Third-Party Plaintiffs have failed to state facts sufficient to constitute a cause of action for civil conspiracy against Patel, Godwin and Jones. As such, the third-party claim for conspiracy as it relates to Patel, Godwin and Jones was properly dismissed pursuant to Rule 12(b)(6), SCRCP, and the Motion for Reconsideration of Order must be denied.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants/Third-
Party Plaintiffs' Motion for Reconsideration of Order is hereby denied.

AND IT IS SO ORDERED.



THE HONORABLE WILLIAM H. SEALS, JR.
Presiding Circuit Court Judge for the
Fifteenth Judicial Circuit

Dated this 29 day of Nov., 2011.

Manoir, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Hotel & Motel Holdings, LLC,

Plaintiff,

v.

BJC Enterprises, LLC, et al.,

Defendants.

BJC Enterprises, LLC, et al.,

Third Party Plaintiffs,

v.

First Palmetto Savings Bank, F.S.B., et al,

Third Party Defendants.

THE COURT OF COMMON PLEAS

FILE COPY

Civil Action No.: 2009-CP-26-05743

**Order Denying Motion for Summary
Judgment on Behalf of Plaintiff Hotel &
Motel Holdings, LLC.**

MELANIE D. BYRD
CLERK OF COURT

2011 JUN -6 AM 10:16

HORRY COUNTY

Hotel & Motel Holdings, LLC's Motion for Summary Judgment on claims against Defendants BJC Enterprises, LLC, Americana, Inc and Wendy Bellamy was heard by the Court on May 12, 2011. Appearing at the hearing were Audra Byrd, Esq. on behalf of Hotel & Motel Holdings, LLC. ("H&M") and Kathryn M. Cook, Esq. on behalf of BJC Enterprises, LLC (BJC), Wendy J. Bellamy, and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. (collectively, "Third Party Plaintiffs"). Representatives for other parties in the lawsuit were also present.

Standard of Review

Summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any

Defenses

The Defendants allege as a defense that the assignment of the loan to H&M lacked consideration. Defendants allege that only \$250,000 was paid in cash for the note, mortgage, and other documents along. \$4,750,000 was also part of the purchase price but was in the form of a new loan from First Palmetto Savings Bank F.S.B. ("Bank"). Defendants allege this was not an arms-length transaction based on the relatively small amount of actual cash paid and the large amount of the loan. Evidence in depositions and argued before the Court support Defendant's allegations. The Court holds that whether or not adequate consideration is a genuine question of material fact.

Another defense alleged by Defendants is failure to give proper notice. The terms of the note and mortgages require notice of default and right to cure being sent in writing via first class mail as seen in Exhibits B, F, and G attached to Defendants' memorandum in opposition. There is evidence that Bank considered the loans current as of the February 3, 2009 payment. W. Bellamy Dep., Page 101, lines 11-22. Defendants allege they were not notified of being in default after February 3, 2009 until being served by from H&M. W. Bellamy Dep., Page 104, lines 22-25. Whether or not Defendants were on notice as required by the terms of the note and mortgage gives rise to a genuine issue of material fact.

Defendants allege several other defenses. However, as the Court has found more than a scintilla of evidence for the two defenses above, it would be improper for this Court to grant Plaintiff's Motion for Summary Judgment.

Conclusion

Based upon the reasons stated herein, Hotel & Motel Holdings, LLC's Motion for Summary Judgment its claim against Defendants is hereby **DENIED**.

IT IS SO ORDERED.



William H. Seals, Jr., Judge
Twelfth Judicial Circuit

Horry County, South Carolina

June 1, 2011

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Hotel & Motel Holdings, LLC,

Plaintiff,

v.

BJC Enterprises, LLC, et al.,

Defendants.

BJC Enterprises, LLC, et al.,

Third Party Plaintiffs,

v.

First Palmetto Savings Bank, F.S.B., et al,

Third Party Defendants.

THE COURT OF COMMON PLEAS

Civil Action No.: 2009-CP-26-05743

2011 JAN -6 AM 10:16
Horry County
CLERK OF COURT

**Order Granting Motion for Summary
Judgment on Counterclaims Asserted by
Defendants Against Hotel & Motel
Holdings, LLC.**

Hotel & Motel Holdings, LLC's Motion for Summary Judgment on Counterclaims of Defendants BJC Enterprises, LLC, Americana, Inc and Wendy Bellamy was heard by the Court on May 12, 2011. Appearing at the hearing were Audra Byrd, Esq. on behalf of Hotel & Motel Holdings, LLC. ("H&M") and Kathryn M. Cook, Esq. on behalf of BJC Enterprises, LLC (BJC), Wendy J. Bellamy, and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. (collectively, "Third Party Plaintiffs"). Representatives for other parties in the lawsuit were also present.

Standard of Review

Summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any

triable issue of fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). "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 Management Co., Inc.* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Breach of Contract and Breach of Contract Accompanied by Fraudulent Act

To prove breach of contract, a party must establish there was a contract, the other party breached the contract, and the breach caused damages. "To maintain an action for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: '(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach.'" *RoTec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 597 S.E.2d 881 (Ct. App., 2004).

In this case, Defendants' claim for breach of contract against H&M is based upon H&M standing in the shoes of First Palmetto Savings Bank, FSB ("Bank"). Defendant asserts H&M is not a holder in due course and is subject to claims that Defendants may have against Bank. In this Court's **Order Granting Motion for Summary Judgment on Claims Asserted by Third Party Plaintiffs Against First Palmetto Savings Bank, F.S.B.** filed on June 1, 2011, the Court granted summary judgment in favor of Bank, a third-party defendant, on these very same two claims brought by Defendants acting as third party plaintiffs. It is the law of the case that there is no factual evidence to support these claims against the bank. Consequently, as to these two claims, the Court need not reach the issue as to whether H&M is a holder in due course. Summary judgment should be granted as a matter of law based on the reasoning of this Court's

**Order Granting Motion for Summary Judgment on Claims Asserted by Third Party
Plaintiffs Against First Palmetto Savings Bank, F.S.B.**

Fraud

In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recovery.

M. B. Kahn Const. Co., Inc. v. South Carolina Nat. Bank of Charleston, 275 S.C. 381, 271 S.E.2d 414 (1980). A "fraud claim requires proof by clear and convincing evidence; thus, more than a mere scintilla of evidence must be presented to withstand a motion for summary judgment." *Turner v. Milliman*, ---S.C.--, 2011 WL 1118833, 4 (2011). The only fraud claim that is asserted against H&M by Defendants is alleged to have occurred in January, 2008. H&M was incorporated in June, 2009. As is was not in existence at the time of the alleged fraud, H & M cannot be held liable as a matter of law.

Civil Conspiracy

In order to recover under a civil conspiracy claim, a party must prove (1) a combination of two or more person; (2) joining for the purpose of injuring the claimant; (3) which causes special damage to the plaintiff. *McMillan v. Oconee Memorial Hosp., Inc.* 367 S.C. 559, 626 S.E.2d 884 (2006). "When items of special damage are claimed, they shall be specifically stated." Rule

9(g), SCRPC. "Special damages must be properly pled, or the claim for civil conspiracy will be dismissed." *AJG Holdings LLC v. Dunn*, 708 S.E.2d 218 (Ct. App., 2011). In the case at bar, no special damages were pled in the Counterclaims. The only damages claimed are those relating to all the causes of action. Therefore the claim for civil conspiracy must be dismissed.

Conversion

Defendants allege H&M converted both real property and rental income from said property. Conversion is "defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights." *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). "There can be no conversion of money unless there is an obligation on the defendant to deliver a specific, identifiable fund to the plaintiff." *Mullis v. Trident Emergency Physicians*, 351 S.C. 503, 507, 570 S.E.2d 549, 551 (Ct. App. 2002) (internal citations omitted). A claim for conversion fails if the defendant is merely exercising a legal right over the property. *Castell v. Stephenson Finance Co.*, 244 S.C. 45 135 S.E.2d 311 (1964).

Defendants allege, in part, that H&M converted real property. "It is well settled that a conversion action does not lie when alleging the exercise of dominion or control over real property." *Hawkins v. City of Greenville*, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct.App., 2004). Therefore to the extent Defendants allege conversion of real property, this cause of action fails as a matter of law.

Defendants further allege that H&M converted rental income for the property. Money can only be the subject of a conversion action "if it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified." *Mullis*, 351 S.C. at 507, 570 S.E.2d at 551. Defendants' pleadings did not contain any specified

amount of money. A Court-appointed Receiver has been in place since April of 2010, and the receiver has made proper accountings to the Court. At the time of the Receiver's appointment, it appears all accounts and monies were given to the receiver. B. Patel Dep., Page 116, lines 1-12. No evidence has been presented that any money was taken by H&M or any money is held by H&M. At the hearing, Ms. Cook presented to the Court pictures allegedly showing members of H&M on the property and collecting rent. The Court carefully examined these photos. They did appear to show members of H&M on the property. However in no instance were any of the members shown taking or handling any money. Mere presence on the property is not probative of a conversion claim. Therefore summary judgment on the conversion claim is proper.

Violation of the South Carolina Unfair Trade Practices Act (UTPA)

To be actionable under UTPA, an unfair or deceptive trade practice or act must adversely affect the public interest. *Florence Paper Co. v. Orphan*, 298 S.C. 210, 379 S.E.2d 289 (1989) "[C]onduct which only affects the parties to the transaction provides no basis for a UTPA claim." *Jefferies v. Phillips*, 316 S.C. 523, 527-528, 451 S.E.2d 21, 23 (Ct. App. 1994). The case at bar concerns one transaction between two sophisticated parties. Since H&M's creation in June 2009, the only business it has ever conducted was the purchase of the note, loan, and other documents related to this case. It has never conducted any business with the general public. Defendants have failed to put forth any evidence that H&M has done any business with the public, or that it has harmed the public interest. Therefore the UTPA claim fails as a matter of law.

Tortious Interference With a Contract

To establish intentional interference with a contractual relationship the plaintiff must prove:

(1) a contract;

- (2) the wrongdoer's knowledge thereof;
- (3) his intentional procurement of its breach;
- (4) the absence of justification; and
- (5) the damage resulting therefrom.

Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). Defendants' allege H&M interfered with the following two categories of contracts: a lending contract between Bank and BJC Enterprises, LLC and contracts between BJC Enterprises, LLC and various renters of the properties.

As to the lending contract, as stated herein and in this Court's **Order Granting Motion for Summary Judgment on Claims Asserted by Third Party Plaintiffs Against First Palmetto Savings Bank, F.S.B.** filed on June 1, 2011, the Defendants presented no evidence Bank breached its contract with BJC Enterprises, LLC. In Defendants' memorandum in opposition to this Motion, Defendants' put forth a long list of alleges interferences carried out by Jack Jones and Bhupendra Patel. All of the alleged inferences occurred before the creation of H&M was created in June, 2009. Therefore, even if taken as true, H&M cannot be held liable as it did not exist.

Intentional Infliction of Emotional Distress/Outrage

To establish a claim for intentional infliction of emotional distress/outrage, the claimant must show the defendant:

- (1) "intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct";
- (2) that the conduct was so outrageous it exceeded "all possible bounds of decency" and so "atrocious" it was "utterly intolerable in a civilized

community”;

(3) such actions actually caused plaintiff's emotional distress; and

(4) the emotional distress was so severe “no reasonable man could be expected to endure it.”

AJG Holdings, LLC, 708 S.E.2d at 223 (quoting *Hansson v. Scalise Builders of S.C.*, 374 S.C. 353, 356, 650 S.E.2d 68, 70 (2007)). A claim for intentional infliction of emotional express/outrage carries a “heightened burden of proof, and there must be more than a scintilla of evidence in order to defeat a motion for summary judgment.” *Id.* at 224 (internal citations omitted).

After reviewing the evidence, the Court holds that there is no evidence to support a claim for intentional infliction of emotional distress/outrage. In Wendy Bellamy's deposition, Bellamy stated that her distress and suicide attempt was the result of her financial situation relating to Bank. W. Bellamy Dep., Page 60, lines 10-16; Page 63, lines 11-22. Her suicide attempt was a full two years before the creation of H&M. There is no evidence she had any significant distress caused by H&M after its creation in June 2009.

Conclusion

Based upon the reasons stated herein, Hotel & Motel Holdings, LLC's Motion for Summary Judgment on Counterclaims Asserted by Defendants is hereby **GRANTED**.

IT IS SO ORDERED.


William H. Seals, Jr., Judge
Twelfth Judicial Circuit

Horry County, South Carolina

June 1, 2011

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Hotel & Motel Holdings, LLC,

Plaintiff,

v.

BJC Enterprises, LLC, et al.,

Defendants.

BJC Enterprises, LLC, et al.,

Third Party Plaintiffs,

v.

First Palmetto Savings Bank, F.S.B., et al,

Third Party Defendants.

THE COURT OF COMMON PLEAS

FILE COPY

Civil Action No.: 2009-CP-26-05743

HORRY COUNTY
2011 JUN -6 AM 10:15
CLERK OF COURT

**Order Granting Motion for Summary
Judgment on Claims Asserted by Third
Party Plaintiffs Against First Palmetto
Savings Bank, F.S.B.**

First Palmetto Savings Bank, F.S.B.'s Motion for Summary Judgment on Claims Asserted by Third Party Plaintiffs was heard by the Court on May 12, 2011. Appearing at the hearing were William H. Short, Esq. on behalf of First Palmetto Savings Bank, F.S.B. ("Bank") and Kathryn M. Cook, Esq. on behalf of BJC Enterprises, LLC (BJC), Wendy J. Bellamy, and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. (collectively, "Third Party Plaintiffs"). Representatives for other parties in the lawsuit were also present.

The Third Party Complaint alleged several causes of action against Bank, many of which were stricken by Order entered October 15, 2010. The remaining claims of breach of contract, breach of contract by fraudulent act, and civil conspiracy are before the Court now in this Motion.

Standard of Review

Summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issue of fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). “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 Management Co., Inc.* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Breach of Contract

To prove breach of contract, a party must establish there was a contract, the other party breached the contract, and the breach caused damages. In this case, Third Party Plaintiffs assert Bank breached their duty of good faith and fair dealing under the loan documents and breached their obligation of confidentiality concerning the lending relationship.

Third Party Plaintiffs assert Bank breached their duty of good faith and fair dealing by alleging Bank conspired with others and assented to Jack Jones, Donald Godwin, and Bhupendra Patel to dispossess Third Party Plaintiffs of the properties. Third Party Plaintiffs cite Wendy Bellamy’s deposition Page 103 lines 17-25 and Page 104, lines 1-19 to support this alleged conspiracy. However, after reading the deposition, this Court finds that there is no evidence that Bank had any involvement in any conspiracy. On page 101 of Bellamy’s deposition, Bellamy states Sammy Small, CEO of Bank, told her she needed to make a “hundred and fifty thousand dollar” payment by May 31, 2009. Bellamy goes on to state that the payment was not made by May 31. When asked why the payment was not made, Bellamy states that the payment could have been made but was not. See W. Bellamy Dep., Page 103, lines 17-21.

When questioned further as to why the payment was not made, Bellamy states that she was not involved with any bookkeeping, and she had thought Jack Jones was going to ensure the payment was made. See W. Bellamy Dep., Page 103-104. She "trusted [Jack Jones] with everything." See W. Bellamy Dep., Page 104, lines 18-19. There is no evidence in Bellamy's deposition that Bank in anyway conspired with anyone to stop the May 31, 2009 payment from being received. On the contrary, the Bank, through its CEO Sammy Small, specifically told Bellamy she had to pay by May 31, 2009. See W. Bellamy Dep., Page 101, lines 11-22. She admits the payment was not made and blames Jack Jones citing her trust in him.

There is no evidence that the bank conspired to dispossess BJC of any property. There is no other evidence Bank breached their duty of good faith and fair dealing.

Third Party Plaintiff's allege the contract was breached when Bank disclosed private information about the loan. In their memorandum, Third Party Plaintiffs cite to *Rycroft v. Gaddy*, 281 S.C. 119, 314 S.E.2d 39 (Ct. App., 1984). In *Rycroft*, the Court is dealing with the tort of invasion of the right privacy. In the case at bar, it appears that Third Party Plaintiffs are attempting to couch a tort claim of invasion of the right to privacy in this breach of contract action. There is not case law to support such a claim as a breach of a contract. Third Party Plaintiffs also allege that Bank violated its own policy as to confidentiality. The policy is attached to Third Party Plaintiff's memorandum as Exhibit Y. Exhibit Y is a copy the "Privacy & Security" section of Bank's website located at <http://www.firstpalmetto.com/site/privacy.html>. Exhibit Y is dated "5/6/2011," presumably the date it was printed off the website. There is no indication that the contents of the webpage existed at the time the parties contracted. Furthermore, there is no evidence that this webpage or its contents were included in the contract between the parties. Therefore the Court finds this webpage irrelevant to these proceedings.

There is no evidence that Bank had any contractual duty to not disclose information about the loan to potential buyers once the loan was in default.

Having examined all of the evidence in the record, and this Court does not find any evidence to support Third Party Plaintiff's claim of breach of contract against Bank.

Breach of Contract Accompanied by Fraudulent Act

"To maintain an action for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: '(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach.'" *RoTec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 597 S.E.2d 881 (Ct. App., 2004). In this case, there is no evidence Bank breached the contract between Bank and Third Party Plaintiffs, *supra*, therefore the Court need not discuss the second and third elements.

Civil Conspiracy

In order to recover under a civil conspiracy claim, a party must prove (1) a combination of two or more person; (2) joining for the purpose of injuring the claimant; (3) which causes special damage to the plaintiff. *McMillan v. Oconee Memorial Hosp., Inc.* 367 S.C. 559, 626 S.E.2d 884 (2006). "When items of special damage are claimed, they shall be specifically stated." Rule 9(g), SCRPC. "Special damages must be properly pled, or the claim for civil conspiracy will be dismissed." *AJG Holdings LLC v. Dunn*, 708 S.E.2d 218 (Ct. App., 2011). In the case at bar, no special damages were pled in the Third Party Complaint. The only damages claimed are those relating to all the causes of action. Therefore the claim for civil conspiracy must be dismissed.

Conclusion

Based upon the reasons stated herein, First Palmetto Savings Bank, F.S.B.'s Motion for Summary Judgment on Claims Asserted by Third Party Plaintiffs is hereby **GRANTED**.

IT IS SO ORDERED.



William H. Seals, Jr., Judge
Twelfth Judicial Circuit

Horry County, South Carolina

June 1, 2011

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
HOTEL & MOTEL HOLDINGS, LLC,

Plaintiff,

vs.

BJC ENTERPRISES, LLC, ET AL.,

Defendants.

BJC ENTERPRISES, LLC, ET AL.,

Third Party Plaintiffs,

vs.

FIRST PALMETTO SAVINGS BANK,
F.S.B., JACK JONES, DONALD D.
GODWIN, AND BHUPENDRA PATEL,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-04743

**ORDER DENYING DEFENDANTS'
MOTION FOR RECONSIDERATION OF
ORDER GRANTING SUMMARY
JUDGMENT TO PLAINTIFF ON
DEFENDANTS' COUNTERCLAIMS**

HORRY COUNTY
11 JUL 27 AM 9:50
MELANIE HUGHES-WARD
CLERK OF COURT

This matter comes before the Court upon the Motion of Defendants BJC Enterprises, LLC ("BJC"), Wendy J. Bellamy, and Americana, Inc. seeking an Order reconsidering the previous Order of this Court granting the Motion for Summary Judgment on Defendants' Counterclaims, which was filed by Hotel & Motel Holdings, LLC (hereinafter "H & M"). The parties have extensively briefed the issues presented in the Motion, and in accordance with Rule 59(f), SCRCP, the Court has made its determination on the briefs of the parties without oral argument. For the reasons set forth below, the Motion for Reconsideration of Order is DENIED.

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RELEVANT PROCEDURAL HISTORY

This commercial foreclosure action was originally brought by First Palmetto Savings Bank, F.S.B. ("First Palmetto"). The Summons and Complaint were filed with the Court on June 11, 2009. Subsequently, an Amended Summons and Complaint were filed with the Court wherein H & M was substituted as the plaintiff. According to the Amended Complaint, H & M purchased the mortgages which are the subject of this action, and assignments of the mortgages have been recorded with the Office of the Horry County Register of Deeds.

Thereafter, Defendants answered the Amended Complaint and later filed an Amended Answer, Counterclaims and Third-Party Complaint. In the Amended Answer, Defendants asserted the following counterclaims against H & M: breach of contract, fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, interference with contractual relationship, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act.

In response to the counterclaims, H & M filed and served a Motion for Summary Judgment, and a hearing on the Motion was held before this Court on Thursday, May 12, 2011. By Order filed with the Horry County Clerk of Court on June 6, 2011, this Court granted the Motion for Summary Judgment as to Defendants' Counterclaims. It is this Order that Defendants seek reconsideration of pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure. In their Motion for Reconsideration, filed on June 20, 2011, Defendants allege the Court erred in several ways, as addressed below. However, the Court finds that none of the issues raised by Defendants in their Motion provide a basis for reconsideration of the Court's Order, and thus, their Motion for Reconsideration is denied.

CONCLUSIONS OF LAW AND ANALYSIS

- I. THE COURT DID NOT ERR IN CONCLUDING THAT THE STATUS OF H & M AS A HOLDER IN DUE COURSE DOES NOT AFFECT THE VIABILITY OF DEFENDANTS' COUNTERCLAIMS.

H & M concedes that it is not a holder in due course. The evidence in this case establishes that H & M purchased the loan documents of BJC after the present foreclosure action was filed. However, the status of H & M as a holder of due course only becomes an issue when the defendants establish the existence of a valid *defense*. More importantly, the fact that H & M is not a holder in due course has no bearing on whether Defendants may assert affirmative claims against H & M as an assignee of the loan documents.

Under South Carolina law, the rights of an assignee can be no greater than those of the assignor. Dixie Wood Preserving Co. v. Albert Gersten & Associates, 244 S.C. 57, 64-65, 135 S.E.2d 368, 371 (1964). "However, absent an agreement to the contrary, the common law assignee takes only the benefits, not the burdens of the assigned obligation." Rosemond v. Campbell, 288 S.C. 516, 523, 343 S.E.2d 641, 645 (1986). Therefore, "as against the assignee, the obligor *can only assert a claim defensively* when the assignee seeks to enforce the obligation; *he has no common law right to sue the assignee affirmatively* on a claim against the assignor arising from the underlying obligation." Id. (emphasis added); see also, 27 S.C. Jur. Mortgages § 172. The distinction between a defense and affirmative claim is critical in this case.

Many of the grounds set forth as reasons supporting the Court's reconsideration of its prior Order asserted by Defendants are based upon a mischaracterization of the protections afforded a holder in due course and the ramifications of not qualifying as such. "A person taking a negotiable instrument as a 'holder in due course' takes it free from all claims to it on the part of any person and free from all 'personal' defenses of any party to the instrument with whom the

holder has not dealt.” Rosemond at 523, 343 S.E.2d at 645. There are numerous personal defenses including, among others, the following: failure of consideration, nonperformance of a condition precedent, nondelivery, theft of the instrument, payment or satisfaction to the holder would be inconsistent with the terms of a restrictive endorsement, and fraud in the inducement. 10 C.J.S. *Bills and Notes* § 204; see also, Park v. Funderburk, 87 S.C. 76, 68 S.E. 963 (1910) (noting that personal defenses include the defenses of fraud in the inducement and failure of consideration).

Critically, whether an assignee qualifies as a holder in due course affects only what *defenses* may be asserted against the assignee. The Order of this Court which Defendants seek reconsideration of deals with the affirmative *counterclaims* of Defendants, not their defenses. As such, the Court finds that whether H & M is a holder in due course has no bearing on the viability of these counterclaims, and H & M is not subject to affirmative claims based on the alleged conduct of First Palmetto. Rather, these claims must be asserted, if at all, against First Palmetto.

II. THE COURT DID NOT ERR IN FINDING THERE IS NO EVIDENCE THAT H & M BREACHED ITS IMPLIED OBLIGATIONS OF GOOD FAITH AND FAIR DEALING.

In their Motion for Reconsideration, Defendants make numerous unsupported, conclusory statements of fact which they allege constitute evidence of misconduct on the part of H & M, amounting to a breach of its obligations of good faith and fair dealing. Importantly, the allegations do not include a citation to the record or any evidence in this case. As a result, the Court finds that the arguments offered by Defendants are wholly insufficient to prove that H & M breached its implied obligations of good faith and fair dealing. The Court will address each alleged breach below.

A. Failure To Provide Notice.

Defendants allege that H. & M breached its contractual obligation by failing to provide notice to Defendants. Notably, Defendants fail to specify the notice to which they were allegedly entitled. The terms of the loan documents do not require that notice be given. The notice provisions contained in the loan documents relate to acceleration of the debt. The evidence in this case clearly establishes that First Palmetto did not accelerate the debt; the loan matured. The Court finds that no provision of the loan documents requires First Palmetto to provide notice of default, much less maturity, to the defendants.

Even assuming notice was required, the Court finds ample evidence in this case which establishes that Defendants were provided written notice on at least two occasions. Moreover, the evidence establishes to the Court's satisfaction, that BJC received these notices. Additionally, when First Palmetto instituted a foreclosure action in February of 2009, it clearly outlined the defaults of BJC. Thus, the Court finds the defendants' contention that they were without notice of default without merit and unsupported by the evidence in this case.

Finally, even if BJC was entitled to notice and did not receive it, and therefore there was a breach of the loan agreement, the Court finds that BJC breached the contract first by failing to submit payment when due. As a matter of law, a party cannot take advantage of his own default in the performance of a contract, and where a contract is not performed, the party who is guilty of the first breach is the one upon whom rests all liability for the nonperformance. Willms Trucking Co. v. JW Constr. Co., 314 S.C. 170, 442 S.E.2d 197 (Ct. App. 1994); 17A Am. Jur. 2d *Contracts* § 621 (1991). Based on the foregoing, the Court did not err in finding H & M did not breach its implied obligations of good faith and fair dealing by allegedly failing to provide notice to BJC.

B. Conditional Approval Of Renewal Of Loan Letter.

In further support of their Motion for Reconsideration, Defendants allege that First Palmetto breached its implied obligation of good faith and fair dealing when it made an offer to renew the loan and sent it to an address where First Palmetto knew Bellamy, BJC and Americana would not receive it. As set forth above, the alleged acts of First Palmetto are not imputed to H & M simply by virtue of its status as an assignee of the loan documents. In any event, the Court finds there is no evidence to support this conclusory assertion of fact by Defendants. Indeed, the Court finds that the evidence in this case directly refutes the defendants' assertion.

Initially, the Court would note that there is no evidence to suggest that First Palmetto knew or should have known that Defendants would not receive their mail when it was sent to the address of record for BJC. To the contrary, the evidence reveals that BJC did receive the letter, and BJC's negotiations with First Palmetto continued after the letter was sent. The loan history report for the 2008 calendar year indicates that on November 26, 2008, a payment in the amount specified in the letter was made. Thus, the only reasonable inference is that BJC received the letter.

Based on the foregoing, the Court did not err in finding that First Palmetto and H & M did not breach their implied duties of good faith and fair dealing with regard to the November 24, 2008 letter of conditional approval.

C. Negotiations Regarding A Sale Of The Loan.

Next, Defendants contend that First Palmetto breached its implied obligation of good faith and fair dealing when it advised BJC and its members that the bank was negotiating a workout of the loan while simultaneously negotiating the sale of the loan. Presumably, Defendants find these actions mutually exclusive such that the sale of the loan could not

constitute a workout. Implicitly, Defendants are contending that the negotiations leading up to the sale of the BJC loan were done without the knowledge and acquiescence of the defendants. The Court finds that the evidence in this case does not support this assertion, and in fact, it is directly contradicted by the testimony of multiple witnesses.

In her deposition, Defendant Bellamy testified that she was present during discussions between First Palmetto and Jack Jones regarding the sale of the loan. In addition, Defendant Bellamy stated that she was present in several meetings with Jack Jones and others regarding the potential purchase of the loan documents. Similarly, Joyce Collins, a long-time friend of Defendant Bellamy, testified in her deposition that she discussed purchasing the loan from First Palmetto with Defendant Bellamy present. Moreover, Mrs. Collins testified that Defendant Bellamy was aware of the fact that she and Jack Jones were negotiating the purchase of the BJC loan. Bhupendra Patel testified similarly, corroborating the meetings where Defendant Bellamy was present and the knowledge of Defendant Bellamy regarding the loan sale negotiations.

The Court finds it significant that nothing within the loan documents prohibits First Palmetto from negotiating and consummating the sale of the BJC loan. This fact, coupled with the knowledge and apparent acquiescence of the defendants in the sale of the loan, compels a finding by the Court that First Palmetto has not breached its implied obligations of good faith and fair dealing by negotiating the sale of the loan documents.

Based on the above, the Court finds that BJC has presented no evidence to support its claims that First Palmetto (or H & M) breached the implied obligation of good faith and fair dealing by negotiating and completing the sale of BJC's loan.

D. Installation Of Patel As Manager And Diversion Of Funds.

Defendants also assert that First Palmetto assisted in the installation of Bhupendra Patel as manager of the properties, allowing Patel to divert rental funds which could have been used to make the May 31, 2009 payment to First Palmetto. Initially, the Court notes there is no evidence in the record to support Defendants' contention that Patel diverted any funds or failed to account for any funds; Defendant Bellamy admitted as much in her deposition.

Nonetheless, Defendants assert that the diversion of funds perpetrated by Patel is "evidenced, at a minimum, by substantial payments to Jack Jones and Wilbur Jones." The evidence establishes that Patel made these payments. However, the evidence also establishes that the payments were for loans made by Jack Jones and Wilbur Jones to Patel for the benefit of the defendants to allow Patel to open the motels in 2009. The loan agreements were memorialized in a notarized writing, executed by Defendant Bellamy and Henry C. Coan III, as well as two witnesses.

Based on the above, the Court finds that Defendants have presented no evidence to establish that First Palmetto assisted in the installation of Patel as a manager or of any diversion of funds by Patel. Therefore, the Court did not err in granting summary judgment to H & M on the counterclaims of Defendants.

III. THE COURT DID NOT ERR IN FINDING THAT H & M DID NOT EXIST PRIOR TO JUNE 2009, AND H & M IS NOT LIABLE FOR THE CONDUCT OF ANY PERSON OR ENTITY PRIOR TO THE DATE OF ITS INCORPORATION.

A. The De Facto Corporation Doctrine Does Not Apply In This Case.

"A de facto corporation is one so defectively created as not to be a de jure corporation, but nevertheless the result of a bona fide attempt to incorporate under existing statutory authority, coupled with the exercise of corporate powers, and recognized by the courts as such in

all proceedings except a direct attack by the state questioning its corporate existence.” Glaze v. Grooms, 324 S.C. 249, 256, 478 S.E.2d 841, 845 (1996). The evidence establishes that H & M was validly formed on June 15, 2009, when its Articles of Organization were filed with the Office of the South Carolina Secretary of State. H & M was not defectively created, and its corporate existence is not at issue in this case. Moreover, there is no evidence that there was an attempt to form H & M or an exercise of corporate powers prior to the date of H & M’s incorporation through the Secretary of State.

Based on the foregoing, H & M cannot be considered a de facto corporation, and the Court finds Defendants’ arguments in this regard are without support in fact or law.

B. The Alleged Acts Of Jack Jones Are Not Imputable To H & M.

Defendants further allege that Jack Jones was a promoter of H & M prior to its formation, and therefore, his acts are imputable to H & M. This argument fails as a matter of law. “Generally, a corporation is not liable for torts of its promoters prior to its creation unless it has rendered itself liable by its own act after acquiring corporate existence. A corporation is not liable for the fraud, negligence, or other torts of its promoters or incorporators prior to its creation, unless it has in some way rendered itself liable by its own act after acquiring corporate existence.” 18 C.J.S. *Corporations* § 104 (2011). The Court finds there is no evidence, or allegation, that H & M ratified or otherwise rendered itself liable for the torts of Jack Jones.

C. H & M Is Not Estopped From Denying It Existed Prior To June 2009.

In their final effort to impute liability to H & M, Defendants assert that estoppel precludes H & M from denying it existed prior to its incorporation on June 15, 2009. For the reasons below, the Court finds this argument fails as a matter of law.

The South Carolina Court of Appeals has summarized the essential elements of estoppel, which are as follows:

- (1) conduct amounting to a false representation or concealment of material facts, or conduct calculated to convey the impression that the facts are otherwise than, and inconsistent with, the party's subsequent assertions;
- (2) intention or expectation that such conduct be acted upon by the other party; and
- (3) actual or constructive knowledge of the real facts.

As to the party claiming estoppel, the essential elements are:

- (1) lack of knowledge or the means of acquiring, with reasonable diligence, knowledge of the true facts;
- (2) reasonable reliance on the other party's conduct; and
- (3) a prejudicial change in position.

Provident Life and Acc. Ins. Co. v. Driver, 317 S.C. 471, 477, 451 S.E.2d 924, 928 (Ct. App. 1994).

Defendants allege that Jack Jones falsely represented to the members of BJC that a loan workout was being negotiated when no such workout was being negotiated. Further, Defendants assert that Jack Jones was working to "paper the deal to purchase the loan." Significantly, Defendants have presented the Court with no evidence in support of this proposition. To the contrary, the evidence before this Court establishes that Jack Jones was working to salvage the BJC loan and raise funds for BJC. As an example, Jack Jones and his brother lent \$70,000.00 to Patel for the benefit of BJC which enabled the motels to open for the 2009 season. Additionally, Jack Jones took Defendant Bellamy to numerous attorneys, resulting in several capital call letters to the members of BJC, but the members of BJC refused to contribute funds to pay the loan. Moreover, there is evidence establishing that Defendant Bellamy was aware that negotiations

were ongoing regarding the purchase of the loan. As a result, there is no false representation or concealment of material fact on the part of H & M.

In addition to their failure to present evidence of a false representation or concealment of material fact, the Court finds that Defendants have failed to present any evidence of their lack of knowledge, reasonable reliance or prejudicial change in position. Indeed, Defendants cannot make the required showing because, as Defendant Bellamy acknowledged in her deposition, regardless of who owned the loan, the obligation is owed. Neither H & M nor anybody else did anything to cause a prejudicial change in the defendants' positions. The defendants were (and are) in the same position after H & M purchased the loan as they were prior to its purchase of the loan. Thus, the Court finds that Defendants have failed as a matter of law to establish the requisite elements of estoppel, and the Court did not err in granting summary judgment to H & M as to Defendants' counterclaims.

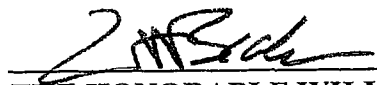
CONCLUSION

After a careful review of the pleadings, the briefs of the parties, and the relevant case law, this Court concludes it has properly considered the Motion for Reconsideration. Defendants have failed to state grounds sufficient to warrant reconsideration and have similarly failed to demonstrate any error of law in the Court's grant of summary judgment.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Reconsideration of Order Granting Summary Judgment in favor of Plaintiff on the Counterclaims of Defendants is hereby denied.

AND IT IS SO ORDERED.



THE HONORABLE WILLIAM H. SEALS, JR.
Presiding Circuit Court Judge for the
Fifteenth Judicial Circuit

Dated this 25 day of July, 2011.
Mauldin, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Case No. 2009-CP-26-5743

Hotel and Motel Holdings, LLC,

Plaintiff,

vs.

BJC Enterprises, LLC, Wendy J.
Bellamy, Americana, Inc., a/k/a
Americana Motel of Myrtle Beach, Inc.,
Mozingo & Wallace Architects, LLC,
Kersi S. Shroff, and Shroff Management,
Inc.,

Defendants,

BJC Enterprises, LLC, Wendy J.
Bellamy, and Americana, Inc., a/k/a
Americana Motel of Myrtle Beach, Inc.,

Third Party Plaintiffs,

vs.

First Palmetto Savings Bank, F.S.B., Jack
Jones, Donald D. Godwin, and Bhupendra
Patel,

Third Party Defendants.

HORRY COUNTY
11 JUL 28 AM 9:14
MELANIE HARRIS-WARD
CLERK OF COURT

**ORDER DENYING DEFENDANT/THIRD PARTY PLAINTIFFS'
MOTION FOR RECONSIDERATION**

This matter comes before the Court on the motion of Third Party Plaintiffs BJC Enterprises, LLC, Wendy J. Bellamy, and Americana, Inc., a/k/a Americana Motel of Myrtle Beach, Inc. (collectively, "Third Party Plaintiffs") for reconsideration of the Order granting Third-Party Defendant First Palmetto Savings Bank, F.S.B. ("First Palmetto") summary judgment on the third party claims asserted against it by Third Party Plaintiffs (the "Order"). No

2115

hearing was held on the motion for reconsideration. After considering the arguments set forth in the memoranda filed in support and in opposition to the motion, the Court finds that the Third Party Plaintiffs' motion should be denied.

PROCEDURAL HISTORY

This case arises out of a foreclosure action brought originally by First Palmetto against Third Party Plaintiffs. After foreclosure proceedings were commenced, on June 30, 2009, First Palmetto sold the loan documents to Hotel and Motel Holdings, LLC ("H & M"). As H & M became the owner of the loan documents, on September 11, 2009, H & M was substituted as plaintiff in this foreclosure action. In response to the foreclosure complaint, Third-Party Plaintiffs answered the complaint, and later filed their Third-Party Complaint.

