

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2009-CP-26-5743

RECEIVED

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SC Court of Appeals

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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Attorneys for Respondent Bhupendra Patel

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.

HYPOTHECATION AGREEMENT

JANUARY 17,

~~XX~~ 2008

TO: **FIRST PALMETTO SAVINGS BANK, F.S.B.**

MYRTLE BEACH, S.C.

BJC ENTERPRISES, LLC

In consideration of your making, renewing or extending a loan or loans to 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"**

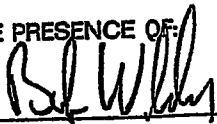
and for the purpose of enabling Debtor to obtain credit therefor. I hereby certify and warrant that the said property is completely free of all security interests, except such as may be created hereunder and has been duly assigned, released, transferred and delivered by me to Debtor and by these presents, 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 for 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.

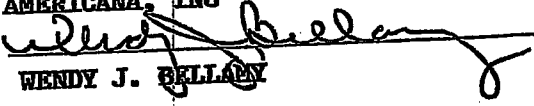
Furthermore, I request that you give, or continue to give, to Debtor credit in the form of loans, renewals or extensions as aforesaid, and in consideration of all or any such credit so granted by you, I agree that all or any property pledged or hypothecated as aforesaid, shall be subjected in your hands 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 for any action taken or omitted at the direction of or on authority from Debtor.

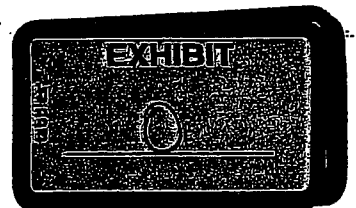
This agreement shall be binding on my heirs, executors, administrators and assigns and shall inure to the benefits of your successors and assigns.

IN THE PRESENCE OF:



**AMERICANA MOTEL OF MYRTLE BEACH, INC AKA
AMERICANA, INC**


WENDY J. BELLAMY



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H
Biro & MacDonald, P.A.
Attorneys at Law
815 North Ave. N., Suite 200
Myrtle Beach, S.C. 29577

COPY

446921
DEFENDANT'S
EXHIBIT

FILED
HORRY COUNTY, S.C.
2005 JAN 19 AM 9:03

12
7-28-10 JAM

BALLEW V. SKIPPER
REGISTRAR OF DEEDS

This document was prepared by (name, address, phone): FIRST PALMETTO SAVINGS BANK
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: AMERICANA MOTEL OF MYRTLE BEACH, INC AKA AMERICANA,
INC
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"

AND Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. 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. Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. 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. Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. 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 Myrtle Beach, South Carolina 29577
(County) (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.

MORTGAGE
3904 0028

EXHIBIT

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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.

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, have been duly authorized, have received all necessary 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,

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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: AMERICANA MOTEL OF MYRTLE BEACH, INC AKA AMERICANA, INC

Wendy J. Bellamy (Signature) Wendy J. Bellamy (Date) Wendy J. Bellamy (Seal)

(Signature) (Date) (Seal)

Signed, Sealed and delivered in the presence of:

[Signature]
(Witness)

Jennifer C. Walsh
(Witness)

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Myrtle Beach } 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. Walsh (Seal)
Notary Public for South Carolina

[Signature]

My commission expires: 4-13-2010

EXHIBIT "A"

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, 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 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 that map or plat by N.C. Hughes, Jr., Engineer. 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.

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 & 1/2 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 rear 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 (½) 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 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 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 (½) 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 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 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.

Rice & MacDonald, P.A.
Attorneys at Law
950 48th Ave. N., Suite 200
Myrtle Beach, S.C. 29577

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FILED
HORRY COUNTY, S.C.
/ 2005 JAN 19 AM 9:03
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: AMERICANA MOTEL OF MYRTLE BEACH, INC AKA AMERICANA, INC

20-1820982

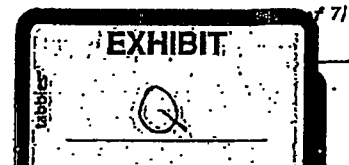
☐ Refer to the Addendum that is attached and incorporated herein for additional Assignors.

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 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 may be a party.

- 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 franchisees.
- 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.

(page 4 of 7)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2009-CP-2657

FILED
HORRY COUNTY
2009 NOV -4 PM 1:19
JANIE HUGGINS-MAST
CLERK OF COURT

Hotel & 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.

DEFENDANT BJC ENTERPRISES,
LLC'S ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT

(Demand for Jury Trial)

The Defendant, BJC Enterprises, LLC, answering the Amended Complaint of the Plaintiff, would respectfully show and allege unto this Honorable Court, as follows:

FIRST DEFENSE

1. Each and every allegation not hereinafter admitted, modified, or qualified is denied and strict proof is demanded thereof.
2. The answering Defendant does not have sufficient knowledge as to the allegations of Paragraphs Two, Three, Eight, Nine and Ten (2, 3, 8, 9 and 10) and are therefore denied.
3. The allegations of Paragraphs Four, Five, Six, Seven, Twelve and Thirteen (4, 5, 6, 7, 12 and 13) are admitted.
4. In answering Paragraph Eleven (11), the answering Defendant deny such and demands strict proof thereof.
5. The allegations of Paragraph Fourteen (14) is denied.
6. In answering Paragraphs Fifteen, Sixteen, Seventeen, Eighteen, Nineteen, Twenty, Twenty-One, Twenty-Two, Twenty-Seven, Twenty-Eight, Twenty-Nine, Thirty, Thirty-

One, Thirty-Two, Thirty-Three, Thirty-Four, Thirty-Five, Thirty-Six, Thirty-Seven, Thirty-Eight, Thirty-Nine and Forty (15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40), the allegations therein are denied in that the Plaintiff comes before this Court with unclean hands and that it is attempting to perpetrate a fraud to deprive the answering Defendant as well as other Defendants of their rights and remedies to the property subject to this action.

SECOND DEFENSE AND FIRST COUNTERCLAIM

7. The allegations of the First Defense are incorporated herein and made a part and parcel hereof.

8. The Answering Defendant asserts unclean hands on the part of the Plaintiff as an affirmative defense to Plaintiff's claims.

THIRD DEFENSE AND SECOND COUNTERCLAIM

9. The allegations of the First and Second Defenses are incorporated herein and made a part and parcel hereof.

10. The answering Defendant asserts estoppel as an affirmative defense to Plaintiff's claims.

FOURTH DEFENSE AND THIRD COUNTERCLAIM

11. The allegations of the First, Second and Third Defenses are incorporated herein and made a part and parcel hereof.

12. The answering Defendant asserts waiver as an affirmative defense to Plaintiff's claims.

FIFTH DEFENSE AND FOURTH COUNTERCLAIM

13. The allegations of the First, Second, Third and Fourth Defenses are incorporated herein and made a part and parcel hereof.

14. Upon information and belief, the Plaintiff together with First Palmetto Savings Bank, FSB has entered into an agreement or arrangement for the purpose of specifically harming BJC Enterprises, LLC by obtaining possession of its interests in certain real estate and its other assets including operating funds, which Plaintiff improperly obtained in the calendar year 2009.

15. Because of the conspiracy by the Plaintiff with First Palmetto Savings Bank, FSB the Defendant BJC Enterprises, LLC has been harmed and continues to be harmed.

16. The Defendant BJC Enterprises, LLC is entitled to a dismissal of the Plaintiff's Foreclosure Complaint as well as actual and punitive damages from the Plaintiff.

SIXTH DEFENSE AND FIFTH COUNTERCLAIM

17. The allegations of the First, Second, Third, Fourth, Fifth Defenses are incorporated herein and made a part and parcel hereof.

18. The Plaintiff converted assets of the Defendant BJC Enterprises, LLC and such conversion has harmed the said Defendant.

19. The Defendant BJC Enterprises, LLC is entitled to a judgment against the Plaintiff for actual and punitive damages.

SEVENTH DEFENSE AND SIXTH COUNTERCLAIM

20. The allegations of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are incorporated herein and made a part and parcel hereof.

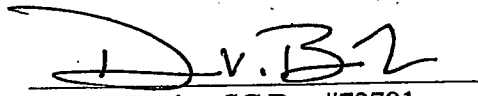
21. The Plaintiff has interfered with the banking relationship between BJC Enterprises, LLC and First Palmetto Savings Bank, FSB and the interference has caused this answering Defendant damages.

22. The Defendant BJC Enterprises, LLC is entitled to an award of actual and punitive damages against the Plaintiff.

WHEREFORE, having answered the Amended Complaint, the Defendant BJC

Enterprises, LLC prays that the same be dismissed with prejudice, for a judgment against the Plaintiff for actual and punitive damages, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

McNAIR LAW FIRM, P.A.

A handwritten signature in black ink, appearing to read "D.V. Butler", is written over a horizontal line.

Dan V. Butler, SC Bar #72791

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Fax: (843) 443-9137

Email: dbutler@mcnair.net

Attorneys for the Defendant BJC Enterprises, LLC

Myrtle Beach, South Carolina

October 19, 2009

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2009-CP-26-57

Hotel & 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.

DEFENDANTS WENDY J. BELLAMY
AND AMERICANA, INC. a/k/a
AMERICANA MOTEL OF MYRTLE
BEACH, INC.'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT

(Demand for Jury Trial)

FILED
HORRY COUNTY
2009 NOV -4 PM 1:19
CLERK OF COURT
JELANIE HUGHES-JACKSON

The Defendants, Wendy J. Bellamy and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc., answering the Amended Complaint of the Plaintiff, would respectfully show and allege unto this Honorable Court, as follows:

FIRST DEFENSE

1. Each and every allegation not hereinafter admitted, modified, or qualified is denied and strict proof is demanded thereof.

2. The answering Defendants do not have sufficient knowledge as to the allegations of Paragraphs Two, Three, Eight, Nine and Ten (2, 3, 8, 9 and 10) and are therefore denied.

3. The allegations of Paragraphs Four, Five, Six, Seven, Twelve and Thirteen (4, 5, 6, 7, 12 and 13) are admitted.

4. In answering Paragraph Eleven (11), the answering Defendants denies such and demands strict proof thereof.

5. The allegations of Paragraph Fourteen (14) is denied.

6. In answering Paragraphs Fifteen, Sixteen, Seventeen, Eighteen, Nineteen,

Twenty, Twenty-One, Twenty-Two, Twenty-Seven, Twenty-Eight, Twenty-Nine, Thirty, Thirty-One, Thirty-Two, Thirty-Three, Thirty-Four, Thirty-Five, Thirty-Six, Thirty-Seven, Thirty-Eight, Thirty-Nine and Forty (15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40), the allegations therein are denied in that the Plaintiff comes before this Court with unclean hands and that it is attempting to perpetrate a fraud to deprive the answering Defendants as well as other Defendants of their rights and remedies to the property subject to this action.

SECOND DEFENSE AND FIRST COUNTERCLAIM

7. The allegations of the First Defense are incorporated herein and made a part and parcel hereof.

8. The answering Defendants assert unclean hands on the part of the Plaintiff as an affirmative defense to Plaintiff's claims.

THIRD DEFENSE AND SECOND COUNTERCLAIM

9. The allegations of the First and Second Defenses are incorporated herein and made a part and parcel hereof.

10. The answering Defendants assert estoppel as an affirmative defense to Plaintiff's claims.

FOURTH DEFENSE AND THIRD COUNTERCLAIM

11. The allegations of the First, Second and Third Defenses are incorporated herein and made a part and parcel hereof.

12. The answering Defendants assert waiver as an affirmative defense to Plaintiff's claims.

FIFTH DEFENSE AND FOURTH COUNTERCLAIM

13. The allegations of the First, Second, Third and Fourth Defenses are incorporated

herein and made a part and parcel hereof.

14. Upon information and belief, the Plaintiff together with First Palmetto Savings Bank, FSB has entered into an agreement or arrangement for the purpose of specifically harming Wendy J. Bellamy and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. by obtaining possession of their interests in certain real estate and their other assets including operating funds, which Plaintiff improperly obtained in the calendar year 2009.

15. Because of the conspiracy by the Plaintiff with First Palmetto Savings Bank, FSB the Defendants Wendy J. Bellamy and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. have been harmed and continues to be harmed.

16. The Defendants Wendy J. Bellamy and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. are entitled to a dismissal of the Plaintiff's Foreclosure Complaint as well as actual and punitive damages from the Plaintiff.

SIXTH DEFENSE AND FIFTH COUNTERCLAIM

17. The allegations of the First, Second, Third, Fourth, Fifth Defenses are incorporated herein and made a part and parcel hereof.

18. The Plaintiff converted assets of the Defendants Wendy J. Bellamy and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. and such conversion has harmed the said Defendants.

19. The Defendants Wendy J. Bellamy and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. are entitled to a judgment against the Plaintiff for actual and punitive damages.

SEVENTH DEFENSE AND SIXTH COUNTERCLAIM

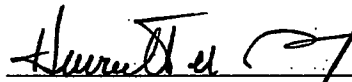
20. The allegations of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are incorporated herein and made a part and parcel hereof.

21. The Plaintiff has interfered with the banking relationship between Wendy J. Bellamy and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. and First Palmetto Savings Bank, FSB and the interference has caused these answering Defendants damages.

22. The Defendants Wendy J. Bellamy and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. are entitled to an award of actual and punitive damages against the Plaintiff.

WHEREFORE, having answered the Amended Complaint, the Defendants Wendy J. Bellamy and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc. pray that the same be dismissed with prejudice, for a judgment against the Plaintiff for actual and punitive damages, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

McNAIR LAW FIRM, P.A.



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Fax: (843) 443-9137

Email: hgolding@mcnair.net

*Attorneys for the Defendants Wendy J. Bellamy and
Americana, Inc. a/k/a Americana Motel of Myrtle
Beach, Inc.*

Myrtle Beach, South Carolina

October 19, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-5743

Hotel and Motel Holdings, LLC,)
)
Plaintiffs)

v.)

AMENDED ANSWER, COUNTERCLAIMS
AND THIRD-PARTY COMPLAINT OF
DEFENDANTS BJC ENTERPRISES,
LLC, WENDY J. BELLAMY, AND
AMERICANA, INC.
(Jury Trial Demanded)

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)

v.)

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

Third-Party Defendants)

HORRY COUNTY
10 JUN -9 AM 10:18
NELLIE B. BELLAMY
CLERK OF COURT

Defendants/Third-Party Plaintiffs BJC Enterprises, LLC, Americana Motel of Myrtle Beach, Inc., Wendy J. Bellamy, (hereafter collectively "Owners"), answering the Amended Complaint of Plaintiff and by way of counterclaims and Third-Party Complaint, would respectfully show and allege unto this Honorable Court as follows and demands a jury trial:

FOR A FIRST DEFENSE

1. That each and every allegation not hereinafter admitted, modified or qualified is denied and strict proof demanded thereof.

2. That Paragraph 1 is admitted.

3. That Defendant Owners do not have sufficient information to form a belief as to the allegations of Paragraphs 2, 3, 8, 9, 10, and 12 and therefore deny the same and demand strict proof thereof.

4. That as to the allegations of Paragraph 4, Defendant Owners admit Defendant BJC Enterprises, LLC is a South Carolina corporation and is owner of properties described in a mortgage dated January 14, 2005 and recorded January 19, 2005, but the remaining allegations of Paragraph 4 are denied and strict proof demanded thereof.

5. That Paragraph 5 is admitted.

6. That as to the allegations of Paragraph 6, Defendant Owners admit Wendy J. Bellamy is a citizen of Horry County, South Carolina and is the owner of property described in a mortgage dated January 14, 2005 and recorded January 19, 2005, but the remaining allegations of Paragraph 6 are denied and strict proof demanded thereof.

7. That as to the allegations of Paragraph 7, Defendant Owners admit Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. is a South Carolina corporation and is the owner of property described in a mortgage dated January 14, 2005 and recorded January 19, 2005, but the remaining allegations of Paragraph 7 are denied and strict proof demanded thereof.

8. That as to the allegations of Paragraph 11, Defendant Owners deny the same inasmuch as Plaintiff comes before this Court with unclean hands and as part of a conspiracy and fraud perpetuated in order to deny Defendant Owners as well as other Defendants of their rights and remedies with regard to the subject property.

9. That the allegations of Paragraph 13 are denied to the extent the same does not correctly state in context the language contained in the Note herein issue and Defendant Owners crave reference to said Note and deny all allegations inconsistent therewith.

10. That the allegations of Paragraphs 14 through 93 are denied and strict proof demanded thereof.

**AS TO ALL DEFENSES, COUNTERCLAIMS AND
THIRD-PARTY CLAIMS SET FORTH BELOW**

11. That the allegations of the First Defense are incorporated herein and made a part and parcel hereof.

12. That Wendy Bellamy is a citizen and resident of Horry County, South Carolina, and is a shareholder in a family-owned corporation known as Americana Motel of Myrtle Beach, Inc. (hereafter "Americana") and is one of three members of BJC Enterprises, LLC (hereafter "BJC") as will be more fully set forth below.

13. That BJC Enterprises, LLC is a corporation formed in October, 2004 to purchase an oceanfront hotel known as Emerald Shores and its first row parking lot (hereafter collectively "Emerald Shores") and Wendy Bellamy owns a 1/3 share of the company.

14. That Americana Motel of Myrtle Beach, Inc. is a South Carolina corporation which owns property in Horry County, South Carolina, including but not limited to property operated as a hotel known as the Rainbow Court and other rental property in Myrtle Beach, South Carolina and in which Wendy Bellamy is a shareholder.

15. That First Palmetto Savings Bank, F.S.B. (hereafter "Bank") is a Delaware banking corporation doing business in Horry County, South Carolina, who lent, on January 14, 2005, part of the purchase money of \$5,573,146.62 to BJC to purchase the Emerald Shores property.

16. That Jack H. Jones is a citizen and resident of Horry County, South Carolina and is the paternal uncle of Wendy Bellamy.

17. That Donald D. Godwin is a citizen and resident of Horry County, South Carolina.

18. That Jack Jones and Donald Godwin formed Plaintiff Hotel & Motel Holdings, LLC (hereafter "H & M") on June 15, 2009 as a South Carolina corporation doing business in Horry County, for the purpose of converting the property and assets of Wendy Bellamy, BJC, Americana, Harvey Jones, and Tripp Coan as part of a scheme and conspiracy with Bank and Bhupendra Patel.

19. That Bhupendra Patel (hereafter "Patel") is a citizen and resident of Horry County, South Carolina, and has taken over some or all of the property, leases, rents and profits that are the subject of this foreclosure action and other income-producing property owned by Wendy Bellamy and Harvey Jones that is not subject to mortgage in favor of Plaintiff or Third-Party Defendant Bank.

20. That as part of Third-Party Bank's loan transaction with BJC on January 14, 2005, no guaranty of Wendy Bellamy was required, but the following documents were executed and recorded, where applicable, as part of that transaction:

- (a) A first mortgage of the Emerald Shores property consisting of 3 lots from BJC bearing Tax Map Nos.: 181-11-01-001, 181-11-01-002, and 181-10-10-007;
- (b) A first mortgage from Wendy Bellamy of Lot 14, Block 21 of the Hotel Section of Myrtle Beach, bearing Tax Map No.: 181-10-10-016;

- (c) A first mortgage from Americana of the Rainbow Court Motel property consisting of Lots 2-9, Block 21 of the Hotel Section of Myrtle Beach, bearing Tax Map No.: 181-10-10-005;
- (d) A first mortgage from Americana of Lots 17 and 18, Block 21 of the Hotel Section of Myrtle Beach, bearing Tax Map Nos.: 181-10-10-002 and 181-10-10-003;
- (e) A first mortgage from Americana of Lot 1, Block 21 of the Hotel Section of Myrtle Beach, bearing Tax Map No.: 181-10-10-004;
- (f) A first mortgage from Americana of Lot 16, Block 21 of the Hotel Section of Myrtle Beach, bearing Tax Map No.: 181-10-10-001; and
- (g) A first mortgage from Americana of Lot 6, one-half of Lots 7 and 8, and part of Lot 9, Block 28 of the Hotel Section of Myrtle Beach, bearing Tax Map No.: 181-10-07-010 and 181-10-07-011.

These will be collectively referred to as "Mortgaged Properties."

21. That on or about January 17, 2009, Third-Party Defendant Bank renewed its loan with BJC at which time BJC was current on the payments due under the Note held by Third-Party Defendant Bank.

22. That on February 2, 2009, even though BJC, Americana, and Defendant Wendy Bellamy were current on the Note, Third-Party Defendant Bank instituted a foreclosure action on the Mortgaged Properties bearing Civil Action No. 2009-CP-26-0950.

23. That Third-Party Defendant Bank later dismissed that foreclosure action.

24. That Defendant Wendy Bellamy paid One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) to Third-Party Defendant Bank in March, 2009, keeping the obligations of BJC current on the Note.

25. That without the knowledge of Defendant Bellamy, BJC, and Americana, Third-Party Defendants Jones, Godwin, Patel, and Bank entered into a conspiracy to:

(a) convert and steal the income of the Mortgaged Properties and other property from Defendant Owners and prevent said funds from being used by Defendant Owners to pay on the Note to Third-Party Defendant Bank;

(b) facilitate Third-Party Defendants Jones and Godwin forming of a corporation, Plaintiff H & M, to obtain an Assignment of the Note, Mortgages, and Guaranties from Third-Party Defendant Bank for either nominal or no consideration or for much less than fair market value;

(c) shut out Bellamy from the management of the Mortgaged Properties by putting Third-Party Defendant Patel in charge of the money, books, records, debts, income, expenses, and day to day operation of the Mortgaged Properties and other real property owned by Defendant Bellamy and Harvey Jones, which is not subject to any mortgage in favor of Third-Party Defendant Bank or Plaintiff;

(d) required Defendant Bellamy to sign a personal guaranty in January, 2008 to put at risk valuable property she owned that was not security for the 2005 debt so said property could be obtained by Third-Party Defendants Jones, Godwin, and/or Plaintiff as part of their scheme; and

(e) have H & M foreclose on the mortgages to obtain all the properties after making it impossible for BJC, Americana, and Bellamy to keep current the payments to Third-Party Defendant Bank because of their wrongful takeover of the property and conversion of income.

26. That Plaintiff Third-Party Defendants Jones, Godwin, and Patel conspired and converted the income-producing assets of Defendant Owners and withheld said income that should have been paid to Third-Party Defendant Bank with the knowledge and participation of Third-Party Defendant Bank.

27. That on June 5, 2009, in furtherance of this scheme and conspiracy, Bank filed three actions for breach of guaranties against Defendant Bellamy, Harvey Jones, and Tripp Coan, which individual guaranties were executed in January, 2008 for the 2005 debt obligation as part of the conspiracy set forth above.

28. That in furtherance of this scheme and conspiracy between Plaintiff and Third-Party Defendants, Bank instituted on June 11, 2009 this foreclosure action against BJC, Americana, and Wendy Bellamy, wherein Bank sought to foreclose on the mortgages and obtain the Mortgaged Properties.

29. That in furtherance of this scheme and conspiracy, Third-Party Defendant Bank assigned to Plaintiff H & M the Bellamy Guaranty, the BJC Note, Mortgages, and other security interests given by BJC, Americana, Harvey Jones, Wendy Bellamy, and Tripp Coan in connection with the 2005 loan in a transaction that was not arm's length.

30. That after the assignment of the Note, Mortgages and Guaranty Agreements, Plaintiff H & M was substituted as Plaintiff in each of the Guaranty actions and was substituted as Plaintiff in this foreclosure as part of the continuing conspiracy.

31. That Plaintiff H & M and Third-Party Defendants Jones, Godwin, and Patel have continued to trespass upon the Mortgaged Properties and other real estate owned by Wendy Bellamy and Harvey Jones and have continued to convert and steal all income produced by these

assets in furtherance of keeping Defendant Owners from making payments on the debt to Third-Party Defendant Bank, now wrongfully held by Plaintiff H & M.

32. That Plaintiff H & M and Third-Party Defendant Bank, although nothing more than lenders and/or mortgagees, have interfered in the operation of the Mortgaged Properties and other properties of Bellamy and Harvey Jones to the extent that each has made it impossible to and interfered with Defendant Owners' ability to perform and make payments under the loan and Note here in issue.

33. That Third-Party Defendant Patel, with the consent of and at the direction of Plaintiff H & M and Third-Party Defendants, has advised renters who lease property covered by the mortgages to pay no rent although the renters have and are still occupying the same. See Exhibit A attached hereto and incorporated herein.

34. That since the fall of 2008, monies earned and/or paid by renters for the use of Mortgaged Properties and other properties owned by Bellamy have been converted and stolen by Plaintiff H & M, Third-Party Defendants Patel, Jones, and/or Godwin in furtherance of their scheme to convert and/or wrongfully obtain ownership of the Mortgaged Properties and other property owned by Wendy Bellamy, Harvey Jones, and Tripp Coan.

35. That because of the outrageous conduct of Plaintiff H & M and Third-Party Defendants, Defendant Bellamy attempted suicide, which thankfully, was unsuccessful.

36. That during her emotional breakdown as a result of the actions of Plaintiff and Third-Party Defendants, Defendant Bellamy executed a Durable Power of Attorney in favor of her paternal uncle, Third-Party Defendant Jones, unaware of his masterminding of this conspiracy.

37. That prior to and since the execution of that Durable Power of Attorney, Third-Party Defendant Jones has exercised that power wrongfully, in bad faith, and in breach of his

fiduciary duty to Defendant Bellamy, BJC, and Americana taking all actions in order to harm and cause damage to Defendant Owners and to further his own scheme of converting and/or stealing the property of Defendant Bellamy, Harvey Jones, BJC, Americana, and Tripp Coan.

38. That additionally, Third-Party Defendant Bank divulged private and confidential information concerning the BJC loan and its status to third parties advising each of the status of the note and mortgages, and other private information to the detriment of Defendant Owners, Harvey Jones, and Tripp Coan.

39. That said third parties, after having this private information divulged to them, contacted Defendant Bellamy advising her of the same.

FOR A SECOND DEFENSE
(Lack of Holder in Due Course)

40. That the allegations of the First Defense and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Second Defense.

41. That Plaintiff and Third-Party Defendants conspired together as forth above and below to obtain Defendant Bellamy's execution of a Guaranty under false pretenses in January, 2008 relating to an original lending relationship with Bank dating back to January, 2005.

42. That Plaintiff obtained the Assignment of Note and Mortgages and Guaranties and other security interest through a conspiracy with Third-Party Defendants, as set forth herein, in bad faith, and through tortuous interference with Defendant Owners' contractual relationship with Third-Party Defendant Bank and renters.

43. That as such, Plaintiff is not a holder in due course of said Note, Mortgages, Guaranties, and security agreements that are the subject matter of this action.

44. That Defendant Owners plead lack of holder in due course as a complete affirmative defense and are entitled to dismissal of this action with prejudice.

FOR A THIRD DEFENSE
(Lack of Consideration)

45. That the allegations of the First and Second Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Third Defense.

46. That Plaintiff's and Third-Party Defendant Bank's assignment was without consideration and was in furtherance of the fraud and conspiracy being perpetuated by Plaintiff and Third-Party Defendants on Defendant Owners.

47. That Defendant Bellamy pleads lack of consideration as a complete affirmative defense and is entitled to dismissal of this action with prejudice.

FOR A FOURTH DEFENSE
(Fraud in the Procurement)

48. That the allegations of the First, Second, and Third Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Fourth Defense.

49. That Plaintiff and Third-Party Defendants participated in fraud extracting the Guaranty from Defendant Bellamy in 2008 for the 2005 debt and in procuring the assignment of the loan, Note, Mortgages, Guaranties, and security interests to Plaintiff in 2009.

50. That Defendant Owners plead fraud in the procurement as a complete affirmative defense and are entitled to dismissal of this action with prejudice and an award of damages as set forth below.

FOR A FIFTH DEFENSE
(Lack of Notice)

51. That the allegations of the First, Second, Third, and Fourth Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Fifth Defense.

52. That Plaintiff and Third-Party Defendant Bank failed to give the proper and required notices and opportunity to cure prior to bringing this action.

53. That Defendant Owners plead a lack of notice and right to cure as a complete affirmative defense and are entitled to dismissal of this action with prejudice.

FOR A SIXTH DEFENSE
(Failure of Conditions Precedent)

54. That the allegations of the First, Second, Third, Fourth, and Fifth Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Sixth Defense.

55. That Plaintiff and Third-Party Defendant Bank failed to meet conditions precedent required before the bringing of this action.

56. That Defendant Owners plead failure to meet conditions precedent as a complete affirmative defense and are entitled to dismissal of this action with prejudice.

FOR A SEVENTH DEFENSE
(Lack of Damages)

57. That the allegations of the First, Second, Third, Fourth, Fifth, and Sixth Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Seventh Defense.

58. That Plaintiff has suffered no damages as a proximate result of any action or inaction by Defendant Owners.

59. That if Plaintiff has suffered any damages, which are specifically denied, the same are due to Plaintiff's own fraud, conspiracy, bad faith, unclean hands, and breach of contract.

60. That Defendants plead lack of damages proximately caused by Defendant Owners as a complete affirmative defense and are entitled to dismissal of this action with prejudice.

FOR AN EIGHTH DEFENSE
(Impossibility)

61. That the allegations of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Eighth Defense.

62. That due to the actions of Plaintiff in concert with, in bad faith, and in conspiracy with Third-Party Defendants, Plaintiff has made it impossible for Defendant Owners to fulfill their obligations under the loan that is the subject matter of this action.

63. That Plaintiff and Third-Party Defendants have interfered with the business of BJC Enterprises, LLC, and Americana Motel of Myrtle Beach, Inc. and physically taken over the Mortgaged Properties, confiscated the revenues earned by the Mortgaged Properties and other properties owned by Defendant Owners, and shut out Defendant Owners from operating the Mortgaged Properties and other property, which income is needed to fund the loan obligations.

64. That Plaintiff and Third-Party Defendants have wrongfully taken over all the assets that are the income-producing property which allow Defendant Owners to earn revenues in order to pay the debt obligation and stolen and converted the same.

65. That Defendant Owners plead impossibility caused by Plaintiff and Third-Party Defendants as a complete affirmative defense and are entitled to dismissal of this action with prejudice.

FOR A NINTH DEFENSE
(Waiver)

66. That the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Ninth Defense.

67. That Plaintiff and Third-Party Defendants undertook actions converting and stealing the income-producing assets of Defendant Owners, which are subject to Plaintiff's and

Third-Party Defendant Bank's mortgages and other properties, all with the knowledge and consent of Third-Party Defendant Bank.

68. That Plaintiff and Third-Party Defendants have converted the income from these assets and failed and refused to allow the same to be paid to Third-Party Defendant Bank and/or Plaintiff to satisfy the loan obligations here in issue.

69. That by these acts and omissions of Plaintiff and Third-Party Defendants and others, Plaintiff has waived its rights to seek any recover against Defendant Owners.

70. That Defendant Owners plead waiver as a complete affirmative defense and are entitled to dismissal of this action with prejudice.

FOR A TENTH DEFENSE
(Estoppel)

71. That the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Tenth Defense.

72. That Plaintiff and Third-Party Defendants undertook actions converting and stealing the income-producing assets of Defendant Owners, which are subject to Plaintiff's and Third-Party Defendant Bank's mortgages and other properties, all with the knowledge and consent of Third-Party Defendant Bank.

73. That Plaintiff and Third-Party Defendants have converted the income from these assets and failed and refused to allow the same to be paid to Third-Party Defendant Bank and/or Plaintiff to satisfy the obligations with the note here in issue.

74. That by these acts and omissions of Plaintiff and Third-Party Defendants, Plaintiff is estopped from seeking any recover against Defendant Owners.

75. That Defendant Owners plead estoppel as a complete affirmative defense and are entitled to dismissal of this action with prejudice.

FOR AN ELEVENTH DEFENSE
(Unclean Hands)

76. That the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Tenth Defense.

77. That Plaintiff comes to this Court with unclean hands as set forth above and below.

78. That Defendant Owners plead unclean hands as a complete affirmative defense and are entitled to dismissal of this action with prejudice.

FOR A TWELFTH DEFENSE, FIRST COUNTERCLAIM, AND
THIRD-PARTY COMPLAINT
(Breach of Contract)

79. That the allegations of the First through Eleventh Defenses and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Twelfth Defense, First Counterclaim and Third-Party Complaint.

80. That on January 14, 2005, Third-Party Defendant Bank loaned Defendant BJC \$5,573,146.61 for the purchase of the Emerald Shores property.

81. That on or about January 17, 2009, Third-Party Defendant Bank renewed its loan transaction with Defendant Owners at which time BJC was current on the payments due on the Note held by Third-Party Defendant Bank.

82. That this loan transaction including all renewals and modifications constitutes a contract between Third-Party Defendant Bank and Defendant Owners and contains implied covenants of good faith and fair dealing.

83. That this contract and the obligations of good faith and fair dealing were assigned by Third-Party Defendant Bank to Plaintiff on June 15, 2009.

84. That even though Defendant Owners were current on the Note as of January, 2009, Third-Party Defendant Bank instituted a foreclosure action on the Mortgaged Properties on February 2, 2009, bearing Civil Action No. 2009-CP-26-0950 which was later dismissed.

85. That Defendant Wendy Bellamy paid One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) to Third-Party Defendant Bank in March, 2009, keeping the obligations of Defendant Owners current.

86. That at the same time and without the knowledge of Defendants Bellamy, BJC, and/or Americana, Third-Party Defendants Jones, Godwin, Patel, and Bank entered into a conspiracy to:

(a) convert and steal the income of the Mortgaged Properties and other property from Defendant Owners and prevent said funds from being used by Defendant Owners to pay on the Note to Third-Party Defendant Bank;

(b) facilitate Third-Party Defendants Jones and Godwin forming of a corporation, Plaintiff H & M, to obtain an Assignment of the Note, Mortgages, and Guaranties from Third-Party Defendant Bank for either nominal or no consideration or for much less than fair market value;

(c) shut out Defendant Bellamy from the management of the Mortgaged Properties by putting Third-Party Defendant Patel in charge of the money, books, records, debts, income, expenses, and day-to-day operation of the Mortgaged Properties and other real property owned by Defendant Bellamy and Harvey Jones, which is not subject to any mortgage in favor of Third-Party Defendant Bank on Plaintiff;

(d) require Defendant Bellamy to sign a personal guaranty in January, 2008 to put at risk valuable property she owned that was not security for the 2005 debt so said property could be obtained by Third-Party Defendants Jones, Godwin, and/or Plaintiff as part of their scheme; and

(e) have H & M foreclose on the mortgages to obtain all the properties after making it impossible for BJC, Americana, and Bellamy to keep current the Note payments to Third-Party Defendant Bank because of Plaintiff and Third-Party Defendants' takeover of the property and conversion of income.

87. That in furtherance of this scheme and conspiracy, Third-Party Defendant Bank filed this action for foreclosure against Defendant Owners and contemporaneously filed guaranty actions against Wendy Jones, Harvey Jones, and Tripp Coan.

88. That in furtherance of this scheme and conspiracy, Third-Party Defendant Bank assigned to Plaintiff H & M the Bellamy Guaranty, the Note, Mortgages, and other security interests given by BJC, Americana, Harvey Jones, Wendy Bellamy, and Tripp Coan in connection with the 2005 loan in a transaction that upon information and belief ~~was not an arm's length~~.

89. That Plaintiff H & M and Third-Party Defendants Jones, Godwin, and Patel have continued to trespass upon the property of Defendant Bellamy, Americana, BJC, and Harvey Jones and have continued to convert all income-producing assets with regard to the Mortgaged Properties and other properties in furtherance of keeping Defendant Owners from making payments on the debt owed to Third-Party Defendant Bank, now wrongfully held by Plaintiff H & M.

90. That Plaintiff H & M and Third-Party Defendant Bank, although nothing more than lenders and/or mortgagees, have interfered in the operation of the Mortgaged Properties to the

extent that each has made it impossible to and interfered with Defendants' ability to perform under the Note and loan documents.

91. That Third-Party Defendant Patel, with the consent, direction, and knowledge of Plaintiff H & M and remaining Third-Party Defendants, advised renters who leased Mortgaged Properties to pay no rent although the renters have and are still occupying the same. See Exhibit A attached hereto.

92. That since the fall of 2008, monies earned and/or paid by renters for the use of Mortgaged Properties and other properties of Bellamy have been converted and stolen by Plaintiff H & M, Third-Party Defendants Patel, Jones, and/or Godwin in furtherance of their scheme to convert and/or wrongfully obtain ownership of the Mortgaged Properties and other property owned by Wendy Bellamy and Harvey Jones.

93. That because of the outrageous conduct of Plaintiff H & M and Third-Party Defendants, Defendant Bellamy attempted suicide, which thankfully, was unsuccessful.

94. That prior to having knowledge of Plaintiff and Third-Party Defendants' schemes and conspiracy and during her emotional breakdown as a result of the actions of Plaintiff and Third-Party Defendants, Defendant Bellamy executed a Durable Power of Attorney in favor of her paternal uncle, Third-Party Defendant Jones.

95. That since the execution of that Durable Power of Attorney, Third-Party Defendant Jones has exercised that power wrongfully, in bad faith, and in breach of his fiduciary duty to Defendants Bellamy, BJC, and Americana, taking all actions in order to harm and cause damage to Defendant Owners and to further his own scheme of converting and/or stealing the properties of Defendant Bellamy, Harvey Jones, BJC, Americana, and Tripp Coan.

96. That additionally, Plaintiff and Third-Party Defendant Bank divulged private and confidential information concerning the BJC loan and its status to third parties advising each of the status of the note and mortgage, the loan status, and other private information to the detriment of Defendant Bellamy, BJC, Americana, Harvey Jones, and Tripp Coan.

97. That based on the foregoing, Plaintiff H & M and Third-Party Defendant Bank have breached their obligations of good faith and fair dealing under the terms of the notes, mortgages, and guaranties here in issue and breached their obligations of privacy and confidentiality concerning this lending relationship imposed by common law and state and federal law.

98. That Plaintiff H & M's and Third-Party Defendant Bank's breaches of contract are the proximate cause of damage to Defendant Owners and Plaintiff's breaches of contract are a complete defense and bar to its claims.

