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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

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.

RECEIVED

JAN 06 2014

SC Court of Appeals

RECORD ON APPEAL

Kathryn M. Cook, Bar No. 1371

~~James E. Cook, Bar No. 11050~~

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a/k/a American Motel of Myrtle Beach, Inc.

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Holdings, LLC, Jack Jones and Donald
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Savings Bank, FSB

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Lindsey C. Livingston
1501 Mail Street, 5th Floor
Columbia, SC 29201



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

EXHIBIT A

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

1. Promissory Note from BJC to Seller dated January 17, 2008 in the original principal amount of \$5,573,146.62.
2. Guaranty Agreements
 - 2.1 Guaranty from Wendy J. Bellamy to Seller dated January 17, 2008.
 - 2.2 Guaranty from Harvey L. Jones to Seller dated January 17, 2008.
 - 2.3 Guaranty from Henry C. Coan III to Seller dated January 17, 2008.
3. Mortgages
 - 3.1 Real Estate Mortgage from BJC to Seller dated January 14, 2005 recorded in the ROD Office of Horry County in Book 3904 at page 8.
 - 3.2 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.
 - 3.3 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:
 - 4.1 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.
 - 4.2 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.
 - 4.3 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

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

ASSIGNMENT OF MORTGAGE

46
7-28-10 gbm

First Palmetto Savings Bank, F.S.B. ("Assignor"), having an address of 407 DeKalb Street, Camden, South Carolina 29020, the holder of the mortgage (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage") and the assignment of leases and rents (together with any amendments, renewals, extensions, or modifications thereto, the "Assignment of Leases"), each dated January 14, 2005, from Wendy J. Bellamy in favor of Assignor, recorded with the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at Page 20 and Book 2849 at Page 185, respectively, hereby assigns the Mortgage and Assignment of Leases and any other related security instruments as described on Exhibit A attached hereto, and the notes and claims secured thereby, to Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignee") with an address of Jack Jones, c/o Morgan Lewis, C.P.A., 706 48th Avenue South, North Myrtle Beach, South Carolina 29582. This assignment is made without recourse, representations or warranties of any kind, express or implied.

Executed effective June 30th, 2009.

Witnesses:

[Signature]
[Signature]

FIRST PALMETTO SAVINGS BANK, F.S.B.

By:

Name:

Title: VICE PRESIDENTSTATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

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

[Signature]
Notary Public for the State of South Carolina

My Commission Expires 10.31.17

Instrument#: 2009000071193, MTG BK:
5183 PG: 3151 DOCTYPE: 008 06/30/2009
at 03:25:03 PM, 1 OF 2
BALLERY V. SKIPPER, HORRY COUNTY,
SC REGISTRAR OF DEEDS



EXHIBIT A

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7. All other documents evidencing or securing the Loan



A TRUE COPY, ATTEST
HORRY COUNTY REGISTER OF DEEDS
BALLEK J. SKIPPER, Director - BALLEK J. Skipper

REL/Marcia/Hotel&MotelHoldings, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ASSIGNMENT OF MORTGAGE

First Palmetto Savings Bank, F.S.B. ("Assignor"), having an address of 407 DeKalb Street, Camden, South Carolina 29020, the holder of the mortgage (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage") and the assignment of leases and rents (together with any amendments, renewals, extensions, or modifications thereto, the "Assignment of Leases"), each dated January 14, 2005, from Wendy J. Bellamy in favor of Assignor, recorded with the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at Page 20 and Book 2849 at Page 185, respectively, hereby assigns the Mortgage and Assignment of Leases and any other related security instruments as described on Exhibit A attached hereto, and the notes and claims secured thereby, to Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignee") with an address of Jack Jones, c/o Morgan Lewis, C.P.A., 706 48th Avenue South, North Myrtle Beach, South Carolina 29582. This assignment is made without recourse, representations or warranties of any kind, express or implied

Executed effective June ~~30~~th, 2009.

Witnesses:

[Signature]
[Signature]

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: [Signature]
Name: BRENT W. HART
Title: VICE PRESIDENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Then personally appeared the above named BRENT W. HART the VICE PRESIDENT of First Palmetto Savings Bank, F.S.B. ("Assignor"), and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Assignor, before me.

[Signature]
Notary Public for the State of South Carolina

My Commission Expires 60.31.17

Columbia: 1222001 v.1

Instrument#: 2009000071194, DEED BK:
3408 PG: 304 DOCTYPE: 111 06/30/2009 at
03:25:04 PM, 1 OF 2 BALLEK J.
SKIPPER, HORRY COUNTY, SC
REGISTRAR OF DEEDS

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7-28-10 JSM

This document was prepared by (name, address, phone):

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 06-30-2009 and the parties and their addresses are as follows:

MORTGAGOR: HOTEL & MOTEL HOLDINGS, LLC
3370 MT. PISGAH CEMETERY RD
CONWAY, SC 29526

☐ 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
407 DEKALB STREET
CAMDEN, SC 29020

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:

The property is located in HORRY at SEE ATTACHED EXHIBIT "A"

(County)

(Address)

(City)

, South Carolina

(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 described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

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 \$ 4,750,000.00. 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(ies) 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):

BORROWER: HOTEL & MOTEL HOLDINGS, LLC
LOAN AMOUNT: \$4,750,000.00
RATE: 5.00%
TERM: 60 MONTHS
 - B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
 - C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
 - D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
 - E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

10. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. ENTITY WARRANTIES AND REPRESENTATIONS. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. AUTHORITY TO PERFORM. If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

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

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

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

(page 3 of 8)

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. 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.

16. 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.

17. 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.

18. 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.

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

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. 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.

21. 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. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. 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.

22. 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.

23. 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.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. 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.

26. 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.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. 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.

29. 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.
- ☒ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ **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: HOTEL & MOTEL HOLDINGS, LLC

☒ *Jack H. Jones* (Seal)
(Signature) JACK H. JONES, SOLE MEMBER (Date)

(Signature) (Date)

Signed, Sealed and delivered in the presence of:

[Signature]
(Witness)

[Signature]
(Witness)

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

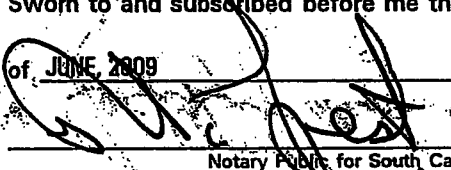
PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF _____ } 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 30TH day

of JUNE, 2009


Notary Public for South Carolina

My commission expires: 7/25/12

0.


EXHIBIT "A"

Property 1 (Emerald Shores Motel)

TMS# 181-11-01-002

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

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

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

Property 2 (Emerald Shores Motel)

TMS#181-11-01-001

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

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

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

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

Property 4 (Parking Lot)

TMS#181-10-10-007

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

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

Property 5 (Lot 14 Block 21)

TMS#181-10-10-016

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

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

Property 6 (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 7 (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 8 (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 9 (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 10 (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 11 (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 Bagnol, 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 12 (Lot 6 Block 28 & ½ of Lot 7 & 8 & Part of Lot 9)
TMS#181-10-07-010 & 011

ALL AND SINGULAR, that certain piece, parcel or lot of land lying and being in the Town of Myrtle Beach, County and State aforesaid, and being Lot No. 6 of Block -28- of the Hotel Section, and beginning at a stake corner on the Northwestern side of Chester Street, which is the Northeastern corner of the lot herein described, and runs North 51 deg. and 28 min. west 240 feet to a stake on the 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

Plaintiff 000094

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 13 (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 14 (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.

COLLATERAL ASSIGNMENT OF NOTE,
MORTGAGE AND OTHER LOAN DOCUMENTS
(Mortgage Recorded in Book 3904 at page 8)

DEFENDANT'S
EXHIBIT

52
7-28-10-*Jim*

THIS ASSIGNMENT is effective as of the 30th day of June, 2009, by and from Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignor"), to First Palmetto Savings Bank, F.S.B., whose address is 407 DeKalb Street, Camden, South Carolina 29020 ("Assignee").

WHEREAS, Assignee has made a loan to Assignor in the principal amount of up to Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) as evidenced by that certain Promissory Note from Assignor to Assignee dated of even date herewith (the "Note"); and

WHEREAS, Assignee has required Assignor to execute this Assignment to further secure the payment of the Note;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure payment by Assignor of the Note and all modifications, renewals and extensions thereof, to secure performance of all the documents and instruments which secure the Note (collectively, the "Loan Documents"), Assignor does hereby assign, transfer and convey to Assignee, its successors and assigns, all right, title and interest of Assignor in and to (i) the promissory note from BJC Enterprises, LLC ("Mortgagor") to Assignee dated January 17, 2008, in the principal amount of \$5,573,146.62 (the "Assigned BJC Note"), (ii) the Mortgage and Security Agreement from Mortgagor to Assignor, dated January 14, 2005, recorded in the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at page 8 (the "Assigned BJC Mortgage"), and (iii) all other documents listed in Exhibit A attached hereto and made a part hereof (the Assigned BJC Note, Assigned BJC Mortgage and all such other documents are collectively referred to herein as the "Assigned BJC Loan Documents"). (The aforesaid documents were sold and assigned by Assignee to Assignor immediately prior to this Collateral Assignment.) Simultaneously with the execution hereof, Assignor shall endorse and deliver to Assignee the Assigned BJC Note pursuant to an Allonge.

Assignor does hereby authorize and empower Assignee, upon the occurrence of an Event of Default (as defined in the Loan Documents), to exercise all the rights, powers and privileges conferred by the Assigned BJC Note, the Assigned BJC Mortgage and the other Assigned BJC Loan Documents in as full a manner as the Assignor was authorized and empowered to exercise them. Upon written notice by Assignee to Mortgagor of an Event of Default, the Mortgagor shall be authorized to make all further payments under the Assigned BJC Note directly to Assignee. Upon such Event of Default, Assignee also shall be entitled to enforce this Assignment and to exercise any and all rights and remedies available at law or in equity with respect to this Assignment, in such order, or cumulatively, as elected by Assignee in its sole discretion, including without limitation enforcement of the liens granted to Assignee in this Collateral Assignment.

Assignor warrants that it is the legal and equitable owner and holder of the Assigned BJC Loan Documents; that it has executed no prior transfer, assignment, conveyance or pledge of the Assigned BJC Loan Documents; that it has executed no release, discharge, satisfaction

Instrument#: 2009000071199, MTG BK:
5183 PG: 3159 DOCTYPE: 074 06/30/2009
at 03:25:09 PM, 1 OF 3
HARRIS COUNTY CLERK

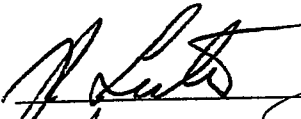
termination or cancellation of the Assigned BJC Loan Documents; that it has executed no instrument of any kind affecting the Assigned BJC Loan Documents or the indebtedness evidenced or secured thereby or the liability of the maker thereof; and that it has full capacity and authority to execute this Assignment.

Upon payment in full by Assignor of all indebtedness evidenced by the Loan Documents and upon request by Assignor, Assignee will reassign to Assignor the Assigned BJC Loan Documents.

This Assignment is governed by and shall be construed in accordance with the laws of the State of South Carolina. This Assignment shall not be modified except by written agreement executed by both parties hereto.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the date first hereinabove written.

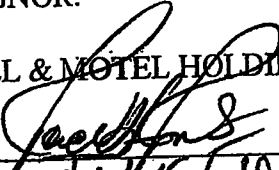
WITNESSES:



Marcia J. Williams

ASSIGNOR:

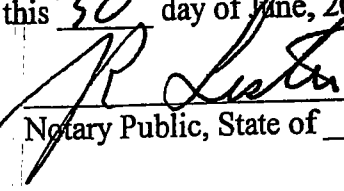
HOTEL & MOTEL HOLDINGS, LLC

By: 
Name: Jack Jones
Title: Member

STATE OF SC)
COUNTY OF Horry)

Jack Jones, the sole member of Hotel & Motel Holdings, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this 30 day of June, 2009.



Notary Public, State of SC (L.S.)

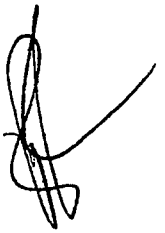


EXHIBIT A

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

1. Promissory Note from BJC to Seller dated January 17, 2008 in the original principal amount of \$5,573,146.62.
2. Guaranty Agreements
 - 2.1 Guaranty from Wendy J. Bellamy to Seller dated January 17, 2008.
 - 2.2 Guaranty from Harvey L. Jones to Seller dated January 17, 2008.
 - 2.3 Guaranty from Henry C. Coan III to Seller dated January 17, 2008.
3. Mortgages
 - 3.1 Real Estate Mortgage from BJC to Seller dated January 14, 2005 recorded in the ROD Office of Horry County in Book 3904 at page 8.
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4. Assignments of Leases:
 - 4.1 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.
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 - 4.3 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

COLLATERAL ASSIGNMENT OF NOTE,
MORTGAGE AND OTHER LOAN DOCUMENTS
(Mortgage Recorded in Book 3904 at page 8)

THIS ASSIGNMENT is effective as of the 30th day of June, 2009, by and from Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignor"), to First Palmetto Savings Bank, F.S.B., whose address is 407 DeKalb Street, Camden, South Carolina 29020 ("Assignee").

WHEREAS, Assignee has made a loan to Assignor in the principal amount of up to Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) as evidenced by that certain Promissory Note from Assignor to Assignee dated of even date herewith (the "Note"); and

WHEREAS, Assignee has required Assignor to execute this Assignment to further secure the payment of the Note;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure payment by Assignor of the Note and all modifications, renewals and extensions thereof, to secure performance of all the documents and instruments which secure the Note (collectively, the "Loan Documents"), Assignor does hereby assign, transfer and convey to Assignee, its successors and assigns, all right, title and interest of Assignor in and to (i) the promissory note from BJC Enterprises, LLC ("Mortgagor") to Assignee dated January 17, 2008, in the principal amount of \$5,573,146.62 (the "Assigned BJC Note"), (ii) the Mortgage and Security Agreement from Mortgagor to Assignor, dated January 14, 2005, recorded in the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at page 8 (the "Assigned BJC Mortgage"), and (iii) all other documents listed in Exhibit A attached hereto and made a part hereof (the Assigned BJC Note, Assigned BJC Mortgage and all such other documents are collectively referred to herein as the "Assigned BJC Loan Documents"). (The aforesaid documents were sold and assigned by Assignee to Assignor immediately prior to this Collateral Assignment.) Simultaneously with the execution hereof, Assignor shall endorse and deliver to Assignee the Assigned BJC Note pursuant to an Allonge.

Assignor does hereby authorize and empower Assignee, upon the occurrence of an Event of Default (as defined in the Loan Documents), to exercise all the rights, powers and privileges conferred by the Assigned BJC Note, the Assigned BJC Mortgage and the other Assigned BJC Loan Documents in as full a manner as the Assignor was authorized and empowered to exercise them. Upon written notice by Assignee to Mortgagor of an Event of Default, the Mortgagor shall be authorized to make all further payments under the Assigned BJC Note directly to Assignee. Upon such Event of Default, Assignee also shall be entitled to enforce this Assignment and to exercise any and all rights and remedies available at law or in equity with respect to this Assignment, in such order, or cumulatively, as elected by Assignee in its sole discretion, including without limitation enforcement of the liens granted to Assignee in this Collateral Assignment.

Assignor warrants that it is the legal and equitable owner and holder of the Assigned BJC Loan Documents; that it has executed no prior transfer, assignment, conveyance or pledge of the Assigned BJC Loan Documents; that it has executed no release, discharge, satisfaction

Instrument#: 2009000071200, DEED BK:
3408 PG: 312 DOCTYPE: 046 06/30/2009 at
03:25:10 PM, 1 OF 3 BALLERY V.
SKIPPER, HORRY COUNTY, SC
REGISTRAR OF DEEDS

Columbia: 1222082 v.1

termination or cancellation of the Assigned BJC Loan Documents; that it has executed no instrument of any kind affecting the Assigned BJC Loan Documents or the indebtedness evidenced or secured thereby or the liability of the maker thereof; and that it has full capacity and authority to execute this Assignment.

Upon payment in full by Assignor of all indebtedness evidenced by the Loan Documents and upon request by Assignor, Assignee will reassign to Assignor the Assigned BJC Loan Documents.

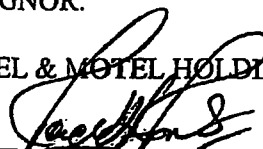
This Assignment is governed by and shall be construed in accordance with the laws of the State of South Carolina. This Assignment shall not be modified except by written agreement executed by both parties hereto.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the date first hereinabove written.

WITNESSES:

ASSIGNOR:

HOTEL & MOTEL HOLDINGS, LLC

By: 

Name: Jack Jones

Title: Manager

STATE OF SC)

COUNTY OF Horry)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Jack Jones, the Manager of Hotel & Motel Holdings, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this 30 day of June, 2009.

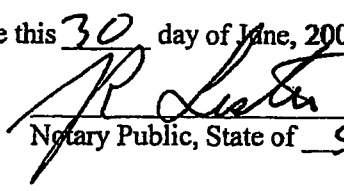
 (L.S.)
Notary Public, State of SC

EXHIBIT A

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

1. Promissory Note from BJC to Seller dated January 17, 2008 in the original principal amount of \$5,573,146.62.
2. Guaranty Agreements
 - 2.1 Guaranty from Wendy J. Bellamy to Seller dated January 17, 2008.
 - 2.2 Guaranty from Harvey L. Jones to Seller dated January 17, 2008.
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 - 4.3 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

COLLATERAL ASSIGNMENT OF NOTE,
MORTGAGE AND OTHER LOAN DOCUMENTS
(Mortgage Recorded in Book 3904 at page 20)

DEFENDANT'S
EXHIBIT

53
7-28-10 Jkm

THIS ASSIGNMENT is effective as of the 30th day of June, 2009, by and from Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignor"), to First Palmetto Savings Bank, F.S.B., whose address is 407 DeKalb Street, Camden, South Carolina 29020 ("Assignee").

WHEREAS, Assignee has made a loan to Assignor in the principal amount of up to Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) as evidenced by that certain Promissory Note from Assignor to Assignee dated of even date herewith (the "Note"); and

WHEREAS, Assignee has required Assignor to execute this Assignment to further secure the payment of the Note;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure payment by Assignor of the Note and all modifications, renewals and extensions thereof, to secure performance of all the documents and instruments which secure the Note (collectively, the "Loan Documents"), Assignor does hereby assign, transfer and convey to Assignee, its successors and assigns, all right, title and interest of Assignor in and to (i) the promissory note from BJC Enterprises, LLC ("Borrower") to Assignee dated January 17, 2008, in the principal amount of \$5,573,146.62 (the "Assigned BJC Note"), (ii) the Mortgage and Security Agreement from Wendy J. Bellamy ("Mortgagor") to Assignor, dated January 14, 2005, recorded in the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at page 8 (the "Assigned BJC Mortgage"), and (iii) all other documents listed in Exhibit A attached hereto and made a part hereof (the Assigned BJC Note, Assigned BJC Mortgage and all such other documents are collectively referred to herein as the "Assigned BJC Loan Documents"). (The aforesaid documents were sold and assigned by Assignee to Assignor immediately prior to this Collateral Assignment.) Simultaneously with the execution hereof, Assignor shall endorse and deliver to Assignee the Assigned BJC Note pursuant to an Allonge.

Assignor does hereby authorize and empower Assignee, upon the occurrence of an Event of Default (as defined in the Loan Documents), to exercise all the rights, powers and privileges conferred by the Assigned BJC Note, the Assigned BJC Mortgage and the other Assigned BJC Loan Documents in as full a manner as the Assignor was authorized and empowered to exercise them. Upon written notice by Assignee to Borrower of an Event of Default, the Borrower shall be authorized to make all further payments under the Assigned BJC Note directly to Assignee. Upon such Event of Default, Assignee also shall be entitled to enforce this Assignment and to exercise any and all rights and remedies available at law or in equity with respect to this Assignment, in such order, or cumulatively, as elected by Assignee in its sole discretion, including without limitation enforcement of the liens granted to Assignee in this Collateral Assignment.

Assignor warrants that it is the legal and equitable owner and holder of the Assigned BJC Loan Documents; that it has executed no prior transfer, assignment, conveyance or pledge of the

Instrument#: 2009000071195, MTG BK:
5183 PG: 3153 DOCTYPE: 074 06/30/2009
at 03:25:05 PM, 1 OF 3
BALLERY V. SKIPPER, HORRY COUNTY
SC REGISTRAR OF DEEDS

Assigned BJC Loan Documents; that it has executed no release, discharge, satisfaction, termination or cancellation of the Assigned BJC Loan Documents; that it has executed no instrument of any kind affecting the Assigned BJC Loan Documents or the indebtedness evidenced or secured thereby or the liability of the maker thereof; and that it has full capacity and authority to execute this Assignment.

Upon payment in full by Assignor of all indebtedness evidenced by the Loan Documents and upon request by Assignor, Assignee will reassign to Assignor the Assigned BJC Loan Documents.

This Assignment is governed by and shall be construed in accordance with the laws of the State of South Carolina. This Assignment shall not be modified except by written agreement executed by both parties hereto.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the date first hereinabove written.

WITNESSES:

ASSIGNOR:

HOTEL & MOTEL HOLDINGS, LLC

By: [Signature]

Name: Jack Jones

Title: Member

STATE OF South Carolina

COUNTY OF Horry

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Jack Jones, the Sole Member of Hotel & Motel Holdings, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this 30 day of June, 2009.

[Signature] (L.S.)
Notary Public, State of SC

EXHIBIT A

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

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

COLLATERAL ASSIGNMENT OF NOTE,
MORTGAGE AND OTHER LOAN DOCUMENTS
(Mortgage Recorded in Book 3904 at page 20)

THIS ASSIGNMENT is effective as of the 30th day of June, 2009, by and from Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignor"), to First Palmetto Savings Bank, F.S.B., whose address is 407 DeKalb Street, Camden, South Carolina 29020 ("Assignee").

WHEREAS, Assignee has made a loan to Assignor in the principal amount of up to Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) as evidenced by that certain Promissory Note from Assignor to Assignee dated of even date herewith (the "Note"); and

WHEREAS, Assignee has required Assignor to execute this Assignment to further secure the payment of the Note;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure payment by Assignor of the Note and all modifications, renewals and extensions thereof, to secure performance of all the documents and instruments which secure the Note (collectively, the "Loan Documents"), Assignor does hereby assign, transfer and convey to Assignee, its successors and assigns, all right, title and interest of Assignor in and to (i) the promissory note from BJC Enterprises, LLC ("Borrower") to Assignee dated January 17, 2008, in the principal amount of \$5,573,146.62 (the "Assigned BJC Note"), (ii) the Mortgage and Security Agreement from Wendy J. Bellamy ("Mortgagor") to Assignor, dated January 14, 2005, recorded in the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at page 8 (the "Assigned BJC Mortgage"), and (iii) all other documents listed in Exhibit A attached hereto and made a part hereof (the Assigned BJC Note, Assigned BJC Mortgage and all such other documents are collectively referred to herein as the "Assigned BJC Loan Documents"). (The aforesaid documents were sold and assigned by Assignee to Assignor immediately prior to this Collateral Assignment.) Simultaneously with the execution hereof, Assignor shall endorse and deliver to Assignee the Assigned BJC Note pursuant to an Allonge.

Assignor does hereby authorize and empower Assignee, upon the occurrence of an Event of Default (as defined in the Loan Documents), to exercise all the rights, powers and privileges conferred by the Assigned BJC Note, the Assigned BJC Mortgage and the other Assigned BJC Loan Documents in as full a manner as the Assignor was authorized and empowered to exercise them. Upon written notice by Assignee to Borrower of an Event of Default, the Borrower shall be authorized to make all further payments under the Assigned BJC Note directly to Assignee. Upon such Event of Default, Assignee also shall be entitled to enforce this Assignment and to exercise any and all rights and remedies available at law or in equity with respect to this Assignment, in such order, or cumulatively, as elected by Assignee in its sole discretion, including without limitation enforcement of the liens granted to Assignee in this Collateral Assignment.

Assignor warrants that it is the legal and equitable owner and holder of the Assigned BJC Loan Documents; that it has executed no prior transfer, assignment, conveyance or pledge of the

Instrument#: 200900071196, DEED BK:
3408 PG: 306 DOCTYPE: 046 06/30/2009 at
03:25:06 PM, 1 OF 3 BALLER V.
SKIPPER, HORRY COUNTY, SC
REGISTRAR OF DEEDS

Columbia: 1222108 v.1

Assigned BJC Loan Documents; that it has executed no release, discharge, satisfaction, termination or cancellation of the Assigned BJC Loan Documents; that it has executed no instrument of any kind affecting the Assigned BJC Loan Documents or the indebtedness evidenced or secured thereby or the liability of the maker thereof; and that it has full capacity and authority to execute this Assignment.

Upon payment in full by Assignor of all indebtedness evidenced by the Loan Documents and upon request by Assignor, Assignee will reassign to Assignor the Assigned BJC Loan Documents.

This Assignment is governed by and shall be construed in accordance with the laws of the State of South Carolina. This Assignment shall not be modified except by written agreement executed by both parties hereto.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the date first hereinabove written.

WITNESSES:

ASSIGNOR:

HOTEL & MOTEL HOLDINGS, LLC

By: [Signature]

Name: Jack Jones

Title: Member

STATE OF South Carolina

COUNTY OF Horry

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Jack Jones, the Sole member of Hotel & Motel Holdings, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this 30 day of June, 2009.

[Signature] (L.S.)
Notary Public, State of SC



EXHIBIT A

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

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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

COLLATERAL ASSIGNMENT OF NOTE,
MORTGAGE AND OTHER LOAN DOCUMENTS
(Mortgage Recorded in Book 3904 at page 28)

54
7-28-10 98W

THIS ASSIGNMENT is effective as of the 30th day of June, 2009, by and from Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignor"), to First Palmetto Savings Bank, F.S.B., whose address is 407 DeKalb Street, Camden, South Carolina 29020 ("Assignee").

WHEREAS, Assignee has made a loan to Assignor in the principal amount of up to Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) as evidenced by that certain Promissory Note from Assignor to Assignee dated of even date herewith (the "Note"); and

WHEREAS, Assignee has required Assignor to execute this Assignment to further secure the payment of the Note;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure payment by Assignor of the Note and all modifications, renewals and extensions thereof, to secure performance of all the documents and instruments which secure the Note (collectively, the "Loan Documents"), Assignor does hereby assign, transfer and convey to Assignee, its successors and assigns, all right, title and interest of Assignor in and to (i) the promissory note from BJC Enterprises, LLC ("Borrower") to Assignee dated January 17, 2008, in the principal amount of \$5,573,146.62 (the "Assigned BJC Note"), (ii) the Mortgage and Security Agreement from Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc. ("Mortgagor") to Assignor, dated January 14, 2005, recorded in the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at page 8 (the "Assigned BJC Mortgage"), and (iii) all other documents listed in Exhibit A attached hereto and made a part hereof (the Assigned BJC Note, Assigned BJC Mortgage and all such other documents are collectively referred to herein as the "Assigned BJC Loan Documents"). (The aforesaid documents were sold and assigned by Assignee to Assignor immediately prior to this Collateral Assignment.) Simultaneously with the execution hereof, Assignor shall endorse and deliver to Assignee the Assigned BJC Note pursuant to an Allonge.

Assignor does hereby authorize and empower Assignee, upon the occurrence of an Event of Default (as defined in the Loan Documents), to exercise all the rights, powers and privileges conferred by the Assigned BJC Note, the Assigned BJC Mortgage and the other Assigned BJC Loan Documents in as full a manner as the Assignor was authorized and empowered to exercise them. Upon written notice by Assignee to Borrower of an Event of Default, the Borrower shall be authorized to make all further payments under the Assigned BJC Note directly to Assignee. Upon such Event of Default, Assignee also shall be entitled to enforce this Assignment and to exercise any and all rights and remedies available at law or in equity with respect to this Assignment, in such order, or cumulatively, as elected by Assignee in its sole discretion, including without limitation enforcement of the liens granted to Assignee in this Collateral Assignment.

Assignor warrants that it is the legal and equitable owner and holder of the Assigned BJC Loan Documents; that it has executed no prior transfer, assignment, conveyance or pledge of the

Instrument#: 2009000071197, MTG BK:
5183 PG: 3156 DOCTYPE: 074 06/30/2009
at 03:25:07 PM, 1 OF 3
BALI FRY V SKIPPER HOBBS COUNTY

Assigned BJC Loan Documents; that it has executed no release, discharge, satisfaction, termination or cancellation of the Assigned BJC Loan Documents; that it has executed no instrument of any kind affecting the Assigned BJC Loan Documents or the indebtedness evidenced or secured thereby or the liability of the maker thereof; and that it has full capacity and authority to execute this Assignment.

Upon payment in full by Assignor of all indebtedness evidenced by the Loan Documents and upon request by Assignor, Assignee will reassign to Assignor the Assigned BJC Loan Documents.

This Assignment is governed by and shall be construed in accordance with the laws of the State of South Carolina. This Assignment shall not be modified except by written agreement executed by both parties hereto.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the date first hereinabove written.

WITNESSES:

R. Lutz
Robert A. Williams

ASSIGNOR:

HOTEL & MOTEL HOLDINGS, LLC

By: [Signature]

Name: Jack Jones

Title: Member

STATE OF SC

COUNTY OF Horry

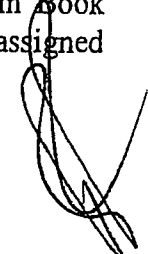
I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Jack Jones, the member of Hotel & Motel Holdings, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this 10 day of June, 2009.

[Signature] (L.S.)
Notary Public, State of SC

EXHIBIT A

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

1. Promissory Note from BJC to Seller dated January 17, 2008 in the original principal amount of \$5,573,146.62.
 2. Guaranty Agreements
 - 2.1 Guaranty from Wendy J. Bellamy to Seller dated January 17, 2008.
 - 2.2 Guaranty from Harvey L. Jones to Seller dated January 17, 2008.
 - 2.3 Guaranty from Henry C. Coan III to Seller dated January 17, 2008.
 3. Mortgages
 - 3.1 Real Estate Mortgage from BJC to Seller dated January 14, 2005 recorded in the ROD Office of Horry County in Book 3904 at page 8.
 - 3.2 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.
 - 3.3 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:
 - 4.1 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.
 - 4.2 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.
 - 4.3 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
- 

COLLATERAL ASSIGNMENT OF NOTE,
MORTGAGE AND OTHER LOAN DOCUMENTS
(Mortgage Recorded in Book 3904 at page 28)

THIS ASSIGNMENT is effective as of the 30th day of June, 2009, by and from Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignor"), to First Palmetto Savings Bank, F.S.B., whose address is 407 DeKalb Street, Camden, South Carolina 29020 ("Assignee").

WHEREAS, Assignee has made a loan to Assignor in the principal amount of up to Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) as evidenced by that certain Promissory Note from Assignor to Assignee dated of even date herewith (the "Note"); and

WHEREAS, Assignee has required Assignor to execute this Assignment to further secure the payment of the Note;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure payment by Assignor of the Note and all modifications, renewals and extensions thereof, to secure performance of all the documents and instruments which secure the Note (collectively, the "Loan Documents"), Assignor does hereby assign, transfer and convey to Assignee, its successors and assigns, all right, title and interest of Assignor in and to (i) the promissory note from BJC Enterprises, LLC ("Borrower") to Assignee dated January 17, 2008, in the principal amount of \$5,573,146.62 (the "Assigned BJC Note"), (ii) the Mortgage and Security Agreement from Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc. ("Mortgagor") to Assignor, dated January 14, 2005, recorded in the Office of the Register of Deeds for Horry County, South Carolina in Book 3904 at page 8 (the "Assigned BJC Mortgage"), and (iii) all other documents listed in Exhibit A attached hereto and made a part hereof (the Assigned BJC Note, Assigned BJC Mortgage and all such other documents are collectively referred to herein as the "Assigned BJC Loan Documents"). (The aforesaid documents were sold and assigned by Assignee to Assignor immediately prior to this Collateral Assignment.) Simultaneously with the execution hereof, Assignor shall endorse and deliver to Assignee the Assigned BJC Note pursuant to an Allonge.

Assignor does hereby authorize and empower Assignee, upon the occurrence of an Event of Default (as defined in the Loan Documents), to exercise all the rights, powers and privileges conferred by the Assigned BJC Note, the Assigned BJC Mortgage and the other Assigned BJC Loan Documents in as full a manner as the Assignor was authorized and empowered to exercise them. Upon written notice by Assignee to Borrower of an Event of Default, the Borrower shall be authorized to make all further payments under the Assigned BJC Note directly to Assignee. Upon such Event of Default, Assignee also shall be entitled to enforce this Assignment and to exercise any and all rights and remedies available at law or in equity with respect to this Assignment, in such order, or cumulatively, as elected by Assignee in its sole discretion, including without limitation enforcement of the liens granted to Assignee in this Collateral Assignment.