The Third-Party Complaint alleged the following causes of action against First Palmetto: breach of contract, fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act. By Order entered October 15, 2010, the causes of action for conversion, interference with contractual relationship, intentional infliction of emotional distress, breach of fiduciary duty, fraud, and violation of the South Carolina Unfair Trade Practices Act were stricken as improper third-party claims under Rule 14, SCRCP. Third Party Plaintiffs challenged that these claims were stricken by the October 15, 2010 Order, and therefore, out of an abundance of caution, First Palmetto filed a separate motion to strike the third party claims for fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act (collectively, the "Third Party Claims") to the extent such Third Party Claims were not included in the October 15, 2010 Order. By separate order, this

Court granted First Palmetto's motion to strike the Third Party Claims.

First Palmetto moved for summary judgment as to the remaining claims of breach of contract, breach of contract accompanied by a fraudulent act, and civil conspiracy. This Court entered its Order on June 6, 2011, granting First Palmetto's summary judgment motion as to these remaining claims, finding there was no evidence that First Palmetto breached any contract with Third Party Plaintiffs, and thus their claims for breach of contract and breach of contract with a fraudulent act failed. With respect to their civil conspiracy claim, the Court held that Third Party Plaintiffs failed to plead special damages and dismissed that claim.

On June 20, 2011, Third Party Plaintiffs filed a Motion for Reconsideration of the Order, asserting that there were material issues of fact precluding summary judgment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

South Carolina Rule of Civil Procedure 59(e) provides that a party may move to alter or amend a judgment within ten days after receipt of written notice of entry of an order. However, it is well-established that a party cannot raise an issue for the first time in a Rule 59(e) motion to reconsider if that issue could have been raised at trial. *See, e.g., Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (recognizing that an issue may not be raised for the first time in a motion to reconsider); *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 274, 588 S.E.2d 639, 641 (Ct. App. 2003); *Gurganiou v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912, 916 (Ct. App. 1995); *see also McMillan v. S.C. Dep't of Agric.*, 364 S.C. 60, 67, 611 S.E.2d 323, 327 (Ct. App. 2005) (issue not preserved "because it cannot be raised for the first time in a motion to alter or amend.").

In their Motion, Third Party Plaintiffs reargue issues which the Court heard and already considered thoroughly, and do so without evidentiary basis in the record. Third Party Plaintiffs

also impermissibly raise new arguments for the first time. The Court finds that none of the issues in Third Party Plaintiffs' motion provide a basis for reconsideration of the Court's Order, and thus, their motion reconsideration is denied.

I. The Court did not err in finding First Palmetto did not commit any breach of contract.

In their Motion to Reconsider, Third Party Plaintiffs make numerous statements which they allege constitute evidence of First Palmetto's breach of its obligations of good faith and fair dealing. However, the Court finds that the statements offered by Third Party Plaintiffs are conclusory and wholly insufficient to prove that First Palmetto committed by breach of contract.

a. Lack of Notice.

In an attempt to create a factual issue, Third Party Plaintiffs allege that First Palmetto breached its contractual obligation by failing to provide notice to Third Party Plaintiffs. Even liberally construing the Third Party Plaintiffs' Third Party Complaint, the Court finds that Third Party Plaintiffs did not plead First Palmetto's failure to provide notice. Additionally, this lack of notice argument was not raised by Third Party Plaintiffs in their response to First Palmetto's Motion for Summary Judgment as to the breach of contract claim. Under well-settled South Carolina, arguments that could have been previously raised, but which were not, cannot form the basis for a motion to reconsider. The Court finds that because Third Party Plaintiffs failed to raise the lack of notice issue when they had the opportunity, they are barred from now raising the issue.

The Court further finds that even if this argument was considered, it fails. Not only do Third Party Plaintiffs fail to specify the notice to which they were allegedly entitled, but the terms of the loan documents do not require that any notice be given. The notice provisions contained in the loan documents relate to acceleration of the debt. The undisputed evidence

presented to the Court proves that First Palmetto did not accelerate the debt, but instead, the loan matured. Thus, the Court finds there is no provision of the loan documents requiring First Palmetto to provide notice of default, much less maturity, to the Third Party Plaintiffs.

Further, the Court finds that even if notice was required, the borrower, BJC, was in fact provided written notice on at least two occasions. Additionally, First Palmetto instituted a foreclosure action in February 2009, which was later dismissed, in which First Palmetto clearly outlined the defaults of BJC. Thus, the Court finds that any contention by Third Party Plaintiffs that notice of its default was not made is unsupported by the uncontradicted evidence in this case.

Finally, even assuming that the Third Party Plaintiffs were entitled to notice and did not receive it, and that there was a breach of the loan agreements, the Court finds that BJC breached the contract first by failing to submit payment when due. As a matter of law, a party cannot take advantage of his own default in the performance of a contract, and where a contract is not performed, the party who is guilty of the first breach is the one upon whom rests all liability for the nonperformance. *Willms Trucking Co. v. JW Constr. Co.*, 314 S.C. 170, 442 S.E.2d 197 (Ct. App. 1994); 17A Am. Jur. 2d *Contracts* § 621 (1991).

Based on the foregoing, the Court finds that Third Party Plaintiffs' arguments related to lack of notice are without merit and do not warrant any reconsideration of the Order.

2. Knowledge of Ms. Bellamy's Suicide Attempt and Conditional Renewal Letter.

Third Party Plaintiffs allege that First Palmetto breached its implied obligation of good faith and fair dealing because it was aware of Ms. Bellamy's suicide attempt when it made an offer to renew the loan and sent it to an address where First Palmetto knew Third Party Plaintiffs would not receive the notice. Once again, these arguments were not raised by Third Party

Plaintiffs in their response to Plaintiff's Motion for Summary Judgment as to the breach of contract claim asserted against First Palmetto, and thus these arguments cannot form the basis for a motion to reconsider. *See, e.g., Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (recognizing that an issue may not be raised for the first time in a motion to reconsider).

Moreover, even if the Court were to consider these arguments, whether or not First Palmetto was aware of Ms. Bellamy's suicide attempt is irrelevant as to whether First Palmetto breached any contract with Third Party Plaintiffs. There is also no evidence to suggest that First Palmetto knew or should have known mail would not be received when sent to the address of record for BJC.

The Court finds that these arguments offer no basis for the Court to reconsider its Order.

3. Discussion of Loan with Third Parties.

Third Party Plaintiffs claim that First Palmetto discussed the BJC loan with third parties, and that First Palmetto's discussions constitute a breach of contract. However, as expressly set forth in the Order, the Court has previously considered and rejected this argument stating "there is no evidence that Bank had any contractual duty to not disclose information about the loan to potential buyers once the loan was in default." Order at pager 4. Third Party Plaintiffs failed to offer any explanation as why the Court erred in holding that First Palmetto had no contractual duty to not disclose information about the loan, which was in default, and thus, the Court finds no basis to reconsider its Order with respect to its holding.

4. Negotiations Regarding Sale of the Loan.

Third Party Plaintiffs also contend that First Palmetto breached its implied obligation of good faith and fair dealing when it advised BJC and its members that it was negotiating a

workout of the loan while simultaneously negotiating the sale of the loan. Third Party Plaintiffs essentially claim that First Palmetto's actions were mutually exclusive, such that the sale of the loan could not constitute a workout. Third Party Plaintiffs also claim the negotiations were done without the knowledge of the Third Party Defendants.

However, the Court finds that the Third Party Plaintiffs' contention is directly contradicted by the testimony of Ms. Bellamy, who testified that she was present during discussions between First Palmetto and Jack Jones regarding the sale of the loan. Further, the Court finds that there is nothing in the loan documents that prohibited First Palmetto's actions. This fact, coupled with the knowledge and acquiescence of the Third Party Plaintiffs in the sale of the loan, compels the Court to conclude that First Palmetto has not breached its implied obligation of good faith and fair dealing by negotiating the sale of the loan documents. Thus, there is no basis for the Court to reconsider its prior ruling.

5. Installation of Patel As Manager and Diversion of Funds.

Third Party Plaintiffs claim that First Palmetto "participated in the installation of Patel" as manager of the properties, allowing Patel to divert rental funds which could have been used to make the May 31, 2009, payment to First Palmetto. The Court finds this argument wholly without merit. The management contract that placed Patel in control over the operation of the mortgaged properties was executed by Wendy Bellamy and Harvey Jones, the very parties who now complain about the management contract. Further, the Court finds that there is no evidence whatsoever that Patel diverted any funds or failed to account for any funds, and that Defendant Bellamy admitted as much in her deposition.

Third Party Plaintiffs further allege that the diversion of funds perpetrated by Patel is "evidenced, at a minimum, by substantial payments to Jack Jones and Wilbur Jones," but Third

Party Plaintiffs do not, however, allege that First Palmetto was in control of Patel or that it directed Patel on what to do with any funds generated from the operation of the hotels. As a result, the Court finds that even if Mr. Patel diverted funds to third parties as the Third Party Plaintiffs contend, such actions have nothing to do with First Palmetto and its obligations under the loan agreement. Thus, the Court finds that it properly granted summary judgment in favor of First Palmetto.

The Court further finds that even if any of the Third Party Plaintiffs' arguments on the implied covenant of good faith and fair dealing as described above had any merit, Third Party Plaintiffs would be precluded from recovering for a breach of the implied covenant because Third Party Plaintiffs failed to perform their own obligations under the loan agreement. See *Swinton Creek Nursery v. Edisto Farm Credit ACA*, 514 S.E.2d 126, 135 (S.C. 1999) (citing *Parks v. Lyons*, 64 S.E.2d 123, 126 (S.C. 1951) ("[O]ne who seeks to recover damages for breach of a contract, to which he was a party, must show that the contract has been performed on his part") (upholding trial court's directed verdict on plaintiff's claim for breach of implied covenant of good faith and fair dealing because plaintiff defaulted on the note with defendant). The Court finds that the loan matured in January 2009, and Third Party Plaintiffs were unable to pay the note in full as required by the terms of the loan documents, nor did they make the \$150,000 payment by May 31, 2009. As the loan was in default, Third Party Plaintiffs are precluded from recovering for a breach of the implied covenant of good faith and fair dealing.

III. The Court did not err in holding that First Palmetto is entitled to summary judgment on Third Party Plaintiffs' breach of contract with fraud claim

As discussed above, there was no error of law in the Court's holding that First Palmetto did not breach any contract, and therefore, there is no error of law in the Court's holding that without a breach of contract claim, there is no claim for breach of contract accompanied by

fraud. The Court further finds the Third Party Plaintiffs' attempt to create an issue of fact with regards to fraud fails. Third Party Plaintiffs have offered nothing other than unsupported statements that are directly contradicted by properly proffered evidence, and thus have failed to provide any basis for reconsideration of the Order.

IV. The Court did not err in granting summary judgment in favor of First Palmetto on Third Party Plaintiffs' civil conspiracy claim.

With respect to the claim for civil conspiracy, the Court finds that there is no basis for it to reconsider its holding that Third Party Plaintiffs failed to plead special damages and that First Palmetto was entitled to summary judgment. Reviewing the Third Party Complaint, the Third Party Plaintiffs did not allege any damages arising from the alleged conspiracy that were different from or in addition to the damages they claimed under their other causes of action, and as a result, this claim was properly dismissed. *AJG Holdings, LLC v. Dunn*, 706 S.E.2d 23, 28 (Ct. App. 2001) ("Special damages must be properly pled, or the claim for civil conspiracy will be dismissed."); *Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) (holding that a conspiracy claim is barred where "no special damages are alleged aside from the breach of contract damages").

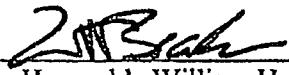
Additionally, the Court previously ruled in its Order granting Motions to Dismiss filed on behalf of Third Party Defendants Bhupendra Patel, Jack Jones and Donald D. Goodwin that Third Party Plaintiffs failed to plead special damages and thus dismissed these claims. Third Party Plaintiffs moved to reconsider that dismissal order on the same grounds as alleged in their motion for reconsideration, and that motion was denied. As such, the Court finds it has already decided these issues against Third Party Plaintiffs.

Finally, the allegations asserted by Third Party Plaintiffs in support of reconsideration of the dismissal of the civil conspiracy claim relate to allegations that First Palmetto installed Patel

as manager of the properties and allowed Patel to divert rental funds. As explained above, Third Party Plaintiffs failed to present any evidence to establish that First Palmetto assisted in the installation of Patel as a manager or of any diversion of funds by Patel. Because Third Party Plaintiffs have failed to demonstrate any error of law in the Court's grant of summary judgment on this claim, their motion must be denied.

IT IS THEREFORE ORDERED that Third Party Plaintiffs' Motion for Reconsideration of the Order granting summary judgment in favor of First Palmetto is **DENIED**.

AND IT IS SO ORDERED.



The Honorable William H. Seals, Jr.

July 25, 2011

COPY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HOTEL & MOTEL HOLDINGS, LLC,

Plaintiff,

vs.

BJC ENTERPRISES, LLC, ET AL.,

Defendants.

BJC ENTERPRISES, LLC, ET AL.,

Third Party Plaintiffs,

vs.

FIRST PALMETTO SAVINGS BANK,
F.S.B., JACK JONES, DONALD D.
GODWIN, AND BHUPENDRA PATEL,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

**ORDER GRANTING MOTION TO STRIKE
REQUEST FOR JURY TRIAL**

RECEIVED

OCT 27 2011

SC Court of Appeals

FILED
Horry County
2011 SEP 29 PM 2:23
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter comes before the Court upon the Motion of Plaintiff Hotel & Motel Holdings, LLC ("H & M") seeking an Order of this Court striking the request for jury trial made on behalf of Defendants BJC Enterprises, LLC ("BJC"), Wendy J. Bellamy, and Americana Motel, Inc. ("Americana"). A hearing on the Motion was held before this Court on August 24, 2011. Present at the hearing for H & M was Audra M. Byrd. Defendants BJC, Americana and Bellamy were represented at the hearing by Kathryn M. Cook. Tara E. Nauful appeared on behalf of First Palmetto Savings Bank, F.S.B. ("First Palmetto"). After review of the Motion and memoranda submitted by the parties and hearing arguments of counsel, the Motion to Strike Request for Jury Trial is GRANTED.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This commercial foreclosure action was originally brought by First Palmetto. The Summons and Complaint were filed with the Court on June 11, 2009. Subsequently, an Amended Summons and Complaint were filed with the Court wherein H & M was substituted as the plaintiff. In its Amended Complaint, H & M asserted three causes of action: (1) foreclosure of real property mortgage, (2) claim and delivery, and (3) appointment of a receiver.

Thereafter, Defendants answered the Amended Complaint and later filed an Amended Answer, Counterclaims and Third-Party Complaint. In the Amended Answer, Defendants asserted the following counterclaims against H & M: breach of contract, fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, interference with contractual relationship, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act.

In response to the counterclaims, H & M filed and served a Motion for Summary Judgment, and a hearing on the Motion was held before this Court on Thursday, May 12, 2011. By Order filed with the Horry County Clerk of Court on June 6, 2011, this Court granted the Motion for Summary Judgment as to Defendants' Counterclaims.

Similarly, the Court granted various dispositive motions filed by the third party defendants, and currently, the only affirmative claims that remain pending in this case are those asserted by H & M.¹ As a result, on June 6, 2011, H & M filed the present Motion to Strike Request for Jury Trial, alleging that the current action involves only the foreclosure of real

¹ Defendants have alleged numerous affirmative defenses, and those defenses are still at issue in this action. The Court makes no findings with regard to the merit or validity of those defenses in this Order.

property mortgages, and the other causes of action have been previously adjudicated by the Court.

LEGAL ANALYSIS AND CONCLUSIONS

I. THERE IS NO RIGHT TO A JURY TRIAL IN A FORECLOSURE ACTION.

It is axiomatic that foreclosures are equitable actions, and in equitable actions, there is no right to a jury trial. Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994); Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). There is no dispute between the parties on this point; during the hearing on this Motion, counsel for Defendants conceded that the claims for foreclosure of the real property mortgages at issue in this case do not require a trial by jury.

To the extent the defendants request a jury trial on the foreclosure claims, their request is stricken, and the matter of the foreclosure of the real property mortgages shall be heard by this Court, sitting without a jury.

II. THE CAUSES OF ACTION FOR APPOINTMENT OF RECEIVER AND CLAIM AND DELIVERY HAVE BEEN PREVIOUSLY ADJUDICATED BY THE COURT AND ARE THEREFORE, MOOT.

The causes of action for Claim and Delivery and Appointment of Receiver have been previously disposed of or rendered moot by Order of this Court dated April 20, 2010, and filed on the same date. In the April, 2010 Order, the Honorable Steven H. John appointed Kenan S. Walker of Waccamaw Land & Timber Management Co., LLC as Receiver and further ordered that Mr. Walker take immediate possession of the properties which are the subject of this action. Since his appointment, the Receiver has maintained possession and control of the properties, including the personal property which is the subject of the Claim and Delivery cause of action.

The defendants are no longer in possession of the personal property, and therefore, the Claim and Delivery cause of action is moot.

Based on the foregoing, the causes of action for Appointment of Receiver and Claim and Delivery have been rendered moot and do not require a trial by jury.

III. THE CLAIM LABELED AS A CAUSE OF ACTION FOR CLAIM AND DELIVERY SOUNDS IN EQUITY, AND DEFENDANTS ARE NOT ENTITLED TO A JURY TRIAL.

As set forth above, the Court finds the cause of action labeled as Claim and Delivery has been rendered moot by previous Order of this Court. However, Defendants argue to the contrary and demand a jury trial on this claim. To the extent the cause of action labeled as Claim and Delivery is not moot, for the reasons set forth below, this Court finds the cause of action sounds in equity, and the defendants are not entitled to a jury trial on this matter.

Pleading must be liberally construed in favor of the pleader, and the nature of the action is to be determined primarily by the allegations of the complaint. Barnwell Production Cred. Ass'n v. Hartzog, 231 S.C. 340, 347, 98 S.E.2d 835, 839 (1957). More significantly, the complaint must be considered as a whole, and "the theory most apparent and clearly outlined by such consideration will be adopted rather than another possible theory which may be, to some extent, indicated by a consideration of the formal parts or of detached parts and fragmentary statements." Id. (quoting 71 C. J. S. Pleading, § 92, p. 230 et seq.).

In the case of security interests secured by personal property, upon default, the secured party has multiple remedies available to him to realize his security, and a secured party is not limited to those remedies outlined in the Uniform Commercial Code adopted by this State. Nat'l

Bank of S.C. v. Daniels, 283 S.C. 438, 441, 322 S.E.2d 689, 691 (Ct. App. 1984). A secured party has three options to recover his security:

(1) He may peaceably take possession of the chattel, advertise and sell and apply the proceeds of sale to his secured debt, paying the surplus, if any, to the mortgagor; (2) if possession be refused, he may institute claim and delivery proceedings to get possession of the chattel for the purpose of sale as in the first instance; (3) he may institute a proceeding similar to the foreclosure of a mortgage of real estate.

Id. (quoting Stokes v. Liverpool & London & Globe Ins. Co., 130 S.C. 521, 531, 126 S.E. 649 (1925)).

Claim and delivery is a statutory remedy for the recovery of specific personal property wrongfully taken or withheld from its rightful owner, accompanied by the recovery of any damages resulting from the taking or possession of the property. See S.C. Code Ann. § 22-3-1310 et seq. In order to state a viable cause of action for claim and delivery, the plaintiff must submit an affidavit with his complaint establishing, among other things, that he owns the property or is entitled to immediate possession of it, that the property is being wrongfully withheld or detained, the cause of the wrongful detention or withholding, and the value of the property. S.C. Code Ann. § 22-3-1320. In this case, no such affidavit was submitted, and the Verified Amended Complaint lacks similar allegations.

Rather, in its Amended Complaint, H & M has merely requested the personal property be sold, along with the real properties, and the proceeds applied towards its secured debt. H & M has not demanded possession of the property or alleged that Defendants have refused to relinquish possession of the property. To the contrary, the pleadings and Orders of this Court indicate the personal property is currently in the possession of the Receiver. The record further indicates that Defendants consented to the appointment of a Receiver and peaceably gave up

possession of the personal property. Therefore, the cause of action labeled as Claim and Delivery can only be viewed as a claim for the foreclosure of a chattel mortgage. This conclusion is supported by the pleadings filed in this action and the prevailing case law. See Barnwell Production Cred. Ass'n v. Hartzog, 231 S.C. 340, 346-347, 98 S.E.2d 835, 838-839 (1957) (holding that although the complaint contained a cause of action titled as "claim and delivery," it lacked the requisite allegations, and the claim was in substance a claim for foreclosure of a chattel mortgage).

For the foregoing reasons, even if the cause of action titled as "Claim and Delivery" has not been rendered moot by prior Order of the Court, it sounds in equity. As such, there exists no right to a trial by jury on this matter.

CONCLUSION

After a careful review of the pleadings, the briefs of the parties and the relevant case law, and hearing arguments from counsel, this Court concludes it has properly considered the Motion to Strike Request for Jury Trial.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Strike Request for Jury Trial is hereby GRANTED;

IT IS FURTHER ORDERED ADJUDGED, AND DECREED that the Plaintiff's claims for foreclosure of real property mortgages shall be heard by this Court, sitting without jury.

AND IT IS SO ORDERED this 26 day of September, 2011.


THE HONORABLE WILLIAM H. SEALS, JR.
Presiding Circuit Court Judge for the
Fifteenth Judicial Circuit

12
JWB

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION NO: 2009-^{LP}EP-26- 2442

First Palmetto Savings Bank, F.S.B.,)
Plaintiff,)
vs.)
BJC Enterprises, LLC, Wendy J. Bellamy,) LIS PENDENS
Americana, Inc. a/k/a)
Americana Motel of Myrtle Beach, Inc.,)
Mozingo & Wallace Architects, LLC,)
Harvey L. Jones, and Henry C. Coan, III)
Defendants.)

NOTICE IS HEREBY GIVEN that an action affecting title to real estate in Horry County, South Carolina, will be filed in regard to the below described property.

Property 1 (Emerald Shores Motel)
TMS# 181-11-01-002

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the office of the ROD for Horry County in Plat Book 1 at Page 84.

For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the locations of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C. E., dated March 24, 1964, and recorded April 10, 1964, in Plat Book 40 at Page 14.

Property 2 (Emerald Shores Motel)
TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel section as

shown on map of Myrtle Beach made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, reference to which is craved as forming a part of these presents.

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid; and being Lot Number Four (4) of Block Four (4), having an ocean frontage of seventy (70) feet and a depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, to which reference is craved as forming a part of these presents.

Less and excepting from the above description lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

Property 4 (Parking Lot)

TMS#181-10-10-007

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid; and more particularly described as Lot Two (2), Block 13; Hotel Section, as shown on a map made by Robert L. Bellamy, C.E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the office of the ROD for Horry County, South Carolina.

These being the identical properties conveyed to the Mortgagor herein by Deed from James C. Journey, dated January 13, 2005 and recorded January 19, 2005 in Deed Book 2849 at Page 171 and by Deed from James C. Journey, as Trustee of the Madeline M. Journey Revocable Trust, dated January 13, 2005 and recorded January 19, 2005 in Deed Book 2849 at Page 167 records of the office of the Register of Deeds for Horry County, South Carolina.

(Lot 14 Block 21)

TMS# 181-10-10-016

ALL THAT certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Fourteen (14) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of

said Section made by N.C. Hughes, Jr., Engineer, in November 1933, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at Page Book 116.

This being the identical property conveyed to the Mortgagor herein by Deed from Estate of Wendell E Jones, Jr., dated July 22, 2002 and recorded July 23, 2002 in Deed Book 2501 at Page 1435, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 1 (Rainbow Court Motel)

Portion of TMS#181-10-10-005

All and Singular, all those certain parcels or lots of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as Lots 4, 5, 7, 8 & 9 in Block 21 of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the R.M.C. for Horry County in Plat Book 1, at Page 84.

This being a portion of the properties conveyed to the Mortgagor herein by Deed from Harvey C. Jones and Lila M. Bagnal, dated September 3, 1968 and recorded May 22, 1969 in Deed Book 409 at Page 224, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 2 (Rainbow Court Motel)

Portion of TMS#181-10-10-005

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Horry, and being known and designated as Lot Six (6) of Block twenty-one (21), according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer; which map or plat is of record in the Clerk of Court's Office for Horry County in Plat Book 1, at Page 84, reference to which is hereby made as a part of this description, said lot of land being more particularly described by meets and bounds as follows, to wit:

Beginning at a stake on the Southwest line of Fifth Avenue at the corner common to lots six (6) and seven (7) of Block twenty-one (21) and running thence along the dividing line between lots six (6) and seven (7) South 38 deg. 32 min. West one hundred and fifty (150) feet to a stake on the Northeast line of lot eight (8), thence along the dividing line between lots six (6) and eight (8) North 51 deg. 28 min. West fifty-seven and five tenths (57.5) feet to a stake at the corner of lot five (5); thence along the dividing line between lots five (5) and six (6) North 38 deg. 32 min. East one hundred and fifty (150) feet to a stake on the Southwest line of Fifth Avenue; thence along the said Southwest line Fifth Avenue South 51 deg. 28 min. East Fifty-seven and five tenths (57.5) feet to the place

of beginning.

This being the identical property conveyed to the Mortgagor herein by Deed from Winston W. Vaught as Master, dates May 8, 1972 and recorded May 8, 1972 in Deed Book 469 at Page 270, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 3 (Triplex, Lot 18 Block 21)

TMS#181-10-10-003

All and singular, all that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as lot 18 in Block (21) of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the R.M.C. for Horry County in Plat Book 1 at Page 84 and Plat Book 1 at Page 116.

This being a portion of the properties conveyed to the Mortgagor herein by Deed from Harvey C. Jones and Lila M. Bagnal, dates September 3, 1968 and recorded May 22, 1969 in Deed Book 409 at Page 224, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 4 (Lot 17 Block 21)

TMS#181-10-10-002

ALL AND SINGULAR, that certain piece, parcel or lot of land, situated, lying and being in the Town of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Seventeen (17) of Block Twenty-One (21) of the Hotel Section, as shown on map of Myrtle Beach made by N.C. Hughes, C.E. dated November 1933 recorded in the Office of the Clerk of Court for Horry County in Plat Book 1 at Page 116, to which plat reference is craved as forming a part of these presents; this being the lot referred to as Parcel Five (5) in deed from H.L. Buck, Jr. to E.E. Burroughs, dated May 21, 1951 recorded in Book 93 at Page 64, RMC for Horry County.

This being the identical property conveyed to the Mortgagor herein by Deed from Charles A. Fanshaw, dated February 19, 1993 and recorded February 19, 1993 in Deed Book 1615 at Page 718, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 5 (Lot 16 Block 21)

TMS#181-10-10-001

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being Lot Sixteen (16), Block Twenty-One (21) of the Hotel Section of Myrtle Beach as shown on the map or plat by N.C. Hughes,

Jr., Engineer. A copy of said map is recorded in Plat Book 1 Page 116, Office of the R.M.C for Horry County and is by reference incorporated herein as forming a part and parcel of this description.

This being the identical property conveyed to the Mortgagor herein by Deed from Lucille T. Mull Trust, dated December 19, 2001 and recorded December 21, 2001 in Deed Book 2437 at Page 800, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 6 (Lot 3 Block 21)
Portion of TMS#181-10-10-005

All and singular, all that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being more particularly shown and designated as Lot No. Three (3) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of the said section made under the supervision of Stanley H. Wright, Engineer, dated June and July 1926, and recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 1, at Page 84, reference to which is craved as forming a part of these presents.

This being the identical property conveyed to the Mortgagor herein by Deed from Lila McCall Bagnal, dated September 10, 1973 and recorded September 10, 1973 in Deed Book 498 at Page 858, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 7 (Lot 6 Block 28 & ½ of Lot 7 & 8 & Part of Lot 9)
TMS#181-10-07-010 & 011

ALL AND SINGULAR, that certain piece, parcel or lot of land lying and being in the Town of Myrtle Beach, County and State aforesaid, and being Lot No. 6 of Block -28- of the Hotel Section, and beginning at a stake corner on the Northwestern side of Chester Street, which is the Northeastern corner of the lot herein described, and runs North 51 deg. And 28 min. west 240 feet to a stake on the read line of Lot No. 14 of said block; thence South 38 deg. And 32 min. west along the rear line of Lots No. 13 and No. 14, 60 feet to a stake; thence South 51 deg. And 28 min. east 240 feet to a stake on the Northwestern side of Chester Street; thence North 38 deg. And 32 min East with Chester Street 60 feet to the point of beginning.

ALSO

All that certain piece, or lot of land, situate and being in the State of South Carolina, County of Horry; known and designated as one-half (1/2) of Lots Seven (7) and Eight (8) of block Twenty-Eight (28) in the Hotel Section; a subdivision of the property of Myrtle Beach according to a

plat made under the direction of Stanley H. Wright, consulting engineer, in June 1926, reference to said plat is hereby made. The said lot of land being more particularly described by metes and bounds as follows: Beginning at a stake on Chester Street at Northeast corner of lot seven (7) of said Block Twenty-Eight (28) and running thence North 51 deg. 27 min 45 sec. West, one hundred and twenty (120) feet to a stake on the line between lots eight (8) and nine (9) of said block thence South 38 deg. 32 min. 15 sec. West along the dividing line between lots (8) and nine (9), seventy-five (75) feet to a stake, thence South 51 deg. 27 min 45 sec. East, one hundred twenty (120) feet to a stake on Chester Street, and thence along Chester Street seventy-five (75) feet to the beginning corner, and being one-half (1/2) of Lots Number seven (7) and eight (8) mentioned above.

ALSO

All that certain piece of land, situated in the Town of Myrtle beach, State and County aforesaid, beginning at the North East corner of lot 9, block 28, Hotel Section, and extending sixty feet along the Cherry and Buck line to the North West corner, extending twenty-five feet along the Cherry and Bartholomew line to a South West corner, extending sixty feet to a South East corner and extending twenty-five feet along Cherry and Stackhouse line to the North East corner. The above description being twenty five feet by sixty feet, a part of lot 9, block 28, Hotel Section.

ALSO

The certain right of way connecting the property herein described with Fourth Avenue as shown on the aforesaid plat. This right-of-way is private way for ingress and egress and is ten 10 feet in width, lying along the boundary line between Lots 8 & 9 of block 28, and being more particularly described as follows: Beginning at the corner of lots 8 and 9 on Fourth Avenue and running thence North 38 deg. 32 min. 15 sec. East along the dividing line of these lots a distance of seventy-five (75) feet to the Northwest corner of the property conveyed to the grantee by deed of Elizabeth G. Stackhouse recorded in the Office of the RMC for Horry County in Deed Book 894 at Page 508; thence running South 51 deg. 27 min. 45 sec. East ten (10) feet along the Western boundary line of the property therein conveyed; thence running South 39 deg. 32 min. 15 sec.; West parallel with the dividing line between Lot 8 and 9, and a distance of ten (10) feet therefrom, for seventy-five (75) feet to Fourth Avenue; thence along the edge of Fourth Avenue ten (10) feet to the beginning corner.

This being the identical property conveyed to the Mortgagor herein by Deed from Sara Alice Beverly, dated April 7, 1999

and recorded April 7, 1999 in Deed Book 2133 at Page 850, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 8 (Lot 1 Block 21)

TMS#181-10-10-004

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Horry, and being known and designated at Lot One (1) Block Twenty-One (21) according to map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer, which map or plat is of record in the Office of the Clerk of the Court for Horry County, in Plat Book 1 at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by meets and bounds as follows; to wit:

Beginning at a stake at the Northeast corner of Lot 1 of said Block 21, which place of beginning is the intersection of the Southeast line of Chester Street with the Southwest line of Fifth Avenue, and running thence South 51 degrees 28 min. East along said Southwest line of Fifth Avenue 57.5 feet to a stake at the corner of Lot 2; thence South 38 degrees 32 Min. West along dividing line Between Lots 1 and 2, 150 feet to a stake on the Northeast line of Lot 18, 57.5 feet to a stake on the Southeast line of Chester Street; thence along said Southeast line of Chester Street; thence along said Southeast line of Chester Street North 38 degrees 32 min. East 150 feet to the place of beginning.

This being the identical property conveyed to the Mortgagor herein by Deed from Evelyn Petros Pharr, dated October 4, 1983 and recorded October 4, 1983 in Deed Book 824 at Page 408, records of the Office of the Register of Deeds for Horry County, South Carolina.

Parcel 9 (Lot 2 Block 21)

Portion of TMS#181-10-10-005

All and singular that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, South Carolina, Dogwood Neck Township, County and State aforesaid and being Lot Two (2) of Block Twenty-One (21) as shown on map of Myrtle Beach, Hotel section, as made by N.C. Hughes, Jr., Engineer, dated November 1933, and recorded in the Office of the Clerk of Court for Horry County, in Plat Book 1, at Page 116, to which plat, reference is craved as forming a part of these presents. The same being conveyed to C.M. Wright by the Myrtle Beach Farms Company, a corporation, by their deed dated October 5, 1934, and recorded October 18, 1934 in Book C-4 at Page 433.

This being the identical property conveyed to the Mortgagor herein by Deed from David L. Leventer, dated October 20, 1972 and recorded January 10, 1973 in Deed Book 483 at Page

548, records of the Office of the Register of Deeds for Horry County, South Carolina.

The purpose of this action is to foreclose upon:

- (a) A mortgage given by BJC Enterprises, LLC to First Palmetto Savings bank, F.S.B. in the amount of Five Million Five Hundred Eighty Thousand and no/100 (\$5,580,000.00) Dollars recorded in the Office of the Register of Deeds for Horry County in Book 3904 at Page 0008 on January 19, 2005.
- (b) A mortgage given by Wendy J. Bellamy to First Palmetto Savings bank, F.S.B. in the amount of Five Million Five Hundred Eighty Thousand and no/100 (\$5,580,000.00) Dollars recorded in the Office of the Register of Deeds for Horry County in Book 3904 at Page 0020 on January 19, 2005.
- (c) A mortgage given by BJC Enterprises, LLC to First Palmetto Savings bank, F.S.B. in the amount of Five Million Five Hundred Eighty Thousand and no/100 (\$5,580,000.00) Dollars recorded in the Office of the Register of Deeds for Horry County in Book 3904 at Page 0028 on January 19, 2005.

DuBOSE-ROBINSON, PC

BY:

J. Kennedy DuBose, Jr.

Jonathan M. Robinson

*John K. DuBose, III

ATTORNEYS FOR PLAINTIFF

925 Broad Street

P. O. Box 39

Camden, South Carolina 29021

(803) 432-1992

johnd@duboselaw.com

Camden, South Carolina
June 2, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION NO: 2009-CP-26- 5743

First Palmetto Savings Bank, F.S.B.,

Plaintiff,

vs.

BJC Enterprises, LLC, Wendy J. Bellamy,
Americana, Inc. a/k/a
Americana Motel of Myrtle Beach, Inc.,
Mozingo & Wallace Architects, LLC,
Kersi S. Shroff, and Shroff Management, Inc.

Defendants.

SUMMONS AND NOTICE

2009 JUN 11 AM 11:11
MELANIE HUSGINS
CLERK OF COURT
HORRY COUNTY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy if herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 935 Broad Street, P. O. Drawer 39, Camden, SC 29020, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that the Plaintiff will move for a general Order of Reference of this cause to the Master in Equity or Special Referee for Horry County, which Order shall, pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to enter a Final Judgment in this case with appeal directly to the Court of Appeals.

YOU WILL ALSO TAKE NOTICE that First Palmetto Savings Bank, F.S.B. will move before a Judge of this Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order appointing some suitable person as Receiver to take charge of the mortgaged premises described in the Complaint herein, collect the rents, issues and profits arising therefrom and hold the same subject to the order of the Court herein, which motion is to be based upon the Mortgages, Commercial Security Agreement, Assignments of Leases and Rents, and the Complaint attached hereto. If the property described in the Complaint is occupied by the mortgagors or the grantees of the mortgagors a motion will be made at the same time and place to designate a reasonable sum for the use of said premises, and the Receiver shall collect such sum in convenient installments and hold the same subject to further order of the Court.

DuBOSE-ROBINSON, PC

BY:

J. Kennedy DuBose, Jr.

Jonathan M. Robinson

John K. DuBose, III

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
)

) CIVIL ACTION NO: 2009-CP-26- 5743

SUMMONS AND NOTICE

Camden, SC
June 9, 2009.

935 Broad Street
P. O. Drawer 39
Camden, SC 29020
(803) 432-1992

*This is an action to collect a debt and any information obtained will
be used for that purpose.*

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION NO: 2009-CP-26-

5743

First Palmetto Savings Bank, F.S.B.,

Plaintiff,

vs.

BJC Enterprises, LLC, Wendy J. Bellamy,
Americana, Inc. a/k/a
Americana Motel of Myrtle Beach, Inc.,
Mozingo & Wallace Architects, LLC,
Kersi S. Shroff, and Shroff Management, Inc.,

Defendants.