99. That as a result of the same, Defendant Owners are entitled to an award of actual and consequential damages, and an order finding Plaintiff H & M is not entitled to foreclose on the real estate here in issue as a result of its breaches of contract and/or set off from any judgment obtained by Plaintiff.

FOR A THIRTEENTH DEFENSE, SECOND COUNTERCLAIM, AND
THIRD-PARTY COMPLAINT
(Fraud)

100. That the allegations of the First through Twelfth Defenses and First Counterclaim and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Thirteenth Defense, Second Counterclaim and Third-Party Complaint.

101. That Third-Party Defendant Bank and its successor in interest, Plaintiff H & M, fraudulently induced Defendant Bellamy to execute a personal guaranty in January, 2008 for the

debt incurred in 2005 which inducement was in furtherance of the conspiracy between and among Third-Party Defendants and Plaintiff H & M.

102. That as a result of this fraud in procuring the guaranty of Defendant Bellamy, Defendant Bellamy has incurred damages including putting at risk property of Defendant Bellamy not otherwise required by Bank as security for this debt.

103. That Third-Party Defendant Bank and Plaintiff in representing its need for the Defendant Bellamy's Guaranty was false.

104. That Third-Party Defendant Bank and Plaintiff knew of the falsity of the representation which representation was material.

105. That Third-Party Defendant Bank and Plaintiff had the intent that the representation be relied upon by Defendant Bellamy, it was relied on, Defendant Bellamy was ignorant of the falsity of the representation and had the right to rely on the representation.

106. That as a result of this fraud by Third-Party Defendant Bank and Plaintiff H & M, Defendant Bellamy has suffered damages and is entitled to an award of actual, consequential, and punitive damages, and setoff as to any judgment obtained by Plaintiff.

FOR A FOURTEENTH DEFENSE, THIRD COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT
(Breach of Contract Accompanied by Fraud)

107. That the allegations of the First through Thirteenth Defenses and First and Second Counterclaims and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Fourteenth Defense, Third Counterclaim and Third-Party Complaint.

108. That Third-Party Defendant Bank and Plaintiff have breached their obligations of good faith, fair dealing, and confidentiality in regard to Defendants Bellamy, BJC, and Americana lending relationship and contract as set forth above.

109. That the obtaining of the guaranty and Power of Attorney and the breaching of the obligation of good faith, fair dealing, and confidentiality was fraudulent by Third-Party Defendant Bank and Plaintiff.

110. That Defendant Owners have suffered damages as a proximate result of the breach of contract accompanied by fraud of Third-Party Defendant Bank and Plaintiff H & M and other Third-Party Defendants.

111. That Defendant Owners are entitled to judgment of actual, consequential, and punitive damages, and/or setoff from any judgment obtained by Plaintiff.

FOR A FIFTEENTH DEFENSE, FOURTH COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT
(Civil Conspiracy)

112. That the allegations of the First through Fourteenth Defenses and First through Third Counterclaims and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Fifteenth Defense, Fourth Counterclaim and Third-Party Complaint.

113. That Plaintiff and Third-Party Defendants entered into a common scheme and conspiracy to deprive, steal and take property of BJC, Americana, Harvey Jones, Wendy Bellamy, and Tripp Coan under the guises of a foreclosure action initially brought by Third-Party Defendant Bank and subsequently prosecuted by Plaintiff H & M and as further set forth in the defenses, counterclaims and Third-Party Claims above and below.

114. That in furtherance of this scheme, Third-Party Defendant Bank assigned the note, mortgages, guaranties, and other security interests to Plaintiff H & M on June 15, 2009 in a less than arm's length transaction and induced Defendant Bellamy to sign over a Power of Attorney to Third-Party Defendant Jones.

115. That the purpose of this scheme by Plaintiff H & M and Third-Party Defendants was to cause special damages to Defendants Bellamy, BJC, and Americana.

116. That Defendants Bellamy, B JC, and Americana are entitled to a judgment of actual, consequential and punitive damages from Plaintiff and Third-Party Defendants, and setoff from any judgment obtained by Plaintiff.

**FOR A SIXTEENTH DEFENSE, FIFTH COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT**
(Conversion)

117. That the allegations of the First through Fifteenth Defenses and First through Fourth Counterclaims and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Sixteenth Defense, Fifth Counterclaim and Third-Party Complaint.

118. That Plaintiff H & M and Third-Party Defendants schemed and conspired together to take and convert the real estate and income-producing assets owned by Defendants Bellamy, B JC, and Americana and Harvey Jones and Tripp Coan to their own use.

119. That this conversion and use of the property by Plaintiff and Third-Party Defendants was without Defendants Bellamy, BJC, and Americana's permission.

120. That the conversion including the taking all of the income produced by the Mortgaged Properties and advising renters that they did not have to pay rent for use of the property, all in furtherance of the scheme to make it impossible for Defendant Owners to perform under the Note here in issue.

121. That the conversion by Plaintiff and Third Party Defendants has caused damage to Defendant Owners.

122. That Defendant Owners are entitled to an accounting for all the monies obtained and/or lost at the hands of Plaintiff H & M and Third-Party Defendants and for an award of actual, consequential, and punitive damages and/or set off from any judgment obtained by Plaintiff.

**FOR A SEVENTEENTH DEFENSE, SIXTH COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT**
(South Carolina Unfair Trade Practices Act)

123. That the allegations of the First through Sixteenth Defenses and First through Fifth Counterclaims and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Sixteenth Defense, Sixth Counterclaim and Third-Party Complaint.

124. That Third-Party Defendant Bank and Plaintiff conduct the trade, business and commerce of lending money to members of the public.

125. That Third-Party Defendant Bank and Plaintiff divulged private and confidential information concerning the status of the loan, note, mortgage and guaranties here in issue in this lending relationship to third parties and continue to do so.

126. That Third-Party Defendant Bank and Plaintiff utilized and conspired with others utilizing unfair and deceptive acts and practices as set forth above in connection with its lending relationship with Defendant Owners.

127. That these deceptive and unfair methods and practices have occurred in this instance and have the potential for repetition and to damage the public and have an impact on the public interest.

128. That the acts of Third-Party Defendant Bank and Plaintiff H & M constitute violations of the South Carolina Unfair Trade Practices Act.

129. That said violations of the Act are a proximate cause of damage to Defendant Owners.

130. That Defendant Owners are entitled to an award of actual damages, consequential damages, punitive damages, treble damages, costs, and attorney fees from Plaintiff and Third-Party Defendant Bank.

**FOR AN EIGHTEENTH DEFENSE, SEVENTH COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT**
(Interference With A Contractual Relationship)

131. That the allegations of the First through Seventeenth Defenses and First through Sixth Counterclaims and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Eighteenth Defense, Seventh Counterclaim and Third-Party Complaint.

132. That Defendant Owners are in the business of renting hotel rooms and/or apartments and/or houses to members of the public and had contractual relationships with renters.

133. That Defendants Bellamy, BJC and/or Americana had a contractual lender/borrower relationship with Third-Party Defendant Bank as set forth above.

134. That Plaintiff and Third-Party Defendants Jones, Godwin, and Patel were aware of the contractual relationships between Defendants and third parties including renters and Third-Party Defendant Bank.

135. That Plaintiff H & M and Third-Party Defendants Jones, Godwin, and Patel interfered with the rental contracts including collecting and converting all rental payments from said third parties and/or advising third parties that no rental was owed even though the third parties were and are utilizing the properties. See Exhibit A.

136. That Plaintiff H & M and Third-Party Defendants Jones, Godwin and Patel interfered with the contractual lending relationship between Defendant Owners and Third-Party Defendant Bank.

137. That Plaintiff and Third-Party Defendants Jones, Godwin, and Patel intentionally procured the breach of these contracts.

138. That Plaintiff and Third-Party Defendants Jones, Godwin and Patel had no justification for obtaining said breach other than in furtherance of their own conspiracy to steal and convert the property and assets of Defendant Bellamy. BJC, Americana, Harvey Jones and Tripp Coan.

139. That as a result of the interference by Plaintiff H & M and Third-Party Defendants Jones, Godwin, and Patel, the contracts with third party renters and the lending relationship with Third-Party Defendant Bank have been breached and/or terminated.

140. That as a result of Plaintiff's and Third-Party Defendants Jones's, Godwin's and Patel's tortuous interference with these contractual relationships, Defendants Bellamy, BJC and Americana have suffered damages.

141. That Defendant Owners are entitled to an award of actual, consequential, and punitive damages from Plaintiff and Third-Party Defendants Jones, Godwin, and Patel.

FOR A NINETEENTH DEFENSE, EIGHTH COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT
(Infliction of Emotional Distress/Outrage)

142. That the allegations of the First through Eighteenth Defenses and First through Seventh Counterclaims and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Nineteenth Defense, Eighth Counterclaim and Third-Party Complaint.

143. That Plaintiff H & M and Third-Party Defendants' extreme and outrageous conduct in conspiring to convert and steal the assets and properties of Defendants Bellamy, BJC, and Americana was done intentionally and/or recklessly by said Plaintiff and Third-Party Defendants.

144. That said extreme and outrageous conduct has caused severe emotional distress to Defendant Bellamy and said severe emotional distress has caused Defendant Bellamy to likewise suffer bodily harm.

145. That such conduct by Plaintiff and Third-Party Defendants was and is so extreme and outrageous that it exceeds all possible bounds of decency.

146. That the emotional stress suffered by Defendant Bellamy is so severe that no responsible man could be expected to endure the same and in fact, caused Defendant Bellamy to attempt to take her own life and suffer physical harm.

147. That Defendant Bellamy is entitled to an award of actual, consequential, and punitive damages due to Plaintiff's and Third-Party Defendants' intentional infliction of emotional distress.

FOR A TWENTIETH DEFENSE, NINTH COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT
(Breach of Fiduciary Duty)

148. That the allegations of the First through Nineteenth Defenses and First through Eighth Counterclaims and Paragraphs 11 through 39 are incorporated herein and made a part and parcel of this Twentieth Defense, Ninth Counterclaim and Third-Party Complaint.

149. That Third-Party Defendant Jack Jones is the paternal uncle of Defendant Bellamy, whose mother and father are both deceased.

150. That Third-Party Defendant Jones knew that Defendant Bellamy placed special confidence and reliance on her relationship with Third-Party Defendant Jones, both personally and in business.

151. That at the insistence of Third-Party Jones, Defendant Bellamy, after being driven to attempt suicide as a result of the acts of the Third-Party Defendants, not knowing at that time

that Third-Party Defendant Jones was a major instigator and mastermind behind said outrageous conduct, conspiracy, and scheming, executed a Durable Power of Attorney in favor of Third-Party Defendant Jones.

152. That as set forth above, rather than carrying out his fiduciary duty in good faith for the benefit and welfare of Defendant Bellamy, BJC, and Americana, Third-Party Defendant Jones undertook his actions intentionally to cause harm to Defendants Bellamy, BJC, and Americana by his wrongful conduct solely for his own benefit.

153. That this breach of fiduciary duty has damaged Defendant Bellamy.

154. That Defendant Bellamy is entitled to an award of actual, consequential, and punitive damages as a result of said breach of fiduciary duty by Third-Party Defendant Jones.

WHEREFORE, Defendants/Third-Party Plaintiffs Wendy J. Bellamy, BJC, and Americana, having fully answered the Amended Complaint of Plaintiff and by way of Counterclaims and Third-Party Complaint, would respectfully pray for the following relief:

- a. That the Amended Complaint of Plaintiff be dismissed with prejudice;
- b. For an award of the relief sought in the First Counterclaim and Third-Party Claim;
- c. For an award of the relief sought in the Second Counterclaim and Third-Party Claim;
- d. For an award of the relief sought in the Third Counterclaim and Third-Party Claim;
- e. For an award of the relief sought in the Fourth Counterclaim and Third-Party Claim;

- f. For an award of the relief sought in the Fifth Counterclaim and Third-Party Claim;
- g. For an award of actual and consequential damages, treble damages, costs, and attorney fees as allowed under the South Carolina Unfair Trade Practices Act;
- h. For an award of the relief sought in the Seventh Counterclaim and Third-Party Claim;
- i. For an award of the relief sought in the Eighth Counterclaim and Third-Party Claim;
- ~~j.~~ For an award of the relief sought in the Ninth Counterclaim and Third-Party Claim;
- k. For costs and attorney fees; and
- l. For such other and further relief as this Honorable Court may deem just and proper.

Respectfully Submitted,

Cook & Roy, LLC


Kathryn M. Cook, Esquire
SC Bar No. 1371
Attorney for Defendants BJC
Enterprises, LLC, Wendy J. Bellamy,
and Americana, Inc. a/k/a American
Motel of Myrtle Beach, Inc.
Post Office Box 4086
North Myrtle Beach, SC 29597
Phone: 843-663-1200
Fax: 843-663-0364
Email: kcook@cookandroy.com

North Myrtle Beach, South Carolina

Date: 6/7, 2010

**AGREEMENT between Bhupendra Patel, Patel Management
on behalf of Americana Corporation (d/b/a Rainbow Court),
Mary Jones, Tina Corley and Lory Griffin**

RE:

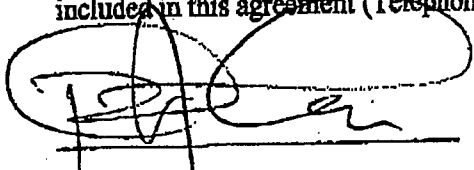
Mary Jones, occupant of 404 Chester Street (Main House), Myrtle Beach, SC 29577

Tina Corley, occupant of 404 Chester Street, Unit #1, Myrtle Beach, SC 29577

Lory Griffin ("Jerry Griffin"), occupant of 404 Chester Street, Unit #2, Myrtle Beach, SC 29577

This is an Agreement between Patel Management on behalf of Americana Corporation (d/b/a Rainbow Court) and Mary Jones, Tina Corley and Lory Griffin ("Jerry Griffin").

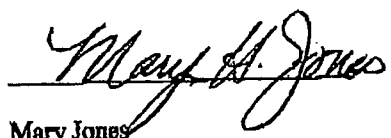
This Agreement, set forth on December 9, 2009 for \$10.00 paid and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, entails that Mary Jones, Tina Corley, and Lory Griffin ("Jerry Griffin") who reside at the above referenced units, reside at said properties with my permission at no monetary cost to them for the year of 2010. Rent and utilities including water, gas, electric, basic cable and internet (Road Runner) are included in this agreement (Telephone is excluded).


Bupendra Patel, Patel Management

Management for Americana Corporation (d/b/a Rainbow Court)

12.9.09

Date


Mary Jones

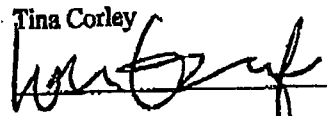
12-9-09

Date


Tina Corley

December 9, 2009

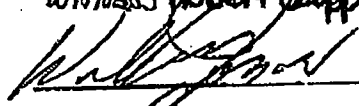
Date


Lory Griffin ("Jerry Griffin")

12-9-09

Date

TC
LG

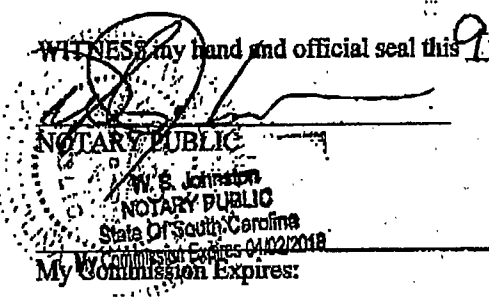

Witness Robert Capps
 (Signature)
Witness Wilbur Jones

12/9/09
Date

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

BEFORE ME personally appeared Bhupendra Patel, Mary Jones, Tina Corley, Lory Griffin. And Wilbur Jones acting as Witness, to me well known to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that he/she executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 9th day of December, 2009.


NOTARY PUBLIC
W. S. Johnston
NOTARY PUBLIC
State Of South Carolina
My Commission Expires 04/02/2018
My Commission Expires:


Handwritten initials "mg" and two circular stamps containing "FC" and "LG".

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 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.)

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.)

**REPLY TO AMENDED ANSWER AND
COUNTERCLAIMS OF DEFENDANT
WENDY J. BELLAMY ON BEHALF OF
PLAINTIFF HOTEL & MOTEL
HOLDINGS, LLC**

Plaintiff Hotel & Motel Holdings, LLC, by and through its undersigned counsel, replies to the Amended Answer, Counterclaims and Third Party Complaint of Defendants Wendy J. Bellamy, Americana, Inc. and BJC Enterprises, LLC and would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(GENERAL DENIAL)

1. Each and every allegation of Defendants' Amended Answer, Counterclaims and Third Party Complaint not hereinafter specifically admitted is denied by Plaintiff.
2. The allegations of Paragraphs 1 – 10 do not require an affirmative response from Plaintiff. However, to the extent said allegations could be construed so as to form affirmative allegations against Plaintiff, the allegations are denied and strict proof is demanded thereof.
3. In response to Paragraph 11, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
4. Responding to Paragraphs 12, Plaintiff is without sufficient information to truthfully admit or deny the allegations contained therein.
5. The allegations of Paragraphs 13 – 17 are admitted, upon information and belief.
6. Paragraph 18 is denied and strict proof is demanded thereof.
7. In response to Paragraph 19, it is admitted, upon information and belief, that Bhupendra Patel is a citizen and resident of Horry County, South Carolina. The remaining and/or inconsistent allegations of Paragraph 19 are denied and strict proof is demanded thereof.
8. Responding to the allegations of Paragraph 20, Plaintiff admits, upon information and belief, that the documents listed were executed and recorded. Plaintiff expressly denies the allegations to the extent they are inconsistent with the actual wording of the transaction documents, which speak for themselves and will be interpreted by the Court as a matter of law. Plaintiff denies the remaining and/or inconsistent allegations contained in Paragraph 20 of the Counterclaim.
9. The allegations of Paragraph 21 are denied and strict proof is demanded thereof.

10. Responding to the allegations of Paragraph 22, it is admitted that a foreclosure action was filed on or about February 2, 2009. The remaining and/or inconsistent allegations contained in Paragraph 22 are denied and strict proof is demanded thereof.
11. The allegations of Paragraph 23 are admitted, upon information and belief.
12. The allegations of Paragraphs 24 – 26 are denied and strict proof is demanded thereof.
13. Responding to the allegations of Paragraph 27, it is admitted that an action for breach of guaranty against Defendant Bellamy was filed on or about June 5, 2009. Further answering, Plaintiff admits that breach of guaranty actions are also pending against Harvey Jones and Henry C. Coan, III. The remaining and/or inconsistent allegations contained in Paragraph 27 are denied and strict proof is demanded thereof.
14. Responding to the allegations of Paragraph 28, it is admitted that this foreclosure action was filed on or about June 11, 2009. The remaining and/or inconsistent allegations contained in Paragraph 28 are denied and strict proof is demanded thereof.
15. Responding to the allegations of Paragraph 29, it is admitted that First Palmetto Savings Bank, F.S.B. sold and assigned the documents listed to Plaintiff. Plaintiff expressly denies the allegations to the extent they are inconsistent with the actual wording of the transaction documents, which speak for themselves and will be interpreted by the Court as a matter of law. Plaintiff denies the remaining and/or inconsistent allegations contained in Paragraph 29 of the Counterclaim.
16. Responding to the allegations of Paragraph 30, it is admitted that Plaintiff has been substituted in each of the actions on the personal guaranties, except for the action styled as First Palmetto Savings Bank, F.S.B. v. Henry C. Coan, III, Civil Action Number:

2009-CP-26-05548. The remaining and/or inconsistent allegations contained in Paragraph 30 are denied and strict proof is demanded thereof.

17. The allegations of Paragraphs 31 – 39 are denied and strict proof is demanded thereof.
18. In response to Paragraph 40, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
19. The allegations of Paragraphs 41 – 44 are denied and strict proof is demanded thereof.
20. In response to Paragraph 45, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
21. The allegations of Paragraphs 46 – 47 are denied and strict proof is demanded thereof.
22. In response to Paragraph 48, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
23. The allegations of Paragraphs 49 – 50 are denied and strict proof is demanded thereof.
24. In response to Paragraph 51, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
25. The allegations of Paragraphs 52 – 53 are denied and strict proof is demanded thereof.
26. In response to Paragraph 54, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
27. The allegations of Paragraphs 55 – 56 are denied and strict proof is demanded thereof.
28. In response to Paragraph 57, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
29. The allegations of Paragraphs 58 – 60 are denied and strict proof is demanded thereof.
30. In response to Paragraph 61, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.

31. The allegations of Paragraphs 62 – 65 are denied and strict proof is demanded thereof.
32. In response to Paragraph 66, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
33. The allegations of Paragraphs 67 – 70 are denied and strict proof is demanded thereof.
34. In response to Paragraph 71, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
35. The allegations of Paragraphs 72 – 75 are denied and strict proof is demanded thereof.
36. In response to Paragraph 76, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
37. The allegations of Paragraphs 77 – 78 are denied and strict proof is demanded thereof.
38. In response to Paragraph 79, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
39. The allegations of Paragraphs 80 are admitted, upon information and belief.
40. Responding to the allegations of Paragraph 81, Plaintiff is without sufficient information to truthfully admit or deny allegations contained therein.
41. In response to Paragraph 82, Plaintiff craves reference to the transaction documents which speak for themselves and will be interpreted by the Court as a matter of law.
42. In response to Paragraph 83, it is admitted there was an assignment of the loan documents to Plaintiff. The remaining and/or inconsistent allegations of Paragraph 83 are denied and strict proof is demanded thereof.
43. The allegations of Paragraphs 84 – 99 are denied and strict proof is demanded thereof.
44. In response to Paragraph 100, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.

45. The allegations of Paragraphs 101 - 106 are denied and strict proof is demanded thereof.
46. In response to Paragraph 107, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
47. The allegations of Paragraphs 108 - 111 are denied and strict proof is demanded thereof.
48. In response to Paragraph 112, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
49. The allegations of Paragraphs 113 - 116 are denied and strict proof is demanded thereof.
50. In response to Paragraph 117, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
51. The allegations of Paragraphs 118 - 122 are denied and strict proof is demanded thereof.
52. In response to Paragraph 123, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
53. The allegations of Paragraphs 124 - 130 are denied and strict proof is demanded thereof.
54. In response to Paragraph 131, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
55. The allegations of Paragraphs 132 - 141 are denied and strict proof is demanded thereof. Further answering, Plaintiff would assert that the rental agreement referenced in Exhibit A of Defendants' Counterclaim was based upon an oral agreement among the parties which was in place for some time prior to the execution of the written agreement. The agreement was known to and approved by Defendants.
56. In response to Paragraph 142, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.
57. The allegations of Paragraphs 143 - 147 are denied and strict proof is demanded thereof.

58. In response to Paragraph 148, Plaintiff reiterates its prior answers and defenses as if restated verbatim herein.

59. The allegations of Paragraph 149 are admitted, upon information and belief.

60. The allegations of Paragraphs 150 – 154 are denied and strict proof is demanded thereof.

FOR A SECOND DEFENSE
(FAILURE TO STATE A CLAIM)

61. Defendants' claims, if any, are barred in whole or in part because Defendants' allegations fail to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE
(UNCLEAN HANDS)

62. Defendants are not entitled to relief because Defendants have unclean hands.

FOR A FOURTH DEFENSE
(ESTOPPEL AND LACHES)

63. Defendants cannot recover because Defendants' claims, if any, are barred by estoppel and laches.

FOR A FIFTH DEFENSE
(WAIVER)

64. Defendants have waived any right to recovery under the causes of actions contained in the Counterclaims.

FOR A SIXTH DEFENSE
(CONTRIBUTORY NEGLIGENCE)

65. Any injury and damage sustained by Defendants, which is specifically denied, was due to and caused in part by contributory negligence and/or willfulness of Defendants and/or their agents and representatives, and for that reason, Plaintiff is not liable to Defendants in any sum whatsoever.

FOR A SEVENTH DEFENSE

(STATUTE OF LIMITATIONS)

66. Defendants cannot recover because their claims, if any, are barred by the applicable statute of limitations.

FOR AN EIGHTH DEFENSE
(MITIGATION OF DAMAGES)

67. Defendants have failed to exercise reasonable diligence in the mitigation of their alleged damages, which damages are denied.

FOR A NINTH DEFENSE
(NO DAMAGES)

68. Defendants have not sustained any damages as a direct result of Plaintiff's actions and, therefore, Defendants may not recover from Plaintiff.

FOR A TENTH DEFENSE
(IN PARI DELICTO)

69. Defendants' claims, if any, are barred by the defense of *in pari delicto*.

FOR AN ELEVENTH DEFENSE
(FAILURE TO STATE GROUNDS WITH PARTICULARITY)

70. The causes of action asserted by Defendants sound in misrepresentation and fraud, thus, are required but fail to state with particularity the circumstances that allegedly constitute misrepresentation and fraud on the part of Plaintiff.

FOR A TWELFTH DEFENSE
(ASSUMPTION OF THE RISK)

71. Any injury, loss, or damage sustained by Defendants, which is specifically denied, is the direct and proximate result of an express and/or implied assumption of the risk by Defendants. As a result, Defendants are barred from recovery against Plaintiff.

FOR A THIRTEENTH DEFENSE
(GOOD FAITH)

72. Plaintiff is immune from liability because it acted in good faith and did not know, and in the exercise of reasonable care could not have known, of any of the untruths and/or omissions as alleged by Defendants.

FOR A FOURTEENTH DEFENSE
(BARRED BY DEFENDANTS' ACTIONS AND REPRESENTATIONS)

73. Defendants' claims, if any, are barred by Defendants' actions and representations.

FOR A FIFTEENTH DEFENSE
(CONDONATION, ACQUIESCENCE, AND RATIFICATION)

74. Defendants' claims, if any, are barred by condonation, acquiescence, and/or ratification.

FOR A SIXTEENTH DEFENSE
(BARRED BY THE TERMS OF AGREEMENT)

75. Defendants' claims, if any, are barred by the terms of the parties' agreements and the applicable loan documents.

FOR A SEVENTEENTH DEFENSE
(BUSINESS JUDGMENT RULE)

76. Defendants' claims, if any, are barred by the business judgment rule.

FOR AN EIGHTEENTH DEFENSE
(NO CONFIDENTIAL RELATIONSHIP)

77. Defendants' claims, if any, are barred in whole or in part because Plaintiff did not have a confidential relationship with Defendants.

FOR A NINETEENTH DEFENSE
(NO ACT OR OMISSION)

78. Defendants' claims, if any, are barred in whole or in part because no act or omission on the part of Plaintiff caused or contributed to any alleged injury or damage claimed by Defendants.

FOR A TWENTIETH DEFENSE
(NO DUTY)

79. Defendants' claims, if any, are barred in whole or in part because Plaintiff did not owe any duty to Defendants.

FOR A TWENTY-FIRST DEFENSE
(NO RESULTING DAMAGES)

80. Defendants' claims, if any, are barred in whole or in part because Defendants did not suffer any damages as a result of any actions by Plaintiff.

FOR A TWENTY-SECOND DEFENSE
(NO FALSE REPRESENTATIONS)

81. Defendants' claims, if any, are barred in whole or in part because Plaintiff did not make any false representations to Defendants.

FOR A TWENTY-THIRD DEFENSE
(NO KNOWINGLY FALSE REPRESENTATIONS)

82. Defendants' claims, if any, are barred in whole or in part because Plaintiff did not knowingly make any false representations to Defendants.

FOR A TWENTY-FOURTH DEFENSE
(NO JUSTIFIABLE RELIANCE)

83. Defendants' claims, if any, are barred in whole or in part because Defendants did not justifiably rely on any misrepresentation by Plaintiff.

FOR A TWENTY-FIFTH DEFENSE
(NO NEGLIGENT DECEIT)

84. Defendants' claims, if any, are barred in whole or in part because Plaintiff did not negligently deceive Defendants.

FOR A TWENTY-SIXTH DEFENSE
(NO FRAUDULENT CONVEYANCE OR ASSIGNMENT)

85. Defendants' claims, if any, are barred in whole or in part because Plaintiff did not fraudulently convey or assign any property.

FOR A TWENTY-SEVENTH DEFENSE
(NO CLAIM OR INTEREST)

86. Defendants' claims, if any, are barred in whole or in part because Defendants have no claim to title or a security interest in any of the properties set forth in the Counterclaims.

FOR A TWENTY-EIGHTH DEFENSE
(NO INTENT TO DEFRAUD)

87. Defendants' claims, if any, are barred in whole or in part because Plaintiff did not intend to defraud Defendants.

FOR A TWENTY-NINTH DEFENSE
(NO INTENT TO HARM)

88. Defendants' claims, if any, are barred in whole or in part because Plaintiff did not intend to deceive or harm Defendants.

FOR A THIRTIETH DEFENSE
(RULE 12(b)(8), SCRCP)

89. Another action is pending between the same parties for the same claim, and therefore Defendants' against Plaintiff should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

FOR A THIRTY-FIRST DEFENSE
(NO STANDING)

90. Defendants lack standing to bring the claims asserted in the Counterclaims.

FOR A THIRTY-SECOND DEFENSE
(NO CONTRACT)

91. Defendants' claims, if any, are barred because Plaintiff had no contract with Defendants.

FOR A THIRTY-THIRD DEFENSE
(RESERVATION AND NON-WAIVER OF ADDITIONAL AFFIRMATIVE DEFENSES)

92. Plaintiff specifically reserves any additional and/or affirmative defenses as may be available to Plaintiff, or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with applicable law.

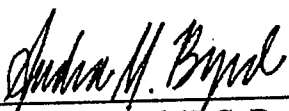
PRAYER FOR RELIEF

WHEREFORE, having fully replied to the Amended Answer, Counterclaims and Third Party Complaint of Defendant BJC Enterprises, LLC, Americana, Inc., and Wendy J. Bellamy, Plaintiff Hotel & Motel Holdings, LLC prays that the same be dismissed with prejudiced, with all costs assessed against Defendants and for such other and further relief the Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



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ATTORNEYS FOR PLAINTIFF HOTEL &
MOTEL HOLDINGS, LLC

July 2, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July, 2010, the foregoing REPLY TO AMENDED ANSWER, COUNTERCLAIMS AND THIRD PARTY COMPLAINT OF DEFENDANTS BJC ENTERPRISES, LLC, AMERICANA, INC. AND WENDY J. BELLAMY ON BEHALF OF PLAINTIFF HOTEL & MOTEL HOLDINGS, LLC has been served upon counsel of record, by depositing a copy of it in the United States mail, postage prepaid and properly addressed as follows:

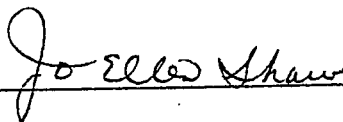
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Jo Ellen Shaw

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.

**FIRST PALMETTO SAVINGS BANK'S ANSWER TO AMENDED
THIRD PARTY COMPLAINT**

Third Party Defendant First Palmetto Savings Bank, F.S.B., ("First Palmetto") hereby answers the Amended Answer, Counterclaims and Third Party Complaint (the "Pleading") of Defendants and Third Party Plaintiffs BJC Enterprises, LLC ("BJC"), Wendy J. Bellamy ("Bellamy"), and Americana, Inc., a/k/a Americana Motel of Myrtle Beach, Inc. ("Americana"), collectively referred to as "Third Party Plaintiffs", as follows:

FIRST DEFENSE

1. First Palmetto denies each and every allegation of the Pleading except those which are hereinafter expressly admitted.
2. The allegations of paragraphs 1 through 10 of the Pleading are in answer to Plaintiff Hotel and Motel Holdings, LLC's Complaint and do not require a response from First Palmetto. To the extent that a response is required, First Palmetto denies the allegations of paragraphs 1 through 10 to the extent that these paragraphs contain affirmative allegations against First Palmetto.
3. Answering the allegations of paragraph 11, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.
4. First Palmetto admits upon information and belief the allegations of paragraphs 12, 13, and 14.
5. Answering the allegations of paragraph 15, First Palmetto admits only that it is doing business in Horry County, South Carolina and, on January 14, 2005, lent \$5,573,146.62 to BJC to purchase the Emerald Shore property. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 15. Further responding to paragraph 15, First Palmetto is a federally chartered savings bank with its principal place of business in the City of Camden, Kershaw County, South Carolina.
6. First Palmetto admits upon information and belief the allegations of paragraphs 16 and 17.
7. First Palmetto denies the allegations of paragraph 18.
8. Answering the allegations of paragraph 19, First Palmetto admits upon information and belief that Bhupendra Patel is a citizen and resident of Horry County, South Carolina. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 19.

9. Answering the allegations of paragraph 20, First Palmetto admits that documents listed were executed and recorded and craves reference to them for the terms thereof. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 20.

10. First Palmetto denies the allegations of paragraph 21.

11. Answering the allegations of paragraph 22, First Palmetto admits only that it filed a foreclosure action on or about February 2, 2009. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 22.

12. First Palmetto admits the allegations of paragraph 23.

13. First Palmetto denies the allegations of paragraphs 24 and 25, including all subparagraphs, and 26.

14. Answering the allegations of paragraph 27, First Palmetto admits only that action for breach of guaranty against Defendant Bellamy was filed on or about June 5, 2009, and that breach of guaranty actions are pending against Harvey Jones and Henry C. Coan, III. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 27.

15. Answering the allegations of paragraph 28, First Palmetto admits only that it filed a foreclosure action on or about June 11, 2009. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 28.

16. Answering the allegations of paragraph 29, First Palmetto admits only that it assigned the loan documents to Hotel and Motel Holdings, LLC on June 30, 2009, and said assignments were recorded on June 30, 2009 in the Office of the Register of Deeds for Horry County. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 29

17. Answering the allegations of paragraph 30, First Palmetto admits only that Hotel and Motel Holdings, LLC was substituted as Plaintiff in the actions on the personal

guaranties with the exception of the suit against Henry C. Coan, III. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 30.

18. First Palmetto denies the allegations of paragraphs 31, 32, 33, 34, 35, and 36.

19. The allegations of paragraph 37 are not directed at First Palmetto, therefore, no response is required of First Palmetto. To the extent a response is required, First Palmetto denies the same.

20. First Palmetto denies the allegations of paragraphs 38 and 39.

21. Answering the allegations of paragraph 40, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

22. The allegations of paragraphs 41 through 78 of the Pleading are in answer to Plaintiff Hotel and Motel Holdings, LLC's Complaint and do not require a response from First Palmetto. To the extent that a response is required, First Palmetto denies the allegations of paragraphs 41 through 78 to the extent that these paragraphs contain affirmative allegations against First Palmetto.

**First Counterclaim and First Third Party Complaint
(Breach of Contract)**

23. Answering the allegations of paragraph 79, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

24. First Palmetto admits the allegations of paragraph 80.

25. First Palmetto denies the allegations of paragraph 81.

26. The allegations of paragraph 82 state conclusions of law to which no response is required. To the extent a response is required, First Palmetto denies the same.

27. Answering the allegations of paragraph 83, First Palmetto admits only that it assigned the loan documents to Hotel and Motel Holdings, LLC. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 83.

28. Answering the allegations of paragraph 84, First Palmetto admits only that it instituted a foreclosure action on certain property, bearing Civil Action No. 2009-CP-26-00950, which was later dismissed. First Palmetto denies the remaining and/or inconsistent allegations of paragraph 84.

29. First Palmetto denies the allegations of paragraphs 85 and 86, including all subparagraphs, and 87.

30. First Palmetto denies the allegations of paragraphs 88. Further responding to paragraph 88, First Palmetto assigned the loan documents to Hotel and Motel Holdings, LLC on June 30, 2009, and said assignments were recorded on June 30, 2009 in the Office of the Register of Deeds for Horry County.

31. First Palmetto denies the allegations of paragraphs 89, 90 and 91.

32. The allegations of paragraph 92 is not directed at First Palmetto, therefore, no response is required of First Palmetto. To the extent a response is required, First Palmetto denies the same.

33. First Palmetto denies the allegations of paragraph 93 and 94.

34. The allegations of paragraph 95 are not directed at First Palmetto, therefore, no response is required of First Palmetto. To the extent a response is required, First Palmetto denies the same 95.

35. First Palmetto denies the allegations of paragraphs 96, 97, 98 and 99.

**Second Counterclaim and Second Third Party Complaint
(Fraud)**

36. Answering the allegations of paragraph 100, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

37. First Palmetto denies the allegations of paragraphs 101, 102, 103, 104, 105, and 106.

**Third Counterclaim and Third Party Complaint
(Breach of Contract Accompanied by Fraud)**

38. Answering the allegations of paragraph 107, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

39. First Palmetto denies the allegations of paragraphs 108, 109, 110, and 111.

**Fourth Counterclaim and Fourth Third Party Complaint
(Civil Conspiracy)**

40. Answering the allegations of 112, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

41. First Palmetto denies the allegations of paragraphs 113, 114, 115 and 116.

**Fifth Counterclaim and Fifth Third Party Complaint
(Conversion)**

42. Answering the allegations of 117, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

43. First Palmetto denies the allegations of paragraphs 118, 119, 120, 121, and 122.

**Sixth Counterclaim and Sixth Third Party Complaint
(South Carolina Unfair Trade Practices)**

44. Answering the allegations of 123, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

45. First Palmetto denies the allegations of paragraphs 124, 125, 126, 127, 128, 129, and 130.

**Seventh Counterclaim and Seventh Third Party Complaint
(Interference with a Contractual Relationship)**

46. Answering the allegations of 131, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

47. Answering the allegations of paragraph 132, First Palmetto lacks sufficient information to truthfully admit or deny the allegations contained therein same.

48. First Palmetto denies the allegations of paragraph 133.

49. The allegations of paragraphs 134, 135, 136, 137, 138, 139, 140 and 141 assert claims against Plaintiff and Third Party Defendants Jones, Godwin and Patel, and are not directed at First Palmetto, therefore, no response is required of First Palmetto. To the extent a response is required, First Palmetto denies the same.

