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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.

RECORD ON APPEAL

RECEIVED
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SC Court of Appeals

Kathryn M. Cook, Bar No. 1371

~~James E. Cook, Jr., Bar No. 77058~~

COOK & ROY, LLC

P.O. Box 4086

North Myrtle Beach, South Carolina 29597

Telephone: 843-663-1200

Attorney for Appellants

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

Carlyle R. Cromer

Audra M. Byrd, Bar No. 76719

R. Wayne Byrd, Bar No. 1068

P.O. Box 2116

Myrtle Beach, South Carolina 29578

Telephone: 843-213-5500

Attorneys for Respondents Hotel and Motel
Holdings, LLC, Jack Jones and Donald
Godwin

Sarah P. Spruill
Lindsey C. Livingston

William H. Short, Jr., Bar No. 5091

P.O. Box 11889

Columbia, South Carolina 29211

Telephone: 803-779-3080

Attorney for Respondent First Palmetto
Savings Bank, FSB

Sarah P. Spruill
PO Box 2048
Greenville, SC 29602

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

- 1 WAY DURING THAT TIME?
- 2 A. NO, MA'AM.
- 3 Q. IF YOU WILL LOOK TO EXHIBIT "88" AND I BELIEVE
- 4 THAT IS ALL THREE PERSONAL GUARANTIES WHICH WERE
- 5 EXECUTED IN JANUARY?
- 6 A. I CAN'T SPEAK FOR TRIPP NOW.
- 7 Q. AND IF YOU CAN JUST CHECK AND SEE IF THOSE ARE
- 8 THREE PERSONAL GUARANTIES AND I'M NOT ASKING YOU
- 9 TO TELL ME WHETHER SOMEBODY SIGNED IT. IF YOU
- 10 WILL JUST CONFIRM FOR ME THAT THOSE ARE ALL THREE
- 11 PERSONAL GUARANTIES?
- 12 A. YES, MA'AM.
- 13 Q. AND IF YOU WILL GO TO YOURS. DO YOU RECOGNIZE
- 14 THAT DOCUMENT?
- 15 A. YES, MA'AM.
- 16 Q. IS THAT YOUR SIGNATURE?
- 17 A. YES, MA'AM.
- 18 Q. AND WHAT DO YOU UNDERSTAND THAT YOU WERE AGREEING
- 19 TO BY SIGNING THIS PERSONAL GUARANTY?
- 20 A. ANYTHING CONNECTED TO THE RAINBOW COURT OR EMERALD
- 21 SHORES IF WE COULDN'T MAKE THE PAYMENT THEY WOULD
- 22 GET IT.
- 23 Q. AND THEY IS WHO?
- 24 A. THE BANK.
- 25 Q. AT THIS TIME IN JANUARY OF 2005, IN JANUARY OF

1 MORTGAGE PAYMENTS UNDER THE BJC LOAN IN 2005?

2 A. AND 2005, NO.

3 Q. HOW ABOUT 2006?

4 A. YES. IN THE WINTER MONTHS.

5 Q. AND THAT WAS WHERE ALL OF PAYMENTS IN THE WINTER
6 MONTHS CAME SOLELY FROM SCHROFF?

7 A. WE HAD SOME. WHEN MY BROTHER DIED ... WHEN MY
8 BROTHER WENDELL DIED, HE HAD A INSURANCE POLICY
9 WITH MY NAME ON IT AND I GOT LIKE A HUNDRED AND
10 FIFTY THOUSAND AND I PUT MONEY IN, YOU KNOW, TO
11 HELP RUN IT.

12 Q. DURING 2005 AND 2006, WERE THE HOTEL PROPERTIES
13 GENERATING ENOUGH MONEY TO MAKE THE MONTHLY
14 MORTGAGE PAYMENTS?

15 A. IN THE SUMMER, YES.

16 Q. HOW ABOUT FOR THE REST OF THE YEAR? WERE THEY
17 MAKING ENOUGH MONEY DURING THE SUMMER TO MAKE THE
18 PAYMENTS THROUGH THE YEAR.

19 A. SEE, WE DIDN'T MAKE THEM LIKE IN THE SUMMER- TIME.
20 THEY HAD THEM SET UP WHERE WE HAD TO MAKE THEM ALL
21 WINTER LONG, ALL TWELVE MONTHS, FROM MY
22 UNDERSTANDING WHEN I WAS THERE. NOW, LIKE I SAID,
23 WHEN MY MOM GOT SICK, I DIDN'T DO NOTHING WITH IT.

24 Q. EXPLAIN THAT TO ME. YOU SAID THEY HAD IT SET UP
25 WHERE ...

1 A. OH, YEAH. I MEAN, HE HAD TO COME INVOLVED IN
2 THERE, YES, MA'AM.

3 Q. AND YOU WERE DESCRIBING TO ME THE CIRCUMSTANCES OF
4 THE 2007 RENEWAL. YOU SAID THAT YOU WENT IN TO
5 SEE BOB WILDER AND YOU SIGNED THE DOCUMENTS?

6 A. HE CALLED ME AND I WENT TO HIS OFFICE AND HE PUT
7 IT IN FRONT OF ME AND I SIGNED IT.

8 Q. AND HOW ABOUT ... AND I JUST FORGOT TO ASK YOU
9 THIS. IN 2005 WHEN THE INITIAL DOCUMENTS WERE
10 SIGNED, DID YOU SIGN THOSE AT THE BANK?

11 A. I THINK IT WAS IN DONALD RICE'S OFFICE.

12 Q. AND THAT ACTUALLY HAPPENED DURING THE CLOSING?

13 A. YES. YES, MA'AM.

14 MS. COOK: TOMMY RICE, RIGHT.

15 A. I MEAN TOMMY RICE. I'M SORRY.

16 Q. SO, TO YOUR MEMORY, DID YOU HAVE ANY NEGOTIATIONS
17 LEADING UP TO THE 2007 RENEWAL OF THE BJC LOAN
18 WITH FIRST PALMETTO?

19 A. ME? NO, MA'AM.

20 Q. I THINK YOU'VE GOT IN FRONT OF YOU THE NOTEBOOK,
21 WHICH IS EXHIBIT "132". CAN YOU TELL ME WHAT
22 EXHIBIT "132" IS? DO YOU RECOGNIZE THAT DOCUMENT?

23 A. IT'S A GUARANTY.

24 Q. WHOSE GUARANTY IS THAT?

25 A. MINE.

1 Q. DID YOU SIGN ... IS THAT YOUR SIGNATURE?

2 A. YES.

3 Q. AND WHAT IS THE DATE OF THAT GUARANTY?

4 A. JANUARY THE 19TH, 2007.

5 Q. SO IS IT YOUR UNDERSTANDING THAT WAS THE PERSONAL
6 GUARANTY THAT YOU SIGNED AT THE TIME OF THE 2007
7 RENEWAL?

8 A. THAT'S MY SIGNATURE. I MEAN, THAT'S THE DATE
9 THERE. I MEAN, I WAS TAKING CARE OF MY MOM. I
10 SIGNED ... THAT'S MY SIGNATURE BUT I CAN'T
11 HONESTLY SAY WHEN THE DATE WAS, NO, MA'AM. I
12 MEAN, I DON'T KNOW. I DON'T KNOW WHAT I ... I
13 CAN'T SIT HERE AND SAY ... THAT'S MY SIGNATURE,
14 YES. I CAN HONESTLY SAY THAT IS MY SIGNATURE.
15 THAT'S ALL I CAN TELL YOU.

16 Q. IF YOU WILL LOOK BACK TO EXHIBIT "130", WHICH IS
17 THE 2007 NOTE, WHICH WAS A RENEWAL OF THE 2005
18 NOTE. WAS IT YOUR UNDERSTANDING THAT UNDER THAT
19 NOTE THERE WERE TO BE ELEVEN MONTHLY PAYMENTS AND
20 THEN ONE FINAL BALLOON PAYMENT OF THE PRINCIPAL IN
21 2008?

22 A. I DON'T EVEN REMEMBER THIS. I MEAN, I SIGNED IT
23 BUT I DON'T REMEMBER IT.

24 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT THAT'S ...

25 A. NOT MY SIGNATURE?

- 1 A. 2007 OR 2008?
- 2 Q. IF YOU'LL LOOK AT EXHIBIT "19". DO YOU RECOGNIZE
- 3 THAT DOCUMENT, EXHIBIT "19"?
- 4 A. UH-HUH. (AFFIRMATIVE RESPONSE.)
- 5 Q. CAN YOU TELL ME WHAT IT IS?
- 6 A. IT'S A LOAN PACKAGE. I MEAN, IT'S A LOAN PACKAGE.
- 7 A LOAN PAPER.
- 8 Q. AND WHAT'S THE DATE? AND IT'S IN THE TOP RIGHT
- 9 ...
- 10 A. 1/17/2008.
- 11 Q. AND JUST UNDERNEATH THAT, IT SAYS, "MATURITY
- 12 DATE". WHAT WAS THE MATURITY DATE?
- 13 A. 1/17/2009.
- 14 Q. SO. IT'S YOUR UNDERSTANDING THAT EXHIBIT "19" IS A
- 15 COPY OF THE NOTE THAT WAS THE RENEWAL OF THE NOTE
- 16 AND IT'S DATED 2008. IS THAT THE 2008 RENEWAL OF
- 17 THIS LOAN?
- 18 A. YEAH. YEAH, I MEAN, THERE'S THE PAPER.
- 19 Q. IS IT YOUR SIGNATURE AT THE BOTTOM OF
- 20 EXHIBIT "19"?
- 21 A. THAT'S MY SIGNATURE.
- 22 Q. AGAIN, YOU SIGNED AS MANAGING MEMBER OF BJC, IS
- 23 THAT RIGHT?
- 24 A. YES.
- 25 Q. AND IN THE MIDDLE OF THAT DOCUMENT UNDER PAYMENTS

1 ...

2 A. BUT I WAS IN NONE OF THESE MEETINGS WHEN THIS WAS
3 DONE. I WAS CALLED IN BY BOB WILDER AND JUST
4 SIGNED. I WAS AT NO MEETINGS OF THIS.

5 Q. AND, "OF THIS, YOU MEAN LEADING UP TO THE RENEWAL
6 OF THIS NOTE?

7 A. YES. I MEAN, HE JUST CALLED ME AND I JUST SIGNED.

8 Q. AGAIN, IN 2008? SO IT WAS SIMILAR TO THE
9 CIRCUMSTANCES IN 2007, YOU JUST ...

10 A. YEAH.

11 Q. I'M SORRY.

12 A. YES, MA'AM.

13 Q. AND BOB WILDER CALLED YOU IN AND JUST SAID, "COME
14 ON IN AND SIGN THESE DOCUMENTS." WHO WAS WITH YOU
15 WHEN YOU SIGNED THIS?

16 A. ME AND BOB WILDER.

17 Q. AND IF YOU'LL LOOK WITH ME AT THE PAYMENT SECTION
18 OF THIS DOCUMENT, IT SAYS, ELEVEN MONTHLY PAYMENTS
19 OF \$47,905.19 BEGINNING 02/17/2008 AND ONE BALLOON
20 PAYMENT OF \$5,509,352.46 ON 01/17/2009. IS THAT
21 CONSISTENT WITH YOUR UNDERSTANDING OF WHAT THE
22 TERMS OF THIS RENEWAL WERE?

23 A. AGAIN, I JUST SIGNED. SOMEBODY ELSE WAS HANDLING
24 IT AND I WASN'T.

25 Q. DID ANYBODY PREVENT YOU FROM READING IT? WHEN YOU

- 1 SIGNED THIS, DID YOU READ THIS DOCUMENT?
- 2 A. NO, MA'AM?
- 3 Q. DID ANYBODY PREVENT YOU FROM READING THIS
- 4 DOCUMENT?
- 5 A. NO.
- 6 Q. AND OTHER THAN BOB WILDER, DID ANYBODY ELSE TELL
- 7 YOU TO COME IN AND MEET WITH HIM TO SIGN THESE
- 8 DOCUMENTS?
- 9 A. NO.
- 10 Q. DID YOU DISCUSS ANY OF THESE RENEWALS WITH HARVEY?
- 11 A. WELL, ME AND HARVEY AND TRIPP. I GUESS HARVEY AND
- 12 TRIPP HAD IT WORKED OUT AND THEY JUST CALLED ME
- 13 AND TOLD ME TO COME SIGN IT.
- 14 Q. SO, YOU THINK THAT HARVEY AND TRIPP MAY HAVE
- 15 NEGOTIATED DIFFERENT RENEWALS WITH THE BANK?
- 16 A. SOMEBODY DID, RIGHT.
- 17 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT IT WAS JACK
- 18 JONES THAT NEGOTIATED THE RENEWALS?
- 19 A. NO. I'M NOT SURE OF THE DATE. IF YOU WILL GIVE
- 20 ME A MINUTE TO LET ME THINK ABOUT THIS?
- 21 Q. SURE.
- 22 A. AND UNCLE JACK CAME IN. UNCLE JACK WASN'T THERE
- 23 IN JANUARY OF 2008.
- 24 Q. SO YOU DON'T HAVE ANY REASON TO BELIEVE JACK
- 25 NEGOTIATED THIS RENEWAL?

- 1 A. I DON'T THINK SO.
- 2 Q. HOW ABOUT DONALD GODWIN, DO YOU THINK HE WAS
- 3 INVOLVED IN NEGOTIATING THIS RENEWAL?
- 4 A. NO.
- 5 Q. OKAY. IF YOU WILL FLIP TO EXHIBIT "21" AND TELL
- 6 ME IF YOU RECOGNIZE THAT DOCUMENT?
- 7 A. THAT'S THE GUARANTY.
- 8 Q. AND WHOSE GUARANTY IS THAT?
- 9 A. MINE.
- 10 Q. AND WHAT IS THE DATE OF THAT?
- 11 A. JANUARY THE 17TH, 2008.
- 12 Q. AND AT THAT TIME IN JANUARY 2008, WAS SCHROFF
- 13 STILL INVOLVED IN THE PROPERTIES OR BJC
- 14 ENTERPRISES?
- 15 A. YES.
- 16 Q. AND DID SCHROFF MAKE ANY LOAN PAYMENTS DURING
- 17 2008?
- 18 A. YES. I'M SURE HE DID DURING THE WINTER.
- 19 Q. TO YOUR KNOWLEDGE, DID MR. SCHROFF EXECUTE A
- 20 PERSONAL GUARANTY ASSOCIATED WITH THIS LOAN
- 21 RENEWAL?
- 22 A. NO. IT WAS ME, HARVEY AND TRIPP.
- 23 Q. SO TRIPP WAS STILL INVOLVED WITH BJC IN 2008?
- 24 A. YES.
- 25 Q. TO YOUR KNOWLEDGE, WAS THERE EVER A RENEWAL OF

- 1 THIS LOAN AFTER JANUARY OF 2008?
- 2 A. NOT THAT I'M AWARE OF.
- 3 Q. AND WHO OPERATED THE PROPERTIES DURING THE
- 4 CALENDAR YEAR 2008?
- 5 A. ME AND MY BROTHER.
- 6 Q. WHAT KIND OF REVENUES WERE THE PROPERTIES
- 7 GENERATING DURING 2008?
- 8 A. BJC I WOULD SAY, I'M GUESSING 'CAUSE I DIDN'T WORK
- 9 IN THE OFFICES. I WOULD SAY EMERALD SHORES,
- 10 600,000. I MEAN, SOMEWHERE IN THERE. MIGHT'VE
- 11 BEEN SEVEN. WHAT YEAR ARE WE ON?
- 12 Q. 2008.
- 13 A. RAINBOW COURT, FIVE OR SIX.
- 14 Q. 500,000 OR 600,000?
- 15 A. YES.
- 16 Q. AND IS THAT AN ESTIMATE OF THE REVENUES YOU WERE
- 17 BRINGING OR THE PROFITS YOU WERE MAKING AFTER YOUR
- 18 PAYMENTS?
- 19 A. NO, NOT THE PROFIT. THE REVENUE.
- 20 Q. AND WERE YOU MAKING ANY PROFITS FOR EITHER THE
- 21 RAINBOW COURT OR EMERALD SHORES DURING 2008?
- 22 A. YOU CAN'T MAKE A PROFIT IF YOU OWE A MORTGAGE.
- 23 Q. SO, YOU WERE NOT MAKING A PROFIT?
- 24 A. NO, MA'AM.
- 25 Q. HOW ABOUT IN 2007, WAS THERE ANY PROFIT MADE BY

1 EITHER THE RAINBOW COURT OR EMERALD SHORES?

2 A. YOU MEAN, WERE WE IN THE NEGATIVE ALL THE TIME?
3 FROM THE FIRST TIME WE BOUGHT THE EMERALD SHORES,
4 WE ALWAYS OWED MONEY.

5 Q. AND WERE THE PROPERTIES ... I GUESS MY QUESTION IS
6 IN 2008, WERE THE PROPERTIES GENERATING ENOUGH
7 MONEY TO SATISFY THE LOAN OBLIGATIONS TO THE BANK?

8 A. YES. I MEAN, WE'VE ALWAYS BEEN ABLE TO MAKE HOUR
9 PAYMENTS AS LONG AS WE WERE, YOU KNOW, WHEN IT WAS
10 INTEREST ONLY, WE COULD DO IT.

11 Q. AND WHEN WAS IT INTEREST ONLY?

12 A. THE FIRST TWO YEARS.

13 Q. AND THEN ...

14 A. BUT WE WEREN'T GOING TO HAVE TO DO IT. I MEAN,
15 ALL THESE PEOPLE PROMISED THEY WERE GOING TO TAKE
16 IT OVER. I MEAN ...

17 Q. WHO WERE ALL THESE PEOPLE?

18 A. I MEAN ... FIRST, I MEAN, JOHN GANDY WAS GOING TO
19 DEVELOP IT AND THEN CASEY WAS GOING TO COME IN AND
20 DEVELOP IT.