) COMPLAINT
) NON-JURY
) FORECLOSURE/
) CLAIM AND DELIVERY/
) ASSIGNMENT OF LEASES &
) RENTS/APPOINTMENT OF
) RECEIVER
) (Deficiency Demanded)

RECEIVED
CLERK OF COURT
JUL 11 AM 11:17
HORRY COUNTY

The Plaintiff, complaining of the Defendants alleges:

1. This is a cause of action for Foreclosure of Mortgages of real estate located in Horry County, South Carolina /Claim and Delivery/ Assignment of Leases and Rents/ Appointment of Receiver.

2. Plaintiff, First Palmetto Savings Bank, F.S.B., is a federally chartered savings bank with its principal place of business in the City of Camden, County of Kershaw, State of South Carolina ("First Palmetto").

3. Defendant BJC Enterprises, LLC, is a corporation organized and existing pursuant to the laws of the State of South Carolina and is the owner of the properties described in that Mortgage dated January 14, 2005 and recorded on January 19, 2005 in Mortgage Book 3094 at Page 0008 in the Horry Clerk of Court's Office/ROD hereinafter described.

4. Upon information and belief Defendant Wendy J. Bellamy is a citizen and resident of Horry County, South Carolina and is the owner of the property described in that Mortgage dated January 14, 2005 and recorded on January 19, 2005 in Mortgage Book 3094 at Page 0020 in the Horry Clerk of Court's Office/ROD hereinafter described.

5. Upon information and belief, Defendant Americana Motel of Myrtle

Beach, Inc. a/k/a Americana, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina and is the owner of the properties described in that Mortgage dated January 14, 2005 and recorded on January 19, 2005 in Mortgage Book 3094 at Page 0028 in the Horry Clerk of Court's Office/ROD hereinafter described.

6. Upon information and belief, Mozingo + Wallace Architects, LLC is a corporation organized and existing pursuant to the laws of the State of South Carolina.

7. Upon information and belief Defendant Kersi S. Shroff is a citizen and resident of Horry County, South Carolina.

8. Upon information and belief, Shroff Management, Inc. is a corporation organized and existing pursuant to the laws of the State of South Carolina.

9. Plaintiff is the owner and holder of a Renewal Note ("note") (Account No. 75-084095-9) dated January 17, 2008 executed by BJC Enterprises, LLC by Wendy J. Bellamy its Managing Member. The principal sum of the note is Five Million Five Hundred Seventy Three Thousand One Hundred Forty Six and 62/100 (\$5,573,146.62) Dollars, bearing interest from date, at the rate of 8.250% per cent per annum. The said note further provided that Defendant BJC Enterprises, LLC would make 11 consecutive monthly payments of Forty Seven Thousand Nine Hundred Five and 19/100 (\$47,905.19) Dollars beginning on February 17, 2008 payable on the same day each month thereafter until the balloon payment due date of January 17, 2009 when Five Million Five Hundred Nine Thousand Three Hundred Fifty Two and 46/100 (\$5,509,352.46) Dollars is due. A copy of the note is attached hereto and incorporated herein by reference and marked **Exhibit "A"**.

10. The aforementioned note (Account No. 75-084095-9) was a renewal of Account No. 75-073840-1. Account No. 75-073840-1 is listed at the top of the note, the correct renewal account number is listed at the bottom of the note (Account No. 75-084095-9).

11. The note further provided that in the event it was placed in the

hands of an attorney for collection by legal proceedings any attorney's fee plus costs shall be added to the note and shall be collectable as part of the debt.

FOR A FIRST CAUSE OF ACTION
Foreclosure of Real Property

Account No. 75-084095-9

Mortgage dated 1/14/2005

Recorded in Mortgage Book 3904 at Page 0008

From BJC Enterprises, LLC to First Palmetto Savings Bank, F.S.B.

12. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

13. The note is secured by a mortgage from BJC Enterprises, LLC dated January 14, 2005, of record in the RMC Office/Clerk of Courts Office for Horry County in Mortgage Book 3904 at Page 0008 and recorded on January 19, 2005, and secured by certain real property situate in Horry County. The property hereafter referred to as "Real Property" is more fully described as follows:

Property 1 (Emerald Shores Motel)

TMS# 181-11-01-002

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the office of the ROD for Horry County in Plat Book 1 at Page 84.

For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the locations of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C. E., dated March 24, 1964, and recorded April 10, 1964, in Plat Book 40 at Page 14.

Property 2 (Emerald Shores Motel)

TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel section as shown on map of Myrtle Beach made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, reference to which is craved as forming a part of these presents.

Property 3 (Emerald Shores Motel)
TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot Number Four (4) of Block Four (4), having an ocean frontage of seventy (70) feet and a depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, to which reference is craved as forming a part of these presents.

Less and excepting from the above description lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

Property 4 (Parking Lot)
TMS#181-10-10-007

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a map made by Robert L. Bellamy, C.E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the office of the ROD for Horry County, South Carolina.

These being the identical properties conveyed to the Mortgagor herein by Deed from James C. Journey, dated January 13, 2005 and recorded January 19, 2005 in Deed Book 2849 at Page 171 and by Deed from James C. Journey, as Trustee of the Madeline M. Journey Revocable Trust, dated January 13, 2005 and recorded January 19, 2005 in Deed Book 2849 at Page 167 records of the office of the Register of Deeds for Horry County, South Carolina.

14. This mortgage was properly executed by the Defendant BJC Enterprises LLC and is a first lien upon the Real Property. Copy of said mortgage is attached hereto and incorporated herein by reference as **Exhibit "B"**.

15. Payment due on the note has not been made as provided for, and the Plaintiff, as the holder thereof, after complying with any notice requirements contained in said Note and/or Mortgage has elected to require immediate payment of the entire principal amount outstanding and accrued interest thereon upon default of the owners of the real property and has placed the Note and Mortgage

in the hands of an attorney for collection.

16. The amount due and owing on the note and mortgage as of June 8, 2009 is Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight (\$5,433,288.28) Dollars, with interest accruing thereon at a rate of \$1,150.95 per diem plus attorney's fees as provided in the note and mortgage, plus other costs of this action; plus sums which the Plaintiff may be required to advance for the protection of its security in the subject property.

17. Defendant BJC Enterprises, LLC is in default under the terms of the note, has been given notice of the default, but has failed to pay the amounts due as provided in the note.

18. Plaintiff is informed and believes it is entitled to judgment against the Defendant BJC Enterprises, LLC for the full amount due Plaintiff under the note and mortgage including attorney's fees and costs; is entitled to foreclosure of its mortgage; and is entitled to have the equity of redemption of the Defendant forever barred.

19. That the Plaintiff specifically reserves its right to a deficiency judgment against the Defendant BJC Enterprises, LLC in the event the property is sold at less than the mortgage indebtedness, the costs, and fees of this action as of the time of the sale. Pursuant to its contractual authority as contained in the mortgage the Plaintiff asks the Court, after the report of the sale is entered, to enter a deficiency judgment against the Defendant BJC Enterprises, LLC should one be due.

20. Mazingo + Wallace Architects, LLC, is named as a Defendant by virtue of Civil Action No. 2009-CP-26-3186 seeking to foreclose a Mechanic's Lien against the subject properties. The Mechanic's Lien, if applicable, is junior and subsequent to Plaintiff's mortgage lien. If applicable, Plaintiff is informed and believes that the aforementioned Mechanic's Lien only applies to:

Properties owned by BJC Enterprises, LLC described in that Mortgage dated 01/14/2005, Recorded on 01/19/2005 in Mortgage Book 3904 at Page 0008 in the Horry County Clerk of Court's Office/ROD. The properties are more particularly described as

Property 1, Property 2, Property 3, and Property 4 in Paragraph 13 Supra.

Copy of said Civil Action is attached hereto and incorporated herein by reference as **Exhibit "C"**.

21. Kersi S. Shroff and Shroff Management, Inc. are named as Defendants herein by virtue of those Lis Pendens filed with the Clerk of Court for Horry County on May 19, 2009 as Civil Action No. 2009-LP-26-2279 and as Civil Action No. 2009-LP-26-2280. The Plaintiff is informed and believes the basis for the said Lis Pendens are not to challenge the title to the said property and is; instead, to challenge the ownership interest in BJC Enterprises, LLC. The said Lis Pendens are attached hereto and incorporated herein by reference as **Exhibit "D"** and **Exhibit "E"**.

22. The Defendants Kersi S. Shroff and Shroff Management, Inc. have also filed the following Lis Pendens with the Clerk of Court for Horry County:

- a) 2009-LP-26-0575
- b) 2009-LP-26-1040
- c) 2009-LP-26-1586
- d) 2009-LP-26-1587
- e) 2009-LP-26-1966
- f) 2009-LP-26-1965

The Plaintiff is informed and believes that these Lis Pendens are of record but have expired and were renewed as Lis Pendens 2009-LP-26-2279 and 2009-LP-26-2280.

23. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, having fully set forth its Complaint, Plaintiff First Palmetto Savings Bank, F.S.B. prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendant BJC

Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney in handling this foreclosure, and for the costs and expenses of this action;

(b) That Plaintiff's mortgage described herein be foreclosed, the equity of redemption barred, the mortgage premises sold, the proceeds of the sale applied as follows: first, to the costs of this action, including reasonable attorney's fees as aforesaid; next, to the amount found due to the Plaintiff on the note and mortgage and the balance, if any, be disbursed in accordance with the Order of this Court pursuant to Rule 71 of the South Carolina Rules of Civil Procedure;

(c) That the Report of Sale having been rendered, the Court assess a deficiency judgment against the Defendant BJC Enterprises, LLC as prayed for; and

(d) For such other and further relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION

Claim and Delivery

Commercial Security Agreement and UCC-1 Financing Statements

24. This is a cause of action for Claim and Delivery of certain collateral situate at 404 N. Ocean Blvd., Myrtle Beach, South Carolina 29577.

25. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

26. On January 17, 2008, the BJC Enterprises, LLC. borrowed the sum of Five Million Five Hundred Seventy Three Thousand One Hundred Forty Six and 62/100 (\$5,573,146.62) Dollars as evidenced by a Renewal Note and Commercial Security Agreement executed by the Defendant BJC Enterprises, LLC. by Wendy J. Bellamy its Managing Member on January 17, 2008, copies of which are attached hereto, incorporated herein by reference and marked, respectively, as **Exhibits "A"** and

"F".

27. The Note is secured by a Commercial Security Agreement whose terms place as collateral for the obligation:

- a) Deposit Accounts: all deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- b) Specific Property Description: the property includes, but is not limited by, the following:
 - i) All furniture, fixtures, equipment located at 404 N. Ocean Blvd. Myrtle Beach, South Carolina 29577 and used in the operation of the Emerald Shores Motel.
 - ii) First Palmetto Savings Bank, FSB Certificate of Deposit: Account #41-4660924 in the amount of \$500,000.00, The name on the Account is Henry C. Coan, Jr. Marital Trust

28. The Note and Commercial Security Agreement provide that upon default of the note, the Plaintiff can declare the entire note due and owing. They also provide that Plaintiff can enforce the Note against the collateral as provided by the South Carolina Uniform Commercial Code.

29. First Palmetto Savings Bank, F.S.B. perfected its security interest by filing a Form UCC-1 Financing Statement in the office of the Register of Deeds for Horry County on January 19, 2005 in Book 3904, at page 17, which describes as collateral:

All furniture, fixtures and equipment located at 404 N. Ocean Blvd., Myrtle Beach, SC 29577 and used in the operation of the Emerald Shores Motel. For a more complete legal description see attached Exhibit "A".

Form UCC-1 Financing Statement (and Exhibit "A" thereto) is attached hereto and incorporated herein by reference and marked as **Exhibit "G"**.

30. The Note further provided that in the event it was placed in the hands of an attorney for collection by legal proceedings any attorney's fee plus costs

shall be added to the note and collectable as part of the debt.

31. The Defendant BJC Enterprises, LLC has defaulted under the terms of the Note. After complying with any notice requirements contained in the Note, the Plaintiff has elected to declare the entire balance due and owing which is Five Million Forty Hundred Thirty Three Thousand Two Hundred Eighty Eight and 28/100(\$5,433,288.28) Dollars, with interest accruing thereon at a rate of \$1,150.95 as of June 8, 2009, with interest continuing to accrue thereon.

32. Plaintiff has demanded Defendant pay the amounts due but Defendant has failed to do so.

33. Under the terms and conditions of Defendant's obligation, Plaintiff is entitled to possession of the collateral and is entitled to sell it as provided by law, applying the proceeds against the obligation owed by Defendant BJC Enterprises, LLC.

34. Plaintiff specifically reserves its right to a deficiency judgment in the event the money derived from sale of collateral is insufficient to meet the obligation.

35. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

a. if possession of the property described in the Commercial Security Agreement and UCC-1 Financing Statement cannot be voluntarily obtained, Plaintiff is entitled to an order of this Court allowing it to access 404 N. Ocean Blvd., Myrtle Beach, South Carolina owned by BJC Enterprises, LLC to take immediate possession of the collateral or to access to such other place where the collateral may be found.

b. for the immediate possession of the secured property to be sold and the proceeds applied against the debt, and after applying the proceeds to the debt, is entitled to a deficiency judgment if the collateral is sold in the manner provided by law for less than the debt, and that Plaintiff is entitled, if

delivery of the property cannot be had, to judgment against BJC Enterprises, LLC in the amount of Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight and 28/100 (\$5,433,288.28) Dollars, with interest accruing thereon at a rate of 8.250% per annum from June 8, 2009, and is entitled to costs of collection, court costs, and a reasonable attorney's fee; and that Plaintiff have judgment for that amount;

c. for such other and further relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
Appointment of Receiver and Assignment of Leases and Rents

36. This is a cause of action for the appointment of a receiver pursuant to an Assignment of Leases and Rents.

37. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

38. As further security for the Note, Defendant, BJC Enterprises, LLC, by Wendy Bellamy, Managing Member, executed and delivered to First Palmetto Savings Bank, F.S.B. an Assignment of Leases and Rents dated January 14, 2005 and recorded at Book 2849, at page 176 on January 19, 2005. The Assignment of Leases and Rents is attached hereto and incorporated herein by reference and marked as **Exhibit "H"**.

39. Paragraph 12 of the Assignment of Leases and Rents provides that First Palmetto Savings Bank, F.S.B. may, on or after an Assignor's default, make an application to the Court for an appointment of a receiver for the benefit of Lender to take possession of the property and the Leases, with the power to receive, collect and apply the Rents.

40. In conjunction with the first and second cause of action to foreclose the mortgage, and claim and deliver collateral, and as a result of the default by the Defendant BJC Enterprises, LLC under the terms of the loan documents, and pursuant to terms in §15-65-10, et seq. of the *South Carolina Code of Laws*, the Plaintiff is entitled to the appointment of a Receiver to take control of the premises encumbered by the Mortgage, Commercial Security Agreement, and

Assignment of Leases and Rents, and to manage the property and to receive the rents and profits and to have rents and profits disbursed in accordance with the terms of the Mortgage, Commercial Security Agreement, and Assignment of Leases and Rents.

41. The Receiver is entitled to a reasonable fee. The fees of the Receiver, the attorney's fees and the costs of taking control and managing the Property in collecting rents, the costs of repairs to the Property, and other expenses as outlined in the Note, Mortgage, Commercial Security Agreement, and Assignment of Leases and Rents should be added to the principal due under the Note, Mortgages, Commercial Security Agreement, and Assignment of Leases and Rents and paid out of any rents received.

42. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff First Palmetto Savings Bank, F.S.B. prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendant BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney, for the costs and expenses of this action;

(b) For appointment of a Receiver to take control of the Property, to manage the Property, and to receive rents and profits and to have the rents and profits disbursed in accordance with the Mortgage, Commercial Security Agreement, and Assignment of Leases and Rents, with Receiver's fees, attorney's fees and costs in taking control of and managing the Property and collecting rents, the costs of repairs to the Property and other expenses as outlined in the Note and Mortgage and Assignment of Leases and Rents added to the principal due under the Note and Mortgage and paid out of any rents received; and

(c) for such other and further relief as the Court deems just and proper.

FOR A FORTH CAUSE OF ACTION
Foreclosure of Real Property
Account No. 75-084095-9
Mortgage dated 1/14/2005

Recorded in Mortgage Book 3904 at Page 0020
From Wendy J. Bellamy to First Palmetto Savings Bank, F.S.B.

43. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

44. Plaintiff is the owner and holder of a Renewal Note ("Note") (Account No. 75-084095-9) dated January 17, 2008 executed by BJC Enterprises, LLC by Wendy J. Bellamy its Managing Member. The principal sum of the note is Five Million Five Hundred Seventy Three Thousand One Hundred Forty Six and 62/100 (\$5,573,146.62) Dollars, bearing interest from date, at the rate of 8.250% per cent per annum. The said note further provided that Defendant BJC Enterprises, LLC would make 11 consecutive monthly payments of Forty Seven Thousand Nine Hundred Five and 19/100 (\$47,905.19) Dollars beginning on February 17, 2008 payable on the same day each month thereafter until the balloon payment due date of January 17, 2009 when Five Million Five Hundred Nine Thousand Three Hundred Fifty Two and 46/100 (\$5,509,352.46) Dollars is due. A copy of the note is attached hereto and incorporated herein by reference and marked Exhibit "A".

45. The Note further provided that in the event it was placed in the hands of an attorney for collection by legal proceedings any attorney's fee plus costs shall be added to the note and collectable as part of the debt.

46. January 17, 2008, Defendant Wendy J. Bellamy executed a Hypothecation Agreement wherein she assigned, released and transferred unto BJC Enterprises, LLC all her right title and interest in said property in consideration of Plaintiff making, renewing or extending a loan or loans to BJC Enterprises, LLC. A copy of said Hypothecation Agreement is attached hereto, incorporated herein by reference and marked Exhibit "I".

47. The Note was secured by a Mortgage from Wendy J. Bellamy dated

January 14, 2005, now of record in the RMC Office/Clerk of Courts Office for Horry County in Mortgage Book 3904 at Page 0020 recorded on January 19, 2005, secured by certain real property situate in Horry County. The property hereafter referred to as "Real Property" is more fully described as follows:

(Lot 14 Block 21)

TMS# 181-10-10-016

ALL THAT certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Fourteen (14) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of said Section made by N.C. Hughes, Jr., Engineer, in November 1933, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at Page Book 116.

This being the identical property conveyed to the Mortgagor herein by Deed from Estate of Wendell E Jones, Jr., dated July 22, 2002 and recorded July 23, 2002 in Deed Book 2501 at Page 1435, records of the Office of the Register of Deeds for Horry County, South Carolina.

This Mortgage was properly executed by the Defendant Wendy J. Bellamy and is a first lien upon the Real Property. Copy of said Mortgage is attached hereto and incorporated herein by reference as **Exhibit "J"**.

48. Payment due on the note has not been made as provided for, and the Plaintiff, as the holder thereof, after complying with any notice requirements contained in said Note and/or Mortgage has elected to require immediate payment of the entire principal amount outstanding and accrued interest thereon upon default of the owners of the real property and has placed the Note and Mortgage in the hands of an attorney for collection.

49. The amount due and owing on the note and mortgage as of June 8, 2009 is Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight (\$5,433,288.28) Dollars, with interest accruing thereon at a rate of \$1,150.95 per diem plus attorney's fees as provided in the note and mortgage, plus other costs of this action; plus sums which the Plaintiff may be required to advance for the protection of its security in the subject property.

50. Defendant BJC Enterprises, LLC is in default under the terms of the note, has been given notice of the default, but has failed to pay the amounts due as provided in the note.

51. Plaintiff is informed and believes it is entitled to judgment against the Defendant BJC Enterprises, LLC for the full amount due Plaintiff under the note and mortgage; is entitled to foreclosure of its mortgage; and is entitled to have the equity of redemption of the Defendant forever barred.

52. Mzingo + Wallace Architects, LLC, is named as a Defendant by virtue of Civil Action No. 2009-CP-26-3186 seeking to foreclose a Mechanic's Lien against the subject properties. The Mechanic's Lien, if applicable, is junior and subsequent to Plaintiff's mortgage lien. If applicable, Plaintiff is informed and believes that the aforementioned Mechanic's Lien only applies to:

Properties owned by BJC Enterprises, LLC described in that Mortgage dated 01/14/2005, Recorded on 01/19/2005 in Mortgage Book 3904 at Page 0008 in the Horry County Clerk of Court's Office/ROD. The properties are more particularly described as Property 1, Property 2, Property 3, and Property 4 in Paragraph 13 Supra.

Copy of the Civil Action is attached hereto and incorporated herein by reference as Exhibit "C".

53. Kersi S. Shroff and Shroff Management, Inc. are named as Defendants herein by virtue of those Lis Pendens filed with the Clerk of Court for Horry County on May 19, 2009 as Civil Action No. 2009-LP-26-2279 and as Civil Action No. 2009-LP-26-2280. The Plaintiff is informed and believes the basis for the said Lis Pendens are not to challenge the title to the said property and is; instead, to challenge the ownership interest in BJC Enterprises, LLC. The said Lis Pendens are attached hereto and incorporated herein by reference as Exhibit "D" and Exhibit "E".

54. The Defendants Kersi S. Shroff and Shroff Management, Inc. have also filed the following Lis Pendens with the Clerk of Court for Horry County:

g) 2009-LP-26-0575

h) 2009-LP-26-1040

i) 2009-LP-26-1586

j) 2009-LP-26-1587

k) 2009-LP-26-1966

l) 2009-LP-26-1965

The Plaintiff is informed and believes that these Lis Pendens are of record but have expired and were renewed as Lis Pendens 2009-LP-26-2279 and 2009-LP-26-2280.

55. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff First Palmetto Savings Bank, F.S.B. prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendant BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney, for the costs and expenses of this action;

(b) That Plaintiff's mortgage described herein be foreclosed, the equity of redemption barred, the mortgage premises sold, the proceeds of the sale applied as follows: first, to the costs of this action, including reasonable attorney's fees as aforesaid; next, to the amount found due to the Plaintiff on the note and mortgage and the balance, if any, be disbursed in accordance with the Order of this Court pursuant to Rule 71 of the South Carolina Rules of Civil Procedure;

(c) That the Report of Sale having been rendered, the Court assess a deficiency judgment against the Defendant BJC Enterprises, LLC as prayed for; and

(d) For such other and further relief as the Court deems just and proper.

FOR A FIFTH CAUSE OF ACTION
Appointment of Receiver and Assignment of Leases and Rents

56. This is a cause of action for the appointment of a receiver pursuant to an Assignment of Leases and Rents.

57. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

58. As further security for the Note, Defendant, Wendy J. Bellamy executed and delivered to First Palmetto Savings Bank, F.S.B. an Assignment of Leases and Rents dated January 14, 2005 and recorded at Book 2849, at page 185 on January 19, 2005. The Assignment of Leases and Rents is attached hereto and incorporated herein by reference and marked as **Exhibit "K"**.

59. Paragraph 12 of the Assignment of Leases and Rents provides that First Palmetto Savings Bank, F.S.B. may, on or after an Assignor's default, make an application to the Court for an appointment of a receiver for the benefit of Lender to take possession of the property and the Leases, with the power to receive, collect and apply the Rents.

60. In conjunction with the fourth cause of action to foreclose the mortgage, and as a result of the default by the Defendant BJC Enterprises, LLC under the terms of the loan documents, and pursuant to terms in §15-65-10, et seq. of the *South Carolina Code of Laws*, the Plaintiff is entitled to the appointment of a Receiver to take control of the premises encumbered by the Mortgage, and Assignment of Leases and Rents, and to manage the property and to receive the rents and profits and to have rents and profits disbursed in accordance with the terms of the Mortgage, and Assignment of Leases and Rents.

61. The Receiver is entitled to a reasonable fee. The fees of the Receiver, the attorney's fees and the costs of taking control and managing the Property in collecting rents, the costs of repairs to the Property, and other expenses as outlined in the Note, Mortgage, and Assignment of Leases and Rents should be added to the principal due under the Note, Mortgages, and Assignment of Leases and Rents and paid out of any rents received.

62. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff First Palmetto Savings Bank, F.S.B. prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendants BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney, for the costs and expenses of this action;

(b) For appointment of a Receiver to take control of the Property, to manage the Property, and to receive rents and profits and to have the rents and profits disbursed in accordance with the Mortgage, and Assignment of Leases and Rents, with Receiver's fees, attorney's fees and costs in taking control of and managing the Property and collecting rents, the costs of repairs to the Property and other expenses as outlined in the Note, Mortgage, and Assignment of Leases and Rents added to the principal due under the Note and Mortgage and paid out of any rents received; and

(c) for such other and further relief as the Court deems just and proper.

FOR A SIXTH CAUSE OF ACTION
Foreclosure of Real Property
Account No. 75-084095-9
Mortgage dated 1/14/2005
Recorded in Mortgage Book 3904 at Page 0028
From Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc., to First
Palmetto Savings Bank, F.S.B.

63. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

64. Plaintiff is the owner and holder of a Renewal Note ("Note") (Account No. 75-084095-9) dated January 17, 2008 executed by BJC Enterprises, LLC

by Wendy J. Bellamy its Managing Member. The principal sum of the note is Five Million Five Hundred Seventy Three Thousand One Hundred Forty Six and 62/100 (\$5,573,146.62) Dollars, bearing interest from date, at the rate of 8.250% per cent per annum. The said note further provided that Defendant BJC Enterprises, LLC would make 11 consecutive monthly payments of Forty Seven Thousand Nine Hundred Five and 19/100 (\$47,905.19) Dollars beginning on February 17, 2008 payable on the same day each month thereafter until the balloon payment due date of January 17, 2009 when Five Million Five Hundred Nine Thousand Three Hundred Fifty Two and 46/100 (\$5,509,352.46) Dollars is due. A copy of the note is attached hereto and incorporated herein by reference and marked Exhibit "A".

65. The Note further provided that in the event it was placed in the hands of an attorney for collection by legal proceedings any attorney's fee plus costs shall be added to the note and collectable as part of

66. On January 17, 2008, Defendant Americana Motel of Myrtle Beach, Inc. aka Americana, Inc. by Wendy J. Bellamy executed a Hypothecation Agreement wherein they assigned, released and transferred unto BJC Enterprises, LLC all their right title and interest in said property in consideration of Plaintiff making, renewing or extending a loan or loans to BJC Enterprises, LLC. A copy of said Hypothecation Agreement is attached hereto, incorporated herein by reference and marked Exhibit "L".

67. The Note was secured by a Mortgage from Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc., dated January 14, 2005, now of record in the RMC Office/Clerk of Courts Office for Horry County in Mortgage Book 3904 at Page 0028 on January 19, 2005, secured by certain real property situate in Horry County. The property hereafter referred to as "Real Property" is more fully described as follows:

Property 1 (Rainbow Court Motel)
Portion of TMS#181-10-10-005

All and Singular, all those certain parcels or lots of land, together with the improvements thereon, situate, lying and being

in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as Lots 4, 5, 7, 8 & 9 in Block 21 of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the R.M.C. for Horry County in Plat Book 1, at Page 84.

This being a portion of the properties conveyed to the Mortgagor herein by Deed from Harvey C. Jones and Lila M. Bagnal, dated September 3, 1968 and recorded May 22, 1969 in Deed Book 409 at Page 224, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 2 (Rainbow Court Motel)
Portion of TMS#181-10-10-005

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Horry, and being known and designated as Lot Six (6) of Block twenty-one (21), according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer; which map or plat is of record in the Clerk of Court's Office for Horry County in Plat Book 1, at Page 84, reference to which is hereby made as a part of this description, said lot of land being more particularly described by meets and bounds as follows, to wit:

Beginning at a stake on the Southwest line of Fifth Avenue at the corner common to lots six (6) and seven (7) of Block twenty-one (21) and running thence along the dividing line between lots six (6) and seven (7) South 38 deg. 32 min. West one hundred and fifty (150) feet to a stake on the Northeast line of lot eight (8), thence along the dividing line between lots six (6) and eight (8) North 51 deg. 28 min. West fifty-seven and five tenths (57.5) feet to a stake at the corner of lot five (5); thence along the dividing line between lots five (5) and six (6) North 38 deg. 32 min. East one hundred and fifty (150) feet to a stake on the Southwest line of Fifth Avenue; thence along the said Southwest line Fifth Avenue South 51 deg. 28 min. East Fifty-seven and five tenths (57.5) feet to the place of beginning.

This being the identical property conveyed to the Mortgagor herein by Deed from Winston W. Vaught as Master, dated May 8, 1972 and recorded May 8, 1972 in Deed Book 469 at Page 270, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 3 (Triplex, Lot 18 Block 21)
TMS#181-10-10-003

All and singular, all that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as lot 18 in Block (21) of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the R.M.C. for Horry County in Plat Book 1 at Page 84 and Plat Book 1 at Page 116.

This being a portion of the properties conveyed to the Mortgagor

herein by Deed from Harvey C. Jones and Lila M. Bagnal, dates September 3, 1968 and recorded May 22, 1969 in Deed Book 409 at Page 224, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 4 (Lot 17 Block 21)

TMS#181-10-10-002

ALL AND SINGULAR, that certain piece, parcel or lot of land, situated, lying and being in the Town of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Seventeen (17) of Block Twenty-One (21) of the Hotel Section, as shown on map of Myrtle Beach made by N.C. Hughes, C.E. dated November 1933 recorded in the Office of the Clerk of Court for Horry County in Plat Book 1 at Page 116, to which plat reference is craved as forming a part of these presents; this being the lot referred to as Parcel Five (5) in deed from H.L. Buck, Jr. to E.E. Burroughs, dated May 21, 1951 recorded in Book 93 at Page 64, RMC for Horry County.

This being the identical property conveyed to the Mortgagor herein by Deed from Charles A. Fanshaw, dated February 19, 1993 and recorded February 19, 1993 in Deed Book 1615 at Page 718, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 5 (Lot 16 Block 21)

TMS#181-10-10-001

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being Lot Sixteen (16), Block Twenty-One (21) of the Hotel Section of Myrtle Beach as shown on the map or plat by N.C. Hughes, Jr., Engineer. A copy of said map is recorded in Plat Book 1 Page 116, Office of the R.M.C for Horry County and is by reference incorporated herein as forming a part and parcel of this description.

This being the identical property conveyed to the Mortgagor herein by Deed from Lucille T. Mull Trust, dated December 19, 2001 and recorded December 21, 2001 in Deed Book 2437 at Page 800, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 6 (Lot 3 Block 21)

Portion of TMS#181-10-10-005

All and singular, all that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being more particularly shown and designated as Lot No. Three (3) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of the said section made under the supervision of Stanley H. Wright, Engineer, dated June and July 1926, and recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 1, at Page 84, reference to which is craved as forming a part of these presents.

This being the identical property conveyed to the Mortgagor herein by Deed from Lila McCall Bagnal, dated September 10, 1973 and recorded September 10, 1973 in Deed Book 498 at Page 858, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 7 (Lot 6 Block 28 & ½ of Lot 7 & 8 & Part of Lot 9)
TMS#181-10-07-010 & 011

ALL AND SINGULAR, that certain piece, parcel or lot of land lying and being in the Town of Myrtle Beach, County and State aforesaid, and being Lot No. 6 of Block -28- of the Hotel Section, and beginning at a stake corner on the Northwestern side of Chester Street, which is the Northeastern corner of the lot herein described, and runs North 51 deg. And 28 min. west 240 feet to a stake on the read line of Lot No. 14 of said block; thence South 38 deg. And 32 min. west along the rear line of Lots No. 13 and No. 14, 60 feet to a stake; thence South 51 deg. And 28 min. east 240 feet to a stake on the Northwestern side of Chester Street; thence North 38 deg. And 32 min East with Chester Street 60 feet to the point of beginning.

ALSO

All that certain piece, or lot of land, situate and being in the State of South Carolina, County of Horry; known and designated as one-half (1/2) of Lots Seven (7) and Eight (8) of block Twenty-Eight (28) in the Hotel Section; a subdivision of the property of Myrtle Beach according to a plat made under the direction of Stanley H. Wright, consulting engineer, in June 1926, reference to said plat is hereby made. The said lot of land being more particularly described by metes and bounds as follows: Beginning at a stake on Chester Street at Northeast corner of lot seven (7) of said Block Twenty-Eight (28) and running thence North 51 deg. 27 min 45 sec. West, one hundred and twenty (120) feet to a stake on the line between lots eight (8) and nine (9) of said block thence South 38 deg. 32 min. 15 sec. West along the dividing line between lots (8) and nine (9), seventy-five (75) feet to a stake, thence South 51 deg. 27 min 45 sec. East, one hundred twenty (120) feet to a stake on Chester Street, and thence along Chester Street seventy-five (75) feet to the beginning corner, and being one-half (1/2) of Lots Number seven (7) and eight (8) mentioned above.

ALSO

All that certain piece of land, situated in the Town of Myrtle beach, State and County aforesaid, beginning at the North East corner of lot 9, block 28, Hotel Section, and extending sixty feet along the Cherry and Buck line to the North West corner, extending twenty-five feet along the Cherry and Bartholomew line to a South West corner, extending sixty feet to a South East corner and extending twenty-five feet along Cherry and Stackhouse line to the North East corner. The above description being twenty five feet by sixty feet, a part of lot 9, block 28, Hotel Section.

ALSO

The certain right of way connecting the property herein described with Fourth Avenue as shown on the aforesaid plat. This right-of-way is private way for ingress and egress and is ten 10 feet in width, lying along the boundary line between Lots 8 & 9 of block 28, and being more particularly described as follows: Beginning at the corner of lots 8 and 9 on Fourth Avenue and running thence North 38 deg. 32 min. 15 sec. East along the dividing line of these lots a distance of seventy-five (75) feet to the Northwest corner of the property conveyed to the grantee by deed of Elizabeth G. Stackhouse recorded in the Office of the RMC for Horry County in Deed Book 894 at Page 508; thence running South 51 deg. 27 min. 45 sec. East ten (10) feet along the Western boundary line of the property therein conveyed; thence running South 39 deg. 32 min. 15 sec.; West parallel with the dividing line between Lot 8 and 9, and a distance of ten (10) feet therefrom, for seventy-five (75) feet to Fourth Avenue; thence along the edge of Fourth Avenue ten (10) feet to the beginning corner.

This being the identical property conveyed to the Mortgagor herein by Deed from Sara Alice Beverly, dated April 7, 1999 and recorded April 7, 1999 in Deed Book 2133 at Page 850, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 8 (Lot 1 Block 21)
TMS#181-10-10-004

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Horry, and being known and designated at Lot One (1) Block Twenty-One (21) according to map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer, which map or plat is of record in the Office of the Clerk of the Court for Horry County, in Plat Book 1 at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by meets and bounds as follows; to wit:

Beginning at a stake at the Northeast corner of Lot 1 of said Block 21, which place of beginning is the intersection of the Southeast line of Chester Street with the Southwest line of Fifth Avenue, and running thence South 51 degrees 28 min. East along said Southwest line of Fifth Avenue 57.5 feet to a stake at the corner of Lot 2; thence South 38 degrees 32 Min. West along dividing line Between Lots 1 and 2, 150 feet to a stake on the Northeast line of Lot 18, 57.5 feet to a stake on the Southeast line of Chester Street; thence along said Southeast line of Chester Street; thence along said Southeast line of Chester Street North 38 degrees 32 min. East 150 feet to the place of beginning.

This being the identical property conveyed to the Mortgagor herein by Deed from Evelyn Petros Pharr, dated October 4, 1983 and recorded October 4, 1983 in Deed Book 824 at Page 408, records of the Office of the Register of Deeds for Horry County, South Carolina.

Parcel 9 (Lot 2 Block 21)

All and singular that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, South Carolina, Dogwood Neck Township, County and State aforesaid and being Lot Two (2) of Block Twenty-One (21) as shown on map of Myrtle Beach, Hotel section, as made by N.C. Hughes, Jr., Engineer, dated November 1933, and recorded in the Office of the Clerk of Court for Horry County, in Plat Book 1, at Page 116, to which plat, reference is craved as forming a part of these presents. The same being conveyed to C.M. Wright by the Myrtle Beach Farms Company, a corporation, by their deed dated October 5, 1934, and recorded October 18, 1934 in Book C-4 at Page 433.

This being the identical property conveyed to the Mortgagor herein by Deed from David L. Leventer, dated October 20, 1972 and recorded January 10, 1973 in Deed Book 483 at Page 548, records of the Office of the Register of Deeds for Horry County, South Carolina.

This Mortgage was properly executed by the Defendant Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc., and is a first lien upon the Real Property. Copy of said Mortgage is attached hereto and incorporated herein by reference as **Exhibit "M"**.

68. Americana, Inc. is the current record owner of (Lot 2 and Lot 3, Block 21) described in the preceding paragraph. Plaintiff is informed and believes that Americana, Inc., and Americana Motel of Myrtle Beach, Inc. are the same corporate entity by virtue of their execution of the above referenced mortgage in the name of Americana Motel of Myrtle Beach, a/k/a Americana, Inc. Plaintiff is also informed and believes that they are the same corporate entity due to common ownership and forfeiture of the corporate status of Americana, Inc.

69. Payment due on the note has not been made as provided for, and the Plaintiff, as the holder thereof, after complying with any notice requirements contained in said Note and/or Mortgage has elected to require immediate payment of the entire principal amount outstanding and accrued interest thereon upon default of the owners of the real property and has placed the Note and Mortgage in the hands of an attorney for collection.