Assignor warrants that it is the legal and equitable owner and holder of the Assigned BJC Loan Documents; that it has executed no prior transfer, assignment, conveyance or pledge of the

Columbia: 1222115 v.1

Instrument#: 2009000071198, DEED BK:
3408 PG: 309 DOCTYPE: 046 06/30/2009 at
03:25:08 PM, 1 OF 3 BALLERY V.
SKIPPER, HORRY COUNTY, SC
REGISTRAR OF DEEDS

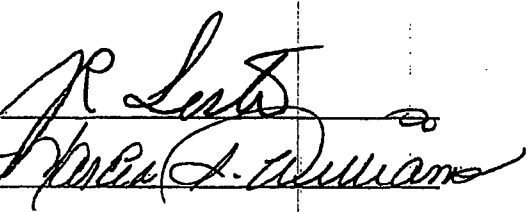
Assigned BJC Loan Documents; that it has executed no release, discharge, satisfaction, termination or cancellation of the Assigned BJC Loan Documents; that it has executed no instrument of any kind affecting the Assigned BJC Loan Documents or the indebtedness evidenced or secured thereby or the liability of the maker thereof; and that it has full capacity and authority to execute this Assignment.

Upon payment in full by Assignor of all indebtedness evidenced by the Loan Documents and upon request by Assignor, Assignee will reassign to Assignor the Assigned BJC Loan Documents.

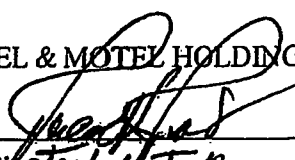
This Assignment is governed by and shall be construed in accordance with the laws of the State of South Carolina. This Assignment shall not be modified except by written agreement executed by both parties hereto.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the date first hereinabove written.

WITNESSES:



ASSIGNOR:

HOTEL & MOTEL HOLDINGS, LLC
● By: 
Name: Jack Jones
Title: Member

STATE OF SC)
COUNTY OF Horry)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Jack Jones, the member of Hotel & Motel Holdings, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this 30 day of June, 2009.

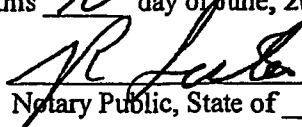
 (L.S.)
Notary Public, State of SC

EXHIBIT A

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

1. Promissory Note from BJC to Seller dated January 17, 2008 in the original principal amount of \$5,573,146.62.
 2. Guaranty Agreements
 - 2.1 Guaranty from Wendy J. Bellamy to Seller dated January 17, 2008.
 - 2.2 Guaranty from Harvey L. Jones to Seller dated January 17, 2008.
 - 2.3 Guaranty from Henry C. Coan III to Seller dated January 17, 2008.
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 - 3.2 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.
 - 3.3 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:
 - 4.1 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.
 - 4.2 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.
 - 4.3 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
- 

55
7-28-10 JLM

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made effective the __ day of June, 2009, by and among First Palmetto Savings Bank, F.S.B. ("Lender"); Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Borrower") and Haynsworth Sinkler Boyd, P.A., a South Carolina professional association ("Escrow Agent").

WHEREAS, Lender and Borrower are parties to a Loan Sale Agreement dated June __, 2009 (the "Loan Sale Agreement"), whereby Lender agreed to sell to Borrower and Borrower agreed to purchase from Lender the Loan, as more particularly described in the Loan Sale Agreement;

WHEREAS, in order to finance the acquisition of the Loans, Lender has agreed to lend to Borrower the sum of \$4,750,000, as evidenced by that certain Promissory Note executed by Borrower in favor of Lender of even date herewith (the "Note"), said loan being secured by Collateral Assignments of Note, Mortgage and other Loan Documents of even date herewith (all of the loan documents being referred to collectively herein as the "Loan Documents");

WHEREAS, in order to further secure payment of the Note, Borrower has executed that certain Mortgage and Security Agreement (the "Mortgage") and Assignment of Leases, Rents and Profits (the "Assignment of Leases") in favor of Lender (the Mortgage and the Assignment of Leases are collectively referred to herein as the "Security Documents"); and

WHEREAS, Lender and Borrower have agreed that the Security Documents shall be held in escrow by the Escrow Agent in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements herein and in the Loan Documents, Borrower, Lender and Escrow Agent agree as follows:

1. Lender and Borrower hereby appoint Escrow Agent as escrow agent under this Agreement.
2. The Security Documents shall be delivered to Escrow Agent. Escrow Agent shall hold the Security Documents in accordance with the terms of this Agreement.
3. Escrow Agent shall hold the Security Documents in trust until such time as it determines that Borrower has received a foreclosure deed, deed in lieu of foreclosure or other conveyance to Borrower of the property, or any portion thereof, described in the Security Documents (the "Property"). Borrower agrees to give Escrow Agent and Lender immediate written notice should Borrower obtain title to the Property or any portion thereof. Notwithstanding the foregoing, Escrow Agent shall be entitled to independently determine that the conveyance of the Property or any portion thereof to Borrower has occurred, and may also rely on any written evidence from Lender that Borrower has obtained such title. Escrow Agent is irrevocably authorized and instructed by Borrower to immediately complete the dates of the Security Documents with the then current date

and to record the Security Documents in the Horry County ROD Office upon Escrow Agent's determination that Borrower has obtained title to the Property or any portion thereof. This is a power coupled with an interest, and may not be revoked or withdrawn by Borrower.

4. Escrow Agent shall not be liable for any loss or damage resulting from the following: (a) any defects or conditions of title to the Property; (b) any defects in the Property, obligations or rights of any tenant or other party in possession, the surrender of possession or any misrepresentations made by any other party; (c) any default, error, action or omission of any other party; (d) the expiration of any time limit or other delay; (e) lack of authenticity, sufficiency and effectiveness of any documents delivered to it and lack of genuineness of any signature or authority of any person to sign any such document; (f) Escrow Agent complying with any and all legal process, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed; (g) Escrow Agent asserting or failing to assert any cause of action or defense in any judicial, administrative or other proceeding either in the interest of itself or any other party or parties; (h) any good faith act or forbearance by Escrow Agent; or (i) any other act or failure to act by Escrow Agent other than an act of recklessness or intentional malfeasance.

5. Escrow Agent shall have no obligation to inquire into the authenticity of any written instructions delivered to it as required by this Agreement or to inquire as to the genuineness of any signature of authority of any person to issue such instructions.

6. If Escrow Agent is made a party to any judicial, non-judicial or administrative action, hearing or process based on acts of any of the other parties hereto and not on the malfeasance or recklessness of Escrow Agent in performing its duties hereunder, the parties shall indemnify, save and hold Escrow Agent harmless from any expenses, costs and reasonable attorney fees incurred by Escrow Agent in responding to such action.

7. Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand, confirmed facsimile or nationally recognized courier (such as Federal Express) which maintains a record or receipt of delivery and addressed to each party at its address as set forth below. Any party may designate a change of address by written notice to the others, given at least five (5) business days before such change of address is to become effective. The addresses for all notices are as follows:

LENDER: First Palmetto Savings Bank, F.S.B.
Attention: Real Estate Administration
407 DeKalb Street
Camden, SC 29020
Facsimile: (803) 424-5077

BORROWER: Hotel & Motel Holdings, LLC
Attention: Jack H. Jones
c/o Morgan Lewis, C.P.A.
706 48th Avenue South
North Myrtle Beach, SC 29582
Facsimile: _____

With a copy to: John Lester
1303 Azalea Court
Myrtle Beach, SC 29577
Facsimile: (843) 449-0298

ESCROW AGENT: Haynsworth Sinkler Boyd, P.A.
Attention: M. Todd Haynie III
1201 Main Street, Suite 2200
Columbia, SC 29201
Facsimile: (803) 765-1243

8. The undersigned do hereby jointly and severally agree that Escrow Agent shall incur no liability whatsoever in connection with its performance under this Agreement, and the undersigned do hereby jointly and severally release and waive any claim they may have against Escrow Agent which may result from its performance of its functions under this Agreement, excluding only acts of recklessness or malfeasance by Escrow Agent. Escrow Agent shall be liable only for loss or damage caused directly by its act of recklessness or malfeasance while performing as escrow agent under this Agreement. The undersigned further agree, jointly and severally, to indemnify and hold harmless from and against all loss, costs, damages, judgments, litigation of any type (including actions initiated by Escrow Agent to determine respective obligations of the undersigned or Escrow Agent), attorneys' fees, expenses, obligations and liabilities of any kind or nature which Escrow Agent may incur or sustain in connection with this Agreement.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to principles of conflict of laws.

10. No provision of this Agreement may be amended, modified, supplemented, changed, waived, discharged or terminated, unless all parties consent thereto in writing.

11. This Agreement may be executed by facsimile and in any number of counterparts, all of which taken together shall constitute one agreement, and any party hereto may execute this Agreement by signing any such counterpart.

12. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

13. This Agreement and the Loan Documents embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof. In the event of any conflict between this Agreement and the Loan Documents, this Agreement shall control.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this 25th day of June, 2009.

SELLER:

FIRST PALMETTO SAVINGS BANK, F.S.B.

By: Brent W. Hutto (SEAL)

Name: Brent W. Hutto

Title: Vice President

BORROWER:

HOTEL & MOTEL HOLDINGS, LLC

By: Jack H. Jones (SEAL)

Name: Jack H. Jones

Title: Member

ESCROW AGENT:

HAYNSWORTH SINKLER BOYD, P.A.,
a professional association

By: _____ (SEAL)

M. Todd Haynie III
Shareholder

51
17-28-10 JSM

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., which Note has previously been sold and assigned by First Palmetto Savings Bank, F.S.B. to Hotel & Motel Holdings, LLC, a South Carolina limited liability company ("Assignor"). It is intended that this Allonge be attached to and made a permanent part of the Note.

Pay to the order of First Palmetto Savings Bank, F.S.B. ("Assignee").

Executed effective the 17 day of June, 2009.

HOTEL & MOTEL HOLDINGS, LLC, a
South Carolina limited liability company

By: [Signature]
Name: Jack H. Jones
Title: Member

DEFENDANT'S
EXHIBIT

AGREEMENT CONCERNING REPRESENTATION

THIS AGREEMENT ("Agreement") is made effective the 24th day of June, 2009, by and among FIRST PALMETTO SAVINGS BANK, F.S.B. ("Seller"), HOTEL & MOTEL HOLDINGS LLC, ("Buyer") and DuBose-Robinson, PC a South Carolina professional association ("DR").

WHEREAS, Seller and Buyer are parties to a Loan Sale Agreement dated June 24th, 2009 (the "Loan Sale Agreement"), whereby Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller the following loan documents ("the Loan"): As shown on Attachment 1. Loan Documents attached hereto and incorporated herein.

WHEREAS, DR, prior to the sale of the Loan to Purchaser, has represented Seller in enforcement actions filed against BJC Enterprises, LLC, et al (collectively "Entities") for collection of the Loan, including the pending foreclosure of three Mortgages, captioned as follows:

First Palmetto Savings Bank, F.S.B. vs. BJC Enterprises, LLC, et al; pending in the Circuit for the Fifteenth Judicial Circuit in and for Horry County, South Carolina as Case Number 2009-CP-26-5743 for the mortgages listed below:

- a) In the Matter of the Foreclosure of a Mortgage executed by BJC Enterprises, LLC dated January 14, 2005 and Recorded in Book 3904 at Page 0008 on January 19, 2005;
- b) In the Matter of the Foreclosure of a Mortgage executed by Wendy J. Bellamy dated January 14, 2005 and Recorded in Book 3904 at Page 0020 on January 19, 2005; and
- c) In the Matter of the Foreclosure of a Mortgage executed by Americana Motel of Myrtle Beach, Inc., a/k/a Americana, Inc., dated January 14, 2005 and Recorded in Book 3904 at Page 0028 on January 19, 2005.

WHEREAS, DR, prior to the sale of the Loan to Buyer, has represented Seller in enforcement against:

- a) Wendy J. Bellamy for her guaranty agreement of the Loan, including the pending suit against Wendy J. Bellamy, captioned as First Palmetto Savings Bank, F.S.B. vs. Wendy J. Bellamy, Case Number 2009-CP-26-5550, pending in the Court of Common Pleas, County of Horry, State of South Carolina. ("Guaranty Action")
- b) Henry C. Coan, III, for his guaranty agreement of the Loan, including the pending suit against Henry C. Coan, III, captioned as First Palmetto Savings Bank, F.S.B. vs. Henry C. Coan, III, Case Number 2009-CP-26-5548, pending in the Court of Common Pleas, County of Horry, State of South Carolina. ("Guaranty Action")

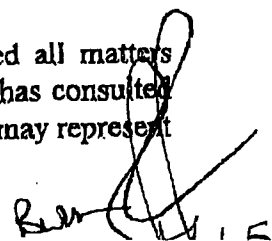
- c) Harvey L. Jones, for his guaranty agreement of the Loan, including the pending suit against Harvey L. Jones, captioned as First Palmetto Savings Bank, F.S.B. vs. Harvey L. Jones, Case Number 2009-CP-26-5549, pending in the Court of Common Pleas, County of Horry, State of South Carolina. ("Guaranty Action")

WHEREAS, Buyer has requested that DR represent Buyer in the Pending Foreclosure Action and in the Guaranty Actions;

WHEREAS, DR is willing to undertake such representation of Buyer, and Seller is willing to consent to such representation, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DR has represented, and shall continue to represent, Seller in the following matters:
 - a) All prior, current and future matters for which representation is requested by Seller and that are unrelated to matters concerning Buyer, the loan or the property subject to foreclosure.
2. The parties agree that DR may represent Buyer in the following matters:
 - a) The Pending Foreclosure Action and the Guaranty Actions in the Horry County Court of Common Pleas.
3. All communications and other information shared between Seller and DR or otherwise related to DR's representation of Seller, whether or not relating to Buyer, shall be confidential information of Seller and shall not be shared by DR with Buyer unless consented to by Seller.
4. If any dispute arises between Buyer and Seller related to the Buyer's acquisition of the Loan Documents or any other matter, Seller shall be entitled to have the benefit of DR's representation in all such matters. Buyer consents thereto, whether or not DR continues to act as counsel to Buyer with respect to the Pending Foreclosure Action and the Guaranty Actions.
5. DR may determine in its sole discretion at any time that it no longer desires to act as counsel to Buyer with respect to the Pending Foreclosure Action and the Guaranty Actions, in which case Buyer agrees that it shall release DR from its duties with respect thereto and shall obtain substitute counsel.
6. In no event shall DR be required to disclose any confidential information of Seller to Buyer.
7. Each party acknowledges and confirms that it has carefully reviewed all matters related to this Agreement, has consulted with DR to the extent it deemed desirable, has consulted with other legal counsel to the extent it deemed desirable and has determined that DR may represent



each party in the manner set forth in this Agreement. In addition, Buyer confirms that it has consulted with its separate counsel concerning this matter. Based on the foregoing, DR has concluded that it can provide the representation set forth herein in accordance with the applicable provisions of the Rules of Professional Conduct as promulgated by the Supreme Court of South Carolina. Accordingly, Seller and Buyer waive any conflict of interest that may exist or arise with respect to Seller's representation as described herein. In the event DR determines at any time that it no longer feels comfortable that it can continue in such roles, DR may withdraw from representation of Buyer.

Executed and agreed to as of the date first above written.

SELLER:

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

By: [Signature] (SEAL)

Brent W. Hurst
Vice President

BUYER:

HOTEL & MOTEL HOLDING, LLC

By: [Signature] (SEAL)

Name: Jack H. Sells
Title: President

DuBose-Robinson, PA

By: [Signature] (SEAL)

Name: John F. DuBose
Title: Attorney

EXHIBIT V

DuBose-Robinson, PC

ATTORNEYS AT LAW
935 Broad Street
Camden, South Carolina 29020
Telephone: 803-432-1992
Fax: 803-432-0784

February 20, 2009

J. Kennedy DuBose, Jr.
Jonathan M. Robinson
John K. DuBose, III

Americana Motel of Myrtle Beach, Inc.
Ann L. Jones, Registered Agent
405 Flagg Street
Myrtle Beach, SC 29577

BJC Enterprises, LLC
Wendy J. Bellamy, Registered Agent
405 Flagg Street
Myrtle Beach, SC 29577

Harvey L. Jones
1324 Harbor Towne Road
Myrtle Beach, SC 29577

Henry C. Coan, III
1910 Arundel Road
Myrtle Beach, SC 29577

Wendy J. Bellamy, Individually
405 Flagg Street
Myrtle Beach, SC 29577

Scott B. Umstead, Esquire
Attorney for Mazingo + Wallace Architects, LLC
1301 48th Avenue N., Suite D
Myrtle Beach, SC 29577

RE: First Palmetto Savings Bank, F.S.B. v. BJC Enterprises,
LLC,
et al.
Civil Case No: 2009-CP-26-950
Our File No: 08.224

To Whom It May Concern:

Enclosed, please find a filed copy of the Stipulation of Dismissal Without Prejudice in the above-referenced matter. If you should have any questions please contact our office.

Very truly yours,

DuBOSE-ROBINSON, PC

John K. DuBose, III

JKDIII:snk

Enclosure

DEFENDANT'S
EXHIBIT

25
9-28-10 Jm

REPLY TO: Mailing Address
PO Drawer 39
Camden, SC 29021

Columbia Office
609 Sims Ave.
Columbia, SC 29208
Telephone: 803-254-5445

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

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

Plaintiff,

vs.

BJC Enterprises, LLC, Wendy J. Bellamy,
Americana, Inc. a/k/a
Americana Motel of Myrtle Beach, Inc.
Mozingo + Wallace Architects, LLC,
Harvey L. Jones, and Henry C. Coan, III

Defendants.

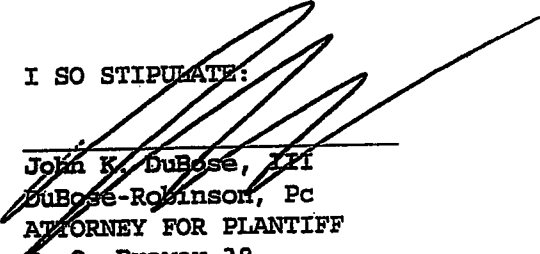
IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-26-950

STIPULATION OF
DISMISSAL
WITHOUT PREJUDICE

By stipulation of Attorney for the Plaintiff pursuant to SCRPC 41
(a)(1)(A), the above-captioned matter is hereby dismissed without
prejudice. The Clerk of Court for Horry County is hereby requested to
dismiss the same of record without prejudice and to cancel the Lis
Pendens filed in this matter.

I SO STIPULATE:


John K. DuBose, III
DuBose-Robinson, PC
ATTORNEY FOR PLAINTIFF
P. O. Drawer 39
Camden, SC 29021

FILED
HORRY COUNTY
2009 FEB 13 PM 2:25
MELANIE HUGGINS
CLERK OF COURT

DuBose-Robinson, PC

ATTORNEYS AT LAW

PO Drawer 39

Camden, South Carolina 29021-0039



PITNEY BOWES

E 02 1 F

0003093226

FEB 20 2009

MAILED FROM ZIP CODE 29020

BJC Enterprises, LLC

BJC Enterprises, LLC
Wendy J. Bellamy, Registered Agent

405 Flagg Street

405 Flagg Street
Myrtle Beach, SC 29577

235774025

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

000

EXHIBIT W

37
7-28-10 RM

STATEMENT OF ACCOUNT

Account Number [REDACTED] 95-5

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

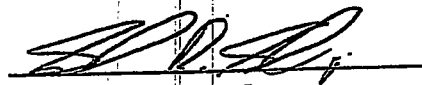
Defendants: BJC Enterprises, LLC

Principal Balance due First Palmetto Savings Bank, F.S.B. on a Renewal Note (Account No. [REDACTED] 95-5) dated January 17, 2008 from BJC Enterprises, LLC. BJC Enterprises, LLC has defaulted in payment of the note and there is now due Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight and 28/100 (\$5,433,288.28) Dollars as of June 2, 2009, with interesting accruing thereon at a rate of \$1,150.95 per diem.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned, Samuel R. Small, Jr., who being duly sworn, deposes and says that he General Counsel of First Palmetto Savings Bank, F.S.B., and in said capacity does hereby subscribe to this Statement of Account and does hereby state that the above account is to the best of the undersigned's knowledge, information, and belief, just, true, and correct; that as of June 2, 2009, First Palmetto Savings Bank, F.S.B. is due the principal sum of Five Million Four Hundred Thirty Three Thousand Two Hundred Eighty Eight and 28/100 (\$5,433,288.28) Dollars as of June 2, 2009, with interesting accruing thereon at a rate of \$1,150.95 per diem, by BJC Enterprises, LLC and that all just and lawful offsets, discounts, payments, and credits have been allowed.



Samuel R. Small, Jr.
General Counsel
First Palmetto Savings Bank, F.S.B.

SWORN TO before me this
3rd day of June, 2009.

Shannon M. Knapp, Jr.

Notary Public for South Carolina

My Commission Expires: 7/16/2017

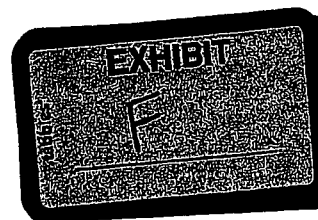


EXHIBIT X

Complete Appraisal - Summary Report of

**BJC ENTERPRISES, LLC
RAINBOW COURT MOTEL
405 FLAGG STREET
MYRTLE BEACH, SOUTH CAROLINA
Tax Map #: 181-10-10-005 pt
Our File #C09-050**

**For
Mr. Marvin W. Best
Vice President
Collections Division
First Palmetto Savings Bank, FSB
407 Dekalb Street
Camden, SC 29020**

**As of
June 1, 2009**

**By
C. Vernon Hammond
South Carolina Certified General Appraiser #5782
Palmetto Valuation & Appraisal, LLC**

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PALMETTO VALUATION & APPRAISAL, LLC

June 5, 2009

Mr. Marvin W. Best
Vice President
Collections Division
First Palmetto Savings Bank, FSB
407 Dekalb Street
Camden, SC 29020

Re: **Appraisal of The Rainbow Court Motel**
Located at 405 Flagg Street
Myrtle Beach, South Carolina 29577
Owner: Americana Motel of Myrtle Beach, Inc.
Borrower: BJC Enterprises, LLC
Our File #C09-050

Dear Mr. Best:

We have prepared a complete appraisal of the above referenced property as of June 1, 2009. The objective of this appraisal is to provide our opinion of the current market value of the Fee Simple Interest based on an "As Is" condition. This appraisal is being reported in a complete, summary format.

This is a Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards rule 2-2(b) of *USPAP*, for a Summary Appraisal Report. As such, it represents summary descriptions and discussions of the subject property as well as the data, reasoning, and analyses that were used in the appraisal process to develop the opinion of value. The appraiser is not responsible for unauthorized use of this report.

The subject property is a second and third row lodging facility that houses 77 hotel rooms and a manager's quarters. The improvements on the subject property include a main building that houses 50 units. The remaining 27 units are contained in 7 cottage type buildings surrounding a central courtyard. The subject site contains a total of 1.36 acres or 59,025 square feet. The building has been used as a hotel for the past forty years. The subject has frontage on both 5TH Avenue and Flagg Street in Myrtle Beach, South Carolina. The property is located at 405 Flagg Street, Myrtle Beach, Horry County, South Carolina.

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PALMETTOVALUATION@YAHOO.COM



PALMETTO VALUATION & APPRAISAL, LLC

The reliance of this report is limited to the client; everyone else is considered an unintended user. All information contained within this submitted report is strictly for the sole use of the client, and may not be used for any purpose by another party without the written consent of the appraiser.

Subject to the assumptions and limiting conditions, extraordinary assumptions, hypothetical conditions, certifications, and definitions, the current fee simple market value, based on "As Is" condition as of the date of inspection is:

**ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS & no/100's
(\$1,700,000.00)**

If we can be of any further assistance, please do not hesitate to contact us.

Respectfully submitted,

**C. Vernon Hammond
SC Certified General Appraiser #5782**

**Sarah J. Hammond
SC Apprentice Appraiser # AA6314**

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PALMETTOVALUATION@YAHOO.COM

RECONCILIATION AND FINAL VALUE ESTIMATE

The following value conclusions are indicated from the three approaches to value used in this analysis.

Direct Sales Comparison Approach	\$2,100,000.00
Income Approach	\$1,700,000.00
Market Approach using GIM Method	\$1,800,000.00

The overall value per SF is the most commonly used unit of comparison in today's market. Based on these approaches the current fee simple market value, based on current "As Is" condition, as of June 1, 2009 is:

ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS & no/100's
(\$1,700,000.00)

MARKETING AND EXPOSURE TIME

The estimated marketing time for the property is twelve months to twenty four months. This marketing time is also estimated as the needed exposure time for the property.

95 A WK
10/22/10

Complete Appraisal - Summary Report of

BJC ENTERPRISES, INC.
~~EMERALD SHORES MOTEL~~
404 N. OCEAN BLVD.
MYRTLE BEACH, SOUTH CAROLINA
Tax Map #: 181-11-01-001 & 002
Our File #C09-049

For
Mr. Marvin W. Best
Vice President
Collections Division
First Palmetto Savings Bank, FSB
407 Dekalb Street
Camden, SC 29020

As of
June 5, 2009

By

C. Vernon Hammond
South Carolina Certified General Appraiser #5782
Palmetto Valuation & Appraisal, LLC

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June 5, 2009

Mr. Marvin W. Best
Vice President
Collections Division
First Palmetto Savings Bank, FSB
407 Dekalb Street
Camden, SC 29020

**Re: Appraisal of the Emerald Shores Motel
Located at 404 N. Ocean Boulevard
Myrtle Beach, South Carolina
Owner: BJC Enterprises, LLC**

Our File #C09-049

Dear Mr. Best:

We have prepared a complete appraisal of the above referenced property as of June 5, 2009. The objective of this appraisal is to provide our opinion of the current market value of the Fee Simple Interest based on an "As Is" condition. This appraisal is being reported in a complete, summary format.

This is a Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards rule 2-2(b) of *USPAP*, for a Summary Appraisal Report. As such, it represents summary descriptions and discussions of the subject property as well as the data, reasoning, and analyses that were used in the appraisal process to develop the opinion of value. The appraiser is not responsible for unauthorized use of this report.

The subject property is an ocean front two story stucco veneer structure that houses 62 hotel rooms and a manager's quarters. The improvements on the subject property include 25,260 heated square feet with a total square footage of 34,273. The subject site contains a total of 0.81 acres or 35,280 square feet. The building has been used as a hotel for approximately the past forty years. The subject has frontage on Ocean Boulevard and 280 feet of frontage on the Atlantic Ocean in Myrtle Beach, South Carolina. The site consists of 4 ocean front lots that border the ocean and one second row lot that has approximately 0.19 acres or 8,400 square feet that is utilized for parking. It has approximately 70 feet of frontage on the west side of Ocean Blvd. and contains 22 individual parking spaces. The property is located at 404 N. Ocean Blvd. Myrtle Beach, Horry County, South Carolina.

The reliance of this report is limited to the client; everyone else is considered an

unintended user. All information contained within this submitted report is strictly for the sole use of the client, and may not be used for any purpose by another party without the written consent of the appraiser.

Subject to the assumptions and limiting conditions, extraordinary assumptions, hypothetical conditions, certifications, and definitions, the current fee simple market value, based on "As Is" condition, as of the date of inspection is:

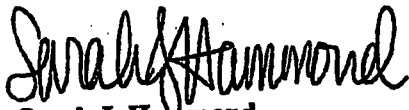
**THREE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS &
no/100's
(\$3,750,000.00)**

If we can be of any further assistance, please do not hesitate to contact us.

Respectfully submitted,



**C. Vernon Hammond
SC Certified General Appraiser #5782**



**Sarah J. Hammond
SC Apprentice Appraiser # AA6314**

Restricted Use Appraisal Report of

**Various Rental Properties
BJC Enterprises, LLC**

Myrtle Beach, Horry County, SC

For

Mr. Marvin W. Best

Vice President

Collections Division

First Palmetto Savings Bank, FSB

407 Dekalb Street, Camden, SC 29020

June 17, 2009

By

C. Vernon Hammond

South Carolina Certified General Appraiser # 5782

Palmetto Valuation & Appraisal, LLC

1105 Broad Street, Camden South Carolina 29020

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PALMETTO VALUATION & APPRAISAL, LLC

June 17, 2009

Mr. Marvin W. Best
Vice President
First Palmetto Savings Bank, FSB
Collections Division
407 Dekalb Street
Camden, South Carolina 29020

**Re: Seven (7) residential rental properties located in
Myrtle Beach, South Carolina
Borrower: BJC Enterprises, LLC
Owner: Americana Motel of Myrtle Beach, Inc. et al
Our File #C09-51**

Dear Mr. Best:

We have prepared an appraisal of the above referenced property as of June 16, 2009. The objective of this appraisal is to provide our opinion of the current market value of the fee simple interest. Based on our agreement with the client this appraisal is being reported in a RESTRICTED format.

This RESTRICTED USE appraisal has been prepared in accordance with *USPAP*, and the *Standards of Professional Practice and Code of Ethics* of the Appraisal Institute. As such, it presents statements concerning the data, reasoning, and analyses that were used in the appraisal process to develop the opinion of value. Supporting documentation concerning the data, reasoning and analyses is retained in the work file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated herein. The appraisers are not responsible for the unauthorized use of this report.

REAL ESTATE APPRAISED

The subject properties are an assemblage of seven (7) different properties that lie between 4th and 5th Ave North and Chester Street in Myrtle Beach, South Carolina. The properties are older and have some deferred maintenance but are typical of rental units in this immediate area of the Grand Strand. They vary from a single family residence to 2, 3, & 4 multi- family units that are for rent by the week or

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PALMETTOVALUATION@YAHOO.COM



PALMETTO VALUATION & APPRAISAL, LLC

month. A table has been included to give the client a better idea of the array of properties being included in this evaluation report. Each one will be more fully explained in the site description of this report. For appraisal and valuation purposes this is the square footage that will be utilized. The subject properties are within a fairly desirable area that in the past has enjoyed substantial residential and commercial growth. This includes the Old Pavilion area of the Grand Strand which continues to be a draw for tourists seeking a more affordable trip to the beach. The hotels in this area are definitely second tier units that average somewhere between \$38.00 to \$55.00 per night. Though they cannot compete with the newer high rise concrete and steel projects in quality, they retain a good share of business from economically minded tourists. Other areas of Horry County have seen intense growth in both the residential and commercial sectors. It continues to be the major center of growth within Horry County. Both national and local retailers have placed an excellent mix of retail and service oriented businesses to meet the expanding residential growth in the nearby areas. This area has been the hub for much of the growth that Horry County has enjoyed for the past few years and there appears to be adequate vacant land for any future growth needs.

Flood map determination can be found in Flood Map # 45051C0684H, dated 8/23/1999, for Horry County, SC.

VALUE CONCLUSION

All seven subject properties are located in the subject neighborhood. The adjusted values range from \$45.84 to \$121.81 per SF. Equal consideration and reliance has been given to all sales comparables. Due to the various condition & sizes of the subject properties, the appraiser believes a figure on the low end of the range is more appropriate. It is important to note that several of these properties are approaching the end of their economic life. Without rehabilitation and refurbishing, these units will diminish rapidly in value. When this occurs, redevelopment of the sites will probably be warranted. This can be delayed with curing deferred maintenance and functional obsolescence, if possible.

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PALMETTO VALUATION & APPRAISAL, LLC

Based on these sales, the current value is:

One Million Fifteen Thousand Dollars & no/100's

(\$1,015,000.00)

For marketing and negotiating purposes, an asking price above the indicated per SF range of value is suggested.

MARKETING TIME AND EXPOSURE TIME

The marketing and exposure time is estimated to be eighteen to twenty four months.

The reliance of this report is limited to the client; everyone else is considered an unintended user. All information contained within this submitted **RESTRICTED USE** report is strictly for the sole use of the client, and may not be used for any purpose by another party without the written consent of the appraisers.

If we can be of any further assistance, please do not hesitate to contact us.

Respectfully submitted,

C. Vernon Hammond
SC Certified General Appraiser #5782

Sarah J. Hammond
SC Apprentice Appraiser # AA6314

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EXHIBIT Y



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

[>HOME](#)

[ONLINE BANKING](#)

[DEPOSIT SERVICES](#)

[LOAN SERVICES](#)

[CALCULATORS](#)

[BRANCH LOCATIONS](#)

[CONTACT US](#)

[HELP](#)

ACCOUNT LOGIN

► [Login to
My Account](#)

► [Demo](#)

► [Privacy & Security](#)

Privacy & Security

First Palmetto Savings Bank, F.S.B.