21 Q. WAS JACK JONES OR DONALD GODWIN EVER GONNA COME IN
22 AND DEVELOP IT?

23 A. NO.

24 Q. AND YOU TOLD ME THAT YOU WERE ABLE TO MAKE THE
25 PAYMENTS WHEN IT WAS INTEREST ONLY, AND THEN, YOU

1 TOLD ME THAT IN 2007, THE TERMS OF THE LOAN
2 CHANGED AND IT WAS NO LONGER INTEREST ONLY. WERE
3 YOU ABLE TO MAKE THE PAYMENTS AFTER THE TERMS OF
4 THE LOAN CHANGED?

5 A. SEE, I WASN'T EVEN IN IT HARDLY THEN. I MEAN, I
6 WOULD GO DOWN THERE AND HELP CLEAN ROOMS AND CHECK
7 ON HOUSEKEEPING, BUT I DON'T KNOW.

8 Q. AND WHEN DID YOU GO BACK TO THE HOTEL AND BEGIN
9 AGAIN TO ASSIST IN RUNNING THE PROPERTY?

10 A. AFTER MY MOM DIED.

11 Q. AND THAT DATE AGAIN WAS AUGUST OF 2008?

12 A. SEVEN.

13 Q. AND ONCE YOU CAME BACK IN AUGUST OF 2007, WERE THE
14 PROPERTIES MAKING ENOUGH AT THAT TIME TO MAKE THE
15 PAYMENTS UNDER THE TERMS OF THE LOAN?

16 A. I DON'T EVEN KNOW.

17 Q. WELL ...

18 A. I MEAN, THE PAYMENTS WERE GETTING MADE.

19 Q. MY QUESTION IS, WERE THE PAYMENTS GETTING MADE
20 FROM MONEY THAT THE PROPERTIES WERE GENERATING OR
21 FROM INFUSIONS OF CASH FROM SOME OTHER SOURCE.

22 A. I IMAGINE FROM BOTH.

23 Q. AND IF YOU WILL FLIP BACK TO EXHIBIT "19", THE
24 2008 RENEWAL, IT CALLS, UNDER THE TERMS OF
25 EXHIBIT "19" IN THE 2008 RENEWAL, THERE WAS A

1 BALLOON PAYMENT OF PRINCIPAL DUE IN JANUARY OF
2 2009. WAS THAT BALLOON PAYMENT MADE IN JANUARY OF
3 2009?

4 A. NO.

5 Q. WHY NOT?

6 A. I DON'T KNOW. I AM ASSUMING THAT WE DIDN'T HAVE
7 THE MONEY.

8 Q. WOULD YOU KNOW IF BJC ENTERPRISES HAD
9 FIVE MILLION?

10 A. NO, THEY DIDN'T.

11 MS. COOK: WHEN YOU GET TO A GOOD PLACE TO
12 STOP, CAN WE TAKE A BREAK?

13 MRS. BYRD: YEAH, LET'S GO AHEAD.

14 MS. COOK: I NEED TO USE THE RESTROOM.

15 OFF THE RECORD.

16 Q. WE ARE BACK FROM A LITTLE BREAK. I WANT TO GO
17 BACK TO 2008. WE TALKED A FEW MINUTES AGO ABOUT
18 THE LOAN WAS RENEWED IN JANUARY OF 2008, AND THERE
19 WERE ELEVEN MONTHLY PAYMENTS DUE IN 2008 WITH A
20 BALLOON PAYMENT IN JANUARY OF 2009. DURING THE
21 YEAR 2008, WERE YOU ACTIVELY INVOLVED IN MANAGING
22 THE PROPERTIES?

23 A. DID I GO DOWN THERE?

24 Q. SURE?

25 A. YES, I DID.

1 Q. OTHER THAN THAT \$500,000.00 ENTRY, DO YOU SEE
2 NOTED ON EXHIBIT "153" PAGE 8, ANY OTHER PAYMENT
3 FOR THE MONTH OF DECEMBER 2008 TO FIRST PALMETTO
4 SAVINGS BANK?

5 A. NO.

6 Q. NOW, I WANT TO STICK WITH 2008 FOR A MINUTE AND
7 ASK YOU A LITTLE BIT ABOUT SOME PERSONAL ISSUES
8 THAT I KNOW YOU HAD IN 2008. I HATE TO BE
9 INTRUSIVE AND I DON'T MEAN TO BE, BUT I HAS BEEN
10 MADE AN ISSUE IN THIS LITIGATION. SO, I HAVE TO
11 ASK YOU ABOUT THAT AND I APOLOGIZE IN ADVANCE FOR
12 ANY UN COMFORT THAT I CAUSE YOU. IN NOVEMBER
13 OF 2008, DID YOU ATTEMPT TO COMMIT SUICIDE?

14 A. YES.

15 Q. AND HOW DID YOU TRY TO KILL YOURSELF?

16 A. I TOOK PILLS.

17 Q. WHAT KIND OF PILLS?

18 A. DIFFERENT KIND.

19 Q. WAS THAT THE FIRST TIME YOU HAD ATTEMPTED SUICIDE?

20 A. NO.

21 Q. HOW MANY TIMES PRIOR?

22 A. ONCE.

23 Q. AND HOW MUCH TIME ELAPSED FROM THE FIRST TIME THAT
24 YOU TRIED TO KILL YOURSELF UNTIL THIS TIME WHICH
25 WAS NOVEMBER OF 2008?

1 A. I DON'T REMEMBER.

2 Q. WAS IT MONTHS?

3 A. IT WAS AFTER MY MOM PASSED.

4 Q. AND YOU TOLD ME THAT YOUR MOM PASSED IN AUGUST OF
5 2007. SO, THE FIRST SUICIDE ATTEMPT WAS SOMETIME
6 BETWEEN AUGUST 2007 AND NOVEMBER 2008?

7 A. YES.

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

9 A. THE FIRST OR SECOND TIME?

10 Q. WHAT WAS THE REASON THAT YOU ATTEMPTED SUICIDE IN
11 NOVEMBER OF 2008?

12 A. EVERYTHING WAS CLOSING IN ON ME. I MEAN, MY WORD
13 IS MY WORD. WE OWED THE BANK AND I KNEW I HAD MY
14 OBLIGATIONS, YOU KNOW. I WASN'T GOING TO LET THE
15 MOTEL GO DOWN. I WAS GOING TO DO WHATEVER IT TOOK
16 TO SAVE IT.

17 Q. AND I UNDERSTAND FROM YOUR BROTHER'S TESTIMONY
18 YESTERDAY, THAT AT SOME MEETING JUST PRIOR TO YOUR
19 SUICIDE ATTEMPT IN NOVEMBER OF 2008, YOU ANNOUNCED
20 THAT YOU WOULD BE ABLE TO GET SOME SUM OF MONEY IN
21 A RELATIVELY SHORT PERIOD OF TIME. DO YOU RECALL
22 THAT MEETING?

23 A. YES.

24 Q. WHERE WAS THAT MEETING?

25 A. AT 48TH AVENUE AT FIRST PALMETTO.

1 Q. AND WHO WAS PRESENT IN THAT MEETING?

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

5 Q. WAS MR. BULL PRESENT?

6 A. NO, MA'AM.

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

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

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

15 A. YES, MA'AM.

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

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

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

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

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

- 1 A. HONESTLY, I DON'T KNOW.
- 2 Q. AND YOU SAID YOU WERE TRYING TO WORK OUT
- 3 SOMETHING. HAD Y'ALL INDICATED TO THE BANK THAT
- 4 YOU WERE NOT GOING TO BE ABLE TO MAKE THE BALLOON
- 5 PAYMENT?
- 6 A. I HADN'T INDICATED NOTHIN'. I JUST WENT TO THE
- 7 MEETING.
- 8 Q. WHAT WERE THEY TALKING ABOUT AT THE MEETING?
- 9 A. THE LOAN. I MEAN, WHAT THEY WERE GOING TO DO. I
- 10 DIDN'T OPEN MY MOUTH. I SAT THERE AND LISTENED TO
- 11 CASEY. ED DID MOST OF THE TALKING TO MR. HUTTO,
- 12 AND BOB WILDER. I DON'T THINK HE'S SAID TOO MUCH
- 13 EITHER?
- 14 Q. WHAT WERE MR. FARMER AND MR. SCHROFF WHAT WERE
- 15 THEY OFFERING TO DO?
- 16 A. TRYING TO FIGURE OUT, I GUESS, WHAT COULD BE DONE
- 17 TO MAKE THE PAYMENTS AND KEEP THINGS GOING.
- 18 Q. WERE THEY TALKING ABOUT INTEREST RATES?
- 19 A. INTEREST RATES WERE DISCUSSED, YES.
- 20 Q. AND ANYTHING ELSE? ANY OTHER TERMS THAT YOU CAN
- 21 REMEMBER THAT WERE TALKED ABOUT DURING THAT
- 22 MEETING?
- 23 A. THEY TALKED ABOUT A LOT. ALL REMEMBER WAS THE
- 24 LAST THING MR. HUTTO SAID. YOU HAD TO COME UP
- 25 WITH A CERTAIN AMOUNT OF MONEY.

- 1 Q. AND HOW MUCH DID HE TELL YOU YOU HAD TO COME UP
2 WITH?
- 3 A. I DON'T KNOW.
- 4 Q. IF YOU CAME UP WITH WHATEVER THAT AMOUNT WAS ...
- 5 A. I DIDN'T CARE AT THAT POINT WHAT HE NEEDED. I WAS
6 GOING TO GET IT.
- 7 Q. AND IF YOU WERE ABLE TO COME UP WITH WHATEVER THAT
8 AMOUNT WAS, WHAT WAS YOUR UNDERSTANDING OF WHAT
9 WOULD HAPPEN THEN? WOULD THAT RENEW THE NOTE FOR
10 ANOTHER YEAR?
- 11 A. I WASN'T GOING TO RENEW THE NOTE. I WAS GOING TO
12 PAY IT OFF.
- 13 Q. DO YOU NEED A BREAK, MS. BELLAMY?
- 14 A. NO. GO AHEAD. I'M FINE. I WAS GOING TO PAY THE
15 NOTE OFF.
- 16 Q. AND YOU WERE GOING TO PAY THE ENTIRE PRINCIPAL
17 AMOUNT OF FIVE MILLION, WHATEVER IT WAS AT THAT
18 TIME?
- 19 A. YES.
- 20 Q. AND HOW WERE YOU GOING TO DO THAT?
- 21 A. BECAUSE I HAD \$5,500,000.00 WORTH OF LIFE
22 INSURANCE THAT I HAVE HAD FOR LIKE 8, 9, 10 YEARS.
- 23 Q. SO, AT THE CONCLUSION OF THAT MEETING WHEN YOU
24 STOOD, DO YOU REMEMBER WHAT YOU SAID?
- 25 A. I TOLD THEM I WOULD HAVE THE MONEY IN TWO WEEKS.

- 1 Q. WAS THAT THE CONCLUSION OF THE MEETING?
- 2 A. YES, YES.
- 3 Q. YOUR SUICIDE ATTEMPT IN NOVEMBER OF 2008, WAS
- 4 FOLLOWING UP REALLY AFTER THAT MEETING TO GET THAT
- 5 FIVE MILLION SOME ODD DOLLARS THAT WAS OWED UNDER
- 6 THE NOTE, IS THAT CORRECT?
- 7 A. CORRECT.
- 8 Q. YOU TOLD ME EARLIER THAT THERE WAS A PRIOR SUICIDE
- 9 ATTEMPT. WHAT WAS THE REASON FOR THAT SUICIDE
- 10 ATTEMPT.
- 11 A. I JUST LOST MY MOM. AND I DON'T KNOW.
- 12 Q. THE FIRST SUICIDE ATTEMPT, SOME TIME AFTER YOUR
- 13 MOM PASSED AWAY, WAS THAT RELATED TO BUSINESS
- 14 PROBLEMS OR WAS THAT REALLY A RESULT OF THE GRIEF
- 15 OF YOUR MOM OR NEITHER OF THOSE THINGS?
- 16 A. PROBABLY MY MOM.
- 17 Q. AND AFTER YOUR SUICIDE ATTEMPTS IN NOVEMBER 2008,
- 18 DID YOU EXECUTE A POWER OF ATTORNEY?
- 19 A. YES.
- 20 Q. DO YOU REMEMBER THE DATE?
- 21 A. IT WAS IN DECEMBER.
- 22 Q. DECEMBER OF 2008?
- 23 A. YES.
- 24 Q. AND WHO WAS THAT POWER OF ATTORNEY IN FAVOR OF?
- 25 A. TO MY UNCLE JACK.

- 1 Q. AND PRIOR TO THAT POWER OF ATTORNEY IN FAVOR OF
2 JACK JONES, WAS THERE ANOTHER POWER OF ATTORNEY
3 THAT YOU EXECUTED IN NOVEMBER OF 2008?
- 4 A. I HAVE NEVER EXECUTED NO POWER OF ATTORNEY TO
5 NOBODY BUT UNCLE JACK.
- 6 Q. SO, YOU DID NOT EXECUTE A POWER OF ATTORNEY ON
7 NOVEMBER THE 19TH, 2008, IN FAVOR OF YOUR HUSBAND,
8 BILLY JOE BELLAMY?
- 9 A. NO, MA'AM.
- 10 Q. SO, IF THAT IS NOTED ON THE RECORDS WITH THE HORRY
11 COUNTY REGISTER OF DEEDS, IT'S JUST INACCURATE?
- 12 A. IF THERE IS ONE ... WELL, THE HOSPITAL COULD'VE
13 DONE IT, BUT WHEN I WAS IN INTENSIVE CARE. BUT I
14 DIDN'T DO IT, NO, MA'AM?
- 15 Q. WHAT WERE THE CIRCUMSTANCES LEADING UP TO THE
16 POWER OF ATTORNEY THAT YOU EXECUTED IN FAVOR OF
17 JACK IN DECEMBER OF 2008?
- 18 A. UNCLE JACK CALLED ME AND WE WERE TALKING AND HE
19 WAS ASKING HOW I WAS DOING AND ALL THAT AND HE
20 SAID NOTHING IS WORTH TAKING YOUR LIFE FOR. WE
21 GOT TO TALKING AND STUFF AND HE SAID, "BRING ME
22 ALL YOUR PAPERS AND COME UP HERE AND I WILL HELP
23 YOU." SO, I TOOK EVERYTHING UP THERE AND, YOU
24 KNOW. HE'S A SMART MAN. HE WHEELS AND DEALS AND
25 HE KNOWS HOW TO DO ALL THIS STUFF AND I TRUSTED

- 1 RELATED TO THE BJC LOAN WITH FIRST PALMETTO?
- 2 A. CORRECT.
- 3 Q. ANY OTHER PAPERS OR DOCUMENTS ... WHAT WAS YOUR
- 4 UNDERSTANDING OF WHAT JACK WAS GOING TO HELP YOU
- 5 WITH? WAS IT LIMITED TO THE BJC LOAN AND RELATED
- 6 ACTIVITIES OF THE HOTEL PROPERTIES?
- 7 A. MY UNDERSTANDING THAT HE WAS GOING TO HELP ME GET
- 8 EVERYTHING STRAIGHT, YOU KNOW, WITH THE BANK, SO
- 9 WE WOULDN'T LOSE OUR PROPERTY. I MEAN, YOU KNOW,
- 10 WE WORKED ALL OUR LIFE. I TRUSTED HIM. I PUT MY
- 11 LIFE IN HIS HANDS.
- 12 Q. AND JACK CALLED YOU AND SAID, BRING "EVERYTHING TO
- 13 ME." DID YOU BRING EVERYTHING TO JACK?
- 14 A. UH-HUH. (AFFIRMATIVE RESPONSE.)
- 15 Q. IS THAT A YES?
- 16 A. YES.
- 17 Q. YOU WENT TO HIS HOUSE?
- 18 A. YES.
- 19 Q. WHEN WAS THE POWER OF ATTORNEY ... WAS IT EXECUTED
- 20 AT THAT FIRST MEETING WITH JACK?
- 21 A. AT MICHAEL MUNDEN'S OFFICE.
- 22 Q. WHO DREW UP THE POWER OF ATTORNEY?
- 23 A. MICHAEL MUNDEN.
- 24 Q. MICHAEL MUNDEN, WAS HE THE ATTORNEY THAT WAS
- 25 HANDLING ... IS HANDLING YOUR MOTHER'S ESTATE, IS

1 THAT RIGHT?

2 A. HE GOT A COPY OF IT. UNCLE JACK GOT A COPY OF MY
3 MOM'S WILL AND EVERYTHING.

4 Q. SO. DID YOU CALL ... HOW DID MICHAEL MUNDEN COME
5 TO DRAFT THE POWER OF ATTORNEY?

6 A. UNCLE JACK WANTED A COPY OF MY MOM'S WILL, SO WE
7 WENT AND GOT IT, AND WHILE WE WERE SITTING THERE
8 UNCLE JACK SAID TO MICHAEL MUNDEN, "WELL, WHAT IF
9 I TOOK POWER OF THE ATTORNEY FOR WENDY?" AND
10 MICHAEL WAS SITTING ACROSS AND HE SAID, "WELL, I
11 THINK THAT WOULD BE A GOOD IDEA AT THIS TIME."

12 Q. DO YOU HAVE ANY IDEA WHY THAT WOULD ... WHY HE
13 WOULD THINK ... WHY THAT WOULD BE A GOOD IDEA?

14 A. BECAUSE HE HAD HEARD WHAT I TRIED TO DO.

15 Q. AND AFTER YOUR SUICIDE ATTEMPTS IN NOVEMBER 2008,
16 WERE YOU HOSPITALIZED INVOLUNTARILY FOR ANY TIME
17 OR VOLUNTARILY.