70. The amount due and owing on the note and mortgage as of June 8, 2009 is Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty

Eight (\$5,433,288.28) Dollars, with interest accruing thereon at a rate of \$1,150.95 per diem plus attorney's fees as provided in the note and mortgage, plus other costs of this action; plus sums which the Plaintiff may be required to advance for the protection of its security in the subject property.

71. Defendant BJC Enterprises, LLC is in default under the terms of the note, has been given notice of the default, but has failed to pay the amounts due as provided in the note.

72. Plaintiff is informed and believes it is entitled to judgment against the Defendant BJC Enterprises, LLC for the full amount due Plaintiff under the note and mortgage; is entitled to foreclosure of its mortgage; and is entitled to have the equity of redemption of the Defendant forever barred.

73. Mozingo + Wallace Architects, LLC, is named as a Defendant by virtue of Civil Action No. 2009-CP-26-3186 seeking to foreclose a Mechanic's Lien against the subject properties. The Mechanic's Lien, if applicable, is junior and subsequent to Plaintiff's mortgage lien. If applicable, Plaintiff is informed and believes that the aforementioned Mechanic's Lien only applies to:

Properties owned by BJC Enterprises, LLC described in that Mortgage dated 01/14/2005, Recorded on 01/19/2005 in Mortgage Book 3904 at Page 0008 in the Horry County Clerk of Court's Office/ROD. The properties are more particularly described as Property 1, Property 2, Property 3, and Property 4 in Paragraph 13 Supra.

Copy of the Civil Action is attached hereto and incorporated herein by reference as Exhibit "C".

74. Kersi S. Shroff and Shroff Management, Inc. are named as Defendants herein by virtue of those Lis Pendens filed with the Clerk of Court for Horry County on May 19, 2009 as Civil Action No. 2009-LP-26-2279 and as Civil Action No. 2009-LP-26-2280. The Plaintiff is informed and believes the basis for the said Lis Pendens are not to challenge the title to the said property and is; instead, to challenge the ownership interest in BJC Enterprises, LLC. The said Lis Pendens are attached hereto and incorporated herein by reference as Exhibit "D" and

Exhibit "E".

75. The Defendants Kersi S. Shroff and Shroff Management, Inc. have also filed the following Lis Pendens with the Clerk of Court for Horry County:

m) 2009-LP-26-0575

n) 2009-LP-26-1040

o) 2009-LP-26-1586

p) 2009-LP-26-1587

q) 2009-LP-26-1966

r) 2009-LP-26-1965

The Plaintiff is informed and believes that these Lis Pendens are of record but have expired and were renewed as Lis Pendens 2009-LP-26-2279 and 2009-LP-26-2280.

76. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, having fully set forth its Complaint, Plaintiff First Palmetto Savings Bank, F.S.B. prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendant BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney in handling this foreclosure, and for the costs and expenses of this action;

(b) That Plaintiff's mortgage described herein be foreclosed, the equity of redemption barred, the mortgage premises sold, the proceeds of the sale applied as follows: first, to the costs of this action, including reasonable attorney's fees as aforesaid; next, to the amount found due to the Plaintiff on the note and mortgage and the balance, if any, be disbursed in accordance with

the Order of this Court pursuant to Rule 71 of the South Carolina Rules of Civil Procedure;

(c) That the Report of Sale having been rendered, the Court assess a deficiency judgment against the Defendant BJC Enterprises, LLC as prayed for; and

(d) For such other and further relief as the Court deems just and proper.

FOR A SEVENTH CAUSE OF ACTION
Appointment of Receiver and Assignment of Leases and Rents

77. This is a cause of action for the appointment of a receiver pursuant to an Assignment of Leases and Rents.

78. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

79. As further security for the Note, Defendant, Americana Motel of Myrtle Beach, Inc, a/k/a Americana, Inc., by its managing member Wendy J. Bellamy executed and delivered to First Palmetto Savings Bank, F.S.B. an Assignment of Leases and Rents dated January 14, 2005 and recorded at Book 2849, at page 193 on January 19, 2005. The Assignment of Leases and Rents is attached hereto and incorporated herein by reference and marked as Exhibit "N".

80. Paragraph 12 of the Assignment of Leases and Rents provides that First Palmetto Savings Bank, F.S.B. may, on or after an Assignor's default, make an application to the Court for an appointment of a receiver for the benefit of Lender to take possession of the property and the Leases, with the power to receive, collect and apply the Rents.

81. In conjunction with the sixth cause of action to foreclose the mortgage, and as a result of the default by the Defendant BJC Enterprises, LLC under the terms of the loan documents, and pursuant to terms in §15-65-10, et seq. of the *South Carolina Code of Laws*, the Plaintiff is entitled to the appointment of a Receiver to take control of the premises encumbered by the Mortgage, and Assignment of Leases and Rents, and to manage the property and to receive the rents and profits and to have rents and profits disbursed in accordance with the terms of the Note, Mortgage, and Assignment of Leases and

Rents.

82. The Receiver is entitled to a reasonable fee. The fees of the Receiver, the attorney's fees and the costs of taking control and managing the Property in collecting rents, the costs of repairs to the Property, and other expenses as outlined in the Note, Mortgage, and Assignment of Leases and Rents should be added to the principal due under the Note and Mortgage and paid out of any rents received.

83. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

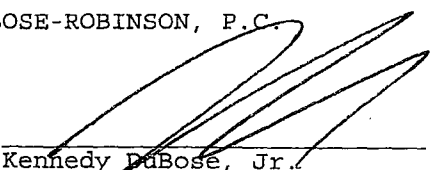
WHEREFORE, Plaintiff First Palmetto Savings Bank, F.S.B. prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendant BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney, for the costs and expenses of this action;

(b) For appointment of a Receiver to take control of the Property, to manage the Property, and to receive rents and profits and to have the rents and profits disbursed in accordance with the Mortgage, Commercial Security Agreement and Assignment of Leases and Rents, with Receiver's fees, attorney's fees and costs in taking control of and managing the Property and collecting rents, the costs of repairs to the Property and other expenses as outlined in the Note, Mortgage, and Assignment of Leases and Rents added to the principal due under the Note and Mortgage and paid out of any rents received; and

(c) for such other and further relief as the Court deems just and proper.

DuBOSE-ROBINSON, P.C.

By: 

J. Kennedy DuBose, Jr.
Jonathan M. Robinson
John K. DuBose, III
ATTORNEYS FOR PLAINTIFF
935 Broad Street
P. O. Drawer 39
Camden, South Carolina 29021
(803) 432-1992 (telephone)
(803) 432-0784 (facsimile)
johnd@duboselaw.com

Camden, South Carolina
June 9, 2009

*This is an action to collect a debt and
any information obtained will be used for that purpose.*

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION
PRACTICES ACT, (the Act), 15 U.S.C. Section 1601 As Amended

1. The amount of the debt is stated in the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. That debt described in the Complaint attached hereto and evidenced by copies of the Note, Mortgage and Security Agreement attached hereto will be assumed to be valid by the creditor's law firm, unless the debtors, within thirty days after the receipt of this notice, dispute, in writing, the validity of the debt of some portion thereof.
4. If the debtors notify the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtors by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtors make a written request to the creditor's law firm within thirty days from the receipt of this notice, the name and address of the original creditor will be mailed to the

debtors by the creditor's law firm. That Creditor was: First Palmetto Savings Bank, F.S.B.

6. Written requests should be addressed to John K. DuBose, III, Esquire, P. O. Drawer 39, Camden, SC 29021.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION NO: 2009-CP-26-5743

Hotel and Motel Holdings, LLC,

Plaintiff,

vs.

BJC Enterprises, LLC, Wendy J. Bellamy,
Americana, Inc. a/k/a
Americana Motel of Myrtle Beach, Inc.,
Mozingo & Wallace Architects, LLC,
Kersi S. Shroff, and Shroff Management, Inc.,

Defendants.

)
)
) AMENDED
) COMPLAINT
) NON-JURY
) FORECLOSURE/
) CLAIM AND DELIVERY/
) ASSIGNMENT OF LEASES &
) RENTS/APPOINTMENT OF
) RECEIVER
) (Deficiency Demanded)
)
)
)

The Plaintiff, complaining of the Defendants alleges:

1. This is a cause of action for Foreclosure of Mortgages of real estate located in Horry County, South Carolina /Claim and Delivery/ Assignment of Leases and Rents/ Appointment of Receiver.

2. Plaintiff, Hotel & Motel Holdings, LLC, is a limited liability corporation organized and existing pursuant to the laws of the State of South Carolina ("H&M Holdings").

3. Plaintiff, H&M Holdings obtained ownership of the Note, Mortgages, and other security instruments and documents that are the subject of the above captioned matter by virtue of:

a. Assignment of Mortgage dated June 30, 2009 and recorded on June 30, 2009 in the Horry County Register of Deeds Office in Mortgage Book 5183 at Page 3147 and in Deed Book 3408 at Page 300. Copies attached hereto and incorporated by reference herein as **Exhibit "A"**.

b. Assignment of Mortgage dated June 30, 2009 and recorded on June 30, 2009 in the Horry County Register of Deeds Office in Mortgage Book 5183 at

Page 3149 and Deed Book 3408 at page 302. Copies attached hereto and incorporated by reference herein as **Exhibit "B"**.

- c. Assignment of Mortgage dated June 30, 2009 and recorded on June 30, 2009 in the Horry County Register of Deeds Office in Mortgage Book 5183 at Page 3151 and Deed Book 3408 at Page 304. Copies attached hereto and incorporated by reference herein as **Exhibit "C"**.

4. Defendant BJC Enterprises, LLC, is a corporation organized and existing pursuant to the laws of the State of South Carolina and is the owner of the properties described in that Mortgage dated January 14, 2005 and recorded on January 19, 2005 in Mortgage Book 3094 at Page 0008 in the Horry Clerk of Court's Office/ROD hereinafter described.

5. The property subject to this action is commercial and the Home Affordable Modification Plan "HMP" is inapplicable.

6. Upon information and belief Defendant Wendy J. Bellamy is a citizen and resident of Horry County, South Carolina and is the owner of the property described in that Mortgage dated January 14, 2005 and recorded on January 19, 2005 in Mortgage Book 3094 at Page 0020 in the Horry Clerk of Court's Office/ROD hereinafter described. As set forth herein, this property was hypothecated and pledged by Defendant Wendy J. Bellamy as security for the indebtedness of Defendant BJC Enterprises, LLC.

7. Upon information and belief, Defendant Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina and is the owner of the properties described in that Mortgage dated January 14, 2005 and recorded on January 19, 2005 in Mortgage Book 3094 at Page 0028 in the Horry Clerk of Court's Office/ROD hereinafter described. As set forth herein, these properties were

hypothecated and pledged by Defendant Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. as security for the indebtedness of Defendant BJC Enterprises, LLC.

8. Upon information and belief, Mozingo + Wallace Architects, LLC is a corporation organized and existing pursuant to the laws of the State of South Carolina.

9. Upon information and belief Defendant Kersi S. Shroff is a citizen and resident of Horry County, South Carolina.

10. Upon information and belief, Shroff Management, Inc. is a corporation organized and existing pursuant to the laws of the State of South Carolina.

11. Plaintiff is the owner and holder of a Renewal Note ("note") (Account No. 75-084095-9) dated January 17, 2008 executed by BJC Enterprises, LLC by Wendy J. Bellamy its Managing Member. The principal sum of the note is Five Million Five Hundred Seventy Three Thousand One Hundred Forty Six and 62/100 (\$5,573,146.62) Dollars, bearing interest from date, at the rate of 8.250% per cent per annum. The said note further provided that Defendant BJC Enterprises, LLC would make 11 consecutive monthly payments of Forty Seven Thousand Nine Hundred Five and 19/100 (\$47,905.19) Dollars beginning on February 17, 2008 payable on the same day each month thereafter until the balloon payment due date of January 17, 2009 when Five Million Five Hundred Nine Thousand Three Hundred Fifty Two and 46/100 (\$5,509,352.46) Dollars is due. A copy of the note is attached hereto and incorporated herein by reference and marked **Exhibit "D"**.

12. The aforementioned note (Account No. 75-084095-9) was a renewal of Account No. 75-073840-1. Account No. 75-073840-1 is listed at the top of the note, the correct renewal account number is listed at the bottom of the note (Account No. 75-084095-9).

13. The note further provided that in the event it was placed in the hands of an attorney for collection by legal proceedings any attorney's fee plus costs shall be added to the note and shall be collectable as part of the debt.

FOR A FIRST CAUSE OF ACTION
Foreclosure of Real Property
Account No. 75-084095-9
Mortgage dated 1/14/2005
Recorded in Mortgage Book 3904 at Page 0008

14. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

15. The note is secured by a mortgage from BJC Enterprises, LLC dated January 14, 2005, of record in the RMC Office/Clerk of Courts Office for Horry County in Mortgage Book 3904 at Page 0008 and recorded on January 19, 2005, and secured by certain real property situate in Horry County. The property hereafter referred to as "Real Property" is more fully described as follows:

Property 1 (Emerald Shores Motel)
TMS# 181-11-01-002

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the office of the ROD for Horry County in Plat Book 1 at Page 84.

For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the locations of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C. E., dated March 24, 1964, and recorded April 10, 1964, in Plat Book 40 at Page 14.

Property 2 (Emerald Shores Motel)
TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel section as shown on map of Myrtle Beach made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, reference to which is craved as forming a part of these presents.

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot Number Four (4) of Block Four (4), having an ocean frontage of seventy (70) feet and a depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, to which reference is craved as forming a part of these presents.

Less and excepting from the above description lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

Property 4 (Parking Lot)
TMS#181-10-10-007

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a map made by Robert L. Bellamy, C.E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the office of the ROD for Horry County, South Carolina.

These being the identical properties conveyed to the Mortgagor herein by Deed from James C. Journey, dated January 13, 2005 and recorded January 19, 2005 in Deed Book 2849 at Page 171 and by Deed from James C. Journey, as Trustee of the Madeline M. Journey Revocable Trust, dated January 13, 2005 and recorded January 19, 2005 in Deed Book 2849 at Page 167 records of the office of the Register of Deeds for Horry County, South Carolina.

16. This mortgage was properly executed by the Defendant BJC Enterprises LLC and is a first lien upon the Real Property. Copy of said mortgage is attached hereto and incorporated herein by reference as **Exhibit "E"**.

17. Plaintiff obtained ownership of the aforementioned mortgage by that Assignment of Mortgage dated June 30, 2009 and recorded on June 30, 2009 in the aforementioned Register of Deeds Office in Mortgage Book 5183 at Page 3147 and in Deed Book 3408 at Page 300. A copy of the Assignment of Mortgage is attached hereto and incorporated herein by reference as **Exhibit "A"**.

18. Payment due on the note has not been made as provided for, and First Palmetto savings Bank, F.S.B., as the previous holder thereof, after complying

with any notice requirements contained in said Note and/or Mortgage elected to require immediate payment of the entire principal amount outstanding and accrued interest thereon upon default of the owners of the real property and placed the Note and Mortgage in the hands of an attorney for collection.

19. The amount due and owing on the note and mortgage as of June 8, 2009 is Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight (\$5,433,288.28) Dollars, with interest accruing thereon at a rate of \$1,150.95 per diem plus attorney's fees as provided in the note and mortgage, plus other costs of this action; plus sums which the Plaintiff may be required to advance for the protection of its security in the subject property.

20. Defendant BJC Enterprises, LLC is in default under the terms of the note, has been given notice of the default, but has failed to pay the amounts due as provided in the note.

21. Plaintiff is informed and believes it is entitled to judgment against the Defendant BJC Enterprises, LLC for the full amount due Plaintiff under the note and mortgage including attorney's fees and costs; is entitled to foreclosure of its mortgage; and is entitled to have the equity of redemption of the Defendant forever barred.

22. That the Plaintiff specifically reserves its right to a deficiency judgment against the Defendant BJC Enterprises, LLC in the event the property is sold at less than the mortgage indebtedness, the costs, and fees of this action as of the time of the sale. Pursuant to its contractual authority as contained in the mortgage the Plaintiff asks the Court, after the report of the sale is entered, to enter a deficiency judgment against the Defendant BJC Enterprises, LLC should one be due.

23. Mozingo + Wallace Architects, LLC, is named as a Defendant by virtue of Civil Action No. 2009-CP-26-3186 seeking to foreclose a Mechanic's Lien against the subject properties. The Mechanic's Lien, if applicable, is junior and subsequent to Plaintiff's mortgage lien. If applicable, Plaintiff is informed and believes that the aforementioned Mechanic's Lien only applies to:

Properties owned by BJC Enterprises, LLC described in that Mortgage dated 01/14/2005, Recorded on 01/19/2005 in Mortgage Book 3904 at Page 0008 in the Horry County Clerk of Court's Office/ROD. The properties are more particularly described as

Property 1, Property 2, Property 3, and Property 4 in Paragraph 14 Supra.

Copy of said Civil Action is attached hereto and incorporated herein by reference as **Exhibit "F"**.

24. Kersi S. Shroff and Shroff Management, Inc. are named as Defendants herein by virtue of those Lis Pendens filed with the Clerk of Court for Horry County on May 19, 2009 as Civil Action No. 2009-LP-26-2279 and as Civil Action No. 2009-LP-26-2280. The Plaintiff is informed and believes the basis for the said Lis Pendens are not to challenge the title to the said property and is; instead, to challenge the ownership interest in BJC Enterprises, LLC. The said Lis Pendens are attached hereto and incorporated herein by reference as **Exhibit "G"** and **Exhibit "H"**.

26. The Defendants Kersi S. Shroff and Shroff Management, Inc. have also filed the following Lis Pendens with the Clerk of Court for Horry County:

- a) 2009-LP-26-0575
- b) 2009-LP-26-1040
- c) 2009-LP-26-1586
- d) 2009-LP-26-1587
- e) 2009-LP-26-1966
- f) 2009-LP-26-1965

The Plaintiff is informed and believes that these Lis Pendens are of record but have expired and were renewed as Lis Pendens 2009-LP-26-2279 and 2009-LP-26-2280.

27. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff Hotel & Motel Holdings, LLC, prays as follows:

- (a) That the Court duly inquire into the matters and things herein

alleged and award judgment in favor of Plaintiff against Defendant BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney in handling this foreclosure, and for the costs and expenses of this action;

(b) That Plaintiff's mortgage described herein be foreclosed, the equity of redemption barred, the mortgage premises sold, the proceeds of the sale applied as follows: first, to the costs of this action, including reasonable attorney's fees as aforesaid; next, to the amount found due to the Plaintiff on the note and mortgage and the balance, if any, be disbursed in accordance with the Order of this Court pursuant to Rule 71 of the South Carolina Rules of Civil Procedure;

(c) That the Report of Sale having been rendered, the Court assess a deficiency judgment against the Defendant BJC Enterprises, LLC as prayed for; and

(d) For such other and further relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION

Claim and Delivery

Commercial Security Agreement and UCC-1 Financing Statements

28. This is a cause of action for Claim and Delivery of certain collateral situate at 404 N. Ocean Blvd., Myrtle Beach, South Carolina 29577.

29. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

30. On January 17, 2008, the BJC Enterprises, LLC. borrowed the sum of Five Million Five Hundred Seventy Three Thousand One Hundred Forty Six and 62/100 (\$5,573,146.62) Dollars as evidenced by a Renewal Note and Commercial Security Agreement executed by the Defendant BJC Enterprises, LLC. by Wendy J. Bellany its Managing Member on January 17, 2008, copies of which are attached hereto, incorporated herein by reference and marked, respectively, as **Exhibits "D"** and

"I".

31. The Note is secured by a Commercial Security Agreement whose terms place as collateral for the obligation:

- a) Deposit Accounts: all deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- b) Specific Property Description: the property includes, but is not limited by, the following:
 - i) All furniture, fixtures, equipment located at 404 N. Ocean Blvd. Myrtle Beach, South Carolina 29577 and used in the operation of the Emerald Shores Motel.
 - ii) First Palmetto Savings Bank, FSB Certificate of Deposit: Account #41-4660924 in the amount of \$500,000.00, The name on the Account is Henry C. Coan, Jr. Marital Trust

32. The Note and Commercial Security Agreement provide that upon default of the note, the Plaintiff can declare the entire note due and owing. They also provide that Plaintiff can enforce the Note against the collateral as provided by the South Carolina Uniform Commercial Code.

33. Plaintiff's security interest in the collateral is perfected by a Form UCC-1 financing Statement recorded in the office of the Register of Deeds for Horry County on January 19, 2005 in Book 3904, at page 17, which describes as collateral:

All furniture, fixtures and equipment located at 404 N. Ocean Blvd., Myrtle Beach, SC 29577 and used in the operation of the Emerald Shores Motel. For a more complete legal description see attached Exhibit "A".

Form UCC-1 Financing Statement (and Exhibit "A" thereto) is attached hereto and incorporated herein by reference and marked as **Exhibit "J"**.

34. Plaintiff is the current owner and holder of the aforementioned Commercial Security Instrument and UCC-1 Financing Statement by virtue of the Assignment of Mortgage referenced in Paragraph 3 supra. A copy of the

Assignment of Mortgage is attached hereto and incorporated herein as **Exhibit "A"**

35. The Note further provided that in the event it is placed in the hands of an attorney for collection by legal proceedings any attorney's fee plus costs shall be added to the note and collectable as part of the debt.

36. The amount due and owing on the note and mortgage as of June 8, 2009 is Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight (\$5,433,288.28) Dollars, with interest accruing thereon at a rate of \$1,150.95 per diem plus attorney's fees as provided in the note and mortgage, plus other costs of this action; plus sums which the Plaintiff may be required to advance for the protection of its security in the subject property.

37. First Palmetto Savings Bank, F.S.B., as the previous holder of the Note, has demanded that the Defendant pay the amounts due but Defendant has failed to do so.

38. Under the terms and conditions of Defendant's obligation, Plaintiff is entitled to possession of the collateral and is entitled to sell it as provided by law, applying the proceeds against the obligation owed by Defendant BJC Enterprises, LLC.

39. Plaintiff specifically reserves its right to a deficiency judgment in the event the money derived from sale of collateral is insufficient to meet the obligation.

40. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

a. if possession of the property described in the Commercial Security Agreement and UCC-1 Financing Statement cannot be voluntarily obtained, Plaintiff is entitled to an order of this Court allowing it to access 404 N. Ocean Blvd., Myrtle Beach, South Carolina owned by BJC Enterprises, LLC to take immediate

possession of the collateral or to access to such other place where the collateral may be found.

b. for the immediate possession of the secured property to be sold and the proceeds applied against the debt, and after applying the proceeds to the debt, is entitled to a deficiency judgment if the collateral is sold in the manner provided by law for less than the debt, and that Plaintiff is entitled, if delivery of the property cannot be had, to judgment against BJC Enterprises, LLC in the amount of Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight and 28/100 (\$5,433,288.28) Dollars, with interest accruing thereon at a rate of 8.250% per annum from June 8, 2009, and is entitled to costs of collection, court costs, and a reasonable attorney's fee; and that Plaintiff have judgment for that amount;

c. for such other and further relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
Appointment of Receiver and Assignment of Leases and Rents

41. This is a cause of action for the appointment of a receiver pursuant to an Assignment of Leases and Rents.

42. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

43. As further security for the Note, Defendant, BJC Enterprises, LLC, by Wendy Bellamy, Managing Member, executed and delivered an Assignment of Leases and Rents dated January 14, 2005 and recorded at Book 2849, at page 176 on January 19, 2005. The Assignment of Leases and Rents is attached hereto and incorporated herein by reference and marked as **Exhibit "K"**.

44. Plaintiff is the current owner and holder of the Assignment of Leases and Rents by virtue of that Assignment of Mortgage referenced in paragraph 3 supra. A copy of the Assignment of Mortgage is attached hereto and incorporated herein by reference as **Exhibit "A"**.

45. Paragraph 12 of the Assignment of Leases and Rents provides that

Lender may, on or after an Assignor's default, make an application to the Court for an appointment of a receiver for the benefit of Lender to take possession of the property and the Leases, with the power to receive, collect and apply the Rents.

46. In conjunction with the first and second cause of action to foreclose the mortgage, and claim and deliver collateral, and as a result of the default by the Defendant BJC Enterprises, LLC under the terms of the loan documents, and pursuant to terms in §15-65-10, et seq. of the *South Carolina Code of Laws*, the Plaintiff is entitled to the appointment of a Receiver to take control of the premises encumbered by the Mortgage, Commercial Security Agreement, and Assignment of Leases and Rents, and to manage the property and to receive the rents and profits and to have rents and profits disbursed in accordance with the terms of the Mortgage, Commercial Security Agreement, and Assignment of Leases and Rents.

47. The Receiver is entitled to a reasonable fee. The fees of the Receiver, the attorney's fees and the costs of taking control and managing the Property in collecting rents, the costs of repairs to the Property, and other expenses as outlined in the Note, Mortgage, Commercial Security Agreement, and Assignment of Leases and Rents should be added to the principal due under the Note, Mortgages, Commercial Security Agreement, and Assignment of Leases and Rents and paid out of any rents received.

48. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendant BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to

advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney, for the costs and expenses of this action;

(b) For appointment of a Receiver to take control of the Property, to manage the Property, and to receive rents and profits and to have the rents and profits disbursed in accordance with the Mortgage, Commercial Security Agreement, and Assignment of Leases and Rents, with Receiver's fees, attorney's fees and costs in taking control of and managing the Property and collecting rents, the costs of repairs to the Property and other expenses as outlined in the Note and Mortgage and Assignment of Leases and Rents added to the principal due under the Note and Mortgage and paid out of any rents received; and

(c) for such other and further relief as the Court deems just and proper.

FOR A FORTH CAUSE OF ACTION
Foreclosure of Real Property
Account No. 75-084095-9
Mortgage dated 1/14/2005
Recorded in Mortgage Book 3904 at Page 0020

49. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

50. Plaintiff is the owner and holder of a Renewal Note ("Note") (Account No. 75-084095-9) dated January 17, 2008 executed by BJC Enterprises, LLC by Wendy J. Bellamy its Managing Member. The principal sum of the note is Five Million Five Hundred Seventy Three Thousand One Hundred Forty Six and 62/100 (\$5,573,146.62) Dollars, bearing interest from date, at the rate of 8.250% per cent per annum. The said note further provided that Defendant BJC Enterprises, LLC would make 11 consecutive monthly payments of Forty Seven Thousand Nine Hundred Five and 19/100 (\$47,905.19) Dollars beginning on February 17, 2008 payable on the same day each month thereafter until the balloon payment due date of January 17, 2009 when Five Million Five Hundred Nine Thousand Three Hundred Fifty Two and 46/100 (\$5,509,352.46) Dollars is due. A copy of the note is attached hereto and incorporated herein by reference and marked **Exhibit "D"**.

51. The Note further provided that in the event it is placed in the hands of an attorney for collection by legal proceedings any attorney's fee plus costs shall be added to the note and collectable as part of the debt.

52. January 17, 2008, Defendant Wendy J. Bellamy executed a Hypothecation Agreement wherein she assigned, released and transferred unto BJC Enterprises, LLC all her right title and interest in said property in consideration of First Palmetto Savings Bank, F.S.B. making, renewing or extending a loan or loans to BJC Enterprises, LLC. A copy of said Hypothecation Agreement is attached hereto, incorporated herein by reference and marked **Exhibit "L"**.

53. The Note is secured by a Mortgage from Wendy J. Bellamy dated January 14, 2005, now of record in the RMC Office/Clerk of Courts Office for Horry County in Mortgage Book 3904 at Page 0020 recorded on January 19, 2005, secured by certain real property situate in Horry County. The property hereafter referred to as "Real Property" is more fully described as follows:

(Lot 14 Block 21)

TMS# 181-10-10-016

ALL THAT certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Fourteen (14) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of said Section made by N.C. Hughes, Jr., Engineer, in November 1933, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at Page Book 116.

This being the identical property conveyed to the Mortgagor herein by Deed from Estate of Wendell E Jones, Jr., dated July 22, 2002 and recorded July 23, 2002 in Deed Book 2501 at Page 1435, records of the Office of the Register of Deeds for Horry County, South Carolina.

This Mortgage was properly executed by the Defendant Wendy J. Bellamy and is a first lien upon the Real Property. Copy of said Mortgage is attached hereto and incorporated herein by reference as **Exhibit "M"**.

54. Plaintiff obtained ownership of the aforementioned mortgage by that Assignment of Mortgage dated June 30, 2009 and recorded on June 30, 2009 in the

aforementioned Register of Deeds Office in Mortgage Book 5183 at Page 3149 and Deed Book 3408 at page 302. A copy of the Assignment of Mortgage is attached hereto and incorporated herein by reference as **Exhibit "B"**.

55. Payment due on the note has not been made as provided for, and First Palmetto Savings Bank, F.S.B., as the previous holder thereof, after complying with any notice requirements contained in said Note and/or Mortgage elected to require immediate payment of the entire principal amount outstanding and accrued interest thereon upon default of the owners of the real property and placed the Note and Mortgage in the hands of an attorney for collection.

56. The amount due and owing on the note and mortgage as of June 8, 2009 is Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight (\$5,433,288.28) Dollars, with interest accruing thereon at a rate of \$1,150.95 per diem plus attorney's fees as provided in the note and mortgage, plus other costs of this action; plus sums which the Plaintiff may be required to advance for the protection of its security in the subject property.

57. Defendant BJC Enterprises, LLC is in default under the terms of the note, has been given notice of the default, but has failed to pay the amounts due as provided in the note.

58. Plaintiff is informed and believes it is entitled to judgment against the Defendant BJC Enterprises, LLC for the full amount due Plaintiff under the note and mortgage; is entitled to foreclosure of its mortgage; and is entitled to have the equity of redemption of the Defendant forever barred.

59. Mzingo + Wallace Architects, LLC, is named as a Defendant by virtue of Civil Action No. 2009-CP-26-3186 seeking to foreclose a Mechanic's Lien against the subject properties. The Mechanic's Lien, if applicable, is junior and subsequent to Plaintiff's mortgage lien. If applicable, Plaintiff is informed and believes that the aforementioned Mechanic's Lien only applies to:

Properties owned by BJC Enterprises, LLC described in that Mortgage dated 01/14/2005, Recorded on 01/19/2005 in Mortgage Book 3904 at Page 0008 in the Horry County Clerk of Court's Office/ROD. The properties are more particularly described as

Property 1, Property 2, Property 3, and Property 4 in Paragraph 14 Supra.

Copy of the Civil Action is attached hereto and incorporated herein by reference as **Exhibit "F"**

60. Kersi S. Shroff and Shroff Management, Inc. are named as Defendants herein by virtue of those Lis Pendens filed with the Clerk of Court for Horry County on May 19, 2009 as Civil Action No. 2009-LP-26-2279 and as Civil Action No. 2009-LP-26-2280. The Plaintiff is informed and believes the basis for the said Lis Pendens are not to challenge the title to the said property and is; instead, to challenge the ownership interest in BJC Enterprises, LLC. The said Lis Pendens are attached hereto and incorporated herein by reference as **Exhibit "G"** and **Exhibit "H"**.

61. The Defendants Kersi S. Shroff and Shroff Management, Inc. have also filed the following Lis Pendens with the Clerk of Court for Horry County:

- g) 2009-LP-26-0575
- h) 2009-LP-26-1040
- i) 2009-LP-26-1586
- j) 2009-LP-26-1587
- k) 2009-LP-26-1966
- l) 2009-LP-26-1965

The Plaintiff is informed and believes that these Lis Pendens are of record but have expired and were renewed as Lis Pendens 2009-LP-26-2279 and 2009-LP-26-2280.

62. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendant BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this

Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney, for the costs and expenses of this action;

(b) That Plaintiff's mortgage described herein be foreclosed, the equity of redemption barred, the mortgage premises sold, the proceeds of the sale applied as follows: first, to the costs of this action, including reasonable attorney's fees as aforesaid; next, to the amount found due to the Plaintiff on the note and mortgage and the balance, if any, be disbursed in accordance with the Order of this Court pursuant to Rule 71 of the South Carolina Rules of Civil Procedure;

(c) That the Report of Sale having been rendered, the Court assess a deficiency judgment against the Defendant BJC Enterprises, LLC as prayed for; and

(d) For such other and further relief as the Court deems just and proper.

FOR A FIFTH CAUSE OF ACTION

Appointment of Receiver and Assignment of Leases and Rents

63. This is a cause of action for the appointment of a receiver pursuant to an Assignment of Leases and Rents.

64. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

65. As further security for the Note, Defendant, Wendy J. Bellamy executed and delivered an Assignment of Leases and Rents dated January 14, 2005 and recorded at Book 2849, at page 185 on January 19, 2005. The Assignment of Leases and Rents is attached hereto and incorporated herein by reference and marked as **Exhibit "N"**.

66. Plaintiff obtained ownership of the aforementioned Assignment of Leases and Rents by virtue of that Assignment of Mortgage referenced in paragraph 3 supra. A copy of the Assignment of Mortgage is attached hereto and incorporated herein by reference as **Exhibit "B"**.

67. Paragraph 12 of the Assignment of Leases and Rents provides that Lender may, on or after an Assignor's default, make an application to the Court

for an appointment of a receiver for the benefit of Lender to take possession of the property and the Leases, with the power to receive, collect and apply the Rents.

68. In conjunction with the fourth cause of action to foreclose the mortgage, and as a result of the default by the Defendant BJC Enterprises, LLC under the terms of the loan documents, and pursuant to terms in §15-65-10, et seq. of the *South Carolina Code of Laws*, the Plaintiff is entitled to the appointment of a Receiver to take control of the premises encumbered by the Mortgage, and Assignment of Leases and Rents, and to manage the property and to receive the rents and profits and to have rents and profits disbursed in accordance with the terms of the Mortgage, and Assignment of Leases and Rents.

69. The Receiver is entitled to a reasonable fee. The fees of the Receiver, the attorney's fees and the costs of taking control and managing the Property in collecting rents, the costs of repairs to the Property, and other expenses as outlined in the Note, Mortgage, and Assignment of Leases and Rents should be added to the principal due under the Note, Mortgages, and Assignment of Leases and Rents and paid out of any rents received.

70. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendants BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney, for the costs and expenses of this action;

(b) For appointment of a Receiver to take control of the Property, to

manage the Property, and to receive rents and profits and to have the rents and profits disbursed in accordance with the Mortgage, and Assignment of Leases and Rents, with Receiver's fees, attorney's fees and costs in taking control of and managing the Property and collecting rents, the costs of repairs to the Property and other expenses as outlined in the Note, Mortgage, and Assignment of Leases and Rents added to the principal due under the Note and Mortgage and paid out of any rents received; and

(c) for such other and further relief as the Court deems just and proper.

FOR A SIXTH CAUSE OF ACTION
Foreclosure of Real Property
Account No. 75-084095-9
Mortgage dated 1/14/2005
Recorded in Mortgage Book 3904 at Page 0028

71. All previous allegations of the Complaint are repeated as fully as if set out herein verbatim.

72. Plaintiff is the owner and holder of a Renewal Note ("Note") (Account No. 75-084095-9) dated January 17, 2008 executed by BJC Enterprises, LLC by Wendy J. Bellamy its Managing Member. The principal sum of the note is Five Million Five Hundred Seventy Three Thousand One Hundred Forty Six and 62/100 (\$5,573,146.62) Dollars, bearing interest from date, at the rate of 8.250% per cent per annum. The said note further provided that Defendant BJC Enterprises, LLC would make 11 consecutive monthly payments of Forty Seven Thousand Nine Hundred Five and 19/100 (\$47,905.19) Dollars beginning on February 17, 2008 payable on the same day each month thereafter until the balloon payment due date of January 17, 2009 when Five Million Five Hundred Nine Thousand Three Hundred Fifty Two and 46/100 (\$5,509,352.46) Dollars is due. A copy of the note is attached hereto and incorporated herein by reference and marked **Exhibit "D"**.

73. The Note further provided that in the event it is placed in the hands of an attorney for collection by legal proceedings any attorney's fee plus costs shall be added to the note and collectable as part of

74. On January 17, 2008, Defendant Americana Motel of Myrtle Beach, Inc. aka Americana, Inc. by Wendy J. Bellamy executed a Hypothecation Agreement wherein they assigned, released and transferred unto BJC Enterprises, LLC all their right title and interest in said property in consideration of First Palmetto Savings Bank, F.S.B. making, renewing or extending a loan or loans to BJC Enterprises, LLC. A copy of said Hypothecation Agreement is attached hereto, incorporated herein by reference and marked **Exhibit "O"**.

75. The Note is secured by a Mortgage from Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc., dated January 14, 2005, now of record in the RMC Office/Clerk of Courts Office for Horry County in Mortgage Book 3904 at Page 0028 on January 19, 2005, secured by certain real property situate in Horry County. The property hereafter referred to as "Real Property" is more fully described as follows:

Property 1 (Rainbow Court Motel)
Portion of TMS#181-10-10-005

All and Singular, all those certain parcels or lots of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as Lots 4, 5, 7, 8 & 9 in Block 21 of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the R.M.C. for Horry County in Plat Book 1, at Page 84.