Our Policy on Confidentiality

We will keep your information private.

The terms "we", "our", and "us" used in this disclosure means First Palmetto Savings Bank, F.S.B. The terms "you" and "your" used in this disclosure means deposit accounts, loan accounts and all former accounts.

We will not disclose any nonpublic personal information except as required by law and will continue to respect your privacy.

Information That We Collect

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications and other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from consumer reporting agencies.

Information That We Disclose

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

Disclosures Permitted By Law

We may disclose all of the information we collect, as described above to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

Confidentiality and Security

We restrict access to nonpublic personal information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with Federal standards to guard your nonpublic personal information.

If you have any questions, please [contact us](#).



Powered by **INTUIT**



EXHIBIT Z

DEPOSITION
EXHIBIT

90

Page 1 of 1

Sammy Small

From: "Brent Hutto" <bhutto@fpsb.com>
To: "Bob Wilder" <bwilder@fpsb.com>; "Tumpie Bull" <tbull@fpsb.com>; "Drew Hansen" <dhansen@fpsb.com>
Cc: "Sammy Small" <:ssmalljr@fpsb.com>; "MARTY BEST" <mbest@fpsb.com>
Sent: Tuesday, February 03, 2009 6:26 PM
Subject: BJC Account #75-084095-9

ob, Tumpie, and Drew:

lease be advised that any future correspondence with BJC, LLC, the members of BJC, or any third party inquiring about BJC
ould be directed to my attention. Additionally, any future discussion with Casey Shroff is not authorized.

you have any questions, please feel free to call me.

at W. Hutto
President
rst Palmetto Savings Bank

FPSB_000093

EXHIBIT AA

RAINBOW COURT

February 7, 2009

Mr. Sammy Smalls
c/o First Palmetto Savings Bank
407 E Dekalb St
Camden, SC 29020

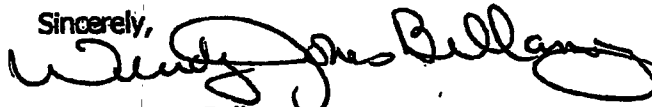
RE: Emerald Shores

Dear Mr. Smalls,

It was very nice meeting you and your associates. I want to thank you for accepting the payment for the Emerald Shores loan and working with us to rectify our loan. We are diligently working to establish a strategy that will satisfy First Palmetto and our needs.

In addition, I want to thank you for personally taking over the loan in Camden and understanding and respecting our desire for confidentiality regarding our business with First Palmetto.

Sincerely,



Wendy Jones Bellamy

405 Flagg Street
Myrtle Beach, SC 29577

PHONE (843) 448-3857
FAX (843) 626-7897
E-MAIL rainbowcourtmotel@gmail.com
WEB SITE <http://www.rainbowcourt.com>

DEFENDANT'S
EXHIBIT

142
11-22-10 *gdm*
FPSB_000079

EXHIBIT BB

IL 550 75-086184-9 HOTEL & HOTEL H TAXID 270-38-5700 RR 069 07-13-09
 PRN BAL:: 4750,000.00 PLDG SAV:: STOP CODE::00:00:00 1
 PART BAL:: .00 HOME PHONE::000 000-0000 BUSINESS TYPE:::00
 REG. PAY:: .00 BUSINESS PH::843 449-2130 LOAN CLASS:::001
 NIP. PAY:: .00 CIF NO::: 270385700 COLLATERAL CODE:: 000
 FINAL PY:: .00 DATE LAST FM:: 07-02-09 PROP TYPE:::73
 NTE AMT:: 4750,000.00 PLAN NUMBER:::013 DEALER CD:::0000-00
 INT RATE::: 5.000 OFFICER::: BUH DEALER RTE::: 0.000
 RATE TYPE::: 1
 PAYMENT MODE:::5 LAST TRAN:::878 :: 4750,000.00:: 06-30-09
 DUE DATE::: 11-01-09 ADDR USG:::20 :::00 :::00 :::00
 NOTE DATE::: 06-30-09 HOTEL & HOTEL HOLDINGS LLC
 MATURITY DT:: 06-30-14 3370 HT PISGAB CEMETERY RD
 ORIGINAL TERM::: 60 CONWAY SC 29526
 REMAINING TERM::: 58
 TOTAL PAYMENTS:: 60
 REM. PAYMENTS::: 60
 PRIN RED:: .00

> []

Submit Cancel

07-13-2009 15:57:30

ng S... [24] Open Solutions Teller

[25] TotalPlus - Microsoft Info...

[26] TotalPlus - []

cc [27] 3:57 PM

IL 555 75-086184-9 HOTEL & HOTEL H CREDIT INQUIRY PG 1 OF 2 DATE 11-19-09 1

LAST UPDATE 08-18-09

BAL - ORIG	4,750,000.00	CIF #	270385700	DAYS DELQ/PATTERN	
- CURR	4,000,000.00	BRANCH	069	CURR	019
PART PAY BAL	.00	OFFICER	BWH	NOV	000 X
PMT AMOUNT	79,270.82	COLL OFF		OCT	000
AMOUNT DUE	83,234.36	PLAN	13	SEP	000
ORIG DATE	6/30/09	INT RATE	5.000%	AUG	000
MAT DATE	6/30/14	STOP CODES	00 00 00	JUL	000
DUE DATE	11/01/09	DEALER CODE	0000 00	JUN	007
DATE LAST PMT	10/09/09	CREDIT CODE		MAY	000
DATE LAST TRAN	11/13/09	COLLECTION CODE	000	APR	000
TERM - ORIG/REN	060/054	SPEC HANDLING CODE	0	MAR	000
PMTS - ORIG/REN	060/060	CREDIT BUREAU STATUS		FEB	000
L/C DUE	3,963.54	L/C ASSD/COLL	001 / 000	JAN	000
L/C PAID YTD	.00	L/C NBR WAIVED	000	DEC	000
L/C PAID LTD	.00	L/C ANT WAIVED	.00	LOAN GRADE 1	0
NSF FEES DUE	.00	NBR RET CKS	000	GR 1 ANT	
NSF FEES PAID ETD	.00	NBR EXTENSIONS	000	LOAN GRADE 2	0
NSF FEES PAID LTD	.00	COLL1	ASSIGN DOC & CD	GR 2 ANT	
		COLL2	#414807855		

CORHAND ☐ ACCT 750861849

PLUS

Submit Cancel

11-19-09 14:50:24

IL 555 75-086184-9 HOTEL & HOTEL R CREDIT INQUIRY PG 1 OF 2 DATE 12-18-09 1

LAST UPDATE 08-18-09

BAL - ORIG	4,750,000.00	CIF #	270385700	DAYS DELQ/PATTERN
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PART PAY BAL	.00	OFFICER	898	DEC 000 X
PMT AMOUNT	16,666.67	COLL OFF		NOV 018
AMOUNT DUE	17,500.00	PLAN	13	OCT 000
ORIG DATE	6/30/09	INT RATE	5.000%	SEP 000
EAT DATE	6/30/14	STOP CODES	00 00 00	AUG 000
DUE DATE	12/01/09	DEALER CODE	0000 00	JUL 000
DATE LAST PMT	11/19/09	CREDIT CODE		JUN 007
DATE LAST TRAN	12/14/09	COLLECTION CODE	000	MAY 000
TERM - ORIG/REN	060/053	SPEC HANDLING CODE	0	APR 000
PMTS - ORIG/REN	060/059	CREDIT BUREAU STATUS		MAR 000
L/C DUE	833.33	L/C ASSD/COLL	002 / 000	FEB 000
L/C PAID YTD	.00	L/C NBR WAIVED	001	JAN 000
L/C PAID LTD	.00	L/C ANT WAIVED	3,963.54	LOAN GRADE 1 0
NSF FEES DUE	.00	NBR RET CRS	000	GR 1 ANT
NSF FEES PAID MTD	.00	NBR EXTENSIONS	000	LOAN GRADE 2 0
NSF FEES PAID LTD	.00	COLL1	ASSIGN DOC & CD	GR 2 ANT
		COLL2	#414807855	

COMMAND ☐ ACCT 750861849

PLUS

Submit Cancel

12 18 2009 11:00:07

Wain 4c

WCH
12-18-09

IL 555 75-086184-9 HOTEL & HOTEL H CREDIT INQUIRY PG 1 OF 2 DATE 01-13-10 1
LAST UPDATE 09-18-09

BAL - ORIG	4,750,000.00	CIF #	270385700	DAYS DELQ/PATTERN	
- CURR	4,000,000.00	BRANCH	069	CURR	012
PART PAY BAL	.00	OFFICER	BVM	JAN	000 X
PMT AMOUNT	17,222.22	COLL OFF		DEC	017
AMOUNT DUE	18,083.33	PLAN	13	NOV	018
ORIG DATE	6/30/09	INT RATE	5.000%	OCT	000
NAT DATE	6/30/14	STOP CODES	00 00 00	SEP	000
DUE DATE	1/01/10	DEALER CODE	0000 00	AUG	000
DATE LAST PMT	12/18/09	CREDIT CODE		JUL	000
DATE LAST TRAN	1/12/10	COLLECTION CODE	000	JUN	007
TERM - ORIG/REN	060/052	SPEC HANDLING CODE	0	MAY	000
PMTS - ORIG/REN	060/050	CREDIT BUREAU STATUS		APR	000
L/C DUE	861.11	L/C ASSD/COLL	000 / 000	MAR	000
L/C PAID YTD	.00	L/C NBR WAIVED	002	FEB	000
L/C PAID LTD	.00	L/C ANT WAIVED	4,796.87	LOAN GRADE 1	0
NSF FEES DUE	.00	NBR RET CKS	000	GR 1 ANT	
NSF FEES PAID MTD	.00	NBR EXTENSIONS	000	LOAN GRADE 2	0
NSF FEES PAID LTD	.00	COLL1	ASSIGN DOC 6 CD	GR 2 ANT	
		COLL2	#414807855		

COMMAND ☐ ACCT 750861849

PLUS

Submit Cancel

01-13-2010 09:17:08

EXHIBIT CC

AGREEMENT TO PROVIDE INSURANCE

DATE AND PARTIES The date of this Agreement to Provide Insurance (Agreement) is 06-30-2009 The parties and their addresses are

OWNER: HOTEL & MOTEL HOLDINGS, LLC
3370 MT. PISGAH CEMETERY RD
CONWAY, SC 29526

SECURED PARTY FIRST PALMETTO SAVINGS BANK, FSB
407 DEKALB STREET
CAMDEN, SC 29020

The pronouns "you" and "your" refer to the Secured Party The pronouns "I," "me" and "my" refer to each person or entity signing this Agreement as Owner

1. LOAN, LEASE, OR CONTRACT DESCRIPTION (Loan)

A Date: 06-30-2009
B Loan Number: 75-086184-8
C Loan Amount: 4,750,000.00
D Additional Information:

2. AGREEMENT TO PROVIDE INSURANCE As part of my Loan, I agree to do all of the following (in addition to any requirements specified in the Loan documents)

- A I will insure the Property as listed and with the coverages shown on the COVERAGES section
- B I will have you named on the policy, with the status listed under the STATUS section
- C I will arrange for the insurance company to notify you that the policy is in effect and your status has been noted
- D I will pay for the insurance, including any fee for this endorsement
- E I will keep the insurance in effect until the Property is no longer subject to your security interest (I understand that the Property may secure debts in addition to any listed in the LOAN DESCRIPTION section)

3. DESCRIPTION OF PROPERTY The Property subject to this Agreement is described as follows

SEE ATTACHED EXHIBIT "A"

4. COVERAGES I agree to insure the Property according to the following described risks, amount of coverage, and maximum deductible allowed

☐ If checked, all coverages will be for the full replacement value of the Property

Homeowner's Coverage	☐ H O	☐ Other (Describe) _____
Insurable Value	Deductible _____	
Automobile Coverages	☐ Fire	☐ Theft ☐ Collision ☐ Comprehensive ☐ Liability ☐ Other _____
Insurable Value	Deductible _____ Minimum limits _____	
Property Coverage	☒ Fire ☒ Theft ☐ Collision ☐ Comprehensive ☒ Liability ☒ Other <u>FLOOD</u>	
Insurable Value	Deductible _____	

5. STATUS Your status shall be listed on the insurance policy as follows

☐ Lender ☐ Certificate Holder ☒ Additional Insured ☐ Mortgagee ☐ Other _____

California Real Property: Hazard insurance exceeding the replacement value of the improvements on the property is not required as a condition of this loan

6. ADDITIONAL TERMS

7. INSURANCE COMPANY The insurance policy covering the Property and the insurance company issuing the policy are as follows

A Policy Number _____ Effective From _____ To _____
B Insurance Company Name, Address, and Phone Number _____

8. INSURANCE AGENT AND AGENT The insurance agency through which I have purchased, or intend to purchase, the required insurance is as follows

A Agent Name _____
B Agency Name, Address, and Phone Number _____

9. SIGNATURES

SIGNATURES FOR OWNER(S) AND AUTHORIZATION TO INSURANCE AGENT AND COMPANY By signing below, I agree to the terms contained in this Agreement and authorize receipt by a copy of this Agreement. I request the listed insurance company and agency to provide the indicated coverage and list you on the policy with the indicated status. I also request the insurance company or its authorized agent to immediately confirm that the policy is in effect by signing the form and forwarding a copy of the policy to you.

HOTEL & MOTEL HOLDINGS, LLC
X [Signature] Member 6/30/09
Date
X JACK H. JONES, SOLE MEMBER
Date

SIGNATURE FOR SECURED PARTY AND REQUEST FOR CONFIRMATION Upon receipt of this Agreement, the insurance company or agency named above is requested to confirm the policy coverages shown above

By X _____
BRENT W HUTTO, VICE PRESIDENT
Date

SIGNATURE FOR INSURANCE COMPANY AND CONFIRMATION By signing below, Insurance Company confirms the existence of the insurance coverages agreed to be provided by our insured and that you will be notified not less than 10 days before cancellation

Insurance Company
By X _____
Date

Please return to Secured Party at the address listed in the DATE AND PARTIES section.

Expects © 1998 Bankers Systems, Inc. St. Cloud, MN Form APL-CEN 6/13/2000

EXHIBIT "A"

Property 1 (Emerald Shores Motel)

TMS# 181-11-01-002

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

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

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

Property 2 (Emerald Shores Motel)

TMS#181-11-01-001

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

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

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

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

Property 4 (Parking Lot)

TMS#181-10-10-007

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

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

Property 5 (Lot 14 Block 21)

TMS#181-10-10-016

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

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

Property 6 (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 7 (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 8 (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 Lula M. Bagnall, 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 9 (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 10 (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 11 (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 Bagnol, 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 12 (Lot 6 Block 28 & ½ of Lot 7 & 8 & Part of Lot 9)
TMS#181-10-07-010 & 011

ALL AND SINGULAR, that certain piece, parcel or lot of land lying and being in the Town of Myrtle Beach, County and State aforesaid, and being Lot No. 6 of Block -28- of the Hotel Section, and beginning at a stake corner on the Northwestern side of Chester Street, which is the Northeastern corner of the lot herein described, and runs North 51 deg. and 28 min. west 240 feet to a stake on the 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 13 (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 as 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 14 (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.

Pat Kelly

From: "Thomas Anderson" <tanderson@fpsb.com>
To: "Pat Kelly" <pkelly@fpsb.com>
Sent: Monday, July 13, 2009 7:44 AM
Subject: one more flood questions

Pat:

For		
75-086184-9	HOTEL & MOTEL HOLDINGS LLC	BWH

One property held as collateral, 404 North Ocean Blvd, MB, SC, is in the flood zone and I don't see flood insurance for it.

Do you know the status of this?

Thanks,

TA

Thomas Anderson
 First Palmetto Savings Bank
 Phone: 803-424-5036
 Fax: 803-432-0193
 www.fpsb.com

7-14-09
 Refer all questions
 to Sammy Jr.
 per BWH

7/13/2009

FLOOD INSURANCE ADEQUACY FORM - (OTHER THAN CONDOS)

The amount of flood insurance must equal the lesser of the loan amount (plus balances of all loans in superior position), the insurable value of the improvements, or the maximum coverage available through the NFIP. Complete the following information for all properties, also use calculation of coverage.

Date Submitted: 12/15/2009
Loan Officer: BRENT HUTTO
Borrower Name: HOTEL & MOTEL HOLDINGS LLC
Account #: 75-0861849
Collateral Address: 404 N OCEAN BLVD, MYRTLE BEACH, SC 29577

First Palmetto Loan Amount	Prior Lien(s) Balance(s)	Total All Loans
\$4,000,000.00		\$4,000,000.00
Total Appraised Value	Land Value	Total Value of Improvements
\$3,750,000.00	\$0.00	\$3,750,000.00
Maximum NFIP Available	Number of Units or Buildings	Maximum NFIP Insurance Available
Per Residence = \$250,000 Per Commercial Building = \$500,000	1	\$500,000.00
The Lesser of the Values in The Right Column Equals Amount of Insurance Required		\$500,000.00
Amount of Insurance in Place as Evidenced on Insurance Policy		\$0.00
Amount of Additional Coverage Needed (if necessary)		\$0.00

Policy #: WOODBURY
Effective Dates of Policy: 04/27/2009 THRU 04/27/2010
Date Approved by Flood Officer:
Signature of Authorized Flood Officer:

Pat Kelly

From: "Pat Kelly" <pkelly@fpsb.com>
To: "John Kinard" <johnkinard@fpsb.com>
Sent: Tuesday, December 15, 2009 4:00 PM
Subject: MEETING

John,

I could not seem to catch you in your office or on the phone
I have a letter ready to send to Hotel & Motel that I am putting on your desk. Is this acceptable and do I need to have them
change the name on the flood policy as well?

Thanks!
Pat Kelly
Insurance Clerk
First Palmetto Savings Bank
803-424-5054 (Phone)
803-424-5148 (Fax)
pkelly@fpsb.com

12/15/2009

FPSB_001819

FIRST PALMETTO

SAVINGS BANK

www.firstpalmetto.com



1105 Broad Street
Post Office Box 430
Camden, South Carolina 29021
Phone (803) 432-1416

December 15, 2009

Hotel & Motel Holdings, LLC
3370 Mt. Pisgah Cemetery Rd.
Conway, S.C. 29526

RE: 75-0861849

Dear Sirs:

The flood disaster protection act requires banks to determine if property held as collateral is in a flood area and requires banks to notify property owners of required insurance. The act also provides if we do not receive adequate flood insurance coverage, then we are required to acquire the coverage at the owner's expense.

We have reviewed your loan for 404 N Ocean Blvd., Myrtle Beach, S.C., and have found the coverage needs to be for \$500,000.00. Currently, we show a policy for \$400,000.00. Please increase the amount of flood coverage to the \$500,000.00 requirement and have your agent provide proof of this coverage to us by December 25, 2009. If you have any questions, please contact Pat Kelly at 803-432-2265, Ext. 5054.

Thank you.

Pat Kelly
Escrow Clerk

12-15-09
Sammy to get hazard
Write letter to customer
increased to 500,000
What about name?

FPSB_001779

Pat Kelly

From: "Pat Kelly" <pkelly@fpsb.com>
To: "Walter Long" <wlong@fpsb.com>; "John Kinard" <johnkinard@fpsb.com>
Sent: Wednesday, December 16, 2009 4:23 PM
Subject: HOTEL & MOTEL

Hey,

As best I can tell from the information given to me by John,
They have the following on Emerald Shores, 404 N Ocean Blvd.:
\$2,800,000 in property coverage that expires on 8-1-10
\$400,000 in flood coverage that expires on 4-27-10.
\$25,000 in wind/hail coverage that expires 8-1-10.

Also, the letter is ready to go out on the increase in flood, but I am awaiting the go ahead

Thanks!
Pat Kelly
Insurance Clerk
First Palmetto Savings Bank
803-424-5054 (Phone)
803-424-5148 (Fax)
pkelly@fpsb.com

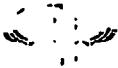
12/16/2009

FPSB_001863

FIRST PALMETTO

SAVINGS BANK

www.firstpalmetto.com



Since 1904

December 15, 2009

Hotel & Motel Holdings, LLC
3370 Mt. Pisgah Cemetery Rd.
Conway, S.C. 29526

RE: 75-0861849

Dear Sirs:

The flood disaster protection act requires banks to determine if property held as collateral is in a flood area and requires banks to notify property owners of required insurance. The act also provides if we do not receive adequate flood insurance coverage, then we are required to acquire the coverage at the owner's expense.

We have reviewed your loan for 404 N Ocean Blvd., Myrtle Beach, S.C., and have found the coverage needs to be for \$500,000.00. Currently, we show a policy for \$400,000.00. Please increase the amount of flood coverage to the \$500,000.00 requirement and have your agent provide proof of this coverage to us by December 25, 2009. If you have any questions, please contact Pat Kelly at 803-432-2265, Ext. 5054.

Thank you.

Pat Kelly
Escrow Clerk

Mailed

12-30-09

L12

in force

4/27/10

1-4-10

get hazard r

wind policy dec

I am to call

12/30/09

sent John

email

100,000 increase

not done

wait for summary

to get back

1-4-10 SS Jr
OK for all 400,000
SSAM

FPSB_001805

Pat Kelly

From: "Pat Kelly" <pkelly@fpsb.com>
To: "John Kinard" <johnkinard@fpsb.com>
Sent: Wednesday, December 30, 2009 3:05 PM
Subject: HOTEL & MOTEL

John,

I sent letter to the customer on 12-15-09 and asked the increase in flood by 12-25-09. Haven't heard anything. Please advise as to what you need me to do.

Thanks!
Pat Kelly
Insurance Clerk
First Palmetto Savings Bank
803-424-5054 (Phone)
803-424-5148 (Fax)
pkelly@fpsb.com

1-570
Colin to
EMAIL me
PROP coverage
on 404 N Ocean Blvd
- Emerald Shores
- Rainbow Ct

12/30/2009

FPSB_001778

Pat Kelly

From: "John Kinard" <johnkinard@fpsb.com>
 To: "Pat Kelly" <pkelly@fpsb.com>
 Sent: Monday, January 04, 2010 11:22 AM
 Subject: FW: Hotel and Motel

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

From: Sammy Small [mailto:ssmalljr@fpsb.com]
 Sent: Monday, January 04, 2010 11:55 AM
 To: John Kinard
 Subject: Re: Hotel and Motel

Do not force place. You can put this in the file if you need authorization.

Thanks.

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

From: "John Kinard" <johnkinard@fpsb.com>
 To: "Sammy Small, Jr." <ssmalljr@fpsb.com>
 Sent: Monday, January 04, 2010 11:22 AM
 Subject: Hotel and Motel

> Sammy,
 >
 > Emerald Shores is in the flood zone and we have a \$400,000
 > policy with an April 2010 expiration date. Pat sent a letter
 > requiring
 > an additional \$100,000 (to meet FEMA guidelines) which they have not
 > provided. I will instruct her to force place this amount today unless
 > you disagree.
 >
 > John
 >
 >
 >

1/5/2010

FPSB_001815

EXHIBIT DD

Host Screen

July 14, 2010 11:33 AM

TC 532 201820962-BJC LLC BDA EMERALD CIF SUMMARY LVL-1 PG- 1 DATE 07/14/10
ACTIONS- I=INQ M=MENU L=LIST LAST F/M DT 09/03/09
999 TO CANCEL:

CLASS 010 - ACCOUNT INFORMATION

ACT	ACCOUNT NBR	PM	CK	TX	ST	PR	PY	ACCT	SHORT NAME	BALANCE	TAX ID
:	56-565953-7		20					20	BJC PROPERTIES	ACCT CLOSED	201820962
:	56-566046-9		22					22	EMERALD SHORES	ACCT CLOSED	201820962
:	56-566095-6		23						EMERALD SHORES	101,956.15	201820962
:	75-073840-1									ACCT PURGED	
:	75-084095-9		21						BJC ENTERPRISES	ACCT CLOSED	201820962

CLASS 035 - BUSINESS INFORMATION

ACT	TAXID NUMBER	BUSINESS NAME	OFF	BUS TYPE	PRIMARY CONTACT
:	20-1820962	BJC PROPERTIES LLC	BAK		WENDY J BELLAMY

CLASS 085 - CFSIEBL FILE

ACT	ACCOUNT NUM	ADD#	COMPANY/LAST NAME	FIRST NAME
:			020 EMERALD SHORES	
:			021	
:			022 EMERALD SHORES MOTEL	

NEXT CLASS TO DISPLAY: ENTER TO CONTINUE:

04/016

FPSB_000902

EXHIBIT EE

COUNT	NBR OF DAYS TRANS IT HRN TL T/C TRAN AMOUNT	PRINCIPAL	INTEREST	INSUR	L/G-NSF	DLR INC	SRV FEE	PRIN BALANCE
DATE DATA	8-09-76							

2009

-0000-04-00 HOTEL & REPTING BALANCE										00
00-00-00 PREV	00-30-09 001 A1 87H	4750,000.00	4750,000.00	00	00	00 L	00	00	4750,000.00	00
	10-05-09 001 A1 13H	250,000.00	250,000.00	00	00	00 L	00	00	4500,000.00	00
	10-09-09 001 A1 13H	500,000.00	500,000.00	00	00	00 L	00	00	4000,000.00	00
	11-10-09 000 A1 14J	3,963.54	00	00	00	3963.54 L	00	00	4000,000.00	00
	11-19-09 001 A1 180	3,963.54	00	00	00	3963.54 L	00	00	4000,000.00	00
	11-19-09 001 A1 111	79,270.82	00	79270.82	00	00 L	00	00	4000,000.00	00
	12-14-09 000 A1 14J	833.33	00	00	00	833.33 L	00	00	4000,000.00	00
	12-18-09 001 A1 180	833.33	00	00	00	833.33 L	00	00	4000,000.00	00
	12-18-09 001 A1 111	16,666.67	00	16666.67	00	00 L	00	00	4000,000.00	00
01-01-10 NEXT	ENDING BALANCE	3004,062.51	4000,000.00	95937.49	00	00 L	00	00	4000,000.00	00
						00 F				

HOTEL + MOTEL Loan History

6/30/2009 - PRESENT

2010

IL 514	75-086184-9	HOTEL & MOTEL CUR BAL	4,000,000.00	DATE 07-20-10
DATE/TC	07-01-10 111	06-01-10 111	05-03-10 111	04-01-10 111
TRM AMT	16,666.67	17,222.22	16,666.66	17,222.22
PRIN	.00	.00	.00	.00
INT	16,666.67	17,222.22	16,666.66	17,222.22
INS	.00	.00	.00	.00
DEALER	.00	.00	.00	.00
LAT CHG	.00	.00	.00	.00
FEES	.00	.00	.00	.00
PRN BAL	4000,000.00	4000,000.00	4000,000.00	4000,000.00
DUE DATE	08-01-10	07-01-10	06-01-10	05-01-10
DATE/TC	02-01-10 111	01-13-10 111	01-13-10 180	01-12-10 191
TRM AMT	17,222.22	17,222.22	861.11	861.11
PRIN	.00	.00	.00	.00
INT	17,222.22	17,222.22	.00	.00
INS	.00	.00	.00	.00
DEALER	.00	.00	.00	.00
LAT CHG	.00	.00	861.11	861.11
FEES	.00	.00	.00	.00
PRN BAL	4000,000.00	4000,000.00	4000,000.00	4000,000.00
DUE DATE	03-01-10	02-01-10	01-01-10	01-01-10
ACCT: 750861849	PLUS:			

Submit Cancel

07-20-2010 14:44:09

Host Screen

July 14, 2010 1:59 PM

TC 532 270385700-

CIF SUMMARY LVL-1 PG- 1 DATE 07/14/10

ACTIONS- I=INQ M=MENU L=LIST

LAST F/M DT 00/00/00

999 TO CANCEL:

CLASS 010 - ACCOUNT INFORMATION

ACT	ACCOUNT NBR	PM	CK	TX	ST	PR	PY	ACCT	SHORT NAME	BALANCE	TAX ID
:	41-480875-4	21				21			HOTEL AND MOTEL	802,235.87	270385700
:	✓5-086184-9	20							HOTEL & MOTEL H	4,000,000.00	270385700

CLASS 085 - CFSIEBL FILE

ACT	ACCOUNT NUM	ADD#	COMPANY/LAST NAME	FIRST NAME
:			020 HOTEL & MOTEL HOLDINGS LLC	
:			021 HOTEL & MOTEL HOLDINGS LLC	

NEXT CLASS TO DISPLAY:

ENTER:

04/016

HOTEL
+
MOTEL

EXHIBIT FF

38
7-28-10 JSM

BORROWER'S SETTLEMENT STATEMENT

BORROWER: HOTEL & MOTEL HOLDINGS, LLC
 LENDER: FIRST PALMETTO SAVINGS BANK
 SETTLEMENT DATE: 6/30/2009
 PROPERTY LOCATION: 14 PROPERTIES LOCATED IN MYRTLE BEACH, SC

DEBITS

PRINCIPAL PAYOFF OF FIRST PALMETTO # 75-084095-9	5,000,000.00
--	--------------

CREDITS

PRINCIPAL AMOUNT OF NEW LOANS	4,750,000.00
TOTAL DUE FROM BORROWER	250,000.00
	<u>5,000,000.00</u>

BALANCE

BALANCE TO BORROWER	<u>0.00</u>
---------------------	-------------

APPROVED BY BORROWER

HOTEL & MOTEL HOLDINGS, LLC


 JACK H. JONES / SOLE MEMBER

EXHIBIT GG

DEPOSITION
EXHIBIT

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

RE:

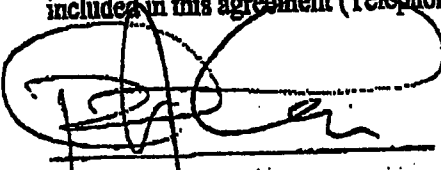
Mary Jones, occupant of 404 Chester Street (Main House), Myrtle Beach, SC 29577

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

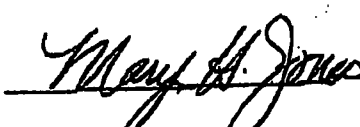
This is an Agreement between Patel Management on behalf of Americana Corporation (d/b/a Rainbow Court) and Mary Jones, Tina Corley and Lory Griffin ("Jerry Griffin").

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).

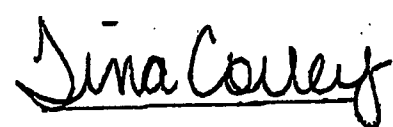

Buphendra Patel, Patel Management

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

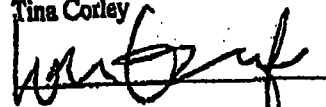
12.9.09
Date


Mary Jones

12-9-09
Date


Tina Corley

December 9, 2009
Date


Lory Griffin ("Jerry Griffin")

12-9-09
Date

TC
(17)

Robert L. Jones
WITNESS Robert Jones

Wilbur Jones (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.

[Signature]
NOTARY PUBLIC
M. E. Johnson
NOTARY PUBLIC
State of South Carolina
My Commission Expires 04/02/2018

mg (FC) (LG)

EXHIBIT HH

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

**GRANT OF OWNERSHIP INTEREST
CERTIFICATE**

BE IT HEREIN KNOWN THAT Donald D. Godwin, having fully complied with the requirements and conditions of being added as a fifty (50%) per cent member of HOTEL & MOTEL HOLDINGS, LLC, A South Carolina Limited Liability Company, HOTEL & MOTEL HOLDINGS, LLC hereby grants, bargains, sells and releases, unto the said Donald D. Godwin, fifty percent (50%) ownership interest in HOTEL & MOTEL HOLDINGS, LLC, which ownership interest includes all rights of a member and, without limiting, the foregoing "Financial Rights" and "Voting Rights"; subject, nevertheless, to the terms and conditions of the company's Operating Agreement and such additions, amendments, and modifications thereto made, the terms and conditions whereof are herein incorporated by reference as though set out verbatim.

DATED THIS 2nd DAY OF October, 2009.