18 A. DO YOU MEAN WAS I TAKEN BY A POLICE CAR?

19 Q. WERE YOU?

20 A. YES.

21 Q. WHERE WERE YOU TAKEN?

22 A. FLORENCE.

23 Q. TO MCLEOD?

24 A. NO. SOME KIND OF MENTAL HEALTH PLACE.

25 Q. DO YOU HAVE ANY IDEA WHO HAD YOU TAKEN TO THE

- 1 MENTAL HEALTH PLACE BY POLICE CAR?
- 2 A. THE STATE OR THAT'S WHAT THEY TOLD ME BECAUSE I
- 3 WASN'T GOING.
- 4 Q. DID YOUR HUSBAND SIGN THE PAPERS TO HAVE YOU
- 5 INVOLUNTARILY COMMITTED?
- 6 A. WELL, NOW, I WAS TOLD THAT THE STATE DID IT.
- 7 UNLESS HE LIED TO ME. I DON'T KNOW.
- 8 Q. HAVE YOU HAD THE CHANCE TO REVIEW YOUR MEDICAL
- 9 RECORDS?
- 10 A. I HAVE NEVER SEEN THEM.
- 11 Q. AND HOW LONG WERE YOU IN THE MENTAL HEALTH CENTER
- 12 IN FLORENCE?
- 13 A. FOURTEEN DAYS.
- 14 Q. AFTER FOURTEEN DAYS YOU WERE RELEASED?
- 15 A. YES.
- 16 Q. DID YOU HAVE ANY OBLIGATIONS TO FOLLOW UP?
- 17 A. I SAW A THERAPIST.
- 18 Q. DID YOU SEE A THERAPIST HERE IN MYRTLE BEACH?
- 19 A. PAWLEY'S, YES.
- 20 Q. WHO WAS IT?
- 21 A. HER NAME IS RIGHT ON MY TONGUE. GIVE ME A MINUTE.
- 22 Q. OKAY.
- 23 A. OH, MAN. I CAN'T REMEMBER RIGHT NOW, BUT I WILL.
- 24 Q. AND HOW LONG DID YOU TREAT WITH A THERAPIST AT
- 25 PAWLEY'S ISLAND? WAS IT ELIZABETH NEWMAN?

- 1 A. I THINK IT WAS IN HER OFFICE. I FORGOT HER NAME.
2 MS. COOK: IT WILL COME TO YOU. AND YOU CAN
3 TELL HER.
- 4 Q. ARE YOU STILL SEEING A THERAPIST?
- 5 A. I HAVEN'T SEEN HER IN LIKE TWO MONTHS. I WAS
6 GOING LIKE THREE TIMES A WEEK. THEN I DROPPED IT
7 DOWN TO ONE AND THEN ONCE EVERY OTHER WEEK.
- 8 Q. ARE YOU BEING TREATED FOR DEPRESSION OR WHAT IS
9 YOUR DIAGNOSIS?
- 10 A. IT MUST BE DEPRESSION. I MEAN, I DON'T KNOW.
11 THEY DIDN'T DO DIAGNOSE. I MEAN, I AM ON
12 MEDICATION FOR DEPRESSION. IS THAT WHAT YOU'RE
13 ASKING?
- 14 Q. WELL, I JUST I AM TRYING TO ASK WHAT ... DID SHE
15 DIAGNOSIS YOU AS SCHIZOPHRENIC?
- 16 A. I'M NOT ... I'M NOT CRAZY.
- 17 Q. HAS SHE EVER DECLARED YOU TO BE INCOMPETENT?
- 18 A. I HOPE NOT ANYWAY. NO, I DON'T THINK SO.
- 19 Q. DO YOU CONSIDER YOURSELF TO BE COMPETENT?
- 20 A. NOW?
- 21 Q. YES.
- 22 A. YEAH. I MEAN, I'M NOT CRAZY NOW.
- 23 Q. 2008, IN DECEMBER OF 2008, WERE YOU COMPETENT
24 THEN?
- 25 A. ARE YOU ASKING ME WHY I GIVE UNCLE JACK MY POWER

1 OF ATTORNEY?

2 Q. I AM ASKING YOU IF IN DECEMBER OF 2008, DID YOU
3 CONSIDER YOURSELF TO BE INCOMPETENT?

4 A. I CONSIDERED MYSELF NOT ABLE TO MAKE THE RIGHT
5 CHOICES AND DO ... YES.

6 Q. SO AT THE TIME YOU EXECUTED THAT POWER OF
7 ATTORNEY, YOU WERE NOT COMPETENT TO DO SO?

8 A. I DON'T UNDERSTAND. WOULD YOU REPEAT THAT PLEASE?

9 Q. SURE. AT THE TIME YOU EXECUTED THE POWER OF
10 ATTORNEY IN FAVOR OF JACK IN DECEMBER 2008, WERE
11 YOU NOT COMPETENT TO DO SO?

12 A. NO. I KNEW WHAT I WAS DOING WHEN I GIVE HIM MY
13 POWER OF ATTORNEY.

14 Q. DID YOU HAVE THE ADVICE OF AN ATTORNEY, MICHAEL
15 MUNDEN, AT THE TIME?

16 A. I HAD UNCLE JACK'S ADVICE. I TRUSTED HIM.

17 Q. DID YOU HAVE THE ADVICE ALSO OF MICHAEL MUNDEN?

18 A. DID HE TELL ME TO DO IT?

19 Q. DID YOU HAVE HIS ADVICE PRIOR TO EXECUTING THE
20 POWER OF ATTORNEY?

21 A. NO. WE WENT TOGETHER. ME AND UNCLE JACK WENT
22 THERE TOGETHER.

23 Q. DID MICHAEL MUNDEN ADVISE YOU, ONE WAY OR ANOTHER,
24 WHETHER THE POWER OF ATTORNEY WAS A GOOD IDEA OR
25 NOT?

- 1 A. DID HE?
- 2 Q. DID HE OFFER YOU ANY COUNSELING AT ALL ABOUT THE
3 POWER OF ATTORNEY?
- 4 A. NO.
- 5 Q. SO, HE ...
- 6 A. I MEAN, HE TOLD US WHAT IT WOULD BE THAT I WAS
7 SIGNING OVER TO HIM TO MAKE ALL THE DECISIONS FOR
8 MY BEST INTERESTS. YOU KNOW, WITH ALL THIS GOING
9 ON.
- 10 Q. WAS IT YOUR UNDERSTANDING THAT BY EXECUTING THAT
11 POWER OF ATTORNEY, YOU NO LONGER HAD THE RIGHT OR
12 ABILITY TO MAKE THE DECISIONS FOR YOURSELF?
- 13 A. I DIDN'T WANT THEM.
- 14 Q. DID YOU UNDERSTAND THAT YOU DIDN'T HAVE THE RIGHT
15 TO MAKE DECISIONS ON BEHALF OF YOURSELF?
- 16 A. YES.
- 17 Q. THAT WAS YOUR UNDERSTANDING?
- 18 A. YES, YES.
- 19 Q. AND DID YOU EVER ASK MR. MUNDEN OR ANY ATTORNEY
20 ABOUT WHETHER YOU HAD THE RIGHT OR ABILITY TO MAKE
21 DECISIONS FOR YOURSELF?
- 22 A. I DIDN'T WANT TO. I TRUSTED MY UNCLE JACK. I
23 MEAN, WHY WOULD I NEED ANYTHING ELSE?
- 24 Q. MY QUESTION IS, DID YOU KNOW THAT YOU COULD MAKE
25 DECISIONS FOR YOURSELF?

1 A. I DIDN'T EVEN ... NO, I DIDN'T THINK. HE WAS
2 DOING IT.
3 Q. IF JACK HAD EXERCISED THE POWER OF ATTORNEY IN A
4 WAY THAT YOU HAD NOT WANTED, DO YOU THINK YOU HAD
5 ANY RIGHT TO GO BEHIND HIM? IN OTHER WORDS, BY
6 SIGNING THAT, WAS JACK JUST COMPLETELY IN CONTROL
7 OF EVERY DECISION IN YOUR LIFE?
8 A. I THOUGHT THAT HE WAS DOING IT TO TAKE CARE OF ME
9 TO MAKE SURE EVERYTHING ... THAT NOBODY WOULD TAKE
10 ADVANTAGE OF ME OR HURT ME. HE KNEW THAT MY GOAL
11 WAS TO SAVE THE PROPERTY NO MATTER WHAT IT TOOK.
12 Q. AND YOU THOUGHT THAT TO SAVE THE PROPERTY, YOU
13 NEEDED FIVE SOME MILLION TO PAY IT OFF?
14 A. THAT'S WHAT I WAS GOING TO DO. TO PAY IT OFF.
15 Q. HOW ELSE COULD YOU OR JACK HAVE SAVED THE PROPERTY
16 FROM BEING TAKEN IN DECEMBER 2008?
17 A. HE WAS GONNA WORK OUT SOME KIND OF PLAN WITH THE
18 BANK.
19 Q. LIKE A RENEWAL?
20 A. RENEWAL, WHATEVER IT TOOK. I MEAN, HE WAS GOING
21 TO TAKE CARE IT. DO I MEAN HE WAS GOING TO PAY IT
22 OFF, BY NO MEANS. NO ONE ASKED NO BODY TO DO
23 NOTHING AND IN PUT THEIR MONEY INTO IT. JUST HELP
24 FIGURE OUT A WAY WE HE COULD WORK AND SAVE OUR
25 PROPERTY.

1 Q. WAS JACK GOING TO BE DOING THAT ALONE OR WERE
2 HARVEY AND TRIPP AND CASEY SCHROFF, WERE THEY
3 GONNA TO BE ALSO NEGOTIATING OR WAS IT ALL UP TO
4 JACK?

5 A. I CAN'T SPEAK FOR THEM. HE WAS GOING TO TAKE CARE
6 OF IT FOR ME. SO, IF THAT WAS NEGOTIATING WITH
7 THE BANK, TRIPP, OR CASEY OR ANY OF THEM, HE WAS
8 GOING TO TAKE CARE OF IT. I DIDN'T EVEN HAVE TO
9 GO FACE THEM.

10 Q. BUT WAS IT YOUR UNDERSTANDING THAT JACK ALONE WAS
11 GOING TO BE NEGOTIATING. IS THAT WHAT YOU
12 EXPECTED?

13 A. NO, NO, NO. HE WAS JUST GOING TO GO FOR ME. THE
14 REST OF THEM HAD TO FILL IN FOR THEIR OWN SELF.

15 Q. OKAY. I UNDERSTAND. IF YOU WILL TAKE A LOOK AT
16 EXHIBIT "137". CAN YOU TELL ME IF YOU HAVE EVER
17 SEEN EXHIBIT "137"?

18 A. I HAVE NEVER SEEN THIS.

19 Q. IN THE MEETING WITH THE BANK IN MID OCTOBER 2008,
20 DO YOU RECALL A DISCUSSION ABOUT LOWERING THE
21 MONTHLY INTEREST RATE ON A PROPOSED RENEWAL?

22 A. IS THAT THE ONE WITH BRENT HUTTO?

23 Q. YES, MA'AM. THE ONE ... THE MEETING WHERE YOU ALL
24 CONCLUDED, WHERE YOU STOOD UP AND SAID, "I'LL HAVE
25 FIVE MILLION." I'M SORRY. YOU SAID, "I'LL HAVE

- 1 THE MONEY."
- 2 A. THE PAYMENT.
- 3 Q. WITHIN TWO WEEKS?
- 4 A. THEY DISCUSSED IT. I MEAN, CASEY AND ED FARMER
- 5 DISCUSSED IT. ED FARMER MENTIONED THE CD. I
- 6 MEAN, THEY DISCUSSED A LOT. I JUST SAT THERE
- 7 UNTIL BRENT HUTTO MADE SOME KIND OF REMARK, AND
- 8 THAT'S WHEN I SAID, "FORGET THIS. I'LL GET YOU
- 9 THE MONEY. I'LL HAVE YOU THE MONEY."
- 10 Q. WHAT REMARK DID BRENT HUTTO SAY? WHAT DID HE SAY?
- 11 A. AND I DON'T KNOW. CASEY AND ED WAS ASKING HIM
- 12 SOME KIND OF QUESTION AND HE JUST ... I GUESS,
- 13 LIKE A ULTIMATUM TO HIM OR SOMETHING. THERE WAS
- 14 NO USE TO SIT THERE AS FAR AS I WAS CONCERNED.
- 15 Q. AFTER THAT MEETING, DID YOU HAVE ANY OTHER
- 16 MEETINGS WITH THE BANK IN 2008?
- 17 A. NEVER STEPPED FOOT IN IT.
- 18 Q. DID YOU GET ANY CORRESPONDENCE FROM THE BANK AFTER
- 19 YOUR SUICIDE ATTEMPT?
- 20 A. NO, I DIDN'T.
- 21 Q. DID YOU CHANGE YOUR ADDRESS WITH THE BANK?
- 22 A. I LIVED WHERE I'VE LIVED FOR FIFTY YEARS. I GREW
- 23 UP IN THAT HOUSE.
- 24 Q. CAN YOU TURN TO EXHIBIT "105"? DO YOU RECOGNIZE
- 25 THAT DOCUMENT?

1 WRITTEN BY SOMEONE AT A LAW OFFICE?

2 A. BECAUSE OF THE MEETING.

3 Q. SO THIS LETTER WAS A RESULT OF YOUR MEETING WITH
4 JACK WITH HENRIETTA?

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

6 MS. COOK: YOU NEED TO SAY, YES.

7 A. YES.

8 Q. AND HOW WAS THIS LETTER GIVEN TO YOU? WAS IT
9 E-MAILED OR FAXED? HOW DID YOU GET THIS LETTER?

10 A. I WENT AND PICKED IT UP.

11 Q. WHO DID YOU PICK IT UP FROM?

12 A. THE LAW OFFICE.

13 Q. OF MCNAIR?

14 A. YES.

15 Q. AND I WANT YOU TO LOOK AT PARAGRAPH TWO AND IT
16 SAYS, "A MORTGAGE PAYMENT IN THE AMOUNT OF
17 \$150,000.00 IS DUE TO FIRST PALMETTO SAVINGS BANK
18 ON MAY 31ST 2009." DO YOU SEE THAT?

19 A. YES, MA'AM.

20 Q. WHAT IS YOUR UNDERSTANDING OF WHAT THE \$150,000.00
21 PAYMENT WAS?

22 A. ME AND UNCLE JACK AND BUPI WENT TO CAMDEN, AND
23 AFTER I HAD GONE AND MADE A PAYMENT ... I WENT UP
24 THERE TO MAKE A PAYMENT. AND WE COME BACK AND
25 THEN THOSE THREE WENT AND THAT'S WHEN MR. SAMMY

1 SAID THAT I HAD TO COME UP WITH A HUNDRED AND
2 FIFTY THOUSAND BY MAY THE 31ST AND THAT HE WOULD
3 RENEW THE LOAN FOR \$300,000.00 A YEAR. THAT'S
4 WHAT I WALKED AWAY WITH.

5 Q. AND I WANT TO GET REAL CLEAR ON THIS TIMING
6 BECAUSE IT IS IMPORTANT AND I KNOW IT IS HARD TO
7 REMEMBER BACK, BUT IT'S IMPORTANT TO THE SUIT THAT
8 WE UNDERSTAND HOW THE EVENTS OCCURRED AND THE
9 TIMING OF THOSE EVENTS. WHEN IS THE FIRST
10 MEETING? I KNOW YOU MET WITH THE BANK IN
11 OCTOBER 2008, THEN THE SUICIDE ATTEMPT.

12 A. THAT WAS DOWN HERE.

13 Q. THE POWER OF ATTORNEY EXECUTED IN FAVOR OF JACK IN
14 DECEMBER. DID YOU HAVE ANY MEETINGS WITH ANYBODY
15 FROM THE BANK IN JANUARY OF 2009? AND IF THERE IS
16 ANY DOCUMENT THAT YOU WOULD LIKE TO LOOK AT THAT
17 WOULD HELP YOU TO REMEMBER DATES, JUST LET ME KNOW
18 AND I'LL GET TO YOU BECAUSE I WANT YOU TO BE
19 ACCURATE?

20 A. I NEVER ... UNTIL ME AND UNCLE JACK WENT TO
21 CAMDEN?

22 Q. THE FIRST MEETING AFTER EXECUTING THE POWER OF
23 ATTORNEY IN FAVOR OF JACK, THE FIRST MEETING THAT
24 YOU HAD WITH ANYBODY FROM THE BANK WAS WHEN YOU
25 AND JACK WENT TO CAMDEN?

- 1 A. I BELIEVE SO.
- 2 Q. AND WHO WAS PRESENT AT THAT MEETING?
- 3 A. ME AND UNCLE JACK, SAMMY SMALL, SAMMY JUNIOR,
- 4 MARTY BEST AND ONE OTHER GUY AND I CAN'T REMEMBER
- 5 HIS NAME.
- 6 Q. WAS HE WITH THE BANK?
- 7 A. YES.
- 8 Q. AND WHEN WAS THAT MEETING? I THINK YOU JUST TOLD
- 9 ME THAT THERE WAS NO MEETING IN JANUARY, IS THAT
- 10 RIGHT?
- 11 A. YEAH. I DON'T REMEMBER THE DATE. I JUST REMEMBER
- 12 ME AND HIM RODE UP THERE. IT HAS TO BE BEFORE
- 13 FEBRUARY THE 4TH WHEN WE ... I DON'T KNOW. UNCLE
- 14 JACK MAKE THOSE CALLS TO MR. SMALL. THEY TALKED
- 15 ... ALL I KNOW IS I HAD TO COME UP WITH SOME
- 16 MONEY.
- 17 Q. SO YOUR FIRST MEETING WAS WITH JACK IN CAMDEN WITH
- 18 SAMMY SMALL SENIOR, SAMMY SMALL JUNIOR, MR. BEST
- 19 AND ANOTHER MAN FROM THE BANK. WHAT WAS DISCUSSED
- 20 DURING THAT MEETING?
- 21 A. FIRST OFF, MR. ... I TALKED WITH MR. SMALL AND I
- 22 TOLD HIM ABOUT THINGS THAT WERE HAPPENING AND HE
- 23 ASSURED ME THAT MY PERSONAL LOAN/MORTGAGE WOULD
- 24 NOT BE DISCUSSED TO ANYBODY ELSE ANYMORE.
- 25 Q. AND YOU MEAN YOUR PERSONAL LOAN ON YOUR HOME?