This being a portion of the properties conveyed to the Mortgagor herein by Deed from Harvey C. Jones and Lila M. Bagnal, dated September 3, 1968 and recorded May 22, 1969 in Deed Book 409 at Page 224, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 2 (Rainbow Court Motel)
Portion of TMS#181-10-10-005

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Horry, and being known and designated as Lot Six (6) of Block twenty-one (21), according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer; which map or plat is of record in the Clerk of Court's Office for Horry County in Plat Book 1, at Page 84, reference to which is hereby made as a part of this description, said lot of land being more particularly described by meets and bounds as follows, to wit:

Beginning at a stake on the Southwest line of Fifth Avenue at the corner common to lots six (6) and seven (7) of Block twenty-one (21) and running thence along the dividing line between lots six (6) and seven (7) South 38 deg. 32 min. West one hundred and fifty (150) feet to a stake on the Northeast line of lot eight (8), thence along the dividing line between lots six (6) and eight (8) North 51 deg. 28 min. West fifty-seven and five tenths (57.5) feet to a stake at the corner of lot five (5); thence along the dividing line between lots five (5) and six (6) North 38 deg. 32 min. East one hundred and fifty (150) feet to a stake on the Southwest line of Fifth Avenue; thence along the said Southwest line Fifth Avenue South 51 deg. 28 min. East Fifty-seven and five tenths (57.5) feet to the place of beginning.

This being the identical property conveyed to the Mortgagor herein by Deed from Winston W. Vaught as Master, dates May 8, 1972 and recorded May 8, 1972 in Deed Book 469 at Page 270, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 3 (Triplex, Lot 18 Block 21)
TMS#181-10-10-003

All and singular, all that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as lot 18 in Block (21) of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the R.M.C. for Horry County in Plat Book 1 at Page 84 and Plat Book 1 at Page 116.

This being a portion of the properties conveyed to the Mortgagor herein by Deed from Harvey C. Jones and Lila M. Bagnal, dates September 3, 1968 and recorded May 22, 1969 in Deed Book 409 at Page 224, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 4 (Lot 17 Block 21)
TMS#181-10-10-002

ALL AND SINGULAR, that certain piece, parcel or lot of land, situated, lying and being in the Town of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Seventeen (17) of Block Twenty-One (21) of the Hotel Section, as shown on map of Myrtle Beach made by N.C. Hughes, C.E. dated November 1933 recorded in the Office of the Clerk of Court for Horry County in Plat Book 1 at Page 116, to which plat reference is craved as forming a part of these presents; this being the lot referred to as Parcel Five (5) in deed from H.L. Buck, Jr. to E.E. Burroughs, dated May 21, 1951 recorded in Book 93 at Page 64, RMC for Horry County.

This being the identical property conveyed to the Mortgagor herein by Deed from Charles A. Fanshaw, dated February 19, 1993 and recorded February 19, 1993 in Deed Book 1615 at Page 718, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 5 (Lot 16 Block 21)
TMS#181-10-10-001

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being Lot Sixteen (16), Block Twenty-One (21) of the Hotel Section of Myrtle Beach as shown on the map or plat by N.C. Hughes, Jr., Engineer. A copy of said map is recorded in Plat Book 1 Page 116, Office of the R.M.C for Horry County and is by reference incorporated herein as forming a part and parcel of this description.

This being the identical property conveyed to the Mortgagor herein by Deed from Lucille T. Mull Trust, dated December 19, 2001 and recorded December 21, 2001 in Deed Book 2437 at Page 800, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 6 (Lot 3 Block 21)
Portion of TMS#181-10-10-005

All and singular, all that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being more particularly shown and designated as Lot No. Three (3) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of the said section made under the supervision of Stanley H. Wright, Engineer, dated June and July 1926, and recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 1, at Page 84, reference to which is craved as forming a part of these presents.

This being the identical property conveyed to the Mortgagor herein by Deed from Lila McCall Bagnal, dated September 10, 1973 and recorded September 10, 1973 in Deed Book 498 at Page 858, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 7 (Lot 6 Block 28 & ½ of Lot 7 & 8 & Part of Lot 9)
TMS#181-10-07-010 & 011

ALL AND SINGULAR, that certain piece, parcel or lot of land lying and being in the Town of Myrtle Beach, County and State aforesaid, and being Lot No. 6 of Block -28- of the Hotel Section, and beginning at a stake corner on the Northwestern side of Chester Street, which is the Northeastern corner of the lot herein described, and runs North 51 deg. And 28 min. west 240 feet to a stake on the read line of Lot No. 14 of said block; thence South 38 deg. And 32 min. west along the rear line of Lots No. 13 and No. 14, 60 feet to a stake; thence South 51 deg. And 28 min. east 240 feet to a stake on the Northwestern side of Chester Street; thence North 38 deg. And 32 min East with Chester Street 60 feet to the point of beginning.

ALSO

All that certain piece, or lot of land, situate and being in the State of South Carolina, County of Horry; known and designated as

one-half (1/2) of Lots Seven (7) and Eight (8) of block Twenty-Eight (28) in the Hotel Section; a subdivision of the property of Myrtle Beach according to a plat made under the direction of Stanley H. Wright, consulting engineer, in June 1926, reference to said plat is hereby made. The said lot of land being more particularly described by metes and bounds as follows: Beginning at a stake on Chester Street at Northeast corner of lot seven (7) of said Block Twenty-Eight (28) and running thence North 51 deg. 27 min 45 sec. West, one hundred and twenty (120) feet to a stake on the line between lots eight (8) and nine (9) of said block thence South 38 deg. 32 min. 15 sec. West along the dividing line between lots (8) and nine (9), seventy-five (75) feet to a stake, thence South 51 deg. 27 min 45 sec. East, one hundred twenty (120) feet to a stake on Chester Street, and thence along Chester Street seventy-five (75) feet to the beginning corner, and being one-half (1/2) of Lots Number seven (7) and eight (8) mentioned above.

ALSO

All that certain piece of land, situated in the Town of Myrtle beach, State and County aforesaid, beginning at the North East corner of lot 9, block 28, Hotel Section, and extending sixty feet along the Cherry and Buck line to the North West corner, extending twenty-five feet along the Cherry and Bartholomew line to a South West corner, extending sixty feet to a South East corner and extending twenty-five feet along Cherry and Stackhouse line to the North East corner. The above description being twenty five feet by sixty feet, a part of lot 9, block 28, Hotel Section.

ALSO

The certain right of way connecting the property herein described with Fourth Avenue as shown on the aforesaid plat. This right-of-way is private way for ingress and egress and is ten 10 feet in width, lying along the boundary line between Lots 8 & 9 of block 28, and being more particularly described as follows: Beginning at the corner of lots 8 and 9 on Fourth Avenue and running thence North 38 deg. 32 min. 15 sec. East along the dividing line of these lots a distance of seventy-five (75) feet to the Northwest corner of the property conveyed to the grantee by deed of Elizabeth G. Stackhouse recorded in the Office of the RMC for Horry County in Deed Book 894 at Page 508; thence running South 51 deg. 27 min. 45 sec. East ten (10) feet along the Western boundary line of the property therein conveyed; thence running South 39 deg. 32 min. 15 sec.; West parallel with the dividing line between Lot 8 and 9, and a distance of ten (10) feet therefrom, for seventy-five (75) feet to Fourth Avenue; thence along the edge of Fourth Avenue ten (10) feet to the beginning corner.

This being the identical property conveyed to the Mortgagor herein by Deed from Sara Alice Beverly, dated April 7, 1999 and recorded April 7, 1999 in Deed Book 2133 at Page 850, records of the Office of the Register of Deeds for Horry County, South Carolina.

Property 8 (Lot 1 Block 21)

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Horry, and being known and designated at Lot One (1) Block Twenty-One (21) according to map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer, which map or plat is of record in the Office of the Clerk of the Court for Horry County, in Plat Book 1 at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by meets and bounds as follows; to wit:

Beginning at a stake at the Northeast corner of Lot 1 of said Block 21, which place of beginning is the intersection of the Southeast line of Chester Street with the Southwest line of Fifth Avenue, and running thence South 51 degrees 28 min. East along said Southwest line of Fifth Avenue 57.5 feet to a stake at the corner of Lot 2; thence South 38 degrees 32 Min. West along dividing line Between Lots 1 and 2, 150 feet to a stake on the Northeast line of Lot 18, 57.5 feet to a stake on the Southeast line of Chester Street; thence along said Southeast line of Chester Street; thence along said Southeast line of Chester Street North 38 degrees 32 min. East 150 feet to the place of beginning.

This being the identical property conveyed to the Mortgagor herein by Deed from Evelyn Petros Pharr, dated October 4, 1983 and recorded October 4, 1983 in Deed Book 824 at Page 408, records of the Office of the Register of Deeds for Horry County, South Carolina.

Parcel 9 (Lot 2 Block 21)
Portion of TMS#181-10-10-005

All and singular that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, South Carolina, Dogwood Neck Township, County and State aforesaid and being Lot Two (2) of Block Twenty-One (21) as shown on map of Myrtle Beach, Hotel section, as made by N.C. Hughes, Jr., Engineer, dated November 1933, and recorded in the Office of the Clerk of Court for Horry County, in Plat Book 1, at Page 116, to which plat, reference is craved as forming a part of these presents. The same being conveyed to C.M. Wright by the Myrtle Beach Farms Company, a corporation, by their deed dated October 5, 1934, and recorded October 18, 1934 in Book C-4 at Page 433.

This being the identical property conveyed to the Mortgagor herein by Deed from David L. Leventer, dated October 20, 1972 and recorded January 10, 1973 in Deed Book 483 at Page 548, records of the Office of the Register of Deeds for Horry County, South Carolina.

This Mortgage was properly executed by the Defendant Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc., and is a first lien upon the Real Property. Copy of said Mortgage is attached hereto and incorporated herein by

reference as **Exhibit "P"**.

76. Plaintiff obtained ownership of the aforementioned mortgage by that Assignment of Mortgage dated June 30, 2009 and recorded on June 30, 2009 in the aforementioned Register of Deeds Office in Mortgage Book 5183 at Page 3151 and Deed Book 3408 at Page 304. A copy of the Assignment of Mortgage is attached hereto and incorporated herein by reference as **Exhibit "C"**.

77. Americana, Inc. is the current record owner of (Lot 2 and Lot 3, Block 21) described in the preceding paragraph. Plaintiff is informed and believes that Americana, Inc., and Americana Motel of Myrtle Beach, Inc. are the same corporate entity by virtue of their execution of the above referenced mortgage in the name of Americana Motel of Myrtle Beach, a/k/a Americana, Inc. Plaintiff is also informed and believes that they are the same corporate entity due to common ownership and forfeiture of the corporate status of Americana, Inc.

78. Payment due on the note has not been made as provided for, and the Plaintiff, as the holder thereof, after complying with any notice requirements contained in said Note and/or Mortgage has elected to require immediate payment of the entire principal amount outstanding and accrued interest thereon upon default of the owners of the real property and has placed the Note and Mortgage in the hands of an attorney for collection.

79. The amount due and owing on the note and mortgage as of June 8, 2009 is Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight (\$5,433,288.28) Dollars, with interest accruing thereon at a rate of \$1,150.95 per diem plus attorney's fees as provided in the note and mortgage, plus other costs of this action; plus sums which the Plaintiff may be required to advance for the protection of its security in the subject property.

80. Defendant BJC Enterprises, LLC is in default under the terms of the note, has been given notice of the default, but has failed to pay the amounts due as provided in the note.

81. Plaintiff is informed and believes it is entitled to judgment against

the Defendant BJC Enterprises, LLC for the full amount due Plaintiff under the note and mortgage; is entitled to foreclosure of its mortgage; and is entitled to have the equity of redemption of the Defendant forever barred.

82. Mozingo + Wallace Architects, LLC, is named as a Defendant by virtue of Civil Action No. 2009-CP-26-3186 seeking to foreclose a Mechanic's Lien against the subject properties. The Mechanic's Lien, if applicable, is junior and subsequent to Plaintiff's mortgage lien. If applicable, Plaintiff is informed and believes that the aforementioned Mechanic's Lien only applies to:

Properties owned by BJC Enterprises, LLC described in that Mortgage dated 01/14/2005, Recorded on 01/19/2005 in Mortgage Book 3904 at Page 0008 in the Horry County Clerk of Court's Office/ROD. The properties are more particularly described as Property 1, Property 2, Property 3, and Property 4 in Paragraph 14 Supra.

Copy of the Civil Action is attached hereto and incorporated herein by reference as **Exhibit "F"**.

83. Kersi S. Shroff and Shroff Management, Inc. are named as Defendants herein by virtue of those Lis Pendens filed with the Clerk of Court for Horry County on May 19, 2009 as Civil Action No. 2009-LP-26-2279 and as Civil Action No. 2009-LP-26-2280. The Plaintiff is informed and believes the basis for the said Lis Pendens are not to challenge the title to the said property and is; instead, to challenge the ownership interest in BJC Enterprises, LLC. The said Lis Pendens are attached hereto and incorporated herein by reference as **Exhibit "G"** and **Exhibit "H"**.

84. The Defendants Kersi S. Shroff and Shroff Management, Inc. have also filed the following Lis Pendens with the Clerk of Court for Horry County:

- m) 2009-LP-26-0575
- n) 2009-LP-26-1040
- o) 2009-LP-26-1586
- p) 2009-LP-26-1587
- q) 2009-LP-26-1966

r) 2009-LP-26-1965

The Plaintiff is informed and believes that these Lis Pendens are of record but have expired and were renewed as Lis Pendens 2009-LP-26-2279 and 2009-LP-26-2280.

85. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

WHEREFORE, Plaintiff prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendant BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney in handling this foreclosure, and for the costs and expenses of this action;

(b) That Plaintiff's mortgage described herein be foreclosed, the equity of redemption barred, the mortgage premises sold, the proceeds of the sale applied as follows: first, to the costs of this action, including reasonable attorney's fees as aforesaid; next, to the amount found due to the Plaintiff on the note and mortgage and the balance, if any, be disbursed in accordance with the Order of this Court pursuant to Rule 71 of the South Carolina Rules of Civil Procedure;

(c) That the Report of Sale having been rendered, the Court assess a deficiency judgment against the Defendant BJC Enterprises, LLC as prayed for; and

(d) For such other and further relief as the Court deems just and proper.

FOR A SEVENTH CAUSE OF ACTION

Appointment of Receiver and Assignment of Leases and Rents

86. This is a cause of action for the appointment of a receiver pursuant to an Assignment of Leases and Rents.

87. All previous allegations of the Complaint are repeated as fully

as if set out herein verbatim.

88. As further security for the Note, Defendant, Americana Motel of Myrtle Beach, Inc, a/k/a Americana, Inc., by its managing member Wendy J. Bellamy executed and delivered an Assignment of Leases and Rents dated January 14, 2005 and recorded at Book 2849, at page 193 on January 19, 2005. The Assignment of Leases and Rents is attached hereto and incorporated herein by reference and marked as **Exhibit "Q"**.

89. Plaintiff is the current owner and holder of the Assignment of Leases and Rents by virtue of that Assignment of Mortgage referenced in paragraph 3 supra. A copy of the Assignment of Mortgage is attached hereto and incorporated herein by reference as **Exhibit "C"**.

90. Paragraph 12 of the Assignment of Leases and Rents provides that Lender may, on or after an Assignor's default, make an application to the Court for an appointment of a receiver for the benefit of Lender to take possession of the property and the Leases, with the power to receive, collect and apply the Rents.

91. In conjunction with the sixth cause of action to foreclose the mortgage, and as a result of the default by the Defendant BJC Enterprises, LLC under the terms of the loan documents, and pursuant to terms in §15-65-10, et seq. of the *South Carolina Code of Laws*, the Plaintiff is entitled to the appointment of a Receiver to take control of the premises encumbered by the Mortgage, and Assignment of Leases and Rents, and to manage the property and to receive the rents and profits and to have rents and profits disbursed in accordance with the terms of the Note, Mortgage, and Assignment of Leases and Rents.

92. The Receiver is entitled to a reasonable fee. The fees of the Receiver, the attorney's fees and the costs of taking control and managing the Property in collecting rents, the costs of repairs to the Property, and other expenses as outlined in the Note, Mortgage, and Assignment of Leases and Rents

should be added to the principal due under the Note and Mortgage and paid out of any rents received.

93. The Plaintiff specifically reserves and does not waive or ban its right to pursue any party or any remedies available at law and equity to recover the indebtedness owed to the Plaintiff by the Defendant BJC Enterprises, LLC.

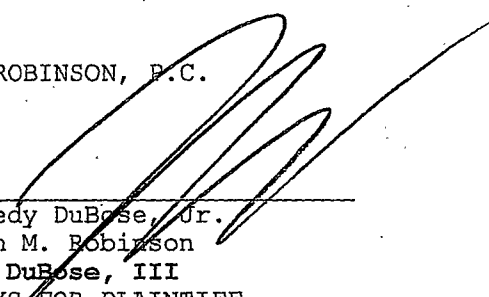
WHEREFORE, Plaintiff prays as follows:

(a) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of Plaintiff against Defendant BJC Enterprises, LLC for the amount owing to Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with further accrued interest, together with reasonable attorney's fees for the services of Plaintiff's attorney, for the costs and expenses of this action;

(b) For appointment of a Receiver to take control of the Property, to manage the Property, and to receive rents and profits and to have the rents and profits disbursed in accordance with the Mortgage, Commercial Security Agreement and Assignment of Leases and Rents, with Receiver's fees, attorney's fees and costs in taking control of and managing the Property and collecting rents, the costs of repairs to the Property and other expenses as outlined in the Note, Mortgage, and Assignment of Leases and Rents added to the principal due under the Note and Mortgage and paid out of any rents received; and

(c) for such other and further relief as the Court deems just and proper.

DuBOSE-ROBINSON, P.C.

By: 
J. Kennedy DuBose, Jr.
Jonathan M. Robinson
John K. DuBose, III
ATTORNEYS FOR PLAINTIFF
935 Broad Street
P. O. Drawer 39
Camden, South Carolina 29021

Camden, South Carolina

~~September~~
~~August~~ 22, 2009

(803) 432-1992 (telephone)
(803) 432-0784 (facsimile)
johnd@duboselaw.com

*This is an action to collect a debt and
any information obtained will be used for that purpose.*

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION
PRACTICES ACT, (the Act), 15 U.S.C. Section 1601 As Amended

1. The amount of the debt is stated in the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. That debt described in the Complaint attached hereto and evidenced by copies of the Note, Mortgage and Security Agreement attached hereto will be assumed to be valid by the creditor's law firm, unless the debtors, within thirty days after the receipt of this notice, dispute, in writing, the validity of the debt of some portion thereof.
4. If the debtors notify the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtors by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtors make a written request to the creditor's law firm within thirty days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtors by the creditor's law firm. That Creditor was: First Palmetto Savings Bank, F.S.B.
6. Written requests should be addressed to John K. DuBose, III, Esquire, P. O. Drawer 39, Camden, SC 29021.

444
7-28-10 Jbm

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ASSIGNMENT OF MORTGAGE

First Palmetto Savings Bank, F.S.B. ("Assignor"), having an address of 407 DeKalb Street, Camden, South Carolina 29020, the holder of the mortgage (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage") and the assignment of leases and rents (together with any amendments, renewals, extensions, or modifications thereto, the "Assignment of Leases"), each dated January 14, 2005, from BJC Enterprises, LLC in favor of Assignor, recorded with the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at Page 8 and Book 2849 at Page 176, respectively, hereby assigns the Mortgage and Assignment of Leases and any other related security instruments as described on Exhibit A attached hereto, and the notes and claims secured thereby, to Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignee") with an address of Jack Jones, c/o Morgan Lewis, C.P.A., 706 48th Avenue South, North Myrtle Beach, South Carolina 29582. This assignment is made without recourse, representations or warranties of any kind, express or implied

Executed effective June 30th, 2009.

Witnesses:

[Signature]
[Signature]

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: [Signature]
Name: Brent W. Hutto
Title: Vice President

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

Then personally appeared the above named Brent W. Hutto the vice-president of First Palmetto Savings Bank, F.S.B. ("Assignor"), and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Assignor, before me.

[Signature]
Notary Public for the State of South Carolina

My Commission Expires 10.31.13

EXHIBIT A

The \$5,573,146.62 BJC Loan, which is evidenced, secured or guaranteed by the following documents:

1. Promissory Note from BJC to Seller dated January 17, 2008 in the original principal amount of \$5,573,146.62.
2. Guaranty Agreements
 - 2.1 Guaranty from Wendy J. Bellamy to Seller dated January 17, 2008.
 - 2.2 Guaranty from Harvey L. Jones to Seller dated January 17, 2008.
 - 2.3 Guaranty from Henry C. Coan III to Seller dated January 17, 2008.
3. Mortgages
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5. Commercial Security Agreement from BJC to Seller dated January 14, 2008.
6. UCC-1 Financing Statements recorded in the ROD Office for Horry County in Book 3904 at page 17 and with the Office of the Secretary of State of South Carolina, assigned reference number 050124-0940410.
7. All other documents evidencing or securing the Loan



REL/Marcia/Hotel&MotelHoldings, LLC
HORRY COUNTY REGISTRAR OF DEEDS
Battery V. Skipper, Director - Battery V. Skipper

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

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First Palmetto Savings Bank, F.S.B. ("Assignor"), having an address of 407 DeKalb Street, Camden, South Carolina 29020, the holder of the mortgage (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage") and the assignment of leases and rents (together with any amendments, renewals, extensions, or modifications thereto, the "Assignment of Leases"), each dated January 14, 2005, from BJC Enterprises, LLC in favor of Assignor, recorded with the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at Page 8 and Book 2849 at Page 176, respectively, hereby assigns the Mortgage and Assignment of Leases and any other related security instruments as described on Exhibit A attached hereto, and the notes and claims secured thereby, to Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignee") with an address of Jack Jones, c/o Morgan Lewis, C.P.A., 706 48th Avenue South, North Myrtle Beach, South Carolina 29582. This assignment is made without recourse, representations or warranties of any kind, express or implied

Executed effective June 30th, 2009.

Witnesses:

[Signature]
[Signature]

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: [Signature]
Name: Brent W. Hutto
Title: Vice President

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

Then personally appeared the above named Brent W. Hutto the vice-president of First Palmetto Savings Bank, F.S.B. ("Assignor"), and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Assignor, before me.

[Signature]
Notary Public for the State of South Carolina

My Commission Expires 10.31.13

Instrument#: 2009000071190, DEED BK: 3408 PG: 300 DOCTYPE: 111 06/30/2009 at 03:25:00 PM, 1 OF 2 BATTERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS



A TRUE COPY, ATTEST
HORRY COUNTY REGISTER OF DEEDS
Ballery V. Skipper, Director — Ballery V. Skipper

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DEFENDANT'S
EXHIBITSTATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ASSIGNMENT OF MORTGAGE

45
7-29-10 *88m*

First Palmetto Savings Bank, F.S.B. ("Assignor"), having an address of 407 DeKalb Street, Camden, South Carolina 29020, the holder of the mortgage (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage") and the assignment of leases and rents (together with any amendments, renewals, extensions, or modifications thereto, the "Assignment of Leases"), each dated January 14, 2005, from Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc. in favor of Assignor, recorded with the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at Page 28 and Book 2849 at Page 193, respectively, hereby assigns the Mortgage and Assignment of Leases and any other related security instruments as described on Exhibit A attached hereto, and the notes and claims secured thereby, to Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignee") with an address of Jack Jones, c/o Morgan Lewis, C.P.A., 706 48th Avenue South, North Myrtle Beach, South Carolina 29582. This assignment is made without recourse, representations or warranties of any kind, express or implied

Executed effective June 30th, 2009.

Witnesses

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: Brent W. Hutto
Name: Brent W. Hutto
Title: Vice PresidentSTATE OF SOUTH CAROLINA)
COUNTY OF Horry)

Then personally appeared the above named Brent W. Hutto the vice-president of First Palmetto Savings Bank, F.S.B. ("Assignor"), and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Assignor, before me.

Notary Public for the State of South Carolina

My Commission Expires 7/25/10

Instrument#: 2009000071191, MTG BK:
5183 PG: 3149 DOCTYPE: 008 06/30/2009
at 03:25:01 PM, 1 OF 2
BALLERY V. SKIPPER, HORRY COUNTY,
SC REGISTRAR OF DEEDS

EXHIBIT

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A TRUE COPY, ATTEST
HORRY COUNTY REGISTER OF DEEDS
Ballery V. Skipper, Director - Ballery V. Skipper

REL/Marcia/Hotel&MotelHoldings,LLC

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

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Executed effective June ~~30~~³⁰, 2009.

Witnesses

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: Brent W. Hutto

Name: Brent W. Hutto

Title: Vice President

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

Then personally appeared the above named Brent W. Hutto the vice-president of First Palmetto Savings Bank, F.S.B. ("Assignor"), and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Assignor, before me.

Notary Public for the State of South Carolina

My Commission Expires 7/25/10



A TRUE COPY, ATTEST
HORRY COUNTY REGISTER OF DEEDS
Ballery V. Skipper, Director — Ballery V. Skipper

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5. Commercial Security Agreement from BJC to Seller dated January 14, 2008.
6. UCC-1 Financing Statements recorded in the ROD Office for Horry County in Book 3904 at page 17 and with the Office of the Secretary of State of South Carolina, assigned reference number 050124-0940410.
7. All other documents evidencing or securing the Loan

DEFENDANT'S
EXHIBITSTATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ASSIGNMENT OF MORTGAGE

46
7-28-10 JSM

First Palmetto Savings Bank, F.S.B. ("Assignor"), having an address of 407 DeKalb Street, Camden, South Carolina 29020, the holder of the mortgage (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage") and the assignment of leases and rents (together with any amendments, renewals, extensions, or modifications thereto, the "Assignment of Leases"), each dated January 14, 2005, from Wendy J. Bellamy in favor of Assignor, recorded with the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at Page 20 and Book 2849 at Page 185, respectively, hereby assigns the Mortgage and Assignment of Leases and any other related security instruments as described on Exhibit A attached hereto, and the notes and claims secured thereby, to Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignee") with an address of Jack Jones, c/o Morgan Lewis, C.P.A., 706 48th Avenue South, North Myrtle Beach, South Carolina 29582. This assignment is made without recourse, representations or warranties of any kind, express or implied

Executed effective June 30th, 2009.

Witnesses:

[Signature]
Marcia J. Williams

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: [Signature]
Name: Brent W. Hutto
Title: Vice President

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Then personally appeared the above named Brent W. Hutto the Vice President of First Palmetto Savings Bank, F.S.B. ("Assignor"), and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Assignor, before me.

[Signature]
Notary Public for the State of South Carolina

My Commission Expires 10.31.17

Instrument#: 2009000071193, MTG BK:
5183 PG: 3151 DOCTYPE: 008 06/30/2009
at 03:25:03 PM, 1 OF 2
BALLERY V. SKIPPER, HORRY COUNTY,
SC REGISTRAR OF DEEDS





A TRUE COPY, ATTEST
HORRY COUNTY REGISTER OF DEEDS
BATTERY V. SKIPPER, Director - BATTERY V. SKIPPER

REL/Marcia/Hotel&MotelHoldings.LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ASSIGNMENT OF MORTGAGE

First Palmetto Savings Bank, F.S.B. ("Assignor"), having an address of 407 DeKalb Street, Camden, South Carolina 29020, the holder of the mortgage (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage") and the assignment of leases and rents (together with any amendments, renewals, extensions, or modifications thereto, the "Assignment of Leases"), each dated January 14, 2005, from Wendy J. Bellamy in favor of Assignor, recorded with the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at Page 20 and Book 2849 at Page 185, respectively, hereby assigns the Mortgage and Assignment of Leases and any other related security instruments as described on Exhibit A attached hereto, and the notes and claims secured thereby, to Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignee") with an address of Jack Jones, c/o Morgan Lewis, C.P.A., 706 48th Avenue South, North Myrtle Beach, South Carolina 29582. This assignment is made without recourse, representations or warranties of any kind, express or implied

Executed effective June 30th, 2009.

Witnesses:

[Signature]
[Signature]

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: [Signature]

Name: Brent W. Hutto

Title: Vice President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Then personally appeared the above named Brent W. Hutto the Vice President of First Palmetto Savings Bank, F.S.B. ("Assignor"), and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Assignor, before me.

[Signature]
Notary Public for the State of South Carolina
My Commission Expires 10.31.17

EXHIBIT A

The \$5,573,146.62 BJC Loan, which is evidenced, secured or guaranteed by the following documents:

1. Promissory Note from BJC to Seller dated January 17, 2008 in the original principal amount of \$5,573,146.62.
2. Guaranty Agreements
 - 2.1 Guaranty from Wendy J. Bellamy to Seller dated January 17, 2008.
 - 2.2 Guaranty from Harvey L. Jones to Seller dated January 17, 2008.
 - 2.3 Guaranty from Henry C. Coan III to Seller dated January 17, 2008.
3. Mortgages
 - 3.1 Real Estate Mortgage from BJC to Seller dated January 14, 2005 recorded in the ROD Office of Horry County in Book 3904 at page 8.
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7. All other documents evidencing or securing the Loan

BJS ENTERPRISES, LLC
1000 LAGG STREET
MYRTLE BEACH, SC 29577

FIRST PALMETTO SAVINGS, INC. FSB
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577

Loan Number 75-073840-1
Date 01-17-2008
Maturity Date 01-17-2009
Loan Amount \$ 5,573,146.62
Renewal Of 75-073840-1

EXHIBIT

19
01-28-10 JAM

BORROWER'S NAME AND ADDRESS
"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

I have received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of FIVE MILLION FIVE HUNDRED SEVENTY THREE
THOUSAND ONE HUNDRED FORTY SIX AND 62/100 Dollars \$ 5,573,146.62
Single Advance: I will receive all of this principal sum on 01-17-2008. No additional advances are contemplated under this note.
Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On
I will receive the amount of \$ and future principal advances are contemplated.
Conditions: The conditions for future advances are

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all
other conditions and expires on
☒ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 01-17-2008 at the rate of 8.250%
per year until 01-17-2009
Variable Rate: This rate may then change as stated below.
☐ Index Rate: The future rate will be the following index rate:
☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
☐ Frequency and Timing: The rate on this note may change as often as
A change in the interest rate will take effect % or less than
☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than % each
%. The rate may not change more than %

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ CRUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.
FIXED MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to
CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE PAYMENT AMOUNT

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount
above:

PAYMENTS: I agree to pay this note as follows:
MONTHLY PAYMENTS OF \$47,905.19 BEGINNING 02-17-2008 AND 1 BALLOON PAYMENT OF \$5,509,352.46 ON 01-17-2009.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): MORTGAGES DATED JANUARY 14, 2005 (3 MORTGAGES), COMMERCIAL SECURITY AGREEMENT DATED 1-17-2008 & ASSIGNMENT OF LEASES AND RENTS (3) DATED 1-14-2005
(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is RENEWAL OF LOAN

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.
BJS ENTERPRISES, LLC

Wendy J. Bellamy
WENDY J. BELLAMY, MANAGING MEMBER

Signature for Lender

Bob Wilder
BOB WILDER, VICE PRESIDENT

EXHIBIT

DEFINITIONS: As used on page 1, "I" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorser, sureties) who agrees to pay this note (together referred to as "us"). or "you" means the Lender and its successors and assigns.

CABLE LAW: The law of the state of South Carolina will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. Any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement. COMMISSIONS OR OTHER REMUNERATION: I understand and agree that my insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full unless, when I make the prepayment, you and I agree in writing to the contrary.

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE: The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post-Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which, you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to (1) I fail to make a payment on time or in the amount due; (3) I fail to keep the property insured, if required; (4) I fail to pay, or keep any promise, on any debt or agreement I have with you; (5) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (6) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (7) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (8) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (9) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (10) I change my name or assume an additional name without first notifying you before making such a change; (11) I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; (12) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. Of course, you are entitled to only one payment in full. I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a pre-seizure hearing prior to seizure of any personal property which may secure this loan.

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH:
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
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	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	

COPY

DEFENDANT'S
EXHIBIT

FILED
HORRY COUNTY, S.C.

2005 JAN 19 AM 9:00

This document was prepared by (name, address, phone): FIRST PALMETTO SAVINGS BANK, FSB
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577

BALLERY V. SKIPPER
REGISTRAR OF DEEDS

State of South Carolina Space Above This Line For Recording Data

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 01-14-2005 and the parties and their addresses are as follows:

MORTGAGOR: BJC ENTERPRISES, LLC
405 FLAG STREET
MYRTLE BEACH, SC 29577
20-1820982

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

LENDER:

FIRST PALMETTO SAVINGS BANK, FSB
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577
57-0921408

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

See Attached Exhibit "A"

MORTGAGE
3904 0008

The property is located in Horry County at _____
(County)
Myrtle Beach, South Carolina 29577
(Address) (City) (Zip Code)

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

EXHIBIT

E

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 5,580,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt):

(e.g., borrower's name, note amount, interest rate, maturity date)

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.

C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.

E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

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

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

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

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

C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.
11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:
- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
 - B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
 - C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.
12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.
- No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.
13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.
- Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.
14. **CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
15. **DEFAULT.** Mortgagor will be in default if any of the following occur:
- A. Any party obligated on the Secured Debt fails to make payment when due;
 - B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
 - C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
 - D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
 - E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
 - F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or

- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

16. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

17. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

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

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims,

demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.

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

19. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

20. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

21. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

23. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend,

modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guarantied, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

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

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

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

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

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☐ **Crops; Timber; Minerals; Rents, Issues, and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").
- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

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

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

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

☐ Actual authority was granted to the parties signing below by resolution signed and dated _____.

Entity Name: BJC ENTERPRISES, LLC

Wendy Bellamy (Seal)
(Signature) WENDY BELLAMY, MANAGING MEMBER (Date)

(Signature) (Seal)
(Date)

Signed, Sealed and delivered in the presence of:

[Signature]
(Witness)

Terri C. Walk
(Witness)

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

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Horry } ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 14TH day

of JANUARY, 2005

Terri C. Walk (Seal)
Notary Public for South Carolina

[Signature]

My commission expires: 4-13-2010

EXHIBIT "A"

Property 1 (Emerald Shores Motel)

TMS# 181-11-01-002

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the office of the ROD for Horry County in Plat Book 1 at Page 84.

For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the location of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C. E., dated March 24, 1964, and recorded April 10, 1964, in Plat Book 40 at Page 14.

Property 2 (Emerald Shores Motel)

TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, reference to which is craved as forming a part of these presents.

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot Number Four (4) of Block Four (4), having an ocean frontage of seventy (70) feet and a depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, to which reference is craved as forming a part of these presents.

Less and excepting from the above described lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

Property 4 (Parking Lot)

TMS#181-10-10-007

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a map made by Robert L. Bellamy, C. E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the office of the ROD for Horry County, South Carolina.

These being the identical properties conveyed to the Mortgagor herein by Deed from James C. Journey, dated January 13, 2005 and recorded January 19, 2005 in ~~Mortgage~~ ^{Deed} Book 2849 at Page 171 and by Deed from James C. Journey, as Trustee of the Madeline M. Journey Revocable Trust, dated January 13, 2005 and recorded January 19, 2005 in ~~Mortgage~~ ^{Deed} Book 2849 at Page 167 records of the office of the Register of Deeds for Horry County, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Mozingo + Wallace Architects, LLC

Plaintiff(s)

vs.

BJC Enterprises, et al.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009 4 26 3186

(Please Print)

Submitted By: Scott B. Umstead

Address: 4226 Mayfair Street, Suite 100

Myrtle Beach, SC 29577

SC Bar #: 05670

Telephone #: 843-913-4610

Fax #: 843-913-4612

Other:

E-mail: scottu@sc.rr.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

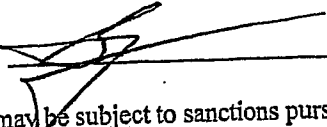
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☒ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/ File Med Mal (230) | ☐ Premises Liability (330) | ☒ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
-
- | | | | |
|--|--|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Other (799) | ☐ Other (899) | ☐ Worker's Comp (960) |
-
- | | | | |
|--|---|--|--|
| Special/Complex /Other | | | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Zoning Board (970) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Administrative Law Judge (980) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Public Service Commission (990) |
| ☐ Other (699) | ☐ Sexual Predator (510) | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |

Submitting Party Signature: 

Date: March 27, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2009-CP-26-_____

Mozingo + Wallace Architects, LLC,

Plaintiff,

v.

BJC Enterprises, LLC, First Palmetto
Savings Bank, FSB, Kersi S. Shroff,
Shroff Management, Inc, Wendy-Jones
Bellamy, Harvey L. Jones, Myrtle Beach
Grande Hotel, LLC, Billy Joe Bellamy,
Americana Motel of Myrtle Beach, Inc.
a/k/a Americana, Inc., The National Bank of
South Carolina, Harvey C. Jones and
Lila M. Bagnal,

Defendants.

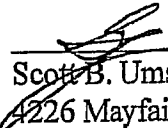
**CERTIFICATE OF
EXEMPTION FROM ADR**

HORRY COUNTY
09 MAR 27 PM 3:48
MELANIE HUGGINS
CLERK OF COURT

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ADR BECAUSE:

- _____ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- _____ this action is appellate in nature;
- _____ this is a post-conviction relief matter;
- _____ this is a contempt of Court proceeding;
- _____ this is a forfeiture proceeding by the State;
- ☒ _____ this is a case involving a mortgage foreclosure; or lien for assessments;
- _____ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this civil action.

SCOTT B. UMSTEAD, P.A.



Scott B. Umstead
4226 Mayfair Street, Suite 100
Myrtle Beach, SC 29577
843-913-4610
Attorney for Plaintiff

March 27, 2009
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2009-CP-26- 3186

Mozingo + Wallace Architects, LLC,

Plaintiff,

v.