Witnesses:

Bonnie Studley
Day R. Ridd

HOTEL & MOTEL HOLDINGS, LLC

By

Jack H. Jones
Individually and as Managing
Member for Hotel & Motel Holdings LLC

**DEPOSITION
EXHIBIT**

181
H.2 to JRM

EXHIBIT II

Hotel & Motel Holdings, LLC						
P.O. Box 1649						
Conway, SC 29528						
Recap of Deposits and Disbursements - Year Ended 12/31/10						
Check #	Date	Vendor / Deposit	Description	Amount Paid	Amount of Deposit	Cleared
	1/3/2010	Carry over Balance from 2009			8,357.58	X
1001	1/26/2010	Turner, Padgett, Graham & Laney, PA		3,371.57		X
	2/23/2010	(Deposit \$18,000.00 from Donald Godwin)			18,000.00	X
1002	2/23/2010	Turner, Padgett, Graham & Laney, PA		15,776.62		X
1003	2/23/2010	Domain Registry of America		50.00		X
	8/24/2010	(Deposit \$20,691.06 Reimbursement for attorney fees-First Palmiste Savings)			20,691.06	X
1004	8/24/2010	Donald Godwin		20,691.08		X
1005	10/20/2010	Al Allen for County Council		250.00		
				40,139.25	45,058.62	
Cash In Bank					4,919.37	

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HOTEL AND MOTEL HOLDINGS, LLC

☐ Plaintiff

v.

Bjc Enterprises, Llc, Wendy J. Bellamy, Americana,
Inc., Et Al

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-26-5743

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Audra M. Byrd, Esq., Bar No.

Address:

Turner Padget

PO Box 2116

Myrtle Beach, SC 29578

phone: 843-213-5500 fax: 843-213-5555

e-mail: abyrd@turnerpadget.com other:

Defendant's Attorney:

For Bjc Enterprises, Wendy Bellamy, Americana, Inc.

Kathryn M. Cook, Esq., Bar No. 1371

Address:

PO Box 4086

N. Myrtle Beach, SC 29597

phone: 843-663-1200 fax: 843-663-0364

e-mail: kcook@cookandroy.com other:

Attorneys for Defendant Mozingo & Wallace
Architects, LLC:

Scott B. Umstead, Esquire

4226 Mayfair Street, Suite 100

Myrtle Beach, SC 29578

Ph: (843) 913-4610 Fax: (843) 913-4612

Email: scottu@sc.rr.com

Attorneys for Defendants Kersi S. Shroff and Shroff
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Susan P. MacDonald, Esquire

Nelson Mullins Riley & Scarborough, LLP

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Myrtle Beach, SC 29578-3939

Ph: (843) 946-5654 Fax: (843) 448-3437

Email: susan.macdonald@nelsonmullins.com

Attorney for First Palmetto Savings Bank, FSB:

William H. Short, Esq.

Haynsworth Sinkler Boyd, PA

PO Box 11889

Columbia, SC 29211

Phone: 803-540-7823 Fax: 803-765-1243

Email: bshort@hsblawfirm.com

Attorney for Bhupendra Patel:

William W. DesChamps, Jr., Esq.

DesChamps Law Firm

PO Box 2402

Myrtle Beach, SC 29578

Phone: 448-2391 Fax: 448-3308

Email: wwd@sc.rr.com

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration of Order Granting Summary Judgment to Plaintiff as to Defendants' Counterclaims

Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

SECTION III: Motion Fee

- ☒ **PAID – AMOUNT: \$25.00**
☐ **EXEMPT:** (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

Date Filed:

☐ MOTION FEE COLLECTED:

☐ CONTESTED – AMOUNT DUE:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

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

PAID

HORRY COUNTY
11 JUL - 7 AM 11:58
CLERK OF COURT

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' Motion for Reconsideration of
Order Granting Summary Judgment to
Plaintiff as to Defendants' Counterclaims

HORRY COUNTY
11 JUN - 9 AM 10:36
CLERK OF COURT
CLOCK IN TIME CANCELLED

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: AUDRA M. BYRD, ESQ. and R. WAYNE BYRD, ESQ., Attorneys for Plaintiff Hotel and Motel Holdings, LLC and Third-Party Defendants Donald D. Godwin and Jack Jones; SUSAN P. MACDONALD, ESQ., Attorney for Defendants Kersi S. Shroff and Shroff Management, Inc.; SCOTT B. UMSTEAD, ESQ., Attorney for Mozingo & Wallace Architects, LLC; WILLIAM W. DESCHAMPS, JR., ESQ., Attorney for Third-Party Defendant Bhupendra Patel; and WILLIAM H. SHORT, ESQ., Attorney for First Palmetto Savings Bank, F.S.B.

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the
Honorable William Henry Seals, Jr., at the Horry County Courthouse, in Conway, South

Carolina, within ten days hereafter or as soon thereafter as counsel may be heard for reconsideration of his Order signed June 1, 2011, received by Defendants' counsel via email on June 1, 2011, but not yet filed with the Court of Common Pleas of Horry County, South Carolina. A copy of that Order is attached hereto. This Motion for Reconsideration is made pursuant to Rule 52(b) and Rule 59(e) of the South Carolina Rules of Civil Procedure.

Given the unusual posture of this case for trial, there are multiple claims and parties involved in this litigation and the remaining claims by Hotel and Motel Holdings and defenses of BJC, Americana, and Wendy Bellamy are scheduled first for trial on Monday, June 6, 2011, Defendants file this Motion to Reconsider preserving their rights to supplement this motion within ten days of the service of the filed Order. Further, and without waiving their rights to have reconsidered the matters contained in this Motion and any Supplemental Motion to Reconsider and Memorandum In Support as shall hereafter be filed, Defendants maintain that the portion of the case remaining for trial to begin June 6, 2011 should be continued until this Motion, Supplemented Motion, and/or Memorandum In Support thereof have been filed and can be heard by the Court as provided under the South Carolina Rules of Civil Procedure.

Subject to the above, Defendants request that the Court amend its Order and find that when viewed in the light most favorable to Defendants the evidence yields more than one inference and/or inferences are in doubt and constitute factual issues with regard to the counterclaims asserted by Defendants against Plaintiff H&M. The counterclaims of Defendants against H&M upon which the Court granted summary judgment are:

1. Breach of Contract;
2. Fraud;
3. Breach of Contract Accompanied by Fraud;

4. Civil Conspiracy;
5. Conversion;
6. Violations of the Unfair Trade Practices Act;
7. Interference with Contract; and
8. Emotional Distress/Outrage.

The grounds for this Motion to Reconsider include, but are not limited to, that the Court erred as follows:

1. In finding that the only fraud alleged in this matter related to events in January, 2008.
2. In finding that there was no evidence or factual issues that H&M breached its contractual duty of good faith and fair dealing, committed fraud, breached its contract with fraud, or was part of a conspiracy given the evidence in the record that:
 - Bank and Jones, and thus H&M, were aware of Defendant Bellamy's suicide attempt after the meeting with Bank in October, 2008 to discuss renewal of the BJC loan.
 - Bank made an offer to renew the BJC loan and sent it to an address where it knew Bellamy, BJC, and Americana would not receive the letter and/or it would be intercepted by H&M's sole member, Jones.
 - Bank was provided by Jack Jones an unrecorded copy of Ms. Bellamy's Power of Attorney in his favor as soon as it had been signed by Ms. Bellamy between December 9, 2008 and December 15, 2008.
 - Bank, Jones and H&M discussed confidential information concerning the BJC loan with third parties prior to the loan being in default and Bank employees

were instructed to stop discussing the loan with others and prohibited from discussing the loan with BJC members.

- Jones and Bank fraudulently represented to BJC, and the owners of the additional security, Wendy Bellamy, Harvey Jones, Tripp Coan, and Americana, that they were renegotiating a renewal of the BJC loan from December, 2008, through May, 2009, but were, in fact, planning a sale of the BJC loan to Jones and/or H&M to occur after Jones caused BJC to default in May, 2009 and after Bank instituted this foreclosure action on the properties serving as collateral.
- The evidence of this plan of Bank and Jones, individually and as sole member of H&M, to cause the default under the BJC loan includes the cell phone telephone records of Sammy Small, Sr. reflecting the dates and times of calls to Jack Jones, the Privilege Log of the Haynsworth Firm reflecting it was hired by Bank to draft the Loan Sale Agreement between Bank and H&M on March 26, 2009, Jack Jones installing Bhupendra Patel in March, 2009 as manager over the properties to control all of the income that should have been used to make the \$150,000.00 May 31, 2009 payment to Bank.
- Jones and H&M placing Patel in control of the properties and making Bank aware of the same as a result of the meeting of Sammy Small, Sr. at the Bank in Camden in March, 2009 with Jones, Bellamy and Patel and Patel's opening of the checking accounts at First Palmetto with Patel as the only signatory.
- The creation as of April 16, 2008 of the draft Loan Sales Agreement for the sale of the BJC Loan to H&M anticipating that the parties would cause the

default by BJC on May 31, 2009, Bank would immediately file this foreclosure, Bank and H&M would then close on the Loan Sale Contract in June, 2009, and thereafter substitute H&M as Plaintiff in the foreclosure.

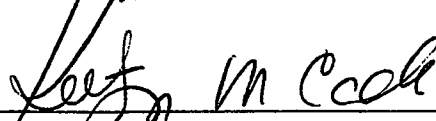
- Patel's use of revenue from the operation of the motels so as to not have it available for the May 31, 2009 Bank payment and failure to advise the members of BJC, Americana, and Bellamy that he had not made that payment or was in need of cash contributions from the members to make that payment.
- Bank's failure to send notice of default or opportunity to cure said default prior to filing the three guaranty actions dated June 3, 2009 and this foreclosure action against Defendants dated June 9, 2009.
- Formation of Hotel and Motel Holdings, LLC on June 12, 2009 with Jack Jones as its sole member and no capitalization of the corporation.
- Execution of the Loan Sale Agreement by Bank and H&M on June 24, 2009 and the agreement to fund a \$4,750,000.00 loan to H&M to accomplish closing on June 30, 2009.
- Funding of a \$4,750,000.00 loan by Bank to H&M without requiring its usual underwriting information from borrower, including a financial statement, credit report, tax returns of the new corporation or its principal, proof of the corporation's income stream, and without requiring any personal guarantee of Jack Jones for the loan.
- The terms of the Loan Sales Agreement which survived the closing by H&M.
- Seeking to have H&M substituted as Plaintiff in the foreclosure action on July 7, 2009 and Bank paying all of H&M's attorney fees in this litigation.

- H&M seeking to have Patel appointed as receiver during pendency of this action which the Court denied.
 - H&M's continued control over the properties after a receiver was appointed.
3. In finding that there were no issues of fact or inferences that could be drawn from the evidence in the record as outlined above and as will be further referenced in Defendants' Memorandum that the acts of Bank, and thus H&M, and H&M after its purchase of the BJC loan towards Bellamy, BJC, and Americana from which a jury could find a violation of the South Carolina Unfair Trade Practices Act and/or acts and omissions that were so outrageous as to constitute emotional distress and/or outrage.
4. In finding that there was no evidence or factual issues as to the drafting of legal documents including the 2008 BJC Note, the three 2008 Mortgage Modifications, and three Guaranty Agreements by Bank without an attorney such that a factual issue was created from which the fact finder could determine the Bank engaged in the unauthorized practice of law preventing Bank and H&M, as assignee of the Bank, from foreclosing on the collateral as a result of unclean hands.

Based on the foregoing and reserving the right to supplement this Motion to Reconsider within ten days of receipt of the Court's filed Order, Defendants respectfully request that the Court find that a great deal more than a scintilla of evidence is in the record creating issues of fact and/or yielding more than one inference such that Third-Party Defendant Bank's Motion for Summary Judgment must be denied.

Respectfully Submitted,

Cook & Roy, LLC



Kathryn M. Cook, Esquire

SC Bar No.: 1371

Post Office Box 4086

North Myrtle Beach, SC 29597

Phone: 843-663-1200

Fax: 843-663-0364

Email: kcook@cookandroy.com

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: June 3, 2011

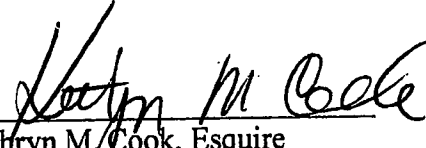
North Myrtle Beach, SC

RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- _____ A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- _____ B. Such consultation would serve no useful purpose, or could not be timely held; or
- X C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
- _____ a. To Dismiss
- _____ b. For Summary Judgment
- _____ c. For New Trial
- _____ d. For Judgment NOV

COOK AND ROY, LLC


Kathryn M. Cook, Esquire
Post Office Box 4086
North Myrtle Beach, SC 29597
Phone: (843)663-1200

June 3 , 2011

North Myrtle Beach, South Carolina.

MYRTLE BEACH COUNTY
11 JUL -7 AM 11:58
CLERK OF COURT

MYRTLE BEACH COUNTY
11 JUN -6 PM 10:36
CLERK OF COURT
CLOCKED IN TIME CANCELLED

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HOTEL AND MOTEL HOLDINGS, LLC

☐ Plaintiff

v.

Bjc Enterprises, Llc, Wendy J. Bellamy, Americana,
Inc., Et Al

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-26-5743

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

PAID

Plaintiff's Attorney:

Audra M. Byrd, Esq., Bar No.

Address:

Turner Padget

PO Box 2116

Myrtle Beach, SC 29578

phone: 843-213-5500 fax: 843-213-5555

e-mail: abyrd@turnerpadget.com other:

Defendant's Attorney:

For Bjc Enterprises, Wendy Bellamy, Americana, Inc.

Kathryn M. Cook, Esq., Bar No. 1371

Address:

PO Box 4086

N. Myrtle Beach, SC 29597

phone: 843-663-1200 fax: 843-663-0364

e-mail: kcook@cookandroy.com other:

Attorneys for Defendant Mozingo & Wallace
Architects, LLC:

Scott B. Umstead, Esquire

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Myrtle Beach, SC 29578

Ph: (843) 913-4610 Fax: (843) 913-4612

Email: scottu@sc.rr.com

Attorneys for Defendants Kersi S. Shroff and Shroff
Management, Inc.:

Susan P. MacDonald, Esquire

Nelson Mullins Riley & Scarborough, LLP

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Myrtle Beach, SC 29578-3939

Ph: (843) 946-5654 Fax: (843) 448-3437

Email: susan.macdonald@nelsonmullins.com

Attorney for First Palmetto Savings Bank, FSB:

William H. Short, Esq.

Haynsworth Sinkler Boyd, PA

PO Box 11889

Columbia, SC 29211

Phone: 803-540-7823 Fax: 803-765-1243

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Attorney for Bhupendra Patel:

William W. DesChamps, Jr., Esq.

DesChamps Law Firm

PO Box 2402

Myrtle Beach, SC 29578

Phone: 448-2391 Fax: 448-3308

Email: wwd@sc.rr.com

FILED
CLERK OF COURT
JUL - 7 AM 11:58
Horry County

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration of Order Granting Summary Judgment on Third-Party Claims
 Against First Palmetto Savings Bank

Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

- ☒ **PAID – AMOUNT: \$25.00**
☐ **EXEMPT:** (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by:

JAKB

Date Filed:

6/6/11

- ☐ MOTION FEE COLLECTED: *25.00*
☐ CONTESTED – AMOUNT DUE:

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)

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)

Defendants' Motion for Reconsideration of
Order Granting Summary Judgment on
Third-Party Claims Against First Palmetto
Savings Bank, F.S.B.

TO: WILLIAM H. SHORT, ESQ., Attorney for First Palmetto Savings Bank, F.S.B.;
AUDRA M. BYRD, ESQ. and R. WAYNE BYRD, ESQ., Attorneys for Plaintiff Hotel
and Motel Holdings, LLC and Third-Party Defendants Donald D. Godwin and Jack
Jones; SUSAN P. MACDONALD, ESQ., Attorney for Defendants Kersi S. Shroff and
Shroff Management, Inc.; SCOTT B. UMSTEAD, ESQ., Attorney for Mozingo &
Wallace Architects, LLC; and WILLIAM W. DESCHAMPS, JR., ESQ., Attorney for
Third-Party Defendant Bhupendra Patel

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the
Honorable William Henry Seals, Jr., at the Horry County Courthouse, in Conway, South

Carolina, within ten days hereafter or as soon thereafter as counsel may be heard for reconsideration of his Order signed June 1, 2011, received by Defendants' counsel via email on June 1, 2011, but not yet filed with the Court of Common Pleas of Horry County, South Carolina. A copy of that Order is attached hereto. This Motion for Reconsideration is made pursuant to Rule 52(b) and Rule 59(e) of the South Carolina Rules of Civil Procedure.

Given the unusual posture of this case for trial, there are multiple claims and parties involved in this litigation and the remaining claims by Hotel and Motel Holdings and defenses of BJC, Americana, and Wendy Bellamy are scheduled first for trial on Monday, June 6, 2011, Defendants file this Motion to Reconsider preserving their rights to supplement this motion within ten days of the service of the filed Order. Further, and without waiving their rights to have reconsidered the matters contained in this Motion and any Supplemental Motion to Reconsider and Memorandum In Support as shall hereafter be filed, Defendants maintain that the portion of the case remaining for trial to begin June 6, 2011 should be continued until this Motion, Supplemented Motion, and/or Memorandum In Support thereof have been filed and can be heard by the Court as provided under the South Carolina Rules of Civil Procedure.

Subject to the above, Defendants request that the Court amend its Order and find that when viewed in the light most favorable to Defendants the evidence yields more than one inference and/or inferences are in doubt and constitute factual issues with regard to the third-party claims asserted by Defendants against Third-Party Defendant First Palmetto Savings Bank, F.S.B. The third-party claims of Defendants against Bank upon which the Court granted summary judgment are:

1. Breach of Contract;
2. Fraud;

3. Breach of Contract Accompanied by Fraud;
4. Civil Conspiracy;
5. Conversion;
6. Violations of the Unfair Trade Practices Act; and
7. Emotional Distress/Outrage.

The grounds for this Motion to Reconsider include, but are not limited to, that the Court erred as follows:

1. In finding that any third-party claims asserted by Defendants against the Bank were stricken by the prior Order dated October 15, 2010. The Court mistakenly believed that Defendants' claims against Bank for fraud, conversion, violations of Unfair Trade Practices Act, and emotional distress/outrage had been stricken when the same were not stricken by the Order of October 15, 2010.
2. In finding that the only claims remaining by Defendants/Third-Party Plaintiffs BJC, American, and Bellamy were limited to breach of contract, breach of contract accompanied by fraud, and civil conspiracy against the Bank in deciding the Bank's motion for summary judgment.
3. In finding that there was no evidence or factual issues that Bank breached its contractual duty of good faith and fair dealing, committed fraud, breached its contract with fraud, or was part of a conspiracy given the evidence in the record that:
 - Bank was aware of Defendant Bellamy's suicide attempt after the meeting with Bank in October, 2008 to discuss renewal of the BJC loan.
 - Bank thereafter sent an offer to renew the BJC loan to an address where it knew Bellamy, BJC, and Americana would not receive the letter.

- Bank was provided by Jack Jones an unrecorded copy of Ms. Bellamy's Power of Attorney in his favor as soon as it had been signed by Ms. Bellamy between December 9, 2008 and December 15, 2008.
- Bank discussed confidential information concerning the BJC loan with third parties prior to the loan being in default and had to reprimand Bank employees to stop discussing the loan with others and prohibited them from discussing the loan with BJC members.
- Bank fraudulently represented to BJC, and the owners of the additional security, Wendy Bellamy, Harvey Jones, Tripp Coan, and Americana, that it was renegotiating a renewal of the BJC loan from December, 2008, through May, 2009, but was, in fact, planning with Jack Jones a sale of the BJC loan to him or H&M to occur after Jones caused BJC to default in May, 2009 and Bank had instituted this foreclosure action on the properties serving as collateral.
- The evidence of this plan of Bank and Jones to cause the default under the BJC loan includes the cell phone telephone records of Sammy Small, Sr. reflecting the dates and times of calls to Jack Jones, the Privilege Log of the Haynsworth Firm reflecting it was hired by Bank to draft the Loan Sale Agreement between Bank and Jack Jones and H&M on March 26, 2009, Jack Jones installing Bhupendra Patel in March, 2009 as manager over the properties to control all of the income that should have been used to make the \$150,000.00 May 31, 2009 payment to Bank.

- That Bank was aware Jones had placed Patel in control of the properties as a result of the meeting of Sammy Small, Sr. at the Bank in Camden in March, 2009 with Jones, Bellamy and Patel and Patel's opening of the checking accounts at First Palmetto with Patel as the only signatory.
- Bank obtaining from its lawyers on April 16, 2008 the draft Loan Sales Agreement for the sale of the BJC Loan to Jones or H&M anticipating that Jones would cause the default by BJC on May 31, 2009 and Bank would immediately file a foreclosure suit, close on the Loan Sale Contract in June, 2009 to H&M, and then substitute H&M as Plaintiff in the foreclosure.
- Patel's use of revenue from the operation of the motels so as to not have it available for the May 31, 2009 Bank payment and failure to advise the members of BJC, Americana, and Bellamy that he had not made that payment or was in need of cash contributions from the members to make that payment.
- Bank's failure to send notice of default or opportunity to cure said default prior to filing the three guaranty actions dated June 3, 2009 and this foreclosure action dated June 9, 2009 as part of its plan with H&M and Jones.
- Formation of Hotel and Motel Holdings, LLC on June 12, 2009 with Jack Jones as its sole member and no capitalization of the corporation.
- Execution of the Loan Sale Agreement by Bank and H&M on June 24, 2009 and agreement to fund a \$4,750,000.00 loan to H&M to accomplish closing on June 30, 2009.
- Funding of a \$4,750,000.00 loan by Bank to a new corporation, H&M, without requiring its usual underwriting information from borrower, including

a financial statement, credit report, tax returns of the new corporation or its principal, proof of the corporation's income stream, and without requiring any personal guarantee of Jack Jones for the loan.

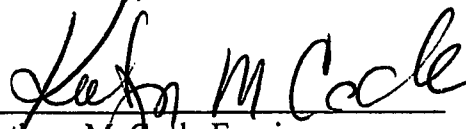
- Bank seeking to have H&M substituted as Plaintiff in the foreclosure action on July 7, 2009 and paying all of H&M's attorney fees in this litigation.
 - The terms of the Loan Sales Agreement which survived the closing by H&M.
 - H&M seeking to have Patel appointed as receiver during pendency of this action which the Court denied.
4. In finding that there were no issues of fact or inferences that could be drawn from the evidence in the record as outlined above and as will be further referenced in Defendants' Memorandum that the acts of Bank towards Bellamy, BJC, and Americana from which a jury could find a violation of the South Carolina Unfair Trade Practices Act by Bank and/or acts and omissions that were so outrageous as to constitute emotional distress and/or outrage.
5. In finding that there was no evidence or factual issues as to the drafting of legal documents including the 2008 BJC Note, the three 2008 Mortgage Modifications, and three Guaranty Agreements by Bank without an attorney such that a factual issue was created from which the fact finder could determine the Bank engaged in the unauthorized practice of law preventing Bank and H&M, as assignee of the documents, from foreclosing on the collateral as a result of unclean hands.

Based on the foregoing and reserving the right to supplement this Motion to Reconsider within ten days of receipt of the Court's filed Order, Defendants respectfully request that the Court find that a great deal more than a scintilla of evidence is in the record creating issues of fact and/or

yielding more than one inference such that Third-Party Defendant Bank's Motion for Summary Judgment must be denied.

Respectfully Submitted,

Cook & Roy, LLC

A handwritten signature in black ink, appearing to read 'Kathryn M. Cook', is written over a horizontal line.

Kathryn M. Cook, Esquire

SC Bar No.: 1371

Post Office Box 4086

North Myrtle Beach, SC 29597

Phone: 843-663-1200

Fax: 843-663-0364

Email: kcook@cookandroy.com

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: June 3, 2011

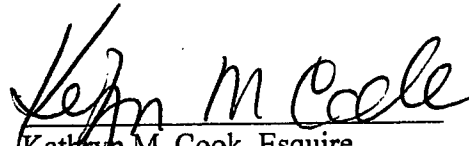
North Myrtle Beach, SC

RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- _____ A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- _____ B. Such consultation would serve no useful purpose, or could not be timely held; or
- X C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
- _____ a. To Dismiss
- _____ b. For Summary Judgment
- _____ c. For New Trial
- _____ d. For Judgment NOV

COOK AND ROY, LLC


Kathryn M. Cook, Esquire
Post Office Box 4086
North Myrtle Beach, SC 29597
Phone: (843)663-1200

June 3 , 2011

North Myrtle Beach, South Carolina.

MYRTLE BEACH COUNTY
CLERK OF COURT
11 JUL -7 AM 11:58

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Hotel and Motel Holdings, LLC,)

Plaintiffs)

v.)

BJC Enterprises, LLC, Wendy J. Bellamy,)
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Architects, LLC, Kersi S. Shroff, and)
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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 SUPPORT OF
DEFENDANTS' MOTION FOR
RECONSIDERATION OF ORDER
GRANTING SUMMARY JUDGMENT TO
HOTEL AND MOTEL HOLDINGS, LLC
ON DEFENDANTS' COUNTERCLAIMS

FILED
JUN 21 AM 8:19
CLERK OF COURT

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In the interest of brevity, Defendants incorporate their 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, including all of the facts, arguments, and statements of law included therein along with all exhibits attached thereto into this Memorandum.

STATUS OF PLEADINGS

Pursuant to the Order of the Honorable William Henry Seals, Jr. which granted Hotel and Motel Holdings, LLC's (hereafter "H&M") motion for summary judgment as to the counterclaims of Defendants BJC, Enterprises, LLC, Americana, Inc., and Wendy Bellamy, there are currently no pending counterclaims against H&M.

SUMMARY JUDGMENT 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. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. See Bovain v. Canal Ins., 678 S.E.2d 422 (2009). 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). The "scintilla of evidence rule" requires that even if the slightest amount of relevant evidence exists on an issue, a motion for summary judgment must be denied and the issue must go before a jury." See Bryan A. Garner, Black's Law Dictionary, definition of "scintilla of evidence rule" (Abridged 8th Ed., 2005). In this case, there are a multitude of factual issues requiring denial of both H+M's motion

for summary judgment and First Palmetto Savings Bank, F.S.B.'s motion for summary judgment.

LEGAL ARGUMENT

I. THE COURT HAS FOUND THAT THERE IS A FACTUAL DISPUTE AS TO H&M'S STATUS AS A HOLDER IN DUE COURSE SUCH THAT THE DEFENSES AND THIRD-PARTY CLAIMS AGAINST THE BANK ARE VIABLE AGAINST H&M PRECLUDING SUMMARY JUDGMENT.

As this Court indicated in its Order denying H&M summary judgment as to Defendants' defenses to the foreclosure, questions of fact exist regarding H&M's status as a "holder in due course" and other defenses such that summary judgment was not appropriate. The Court held that questions of fact exist as to whether H&M is a holder in due course and H&M has not met its burden of establishing itself as the same. In South Carolina, one that is not a holder in due course takes an instrument subject to all real and personal defenses, including defenses that would be available in a simple contract action and claims in recoupment. Defendants' defenses, counterclaims, and third-party claims are claims in recoupment, as the same "grow out of the identical transaction that gave rise to the Plaintiff's cause of action." See Mullins Hospital v. Squires, 233 S.C. 186, 104 S.E.2d 161, 166 (1958). Pursuant to this Court's holding that H&M has not met its burden to establish itself as a holder in due course, H&M took the BJC 2008 note and mortgages subject to Third-Party Plaintiffs' claims and defenses against Bank, including breach of contract, breach of contract with fraud, fraud, civil conspiracy, conversion, South Carolina Unfair Trade Practices Act, and intentional infliction of emotional distress.

II. THIRD-PARTY CLAIMS ASSERTED BY DEFENANTS/THIRD-PARTY PLAINTIFFS AGAINST BANK WERE NOT STRICKEN BY JUDGE JOHN'S

**OCTOBER 15, 2010 ORDER AND SINCE H&M IS NOT A HOLDER IN DUE
COURSE, H&M TAKES THE BJC NOTE SUBJECT TO THIRD-PARTY
PLAINTIFFS' CLAIMS AND DEFENSES AGAINST BANK WITH REGARD TO
THE SAME.**

The Honorable Judge Steven H. John's Order, titled Order Granting in Part and Denying in part Motions to Dismiss Filed on Behalf of Third Party-Defendants Jack Jones, Donald Godwin, and Bhupendra Patel, and dated October 15, 2010, is attached hereto as Exhibit A. The title of the Order speaks for itself: the Order memorialized Judge John's ruling with regard to motion's to dismiss filed by Jack Jones, Donald Godwin, and Bhupendra Patel and, importantly, not Bank. Bank did not file a motion to dismiss the third-party claims against it, and thus, the Court did not rule on any claims against the Bank. The Court specifically stated the same at the hearing.

A review of Judge John's Order shows that the third-party claims against Bank for breach of contract, fraud, breach of contract with fraud, civil conspiracy, conversion, South Carolina Unfair Trade Practices Act, and intentional infliction of emotional distress were not dismissed. The Order states that "[i]n determining whether there exists a proper third-party claim, the Court must determine whether Third-Party Plaintiffs have causes of action against Godwin, Jones, and Patel that would impose liability upon Third-Party Defendants for all or part of Plaintiff Hotel and Motel Holdings' claim for foreclosure." See Exhibit A, Judge John's Order, pg. 6, Ln. 6 (emphasis added). In fact, the motions filed by counsel for Jones and Godwin and for Patel only sought to strike cause of action against their respective clients. See Motion to Dismiss and Strike Third Party Complaint on Behalf of Jack Jones and Donald Godwin; See also Third-Party Defendant Patel's Motion to Dismiss and/or Strike Third-Party Complaint.

While it might appear at first glance that Judge John's Order strikes Third-Party causes of action for fraud and unfair trade practices, the same is not possible. The causes of action against Godwin and Patel, as initially alleged by Third-Party Plaintiffs, were civil conspiracy, conversion, interference with a contractual relationship, and intentional infliction of emotional distress. See Judge John Order, pg. 3, Ln. 17-23. The same causes of action were also alleged against Jones, along with a cause of action for breach of fiduciary duty. *Id.* at pg.3, Ln. 23; pg. 4, Ln. 1-2. Fraud and unfair trade practices were not alleged against Patel, Godwin, and/or Jones and thus, the same could not have been stricken against them. Bank did not file a motion to strike. Therefore, all claims against Bank must stand, as at the hearing Judge John explicitly declined to strike causes of action against Bank. The transcript from the motion hearing before Judge John will clearly show that Judge John was not ruling upon any causes of action pending against Bank. The transcript is currently being prepared by the court reporter and Defendants reserve the right to supplement this memorandum with the same once it is received.

Also, Judge John's Order clearly does not strike the intentional infliction of emotional distress or conversion causes of action against Bank. Nowhere within Judge John's Order are these causes of action, as they pertain to Bank, stricken. Any contention to the contrary is clearly without merit and constitutes a gross misstatement of the facts and an incomprehensible reading of Judge John's Order. Thus, H&M is subject to all claims and defenses that Third-Party Plaintiffs/Defendants have set forth with regard to the BJC note and mortgages, including those alleged against Bank, which are breach of contract, fraud, breach of contract with fraud, civil conspiracy, conversion, South Carolina Unfair Trade Practices Act violations, and intentional infliction of emotional distress.

III. DEFENDANT/THIRD-PARTY PLAINTIFFS MET THEIR BURDEN OF PRODUCING A MERE SCINTELLA OF EVIDENCE TO SUPPORT A BREACH OF CONTRACT CLAIM AGAINST BANK, AND THEREFORE, SINCE H&M STANDS IN THE SHOES OF BANK WITH REGARD TO THE NOTE, GIVEN THAT IT MAY BE DETERMINED THAT H&M IS NOT A HOLDER NOT IN DUE COURSE, DEFENDANT/THIRD-PARTY PLAINTIFFS HAVE ALSO MET THEIR BURDEN OF ESTABLISHING A BREACH OF CONTRACT CLAIM AGAINST H&M.

Third-party Plaintiffs specifically re-allege all of the facts and allegations contained in their Memorandum in Opposition to Summary Judgment. At the outset, it is noted that the Court, in its Order denying Plaintiff's motion for summary judgment, specifically found that "[w]hether or not Defendants were on notice as required by the terms of the note and mortgage gives rise to a genuine issue of material fact." See Order Denying Motion for Summary Judgment on Behalf of Plaintiff Hotel & Motel Holdings, LLC, Pg. 3, Ln. 15-16 (emphasis added). Defendants/Third-Party Plaintiffs specifically pled lack of notice as an affirmative defense. See Amended Answer, Counterclaims, and Third-Party Claims, Pg. 10. They also specifically re-alleged their lack of notice claims and incorporated the same within their breach of contract claim against Bank and H&M. See Amended Answer, Counterclaims, and Third-Party Complaint, Pg. 14. Rather than reasserting the same arguments previously stated within the pleadings regarding lack of notice, Defendants/Third-Party Plaintiffs incorporated those allegations within the breach of contract claim. This was done in the interest of succinctness, brevity, and for the convenience of opposing counsel and the Court.