- 1 A. NO, NO. OUR MORTGAGE WITH THE BANK.
- 2 Q. TO BJC LOAN?
- 3 A. YES, YES. HE HAD HIS LITTLE GRAVEL AND HE
- 4 PROMISED THAT NOBODY ELSE WOULD DISCUSS OUR LOAN.
- 5 THAT HE WOULD HANDLE IT WAS CAMDEN. AND THEN HIM
- 6 AND UNCLE JACK STARTED TALKING AND UNCLE JACK WAS
- 7 TRYING TO TALK TO HIM TO FIGURE OUT WHAT IT WOULD
- 8 TAKE TO GET THIS LOAN STRAIGHT AND KEEP US GOING
- 9 UNTIL EITHER WE COULD SELL IT OR DO SOMETHING WITH
- 10 IT.
- 11 Q. SO JACK ASKED MR. SMALL SENIOR?
- 12 A. YES.
- 13 Q. WHAT IT WOULD TAKE TO KEEP THE LOAN GOING,
- 14 CORRECT?
- 15 A. CORRECT.
- 16 Q. UNTIL SUCH TIME AS YOU COULD SELL THE PROPERTY?
- 17 A. SELL IT OR WHATEVER.
- 18 Q. OR COME UP WITH FIVE OR WHATEVER MILLION DOLLARS?
- 19 A. HE NEVER SAID THAT. HE NEVER SAID THAT PRICE. HE
- 20 SAID WE HAD TO COME UP WITH A CERTAIN AMOUNT.
- 21 SOMEHOW, YOU KNOW, I COME UP WITH WHATEVER THEY
- 22 TOLD ME I HAD TO HAVE.
- 23 Q. DO YOU REMEMBER WHAT THEY TOLD YOU YOU HAD TO
- 24 HAVE?
- 25 A. AND IT WOULD HAVE TO BE 95,000 BECAUSE THAT'S WHAT

1 I TOOK.

2 Q. SO YOU ARE TALKING ABOUT EXHIBIT "141", WHICH IS
3 THAT CHECK FOR 95,000 DATED FEBRUARY THE 3RD 2009?

4 A. YES.

5 Q. SO, THAT CHECK YOU TOOK TO CAMDEN AS A RESULT OF
6 YOUR MEETING WITH JACK AND ...

7 A. WE HAD ... I'M SORRY. GO AHEAD.

8 Q. THAT CHECK FOR \$95,000.00 WAS DATED FEBRUARY
9 THE 3RD OF 2009 WAS TAKEN TO THE BANK AS A RESULT
10 OF YOUR MEETING WITH JACK, SAMMY SMALL SENIOR,
11 SAMMY SMALL JUNIOR, BEST AND SOME OTHER BANK
12 OFFICER OR BANK PERSON?

13 A. LINNEY, LINNEY, SOMETHING LIKE THAT.

14 Q. LENT BRIDGES?

15 A. THAT'S IT.

16 Q. AND WHAT WAS YOUR UNDERSTANDING OF THE STATUS OF
17 THE LOAN ONCE YOU TO THIS \$95,000.00 PAYMENT?

18 A. WELL, UNCLE JACK JUST KEPT ... UNCLE JACK JUST
19 KEPT ... WE KEPT, YOU KNOW, "WHERE AM I GOING TO
20 GET THIS MONEY FROM? WHERE AM I GOING TO GET THIS
21 MONEY FROM? UP UNTIL THE DAY I TOOK IT, THAT'S
22 ALL ... YOU KNOW, THAT'S ALL I KEPT TRYING TO
23 FIGURE OUT WHERE WAS I GOING TO GET THE MONEY TO
24 MAKE THIS PAYMENT. I GOTTA DO SOMETHING. WHAT AM
25 I GONNA DO?

1 Q. HOW LONG WAS IT BETWEEN DATE YOU TOOK THIS CHECK
2 FOR \$95,000.00 TO THE BANK SINCE YOUR MEETING THAT
3 YOU HAD HAD IN CAMDEN, THE FIRST MEETING WITH
4 JACK?

5 A. MY UNCLE JACK TOOK CARE OF ALL THAT. HE WOULD
6 JUST CALL AND TELL ME WHAT I NEEDED TO DO. WHAT I
7 NEEDED TO DO.

8 Q. AND MY QUESTION IS, HOW MUCH TIME DID IT TAKE YOU
9 TO GET THE NINETY-FIVE THOUSAND DOLLARS AFTER YOUR
10 MEETING?

11 A. I GOT IT THAT DAY.

12 Q. I THINK I'M NOT BEING CLEAR, BUT I'M TRYING TO
13 UNDERSTAND HOW MUCH TIME PASSED FROM WHEN JACK
14 TOOK YOU UP THERE ...

15 A. WELL, I DON'T KNOW ...

16 Q. JUST LET ME FINISH MY QUESTION.

17 MS. COOK: JUST LISTEN TO HER. PAY
18 ATTENTION.

19 Q. FROM THE TIME THAT JACK TOOK YOU TO THE BANK IN
20 CAMDEN AND YOU WERE TOLD YOU NEEDED TO GET
21 \$95,000.00, HOW MUCH TIME PASSED FROM THAT MEETING
22 UNTIL YOU ACTUALLY GOT THE \$95,000.00 AND TOOK IT
23 UP THERE?

24 A. I GOT THE MONEY ON THIS DATE AND TOOK IT UP THERE.

25 Q. AND THAT THE SAME DAY THAT JACK TOOK YOU UP THERE

1 SURE.

2 Q. BUT YOU ARE PRETTY SURE IT WAS IN MARCH?

3 A. I'M NOT SURE. MR. PATEL WAS ALREADY GOING TO BE
4 ... I MEAN, WE HAD ALREADY TALKED ABOUT HIM BEING
5 THE MANAGER.

6 Q. AND WHAT WAS THE DISCUSSION AT THAT MEETING?

7 A. WHAT MEETING?

8 Q. YOUR MEETING WITH JACK, BUPI IN CAMDEN.

9 A. IN CAMDEN?

10 Q. YES.

11 A. WE DISCUSSED ABOUT WHAT I HAD TO COME UP WITH AND
12 UNCLE JACK INTRODUCED BUPI TO MR. SAMMY. THAT WAS
13 THE FIRST TIME HE HAD MET HIM, AND MR. SAMMY HAVE
14 TOLD HIM THAT HE KNEW THAT HE DID A LOT OF
15 BUSINESS WITH FIRST PALMETTO AND HE WAS A GOOD
16 CLIENT BECAUSE YOU COULD TELL BY THE WAY THEY WERE
17 TALKING, YOU KNOW. HE HAD DONE A LOT OF BUSINESS
18 WITH THE BANK AND THEN WE TALKED ABOUT IN THE
19 CONVERSATION ABOUT MR. SAMMY TALKING ABOUT THAT I
20 HAD TO COME UP WITH A HUNDRED AND FIFTY THOUSAND
21 DOLLARS BY MAY THE 31ST. HE SAID, "YOU HAVE GOT
22 TO HAVE THAT HUNDRED AND FIFTY THOUSAND DOLLARS.

23 Q. AND WHAT WAS YOUR UNDERSTANDING OF WHAT WOULD
24 HAPPEN IF YOU GOT THE HUNDRED AND FIFTY THOUSAND
25 DOLLARS?

1 A. THAT THE LOAN WOULD BE RENEWED FOR \$300,000.00 A
2 YEAR BECAUSE I SAID, OKAY. WELL, THE EMERALD
3 SHORES CAN PAY A HUNDRED AND FIFTY AND RAINBOW
4 COURT CAN PAY A HUNDRED AND FIFTY, AND IT WOULD
5 GIVE US A CHANCE TO EITHER, AS UNCLE JACK TOLD MR.
6 SAMMY, "YOU CAN'T SELL A MOTEL IF IT IS IN
7 FORECLOSURE OR STUFF BECAUSE NOBODY IS GOING TO
8 TRY TO BUY SOMETHING THAT IS IN TROUBLE." SO, HE
9 AND MR. SAMMY TALKED ABOUT WORKING IT OUT SO THAT
10 WE COULD KEEP IT UNTIL IT COULD BE SOLD OR
11 SOMETHING DONE.

12 Q. AND SO YOUR UNDERSTANDING IS IF YOU CAN GET THE
13 \$150,000 BY MAY THE 31ST 2009, THEN THE LOAN WOULD
14 BE RENEWED FOR A YEAR?

15 A. YEAH. I DIDN'T EVER TAKE IT PAST A YEAR. UNCLE
16 JACK DID SAY FIVE BUT MR. SAMMY NEVER ANSWERED.

17 Q. BUT IT WOULD BE RENEWED FOR WHATEVER IF IT WAS THE
18 YEAR OR MORE THAN ONE YEAR, BUT IT WAS GOING TO BE
19 A FLAT PAYMENT OF \$300,000.00?

20 A. 300,000.00.

21 Q. DID YOU HAVE ANY OTHER MEETINGS WITH THE BANK
22 AFTER THAT MEETING?

23 A. NO, MA'AM. I CALLED MR. SAMMY. YOU KNOW, HE
24 ASKED ME WHEN I LEFT, HE GIVE ME HIS CELL PHONE
25 NUMBER AND ASKED ME TO CALL HIM AND LET HIM KNOW

1 HOW WE WERE DOING.

2 Q. DID YOU EVER CALL MR. SAMMY AFTER THAT?

3 A. YES, I DID.

4 Q. WHEN DID YOU CALL HIM?

5 A. JUST DIFFERENT TIMES FROM WHENEVER THAT LAST
6 MEETING WAS. HE WAS ASKED ME TO CALL HIM LIKE
7 EVERY COUPLE WEEKS OR A MONTH JUST TO KIND OF KEEP
8 CHECKING IN.

9 Q. DURING THOSE PHONE CALLS, DID YOU EVER TALK ABOUT
10 THE LOAN?

11 A. NO. I JUST TOLD HIM WE WERE DOING GOOD. THAT I
12 REALLY APPRECIATED EVERYTHING HE WAS WORKING WITH
13 US AND JUST THAT KIND CONVERSATION.

14 Q. AND ABOUT HOW MANY TIMES DO YOU THINK YOU CALLED
15 HIM?

16 A. I DON'T REMEMBER.

17 Q. DID YOU MAKE THE HUNDRED AND FIFTY THOUSAND DOLLAR
18 PAYMENT TO THE BANK BY MAY 31ST?

19 A. NO. BUT WE COULD HAVE.

20 Q. WHAT DO YOU MEAN BY THAT?

21 A. I MEAN, THE PAYMENT OF THE MADE IN.

22 Q. WHY WASN'T IT MADE THEN?

23 A. I CAN'T ANSWER THAT. I WASN'T IN CHARGE OF THE
24 BOOKS OR NOTHING, BUT THE PAYMENT COULD HAVE BEEN
25 MADE.

1 Q. WELL, IF YOU WEREN'T IN CHARGE OF THE BOOKS, THEN
2 HOW DO YOU KNOW IT COULD HAVE BEEN MADE?

3 A. I WAS THERE EVERY SINGLE DAY. I KNOW THE ROOMS
4 THAT WERE RENTED AND I KNOW THE STUDENTS THAT WERE
5 CHECKING IN. I KNOW IT COULD HAVE BEEN MADE.
6 YOU'RE TALKING ABOUT ALMOST TWO HUNDRED ROOMS,
7 COUNTING COTTAGES AND STUDENTS CHECKING IN.

8 Q. AND YOU'RE SAYING THAT THE HOTEL COULD HAVE PAID
9 IT'S EXPENSES AND HAD A HUNDRED AND FIFTY THOUSAND
10 DOLLARS LEFT OVER TO MAKE THIS PAYMENT?

11 A. WE COULD HAVE PAID THE BILLS WE HAD TO PAY AND PAY
12 THE HUNDRED AND FIFTY. IF I WOULD HAVE HAD TO GET
13 IT FROM SOMEWHERE ELSE, I COULD HAVE GOT IT. I
14 DIDN'T KNOW ALL THIS WAS GONNA TO HAPPEN. I
15 TRUSTED UNCLE JACK WITH ALL MY HEART AND HE LOOKED
16 ME IN THE EYES SITTING THERE AT THE OFFICE AND
17 SAYS, "DON'T WORRY ABOUT NOTHING. THAT IS MY
18 BLOOD RIGHT THERE. THAT IS MY BLOOD. I TRUSTED
19 HIM WITH EVERYTHING.

20 Q. DID YOU KNOW THAT THE HUNDRED AND FIFTY THOUSAND
21 DOLLARS HAD NOT BEEN PAID BY MAY 31ST?

22 A. YEAH, WHEN I GOT SERVED FROM H&M, I SAID, HE WAS
23 SITTING THERE AND I WAS SITTING THERE RIGHT BESIDE
24 HIM, AND I GOT SERVED, AND I LOOKED HIM IN THE
25 EYES AND I SAID, WHAT IS THIS?" HE SAID, "DON'T

1 YOU TRUST ME?" HE SAID, "DON'T YOU TRUST ME?"
2 AND I SAID, "YES, I TRUST YOU BUT WHY AM I BEING
3 SERVED?" I STARTED CRYING. I WENT OUTSIDE, AND I
4 CALLED MY FRIEND AND SHE CAME AND PICKED ME UP AND
5 SHE TOOK ME TO HENRIETTA GOLDING.

6 Q. AND WHATEVER THAT DOCUMENT IS THAT YOU WERE
7 TALKING ABOUT, IT SAID HOTEL AND MOTEL HOLDINGS?

8 A. YES.

9 Q. WAS IT A LEGAL DOCUMENT?

10 A. YES. BUT IT WAS ... AND I JUMPED AHEAD BECAUSE
11 MR. SMALL CAME ... YOU GET BACK IN CHARGE OF THIS.
12 I'M SORRY.

13 Q. WELL, I AM TRYING TO UNDERSTAND WHAT THE DOCUMENT
14 WAS THAT YOU SAW THAT SENT YOU TO HENRY AGAIN?

15 A. I GOT SERVED WITH PAPERS SAYING THE H&M WAS SUING
16 ME.

17 Q. BEFORE THAT, YOU HAVE NOT SEEN A SUMMONS AND
18 COMPLAINT FILED BY FIRST PALMETTO SAVINGS BANK?

19 A. NO. DID I? I NEVER GOT SERVED NOTHING WITH MR.
20 JOHN DEBOSE. HARVEY AND TRIPP GOT SERVED BUT I
21 NEVER GOT SERVED. I NEVER GOT ... MR. SAMMY CAME
22 TO THE RAINBOW COURT AND TOLD US SITTING THERE
23 THAT HE WAS GOING TO START FORECLOSING BECAUSE THE
24 PAYMENT WASN'T MADE ON MAY THE 31ST. THAT'S THE
25 FIRST TIME I KNEW THE PAYMENT WASN'T MADE.

1 Q. AND YOU SAID THAT DATE WAS WHAT?

2 A. JUNE THE 5TH.

3 Q. HOW DO YOU KNOW THAT IT WAS JUNE THE 5TH?

4 A. WHEN SOMEBODY LOOKS YOU IN THE EYE AND TELLS YOU
5 THEY ARE GETTING READY TO FORECLOSE ON ALL YOUR
6 PROPERTY THAT YOU HAVE WORKED ALL YOUR LIFE, YOU
7 KNOW THE DATE. I'M SORRY.

8 Q. I'M JUST TRYING TO CLEAR IT UP. WE HAVE BEEN REAL
9 SKETCHY ON THE OTHER DATES AND THAT WAS A VERY
10 SPECIFIC DATE, AND I WAS JUST WONDERING IF IT WAS
11 SOMEBODY'S BIRTHDAY OR HOW DO YOU KNOW IT'S JUNE
12 THE 5TH? YOU SAY MR. SMALL CAME TO THE PROPERTY
13 AND TOLD YOU HE WAS GOING TO START A FORECLOSURE,
14 IS THAT RIGHT?

15 A. YES, MA'AM.

16 Q. WHO WAS WITH HIM?

17 A. MARTY BEST. I BELIEVE THAT'S WHO IT WAS.

18 Q. AND THAT WAS YOUR FIRST NOTICE THAT THE HUNDRED
19 AND HUNDRED AND FIFTY THOUSAND DOLLARS THAT WAS TO
20 BE PAID ON MAY THE 31ST, HAD NOT BEEN PAID?

21 A. CORRECT.

22 Q. DID YOU EVER ASK ... WHO WOULD YOU HAVE EXPECTED
23 TO MAKE THE HUNDRED AND FIFTY THOUSAND DOLLARS?
24 WHO WERE YOU COUNTING ON TO MAKE THAT?

25 A. UNCLE JACK AND BUPI.

- 1 Q. DID YOU SEE A RECEIPT THAT THE MOTELS HAD PAID
2 MORTGAGE?
- 3 A. I DIDN'T KNOW THAT UNTIL AFTER THE FACT.
- 4 Q. DID YOU SEE A RECEIPT THAT SAID THEY HAD PAID THE
5 MORTGAGE?
- 6 A. DID I EVER SEE IT, NO.
- 7 Q. DID YOU ASK?
- 8 A. I JUST TOOK FOR GRANTED.
- 9 Q. DID SOMEBODY TELL YOU THAT THEY HAD MADE THE
10 HUNDRED AND FIFTY THOUSAND DOLLAR PAYMENT?
- 11 A. I PUT ONE HUNDRED PERCENT. THEY AND MY UNCLE, TO
12 MAKE SURE ALL THIS WAS TAKEN CARE OF. I DID
13 EXACTLY WHAT HE ASKED ME TO DO. HE TOLD ME THAT
14 HE WOULD TAKE CARE OF THAT. I CLEANED ROOMS AND I
15 DID A THIS AND I DID EVERYTHING THAT HE ASKED ME
16 TO.
- 17 Q. AND MY QUESTION IS, DID SOMEONE TELL YOU THAT THE
18 HUNDRED AND FIFTY THOUSAND DOLLARS PAYMENT TO THE
19 BANK HAD BEEN MADE?
- 20 A. NO.
- 21 Q. BUT YOU KNEW THAT YOU DIDN'T CONTRIBUTE THE
22 \$55,000.00 TO BJC?
- 23 A. IF I HADN'T ... IF I'D HAVE KNOWN IT, I WOULD HAVE
24 COME UP WITH THE WHOLE HUNDRED AND FIFTY, ONE WAY
25 OR THE OTHER.