**Eighth Counterclaim and Eighth Third Party Complaint
(Infliction of Emotional Distress/Outrage)**

50. Answering the allegations of 142, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

51. First Palmetto denies the allegations of paragraphs 143, 144, 145, 146 and 147.

**Ninth Counterclaim and Ninth Third Party Complaint
(Breach of Fiduciary Duty)**

52. Answering the allegations of 148, First Palmetto realleges the previous paragraphs of this Answer as fully as if repeated verbatim herein.

53. The allegations of paragraph 149 are admitted, upon information and belief.

54. The allegations of paragraphs 150, 151, 152, 153 and 154 assert claims against Third Party Defendants Jones, and are not directed at First Palmetto, therefore, no response is required of First Palmetto. To the extent a response is required, First Palmetto denies the same.

Prayer for Relief

55. First Palmetto denies that Defendants/Third-Party Plaintiffs Bellamy, BJC and Americana are entitled to the relief requested their prayer for relief.

**SECOND DEFENSE
(Improper Third Party Complaint)**

56. Rule 14 of the South Carolina Rules of Procedure provides, "a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a

proximately caused damage to the Third Party Plaintiffs, and the only alleged wrongful acts are those for which the Third Party Plaintiffs already seek damages.

63. Where the particular acts charged as a conspiracy are the same as those relied upon as the tortious or actionable wrong, the Third Party Plaintiffs cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.

64. Consequently, the Third Party Plaintiffs are barred from pursuing their civil conspiracy cause of action or must make an election of remedies.

**SEVENTH DEFENSE
(Good Faith)**

65. Third Party Plaintiffs' claims are barred because First Palmetto acted in good faith, with the care that an ordinary and prudent financial institution would exercise under similar circumstances.

**EIGHTH DEFENSE
(Failure of Proximate Cause)**

66. Third Party Plaintiffs' claims are barred in whole or in part by virtue of the fact that no action of First Palmetto constituted the proximate cause of any alleged injury or damage.

**NINTH DEFENSE
(Intervening Events)**

67. Third Party Plaintiffs' claims are barred, in whole or in part, to the extent the damages claimed are the result of circumstance and events not related to the allegations of the Third Complaint, or any act or omission of First Palmetto.

**TENTH DEFENSE
(No Adverse Impact on Public Interest)**

68. The Pleading fails to allege or demonstrate an adverse impact on the public interest and accordingly fails to state a claim under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, et seq.

ELEVENTH DEFENSE
(Failure to Plead Fraud with Particularity)

69. The Pleading fails to plead fraud with sufficient particularity to overcome the requirements of Rule 9(b), SCRCP.

TWELFTH DEFENSE
(Statute of Limitations)

70. Third Party Plaintiffs' claims are barred by all applicable statutes of limitation.

THIRTEENTH DEFENSE
(Preservation of Right to Plead Additional Defenses)

71. First Palmetto reserves the right to raise additional defense during or after the completion of discovery in this case.

WHEREFORE, having fully answered the Pleading, First Palmetto prays that this Court inquire into the matters alleged herein and dismiss with prejudice all third party claims of BJC Enterprises, LLC , Wendy J. Bellamy, and Americana, Inc., a/k/a Americana Motel of Myrtle Beach, Inc, and for such other relief as the Court may deem just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: _____

WMA Short
William H. Short, Jr.

Tara E. Nauful

Lindsey Carlberg Livingston

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(803) 765.1243 Fax

Attorneys for Third Party Defendant First
Palmetto Savings Bank, F.S.B.

July 23, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Civil Action No. 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.)

**ANSWER TO AMENDED THIRD PARTY
COMPLAINT ON BEHALF OF JACK
JONES AND DONALD GODWIN**

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.)

Third Party Defendants Jack Jones and Donald Godwin, by and through their undersigned counsel, make Answer to the Amended Third Party Complaint of Defendants Wendy J. Bellamy, Americana, Inc. and BJC Enterprises, LLC and would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(GENERAL DENIAL)

1. Each and every allegation of Defendants' Amended Third Party Complaint not hereinafter specifically admitted is denied by Jones and Godwin.
2. The allegations of Paragraphs 1 – 10 do not require an affirmative response from Jones and Godwin. However, to the extent said allegations could be construed so as to form affirmative allegations against Jones and Godwin, the allegations are denied and strict proof is demanded thereof.
3. In response to Paragraph 11, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
4. The allegations of Paragraphs 12 – 17 are admitted, upon information and belief.
5. Paragraph 18 is denied and strict proof is demanded thereof.
6. In response to Paragraph 19, it is admitted, upon information and belief, that Bhupendra Patel is a citizen and resident of Horry County, South Carolina. The remaining and/or inconsistent allegations of Paragraph 19 are denied and strict proof is demanded thereof.
7. Responding to the allegations of Paragraph 20, Jones and Godwin admit, upon information and belief, that the documents listed were executed and recorded. Jones and Godwin expressly deny the allegations to the extent they are inconsistent with the actual wording of the transaction documents, which speak for themselves and will be interpreted by the Court as a matter of law. Jones and Godwin deny the remaining and/or inconsistent allegations contained in Paragraph 20 of the Third Party Complaint.
8. The allegations of Paragraph 21 are denied and strict proof is demanded thereof.

9. Responding to the allegations of Paragraph 22, it is admitted that a foreclosure action was filed on or about February 2, 2009. The remaining and/or inconsistent allegations contained in Paragraph 22 are denied and strict proof is demanded thereof.
10. The allegations of Paragraph 23 are admitted, upon information and belief.
11. The allegations of Paragraphs 24 – 26 are denied and strict proof is demanded thereof.
12. Responding to the allegations of Paragraph 27, it is admitted that an action for breach of guaranty against Defendant Bellamy was filed on or about June 5, 2009. Further answering, Jones and Godwin admit that breach of guaranty actions are also pending against Harvey Jones and Henry C. Coan, III. The remaining and/or inconsistent allegations contained in Paragraph 27 are denied and strict proof is demanded thereof.
13. Responding to the allegations of Paragraph 28, it is admitted that this foreclosure action was filed on or about June 11, 2009. The remaining and/or inconsistent allegations contained in Paragraph 28 are denied and strict proof is demanded thereof.
14. Responding to the allegations of Paragraph 29, it is admitted that First Palmetto Savings Bank, F.S.B. sold and assigned the documents listed to Plaintiff. Jones and Godwin expressly deny the allegations to the extent they are inconsistent with the actual wording of the transaction documents, which speak for themselves and will be interpreted by the Court as a matter of law. Jones and Godwin deny the remaining and/or inconsistent allegations contained in Paragraph 29 of the Third Party Complaint.
15. Responding to the allegations of Paragraph 30, it is admitted that Plaintiff has been substituted in each of the actions on the personal guaranties, except for the action styled as First Palmetto Savings Bank, F.S.B. v. Henry C. Coan, III, Civil Action Number:

2009-CP-26-05548. The remaining and/or inconsistent allegations contained in Paragraph 30 are denied and strict proof is demanded thereof.

16. The allegations of Paragraphs 31 – 39 are denied and strict proof is demanded thereof.
17. In response to Paragraph 40, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
18. The allegations of Paragraphs 41 – 44 are denied and strict proof is demanded thereof.
19. In response to Paragraph 45, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
20. The allegations of Paragraphs 46 – 47 are denied and strict proof is demanded thereof.
21. In response to Paragraph 48, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
22. The allegations of Paragraphs 49 – 50 are denied and strict proof is demanded thereof.
23. In response to Paragraph 51, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
24. The allegations of Paragraphs 52 – 53 are denied and strict proof is demanded thereof.
25. In response to Paragraph 54, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
26. The allegations of Paragraphs 55 – 56 are denied and strict proof is demanded thereof.
27. In response to Paragraph 57, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
28. The allegations of Paragraphs 58 – 60 are denied and strict proof is demanded thereof.
29. In response to Paragraph 61, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.

30. The allegations of Paragraphs 62 – 65 are denied and strict proof is demanded thereof.
31. In response to Paragraph 66, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
32. The allegations of Paragraphs 67 – 70 are denied and strict proof is demanded thereof.
33. In response to Paragraph 71, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
34. The allegations of Paragraphs 72 – 75 are denied and strict proof is demanded thereof.
35. In response to Paragraph 76, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
36. The allegations of Paragraphs 77 – 78 are denied and strict proof is demanded thereof.
37. In response to Paragraphs 79 – 99, Jones and Godwin contend that the allegations contained therein do not pertain to them, and thus no response is deemed necessary. However, should a response be required, Jones and Godwin deny any and all allegations in those Paragraphs that allege misconduct, omissions or liability against Jones and Godwin.
38. The allegations contained in Paragraphs 100 – 106 do not require a response from Jones and Godwin, as Defendants' third party claim for Fraud has been dismissed by Order of this Court.
39. In response to Paragraphs 107 – 111, Jones and Godwin contend that the allegations contained therein do not pertain to them, and thus no response is deemed necessary. However, should a response be required, Jones and Godwin deny any and all allegations in those Paragraphs that allege misconduct, omissions or liability against Jones and Godwin.

40. In response to Paragraph 112, Jones and Godwin reiterate their prior answers and defenses as if restated verbatim herein.
41. The allegations of Paragraphs 113 – 116 are denied and strict proof is demanded thereof.
42. The allegations contained in Paragraphs 117 – 122 do not require a response from Jones and Godwin, as Defendants' third party claim for conversion has been dismissed by Order of this Court.
43. The allegations contained in Paragraphs 123 – 130 do not require a response from Jones and Godwin, as Defendants' third party claim for violation of the South Carolina Unfair Trade Practices Act has been dismissed by Order of this Court.
44. The allegations contained in Paragraphs 131 – 141 do not require a response from Jones and Godwin, as Defendants' third party claim for interference with contractual relationship has been dismissed by Order of this Court.
45. The allegations contained in Paragraphs 142 – 147 do not require a response from Jones and Godwin, as Defendants' third party claim for infliction of emotional distress/outrage has been dismissed by Order of this Court.
46. The allegations contained in Paragraphs 148 – 154 do not require a response from Jones and Godwin, as Defendants' third party claim for breach of fiduciary duty has been dismissed by Order of this Court.

FOR A SECOND DEFENSE
(FAILURE TO STATE A CLAIM)

47. Defendants' claims, if any, are barred in whole or in part because Defendants' allegations fail to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE
(UNCLEAN HANDS)

48. Defendants are not entitled to relief because Defendants have unclean hands.

FOR A FOURTH DEFENSE
(ESTOPPEL AND LACHES)

49. Defendants cannot recover because Defendants' claims, if any, are barred by estoppel and laches.

FOR A FIFTH DEFENSE
(WAIVER)

50. Defendants have waived any right to recovery under the causes of actions contained in the Third Party Complaint.

FOR A SIXTH DEFENSE
(CONTRIBUTORY NEGLIGENCE)

51. Any injury and damage sustained by Defendants, which is specifically denied, was due to and caused in part by contributory negligence and/or willfulness of Defendants and/or their agents and representatives, and for that reason, Jones and Godwin are not liable to Defendants in any sum whatsoever.

FOR A SEVENTH DEFENSE
(STATUTE OF LIMITATIONS)

52. Defendants cannot recover because their claims, if any, are barred by the applicable statute of limitations.

FOR AN EIGHTH DEFENSE
(MITIGATION OF DAMAGES)

53. Defendants have failed to exercise reasonable diligence in the mitigation of their alleged damages, which damages are denied.

FOR A NINTH DEFENSE
(NO DAMAGES)

54. Defendants have not sustained any damages as a direct result of Jones or Godwin's actions and, therefore, Defendants may not recover from Jones or Godwin.

FOR A TENTH DEFENSE
(IN PARI DELICTO)

55. Defendants' claims, if any, are barred by the defense of *in pari delicto*.

FOR AN ELEVENTH DEFENSE
(FAILURE TO STATE GROUNDS WITH PARTICULARITY)

56. The causes of action asserted by Defendants sound in misrepresentation and fraud, thus, are required but fail to state with particularity the circumstances that allegedly constitute misrepresentation and fraud on the part of Jones and Godwin.

FOR A TWELFTH DEFENSE
(ASSUMPTION OF THE RISK)

57. Any injury, loss, or damage sustained by Defendants, which is specifically denied, is the direct and proximate result of an express and/or implied assumption of the risk by Defendants. As a result, Defendants are barred from recovery against Jones and Godwin.

FOR A THIRTEENTH DEFENSE
(GOOD FAITH)

58. Jones and Godwin are immune from liability because they acted in good faith and did not know, and in the exercise of reasonable care could not have known, of any of the untruths and/or omissions as alleged by Defendants.

FOR A FOURTEENTH DEFENSE
(BARRED BY DEFENDANTS' ACTIONS AND REPRESENTATIONS)

59. Defendants' claims, if any, are barred by Defendants' actions and representations.

FOR A FIFTEENTH DEFENSE
(CONDONATION, ACQUIESCENCE, AND RATIFICATION)

60. Defendants' claims, if any, are barred by condonation, acquiescence, and/or ratification.

FOR A SIXTEENTH DEFENSE
(BARRED BY THE TERMS OF AGREEMENT)

61. Defendants' claims, if any, are barred by the terms of the parties' agreements and the applicable loan documents.

FOR A SEVENTEENTH DEFENSE
(BUSINESS JUDGMENT RULE)

62. Defendants' claims, if any, are barred by the business judgment rule.

FOR AN EIGHTEENTH DEFENSE
(NO CONFIDENTIAL RELATIONSHIP)

63. Defendants' claims, if any, are barred in whole or in part because neither Jones nor Godwin had a confidential relationship with Defendants.

FOR A NINETEENTH DEFENSE
(NO ACT OR OMISSION)

64. Defendants' claims, if any, are barred in whole or in part because no act or omission on the part of Jones or Godwin caused or contributed to any alleged injury or damage claimed by Defendants.

FOR A TWENTIETH DEFENSE
(NO DUTY)

65. Defendants' claims, if any, are barred in whole or in part because neither Jones nor Godwin owed any duty to Defendants.

FOR A TWENTY-FIRST DEFENSE
(NO RESULTING DAMAGES)

66. Defendants' claims, if any, are barred in whole or in part because Defendants did not suffer any damages as a result of any actions by Jones or Godwin.

FOR A TWENTY-EIGHTH DEFENSE
(NO INTENT TO DEFRAUD)

73. Defendants' claims, if any, are barred in whole or in part because Jones and Godwin did not intend to defraud Defendants.

FOR A TWENTY-NINTH DEFENSE
(NO INTENT TO HARM)

74. Defendants' claims, if any, are barred in whole or in part because Jones and Godwin did not intend to deceive or harm Defendants.

FOR A THIRTIETH DEFENSE
(NO STANDING)

75. Defendants lack standing to bring the claims asserted in the Third Party Complaint.

FOR A THIRTY-FIRST DEFENSE
(RESERVATION AND NON-WAIVER OF ADDITIONAL AFFIRMATIVE DEFENSES)

76. Jones and Godwin specifically reserve any additional and/or affirmative defenses as may be available to them, or revealed to them during the course of their investigation and/or discovery in the case, and as are consistent with applicable law.

PRAYER FOR RELIEF

WHEREFORE, having fully answered the Amended Third Party Complaint of Defendant BJC Enterprises, LLC, Americana, Inc., and Wendy J. Bellamy, Third Party Defendants Jack Jones and Donald Godwin pray that the same be dismissed with prejudiced, with all costs assessed against Defendants and for such other and further relief the Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

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ATTORNEYS FOR THIRD PARTY
DEFENDANTS JACK JONES AND DONALD
GODWIN

November 11, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Hotel and Motel Holdings, LLC,)

Plaintiff,)

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, and Americana, Inc., a/k/a)
Americana Motel of Myrtle Beach, Inc.,)

Third-Party Plaintiffs,)

v.)

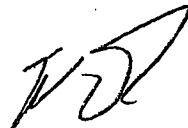
First Palmetto Savings Bank, F.S.B.,)
Jack Jones, Donald D. Godwin, and)
Bhupendra Patel,)

Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-5743

BHUPENDRA PATEL'S ANSWER TO
THIRD-PARTY PLAINTIFFS' THIRD-
PARTY COMPLAINT AND
COUNTERCLAIMS AGAINST THIRD-
PARTY PLAINTIFFS

NOW COMES THE Third-Party Defendant, Bhupendra Patel (hereinafter sometimes referred to as "Patel"), in answering the Third-Party Complaint and counterclaiming against Defendants/Third-Party Plaintiffs, Wendy J. Bellamy (hereinafter sometimes referred to as "Bellamy"), BJC Enterprises, LLC (hereinafter sometimes referred to as "BJC"), and Americana Motel of Myrtle Beach, Inc. (hereinafter sometimes referred to as "Americana"), does hereby allege as follows:



FOR A FIRST DEFENSE

1. Patel does hereby deny each and every allegation in its entirety in the Defendant/Third-Party Plaintiffs' Complaint unless hereinafter specifically admitted.

FOR A SECOND DEFENSE

2. Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
3. Patel, in response to paragraph 11 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
4. Patel admits the allegations in paragraph 12 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint to the extent that Bellamy is a citizen and resident of Horry County, South Carolina and, on information and belief, is a member of BJC and, on information and belief, was an acting member for Americana Motel on or about March 21, 2009 and, on information and belief, had an ownership interest in Americana. Patel is without sufficient information or knowledge to form an opinion or belief as to the remaining allegations in said paragraph and, therefore, denies the same and demands strict proof thereof.
5. Patel denies the allegations in paragraph 13 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
6. Upon information and belief, Patel admits the allegations in paragraph 14 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint to the extent that Americana is a South Carolina corporation which owns property in Horry County, South Carolina and that Bellamy has an ownership interest in said entity. Patel is without sufficient information or knowledge to form an opinion or belief as to the remaining allegations in said paragraph and, therefore, denies the same and demands strict proof thereof.
7. Upon information and belief, Patel admits the allegations in paragraphs 15, 16, and 17 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint.

8. Upon information and belief, Patel admits the allegations in paragraph 18 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint to the extent that Hotel & Motel Holdings, LLC (hereinafter referred to as "H & M") was formed on June 15, 2009 as a South Carolina corporation doing business in Horry County, South Carolina. Patel denies the remaining allegations in said paragraph and demands strict proof thereof. More specifically, Patel never entered into any type of agreement as an individual with First Palmetto Savings Bank, F.S.B. (hereinafter referred to as "Bank"), Harvey Jones, or Tripp Coan.
9. Patel admits the allegations in paragraph 19 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint to the extent that he is a citizen and resident of Horry County, South Carolina. Patel denies the remaining allegations in said paragraph and demands strict proof thereof. More specifically, Patel craves reference to the property, leases, rents, profits, and other-income producing property referenced in said paragraph.
10. Patel is without sufficient information or knowledge to form an opinion or belief as to the allegations in paragraphs 20, 21, 22, 23, and 24 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and, therefore, denies the same and demands strict proof thereof.
11. Patel denies each and every allegation in paragraph 25 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. More specifically, Third-Party Plaintiffs executed two management contracts, dated March 21, 2009, which permitted Patel to manage the day-to-day operations of the properties and pay the bills, make deposits, repairs, and maintain said properties in return for compensation (both management contracts are attached hereto and incorporated herein by reference as Exhibit "A"). Therefore, Third-Party Plaintiffs were not entitled to manage the properties referenced in said paragraph.
12. Patel denies each and every allegation in paragraph 26 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. Patel never possessed any of Bellamy's individual assets in any manner whatsoever. More specifically, Patel had no means of gaining access to or obtaining the individual assets of Bellamy. Further, Patel was permitted, as expressed in the attached



management contracts, to pay the bills, make deposits, and maintain the properties owned by BJC and Americana which are the subject of the above-captioned action. Patel further alleges, upon information and belief, that Bellamy, as a shareholder or member, lacks standing to bring suit on behalf of BJC and Americana.

13. Patel denies the allegations in paragraphs 27, 28, 29, and 30 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
14. Patel denies each and every allegation in paragraph 31 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. More specifically, Patel could not have trespassed onto the property alleged in said paragraph because he entered the real property owned by Americana and BJC pursuant to the management contracts attached hereto as Exhibit "A". The duration for the period under both contracts had not expired when Third-Party Plaintiffs breached the terms of said agreements.
15. Patel denies the allegations in paragraph 32 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
16. Patel denies each and every allegation in paragraph 33 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. Moreover, the agreement attached to Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint references property owned by Americana, not Bellamy individually. Therefore, said allegations should be stricken as they are irrelevant to any causes of action asserted by Bellamy against Patel because Bellamy lacks standing to bring the above-captioned action against Patel on behalf of Americana and BJC.
17. Patel denies each and every allegation in paragraph 34 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. More specifically, Bellamy executed a contract on March 24, 2009 whereby she was to transfer a 1% share of her net profit to Patel upon the sale of all assets of Americana and BJC after paying off all debt. Patel only handled the property of BJC and Americana when he acted in conformance with the terms of the management contracts which he and Third-Party Plaintiffs previously executed.

18. Patel denies the allegations in paragraph 35 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. More specifically, Patel alleges that no reasonable person would attempt suicide if he or she was in the same position under similar circumstances as Bellamy.
19. Patel denies the allegations in paragraph 36 of Third-Party Plaintiffs' Answer, Counterclaim, and Third-Party Complaint and demands strict proof thereof.
20. Paragraphs 37, 38, and 39 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
21. Patel, in response to paragraph 40 of Third-Party Plaintiffs' Answer, Counterclaim, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
22. Patel denies the allegations in paragraph 41 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. Further, Patel alleges that Bellamy and/or Third-Party Plaintiffs must be estopped from asserting the allegations in said paragraph against Patel as Bellamy, in paragraph 8 of her Answer, Counterclaims, and Third-Party Complaint in Civil Action No.: 2009-CP-26-5550 contains identical allegations arising from the same transactions and occurrences against the same third-party defendants, excluding Patel.
23. Patel denies the allegations in paragraph 42 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
24. Paragraphs 43 and 44 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
25. Patel, in response to paragraph 45 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
26. Patel denies the allegations in paragraphs 46 and 47 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.



27. Patel, in response to paragraph 48 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
28. Patel denies the allegations in paragraphs 49 and 50 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
29. Patel, in response to paragraph 51 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
30. Paragraphs 52, 53, 55, 56, 58, and 60 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
31. Patel, in response to paragraphs 54 and 57 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
32. Patel denies the allegations in paragraph 59 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
33. Patel, in response to paragraph 61 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
34. Patel denies the allegations in paragraphs 62, 63, 64, and 65 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
35. Patel, in response to paragraph 66 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
36. Patel denies the allegations in paragraphs 67, 68, 69, and 70 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
37. Patel, in response to paragraph 71 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.



38. Patel denies the allegations in paragraphs 72, 73, 74, and 75 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
39. Patel, in response to paragraph 76 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
40. Paragraphs 77 and 78 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
41. Patel, in response to paragraph 79 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
42. Patel is without sufficient information or knowledge to form an opinion or belief as to the allegations in paragraphs 80, 81, 82, 83, 84, and 85 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and, therefore, denies the same and demands strict proof thereof.
43. Patel denies each and every allegation in paragraph 86 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. More specifically, Third-Party Plaintiffs executed two management contracts, dated March 21, 2009, which permitted Patel to manage the day-to-day operations of the properties owned by BJC and Americana and pay the bills, make deposits, repairs, and maintain said properties in return for compensation (both management contracts are attached hereto and incorporated herein by reference as Exhibit "A"). Therefore, Third-Party Plaintiffs were not entitled to manage the mortgaged properties.
44. Patel denies the allegations in paragraphs 87 and 88 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
45. Patel denies the allegations in paragraph 89 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. More specifically, Patel could not have trespassed onto the property of Bellamy, Americana, BJC, and Harvey Jones because he entered the real property referenced in said paragraph pursuant to the management contracts attached hereto as Exhibit "A". Further, upon information and belief, Bellamy has no individual ownership interest in

the property referenced in said paragraph. The duration for the period under both contracts had not expired when Third-Party Plaintiffs breached the terms of said agreements.

46. Paragraph 90 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint does not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
47. Patel denies the allegations in paragraph 91 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
48. Patel denies the allegations in paragraph 92 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. More specifically, Bellamy executed a contract on March 24, 2009 whereby she was to transfer a 1% share of her net profit to Patel upon the sale of all assets of Americana and BJC after paying off all debt. Patel only handled the property of BJC and Americana when he acted in conformance with the terms of the management contracts which he and Third-Party Plaintiffs previously executed.
49. Patel denies the allegations in paragraph 93 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. Patel further alleges that no reasonable person would attempt suicide if he or she were in the same position under similar circumstances as Bellamy.
50. Patel denies the allegations in paragraph 94 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
51. Paragraphs 95, 96, 97, and 98 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
52. Patel denies the allegations in paragraph 99 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
53. Patel, in response to paragraph 100 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
54. Patel denies the allegations in paragraphs 101 and 102 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.

55. Paragraphs 103, 104, 105, and 106 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
56. Patel, in response to paragraph 107 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
57. Paragraphs 108, 109, and 111 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
58. Patel denies the allegations in paragraph 110 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. Patel further alleges that Third-Party Plaintiffs must be estopped from asserting the allegations in said paragraph against Patel, as Bellamy, in paragraph 86 of her Answer, Counterclaims, and Third-Party Complaint in Civil Action No.: 2009-CP-26-5550, asserts identical allegations against the same Third-Party Defendant Bank. However, said paragraph 86 as well as the other factual allegations asserted to support Bellamy's cause of action for breach of contract accompanied by fraud in Civil Action No.: 2009-CP-26-5550 do not mention Patel even though they reference facts arising from the same transactions and occurrences which engendered the above-captioned matter. Upon information and belief, Patel alleges that the provision, stating: "other Third-Party Defendants", in paragraph 110 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint was incorporated to mislead the Plaintiff and Third-Party Defendants and, therefore, constitutes a scandalous allegation. Therefore, paragraph 110 must be stricken from Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint.
59. Patel, in response to paragraph 112 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
60. Patel denies the allegations in paragraph 113 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.

61. Patel denies the allegations in paragraph 114 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. More specifically, Patel did not assign a note, mortgage, guaranty, or any security interest from F.S.B. to H & M on June 15, 2009. Patel acted as a manager of the properties pursuant to the management contracts executed by Third-Party Plaintiffs and Patel on March 24, 2009.
62. Patel denies the allegations in paragraphs 115 and 116 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
63. Patel, in response to paragraph 117 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
64. Patel denies the allegations in paragraphs 118, 119, 120, 121, and 122 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
65. Patel, in response to paragraph 123 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
66. Patel is without sufficient information or knowledge to form an opinion or belief as to the allegations in paragraphs 124 and 125 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and, therefore, denies the same and demands strict proof thereof.
67. Patel is without sufficient information or knowledge to form an opinion or belief as to the allegations in paragraph 126 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and, therefore, denies the same and demands strict proof thereof. More specifically, Third-Party Plaintiffs fail to specify which individuals or entities were involved in the alleged conspiracy referenced in said paragraph. Therefore, Patel craves reference to those individuals or entities.
68. Paragraphs 127, 128, 129, and 130 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.

69. Patel, in response to paragraph 131 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
70. Patel is without sufficient information or knowledge to form an opinion or belief as to the allegations in paragraphs 132 and 133 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and, therefore, denies the same and demands strict proof thereof.
71. Patel denies the allegations in paragraph 134 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint as to having personal knowledge or being aware of the individual contractual obligations between Defendants and third parties including renters and Third-Party Defendant Bank and, therefore, demands strict proof thereof. The remaining allegations of said paragraph do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.
72. Patel denies the allegations in paragraphs 135, 136, 137, 138, 139, 140, and 141 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.
73. Patel, in response to paragraph 142 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
74. Patel denies the allegations in paragraphs 143, 144, 145, 146, and 147 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof. Patel alleges that a reasonable person would not attempt to take her own life if she was under identical circumstances as Bellamy.
75. Patel, in response to paragraph 148 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint, re-alleges all prior allegations and denials as if fully repeated herein verbatim.
76. Upon information and belief, Patel admits the allegations in paragraph 149 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint
77. Patel denies the allegations in paragraph 151 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint and demands strict proof thereof.



78. Paragraphs 150, 152, 153, and 154 of Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint do not require a response from Patel; however, to the extent that an answer is required, Patel denies the same and demands strict proof thereof.

**FURTHER ANSWERING THIRD-PARTY PLAINTIFFS' THIRD-PARTY
COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO**
(Motion to Strike Third-Party Claims against Patel)

79. Pursuant to Rule 14, *South Carolina Rules of Civil Procedure*, the liability of a Third-Party Defendant must be dependent upon the outcome of the original action between the Plaintiff and Defendant.
80. Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint fails to allege that Patel is liable for any of Plaintiff's claims against said Third-Party Plaintiffs. Further, said pleading fails to allege any facts which show a substantive right to shift liability to Patel.
81. Therefore, Third-Party Plaintiffs' Answer, Counterclaims, and Third-Party Complaint must be stricken as to all allegations asserted against Patel pursuant to Rule 14(a), *South Carolina Rules of Civil Procedure*.

**FURTHER ANSWERING THIRD-PARTY PLAINTIFFS' THIRD-PARTY
COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO**
**(Motion to Dismiss and/or Strike Conspiracy Claim against Patel for failure
to Plead Additional Acts in Furtherance of Conspiracy)**

82. Patel re-alleges all prior allegations and denials as if fully repeated herein verbatim.
83. Third-Party Plaintiffs have failed to state facts sufficient to constitute a cause of action for conspiracy against Patel and, therefore, Third-Party Plaintiffs' cause of action for civil conspiracy against Patel should be dismissed and/or stricken pursuant to Rule 12(b)(6) and/or Rule 12(f), *South Carolina Rules of Civil Procedure*.

**FURTHER ANSWERING THIRD-PARTY PLAINTIFFS' THIRD-PARTY
COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO**
(Standing)

84. Patel re-alleges all prior allegations and denials as if fully repeated herein verbatim.

85. Upon information and belief, Bellamy, as a member of BJC and shareholder of Americana, does not have authority to maintain the above-captioned action on behalf of the Company, or the authority to allege causes of action arising from transactions and occurrences involving said entity's assets.
86. Therefore, the causes of action asserted against Patel by Bellamy arising from property owned by BJC and Americana should be dismissed with prejudice and/or stricken from the Third-Party Plaintiffs' Complaint.

FURTHER ANSWERING THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO
(Estoppel)

87. Patel re-alleges all prior allegations and denials as if fully repeated herein verbatim.
88. Third-Party Plaintiffs previously executed a management contracts which granted Patel authority to handle the day-to-day management of BJC and Americana prior to said Third-Party Plaintiffs filing the above-captioned action and Bellamy filing Civil Action No.: 2009-CP-26-5550 against Patel.
89. Further, Bellamy has requested Patel to engage in management activities and enter the property of BJC and Americana prior to and subsequent to filing the above-referenced actions against Patel. Bellamy, in seeking Patel to act in conformance with his management contract, advised Patel that she was unaware of the civil actions filed against him even though her attorney has since filed and served the above-captioned action upon him.
90. That, in relying on Bellamy's statements and her capacity as a member and/or shareholder of BJC and Americana, Patel continued to perform his duties pursuant to the management contracts attached hereto as Exhibit "A".
91. Therefore, the Third-Party Plaintiffs must be estopped from seeking recovery against Patel for acting in conformance with the management contracts attached hereto as Exhibit "A".



**FURTHER ANSWERING THIRD-PARTY PLAINTIFFS' THIRD-PARTY
COMPLAINT AND BY WAY OF A FIRST COUNTERCLAIM**
(Breach of Contract/Right to Set-Off)

92. Patel re-alleges all prior allegations and denials as if fully repeated herein verbatim.
93. That Bellamy is a citizen and resident of Horry County, South Carolina.
94. That Patel is a citizen and resident of Horry County, South Carolina.
95. That BJC is a limited liability company organized and existing under the laws of South Carolina and transacts business in Horry County, South Carolina.
96. That Americana is a corporation organized and existing under the laws of South Carolina and transacts business in Horry County, South Carolina.
97. That on or about March 21, 2009 Patel and Third-Party Plaintiffs executed binding management contracts whereby Patel was responsible for the day-to-day operations of the Emerald Shores Motel and Rainbow Court Family Resort and Third-Party Plaintiffs were to pay Patel \$30,000 per year in consideration for the management services he provided for each of the above-referenced properties (said contracts are incorporated herein by reference and attached hereto as Exhibit "A"). In connection with the above-referenced management contracts and as consideration for the management services to be provided by Patel, Bellamy, on or about March 24, 2009, executed an agreement between herself and Patel whereby she would transfer 1.00% of her share of the net profit to Patel pursuant to the terms of said agreement in exchange for Patel's management services.
98. The duration of all parts of the attached management contracts have not expired, nor has Patel received all consideration for his performance of all his obligations thus far, pursuant to the terms said contracts.
99. Patel's management duties required him to pay bills, make deposits, make repairs as needed, and ensure pool and ground upkeep and maintenance of both properties. Patel has continued to manage the properties and perform all obligations pursuant to the terms of the attached management contracts throughout 2010.
100. Patel has performed all of his obligations in conformance with the terms expressed in the attached management contracts and has remained ready, willing, and able to perform all obligations required of him under the terms of said contracts until counsel for Third-Party Plaintiffs filed and served Patel with the above-referenced

Third-Party Complaints in an attempt to search for deep pockets and avoid liability resulting from the loan documents which are the subject of Plaintiff's causes of action in the above-captioned matter and Civil Action No.: 2009-CP-26-5550. Said Third-Party Complaints against Patel allege that Patel engaged in conversion, civil conspiracy, tortious interference with a contract, trespass, and wrongfully taking over the properties in which Patel originally contracted with Third-Party Plaintiffs to manage pursuant to the terms expressed in the attached management contracts. Thereafter, Bellamy informed Patel that she was unaware of any actions which she had filed and brought against him. As such, Third-Party Plaintiffs continued to insist that Patel perform management duties at the properties and have expressed ignorance as to the lawsuit despite having sued Patel for performing his obligations pursuant to the terms of said management contracts.

101. Third-Party Plaintiffs filing and serving of the Third-Party Complaint, together with all allegations therein, constitutes an unequivocal repudiation that has prevented Patel from being able to complete performance under the above-referenced management contracts, and as a result of said repudiation, Patel has suffered damages therefrom.
102. As of July, 2010, Patel was paid only \$30,000 for management of the properties he contracted with Third-Party Plaintiffs to manage. Third-Party Plaintiffs are obligated to compensate Patel for the other property pursuant to the terms of the above-referenced management contracts.
103. Failure by Third-Party Plaintiffs to compensate Patel for his performance pursuant to the terms of said contracts constitutes an unjustifiable failure to perform and/or a breach thereof which proximately caused Patel to suffer damages resulting from said breach which shall be off-set by the amount of damages alleged to be owed to Third-Party Plaintiffs by Patel.
104. That as a result of Third-Party Plaintiffs' breach of contract, Patel is entitled to actual and consequential damages.



**FURTHER ANSWERING THIRD-PARTY PLAINTIFFS' THIRD-PARTY
COMPLAINT AND BY WAY OF A SECOND COUNTERCLAIM**
(Breach of Contract Accompanied by a Fraudulent Act)

105. Patel re-alleges all prior allegations and denials as if fully repeated herein verbatim.
106. That Third-Party Plaintiffs breached the terms of the above-referenced contract.
107. That Third-Party Plaintiffs filed a Third-Party Complaint against Patel containing allegations which sought to recover remedies from Patel for actions he took to perform his obligations under the terms of the above-referenced management contracts he previously executed and formed with said Third-Party Plaintiffs.
108. That Third-Party Plaintiffs' Third-Party Complaint failed to mention any management contract created, executed, and made binding by them and Patel.
109. That Third-Party Plaintiffs filed the above-referenced Third-Party Complaint against Patel subsequent to Bellamy filing a Third-Party Complaint against Patel because they never intended to perform their obligations pursuant to the above-referenced management contracts prior to or subsequent to their execution of said contracts. After counsel for Third-Party Plaintiffs served Patel with the Third-Party Complaint in Civil Action No.: 2009-CP-26-5550, Third-Party Plaintiffs, through Bellamy, informed Patel that said Third-Party Plaintiffs were unaware of any actions which were filed on their behalf and brought against Patel. Further, Third-Party Plaintiffs insisted that Patel continue to perform management duties at the properties and expressed ignorance as to the lawsuit despite having sued Patel for performing his obligations pursuant to the terms of said management contracts. Such conduct by Third-Party Plaintiffs constitutes a fraudulent act.
110. That Third-Party Plaintiffs' fraudulent act was connected with their breach of the above-referenced management contracts and Patel suffered damages therefrom.
111. That as a result of Third-Party Plaintiffs' breach of contract accompanied by a fraudulent act, Patel is entitled not only to actual and consequential damages, but also punitive damages.



**FURTHER ANSWERING THIRD-PARTY PLAINTIFFS' THIRD-PARTY
COMPLAINT AND IN THE ALTERNATIVE BY WAY OF A THIRD
COUNTERCLAIM**

(Tortious Interference with a Contract)

112. Patel re-alleges all prior allegations and denials as if fully repeated herein verbatim.
113. That on or about March 21, 2009 Third-Party Plaintiffs and Patel executed binding management contracts whereby Patel was responsible for the day-to-day operations of the Emerald Shores Motel and Rainbow Court Family Resort, and Patel was to be paid \$30,000 per year in consideration for the management services he provided for each of the above-referenced properties (said contracts are incorporated herein by reference and attached hereto as Exhibit "A").
114. That Third-Party Plaintiffs executed said contracts and were to provide consideration to Patel for performance of the terms therein.
115. That Bellamy filed the above-referenced Third-Party Complaint against Patel to interfere with the management contracts between Patel BJC and Americana, which, she intended, would prevent her from having to transfer her ownership interest pursuant to the terms of said contract.
116. Bellamy had no justification to intentionally procure the breach of contract between Patel and BJC and Americana except to prevent Patel from receiving the promised consideration pursuant to the terms of said contract.
117. That as a result of Bellamy's tortious interference with the above-referenced contract, Patel has suffered damages.
118. That Patel is entitled to an award of actual damages, consequential damages, and punitive damages.