The South Carolina Rules of Civil Procedure and the South Carolina courts have a policy of liberally construing pleadings. Pursuant to the South Carolina Rules of Civil Procedure, [a]ll pleadings shall be construed as to do substantial justice to all parties. S.C.R.C.P. 8(f). In order to do substantial justice to the parties, the pleadings are to be liberally construed. See Gaskins v. S. Farm Bureau Cas. Ins. Co., 343 S.C. 666, 541 S.E.2d 269, 271 (Ct.App.2000) (*affirmed as modified on other grounds* 354 S.C. 416 (2003)). "If facts alleged are broad enough to warrant relief, it matters not how narrow the specific prayer may be if the bill contains specific prayer for general relief." Mortgage Loan Co. v. Townsend, 156 S.C. 203, 152 S.E. 878, 886 (1930). With the South Carolina Rules of Civil Procedure and the aforementioned case law in mind, it is clear that Defendants/Third-Party Plaintiffs' breach of contract claims against Bank and H&M include claims based upon lack of notice. Not only was lack of notice specifically pled elsewhere, but it was also specifically incorporated into the breach of contract cause of action. Since the Court has found that material issues of fact are outstanding with regard to notice, and since the issue of notice and the right to cure are contractual obligations and rights of the parties contained within the note and mortgages, the Court must hold that there is a material issue of fact as to whether or not Bank breached its contract with Third-Party Plaintiffs and thus subject H&M to that counterclaim since H&M may be found not to be a holder in due course.

Additionally, Defendants have produced, at a minimum, a mere scintilla of evidence indicating that Bank breached its duty of good faith and fair dealing. Bank was aware that Bellamy had attempted suicide in early November, 2008. See Small, Sr., Dep., Pg. 126. Additionally, due to Bank's long lending history and extensive contacts with Defendants/Third-Party Plaintiffs, Bank was well aware that the properties were closed after Labor Day. See Small, Sr. Dep., Pgs. 169-170. Despite this fact, Bank sent a letter, dated November 24, 2008, offering

Defendants/Third-Party Plaintiffs have produced facts from which a jury could find that Bank breached the terms of the contract along with the duty of good faith and fair dealing included in the same. The evidence meets this threshold standard and Defendants/Third-Party Plaintiffs respectfully request that this Court reconsider its Order granting H&M and Bank summary judgment on Defendant/Third-Party Plaintiff's breach of contract counterclaim.

IV. DEFENDANTS HAVE MET THEIR BURDEN OF PRODUCING MORE THAN A MERE SCINTILLA OF EVIDENCE AS TO THEIR CLAIM FOR BREACH OF CONTRACT WITH FRAUD AND SINCE H&M STANDS IN THE SHOES OF BANK WITH REGARD TO THE NOTE, DEFENDANTS HAVE MET THEIR BURDEN OF ESTABLISHING A COUNTERCLAIM FOR BREACH OF CONTRACT AGAINST H&M.

Defendants/Third-Party Plaintiffs specifically re-allege the facts and allegations set forth in their Memorandum in Opposition to the Motions for Summary Judgment and in the above argument relating to the breach of contract claim. Third-Party Plaintiffs have already shown that they produced issues of fact regarding their breach of contract claim. In order to prevail on an action for breach of contract with fraud, a party must show a breach of contract, fraudulent intent related to the breach, and a fraudulent act related to the breach. See RoTec Services, Inc. v. Encompass Services, Inc., 359 S.C. 467, 597 S.E.2d 881 (Ct.App. 2004). A fraudulent act is broadly defined as one characterized by dishonesty in fact or unfair dealing. *Id.* A mere scintilla of evidence has been set forth, as indicated, with regard to the breach of contract.

Defendants/Third-Party Plaintiffs have produced evidence indicating Bank breached the contract with fraudulent intent, which subjects H&M to this claim if it is found that H&M is not a holder in due course. As discussed previously, Bank indicated to BJC members that it was

negotiating an extension of the loan, one condition of which required a \$150,000 payment to be made by May 31, 2009. Such representation was false, as Bank had no intention of extending the loan with BJC, as evidenced by the phone calls between Jack Jones and Small, Sr., the Loan Sales Agreement drafted while BJC was still current on the loan as reflected by Bank's privilege log, and the installation of Patel over the properties and the revenues derived therefrom. See Exhibits D, E, and F. The representation regarding the loan renewal was material, because if the loan were not renewed, the note would be accelerated and BJC could not afford to pay the note off, which would in turn lead to foreclosure and this is precisely what occurred. Bank knew that it was not going to renew the loan with BJC, as it continued to formulate its plan to sell the loan documents to Jack Jones and participated in the installation of Patel as manager, effectively taking the revenue stream out of the control of BJC and along with it, the ability to pay the \$150,000 payment due May 31, 2009. Bank intended that BJC rely on its representation that the loan would be extended and in fact Small, Sr. told Bellamy what BJC needed to do to reinstate and extend the loan. See Small, Sr. Dep., Pg. 145-148; Bellamy Dep., Pg. 92-96. Bellamy and BJC had no knowledge that Bank actually intended to sell the loan to Jack Jones and or his assigns (H&M) and that Bank would require the installation of Patel as manager of the properties, who was under Jones's control, rendering payment impossible. Defendants relied on these statements regarding the loan extension by Bank, and in fact delivered \$95,000 to Bank and paid off the 2008 real estate taxes as requested by Bank on February 4, 2009. See Exhibits G and H. Bellamy had a right to rely on Bank's statements regarding the note, pursuant to their lending relationship with Bank and pursuant to conversations with Bank President Small, Sr. There is no question BJC suffered damages as a result of Bank's fraudulent intent, the loan was not worked out, the properties are riled in a foreclosure action, and Defendants' livelihood as

hoteliers is on the line. All of the above, along with the other evidence produced with the Memorandum in Opposition to Bank's and Plaintiff's Motion for Summary Judgment, assert, at a minimum, a mere scintilla of evidence that Bank acted with a fraudulent intent related to the breach and committed fraudulent acts related to the breach.

Defendants have met their burden of establishing a mere scintilla of evidence related to their breach of contract with fraud cause of action. This Court should reconsider its grant of summary judgment in favor of H&M as it relates to this counterclaim and should allow this counterclaim to go before a jury.

V. DEFENDANTS PLED SPECIAL DAMAGES SUFFICIENT TO SUPPORT A COUNTERCLAIM FOR CIVIL CONSPIRACY

Defendants are entitled to a liberal construction of their pleadings. The Court did not make a ruling about the sufficiency of the allegations regarding civil conspiracy as to Bank and H&M. Rather, the Court indicated that special damages were not pled and the only damages that were pled related to all other causes of action. A careful review of the pleadings reveals that special damages were pled, apart and separate from the other causes of action.

Defendants allege that in furtherance of the conspiracy, Jones, Godwin, Patel, and Bank sought to divert the income of the properties, install Patel as manager with control over the properties and revenues derived therefrom, shut Bellamy out of the management of the properties, and effectively render it impossible to pay \$150,000, due May 31, 2009, have Bank file a foreclosure action, facilitate the formation of H&M, sell the note and mortgages to H&M, and substitute H&M as party in the foreclosure action. See Amended Answer, Counterclaims, and Third-Party Complaint, Paragraphs 26-30, 34. Defendants allege that Third-Party Defendants entered into a conspiracy to "deprive, steal, and take property...under the guise of a

foreclosure action...prosecuted by H&M," as set forth above. See Amended Answer, Counterclaims, and Third-Party Complaint, Paragraph 113. In Paragraph 115 of the Amended Answer, Third-Party Plaintiffs specifically alleged that they had suffered special damages. The special damages suffered are laid out within the allegations of the conspiracy and the same were specifically pled: a conspiracy was set in motion to have H&M prevent the payment of \$150,000 to Bank, which led to the instant foreclosure action. These are the special damages suffered by Defendants/Third-Party Plaintiffs. While these facts may be subsumed within other causes of action, these specific damages are not alleged anywhere else in the Amended Answer, Counterclaims, and Third-Party Complaint. Additionally, if H&M is not a holder in due course, it is subject to Defendants/Third-Party Plaintiffs' conspiracy claims against Bank, as well as those against H&M for its role in the conspiracy.

VI. DEFENDANTS HAVE PRODUCED AN ABUNDANCE OF FACTUAL ISSUES WITH REGARD TO THEIR FRAUD CLAIM AGAINST H&M.

Defendants specifically incorporate their Memorandum in Opposition to the Motions for Summary Judgment, along with the exhibits attached thereto. While the fraud claim alleged refers to events arising in January 2008, prior to the formation of H&M, H&M still takes the Note, as it is not a holder in due course, pursuant to fraud claims against Bank. Further, H&M, while not having filed the necessary paperwork with the Secretary of State, held itself out to the public, including Bank, as a reputable business. For example, a deal to paper the loan sale was in the works long before the formal formation of H&M and phone calls between the only H&M member, Jack Jones, and Small, Sr. were made from January, 2009 through the June, 2009 closing. See Exhibits D and E. The Supreme Court of South Carolina recognizes de facto corporations, stating that de facto corporations exist for all practical purposes but for which for

same failure to comply with the law has no right to corporate existence. See Bethea v. Allen, 177 S.C. 534, 181 S.E. 893, 895 (1935). The Bethea Court went on to state that de fact corporations are held to like responsibility as if they had been incorporated in strict compliance with the law. *Id.* Thus, the fact that H&M is was not in compliance with the law regarding corporate filings until June, 2009 is irrelevant, as it functioned as a de facto corporation prior to that date.

Additionally, the evidence indicates that Jack Jones, as promoter for H&M, committed numerous bad acts, as outlined in the pleadings, the Memorandum in Opposition to Summary Judgment along with the exhibits attached thereto, and these Motions to Reconsider and Memoranda in Support of the same. The imputation of liability upon a corporation for the acts of its promoters is well established. While not binding on this Court, the Ninth Circuit has held that a corporation is bound by the acts of its promoters if the corporation expressly ratifies those actions or accepts the benefits of those acts. See In re Vortex, 277 S.E.2d 1057 (9th Cir. 2002). At least a mere scintilla of evidence indicates that H&M ratified the actions of Jack Jones or accepted the benefits; they are, indeed, the Plaintiff in this foreclosure action.

Last, but certainly not least, H&M should be estopped from arguing that it was not in existence until June, 2009. Estoppel requires the party to be estopped 1) engage in conduct amounting to a false representation or concealment of material facts; 2) intent that such conduct be acted upon; 3) have knowledge of true facts; and 4) prejudicial change of position. See Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct.App. 1998). Jack Jones undertook corporate action long before this date, as stated elsewhere. And further, Jack Jones, as promoter for H&M, acted to fraudulently convey to BJC members that a workout was being negotiated with Bank, when in fact a workout was not being negotiated, but rather Jack Jones was calling Small, Sr. and papering a deal to purchase the loan. See Exhibits D and E. At a minimum, Jack Jones did not

disclose to the BJC members that he was negotiating such a deal on his own behalf to purchase the loan, effectively omitting to convey this material fact to the BJC members. Jones intended for the BJC members to rely on his representations regarding a workout, as the members spent monies to get the real estate taxes current, pay interest due on the loan, and Jones then took control of the BJC members' revenues by installing Patel as manager and preventing the \$150,000 payment due May 31, 2009 from being made. See Exhibits F, G, and H. Jones knew that, in actuality, the loan would not be worked out and that Bank was planning on foreclosing and selling the loan documents to H&M and substituting H&M in the foreclosure action once Jones and Patel prevented BJC from having the cash from operations or otherwise to make the \$150,000 May 31, 2009 payment. Defendants were prejudiced by this and by trusting that Jones was acting in BJC's best interest via his fiduciary duty to BJC's managing member, Wendy Bellamy, when in actuality Jones was acting in his own self interest. See Bellamy Dep., Pg. 104; H. Jones Dep., Pg. 90-91. These are all facts from which a jury could find that H&M should be estopped from arguing that it didn't exist until June, 2009 and thus, the acts of Jack Jones, its sole member for a period of time, should be imputed to H&M.

The Court did not make a determination as to the viability of the fraud claim. Rather, the Court merely held that such a claim could not stand as H&M was not in existence until June, 2009. Defendants have produced evidence that H&M existed prior to June, 2009, and/or that H&M should be estopped from arguing that it did not exist until June, 2009. Therefore, Third-Party Plaintiffs respectfully request that this Court reconsider its position with regard to the Defendant's fraud counterclaim, reinstate it, and let the same go before a jury.

VII. THIRD-PARTY PLAINTIFFS HAVE PRODUCED A MERE SCINTILLA OF EVIDENCE REGARDING THEIR CAUSE OF ACTION FOR CONVERSION.

Defendants do not dispute the Court's holding that a cause of action for conversion may not lie with regard to real property. However, Third-Party Plaintiffs produced at least a mere scintilla of evidence that H&M converted the rental income and revenues from the mortgaged properties and other properties owned by Wendy Bellamy. "Money...may be the subject of conversion 'if it is capable of being identified and there may be a conversion of determinate sums even though the specific coins and bills are not identified.'" Mullis v. Trident Emergency Physicians, 351 S.C. 503, 507, 570 S.E.2d 549, 551 (Ct.App. 2002) (quoting SSI Medical Services, Inc. v. Cox, 301 S.C. 493498, 392 S.E.2d 789, 782 (1990)). Patel was hired to manage the properties but was under the control of Jack Jones. See Wendy Dep., Pg. 128-129. Wendy called Patel directly and asked how much money was in the account and Patel said he didn't know. *Id.* Bellamy attempted to specifically identify the funds but could not. However, the revenue of the properties is identifiable from the bank statements from when Patel was manager of the properties and the sole owner and signatory on the account. These revenues are capable of being identified and Defendants have properly pled the elements of conversion and have produced, at a minimum, a mere scintilla of evidence that H&M engaged in the conversion of revenues from the properties so that the same would not be available to make the May 31, 2009 \$150,000 payment to Bank. Further, H&M is not a holder in due course and is subject to any claim against Bank for conversion as a claim in recoupment.

**VIII. DEFENDANTS HAVE PRODUCED A MERE SCINTILLA OF EVIDENCE TO
SUPPORT A CAUSE OF ACTION AGAINST H&M UNDER THE SOUTH
CAROLINA UNFAIR TRADE PRACTICES ACT**

Defendants specifically incorporate their Memorandum in Opposition to Summary Judgment and the attachments thereto. Defendants have produced at minimum a mere scintilla

of evidence that H&M engaged in unfair trade practices pursuant to the Act. While the case at bar did involve only one act, the act is capable of repetition by the Bank and H&M and thus affects the public interest. In fact, Jack Jones and Godwin have discussed purchasing other properties and/or loan instruments via H&M. See J. Jones Dep., Pg. 89-91. H&M is a relatively new business, so it is no surprise that they have not entered into a lot of business deals; however, they have plans to and as such, these actions affect the public interest as they are capable of repetition. It can be inferred from the acts of Jones and H&M in this transaction that the acts are capable of repetition and that the public interest is affected. If Jones and H&M would do this to his niece and nephew, Wendy Bellamy and Harvey Jones, imagine what steps would be taken against the public at large. Further, since there is a jury issue as to H&M's status as a holder in due course, it is subject to any claim against Bank that Defendants have for unfair trade practices. Defendants have produced at minimum a mere scintilla of evidence that H&M violated the South Carolina Unfair Trade Practices Act and Defendants respectfully request that the Court reconsider its position with regard to the same.

**IX. DEFENDANTS HAVE PRODUCED A MERE SCINTILLA OF EVIDENCE
THAT H&M TORTIOUSLY INTERFERED WITH CONTRACTS**

Defendants respectfully request that the Court reconsider its position with regard to H&M's tortious interference with contracts. Incorporating arguments from above, H&M was in existence prior to June 2009 as a de facto corporation, is liable for the actions of its promoter Jack Jones, and/or should be estopped from arguing that it did not exist until June, 2009. Thus, at least a mere scintilla of evidence exists that H&M is liable for actions occurring before filing the necessary paperwork with the South Carolina Secretary of State in June, 2009. Further, as set forth in the Memorandum in Support of the Motion to Reconsider the Grant of Summary

Judgment to Bank and as set forth in the Memorandum in Opposition to Summary Judgment, at least a mere scintilla of evidence was set forth indicating that Bank breached its contract with BJC members. The tortious interference with contracts claim should be permitted to go before a jury.

X. THIRD-PARTY PLAINTIFFS HAVE PRODUCED A MERE SCINTILLA OF EVIDENCE TO SUPPORT A CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE

Again, for the reasons laid out above, H&M should not be permitted to escape liability for its actions it committed prior to filing the necessary corporate paperwork with the secretary of state. Court points out that Bellamy testified that she attempted suicide based on her financial situation caused by Bank. As H&M is not a holder in due course, it took the loan subject to this claim as it pertains to Bank. The Memorandum in Opposition to Summary Judgment along with the Motions to Reconsider the Court's grant of summary judgment with regard to the same present facts establishing outrageous conduct on the part of Bank and H&M. At least a mere scintilla of evidence has been shown for support of a cause of action for intentional infliction of emotional distress/outrage and Third-party Plaintiffs request that the Court allow the same to go before a jury.

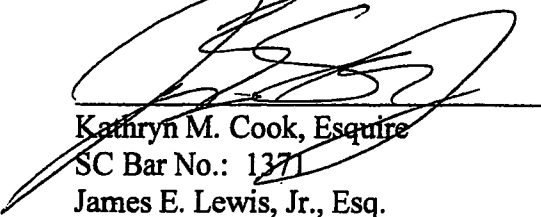
CONCLUSION

Based on the foregoing, Defendants/Third-Party Plaintiffs respectfully request that this Court reconsider its grant of summary judgment to H&M and find that there are disputed facts and inferences that can be drawn therefrom which exist to support Defendants/Third-Party Plaintiffs counterclaims for breach of contract, fraud, breach of contract with fraud, conspiracy, conversion, violations of the South Carolina Unfair Trade Practices Act, interference with

contract, and intentional infliction of emotional distress and reverse the previous Order granting H&M summary judgment as to these counterclaims.

Respectfully Submitted,

Cook & Roy, LLC



Kathryn M. Cook, Esquire

SC Bar No.: 1371

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North Myrtle Beach, South Carolina

Date: June 20, 2011

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, F.S.B.'S MEMORANDUM IN OPPOSITION TO
DEFENDANT/THIRD PARTY PLAINTIFFS' MOTION FOR RECONSIDERATION**

Third-Party Defendant First Palmetto Saving Bank, F.S.B. ("First Palmetto"), through its undersigned attorneys, hereby submits this memorandum in opposition to the motion of Third Party Plaintiffs BJC Enterprises, LLC, Wendy J. Bellamy, and Americana, Inc., a/k/a Americana Motel of Myrtle Beach, Inc. (collectively, "Third Party Plaintiffs") for reconsideration of the Order granting First Palmetto summary judgment on the third party claims asserted against it by

Third Party Plaintiffs (the "Order"). Third Party Plaintiffs argue that the Court was in error to grant First Palmetto's motion. First Palmetto is informed and believes that the grant of summary judgment was proper and reconsideration is improper.

BRIEF STATEMENT OF FACTS

This case arises out of a foreclosure action brought originally by First Palmetto against Third Party Defendants. 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"). As H & M became the owner of the loan documents, on September 11, 2009, H & M was substituted as plaintiff in this foreclosure action. In response to the foreclosure complaint, Third-Party Plaintiffs answered the complaint, and later filed their Third-Party Complaint.

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

2010 Order. First Palmetto incorporates herein by reference its Motion to Strike and Dismiss and Memorandum of Law in Support which is still pending at this time.

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

On June 20, 2011, Third Party Plaintiffs filed a Motion for Reconsideration asserting that there were material issues of fact precluding summary judgment. In their Motion, Third Party Plaintiffs reargue issues which the Court heard and considered thoroughly, and do so without evidentiary basis in the record, and impermissibly raise new arguments for the first time. None of the issues in Third Party Plaintiffs' motion provide a basis for reconsideration of the Court's Order; consequently, the motion for reconsideration should be denied.

ARGUMENT AND STANDARD OF REVIEW

South Carolina Rule of Civil Procedure 59(e) provides that a party may move to alter or amend a judgment within ten days after receipt of written notice of entry of an order. However, it is well established that a party cannot raise an issue for the first time in a Rule 59(e) motion to reconsider if that issue could have been raised at trial. *See, e.g., Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (recognizing that an issue may not be raised for the first time in a motion to reconsider); *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 274, 588 S.E.2d 639, 641 (Ct. App. 2003); *Gurganious v. City of Beaufort*, 317 S.C.

481, 454 S.E.2d 912, 916 (Ct. App. 1995); *see also* *McMillan v. S.C. Dep't of Agric.*, 364 S.C. 60, 67, 611 S.E.2d 323, 327 (Ct. App. 2005) (issue not preserved "because it cannot be raised for the first time in a motion to alter or amend.").

For the Court's convenience, Defendants will address each of Plaintiff's arguments in the order in which they appear in Plaintiff's Motion.

I. Certain Third Party Claims Were Stricken by Judge John's October 15, 2010 Order.

As detailed in First Palmetto's Motion to Strike and Dismiss and Memorandum of Law in Support, the October 15, 2010 Order struck the Third Party Claims at issue as improper, leaving only the claims of breach of contract, breach of contract accompanied by fraud, and civil conspiracy. Moreover, if the Third Party Claims were improper as to one third party defendant, they would be improper third party claims as to all defendants as the Court has found such third-party claims "are independent causes of action, not impacted by the outcome of the foreclosure matter." Finally, as described in its Motion to Strike, the Third Party Claims are procedurally improper and should be stricken pursuant to Rules 12(b)(6), 12(f) and 14(a), SCRPC.

II. There is No Error of Law in the Court's Holding that First Palmetto did not Commit Any Breach of Contract.

In their Motion to Reconsider, Third Party Plaintiffs make numerous unsupported, conclusory statements which they allege constitutes evidence of First Palmetto's breach of its obligations of good faith and fair dealing, including:

1. Third Party Plaintiffs' breach of contract claim against First Palmetto included assertions that First Palmetto breached a contract with Third Party Plaintiffs based on First Palmetto's alleged failure to provide notice of default;

2. The covenant of good faith and fair dealing was breached by First Palmetto because it was aware of Ms. Bellamy's suicide and sent letters to the mortgaged property address.

3. The covenant of good faith and fair dealing was breached because First Palmetto discussed the BJC loan;

4. The covenant of good faith and fair dealing was breached when First Palmetto advised BJC and its members that the bank was negotiating a workout of the loan while simultaneously negotiating the sale of the loan; and

5. The covenant of good faith and fair dealing was breached when First Palmetto assisted in the installation of Bhupendra Patel ("Patel") as manager of the properties, allowing Patel to divert rental funds which could have been used to make the May 31, 2009 payment to First Palmetto.

Despite Third Party Plaintiffs failure to present evidence in support of their contentions, each alleged breach is addressed below.

1. Lack of Notice.

In an attempt to create a factual issue, Third Party Plaintiffs allege that First Palmetto breached its contractual obligation by failing to provide notice to Third Party Plaintiffs. Even liberally construing the Third Party Plaintiffs' Third Party Complaint, the alleged breach by First Palmetto for failure to provide notice was not plead by Third Party Plaintiffs against First Palmetto in their claim for breach of contract.¹ Additionally, this lack of notice argument was not raised by Third Party Plaintiffs in their response to Plaintiff's Motion for Summary Judgment

¹ As the lack of notice claim was not plead, First Palmetto did not address this argument in its Memorandum in support of its Motion for Summary Judgment.

as to the breach of contract claim asserted against First Palmetto.² As noted above, South Carolina law is clear on this issue: arguments that could have been previously raised but which were not cannot form the basis for a motion to reconsider. Third Party Plaintiffs, when they had the opportunity, failed to raise the lack of notice issue, and are not now permitted another opportunity.

Even if this argument is considered, it lacks merit. First, Third Party Plaintiffs fail to specify the notice to which they were allegedly entitled. Second, the terms of the loan documents do not require that notice be given. As described by Plaintiff H&M in its Memorandum in Opposition to Third Party Plaintiffs' Motion for Reconsideration ("H&M Memorandum in Opposition"), the notice provisions contained in the loan documents relate to acceleration of the debt. *See* Exhibits A and B to H&M Memorandum in Opposition. It is undisputed in this case that First Palmetto did not accelerate the debt; the loan at issue matured. No provision of the loan documents requires First Palmetto to provide notice of default, much less maturity, to the defendants. *See* Exhibit C to H&M Memorandum In Opposition, Affidavit of John K. DuBose III, Esquire.

Even assuming notice was required, which it was not, the Borrower, BJC, was provided written notice on at least two occasions. *Id.* 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, any contention by Third Party Plaintiffs that notice of its default was not made is wholly without merit and unsupported by the uncontradicted evidence in this case.

² In their Memorandum in Opposition to H&M's and First Palmetto's Motions for Summary Judgment, Third Party Plaintiffs raised the lack of notice issue with respect to H&M only and as a defense to H&M proceeding with foreclosure. *See* Third Party Plaintiffs' Memorandum at pp. 19-20.

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

Based on the foregoing, Third Party Plaintiffs' arguments related to lack of notice are without merit and should not form the basis for reconsideration of the Order.

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

Third Party Plaintiffs allege that First Palmetto breached its implied obligation of good faith and fair dealing because it was aware of Ms. Bellamy's suicide attempt when it made an offer to renew the loan and sent it to an address where First Palmetto knew Third Party Plaintiffs would not receive it. Once again, these arguments were not raised by Third Party Plaintiffs in their response to Plaintiff's Motion for Summary Judgment as to the breach of contract claim asserted against First Palmetto. Accordingly, these arguments cannot form the basis for a motion to reconsider. *See, e.g., Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (recognizing that an issue may not be raised for the first time in a motion to reconsider).

To the extent these arguments are considered, whether or not First Palmetto was aware of Ms. Bellamy's suicide attempt has nothing to do with whether First Palmetto breached any contract with Third Party Plaintiffs. Furthermore, there is absolutely no evidence to suggest that First Palmetto knew or should have known mail would not be received when sent to the address of record for BJC.

Based on the foregoing, these arguments offer no basis for the Court to reconsider its Order.

3. Discussion of Loan with Third Parties.

Third Party Plaintiffs assert that First Palmetto discussed the BJC loan with third parties which constitutes a breach of contract. The Court has previously considered and rejected this argument stating “there is no evidence that Bank had any contractual duty to not disclose information about the loan to potential buyers once the loan was in default.” Order at pager 4. Despite the Court’s clear ruling, Third Party Plaintiffs simply reassert the same alleged “evidence” made in their Memorandum in Opposition to Summary Judgment that First Palmetto discussed this loan. Third Party Plaintiffs offer no plausible explanation for why the Court’s decision that First Palmetto had no contractual duty to not disclose information about the loan was in error. Accordingly, Third Party Plaintiffs offer no basis for the Court to reconsider its Order with respect to its holding.

4. Negotiations Regarding Sale of the Loan.

Third Party Plaintiffs next contend that First Palmetto breached its implied obligation of good faith and fair dealing when it advised BJC and its members that the it was negotiating a workout of the loan while simultaneously negotiating the sale of the loan. Third Party Plaintiffs appear to assert that these actions are mutually exclusive such that the sale of the loan could not constitute a workout. They also appear to assert that such negotiations were done without the knowledge of the Third Party Defendants.

The evidence in this case does not support this assertion, and in fact, this contention is directly contradicted by the testimony of Ms. Bellamy as Ms. Bellamy testified that she was

present during discussions between First Palmetto and Jack Jones regarding the sale of the loan. (W. Bellamy Dep. [Ex. A] p. 140, lines 1-22).³

Furthermore, there is nothing within the loan documents which would prohibit First Palmetto from negotiating and consummating the sale of the BJC loan. This fact, coupled with the knowledge and acquiescence of the Third Party Plaintiffs in the sale of the loan, compels a finding that First Palmetto has not breached its implied obligation of good faith and fair dealing by negotiating the sale of the loan documents. Accordingly, Third Party Plaintiffs have failed to present evidence to support its claims that First Palmetto breached the implied obligation of good faith and fair dealing by negotiating and completing the sale of BJC's loan, and therefore their arguments and assertions do not provide a basis for reconsideration.

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

In their Memorandum of Law in Support of their Motion to Reconsider, Third Party Plaintiffs assert that First Palmetto "participated in the installation of Patel" as manager of the properties, allowing Patel to divert rental funds which could have been used to make the May 31, 2009 payment to First Palmetto. The management contract which placed Patel in control over the operation of the mortgaged properties was executed by Wendy Bellamy and Harvey Jones. See Management Contract,⁴ attached hereto as Exhibit B. For Third Party Plaintiffs to claim that First Palmetto somehow assisted in the installation of Patel as manager when Third Party Plaintiffs executed the contract with Mr. Patel is disingenuous. Furthermore, there is no evidence whatsoever that Patel diverted any funds or failed to account for any funds; Defendant Bellamy admitted as much in her deposition. (W. Bellamy Dep. [Ex. A] p. 201, line 23 to p. 204, line 15).

³ Referenced portions of Ms. Bellamy's deposition transcript are attached hereto as Exhibit A.

⁴ The Management Contract was attached to Mr. Patel's answer in this matter.

Defendants assert that the diversion of funds perpetrated by Patel is “evidenced, at a minimum, by substantial payments to Jack Jones and Wilbur Jones.” Third Party Plaintiffs do not, however, allege that First Palmetto was in control of Patel or that it directed Patel on what to do with any funds generated from the operation of the hotels. Even if Mr. Patel diverted funds to third parties as the Third Party Plaintiffs contend, such actions have nothing to do with First Palmetto and its obligations under the loan agreement.

Based on the above, Third Party Plaintiffs have presented no evidence to establish that First Palmetto assisted in the installation of Patel as a manager or of any diversion of funds by Patel. Instead, Third Party Plaintiffs have made bare assertions of fact with no evidentiary support, and the Court appropriately granted summary judgment to First Palmetto.

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

III. There is No Error of Law in the Court's holding that First Palmetto is Entitled to Summary Judgment on Third Party Plaintiffs' Breach of Contract with Fraud Claim

Because the Court correctly determined that First Palmetto did not commit a breach of any express or implied contractual provision, it also correctly held that Third Party Plaintiffs do not have a claim for breach of contract by fraudulent act. As discussed above, there was no error of law in the Court's holding that First Palmetto did not breach any contract, and therefore, there is no error of law in the Court's holding that without a breach of contract claim, there is no claim for breach of contract accompanied by fraud.

In their Memorandum of Law in Support of their Motion to Reconsider, Third Party Plaintiffs assert unsupported statements which they contend show an issue of fact with respect to fraud. Each statement is not supported by any evidence in the record, is directly contradicted by properly proffered evidence, and therefore should not be considered or form the basis for reconsideration.

IV. There is No Error of Law in the Court's Holding that First Palmetto is Entitled to Summary Judgment on Third Party Plaintiffs' Civil Conspiracy Claim.

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

Additionally, the Court previously ruled in its Order granting Motions to Dismiss filed on Behalf of Third Party Defendants Bhupendra Patel, Jack Jones and Donald D. Goodwin that Third Party Plaintiffs failed to plead special damages and thus dismissed this claims. Third Party Plaintiffs moved to reconsider that dismissal order on the same grounds as alleged in the instant motion for reconsideration, and that motion was denied. Accordingly, the issues raised by Third Party Plaintiffs have been previously raised and decided against Third Party Plaintiffs.

Finally, the allegations asserted by Third Party Plaintiffs in support of reconsideration of the dismissal of the civil conspiracy claim relate to allegations that First Palmetto installed Patel as manager of the properties and allowed Patel to divert rental funds. As described in Section II. 5., above, Third Party Plaintiffs have presented no evidence to establish that First Palmetto assisted in the installation of Patel as a manager or of any diversion of funds by Patel.

Third Party Plaintiffs have thus failed to demonstrate any error of law in the Court's grant of summary judgment on this claim.

CONCLUSION

For the reasons stated above, Third Party Plaintiffs presented no grounds for which the Order should be amended or altered, and therefore Third Party Plaintiffs' motion to reconsider should be denied.

HAYNSWORTH SINKLER BOYD, P.A.

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June 30, 2011

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

COURT OF COMMON PLEAS
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.

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EXHIBIT

A

1 Q. DID THEY TELL YOU THAT THEY WERE NEGOTIATING WITH
2 THE BANK TO BUY THE NOTE AND MORTGAGE?

3 A. NO, MA'AM.

4 Q. DID YOU EVER HAVE ANY DISCUSSIONS WITH JACK AND
5 JACK AND ANYBODY ELSE ABOUT BUYING THE NOTE AND
6 MORTGAGE FROM FIRST PALMETTO?