SUMMONS

BJC Enterprises, LLC, First Palmetto
Savings Bank, FSB, Kersi S. Shroff,
Shroff Management, Inc, Wendy-Jones
Bellamy, Harvey L. Jones, Myrtle Beach
Grande Hotel, LLC, Billy Joe Bellamy,
Americana Motel of Myrtle Beach, Inc.
a/k/a Americana, Inc., The National Bank of
South Carolina, Harvey C. Jones and
Lila M. Bagnol,

Defendants.

MELANIE HUGGINS
CLERK OF COURT
09 MAR 27 PM 3:48
HORRY COUNTY

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff's attorney, Scott B. Umstead, 4226 Mayfair Street, Suite 100, Myrtle Beach, South Carolina, 29577, within thirty (30) days after the service hereof, 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 Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AN/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a

guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code § 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

Dated at Myrtle Beach, South Carolina, on the 27 day of March, 2009

SCOTT B. UMSTEAD, P.A.



Scott B. Umstead
4226 Mayfair Street, Suite 100
Myrtle Beach, South Carolina 29577
Phone: (843) 913-4610
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2009-CP-26- 3186

Mozingo + Wallace Architects, LLC,

Plaintiff,

v.

BJC Enterprises, LLC, First Palmetto
Savings Bank, FSB, Kersi S. Shroff,
Shroff Management, Inc, Wendy-Jones
Bellamy, Harvey L. Jones, Myrtle Beach
Grande Hotel, LLC, Billy Joe Bellamy,
Americana Motel of Myrtle Beach, Inc.
a/k/a Americana, Inc., The National Bank of
South Carolina, Harvey C. Jones and
Lila M. Bagnal,

Defendants.

COMPLAINT
(Foreclosure of Mechanic's Lien)
(Non-Jury)

HORRY COUNTY
MAR 27 PM 3:48
CLERK OF COURT
MELANIE HUGGINS

The Plaintiff, complaining of Defendants, would respectfully allege and show unto this Honorable Court as follows:

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

1. The Plaintiff, Mozingo + Wallace Architects, LLC, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina and is business in Horry County, South Carolina.
2. The Defendant, BJC Enterprises, LLC, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina and is business in Horry County, South Carolina.
3. The Defendant, First Palmetto Savings Bank, FSB, is a financial institution organized and existing pursuant to laws of the United States of America.

4. The Defendant, Kersi S. Shroff, is, on information and belief, a citizen and resident of Horry County, South Carolina.
5. The Defendant, Shroff Management, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina and is doing business in Horry County, South Carolina.
6. The Defendant, Wendy-Jones Bellamy, is, on information and belief, a citizen and resident of Horry County, South Carolina.
7. The Defendant, Harvey L. Bellamy, is, on information and belief, a citizen and resident of Horry County, South Carolina.
8. The Defendant, Myrtle Beach Grande Hotel, LLC, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina and is business in Horry County, South Carolina.
9. The Defendant, Billy Joe Bellamy, is, on information and belief, a citizen and resident of Horry County, South Carolina.
10. The Defendant, American Motel of Myrtle Beach, Inc. a/k/a Americana, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina and is doing business in Horry County, South Carolina.
11. The Defendant, The National Bank of South Carolina, is a financial institution organized and existing pursuant to laws of the United States of America.
12. The Defendant, Harvey C. Jones, is, on information and belief, a citizen and resident of Horry County, South Carolina.
13. The Defendant, Lila M. Bagnal, is, on information and belief, a citizen and resident of Horry County, South Carolina.

14. The Defendants, BJC Enterprises, LLC, Wendy-Jones Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. are the current owners of the property described below:

PARCEL 1

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 84. For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the location of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C.E., dated March 24, 1964, and recorded April 10, 1964 in Plat Book 40 at Page 14.

The plat referred to above, recorded in Plat Book 1. at Page 84, shows these lots have a depth of 130 feet; however, 4 feet have been taken from each lot to widen Ocean Blvd.

Together with all of the personal property of every kind and nature located on or about the premises and used in connection with the operation of the motel thereon; also the trade name of BEACHVIEW MOTEL.

PARCEL 2

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel Section as shown on map of Myrtle Beach made by N. C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116, reference to which is craved as forming a part of these presents.

PARCEL 3

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot No. Four (4) of Block Four (4) having an ocean frontage of seventy (70) feet and depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116, to which reference is craved as forming a part of the presents.

From the above described lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd. and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

This is the lot of land conveyed to J.T. Rutledge and Cuba Nunez Rutledge by Myrtle Beach Farms Company by its deed dated October 1, 1935, recorded in Deed Book W-6 at Page 161.

This deed is made subject to all the covenants and restrictions contained in deed from Myrtle Beach Farms Company.

PARCEL 4

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a map made by Robert L. Bellamy,

C. E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the Office of the ROD for Horry County, South Carolina.

This conveyance is made subject, however, to the restrictions imposed on said property appearing of record.

Also included in this conveyance are all furniture, fixtures, and furnishings and all other personal property situate on the premises together with the name "Sandman II Motel".

The general warranty hereinafter set forth in this deed expressly does not apply to the six (6) foot strip of the real estate adjoining Flagg Street, and as to said six (6) foot strip,

Grantors hereby quit-claim their interest therein to grantees, their heirs and assigns.

The original Lot 2, Block 13, Hotel Section, was acquired by predecessor in title, L.D. Powell, by the deed of Teresa Fore Barwick by deed dated November 2, 1951 in Deed Book 99 at Page 358, Horry County records. Grantor has been in possession of the six (6) foot Flagg Street which was conveyed by the City of Myrtle Beach to a predecessor in title, since September 16, 1983, and predecessors in title had been in possession since on or before October 16, 1941.

TMS #'s - 181-11-01-002

181-11-01-001

181-10-10-007

AND

ALL and singular, all that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, Myrtle Beach, Horry County, South Carolina, designated as LOT ONE (1), BLOCK THIRTEEN (13), HOTEL SECTION, as shown upon a map of Golden Surf Motel surveyed for I.D. Jeram, prepared by ETS-Engineering and Technical Services, Inc., dated February 28, 1997, to which map reference is craved as forming a part of these presents.

SUBJECT to those restrictions, reservations, covenants, and easements of record; and also to all applicable governmental laws, rules, regulations and ordinances.

TMS # - 181-10-10-006

AND

ALL and singular, that certain piece, parcel or lot of land situate, lying and being in Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being Lot Sixteen (16) of Block Twenty-one (21) of the Hotel Section of Myrtle Beach as shown on map or plat by N.C. Hughes, Jr., Engineers. A copy of said map is recorded in Plat Book 1 at Page 116, office of the R.M.C. for Horry County and is by reference incorporated herein as forming a part and parcel of this description.

TMS # - 181-10-10-001

AND

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in the Town of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Seventeen (17) of Block Twenty-One (21) of the Hotel Section, as shown on map of Myrtle Beach made by N.C. Hughes, C.E. dated November 1933 recorded in the office of the Clerk of Court for Horry County in Plat Book 1 at page 116, to which plat reference is craved as forming a part of these presents; this being the lot referred to as Parcel Five (5) in deed from R. L. Back to E. E. Burroughs, dated May 21, 1951 recorded in Book 93 at Page 64, RMC for Horry County.

TMS # - 181-10-10-002

AND

All and singular, all those certain parcels or lots of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as Lots 4, 5, 7, 8, 9 and 18 in Block 21 of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the RMC for Horry County in Plat Book 1, at Page 84.

TMS # - 181-10-10-003

AND

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Horry and being known and designated as Lot Six (6) of Block Twenty-one (21) according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer; which map or plat is of record in the Clerk of Court's Office for Horry County in Plat Book 1 at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by metes and bounds as follows, to-wit:

Beginning at a stake on the Southwest line of Fifth Avenue at the corner common to lots six (6) and seven (7) of block twenty-one (21) and running thence along the dividing line between lots six (6) and seven (7) South 38 deg. 32 min. West one hundred and fifty (150) feet to a stake on the Northeast line of lot eight (8), thence along the dividing line between lots six (6) and eight (8) North 51 deg. 28 min. West fifty-seven and

five-tenths (57.5) feet to a stake at the corner of lot five (5); thence along the dividing line between lots five (5) and six (6) North 38 deg. 32 min. East one hundred and fifty (150) feet to a stake on the South-west line of Fifth Avenue; thence along the said Southwest line of Fifth Avenue South 51 deg. 28 min. East fifty seven and five-tenths (57.5) feet to the place of beginning.

TMS # - 181-10-10-005

AND

All and singular, that certain piece, parcel or lot of land, situate lying and being in the State of South Carolina, County of Horry, and being known and designated as Lot One (1) Block Twenty-one (21) according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer, which map or plat is of record in the office of the Clerk of Court for Horry County, in Plat Book One at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by metes and bounds as follows, to wit: Beginning at a stake at the Northeast corner of Lot 1 of said Block 21, which place of beginning is the intersection of the Southeast line of Chester Street with the Southwest line of Fifth Avenue, and running thence South 51 degrees 28 min. East along said Southwest line of Fifth Avenue 57.5 feet to a stake at the corner of Lot 2: thence South 38 degrees 32 min. West along dividing line between lots 1 and 2, 150 feet to a stake on the Northeast line of Lot 18, 57.5 feet to a stake on the Southeast line of Chester Street; thence along said Southeast line of Chester Street North 38 degrees 32 min. East 150 feet to the place of beginning.

TMS # - 181-10-10-004

AND

ALL THAT certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Fourteen (14) of Block Twenty-One (21) of the Hotel Section of Myrtle Beach, on a map of said Section made by N.C. Hughes, Jr., Engineer, in November, 1933, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at page 116 (now 356).

The property herein is conveyed subject to easements and restrictions of record.

TMS # - 181-10-10-016

15. Kersi S. Shroff and Shroff Management, Inc. are named as Defendants by virtue of a Notice of Lis Pendens dated and filed on February 9, 2009 styled as "*Kersi S. Shroff and Shroff Management, Inc. v. BJC Enterprises, LLC*" Civil Action No.: 2009-LP-26-0575.
16. First Palmetto Savings Bank, FSB is named as a Defendant by virtue of its Mortgages filed on January 19, 2005 in Mortgage Book 3904 at Page 0008, Mortgage Book 3904 at Page 0020 and Mortgage Book 3904 at Page 0028 in the office of the Register of Deeds for Horry County, South Carolina.
17. The National Bank of South Carolina is named as a Defendant by virtue of its Mortgages filed on March 3, 2008 in Mortgage Book 5039 at Page 1051 and re-recorded on April 9, 2008 in Mortgage Book 5055 at Page 2305 and Mortgage Book 2873 at Page 273 in the office of the Register of Deeds for Horry County, South Carolina.
18. Harvey C. Jones and Lila M. Bagnal are named as Defendants by virtue of their Mortgage file in September of 1968 and attempted Satisfaction of Mortgage filed in Mortgage Book 484 at Page 316 in the office of the Register of Deeds for Horry County, South Carolina.
19. An Agreement was executed on or about December 1, 2008, by Casey Shroff, manager of Shroff Management, Inc., as the agent for the Defendants and was fully ratified by the Defendants in words, actions and partial performance by both

parties. A signed copy of the Agreement is attached hereto as Exhibit "C" and incorporated herein by reference.

20. Plaintiff, pursuant to said Agreement and at the request of Defendants, BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc., furnished labor and materials for use on the property described hereinabove. A fuller description of said account and the indebtedness can be had by reference to the Statement of Account heretofore filed in this action with the Office of the Register of Deeds for Horry County in Lien Book 167 at Page 1647.
21. The improvement of the real property described above was authorized by the owners of the property and there is now due and owing to the Plaintiff in connection with said labor and/or materials furnished in the amount of Six Hundred Forty-One Thousand Eight Hundred Sixty-Nine Thousand and 80/100 (\$641,869.80) Dollars. This amount is a true and just account of the materials and labor furnished on the above-described improvements with all just credits given.
22. In accordance with the Agreement between the parties, the Plaintiff provided the services and/or materials in connection with the improvements to the real property and said labor, services and/or materials were actually utilized in connection with the real property above-described and less than six (6) months have lapsed since labor, services and/or materials were last furnished.
23. As a result of BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc.'s failure to pay for the services and/or materials supplied by the Plaintiff, the Plaintiff filed a Notice

of Mechanic's Lien in the Office of the Register of Deeds for Horry County, a copy of the Notice of Mechanic's Lien is attached hereto and marked as Exhibit "A" and incorporated herein reference. This Mechanic's Lien was filed and served within ninety (90) days from the last date that labor and/or materials were furnished. Thereafter, the Lienor filed a Partial Release of Mechanic's Lien (only as to TMS# 181-10-10-017) dated and filed on December 23, 2008 in Lien Book 167 at Page 2715 and is attached hereto as Exhibit "B" and incorporated herein by reference.

24. This action is brought for the purpose of enforcing the Mechanic's Lien claim by Plaintiff in connection with the real property described hereinabove.
25. The Plaintiff has been required to employ the undersigned attorney for the prosecution of its claim of Mechanic's Lien in connection with the property hereinabove described. The Plaintiff is informed and believes it is entitled to reasonable attorney's fees, pursuant to the Agreement, out of the proceeds of sale for bringing of this action, for costs and disbursements of this action plus accrued interest as made and provided by the code of Laws of the State of South Carolina, as amended.
26. The Plaintiff is informed and believes it is entitled to a judgment against the Defendants, BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc., jointly and severally, in the amount of Six Hundred Twelve Thousand Six Hundred Twelve and 70/100 (\$612,612.70) Dollars together with the interest at the rate of Twelve (12%) Percent pursuant to the Agreement (§11.5.2), plus reasonable attorney's

fees and costs, and that the Plaintiff is entitled to have the subject property, subject to any prior liens, and the proceeds apply to the satisfaction of such judgment, attorney's fees, costs and interest according to law.

27. AS TO LOTS 1, 2, 3 AND 4 OF BLOCK 4 AND LOT 2 OF BLOCK 13 HOTEL SECTION (BJC ENTERPRISES, LLC)

a. The following are Senior Lienholders and the property will be sold subject to their interests:

- i. First Palmetto Savings Bank, FSB by virtue of that Mortgage given by BJC Enterprises, LLC in the amount of Five Million Five Hundred Eighty Thousand and 00/100 (\$5,580,000.00) Dollars dated January 14, 2005 and recorded on January 19, 2005 in the Office of the Register of Deeds for Horry County in Mortgage Book 3904 at Page 0008.
- ii. First Palmetto Savings Bank, FSB by virtue of that Assignment of Leases and Rents given by BJC Enterprises, LLC dated January 14, 2005 and recorded on January 19, 2005 in the Office of the Register of Deeds for Horry County in Deed Book 2849 at Page 0176.
- iii. First Palmetto Savings Bank, FSB by virtue of that UCC-1 given by BJC Enterprises, LLC, recorded on January 19, 2005 in the Office of the Register of Deeds for Horry County in Mortgage Book 3904 at Page 0017 pledging the following described collateral:

"All furniture, fixtures and equipment located at 404 N. Ocean Blvd., Myrtle Beach, SC 29577 and used in the operation of the Emerald Shores Motel. For a more complete legal description see attached Exhibit "A"."

b. The following parties are junior lienholder whose interest is being foreclosure in this action:

- i. Kersi S. Shroff and Shroff Management, Inc. by virtue of a Lis Pendens filed with the Clerk of Court on February 9, 2009 styled as "*Kersi S. Shroff and Shroff Management, Inc. v. BJC Enterprises, LLC*" Civil Action No.: 2009-LP-26-0575. The Plaintiff is informed and believes the basis for said Lis Pendens is not to challenge title to said property and is, instead, to challenge the ownership interest in BJC Enterprises, LLC.

28. **AS TO LOT 14 OF BLOCK 21 HOTEL SECTION (Wendy Jones-Bellamy):**

a. On information and belief, the following are Senior Lienholders and the property will be sold subject to their interests:

- i. First Palmetto Savings Bank, FSB by virtue of that Mortgage given by Wendy Jones Bellamy in the amount of Five Million Five Hundred Eighty Thousand and 00/100 (\$5,580,000.00) Dollars dated January 14, 2005 and recorded on January 19, 2005 in the Office of the Register of Deeds for Horry County in Mortgage Book 3904 at Page 0020.
- ii. First Palmetto Savings Bank, FSB by virtue of that Assignment of Leases and Rents given by Wendy J. Bellamy dated January 14, 2005 and recorded on January 19, 2005 in the Office of the Register of Deeds for Horry County in Deed Book 2849 at Page 0185.

29. **AS TO LOT 1 OF BLOCK 13 HOTEL SECTION (Wendy Jones-Bellamy and Harvey L. Jones):**

a. On information and belief, the following are Senior Lienholders and the property will be sold subject to their interests:

i. The National Bank of South Carolina by virtue of that Mortgage given by Myrtle Beach Grande Hotel, LLC, Harvey L. Jones, Wendy Jones Bellamy Billy Joe Bellamy and Kersi S. Shroff in the amount of One Million Eight Hundred Thirty-Five Thousand and 00/100 (\$1,835,000.00) Dollars dated February 29, 2008 and recorded on March 3, 2008 in the Office of the Register of Deeds for Horry County in Mortgage Book 5039 at Page 1051 and re-recorded on April 9, 2008 in Mortgage Book 5055 at Page 2305.

ii. The National Bank of South Carolina by virtue of that UCC-1 given by Harvey L. Jones and Wendy Jones Bellamy, recorded on January 19, 2005 in the Office of the Register of Deeds for Horry County in Mortgage Book 5039 at Page 1063 pledging the following described collateral:

"Lot 4 and Lots 11-15, Block 28, Hotel Section; Lots 1 and 2, Block 31, Hotel Section, Lot 1, Block 13, Hotel Section; all located in Myrtle Beach, Horry County, South Carolina; and (except for furnishings and equipment), Lot 3, Block 7, Long Bay Estates, Myrtle Beach, Horry County, South Carolina"

iii. The National Bank of South Carolina by virtue of that Assignment of Leases, Rents and Profits given by Harvey L. Jones, Wendy Jones Bellamy, Billy Joe Bellamy and Myrtle Beach Grande Hotel, LLC,

))
dated January 11, 2006 and recorded on January 12, 2006 in the Office of the Register of Deeds for Horry County in Deed Book 3034 at Page 1480.

iv. The National Bank of South Carolina by virtue of that Assignment of Leases, Rents and Profits given by Harvey L. Jones, Wendy Jones Bellamy, Billy Joe Bellamy, Kersi S. Shroff and Myrtle Beach Grande Hotel, LLC, dated February 29, 2008 and recorded on March 3, 2008 in the Office of the Register of Deeds for Horry County in Deed Book 3318 at Page 1519 and re-recorded on March 3, 2008 in Deed Book 3318 at page 2242.

v. National Bank of South Carolina by virtue of that Mortgage given by Harvey L. Jones, Wendy Jones Bellamy, Billy Joe Bellamy and Myrtle Beach Grande Hotel, LLC dated January 11, 2006 and recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4371 at Page 1461.

30. **AS TO LOTS 1, 4, 5, 6, 7, 8, 9, 16, 17 AND 18 OF BLOCK 21 HOTEL SECTION (American Motel of Myrtle Beach, Inc. a/k/a Americana, Inc.):**

a. On information and belief, the following are Senior Lienholders and the property will be sold subject to their interests:

i. First Palmetto Savings Bank, FSB by virtue of that Mortgage given by Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. in the amount of Five Million Five Hundred Eighty Thousand and 00/100 (\$5,580,000.00) Dollars dated January 14, 2005 and recorded on

January 19, 2005 in the Office of the Register of Deeds for Horry County in Mortgage Book 3904 at Page 0028.

ii. First Palmetto Savings Bank, FSB by virtue of that Assignment of Leases and Rents given by Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. dated January 14, 2005 and recorded on January 19, 2005 in the Office of the Register of Deeds for Horry County in Deed Book 2849 at Page 0193.

iii. On information and belief the following described mortgage was paid in full and a Satisfaction has been filed. Plaintiff is further informed and believes the formalities with regard to the below described satisfaction of mortgage may be imperfect and prays that this Court determine the Mortgage was satisfied and does not constitute a lien on the property.

1. The National Bank of South Carolina by virtue of that Mortgage given by Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. in the amount of One Hundred Eighty Thousand and 00/100 (\$180,000.00) dollars dated December 19, 2001 and recorded on December 21, 2001 in the Office of the Register of Deeds for Horry County in Mortgage Book 2873 at Page 0273. This mortgage was attempted to be satisfied on July 8, 2005 in Mortgage Book 4117 at Page 0929.

iv. On information and belief the following described mortgage was paid in full and a Satisfaction has been filed. Plaintiff is further informed

and believes the formalities with regard to the below described satisfaction of mortgage may be imperfect and prays that this Court determine the Mortgage was satisfied and does not constitute a lien on the property.

1. Harvey C. Jones and Lila M. Bagnal by virtue of that Mortgage given by Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. in the amount of Three Hundred One Thousand Six Hundred Seventy-One and 96/100 (\$301,671.96) Dollars dated September 10, 1968 and recorded May 22, 1968. This mortgage was attempted to be satisfied on September 11, 1981 in Mortgage Book 484 at Page 316.

FOR A SECOND CAUSE OF ACTION
(Collection - Breach of Contract)

31. The foregoing allegations are incorporated by reference as if fully set out below.
32. The Plaintiff and the Defendants, BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc., entered into an Agreement whereby Plaintiff undertook to perform certain improvements to real property owned by BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. for the sum of Six Hundred Twelve Thousand Six Hundred Twelve and 70/100 (\$612,612.70) Dollars. An Agreement was executed on or about December 1, 2008, by Casey Shroff, manager of Shroff Management, Inc., as the agent for the Defendants and was fully ratified by the Defendants in words, actions and partial performance by both parties.

33. Pursuant thereto, the Plaintiff performed certain services and provided certain materials pursuant to the Agreement and thereupon demanded the balance in the amount of Six Hundred Twelve Thousand Six Hundred Twelve and 70/100 (\$612,612.70) Dollars.
34. BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. refuse and continue to refuse to pay said sum and said refusal constitutes a breach of the Agreement.
35. The Plaintiff is entitled to a judgment against the Defendants, BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc., jointly and severally, in the amount of Six Hundred Twelve Thousand Six Hundred Twelve and 70/100 (\$612,612.70) Dollars, together with the interest at the rate of Twelve (12%) Percent pursuant to the Agreement (§11.5.2) plus attorney's fees and costs.

FOR A THIRD AND ALTERNATE CAUSE OF ACTION
(Quantum Meruit)

36. The preceding allegations are incorporated by reference as if fully set out herein.
37. In the alternative, Plaintiff would state there existed an Agreement implied in fact between Plaintiff and the Defendants, BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc.
38. The value of the services rendered by the Plaintiff to Defendants, BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. is in the amount of Six Hundred

Twelve Thousand Six Hundred Twelve and 70/100 (\$612,612.70) Dollars and said value is commensurate with architectural industry standards.

39. The Plaintiff is entitled to an Order finding said sum to be fair and reasonable and in further in the entry of a Judgment against the Defendants, BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. in said sum plus interest of at the pre-judgment rate of Eight and 75/100th (8.75%) Percent per annum.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein as follows:

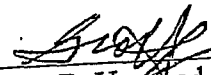
- a. The Plaintiff prays for judgment against BJC Enterprises, LLC, Wendy Jones-Bellamy, Harvey L. Jones and Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc., jointly and severally, in the amount of Six Hundred Twelve Thousand Six Hundred Twelve and 70/100 (\$612,612.70) Dollars plus reasonable attorney's fees and costs, together with the interest at the rate of Eighteen (18%) Percent pursuant to the Agreement and Plaintiff further prays that the Mechanic's Lien of the Plaintiff be established and foreclosed, that the subject property be sold and the proceeds of sale be applied toward the satisfaction of Plaintiff's Mechanic's Lien, that the equity of redemption of the owner and all persons claiming by, under or through the owner be barred, for the costs and disbursements in this action and for such other and further relief as this Court may deem just and proper.
- b. That the mortgage given by Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. to Harvey C. Jones and Lila M. Bagnol in the amount of Three

Hundred One Thousand Six Hundred Seventy-One and 96/100 (\$301,671.96) Dollars dated September 10, 1968 and recorded May 22, 1968 be marked satisfied and determined it does not constitute a lien on the property.

a. That the mortgage given by Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. in the amount of One Hundred Eighty Thousand and 00/100 (\$180,000.00) dollars dated December 19, 2001 and recorded on December 21, 2001 in the Office of the Register of Deeds for Horry County in Mortgage Book 2873 at Page 0273 and attempted to be satisfied on July 8, 2005 in Mortgage Book 4117 at Page 0929 be marked satisfied and determined it does not constitute a lien on the property.

c. For such other and further relief as this Court deems just and proper.

SCOTT B. UMSTEAD, P.A.



Scott B. Umstead
4226 Mayfair Street, Suite 100
Myrtle Beach, SC 29577
843-913-4610
Attorney for Plaintiff

March 27, 2009
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) OFFICE OF THE REGISTER OF DEEDS
) LIEN BOOK _____ AT PAGE _____

Mozingo + Wallace Architects, LLC,

Lienor,

vs.

BJC Enterprises, LLC, Harvey Jones,
Wendy Bellamy, Americana Motel, Inc.,
Americana Motel of Myrtle Beach, Inc.
Dianne Smith and Roger Smith,

Lienees.

NOTICE OF MECHANIC'S LIEN

Instrument#: 2008000159554, LIEN BK:
167 PG: 1647 DOCTYPE: 015 12/12/2008
at 12:49:10 PM, 1 OF 7
BALLERY V. SKIPPER, HORRY COUNTY,
SC REGISTRAR OF DEEDS

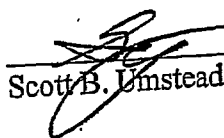
NOTICE IS HEREBY GIVEN that the Lienees are truly indebted to the above-named Lienor in the amount of Six Hundred Twelve Thousand Six Hundred Twelve and 70/100 (\$612,612.70) Dollars, together with interest, the costs of this action, and a reasonable sum of attorney's fees, on account of architectural services performed upon the real property described in Exhibit "A" attached hereto and made a part hereof by reference;

That said labor and/or materials have been performed and/or furnished pursuant to an agreement between the above-named Lienor and Lienees;

That less than ninety (90) days have elapsed since the Lienor ceased labor; and,

That there is now due and owing to the Lienor the sum of Six Hundred Twelve Thousand Six Hundred Twelve and 70/100 (\$612,612.70) Dollars, together with interest, the costs of this action, and a reasonable sum of attorney's fees, for which demand has been made but payment of which has been refused. A Statement of Account is attached as Exhibit "B".

SCOTT B. UMSTEAD, P.A.
Attorney for the Lienor


Scott B. Umstead

Myrtle Beach, South Carolina
December 11, 2008

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) OFFICE OF THE REGISTER OF DEEDS
) LIEN BOOK _____ AT PAGE _____

Mozingo + Wallace Architects, LLC,

Lienor,

vs.

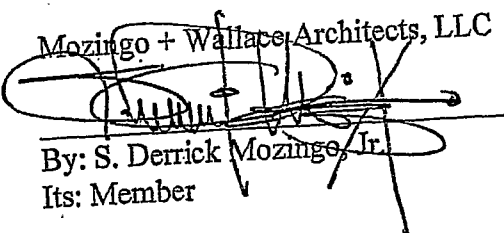
BJC Enterprises, LLC, Harvey Jones,
Wendy Bellamy, Americana Motel, Inc.,
Americana Motel of Myrtle Beach, Inc.
Dianne Smith and Roger Smith,

Lienees.

CORPORATE VERIFICATION

Personally appeared before me, S. Derrick Mozingo, Jr., who, being duly sworn, deposes and says; that he is a member of Mozingo + Wallace Architects, LLC, which is the Lienor in the within Notice of Mechanic's Lien and is making this Verification on his and its behalf from his own knowledge and from the records of Mozingo + Wallace Architects, LLC; Deponent has read the allegations in the foregoing Notice of Mechanic's Lien and the same are true of Deponent's own knowledge, and that the foregoing Notice of Mechanic's Lien is a statement of a just and true account of the amount due the Lienor, with all just credits given.

Mozingo + Wallace Architects, LLC

By:  S. Derrick Mozingo, Jr.
Its: Member

SWORN TO AND SUBSCRIBED before
me this 10th day of December, 2008

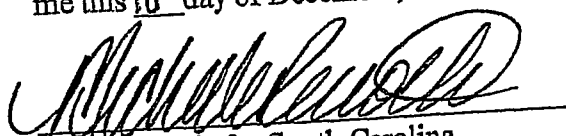

Notary Public for South Carolina
My Commission Expires: 11-15-2009

EXHIBIT "A"

EXHIBIT "A"

PARCEL 1

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 84. For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the location of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C.E., dated March 24, 1964, and recorded April 10, 1964 in Plat Book 40 at Page 14.

The plat referred to above, recorded in Plat Book 1 at Page 84, shows these lots have a depth of 130 feet; however, 4 feet have been taken from each lot to widen Ocean Blvd. Together with all of the personal property of every kind and nature located on or about the premises and used in connection with the operation of the motel thereon; also the trade name of BEACHVIEW MOTEL.

PARCEL 2

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel Section as shown on map of Myrtle Beach made by N. C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116, reference to which is craved as forming a part of these presents.

PARCEL 3

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot No. Four (4) of Block Four (4) having an ocean frontage of seventy (70) feet and depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116, to which reference is craved as forming a part of the presents.

From the above described lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd. and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

This is the lot of land conveyed to J.T. Rutledge and Cuba Nunez Rutledge by Myrtle Beach Farms Company by its deed dated October 1, 1935, recorded in Deed Book W-6 at Page 161.

This deed is made subject to all the covenants and restrictions contained in deed from Myrtle Beach Farms Company.

PARCEL 4

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a map made by Robert L. Bellamy, C. E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the Office of the ROD for Horry County, South Carolina.

This conveyance is made subject, however, to the restrictions imposed on said property appearing of record.

Also included in this conveyance are all furniture, fixtures, and furnishings and all other personal property situate on the premises together with the name "Sandman II Motel".

The general warranty hereinafter set forth in this deed expressly does not apply to the six (6) foot strip of the real estate adjoining Flagg Street, and as to said six (6) foot strip, Grantors hereby quit-claim their interest therein to grantees, their heirs and assigns.

The original Lot 2, Block 13, Hotel Section, was acquired by predecessor in title, L.D. Powell, by the deed of Teresa Fore Barwick by deed dated November 2, 1951 in Deed Book 99 at Page 358, Horry County records. Grantor has been in possession of the six (6) foot Flagg Street which was conveyed by the City of Myrtle Beach to a predecessor in title, since September 16, 1983, and predecessors in title had been in possession since on or before October 16, 1941.

TMS #'s - 181-11-01-002
181-11-01-001
181-10-10-007

AND

ALL and singular, all that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, Myrtle Beach, Horry County, South Carolina, designated as LOT ONE (1), BLOCK THIRTEEN (13), HOTEL SECTION, as shown upon a map of Golden Surf Motel surveyed for I.D. Jeram, prepared by ETS-Engineering and Technical Services, Inc., dated February 28, 1997, to which map reference is craved as forming a part of these presents.

SUBJECT to those restrictions, reservations, covenants, and easements of record; and also to all applicable governmental laws, rules, regulations and ordinances.

TMS # - 181-10-10-006

AND

ALL and singular, all that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, Dogwood Neck Township, County of Horry, State of South Carolina, and being Lot Number Fifteen (15) of Block Number Twenty-one (21) of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Jr., Engineers, dated November, 1933 and recorded in the Office of the Clerk of Court for Horry County in Plat Book "1" at Page 116, reference to which is craved as forming a part of these presents. The above described property is more particularly shown on a plat of the property by William R. Lewis Registered Land Surveyor. Surveyed October 19, 1994 and recorded in Plat Book 131 at Page 523 in the Office of R.M.C. for Horry County which plat is incorporated herein by reference.

TMS # - 181-10-10-017

AND

ALL and singular, that certain piece, parcel or lot of land situate, lying and being in Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being Lot Sixteen (16) of Block Twenty-one (21) of the Hotel Section of Myrtle Beach as shown on map or plat by N.C. Hughes, Jr., Engineers. A copy of said map is recorded in Plat Book 1 at Page 116, office of the R.M.C. for Horry County and is by reference incorporated herein as forming a part and parcel of this description.

TMS # - 181-10-10-001

AND

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in the Town of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Seventeen (17) of Block Twenty-One (21) of the Hotel Section, as shown on map of Myrtle Beach made by N.C. Hughes, C.E. dated November 1933 recorded in the office of the Clerk of Court for Horry County in Plat Book 1 at page 116, to which plat reference is craved as forming a part of these presents; this being the lot referred to as Parcel Five (5) in deed from R. L. Back to E. E. Burroughs, dated May 21, 1951 recorded in Book 93 at Page 64, RMC for Horry County.

TMS # - 181-10-10-002

AND

All and singular, all those certain parcels or lots of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as Lots 4, 5, 7, 8, 9 and 18 in Block 21 of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the RMC for Horry County in Plat Book 1, at Page 84.

TMS # - 181-10-10-003

AND

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Horry and being known and designated as Lot Six (6) of Block Twenty-one (21) according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the

supervision of Stanley H. Wright, Engineer; which map or plat is of record in the Clerk of Court's Office for Horry County in Plat Book 1 at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by metes and bounds as follows, to-wit:

Beginning at a stake on the Southwest line of Fifth Avenue at the corner common to lots six (6) and seven (7) of block twenty-one (21) and running thence along the dividing line between lots six (6) and seven (7) South 38 deg. 32 min. West one hundred and fifty (150) feet to a stake on the Northeast line of lot eight (8), thence along the dividing line between lots six (6) and eight (8) North 51 deg. 28 min. West fifty-seven and five-tenths (57.5) feet to a stake at the corner of lot five (5); thence along the dividing line between lots five (5) and six (6) North 38 deg. 32 min. East one hundred and fifty (150) feet to a stake on the South-west line of Fifth Avenue; thence along the said Southwest line of Fifth Avenue South 51 deg. 28 min. East fifty seven and five-tenths (57.5) feet to the place of beginning.

TMS # - 181-10-10-005

AND

All and singular, that certain piece, parcel or lot of land, situate lying and being in the State of South Carolina, County of Horry, and being known and designated as Lot One (1) Block Twenty-one (21) according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer, which map or plat is of record in the office of the Clerk of Court for Horry County, in Plat Book One at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by metes and bounds as follows, to wit: Beginning at a stake at the Northeast corner of Lot 1 of said Block 21, which place of beginning is the intersection of the Southeast line of Chester Street with the Southwest line of Fifth Avenue, and running thence South 51 degrees 28 min. East along said Southwest line of Fifth Avenue 57.5 feet to a stake at the corner of Lot 2; thence South 38 degrees 32 min. West along dividing line between lots 1 and 2, 150 feet to a stake on the Northeast line of Lot 18, 57.5 feet to a stake on the Southeast line of Chester Street; thence along said Southeast line of Chester Street North 38 degrees 32 min. East 150 feet to the place of beginning.

TMS # - 181-10-10-004

AND

ALL THAT certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Fourteen (14) of Block Twenty-One (21) of the Hotel Section of Myrtle Beach, on a map of said Section made by N.C. Hughes, Jr., Engineer, in November, 1933, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at page 116 (now 356).

The property herein is conveyed subject to easements and restrictions of record.

TMS # - 181-10-10-016

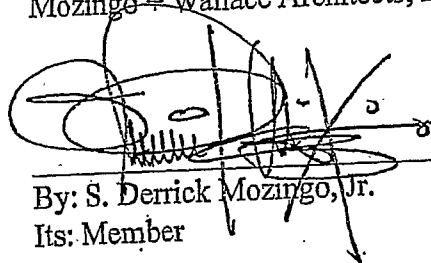
EXHIBIT "B"

Statement of Account

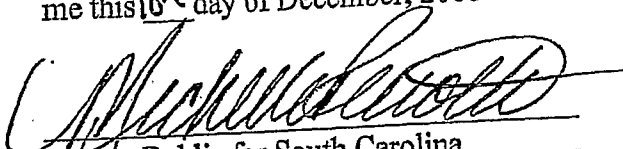
Invoice Total - - - - -	\$612,612.70
Amount Received from Lienees - - - - -	\$ 0.00
Balance Due from Owner - - - - -	\$612,612.70

I, S. Derrick Mozingo, Jr., swear the foregoing is a true and accurate Statement of Account of the amounts due from the Lienees.

Mozingo + Wallace Architects, LLC


By: S. Derrick Mozingo, Jr.
Its: Member

SWORN TO AND SUBSCRIBED before
me this 10th day of December, 2008


Notary Public for South Carolina
My Commission Expires: 11-15-2009

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Mozingo + Wallace Architects, LLC,

Lienor,

vs.

BJC Enterprises, LLC, Harvey Jones,
Wendy Bellamy, Americana Motel, Inc.,
Americana Motel of Myrtle Beach, Inc.
Dianne Smith and Roger Smith,

Lienees.