1 Q. WHO DID YOU ASK?

2 A. MR. PATEL.

3 Q. AND MR. PATEL TOLD YOU HE DIDN'T KNOW HOW MUCH
4 MONEY WAS IN IT?

5 A. SEE, HE WAS CONTROLLED BY UNCLE JACK.

6 Q. MR. PATEL WAS ALSO CONTROLLED BY JACK?

7 A. YEAH. IN MY ... THAT'S MY PERSONAL OPINION. IN
8 FACT, I THINK IT'S SAD THAT THE BANK IS NOT PAYING
9 BUPI PATEL'S LAWYERS BECAUSE UNCLE JACK PUT BUPI
10 PATEL IN THIS POSITION. THAT'S MY OPINION.

11 Q. OKAY.

12 A. I'M SORRY.

13 Q. AND IN WHAT WAY DID JACK PUT BUPI IN THIS
14 POSITION?

15 A. AS GETTING HIM TO BE THE MANAGER. WHY ARE WE
16 HERE?

17 Q. WE'RE HERE BECAUSE WE HAVE A FORECLOSURE ACTION
18 AND THERE IS A NOTE THAT HAS NOT BEEN PAID AND IT
19 IS NOT OWED BY BUPI PATEL, IS IT?

20 A. NO.

21 Q. WHO OWES THE MONEY ON THIS NOTE?

22 A. WE DO.

23 Q. WHO IS WE?

24 A. ME HARVEY AND TRIPP. BUT IT WOULD HAVE BEEN PAID
25 IF UNCLE JACK HADN'T STEPPED IN AND TOLD ME ALL HE

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

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

7 A. YES, MA'AM.

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

15 A. WELL, IF WE WOULD HAVE BEEN IN THERE RUNNING IT,
16 BUT UNCLE JACK SAID, "PUT BUPI PATEL AND LET HIM
17 RUN IT.

18 HE KNOWS HOW TO RUN THE MOTEL. HE CAN MAKE ...
19 WE'LL MAKE THIS PAYMENT." UNCLE JACK SAID THAT
20 AND GOD KNOWS THAT.

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

1 MISUNDERSTAND YOU?

2 A. I SAID THAT.

3 Q. DO YOU REALLY BELIEVE THAT?

4 A. WITH ALL MY HEART. IF JACK WOULD HAVE LEFT HIM
5 ALONE.

6 Q. IF JACK WOULD HAVE LEFT HIM ALONE. SO, IF MR.
7 PATEL MADE AN ERROR, IT WASN'T HIS FAULT, IT WAS
8 BECAUSE HE WAS UNDER THE INFLUENCE OF JACK, IS
9 THAT WHAT YOU'RE SAYING?

10 A. THAT IS WHAT I'M SAYING.

11 Q. ALRIGHT. I WOULD SHOW YOU WHAT THEY HAVE ALREADY
12 TALKED ABOUT IS THE TAX RETURN FOR 2008. ARE YOU
13 FAMILIAR WITH THAT TAX RETURN THAT HAS BJC
14 ENTERPRISES, LLC ON IT?

15 A. YES, SIR. MRS. BYRD SHOWED IT TO ME.

16 Q. I'M GOING TO ASK YOU A QUESTION TOO IF IT IS OKAY?

17 A. YES, SIR.

18 MS. COOK: SHE IS GOING TO NEED TO LOOK AT IT
19 IF YOU ARE GOING TO ASK HER ABOUT THE
20 DOCUMENT.

21 MR. DESCHAMPS: THERE WE GO.

22 MS. COOK: AND I BELIEVE THE ORIGINAL IS
23 SOMEWHERE IF YOU WANTED TO ...

24

25 OFF THE RECORD

1 BELIEVE MR. PATEL COMMITTED THAT CAUSED YOU TO SUE
2 HIM IN THIS ACTION?

3 A. I BELIEVE THAT BUPI WAS UNDER ... I BELIEVE UNCLE
4 JACK BROUGHT BUPI TO RUN THIS PLACE. I BELIEVE
5 WITH ALL MY HEART THAT IF UNCLE JACK WOULD HAVE
6 STAYED AWAY THAT THE PAYMENT COULD HAVE BEEN MADE.

7 Q. THAT'S THE REASON?

8 A. HE WAS IN CONTROL OF EVERYTHING.

9 Q. DID YOU EVER TELL MR. PATEL THAT YOU DIRECTED YOUR
10 ATTORNEY NOT TO SUE HIM AT ANY TIME? DID YOU EVER
11 HAVE THAT CONVERSATION WITH MR. PATEL AFTER THIS
12 LAWSUIT WAS FILED?

13 A. I DON'T REMEMBER HAVING THAT CONVERSATION.
14 SOMETHING MIGHT HAVE BEEN SAID LIKE, "WELL, BUPI
15 IS JUST RUNNING THE PLACE. UNCLE JACK BROUGHT IN
16 WHAT WAS SUPPOSED TO BE A FRIEND TO HIM AND ME,
17 HIS NIECE, AND HE DID BUPI BE WRONG. I THINK
18 UNCLE JACK TOOK ADVANTAGE OF THE BUPI JUST LIKE HE
19 DID ME.

20 Q. I GOTTA ASK YOU A COUPLE MORE QUESTIONS. DOES MR.
21 PATEL HAVE ANY OWNERSHIP INTEREST AT ALL IN BJC
22 ENTERPRISES?

23 A. NO, SIR.

24 Q. DOES HE OWN ANY SHARES OF STOCK IN AMERICANA
25 MOTEL?

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 HUNDRED AND FIFTY OR 250 IN THE SUMMER AND HUNDRED
2 AND FIFTH IN THE WINNER.

3 Q. ARE YOU CLAIMING ANY EMOTIONAL DISTRESS AS A
4 RESULT OF WHAT TO SAY MR. PATEL DID BY PAYING THE
5 BANK IN MAY?

6 A. THIS WHOLE THING HAS BEEN A NIGHTMARE.

7 Q. ONE QUESTION. ARE YOU CLAIMING EMOTIONAL
8 DISTRESS?

9 MS. COOK: WENDY, TRY TO ANSWER YES OR NO AND
10 THEN YOU CAN EXPLAIN THE ANSWER. SO, IF YOU
11 WILL ANSWER YES OR NO AND THEN KNOW YOU CAN
12 EXPLAIN AN ANSWER SO THAT YOU CAN ANSWER MR.
13 DESCHAMPS' QUESTION.

14 A. ASK THE QUESTION AGAIN PLEASE.

15 Q. ARE YOU CLAIMING ANY TYPE OF EMOTIONAL DISTRESS,
16 DAMAGES FOR EMOTIONAL DISTRESS DUE TO WHAT YOU
17 BELIEVE IS MR. PATEL'S FAILURE TO PAY A HUNDRED
18 AND FIFTY THOUSAND DOLLARS TO THE BANK OUT OF
19 INCOME MARCH, APRIL AND MAY 2009?

20 A. I DON'T KNOW HOW TO ANSWER THAT.

21 Q. OKAY. DID MR. PATEL TAKE ... ARE YOU ALLEGING
22 THAT MR. PATEL TOOK ANY MONIES FROM ANY RENTERS
23 FOR HIS OWN USE RATHER THAN FOR OTHER USES?

24 A. REPHRASE THAT.

25 Q. ARE YOU ALLEGING THAT MR. PATEL TOOK ANY MONEY

1 Q. DID YOUR COMMUNICATION LEVEL WITH YOUR BROTHER GO
2 DOWN AFTER YOU GRANTED THE POWER OF ATTORNEY TO
3 YOUR UNCLE JACK?

4 A. YES.

5 Q. DID YOUR BROTHER EXPRESSLY INDICATE TO YOU THAT HE
6 DIDN'T APPROVE OF YOU GIVING YOUR UNCLE JACK THE
7 POWER OF ATTORNEY?

8 A. YES. BUT I TRUSTED UNCLE JACK MORE THAN I DID HIM
9 AT THE TIME.

10 Q. TELL ME WHY YOU TRUSTED YOUR UNCLE JACK MORE THAN
11 YOUR BROTHER AT THE TIME?

12 A. BECAUSE HE KNEW EVERYTHING. UNCLE JACK KNEW HAD
13 TO TAKE CARE EVERYTHING. I MEAN, I FELT LIKE HE
14 WAS LIKE MY FATHER. HE WOULD TAKE CARE OF
15 EVERYTHING. HE KNEW HOW TO WHEEL AND DEAL. HE
16 KNEW HOW TO GET IT ORGANIZED SO I WOULDN'T LOSE
17 THE MOTEL. I TOLD HIM THAT MOTEL MY LIFE. WE
18 COULD SELL THE EMERALD. WE COULD DO WHATEVER IT
19 TAKES. I'M NOT GOING TO LOSE THE RAINBOW COURT.
20 WHATEVER IT TAKES.

21 Q. DOES THAT MEAN YOU THOUGHT YOUR BROTHER COULD NOT
22 TAKE CARE OF THE TWO MOTELS?

23 A. WELL, IT DIDN'T MEAN THAT BUT WE HAD ALREADY BEEN
24 ... WE WERE STRUGGLING UNDOUBTABLY. I MEAN, YOU
25 KNOW, YOU'D HEAR `EM TALKING OR SOMETHING. I JUST

- 1 COULDN'T TAKE IT NO MORE.
- 2 Q. WHO WAS TALKING ABOUT IT STRUGGLING?
- 3 A. WELL, AT THE END WHEN I WENT TO MR. ... WE HAD
- 4 THAT MEETING AT MR. HUTTO, YEAH. I MEAN, IT WAS
- 5 QUITE OBVIOUS WHEN YOU SAT THERE AND LISTENED TO
- 6 `EM.
- 7 Q. BUT THE PERFORMANCE OF THE MOTELS WASN'T
- 8 SUFFICIENT TO KEEP UP WITH THE DEBT SERVICE?
- 9 A. YEAH. I MEAN, IT MUST HAVE OWED MONEY BECAUSE MR.
- 10 HUTTO SAID POINT BLANK, "YOU GOT TO MAKE A
- 11 PAYMENT." I CAN'T REMEMBER. ALL I KNOW IS THAT
- 12 WE HAD TO COME UP WITH MONEY.
- 13 Q. AND THAT CONVERSATION WAS IN NOVEMBER OR OCTOBER
- 14 OF 2008? EXCUSE ME. OCTOBER OF 2008 OR OCTOBER
- 15 OF 2009?
- 16 A. IT WAS IN OCTOBER 2008 WHEN WE HAD THAT MEETING.
- 17 Q. AFTER YOU SIGNED THE POWER OF ATTORNEY IN FAVOR OF
- 18 YOUR UNCLE JACK, DID YOU CEASE HAVING ... DID THE
- 19 LEVEL OF COMMUNICATION BETWEEN YOU AND YOUR
- 20 BROTHER GO DOWN?
- 21 A. I DIDN'T TALK TO HIM.
- 22 Q. SO IT JUST CEASED?
- 23 A. NO. WE STILL WOULD, YOU KNOW, TALK, BUT HE
- 24 RESENTED ME FOR DOING THAT.
- 25 Q. GIVING THE POWER OF ATTORNEY TO YOUR UNCLE JACK?

- 1 A. UH-HUH. (AFFIRMATIVE RESPONSE.)
- 2 Q. THE LETTERS THAT WE'VE LOOKED AT, I THINK THEY
- 3 BEGIN AT EXHIBIT "143" AND RUN THROUGH
- 4 EXHIBIT "148", THE LETTER WRITING CAMPAIGN BETWEEN
- 5 YOU AND MR. SCHROFF. SOME OF THOSE LETTERS YOU
- 6 DIDN'T WRITE. BUT DID SIGN. DID YOU HAVE ANY
- 7 DISCUSSIONS WITH YOUR BROTHER AT THAT TIME ABOUT
- 8 MR. SCHROFF OR ABOUT THE MOTELS?
- 9 A. HE WASN'T THERE. HE DIDN'T WANT TO DO NOTHING.
- 10 MS. COOK: AND YOU WERE SHAKING YOUR HEAD NO.
- 11 A. NO.
- 12 Q. AND THEN I GUESS YOU MADE A DECISION TO TURN OVER
- 13 THE MANAGEMENT OF THE MOTELS IN MARCH OF 2009 TO
- 14 MR. PATEL. DID YOU INFORM YOUR BROTHER IN ADVANCE
- 15 THAT YOU WERE DOING THAT?
- 16 A. NO, I JUST TOLD HIM.
- 17 Q. THE DAY YOU SIGNED IT?
- 18 A. WELL, HE WAS THERE.
- 19 Q. WELL, YOU INFORMED YOUR BROTHER THE DAY YOU SIGNED
- 20 A PIECE OF PAPER IN FAVOR OF MR. PATEL?
- 21 A. YES. I SAID, "HEY, SIGN IT." I MEAN, YOU KNOW,
- 22 WE COULD LOSE IT. UNCLE JACK IS GONNA HELP US.
- 23 HE DIDN'T LIKE THAT BUT HE SIGNED IT.
- 24 Q. HOW MUCH COMMUNICATION DID YOU HAVE WITH YOUR
- 25 BROTHER AFTER THAT MANAGEMENT AGREEMENT WAS SIGNED

1
2 STATE OF SOUTH CAROLINA
3
4 COUNTY OF HORRY.

IN THE COURT OF
COMMON PLEAS
09-CP-26-5550

5
6 HOTEL AND MOTEL HOLDINGS, LLC,
7 PLAINTIFF,

8 -VS-

9 WENDY J. BELLAMY,
10 DEFENDANT/THIRD PARTY PLAINTIFF,

11 -VS-

12 FIRST PALMETTO SAVINGS BANK, F.S.B.; JACK
13 JONES; DONALD D. GODWIN; AND BHUPENDRA
14 PATEL,
15 THIRD PARTY DEFENDANTS,

16 DEPOSITION OF

17
18 **HARVEY JONES**

19 **DEFENDANT'S**
20 **EXHIBIT**

21 5-12 9 Lwm NOVEMBER 22, 2010

22 10:15 A.M. THROUGH 3:59 P.M.

23 AS TAKEN AND TRANSCRIBED BY JERRY S.
24 MABRY, NOTARY PUBLIC AND VERBATIM REPORTER, IN LAW
25 THE OFFICES OF TURNER PADGET, 2411 OAK STREET,
SUITE 300, MYRTLE BEACH, SOUTH CAROLINA 29572.

Jerry S. Mabry
MABRY COURT REPORTING
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7
8
9
10
11 A P P E A R A N C E S

12
13 FOR THE PLAINTIFF; AUDRA M. BYRD, ESQ.
 14 JONES AND GODWIN, TURNER PADGET
 15 THIRD PARTY DEF: 2411 N. OAK STREET, SUITE 301
 MYRTLE BEACH, S.C. 29577

16
17 FOR THE DEFENDANT, KATHRYN M. COOK ESQ.
 18 THIRD PARTY PLF: COOK & ROY
 10409 N. KINGS HIGHWAY
 N. MYRTLE BEACH, S.C. 29572

19
20 FOR THIRD PARTY WILLIAM H. SHORT, JR., ESQ.
 21 DEFENDANT: HAYNSWORTH, SINKLER & BOYD
 1201 MAIN ST., 22ND FLOOR
 COLUMBIA, S.C. 29201

22
23 FOR PATEL, THIRD WILLIAM W. DESCHAMPS, JR.,
 24 PARTY DEFENDANT: ESQ.
 1551 21ST AVE., N. STE. 14
 25 MYRTLE BEACH, S.C. 29577

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Harvey Jones - Cross
Examination by Mr. Byrd

1 A YES, SIR.

2 Q TELL ME IF YOU WOULD, MR. JONES, ABOUT YOUR
3 EDUCATION. IF YOU'LL BEGIN WITH GRADUATION
4 FROM HIGH SCHOOL, IF YOU GRADUATED, WHERE AND
5 WHEN AND BRING ME FORWARD FROM THAT TIME.

6 A I GRADUATED FROM MIAMI MILITARY ACADEMY IN
7 1965, I BELIEVE IT WAS. AND I WENT TO
8 COASTAL FOR A YEAR AND A HALF.

9 Q THAT WOULD HAVE BEEN IN '66, '67, IN THAT
10 AREA?

11 A YES, SIR.

12 Q I TAKE IT BECAUSE YOU WERE ONLY THERE FOR A
13 YEAR AND A HALF, YOU DIDN'T GET ANY DEGREE?

14 A NO, SIR.

15 Q MIAMI MILITARY ACADEMY IS ...

16 A IN MIAMI, FLORIDA.

17 Q AND IT'S SOME SORT OF MILITARY HIGH SCHOOL?

18 A YES, SIR.

19 Q OTHER THAN THAT EDUCATION, DO YOU HAVE ANY
20 FORMAL EDUCATION BEYOND THAT?

21 A NO, SIR.

22 Q TALK TO ME ABOUT YOUR WORK EXPERIENCE.

23 A I'VE WORKED AT A HOTEL MY WHOLE LIFE.

24 Q ALL RIGHT, SIR. TELL ME WHEN YOU FIRST BEGAN
25 WORKING AT A HOTEL.

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1 A OH, YES, SIR.

2 Q AS FAR AS YOU KNOW, DID SHE HAVE THAT JOB
3 INTO 2010?

4 A NO, SIR. I THINK SHE QUIT THAT AND WENT TO
5 WORK FOR ARS IN 2004. I MEAN, 2008.

6 Q WHAT IS ARS?

7 A IT'S A PLUMBING AND AIR CONDITION COMPANY.

8 Q DO YOU KNOW WHAT SHE WAS DOING FOR THEM?

9 A SHE WAS A SALES REPRESENTATIVE. SHE'S ALSO A
10 BROKER IN NORTH AND SOUTH CAROLINA IN REAL
11 ESTATE. SHE SELLS REAL ESTATE AND SHE ALSO
12 SELLS INSURANCE. SHE'S LICENSED IN NORTH AND
13 SOUTH CAROLINA.