7 A. UNCLE JACK.

8 Q. YOU TALKED TO UNCLE JACK ABOUT BUYING THE NOTE
9 MORTGAGE FROM FIRST PALMETTO?

10 A. HE HAD SAID SOMETHING ABOUT BUYING THE NOTE AND
11 MORTGAGE.

12 Q. WHEN?

13 A. I DON'T REMEMBER THE DATE.

14 Q. WELL, I KNOW WE'VE BEEN GOING LONG TIME BUT THIS
15 IS IMPORTANT. WAS BEFORE OR AFTER HE ... YOU
16 EXECUTED YOUR POWER OF ATTORNEY?

17 A. NO. IT WAS AFTER ... HE HAD LEGAL ... HE HAD
18 CONTROL. I TRUSTED HIM WHATEVER HE SAID.

19 Q. MS. BELLAMY, I'M TRYING TO ASK, WERE YOU AWARE
20 THAT JACK WAS DISCUSSING BUYING THE NOTE AND
21 MORTGAGE WITH FIRST PALMETTO?

22 A. YES. I SAT IN A MEETING WITH THEM.

23 Q. WHERE THAT WAS THE TOPIC OF DISCUSSION?

24 A. NO. THAT WASN'T IT. IT WAS IN THE MEETING ABOUT
25 THE PAYMENTS AND STUFF, BUT UNCLE JACK HAD SAID

1 YOU KNOW, HE WASN'T A RECEIVER NOW UNLESS HE WAS
2 JACK AND DONALD'S RECEIVER. HE WAS A MANAGER. A
3 MANAGER IS SUPPOSED TO GO IN THERE AND RUN OF THE
4 PLACE AND HELP US MAKE IT.

5 Q. DID YOU AND YOUR BROTHER AND MR. COAN OR MR.
6 SCHROFF OR WHOEVER WAS SUPPOSED TO BE IN CHARGE,
7 DID Y'ALL HAVE ANY MEETING OR SEND A LETTER TO MR.
8 PATEL TELLING MR. PATEL THAT YOU WERE DISSATISFIED
9 AND YOU WANTED TO DISCHARGE HIM?

10 A. NO, SIR.

11 Q. DID YOU EVER AND I'M GOING TO ASK YOU ONE MORE
12 TIME THAT YOU MAY HAVE SAID IT, DID YOU EVER
13 INDICATE YOUR DISSATISFACTION WITH MR. PATEL TO
14 HIM?

15 A. ME AND BUPI GOT IN A COUPLE ARGUMENTS.

16 Q. DID YOU TELL HIM THAT YOU'RE GOING TO TERMINATE
17 HIM?

18 A. NO. I COULDN'T FIRE NOBODY.

19 Q. DO YOU KNOW OF ANY PROPERTY THAT WAS OWNED BY
20 EITHER AMERICANA OR BY THE LLC THAT MR. PATEL
21 CONVERTED TO HIS OWN USE WHILE HE WAS IN THERE?

22 A. DO WHAT?

23 Q. DO YOU KNOW OF ANY PROPERTY THAT WAS OWNED BY
24 EITHER BJC ENTERPRISES OR AMERICANA OF MYRTLE
25 BEACH THAT MR. PATEL CONVERTED, PUT TO HIS OWN USE

- 1 OR STOLE WHILE HE WAS IN THERE?
- 2 A. LAND.
- 3 Q. ANY PROPERTY OF ANY KIND AND THAT YOU CAN THINK
- 4 OF?
- 5 A. I DON'T KNOW HIM AND UNCLE JACK AND WILBUR WOULD
- 6 GO IN THE BACK DOOR IN THE BACK OFFICE AND SHUT
- 7 THE DOOR. I WASN'T PRIVILEGED TO THAT.
- 8 Q. LET ME ASK THE QUESTION AGAIN BECAUSE YOU HAVE
- 9 ALLEGED IT IN YOUR COMPLAINT. WHAT PROPERTY OF
- 10 EITHER THE LLC OR THE CORPORATION DID MR. PATEL
- 11 TAKE, CONVERT WAS YOUR WORDS? I'M ASKING WHAT
- 12 PROPERTY, LAND, WHAT DID HE TAKE TO YOUR
- 13 KNOWLEDGE?
- 14 A. THEY SHOULD HAVE MADE PAYMENT.
- 15 Q. I AM ASKING YOU WHAT PROPERTY. YOU SAID HE SHOULD
- 16 HAVE MADE THE PAYMENTS? YOU SAID THAT A COUPLE OF
- 17 TIMES. WHAT PROPERTY DID HE TAKE?
- 18 A. I DON'T UNDERSTAND WHAT YOU ARE ASKING ME.
- 19 Q. YOU DON'T KNOW OF ANY PROPERTY HE TOOK?
- 20 A. NO LAND, NO, SIR.
- 21 Q. ANY PERSONAL PROPERTY? DID HE TAKE ANY OF YOUR
- 22 MONEY?
- 23 A. WELL, I DON'T KNOW. I DIDN'T GET TO GO IN THERE
- 24 WITH THEM.
- 25 Q. YOU CAN'T SPECIFY ONE WAY OR THE OTHER?

1 A. NO, SIR.

2 Q. THANK YOU. UNTIL MS. COOK COMMUNICATED WITH MR.
3 PATEL, DO YOU KNOW IF ANYONE ON BEHALF OF YOUR LLC
4 OR YOUR CORPORATION EVER TOLD MR. PATEL THAT HE
5 DID NOT HAVE THE AUTHORITY TO OPERATE OR TO MANAGE
6 THE PROPERTY?

7 A. MISS HENRIETTA TOLD ME TO TELL THEM BOTH TO LEAVE
8 THE PROPERTY. IS THAT WHAT YOU'RE TALKING ABOUT?

9 Q. DID YOU TELL HIM THEN?

10 A. HUH-UH. (NEGATIVE RESPONSE.)

11 Q. NO?

12 A. HOW COULD I TELL HIM.

13 MS. COOK: YOU'RE SHAKING YOUR HEAD AGAIN.

14 A. NO, SIR, I DIDN'T TELL HIM THAT.

15 Q. I HAVE A COUPLE SPECIFIC QUESTIONS. WE'RE GOING
16 TO TALK ABOUT THE MONEY. YOU ALLEGED THAT MR.
17 PATEL CONVERTED AND STOLE FROM YOU CERTAIN INCOME.
18 WHAT WAS THE AMOUNT OF THE INCOME AND WHEN I SAY
19 STOLE FROM YOU, I'M SAYING BJC ENTERPRISES, LLC
20 AND/OR ... WELL, YOU GOT WENDY BELLAMY TOO AND
21 AMERICANA, INC. WHAT WAS TT INCOME THAT HE STOLE?

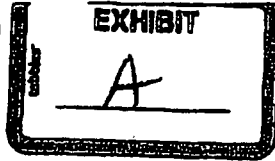
22 A. I DON'T UNDERSTAND THE QUESTION.

23 Q. DO YOU UNDERSTAND INCOME? WHAT INCOME IS?

24 A. I DO KNOW WHAT INCOME IS.

25 Q. I WANT TO KNOW WHAT INCOME MR. PATEL OR PATEL

- 1 MANAGEMENT STOLE FROM EITHER WENDY BELLAMY, BJC
2 ENTERPRISES, LLC OR AMERICANA, INC., A/K/A
3 AMERICANA OF MYRTLE BEACH INC., IF ANY?
- 4 A. REPHRASE THAT.
- 5 Q. WHAT MONEY OR INCOME DID MR. PATEL OR PATEL
6 MANAGEMENT STEAL FROM YOU, THE LLC OR THE
7 CORPORATION?
- 8 A. WHAT I'M SAYING IS THAT I HAD NO CONTROL OVER IT.
9 JACK AND BUPI RAN IT. I COULD BE SITTING IN THE
10 OFFICE AND THEY WOULD GO BACK THERE AND SHUT THE
11 DOOR OR WHATEVER. I HAD NO CONTROL OF IT. THERE
12 WOULD BE MONEY BACK THERE. I DON'T KNOW WHAT THEY
13 DID?
- 14 Q. SO YOU DON'T KNOW?
- 15 A. NO, I DON'T KNOW.
- 16 Q. YOU WERE GETTING A PAYCHECK DURING THIS PERIOD OF
17 TIME, WEREN'T YOU?
- 18 A. \$250.00 FOR THE SIXTY, SEVENTY HOURS A WEEK.
- 19 Q. IS THAT THE SAME PAYCHECK YOU GOT THE YEAR BEFORE?
- 20 A. NO, I GOT MORE.
- 21 Q. WHO NEGOTIATED THE PAYCHECK, MR. PATEL?
- 22 A. JACK JONES.
- 23 Q. WERE YOU HAPPY WITH THE PAYCHECK?
- 24 A. I WOULD HAVE WORKED FOR NOTHING.
- 25 Q. SO YOUR ANSWER IS YES?



MANAGEMENT CONTRACT

The following is a Management Agreement between BJC, LLC d/b/a Emerald Shores Motel (hereinafter referred to as Emerald Shores Motel), Americana Motel of Myrtle Beach, Inc. d/b/a Rainbow Court Family Resort (hereinafter referred to as Rainbow Court Family Resort and Patel Management, LLC (hereinafter referred to as Manager).

All Parties agree as follows:

1. Manager will be responsible for the day to day operations of the Emerald Shores Motel and Rainbow Court Family Resort.
2. Manager will be responsible paying bills, making deposits, repairs as needed, pool and ground upkeep and maintenance of both properties.
3. Terms of compensation for Manager are \$30,000.00 a year for Emerald Shores Motel and \$30,000.00 a year for Rainbow Court Family Resort.

This Agreement is effective beginning March 23, 2009. The term of this Management Agreement is six years. (March 23, 2009- March 23, 2015).

Handwritten signature of Wendy Jones Bellamy.

Date:

3-21-09

Wendy Jones Bellamy, Acting Member for BJC, LLC and Americana Motel of Myrtle Beach, Inc.

Handwritten signature of Linda G. 3-21-09
witness #1
Handwritten signature of Denise H. 3-21-09
witness #2

Handwritten signature of Harvey A. Jones.

Date:

3-21-09

Harvey A. Jones, Acting Member for BJC, LLC and Americana Motel of Myrtle Beach, Inc.

Handwritten signature of Linda G. 3-21-09
witness #1
Handwritten signature of Denise H. 3-21-09
witness #2

Handwritten signature of Bhupendra Patel.

Date:

3.21.09

Bhupendra Patel, Acting Member Patel Management, LLC

Handwritten signature of Linda G. 3-21-09
witness #1
Handwritten signature of Denise H. 3-21-09
witness #2

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Wendy Jones Bellamy, Harvey L. Jones and Bhupendra Patel personally appeared before me on March 21, 2009 and signed a Management Contract between BIC-d/b/a Emerald Shores Motel, Americana Motel of Myrtle Beach-d/b/a Rainbow Court Family Resort and Patel Management, LLC.



Tina Corley, Notary Public for South Carolina

My Commission Expires April 28, 2014

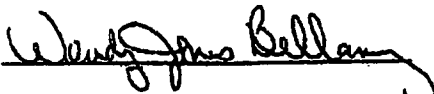
MANAGEMENT CONTRACT

The following is a Management Agreement between Americana Motel of Myrtle Beach, Inc and Bhupendra Patel (hereinafter referred to as Manager).

All Parties agree as follows:

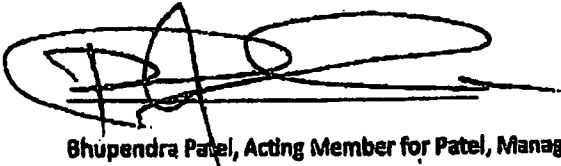
1. Manager will be responsible for the day to day operations of the Americana Motel of Myrtle Beach, Inc. properties.
2. Manager will be responsible paying bills, making deposits, repairs as needed, pool and ground upkeep and maintenance of both properties.
3. The terms of compensation for Manager is \$2,500.00 per month.

This Agreement is effective beginning March 23, 2009. The terms of this Management Agreement is one year. (March 23, 2009- March 23, 2009).



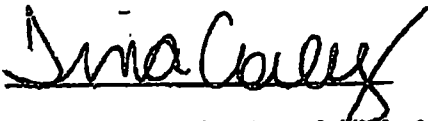
Date: 3-21-2009

Wendy Jones Bellamy, Acting Member for American Motel of Myrtle Beach, Inc.



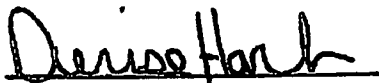
Date: 3-21-2009

Bhupendra Patel, Acting Member for Patel, Management, LLC



Date: 3-21-2009

Witness #1 Tina Corley, Notary Public for South Carolina



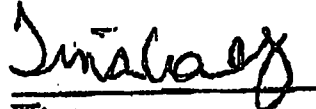
Date: 3-21-2009

Witness #2 Denise Harb

The following is an agreement between Wendy Jones and Bhupendra Patel. It is agreed among the parties that on sale of all assets of American Motel of Myrtle Beach, Inc. dba Rainbow Court Family Resort and BJC, LL dba Emerald Shore Motel after paying off all debt, Wendy Jones will transfer 1.00% of her share of the net profit to Bhupendra Patel.


Wendy Jones

3.24.09
Date

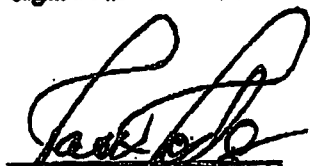

Witness

{STATE OF SOUTH CAROLINA}

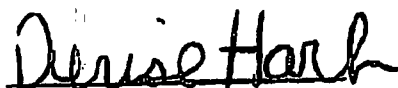
{COUNTY OF HORRY}

I, Jack Jones, as Power of Attorney for Wendy Jones Bellamy, attest that on this date of March 21, 2009 I witnessed and authorized Wendy Jones Bellamy's signing of the Management Contract between BJC, LLC -d/b/a Emerald Shores Motel, Americana Motel of Myrtle Beach, Inc.-d/b/a Rainbow Court Family Resort and Patel Management.

Signed and Witnessed on this 21st day of March, 2009.


Jack Jones

Denise Harb
Witness (Print Name)


Signature

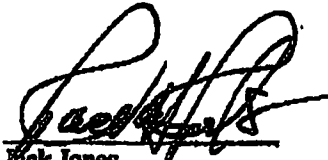

Tina Corley, Notary Public of South Carolina
My Commission Expires April 26, 2014

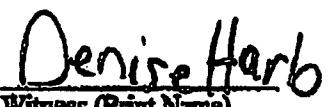
{STATE OF SOUTH CAROLINA}

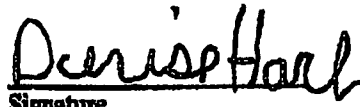
{COUNTY OF HORRY}

I, Jack Jones, as Power of Attorney for Wendy Jones Bellamy, attest that on this date of March 23, 2009 I witnessed and authorized Wendy Jones Bellamy's signing of the Management Contract between BJC, LLC -d/b/a Emerald Shores Motel, Americana Motel of Myrtle Beach, Inc.-d/b/a Rainbow Court Family Resort and Patel Management.

Signed and Witnessed on this 23rd day of March, 2009.


Jack Jones


Witness (Print Name)


Signature


Tina Corley, Notary Public of South Carolina
My Commission Expires April 26, 2014

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
OPPOSITION TO MOTION FOR
RECONSIDERATION OF ORDER
GRANTING MOTION FOR SUMMARY
JUDGMENT TO PLAINTIFF AS TO
DEFENDANTS' COUNTERCLAIMS**

TO: DEFENDANTS BJC ENTERPRISES, LLC, AMERICANA MOTEL, INC., WENDY J. BELLAMY AND THEIR ATTORNEY, KATHRYN M. COOK

COMES NOW Plaintiff Hotel & Motel Holdings, LLC ("H & M"), by and through its undersigned counsel, and hereby submits this Memorandum of Law in Opposition to the Motion to Reconsider Order Granting Motion for Summary Judgment to Plaintiff as to Defendants' Counterclaims. For the reasons set forth below, as well as those contained in Plaintiff's Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment, counsel would show that the Motion to Reconsider should be denied.

ARGUMENT

Defendants seek to alter or amend the June 1, 2011 Order of the Honorable William H. Seals Jr. pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure. However, Defendants have failed to state grounds sufficient to obtain relief from the June 1, 2011 Order, and therefore, the Motion to Reconsider should be denied.

I. THE STATUS OF H & M AS A HOLDER IN DUE COURSE DOES NOT AFFECT THE VIABILITY OF DEFENDANTS' COUNTERCLAIMS.

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

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

Many of the grounds set forth as reasons supporting this Court's reconsideration of its prior Order asserted by Defendants are based upon a fundamental misunderstanding of the protections afforded a holder in due course and the ramifications of not qualifying as such. "A person taking a negotiable instrument as a 'holder in due course' takes it free from all claims to it on the part of any person and free from all 'personal' defenses of any party to the instrument with whom the holder has not dealt." Rosemond at 523, 343 S.E.2d at 645. There are numerous personal defenses including, among others, the following: failure of consideration, nonperformance of a condition precedent, nondelivery, theft of the instrument, payment or satisfaction to the holder would be inconsistent with the terms of a restrictive endorsement, and fraud in the inducement. 10 C.J.S. *Bills and Notes* § 204; see also, Park v. Funderburk, 87 S.C. 76, 68 S.E. 963 (1910) (noting that personal defenses include the defenses of fraud in the inducement and failure of consideration).

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

II. THERE IS NO EVIDENCE THAT H & M BREACHED ITS IMPLIED OBLIGATIONS OF GOOD FAITH AND FAIR DEALING.

In their Motion to Reconsider, Defendants make numerous unsupported, conclusory statements of fact which they allege constitute evidence of misconduct on the part of H & M, amounting to a breach of its obligations of good faith and fair dealing. Importantly, none of the

allegations include a citation to the record or any evidence in this case. Instead, these allegations constitute what can only be called a mischaracterization of the facts. Despite their complete failure to present evidence in support of their contentions, each alleged breach is addressed below.

A. Failure To Provide Notice.

In their Memorandum of Law in Support of Motion to Reconsider Order, Defendants allege that H & M breached its contractual obligation by failing to provide notice to Defendants. Notably, Defendants fail to specify the notice to which they were allegedly entitled. The terms of the loan documents do not require that notice be given. The notice provisions contained in the loan documents relate to acceleration of the debt. See Commercial Note, dated January 17, 2008 and Mortgages, dated January 14, 2005. True and accurate copies of the BJC Mortgage and Note are attached hereto and incorporated herein by reference as **Exhibit A** (Mortgage) and **Exhibit B** (Note). Here, First Palmetto did not accelerate the debt; the loan matured. No provision of the loan documents requires First Palmetto to provide notice of default, much less maturity, to the defendants. See Affidavit of John K. DuBose III, Esquire, attached hereto and incorporated herein by reference as **Exhibit C**.

Nonetheless, the evidence in this case establishes that not only were Defendants provided notice, they were provided written notice on at least two occasions. See Exhibit C. Moreover, Casey Shroff, a member of BJC, testified that he recalled receiving numerous notices of default. Shroff Dep., March 28, 2011, at 19:7 – 20:4. A true and accurate copy of the relevant portion of Mr. Shroff's deposition is attached hereto and incorporated herein by reference as **Exhibit D**. In addition, First Palmetto instituted a foreclosure action in February of 2009, 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 and unsupported by the uncontradicted evidence in this case.

Finally, even assuming for purposes of their Motion that BJC was entitled to notice and did not receive it, and therefore there was a breach of the loan agreement, BJC breached the contract first by failing to submit payment when due. As a matter of law, a party cannot take advantage of his own default in the performance of a contract, and where a contract is not performed, the party who is guilty of the first breach is the one upon whom rests all liability for the nonperformance. Willms Trucking Co. v. JW Constr. Co., 314 S.C. 170, 442 S.E.2d 197 (Ct. App. 1994); 17A Am. Jur. 2d *Contracts* § 621 (1991). Based on the foregoing, even though it was not required to do so, First Palmetto provided BJC with notice of its default and adequate opportunity to cure.

B. Conditional Approval Of Renewal Of Loan Letter.

In further support of their Motion to Reconsider, Defendants allege that First Palmetto breached its implied obligation of good faith and fair dealing when it made an offer to renew the loan and sent it to an address where First Palmetto knew Bellamy, BJC and Americana would not receive it. As set forth above, the alleged acts of First Palmetto are not imputed to H & M simply by virtue of its status as an assignee of the loan documents. In any event, there is no evidence to support this conclusory assertion of fact. Indeed, the evidence in this case directly refutes the defendants' assertion. Initially, it should be noted that there is absolutely no evidence to suggest that First Palmetto knew or should have known mail would not be received when sent to the address of record for BJC. To the contrary, the evidence reveals that BJC did receive the letter, and BJC's negotiations with First Palmetto continued after the letter was sent.

The loan history report for the 2008 calendar year indicates that on November 26, 2008, a payment in the amount specified in the letter was made. A true and accurate copy of the loan history report is attached hereto and incorporated herein by reference as **Exhibit E**. Thus, the only reasonable inference is that BJC received the letter, whether Defendant Bellamy was in a position to read it or not. However, after sending the letter granting conditional approval for renewal of the loan, BJC again defaulted when it failed to make the December 17, 2008 payment as required under the terms of the loan which was being negotiated for renewal. See Exhibit E. As a result, the loan was not renewed, and the loan matured on January 17, 2009, and has never been paid.

Based on the foregoing, First Palmetto did not breach its obligations of good faith and fair dealing, and there is no allegation that H & M had any involvement whatsoever in sending the November 24, 2008 letter of conditional approval.

C. Negotiations Regarding A Sale Of The Loan.

Defendants contend that First Palmetto breached its implied obligation of good faith and fair dealing when it advised BJC and its members that the bank was negotiating a workout of the loan while simultaneously negotiating the sale of the loan. Presumably, Defendants find these actions mutually exclusive such that the sale of the loan could not constitute a workout. Implicitly, Defendants are contending that the negotiations leading up to the sale of the BJC loan were done without the knowledge and acquiescence of the defendants. The evidence in this case does not support this assertion, and in fact, this contention is directly contradicted by the testimony of multiple witnesses.

In her deposition, Defendant Bellamy testified that she was present during discussions between First Palmetto and Jack Jones regarding the sale of the loan. Bellamy Dep., Nov. 23,

2010, at 140:1 – 22. A true and accurate copy of the relevant portions of Mrs. Bellamy's deposition is attached hereto and incorporated herein by reference as **Exhibit F**. In addition, Defendant Bellamy stated that she was present in several meetings with Jack Jones and others regarding the potential purchase of the loan documents. See Exhibit F (Bellamy Dep.) at 144:16 – 148:25.

Similarly, Joyce Collins, a long-time friend of Defendant Bellamy, testified in her deposition that she discussed purchasing the loan from First Palmetto with Defendant Bellamy present. Collins Dep., March 28, 2011, at 16:6 – 21:8. A true and accurate copy of the relevant portions of Mrs. Collins' deposition is attached hereto and incorporated herein by reference as **Exhibit G**. Moreover, Mrs. Collins testified that Defendant Bellamy was aware of the fact that she and Jack Jones were negotiating the purchase of the BJC loan. Exhibit G (Collins Dep.) at 17:22 – 24. Bhupendra Patel testified similarly, corroborating the meetings where Defendant Bellamy was present and the knowledge of Defendant Bellamy regarding the loan sale negotiations. Patel Dep., Nov. 17, 2010, at 95:24 – 99:16. A true and accurate copy of the relevant portions of Mr. Patel's deposition is attached hereto and incorporated herein by reference as **Exhibit H**.

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

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

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

In their Memorandum, Defendants assert that First Palmetto assisted in the installation of Bhupendra Patel as manager of the properties, allowing Patel to divert rental funds which could have been used to make the May 31, 2009 payment to First Palmetto. Initially, there is no evidence whatsoever that Patel diverted any funds or failed to account for any funds; Defendant Bellamy admitted as much in her deposition. See Exhibit F (Bellamy Dep.) at 201:23 – 204:15.

Nonetheless, Defendants assert that the diversion of funds perpetrated by Patel is “evidenced, at a minimum, by substantial payments to Jack Jones and Wilbur Jones.” Without question, Patel made these payments and included them in his accountings. However, as the evidence in this case clearly establishes, the payments were for loans made by Jack Jones and Wilbur Jones to Patel for the benefit of the defendants to allow Patel to open the motels in 2009. See Exhibit H (Patel Dep.) at 48:14 – 49:10. These loan agreements were memorialized in a notarized writing, executed by Defendant Bellamy and Henry C. Coan III, as well as two witnesses. True and accurate copies of the loan agreements are attached hereto and incorporated herein by reference as **Exhibit I**.

Based on the above, Defendants have presented no evidence to establish that First Palmetto assisted in the installation of Patel as a manager or of any diversion of funds by Patel. Instead, Defendants have made bare assertions of fact with no evidentiary support, and the Court appropriately granted summary judgment to H & M on the counterclaims of Defendants.

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

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

“A de facto corporation is one so defectively created as not to be a de jure corporation, but nevertheless the result of a bona fide attempt to incorporate under existing statutory authority, coupled with the exercise of corporate powers, and recognized by the courts as such in all proceedings except a direct attack by the state questioning its corporate existence.” Glaze v. Grooms, 324 S.C. 249, 256, 478 S.E.2d 841, 845 (1996). In this case, H & M was validly formed on June 15, 2009, when its Articles of Organization were filed with the Office of the South Carolina Secretary of State. H & M was not defectively created, and its corporate existence is not at issue in this case. Moreover, there was no attempt to form H & M or exercise of corporate powers prior to the date of its incorporation through the Secretary of State.

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

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

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

M vigorously denies any fraud or misconduct on the part of Jack Jones, and there is no evidence to support these claims. Nonetheless, H & M cannot be held liable for the alleged torts committed by Jack Jones prior to the incorporation of H & M.

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

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

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

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

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

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

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

In their Memorandum, Defendants allege that Jack Jones falsely represented to the members of BJC that a loan workout was being negotiated when no such workout was being negotiated. Further, Defendants assert that Jack Jones was working to “paper the deal to

purchase the loan.” Significantly, Defendants cite no evidence in support of this proposition. In fact, the evidence in this case clearly establishes that Jack Jones was actively working to salvage the BJC loan and raise funds for BJC. For example, he and his brother lent \$70,000.00 to Patel for the benefit of BJC which enabled the motels to open for the 2009 season. See Exhibit I. Additionally, Jack Jones took Defendant Bellamy to numerous attorneys, resulting in several capital call letters to the members of BJC. Exhibit F (Bellamy Dep.) at 84:4 – 85:3, 108:16 – 110:9. However, the members of BJC refused to contribute funds to pay the loan. Exhibit F (Bellamy Dep.) at 115:21 – 116:4; see also, Exhibit D (Shroff Dep.) at 24:16 – 19, 28:4 – 18. Moreover, as set forth above, Defendant Bellamy was well aware that negotiations were ongoing regarding the purchase of the loan. As a result, there is no false representation or concealment of material fact and certainly not on the part of H & M.

In addition to their failure to present evidence of a false representation or concealment of material fact, Defendants have failed to present any evidence of their lack of knowledge, reasonable reliance or prejudicial change in position. Indeed, Defendants cannot make the required showing because, as Defendant Bellamy acknowledged in her deposition, regardless of who owned the loan, the obligation is owed. Exhibit F (Bellamy Dep.) at 149:1 – 8, 152:4 – 19. Neither H & M nor anybody else did anything to cause a prejudicial change in the defendants’ positions. The defendants were (and are) in the same position after H & M purchased the loan as they were prior to its purchase of the loan. Thus, Defendants have failed as a matter of law to establish the requisite elements of estoppel, and the Court properly granted summary judgment to H & M as to Defendants’ counterclaims.

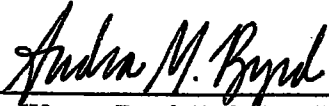
CONCLUSION

The Motion to Reconsider Order Granting Motion for Summary Judgment to Plaintiff as to Defendants’ Counterclaims should be denied as a matter of law. Defendants have produced

no evidence to support their counterclaims against Plaintiff. There are no genuine issues of material fact, summary judgment in favor of H & M is proper, and Defendants have failed to state grounds sufficient to obtain relief from the Court's Order granting summary judgment.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: 
R. Wayne Byrd (S.C. Bar # 1068)
Audra M. Byrd (S.C. Bar # 76719)
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555
ATTORNEYS FOR PLAINTIFF HOTEL &
MOTEL HOLDINGS, LLC

June 30, 2011

Exhibit A

Exhibit A – BJC Mortgage

off

FILED
HORRY COUNTY, S.C.

2005 JAN 19 AM 9:00

BALLERY V. SHIPPER
REGISTRAR OF DEEDS

This document was prepared by (name, address, phone): FIRST PALMETTO SAVINGS BANK, FSB
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 01-14-2005 and the parties and their addresses are as follows

MORTGAGOR

BJC ENTERPRISES, LLC

405 FLAG STREET

MYRTLE BEACH, SC 29577

20 1820962

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

LENDER

FIRST PALMETTO SAVINGS BANK, FSB

ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA

1204 48TH AVENUE NORTH

MYRTLE BEACH, SC 29577

57 0921408

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property

See Attached Exhibit "A"

MORTGAGE

3904 0008

The property is located in Horry County at _____
(County)
Myrtle Beach, South Carolina 29577
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property") The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FIMA, FHLAC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES)

(page 1 of 7)

Expend 1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCO-RESI-SC 5/24/2001

Exhibit A - BJC Mortgage

FPSB_000809

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 5,580,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized, however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following.

- A. The promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt).

(e.g., borrower's name, note amount, interest rate, maturity date)

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

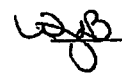
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts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

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees.

- A. To make all payments when due and to perform or comply with all covenants.
B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

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10. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. ENTITY WARRANTIES AND REPRESENTATIONS. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. AUTHORITY TO PERFORM. If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

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

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or

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- 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,

(page 4 of 7)

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 Mortgageor 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. Mortgageor 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. Mortgageor 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. Mortgageor authorizes Lender to intervene in Mortgageor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgageor 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. Mortgageor agrees to maintain insurance as follows:

- A. Mortgageor 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 Mortgageor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgageor 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." Mortgageor 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, Mortgageor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgageor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgageor.

Unless Lender and Mortgageor 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 Mortgageor. If Mortgageor 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 Mortgageor 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, Mortgageor'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 Mortgageor 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. Mortgageor 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, Mortgageor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgageor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgageor warrants that all financial statements and information Mortgageor provides to Lender are, or will be, accurate, correct, and complete. Mortgageor 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 Mortgageor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgageor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgageor's name and Mortgageor 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 Mortgageor signs this Mortgage but does not sign the Evidence of Debt, Mortgageor does so only to mortgage Mortgageor's interest in the Property to secure payment of the Secured Debt and Mortgageor does not agree to be personally liable on the Secured Debt. Mortgageor agrees that Lender and any party to this Mortgage may extend,

(page 5 of 7)

modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

24. APPLICABLE LAW; SEVERABILITY, INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

25. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

26. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

27. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☐ **Crops, Timber; Minerals; Rents, Issues, and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").
- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

28. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☐ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- ☐ **Additional Terms.** _____

(page 6 of 7)

SIGNATURES. By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

☐ Actual authority was granted to the parties signing below by resolution signed and dated _____.

Entity Name BJC ENTERPRISES, LLC

Wendy Bellamy (Signature) WENDY BELLAMY, MANAGING MEMBER (Seal) _____ (Date)

(Signature) _____ (Seal)
(Date)

Signed, Sealed and delivered in the presence of:

[Signature]
(Witness)

Jennifer C. Walk
(Witness)

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

PROBATE

STATE OF SOUTH CAROLINA, COUNTY OF Horry) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 14TH day

of JANUARY, 2005

Jennifer C. Walk (Seal)
Notary Public for South Carolina

[Signature]

My commission expires 4-13-2010

EXHIBIT "A"

Property 1 (Emerald Shores Motel)

TMS# 181-11-01-002

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

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

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

Property 2 (Emerald Shores Motel)

TMS#181-11-01-001

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

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

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

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

Exhibit A - BJC Mortgage

FPSB_000816

Property 4 (Parking Lot)

TMS#181-10-10-007

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

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

14

Exhibit A - BJC Mortgage

FPSB_000817

Exhibit B

Exhibit B – BJC Note

BJC ENTERPRISES, LLC 405 FLAGG STREET MYRTLE BEACH, SC 29577	FIRST PALMETTO SAVINGS BANK, FSB 1204 48TH AVENUE NORTH MYRTLE BEACH, SC 29577	Loan Number <u>75-073840-1</u> Date <u>01-17-2008</u> Maturity Date <u>01-17-2009</u> Loan Amount \$ <u>5,573,146.62</u> Renewal Of <u>75-073840-1</u>
BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns	

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of FIVE MILLION FIVE HUNDRED SEVENTY THREE THOUSAND ONE HUNDRED FORTY SIX AND 62/100 Dollars \$ 5,573,146.62

☒ **Single Advance:** I will receive all of this principal sum on 01-17-2008. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☒ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____.