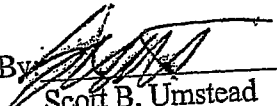
OFFICE OF THE REGISTRAR OF DEEDS
BOOK _____ at PAGE _____

PARTIAL
RELEASE OF MECHANIC'S LIEN
(ONLY AS TO TMS # 181-10-10-017)

Instrument#: 2008000163035, LIEN BK:
167 PG: 2715 DOCTYPE: 103 12/23/2008
at 01:55:44 PM, 1 OF 2
BALLERY V. SKIPPER, HORRY COUNTY,
SC REGISTRAR OF DEEDS

YOU WILL PLEASE BE ADVISED that the property described as TMS Number 181-10-10-017 (attached hereto as Exhibit "A" and owned by Dianne Smith and Roger Smith) in the Notice of Mechanic's Lien in the above-captioned matter dated December 10, 2008 and recorded December 12, 2008 n Mechanic's Lien Book 167 at Page 1647 has been released by the Leinor. This Partial Release of the aforesaid parcel shall not operate to release the Notice of Mechanic's Lien as to the remaining parcels.

SCOTT B. UMSTEAD, P.A.
Attorney for the Lienor

By 
Scott B. Umstead
4226 Mayfair Street, Suite 100
Myrtle Beach, South Carolina 29577
Phone: (843) 913-4610

December 23, 2008



EXHIBIT "A"

ALL and singular, all that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, Dogwood Neck Township, County of Horry, State of South Carolina, and being Lot Number Fifteen (15) of Block Number Twenty-one (21) of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Jr., Engineers, dated November, 1933 and recorded in the Office of the Clerk of Court for Horry County in Plat Book "1" at Page 116, reference to which is craved as forming a part of these presents. The above described property is more particularly shown on a plat of the property by William R. Lewis Registered Land Surveyor. Surveyed October 19, 1994 and recorded in Plat Book 131 at Page 523 in the Office of R.M.C. for Horry County which plat is incorporated herein by reference.

TMS # - 181-10-10-017

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2009-CP-26-_____

Mozingo + Wallace Architects, LLC,

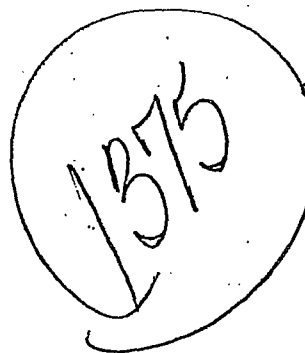
Plaintiff,

v.

BJC Enterprises, LLC, First Palmetto
Savings Bank, FSB, Kersi S. Shroff,
Shroff Management, Inc, Wendy-Jones
Bellamy, Harvey L. Jones, Myrtle Beach
Grande Hotel, LLC, Billy Joe Bellamy,
Americana Motel of Myrtle Beach, Inc.
a/k/a Americana, Inc., The National Bank of
South Carolina, Harvey C. Jones and
Lila M. Bagnal,

Defendants.

NOTICE OF LIS PENDENS



HORRY COUNTY
09 MAR 27 PM 3:48
CLERK OF COURT
MELANIE HUGGINS

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court upon Complaint of the above-named Plaintiff against the above-named Defendants for foreclosure of property located in Horry County described as follows:

PARCEL 1

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 84. For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the location of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C.E., dated March 24, 1964, and recorded April 10, 1964 in Plat Book 40 at Page 14.

The plat referred to above, recorded in Plat Book 1 at Page 84, shows these lots have a depth of 130 feet; however, 4 feet have been taken from each lot to widen Ocean Blvd.

Together with all of the personal property of every kind and nature located on or about the premises and used in connection with the operation of the motel thereon; also the trade name of BEACHVIEW MOTEL.

PARCEL 2

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel Section as shown on map of Myrtle Beach made by N. C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116, reference to which is craved as forming a part of these presents.

PARCEL 3

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot No. Four (4) of Block Four (4) having an ocean frontage of seventy (70) feet and depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116, to which reference is craved as forming a part of the presents.

From the above described lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd. and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

This is the lot of land conveyed to J.T. Rutledge and Cuba Nunez Rutledge by Myrtle Beach Farms Company by its deed dated October 1, 1935, recorded in Deed Book W-6 at Page 161.

This deed is made subject to all the covenants and restrictions contained in deed from Myrtle Beach Farms Company.

PARCEL 4

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a

map made by Robert L. Bellamy,
C. E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page
116, in the Office of the ROD for Horry County, South Carolina.

This conveyance is made subject, however, to the restrictions imposed on said
property appearing of record.

Also included in this conveyance are all furniture, fixtures, and furnishings and
all other personal property situate on the premises together with the name
"Sandman II Motel".

The general warranty hereinafter set forth in this deed expressly does not apply to
the six (6) foot strip of the real estate adjoining Flagg Street, and as to said six (6)
foot strip, Grantors hereby quit-claim their interest therein to grantees, their heirs
and assigns.

The original Lot 2, Block 13, Hotel Section, was acquired by predecessor in title,
L.D. Powell, by the deed of Teresa Fore Barwick by deed dated November 2,
1951 in Deed Book 99 at Page 358, Horry County records. Grantor has been in
possession of the six (6) foot Flagg Street which was conveyed by the City of
Myrtle Beach to a predecessor in title, since September 16, 1983, and
predecessors in title had been in possession since on or before October 16, 1941.

TMS #'s - 181-11-01-002
181-11-01-001
181-10-10-007

AND

ALL and singular, all that certain piece, parcel or lot of land situate, lying and
being in Dogwood Neck Township, Myrtle Beach, Horry County, South
Carolina, designated as LOT ONE (1), BLOCK THIRTEEN (13), HOTEL
SECTION, as shown upon a map of Golden Surf Motel surveyed for I.D. Jeram,
prepared by ETS-Engineering and Technical Services, Inc., dated February 28,
1997, to which map reference is craved as forming a part of these presents.

SUBJECT to those restrictions, reservations, covenants, and easements of record;
and also to all applicable governmental laws, rules, regulations and ordinances.

TMS # - 181-10-10-006

AND

ALL and singular, that certain piece, parcel or lot of land situate, lying and being
in Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina,
being Lot Sixteen (16) of Block Twenty-one (21) of the Hotel Section of Myrtle
Beach as shown on map or plat by N.C. Hughes, Jr., Engineers. A copy of said
map is recorded in Plat Book 1 at Page 116, office of the R.M.C. for Horry

County and is by reference incorporated herein as forming a part and parcel of this description.

TMS # - 181-10-10-001

AND

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in the Town of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Seventeen (17) of Block Twenty-One (21) of the Hotel Section, as shown on map of Myrtle Beach made by N.C. Hughes, C.E. dated November 1933 recorded in the office of the Clerk of Court for Horry County in Plat Book 1 at page 116, to which plat reference is craved as forming a part of these presents; this being the lot referred to as Parcel Five (5) in deed from R. L. Back to E. E. Burroughs, dated May 21, 1951 recorded in Book 93 at Page 64, RMC for Horry County.

TMS # - 181-10-10-002

AND

All and singular, all those certain parcels or lots of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as Lots 4, 5, 7, 8, 9 and 18 in Block 21 of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the RMC for Horry County in Plat Book 1, at Page 84.

TMS # - 181-10-10-003

AND

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Horry and being known and designated as Lot Six (6) of Block Twenty-one (21) according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer; which map or plat is of record in the Clerk of Court's Office for Horry County in Plat Book 1 at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by metes and bounds as follows, to-wit:

Beginning at a stake on the Southwest line of Fifth Avenue at the corner common to lots six (6) and seven (7) of block twenty-one (21) and running thence along the dividing line between lots six (6) and seven (7) South 38 deg. 32 min. West one hundred and fifty (150) feet to a stake on the Northeast line of lot eight (8), thence along the dividing line between lots six (6) and eight (8) North 51 deg. 28 min. West fifty-seven and five -tenths (57.5) feet to a stake at the corner of lot five (5); thence along the dividing line between lots five (5) and six (6) North 38 deg. 32 min. East one hundred and fifty (150) feet to a stake on the South-west

line of Fifth Avenue; thence along the said Southwest line of Fifth Avenue South 51 deg. 28 min. East fifty seven and five-tenths (57.5) feet to the place of beginning.

TMS # - 181-10-10-005

AND

All and singular, that certain piece, parcel or lot of land, situate lying and being in the State of South Carolina, County of Horry, and being known and designated as Lot One (1) Block Twenty-one (21) according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer, which map or plat is of record in the office of the Clerk of Court for Horry County, in Plat Book One at Page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by metes and bounds as follows, to wit: Beginning at a stake at the Northeast corner of Lot 1 of said Block 21, which place of beginning is the intersection of the Southeast line of Chester Street with the Southwest line of Fifth Avenue, and running thence South 51 degrees 28 min. East along said Southwest line of Fifth Avenue 57.5 feet to a stake at the corner of Lot 2; thence South 38 degrees 32 min. West along dividing line between lots 1 and 2, 150 feet to a stake on the Northeast line of Lot 18, 57.5 feet to a stake on the Southeast line of Chester Street; thence along said Southeast line of Chester Street North 38 degrees 32 min. East 150 feet to the place of beginning.

TMS # - 181-10-10-004

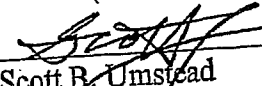
AND

ALL THAT certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Fourteen (14) of Block Twenty-One (21) of the Hotel Section of Myrtle Beach, on a map of said Section made by N.C. Hughes, Jr., Engineer, in November, 1933, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at page 116 (now 356).

The property herein is conveyed subject to easements and restrictions of record.

TMS # - 181-10-10-016

SCOTT B. UMSTEAD, P.A.



Scott B. Umstead
4226 Mayfair Street, Suite 100
Myrtle Beach, SC 29577
Ph: 843-913-4610
Attorney for Plaintiff

March 27, 2009
Myrtle Beach, South Carolina

EXHIBIT "A"

PARCEL 1

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N. C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 84.

For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the location of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C. E., dated March 24, 1964, and recorded April 10, 1964, in Plat Book 40 at Page 14.

The plat referred to above, recorded in Plat Book 1 at Page 84, shows these lots have a depth of 130 feet; however, 4 feet have been taken from each lot to widen Ocean Blvd.

Together with all of the personal property of every kind and nature located on or about the premises and used in connection with the operation of the motel thereon; also the trade name of BEACHVIEW MOTEL.

DERIVATION: This being the identical property conveyed to James C. Journey and Madeline Journey herein by Deed recorded in the Office of the ROD for Horry County in Deed Book 844 at Page 908.

PARCEL 2

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel Section as shown on map of Myrtle Beach made by N. O. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116, reference to which is craved as forming a part of these presents.

DERIVATION: This being the identical property conveyed to Madeline M. Journey herein by Deed recorded in the Office of the ROD for Horry County in Deed Book 336 at Page 92.

PARCEL 3

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot No. Four (4) of Block Four (4), having an ocean frontage of seventy (70) feet and a depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N. C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1 at Page 116, to which reference is craved as forming a part of these presents.

From the above described lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd and this

said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

This is the lot of land conveyed to J. T. Rutledge and Cuba Nunez Rutledge by Myrtle Beach Farms Company by its deed dated October 1, 1935, recorded in Deed Book W-6 at Page 161.

This deed is made subject to all the covenants and restrictions contained in the deed from Myrtle Beach Farms Company.

DERIVATION: This being the identical property conveyed to Madeline M. Journey herein by Deed recorded in the Office of the ROD for Horry County in Deed Book 111 at Page 438.

PARCEL 4

ALL AND SINGULAR that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a map made by Robert L. Bellamy, C.E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the Office of the ROD for Horry County, South Carolina.

This conveyance is made subject, however, to the restrictions imposed on said property appearing of record.

Also included in this conveyance are all furniture, fixtures, and furnishings and all other personal property situate on the premises together with the name "Sandman II Motel".

The general warranty hereinafter set forth in this deed expressly does not apply to the six (6) foot strip of the real estate adjoining Flagg Street, and as to said six (6) foot strip, Grantors hereby quit-claim their interest therein to grantees, their heirs and assigns.

The original Lot 2, Block 13, Hotel Section, was acquired by predecessor in title, L.D. Powell, by deed of Teresa Fore Barwick by deed dated November 2, 1951 in Deed Book 99 at Page 358, Horry County records. Grantor has been in possession of the six (6) foot Flagg Street which was conveyed by the City of Myrtle Beach to a predecessor in title, since September 16, 1983, and predecessors in title had been in possession since on or before October 16, 1941.

DERIVATION: This being the identical property conveyed to James C. Journey and Madeline M. Journey by Deed recorded in the Office of the ROD for Horry County in Deed Book 1350 at Page 726. Madeline M. Journey's interest was devised to James M. Journey by Will found in Horry County Probate Case 2000-ES-553 and evidenced by Deed of Distribution recorded in Deed Book 2799 at Page 1 in the Office of the Register of Deeds for Horry County.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Kersi S. Shroff and Shroff
Management, Inc.,

Plaintiffs,

vs.

Americana Motel of Myrtle Beach,
Inc., a/k/a Americana, Inc. and Wendy
Jones Bellamy

Defendants.

Civil Action No. 2009-LP-26-2280

LIS PENDENS

FILED IN COURT
MAY 19 PM 2:03
HORRY COUNTY

NOTICE IS HEREBY GIVEN that an action will be commenced in this Court upon the Complaint of the above-named plaintiffs against the above-named defendants involving the title of and possible liens against the real property as set forth in the following:

That certain Deed recorded May 26, 1969 in Deed Book 409 at Page 224 in the Register of Deeds for Horry County, South Carolina.

All and singular, all those certain parcels or lots of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, in the City of Myrtle Beach, designated as Lots 4, 5, 7, 8, 9 and 18 in Block 21 of the Hotel Section at Myrtle Beach as shown on map made by Stanley H. Wright, Engineer, dated June 1926, and recorded in the Office of the R.M.C. for Horry County in Plat Book 1, at page 84.

ALSO

All of the personal property of every kind and nature located in, on or about the above described premises used in connection with the operation of the Rainbow Motel and Apartments.



That certain Deed recorded May 8, 1972 in Deed Book 469 at Page 270 in the Register of Deeds for Horry County, South Carolina.

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Horry, and being known and designated as Lot Six (6) of Block twenty-one (21), according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer; which map or plat is of record in the Clerk of Court's Office for Horry County in Plat Book 1, at page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by metes and bounds as follows, to-wit:

Beginning at a stake on the Southwest line of Fifth Avenue at the corner common to lots six (6) and seven (7) of block twenty-one (21) and running thence along the dividing line between lots six (6) and seven (7) South 38 deg. 32 min. West one hundred and fifty (150) feet to a stake on the Northeast line of lot eight (8), thence along the dividing line between lots six (6) and eight (8) North 51 deg. 28 min. West fifty-seven and five-tenths (57.5) feet to a stake at the corner of lot five (5); thence along the dividing line between lots five (5) and six (6) North 38 deg. 32 min. East one hundred and fifty (150) feet to a stake on the South-west line of Fifth Avenue; thence along the said Southwest line of Fifth Avenue South 51 deg. 28 min. East fifty-seven and five-tenths (57.5) feet to the place of beginning.

That certain Deed recorded February 19, 1993 in Deed Book 1615 at Page 718 in the Register of Deeds for Horry County, South Carolina.

ALL AND SINGULAR, that certain piece, parcel or lot of land, situated, lying and being in the Town of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Seventeen (17) of Block Twenty-One (21) of the Hotel Section, as shown on map of Myrtle Beach made by N. C. Hughes, C.E. dated November 1933 recorded in the office of the Clerk of Court for Horry County in Plat Book 1 at page 116, to which plat reference is craved as forming a part of these presents; this being the lot referred to as parcel Five (5) in deed from H. L. Buck, Jr. to E. E. Burroughs, dated May 21, 1951 recorded in Book 93 at Page 64, RMC for Horry County.

This being the identical property conveyed to Charles A. Fanshaw by Deed of Distribution of the Estate of Leona H. Petty, recorded January 6, 1993 in the office of the RMC for Horry County in Deed Book 1604 at Page 140.

All and Singular, that certain piece, parcel, or lot of land with improvements thereto, situate, lying and being in the County and State aforesaid, and being more particularly shown and designated as Lot Three (3), of Block Twenty-one (21), of the Hotel Section of Myrtle Beach as shown upon a map of said section prepared by Stanley H. Wright, Eng., made in June and July, 1926, and recorded in Plat Book 1, at Page 84, records of Horry County.

TOGETHER with all furniture, furnishings, fixtures, excepting the refrigerator and stove, all situate upon the above described property.

That certain Deed recorded July 23, 2002 in Deed Book 2501 at Page 1435 in the Register of Deeds for Horry County, South Carolina.

ALL THAT certain piece, parcel of lot of land with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Fourteen (14) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of said Section made by N.C. Hughes, Jr., Engineer, in November, 1933, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at Page 116 (now 356).

This being the same property conveyed to Wendell E. Jones and Wendy Jones Bellamy by Deed of Jane M. Lamb and Truman E. Moore, Jr. dated August 2, 1994 and recorded August 2, 1994 in Deed Book 1746 at page 170, in the office of the Register of Deeds for Horry County.

This sale made pursuant to that certain Order for Sale of Real Estate in Aid of Assets filed in the Probate Court of Horry County, South Carolina on July 3, 2002.

The property herein is conveyed subject to easements and restrictions of record.

That certain Deed recorded April 7, 1999 in Deed Book 2133 at Page 850 in the Register of Deeds for Horry County, South Carolina.

ALL AND SINGULAR, that certain piece, parcel or lot of land lying and being the Town of Myrtle Beach, County and State aforesaid, and being Lot #6 of Block -28- of the Hotel Section, and beginning at a stake corner on the Northwestern side of Chester Street, which is the Northeastern corner of the lot herein described, and runs North 51 deg. and 28 min. West 240 feet to a Stake on the rear line of Lot #14 of said block; thence South 38 deg. and 32 min. west along the rear line of Lots

#13 and #14, 60 feet to a Stake; thence South 51 deg. and 28 min. East 240 feet to a Stake on the Northwestern side of Chester Street 60 feet to the point of beginning.

Also

All that certain piece or lot of land, situate and being in the State of South Carolina, County of Horry; known and designated as one-half (1/2) of lots seven (7) and eight (8) of block twenty-eight (28) in the Hotel Section; a subdivision of the property of Myrtle Beach according to a plat made under the direction of Stanley H. Wright, consulting engineer, in June 1926, reference to said plat is made hereby made. The said lot of land being more particularly described as metes and bounds as follows: Beginning at a stake on Chester Street at the Northeast corner of lot seven (7) of said block twenty-eight (28) and running thence North 51 deg, 27 min. 45 sec. West, one hundred and twenty (120) feet to a stake on the line between lots eight (8) and nine (9) of said block thence South 38 deg. 32 min. 15 sec. West along the dividing line between lots 8 and 9, seventy-five (75) feet to a stake, thence South 51 deg. 27 min. 45 sec. East, one hundred and twenty (120) feet to a stake on Chester Street, and thence along Chester Street seventy-five (75) feet to the beginning corner, and being one-half (1/2) of Lots Number seven (7) and eight (8) mentioned above.

Also

All that certain piece or lot of land, situate in the Town of Myrtle Beach, State and County aforesaid, beginning at the North East corner of lot 9, block 28, Hotel Section, and extending sixty feet along the Cherry and Buck line to the North West corner; extending twenty-five feet along the Cherry and Bartholomew line to a South West corner, extending sixty feet to a South East corner and extending twenty-five feet along Cherry and Stackhouse line to the North East corner. The above description being twenty five feet by sixty feet, a part of lot 9, block 28, Hotel Section.

Also

That certain right of way connecting the property herein described with Fourth Avenue as shown on the aforesaid plat. This right-of-way in private way for ingress and egress and is ten 910 feet in width, lying along the boundary line between Lots 8 and 9 of block 28, and being more particularly described as follows: Beginning at the corner of lots 8 and 9 on Fourth Avenue and running thence North 38 deg. 32 min. 15 sec. East along the dividing line of these lots a distance of seventy-five (75) feet to the Northwest corner of the property conveyed to the grantee

by deed of Elizabeth G. Stackhouse recorded in the Office of the RMC for Horry County in Deed Book 894 at Page 508; thence running South 51 deg. 27 min. 45 sec. East ten (10) feet along the Western boundary line of the property therein conveyed; thence running South 39 deg. 32 min. 15 sec.; West parallel with the dividing line between Lots 8 and 9, and a distance of ten (10) feet therefrom, for seventy-five (75) feet to Fourth Avenue; thence along the edge of Fourth Avenue ten (10) feet to the beginning corner.

This being the identical property as conveyed to the Grantor by Deed of Elizabeth G. Stackhouse recorded in the Office of the Register of Deeds for Horry County in Deed Book 894 at page 508.

That certain Deed recorded October 9, 1996 in Deed Book 1085 at Page 214 in the Register of Deeds for Horry County, South Carolina.

That certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Horry, and being known and designated at Lot One (1) Block Twenty-one (21) according to a map or plat of Hotel Section of Myrtle Beach as made in June and July of 1926 under the supervision of Stanley H. Wright, Engineer, which map or plat is of record in the office of the Clerk of Court for Horry County, in Plat Book One at page 84, reference to which is hereby made as a part of this description; said lot of land being more particularly described by metes and bounds as follows, to wit: Beginning at a stake at the Northeast corner of Lot 1 of said Block 21, which place of beginning is the intersection of the Southeast line of Chester Street with the Southwest line of Fifth Avenue, and running thence South 51 degrees 28 min. East along said Southwest line of Fifth Avenue 57.5 feet to a stake at the corner of Lot 2; thence South 38 degrees 32 min. West along dividing line between lots 1 and 2, 150 feet to a stake on the Northeast line of Lot 18, 57.5 feet to a stake on the Southeast line of Chester Street; thence along said Southeast line of Chester Street North 38 degrees 32 min. East 150 feet to the place of beginning.

This being the identical property devised to Anastasia Kardaras Petros for life, with the remainder in fee simple to Evelyn Petros Pharr, by Last Will and Testament of Mike Petros, dated January 4, 1984, which was filed in the office of the Probate Judge for Horry County, in Cabinet 4, Drawer 5, Package 55. Also see deed of Anastasia Kardaras Petros to Evelyn P. Pharr dated September 14, 1979, which is duly recorded in the office of the Clerk of Court for Horry County, in Deed Book 655, at page 847.

At the time of the filing of this notice, the premises affected by the said action were situated in the County of Horry, State of South Carolina and are described above.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Susan P. MacDonald

SC Bar No. 007943

E-Mail: susan.macdonald@nelsonmullins.com

3751 Robert M. Grissom Parkway / Suite 300

Post Office Box 3939 (29578-3939)

Myrtle Beach, SC 29577-3165

(843) 448-3500

Attorneys for Kersi S. Shroff and Shroff Management,
Inc.

Myrtle Beach, South Carolina

May 18, 2009

DEBTOR NAME AND ADDRESS

UJC ENTERPRISES, LLC
 05 FLAGG STREET
 MYRTLE BEACH, SC 29577

SECURED PARTY NAME AND ADDRESS

FIRST PALMETTO SAVINGS BANK, FSB
 1204 48TH AVENUE NORTH
 MYRTLE BEACH, SC 29577

☐ individual ☐ partnership ☐ corporation ☒ LIMITED LIABILITY COMPANY
☐ of organization/registration (if applicable) "SC"
 If checked, refer to addendum for additional Debtors and signatures.

COMMERCIAL SECURITY AGREEMENT

date of this Commercial Security Agreement (Agreement) is 01-17-2008

SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one) ☒ Debtor ☐ (Borrower) owes to Secured Party:

☐ Specific Debts. The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):

☒ All Debts. All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated to or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.

PROPERTY INTEREST. To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

PROPERTY DESCRIPTION. The Property is described as follows:

- ☐ Accounts and Other Rights to Payment: All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.
- ☐ Inventory: All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.
- ☐ Equipment: All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.
- ☐ Instruments and Chattel Paper: All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ General Intangibles: All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.
- ☐ Documents: All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ Farm Products and Supplies: All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.
- ☐ Government Payments and Programs: All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ Investment Property: All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☒ Deposit Accounts: All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☒ Specific Property Description: The Property includes, but is not limited by, the following (if required, provide real estate description):

ALL FURNITURE, FIXTURES AND EQUIPMENT LOCATED AT 404 N. OCEAN BLVD, MYRTLE BEACH, SC, 29577 AND USED IN THE OPERATION OF THE EMERALD SHORES MOTEL.

FIRST PALMETTO SAVINGS BANK, FSB CERTIFICATE OF DEPOSIT #41-4660924 IN THE AMOUNT OF \$500,000.00. THE NAME ON THE ACCOUNT IS THE HENRY C COAN, JR MARITAL TRUST

USE OF PROPERTY. The Property will be used for ☐ personal ☒ business ☐ agricultural ☐ purposes.

SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement.

DEBTOR

C ENTERPRISES, LLC

Wendy J. Bellamy
 WENDY J. BELLAMY
 MANAGING MEMBER

SECURED PARTY

FIRST PALMETTO SAVINGS BANK, FSB

Bob Wilder
 BOB WILDER
 VICE PRESIDENT

EXHIBIT

GENERAL PROVISIONS. Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of this Property and Debtor will remain obligated under this Agreement. The duties and obligations of this Agreement will bind the successors and assigns of Debtor. Secured Party. No modification of this Agreement is effective unless it is in writing and signed by Debtor and Secured Party. Whenever used, plural includes the singular and the singular includes the plural. Time of the essence.

APPLICABLE LAW. This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

NAME AND LOCATION. Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence. If Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice or to any change in Debtor's name, address, or state of organization or jurisdiction.

WARRANTIES AND REPRESENTATIONS. Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations, which continue as long as this Agreement is in effect:

- 1. Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
- 2. the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
- 3. other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
- 4. Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debts. The Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

DUTIES TOWARD PROPERTY. Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, to which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments.

If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in a trust for Secured Party and will not commingle the proceeds or returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors showing names, addresses, and amounts owing, invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will not use any loan proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained by federal law.

If Debtor pledges the Property to Secured Party (delivers the Property into the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

PERFECTION OF SECURITY INTEREST. Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

INSURANCE. Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amounts Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debts. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights to any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debts. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

AUTHORITY TO PERFORM. Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement.

If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property. Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

PURCHASE MONEY SECURITY INTEREST. If the Property includes items purchased with the Secured Debts, the Property purchased with the Secured Debts will remain subject to Secured Party's security interest until the Secured Debts are paid in full. Payments on any non-purchase money loan also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

DEFAULT. Debtor will be in default if:

- (1) Debtor (or Borrower, if not the same) fails to make a payment in full when due;
- (2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
- (3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debts;
- (4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debts or significantly impairs the value of the Property.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION. Secured Party may immediately seize the Property upon Debtor's default. Debtor agrees to waive the right to five days' notice and a pre-seizure hearing prior to seizure of the Property.

REMEDIES. After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may at Secured Party's option do any one or more of the following:

- (1) make all or any part of the Secured Debts immediately due and accrue interest at the highest post-maturity interest rate;
- (2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
- (3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
- (4) use any remedy allowed by state or federal law, or provided in any agreement evidencing or pertaining to the Secured Debts.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debts. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any.

By choosing any one or more of these remedies, Secured Party does not give up the right to use any other remedy. Secured Party does not waive a default by not using a remedy.

WAIVER. Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

NOTICE AND ADDITIONAL DOCUMENTS. Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.

DEFENDANT'S EXHIBIT

15

11-28-10 JSM

UCC1

STATE OF SOUTH CAROLINA FILING FEES:

- \$ 8.00 - For the FIRST TWO pages \$20.00 - Public Finance Transaction
 - \$ 2.00 - For THIRD page \$20.00 - Manufactured Home Transaction
 - \$ 1.00 - Each ADDITIONAL page after the THIRD page.
- For each additional Debtor more than two (2), add \$2.00 for each additional Debtor.

UCC FINANCING STATEMENT FOLLOW INSTRUCTIONS CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
Ray H. Winters, Esquire

B. SEND ACKNOWLEDGMENT TO: (Name and Address)
*Rice, MacDonald & Winters, P.A.
950 48th Ave. North, Suite 200
Myrtle Beach, SC 29577*

FILED
HOPKINS COUNTY, S.C.
2005 JAN 19 AM 9:01
CLERK OF SUPERIOR COURT
REGISTRAR OF DEEDS

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

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

1a ORGANIZATION'S NAME <i>BJC Enterprises, LLC</i>		MIDDLE NAME		SUFFIX
OR	1b INDIVIDUAL'S LAST NAME	FIRST NAME		
1c MAILING ADDRESS <i>405 Flag St.</i>		CITY <i>Myrtle Beach</i>	STATE <i>SC</i>	POSTAL CODE <i>29577</i>
1d TAX ID # (Organizations) <i>20-1820962</i>		1e TYPE OF ORGANIZATION <i>LLC</i>	1f JURISDICTION OF ORGANIZATION <i>South Carolina</i>	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		MIDDLE NAME		SUFFIX
OR	2b INDIVIDUAL'S LAST NAME	FIRST NAME		
2c MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d TAX ID # (Organizations)		2e TYPE OF ORGANIZATION	2f JURISDICTION OF ORGANIZATION	2g ORGANIZATIONAL ID # if any ☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME <i>First Palmetto Savings Bank, FSB</i>		MIDDLE NAME		SUFFIX
OR	3b INDIVIDUAL'S LAST NAME	FIRST NAME		
3c MAILING ADDRESS <i>1204 48th Avenue North</i>		CITY <i>Myrtle Beach</i>	STATE <i>SC</i>	POSTAL CODE <i>29577</i>
				COUNTRY <i>US</i>

4. This FINANCING STATEMENT covers the following collateral:

All furniture, fixtures and equipment located at 404 N. Ocean Blvd., Myrtle Beach, SC 29577 and used in the operation of the Emerald Shores Motel. For a more complete legal description see attached Exhibit "A".

MORTGAGE
3904 0017

5. ALTERNATIVE DESIGNATION (if applicable)	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]				7. REQUEST SEARCH REPORT(S) ON UCC 11 FORM		
8. OPTIONAL FILER REFERENCE DATA				All Debtors Debtor 1 Debtor 2		

EXHIBIT

EXHIBIT "A"

Property 1 (Emerald Shores Motel)
TMS# 181-11-01-002

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the office of the ROD for Horry County in Plat Book 1 at Page 84.

For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the location of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C. E., dated March 24, 1964, and recorded April 10, 1964, in Plat Book 40 at Page 14.

Property 2 (Emerald Shores Motel)
TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, reference to which is craved as forming a part of these presents.

Property 3 (Emerald Shores Motel)
TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot Number Four (4) of Block Four (4), having an ocean frontage of seventy (70) feet and a depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, to which reference is craved as forming a part of these presents.

Less and excepting from the above described lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

Property 4 (Parking Lot)

TMS#181-10-10-007

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a map made by Robert L. Bellamy, C. E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the office of the ROD for Horry County, South Carolina.

These being the identical properties conveyed to the Mortgagor herein by Deed from James C. Journey, dated January 13, 2005 and recorded January 19, 2005 in ~~Mortgage~~ ^{Deed} Book 2849 at Page 171 and by Deed from James C. Journey, as Trustee of the Madeline M. Journey Revocable Trust, dated January 13, 2005 and recorded January 19, 2005 in ~~Mortgage~~ ^{Deed} Book 2849 at Page 167, records of the office of the Register of Deeds for Horry County, South Carolina.

FILED
HERRY COUNTY, S.C.

2005 JAN 19 AM 9:00

GALLERY V. SKIPPER
REGISTRAR OF DEEDS

State of South Carolina

Space Above This Line For Recording Data

This document was prepared by (name, address, phone number): FIRST PALMETTO SAVINGS BANK, FSB
1204 48TH AVENUE NORTH MYRTLE BEACH, SC 29577

ASSIGNMENT OF LEASES AND RENTS

1. DATE AND PARTIES. The date of this Assignment of Leases and Rents (Assignment) is
01-14-2005. The parties and their addresses are:

ASSIGNOR: BJC ENTERPRISES, LLC
406 FLAG STREET
MYRTLE BEACH, SC 29577

26-1820982

☐ Refer to the Addendum that is attached and incorporated herein for additional Assignors.

LENDER: FIRST PALMETTO SAVINGS BANK, FSB
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577
67-0921408

2. ASSIGNMENT OF LEASES AND RENTS. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Assignor's performance under this Assignment, Assignor irrevocably assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (all referred to as Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases).

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

C. The term Property as used in this Assignment shall include the following described real property:

See Attached Exhibit "A"



The Property is located in Horry County at Myrtle Beach, South Carolina 29577 (Address, City, State, ZIP Code).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Assignment at any one time will not exceed \$ 5,580,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Assignment. Also, this limitation does not apply to advances made under the terms of this Assignment to protect Lender's security and to perform any of the covenants contained in this Assignment. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBTS.** This Assignment will secure the following Secured Debts:
- A. ☒ **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements. (Include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)

- ☐ One or more of the debts secured by this Assignment contains a future advance provision.
- B. ☐ **All Debts.** All present and future debts from Assignor and _____

to Lender, even if this Assignment is not specifically referenced or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Assignment, each agrees that it will secure debts incurred either individually or with others who may not sign this Assignment. Nothing in this Assignment constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide notice of the right of rescission, Lender waives any subsequent security interest in the Assignor's principal dwelling that is created by this Assignment. This Assignment will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Assignment will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. **Sums Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Assignment.

5. **PAYMENTS.** Assignor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Assignment.
6. **COLLECTION OF RENTS.** Assignor may collect, receive, enjoy and use the Rents so long as Assignor is not in default. Assignor will not collect in advance any Rents due in future lease periods, unless Assignor first obtains Lender's written consent. Upon default, Assignor will receive any Rents in trust for Lender and Assignor will not commingle the Rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Assignor agrees that this Assignment is immediately effective between Assignor and Lender and effective as to third parties on the recording of this Assignment.
7. **WARRANTIES AND REPRESENTATIONS.** To induce Lender to enter into the Loan, Assignor makes these representations and warranties for as long as this Assignment is in effect.
- A. **Power.** Assignor is duly organized, validly existing and in good standing under the laws in the jurisdiction where Assignor was organized and is duly qualified, validly existing and in good standing in all jurisdictions in which Assignor operates or Assignor owns or leases property. Assignor has the power and authority to enter into this transaction and to carry on Assignor's business or activity as now conducted.
- B. **Authority.** The execution, delivery and performance of this Assignment and the obligations evidenced by this Assignment are within Assignor's duly authorized powers; has received all necessary governmental approval; will not violate any provision of law or order of court or governmental agency; and will not violate any agreement to which Assignor is a party or to which Assignor is or any of Assignor's property is subject.

- C. **Name and Place of Business.** Other than previously disclosed in writing to Lender, Assignor has not changed Assignor's name or principal place of business within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Assignor does not and will not use any other name and will preserve Assignor's existing name, trade names and franchises.
- D. **Ownership or Lease of Property.** Assignor owns or leases all property that Assignor needs to conduct Assignor's business and activities. All of Assignor's property is free and clear of all liens, security interests, encumbrances and other adverse claims and interests, except those Lender previously agreed to in writing.
- E. **Compliance with Laws.** Assignor is not violating any laws, regulations, rules, orders, judgments or decrees applicable to Assignor or Assignor's property, except for those that Assignor is challenging in good faith through proper proceedings after providing adequate reserves to fully pay the claim and its challenge should Assignor lose.
- F. **Title.** Assignor has good title to the Leases, Rents and Property and the right to assign, grant, bargain, convey and mortgage to Lender as additional security the Leases and Rents, and no other person has any right in the Leases and Rents.
- G. **Recordation.** Assignor has recorded the Leases as required by law or as otherwise prudent for the type and use of the Property.
- H. **Default.** No default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Assignor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Assignor or any party to the Lease defaults or fails to observe any applicable law, Assignor will promptly notify Lender.
- I. **Lease Modification.** Assignor has not sublet, modified, extended, canceled, or otherwise altered the Leases, or accepted the surrender of the Property covered by the Leases (unless the Leases so required).
- J. **Encumbrance.** Assignor has not assigned, compromised, subordinated or encumbered the Leases and Rents.
8. **COVENANTS.** Assignor agrees to the following covenants:
- A. **Rent Abatement and Insurance.** When any Lease provides for an abatement of Rents due to fire, flood or other casualty; Assignor will insure against this risk of loss with a policy satisfactory to Lender. Assignor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.
- B. **Copies of Leases.** Assignor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.
- C. **Right to Rents.** Immediately after the execution of this Assignment, Assignor will notify all current and future tenants and others obligated under the Leases of Lender's right to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Assignor or Lender asks them to do so.
- D. **Accounting.** When Lender requests, Assignor will provide to Lender an accounting of Rents, prepared in a form acceptable to Lender, subject to generally accepted accounting principles and certified by Assignor or Assignor's accountant to be current, accurate and complete as of the date requested by Lender.
- E. **Lease Modification.** Assignor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so required) without Lender's written consent.
- F. **Encumbrance.** Assignor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.
- G. **Future Leases.** Assignor will not enter into any future Leases without prior written consent from Lender. Assignor will execute and deliver such further assurances and assignments as to these future Leases as Lender requires from time to time.
- H. **Personal Property.** Assignor will not sell or remove any personal property on the Property, unless Assignor replaces this personal property with like kind for the same or better value.
- I. **Prosecution and Defense of Claims.** Assignor will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Assignor's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against parties who supply labor or materials to improve or maintain the leaseholds subject to the Leases and/or the Property.
- J. **Liability and Indemnification.** Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses or damages due to Lender's gross negligence or intentional torts to the extent permitted by law. Otherwise, Assignor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.
- K. **Leasehold Estate.** Assignor will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest, and agrees that the Leases shall remain in full force and effect regardless of any merger of the Assignor's interests and of any merger of the interests of Assignor and any party obligated under the Leases.
- L. **Insolvency.** Lender will be the creditor of each tenant and of anyone else obligated under the Leases who is subject to an assignment for the benefit of creditors, an insolvency, a dissolution or a receivership proceeding, or a bankruptcy.