**FURTHER ANSWERING THIRD-PARTY PLAINTIFFS' THIRD-PARTY
COMPLAINT AND BY WAY OF A FOURTH COUNTERCLAIM**
(S.C. Frivolous Proceeding Actions Act)

119. Patel re-alleges all prior allegations and denials as if fully repeated herein verbatim.
120. As there is no basis for the within action, either in law or in fact, against Patel, at the conclusion of the action, Patel shall be entitled to an assessment of and against

Third-Party Plaintiffs for payment of all or a portion of the attorney's fees and court costs of Patel under the *South Carolina Frivolous Proceeding Actions Act*.

121. In support of the allegations as set forth in this Cause of Action and Counterclaim, Patel would allege that the within action is being brought against him, with the knowledge that adjudication of said claim is without merit as against him and, further, the bringing of said action was done primarily for purposes other than the adjudication of a proper legal claim with same being the basis for the cause of action back and against Bellamy under the *South Carolina Frivolous Proceeding Actions Act*.

FURTHER ANSWERING THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT AND AS A FURTHER DEFENSE THERETO

122. Patel re-alleges all prior allegations and denials as if fully repeated herein verbatim.
123. Patel reserves and does not waive any additional or further defenses as may be revealed by discovery.

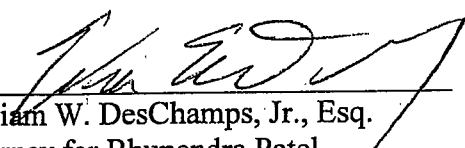
WHEREAS, Patel having fully answered and counterclaimed against Third-Party Plaintiffs, prays that the Honorable Court inquire into the matters as set forth herein and:

- a. Third-Party Plaintiffs' Third-Party Complaint be dismissed with prejudice;
- b. Patel be awarded attorney's fees and costs under the *South Carolina Frivolous Proceedings Actions Act*;
- c. For judgment against Third-Party Plaintiffs for actual, consequential, and punitive damages in the amount to be determined by the jury and/or the finder-of-fact;
- d. For judgment against Bellamy for actual, consequential, and punitive damages in the amount to be determined by the jury and/or the finder-of fact; and
- e. For any other and further relief as this Court deems just and proper.

[SIGNATURE ON NEXT PAGE]



DESCHAMPS LAW FIRM



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E-mail: trey@deschampsfirm.com

July 14, 2010
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

FIRST PALMETTO SAVINGS BANK, FSB,

Plaintiff,

Civil Action No. 2009-CP-26-5 '43

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,

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MOTION TO SUBSTITUTE PARTY

Pursuant to Rule 25(c) SCRCP, First Palmetto Savings Bank, FSB ("First Palmetto") hereby moves before this Court for an Order substituting Hotel & Motel Holdings, LLC ("H&M Holdings") as the Plaintiff in the above captioned action on the following specific grounds:

1. First Palmetto transferred and assigned the note, mortgages, and all other security instruments and documents that are the subject to the above captioned action to H&M Holdings as evidenced by:
 - 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".

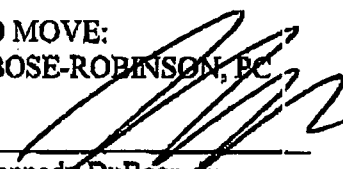
c. Assignment of Mortgage dated June 30, 2009 and recorded on June 30, 2009 in the Horry County Register of Deeds Office in Mortgage Book 5183 at Page 3151 and Deed Book 3408 at Page 304. Copies attached hereto and incorporated by reference herein as Exhibit "C".

2. That First Palmetto is no longer the owner or holder of the note, mortgages, and security instruments that are the subject of this action.
3. As the current owner and holder of the note, mortgages, and security instruments H&M Holdings is the proper party in interest and the proper Plaintiff in the above captioned action. Copies of proposed Amended Lis Pendens, Amended Summons and Notice, and Amended Complaint with Exhibits are attached hereto and incorporated herein collectively as Exhibit "D"
4. That substitution of Hotel & Motel as Plaintiff in the above captioned action will not prejudice or work an injustice to the adverse parties.
5. That no parties have filed responsive pleadings to the complaint.
6. That as a matter of right, Hotel and Motel is entitled to be substituted as Plaintiff in the above captioned action.

Wherefore, First Palmetto prays that H&M Holdings be substituted for First Palmetto as the Plaintiff in the above captioned action and for such other and further relief as this Court may deem appropriate.

I SO MOVE:

DuBOSE-ROBINSON, PC

BY: 

J. Kennedy DuBose, Jr.

Jonathan M. Robinson

*John K. DuBose, III

ATTORNEYS FOR PLAINTIFF

935 Broad St.

P. O. Drawer 39

Camden, SC 29021

(803) 432-1992 (telephone)

July 8, 2009.

Camden, South Carolina

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DUBOSE LAW

PAGE 06/08

MOTION TO SUBSTITUTE PARTY

Civil Action No. 2009-CP-25-2442

I CONSENT:

HOTEL & MOTEL HOLDINGS, LLC

BY:

Jack H. Jones

NAME:

Jack H. Jones

ITS:

Member

July 7, 2009.

 South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

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.

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.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

**NOTICE OF MOTION AND MOTION TO
STRIKE, TO DISMISS AND FOR COSTS
AND SANCTIONS ON BEHALF OF THIRD
PARTY DEFENDANTS JACK JONES AND
DONALD GODWIN**

TO: DEFENDANTS/THIRD PARTY PLAINTIFFS BJC ENTERPRISES, LLC, WENDY J.
BELLAMY, AND AMERICANA, INC. AND THEIR ATTORNEY, KATHRYN M.
COOK, ESQUIRE

COME NOW Third Party Defendants Jack Jones and Donald Godwin, by and through
their undersigned counsel, and hereby submit this Motion to Strike and to Dismiss the Amended
Third Party Complaint which was filed on or about June 9, 2010, by Defendants/Third Party

TPGL 3349194v1

Plaintiffs BJC Enterprises, LLC, Wendy J. Bellamy, and Americana, Inc. In addition, Third Party Defendants Jones and Godwin seek the imposition of sanctions upon Defendants/Third Party Plaintiffs and/or their counsel as permitted under Rule 11(a), SCRCP, including reasonable expenses incurred in prosecuting this Motion and reasonable attorneys' fees. This Motion is made pursuant to Rules 11, 12(b)(6), 12(b)(8), 12(f), and 14(a) of the South Carolina Rules of Civil Procedure.

The within Motion is premised upon the pleadings, as well as all applicable case and statutory law, and any affidavits submitted at a later date. In addition, a supporting Memorandum of Law is being filed contemporaneously with the Court and is incorporated hereinto by reference.

In accordance with Rule 11(a), SCRCP, counsel hereby certifies that prior to filing this Motion, counsel has communicated with opposing counsel and has attempted in good faith to resolve the matter contained in the Motion.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



R. Wayne Byrd (S.C. Bar # 1068)

Audra M. Byrd (S.C. Bar # 76719)

David R. Sligh (S.C. Bar # 77493)

Post Office Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR THIRD PARTY

DEFENDANTS JACK JONES AND DONALD

GODWIN

July 16, 2010

TPGL 3349194v1

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, 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.)

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO STRIKE, TO DISMISS
AND FOR COSTS AND SANCTIONS ON
BEHALF OF THIRD PARTY
DEFENDANTS JACK JONES AND
DONALD GODWIN**

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.)

COME NOW Third Party Defendants Jack Jones ("Jones") and Donald Godwin ("Godwin"), by and through their undersigned counsel, and hereby submit this Memorandum of Law in Support of their contemporaneously-filed Motion to Strike, to Dismiss, and for Costs and

Sanctions. For the reasons set forth herein, counsel would show that the Amended Third Party Complaint should be stricken as a matter of law.

ARGUMENT

I. DEFENDANTS' AMENDED THIRD PARTY COMPLAINT IS IMPROPER UNDER THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE AND SHOULD BE STRICKEN.

Under Rule 14, SCRPC, a defendant "may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him." Rule 14(a), SCRPC. Thus, Rule 14 permits a defendant to bring into the action, or implead, a non-party who may be ultimately responsible for any judgment rendered against the defendant. First Gen. Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 445 S.E.2d 446 (1994). "Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant *founded upon derivative liability*. The outcome of the principal claim must impact the third-party defendant's liability; however, no right exists to implead a third-party defendant who is directly liable to the plaintiff." Id. at 442, 445 S.E.2d at 447 (emphasis added).

In this case, Defendants' third party claims against Godwin and Jones are not derivative in nature. In determining whether Defendants state a viable Third Party Complaint, the Court must determine whether Defendants have a cause of action against Godwin and Jones which would impose liability upon Godwin and Jones for all or part of Plaintiff Hotel & Motel Holdings' claim for foreclosure. Clearly, Defendants have no such claim. Indeed, if the claims asserted were meritorious, which is categorically denied, Jones and Godwin would be directly liable to both Plaintiff Hotel & Motel Holdings and Defendants.

Rule 14(a), SCRCF, permits any party, including a third party defendant to move to strike the third party claim. Beach v. Hudson, 298 S.C. 424, 380 S.E.2d 869 (Ct. App. 1989). When considering a motion to strike a third party claim, "the court may properly consider 'the effect the additional parties and claims will have on the adjudication of the main action - in particular, whether continued joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way.'" Id. at 426, 380 S.E.2d at 871. (quoting 6 C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1460 at 319 (1971)). If the Court permits continued joinder of Defendants' third party claims against Godwin and Jones, the straightforward foreclosure action would be unduly complicated with complex breach of fiduciary duty and civil conspiracy claims. Furthermore, continued joinder will significantly prejudice Hotel & Motel Holdings, Godwin and Jones in several respects. For example, Hotel & Motel Holdings is entitled to have the foreclosure matter referred to the Master in Equity, so as to move the foreclosure along without the delays necessarily imposed by appearing on the jury roster. In contrast, Godwin and Jones are entitled to a trial by jury on the third party claims asserted against them.

Based upon the foregoing and pursuant to Rules 12(f) and 14(a), SCRCF, Defendants' Amended Third Party Complaint should be stricken as a matter of law. The claims asserted against Godwin and Jones are not derivative in nature, and therefore, the Amended Third Party Complaint is procedurally improper and impermissible under the South Carolina Rules of Civil Procedure.

II. DEFENDANTS HAVE FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION AGAINST GODWIN AND JONES.

A trial court may properly grant a motion to dismiss for failure to state facts sufficient to constitute a cause of action when 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. Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). When deciding a motion to dismiss pursuant to Rule 12(b)(6), SCRPC, the Court should consider only the allegations set forth on the face of the complaint. Stiles, at 300, 457 S.E.2d at 602 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

Here, Defendants have failed to state facts sufficient to state a cause of action against Godwin and Jones individually. There is no allegation that Jones or Godwin, acting in their individual capacities, have participated in any manner with regard to the loan transactions which are the subject of the Third Party Complaint. The allegations relate only to the acquisition of the underlying Notes and Mortgages, and this was accomplished solely by Hotel & Motel Holdings. Moreover, with regard to Godwin, he was not a member or otherwise affiliated with Hotel & Motel Holdings until after the loan documents were sold to the company. Thus, Defendants have failed to articulate any reason whatsoever for attempting to bring in Godwin and Jones, individually, as a parties to this foreclosure action.

Based upon the foregoing, Defendants' Amended Third Party Complaint should be dismissed for failure to state facts sufficient to constitute a cause of action against Godwin and Jones. Defendants have failed to allege any facts which would entitle them to relief on any theory of the case as to Godwin and Jones.

III. GODWIN AND JONES' REQUESTS FOR SANCTIONS PURSUANT TO RULE 11, SCRPC IS PROPER AND SHOULD BE GRANTED AS A MATTER OF LAW.

In relevant part, Rule 11(a), SCRPC provides: "Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney

of record who is an active member of the South Carolina Bar.” The Rule further provides that by his signature, the submitting attorney is certifying that “he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.” Rule 11(a), SCRCP.

Under Rule 11, SCRCP, parties and attorneys are required to read their pleadings before filing with the Court, and the parties and their attorneys must certify that to the best of their knowledge, information and belief, there is good grounds to support the pleading. In preparing a motion or pleading, “an attorney has a duty of acting in good faith, and may be disciplined for violation of the duty.” Johnson v. Dailey, 318 S.C. 318, 323, 457 S.E.2d 613, 616 (1995). It is a violation of Rule 11 of the South Carolina Rules of Civil Procedure for a party or her counsel to knowingly file a frivolous claim. Wade v. State, 348 S.C. 255, 263, 559 S.E.2d 843, 847 (2002). In discussing Rule 11, FRCP, the South Carolina District Court has held:

Rule 11 requires that an attorney conduct a reasonable investigation of the factual and legal basis for the claim before filing. The prefiling factual investigation must uncover some information to support the allegations in the complaint and some basis in law to support the claims in the complaint. An attorney violates Rule 11 if the complaint has absolutely no chance of success under the existing precedent. Rule 11 no longer requires a showing of bad faith. Rather, the relevant inquiry is whether a specific filing was, if not successful, at least well founded at the time of filing.

Gibbes v. Rose Hill Plantation Dev. Co., 794 F.Supp. 1327, 1340 (D.S.C.1992) (internal citations and quotations omitted) (quoting Brubaker v. City of Richmond, 943 F.2d 1363, 1373 (4th Cir. 1991)). The Amended Third Party Complaint filed in this action clearly demonstrates that no investigation into the facts or the prevailing case law was undertaken prior to filing.

In this case, a reasonable investigation of the facts surrounding the assignment of the underlying Note and Mortgage would reveal that Godwin was not involved in any manner with the transaction, and he did not become a member of Hotel & Motel Holdings until after the assignment was effected. In addition, even a minimal investigation of the transaction would reveal the assignment was a legitimate business transaction whereby Hotel & Motel Holdings paid adequate compensation for the assignment. Furthermore, a cursory review of controlling case law would alert counsel to the impropriety of the Third Party Complaint, which is clearly not based upon derivative liability as required under the Rules of Procedure.

By requesting the imposition of sanctions, Godwin and Jones are simply requesting that the Court punish counsel for filing what is clearly a frivolous Third Party Complaint in direct contravention of the South Carolina Rules of Civil Procedure and controlling case law. As set forth more fully above, there is no legal or factual basis upon which Defendants may assert a Third Party Complaint against Godwin and Jones in this foreclosure action.

For these reasons, Godwin and Jones respectfully request their costs be assessed against Defendants and/or their counsel and sanctions be imposed by the Court.

CONCLUSION

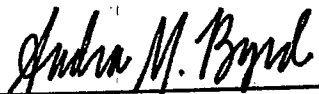
For all of the foregoing reasons, Defendants' Amended Third Party Complaint against Jack Jones and Donald Godwin should be dismissed. Defendants' claims are not based upon derivative liability and are therefore, improper under the South Carolina Rules of Civil Procedure. Further, Defendants have failed to state facts sufficient to constitute a cause of action against Godwin and Jones, individually. Finally, Godwin and Jones' requests for costs and sanctions are proper and should be granted.

THEREFORE, Third Party Defendants Donald Godwin and Jack Jones respectfully request that the Amended Third Party Complaint be dismissed with prejudice, that the costs of this action be charged to Defendants, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:


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ATTORNEYS FOR THIRD PARTY
DEFENDANTS JACK JONES AND DONALD
GODWIN

July 16, 2010

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Hotel and Motel Holdings, LLC,
Plaintiff,

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, and Americana, Inc., a/k/a
Americana Motel of Myrtle Beach, Inc.,

Third-Party Plaintiffs,

v.

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

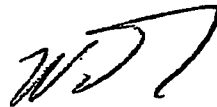
Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-5743

NOTICE OF MOTION AND MOTION
TO DISMISS AND/OR STRIKE
THIRD-PARTY COMPLAINT ON
BEHALF OF THIRD-PARTY
DEFENDANT PATEL

TO: The Third-Party Plaintiffs, BJC Enterprises, LLC, Wendy J. Bellamy, and
Americana, Inc., by and through her attorney, Kathryn M. Cook, Esquire:

YOU WILL PLEASE TAKE NOTICE that the Third-Party Defendant Patel, through
his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas
for the Fifteenth Judicial Circuit, Horry County, at the Horry County Courthouse in Conway,
South Carolina, on the tenth (10th) day after service hereof, or as soon as thereafter as counsel
may be heard for an Order dismissing and/or striking Third-Party Plaintiffs' Third-Party



Complaint pursuant to Rule 12(b)(6) and Rule 12(f), *South Carolina rules of Civil Procedure*.

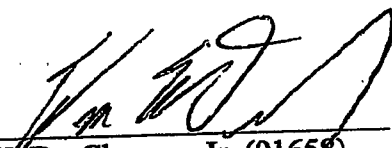
More specifically, Third-Party Defendant Patel bases his motion on the following grounds:

1. Pursuant to Rule 14, *South Carolina Rules of Civil Procedure*, the liability of a Third-Party Defendant must be dependent upon the outcome of the original action between the Plaintiff and Defendant. The Third-Party Complaint fails to state any legal or factual grounds under which Third-Party Defendant Patel would be liable for indemnification, subrogation, contribution, express or implied warranty, or any other theory that would support a third-party action under Rule 14.
2. Third-Party Plaintiffs have failed to state facts sufficient to constitute causes of action for fraud, breach of contract, conversion, civil conspiracy, interference with a contractual relationship, and infliction of emotional distress.
3. Paragraphs 86, 89, 91, 92, 93, 94, 101, 118 of the Third-Party Complaint must be stricken with respect to any claims asserted against Third-Party Defendant Patel as the allegations therein are redundant, immaterial, and scandalous.

WHEREFORE, the Third-Party Defendant Patel requests that this Honorable Court dismiss and/or strike the Third-Party Plaintiffs' Complaint for the above-stated reasons.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, the undersigned certifies that prior consultation would serve no useful purpose with respect to Third-Party Defendant's Motion as said motion would be dispositive of Third-Party Plaintiffs' causes of action against said Third-Party Defendant if granted.

DESCHAMPS LAW FIRM



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August 16 2010
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Hotel and Motel Holdings, LLC,)

Plaintiff,)

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, and Americana, Inc., a/k/a
Americana Motel of Myrtle Beach, Inc.,**)

Third-Party Plaintiffs,)

v.)

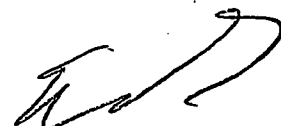
**First Palmetto Savings Bank, F.S.B.,
Jack Jones, Donald D. Godwin, and
Bhupendra Patel,**)

Third-Party Defendants.)

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-5743**

**THIRD-PARTY DEFENDANT
BHUPENDRA PATEL'S
MEMORANDUM IN SUPPORT OF
HIS MOTION TO DISMISS AND/OR
STRIKE DEFENDANTS'
THIRD-PARTY COMPLAINT**

Pursuant to Rule 12(b)(6) and Rule 12(f), *South Carolina Rules of Civil Procedure*, the Third-Party Defendant Bhupendra Patel (hereinafter referred to as "Patel") hereby moves for an Order dismissing and/or striking Defendant/Third-Party Plaintiffs' Third-Party Complaint. More specifically, Patel basis his Motion on the following grounds: 1) that Third-Party Plaintiffs have failed to state any legal or factual grounds under which Patel would be liable for indemnification, subrogation, contribution, express or implied warranty, or any other theory that would support a



third-party action under Rule 14, *South Carolina Rules of Civil Procedure*; 2) Third-Party Plaintiffs have failed to state facts sufficient to constitute causes of action for fraud, breach of contract, conversion, civil conspiracy, interference with a contractual relationship, and infliction of emotional distress; and 3) paragraphs 86, 89, 91, 92, 93, 94, 101, and 118 of the Third-Party Complaint must be stricken with respect to any claims asserted against Patel as the allegations therein are redundant, immaterial, and scandalous.

STATEMENT OF THE CASE

This action was originally brought by Plaintiff Hotel & Motel Holdings LLC (hereinafter referred to as "H & M"), as holder of the subject mortgages, against Defendants/Third-Party Plaintiffs to foreclose on two hotel properties owned by said parties. Defendants/Third-Party Plaintiffs filed and served their responsive pleadings on all the above-captioned parties asserting counterclaims against H & M and third-party claims against the above-captioned Third-Party Defendants. The Third-Party Complaint is ambiguous as to the causes of action they are asserting against Patel, however, it appears that they allege causes of action against Patel for civil conspiracy, conversion, interference with a contractual relationship, and infliction of emotional distress/outrage. Additionally, as pled in paragraph 49 of the Third-Party Complaint, Third-Party Plaintiffs allege that Patel participated in fraud by extracting a guaranty from Wendy J. Bellamy (hereinafter referred to as "Bellamy").

LAW/ANALYSIS

The Third-Party Complaint must be dismissed and/or stricken as it is an improper attempt to implead Patel pursuant to Rule 14, *South Carolina Rules of Civil Procedure*, and it fails to state facts sufficient to constitute actions for fraud, breach of contract, conversion, civil conspiracy, interference with a contractual relationship, and infliction of emotional distress pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*.



1. **Third-Party Plaintiffs' Complaint is improper pursuant to Rule 14, *South Carolina Rules of Civil Procedure*.**

Under Rule 14, *South Carolina Rules of Civil Procedure*, a "third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability." *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994). Derivative liability is defined as "liability for a wrong that a person other than the one wronged has a right to redress." *Black's Law Dictionary* 926 (7th ed. 1999). The provisions in Rule 14(a), *South Carolina Rules of Civil Procedure*, are substantially same as Rule 14(a) of the *Federal Rules of Civil Procedure*. See Note to Rule 14, *South Carolina Rules of Civil Procedure*. "Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Procedure." *Gardner v. Newsome Chevrolet-Buick*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). In *Laughlin v. Dell Fin. Servs. L.P.*, 465 F. Supp. 2d 563 (D.S.C. 2006), the Federal District Court of South Carolina construed Rule 14(a), *Federal Rules of Civil Procedure*, to require the third-party plaintiff to allege that the third-party defendant's liability to it must be dependent upon the outcome of the plaintiff's claim against the third-party plaintiff, or that the third-party defendant is secondarily liable to said third-party plaintiff. See *Id.* The Court found that that the relief demanded by the third-party plaintiff resulting from its causes of action for breach of contract, fraudulent inducement, fraud, and negligent misrepresentation asserted against the third-party defendant was available regardless of the outcome of the original claims asserted by the plaintiff against said third-party plaintiff. *Id.* at 465 F. Supp. 2d at 566.

Third-Party Plaintiffs' Third-Party Complaint seeks to recover damages from Patel arising from causes of action for civil conspiracy, conversion, intentional infliction of emotional distress, and interference with a contractual relationship. Third-Party Plaintiffs' potential liability to H & M will result from whether the finder-of-fact finds that they breached the terms of the subject mortgages and other loan documents, or whether Third-Party Plaintiffs have a valid defense to the foreclosure of the subject mortgages and other loan documents. Third-Party Plaintiffs' liability to H & M is not the proximate and foreseeable result of Patel's alleged conduct. Therefore, the damages in which Third-Party Plaintiffs seek to recover from Patel are not affected by the result of this foreclosure suit. Further, the Third-Party Complaint does not state any legal grounds under which, nor does it even allege that, Patel is liable for

indemnification, subrogation, contribution, express or implied warranty, or any other theory that would support a third-party action under Rule 14, *South Carolina Rules of Civil Procedure*.

2. **Third-Party Plaintiffs have failed to state facts sufficient to constitute causes of action against Patel for fraud, breach of contract, conversion, civil conspiracy, interference with a contractual relationship, and infliction of emotional distress.**

In considering a motion to dismiss a complaint based on failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Gentry v. Younce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

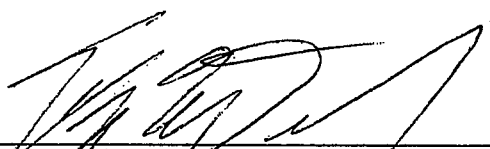
Third-Party Plaintiffs do not plead any factual allegations against Patel in their cause of action for fraud. The Third-Party Complaint merely states in paragraph 49 that Patel participated in fraud. As to Third-Party Plaintiffs' cause of action against Patel for breach of contract, the Third-Party Complaint does not contain any factual allegations that refer to any contract or breach thereof between said parties and Patel. The Third-Party Complaint also fails to state sufficient facts to constitute a cause of action for civil conspiracy against Patel as the damages alleged to have been incurred by the Third-Party Plaintiffs as a result thereof are identical to those damages in which they seek to recover from their other causes of action. See *Vaught v. Waites*, 300 S.C. 201, 397 S.E.2d 91 (Ct. App. 1989) (no special damages are alleged wherein the damages sought in the conspiracy cause of action are the same as those sought in other causes of action). More specifically, the Third-Party Complaint seeks to recover damages for the particular acts of Patel, and likewise, seeks to recover damages on an alleged conspiracy by Patel to do those particular acts. See *Peoples Fed. Sav. & Loan Ass'n v. Resources Planning Corp.* 358 S.C. 460, 596 S.E.2d 51 (2004) (a plaintiff cannot recover damages for a particular act or wrong and likewise recover on a conspiracy to do the act or wrong). As to Third-Party Plaintiffs' cause of action for interference with a contractual relationship, the Third-Party Complaint alleges that the mortgages and other loan documents are not enforceable. Further, the contracts referenced in paragraph 135 of the Third-Party Complaint and attached thereto as Exhibit "A" were for the year 2010 and, therefore, no damage could have been incurred by the

Third-Party Plaintiffs as a result of the terms in said Exhibit "A" when the above-captioned action was filed and served in 2009. The Third-Party Complaint fails to allege that Patel committed any action or physically took possession of any personal property of the Third-Party Plaintiffs. Further, the Third-Party Complaint alleges that Patel conspired with others to take and convert Third-Party Plaintiffs' real estate assets; however, a cause of action for conversion only applies to personal property. Therefore, Third-Party Plaintiff's cause of action for conversion must be dismissed and/or stricken from the Third-Party Complaint. As to Bellamy's cause of action for intentional infliction of emotional distress, the Third-Party Complaint fails to state any actions or any specific factual allegations against Patel. Further, paragraph 143 of Bellamy's Third-Party Complaint merely states a legal conclusion and the remaining allegations under Bellamy's cause of action for intentional infliction of emotional distress are not sufficient to satisfy all the necessary elements to constitute such cause of action.

CONCLUSION

Third-Party Plaintiffs' causes of action are not based upon any theory that would support a third-party action under Rule 14, *South Carolina Rules of Civil Procedure*. Third-Party Plaintiffs' Third-Party Complaint also fails to plead facts sufficient to constitute valid causes of action against Patel. Therefore, Patel respectfully requests that this Honorable Court dismiss Third-Party Plaintiffs' Third-Party Complaint.

DESCHAMPS LAW FIRM



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September 13, 2010
Myrtle Beach, 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

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO STRIKE OR TO DISMISS
ON BEHALF OF THIRD PARTY
DEFENDANTS JACK JONES AND
DONALD GODWIN**

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COME NOW Third Party Defendants Jack Jones ("Jones") and Donald Godwin ("Godwin"), by and through their undersigned counsel, and hereby submit this Memorandum of Law in Support of their previously filed Motion to Strike or to Dismiss. For the reasons set forth herein, counsel would show that the third party claim for conspiracy should be stricken as a matter of law.

ARGUMENT

- I. DEFENDANTS' AMENDED THIRD PARTY CLAIM IS IMPROPER UNDER THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE AND SHOULD BE STRICKEN.

Under Rule 14, SCRPC, a defendant "may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the

plaintiff's claim against him." Rule 14(a), SCRPC. Thus, Rule 14 permits a defendant to bring into the action, or implead, a non-party who may be ultimately responsible for any judgment rendered against the defendant. First Gen. Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 445 S.E.2d 446 (1994). "Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant *founded upon derivative liability*. The outcome of the principal claim must impact the third-party defendant's liability; however, no right exists to implead a third-party defendant who is directly liable to the plaintiff." Id. at 442, 445 S.E.2d at 447 (emphasis added).

In this case, Defendants' third party claim for conspiracy against Godwin and Jones is not derivative in nature. In determining whether Defendants state a viable third party claim, the Court must determine whether Defendants have a cause of action against Godwin and Jones which would impose liability upon Godwin and Jones for all or part of Plaintiff Hotel & Motel Holdings' claim for foreclosure. Clearly, Defendants have no such claim. Indeed, if the claim asserted was meritorious, which is categorically denied, Jones and Godwin would be directly liable to both Plaintiff Hotel & Motel Holdings and Defendants.

Rule 14(a), SCRPC, permits any party, including a third party defendant to move to strike the third party claim. Beach v. Hudson, 298 S.C. 424, 380 S.E.2d 869 (Ct. App. 1989). When considering a motion to strike a third party claim, "the court may properly consider 'the effect the additional parties and claims will have on the adjudication of the main action - in particular, whether continued joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way.'" Id. at 426, 380 S.E.2d at 871. (quoting 6 C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1460 at 319 (1971)). If the Court permits continued joinder of Defendants' third party claim against Godwin and Jones, the

straightforward foreclosure action would be unduly complicated with complex civil conspiracy claims.

Based upon the foregoing and pursuant to Rules 12(f) and 14(a), SCRCP, Defendants' third party claim for civil conspiracy should be stricken as a matter of law. The claim asserted against Godwin and Jones is not derivative in nature, and therefore, the third party claim is procedurally improper and impermissible under the South Carolina Rules of Civil Procedure.

II. DEFENDANTS HAVE FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION FOR CONSPIRACY AGAINST GODWIN AND JONES.

A trial court may properly grant a motion to dismiss for failure to state facts sufficient to constitute a cause of action when 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. Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). When deciding a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the Court should consider only the allegations set forth on the face of the complaint. Stiles, at 300, 457 S.E.2d at 602 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

Here, Defendants have failed to state facts sufficient to state a cause of action for conspiracy against Godwin and Jones individually. A civil conspiracy consists of three elements: (1) a combination of two or more persons; (2) joining for the purpose of injuring the plaintiff; and (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). To establish special damages, Defendants must show the acts of Godwin and Jones, in furtherance of the alleged conspiracy were separate and

independent from the other wrongful acts alleged in their counterclaims. See Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). “Special damages must be properly pled, or the claim for civil conspiracy will be dismissed.” AJG Holdings, LLC v. Dunn, 706 S.E.2d 23, 28 (Ct. App. 2011). Moreover, Rule 9(g) of the South Carolina Rules of Civil Procedure requires special damages be specifically stated in the pleadings. 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). For the reasons below, Defendants’ allegations of civil conspiracy are insufficient, and dismissal is appropriate.

A civil conspiracy claim requires one to plead additional acts in furtherance of the conspiracy which are distinct and separate from the other wrongful acts alleged 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). If the party fails to plead such separate acts, the civil conspiracy claim shall be dismissed. Hackworth, 385 S.C. at 116, 682 S.E.2d at 875. The civil conspiracy claim must do more than incorporate the prior allegations and then 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).

Here, Defendants merely repeat the allegations contained in their prior counterclaims and third party claims in support of their civil conspiracy claim. Defendants make no additional or independent allegations of conspiracy and instead rely on the exact allegations contained in their remaining counterclaims.

In addition to the failure to identify any wrongful acts on the part of Godwin and Jones, individually, Defendants have failed to plead special damages unique to the civil conspiracy claim. The damages allegedly incurred by Defendants as a result of the purported conspiracy are

the precise damages averred in Defendants' remaining counterclaims and third party claims. Thus, Defendants' allegations of civil conspiracy fail as a matter of law, and Jones and Godwin are entitled to dismissal of this third party claim.

Moreover, with regard to Donald Godwin, he was not a member or otherwise affiliated with Hotel & Motel Holdings until *after* the loan documents were sold to the company. Thus, Defendants have failed to articulate any reason whatsoever for attempting to bring in Donald Godwin, individually, as a party to this foreclosure action. A true and accurate copy of an Affidavit that was required of Donald Godwin prior to the loan sale is attached hereto and incorporated herein by reference as **Exhibit A**. In addition, nearly every witness whose deposition has been taken so far in this case has testified that they had no dealings whatsoever with Donald Godwin prior to the loan sale agreement. See Dep. Wendy Bellamy, at pp. 219:24 – 220:16; pp. 257:8 – 258:25 (Copy attached as **Exhibit B**); Dep. Harvey Jones, at p. 155:2 – 5 (Copy attached as **Exhibit C**); Dep. Bhupendra Patel, at 100:19 – 23 (Copy attached as **Exhibit D**); Dep. Brent Hutto, at pp. 53:22 – 54:2; p. 115:14 – 20; p. 163:14 – 23 (Copy attached as **Exhibit E**); Dep. Sammy Small, Sr., at p. 189:19 – 25; p. 199:8 – 13 (Copy attached as **Exhibit F**). Therefore, there is no evidence that Donald Godwin participated in a conspiracy of any type.

Based upon the foregoing, Defendants' third party claim for civil conspiracy should be dismissed for failure to state facts sufficient to constitute a cause of action against Godwin and Jones. Defendants have failed to allege any facts which would entitle them to relief on any theory of conspiracy as to Godwin and Jones.

CONCLUSION

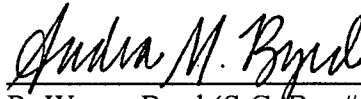
For all of the foregoing reasons, Defendants' Amended Third Party Claim for Conspiracy against Jack Jones and Donald Godwin should be dismissed. Defendants' claim is not based upon

derivative liability and are therefore, improper under the South Carolina Rules of Civil Procedure. Further, Defendants have failed to state facts sufficient to constitute a cause of action for conspiracy against Godwin and Jones, individually. Therefore, Third Party Defendants Donald Godwin and Jack Jones respectfully request that the third party claim for conspiracy be dismissed with prejudice, that the costs of this action be charged to Defendants, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



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ATTORNEYS FOR THIRD PARTY

DEFENDANTS JACK JONES AND DONALD
GODWIN

APRIL 11, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-5743

Hotel and Motel Holdings, LLC,)
)
Plaintiffs)

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)

Defendants/Third-Party Plaintiffs' Motion
for Reconsideration of Order

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

Third-Party Plaintiffs)

v.)

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

Third-Party Defendants)

TO: THIRD-PARTY DEFENDANTS JACK JONES, DONALD D. GODWIN,
BHUPENDRA PATEL, AND THEIR RESPECTIVE ATTORNEYS, AUDRA M.
BYRD, R. WAYNE BYRD, WILLIAM W. DESCHAMPS, JR. AND WILLIAM W.
DESCHAMPS, III

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the
Honorable William H. Seals, Jr., at the Horry County Courthouse and/or at the Georgetown
County Courthouse, within ten days hereafter or as soon as counsel may be heard to reconsider
his Order signed April 20, 2011 and filed April 21, 2011, which is attached hereto and

incorporated herein. The order striking Defendants/Third-Party Plaintiffs' claims for conspiracy against Third-Party Defendants Jack Jones, Donald D. Godwin, and Bhupendra Patel was served via email on April 26, 2011 on the undersigned. This motion to reconsider is made pursuant to Rule 52(b) and Rule 59(e) of the South Carolina Rules of Civil Procedure.

The grounds for this motion are that the Court erred as follows:

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

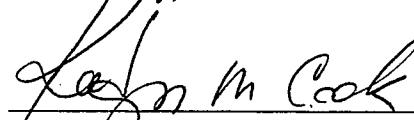
and omissions that constitute the basis of separate and distinct causes of action as to Plaintiff H&M and Third-Party Defendant First Palmetto;

5. In failing to find that Third-Party Plaintiffs plead 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 H&M and Third-Party Defendant First Palmetto; and
6. In failing to find that the pleadings of the Third-Party Plaintiffs put Third-Party Defendants Jones, Godwin, and Patel on notice of the acts and omissions by them which constitute conversion.

Based on the foregoing, Third-Party Plaintiffs will request that the Court to reconsider its order striking the claims of conversion against Third-Party Defendants Jack Jones, Donald B. Godwin, and Bhupendra Patel, rescind that order, and issue an order denying Third-Party Defendants' motion to dismiss based on Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Respectfully Submitted,

Cook & Roy, LLC



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Attorney for Defendants/Third-Party

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

Date: May 4, 2011

North Myrtle Beach, SC

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) 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 HODGSON-BAIRD
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

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, 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. 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.

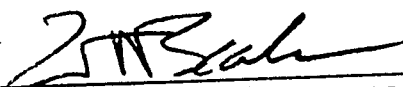
CONCLUSION

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.

Mauler, 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., et al.,)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

**NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT ON
COUNTERCLAIMS SUBMITTED ON
BEHALF OF PLAINTIFF HOTEL &
MOTEL HOLDINGS, LLC**

TO: DEFENDANTS/THIRD PARTY PLAINTIFFS BJC ENTERPRISES, LLC, WENDY J. BELLAMY, AND AMERICANA, INC. AND THEIR ATTORNEY, KATHRYN M. COOK, ESQUIRE

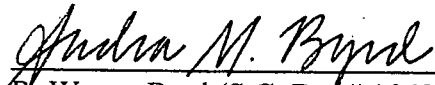
COME NOW Plaintiff Hotel & Motel Holdings, LLC, by and through its undersigned counsel, and hereby submits this Motion for Summary Judgment on Counterclaims of Defendants BJC Enterprises, LLC, Wendy J. Bellamy and Americana, Inc. This Motion is made pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure.

The within Motion is premised upon the pleadings, written discovery, deposition testimony, as well as all applicable case and statutory law. In addition, a supporting Memorandum of Law is being filed contemporaneously with the Court and is incorporated hereinto by reference.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



R. Wayne Byrd (S.C. Bar # 1068)

Audra M. Byrd (S.C. Bar # 76719)

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Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

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ATTORNEYS FOR PLAINTIFF HOTEL &
MOTEL HOLDINGS, LLC

April 8, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Civil Action No. 2009-CP-26-05743

HOTEL & MOTEL HOLDINGS, LLC,)

Plaintiff,)

vs.)

BJC ENTERPRISES, LLC, et al.,)

Defendants.)

**MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF PLAINTIFF HOTEL &
MOTEL HOLDINGS, LLC**

BJC ENTERPRISES, LLC, et al,)

Third Party Plaintiffs,)

vs.)

FIRST PALMETTO SAVINGS BANK,
F.S.B., et al.,)

Third Party Defendants.)

TO: DEFENDANTS/THIRD PARTY PLAINTIFFS BJC ENTERPRISES, LLC, WENDY J. BELLAMY, AND AMERICANA, INC. AND THEIR ATTORNEY, KATHRYN M. COOK, ESQUIRE

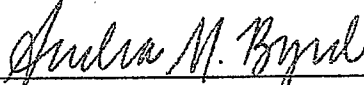
COME NOW Plaintiff Hotel & Motel Holdings, LLC, by and through its undersigned counsel, and hereby submits this Motion for Summary Judgment. This Motion is made pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure.

The within Motion is premised upon the pleadings, written discovery, deposition testimony, as well as all applicable case and statutory law. In addition, a supporting Memorandum of Law is being filed contemporaneously with the Court and is incorporated hereinto by reference.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



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ATTORNEYS FOR PLAINTIFF HOTEL &
MOTEL HOLDINGS, LLC

May 2, 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., et al.,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF PLAINTIFF
HOTEL & MOTEL HOLDINGS, LLC**

COMES NOW Plaintiff Hotel & Motel Holdings, LLC (hereinafter "H & M"), by and through its undersigned counsel, and hereby submits this Memorandum of Law in Support of its contemporaneously-filed Motion for Summary Judgment on its claims. For the reasons set forth herein, counsel would show that the Motion for Summary Judgment should be granted as a matter of law.

STATEMENT UNDISPUTED FACTS

Wendy J. Bellamy, Harvey L. Jones, and Henry C. Coan, III formed a limited liability company known as BJC Enterprises, LLC ("BJC") in October of 2004 for the purpose of purchasing an oceanfront motel known as the Emerald Shores. Prior to that time, Bellamy, Jones and their family, through a corporation known as Americana, Inc., owned and operated a

neighboring motel known as the Rainbow Court, as well as various other rental properties in the same vicinity. The Emerald Shores is located directly in front of the Americana properties, and the purpose in acquiring the Emerald Shores was to develop all of the properties as high-rise condominiums and sell them for a substantial profit.

To fund its acquisition of the Emerald Shores, BJC borrowed \$5.58 million dollars from First Palmetto Savings Bank, F.S.B. ("First Palmetto") in January of 2005. As collateral for its loan, First Palmetto took a first mortgage on the Emerald Shores, as well as the properties owned by Americana and Wendy J. Bellamy. In addition, Bellamy, Jones and Coan were required to sign personal guaranties, guaranteeing payment of the debt.

Under the terms of the initial loan, BJC was obligated to make monthly interest payments for two years, with a balloon payment of principal due in January of 2007. However, when the Note came due in January of 2007, BJC did not have the funds to make the balloon payment, and the loan was extended for an additional one year term. The first renewal called for monthly interest payments and a balloon payment of principal in January of 2008. Again in 2008, BJC did not have the money to pay off the loan, and First Palmetto agreed to renew the loan for another year. The second renewal called for monthly payments of interest and principal with a balloon payment of the remaining principal balance due in January 2009. However, during 2008, BJC was consistently late on its monthly payments, and the company eventually stopped making any payments whatsoever in October of 2008. A true and accurate summary of the BJC loan payment history for 2008 (compiled from the documents produced by First Palmetto, general ledgers produced by BJC and the bank records of BJC produced in response to subpoenas) is attached hereto and incorporated herein by reference as **Exhibit A**.

BJC and First Palmetto had several meetings at the end of 2008, and First Palmetto indicated to the company that it was not willing to renew the loan for another term unless BJC could come up with a plan to get the loan paid. When the Note came due in January of 2009, BJC did not make the balloon payment, and First Palmetto filed a foreclosure action on February 2, 2009. Thereafter, BJC was able to negotiate with the bank for additional time. First Palmetto extended the loan maturity date until May 31, 2009 and dismissed the foreclosure action after BJC made a \$95,000.00 payment to the bank on February 3, 2009 and caught up the past due property taxes. However, that was last payment BJC ever made on the loan. When BJC failed to make the next required payment on May 31, 2009, First Palmetto filed the present foreclosure action on June 11, 2009.

After present action was filed, H & M was formed on June 15, 2009 when its Articles of Organization were filed with the Office of the South Carolina Secretary of State. On June 30, 2009, H & M bought the BJC loan from First Palmetto. On September 11, 2009, H & M was substituted as the plaintiff in this foreclosure action.

As consideration for the purchase of the BJC loan documents, H & M immediately paid \$2,000,000.00 to First Palmetto. Half of this money was a down payment, and the other half was placed in a certificate of deposit with First Palmetto to serve as interest carry for five years. In addition, H & M executed a promissory note, and the current principal amount owed to First Palmetto by H & M is \$4,000,000.00. The H & M loan is further secured by an assignment of collateral whereby H & M has assigned its interest in the Note, mortgages and security instruments back to First Palmetto.

In response to the foreclosure Complaint, BJC, Americana, Inc., and Wendy J. Bellamy answered and asserted numerous defenses, counterclaims and third-party claims. The defenses

posited by these Defendants include the following: (1) Lack of Holder in Due Course; (2) Lack of Consideration; (3) Fraud in the Procurement; (4) Lack of Notice; (5) Failure of Conditions Precedent; (6) Lack of Damages; (7) Impossibility; (8) Waiver; (9) Estoppel; and (10) Unclean Hands.

On April 20, 2010, the Honorable Steven H. John appointed Kenan L. Walker of Waccamaw Land & Timber, LLC as Receiver for the properties secured by the Loan Documents.

LEGAL STANDARD

A trial court may properly grant summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Simmons v. Tuomey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000) (citing Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988)).

Once the party moving for summary judgment meets its initial burden of showing a lack of genuine issue of material fact, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Bravis v. Dunbar, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Rather, the nonmoving party must set forth or point to specific facts showing that there is a genuine issue for trial. Id. Moreover, in cases requiring a heightened burden of proof, the party opposing summary judgment must submit more than a mere scintilla of evidence to withstand the motion. Hancock v. Mid-South Mgmt. Co., Inc., 318 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009).

Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist upon which reasonable minds cannot differ. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine. The judge is not required to single out some morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine. Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638 (Ct. App. 1990) (citing Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984)).

ARGUMENT

THERE ARE NO GENUINE ISSUES OF MATERIAL FACT IN DISPUTE REGARDING THE EXISTENCE OF THE DEBT, OWNERSHIP OF THE MORTGAGE OR DEFAULT BY BJC, AND H & M IS ENTITLED TO FORECLOSE AS A MATTER OF LAW.

A. H & M Has Made A Prima Facie Showing Of Its Right To Foreclose The Mortgages Of BJC, Americana, And Bellamy.

To state a claim for foreclosure of a mortgage, the foreclosing party must establish the existence of the debt, ownership of the mortgage, and the mortgagor's default on the debt. U.S. Bank Trust Nat. Ass'n v. Bell, 385 S.C. 364, 375 n. 9, 684 S.E.2d 199, 205 n. 9 (Ct. App. 2009). "Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." Id. (citing Bandy v. Bandy, 187 S.C. 410, 413, 197 S.E. 396, 397 (1938) (holding the burden was on defendant in mortgage foreclosure suit to establish defense that mortgage and note were without valuable consideration by a preponderance of the evidence))).

In this case, the parties do not dispute the existence of the debt. The incontestable evidence establishes that Wendy J. Bellamy, as managing member of BJC executed a Promissory

Note in the principal amount of \$5,573,146.62 on January 17, 2008. This Note was the renewal of two prior Notes, both of which were executed by Ms. Bellamy. Ms. Bellamy does not deny signing the Notes or receiving the loan proceeds when First Palmetto originally made the loan in January of 2005. Amended Answer to Complaint, at p. 3, ¶ 15; see also, Bellamy Dep., November 23, 2010, at 44:2 – 24. A true and accurate copy of the relevant portion of Ms. Bellamy's deposition is attached hereto and incorporated herein by reference as **Exhibit B**. In fact, Ms. Bellamy concedes the debt is owed, and she testified several times during her deposition to this effect. Bellamy Dep., at 129:15 – 130:24; 149: 7 – 8; and 152:15 – 22. (See Exhibit B).

Additionally, there is no genuine issue of material fact in dispute regarding ownership of the mortgages which are the subject of this action. Assignments of the mortgages from First Palmetto to H & M are public records, filed with the Office of the Horry County Register of Deeds and attached as Exhibits to the foreclosure complaint filed in this action. Therefore, H & M has established its ownership of the mortgages.

Finally, H & M has established numerous incidents of default by BJC, and the parties do not dispute these defaults. Specifically, BJC has failed to make the balloon payment of \$5,509,352.46 which was due under the terms of the Note on or before January 17, 2009 and extended until May 31, 2009. Moreover, there is no dispute as to whether BJC defaulted on the loan in 2008. Casey Shroff, a member of BJC, admitted in his deposition that he was making the mortgage payments to First Palmetto in 2008, but he could no longer afford to do so and stopped making the payments in October of 2008. Shroff Dep., March 28, 2011, at 8:4 – 10:1; 11:9 – 15. A true and accurate copy of the relevant portion of Mr. Shroff's deposition is attached hereto and

incorporated herein by reference as **Exhibit C**. As a result, H & M has established a default under the terms of the Note.

For the foregoing reasons, H & M is entitled to foreclose the mortgages of BJC, Americana and Bellamy unless the defendants are able to establish a viable defense. As set forth below, no such defense exists.

B. The Defenses Asserted By Defendants Are Without Merit And Do Not Impact The Validity Or Enforceability Of The Note And Mortgages.

In response to the Complaint, Defendants have asserted various defenses. However, there is no factual or legal grounds supporting the defenses asserted. Each defense is addressed below.

1) Lack of Holder in Due Course

As their first defense, Defendants assert that H & M is not a holder in due course. However, lack of holder in due course is not a defense, and the burden of establishing holder in due course status does not arise until a defense is shown to exist. S.C. Code Ann. § 36-3-305. Thereafter, if Defendants establish a defense, the burden shifts to H & M to prove its status as a holder in due course. However, since Defendants have failed to establish a viable defense, H & M's status as a holder in due course is not an issue in this case.

2) Lack of Consideration

In their Answer, Defendants assert that the assignment of loan documents from First Palmetto to H & M was without consideration. This assertion is without any factual basis, and the evidence in this case establishes the contrary is true. The loan sales agreement between the parties provides for payment of \$5,000,000.00 by H & M to First Palmetto. A true and accurate copy of the agreement is attached hereto and incorporated herein by reference as **Exhibit D**.

There is no dispute that \$2,000,000.00 has been paid to First Palmetto, and H & M is obligated to pay \$4,000,000.00 to First Palmetto upon the maturity of its Note in June of 2014. Therefore, the assignment is not without consideration.

3) Fraud in the Procurement

Defendants assert that H & M and First Palmetto “participated in fraud extracting the Guaranty from Defendant Bellamy in 2008 for the 2005 debt.” Amended Answer, at p. 10, ¶ 49.

In order to establish a defense of fraud in the inducement to enter into a contract, Defendants must prove:

- (1) a representation;
- (2) its falsity;
- (3) its materiality;
- (4) knowledge of its falsity or 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; and
- (9) the hearer's consequent and proximate injury.

Darby v. Waterboggan, 288 S.C. 579, 344 S.E.2d 153 (Ct. App. 1986). The failure to prove any one of these elements is fatal to the defense. Id.

As an initial matter, Defendants have failed to allege a misrepresentation by H & M or their reliance thereupon. In addition, the evidence clearly establishes that Defendant Bellamy was required to sign a personal guaranty in 2005 and 2007. More importantly, the personal guaranty is not an issue in this foreclosure action. Finally, H & M was not formed in January of 2008 when the personal guaranty was executed. The company was not formed until June of 2009. Therefore, it could not have participated in the alleged fraudulent procurement of the personal guaranty. As such, this defense is without merit.

4) Lack of Notice

Defendants assert that H & M failed to give proper notice and opportunity to cure prior to bringing the foreclosure action. Initially, H & M would note that it was not formed until *after* the present action was filed. Nonetheless, the evidence in this case clearly demonstrates that BJC was provided adequate notice of its default. BJC met with First Palmetto on numerous occasions in 2008 and 2009 regarding its defaults. Bellamy Dep., at 60:17 – 63:12. (See Exhibit B). First Palmetto sent notices of the default to BJC, and Casey Shroff admitted receiving the notices. Shroff Dep., at p. 19:12 – 20:16. (See Exhibit C). In addition, First Palmetto instituted a foreclosure action in February of 2009, which was dismissed after receiving an interest payment, in which First Palmetto clearly outlined the defaults of BJC. Thus, the contention that BJC was without notice of its default is wholly without merit. Based on the foregoing, BJC was provided notice of its default and adequate opportunity to cure, but it failed to do so.

5) Failure of Conditions Precedent

Defendants allege generally that H & M failed to meet the conditions precedent required before bringing this action. However, Defendants do not point to any specific conditions, and indeed, there are none contained in the loan agreement. As such, this defense fails.

6) Lack of Damages

In their Answer, Defendants allege that H & M has not suffered any damages. This defense is frivolous as H & M has clearly suffered damages as a result of Defendants' failure to make payment as required under the terms of its loan agreement.

7) Impossibility

Defendants assert that H & M has interfered with the business of BJC, physically taken over the properties, and confiscated the revenues, thereby preventing Defendants from making the loan payments to First Palmetto. However, H & M was not formed until after this

foreclosure action was filed and could not have interfered with BJC's operations prior to its formation. Moreover, the Court-appointed Receiver has been in control of the properties since his appointment in 2010. Finally, the evidence in this case establishes that BJC could not make the mortgage payments using the revenues from the motel operations at any time. Bellamy Dep., at p. 131:9 – 132:24; 208:13 – 209:10 (Exhibit B); see also, Shroff Dep., at p. 13:18 – 14:2 (Exhibit C). Therefore, no alleged interference by H & M or any other party made it impossible for BJC to perform under the terms of the loan documents.

8) Waiver

Defendants allege generally that H & M waived its right to recover, but Defendants do not point to any specific conduct which would constitute a waiver. In fact, H & M has not waived its right to foreclose. As such, this defense fails.

9) Estoppel

In their Answer, Defendants allege generally that H & M is estopped from seeking to foreclose the mortgages which are the subject of this action. However, Defendants fail to plead the elements necessary to establish estoppel, and the evidence in this case would not support such a claim in any event. Therefore, their estoppel defense fails.

10) Unclean Hands

Defendants allege generally that H & M has unclean hands, but Defendants do not allege any conduct by H & M which would support such a claim. The conduct complained of by Defendants is specifically authorized by the terms of the loan documents, and therefore, the unclean hands defense is not applicable in this case.

CONCLUSION

For all of the reasons set forth above, the Motion for Summary Judgment of Plaintiff Hotel & Motel Holdings, LLC should be granted as a matter of law. Defendants have produced

no evidence to support their defenses to this foreclosure action. There being no genuine issues of material fact, summary judgment in favor of Plaintiff Hotel & Motel Holdings, LLC is just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

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ATTORNEYS FOR PLAINTIFF HOTEL &
MOTEL HOLDINGS, LLC

May 2, 2011

Exhibit A

BJC Loan Payment History During 2008 Calendar Year

<u>Due Date</u>	<u>Amount Due</u>	<u>Paid Date</u>	<u>Amount Paid</u>	<u>Days Late</u>
February 17, 2008	\$47,905.19	February 25, 2008	\$47,905.19	8
March 17, 2008	\$47,905.19	March 24, 2008	\$47,905.19	7
April 17, 2008	\$47,905.19	April 28, 2008 May 23, 2008	\$37,665.87 \$12,634.58	36
May 17, 2008	\$47,905.19	June 3, 2008	\$47,905.19	17
June 17, 2008	\$47,905.19	July 1, 2008	\$47,905.19	14
July 17, 2008	\$47,905.19	July 29, 2008	\$47,905.19	12
August 17, 2008	\$47,905.19	September 2, 2008	\$47,905.19	16
September 17, 2008	\$47,905.19	October 2, 2008	\$48,300.45	15
October 17, 2008	\$47,905.19	November 26, 2008 November 26, 2008	\$47,905.19 \$19,135.29	50
November 17, 2008	\$47,905.19	February 3, 2009		78
December 17, 2008	\$47,905.19	February 3, 2009	\$95,000.00	48
January 17, 2009	\$5,509,352.46			

Exhibit B

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

15TH JUDICIAL CIRCUIT

CASE NUMBER 2009-CP-26-5550

HOTEL AND MOTEL HOLDINGS,
LLC.

PLAINTIFF

V.

WENDY J. BELLAMY,

DEFENDANT/THIRD

PARTY PLAINTIFF

V.

FIRST PALMETTO SAVINGS
BANK, FSB, JACK JONES,
DONALD D. GODWIN, AND
BHUPENDRA PATEL,

THIRD PARTY DEFENDANTS.

COPY

DEPOSITION OF
WENDY J. BELLAMY

FROM 8:58 P.M. UNTIL 5:07 P.M.

NOVEMBER 23, 2010

AS TAKEN AND TRANSCRIBED BY MICHAEL J. MCCARTHY, NOTARY
PUBLIC AND VERBATIM REPORTER, AT TURNER PADGET GRAHAM & LACEY
P.A., 2411 NORTH OAK STREET, SUITE 301, MYRTLE BEACH, SOUTH
CAROLINA.

****THIS IS AN OFFICIAL TRANSCRIPT GOVERNED BY 25A SOUTH
CAROLINA CODE ANN. REGS. 67-615D (SUPP. 2000). THE
UNAUTHORIZED COPYING OF THIS DOCUMENT IS DEEMED TO BE
CONVERSION OF AN ASSET BELONGING TO THE COURT REPORTER.**

1 A. 2007 OR 2008?

2 Q. IF YOU'LL LOOK AT EXHIBIT "19". DO YOU RECOGNIZE
3 THAT DOCUMENT, EXHIBIT "19"?

4 A. UH-HUH. (AFFIRMATIVE RESPONSE.)

5 Q. CAN YOU TELL ME WHAT IT IS?

6 A. IT'S A LOAN PACKAGE. I MEAN, IT'S A LOAN PACKAGE.
7 A LOAN PAPER.

8 Q. AND WHAT'S THE DATE? AND IT'S IN THE TOP RIGHT
9 ...

10 A. 1/17/2008.

11 Q. AND JUST UNDERNEATH THAT, IT SAYS, "MATURITY
12 DATE". WHAT WAS THE MATURITY DATE?

13 A. 1/17/2009.

14 Q. SO. IT'S YOUR UNDERSTANDING THAT EXHIBIT "19" IS A
15 COPY OF THE NOTE THAT WAS THE RENEWAL OF THE NOTE
16 AND IT'S DATED 2008. IS THAT THE 2008 RENEWAL OF
17 THIS LOAN?

18 A. YEAH. YEAH, I MEAN, THERE'S THE PAPER.

19 Q. IS IT YOUR SIGNATURE AT THE BOTTOM OF
20 EXHIBIT "19"?

21 A. THAT'S MY SIGNATURE.

22 Q. AGAIN, YOU SIGNED AS MANAGING MEMBER OF BJC, IS
23 THAT RIGHT?

24 A. YES.

25 Q. AND IN THE MIDDLE OF THAT DOCUMENT UNDER PAYMENTS

1 A. I DON'T REMEMBER.

2 Q. WAS IT MONTHS?

3 A. IT WAS AFTER MY MOM PASSED.

4 Q. AND YOU TOLD ME THAT YOUR MOM PASSED IN AUGUST OF

5 2007. SO, THE FIRST SUICIDE ATTEMPT WAS SOMETIME

6 BETWEEN AUGUST 2007 AND NOVEMBER 2008?

7 A. YES.

8 Q. WHAT WAS THE REASON THAT YOU DID THAT?

9 A. THE FIRST OR SECOND TIME?

10 Q. WHAT WAS THE REASON THAT YOU ATTEMPTED SUICIDE IN

11 NOVEMBER OF 2008?

12 A. EVERYTHING WAS CLOSING IN ON ME. I MEAN, MY WORD

13 IS MY WORD. WE OWED THE BANK AND I KNEW I HAD MY

14 OBLIGATIONS, YOU KNOW. I WASN'T GOING TO LET THE

15 MOTEL GO DOWN. I WAS GOING TO DO WHATEVER IT TOOK

16 TO SAVE IT.

17 Q. AND I UNDERSTAND FROM YOUR BROTHER'S TESTIMONY

18 YESTERDAY, THAT AT SOME MEETING JUST PRIOR TO YOUR

19 SUICIDE ATTEMPT IN NOVEMBER OF 2008, YOU ANNOUNCED

20 THAT YOU WOULD BE ABLE TO GET SOME SUM OF MONEY IN

21 A RELATIVELY SHORT PERIOD OF TIME. DO YOU RECALL

22 THAT MEETING?

23 A. YES.

24 Q. WHERE WAS THAT MEETING?

25 A. AT 48TH AVENUE AT FIRST PALMETTO.

1 Q. AND WHO WAS PRESENT IN THAT MEETING?

2 A. BRENT HUTTO, BOB WILDER, MYSELF, HARVEY, CASEY
3 SCHROFF, AND ED FARMER. THEN WE WERE IN TUMPIE
4 BULL'S OFFICE.

5 Q. WAS MR. BULL PRESENT?

6 A. NO, MA'AM.

7 Q. DO YOU HAVE ANY RECOLLECTION OF THE DATE OF THAT
8 MEETING?

9 A. IT WAS IN THE MIDDLE OF NOVEMBER. NO, I DON'T.

10 Q. DO YOU THINK IT COULD'VE BEEN THE MIDDLE, AND I
11 WILL TELL YOU THAT I HAVE REVIEWED YOUR MEDICAL
12 RECORDS FROM GRAND STRAND AND YOUR ATTEMPT AT
13 SUICIDE WAS NOVEMBER THE 3RD, 2008. WOULD THIS
14 MEETING HAVE TAKEN PLACE BEFORE THAT TIME?

15 A. YES, MA'AM.

16 Q. SO, DO YOU THINK IT COULD HAVE BEEN THE MIDDLE OF
17 OCTOBER 2008, WHEN YOU HAD THIS MEETING?

18 A. YES. IT WAS BEFORE ... YES. IT WAS BEFORE
19 HALLOWEEN. ABOUT THE MIDDLE, YES, MA'AM.

20 Q. WHAT WAS THE PURPOSE OF THAT MEETING IN OCTOBER OF
21 2008 WITH FIRST PALMETTO?

22 A. TRYING TO WORK OUT SOMETHING BECAUSE THEY SAID
23 THERE WAS PAYMENTS ... A PAYMENT DUE.

24 Q. WHO CALLED THAT MEETING? DO YOU THINK THE BANK
25 CALLED THAT MEETING?

1 A. HONESTLY, I DON'T KNOW.

2 Q. AND YOU SAID YOU WERE TRYING TO WORK OUT
3 SOMETHING. HAD Y'ALL INDICATED TO THE BANK THAT
4 YOU WERE NOT GOING TO BE ABLE TO MAKE THE BALLOON
5 PAYMENT?

6 A. I HADN'T INDICATED NOTHIN'. I JUST WENT TO THE
7 MEETING.

8 Q. WHAT WERE THEY TALKING ABOUT AT THE MEETING?

9 A. THE LOAN. I MEAN, WHAT THEY WERE GOING TO DO. I
10 DIDN'T OPEN MY MOUTH. I SAT THERE AND LISTENED TO
11 CASEY. ED DID MOST OF THE TALKING TO MR. HUTTO,
12 AND BOB WILDER. I DON'T THINK HE'S SAID TOO MUCH
13 EITHER?

14 Q. WHAT WERE MR. FARMER AND MR. SCHROFF WHAT WERE
15 THEY OFFERING TO DO?

16 A. TRYING TO FIGURE OUT, I GUESS, WHAT COULD BE DONE
17 TO MAKE THE PAYMENTS AND KEEP THINGS GOING.

18 Q. WERE THEY TALKING ABOUT INTEREST RATES?

19 A. INTEREST RATES WERE DISCUSSED, YES.

20 Q. AND ANYTHING ELSE? ANY OTHER TERMS THAT YOU CAN
21 REMEMBER THAT WERE TALKED ABOUT DURING THAT
22 MEETING?

23 A. THEY TALKED ABOUT A LOT. ALL REMEMBER WAS THE
24 LAST THING MR. HUTTO SAID. YOU HAD TO COME UP
25 WITH A CERTAIN AMOUNT OF MONEY.

1 Q. AND HOW MUCH DID HE TELL YOU YOU HAD TO COME UP
2 WITH?

3 A. I DON'T KNOW.

4 Q. IF YOU CAME UP WITH WHATEVER THAT AMOUNT WAS ...

5 A. I DIDN'T CARE AT THAT POINT WHAT HE NEEDED. I WAS
6 GOING TO GET IT.

7 Q. AND IF YOU WERE ABLE TO COME UP WITH WHATEVER THAT
8 AMOUNT WAS, WHAT WAS YOUR UNDERSTANDING OF WHAT
9 WOULD HAPPEN THEN? WOULD THAT RENEW THE NOTE FOR
10 ANOTHER YEAR?

11 A. I WASN'T GOING TO RENEW THE NOTE. I WAS GOING TO
12 PAY IT OFF.

13 Q. DO YOU NEED A BREAK, MS. BELLAMY?

14 A. NO. GO AHEAD. I'M FINE. I WAS GOING TO PAY THE
15 NOTE OFF.

16 Q. AND YOU WERE GOING TO PAY THE ENTIRE PRINCIPAL
17 AMOUNT OF FIVE MILLION, WHATEVER IT WAS AT THAT
18 TIME?

19 A. YES.

20 Q. AND HOW WERE YOU GOING TO DO THAT?

21 A. BECAUSE I HAD \$5,500,000.00 WORTH OF LIFE
22 INSURANCE THAT I HAVE HAD FOR LIKE 8, 9, 10 YEARS.

23 Q. SO, AT THE CONCLUSION OF THAT MEETING WHEN YOU
24 STOOD, DO YOU REMEMBER WHAT YOU SAID?

25 A. I TOLD THEM I WOULD HAVE THE MONEY IN TWO WEEKS.

1 Q. WHO DID YOU ASK?
2 A. MR. PATEL.
3 Q. AND MR. PATEL TOLD YOU HE DIDN'T KNOW HOW MUCH
4 MONEY WAS IN IT?
5 A. SEE, HE WAS CONTROLLED BY UNCLE JACK.
6 Q. MR. PATEL WAS ALSO CONTROLLED BY JACK?
7 A. YEAH. IN MY ... THAT'S MY PERSONAL OPINION. IN
8 FACT, I THINK IT'S SAD THAT THE BANK IS NOT PAYING
9 BUPI PATEL'S LAWYERS BECAUSE UNCLE JACK PUT BUPI
10 PATEL IN THIS POSITION. THAT'S MY OPINION.
11 Q. OKAY.
12 A. I'M SORRY.
13 Q. AND IN WHAT WAY DID JACK PUT BUPI IN THIS
14 POSITION?
15 A. AS GETTING HIM TO BE THE MANAGER. WHY ARE WE
16 HERE?
17 Q. WE'RE HERE BECAUSE WE HAVE A FORECLOSURE ACTION
18 AND THERE IS A NOTE THAT HAS NOT BEEN PAID AND IT
19 IS NOT OWED BY BUPI PATEL, IS IT?
20 A. NO.
21 Q. WHO OWES THE MONEY ON THIS NOTE?
22 A. WE DO.
23 Q. WHO IS WE?
24 A. ME HARVEY AND TRIPP. BUT IT WOULD HAVE BEEN PAID
25 IF UNCLE JACK HADN'T STEPPED IN AND TOLD ME ALL HE

1 SAID HE WAS GOING TO DO. HIM AND MR. SMALL MADE
2 THE AGREE ... UNCLE JACK SAID THAT IT WAS GONNA BE
3 WORKED OUT.

4 Q. AND YOU UNDERSTOOD THAT THE WORKOUT WAS A HUNDRED
5 AND FIFTY THOUSAND DOLLAR PAYMENT TO BE PAID BY
6 MAY THE 31ST?

7 A. YES, MA'AM.

8 Q. AND I'M ASKING YOU IF THIS LETTER IN MAY, MAY THE
9 13TH, YOU KNEW AT THAT TIME THAT THE HUNDRED AND
10 FIFTY THOUSAND DOLLARS HAD NOT BEEN PAID. WHAT
11 EFFORTS DID YOU MAKE AS THE DEBTOR TO SEE THAT THE
12 HUNDRED AND FIFTY THOUSAND DOLLARS WAS PAID OR TO
13 YOUR KNOWLEDGE, WHAT EFFORTS DID HARVEY OR TRIPP
14 OR CASEY MAKE?

15 A. WELL, IF WE WOULD HAVE BEEN IN THERE RUNNING IT,
16 BUT UNCLE JACK SAID, "PUT BUPI PATEL AND LET HIM
17 RUN IT.
18 HE KNOWS HOW TO RUN THE MOTEL. HE CAN MAKE ...
19 WE'LL MAKE THIS PAYMENT." UNCLE JACK SAID THAT
20 AND GOD KNOWS THAT.

21 Q. I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
22 EXHIBIT "154". THIS IS A TAX RETURN FOR BJC
23 ENTERPRISES FOR THE YEAR ENDING IN 2008. WHO WAS
24 RUNNING THE HOTEL DURING THE CALENDAR YEAR 2008?
25 TAX RETURN FOR BJC.

1 MARKED FOR IDENTIFICATION

2 AND INTRODUCED INTO EVID-

3 ENCE AS EXHIBIT "154".

4 A. HARVEY.

5 Q. AND WOULD YOU GO DOWN TO LINE 22 WHERE IT SAYS,
6 "ORDINARY BUSINESS INCOME OR LOSS" AND TELL ME
7 WHAT THE NUMBER IS THERE IN LINE ENTRY 22?

8 A. MINUS \$459,000.00.

9 Q. SO, WHEN HARVEY WAS OPERATING IT AND BUPI PATEL
10 WAS NOT INVOLVED, AND BY YOUR TESTIMONY JACK JONES
11 WAS NOT INVOLVED, THE HOTEL WAS LOSING \$459,000.00
12 A YEAR, IS THAT RIGHT?

13 A. WELL, YEAH, I GUESS. THAT'S WHAT IT SAYS.

14 Q. SO, IS IT YOUR TESTIMONY THAT WITH A LOSS OF
15 \$459,000.00 A YEAR, BJC COULD HAVE SERVICED THIS
16 DEBT?

17 A. I AM SAYING THAT WE ALWAYS FOUND A WAY TO PAY IT.
18 FROM THE VERY GET-GO WHEN WE GOT THE LOAN. THE
19 DEAL WAS JOHN GANDY AND MR. PATEL WAS GOING TO
20 TAKE THE LOAN. WE DIDN'T HAVE THE MONEY. THE
21 BANK KNEW WE DIDN'T HAVE THE MONEY. UNCLE JACK
22 KNEW WE DIDN'T HAVE THE MONEY. CASEY SCHROFF KNEW
23 WE DIDN'T HAVE THE MONEY. WE WERE THERE. WE
24 WORKED IT AND STUFF. THEY WERE GOING TO DEVELOP
25 IT. THEY WERE GOING TO PUT IT IN AN LLC AND TAKE

1 CARE OF IT AND DEVELOP IT. YES, I WAS DUMB, BUT I
2 BELIEVED.

3 Q. MY QUESTION IS, WHAT DID JACK JONES OR DONALD
4 GODWIN DO TO CHANGE THE ECONOMIC STATUS OR THE
5 FINANCIAL WHEREWITHAL OF THE BJC SO THAT THE
6 COMPANY DIDN'T HAVE THE HUNDRED AND FIFTY THOUSAND
7 DOLLARS TO MAKE THE PAYMENT? BECAUSE IT LOOKS TO
8 BE ME LOOKING AT THE TAX RETURN, THE COMPANY NEVER
9 HAD THE MONEY TO MAKE THESE PAYMENTS?

10 A. AND NEVER WOULD. EMERALD SHORES CAN'T DO THE 6.3
11 OR FIVE, BUT IF YOU PUT `EM BOTH TOGETHER WITH THE
12 INCOME, IN THE SUMMERTIME, IT COULD HAVE MADE IT.

13 Q. BECAUSE I THINK YOU JUST TOLD ME THAT IF JACK AND
14 BUPI HADN'T HAVE COME IN THEN Y'ALL COULD HAVE
15 MADE THE PAYMENT?

16 A. THE MOTEL WOULD HAVE ... WE'VE ALWAYS MADE THE
17 PAYMENTS. WE'VE ALWAYS FOUND A WAY TO MAKE IT.

18 Q. BUT BY FINDING A WAY, IT DIDN'T COME FROM GETTING
19 MORE PEOPLE IN THE ROOMS, DID IT? IT CAME FROM
20 LIKE SCHROFF AND THOSE PEOPLE PUTTING CASH MONEY
21 IN, RIGHT? IT DIDN'T COME FROM INCREASING THE
22 REVENUE FROM THE HOTELS, DID IT?

23 A. ALL WE HAD TO COME UP WITH WAS A HUNDRED AND FIFTY
24 THOUSAND.

25 Q. DID YOU HAVE A HUNDRED AND FIFTY THOUSAND DOLLARS?

1 Q. DOES IT MAKE ANY DIFFERENCE TO YOU WHO OWNS THE
2 NOTE AND MORTGAGE?

3 A. DOES IT MAKE ANY DIFFERENCE? I WANTED FIRST
4 PALMETTO TO KEEP IT.

5 Q. OKAY. BUT DOES IT CHANGE YOUR OBLIGATION UNDER
6 THE NOTE? DID YOUR OBLIGATIONS CHANGE?

7 A. NO, MA'AM. WE OWED THEM THE MONEY. I NEVER HAVE
8 DENIED THAT.

9 Q. SO WHAT'S THE PROBLEM HERE?

10 A. I DIDN'T EVEN KNOW THAT THEY BOUGHT THE MORTGAGE.

11 Q. SO, THE PROBLEM IS THAT YOU WERE NOT NOTIFIED THAT
12 THE MORTGAGE HAD BEEN PURCHASED?

13 A. NO. I DIDN'T KNOW ANY OF IT. UNCLE JACK WAS
14 SUPPOSED TO BE TRYING TO HELP. NO, I DIDN'T KNOW.
15 NO. I DON'T EVEN KNOW WHAT YOU ASKED ME.

16 Q. IS THE PROBLEM THAT YOU WERE NOT NOTIFIED THAT THE
17 NOTE AND MORTGAGE HAD BEEN PURCHASED? IS THAT THE
18 PROBLEM?

19 A. NO. THE PROBLEM WAS THAT THE HUNDRED AND FIFTY
20 WOULD'VE BEEN MADE AND WE WOULDN'T BE SITTING HERE
21 IF UNCLE JACK HADN'T BEEN LYING AND TRYING TO DO
22 WHATEVER HE WAS TRYING TO DO..

23 Q. WHAT WAS HE LYING TO YOU ABOUT?

24 A. THE WHOLE THING. "I'M THERE TO HELP YOU, WENDY.
25 DO YOU THINK I WOULD DO ANYTHING TO HURT YOU?"

1 DO YOU WANT TO CONTINUE?

2 A. I'M OKAY. GO AHEAD.

3 MS. COOK: OKAY.

4 Q. DOES IT MAKE A DIFFERENCE TO YOU WHO HOLDS THE
5 NOTE AND MORTGAGE? DOES IT MAKE A DIFFERENCE TO
6 YOU TO WHOM THE DEBT IS OWED?

7 A. I WOULD LIKE TO KNOW WHO I OWE THE DEBT TO.

8 Q. AND I THINK THAT IS REASONABLE, BUT MY QUESTION IS
9 THOUGH, OTHER THAN KNOWING THE IDENTITY, DOES IT
10 MAKE A DIFFERENCE TO YOU WHO? DOES IT CHANGE YOUR
11 OBLIGATIONS? IF FIRST PALMETTO OWNS THE NOTE AND
12 MORTGAGE OR HOTEL AND MOTEL HOLDINGS OWNS THE NOTE
13 AND MORTGAGE, WHAT DIFFERENCE DOES THAT MAKE TO
14 YOU?

15 A. WE OWE THE OBLIGATION TO WHOEVER HAS THE DEBT,
16 MEANING THE MORTGAGE. IS THAT WHAT YOU'RE ASKING
17 ME.

18 Q. YES.

19 A. YES, I DON'T DENY THAT.

20 Q. DOES BJC HAVE THE MONEY CURRENTLY TO PAY OFF THE
21 NOTE?

22 A. I DON'T KNOW WHAT BJC HAS.

23 Q. WHO WOULD KNOW?

24 A. I'M ASSUMING ALL THE CHECKBOOKS WERE CLOSED AND
25 STUFF. JACK AND BUPI TOOK `EM.

1 TO BE FOR THE PURPOSE OF THE RECORD. YOU ARE
2 TALKING ABOUT MR. JACK JONES NOW NOT MR. BHUPENDRA
3 PATEL, IS THAT RIGHT?

4 A. YES.

5 Q. DO YOU NEED TO TAKE A BREAK?

6 A. NO, SIR.

7 Q. BECAUSE I AM NOT TRYING TO ASK YOU QUESTIONS ABOUT
8 MR. JONES RIGHT NOW.

9 A. OKAY.

10 Q. IF YOU WOULD LIKE TO TAKE A BREAK, WE CAN BECAUSE
11 I WANT TO RUN THROUGH MR. PATEL.

12 A. NO. GO AHEAD.

13 Q. IN THE 2008 TAX RETURNS THAT WE'VE BEEN GOING
14 THROUGH AND TALKING ABOUT A GOOD BIT OF MONEY THAT
15 THE AMERICANA MADE, WHICH INCLUDED THE ... OR YOU
16 TESTIFIED A GOOD BIT OF MONEY WHICH INCLUDED THE
17 NBSC PROPERTIES AND YET THE TAXES WERE NOT PAID
18 FOR 2008. DURING THE 2008 YEAR. NOT WHEN MR.
19 PATEL TOOK OVER OR WHEN JACK JONES ALLEGEDLY TOLD
20 MR. PATEL NOT TO PAY BILLS, BUT WHY WEREN'T THESE
21 TAXES PAID IN 2008 WHEN YOUR BROTHER HAD CONTROL,
22 AA YOU SAID OD THE PROPERTY AND YOU WERE
23 GENERATING ENOUGH MONEY TO PAY A HUNDRED AND FIFTY
24 THOUSAND DOLLARS FOR MORTGAGE PAYMENTS IN MAY.
25 WHY DIDN'T YOU PAY THE TAXES?