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 01-17-2008 at the rate of 8.250% per year until 01-17-2009.

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate _____.

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____.

A change in the interest rate will take effect _____.

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

The rate may not change more than _____ % each _____.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ _____.

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____.

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE PAYMENT AMOUNT.

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____.

PAYMENTS: I agree to pay this note as follows:

11 MONTHLY PAYMENTS OF \$47,905.19 BEGINNING 02-17-2008 AND 1 BALLOON PAYMENT OF \$5,508,352.46 ON 01-17-2009

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date) MORTGAGES DATED JANUARY 14, 2005 (3 MORTGAGES), COMMERCIAL SECURITY AGREEMENT DATED 1-17-2008 & ASSIGNMENT OF LEASES AND RENTS (3) DATED 1-14-2005

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

Bob Wilder
BOB WILDER, VICE PRESIDENT

PURPOSE: The purpose of this loan is RENEWAL OF LOAN

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

BJC ENTERPRISES, LLC

Wendy J. Bellamy
WENDY J. BELLAMY, MANAGING MEMBER

Exhibit C

Exhibit C – DuBose Affidavit

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

**AFFIDAVIT OF
JOHN K DUBOSE III, ESQUIRE**

Before me, the undersigned notary public, personally came and appeared: John K.

DuBose III, Esquire, who being duly sworn, deposed and said:

1. I am over eighteen (18) years of age and am fully competent to testify as to the matters contained herein.
2. The information contained in this Affidavit is based upon my personal knowledge.
3. As affiant, I believe the information contained in this Affidavit to be true, complete and accurate.
4. I am an attorney, licensed and in good standing in the State of South Carolina, and I am currently employed with the law firm of Robinson- DuBose, PC.

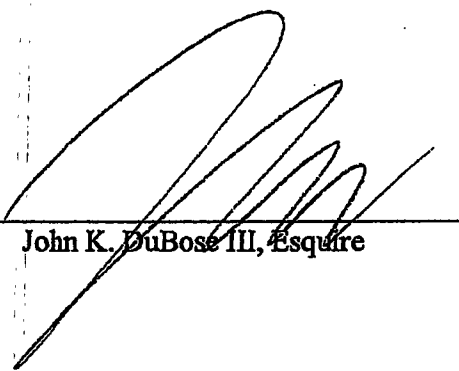
Exhibit C - DuBose Aff.

5. My firm previously represented First Palmetto Savings Bank, F.S.B. (hereinafter referred to as "First Palmetto") in connection with the above case, as well as in the pre-suit attempts to collect debt owed to First Palmetto from BJC Enterprises, LLC (hereinafter referred to as "BJC").
6. By virtue of my firm's representation of First Palmetto, I am familiar with the commercial loan made to BJC by First Palmetto and the related loan documents.
7. The BJC loan documents do not require First Palmetto to give notice to BJC of a failure to make payments when due, and BJC expressly waived its right in this regard.
8. Specifically, on page two of the 2008 Note from BJC, under the heading "WAIVER," the Note provides the following: "I give up my rights to require you to do certain things. I will not require you to . . . give notice that amounts due have not been paid (notice of dishonor)."
9. Nonetheless, after BJC defaulted on its loan, my firm drafted a notice of default to BJC in the form of a letter dated November 14, 2008. A true and accurate copy of the letter is attached hereto and incorporated herein by reference as **Exhibit A**. This letter was sent to the addressees indicated by United States mail on November 14, 2008.
10. In January of 2009, my firm drafted a second notice of default to BJC in the form of a letter dated January 9, 2009. An executed copy of the letter could not be located in my firm's file, but a draft of the letter was sent to First Palmetto for its file. A true and accurate copy of the letter contained in the file of First Palmetto is attached hereto and incorporated herein by reference as **Exhibit B**. An executed original of this letter was sent to the addressees indicated by United States mail on January 9, 2009.

Exhibit C - DuBose Aff.

11. With regard to the January 2009 letter, I specifically recall reviewing our file from First Palmetto to obtain the addresses of each of the guarantors so that we could provide a copy of the default notice to them as well. We notified the guarantors out of an abundance of caution even though notice was not required.

FURTHER, AFFIANT SAYETH NOT.



John K. DuBose III, Esquire

SWORN to before me
This 30th day of June, 2011.

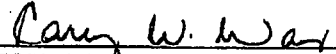

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3.15.2015

Exhibit C - DuBose Aff.

DuBose-Robinson, PC

ATTORNEYS AT LAW
935 Broad Street
Camden, South Carolina 29020
Telephone: 803-432-1992
Fax: 803-432-0784

. Kennedy DuBose, Jr.
onathan M. Robinson
ohn K. DuBose, III

November 14, 2008

REPLY TO: Mailing Address
PO Drawer 39
Camden, SC 29021

Columbia Office
609 Sims Ave.
Columbia, SC 29208
Telephone: 803-254-5445

Ms. Wendy J. Bellamy
Managing Member
BJC Enterprises, LLC
405 Flagg Street
Myrtle Beach, South Carolina 29577

Mr. Edward M. Farmer, Trustee
Henry C. Coan, Jr. Marital Trust
1004 29th Avenue North, Suite A
Myrtle Beach, South Carolina 29577

Americana Motel of Myrtle Beach, Inc.
a/k/a Americana, Inc.
c/o Ms. Wendy J. Bellamy
405 Flagg Street
Myrtle Beach, South Carolina 29577

Ms. Wendy J. Bellamy
405 Flagg Street
Myrtle Beach, South Carolina 29577

RE: First Palmetto Savings Bank vs. BJC Enterprises, LLC
Note dated January 17, 2008

Dear Ms. Bellamy and Mr. Farmer:

We have been retained by First Palmetto Savings Bank, F.S.B. in regard to a collection of the amount due on the above-referenced Note.

The purpose of this letter is to notify you that the above-referenced Note is in default. The sum of \$5,519,628.41 was due and payable on November 14, 2008 together with interest due on November 14, 2008 of \$54,391.33 and a late fee of \$13,976.30 for a total due on November 14, 2008 of \$5,587,996.04 plus attorney's fees accrued on behalf of the lender in the amount of \$500.00.

Exhibit A to DuBose Affidavit

November 14, 2008
Letter – Page 2

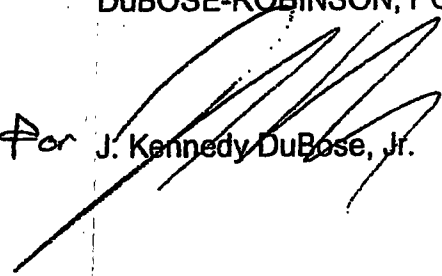
The total amount of the debt due on November 14, 2008 is \$5,588,496.04 with interim interest continuing to accrue from November 14, 2008.

The purpose of this letter is to inform you that the Note is in default and First Palmetto Savings Bank may elect to exercise its remedies under the Note and Mortgages dated January 14, 2005 (three mortgages), commercial security agreement dated January 7, 2008, and Assignment of Leases and Rents (3) dated January 14, 2005, and Assignment of deposit or share account and Hypothecation Agreement dated January 17, 2008 by Edward M. Farmer, Trustee of the Henry C. Coan, Jr. Marital Trust whereby said Edward M. Farmer, Trustee pledged to the above-referenced debt First Palmetto Savings Bank, F.S.B. certificate of deposit #4660924 in the amount of \$500,000.00 plus accrued interest (loan documents).

You are hereby notified that First Palmetto Savings Bank may exercise all its remedies without further notice including applying the above referenced certificate of deposit to the debt as provided in the loan documents and hypothecation agreement and without further notice may institute foreclosure debt collection actions under the Mortgages, Note, Assignments, and security agreements.

Very truly yours,

DuBOSE-ROBINSON, PC

For  J. Kennedy DuBose, Jr.

JKDuB, Jr.:srd

Exhibit A to DuBose Affidavit

*From FORECLOSURE COUNSEL
DuBOSE*

January 9, 2009

Ms. Wendy J. Bellamy
Managing Member
BJC Enterprises, LLC
405 Flagg Street
Myrtle Beach, S.C. 29577

Mr. Edward M. Farmer, Trustee
Henry C. Coan, Jr. Marital Trust
1004 29th Avenue North, Suite A
Myrtle Beach, S.C. 29577

Americana Motel of Myrtle Beach, Inc.
a/k/a Americana, Inc.
c/o Ms. Wendy J. Bellamy
405 Flagg Street
Myrtle Beach, S.C. 29577

Mr. Harvey L. Jones
1324 Harbor Towne Road
Myrtle Beach, S.C. 29577

Mr. Henry C. Coan, III
1910 Arundel Road
Myrtle Beach, S.C. 29577

Ms. Wendy J. Bellamy
405 Flagg Street
Myrtle Beach, S.C. 29577

RE: First Palmetto Savings Bank vs. BJC Enterprises, LLC
Note dated January 17, 2008

Dear Ms. Bellamy, Mr. Farmer, Mr. Jones, and Mr. Coan:

We have been retained by First Palmetto Savings Bank, F.S.B. to institute a collection of the amount due on the above-referenced Note.

The total amount of the debt due as of January 9, 2009 is \$5,602,581.31 with interest continuing to accrue from January 9, 2009 at \$1,264.92 per diem and demand for payment is made. Please note that a late charge will also accrue on January 28, 2009 if the amount due is not paid.

The purpose of this letter is to inform you that the Note is in default and First Palmetto Savings Bank will exercise its remedies under the Note and Mortgages dated January 14, 2005 (three mortgages), commercial security agreement dated January 7, 2008, and Assignment of Leases and Rents (3) dated January 14, 2005, and Assignment of deposit or share account and Hypothecation Agreement dated January 17, 2008 by Edward M. Farmer, Trustee of the Henry C. Coan, Jr. Marital

FPSB_000094

Exhibit B to DuBose Affidavit

January 9, 2009
Letter – Page 2

Trust whereby said Edward M. Farmer, Trustee pledged to the above-referenced debt First Palmetto Savings Bank, F.S.B. certificate of deposit #4660924 in the amount of \$500,000.00 plus accrued interest (loan documents).

The certificate of deposit will be applied to the debt and First Palmetto Savings Bank will institute foreclosure and suits on the guarantees of Wendy J. Bellamy, Harvey L. Jones, and Henry C. Coan, III.

Very truly yours,

DuBOSE-ROBINSON, PC

J. Kennedy DuBose, Jr.

JKDuB, Jr.:srd

FPSB_000095

Exhibit B to DuBose Affidavit

Exhibit D

Exhibit D – Shroff Dep.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
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.

Exhibit D - Shroff Dep.

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

Exhibit D - Shroff Dep.

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 - Shroff Dep.

1 Ms. Bellamy?

2 A: I sent it to both Ms. Bellamy and Harvey, and I
3 believe I sent it to even Tripp because I was not
4 sure whether Tripp was a member or I was a member
5 or who was a member of BJC.

6 Q: In your mind was there some confusion as to
7 whether or not you were a member?

8 A: No. In my mind there was no confusion because I
9 had bought the interest and, you know, the
10 assignment of shares had been made. You know,
11 Harvey and Wendy had signed off on that, but in
12 other peoples' mind there was some question so I
13 started communicating -- When that happened I
14 started communicating with Tripp and Ed Farmer a
15 little bit better.

16 Q: Okay. It appears that you refused to make the
17 capital contribution as called by Wendy in the
18 April 23rd letter; is that right?

19 A: Yes.

20 Q: And you requested a meeting of all the members of
21 BJC?

22 A: Well, when I received this letter, you know, or
23 when I received, sorry, the capital call letter I
24 picked the phone up and I talked with Harvey.
25 And Harvey had claimed that he didn't know

Exhibit D - Shroff Dep.

1 lot of other problems, financial problems on my
2 other projects, too, which I thought were more
3 salvageable than this one was.

4 Q: Were you willing to contribute more money to make
5 the loan payments to First Palmetto?

6 A: Only if everybody else was.

7 Q: And did you understand that everybody else was or
8 was not?

9 A: I understood at least Harvey didn't have the
10 money and Wendy didn't have the money. I
11 understood that, maybe it was wrong.

12 Q: Did you understand that based on your
13 conversations with Harvey and Wendy? How did you
14 come to believe that Harvey could not make ---

15 A: I mean, Harvey just point blankly told me he
16 didn't have it, so I knew that Harvey couldn't
17 come up with his share. Besides, I mean, this
18 was not a valid capital call.

19 Q: Because it wasn't authorized pursuant to ---

20 A: It was not authorized properly, and Harvey
21 disclaimed that he even knew about it. And Wendy
22 was writing that it was based on Harvey's request
23 or Harvey's permission, and I thought Wendy had
24 gone cuckoo at that time.

25 Q: What do you mean by that?

Exhibit D - Shroff Dep.

Exhibit E

Exhibit E – Loan History Report

ACCOUNT NBR	CIF NAME	TRANS DT	BRN TL	T/C	TRAN AMOUNT	PRINCIPAL	INTEREST	INSUR	L/C-NSF	DLR INC	SRV FEE	PRIN BALANCE
DUE DATE												

2008

75-084095-9 BJC ENTE BEGINNING BALANCE

00-00-00 PREV	01-17-08 001 A1 878	5573,146.62-	5573,146.62-	.00	.00	.00 L	.00	.00	.00	.00	.00	5573,146.62
	02-25-08 000 A1 111	47,905.19	.00	47905.19	.00	.00 L	.00	.00	.00	.00	.00	5573,146.62
	03-24-08 000 A1 111	47,905.19	10,239.36	37665.83	.00	.00 L	.00	.00	.00	.00	.00	5562,907.26
	04-29-08 000 A1 191	2,395.26-	.00	.00	.00	2395.26-L	.00	.00	.00	.00	.00	5562,907.26
	04-28-08 001 A1 788	37,665.87	.00	37665.87	.00	.00 L	.00	.00	.00	.00	.00	5562,907.26
	05-23-08 001 A1 788	12,634.58	.00	10239.32	.00	2395.26 L	.00	.00	.00	.00	.00	5562,907.26
	05-28-08 000 A1 191	2,395.26-	.00	.00	.00	2395.26-L	.00	.00	.00	.00	.00	5562,907.26
	06-03-08 000 A1 111	47,905.19	5,297.25	42607.94	.00	.00 L	.00	.00	.00	.00	.00	5557,610.01
	06-30-08 000 A1 191	2,395.26-	.00	.00	.00	2395.26-L	.00	.00	.00	.00	.00	5557,610.01
	07-01-08 000 A1 111	47,905.19	12,243.86	35661.33	.00	.00 L	.00	.00	.00	.00	.00	5545,366.15
	07-29-08 000 A1 191	2,395.26-	.00	.00	.00	2395.26-L	.00	.00	.00	.00	.00	5545,366.15
	07-29-08 000 A1 111	47,905.19	12,322.42	35582.77	.00	.00 L	.00	.00	.00	.00	.00	5533,043.73
	08-28-08 000 A1 191	2,395.26-	.00	.00	.00	2395.26-L	.00	.00	.00	.00	.00	5533,043.73
	09-02-08 000 A1 111	47,905.19	3,525.57	44379.62	.00	.00 L	.00	.00	.00	.00	.00	5529,518.16
	09-30-08 000 A1 191	2,395.26-	.00	.00	.00	2395.26-L	.00	.00	.00	.00	.00	5529,518.16
	10-02-08 000 A1 111	48,300.45	9,889.75	38015.44	.00	395.26 L	.00	.00	.00	.00	.00	5519,628.41
	10-28-08 000 A1 191	2,395.26-	.00	.00	.00	2395.26-L	.00	.00	.00	.00	.00	5519,628.41
	11-26-08 001 A1 111	47,905.19	.00	47905.19	.00	.00 L	.00	.00	.00	.00	.00	5519,628.41
	11-26-08 001 A1 111	19,135.29	.00	19135.29	.00	.00 L	.00	.00	.00	.00	.00	5519,628.41
	12-01-08 000 A1 191	2,395.26-	.00	.00	.00	2395.26-L	.00	.00	.00	.00	.00	5519,628.41
	12-30-08 000 A1 191	2,395.26-	.00	.00	.00	2395.26-L	.00	.00	.00	.00	.00	5519,628.41
11-17-08 NEXT	ENDING BALANCE	5141,631.44-	5519,628.41-	396763.79	.00	18766.02-L	.00	.00	.00	.00	.00	5519,628.41
						.00 F						

Exhibit E - Loan History Report

FPSB 000203

BRANCH 069

2008

RUN DATE 01/01/09 TIME 11:11 SEGH 1401

ACCOUNT NBR	CIF NAME	TRANS DT	BRN TL	T/C	TRAN AMOUNT	PRINCIPAL	INTEREST	INSUR	L/C-NSF	DLR INC	SRV FEE	PRIN BALANCE
75-073840-1 BJC ENTE BEGINNING BALANCE.												
01-12-08 PREV	01-23-08 000 A1 191	280,609.84-			.00	.00	.00	80609.84-L	.00	.00	.00	5573,146.62
	01-25-08 001 A1 180	80,609.84			.00	.00	.00	80609.84 L	.00	.00	.00	5573,146.62
	01-25-08 001 A1 113	45,348.62			.00	45348.62	.00	.00 L	.00	.00	.00	5573,146.62
	01-17-08 001 AJ 723	5573,146.62	5573,146.62		.00	.00	.00 L	.00	.00	.00	.00	.00
01-12-08 NEXT	ENDING BALANCE	5418,495.24	5573,146.62		45348.62	.00	.00 L	.00	.00	.00	.00	.00
							.00 F					

Exhibit E - Loan History Report

FPSR 000704

Exhibit F

Exhibit F – Bellamy Dep.

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.**

Exhibit F - Bellamy Dep.

1 HARVEY JONES, TRIPP COAN. WHAT WERE YOUR
2 RESPECTIVE MEMBERSHIP INTEREST IN BJC?

3 A. A THIRD, A THIRD, AND A THIRD.

4 Q. DID ANY OF YOU CONTRIBUTE MONEY TO THE LLC?

5 A. YES, MA'AM. TRIPP PUT IN ONE MILLION IN CASH AND
6 A \$500,000 CD FROM HIS MOTHER'S TRUST ACCOUNT.

7 Q. HOW ABOUT YOU OR HARVEY?

8 A. NO CASH, NO, MA'AM.

9 Q. SO YOU AND HARVEY BROUGHT THE PROPERTY?

10 A. THAT IS CORRECT. YES, MA'AM.

11 Q. AND THE PROPERTY THAT YOU BROUGHT WAS THE RAINBOW
12 COURT AND THE PROPERTIES THAT ARE THE SUBJECT OF
13 THIS ACTION OTHER THAN THE EMERALD SHORES?

14 A. CORRECT.

15 Q. AND WHEN YOU PURCHASED THE EMERALD SHORES, DID YOU
16 ALL LOOK AT ANY OF THEIR PROFITS AND LOSSES OR ANY
17 OF THEIR INCOME STATEMENTS TO GET AN IDEA OF WHAT
18 KIND OF MONEY THEY WERE GENERATING?

19 A. NO, MA'AM.

20 Q. THE 1.5 MILLION ... YOU SAID ONE MILLION IN CASH
21 AND A \$500,000 CD FROM TRIPP. WHAT DID THE ONE
22 MILLION IN CASH GO TO THAT TRIPP BROUGHT TO THE
23 LLC?

24 A. THE DOWN PAYMENT.

25 Q. HOW DID YOU COME TO APPLY OR SEEK A LOAN FROM

1 FIRST PALMETTO SAVINGS BANK?

2 A. WE HAD A CONTRACT ON THE EMERALD SHORES, A
3 GENTLEMAN NAMED DOUG BILLINGS COME BY AND WAS
4 TALKING TO ME AND HE SAID THAT HE HAD SOMEONE THAT
5 HE WANTED ME TO MEET AND HE BROUGHT JOHN GANDY THE
6 NEXT DAY AND I ALREADY KNOW JOHN. WE WENT TO HIGH
7 SCHOOL TOGETHER. AND JOHN ASKED ME TO WALK AROUND
8 THE PROPERTY AND HE SAID "OH, YOU GOT A GOLD MINE
9 ON THIS KIND OF STUFF." YOU KNOW, HE SAID, "I
10 HAVE A GENTLEMAN NAMED, MR. PATEL. "WOULD YOU MIND
11 DOING BUSINESS WITH AN INDIAN?" I SAID, "I DON'T
12 CARE AS LONG AS HE IS HONEST." SO HE BROUGHT HIM
13 TO ME AT THE MOTEL AND THAT WAS THE FIRST TIME I
14 MET MR. PATEL. AND WE TALKED ABOUT GOING INTO
15 BUSINESS TOGETHER AND WE ALL AGREED. I MEAN,
16 AFTER A COUPLE OF MEETINGS, THEY WERE GOING TO
17 COME IN AND DEVELOP IT.

18 Q. AND THAT WAS MR. PATEL AND JOHN GANDY?

19 A. JOHN GANDY.

20 Q. THEY WERE GOING TO BE THE DEVELOPERS OF ALL OF THE
21 PROPERTY OR JUST THE EMERALD SHORES?

22 A. NO, ALL OF IT. JOHN GANDY FORMED BLUE ATLANTIC,
23 LLC. AND THEY WERE GOING TO GET FIFTY
24 PERCENT PERCENT OF THE DEAL AND WE WOULD GET FIFTY
25 BECAUSE WE HAD THE LAND, BUT WE HAD NO MONEY.

1 RECORD, RIGHT NOW.

2 MS. COOK: OKAY. GO OFF.

3 OFF THE RECORD.

4 Q. DO YOU RECALL WHEN THE DATE THAT JACK TOOK YOU TO
5 SEE HENRIETTA GOLDING?

6 A. NO, I DON'T REMEMBER THE DATE. HE TOOK ME TO SO
7 MANY DIFFERENT LAWYERS.

8 Q. WHAT OTHERS LAWYERS DID HE TAKE YOU TO?

9 A. MORGAN MARTIN. WE SAT WITH MORGAN MARTIN. HE
10 TOOK ME TO TOMMY ROGERS, A JUDGE IN FLORENCE. I
11 MEAN, HE TOLD ALL THESE LAWYERS THAT HE WAS THERE
12 TO HELP ME AND I BELIEVED EVERY WORD HE SAID.

13 Q. AND WOULD THIS HAVE BEEN IN 2008 OR 2009?

14 A. 2009. BEGINNING OF 2009.

15 Q. AND WHAT DID JACK TELL YOU WAS THE PURPOSE OF
16 MEETING WITH THESE LAWYERS?

17 A. ABOUT CASEY TRYING TO ... I DON'T KNOW. HE WAS
18 JUST TAKING ME ... I DON'T KNOW. WHATEVER IT
19 TOOK, HE WAS GOING TO DO TO HELP.

20 Q. AND MY QUESTION IS REALLY MORE NARROW. WHAT DID
21 JACK TELL YOU WAS THE REASON WHY YOU WERE GOING TO
22 SEE THESE ATTORNEYS? AND I'M NOT ASKING YOU WHAT
23 THE ATTORNEYS TOLD YOU. I'M ASKING, WHAT DID JACK
24 TELL YOU?

25 A. THAT HE THOUGHT OR HE KNEW THAT WHAT CASEY AND

1 TRIPP DID WAS WRONG. I GUESS, BY READING THEM
2 PAPERS. THAT CASEY WAS TRYING TO TAKE ALL THE
3 PROPERTY AND THAT HE WOULD NOT LET IT HAPPEN.

4 Q. AND IS THAT THE SAME THING THAT TRIPP HAD
5 EXPRESSED TO YOU ABOUT CASEY EARLIER?

6 A. NO. TRIPP JUST DIDN'T LIKE HIM. SEE, TRIPP HAS
7 BEEN ...TRIPP'S DAD HAS BEEN IN THE MOTEL
8 BUSINESS, SO HE'S BEEN AROUND MORE WHEELING AND
9 DEALING.

10 Q. DIDN'T YOU TELL ME THAT TRIPP ...

11 A. YEAH. I DID TELL YOU THAT.

12 Q. THAT TRIPP ...

13 A. DID NOT LIKE CASEY.

14 Q. THAT TRIPP'S PROBLEM WAS THAT CASEY WAS TRYING TO
15 INTERFERE OR THAT ...

16 A. NO. THIS PAPER SAYS THAT WE'RE GIVING HIM FIFTY
17 PERCENT OF EVERYTHING AND WE GIVE HIM ONE HUNDRED
18 PERCENT CONTROL OVER ALL THE DEVELOPMENT. IN
19 OTHER WORDS, HE HAD THE RIGHTS TO MAKE ALL THE
20 DECISIONS FOR US.

21 Q. AND HAD TRIPP TOLD YOU PREVIOUSLY THAT HE THOUGHT
22 CASEY WAS TRYING TO MANIPULATE ...

23 A. HE SAID THAT IN JACK THOMAS' OFFICE.

24 Q. SO WERE JACK'S CONCERNS SIMILAR TO THOSE OF TRIPP
25 WITH REGARD TO CASEY?

1 Q. IF YOU WILL JUST READ THROUGH THIS REAL QUICKLY
2 AND REFAMILIARIZE YOURSELF WITH IT.

3 A. OKAY.

4 Q. THE FINAL PARAGRAPH READS, "SECTION 3.3 OF THE
5 LLC'S OPERATING AGREEMENT AUTHORIZES A CAPITAL
6 CALL IN CASE THERE ARE ANTICIPATED SHORTFALLS IN
7 THE PAYMENT OF THE LLC'S OBLIGATION. HARVEY AND I
8 BELIEVE THAT THE SHORTFALL WILL BE A HUNDRED AND
9 SIXTY-FIVE THOUSAND DOLLARS COMPRISING OF THE
10 \$150,000.00 MORTGAGE PAYMENT DUE MAY 31ST AND THE
11 \$15,000.00 LEGAL EXPENSES TO DEFEND THE
12 FORECLOSURE ACTION. WHAT FORECLOSURE ACTION ARE
13 YOU REFERRING TO?

14 A. THE ONE THAT HARVEY AND TRIPP HAD BEEN SERVED.

15 Q. WHO WAS FORECLOSING?

16 A. WELL, IT SAID IF THE PAYMENT WAS NOT PAID BY THE
17 31ST, THERE WAS NO ... THE FORECLOSURE THAT HARVEY
18 AND TRIPP GOT WAS DISMISSED BECAUSE I MADE THE
19 PAYMENT ON FEBRUARY. THIS WAS DONE IN APRIL AND I
20 KNEW BY THEN I HAD TO MAKE A PAYMENT OF A HUNDRED
21 AND FIFTY THOUSAND. WHEN UNCLE JACK TOOK ME TO
22 HENRIETTA'S, THEY TALKED ABOUT THE THIS AND SAID
23 THAT IF CASEY DIDN'T COME UP WITH HIS MONEY ... IF
24 CASEY WAS A MEMBER OF THE LLC OR HAD BOUGHT TRIPP
25 OUT, HE HAD TO COME UP WITH HIS THIRD OF THE

1 HUNDRED AND FIFTY THOUSAND, AND THEN SHE ADDED THE
2 ATTORNEY FEE ON IT I THINK.

3 Q. SO THAT HUNDRED AND FIFTY THOUSAND ...

4 A. THAT WAS TO MAKE THE PAYMENT MAY THE 31ST, BUT IN
5 THE MEANTIME, WE ARE OPERATING THE EMERALD SHORES
6 AND THE RAINBOW COURT. SO, THE UNDERSTANDING THAT
7 I HAD WHEN WE WERE AT THAT MEETING IS IF THE
8 RAINBOW COURT AND THE EMERALD SHORES FELL SHORT,
9 THAT THIS MONEY WOULD BE PUT UP WITH IT TO MAKE
10 THE PAYMENT.

11 Q. "BY THIS MONEY" YOU MEAN THIS HUNDRED AND FIFTY
12 THOUSAND DOLLARS?

13 A. NO, NO. IF CASEY OR HARVEY OR ANYBODY CAME AND
14 PUT THEIR 55,000 IN, YOU KNOW, THEN WE ALL ...
15 THEN IT WOULD BE THERE IN BJC. IF THE RAINBOW
16 COURT AND THE EMERALD SHORES DID NOT COME UP WITH
17 THE MONEY, THAT THIS MONEY WOULD BE THERE FROM
18 EACH MEMBER TO MAKE THE PAYMENTS. THAT'S MY ...
19 THAT'S THE WAY I TOOK IT. ARE YOU WITH ME?

20 Q. I AM. OKAY. AND THE \$15,000.00 REFERENCES LEGAL
21 EXPENSES?

22 A. THAT WAS FOR THE MCNAIR LAW FIRM.

23 Q. WHAT FORECLOSURE ACTION WAS IT DEFENDING ON APRIL
24 THE 23RD 2009?

25 A. MOZINGO WALLACE. I'M TRYING TO UNMIX IT.

1 Q. BUT IT GOES ON TO SAY, "THEREFORE, HARVEY AND I
2 HAVE APPROVED AND HEREBY DEMAND THAT A CAPITAL
3 CALL OF \$165,000.00 WITH EACH MEMBER BEING
4 REQUIRED TO CONTRIBUTE HIS OR HER PRO-RATA SHARE
5 OF THE CAPITAL CONTRIBUTIONS BY MAY THE 10TH
6 2009." WHY DID YOU PICK MAY 10, 2009 AS THE DATE?

7 A. WELL, THAT WOULD GIVE US TIME FROM MAY THE 10TH TO
8 MAY THE 31ST TO MAKE SURE WE COULD COME UP WITH
9 THE MONEY.

10 Q. SO YOU UNDERSTOOD THAT THE HUNDRED AND FIFTY
11 THOUSAND DOLLAR PAYMENT WAS GONNA HAVE TO COME
12 FROM THE MEMBERS OF BJC?

13 A. NO.

14 Q. THEN WHAT?

15 A. WE HAD THE MOTEL.

16 Q. WELL, IF THE MOTEL WAS GONNA PAY IT, WHY DID YOU
17 HAVE TO WRITE THIS LETTER?

18 A. WE HAD A THING ON MOZINGO WALLACE AND WE HAD THE
19 MOTEL PAYMENT AND MR. SMALL HAD TOLD ME WITH UNCLE
20 JACK AND BUPI, WE HAD TO PAY THAT HUNDRED AND
21 FIFTY THOUSAND BY MAY THE 31ST.

22 Q. MY QUESTION IS, IF THE HOTELS WERE GOING TO MAKE
23 THE HUNDRED AND FIFTY THOUSAND PAYMENT, WHY WOULD
24 YOU HAVE TO WRITE THIS LETTER AND ASK FOR A
25 HUNDRED AND FIFTY THOUSAND FROM BJC?

1 OBJECTIONS WOULD BE PRESERVED OR NEEDED TO BE
2 MADE. THUS, EVERY OBJECTION NEEDS TO BE
3 RAISED IN THIS DEPOSITION.

4 MR. BYRD: THAT'S YOUR UNDERSTANDING OF THE
5 RULES OF CIVIL PROCEDURE OF SOUTH CAROLINA.
6 WELL, MAYBE YOU OUGHT TO READ RULE 30.

7 MS. COOK: YES, SIR. I COULD BE WRONG BUT I
8 DO NOT BELIEVE SO. BUT, FOR THE RECORD, I
9 WOULD LIKE FOR THE COURT REPORTER TO EITHER
10 CONFIRM OR FIND THAT I AM WRONG THAT QUESTION
11 HAD BEEN ASKED AND HAD BEEN ANSWERED BY MS.
12 BELLAMY.

13 MR. BYRD: ALRIGHT. THAT'S WHERE WE STAND
14 RIGHT NOW. THE COURT REPORTER IS LOOKING FOR
15 THAT QUESTION AND ANSWER. WE STAND ADJOURNED
16 'TIL THAT HAPPENS.

17 MS. COOK: YES, SIR.

18
19 OFF THE RECORD.
20

21 Q. MS. BELLAMY, AFTER YOUR LETTER OF APRIL THE 23RD
22 OF 2009, DID HARVEY JONES MAKE A CAPITAL
23 CONTRIBUTION TO BJC IN THE AMOUNT OF \$55,000.00?