14 Q DOES SHE HAVE A REAL ESTATE AGENCY OR AN
15 INSURANCE AGENCY?

16 A NO, SIR. SHE JUST WORKS FOR DIFFERENT
17 COMPANIES.

18 Q SO, SHE MAY DO WORK FOR ONE REAL ESTATE
19 COMPANY OR INSURANCE AGENCY AND THEN DO SOME
20 WORK FOR ANOTHER ONE FROM TIME TO TIME?

21 A YES, SIR.

22 Q WE'VE LOOKED AT SOME ... LET ME BACK UP NOW
23 AND ASK ONE MORE QUESTION. I THINK YOU
24 OPERATED RAINBOW COURT AND YOU HAD REALLY
25 PRIMARILY RESPONSIBILITY, DID YOU NOT, FOR

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- 1 2005. WHATEVER ... WHATEVER WAS IN OUR GRASP
2 AT THAT TIME, HE PREPARED THE TAXES FOR IT.
3 Q HAVE YOU FILED A TAX RETURN FOR THE YEAR
4 ENDING DECEMBER 31ST, 2009?
5 A I WASN'T THERE. SO ... I THINK 2009 WAS
6 WHEN JACK AND BOOPIE TOOK OVER. AM I
7 CORRECT? YEAH. 2009, I WASN'T THERE.
8 Q BUT YOU STILL OWNED AN INTEREST IN BJC ENTER-
9 PRISES, DIDN'T YOU?
10 A WELL, SHORTLY AFTER THEY TOOK OVER, THEY
11 LOCKED ME OUT. SO, I HAVE NO IDEA WHAT
12 HAPPENED. SHORTLY AFTER THAT, I HAD A HEART
13 ATTACK.
14 Q BUT BJC ENTERPRISES WAS NOT TAKEN OVER BY
15 JACK JONES, WAS IT?
16 A HE WAS THERE. HE'S THE ONE THAT TALKED. HIM
17 AND BOOPIE, AND JACK ASSURED ME AT THAT POINT
18 IN TIME THAT HE WOULD MAKE SURE THAT WENDY
19 AND I DIDN'T LOSE THE PLACE. THAT'S THE ONLY
20 REASON I BACKED OUT.
21 Q SO, YOU DON'T KNOW WHETHER A TAX RETURN HAS
22 BEEN PREPARED FOR BJC ENTERPRISES FOR THE
23 YEAR ENDING 12/31/09 OR NOT?
24 A I HAVE NO IDEA.
25 Q I UNDERSTAND THAT THERE IS A LOAN DATED

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1 MEETINGS?

2 A YES, SIR.

3 Q DID THE BANK EVER INDICATE TO YOU IN ANY WAY
4 THAT THEY WERE WILLING TO REDUCE THE INTEREST
5 RATE?

6 A NO, SIR, NOT THAT I'M AWARE OF. EVERY TIME
7 WE WOULD TALK, MR. WILDER WOULD HAVE TO ...
8 ONCE IT WAS OVER WITH, BASICALLY HAVE TO CALL
9 ...

10 Q HIS SUPERIORS?

11 A YES, SIR.

12 Q ABOUT WHAT FLEXIBILITY ...

13 A RIGHT. WHICH WE DISCUSSED IN THE MEETINGS.

14 Q ON WHAT THE BANK MAY BE WILLING TO DO?

15 A YES, SIR. AND THEN WE WOULD GO BACK UP AND
16 ...

17 Q DID CASEY ATTEND MOST OF THESE MEETINGS?

18 A NO, SIR.

19 Q DO YOU REMEMBER MEETING WITH ANYBODY OTHER
20 THAN MR. WILDER IN MYRTLE BEACH?

21 A I THINK ONE TIME WE HAD A MEETING WITH MR.
22 WILDER AND TUMPIE OR SOMETHING LIKE THAT. I
23 DON'T KNOW. I DIDN'T KNOW HIM PERSONALLY BUT
24 WE MET IN HIS OFFICE. IN THAT MEETING, THERE
25 WAS CASEY, WENDY, ED FARMER, BOB WILDER,

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1 Q IS THAT THE MEETING WHEN YOUR SISTER SAID
2 SHE'D HAVE THE MONEY?

3 A NO, SIR.

4 Q THAT WAS A DIFFERENT MEETING, RIGHT?

5 A THAT WAS A DIFFERENT MEETING. THE MEETING
6 WHERE SHE SAID SHE'D HAVE THE MONEY WAS HERE
7 AND WE ... I WAS REALLY CONFUSED AS TO HOW
8 SHE WAS GONNA GET IT.

9 Q DO YOU KNOW IF SHE DID?

10 A THANK THE LORD SHE DIDN'T.

11 Q SO SHE WAS NOT ABLE TO COME UP WITH THAT
12 MONEY THAT SHE TOLD THE BANK THAT SHE WOULD?

13 A WELL, SHE TRIED TO HARM HERSELF IN ORDER TO
14 GET THE MONEY.

15 Q IS THAT WHEN ... A TIME WHEN SHE TRIED TO
16 COMMIT SUICIDE?

17 A YES, SIR.

18 Q IS THAT WHAT YOU'RE TALKING ABOUT?

19 A YES, SIR. THAT'S HOW SHE WAS GONNA GET THE
20 MONEY.

21 Q LET'S GET A LOOK AT EXHIBIT NUMBER "137".

22 MR. BYRD: WOULD YOU FOLKS LIKE TO
23 TAKE A BREAK?

24 MS. COOK: I WAS GONNA SAY WHEREVER
25 IS GOOD FOR YOU TO TAKE A BREAK,

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1 WHENEVER IT'S A GOOD TIME.

2 MR. BYRD: WE'LL TAKE IT RIGHT NOW.

3 OFF THE RECORD

4 Q WE'RE BACK ON THE RECORD NOW. MR. JONES,
5 JUST BEFORE WE BROKE, WE WERE LOOKING AT
6 EXHIBIT NUMBER "137", A LETTER DATED NOVEMBER
7 24, 2008 AND THAT LETTER IS TO BJC ENTER-
8 PRISES, LLC, WENDY J. BELLAMY, HARVEY L.
9 JONES, HENRY C. COAN, III, AND THE ADDRESS IS
10 405 FLAGG STREET, MYRTLE BEACH, SOUTH
11 CAROLINA 29577. WHAT IS LOCATED AT 405 FLAGG
12 STREET?

13 A THE RAINBOW COURT.

14 Q DID YOU RECEIVE A COPY OF THIS LETTER?

15 A NO, SIR, I'VE NEVER SEEN THIS LETTER.

16 Q OKAY. THIS LETTER WAS DEALING WITH THE LOAN
17 THAT WE'VE BEEN LOOKING AT?

18 A YES, SIR.

19 Q AND THEY'VE AGREED TO CHANGE THE INTEREST
20 RATE TO SEVEN PERCENT, DO YOU SEE THAT?

21 A YES, SIR.

22 Q THEN IT SAYS, "UPON RENEWAL OF THE EXISTING
23 LOAN..." DO YOU SEE WHERE I'M READING?

24 A YES, SIR.

25 Q "FIRST PALMETTO WILL RETAIN THE SAME SECURITY

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1 INTEREST CURRENTLY EXISTING FROM BJC ENTER-
2 PRISES, LLC AND THE HENRY C. COAN, JR.,
3 MARITAL TRUST. FIRST PALMETTO WILL REQUIRE
4 THE PERSONAL GUARANTY OF WENDY J. BELLAMY,
5 HARVEY C. JONES AND HENRY C. COAN, III." SEE
6 THAT?

7 A YES, SIR. EXCEPT THEY ... THE "C" IS NOT
8 MINE. I DON'T GUESS THAT MEANS ANYTHING.

9 Q WHAT IS YOUR MIDDLE INITIAL?

10 A LAVON.

11 Q SO IT'S HARVEY L. JONES?

12 A YES, SIR.

13 Q SO THEY MADE A MISTAKE THERE?

14 A YES, SIR.

15 LETTER FROM HUTTO TO
16 BJC, ET ALS DATED
17 11/24/08 MARKED
18 FOR IDENTIFICATION
19 AND INTRODUCED INTO
20 EVIDENCE AS DEFEN-
21 DANT'S EXHIBIT "137".

22 Q NOW, DID YOU HAVE OR DO YOU RECALL HAVING HAD
23 A MEETING UP IN CAMDEN WITH FIRST PALMETTO
24 BEFORE THIS LETTER WAS MAILED?

25 A NO, SIR. I'VE NEVER BEEN TO CAMDEN OTHER

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1 THAN THE FIRST TIME I WENT WITH JACK.

2 Q WHEN WAS THAT?

3 A I'M NOT SURE OF THE DATES. IF MY MIND ... IF
4 MY MEMORY SERVES ME RIGHT, I THINK WENDY
5 TRIED TO HARM HERSELF NOVEMBER OF THAT YEAR.
6 AND IT WOULD HAVE BEEN IN DECEMBER OF THAT
7 YEAR OR THE FIRST OF JANUARY OR SOMETHING IN
8 `09. THOSE TIMES ... THE TIME FRAME I'M NOT
9 REALLY SURE, BUT IT WOULD HAVE BEEN ...

10 `CAUSE THIS LETTER, I'VE NEVER SEEN IT BEFORE
11 `CAUSE I THINK IT WAS RIGHT AT THIS SAME
12 PERIOD OF TIME IS WHEN WENDY TRIED TO HARM
13 HERSELF, AND THEN SOMEWHERE IN DECEMBER, I
14 THINK, IS WHEN JACK INFORMED ME THAT HE HAD
15 WENDY'S POWER OF ATTORNEY AND HE SAID HE
16 WOULD SET UP A MEETING WITH MR. SMALL, AND
17 SHORTLY AFTER THAT SOME TIME, THAT'S WHEN WE
18 WENT UP THERE AND THE MEETING WAS HELD.

19 Q DO YOU RECALL THAT WENDY TRIED TO COMMIT
20 SUICIDE ON OR ABOUT NOVEMBER THE 3RD, 2008?

21 A YEAH. I KNOW IT WAS IN THERE BECAUSE OF
22 THANKSGIVING, YOU KNOW. WE USUALLY MAKE
23 PLANS TO ALL GET TOGETHER, AND MY BROTHER-IN-
24 LAW CALLED ME AND TOLD ME THAT WENDY HAD
25 TRIED TO HARM HERSELF, AND AT THAT TIME, I

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1 12/22/08 FOR IDENTI-
2 FICATION AND INTRO-
3 DUCED INTO EVIDENCE
4 AS DEFENDANT'S EXHIBIT
5 "140".

6 Q WE'RE BACK ON THE RECORD NOW. DO YOU HAVE THE
7 BINDER WHICH HAS EXHIBIT "105" IN IT?

8 A NO, SIR.

9 Q THIS EXHIBIT "105" IS DATED JANUARY 9, 2009.
10 IT'S ADDRESSED TO WENDY BELLAMY AT 405 FLAGG
11 STREET, MR. FARMER AT 1004 29TH AVENUE NORTH,
12 SUITE A, AMERICANA MOTEL OF MYRTLE BEACH,
13 INC., IN CARE OF MS. WENDY J. BELLAMY AT 405
14 FLAGG STREET, AND THEN MR. HARVEY L. JONES,
15 AND THEY GOT YOUR INITIAL RIGHT THERE.

16 A YES, SIR.

17 Q AT 1324 HARBOR TOWN ROAD. WAS IS THAT THE
18 ADDRESS OF?

19 A THAT WAS MY SON'S HOUSE.

20 Q DID YOU GET A COPY OF THIS LETTER, MR. JONES?

21 A I DON'T REMEMBER THIS LETTER, NO, SIR.

22 Q DO YOU KNOW IF MS. BELLAMY GOT A COPY OF THIS
23 LETTER?

24 A I HAVE NO IDEA.

25 Q DO YOU KNOW IF ED FARMER GOT A COPY OF THIS

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1 WE HAD TO PAY THE TAXES AND PAY THIS AND I
2 BELIEVE THAT IT WAS TWO HUNDRED THOUSAND.

3 Q DO YOU KNOW HOW MUCH THE TAXES WERE?

4 A MY BEST ... 'CAUSE I WROTE THE CHECKS. SEEMS
5 LIKE OUR TAXES RUN IN THE NEIGHBORHOOD OF
6 ABOUT A HUNDRED AND TWENTY SOME THOUSAND A
7 YEAR AND THAT YEAR, DUE TO THE FACT A BUILDING
8 THAT ME AND WENDY OWNED, WE TOOK IT OUT OF IT
9 AND IT WAS ABOUT ... GOSH, DOGGIT. ABOUT
10 NINETY-FIVE THOUSAND OR NINETY-SIX THOUSAND.
11 IT WAS IN THE NINETIES. I'M NOT SURE EXACTLY.
12 IT WAS SOMETHING LIKE THAT.

13 Q THIS WAS ON THE PROPERTY THAT THE BANK HELD A
14 SECURITY INTEREST IN?

15 A YES, SIR. THE ONE WE DIDN'T PAY WAS THE ONE
16 THEY DIDN'T HAVE ... IT WAS SOMETHING ELSE.
17 WHEN JACK AND BOOPIE TOOK OVER, THEY WERE ...
18 ASSURED ME THAT THE TAXES WOULD BE CAUGHT UP
19 IN ANY DEALS THAT WAS OUTSTANDING. THAT THEY
20 WOULD TAKE CARE OF 'EM AND STUFF. THE HOTEL
21 BILLS AND STUFF WHEN I SIGNED WHAT THEY CALL
22 AN AGREEMENT. I CALL IT A PIECE OF PAPER.

23 Q DO YOU KNOW HOW THIS CHECK WAS DELIVERED TO
24 FIRST PALMETTO?

25 A YES, SIR.

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1 Q HOW?
2 A MY SISTER AND I TOOK IT.
3 Q TOOK IT WHERE?
4 A TO CAMDEN.
5 Q SO YOU DROVE IT TO CAMDEN?
6 A YES, SIR.
7 Q WHO WAS WITH YOU ON THAT TRIP?
8 A MY SISTER.
9 Q JUST THE TWO OF YOU?
10 A YES, SIR.
11 Q DID YOU JUST WALK IN THE BANK AND DELIVER THE
12 CHECK TO A TELLER OR DID YOU HAVE A MEETING?
13 A WE WENT TO MR. SMALL'S OFFICE.
14 Q WAS THAT ON THE DATE THE CHECK IS ACTUALLY
15 DATED, THE 3RD OF FEBRUARY?
16 A YES, SIR. 'CAUSE WE GOT THE CERTIFIED CHECK
17 AT WACHOVIA AND LEFT FROM THERE AND WENT
18 STRAIGHT TO CAMDEN.
19 Q WHO DID YOU MEET WITH THERE?
20 A MR. SMALL.
21 Q ANYBODY ELSE?
22 A NO, SIR. I DON'T BELIEVE THERE WAS ANYBODY
23 ELSE IN THE ROOM.
24 Q WHAT WAS THE SUBJECT MATTER OF THAT DISCUS-
25 SION?

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1 MIGHT HAVE ALL WALKED IN TOGETHER. I'M NOT
2 SURE.

3 Q WHEN WAS THAT?

4 A I DON'T KNOW THE DATE.

5 Q WOULD IT HAVE BEEN IN MARCH OF 2009?

6 A WHATEVER THIS DATE RIGHT HERE IS. I'M LOOKING
7 FOR THAT PIECE OF PAPER. IT WAS ON THE THIRD,
8 21 OF '09.

9 Q MARCH 21, '09?

10 A YES, SIR.

11 Q IT WAS MARCH 21, 2009, ARE YOU TALKING ABOUT
12 THE MANAGEMENT CONTRACT THAT WAS SIGNED AT
13 THAT TIME?

14 A YES, SIR.

15 Q IS IT YOUR TESTIMONY THAT PRIOR TO THAT TIME,
16 THE LLC HADN'T HAD ANY DISCUSSIONS WITH MR.
17 PATEL OR PATEL MANAGEMENT WITH REGARDS TO THE
18 HOTEL?

19 A NOT WITH ME PRESENT, NO.

20 Q HAD BJC ENTERPRISES, LLC, TO YOUR KNOWLEDGE,
21 HAD ANY DISCUSSIONS WITH MR. PATEL?

22 A NOT TO MY KNOWLEDGE.

23 Q YOU DON'T HAVE ANY KNOWLEDGE AS TO ANY NEGOTIATIONS THAT WENT BACK AND FORTH BETWEEN BJC
24 ENTERPRISES, LLC BY THE MCNAIR LAW FIRM TO MR.
25

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1 Q IS THERE ANY HOTEL PROPERTIES THAT IT IS
2 ENGAGED IN OTHER THAN THE PROPERTIES WE'RE
3 TALKING ABOUT HERE TODAY?

4 A NOT THAT I'M AWARE OF.

5 Q TO YOUR KNOWLEDGE, DO YOU KNOW IF YOU EXECUTED
6 AN OPERATING AGREEMENT IN THE FORMATION OF BJC
7 ENTERPRISES?

8 A I SIGNED THIS PAPER RIGHT HERE ...

9 Q YOU'RE REFERRING TO THE MANAGEMENT CONTRACT?

10 MS. COOK: EXHIBIT "70".

11 A IF YOU WANT TO CALL IT THAT. AFTER THAT ...
12 AFTER I SIGNED THIS, WITHIN TWENTY-FOUR HOURS
13 AFTER I SIGNED IT, I CONTACTED THEM AND SAID,
14 "WE NEED TO DRAW UP A PAPER THAT WOULD BE A
15 LITTLE BIT MORE SUBSTANTIAL THAN THIS AND
16 COVER US." BECAUSE IN THIS SO-CALLED MEETING
17 WE HAD, THEY AGREED TO DO CERTAIN THINGS AND
18 ... BUT SHORTLY AFTER THAT, I WENT THERE TWO
19 OR THREE, MAYBE A WEEK LATER, AND THERE WAS A
20 GENTLEMAN THERE CHANGING THE LOCKS ...