1 A. BECAUSE WE HAD TAKEN THE MONEY WE HAD TO MAKE
2 MORTGAGE PAYMENTS.

3 Q. OKAY.

4 A. AND WE ALWAYS, UP UNTIL THAT DATE, ME AND MY
5 BROTHER HAD SOLELY PAID TAXES OURSELF OUT OF OUR
6 PERSONAL MONEY.

7 Q. IN OTHER WORDS, THE PROPERTY ITSELF DIDN'T
8 GENERATE ENOUGH MONEY TO MAKE BOTH THE MORTGAGE
9 PAYMENTS, IS THAT CORRECT?

10 A. THAT IS CORRECT.

11 Q. OKAY. NOW, IN ADDITION TO THE TAX BILLS THAT
12 WEREN'T PAID, THERE WERE A LOT OF OTHER BILLS THAT
13 WEREN'T PAID, INCLUDING PREMIUM FINANCING
14 SPECIALISTS FOR INSURANCE, BANK OF AMERICA, STATE
15 FARM, VERIZON. BILLS TOTALING OVER A HUNDRED
16 THOUSAND DOLLARS, IS CORRECT?

17 A. RIGHT.

18 Q. TELL ME WHAT WAS.

19 A. THERE WAS TWENTY SOME THOUSAND TO ONE AND 27,000.
20 I HAVE A LIST OF THAT.

21 Q. ALRIGHT. COULD DO YOU JUST LOOK AT THIS. IT
22 SAYS, "RAINBOW COURT EXPENSES". ARE YOU FAMILIAR
23 WITH THAT? IT'S DATED MAY THE 12TH 2009?

24 A. WHEN WAS THIS. THIS IS JACK AND BUPIE'S, IT WAS
25 NOT MINE. I'M NOT FAMILIAR WITH THAT AT ALL?

Exhibit C

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF HORRY) Case No.: 2009-CP-26-05743

Hotel & Motel Holdings, LLC,)
)
 Plaintiff,)

-versus-)

BJC Enterprises, LLC, Wendy J. Bellamy,)
 Americana, Inc., a/k/a Americana Motel)
 of Myrtle Beach, Inc., Mazingo and)
 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.,)
 Third Party Plaintiffs,)

-versus-)

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

THE DEPOSITION OF
 KERSI S. SHROFF
 Monday, March 28, 2011
 a.m. --- 11:07 a.m.

9:55

The deposition of Kersi S. Shroff, taken on behalf
 of the Plaintiff, at the office of Turner Padgett
 Graham & Laney, PA, located at Founders Centre, Suite
 301, 2411 North Oak Street, Myrtle Beach, South
 Carolina, on Monday, March 28, 2011.

1 termination clause in it; I don't know. I think
2 it expires after 2011, so it may have just
3 expired if I remember correctly.

4 **Q: Does this agreement require your company Shroff**
5 **Management to make the loan payments?**

6 A: To make up to -- I think up to a certain amount,
7 250,000.

8 **Q: Has your company continued to do that?**

9 A: I think we stopped doing that in October 2008, I
10 believe, was the last payment if I'm not
11 mistaken. September, October 2008. But I
12 believe we made far more payments during that
13 timeframe than this contract called for.

14 **Q: What was the reason why no more payments were**
15 **made after October of 2008?**

16 A: It made me feel good.

17 **Q: It made you feel good not to make the payments?**

18 A: No, it made me feel good to make the payments.

19 **Q: Okay. Why did the payments stop in October of**
20 **2008?**

21 A: Oh, sorry. I misunderstood your question.

22 **Q: That's okay.**

23 A: I really started getting into financial
24 difficulties myself with the other projects that
25 I had, and I could not continue making them. I

1 made them as best as I could till I could, okay,
2 so.

3 Q: Did there come a time when you bought Tripp
4 Coan's membership interest in BJC Enterprises?

5 A: I certainly did.

6 Q: When was that?

7 A: Audra, I have not reviewed any documents in
8 preparation for this deposition, okay, so the
9 dates I give you are roughly.

10 Q: Right, understood.

11 A: I would say that it was late spring, early summer
12 2008.

13 Q: Can you tell me a little bit about the
14 circumstances that led up to you purchasing that
15 membership interest?

16 A: There was a lot of -- In my mind, you know, I was
17 the only one making payments, nobody else was
18 making payments, and I didn't have anything to
19 show for all the payments that I had made to
20 date. And I thought this was a way securitizing
21 my payments in some fashion.

22 Q: When you say you were making the payments and
23 nobody else was do you mean the loan payments to
24 First Palmetto?

25 A: Yes, yes. And I had made them, in my mind, in

1 excess of what this contract called for.

2 Q: Before your purchase of Tripp Coan's interest did
3 you discuss it with Wendy Bellamy or Harvey
4 Jones?

5 A: I never did anything without discussing it.

6 Q: Did Ms. Bellamy and Mr. Jones agree to allow you
7 to purchase Mr. Coan's interest?

8 A: Yes.

9 Q: Do you recall what the purchase price was for Mr.
10 Coan's interest?

11 A: There was an exchange for two condos at the
12 Caribbean unit as I simply didn't have the cash
13 to buy. He would have preferred cash. So it was
14 whatever the value was for those two condos. He
15 took two of the best condos, I remember that. So
16 they were in the neighborhood of 700,000 each, I
17 think.

18 Q: Were there any documents that outlined this
19 transaction?

20 A: There was a closing sale that took place on the
21 units because the bank had to be paid off. I
22 mean, development units, there was a note, and
23 the Bellamy Law Firm did all that.

24 Q: Were there any documents that outlined the actual
25 transfer of Mr. Coan's interest to you?

1 A: Do you mean the assignment of shares?

2 Q: If that's what it was. I don't know, I haven't

3 seen. Do you have something that is an

4 assignment of shares?

5 A: I believe, I believe, yes, or I believe Ashley

6 Morrison does.

7 Q: And she's also with Bellamy?

8 A: She's with Bellamy.

9 Q: Did there come a time when you were aware that

10 BJC was no longer making loan payments to First

11 Palmetto?

12 A: Absolutely since I was the one making the

13 payments.

14 Q: Do you recall approximately when that was?

15 A: I think I made my last payment October 2008.

16 Again, it's, you know, tied to my project failing

17 on the other side, so I can remember the dates.

18 Q: Sure. And let me just go back for a second. The

19 transfer of Mr. Coan's interest to you was that

20 to you individually or was it to your management

21 company or do you recall?

22 A: I couldn't recall that at all, but it would -- it

23 was to one of them, okay, so.

24 Q: Did you participate in any meetings with First

25 Palmetto Savings Bank regarding this loan?

1 Mr. Harvey Jones and Wendy Jones was being
2 applied to the bank.

3 Q: So the arrangement was you made the payment
4 either to Harvey or Ms. Bellamy and they paid the
5 bank?

6 A: Actually, I didn't have an arrangement. This
7 document doesn't say how to make the payments.
8 So I made the first payments to either Harvey or
9 Wendy; I can't remember who the checks were
10 written to. And then I think I made the second
11 payment to First Palmetto. The reason why I'm
12 remembering this is because I had to go back to
13 Mr. Wilder and ask him if I was doing this thing
14 correctly. So the second payment, I believe, I
15 made to First Palmetto directly, and then in
16 whatever conversations we had all subsequent
17 payments were made to Harvey and Wendy.

18 Q: Why was it necessary for you to make the loan
19 payments?

20 A: I believe, I believe there was always a
21 shortfall. I think the way the agreement reads,
22 you know, they can make the payments to the
23 operations of the business, and if there's a
24 shortfall then I make-up the shortfall up to a
25 certain amount. So I was making up the shortfall

1 of the business.

2 Q: During that time who was running the properties?

3 A: Harvey and Wendy.

4 Q: And once you purchased Tripp Coan's interest in

5 BJC did you begin actively participating in

6 running the hotels?

7 A: No.

8 Q: Is it your understanding that Harvey and Wendy

9 continued to operate the hotels?

10 A: Yes. I tried. I tried to, but being a family

11 motel and being that this is their living, you

12 know, they wanted to continue. Now, I did try

13 and put some management structure around it after

14 I bought my, you know, after I bought my

15 interest, but I wouldn't say that I was running

16 the hotel.

17 Q: Do you recall any meetings with the bank towards

18 the end of 2008 where it was not just a daily

19 meeting, you know, not just an ordinary meeting

20 between you and Bob Wilder but an actual meeting

21 to discuss how this loan was going to be paid

22 moving forward?

23 A: Can you repeat that question please?

24 Q: Sure. Do you recall a meeting at the end of 2008

25 where it was a meeting of all the members of BJC

1 A: I think they can answer that better than I can.

2 Q: Well, from your perspective what caused that
3 disagreement?

4 A: I have no idea.

5 Q: Okay. You told me about a meeting in Camden with
6 the bank. Was that in January of 2009?

7 A: Yes, it was because I just lost -- I remember my
8 chief operations officer Hoffman died and they
9 wanted me to come up there on the day of his
10 funeral and I couldn't make it. So I want to say
11 it was January 20th, 21st, in that timeframe.

12 Q: At the time of that meeting had a foreclosure
13 action been filed?

14 A: I don't believe so. I believe that we had
15 received several default payments from their
16 attorney threatening foreclosure.

17 Q: You said default payments. Do you mean ---

18 A: I'm sorry. Default letters I should have said.

19 Q: When you received these default letters was there
20 any discussion among you and Harvey and Wendy
21 about how to address the defaults?

22 A: Sure.

23 Q: What were the discussions?

24 A: The discussions were all along the lines of, "How
25 do we get out of it? How can we start making

1 payments?"

2 Q: Did you ever come up with a solution as to how
3 you were going to make ---

4 A: No, we -- Unfortunately we needed the bank to be
5 apart of the solution. And when we went up to
6 Camden the bank really refused to talk with me,
7 you know, would not accept me as a member of BJC
8 or would not recognize me as a member of BJC. So
9 my discussions at that time literally stopped. I
10 did make a few phone calls to Mr. Small to try
11 and get in, but he told me I had to go through Ed
12 Farmer and Tripp Coan, or that's my recollection
13 I should say.

14 Q: Did you subsequently become aware that a
15 foreclosure had been filed?

16 A: Yes.

17 Q: Was that after the Camden meeting?

18 A: This is a funny thing. I remember this again
19 because this was unusual. There was a
20 foreclosure filed and withdrawn very quickly, I
21 want to say within a matter of one or two weeks.
22 And that had to do with Wendy, I believe, and I
23 say Wendy, it could be Wendy and Harvey or it
24 could be Wendy, Harvey, and Jack, I have no idea,
25 coming up with a certain amount of money. And I

Exhibit D

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT OR, IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976 AS AMENDED.

LOAN SALE AGREEMENT

THIS LOAN SALE AGREEMENT ("*Agreement*"), entered into this 24th day of June, 2009 by and between FIRST PALMETTO SAVINGS BANK, F.S.B. ("*Seller*"), and HOTEL & MOTEL HOLDING, LLC, Jack H. Jones, sole member ("*Buyer*"), sets forth the terms and conditions whereby the Seller agrees to sell and the Buyer agrees to purchase the Loan (as defined below) identified herein.

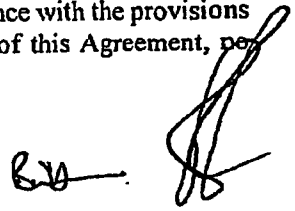
NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and the Buyer hereby agree as follows:

1. **Loan Documents to be Sold to Buyer.** Seller holds the loan documents listed in Attachment 1 (collectively, the "*Loan Documents*") in connection with that certain loan (the "*Loan*") in the original principal amount of \$5,573,146.62 from Seller to BJC Enterprises, LLC ("*BJC*"). As of the date hereof, the principal amount outstanding under the Loan is \$5,022,308.41. The promissory note referenced in Attachment 1 is referred to herein as the "*Note*." The mortgages referenced in Attachment 1 are collectively referred to herein as the "*Mortgage*" and the assignments of leases, rents and profits referenced in Attachment 1 are collectively referred to herein as the "*Assignment of Leases*". The real property subject to the Mortgage is hereinafter referred to as the "*Property*".

2. **Agreement to Purchase and Sell.** Subject to and in accordance with the terms and conditions of this Agreement, the Seller hereby agrees to sell, assign, transfer and convey to the Buyer at the Closing, and the Buyer hereby agrees to purchase and accept at the Closing, all rights, title, and interest of the Seller, as of the Closing Date, in, to and under the Loan and the Loan Documents.

3. **Closing.** The closing shall occur on the "*Closing Date*," which shall be on or before June 30, 2009. Seller, in its sole option, may extend the Closing Date ten (10) days to July 10, 2009 upon notice to Buyer.

3.1 **Pledged Accounts.** Upon execution hereof, Buyer will pledge to Seller as Earnest Money (as defined below) and to be applied after Closing in accordance with the provisions hereof, no less than Two Million Dollars in certificates of deposit (each a "*CD*" and collectively the "*CDs*") held with other lenders (the "*Pledged Accounts*"). The Pledged Accounts will constitute security for the Earnest Money obligation arising hereunder and for the obligations of Buyer in connection with the Buyer Loan (as defined below). Immediately upon maturity, the CDs shall be paid in accordance with the provisions of this Agreement, with the first \$1,000,000 in funds from matured CDs being paid to Seller as a portion of the Purchase Price and the next \$1,000,000 in funds from matured CDs being deposited with Seller as the Security Account (as defined below). The holders of the Pledged Accounts will execute all documents necessary to perfect the security interest of Seller and consent to payment of funds from the CDs in accordance with the provisions of this Agreement. Other than for payments in accordance with the provisions of this Agreement, no withdrawals shall be permitted from the Pledged Accounts.



3.2 Payment of Purchase Price. As the purchase price, Buyer shall pay to Seller the sum of Five Million Dollars (\$5,000,000) (the "**Purchase Price**"), paid as follows: (i) One Million Dollars in funds from the CDs shall be immediately paid to Seller upon maturity of such CDs for application to the Purchase Price, and (ii) the remaining \$4,000,000 of the Purchase Price shall be financed by the Buyer Loan (as defined below).

~~**3.3 Earnest Money.** Buyer agrees that fifty thousand dollars (\$50,000.00) of the money held in the Pledged Accounts shall constitute earnest money (the "**Earnest Money**") hereunder. The Earnest Money shall be non-refundable except upon a default by Seller under this Agreement. If Buyer fails to close under this Agreement, unless caused by the default of Seller, Seller shall be entitled to demand payment from any holder of the Pledged Accounts of the fifty thousand dollars (\$50,000.00) of the Earnest Money as liquidated damages. Both parties agree that Seller's actual damages in the event of Buyer's default hereunder are difficult to determine, and that fifty thousand dollars (\$50,000.00) of the Earnest Money constitutes a fair and reasonable agreement as to the amount of Seller's damages. Each holder of a Pledged Account shall consent to pay the Earnest Money to Seller upon demand.~~

3.4 Conveyance. Upon receipt of the Purchase Price, the Seller shall sell, assign, transfer and convey the Loan Documents to the Buyer subject to and in accordance with the provisions of this Agreement.

3.5 Recording Fees. The Buyer shall pay all transfer, filing and recording fees required to be paid in connection with the transactions contemplated hereby.

4. Transfer of Loans.

4.1 Closing Documents. At Closing, Seller shall execute and deliver to Buyer with respect to the Loan (i) a Bill of Sale in substantially the form attached hereto as Attachment 2, selling, assigning, transferring and conveying to the Buyer all rights, title and interests of the Seller in, to and under the Loan, all on the terms and conditions set forth in this Agreement; (ii) the original Note, or affidavits of lost Note, endorsed to the Buyer by allonge in substantially the form attached hereto as Attachment 3; (iii) assignments of the Mortgage and Assignment of Leases in substantially the form attached hereto as Attachment 4 and (iv) assignments of all other Loan Documents, consistent in form with the terms of this Agreement (collectively, the "**Closing Documents**"). The endorsements and assignments included in the Closing Documents shall be without recourse, representation or warranty of any kind or nature. Such qualifying language on the endorsements and assignments shall not affect, limit or enlarge the obligations of the Seller or the rights, remedies and recourse of the Buyer as specified in this Agreement.

4.2 Hazard Insurance, Liability Insurance, Etc. At the request and sole cost and expense of the Buyer, the Seller shall cooperate with the Buyer in executing written requests to each hazard, casualty, and liability insurer, and to the writing agent for each flood hazard insurer, issuing a policy of insurance obtained by an Obligor with respect to the Loan, requesting an endorsement of its policy of insurance effective on the Closing Date adding the Buyer as the mortgagee, the loss payee and/or an insured named therein, as the case may be, together with instructions that such endorsement be forwarded directly to the Buyer, with a copy to the Seller at the address herein specified for notices. Each such request shall be prepared by the Buyer at its sole cost and expense, and any additional premium or other charge in connection therewith shall be paid by the Buyer. The Buyer shall not be entitled to be added to or acquire an interest in

any policy of insurance obtained by the Seller. The Seller shall remain an insured mortgagee, loss payee and/or additional insured in light of the financing provided to Buyer by Seller under Section 5.

5. Seller's Loan to Buyer.

5.1 Loan to Buyer. Seller agrees to provide a loan to Buyer at Closing in the amount of Four Million Dollars (\$4,000,000) (the "**Buyer Loan**"). The Buyer Loan shall be evidenced by a promissory note from Buyer to Seller in form provided by Seller (the "**Buyer Note**"). The Buyer Note shall be secured by a collateral assignment from Buyer to Seller of the Loan Documents. Such collateral assignment shall be evidenced of record in the Horry County Register of Deeds' Office, with the Secretary of State Financing Statement Division and other applicable recording offices as deemed necessary by Seller. All documents evidencing, securing or guaranteeing the Buyer Loan shall be prepared by Seller's counsel, subject to review by Buyer's counsel, and shall be in form and content satisfactory to Seller.

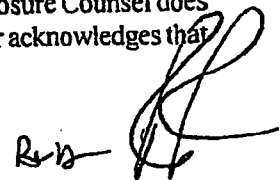
5.2 Terms of Buyer Note. The Buyer Note shall be at a fixed interest rate of five percent (5%) per annum, increasing to eight percent (8%) per annum if the Buyer defaults on the Buyer Note. Buyer shall make monthly interest payments for five years with a final payment of the entire outstanding balance due on the Buyer Note at maturity. The Buyer Note shall mature five (5) years from the Closing Date.

5.3 Security Account. At closing, Buyer will establish with Seller an account that Buyer shall pledge as additional security for the Buyer Loan (such account hereinafter referred to as the "**Security Account**"). Buyer will deposit into such Security Account the minimum amount required to establish it. Following payment of the \$1,000,000 portion of the Purchase Price from the CDs in accordance with the provisions of Section 3.1 above, the next \$1,000,000 in proceeds from matured CDs in the Pledged Accounts shall be transferred immediately upon maturity to Seller for deposit into the Security Account. Buyer will execute pledge documents in the form provided by Seller's counsel. Buyer shall only be permitted to withdraw amounts from the Security Account to pay interest payments as they become due under the Note. Otherwise, Buyer will not be permitted to make withdrawals from the Security Account.

5.4 Loan Documentation and Requirements. Seller's obligation to make the Buyer Loan is conditional upon compliance with Seller's underwriting guidelines and closing documentation requirements. Such requirements include without limitation an opinion of Buyer's counsel in form and content satisfactory to Seller. Seller's obligation to make the Buyer Loan is also conditional on Buyer not suffering a material adverse change in financial condition.

6. Provisions Concerning Enforcement of Loan Documents and Realization of Collateral.

6.1 Foreclosure Counsel. Both parties acknowledge that Dubose-Robinson, P.C. ("**Foreclosure Counsel**") has acted as Seller's counsel in connection with actions taken to date to foreclose on the Mortgage and otherwise enforce the Loan Documents. Seller shall be responsible for all attorneys' fees and expenses of Foreclosure Counsel through the date of Closing. After the Closing, the parties agree that Foreclosure Counsel will continue to represent Buyer with respect to the foreclosure of the Mortgage and enforcement of the Loan Documents (subject to Foreclosure Counsel determining that it can do so). Such representation shall be at the discretion of Buyer, and Buyer shall be entitled in its discretion to replace Foreclosure Counsel as counsel, with Buyer responsible for the cost of such counsel. Should Buyer continue to retain Foreclosure Counsel as counsel for such purposes, Seller will pay all legal fees and expenses of Foreclosure Counsel after the Closing Date. Buyer acknowledges and agrees that Foreclosure Counsel does and will continue to represent Seller with respect to matters unrelated to the Loan. Buyer acknowledges that



if representation of Buyer puts Foreclosure Counsel in a position adverse to Seller, Foreclosure Counsel may withdraw in its sole discretion. In the event of a subsequent dispute between Seller and Buyer, Buyer agrees that, to the extent permitted under the Rules of Professional Conduct governing Foreclosure Counsel, Foreclosure Counsel may elect to withdraw from further representation of Buyer in enforcing the Loan Documents and to represent Seller in any such dispute. Buyer also acknowledges and agrees that it will execute that certain Agreement Concerning Representation on or before the Closing Date.

6.2 Participation by Seller in Litigation; Pleadings. Seller shall be entitled, at its option, to continue to be represented in all litigation concerning enforcement of the Loan Documents in order to insure that its collateral interests in the Loan Documents are protected.

6.3 Minimum Bid at Foreclosure Sale. Buyer agrees that if it forecloses on the Mortgage, Buyer will not allow the Property to sell to a third party for less than the amount of the Buyer Note, and will itself bid not less than the amount of the Purchase Price at the foreclosure. Buyer agrees that Seller's collateral assignment interest in the Loan Documents shall at all times be evidenced in all foreclosure proceedings, such that its collateral interest is protected up to and through the date of sale. Any foreclosure order shall provide that in the event any party other than Buyer is the successful bidder at a foreclosure sale, the proceeds of sale, after payment of court fees, shall be applied first to repay the Buyer Note until it is paid in full.

6.4 Provisions to Apply When Buyer is Successful Bidder at Foreclosure. In the event the Buyer is successful bidder at foreclosure on the Property, Buyer will immediately grant to Seller a first lien mortgage and security agreement, assignment of leases, rents and profits and UCC-1 financing statements on the Property securing the Buyer Note, in form and content satisfactory to Seller. Such documents shall be executed at the Closing and placed in escrow with Seller's counsel, with irrevocable instructions from Buyer that Seller's Counsel shall immediately record such first lien mortgage and security agreement, assignment of leases, rents and profits and UCC-1 financing statements upon Buyer receiving a foreclosure deed to the Property. Buyer shall also provide at its expense a title insurance policy insuring Seller's first mortgage, in form and content satisfactory to Seller.

6.5 Assignment of Litigation.

6.6.1 At Closing, by delivering to Buyer the conveyance of documents referenced in Section 4, Seller shall be deemed to have assigned to Buyer and Buyer shall be deemed to have agreed to assume, any currently pending litigation in Horry County to enforce the Loan Documents (the "*Assigned Litigation*").

6.6.2 It shall be Buyer's responsibility, through Foreclosure Counsel, to (a) draft substitutions of parties in such a form and content consistent with the Rules of the court exercising jurisdiction over the matter ("*Substitutions of Parties*") to be filed with all appropriate courts and to be served on the opposing party(ies), (b) forward same to the attorneys presently handling any Assigned Litigation for signatures, (c) file such Substitution of Parties with all appropriate courts and serve same on the opposing party(ies) within ten (10) days after Closing and (d) contemporaneously with such filing and service, provide evidence of same to Seller.

6.6 Limitations on Settlement Rights. Any settlement by Buyer of any pending or further litigation to enforce the Loan Documents, including without limitation any proceedings in bankruptcy court, shall be subject to Seller's approval until the Buyer Note is paid in full.



7. **Representations and Warranties of the Buyer.** The Buyer hereby represents and warrants as follows:

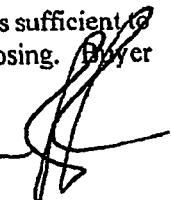
7.1 **Organization, Existence, Etc.** The Buyer is duly formed or organized, validly existing and in good standing under the laws of the jurisdiction of its formation or organization, and is registered or qualified to conduct business in all other jurisdictions in which the failure to be so registered or qualified would materially and adversely affect the ability of Buyer to perform its obligations hereunder.

7.2 **Authority and Enforceability, Etc.** The Buyer has the power and authority to execute, deliver and perform each of the sale documents and Buyer Loan documents referenced in this Agreement (collectively, the "*Transaction Documents*") to which it is a party and has taken all necessary action to authorize such execution, delivery and performance. The Buyer's execution of this Agreement and its performance of its obligations hereunder are not subject to any further approval, vote or contingency from any person or committee. Assuming due authorization, execution and delivery by the Seller, if applicable, the Transaction Documents and all obligations of the Buyer thereunder are the legal, valid and binding obligations of the Buyer, enforceable in accordance with the terms of the Transaction Documents, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.3 **Conflict with Existing Laws or Contracts.** The execution and delivery of the Transaction Documents and the performance by the Buyer of its obligations thereunder will not conflict with or be a breach of any provision of any law, regulation, judgment, order, decree, writ, injunction, contract, agreement or instrument to which the Buyer is subject; and the Buyer has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery and performance by the Buyer of the Transaction Documents.

7.4 **Financial Condition.** Neither the Buyer nor any manager, member, general partner, limited partner, shareholder or joint venturer in the Buyer is involved in any financial difficulties which would impair or prevent a closing pursuant to this Agreement on the Closing Date. The Buyer has now and will have as of the Closing Date sufficient liquid assets, capital and net worth to meet its obligations under the Transaction Documents and to pay the Purchase Price without any financing or other contingencies.

7.5 **Decision to Purchase.** Buyer (i) has sufficient information concerning the Loan and the Loan Documents in order to make an informed decision to enter into this Agreement and purchase the Loan Documents subject to the terms of this Agreement, (ii) is represented by experienced counsel of its choice in connection with this transaction and (iii) is not in a disparate bargaining position with respect to Seller. Buyer has been provided full and complete access to the Loan Documents by the Seller as well as the opportunity to obtain from Seller and the public record and other sources such information, copies of documentation and portions Buyer deemed appropriate. Buyer has consulted with its counsel and advisors regarding this Agreement, the Loan and the Loan Documents and thereafter made its own, independent evaluation of each and every aspect of this transaction Buyer deemed material, including without limitation, (a) the enforceability of the Loan Documents, (b) title to and value of mortgaged property and other collateral securing the Loan, (c) any assessment, report or analysis of the environmental status of any real and/or personal property, if any, (d) the existence and status of the Loan made pursuant to the Loan Documents, and (e) the value of the Loan and the Loan Documents. Buyer currently has funds sufficient to pay the Purchase Price, subject to Seller providing the Buyer Loan, and to complete Closing. Buyer

650 

represents, warrants and covenants that Buyer is an accredited investor (as that term is defined in Rule 501 promulgated under the Securities Act of 1933) who can bear the loss of its entire monetary investment, which includes the Purchase Price and the fees and costs which are in any way associated with the transactions contemplated by this Agreement.

7.6 No Reliance. In entering into this Agreement and the other Transaction Documents, the Buyer has not relied upon any oral or written information from the Seller or any of its employees, agents, attorneys or representatives, other than the limited representations and warranties of the Seller contained herein. The Buyer acknowledges that no employee, agent, attorney or representative of the Seller has been authorized to make, and that the Buyer has not relied upon, any statements, representations or warranties other than those specifically contained in this Agreement.

7.7 Brokers. No broker or other party entitled to a commission is involved in connection with this transaction as a result of the actions of Buyer

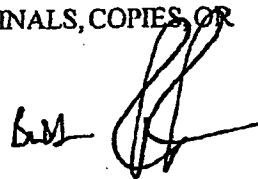
7.8 Litigation. There are no actions, suits or proceedings pending against Buyer that, if concluded adversely to Buyer, would materially adversely affect the ability of Buyer to perform its obligations under this Agreement.

8. Covenants of Buyer.

8.1 Use of Seller's Name. Buyer shall not make any claim in the name of Seller, nor continue to prosecute or defend in the name of Seller any litigation in respect of the Loan Documents, or any legal or equitable action hereafter arising. Buyer shall not intentionally or unintentionally, through misrepresentation, nondisclosure or otherwise mislead any person or entity as to, or conceal from any person or entity, the identity of Buyer as holder of the Loan Documents. Buyer shall not use or refer to the name "First Palmetto Savings Bank, F.S.B." or any name derived therefrom or confusingly similar therewith to promote Buyer's marketing, advertising, sale or transfer of the Loan or the collection, operation or management thereof.

8.2 Release Upon Settlement of Claims. Buyer covenants that it shall not accept a release of liability from any borrower, guarantor or person or grant a release of liability to any borrower, guarantor or person in connection with or with respect to the Loan unless simultaneously such borrower, guarantor or person shall release and discharge Seller and its directors, officers, employees and agents from all claims which such borrower, guarantor or person could have against them with respect to the Loan prior to the date of such release, which such release of liability shall be in substantially the same form as that which Buyer shall have given to or (as applicable) accepted from such borrower, guarantor or person.

9. Seller's Representations, Warranties and Recourse; Disclaimer of Representations and Warranties Not Expressly Set Forth Herein. THIS SALE IS MADE WITHOUT RECOURSE AGAINST THE SELLER. EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES WHICH ARE EXPRESSLY SET FORTH BELOW, NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, HAVE BEEN MADE BY SELLER OR BY ANYONE ACTING ON ITS BEHALF. PARTICULARLY, AND WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE REGARDING (i) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR ITS SOURCES OF INFORMATION (WHETHER CONTAINED IN ORIGINALS, DUPLICATE ORIGINALS, COPIES OR



MAGNETIC MEDIA, INCLUDING COMPUTER TAPES AND DISKS), INCLUDING WITHOUT LIMITATION ANY REPORTS OR OTHER INFORMATION PREPARED BY ACCOUNTANTS, ENGINEERS, APPRAISERS, ENVIRONMENTAL CONSULTANTS OR OTHER PROFESSIONALS, (ii) THE QUALITY OR COLLECTABILITY OF THE LOAN, (iii) THE CREDITWORTHINESS OF BJC OR ANY GUARANTOR OF THE LOAN, (iv) THE VALUE OF ANY COLLATERAL, (v) THE ENFORCEABILITY OF ANY LOAN DOCUMENT OR (vi) THE PRIORITY OF ANY LIEN. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT. ALL LOANS SOLD TO BUYER UNDER THIS AGREEMENT ARE SOLD AND TRANSFERRED WITHOUT RECOURSE OR WARRANTY EXPRESS OR IMPLIED

9.1 Representations and Warranties by the Seller. The Seller hereby represents and warrants as follows:

9.1.1 Organization, Existence, Etc. The Seller is duly formed or organized, validly existing and in good standing under the laws of the jurisdiction of its formation or organization, and is registered or qualified to conduct business in all other jurisdictions in which the failure to be so registered or qualified would materially and adversely affect the ability of Seller to perform its obligations hereunder.

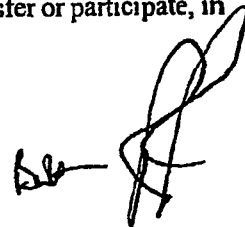
9.1.2 Authority, Enforceability, Etc. The Seller has taken all necessary action to authorize execution, delivery and performance of each of the Transaction Documents to which it is a party. Assuming due authorization, execution and delivery by the Buyer, the Transaction Documents and all the obligations of the Seller thereunder are the legal, valid and binding obligations of the Seller enforceable in accordance with the terms of the Transaction Documents, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or a law).

9.1.3 Conflict with Existing Laws or Contracts. The execution and delivery of the Transaction Documents and the performance by the Seller of its obligations thereunder will not conflict with or be a breach of any material provision of any law, regulation, judgment, order, decree, writ, injunction, contract, agreement or instrument to which the Seller is subject; and the Seller has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery and performance by the Seller of the Transaction Documents.

9.1.4 Legal Action Against Seller. There is no action, suit or proceeding of which the Seller has received actual notice pending against Seller in any court or by or before any other governmental agency or instrumentality which would materially affect the ability of Seller to carry out the transactions contemplated by the Transaction Documents.

9.1.5 Brokers. No broker or other party entitled to a commission is involved in connection with this transaction as a result of the actions of Seller.

9.1.6 Title to Loan. The Seller has good title to and is the sole owner of the Loan, free and clear of any liens, claims, encumbrances or other charges whatsoever. The Loan is not subject to any prior assignment, conveyance, transfer or participation or agreement to assign, convey, transfer or participate, in whole or in part.

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10. **Conditions Precedent to Closing.** The respective obligations of the Buyer and the Seller to complete the purchase and sale of the Loan pursuant to this Agreement are subject to the fulfillment on or prior to Closing Date of each of the following additional conditions to be fulfilled by the other, unless the same is specifically waived in writing by the party for whose benefit the same is to be fulfilled:

10.1 **Performance of Covenants.** The Seller and the Buyer shall have performed all of their respective covenants and agreements contained herein which are required to be performed by them on or prior to the Closing Date.

10.2 **Representations and Warranties.** All representations and warranties of the Buyer and Seller set forth in this Agreement shall be true in all material respects at and as of the Closing Date.

10.3 **Governmental Approvals.** All requisite federal, state and local governmental and regulatory approvals relating to the transactions contemplated hereby, if any, shall have been obtained.

11. **Certain Obligations of the Buyer.**

11.1 **Collection Practices.** The Buyer will not violate any laws relating to unfair credit collection practices in connection with the Loan. The Buyer hereby agrees to indemnify the Seller and to hold it harmless from and against any and all claims, demands, losses, damages, penalties, fines, forfeitures, judgments, legal fees and any other costs, fees, and expenses incurred by the Seller as a result of (1) a breach by the Buyer of the aforesaid warranty or (2) any claim, demand, or assertion that, after the Closing Date, the Seller was in any way involved in or had in any way authorized any wrongful collection practices in connection with the Loan transferred to the Buyer pursuant to this Agreement. The Buyer agrees to notify the Seller within ten (10) Business Days of notice or knowledge of any such claim or demand.

11.2 **Reporting to or for the Internal Revenue Service.** The Buyer agrees to submit all Internal Revenue Service Forms and Information Returns for the Loan for the period during which it owns the Loan.

12. **Notice to BJC and Guarantors.** The Buyer shall, within five (5) Business Days after the Closing Date, give notice through Foreclosure Counsel of this transfer to BJC and all guarantors of the Loan, with a copy to the notice to the Seller, by registered U.S. Mail, return receipt requested.

13. **Notice of Claim.** The Buyer shall immediately notify the Seller of any claim, threatened claim, or any litigation against the Seller, or any of their predecessors or affiliates, which may come to its attention relating to the Loan.

14. **Notices.** All notices or deliveries required or permitted hereunder shall be in writing and delivered personally or by generally recognized overnight delivery service, and shall be deemed given (a) when delivered, if delivered personally, or (b) on the following Business Day, if sent by generally recognized overnight delivery service, in each case to the Seller or Buyer at the following address, or such other address as either party may hereafter designate by notice given in compliance with this Section to the other party.

SELLER: First Palmetto Savings Bank, F.S.B.
Attention: Samuel R. Small, Jr., General Counsel
407 DeKalb Street



Camden, South Carolina 29020
Telephone Number: (803) 424-5019
Facsimile Number: (803) 424-5077
e-mail: ssmalljr@fpsb.com

With a copy to: M. Todd Haynie III
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2200
Columbia, South Carolina 29201
Telephone Number: (803) 779-3080
Facsimile Number: (803) 765-1243
e-mail: thaynie@hsblawfirm.com

BUYER: Jack Jones, c/o Morgan Lewis, C.P.A.
706 48th Avenue South
North Myrtle Beach, South Carolina 29582
Telephone Number: (843) 497-4877
Mobile Number: (843) 340-3621

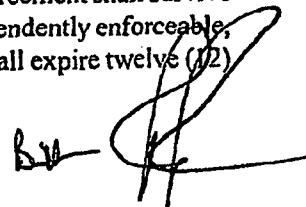
15. **Severability.** Each part of this Agreement is intended to be severable. If any term, covenant, condition or provision hereof is unlawful, invalid, or unenforceable for any reason whatsoever, and such illegality, invalidity, or unenforceability does not affect the remaining parts of this Agreement, then all such remaining parts hereof shall be valid and enforceable and have full force and effect as if the invalid or unenforceable part had not been included.

16. **Construction and Interpretation.** Unless the context otherwise requires, singular nouns and pronouns (including defined terms), when used herein, shall be deemed to include the plural and vice versa, and impersonal pronouns shall be deemed to include the personal pronoun of the appropriate gender. The fact that one party or its representative may have drafted this Agreement shall not be taken into account by any court asked to interpret the terms of this Agreement, both parties having had the opportunity to have reviewed this Agreement and negotiate its terms. Further, both parties acknowledge that they have had an opportunity to have a counsel of their choosing represent them in this transaction and review this document.

17. **Assignment.** This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof, including any attachments hereto, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors, and assigns. Notwithstanding anything herein to the contrary, however, Buyer shall not assign its rights under this Agreement without the prior written consent of the Seller

18. **Prior Understandings.** This Agreement supersedes any and all prior discussions and agreements between the Seller and the Buyer with respect to the purchase of the Loan and other matters contained herein, and this Agreement contains the sole and entire understanding between the parties hereto with respect to the transactions contemplated herein.