(page 3 of 7)

9. **TRANSFER OF AN INTEREST IN THE ASSIGNOR.** If Assignor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A. A beneficial interest in Assignor is sold or transferred.
 - B. There is a change in either the identity or number of members of a partnership or similar entity.
 - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.
- However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Assignment.
10. **DEFAULT.** Assignor will be in default if any of the following occur with regard to the Secured Debts that are secured by this Assignment:
- A. **Payments.** Assignor fails to make a payment in full when due.
 - B. **Insolvency or Bankruptcy.** Assignor makes an assignment for the benefit of creditors or becomes insolvent, either because Assignor's liabilities exceed Assignor's assets or Assignor is unable to pay Assignor's debts as they become due; or Assignor petitions for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or is the subject of a petition or action under such laws and fails to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
 - C. **Death or Incompetency.** If Assignor is an individual, Assignor dies or is declared legally incompetent.
 - D. **Business Termination.** If Assignor is not an individual, Assignor merges, dissolves, reorganizes or ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.
 - E. **Failure to Perform.** Assignor fails to perform any condition or to keep any promise or covenant of this Assignment, any other document evidencing or pertaining to the Loan, or any other debt or agreement Assignor has with Lender.
 - F. **Misrepresentation.** Assignor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - G. **Property Transfer.** Assignor transfers all or a substantial part of Assignor's money or property.
 - H. **Property Value.** The value of the Property declines or is impaired.
 - I. **Name Change.** Assignor changes Assignor's name or assumes an additional name without notifying Lender before making such a change.
 - J. **Material Change.** Without first notifying Lender, there is a material change in Assignor's business, including ownership, management, and financial conditions.
 - K. **Insecurity.** Lender reasonably believes that Lender is insecure.
11. **REMEDIES.** After Assignor defaults, and after Lender gives any legally required notice and opportunity to cure the default, Lender may at Lender's option do any one or more of the following:
- A. **Acceleration.** Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due.
 - B. **Additional Security.** Lender may demand additional security or additional parties to be obligated to pay the Secured Debts.
 - C. **Sources.** Lender may use any and all remedies Lender has under the state law where the Property is located or federal law or in any instrument evidencing or pertaining to the Secured Debts.
 - D. **Insurance Benefits.** Lender may make a claim for any and all insurance benefits or refunds that may be available on Assignor's default.
 - E. **Payments Made On Assignor's Behalf.** Amounts advanced on Assignor's behalf will be immediately due and may be added to the Secured Debts.
 - F. **Rents.** Lender may terminate Assignor's right to collect Rents and directly collect and retain Rents in Lender's name without taking possession of the Property and to demand, collect, receive, and sue for the Rents, giving proper receipts and releases. In addition, after deducting all reasonable expenses of collection from any collected and retained Rents, Lender may apply the balance as provided for by the Secured Debts.
 - G. **Entry.** Lender may enter, take possession, manage and operate all or any part of the Property; make, modify, enforce or cancel or accept the surrender of any Leases; obtain or evict any tenants and licensees; increase or reduce Rents; decorate, clean and make repairs or do any other act or incur any other cost Lender deems proper to protect the Property as fully as Assignor could do. Any funds collected from the operation of the Property may be applied in such order as Lender may deem proper, including, but not limited to, payment of the following: operating expenses, management, brokerage, attorneys' and accountants' fees, the Secured Debts, and toward the maintenance of reserves for repair or replacement. Lender may take such action without regard to the adequacy of the security, with or without any action or proceeding, through any person or agent, or receiver to be appointed by a court, and irrespective of Assignor's possession. The collection and application of the Rents or the entry upon and taking possession of the Property as set out in this section shall not cure or waive any notice of default under the Secured Debts, this Assignment, or invalidate any act pursuant to such notice. The enforcement of such remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that such collection and application of Rents may have cured the original default.

H. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

12. **APPOINTMENT OF A RECEIVER.** On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of Lender to take possession of the Property and the Leases, with the power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.

13. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** To the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Assignment. Unless the applicable law that governs this Assignment is North Dakota, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. These expenses will bear interest from the date of payment until paid in full at the contract interest rate then in effect for the Loan. To the extent permitted by the United States Bankruptcy Code, Assignor agrees to pay the reasonable attorneys' fees Lender incurs to collect this Assignment as awarded by any court exercising jurisdiction under the Bankruptcy Code.

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

Assignor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Assignor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Assignor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Assignor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Assignor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Assignor or any tenant of any Environmental Law. Assignor will immediately notify Lender in writing as soon as Assignor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Assignor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Assignor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Assignor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Assignor and any tenant are in compliance with applicable Environmental Law.

(page 6 of 7)

- I. Upon Lender's request and at any time, Assignor agrees, at Assignor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Assignor's obligations under this section at Assignor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Assignor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses to the extent permitted by law, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Assignment and in return Assignor will provide Lender with collateral of at least equal value to the Property secured by this Assignment without prejudice to any of Lender's rights under this Assignment.
- L. Notwithstanding any of the language contained in this Assignment to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Assignment regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.
15. **TERM.** This Assignment will remain in full force and effect until the Secured Debts are paid or otherwise discharged and Lender is no longer obligated to advance funds under any loan or credit agreement which is a part of the Secured Debts. If any or all payments of the Secured Debts are subsequently invalidated, declared void or voidable, or set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act or other state or federal law, then the Secured Debts will be revived and will continue in full force and effect as if this payment had not been made.
16. **CO-SIGNERS.** If Assignor signs this Assignment but does not sign the Secured Debts, Assignor does so only to assign Assignor's interest in the Property to secure payment of the Secured Debts and Assignor does not agree to be personally liable on the Secured Debts. If this Assignment secures a guaranty between Lender and Assignor, Assignor agrees to waive any rights that may prevent Lender from bringing any action or claim against Assignor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.
17. **WAIVERS.** Except to the extent prohibited by law, Assignor waives all homestead exemption rights relating to the Property.
18. **U.C.C. PROVISIONS.**
- ☐ **Construction-Loan.** This Assignment secures an obligation incurred for the construction of an improvement on the Property.
19. **OTHER TERMS.** If checked, the following are applicable to this Assignment:
- ☐ **Line of Credit.** The Secured Debts include a revolving line of credit provision. Although the Secured Debts may be reduced to a zero balance, this Assignment will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.
- ☐ **Additional Terms.**
20. **APPLICABLE LAW.** This Assignment is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.
21. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** Each Assignor's obligations under this Assignment are independent of the obligations of any other Assignor. Lender may sue each Assignor individually or together with any other Assignor. Lender may release any part of the Property and Assignor will still be obligated under this Assignment for the remaining Property. The duties and benefits of this Assignment will bind and benefit the successors and assigns of Lender and Assignor.
22. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Assignment may not be amended or modified by oral agreement. No amendment or modification of this Assignment is effective unless made in writing and executed by Assignor and Lender. This Assignment is the complete and final expression of the agreement. If any provision of this

(page 8 of 7)

Assignment is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

23. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Assignment.
24. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail and by registered or certified mail, return receipt requested, to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. Assignor will inform Lender in writing of any change in Assignor's name, address or other application information. Assignor will provide Lender any financial statements or information Lender requests. All financial statements and information Assignor gives Lender will be correct and complete. Assignor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Assignor's obligations under this Assignment and to confirm Lender's lien status on any Property. Time is of the essence.
25. SIGNATURES. By signing under seal, Assignor agrees to the terms and covenants contained in this Assignment. Assignor also acknowledges receipt of a copy of this Assignment.

BJG ENTERPRISES, LLC
(Entity Name)

Wend Bellamy (Seal)
(Signature) WENDY BELLAMY, MANAGING MEMBER

(Signature) (Seal)

Signed, sealed and delivered in the presence of:

[Signature]
(Witness)

Jennifer C. Wale
(Witness)

PROBATE: STATE OF SOUTH CAROLINA, COUNTY OF Way ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Assignor (and each Assignor if more than one) sign, seal and deliver the foregoing Assignment and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 14TH day

of JANUARY, 2005

Jennifer C. Wale (Seal)
Notary Public for South Carolina

My commission expires: 4-13-2010

[Signature]

EXHIBIT "A"

Property 1 (Emerald Shores Motel)
TMS# 181-11-01-002

ALL AND SINGULAR, all those certain lots or parcels of land, together with the improvements thereon, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, designated as Lots 1 and 2 in Block 4 of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116.

These lots are also shown on map made by Stanley H. Wright, dated June 1926 and recorded in the office of the ROD for Horry County in Plat Book 1 at Page 84.

For a more accurate and complete description of these lots of land reference is made to a map thereof, showing the location of improvements thereon, made for the grantors herein and George Simon by Robert L. Bellamy C. E., dated March 24, 1964, and recorded April 10, 1964, in Plat Book 40 at Page 14.

Property 2 (Emerald Shores Motel)
TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid and being Lot Number Three (3) of Block Four (4) of the Hotel Section as shown on map of Myrtle Beach made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, reference to which is craved as forming a part of these presents.

Property 3 (Emerald Shores Motel)
TMS#181-11-01-001

ALL AND SINGULAR, that certain piece, parcel or lot of land, and the buildings and furnishings therein, situate, lying and being at Myrtle Beach, Dogwood Neck Township, County and State aforesaid, and being Lot Number Four (4) of Block Four (4), having an ocean frontage of seventy (70) feet and a depth of One Hundred Thirty (130) feet as shown on map of Myrtle Beach Hotel Section made by N.C. Hughes, Jr., Engineer, dated November 1933 and recorded in the Office of the ROD for Horry County in Plat Book 1, at Page 116, to which reference is craved as forming a part of these presents.

Less and excepting from the above described lot, the South Carolina State Highway Commission or the Town of Myrtle Beach owning a four (4) foot strip adjacent to Ocean Blvd and this said four (4) foot strip across the back of the above described lot is excepted from this conveyance.

Property 4 (Parking Lot)

TMS#181-10-10-007

ALL AND SINGULAR, that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township, County and State aforesaid, and more particularly described as Lot Two (2), Block 13, Hotel Section, as shown on a map made by Robert L. Bellamy, C. E., for Mary Lee Powell dated April 20, 1960 recorded in Plat Book 29 at Page 116, in the office of the ROD for Horry County, South Carolina.

These being the identical properties conveyed to the Mortgagor herein by Deed from James C. Jurney, dated January 13, 2005 and recorded January 19, 2005 in Mortgage Book 2849 at Page 171 and by Deed from James C. Jurney, as Trustee of the Madeline M. Jurney Revocable Trust, dated January 13, 2005 and recorded January 19, 2005 in Mortgage Book 2849 at Page 167, records of the office of the Register of Deeds for Horry County, South Carolina.

HYPOTHECATION AGREEMENT

JANUARY 17,

2008

TO: FIRST PALMETTO SAVINGS BANK, F.S.B.
MYRTLE BEACH, S.C.

In consideration of your making, renewing or extending a loan or loans to RJC ENTERPRISES, LLC hereinafter referred to as "Debtor", for which the following property, including all proceeds, additions, and substitutions, belonging to me has been tendered to you as collateral to wit:

***SEE ATTACHED EXHIBIT "A"**

and for the purpose of enabling Debtor to obtain credit therefor. I hereby certify and warrant that the said property is completely free of all security interests, except such as may be created hereunder and has been duly assigned, released, transferred and delivered by me to Debtor and by these presents, I do hereby assign, release and transfer unto said Debtor all of my right, title and interest in and to said property, and hereby expressly authorize Debtor to pledge or hypothecate all or any part of said property for the indebtedness aforesaid, and all renewals and extensions thereof, and also for any and all other indebtedness of the Debtor to you, whether alone or with others, direct or indirect, absolute or contingent and howsoever acquired by you, created at any time before receipt by you of written revocation of this authorization, and all renewals and extensions thereof, and I hereby waive notice and statements of all or any such indebtedness or extensions or renewal thereof.

If, with respect to any collateral, a stock dividend is declared, or any stock split made, or any right to subscribe is issued, all certificates or shares representing such stock dividend, or stock split, or right to subscribe will be immediately delivered, duly endorsed, to the Bank as additional collateral to this agreement.

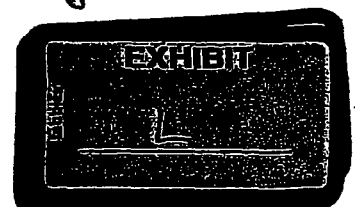
Furthermore, I request that you give, or continue to give, to Debtor credit in the form of loans, renewals or extensions as aforesaid. In consideration of all or any such credit so granted by you, I agree that all or any property pledged or hypothecated as aforesaid, shall be subjected in your hands or those of your assigns, or pledgee or pledgees, to all powers and rights which would apply thereto by contract or otherwise if said property in fact so pledged or hypothecated stood in the name of Debtor himself, and not in my name. You are expressly authorized to give to the Debtor (who is hereby appointed my agent for any and all such purposes) any required notice with respect to the collateral, or any substitutions or additions thereto, and the same shall be regarded as notice to me, and to accept or act upon any or all instructions of Debtor regarding any disposition of any or all of the collateral, or any substitutions therefore or additions thereto or proceeds thereof, including any surplus upon sale or other disposition of such collateral or any part thereof and including, also, the delivery or payment of the same or any part thereof to Debtor, or upon his order, and you shall have no responsibility or any action taken or omitted at the direction of or on authority from Debtor.

This agreement shall be binding on my heirs, executors, administrators and assigns and shall inure to the benefits of your successors and assigns.

IN THE PRESENCE OF:

Bob Wilkin

Wendy J. Bellamy
WENDY J. BELLAMY



COPY

FILED
HORRY COUNTY, S.C.
2005 JAN 19 AM 9:02
BALLEKY V. SKIPPER
REGISTRAR OF DEEDS

This document was prepared by (name, address, phone): FIRST PALMETTO SAVINGS BANK, FSB
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577

State of South Carolina _____ Space Above This Line For Recording Data _____

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 01-14-2005 and the parties and their addresses are as follows:

MORTGAGOR: WENDY J. BELLAMY

20-1820962

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

LENDER:

FIRST PALMETTO SAVINGS BANK, FSB
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577
57-0921408

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

See Attached Exhibit "A"

MORTGAGE
3904 0020

AND Wendy J. Bellamy does hereby acknowledge that the Premises described herein shall be collateral to secure any present and future indebtedness, obligation or liability howsoever evidenced, owing by BJC Enterprises, LLC to Lender, or any extension or renewal thereof. Wendy J. Bellamy hereby consents to the extension or renewal from time to time of any such indebtedness, obligation or liability, and waives any notice of such indebtedness, obligation, liability, extension or renewal. Wendy J. Bellamy further agrees that the within mortgage shall be subject to disposition in accordance with the terms and conditions of the instruments evidencing the indebtedness, obligation and liabilities of BJC Enterprises, LLC.

The property is located in Horry County at _____
(County)
Myrtle Beach, South Carolina 29577
(Address) (City) (Zip Code)

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

EXHIBIT

M

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 5,580,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt): _____

(e.g., borrower's name, note amount, interest rate, maturity date)

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

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

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Kersi S. Shroff and Shroff
Management, Inc.,

Plaintiff,

vs.

BJC Enterprises, LLC

Defendant.

Civil Action No. 2009-LP-26-2279

LIS PENDENS

FILED
MAY 19 PM 2:03
CLERK OF COURT

NOTICE IS HEREBY GIVEN that an action will be commenced in this Court upon the Complaint of the above-named plaintiff against the above-named defendant involving the title of and possible liens against the real property as set forth in that certain Deed recorded January 18, 2005 in Deed Book 2849 at Page 171 in the Register of Deeds for Horry County, South Carolina.

At the time of the filing of this notice, the premises affected by the said action were situated in the County of Horry, State of South Carolina and are described as follows:

See Attached Exhibit A

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Susan P. MacDonald
SC Bar No. 007943
E-Mail: susan.macdonald@nelsonmullins.com
3751 Robert M. Grissom Parkway / Suite 300
Post Office Box 3939 (29578-3939)
Myrtle Beach, SC 29577-3165
(843) 448-3500

Attorneys for Kersi S. Shroff and Shroff Management, Inc.

Myrtle Beach, South Carolina

May 18, 2009



10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement, or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

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

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or

- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

16. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

17. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

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

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims,

demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.

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

19. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

20. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

21. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

23. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend,

modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

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

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

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

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

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☐ **Crops; Timber; Minerals; Rents, Issues, and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").
- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

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

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

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

☐ Actual authority was granted to the parties signing below by resolution signed and dated _____.

Entity Name: _____

Wendy Bellamy (Signature) WENDY J. BELLAMY (Date) _____ (Seal)

(Signature) _____ (Date) _____ (Seal)

Signed, Sealed and Delivered in the presence of:

[Signature]
(Witness)

Jennifer C. Wake
(Witness)

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

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Horry } ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 14TH day

of JANUARY, 2005

Jennifer C. Wake (Seal)
Notary Public for South Carolina

[Signature]

My commission expires: 4-13-2010

EXHIBIT "A"

(Lot 14 Block 21)

TMS#181-10-10-016

ALL THAT certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being Lot Fourteen (14) of Block Twenty-One (21), of the Hotel Section of Myrtle Beach, on a map of said Section made by N.C. Hughes, Jr., Engineer, in November 1933, and recorded in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 1 at Page Book 116.

This being the identical property conveyed to the Mortgagor herein by Deed from Estate of Wendell E. Jones, Jr., dated July 22, 2002 and recorded July 23, 2002 in Deed Book 2501 at Page 1435, records of the Office of the Register of Deeds for Horry County, South Carolina.

FILED
HORRY COUNTY, S.C.

✓ 2005 JAN 19 AM 9:02

BALLEW V. SKIPPER
REGISTRAR OF DEEDS

State of South Carolina

Space Above This Line For Recording Data

This document was prepared by (name, address, phone number): FIRST PALMETTO SAVINGS BANK, FSB
1204 48TH AVENUE NORTH MYRTLE BEACH, SC 29577

ASSIGNMENT OF LEASES AND RENTS

1. DATE AND PARTIES. The date of this Assignment of Leases and Rents (Assignment) is
01-14-2005. The parties and their addresses are:
ASSIGNOR: WENDY J. BELLAMY

20-1820962

☐ Refer to the Addendum that is attached and incorporated herein for additional Assignors.

LENDER: FIRST PALMETTO SAVINGS BANK, FSB
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577
67-0921408

2. ASSIGNMENT OF LEASES AND RENTS. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Assignor's performance under this Assignment, Assignor irrevocably assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (all referred to as Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases).

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

C. The term Property as used in this Assignment shall include the following described real property:

See Attached Exhibit "A"

(page 1 of 7)

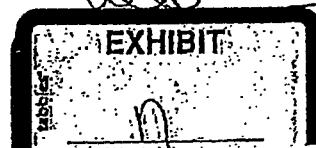
SOUTH CAROLINA ASSIGNMENT OF LEASES AND RENTS
(NOT FOR FNMA, FHLMC, OR VA USE AND NOT FOR CONSUMER PURPOSES)
EXPERTS © 2001 Bankers Systems, Inc., St. Cloud, MN Form ASMT-RENT-SC 2/27/2002

Plaintiff 000019

244

DEED

0185



The Property is located in Horry County at Myrtle Beach, South Carolina 29577 (Address, City, State, ZIP Code).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Assignment at any one time will not exceed \$ 5,580,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Assignment. Also, this limitation does not apply to advances made under the terms of this Assignment to protect Lender's security and to perform any of the covenants contained in this Assignment. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBTS.** This Assignment will secure the following Secured Debts:
- A. ☒ **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements. (Include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)
- ☐ One or more of the debts secured by this Assignment contains a future advance provision.
- B. ☐ **All Debts.** All present and future debts from Assignor and _____

to Lender, even if this Assignment is not specifically referenced or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Assignment, each agrees that it will secure debts incurred either individually or with others who may not sign this Assignment. Nothing in this Assignment constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide notice of the right of rescission, Lender waives any subsequent security interest in the Assignor's principal dwelling that is created by this Assignment. This Assignment will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Assignment will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. **Sums Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Assignment.

5. **PAYMENTS.** Assignor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Assignment.
6. **COLLECTION OF RENTS.** Assignor may collect, receive, enjoy and use the Rents so long as Assignor is not in default. Assignor will not collect in advance any Rents due in future lease periods, unless Assignor first obtains Lender's written consent. Upon default, Assignor will receive any Rents in trust for Lender and Assignor will not commingle the Rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Assignor agrees that this Assignment is immediately effective between Assignor and Lender and effective as to third parties on the recording of this Assignment.
7. **WARRANTIES AND REPRESENTATIONS.** To induce Lender to enter into the Loan, Assignor makes these representations and warranties for as long as this Assignment is in effect.
- A. **Power.** Assignor is duly organized, validly existing and in good standing under the laws in the jurisdiction where Assignor was organized and is duly qualified, validly existing and in good standing in all jurisdictions in which Assignor operates or Assignor owns or leases property. Assignor has the power and authority to enter into this transaction and to carry on Assignor's business or activity as now conducted.
- B. **Authority.** The execution, delivery and performance of this Assignment and the obligation evidenced by this Assignment: are within Assignor's duly authorized powers; has received all necessary governmental approval; will not violate any provision of law or order of court or governmental agency; and will not violate any agreement to which Assignor is a party or to which Assignor is or any of Assignor's property is subject.

- C. Name and Place of Business. Other than previously disclosed in writing to Lender, Assignor has not changed Assignor's name or principal place of business within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Assignor does not and will not use any other name and will preserve Assignor's existing name, trade names and franchises.
- D. Ownership or Lease of Property. Assignor owns or leases all property that Assignor needs to conduct Assignor's business and activities. All of Assignor's property is free and clear of all liens, security interests, encumbrances and other adverse claims and interests, except those Lender previously agreed to in writing.
- E. Compliance with Laws. Assignor is not violating any laws, regulations, rules, orders, judgments or decrees applicable to Assignor or Assignor's property, except for those that Assignor is challenging in good faith through proper proceedings after providing adequate reserves to fully pay the claim and its challenge should Assignor lose.
- F. Title. Assignor has good title to the Leases, Rents and Property and the right to assign, grant, bargain, convey and mortgage to Lender as additional security the Leases and Rents, and no other person has any right in the Leases and Rents.
- G. Recordation. Assignor has recorded the Leases as required by law or as otherwise prudent for the type and use of the Property.
- H. Default. No default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Assignor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Assignor or any party to the Lease defaults or fails to observe any applicable law, Assignor will promptly notify Lender.
- I. Lease Modification. Assignor has not sublet, modified, extended, canceled, or otherwise altered the Leases, or accepted the surrender of the Property covered by the Leases (unless the Leases so required).
- J. Encumbrance. Assignor has not assigned, compromised, subordinated or encumbered the Leases and Rents.
8. COVENANTS. Assignor agrees to the following covenants:
- A. Rent Abatement and Insurance. When any Lease provides for an abatement of Rents due to fire, flood or other casualty, Assignor will insure against this risk of loss with a policy satisfactory to Lender. Assignor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.
- B. Copies of Leases. Assignor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.
- C. Right to Rents. Immediately after the execution of this Assignment, Assignor will notify all current and future tenants and others obligated under the Leases of Lender's right to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Assignor or Lender asks them to do so.
- D. Accounting. When Lender requests, Assignor will provide to Lender an accounting of Rents, prepared in a form acceptable to Lender, subject to generally accepted accounting principles and certified by Assignor or Assignor's accountant to be current, accurate and complete as of the date requested by Lender.
- E. Lease Modification. Assignor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so required) without Lender's written consent.
- F. Encumbrance. Assignor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.
- G. Future Leases. Assignor will not enter into any future Leases without prior written consent from Lender. Assignor will execute and deliver such further assurances and assignments as to these future Leases as Lender requires from time to time.
- H. Personal Property. Assignor will not sell or remove any personal property on the Property, unless Assignor replaces this personal property with like kind for the same or better value.
- I. Prosecution and Defense of Claims. Assignor will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Assignor's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against parties who supply labor or materials to improve or maintain the leaseholds subject to the Leases and/or the Property.
- J. Liability and Indemnification. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses or damages due to Lender's gross negligence or intentional torts to the extent permitted by law. Otherwise, Assignor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.
- K. Leasehold Estate. Assignor will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest, and agrees that the Leases shall remain in full force and effect regardless of any merger of the Assignor's interests and of any merger of the interests of Assignor and any party obligated under the Leases.
- L. Insolvency. Lender will be the creditor of each tenant and of anyone else obligated under the Leases who is subject to an assignment for the benefit of creditors, an insolvency, a dissolution or a receivership proceeding, or a bankruptcy.

(page 3 of 7)

9. **TRANSFER OF AN INTEREST IN THE ASSIGNOR.** If Assignor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A. A beneficial interest in Assignor is sold or transferred.
 - B. There is a change in either the identity or number of members of a partnership or similar entity.
 - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.
- However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Assignment.
10. **DEFAULT.** Assignor will be in default if any of the following occur with regard to the Secured Debts that are secured by this Assignment:
- A. **Payments.** Assignor fails to make a payment in full when due.
 - B. **Insolvency or Bankruptcy.** Assignor makes an assignment for the benefit of creditors or becomes insolvent, either because Assignor's liabilities exceed Assignor's assets or Assignor is unable to pay Assignor's debts as they become due; or Assignor petitions for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or is the subject of a petition or action under such laws and fails to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
 - C. **Death or Incompetency.** If Assignor is an individual, Assignor dies or is declared legally incompetent.
 - D. **Business Termination.** If Assignor is not an individual, Assignor merges, dissolves, reorganizes or ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.
 - E. **Failure to Perform.** Assignor fails to perform any condition or to keep any promise or covenant of this Assignment, any other document evidencing or pertaining to the Loan, or any other debt or agreement Assignor has with Lender.
 - F. **Misrepresentation.** Assignor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - G. **Property Transfer.** Assignor transfers all or a substantial part of Assignor's money or property.
 - H. **Property Value.** The value of the Property declines or is impaired.
 - I. **Name Change.** Assignor changes Assignor's name or assumes an additional name without notifying Lender before making such a change.
 - J. **Material Change.** Without first notifying Lender, there is a material change in Assignor's business, including ownership, management, and financial conditions.
 - K. **Insecurity.** Lender reasonably believes that Lender is insecure.
11. **REMEDIES.** After Assignor defaults, and after Lender gives any legally required notice and opportunity to cure the default, Lender may at Lender's option do any one or more of the following:
- A. **Acceleration.** Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due.
 - B. **Additional Security.** Lender may demand additional security or additional parties to be obligated to pay the Secured Debts.
 - C. **Sources.** Lender may use any and all remedies Lender has under the state law where the Property is located or federal law or in any instrument evidencing or pertaining to the Secured Debts.
 - D. **Insurance Benefits.** Lender may make a claim for any and all insurance benefits or refunds that may be available on Assignor's default.
 - E. **Payments Made On Assignor's Behalf.** Amounts advanced on Assignor's behalf will be immediately due and may be added to the Secured Debts.
 - F. **Rents.** Lender may terminate Assignor's right to collect Rents and directly collect and retain Rents in Lender's name without taking possession of the Property and to demand, collect, receive, and sue for the Rents, giving proper receipts and releases. In addition, after deducting all reasonable expenses of collection from any collected and retained Rents, Lender may apply the balance as provided for by the Secured Debts.
 - G. **Entry.** Lender may enter, take possession, manage and operate all or any part of the Property; make, modify, enforce or cancel or accept the surrender of any Leases; obtain or evict any tenants and licensees; increase or reduce Rents; decorate, clean and make repairs or do any other act or incur any other cost Lender deems proper to protect the Property as fully as Assignor could do. Any funds collected from the operation of the Property may be applied in such order as Lender may deem proper, including, but not limited to, payment of the following: operating expenses, management, brokerage, attorneys' and accountants' fees, the Secured Debts, and toward the maintenance of reserves for repair or replacement. Lender may take such action without regard to the adequacy of the security, with or without any action or proceeding, through any person or agent, or receiver to be appointed by a court, and irrespective of Assignor's possession. The collection and application of the Rents or the entry upon and taking possession of the Property as set out in this section shall not cure or waive any notice of default under the Secured Debts, this Assignment, or invalidate any act pursuant to such notice. The enforcement of such remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that such collection and application of Rents may have cured the original default.

H. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

12. APPOINTMENT OF A RECEIVER. On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of Lender to take possession of the Property and the Leases, with the power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.

13. COLLECTION EXPENSES AND ATTORNEYS' FEES. To the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Assignment. Unless the applicable law that governs this Assignment is North Dakota, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. These expenses will bear interest from the date of payment until paid in full at the contract interest rate then in effect for the Loan. To the extent permitted by the United States Bankruptcy Code, Assignor agrees to pay the reasonable attorneys' fees Lender incurs to collect this Assignment as awarded by any court exercising jurisdiction under the Bankruptcy Code.

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

Assignor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Assignor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Assignor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Assignor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Assignor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Assignor or any tenant of any Environmental Law. Assignor will immediately notify Lender in writing as soon as Assignor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Assignor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Assignor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Assignor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Assignor and any tenant are in compliance with applicable Environmental Law.

(page 5 of 7)

- I. Upon Lender's request and at any time, Assignor agrees, at Assignor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Assignor's obligations under this section at Assignor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Assignor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses to the extent permitted by law, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Assignment and in return Assignor will provide Lender with collateral of at least equal value to the Property secured by this Assignment without prejudice to any of Lender's rights under this Assignment.
- L. Notwithstanding any of the language contained in this Assignment to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Assignment regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.
15. **TERM.** This Assignment will remain in full force and effect until the Secured Debts are paid or otherwise discharged and Lender is no longer obligated to advance funds under any loan or credit agreement which is a part of the Secured Debts. If any or all payments of the Secured Debts are subsequently invalidated, declared void or voidable, or set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act or other state or federal law, then the Secured Debts will be revived and will continue in full force and effect as if this payment had not been made.
16. **CO-SIGNERS.** If Assignor signs this Assignment but does not sign the Secured Debts, Assignor does so only to assign Assignor's interest in the Property to secure payment of the Secured Debts and Assignor does not agree to be personally liable on the Secured Debts. If this Assignment secures a guaranty between Lender and Assignor, Assignor agrees to waive any rights that may prevent Lender from bringing any action or claim against Assignor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.
17. **WAIVERS.** Except to the extent prohibited by law, Assignor waives all homestead exemption rights relating to the Property.
18. **U.C.C. PROVISIONS.**
- ☐ **Construction Loan.** This Assignment secures an obligation incurred for the construction of an improvement on the Property.
19. **OTHER TERMS.** If checked, the following are applicable to this Assignment:
- ☐ **Line of Credit.** The Secured Debts include a revolving line of credit provision. Although the Secured Debts may be reduced to a zero balance, this Assignment will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.
- ☐ **Additional Terms.**
20. **APPLICABLE LAW.** This Assignment is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.
21. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** Each Assignor's obligations under this Assignment are independent of the obligations of any other Assignor. Lender may sue each Assignor individually or together with any other Assignor. Lender may release any part of the Property and Assignor will still be obligated under this Assignment for the remaining Property. The duties and benefits of this Assignment will bind and benefit the successors and assigns of Lender and Assignor.
22. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Assignment may not be amended or modified by oral agreement. No amendment or modification of this Assignment is effective unless made in writing and executed by Assignor and Lender. This Assignment is the complete and final expression of the agreement. If any provision of this

(page 6 of 7)

Assignment is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

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

24. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail and by registered or certified mail, return receipt requested, to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. Assignor will inform Lender in writing of any change in Assignor's name, address or other application information. Assignor will provide Lender any financial statements or information Lender requests. All financial statements and information Assignor gives Lender will be correct and complete. Assignor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Assignor's obligations under this Assignment and to confirm Lender's lien status on any Property. Time is of the essence.

25. SIGNATURES. By signing under seal, Assignor agrees to the terms and covenants contained in this Assignment. Assignor also acknowledges receipt of a copy of this Assignment.

(Entity Name)

Wendy J. Bellamy (Seal)
(Signature) WENDY J. BELLAMY

Signed, sealed and delivered in the presence of:

[Signature]
(Witness)

Jennifer C. Wah (Seal)
(Signature)

Jennifer C. Wah
(Witness)

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Abbeville ss.

Personally appeared before me the undersigned witness who, being duly sworn, depose and said that (s)he saw the Assignor (and each Assignor if more than one) sign, seal and deliver the foregoing Assignment and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 14TH day

of JANUARY, 2006

Jennifer C. Wah (Seal)
Notary Public for South Carolina

My commission expires: 4-13-2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM HORRY COUNTY
Case No.: 2009-CP-26-5743

Hotel and Motel Holdings, LLC, Respondent.,

v.

BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., Mozingo &
Wallace Architects, LLC, Kersi S. Shroff, and Shroff Management,
Inc., Defendants,

BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., Appellants,

v.

First Palmetto Savings Bank, F.S.B., Jack Jones, Donald D. Godwin,
and Bhupendra Patel, Respondents.

PROOF OF SERVICE

I hereby certify that I have served upon Respondents the Record on Appeal via hand delivery and U.S. mail addressed as follows:

HAND DELIVERED

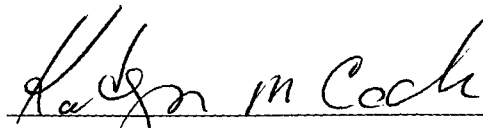
Audra M. Byrd
R. Wayne Byrd
P.O. Box 2116
Myrtle Beach, South Carolina 29578
Attorneys for Respondents Hotel and Motel Holdings, LLC,
Donald Godwin, and Jack Jones

U.P. S. / FedEx
William H. Short
P.O. Box 11889
Columbia, South Carolina 29211
Attorney for Respondent First Palmetto Savings Bank, FSB

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DEC 18 2013

SC Court of Appeals

A handwritten signature in black ink, reading "Kathryn M. Cook", written over a horizontal line.

Kathryn M. Cook, Esq.

SC Bar No. 1371

Cook & Roy, LLC

P.O. Box 4086

North Myrtle Beach, SC 29597

(843) 663-1200

Email: kcook@cookandroy.com

Attorney for Appellants

North Myrtle Beach, South Carolina

December 16 , 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM HORRY COUNTY
Case No.: 2009-CP-26-5743

Hotel and Motel Holdings, LLC, Respondent.,

v.

BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., Mozingo &
Wallace Architects, LLC, Kersi S. Shroff, and Shroff Management,
Inc., Defendants,

BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., Appellants,

v.

First Palmetto Savings Bank, F.S.B., Jack Jones, Donald D. Godwin,
and Bhupendra Patel, Respondents.

CERTIFICATE OF COUNSEL

I hereby certify that I have included in the Record on Appeal all matters properly proposed by the parties that are relevant to the appeal and were presented to the lower court. However, counsel for Respondents designated certain matter that is not relevant and was not presented to the lower court. Counsel has written Respondents' counsel under separate cover and the parties will attempt to reach a resolution of these issues prior to the due date of the Final Briefs and Record on Appeal before the S.C. Court of Appeals.

RECEIVED

DEC 18 2013

SC Court of Appeals


Kathryn M. Cook, Esq.

SC Bar No. 1371

Cook & Roy, LLC

P.O. Box 4086

North Myrtle Beach, SC 29597

(843) 663-1200

Email: kcook@cookandroy.com

Attorney for Appellants

North Myrtle Beach, South Carolina

December 16 , 2013

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JAN 06 2014

APPEAL FROM HORRY COUNTY
William H. Seals, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2009-CP-26-5743

Hotel and Motel Holdings, LLC, ...Respondent

v.

BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., Mozingo &
Wallace Architects, LLC, Kersi S. Shroff, and Shroff Management,
Inc., ...Defendants

of whom

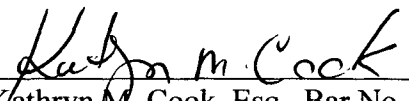
BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc.,
a/k/a Americana Motel of Myrtle Beach, Inc., ...Appellants

v.

First Palmetto Savings Bank, F.S.B., Jack Jones, Donald D. Godwin,
and Bhupendra Patel, ...Respondents

CERTIFICATE OF COUNSEL

I hereby certify that I have included in the Record on Appeal all matters properly proposed by the parties that are relevant to the appeal and were presented to the lower court. However, counsel for Respondents designated certain matter that is not relevant and/or was not presented to the lower court. Counsel wrote Respondents' counsel advising of the same and received no objection to excluding that matter from the Record on Appeal.


Kathryn M. Cook, Esq., Bar No. 1371
James Lewis, Bar No. 77698
Cook & Roy, LLC
P.O. Box 4086
North Myrtle Beach, SC 29597
(843) 663-1200

Attorney for Appellants BJC Enterprises,
LLC, Wendy J. Bellamy and Americana, Inc.

January 6, 2014