21 Q LET'S GET BACK TO THE QUESTION I ASKED.

22 A I CAN'T FINISH THAT?

23 Q NO, SIR. I'M ASKING YOU ABOUT ...

24 MS. COOK: LET HIM FINISH HIS
25 ANSWER. LET HIM FINISH WHATEVER HE

1 A NO, SIR. FAR AS I WAS CONCERNED, IT STARTED
2 THIS DATE RIGHT HERE.

3 Q SO, BECAUSE YOU DON'T BELIEVE HE HAD AUTHORITY
4 UNDER THE MANAGEMENT CONTRACT, ANY TIME THAT
5 HE WAS IN POSSESSION SUBSEQUENT TO THAT ... TO
6 MARCH 21, 2009, WAS A CONTINUING TRESPASS, IS
7 THAT WHAT YOU'RE SAYING?

8 A I THINK HE CAME THERE WITH INTENTIONS TO DO
9 FRAUD ON US, ALONG WITH JACK JONES.

10 Q I'M GOING TO ASK A COUPLE QUESTIONS AND I
11 THINK I KNOW THE ANSWER, BUT LET'S ... YOU
12 DON'T KNOW ANY DATES THAT MR. PATEL ALLEGEDLY
13 STOLE, CONVERTED THE MONEY OTHER THAN IT HAD
14 TO BE AFTER MARCH 21, 2009, IS THAT CORRECT?

15 A YES, SIR.

16 Q YOU HAVEN'T LOOKED AT THE BOOKS OR RECORDS TO
17 DETERMINE WHETHER OR NOT THE ALLEGATIONS THAT
18 YOU SAY IN YOUR COMPLAINT ARE TRUE, IT'S ONLY
19 YOUR FEELING, IS THAT CORRECT?

20 A NO, SIR. THEY WERE SUPPOSED TO SEND US OUT A
21 COPY OF EVERYTHING. THAT WAS SOMETHING THAT
22 WAS MENTIONED AT THIS TIME. HE WAS SUPPOSED
23 TO SEND US OUT A QUARTERLY REPORT OF WHAT
24 TRANSACTIONS TOOK PLACE AND SO FORTH, AND
25 MATTER OF FACT, I ASKED FOR THEM SEVERAL TIMES

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1 A I HAVEN'T HAD ANY OTHER THAN HE WAS MY DADDY'S
2 BROTHER.

3 Q SO YOU REALLY HAD NO INTERACTION WITH HIM
4 UNTIL HE GOT THE POWER OF ATTORNEY FROM WENDY?

5 A THE ONLY INTERACTION I KNOW IS THAT HE SPENT
6 HIS WHOLE LIFE STEALING FROM PEOPLE.

7 Q I'LL ASK THE QUESTION AGAIN. YOU DIDN'T HAVE
8 ANY INTERACTION WITH YOUR UNCLE UNTIL HE GOT
9 THE POWER OF ATTORNEY FROM YOUR SISTER?

10 A RIGHT. LET ME PUT MANIPULATING PEOPLE, NOT
11 STEALING. HE MANIPULATED PEOPLE. BUT, TO
12 ANSWER YOUR QUESTION, NO.

13 Q HOW DID YOU FIND OUT THAT HE ...

14 A HE CALLED ME.

15 Q HE SAID HE HAD HER POWER OF ATTORNEY?

16 A HE CALLED ME AND ASKED ME TO COME TO HIS HOUSE
17 AND THAT'S WHEN HE TOLD ME.

18 Q DO YOU HAVE ANY REASON TO DOUBT THAT YOUR
19 SISTER VOLUNTARILY GAVE HIM THE POWER OF
20 ATTORNEY?

21 A I DON'T THINK MY SISTER WAS RIGHTFULLY IN HER
22 MIND 'CAUSE OUR MOTHER TOLD US TO BE CAREFUL
23 OF HIM AND OUR UNCLES. SO, I DON'T THINK SHE
24 WAS USING GOOD JUDGMENT, NO.

25 Q DO YOU THINK SHE VOLUNTARILY SIGNED THE POWER

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1 OF ATTORNEY?

2 A VOLUNTARILY? I COULDN'T ANSWER THAT BECAUSE I
3 DON'T KNOW WHAT TRANSPIRED FOR HER TO DO THIS.
4 YOU'D HAVE TO ASK HER IF SHE VOLUNTARILY DONE
5 IT.

6 Q TELL ME ABOUT THE TRIP TO CAMDEN THE FIRST
7 TIME TO TALK TO THE BANK IN 2010.

8 A WHEN WOULD YOU LIKE ME TO START? FROM WHEN WE
9 GOT IN THE CAR.

10 Q SURE. TELL ME WHAT Y'ALL TALKED ABOUT.

11 A BASICALLY WE TALKED ABOUT THE LOAN AND JACK
12 ASSURED ME THE WHOLE WAY UP THERE THAT HE
13 WOULD BASICALLY TAKE CARE OF ... WAIT A
14 MINUTE. ARE YOU TALKING ABOUT THE TIME JACK
15 AND I RODE TOGETHER?

16 Q YES, SIR.

17 A AND THAT WAS WITH TRIPP AND ALL OF `EM. HE
18 BASICALLY REALLY DIDN'T REALLY GO INTO A WHOLE
19 LOT THAT TIME. HE SAID THAT, YOU KNOW, HE WAS
20 BASICALLY ACTING LIKE ... HE WAS CONCERNED
21 ABOUT WENDY. WE GOT UP THERE, THE FIRST THING
22 HE DID WAS OBJECT TO CASEY BEING THERE. FOR
23 SOME REASON HE DIDN'T LIKE CASEY. HE TRIED TO
24 LEAD US TO BELIEVE THAT CASEY WAS GONNA STEAL
25 EVERYTHING FROM US, WHEN THE CULPRIT TRYING TO

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1 A YES, SIR.

2 Q SUBSEQUENT TO THAT JANUARY TRIP TO CAMDEN, HOW
3 MANY OTHER TRIPS ... I MEAN, HOW MANY MEETINGS
4 DID YOU HAVE WITH MR. SMALL, SENIOR?

5 A THERE WAS THAT MEETING AND THEN WHEN WENDY AND
6 I TOOK THE NINETY SOME THOUSAND DOLLARS ...
7 NINETY-FIVE THOUSAND. AND THEN THERE WAS ONE
8 OTHER MEETING WHERE I WENT WITH JACK.

9 Q THE SECOND TIME YOU WENT WITH JACK, WAS THERE
10 ANYBODY ELSE IN THE MEETING?

11 A WE DIDN'T ACTUALLY GO IN HIS OFFICE. WE WENT
12 INTO ... AS YOU GO UP THE STEPS ... YOU MIGHT
13 BE FAMILIAR WITH THE BANK.

14 Q YES, SIR.

15 A THERE'S A LITTLE PLACE THERE WITH A DESK AND
16 STUFF. WE WENT IN THERE OR SIT AT A TABLE.
17 AND WE WENT IN THERE AND WE TALKED A LITTLE
18 WHILE. JACK AND HIM GOT UP AND LEFT THE ROOM
19 AND I DON'T KNOW WHAT THEY TALKED ABOUT OUT-
20 SIDE THE ROOM. JACK COME BACK IN AND HE SAID,
21 "I GOT EVERYTHING TAKEN CARE OF." AND THEN
22 MR. SMALL COME IN AND TALKED A LITTLE BIT MORE
23 AND THEN THEY LEFT ONE MORE TIME, AND THE
24 FIRST TIME THEY WERE GONE ABOUT FIFTEEN
25 MINUTES AND THE SECOND TIME ABOUT TEN MINUTES.

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1 HADN'T SEEN IT.

2 Q AFTER THAT THIRD TRIP, DID YOU HAVE ANY MORE
3 CONVERSATIONS WITH ANYBODY AT FIRST PALMETTO?

4 A NO, SIR. WELL, TAKE THAT BACK. I DID GO INTO
5 THE BRANCH DOWN HERE AND I WAS INFORMED BY BOB
6 WILDER THAT BASICALLY HE COULDN'T TALK TO ME
7 OR CASEY OR ANYTHING ABOUT THE BANK. THAT I
8 HAD TO GO AND TALK TO MR. SMALL. HE SAID THAT
9 THE BANK DOWN HERE, IT WAS TAKEN OUT OF THEIR
10 HANDS, AND THAT I COULDN'T TALK TO HIM.

11 'CAUSE I WENT IN THERE TO ASK A QUESTION ABOUT
12 SOMETHING AND THAT'S WHEN I WAS INFORMED.

13 Q YOU DON'T HAVE ANY IDEA WHAT DATE THAT CONVER-
14 SATION WAS?

15 A NO, SIR. IT WAS AFTER THAT MEETING.

16 Q AFTER THE THIRD TRIP?

17 A YES, SIR, AND IT WAS BEFORE THIS. (WITNESS
18 INDICATING EXHIBIT "70".)

19 Q FROM THE TIME OF YOUR EXECUTION OF THAT DOCU-
20 MENT, YOU HAVEN'T HAD ANY INVOLVEMENT WITH THE
21 MOTELS, THE PROPERTIES OR ANYBODY INVOLVED,
22 CORRECT?

23 A OTHER THAN THAT ONE TIME TALKING TO MY SISTER.
24 I TALKED TO HER SEVERAL TIMES, BUT SHE DIDN'T
25 GO INTO ANY DETAILS ABOUT WHAT WAS GOING ON

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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

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AS TAKEN AND TRANSCRIBED BY PEPPER M.
MCCARTHY, NOTARY PUBLIC AND VERBATIM REPORTER,
AT THE TURNER PADGET, 2411 OAK STREET, SUITE
300, 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.**

HANDS?

A WELL, THE ONES WHICH DIDN'T COME TO MY HAND, I
HAVE NO CONTROL.

Q BUT ARE YOU AWARE OF WHETHER THERE WERE SUCH
BILLS OR INVOICES OR OBLIGATIONS THAT DIDN'T
COME INTO YOUR HANDS?

A WELL, AT THE TIME WHEN I TOOK OVER THE
MANAGEMENT, THERE WERE BILLS FROM THE PREVIOUS
YEAR WHICH WAS NOT PAID.

Q AND THEN AFTER YOU TOOK OVER, WERE THERE BILLS
OR OBLIGATIONS THAT YOU'RE AWARE OF THAT MAY
NOT HAVE COME INTO YOUR HANDS THAT WERE NOT
PAID?

A SURE. IF THEY DIDN'T COME TO MY OFFICE ON MY
DESK.

Q AND WHEN YOU SAY YOUR DESK, WHERE WAS YOUR
DESK?

A AT RAINBOW COURT.

Q THERE'S A LOT OF BUILDINGS DEALING WITH RAINBOW
COURT. SO, WHERE WAS YOUR DESK IN RAINBOW
COURT?

A AT THE BACK. BEHIND THE OFFICE RIGHT AT THE
BACK.

Q AND WE KNOW WHAT ...

A THERE WAS A WINDOW, THEN THERE IS AN OFFICE.

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PEPPERMCCARTHY@SC.RR.COM

1 **A** SINCE I CAME HERE I'VE BEEN IN THE HOTEL
2 BUSINESS AND DEVELOPMENT.

3 **Q** SINCE YOU CAME HERE?

4 **A** YES.

5 **Q** WHAT BUSINESS IS YOUR BROTHER, NICK, IN?

6 **A** HE IS MY PARTNER IN MY BUSINESS.

7 **Q** AND HOW MUCH...

8 **A** IT'S A FAMILY BUSINESS, BUT THE BROTHERS ARE
9 PARTNERS.

10 **Q** ALLEN AS WELL?

11 **A** YES.

12 **Q** AND HAS THAT BEEN HOW IT'S BEEN SINCE YOU CAME
13 TO HORRY COUNTY?

14 **A** YES, MA'AM.

15 **Q** DID THE THREE OF YOU PRETTY MUCH COME TOGETHER?

16 **A** NO.

17 **Q** WHO CAME FIRST.

18 **A** ME.

19 **Q** BUPI, HOW LONG HAVE YOU KNOWN WENDY BELLAMY?

20 **A** SIX, SEVEN YEARS.

21 **Q** HOW ABOUT HARVEY JONES?

22 **A** TWO YEARS.

23 **Q** HOW ABOUT JACK JONES?

24 **A** I HAVE KNOWN HIM A LONG TIME, MAYBE FIFTEEN OR
25 TWENTY YEARS.

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PEPPERMCCARTHY@SC.RR.COM

1 **A** NO.

2 **Q** SO YOUR ONLY KNOWLEDGE OF KENIN HAS TO DO WITH
3 THIS AS RECEIVER?

4 **A** RIGHT.

5 **Q** AND DO YOU KNEW DONALD GODWIN?

6 **A** YES.

7 **Q** HOW LONG HAVE YOU KNOWN DONALD GODWIN?

8 **A** 5 OR 6 YEARS.

9 **Q** HOW DID YOU MEET DONALD? HOW DID YOU GET TO
10 KNOW HIM?

11 **A** I MET WITH HIM AND JACK JONES.

12 **Q** AND WHAT WAS YOUR FIRST MEETING WITH DONALD
13 CONCERNING ... WHAT DID JACK INTRODUCE Y'ALL
14 FOR?

15 **A** THEY WERE LOANING US SOME MONEY.

16 **Q** WHEN YOU SAY, "LOANING US", LOANING YOU AND
17 YOUR BROTHERS?

18 **A** MY ENTITY, YES.

19 **Q** AND PRIOR TO MEETING DONALD WITH JACK JONES
20 DEALING WITH THAT LENDING RELATIONSHIP ...
21 WELL, FIRST OF ALL, DID YOU BORROW MONEY FROM
22 THEM AFTER MEETING THEM?

23 **A** YES.

24 **Q** HAD YOU BORROWED MONEY FROM JACK PRIOR TO HIM
25 INTRODUCING YOU TO DON AND THAT RELATIONSHIP?

—MABRY COURT REPORTING—

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1 **A** ABOUT FIVE YEARS AGO, SIX YEARS AGO.

2 **Q** WHAT WAS YOUR FIRST RELATIONSHIP WITH THEM
3 DEALING WITH?

4 **A** ALONE ON A REAL ESTATE.

5 **Q** AND SINCE THAT FIRST LOAN, HAVE YOU CONTINUED
6 TO HAVE SOME TYPE OF RELATIONSHIP WITH THEM?

7 **A** YES.

8 **Q** CURRENTLY, DO YOU HAVE ANY LOANS OR MORTGAGES
9 OUTSTANDING WITH THEM?

10 **A** YES.

11 **Q** HOW MANY?

12 **A** THREE.

13 **Q** WHAT ARE THOSE THREE LOANS AND ABOUT WHAT ARE
14 THEIR CURRENT BALANCES?

15 **A** ABOUT \$650,000.00.

16 **Q** TOTAL?

17 **A** TOTAL.

18 **Q** WHAT WERE THE PURPOSES OF THOSE THREE LOANS?

19 **A** ALONE ON A CONDOMINIUM.

20 **Q** TO CONSTRUCT CONDOMINIUMS OR TO BUY THEM?

21 **A** TO BUY THEM.

22 **Q** AND WHAT IS YOUR HOME ADDRESS?

23 **A** 8747 MONACO CIRCLE, M-O-N-A-C-O.

24 **Q** IS THAT IN GRAND DUNES?

25 **A** YES.

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 SAY YOU OR YOUR BROTHERS HAVE BORROWED FROM
2 JACK OVER Y'ALL'S RELATIONSHIP?

3 **A** MAYBE CLOSE TO \$4 MILLION.

4 **Q** DOES THAT INCLUDE THE LOAN THAT JACK AND DONALD
5 ... THAT TOTAL WOULD INCLUDE WHATEVER MONEY
6 JACK AND DONALD LENT YOU?

7 **A** YES.

8 **Q** AND WHEN JACK AND DONALD WOULD SEND YOU AND
9 YOUR BROTHERS MONEY, WOULD YOU SIGN A NOTE?
10 WOULD THERE BE DOCUMENTS OR EVIDENCE OF THAT
11 LOAN?

12 **A** YES.

13 **Q** DO YOU HAVE COPIES OF THOSE DOCUMENTS?

14 **A** YES.

15 **Q** WOULD YOU USE MR. DESCHAMPS TO HELP YOU
16 DOCUMENT THOSE LOANS OR WAS THAT SOMETHING YOU
17 DIDN'T NECESSARILY USE AN ATTORNEY FOR?

18 **A** NO, NO, NO.

19 **Q** YOU DIDN'T USE AN ATTORNEY?

20 **A** NO.

21 **Q** DO YOU CURRENTLY OWE JACK JONES OR DONALD
22 GODWIN ANY MONEY?

23 **A** NO.

24 **Q** THE LOAN THAT JACK AND DONALD GAVE TO YOU WHEN
25 YOU MET HIM ... I THINK YOU SAID YOU MET DONALD

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 5 OR 6 YEARS AGO WITH JACK. HOW MUCH DID THEY
2 LEND YOU AT THAT TIME?

3 **A** TWO AND A QUARTER MILLION.

4 **Q** OTHER THAN THAT LOAN, HAVE JACK AND DONALD
5 SINCE THAT LOAN, LENT YOU ANY MORE MONEY?

6 **A** NOT TOGETHER.

7 **Q** SINCE THAT HAS JACK LENT YOU ANY MORE MONEY?

8 **A** YES.

9 **Q** CAN YOU TELL ME WHAT LOANS JACK HAS MADE TO YOU
10 SINCE THE TWO AND A HALF MILLION DOLLARS?

11 THERE WAS A \$1.3 MILLION LOAN?

12 **A** (NODDING HIS HEAD AFFIRMATIVELY.)

13 **Q** ANYTHING ELSE FROM JACK?

14 **A** NO.

15 **Q** HAS DONALD LENT YOU ANY MONEY?

16 **A** NO.

17 **Q** SINCE THAT INCIDENTAL LOAN?

18 **A** NO.