19. **Survival.** Each and every covenant made by the Buyer or the Seller in this Agreement shall survive the closing and shall not merge into the closing documents, but instead shall be independently enforceable, provided, however, that the Seller's representations and warranties set forth herein shall expire twelve (12)



months after the Closing Date, after which time no claim for breach of Seller's representations or warranties may be made.

20. **Choice of Law and Resolution of Disputes.** This Agreement and claims arising out of or in connection therewith shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, TO THE EXTENT ALLOWED BY LAW, THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE BETWEEN SELLER AND BUYER ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED THERETO. THE FOREGOING NOTWITHSTANDING, SELLER MAY, AT ITS OPTION, DEMAND TO ARBITRATE ANY DISPUTE UNDER THE EXPEDITED PROCEDURES OF THE COMMERCIAL FINANCIAL DISPUTES ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (AAA) AND TITLE 9 OF THE UNITED STATES CODE, AND ALL PARTIES HERETO AGREE TO SUCH ARBITRATION. A SINGLE ARBITRATOR WILL BE APPOINTED BY THE AAA AND WILL BE A RETIRED JUDGE OR ATTORNEY WITH EXPERIENCE OR KNOWLEDGE IN BANKING TRANSACTIONS. A JUDGMENT MAY BE ENTERED UPON THE AWARD BY ANY COURT OF COMPETENT JURISDICTION.

21. **Time of the Essence.** Time is of the essence of all provisions of this Agreement.

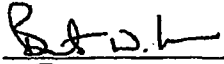
Signature page to follow.

bn 

EXECUTED AS AN INSTRUMENT UNDER SEAL AS OF THE DATE WRITTEN ABOVE.

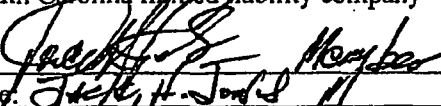
SELLER:

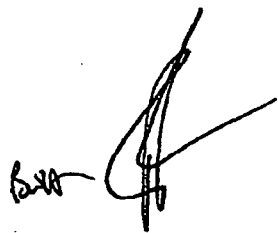
FIRST PALMETTO SAVINGS BANK, F.S.B.

By:  (SEAL)
Name: Robert W. Hutto
Title: Vice President

BUYER:

HOTEL & MOTEL HOLDING, LLC,
a South Carolina limited liability company

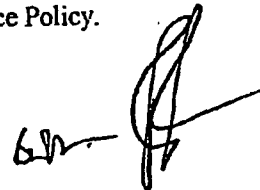
By:  (SEAL)
Name: Jack H. Jones
Title: Member



ATTACHMENT 1

LOAN 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
 - 1.1 Guaranty from Wendy J. Bellamy to Seller dated January 17, 2008.
 - 1.2 Guaranty from Harvey L. Jones to Seller dated January 17, 2008
 - 1.3 Guaranty from Henry C. Coan III to Seller dated January 17, 2008.
3. Mortgages
 - 2.1 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.
 - 2.2 Real Estate Mortgage from Wendy J. Bellamy to Seller dated January 14, 2005 recorded in the ROD Office of Horry County in Book 3904 at page 20.
 - 2.3 Real Estate Mortgage from Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc to Seller dated January 14, 2005 recorded in the ROD Office of Horry County in Book 3904 at page 28.
4. Assignments of Leases:
 - 2.1 Assignment of Leases and Rents from BJC to Seller dated January 14, 2005 recorded in the ROD Office of Horry County in Book 2849 at page 176.
 - 2.2 Assignment of Leases and Rents from Wendy J. Bellamy to Seller dated January 14, 2005 recorded in the ROD Office of Horry County in Book 2849 at page 185.
 - 2.3 Assignment of Leases and Rents from Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc. to Seller dated January 14, 2005 recorded in the ROD Office of Horry County in Book 2849 at page 193.
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, including a Title Insurance Policy.



ATTACHMENT 2

BILL OF SALE

First Palmetto Savings Bank, F.S.B. (the "***Seller***"), for value received and pursuant to the terms and conditions of that certain Loan Sale Agreement dated _____, 2009 between the Seller and _____ (the "***Buyer***"), does hereby sell, assign, transfer and convey to Buyer, its heirs, administrators, representatives, successors and assigns, all rights, title and interests of the Seller, as of the date hereof, in, to and under the Loan described in the Loan Sale Agreement.

THIS BILL OF SALE IS EXECUTED WITHOUT RECOURSE AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESSED, IMPLIED, OR IMPOSED BY LAW EXCEPT AS PROVIDED IN THE LOAN SALE AGREEMENT.

EXECUTED this _____ day of _____, 2009.

SELLER:

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: _____

Name: _____

Title: _____

A handwritten signature in black ink, appearing to be 'B. J.' followed by a stylized flourish.

ATTACHMENT 3

ALLONGE

Reference is made to the \$5,573,146.62 promissory note from BJC Enterprises, LLC (the "*Note*") payable to the order of First Palmetto Savings Bank, F.S.B. ("*Assignor*"). It is intended that this Allonge be attached to and made a permanent part of the Note.

Pay to the order of _____ ("*Assignee*"), without recourse, representations or warranties of any kind, express or implied.

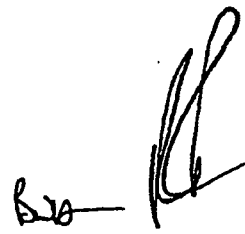
Executed this _____ day of _____, 2009.

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: _____

Name: _____

Title: _____

A handwritten signature in black ink, appearing to be "Bjo" followed by a stylized flourish.

ATTACHMENT 4

ASSIGNMENT OF MORTGAGE AND ASSIGNMENT OF LEASES

First Palmetto Savings Bank, F.S.B. ("*Assignor*"), having an address of 407 DeKalb Street, Camden, South Carolina 29020, the holder of the mortgages (together with any amendments, renewals, extensions, or modifications thereto, collectively the "*Mortgage*") and assignments of leases (together with any amendments, renewals, extensions, or modifications thereto, collectively the "*Assignment of Leases*"), each dated January 14, 2005, in favor of Assignor described on Exhibit A attached hereto, hereby assigns the Mortgage and the Assignment of Leases and any other related security instruments as described on Exhibit A attached hereto, and the notes and claims secured thereby, to _____ ("*Assignee*") with an address of _____. This assignment is made without recourse, representations or warranties of any kind, express or implied

Executed this ____ day of _____, 2009.

FIRST PALMETTO SAVINGS BANK, F.S.B.

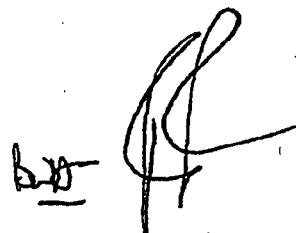
By: _____
Name: _____
Title: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

Personally appeared the above named _____, the _____ of First Palmetto Savings Bank, F.S.B., and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Assignor, before me.

Notary Public

My commission expires _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

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.

**NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT ON CLAIMS
ASSERTED BY THIRD PARTY PLAINTIFFS
AGAINST FIRST PALMETTO SAVINGS
BANK, F.S.B.**

FILED
HORRY COUNTY
11 MAY -3 AM 10:51
MELANIE HUGGINS-WARD
CLERK OF COURT

Pursuant to Rule 56, SCRPC, Third-Party Defendant First Palmetto Saving Bank, F.S.B. ("First Palmetto") hereby moves for summary judgment on the third party claims asserted against it by 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") based on the grounds that there is no genuine issue of material fact, and that, as a matter of law, First Palmetto is not liable under any of the causes of action asserted by Third Party Plaintiffs against it in the Third Party Complaint.

This motion is based upon Rule 56, South Carolina Rules of Civil Procedure, common and statutory laws, the pleadings in the case, the supporting Memorandum of Law filed contemporaneously with Court and incorporated herein by reference, and any additional documents, evidence or memoranda which may be properly filed with the Court at or in advance of the hearing in this matter.

HAYNSWORTH SINKLER BOYD, P.A.

By:



William H. Short, Jr.

Lindsey Carlberg Livingston

Post Office Drawer 11889
Columbia, South Carolina 29211
(803) 779.3080 Tel
(803) 765.1243 Fax

Attorneys for First Palmetto Savings Bank,
FSB

May 2, 2011

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

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.

IN THE COURT OF COMMON PLEAS

Case No. 2009-CP-26-5743

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT ON
CLAIMS ASSERTED BY THIRD PARTY
PLAINTIFFS AGAINST FIRST PALMETTO
SAVINGS BANK, F.S.B.**

HORRY COUNTY
11 MAY -3 AM 10:51
MELANIE HUGGINS-MARRS
CLERK OF COURT

Third-Party Defendant First Palmetto Saving Bank, F.S.B. ("First Palmetto") submits this memorandum in support of its motion for summary judgment with respect to the claims of Third Party Plaintiffs BJC Enterprises, LLC ("BJC"), Wendy J. Bellamy ("Bellamy"), and Americana, Inc., a/k/a Americana Motel of Myrtle Beach, Inc. ("Americana") (collectively, "Third Party Plaintiffs").

UNDISPUTED FACTS

On or about January 14, 2005, BJC borrowed from First Palmetto the principal sum of \$5,573,146.62 to allow BJC to purchase an oceanfront hotel known as Emerald Shores and its first row parking lot (the "Loan"). (Amended Answer, Counterclaims and Third-Party Complaint (hereinafter "Answer ") ¶ 15). In connection with this loan transaction, BJC pledged the Emerald Shores property, and Bellamy and Americana pledged certain real property located behind the Emerald Shores including the Rainbow Court Motel (collectively, the "Mortgaged Property"). (Answer ¶ 20). Additionally, Bellamy executed and delivered a Guaranty to First Palmetto guaranteeing BJC's obligations under the Loan. (W. Bellamy Dep. [Ex. A] p. 26, lines 7-9).¹ The Loan matured in January 2007, and it was renewed for 12 months. (B. Hutto Dep. [Ex. B] p. 66 line 24 to p. 67, line 3).² In connection with the January 2007 renewal, Bellamy executed and delivered a Guaranty to First Palmetto, again guaranteeing BJC's obligations under the Loan. (W. Bellamy Dep. [Ex. A] p. 41, lines 1-10).

In January 2008, the Loan matured and it was again renewed by note dated January 17, 2008, which renewal extended the maturity date of the Loan until January 17, 2009. (B. Hutto Dep. [Ex. B] at p. 67, lines 7-13). In connection with the January 2008 renewal, Bellamy executed and delivered a Guaranty to First Palmetto, again guaranteeing BJC's obligations under the Loan. (W. Bellamy Dep. [Ex. A] p. 47, lines 5-11).

When the Loan matured on January 17, 2009, the Note was not paid in full, and therefore was in default. (W. Bellamy Dep. [Ex. A] p. 50 line 23 to p. 51, line 7). Thereafter, First Palmetto filed a foreclosure action on February 2, 2009, but dismissed the action without prejudice on February 13, 2009, based upon an agreement that First Palmetto would forbear from

¹ Referenced portions of Ms. Bellamy's deposition transcript are attached hereto as Exhibit A.

² Referenced portions of Mr. Hutto's deposition transcript are attached hereto as Exhibit B.

exercising its rights under the loan documents if BJC paid the taxes and made an interest payment of \$150,000.00 by May 31, 2009. (W. Bellamy Dep. [Ex. A] p. 92 line 15 to p. 93 line 4; p. 102, lines 12-16). BJC failed to make the May 31, 2009 payment and therefore, First Palmetto filed the instant foreclosure action on June 5, 2009. (*Id.* at p. 103, lines 17-19).

After foreclosure proceedings were commenced, on June 30, 2009, First Palmetto sold the loan documents evidencing the Loan to Hotel and Motel Holdings, LLC ("H & M") for \$5,000,000.00. (J. Jones Dep. [Ex. C], p. 111, lines 3-14).³ 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 an Amended Answer, Counterclaims and 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, SCRPC. Accordingly, the remaining claims asserted against First Palmetto are breach of contract, breach of contract accompanied by a fraudulent act and civil conspiracy. As discussed below, First Palmetto is entitled to summary judgment on each of these claims as a matter of law.

³ Referenced portions of Mr. Jones' deposition transcript are attached hereto as Exhibit C.

ARGUMENT

South Carolina Rule of Civil Procedure 56(c) provides that summary judgment may be granted, "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that [movant] is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. The party seeking summary judgment bears the burden of informing the court of the basis of the motion and identifying those portions of the record that show there is no genuine issue as to any material fact. *Strother v. Lexington Co. Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Owens v. Magill*, 308 S.C. 556, 562, 419 S.E.2d 786, 790 (1992) (the moving party must clearly establish, by the record properly before the court the absence of a triable issue of fact).

Once the movant meets its initial burden of showing the absence of genuine issues of material fact, "to resist a motion for summary judgment the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). As Rule 56(e) provides:

When a motion for summary judgment is made and supported as provided by this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response. . . must set forth specific facts showing that there is a genuine issue for trial.

Rule 56(e), SCRCP. "It is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984).

1. First Palmetto Has Not breached any Contract with Third Party Plaintiffs.

In their first third party claim for breach of contract, Third Party Plaintiffs allege that First Palmetto breached its obligations under the loan documents. (Answer ¶¶ 82, 97).

However, Third Party Plaintiffs do not allege any particular provision of the loan documents which have been breached. Instead, Third Party Plaintiffs assert First Palmetto breached its obligations of good faith and fair dealing under the loan documents and breached their obligations of confidentiality concerning the lending relationship. (Answer ¶ 97). In support of these claims, Third Party Plaintiffs make numerous allegations, each of which fail as a matter of law as described below:

a. First Palmetto filed a foreclosure action even though Third Party Plaintiffs were current under the terms of the loan documents as of January 2009. (Answer ¶ 84).

It is undisputed 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. Therefore, the Loan was in default and First Palmetto was entitled to foreclose pursuant to the terms of the loan documents. Under South Carolina law, there is no breach of the implied covenant of good faith by conduct that the law permits. *See Adams v. G.J. Creel and Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995) ("there is no breach of an implied covenant of good faith where a party to a contract has done what provisions of the contract expressly gave him the right to do"). Thus, First Palmetto did not breach any implied duty of good faith and fair dealing by doing exactly what the loan documents allow it to do- collect the debt owed under the loan documents. As such, this allegation does not support Third Party Plaintiffs' breach of contract claim.

b. First Palmetto sold the loan documents to H & M for little or no consideration in a transaction that was not arms length. (Answer ¶¶ 86 (b), 88).

Even assuming the sale of the loan documents to H & M was for no consideration and not in an arm's length transaction, which First Palmetto denies, such allegations are of no

consequence because the loan documents did not prohibit First Palmetto from selling/assigning the loan documents. First Palmetto performed its obligations under the loan documents when it loaned money to BJC. First Palmetto does not breach its obligations under the loan documents if it sells and/or assigns its rights under the loan documents to a third party. Third Party Plaintiffs cannot (and do not even allege) that the loan documents prohibit First Palmetto from selling/assigning the loan documents. Furthermore, it is undisputed that the sale and assignment of the loan documents was for substantial consideration- \$5,000,000.00, which represents a nominal discount on the Loan which had a principal balance of \$5,029,708.41. Consequently, these allegations do not support Third Party Plaintiffs' breach of contract claim.

c. First Palmetto interfered with the Mortgaged Property. (Answer ¶ 90).

Third Party Plaintiffs make a conclusory statement, not supported by any facts, that First Palmetto interfered with the operations of the Mortgaged Property. While the court must accept as true all well-pleaded factual allegations, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), it need not accept as true plaintiff's bare legal conclusions. See *Taubman Realty Group Ltd. P'ship v. Mineta*, 320 F.3d 475, 479 (4th Cir. 2003). Factual allegations "must be enough to raise a right to relief above the speculative level" with the complaint having "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are insufficient. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 555). Additionally, there is no evidence that First Palmetto interfered with the Mortgaged Property.

d. **First Palmetto divulged private and confidential information concerning the BJC loan and its status. (Answer ¶ 97).**

Third Party Plaintiffs allege that First Palmetto “divulged private and confidential information concerning the BJC loan and its status to third parties advising each of the status of the note and mortgage, the loan status, and other private information.” (Answer ¶ 97). Even assuming First Palmetto divulged this “private and confidential” information, First Palmetto does not owe a duty of confidentiality to Third Party Plaintiffs. While South Carolina courts have never addressed the specific issue, courts in other jurisdictions have held that a bank does not owe a duty of confidentiality to a borrower where the borrower is in default of its loan obligations and the bank is marketing the loans for sale. *See, e.g., Hopewell*, 680 So.2d 812; *Schoneweis v. Dando*, 435 N.W.2d 666 (Neb. 1989); *Graney Dev. Corp. v. Takson*, 400 N.Y.S.2d 717 (N.Y. Sup. Ct. 1978).⁴ In *Hopewell*, the plaintiff alleged that the bank disclosed confidential information concerning plaintiff's loan to a potential buyer of plaintiff's property. *Id.*, 680 So.2d at 814. The court held that there is not a duty of confidentiality arising from a bank-borrower relationship. *Id.*, 680 So.2d at 818. The court explained that “[o]ne who defaults on his debts owed to a merchant cannot expect that his default will be kept secret.” *Id.*, 680 So.2d at 818 (citing *Graney*, 400 N.Y.S.2d at 720).

Similarly, in *Schoneweis*, the plaintiff defaulted on a loan and alleged that the bank violated a common law duty to keep her financial information confidential when the bank allegedly divulged information about the plaintiff's financial situation to plaintiff's relatives. 435 N.W.2d at 668. The court held that such “statements related solely to the debtor-creditor

⁴ Additionally, in South Carolina, there is no fiduciary relationship between a bank and its customer. *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986); *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 497, 220 S.E.2d 116, 119 (Ct. App. 1975); *Johnson v. Serv. Mgmt., Inc.*, 19 S.C. 165, 167-68, 459 S.E.2d 900, 902 (Ct. App. 1995).

relationship. We are not persuaded that under such circumstances First National owed Schoneweis any duty of confidentiality.” *Id.*, 435 N.W.2d at 673.

Here, the relationship between First Palmetto and Third Party Plaintiffs was that of bank and borrower. Similarly, Third Party Plaintiffs concede that the Loan was in default at the time First Palmetto allegedly discussed the Loan with third parties. Because there is no duty of confidentiality between a bank and borrower where the borrower is in default of its loans, Plaintiffs’ allegations fail to support a cause of action for breach of contract under a supposed common law duty of confidentiality.

Moreover, Third Party Plaintiffs have presented no evidence to support this claim. Discussing the status of a loan which is in default in foreclosure does not constitute disclosure of “private” and “confidential” information.

e. Third Party Plaintiffs claim of breach of implied covenant of good faith and fair dealing fails.

There exists in every contract an implied covenant of good faith and fair dealing. *Tharpe v. G.E. Moore Co.*, 254 S.C. 196, 174 S.E.2d 397 (1970). However, a party to a contract who is in default on the contract cannot recover for an alleged breach of the implied covenant of good faith and fair dealing. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 487, 514 S.E.2d 126, 135 (1999); *Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951). It is uncontested that Third Party Plaintiffs were in default under the Loan Documents in January 2009. Therefore, their claim for breach of the implied covenant of good faith and fair dealing fails as a matter of law.

2. **Third Party Plaintiffs' Claim for Breach of Contract Accompanied by a Fraudulent Act Fails as a Matter of Law.**

Third Party Plaintiffs allege that First Palmetto committed fraudulent acts accompanying its alleged breach of contract. (Answer ¶¶ 108-109). The alleged fraudulent acts consist of "obtaining of the guaranty and Power of Attorney and the breach of the obligation of good faith, fair dealing, and confidentiality." (Answer ¶109). For the reasons previously discussed, First Palmetto did not commit a breach of contract, and absent a breach of contract, the issue of fraudulent acts accompanying the breach is moot.

Breach of contract accompanied by a fraudulent act is a cause of action that sounds in contract rather than tort. *Peeples v. Orkin Exterminating Co.*, 244 S.C. 173, 135 S.E.2d 845 (1964); *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997). "There is no cause of action distinct from breach of contract for breach of contract accompanied by a fraudulent act." *Smith v. Canal Ins. Co.*, 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980). "In order to recover punitive damages for breach of contract, the plaintiff must show the breach was accomplished with a fraudulent intention and was accompanied by a fraudulent act." *Thompson v. Home Security Life Ins.*, 244 S.E.2d 533, 534 (S.C. 1978). A fraudulent act is an act characterized by dishonesty in fact, unfair dealing, or unlawful appropriation of another's property by design. *Foxfire Village, Inc. v. Black & Veatch, Inc.*, 304 S.C. 366, 404 S.E.2d 912 (Ct. App. 1991).

Here, Third Party Plaintiffs have failed to establish any breach of contract on the part of First Palmetto, much less a fraudulent act related to any such breach. The alleged fraudulent act relates to allegedly requiring Bellamy to execute a personal guaranty in January 2008 for the debt incurred under the Loan made in 2005. (Answer ¶ 101-105). However, it is undisputed

that Bellamy executed a personal guaranty at the time the Loan was made in 2005, and when the Loan was renewed in both 2007 and 2008. Furthermore, it is undisputed that First Palmetto did not require Bellamy to execute a Power of Attorney or have any knowledge of the execution of the Power of Attorney until after the fact. (B. Hutto Dep. [Ex. B], p. 95, lines 16-19). As such, the allegedly fraudulent acts were not fraudulent at all. Accordingly, Third Party Plaintiffs claim against First Palmetto for breach of contract accompanied by a fraudulent act fails as a matter of law, and First Palmetto is entitled to summary judgment.

3. Third Party Plaintiffs Have Failed to Allege Facts Constituting a Cause of Action for Civil Conspiracy, and First Palmetto Has Not Engaged in a Conspiracy to Harm Third Party Plaintiffs.

Third Party Plaintiffs allege that First Palmetto joined with the Plaintiff and the other Third Party Defendants to deprive, steal and take property of Third Party Plaintiffs and in furtherance of the alleged scheme, First Palmetto assigned the loan documents to Plaintiff (Answer ¶¶ 113-114.) Third Party Plaintiffs have failed, however, to allege facts sufficient to state a cause of action for civil conspiracy..

Where a claim for civil conspiracy merely re-alleges or incorporates acts previously alleged to support other claims and fails to allege additional acts in furtherance of the conspiracy, the claim for civil conspiracy fails to state a cause of action under South Carolina law. *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) (dismissing claim for civil conspiracy that merely incorporated acts alleged in four other causes of action); *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 610-11, 538 S.E.2d 15, 31 (Ct. App. 2000) (dismissing claim for civil conspiracy that merely re-alleged acts complained of in other causes of action); *Vaught v. Waites*, 300 S.C. 201, 208-09, 387 S.E.2d 91, 95 (Ct. App. 1989)

(dismissing claim for civil conspiracy that was “simply an embellishment” of claim for breach of contract).

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. . . . Because the quiddity [i.e., the essence] of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.

Pye v. Estate of Fox, 369 S.C. 555, 567-68, 633 S.E.2d 505, 511 (2006) (citations omitted).

“Special damages must be properly pled, or the claim for civil conspiracy will be dismissed.

AJG Holdings, LLC v. Dunn, 706 S.E.2d 23, 28 (Ct. App. 2001); *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 . . .”). A plaintiff is not entitled to proceed on a conspiracy claim when the damages claimed for the alleged conspiracy overlap with or are subsumed by the damages sought for other causes of action. *Parkman v. Univ. of S.C.*, 44 Fed. Appx. 606, 620 (4th Cir. 2002)

In this case, Third Party Plaintiffs have merely incorporated the allegations of their other third party claims into their claim for civil conspiracy, and they have not alleged any additional acts in furtherance of the conspiracy. They have also not alleged any damages arising from the alleged conspiracy that are different from or in addition to the damages they claim under their other causes of action.

Moreover, the acts alleged by Third Party Plaintiffs in support of their civil conspiracy occurred prior to the formation of the Plaintiff H & M which did not occur until June 15, 2009. (J. Jones Dep. [Ex. C], p. 81, lines 15-16). Therefore, the allegations that First Palmetto somehow conspired with Plaintiff when Plaintiff did not exist lack merit.

Consequently, Third Party Plaintiffs’ claim civil conspiracy fails to state a cause of action under South Carolina law, and First Palmetto is entitled to summary judgment.

CONCLUSION

For the foregoing reasons, First Palmetto is entitled to summary judgment with respect to each of the Third Party Plaintiffs' third party claims.

HAYNSWORTH SINKLER BOYD, P.A.

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May 2, 2011

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

15TH JUDICIAL CIRCUIT

CASE NUMBER 2009-CP-26-5550

HOTEL AND MOTEL HOLDINGS,
LLC.

PLAINTIFF

V.

WENDY J. BELLAMY,

DEFENDANT/THIRD
PARTY PLAINTIFF

V.

FIRST PALMETTO SAVINGS
BANK, FSB, JACK JONES,
DONALD D. GODWIN, AND
BHUPENDRA PATEL,

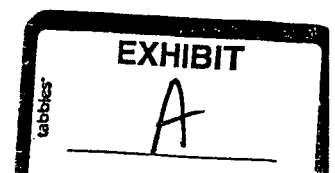
THIRD PARTY DEFENDANTS.

COPY

DEPOSITION OF
WENDY J. BELLAMY

FROM 8:58 P.M. UNTIL 5:07 P.M.

NOVEMBER 23, 2010

AS TAKEN AND TRANSCRIBED BY MICHAEL J. MCCARTHY, NOTARY
PUBLIC AND VERBATIM REPORTER, AT TURNER PADGET GRAHAM & LACEY
P.A., 2411 NORTH OAK STREET, SUITE 301, MYRTLE BEACH, SOUTH
CAROLINA.****THIS IS AN OFFICIAL TRANSCRIPT GOVERNED BY 25A SOUTH
CAROLINA CODE ANN. REGS. 67-615D (SUPP. 2000). THE
UNAUTHORIZED COPYING OF THIS DOCUMENT IS DEEMED TO BE
CONVERSION OF AN ASSET BELONGING TO THE COURT REPORTER.**

1 Q. WAS JACK JONES INVOLVED IN GETTING YOU TO FIRST
2 PALMETTO IN 2005?

3 A. NO, MA'AM.

4 Q. WAS DONALD GODWIN INVOLVED IN GETTING YOU TO FIRST
5 PALMETTO BANK?

6 A. NO, MA'AM.

7 Q. AND AS A PART OF THAT INITIAL LOAN IN 2005, WERE
8 YOU REQUIRED TO SIGN A PERSONAL GUARANTY?

9 A. I SIGNED A PERSONAL GUARANTY.

10 Q. I'M GOING TO SHOW YOU WHAT HAS BEEN INTRODUCED AS
11 EXHIBIT "85". DO YOU RECOGNIZE THAT DOCUMENT?

12 A. I SIGNED IT.

13 Q. DO YOU RECOGNIZE THAT DOCUMENT?

14 A. HONESTLY, IT'S A PERSONAL GUARANTY. I BELIEVE
15 YOU.

16 Q. I BELIEVE THIS IS THE NOTE?

17 A. OH, THE NOTE.

18 Q. AND IF YOU WILL LOOK UP AT THE TOP THAT DATE IS
19 01/14/2005.

20 MS. COOK: DO YOU MIND IF I POINT IT OUT TO
21 HER?

22 MRS. BYRD: SURE.

23 A. THAT'S '07. THAT'S 2007.

24 MS. COOK: IT'S HARD TO SEE, WENDY.

25 A. YES. I'M SORRY. I SEE AT 1/14/2005, YES.

1 Q. DID YOU SIGN ... IS THAT YOUR SIGNATURE?

2 A. YES.

3 Q. AND WHAT IS THE DATE OF THAT GUARANTY?

4 A. JANUARY THE 19TH, 2007.

5 Q. SO IS IT YOUR UNDERSTANDING THAT WAS THE PERSONAL
6 GUARANTY THAT YOU SIGNED AT THE TIME OF THE 2007
7 RENEWAL?

8 A. THAT'S MY SIGNATURE. I MEAN, THAT'S THE DATE
9 THERE. I MEAN, I WAS TAKING CARE OF MY MOM. I
10 SIGNED ... THAT'S MY SIGNATURE BUT I CAN'T
11 HONESTLY SAY WHEN THE DATE WAS, NO, MA'AM. I
12 MEAN, I DON'T KNOW. I DON'T KNOW WHAT I ... I
13 CAN'T SIT HERE AND SAY ... THAT'S MY SIGNATURE,
14 YES. I CAN HONESTLY SAY THAT IS MY SIGNATURE.
15 THAT'S ALL I CAN TELL YOU.

16 Q. IF YOU WILL LOOK BACK TO EXHIBIT "130", WHICH IS
17 THE 2007 NOTE, WHICH WAS A RENEWAL OF THE 2005
18 NOTE. WAS IT YOUR UNDERSTANDING THAT UNDER THAT
19 NOTE THERE WERE TO BE ELEVEN MONTHLY PAYMENTS AND
20 THEN ONE FINAL BALLOON PAYMENT OF THE PRINCIPAL IN
21 2008?

22 A. I DON'T EVEN REMEMBER THIS. I MEAN, I SIGNED IT
23 BUT I DON'T REMEMBER IT.

24 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT THAT'S ...

25 A. NOT MY SIGNATURE?

- 1 A. I DON'T THINK SO.
- 2 Q. HOW ABOUT DONALD GODWIN, DO YOU THINK HE WAS
3 INVOLVED IN NEGOTIATING THIS RENEWAL?
- 4 A. NO.
- 5 Q. OKAY. IF YOU WILL FLIP TO EXHIBIT "21" AND TELL
6 ME IF YOU RECOGNIZE THAT DOCUMENT?
- 7 A. THAT'S THE GUARANTY.
- 8 Q. AND WHOSE GUARANTY IS THAT?
- 9 A. MINE.
- 10 Q. AND WHAT IS THE DATE OF THAT?
- 11 A. JANUARY THE 17TH, 2008.
- 12 Q. AND AT THAT TIME IN JANUARY 2008, WAS SCHROFF
13 STILL INVOLVED IN THE PROPERTIES OR BJC
14 ENTERPRISES?
- 15 A. YES.
- 16 Q. AND DID SCHROFF MAKE ANY LOAN PAYMENTS DURING
17 2008?
- 18 A. YES. I'M SURE HE DID DURING THE WINTER.
- 19 Q. TO YOUR KNOWLEDGE, DID MR. SCHROFF EXECUTE A
20 PERSONAL GUARANTY ASSOCIATED WITH THIS LOAN
21 RENEWAL?
- 22 A. NO. IT WAS ME, HARVEY AND TRIPP.
- 23 Q. SO TRIPP WAS STILL INVOLVED WITH BJC IN 2008?
- 24 A. YES.
- 25 Q. TO YOUR KNOWLEDGE, WAS THERE EVER A RENEWAL OF

1 TOLD ME THAT IN 2007, THE TERMS OF THE LOAN
2 CHANGED AND IT WAS NO LONGER INTEREST ONLY. WERE
3 YOU ABLE TO MAKE THE PAYMENTS AFTER THE TERMS OF
4 THE LOAN CHANGED?

5 A. SEE, I WASN'T EVEN IN IT HARDLY THEN. I MEAN, I
6 WOULD GO DOWN THERE AND HELP CLEAN ROOMS AND CHECK
7 ON HOUSEKEEPING, BUT I DON'T KNOW.

8 Q. AND WHEN DID YOU GO BACK TO THE HOTEL AND BEGIN
9 AGAIN TO ASSIST IN RUNNING THE PROPERTY?

10 A. AFTER MY MOM DIED.

11 Q. AND THAT DATE AGAIN WAS AUGUST OF 2008?

12 A. SEVEN.

13 Q. AND ONCE YOU CAME BACK IN AUGUST OF 2007, WERE THE
14 PROPERTIES MAKING ENOUGH AT THAT TIME TO MAKE THE
15 PAYMENTS UNDER THE TERMS OF THE LOAN?

16 A. I DON'T EVEN KNOW.

17 Q. WELL ...

18 A. I MEAN, THE PAYMENTS WERE GETTING MADE.

19 Q. MY QUESTION IS, WERE THE PAYMENTS GETTING MADE
20 FROM MONEY THAT THE PROPERTIES WERE GENERATING OR
21 FROM INFUSIONS OF CASH FROM SOME OTHER SOURCE.

22 A. I IMAGINE FROM BOTH.

23 Q. AND IF YOU WILL FLIP BACK TO EXHIBIT "19", THE
24 2008 RENEWAL, IT CALLS, UNDER THE TERMS OF
25 EXHIBIT "19" IN THE 2008 RENEWAL, THERE WAS A

1 BALLOON PAYMENT OF PRINCIPAL DUE IN JANUARY OF
2 2009. WAS THAT BALLOON PAYMENT MADE IN JANUARY OF
3 2009?

4 A. NO.

5 Q. WHY NOT?

6 A. I DON'T KNOW. I AM ASSUMING THAT WE DIDN'T HAVE
7 THE MONEY.

8 Q. WOULD YOU KNOW IF BJC ENTERPRISES HAD
9 FIVE MILLION?

10 A. NO, THEY DIDN'T.

11 MS. COOK: WHEN YOU GET TO A GOOD PLACE TO
12 STOP, CAN WE TAKE A BREAK?

13 MRS. BYRD: YEAH, LET'S GO AHEAD.

14 MS. COOK: I NEED TO USE THE RESTROOM.

15 OFF THE RECORD.

16 Q. WE ARE BACK FROM A LITTLE BREAK. I WANT TO GO
17 BACK TO 2008. WE TALKED A FEW MINUTES AGO ABOUT
18 THE LOAN WAS RENEWED IN JANUARY OF 2008, AND THERE
19 WERE ELEVEN MONTHLY PAYMENTS DUE IN 2008 WITH A
20 BALLOON PAYMENT IN JANUARY OF 2009. DURING THE
21 YEAR 2008, WERE YOU ACTIVELY INVOLVED IN MANAGING
22 THE PROPERTIES?

23 A. DID I GO DOWN THERE?

24 Q. SURE?

25 A. YES, I DID.

1 WRITTEN BY SOMEONE AT A LAW OFFICE?

2 A. BECAUSE OF THE MEETING.

3 Q. SO THIS LETTER WAS A RESULT OF YOUR MEETING WITH
4 JACK WITH HENRIETTA?

5 A. UH-HUH. (AFFIRMATIVE RESPONSE.)

6 MS. COOK: YOU NEED TO SAY, YES.

7 A. YES.

8 Q. AND HOW WAS THIS LETTER GIVEN TO YOU? WAS IT
9 E-MAILED OR FAXED? HOW DID YOU GET THIS LETTER?

10 A. I WENT AND PICKED IT UP.

11 Q. WHO DID YOU PICK IT UP FROM?

12 A. THE LAW OFFICE.

13 Q. OF MCNAIR?

14 A. YES.

15 Q. AND I WANT YOU TO LOOK AT PARAGRAPH TWO AND IT
16 SAYS, "A MORTGAGE PAYMENT IN THE AMOUNT OF
17 \$150,000.00 IS DUE TO FIRST PALMETTO SAVINGS BANK
18 ON MAY 31ST 2009." DO YOU SEE THAT?

19 A. YES, MA'AM.

20 Q. WHAT IS YOUR UNDERSTANDING OF WHAT THE \$150,000.00
21 PAYMENT WAS?

22 A. ME AND UNCLE JACK AND BUPI WENT TO CAMDEN, AND
23 AFTER I HAD GONE AND MADE A PAYMENT ... I WENT UP
24 THERE TO MAKE A PAYMENT. AND WE COME BACK AND
25 THEN THOSE THREE WENT AND THAT'S WHEN MR. SAMMY

1 SAID THAT I HAD TO COME UP WITH A HUNDRED AND
2 FIFTY THOUSAND BY MAY THE 31ST AND THAT HE WOULD
3 RENEW THE LOAN FOR \$300,000.00 A YEAR. THAT'S
4 WHAT I WALKED AWAY WITH.

5 Q. AND I WANT TO GET REAL CLEAR ON THIS TIMING
6 BECAUSE IT IS IMPORTANT AND I KNOW IT IS HARD TO
7 REMEMBER BACK, BUT IT'S IMPORTANT TO THE SUIT THAT
8 WE UNDERSTAND HOW THE EVENTS OCCURRED AND THE
9 TIMING OF THOSE EVENTS. WHEN IS THE FIRST
10 MEETING? I KNOW YOU MET WITH THE BANK IN
11 OCTOBER 2008, THEN THE SUICIDE ATTEMPT.

12 A. THAT WAS DOWN HERE.

13 Q. THE POWER OF ATTORNEY EXECUTED IN FAVOR OF JACK IN
14 DECEMBER. DID YOU HAVE ANY MEETINGS WITH ANYBODY
15 FROM THE BANK IN JANUARY OF 2009? AND IF THERE IS
16 ANY DOCUMENT THAT YOU WOULD LIKE TO LOOK AT THAT
17 WOULD HELP YOU TO REMEMBER DATES, JUST LET ME KNOW
18 AND I'LL GET TO YOU BECAUSE I WANT YOU TO BE
19 ACCURATE?

20 A. I NEVER ... UNTIL ME AND UNCLE JACK WENT TO
21 CAMDEN?

22 Q. THE FIRST MEETING AFTER EXECUTING THE POWER OF
23 ATTORNEY IN FAVOR OF JACK, THE FIRST MEETING THAT
24 YOU HAD WITH ANYBODY FROM THE BANK WAS WHEN YOU
25 AND JACK WENT TO CAMDEN?