24 A. NO MEMBERS DID.

25 Q. DID CASEY SCHROFF MAKE HIS CONTRIBUTION OF

1 \$55,000.00?

2 A. NO, MA'AM.

3 Q. DID TRIPP MAKE HIS CONTRIBUTION OF \$55,000.00?

4 A. NO, MA'AM.

5 Q. DID YOU GET ANY RESPONSE TO YOUR LETTER DATED

6 APRIL THE 23RD, 2009 FROM MR. SCHROFF OR MR.

7 HARVEY JONES.

8 A. I DON'T REMEMBER.

9 Q. IF YOU WILL FLIP TO EXHIBIT "144". DO YOU

10 RECOGNIZE THAT DOCUMENT?

11 A. NO.

12 Q. DID YOU EVER RECEIVE A COPY OF THIS DOCUMENT?

13 A. IF I DID, NO. IF I DID I DON'T REMEMBER IT. HOW

14 ABOUT THAT?

15 Q. DID YOU EVER HAVE ANY CONVERSATION WITH MR.

16 SCHROFF AFTER YOUR APRIL 23RD 2009 LETTER ABOUT

17 MAKING A CAPITAL CONTRIBUTION TO BJC?

18 A. I DON'T REMEMBER.

19 Q. DID YOU HAVE ANY CONVERSATION WITH HARVEY JONES

20 AFTER?

21 A. I DIDN'T TALK TO MY BROTHER ANY THEN. I MEAN,

22 ABOUT ANY BUSINESS. UNCLE JACK WAS TAKING CARE OF

23 ALL THIS. I COULD HAVE BEEN DEAD. HE WAS TAKING

24 CARE OF EVERYTHING?

25 Q. WELL, GOING BACK TO EXHIBIT "143", DID YOU TELL ME

1 Q. DID THEY TELL YOU THAT THEY WERE NEGOTIATING WITH
2 THE BANK TO BUY THE NOTE AND MORTGAGE?

3 A. NO, MA'AM.

4 Q. DID YOU EVER HAVE ANY DISCUSSIONS WITH JACK AND
5 JACK AND ANYBODY ELSE ABOUT BUYING THE NOTE AND
6 MORTGAGE FROM FIRST PALMETTO?

7 A. UNCLE JACK.

8 Q. YOU TALKED TO UNCLE JACK ABOUT BUYING THE NOTE
9 MORTGAGE FROM FIRST PALMETTO?

10 A. HE HAD SAID SOMETHING ABOUT BUYING THE NOTE AND
11 MORTGAGE.

12 Q. WHEN?

13 A. I DON'T REMEMBER THE DATE.

14 Q. WELL, I KNOW WE'VE BEEN GOING LONG TIME BUT THIS
15 IS IMPORTANT. WAS BEFORE OR AFTER HE ... YOU
16 EXECUTED YOUR POWER OF ATTORNEY?

17 A. NO. IT WAS AFTER ... HE HAD LEGAL ... HE HAD
18 CONTROL. I TRUSTED HIM WHATEVER HE SAID.

19 Q. MS. BELLAMY, I'M TRYING TO ASK, WERE YOU AWARE
20 THAT JACK WAS DISCUSSING BUYING THE NOTE AND
21 MORTGAGE WITH FIRST PALMETTO?

22 A. YES. I SAT IN A MEETING WITH THEM.

23 Q. WHERE THAT WAS THE TOPIC OF DISCUSSION?

24 A. NO. THAT WASN'T IT. IT WAS IN THE MEETING ABOUT
25 THE PAYMENTS AND STUFF, BUT UNCLE JACK HAD SAID

1 YES.

2 Q. THAT ALL THE LAWSUITS THAT ARE CURRENTLY PENDING,
3 INCLUDING THE ONE THAT BRINGS US HERE TODAY, THOSE
4 WERE ALL ALREADY FILED BEFORE HOTEL AND MOTEL
5 HOLDINGS BOUGHT THE NOTE AND MORTGAGE?

6 A. ALL WHAT PAPERS?

7 Q. ALL OF THE LAWSUITS?

8 A. WHAT DO YOU MEAN ALL THE LAWSUITS?

9 Q. THE FORECLOSURE ACTION FILED BY FIRST PALMETTO
10 SAVINGS BANK THAT WE WERE HERE ...

11 A. THAT STARTED ON JUNE THE 5TH.

12 Q. JUNE THE 4TH?

13 A. OKAY. JUNE THE 4TH.

14 Q. THE PERSONAL GUARANTY ACTION?

15 A. I DIDN'T SEE THAT. MAYBE HENRY GOT IT ALL.

16 Q. DID YOU HAVE ANY DISCUSSIONS WITH TERRY COLLINS OR
17 JOY COLLINS REGARDING BUYING THE NOTE AND THE
18 MORTGAGE?

19 A. YES.

20 Q. WHEN WERE THOSE CONVERSATIONS?

21 A. I DON'T REMEMBER THE DATES.

22 Q. WERE THOSE BEFORE OR AFTER JUNE THE 5TH 2009?

23 A. IT WAS BEFORE BECAUSE UNCLE JACK GOT TOGETHER WITH
24 `EM, ALL THREE OF US. ALL FOUR OF US.

25 Q. YOU MEAN?

1 A. IT WAS ME, UNCLE JACK, BUPI AND JOY AND TERRY.

2 Q. AND WHAT WERE YOUR DISCUSSIONS?

3 A. I DIDN'T HAVE NO DISCUSSIONS. THEY DID ALL OF THE
4 DISCUSSIONS.

5 Q. IS JOY COLLINS YOUR FRIEND?

6 A. YES, MA'AM. VERY MUCH.

7 Q. DEAR FRIEND OF YOURS, RIGHT?

8 A. YES, MA'AM.

9 Q. IN FACT, SHE BOUGHT THE JEWELRY THAT YOU SOLD HER
10 FROM YOUR MOTHER'S ESTATE TO PAY THE \$95,000.00,
11 IS THAT RIGHT?

12 A. YES, MA'AM.

13 Q. SO, WHO BROUGHT HER TO THE TABLE TO EVEN DISCUSS
14 BUYING THE NOTE AND MORTGAGE?

15 A. I'M SURE I MUST HAVE SAID SOMETHING.

16 Q. AND SO ...

17 A. I SAID SOMETHING AND THEN UNCLE JACK CALLED THEM
18 AND SAID, "WELL, I'LL TALK TO `EM."

19 Q. AND HE DID, RIGHT?

20 A. YES. HE CALLED THEM A LOT, YEAH.

21 Q. AND YOU TALKED TO THEM TOO, RIGHT?

22 A. I TALKED TO HER EVERY DAY, THREE OR FOUR TIMES A
23 DAY.

24 Q. DO YOU THINK THAT ...

25 A. I DIDN'T ...

1 Q. DO YOU THINK THAT JOY DID ANYTHING WRONG TO YOU?

2 A. NO, MA'AM.

3 Q. SO, IN THE DISCUSSION, WAS THERE ANY OBJECTION TO
4 JACK AND THE COLLINS HAVING A DISCUSSION ABOUT
5 BUYING THE NOTE AND MORTGAGE? DO YOU HAVE ANY
6 OBJECTION TO THEM DISCUSSING POSSIBLY BUYING THE
7 NOTE AND MORTGAGE FROM FIRST PALMETTO?

8 A. NO, MA'AM.

9 Q. SO, IF THEY HAD BOUGHT THE NOTE AND MORTGAGE
10 INSTEAD OF HOTEL AND MOTEL HOLDINGS, YOU WOULDN'T
11 HAVE A PROBLEM?

12 A. NO.

13 Q. SO YOUR PROBLEM IS LIMITED TO THE FACT THAT IT WAS
14 JACK?

15 A. NO, I DIDN'T SAY THAT. THE WHOLE DEAL WAS THAT
16 NOBODY WAS GOING TO BUY THE MORTGAGE. HE WAS
17 HELPING ME TO SAVE IT, NOT TO BUY THE MORTGAGE.
18 THAT WAS UNCLE JACK'S DOING. THE PLAN WAS NOT TO
19 BUY THE MORTGAGE. THE PLAN WAS TO MAKE THE
20 PAYMENTS AND SAVE IT UNTIL WE EITHER COULD GET A
21 PLAN.

22 Q. BUT I JUST ASKED YOU ABOUT THE DISCUSSIONS THAT
23 JACK AND YOU AND COLLINS MAY HAVE HAD ABOUT BUYING
24 THE NOTE AND MORTGAGE. SO, AT LEAST AT SOME
25 POINT, THAT MUST HAVE BEEN AT LEAST PART OF THE

1 PLAN?

2 A. YEAH. I MEAN, IT WAS DISCUSSED BUT I ONLY ...
3 UNCLE JACK MET WITH THEM AND THEN ALL THREE OF US
4 MET ONE TIME WITH `EM AND TALKED. I NEVER OPENED
5 MY MOUTH.

6 Q. AND WHAT IS YOUR UNDERSTANDING OF WHY THE COLLINS
7 AND JACK DID NOT BUY THE NOTE AND MORTGAGE?

8 A. YOU WILL HAVE TO ASK THEM.

9 Q. DO YOU HAVE ANY UNDERSTANDING OF WHY?

10 A. YES, BUT I'M NOT GOING TO SAY. YOU WILL HAVE TO
11 ASK JOY AND TERRY. THEY KNOW THE TRUTH.

12 Q. NO, MA'AM. I'M ASKING YOU.

13 A. BUT THEN IT'S HEARSAY.

14 Q. THAT'S OKAY, AND THEN THE JUDGE WILL SORT IT ALL
15 OUT? IF IT'S NOT ADMISSIBLE, IF IT IS HEARSAY,
16 THEN THE JUDGE WILL SORT IT OUT, BUT YOU NEED TO
17 ANSWER MY QUESTION.

18 A. MY UNDERSTANDING WAS THAT THEY WERE GOING TO GO IN
19 THERE AND BUY IT. UNCLE JACK WANTED THEM TO WRITE
20 A CHECK WITHOUT THEM EVEN GOING TO TONE TRASK. HE
21 WANTED THEM TO JUST WRITE A CHECK AND THEY
22 WOULDN'T DO THAT. SO, HE SAID ... THEY SAID, "YOU
23 HAVE TO COME." SO, UNCLE JACK WENT TO TONE TRASK
24 WITH THEM AND JOY AND TERRY SAID, "I'M NOT
25 MARRYING THE JONES FAMILY." THAT MEANT TINA AND

1 MARY AND ALL OF THEM HAD TO GO. "IF WE ARE GOING
2 TO BE DOWN THERE, IT'S GOING TO BE RUN RIGHT.
3 EVERY PENNY IS GOING TO GOING IN THE BANK." UNCLE
4 JACK SAID ... THEY EVEN SAID THEY WOULD HOLD THE
5 FIRST MORTGAGE AND PUT THE MONEY IN. UNCLE JACK
6 SAID, "NO WAY. IF I'M GONNA DO IT, I AM GOING TO
7 HAVE THE FIRST MORTGAGE." I DON'T EVEN KNOW WHAT
8 ELSE WAS SAID THEN.

9 Q. SO, THEY WERE SAYING THAT THEY WOULD PUT IN HALF
10 THE MONEY AND JACK COULD PUT IN HALF THE MONEY?

11 A. MY UNDERSTANDING.

12 Q. AND THEY WERE GOING TO TAKE THE FIRST MORTGAGE AND
13 JACK WAS GOING TO GET A SECOND?

14 A. NO. IF THEY TOOK THE FIRST, THEY WD HAVE PUT IN
15 MORE MONEY WAS MY UNDERSTANDING. HE SAID HE HAD
16 TO BORROW MONEY FROM THE BANK. TERRY SAID THAT HE
17 WOULD LOAN THE MONEY TO UNCLE JACK.

18 Q. AND SO WHAT'S YOUR UNDERSTANDING OF WHY THAT
19 DIDN'T WORK? BECAUSE JACK WOULDN'T DO WHAT THEY
20 WANTED HIM TO DO?

21 A. I GUESS.

22 Q. AND YOU DON'T HAVE ANY IDEA ABOUT WHEN THOSE
23 DISCUSSIONS WERE HAPPENING?

24 A. THERE HAVE BEEN SO MANY DATES. I DON'T ... I
25 CAN'T THINK. I DON'T REMEMBER THE DATES.

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 YOU KNOW, HE WASN'T A RECEIVER NOW UNLESS HE WAS
2 JACK AND DONALD'S RECEIVER. HE WAS A MANAGER. A
3 MANAGER IS SUPPOSED TO GO IN THERE AND RUN OF THE
4 PLACE AND HELP US MAKE IT.

5 Q. DID YOU AND YOUR BROTHER AND MR. COAN OR MR.
6 SCHROFF OR WHOEVER WAS SUPPOSED TO BE IN CHARGE,
7 DID Y'ALL HAVE ANY MEETING OR SEND A LETTER TO MR.
8 PATEL TELLING MR. PATEL THAT YOU WERE DISSATISFIED
9 AND YOU WANTED TO DISCHARGE HIM?

10 A. NO, SIR.

11 Q. DID YOU EVER AND I'M GOING TO ASK YOU ONE MORE
12 TIME THAT YOU MAY HAVE SAID IT, DID YOU EVER
13 INDICATE YOUR DISSATISFACTION WITH MR. PATEL TO
14 HIM?

15 A. ME AND BUPI GOT IN A COUPLE ARGUMENTS.

16 Q. DID YOU TELL HIM THAT YOU'RE GOING TO TERMINATE
17 HIM?

18 A. NO. I COULDN'T FIRE NOBODY.

19 Q. DO YOU KNOW OF ANY PROPERTY THAT WAS OWNED BY
20 EITHER AMERICANA OR BY THE LLC THAT MR. PATEL
21 CONVERTED TO HIS OWN USE WHILE HE WAS IN THERE?

22 A. DO WHAT?

23 Q. DO YOU KNOW OF ANY PROPERTY THAT WAS OWNED BY
24 EITHER BJC ENTERPRISES OR AMERICANA OF MYRTLE
25 BEACH THAT MR. PATEL CONVERTED, PUT TO HIS OWN USE

1 OR STOLE WHILE HE WAS IN THERE?

2 A. LAND.

3 Q. ANY PROPERTY OF ANY KIND AND THAT YOU CAN THINK
4 OF?

5 A. I DON'T KNOW HIM AND UNCLE JACK AND WILBUR WOULD
6 GO IN THE BACK DOOR IN THE BACK OFFICE AND SHUT
7 THE DOOR. I WASN'T PRIVILEGED TO THAT.

8 Q. LET ME ASK THE QUESTION AGAIN BECAUSE YOU HAVE
9 ALLEGED IT IN YOUR COMPLAINT. WHAT PROPERTY OF
10 EITHER THE LLC OR THE CORPORATION DID MR. PATEL
11 TAKE, CONVERT WAS YOUR WORDS? I'M ASKING WHAT
12 PROPERTY, LAND, WHAT DID HE TAKE TO YOUR
13 KNOWLEDGE?

14 A. THEY SHOULD HAVE MADE PAYMENT.

15 Q. I AM ASKING YOU WHAT PROPERTY. YOU SAID HE SHOULD
16 HAVE MADE THE PAYMENTS? YOU SAID THAT A COUPLE OF
17 TIMES. WHAT PROPERTY DID HE TAKE?

18 A. I DON'T UNDERSTAND WHAT YOU ARE ASKING ME.

19 Q. YOU DON'T KNOW OF ANY PROPERTY HE TOOK?

20 A. NO LAND, NO, SIR.

21 Q. ANY PERSONAL PROPERTY? DID HE TAKE ANY OF YOUR
22 MONEY?

23 A. WELL, I DON'T KNOW. I DIDN'T GET TO GO IN THERE
24 WITH THEM.

25 Q. YOU CAN'T SPECIFY ONE WAY OR THE OTHER?

1 A. NO, SIR.

2 Q. THANK YOU. UNTIL MS. COOK COMMUNICATED WITH MR.
3 PATEL, DO YOU KNOW IF ANYONE ON BEHALF OF YOUR LLC
4 OR YOUR CORPORATION EVER TOLD MR. PATEL THAT HE
5 DID NOT HAVE THE AUTHORITY TO OPERATE OR TO MANAGE
6 THE PROPERTY?

7 A. MISS HENRIETTA TOLD ME TO TELL THEM BOTH TO LEAVE
8 THE PROPERTY. IS THAT WHAT YOU'RE TALKING ABOUT?

9 Q. DID YOU TELL HIM THEN?

10 A. HUH-UH. (NEGATIVE RESPONSE.)

11 Q. NO?

12 A. HOW COULD I TELL HIM.

13 MS. COOK: YOU'RE SHAKING YOUR HEAD AGAIN.

14 A. NO, SIR, I DIDN'T TELL HIM THAT.

15 Q. I HAVE A COUPLE SPECIFIC QUESTIONS. WE'RE GOING
16 TO TALK ABOUT THE MONEY. YOU ALLEGED THAT MR.
17 PATEL CONVERTED AND STOLE FROM YOU CERTAIN INCOME.
18 WHAT WAS THE AMOUNT OF THE INCOME AND WHEN I SAY
19 STOLE FROM YOU, I'M SAYING BJC ENTERPRISES, LLC
20 AND/OR ... WELL, YOU GOT WENDY BELLAMY TOO AND
21 AMERICANA, INC. WHAT WAS IT INCOME THAT HE STOLE?

22 A. I DON'T UNDERSTAND THE QUESTION.

23 Q. DO YOU UNDERSTAND INCOME? WHAT INCOME IS?

24 A. I DO KNOW WHAT INCOME IS.

25 Q. I WANT TO KNOW WHAT INCOME MR. PATEL OR PATEL

1 MANAGEMENT STOLE FROM EITHER WENDY BELLAMY, BJC
2 ENTERPRISES, LLC OR AMERICANA, INC., A/K/A
3 AMERICANA OF MYRTLE BEACH INC., IF ANY?

4 A. REPHRASE THAT.

5 Q. WHAT MONEY OR INCOME DID MR. PATEL OR PATEL
6 MANAGEMENT STEAL FROM YOU, THE LLC OR THE
7 CORPORATION?

8 A. WHAT I'M SAYING IS THAT I HAD NO CONTROL OVER IT.
9 JACK AND BUPI RAN IT. I COULD BE SITTING IN THE
10 OFFICE AND THEY WOULD GO BACK THERE AND SHUT THE
11 DOOR OR WHATEVER. I HAD NO CONTROL OF IT. THERE
12 WOULD BE MONEY BACK THERE. I DON'T KNOW WHAT THEY
13 DID?

14 Q. SO YOU DON'T KNOW?

15 A. NO, I DON'T KNOW.

16 Q. YOU WERE GETTING A PAYCHECK DURING THIS PERIOD OF
17 TIME, WEREN'T YOU?

18 A. \$250.00 FOR THE SIXTY, SEVENTY HOURS A WEEK.

19 Q. IS THAT THE SAME PAYCHECK YOU GOT THE YEAR BEFORE?

20 A. NO, I GOT MORE.

21 Q. WHO NEGOTIATED THE PAYCHECK, MR. PATEL?

22 A. JACK JONES.

23 Q. WERE YOU HAPPY WITH THE PAYCHECK?

24 A. I WOULD HAVE WORKED FOR NOTHING.

25 Q. SO YOUR ANSWER IS YES?

Exhibit G

Exhibit G – Collins Dep.

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
 JOYCE G. COLLINS
 Monday, March 28, 2011
 a.m. --- 9:51 a.m.

9:18

The deposition of Joyce G. Collins, 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.

Exhibit G - Collins Dep.

1 A: No.

2 Q: Did you have any conversations -- You didn't have
3 any conversations at all about purchasing this
4 loan or just not with the bank?

5 A: Not with the bank.

6 Q: Okay. Did you have any conversations with anyone
7 else about purchasing this loan?

8 A: Not at that time.

9 Q: Okay. At any time?

10 A: I had, in June I had a conversation with Mr.
11 Jones.

12 Q: And what was that conversation?

13 A: We were going to become partners, 50-50.

14 Q: And what was going to be the basis of your
15 partnership? You were going to be 50-50 partners
16 to buy the property or the loan?

17 A: To buy the loan.

18 Q: And what were the terms of your partnership or
19 proposed partnership?

20 A: Well, they started out one way and ended another
21 way.

22 Q: How did it start out?

23 A: Started out 50-50, and then it become a third.

24 Q: And the third would be you have a third or Mr.
25 Jones has a third?

Exhibit G - Collins Dep.

1 A: Mr. Jones has a third, I have a third, and Bhupi
2 Patel has a third.

3 Q: Okay. And was the purchase price still the same,
4 5.2 million?

5 A: Yes, starting, yes.

6 Q: And the 50, I'm going to go back to the first 50-
7 50 partnership. Was the 50-50 partnership
8 between you and Jack?

9 A: Yes.

10 Q: Okay. And then when it became a third, a third,
11 a third, Mr. Patel took the missing third; is
12 that right?

13 A: Yes.

14 Q: And do you recall was this early June or late
15 June?

16 A: Mid June.

17 Q: And during this time did you all have any
18 discussions with the bank?

19 A: No.

20 Q: Was Ms. Bellamy involved in these discussions?

21 A: No.

22 Q: Was Ms. Bellamy aware that there negotiations
23 ongoing, to your knowledge?

24 A: Yes.

25 Q: And how do you know that Ms. Bellamy was aware

Exhibit G - Collins Dep.

1 that there was ongoing negotiations?

2 A: They were held at the Rainbow Court.

3 Q: And when you all were talking about buying this

4 loan what was the business plan; was it to

5 continue to be the lender or were you going to

6 foreclose and hold title to the property?

7 A: Be the lender.

8 Q: And what was Mr. Patel's role to be?

9 A: He was supposed to be, I guess, the receiver to
10 take care of the ---

11 Q: And did you all ever reach an agreement?

12 A: No, not at that time.

13 Q: Why not; what happened?

14 A: Mr. Jones come over to my house one morning about
15 7:00, and he said we need to hurry up and do it
16 because the bank was foreclosing. So Mr. Jones,
17 my husband, and I went to Mr. Trask's office and
18 he listened to the conversation. After Mr. Jones
19 left, Mr. Trask and I and my husband decided that
20 we would be the bank by ourselves.

21 Q: Okay. And did you then make an offer to purchase
22 to the bank?

23 A: No.

24 Q: Okay. Tell me what happened.

25 A: When we got out of the meeting with Mr. Trask I

Exhibit G - Collins Dep.

1 got a phone call. Mr. Jones, Mr. Patel, and Ms.
2 Bellamy was at K & W. They asked us to come down
3 there. Mr. Jones said that they were in a hurry
4 to get the money. I told him the only thing I
5 could offer them was to buy the loan. They could
6 keep it for one month, one year, it, you know,
7 just something quick for them, and that was all I
8 could offer them, that I would be the bank.

9 Q: And what did you understand they were asking?

10 You said, "That's all I could offer."

11 A: A partner, and I did not want to be a partner.

12 Q: Okay. So I think I understand. You're saying
13 that if there was going to be a purchase of the
14 note you would do that but only by yourself?

15 A: Yes.

16 Q: And what was the response of Bhupi Patel, Jack
17 Jones, and Wendy Bellamy to that?

18 A: Mr. Patel didn't say anything. Ms. Jones, she
19 didn't say anything. Mr. -- I mean, Ms. Bellamy
20 didn't say anything. Mr. Jones said that, "No,
21 because I would end up with it."

22 Q: Did you ever communicate your offer to buy the
23 loan to the bank?

24 A: No.

25 Q: At the time of the meeting at K & W was there

Exhibit G - Collins Dep.

- 1 already a foreclosure pending?
- 2 A: Mr. Jones said that they had to move fast.
- 3 That's all I can tell you.
- 4 Q: When you met with Tone Trask the second time, was
- 5 Jack Jones with you?
- 6 A: Only met with him -- I don't understand.
- 7 Q: Okay. I'm sorry. I understood you earlier to
- 8 tell me there was a meeting with Mr. Trask where
- 9 you had a telephone conference with the bank.
- 10 A: Yes.
- 11 Q: And was there a second meeting with Mr. Trask
- 12 with Mr. Jones present?
- 13 A: Yes, in June.
- 14 Q: Was there ever a time where you and Jack
- 15 discussed purchasing the loan and you taking a
- 16 first mortgage and Jack taking a second?
- 17 A: No.
- 18 Q: After the meeting at K & W did you have any other
- 19 negotiations, or I'm sorry, discussions with
- 20 anybody about buying this loan?
- 21 A: I called them, Mr. Trask got me an amortization.
- 22 I called them and told them how much it would be
- 23 each month.
- 24 Q: And when you say how much each month, you mean
- 25 the new loan payments?

Exhibit G - Collins Dep.

1 A: Yes.

2 Q: And do you recall approximately how much that
3 was?

4 A: No.

5 Q: And who did you call and give those to?

6 A: Mr. Jones was on there; Ms. Bellamy, and Mr.

7 Patel. I could hear all three of their voices.

8 I was on the phone.

9 Q: And what was the response to the new monthly
10 payment schedule?

11 A: They said no.

12 Q: Did they tell you any reason why it was no?

13 A: No.

14 Q: Did they say that the properties couldn't
15 generate enough to make those payments?

16 A: They were less than what they had been making.

17 Q: Did they tell you they believed they could make
18 those new ---

19 A: No.

20 Q: So if I understand you're saying they're less
21 than what they were at the time but still they
22 were too high to be made?

23 MS. COOK: OBJECTION TO THE FORM OF
24 THE QUESTION.

25 Q: You can answer.

Exhibit G - Collins Dep.

Exhibit H

Exhibit H – Patel Dep.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

CASE NUMBER 2009-CP-26-5550

HOTEL AND HOTEL HOLDINGS, LLC,

PLAINTIFF,

V.

WENDY BELLAMY,

DEFENDANT/THIRD

PARTY-PLAINTIFF,

V.

FIRST PALMETTO SAVINGS BANK,

F.S.B.; JACK JONES; DONALD D.

GODWIN; AND BHUPENDRA PATEL,

THIRD PARTY

DEFENDANTS.

copy

DEPOSITION OF
BHUPENDRA PATEL
FROM 10:05 A.M. UNTIL 1:45 P.M.
NOVEMBER 17, 2010

Exhibit H - Patel Dep.

1 Q IN ADDITION TO THE OCEANFRONT BUILDING, THE
2 ANNEX WOULD HAVE BEEN ALL OF THE EMERALD SHORES
3 PROPERTY THAT WAS IN THE THIRD ROW BACK?

4 A RAINBOW COURT.

5 Q RAINBOW COURT, AS I UNDERSTAND IT, IS MADE UP
6 OF A HOTEL AND COTTAGES AROUND THE BACK?

7 A THAT'S CORRECT.

8 Q IT WAS THE RAINBOW COURT MOTEL PORTION?

9 A RIGHT. EVERYTHING TOGETHER.

10 Q AND COTTAGES. SO ALL OF THE PROPERTIES OWNED
11 BY AMERICANA THAT DOES BUSINESS AS RAINBOW
12 COURT?

13 A YES.

14 Q SO YOUR FIRST TASK WAS TO GET THE PROPERTIES
15 OPEN?

16 A RIGHT.

17 Q AND AFTER THAT, WHAT DID YOU DO?

18 A WE OPENED THE PROPERTY AND THE HOTEL. WAS A
19 LOT OF WORK AFTER YOU SIT DOWN AT THE HOTEL.
20 THINGS ARE BROKEN, PULLED OUT OF THE WALL,
21 WATER HEATERS NOT WORKING AND WE NEEDED TO GET
22 EVERYTHING READY TO OPEN. THERE IS A LOT OF
23 BILLS THAT WERE NOT PAID AND WE WERE HAVING
24 SOME PROBLEM WITH PEOPLE FOR SUPPLIERS AND THAT
25 STANDARD BECAUSE, YOU KNOW. SO, IT WAS A

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1 LITTLE STRUGGLE IN THE BEGINNING TO GET GOING.
2 AND WE NEEDED SOME KIND OF CASH INJECTION INTO
3 THE PROPERTY TO BE ABLE TO OPEN.

4 Q WHO PROVIDED THAT CASH INJECTION?

5 A INITIALLY, WILBUR JONES PROVIDED \$50,000.00 AND
6 THEN THERE WAS APPROXIMATELY \$120,000.00. I
7 DON'T REMEMBER IF JACK JONES BROUGHT IN. IF I
8 REMEMBER RIGHT, AND THAT STARTED THE THING.

9 Q THAT GOT YOU UP AND RUNNING?

10 A THAT'S RIGHT.

11 Q AFTER YOU GOT UP AND RUNNING, WHAT WAS YOUR
12 SCOPE OF RESPONSIBILITY WITH REGARD TO THE
13 PROPERTY? WHAT DID YOU DO ON A DAY-TO-DAY
14 BASIS WITH REGARD TO THE PROPERTY?

15 A WHAT I DID WAS... MY JOB WAS ... WHEN YOU SAY
16 MANAGEMENT, IT IS TO LOOK AT THE INCOMING
17 REVENUE AND THE OUTGOING BILLS. THAT'S WHAT I
18 WAS DOING. EVERYBODY WAS HAPPY TO GET THE
19 PROPERTY GOING AND I WAS ON THE FINANCIAL SIDE.
20 I WAS MAKING SURE ALL THE REVENUES WERE
21 COLLECTED AND THE BILLS WERE PAID.

22 Q IN TERMS OF HIRING THE LABOR, THE MAIDS, THE
23 DESK CLERKS, STUFF LIKE THAT, DID YOU DO THAT?

24 A THERE WERE ALREADY PEOPLE THERE BECAUSE THAT
25 PROPERTY HAS BEEN THERE SUCH A LONG TIME.

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1 NEGOTIATING TO BUY THE LOAN WITH THE BANK?

2 **A** I DON'T REMEMBER EITHER.

3 MR. DESCHAMPS: LET ME JUST PUT
4 SOMETHING ON THE RECORD. I FORGOT IT
5 EARLIER ON AND IT'S A STANDARD THING
6 THAT WE NORMALLY SAY. WE ARE RESERVING
7 ALL OBJECTIONS OTHER THAN TO THE FORM
8 OF THE QUESTION UNTIL THE TIME OF TRIAL
9 AND I FORGOT TO PUT THAT ON THE RECORD.
10 MS. COOK: THAT'S FINE.

11 **Q** WHEN DID YOU FIRST LEARN OR DID YOU LEARN AT
12 SOME POINT THAT FIRST PALMETTO HAD STARTED A
13 FORECLOSURE ACTION TO FORECLOSE ON THEIR NOTE
14 AND MORTGAGE?

15 **A** WHEN DID I LEARN?

16 **Q** THAT THE BANK HAS STARTED A FORECLOSURE ACTION?

17 **A** UNLESS WENDY SHOWED ME SOME PAPERWORK, I DON'T
18 REMEMBER WHEN IT WAS.

19 **Q** AND DID YOU EVER LEARN THAT H&M, JACK'S
20 COMPANY, WAS CONTINUING WITH A FORECLOSURE
21 ACTION? DID YOU KNOW ANYTHING ABOUT THAT?

22 **A** NOT MUCH.

23 **Q** TELL ME WHAT YOU DID KNOW?

24 **A** ONLY THING I KNEW IS THEY WERE GOING TO BUY THE
25 NOTE.

—MABRY COURT REPORTING—

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1 Q WHO WAS GOING TO BUY THE NOTE?

2 A H&M AND HOLDING BECAUSE THERE WAS OTHER ISSUES
3 THERE, YOU KNOW. I SAT DOWN TWO TIMES IN
4 NEGOTIATIONS WITH A COLLINS FAMILIES.

5 Q WAS THAT THE FIRST TIME THAT YOU HAD MET TERRY
6 AND ...

7 A YES.

8 Q DID THE COLLINS COME TO RAINBOW COURT OR DID
9 Y'ALL GO TO THE COLLINS HOUSE OVER IN
10 PLANTATION POINTE?

11 A THE FIRST TIME WE MET AT RAINBOW COURT.

12 Q AND THEN THE SECOND TIME WAS AT THE COLLINS
13 HOME?

14 A NO. I DIDN'T GO TO HOME THE SECOND TIME. WE
15 MEET AT K&W.

16 Q THE FIRST TIME THAT YOU MET AT RAINBOW COURT,
17 WHO WAS PRESENT?

18 A ME, JACK, JOEY AND TERRY.

19 Q WAS WENDY PRESENT?

20 A YES.

21 Q AND WHAT DID Y'ALL DISCUSS WITH JOEY AND TERRY?

22 A THE DISCUSSION WAS BUYING THE HOTEL. THE NORTH
23 HOTEL WAS BRINGING CASH MONEY.

24 Q THE NORTH HOTEL?

25 A THE MORTGAGE ON THE HOTEL.

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