- 1 A. THAT THE LOAN WOULD BE RENEWED FOR \$300,000.00 A
2 YEAR BECAUSE I SAID, OKAY. WELL, THE EMERALD
3 SHORES CAN PAY A HUNDRED AND FIFTY AND RAINBOW
4 COURT CAN PAY A HUNDRED AND FIFTY, AND IT WOULD
5 GIVE US A CHANCE TO EITHER, AS UNCLE JACK TOLD MR.
6 SAMMY, "YOU CAN'T SELL A MOTEL IF IT IS IN
7 FORECLOSURE OR STUFF BECAUSE NOBODY IS GOING TO
8 TRY TO BUY SOMETHING THAT IS IN TROUBLE." SO, HE
9 AND MR. SAMMY TALKED ABOUT WORKING IT OUT SO THAT
10 WE COULD KEEP IT UNTIL IT COULD BE SOLD OR
11 SOMETHING DONE.
- 12 Q. AND SO YOUR UNDERSTANDING IS IF YOU CAN GET THE
13 \$150,000 BY MAY THE 31ST 2009, THEN THE LOAN WOULD
14 BE RENEWED FOR A YEAR?
- 15 A. YEAH. I DIDN'T EVER TAKE IT PAST A YEAR. UNCLE
16 JACK DID SAY FIVE BUT MR. SAMMY NEVER ANSWERED.
- 17 Q. BUT IT WOULD BE RENEWED FOR WHATEVER IF IT WAS THE
18 YEAR OR MORE THAN ONE YEAR, BUT IT WAS GOING TO BE
19 A FLAT PAYMENT OF \$300,000.00?
- 20 A. 300,000.00.
- 21 Q. DID YOU HAVE ANY OTHER MEETINGS WITH THE BANK
22 AFTER THAT MEETING?
- 23 A. NO, MA'AM. I CALLED MR. SAMMY. YOU KNOW, HE
24 ASKED ME WHEN I LEFT, HE GIVE ME HIS CELL PHONE
25 NUMBER AND ASKED ME TO CALL HIM AND LET HIM KNOW

1 HOW WE WERE DOING.

2 Q. DID YOU EVER CALL MR. SAMMY AFTER THAT?

3 A. YES, I DID.

4 Q. WHEN DID YOU CALL HIM?

5 A. JUST DIFFERENT TIMES FROM WHENEVER THAT LAST
6 MEETING WAS. HE WAS ASKED ME TO CALL HIM LIKE
7 EVERY COUPLE WEEKS OR A MONTH JUST TO KIND OF KEEP
8 CHECKING IN.

9 Q. DURING THOSE PHONE CALLS, DID YOU EVER TALK ABOUT
10 THE LOAN?

11 A. NO. I JUST TOLD HIM WE WERE DOING GOOD. THAT I
12 REALLY APPRECIATED EVERYTHING HE WAS WORKING WITH
13 US AND JUST THAT KIND CONVERSATION.

14 Q. AND ABOUT HOW MANY TIMES DO YOU THINK YOU CALLED
15 HIM?

16 A. I DON'T REMEMBER.

17 Q. DID YOU MAKE THE HUNDRED AND FIFTY THOUSAND DOLLAR
18 PAYMENT TO THE BANK BY MAY 31ST?

19 A. NO. BUT WE COULD HAVE.

20 Q. WHAT DO YOU MEAN BY THAT?

21 A. I MEAN, THE PAYMENT OF THE MADE IN.

22 Q. WHY WASN'T IT MADE THEN?

23 A. I CAN'T ANSWER THAT. I WASN'T IN CHARGE OF THE
24 BOOKS OR NOTHING, BUT THE PAYMENT COULD HAVE BEEN
25 MADE.

1 STATE OF SOUTH CAROLINA

IN THE COURT OF
COMMON PLEAS

2
3 COUNTY OF HORRY.

09-CP-26-5550

4
5 HOTEL AND MOTEL HOLDINGS, LLC,
6 PLAINTIFF,

-VS-

7 WENDY J. BELLAMY,

8 DEFENDANT/THIRD PARTY PLAINTIFF,

-VS-

9 FIRST PALMETTO SAVINGS BANK, F.S.B.; JACK
10 JONES; DONALD D. GODWIN; AND BHUPENDRA PATEL,
11 THIRD PARTY DEFENDANTS,

12 DEFENDANT.

13
14
15
16 DEPOSITION OF

17
18 BRENT HUTTO

19 JUNE 8, 2010

20 1:42 P.M. THROUGH 5:37 P.M.

21
22 AS TAKEN AND TRANSCRIBED BY JERRY S.
23 MABRY, NOTARY PUBLIC AND VERBATIM REPORTER, IN THE
24 OFFICE OF THE COOK AND ROY LAW FIRM, 10409 KINGS
HIGHWAY NORTH, N. MYRTLE BEACH, SOUTH CAROLINA

25 29572.

EXHIBIT

B

1 A NO.

2 Q EVEN IF YOU HAD BEEN PROMOTED TO SENIOR VICE
3 PRESIDENT, IT STILL WOULD HAVE BEEN WITHIN MR.
4 WILDER'S SCOPE OF RESPONSIBILITY TO HAVE
5 SIGNED THE NOTE?

6 A RIGHT. CORRECT.

7 Q IT'S BEEN ESTABLISHED THAT AT THE TIME OF THE
8 MATURITY OF THIS NOTE, WHICH WAS TWENTY-FOUR
9 MONTHS FROM THE NOTE, ACCORDING TO THE NOTE?

10 A CORRECT.

11 Q SO THAT IN JANUARY, 2007, THE ORIGINAL NOTE
12 WOULD HAVE MATURED. IT'S BEEN ESTABLISHED
13 THAT THAT NOTE WAS RENEWED FOR ANOTHER TWELVE
14 MONTHS, 2007 TO 2008?

15 A THAT'S CORRECT.

16 Q IN THE LAST YEAR, HAVE YOU SEEN THE ORIGINAL
17 OF THAT NOTE, THE PHYSICAL ORIGINAL NOTE?

18 A I DON'T RECALL THAT.

19 Q AND THEN IT'S BEEN ESTABLISHED THAT IN JANUARY
20 OF '08 ... NO, NO, NO. IN '07. I JUST
21 COVERED '07 TO '08. IT'S BEEN ESTAB-LISHED
22 THAT IN JANUARY OF '08 THAT THE LOAN WAS
23 RENEWED AGAIN FOR A TWELVE MONTH TIME PERIOD.

24 IS THAT YOUR UNDERSTANDING?

25 A YES.

1 Q HAVE YOU SEEN THE ORIGINAL OF THE 2008 NOTE
2 WITHIN THE LAST YEAR?

3 A NOT THAT I RECALL.

4 Q IT IS MY UNDERSTANDING THAT IT IS THAT 2008
5 NOTE THAT WAS PURCHASED BY H&M IN JUNE OF
6 2009. IS THAT YOUR UNDERSTANDING?

7 A IT IS.

8 Q DO YOU KNOW IF, AS PART OF THAT PURCHASE, WAS
9 THE ORIGINAL 2008 NOTE, POSSESSION OF IT GIVEN
10 TO H&M?

11 A I DO NOT RECALL THAT. I DO NOT RECALL THAT.
12 I DO NOT BELIEVE IT WAS BUT I DON'T RECALL.

13 Q WOULD THAT BE THE SAME ANSWER FOR THE PRE-
14 CEDING NOTE, THE PRECEDING TWO NOTES?

15 A YES.

16 MR. SHORT: CAN WE TAKE A BREAK?

17 MS. COOK: SURE.

18 OFF THE RECORD

19 Q MR. HUTTO, WE HAD JUST TALKED ABOUT ... WE
20 WERE TALKING ABOUT WHAT YOUR RESPONSIBILITIES
21 WERE PRE-2005 LOAN MAKING WITH REGARDS TO THE
22 LOAN.

23 A UH-HUH. (AFFIRMATIVE RESPONSE.)

24 Q WAS IT ULTIMATELY THE LOAN COMMITTEE'S
25 DECISION TO MAKE THE COMMITMENT LETTER OFFER

1 Q YOU DIDN'T HAVE AN UNDERSTANDING PRIOR TO THAT
2 MEETING?

3 A CORRECT.

4 Q WHAT WAS YOUR UNDERSTANDING AS A RESULT OF
5 THAT MEETING IN CAMDEN AS TO MR. JONES' ROLE?

6 A WE WERE TOLD THAT MR. JONES WAS THE ... HAD
7 POWER OF ATTORNEY OVER WENDY.

8 Q WHO TOLD YOU ABOUT THAT?

9 A SPECIFICALLY, I'M NOT SURE. IT WAS STATED IN
10 THE MEETING.

11 Q WHO CALLED THIS MEETING?

12 A I DO NOT KNOW. WE MAY HAVE WELL CALLED IT,
13 BUT I COULDN'T TELL YOU SPECIFICALLY. IF THE
14 MEMBERS CALLED US AND SAID, "WE WANT TO COME
15 SPEAK WITH YOU." I'M NOT SURE.

16 Q DO YOU RECALL ANYBODY SHOWING YOU THE POWER OF
17 ATTORNEY AT THE MEETING?

18 A I BELIEVE THEY PROVIDED A COPY BEFORE THE
19 MEETING, AN ACTUAL PHYSICAL COPY EITHER AT OR
20 PRIOR TO THAT.

21 Q WHAT WAS DISCUSSED AT THIS MEETING? I'D LIKE
22 FOR YOU ... I DON'T CARE WHO, YOU KNOW ... TO
23 THE BEST OF YOUR KNOWLEDGE, AND WITH AS MUCH
24 SPECIFICITY AS POSSIBLE, CAN YOU TELL ME WHAT
25 WAS DISCUSSED AT THIS MEETING IN CAMDEN?

SOUTH CAROLINA
COUNTY OF HORRY

COURT OF COMMON PLEAS
15TH JUDICIAL DISTRICT

2009-CP-26-5550

HOTEL AND MOTEL HOLDINGS,
LLC.

PLAINTIFF

V.

WENDY J. BELLAMY,
DEFENDANT/THIRD
PARTY PLAINTIFF

V.

FIRST PALMETTO SAVINGS
BANK, FSB, JACK JONES,
DONALD D. GODWIN, AND
BHUPENDRA PATEL,

THIRD PARTY DEFENDANTS.

copy

DEPOSITION OF
JACK H. JONES

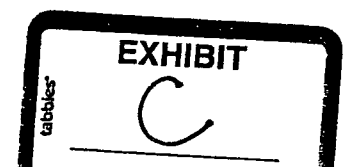
FROM 10:00 A.M. UNTIL 4:50 P.M.
OCTOBER 21, 2010

AS TAKEN AND TRANSCRIBED BY MICHAEL J.
MCCARTHY, NOTARY PUBLIC AND VERBATIM REPORTER, AT
TURNER PADGET GRAHAM & LACEY P.A., 2411 NORTH OAK
STREET, SUITE 301, MYRTLE BEACH, SOUTH CAROLINA.

****THIS IS AN OFFICIAL TRANSCRIPT GOVERNED BY
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2000). THE UNAUTHORIZED COPYING OF THIS DOCUMENT
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THE COURT REPORTER.**

MABRY COURT REPORTING

(843) 957-7653
484



1 HOTEL/MOTEL. TELL ME WHO ORIGINALLY FORMED
2 HOTEL/MOTEL HOLDINGS, LLC?

3 A DONALD GODWIN IS THE ONE THAT GOT ... HE WAS
4 THE REGISTERED AGENT.

5 Q I PHRASED THAT QUESTION BADLY AND I APOLOGIZE.
6 WHO CAME UP WITH THE IDEA TO FORM HOTEL/MOTEL
7 HOLDINGS, LLC?

8 A I DID.

9 Q WHY WERE YOU FORMING A CORPORATION CALLED
10 HOTEL/MOTEL HOLDING, LLC?

11 A TO BUY PROPERTY.

12 Q WHAT PROPERTY WERE YOU GOING TO BUY?

13 A I LOOKED AT THE POINDEXTER. I LOOKED AT THE
14 SEA DIP. I LOOKED AT A NUMBER OF PROPERTIES.

15 Q WHEN WAS HOTEL/MOTEL HOLDING, LLC FORMED?

16 A JUNE 15, 2009.

17 Q AND YOU ARE LOOKING AT EXHIBIT NUMBER "1" THAT
18 MS. BYRD PREPARED, AND IT SAYS, "JUNE 15
19 HOTEL/MOTEL HOLDING, LLC FORMED BY FILING WITH
20 THE SOUTH CAROLINA SECRETARY OF STATE", IS THAT
21 RIGHT?

22 A YES, MA'AM.

23 Q WHEN THAT WAS FORMED ON JUNE 15, 2009, AS YOU
24 SAID, I BELIEVE, AND WE HAVE MARKED THE
25 EXHIBITS AND PULLED THEM OUT AND LOOKED AT

1 **A** I PUT UP A MILLION WHERE YOU WOULD HAVE IT IN
2 ESCROW.

3 **Q** DID HE AGREE, AS YOU UNDERSTOOD IT, TO SELL YOU
4 A 4.75 MILLION DOLLAR NOTE AND MORTGAGE FOR TWO
5 MILLION?

6 **A** NO, MA'AM. HE WAS NOT SELLING IT TO ME FOR TWO
7 MILLION.

8 **Q** WHAT WAS HE SELLING IT TO YOU FOR?

9 **A** SELLING IT TO ME FOR FIVE MILLION.

10 **Q** OKAY. SO, YOU AFFORDED TWO, BUT HE WAS GOING
11 TO SELL IT TO YOU FOR FIVE? HIS COUNTER WAS
12 FIVE?

13 **A** NO, MA'AM. IT WAS FIVE MILLION ALL THE TIME,
14 HONEY.

15 **Q** IT WAS FIVE MILLION ALL THE TIME, BUT WHAT YOUR
16 OFFER WAS, WAS HOW YOU WOULD PAY THAT FIVE
17 MILLION.

18 **A** I WOULD PAY A MILLION DOLLARS AGAINST THE
19 PRINCIPAL AND I WOULD PAY A MILLION DOLLARS FOR
20 FIVE YEARS.

21 **Q** THEN WHAT WOULD HAPPEN AFTER THE END OF THE
22 FIVE YEARS?

23 **A** THEN AFTER FIVE YEARS I WOULD EITHER PAY IT

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Hotel and Motel Holdings, LLC,)

Plaintiffs)

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,)
and Americana, Inc. a/k/a Americana Motel)
of Myrtle Beach, Inc.,)

Third-Party Plaintiffs)

v.)

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

Third-Party Defendants)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-5743

MEMORANDUM IN OPPOSITION TO
PLAINTIFF HOTEL AND MOTEL
HOLDINGS, LLC'S AND THIRD-PARTY
DEFENDANT FIRST PALMETTO
SAVINGS BANK, F.S.B.'S MOTIONS
FOR SUMMARY JUDGMENT

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This is a complex foreclosure action concerning several commercial hotel properties in Myrtle Beach, South Carolina located east of Highway US-17 Business between 5th Avenue South and 6th Avenue South. See Exhibit A. The owners of the properties are BJC Enterprises, LLC (hereafter "BJC"), owning Emerald Shores Hotel; Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. (hereafter "Americana"), owning Rainbow Court; and Wendy Bellamy,

owning a multi-unit rental house. The lender for BJC's acquisition of the ocean front parcel known as Emerald Shores was First Palmetto Savings Bank, F.S.B. (hereafter "Bank"). The original 2005 Note is attached as Exhibit B. The Borrower on the Note is BJC, whose members were Wendy J. Bellamy and Harvey L. Jones (brother and sister), and Henry C. "Tripp" Coan, III. BJC, Wendy J. Bellamy (hereafter "Bellamy"), and Americana, (cumulatively referred to as "Owners,") gave Bank mortgages on the Emerald Shores property purchased by BJC, on separate family property owned by Americana, whose shareholders are Bellamy and Harvey L. Jones, and on the rental house owned by Bellamy as collateral. Tripp Coan also posted a \$500,000 CD with Bank as additional collateral. The mortgages are attached as Exhibits C, D, and E. On January 12, 2007, the 2005 Note was renewed for 1 year and is attached as Exhibit F. The 2005 Note was again renewed on January 17, 2008, with a maturity date of January 17, 2009. That note is attached as Exhibit G. BJC's loan payment history is attached as Exhibit H.

Beginning in October, 2008, Owners and Bank engaged in negotiations for a third renewal of the 2005 note. For a period of time, First Palmetto advised that it was not going to renew the Note, requiring a \$5,509,352.46 payment, rather than renewing the note as First Palmetto had done in the past. Due to the stress caused by these events, Wendy Bellamy, managing member of BJC, attempted suicide on November 3, 2008 in an attempt to have her \$5,500,000 life insurance policy available to pay off First Palmetto. See Exhibit I and Bellamy Dep., Pages 61-64. Bellamy was hospitalized from November 3, 2008 until her release on or about November 19, 2008. After Bellamy's suicide attempt, she was no longer involved with the management of Emerald Shores, Rainbow Court, or with negotiations with the Bank to renew the loan.

Bank was aware of Bellamy's attempted suicide. See Small, Sr. Dep., Pages 125-126. On November 24, 2008, Bank, by letter, conditionally approved a third renewal of the 2005 Note. See Exhibit J. This renewal was not seen by Wendy Bellamy or Harvey Jones, as it was mailed to Rainbow Court during the time when Bellamy was incapacitated, and Rainbow Court was closed. See Bellamy Dep., Pages 64-66. Both properties, Rainbow Court and Emerald Shores, are seasonal and open generally from Memorial Day to Labor Day.

On December 9, 2008, due to her unstable condition and at the urging of her uncle, Jack Jones (hereafter "Jones"), Bellamy signed a Durable Power of Attorney in favor of Jones, which was filed in Horry County on December 12, 2008. See Exhibit K; Bellamy Dep., Pages 71-75; J. Jones Dep., Page 236. Bellamy did not know the status of the Bank's loan to BJC and nor about the Bank's offer to renew the loan for BJC in late November when she gave Jones her Power of Attorney in December. Jones never advised her of that offer. All negotiations with the Bank were turned over to her uncle, Jones, as of December 9, 2008. In fact, Jones had a copy of the Power of Attorney faxed to the Bank on December 15, 2008 after it was recorded on December 12, 2008. See Exhibit K. From December, 2008, Jones had regular contact with First Palmetto, and specifically Bank CEO Sammy Small, Sr. (hereafter "Small"). See Exhibit L. Jones and Bank led BJC, Americana, Bellamy, Harvey Jones, Tripp Coan, and Ed Farmer, the parties' accountant, to believe that Jones was negotiating with the Bank in good faith to achieve a restructuring, renewal, or workout of the loan on BJC's behalf and prevent foreclosure. However, through discovery, we have learned that these phone conversations and private meetings between Jones and Bank centered on a plan by Jack Jones to create an entity, H+M, to acquire the loan from the Bank for the sole benefit of Jones and to the detriment of Owners after Bank filed a foreclosure action against BJC. See Exhibits Q and Z; J. Jones Dep., Pages 26-27.

Bellamy, BJC, and Americana were unaware of Jones's and Bank's ulterior motives and scheme, as they continued to advise Owners that Bank and Jones were negotiating a workout of the BJC loan. As an example, Jones attended a meeting at the Bank in Camden on January 22, 2009 representing Wendy Bellamy. Tripp Coan, Ed Farmer, Harvey Jones, and Casey Shroff were also at the meeting, along with Small and other Bank officials. At that meeting, the group collectively discussed potential workouts, but Small and Jones left the room to speak privately, not including the other Owners. Also, in January, 2009, Jones and his nephew, Harvey, again went to Camden to meet with Small to discuss an extension of the loan. Again, Harvey Jones was left in a room while Jones and Small met privately. The evidence suggests that these private discussions between Jones and Small, and no less that the 115 phone conversations that we now know about between January 22, 2009 and June 30, 2009, were had to discuss plans for Jones to acquire the BJC loan from First Palmetto, all unknown to Owners. See 10/10 J. Jones Dep., Pages 114-115 and 149-150; Small, Sr. Dep., Page 150.

On February 3, 2009, Bellamy and Harvey Jones hand delivered, at Jack Jones's instruction, a check for \$95,000 to Small, Sr. at the Bank office in Camden. The same day they paid all the 2008 real estate taxes on the mortgaged properties in the amount of \$91,503.87. This brought BJC's obligations to Bank current as of February 3, 2009, according to Jack Jones and the Bank and Bank agreed to continue working with BJC. See Exhibits M, N, Z, and AA. As a result, the February, 2009 foreclosure action begun by Bank was dismissed. See Exhibit V.

Also, from January through March, 2009, Jones arranged for Bhupendra Patel (hereafter "Patel"), a Myrtle Beach hotelier who had borrowed more than \$4,000,000 from Jones over his career, to open and manage the properties. See 3/11 Jones Dep., Pages 8-9; See 10/10 Jones Dep., Pages 60-64; See Patel Dep., Pages 27-28 and 122-123. Jones led BJC to believe this was

to enhance the operation of the hotels, to bring in additional income, and was a selling point with the Bank in order to get the loan renewed. Jones took Patel and Bellamy to Camden in March to meet with Small. See Patel Dep., Pages 90-92; See J. Jones Dep., Pages 179-180 and Page 182. However, the evidence now shows that this was one more part of the scheme among Jones, Patel, Godwin, and Bank to facilitate their plan for Jones or his entity to purchase the note and mortgages from the Bank after Bank put the property in foreclosure. In March, 2009, Patel was put in as manager for all the mortgaged properties owned by BJC, Americana, and Bellamy, and a separate property known as the Rainbow Court Annex, which was not security for the Bank loan. See Exhibit O. This increased the properties' expenses by \$60,000 and Patel was in charge of the collection of all revenue and paying all bills. See Patel Dep., Page 49. Patel opened two checking accounts, one for Emerald Shores and one for Rainbow Court at First Palmetto and was the only signatory on the accounts and was the only one who ever signed checks. See Exhibit P and Patel Dep., Pages 52-56. In reality, Patel was controlled by Jack Jones and Jones directed what bills were paid and what obligations were not paid, including the \$150,000 due to Bank on May 31, 2009. From March, 2009 through April, 2010, when a court appointed receiver took over the properties, Patel never made any payments, principal or interest, to the Bank. See Patel Dep., Page 57. He did, however, make payments to himself of \$30,000, to Jack Jones of \$18,000, and to Wilbur Jones of \$50,000. See J. Jones Dep., Page 223; Patel Dep., Pages 59; Pages 101-104. Patel, however, failed to pay the Bank the \$150,000 due by May 31, 2009 needed in order for the Bank to continue working with BJC on the loan renewal.

To further this scheme, as early as March 26, 2009, Bank hired the Haynesworth Firm to draft the documents necessary to sell the BJC loan to Jack Jones and/or an entity he was to create. See Exhibits Q and R. Jones also involved Godwin in the scheme to become a partner

with him in forming H+M. See Exhibit S, 10/10 J. Jones Dep., Pages 81 and 92; 3/11 J. Jones Dep., Page 28. None of this was disclosed by Bank, Jones, Godwin, or Patel to Owners, who all believed that Jones was working on their behalf. Owners were unaware that Jones was actually conspiring with Bank and using Patel to make it impossible for BJC to pay the \$150,000 needed by May 31, 2009 and to facilitate his purchase of the loan after the Bank filed this foreclosure action on June 9, 2009 without giving notice of default and opportunity to cure to Owners.

One day after Bank filed this foreclosure action, on June 12, 2009, Jack Jones and Donald Godwin formed Hotel and Motel Holdings, LLC (hereafter "H+M") to buy the BJC loan from Bank. See Exhibit S. Drafts of the Loan Sales Agreement had already been prepared. See Exhibits L and Q. H+M registered with the South Carolina Secretary of State on June 15, 2009. On June 24, 2009, H+M executed the Loan Sales Agreement. See Exhibits R and T. On June 30, 2009, Bank assigned its interests in the 2008 Note, mortgages, and other loan documents to H+M. See Exhibit U. H+M was substituted as Plaintiff in this case and the guaranty cases, with the Bank paying all of H+M's attorney fees. See Exhibit U; 10/10 J. Jones Dep., Page 139.

STATUS OF PLEADINGS

This foreclosure, receivership, and claim and delivery lawsuit was filed against BJC, Americana, and Wendy Bellamy on June 11, 2009. BJC, Wendy Bellamy, and Americana filed their Answer and asserted counterclaims against H+M, along with various claims against Third-Party Defendants First Palmetto Savings Bank, F.S.B., Jack Jones, Donald D. Godwin, and Bhupendra Patel. The defenses asserted by BJC, Americana, and Bellamy are: 1) qualified general denial; 2) H+M is not a holder in due course; 3) lack of consideration; 4) fraud; 5) lack of notice; 6) failure of conditions precedent; 7) no damages; 8) impossibility; 9) waiver; 10) estoppel; and 11) unclean hands. The counterclaims by BJC, Americana, and Bellamy against

H+M are: 1) breach of contract; 2) fraud; 3) breach of contract with fraud; 4) conspiracy; 5) conversion; 6) violation of the South Carolina Unfair Trade Practices Act; 7) interference with contract; and 8) outrage. As a result of certain Orders striking claims, the existing Third-Party claims against First Palmetto are: 1) breach of contract; 2) fraud; 3) breach of contract with fraud; 4) conspiracy; 5) conversion; 6) violation of the South Carolina Unfair Trade Practices Act; and 7) outrage.

STANDARD OF REVIEW

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits...show that there is no genuine issue as to any material fact and that [movant] is entitled to a judgment as a matter of law” Rule 56(c), S.C.R.C.P. The moving party carries the burden of providing the basis for the motion and showing that there is no issue as to any material fact. Strother v. Lexington Co. Recreation Comm’n, 332 S.C. 54, 504 S.E.2d 117 (1998). “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., 673 S.E.2d 801, 803, 381 S.C. 326, 330 (S.C. 2009) (Emphasis Added). In this case, there are a multitude of factual issues, as set forth above and below, requiring denial of both H+M’s motions for summary judgment and First Palmetto Savings Bank, F.S.B.’s motion for summary judgment.

LEGAL ARGUMENT

I. H+M AND FIRST PALMETTO COME TO THIS COURT WITH UNCLEAN HANDS.

An action seeking foreclosure of a mortgage is an equitable claim. Matrix Financial Services Corp. v. Frazer et. al., Op. No. 26859 (S.C. Sup. Ct., filed August 16, 2010). “The

doctrine of unclean hands precludes a Plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” First Union Nat’l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). “Unclean hands” refers to some misconduct concerning the matter in litigation of which the opposing party can complain. See Wachovia v. Coffey, Op. No. 4685 (S.C. Sup. Ct., filed May 6, 2010). The Wachovia case applied the unclean hands defense to legal and equitable causes of action. *Id.* When faced with a party with unclean hands, the Court may, in its discretion, refuse to provide a remedy to said party. Matrix Financial Services Corp. v. Frazer et. al., Op. No. 26859 (S.C. Sup. Ct., filed August 16, 2010).

First Palmetto, H+M, and its principals, Jack Jones and Donald Godwin, engaged in misconduct, and thus, pursuant to the doctrine of unclean hands, should not be permitted to prevail on their claims in this case. The evidence clearly presents issues of fact to be decided by a jury on the defense of unclean hands. First Palmetto engaged in conspiracy with Jones, Godwin, and Patel for the purpose of injuring BJC, Americana, and Wendy Bellamy and to aid Jones and Patel in causing Owners not to make the May 31, 2009 payment to Bank. “In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (quoting First Union Nat’l Bank of S.C. V. Soden, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct. App. 1998)). Due to the covert and clandestine nature of civil conspiracy, it is often difficult to prove by direct evidence and in fact, conspiracy may be inferred from acts committed, relationships of the parties, the interests of the purported conspirators, and other circumstances. Moore v. Weinberg, 373 S.C. 209, 228, 644 S.E.2d 740, 750 (Ct. App. 2007).

In this matter, Jones obtained from Wendy Bellamy a Power of Attorney at her most vulnerable time to act as a fiduciary on her behalf, individually, as the managing member of BJC, and as 50% shareholder of Americana. See 10/10 J. Jones Dep., Page 168. After obtaining the Power of Attorney, Jones frequently contacted Bank, often times multiple times a day, with the intent of 1) putting Patel in as manager to control the use of income and divert it from payments to Bank; 2) arranging to buy the BJC loan after Bank instituted foreclosure; 3) assisting Bank in causing Owners to default; and 4) forming H+M to take over the loan and mortgages, all for an initial investment of \$250,000. See Exhibits I, K, L, O, P, Q, R, S, T, U, and 10/10 J. Jones Dep., Pages 110-116; Pages 149-151. Jones placed his agent, Patel, in control of the properties and other income producing properties of Bellamy and Harvey Jones, all with the knowledge and encouragement of Bank. See Exhibits O and P. By placing Patel in charge of the properties and the money, and by Jones being on the properties daily, all with the consent and knowledge of the Bank, Jones could assure that Patel would not make the \$150,000 payment to the Bank on May 31, 2009. In fact, Patel did not charge rent to certain tenants. See Exhibit GG.

Evidence of Bank's unclean hands is shown by its negotiations with BJC, Americana, and Wendy Bellamy in late 2008 and through mid 2009 to renew the Note on the one hand, but conspiring with Jones on the other. Such negotiations were merely a façade, as Bank was in serious negotiations to sell the loan to Jones and/or H+M, at least by January, 2009. See Exhibits K, L, Q, and R. The deal was a transaction where Jones and Godwin formed an entity, H+M, which would acquire the loan while the property was in foreclosure from the Bank for \$250,000 and an interest only loan of \$4,750,000 at 5% interest for 5 years with the Bank paying all of H+M's attorney fees for the foreclosure. See Exhibits Q, R, S, T, U, and HH. That offer was not disclosed or made to Owners, which is further evidence of Bank's unclean hands. Jones also

used his manager, Patel, to pay obligations other than to the Bank so as to cause the Owners' inability to pay Bank on May 31, 2009, enabling the Bank to foreclose as part of the scheme. It is no surprise that one day after the Bank filed this foreclosure action, H+M was formed on June 12, 2009. H+M then executed the Loan Sales Agreement 13 days after the foreclosure on June 24, 2009, and moved to be substituted as Plaintiff in this lawsuit on July 9, 2009. See Exhibits S and T.

All of these acts, which were further elaborated on above and below, show a great deal more than a mere scintilla of evidence from which a jury could find conspiracy and unclean hands on the part of Bank and H+M. Pursuant to Wachovia and Matrix and the doctrine of unclean hands, there are a multitude of factual issues as to whether H+M and Bank's claims are defeated due to conspiracy and unclean hands.

II. FIRST PALMETTO AND H+M BREACHED THE CONTRACT WITH BJC, AMERICANA, AND WENDY BELLAMY

a. Third-Party Plaintiffs were current on their obligations under the loan.

Owners were current under the loan at issue in this litigation in February, 2009. First Palmetto filed a foreclosure action on February 2, 2009. This action was filed despite the fact that Wendy Bellamy never received notice of any default by owners. See W. Bellamy Dep., p. 80, lines 3-21. In fact, Wendy Bellamy delivered \$95,000 to First Palmetto on February 3, 2009 and paid more than \$91,000 for 2008 real estate taxes on the mortgaged property, as required by Bank for renewal of the BJC loan. See Exhibits M, N, and AA. Further, Jones, paternal uncle of Bellamy and Harvey Jones and principal of H+M, was allegedly working out arrangements with First Palmetto to extend or renew the loan. As part of that, Bellamy paid the money and taxes and the February 2, 2009 foreclosure action was dismissed on February 13, 2009. See Exhibit V

and W. Bellamy Dep., p. 100, lines 6-13. Interestingly, Jack Jones hired Patel to manage the hotels and Wendy expected that Jones and Patel would ensure that the loan would be current by payment of the \$150,000 by May 31, 2009 to Bank and was never advised otherwise by Jones or Bank prior to June, 2009. See W. Bellamy Dep., p. 103, lines 17-25, p. 104, lines 1-19 and 10/10 J. Jones Dep., Pages 179-182. Simply put, Owners have met their burden of producing more than a mere scintilla of evidence with regard to whether there was a default on the loan entitling H+M to foreclose and issues of material fact remain, which are best left to the providence of a jury.

b. First Palmetto sold the loan documents to H+M for little consideration in a transaction that was not arms length and H+M is not a holder in due course.

Owners dispute that the transfer of the loan to H+M and its principal Jack Jones, whom First Palmetto knew was acting in his own self interest and to the detriment of Owners, was for adequate value. See Exhibits T, W, X, and U. Bank did not assign the notes to H+M for adequate monetary value. H+M, via its principal, Jack Jones, did no more than pay \$250,000 on June 30, 2009 and borrowed \$4,750,000 of the "\$5,000,000 purchase price" from Bank, but was not required to give guarantees from Jones, Godwin, or H+M to Bank. This creates an issue of material fact ripe for the purview of a jury as to whether or not First Palmetto and thus H+M, who stands in the shoes of First Palmetto, breached its duty of good faith and fair dealing under the operative loan documents in this case and whether there was adequate consideration paid for the assignment of the mortgage. It is undisputed that H+M had no assets other than the Bank's loan of \$4,750,000 on June 30, 2009, that H+M conducts no business, and that H+M has no ability to produce income. See 10/10 J. Jones Dep., Pages 96 and 117.

c. H+M interfered with the loan agreement between BJC and First Palmetto.

Owners' Answer and Counterclaims allege interference with the loan relationship and performance of the loan obligations by Jones, H+M, Patel, and Godwin. After Jones became Attorney in Fact for Bellamy on December 9, 2008, he engaged in non-stop conversations with Sammy Small, Sr., CEO of First Palmetto. These conversations involved the loan and were purportedly on behalf of Owners. See Exhibit K and L. In actuality, Jack Jones was using his role as Attorney in Fact to negotiate an acquisition of the loan documents, after forcing BJC into foreclosure, which clearly was to the detriment of Owners. Jones began negotiating his purchase of the loan from First Palmetto as early as January, 2009. All the while, BJC, Americana, Bellamy, Harvey Jones, Tripp Coan, and Ed Farmer were under the impression that Jones was negotiating on their behalf. Rather, Jones was merely acting in his and H+M's own self-interest and was doing everything in his power to make compliance with the loan by BJC impossible. See 3/11 J. Jones Dep., Pages 24-27. The evidence clearly shows that H+M is nothing more than a shell corporation or alter ego for Jones and Godwin. Jones and Godwin admit that they have only put in \$5,000 each since H+M was formed, other than Jones's initial contribution. Each admit that H+M has no source of income. See Exhibit HH and JJ; 10/10 J. Jones Dep., Pages 96, 101-102, 117, and 119-120.

The evidence shows that Jones hired Patel to manage the hotels and Wendy expected that Jones and Patel would ensure that the loan would be current by payment of the \$150,000 by May 31, 2009. See W. Bellamy Dep., p. 103, lines 17-25, p. 104, lines 1-19. However, Jones installed a manager over the mortgaged properties, whom he hand selected and to whom he lent an exorbitant sum of money to in the past and who was already performing illegal acts for Jones's family. See Patel Dep., Pages 120-121. BJC did not know that Patel was under the control of

Jack Jones and that Patel would not and did not pay the Bank from the operating revenue of the hotels on May 31, 2009, as directed by Patel. Instead, payments were made to Patel for management of \$30,000, payments to Jones of \$18,000, and payments to Wilbur Jones of \$50,000. This constitutes evidence of interference with BJC's and First Palmetto's contractual relationship.

Importantly, the \$150,000 payment could have been made but for the wrongful acts of H+M by and through its principal, Jack Jones, and Patel. But for the interference by Jones and Patel, outlined above, and assent to such interference by Bank, BJC would have remained current on the loan. See W. Bellamy Dep., Page 103, lines 17-25, Page 104, lines 1-19. These facts are material and easily put forth more than a mere scintilla of evidence of H+M's interference with BJC's loan relationship and contract with First Palmetto, defeating summary judgment.

d. First Palmetto divulged private and confidential information concerning the BJC loan and its status to third parties.

First Palmetto disclosed private information about the loan. South Carolina recognizes the tort of invasion of right of privacy as "[t]he unwarranted appropriation or exploitation of one's personality, the publicizing of one's private affairs with which the public has no legitimate concern, or the wrongful intrusion into one's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities." Rycroft v. Gaddy, 281 S.C. 119, 123, 314 S.E.2d 39, 42 (Ct. App. 1984). While First Palmetto cites out of state opinions purporting to deny a duty of confidentiality in a bank-borrower relationship, a duty to keep certain bank customer information private was recognized (although denied) in Rycroft.

First Palmetto has a policy on confidentiality which states, at a minimum, that [w]e will not disclose any nonpublic personal information except as required by law and will continue to

respect your privacy.” See Exhibit Y. First Palmetto even states that it will not disclose nonpublic personal information to anyone. Thus, Owners had every reason to require that information regarding the loan in this litigation was to remain private. However, Wendy Bellamy testified that the loan was discussed with third parties, including the Brittain family in Myrtle Beach. In fact, Sammy Small, Sr. CEO of First Palmetto, stated the loan would no longer be discussed with third parties. See W. Bellamy Dep., Page 94, lines 17-25, Page 95, lines 1-4, Page 253, lines 3-25, Page 256, lines 16-25, Page 257, lines 1-25; See 10/10 J. Jones Dep., Page 174; and Exhibit AA. In an email sent at the direction of the CEO, Brent Hutto advised local First Palmetto employees in Myrtle Beach to refrain from discussing this loan with third parties. See Exhibit Z. This was not only a breach of the duty of good faith and fair dealing, but is also a breach of First Palmetto’s confidentiality policy, to which BJC, Americana, Wendy Bellamy, Harvey Jones, and Tripp Coan were a party. There are questions of material fact as to the release of private and confidential information by First Palmetto that easily surpassed the “mere scintilla of evidence” standard from which a jury could find Bank, and thus, H+M breached the contract. Thus, summary judgment should be denied.

e. First Palmetto, and thus H+M, breached its duty of good faith and fair dealing owed to BJC, Americana, and Wendy Bellamy.

In every contract there exists a duty of good faith and fair dealing. Tharpe v. G.E. Moore Co., 254 S.C. 196, 174 S.E.2d 397 (1970). As discussed above, Owners would have been able to perform their obligations under the loan workout but for the scheme among First Palmetto and Jones, Godwin, and Patel to prevent the same. See W. Bellamy Dep., Page 103, lines 17-25, Page 104, lines 1-19. H+M, who is not a holder in due course, takes the loan subject to the defenses and claims Owners have against First Palmetto. BJC was current under the negotiated