19 **Q** AND THE TWO AND A HALF MILLION DOLLAR LOAN YOU
20 PAID BACK ACCORDING TO THE TERMS OF THE LOAN?

21 **A** YES.

22 **Q** WAS THERE INTEREST CHARGED TO YOU ON THAT LOAN?

23 **A** YES.

24 **Q** DO YOU REMEMBER THE RATE?

25 **A** NOT REALLY.

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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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 THERE WERE A LOT OF EMPLOYEES WHO WERE THERE
2 FOR YEARS AND YEARS AND MOSTLY ALL OF THEM CAME
3 BACK AND WE HAVE A FEW MORE.

4 **Q** AND WAS WENDY TO WORK IN THERE?

5 **A** YES. SHE VOLUNTEERED TO WORK AND SHE KNEW THE
6 PROPERTY BETTER THAN ANYBODY.

7 **Q** SO SHE WAS THERE? WHAT DID WENDY DO? WHAT WAS
8 WENDY DOING WHEN IT OPENED IN '09?

9 **A** WHEN IT OPENED, SHE WAS HELPING WITH THE
10 HOUSEKEEPING.

11 **Q** WAS SHE EVER DOING ANY OF THE DESK CLERK
12 OBLIGATIONS OR JOBS?

13 **A** IN THE BEGINNING SHE WAS NOT BUT LATER ON SHE
14 WAS.

15 **Q** WAS ANY OF HER FAMILY WORKING AT THE HOTEL?

16 **A** HER SON.

17 **Q** JOEY?

18 **A** JOEY, MARY, KENIN AND HER HUSBAND, BILLY.

19 **Q** AND WERE THEY WORKING ... WERE BILLY AND JOEY
20 WORKING AS DESK CLERKS/NIGHT CLERKS?

21 **A** YES, DESK CLERK.

22 **Q** BUT YOU HANDLED ALL THE MONEY?

23 **A** THAT'S RIGHT.

24 **Q** NOW, WHAT DID JACK DO?

25 **A** HE CAME THERE AND HAVE COFFEE. HE WAS HELPING.

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 HE WAS GOING AROUND HELPING DOING THIS AND
2 DOING THIS.

3 Q SO HE WAS HELPING RUN IT TOO?

4 A ACTUALLY, EVERYBODY WAS HELPING. THERE WAS NOT
5 A SINGLE PERSON THERE THAT WASN'T HELPING.

6 Q WAS JACK ... WERE YOU AND JACK TALKING ABOUT
7 THE FINANCES AND THE MONEY COMING IN AND GOING
8 OUT?

9 A I DID NOT TELL HIM EXACTLY WHAT WAS HAPPENING.
10 WE JUST TALKED ABOUT GENERAL WHAT REVENUE WAS
11 BROUGHT IN AND WHAT BILLS WERE BEING PAID AND
12 IT WAS ALWAYS THE GENERAL TALK AMONG EVERYBODY.

13 Q DO YOU RECALL THERE BEING A SAFE THERE, A
14 PHYSICAL SAFE, THERE ON THE PROPERTY?

15 A WHEN I CAME THE SAFE AND THE COMPUTER WAS NOT
16 THERE. IT WAS TAKEN OUT THE PREVIOUS NIGHT OR
17 WHATEVER TIME.

18 Q AND THAT WAS IN MARCH OF '09?

19 A IT MUST'VE BEEN MARCH OF '09.

20 Q DID YOU BRING A COMPUTER OR A SAFE?

21 A I HAD TO GET COMPUTER AND I HAD TO GET A SAFE,
22 BUT I DID NOT BUY THE SAFE. MY FRIEND, PETER,
23 WHO OWNS A CONVENIENCE STORE HAD AN EXTRA SAFE
24 AND WE JUST BORROWED IT FROM HIM.

25 Q NOW, WHO HAD A COMBINATION TO THE SAFE OR DID

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PEPPERMCCARTHY@SC.RR.COM

1 YOU HAVE A COMBINATION LOCK?

2 **A** NO. THERE WAS A KEY.

3 **Q** WHO HAD THE KEY TO THE SAFE?

4 **A** ONLY ME.

5 **Q** WHAT DID YOU KEEP IN THE SAFE?

6 **A** WERE KEEPING THE CASH MONEY THAT COMES IN
7 BECAUSE DURING THE NIGHT. THEY HAD A DROP
8 EVERY SHIFT AT EMERALD SHORES FROM 7 TO 3, 3 TO
9 11 AND 11 TO 6. THEY TOOK MONEY. THEY WOULD
10 PUT THE MONEY IN AND DROP IT.

11 **Q** THERE WAS A SLOT IN THE SAFE WHERE YOU COULD
12 DROP THE CASH IN AN ENVELOPE IN EACH SHIFT?

13 **A** YES.

14 **Q** BUT ONLY YOU HAD THE KEY?

15 **A** YES.

16 **Q** WHAT OTHER THAN THE CASH AND RECEIPTS DID YOU
17 KEEP IN THERE?

18 **A** SOME CHANGE OR SOME PAPER WORK IS IN THERE,
19 WHATEVER.

20 **Q** NOW, WHEN YOU CAME IN AND TOOK OVER THE
21 FINANCIAL ASPECTS OF RUNNING THE PROPERTIES IN
22 MARCH OF '09, WERE THERE EXISTING CHECKING OR
23 OPERATING ACCOUNTS WITH ANY BANK?

24 **A** I DON'T KNOW THAT BECAUSE THAT DAY WHEN I CAME
25 IN, I OPENED AN ACCOUNT.

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

- 1 **Q** YOU OPENED A NEW ACCOUNT?
- 2 **A** NEW ACCOUNT.
- 3 **Q** DID YOU OPEN ONE FOR RAINBOW COURT AND ONE FOR
- 4 EMERALD SHORES?
- 5 **A** YES.
- 6 **Q** SO YOU OPENED TWO SEPARATE OPERATING ACCOUNTS?
- 7 **A** RIGHT.
- 8 **Q** AND WHO DID YOU OPEN THOSE ACCOUNTS WITH?
- 9 **A** THERE WAS A LADY UP THERE.
- 10 **Q** WHAT BANK?
- 11 **A** FIRST PALMETTO.
- 12 **Q** SO EACH OF THE ACCOUNTS WAS OPENED AT FIRST
- 13 PALMETTO?
- 14 **A** YES.
- 15 **Q** AND DID YOU PUT ALL THE CASH RECEIPTS AND
- 16 CREDIT CARD RECEIPTS INTO EACH OF THOSE
- 17 ACCOUNTS?
- 18 **A** YES. THE CREDIT CARD AUTOMATICALLY GOES.
- 19 **Q** YOU DEPOSIT THE CASH RECEIPTS INTO EACH OF THE
- 20 RESPECTIVE ACCOUNTS?
- 21 **A** RIGHT.
- 22 **Q** SO THE CASH RECEIPTS YOU GOT IN FROM EMERALD
- 23 SHORES, YOU PUT INTO EMERALD SHORES FIRST
- 24 PALMETTO ACCOUNT?
- 25 **A** YES.

1 **Q** THE RAINBOW COURT ANNEX RECEIPTS, WHERE DID
2 THEY GO?

3 **A** THEY WERE ALL COMBINED INTO RAINBOW COURT.
4 EVERYTHING AT RAINBOW COURT WAS ON A DIFFERENT
5 CASH AND THAT ALL WENT INTO ONE ACCOUNT. ONLY
6 RAINBOW COURT WENT INTO RAINBOW COURT.

7 **Q** WHO HAD SIGNATORY AUTHORITY? WHO SIGNED THE
8 CHECKS?

9 **A** I DID.

10 **Q** COULD ANYBODY ELSE SIGN CHECKS ON THOSE
11 ACCOUNTS?

12 **A** I DON'T REMEMBER, BUT NOBODY HAD SIGNED ANY
13 CHECKS.

14 **Q** ONLY YOU SIGNED THE CHECKS?

15 **A** YES.

16 **Q** AND ANY BILLS THAT WERE PAID, DID YOU WRITE THE
17 CHECK FROM THOSE RESPECTIVE ACCOUNTS?

18 **A** YES.

19 **Q** DID YOU DIVIDE UP, LET'S SAY, I KNOW EMERALD
20 SHORES HAS A POOL AND RAINBOW COURT HAS A POOL,
21 CORRECT?

22 **A** YES.

23 **Q** WELL, THEY HAVE TWO POOLS, THE ANNEX HAS A POOL
24 AND THE BIGGER PROPERTY HAS A POOL?

25 **A** RIGHT.

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 **Q** IF EXPENSES OR INVOICES CAME IN FOR SERVICING
2 THE POOL, WAS THERE ONE INVOICE FOR RAINBOW
3 COURT'S POOL AND A SEPARATE INVOICE FOR EMERALD
4 SHORES POOL?

5 **A** MOST OF THE TIME THEY DID BUT SOMETIMES THERE
6 MIGHT BE ONE BILL.

7 **Q** MOST OF THE BILLS WERE IDENTIFIED PER PROJECT?

8 **A** THAT'S CORRECT.

9 **Q** BUT OCCASIONALLY THEY MIGHT BE TOGETHER?

10 **A** THERE MIGHT BE A TIME ONE BILL HERE FOR
11 WHATEVER.

12 **Q** WHAT DID YOU DO IF THE INCOME, LET'S SAY, IN
13 THE RAINBOW COURT ACCOUNT WAS NOT SUFFICIENT TO
14 PAY ALL OF RAINBOW COURT'S BILLS, WHERE WOULD
15 YOU GET MONEY?

16 **A** IN TWO INSTANCES, THERE WAS ENOUGH MONEY IN
17 RAINBOW COURT BUT THERE WAS IN FOR EMERALD
18 SHORES ACCOUNT AND YOU JUST TRANSFERRED MONEY
19 FROM ONE ACCOUNT TO THE OTHER. AS FAR AS I WAS
20 CONCERNED IT WAS JUST ONE PROPERTY.

21 **Q** SO YOU CAN RECALL SPECIFICALLY ...

22 **A** MAYBE TWICE WHEN THE BANK CALLS THEY MIGHT SAY
23 THERE'S NOT ENOUGH MONEY IN THE ACCOUNT.

24 **Q** OTHER THAN THE FIRST INFLUX OF MONEY,
25 \$50,000.00 FROM WILBUR AND \$20,000.00 FROM JACK

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 JONES, DO YOU RECALL WHILE YOU WERE OPERATING
2 THE HOTELS, WERE THE PROPERTIES GETTING CASH
3 LOANS OR INFLUX OF MONEY FROM ANY OTHER
4 INDIVIDUALS OR ENTITIES?

5 **A** I DON'T RECALL THAT.

6 **Q** WHEN YOU STARTED NEGOTIATING IN JANUARY WHEN
7 JACK AND WENDY CAME TO YOU, WHAT DID THEY TELL
8 YOU ABOUT ANY LOANS OR MORTGAGES THAT WERE
9 OUTSTANDING ON THE PROPERTIES?

10 **A** I DID NOT HAVE THE SPECIFICS BUT THERE WAS A
11 MORTGAGE WITH FIRST PALMETTO AND IT WAS
12 CREATING PROBLEM.

13 **Q** WHEN THEY WERE NEGOTIATING WITH YOU, DID THEY
14 TELL YOU THE STATUS OF THAT MORTGAGE WHETHER
15 THEY WERE IN DEFAULT OR WHAT THE STATUS OF THE
16 LOAN WAS?

17 **A** IF I RECALL RIGHT, IT WAS A CERTAIN AMOUNT OF
18 MONEY HAD TO BE PAID BY THE END OF MAY.

19 **Q** DID THEY TELL YOU HOW MUCH?

20 **A** NOT REALLY.

21 **Q** DID THEY GIVE YOU A RANGE OR ANYTHING?

22 **A** I DON'T REMEMBER. 250,000 OR 150,000. I DON'T
23 REMEMBER RIGHT.

24 **Q** WHILE YOU WERE OPERATING THE PROPERTIES DID ...
25 AS PART OF OVERSEEING THE FINANCES, DID YOU

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PEPPERMCCARTHY@SC.RR.COM

1 EVER MAKE ANY PAYMENTS TO FIRST PALMETTO ON
2 THAT LOAN?

3 **A** NO.

4 **Q** DID YOU EVER RECEIVE ANY CORRESPONDENCE OR
5 LETTERS OR DEFAULT NOTICES OR CALLS FROM FIRST
6 PALMETTO ABOUT THE STATUS OF THE LOAN OR BEING
7 OWED ANY MONEY WHILE YOU WERE MANAGING?

8 **A** NOT TO ME. I NEVER GOT ANYTHING.

9 **Q** ARE YOU AWARE YOU SAID, "NOT TO ME." ARE YOU
10 AWARE WHETHER JACK OR WENDY GOT SUCH NOTICES OR
11 INFORMATION?

12 **A** NOT REALLY.

13 **Q** DID YOU PAY ANY OF THE REAL ESTATE TAXES ON ANY
14 OF THE PROPERTIES?

15 **A** IN 2009, YES, I DID.

16 **Q** DO YOU REMEMBER WHAT PROPERTIES YOU MADE TAX
17 PAYMENTS ON?

18 **A** I PAID EMERALD SHORES AND ALL THE RAINBOW COURT
19 EXCEPT THAT THERE WAS ONE THAT WAS TWO YEARS
20 THAT WAS NOT PAID, BUT THE OTHER ONE WAS WHICH
21 WAS YOU KNOW THE ONE YEAR THE YEAR THAT WHICH
22 WAS 2009 AND I PAID ALL OF THOSE, WHICH WAS
23 2009.

24 **Q** 2008 TAXES?

25 **A** YES. BUT 2007 WAS OUTSTANDING.

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 THE BANK.

2 Q SO YOU WOULD'VE GONE EVERY DAY AND YOU WOULD
3 HAVE GONE TO THE OFFICE IN THE BACK OF THE
4 RAINBOW COURT?

5 A YES. WENDY WAS THERE. EVERYBODY WAS THERE,
6 YEAH.

7 Q WOULD JACK COME TOO?

8 A JACK USED TO COME.

9 Q DURING THAT TIME PERIOD, THERE WOULD STILL BE
10 BILLS AND INCOME COMING IN FROM THOSE ANNUAL
11 RENTALS THAT WERE COTTAGES?

12 A YES, RIGHT.

13 Q AND AGAIN, YOU WERE THE ONLY ONE WHO SIGNED THE
14 CHECKS?

15 A I WAS THE ONE WHO WAS SUPPOSED TO PAY THE
16 BILLS.

17 Q AND YOU WERE THE ONE COLLECTING THE REVENUE AND
18 DEPOSITING IT?

19 A ALL THE REVENUE CAME TO ME.

20 Q WAS THERE REVENUE THAT WAS GENERATED BY THE
21 PROPERTIES THAT DIDN'T COME TO YOU?

22 A WELL, I ... WHAT I'M SAYING ... WHAT I'M SAYING
23 IS WHATEVER REVENUE WAS REPORTED, WHICH WAS
24 COLLECTED AND WAS SHOWN, I GOT IT. BUT IF THE
25 REVENUE WASN'T SHOWN OR SOMEBODY DIDN'T PAY, IT

1 **Q** AND THEN YOU SAID YOU STOPPED MANAGING THE
2 PROPERTY IN FEBRUARY. TELL ME WHY YOU STOPPED
3 MANAGING THE PROPERTY IN FEBRUARY?

4 **A** WASN'T A LETTER CAME FROM YOUR OFFICE THAT I
5 SHOULDN'T BE ON THE PROPERTY?

6 **Q** AND THAT'S WHY I WANT TO KNOW WHY YOU STOPPED
7 MANAGING THE PROPERTY.

8 **A** I GOT A LETTER FROM YOU NOT TO BE ON THE
9 PROPERTY.

10 **Q** AND THAT WAS FEBRUARY 20, 2010?

11 **A** WHATEVER.

12 **Q** AND IN DECEMBER 2009, HOTEL OR MOTEL ASKED THAT
13 YOU BE NAMED AS RECEIVER FOR THE PROPERTY,
14 CORRECT?

15 **A** YES.

16 **Q** IN DECEMBER THE JUDGE DIDN'T ALLOW THAT?

17 **A** YES.

18 **Q** AND YOU ATTENDED THAT HEARING?

19 **A** YES.

20 **Q** AFTER THAT HEARING, DID YOU HAVE ANYTHING TO DO
21 WITH A DOCUMENT THAT WAS DRAWN UP AND THEN
22 FILED AT THE COURTHOUSE THAT SAID CERTAIN
23 PEOPLE DIDN'T HAVE TO PAY RENT IN 2010?

24 **A** YES.

25 **Q** TELL ME HOW THAT CAME ABOUT? TELL ME HOW THAT

1 ALREADY DRAWN UP THE PAPER?

2 **A** THEY CALLED ME ON THE PHONE. THEY WAS VERY,
3 VERY WORRIED. SHE KEPT ON CALLING ME ON THE
4 PHONE, "WHAT ARE WE GOING TO DO?" AND I SAID,
5 "I DON'T KNOW."

6 **Q** SO DID THEY DRAW UP THE PAPER ... DID THEY TYPE
7 UP THE PAPER?

8 **A** I THINK TINA MUST HAVE DRAWN UP THE PAPER.

9 **Q** AND YOU SIGNED IT?

10 **A** YES.

11 **Q** DID YOU FILE IT THE COURTHOUSE?

12 **A** NO.

13 **Q** DO YOU KNOW WHO FILED IT AT THE COURTHOUSE?

14 **A** NO.

15 **Q** DID ANYBODY WITNESS THOSE SIGNATURES? WAS
16 ANYBODY PRESENT WHEN YOU SIGNED IT?

17 **A** WILBUR JONES.

18 **Q** WILBUR JONES WAS PRESENT? WHERE DID YOU SIGN
19 IT?

20 **A** I DON'T KNOW. I DON'T REMEMBER. IT MIGHT HAVE
21 BEEN RAINBOW COURT OR ... YEAH, RAINBOW COURT.

22 **Q** YOU SIGNED THAT AT RAINBOW COURT?

23 **A** IT MUST HAVE BEEN RAINBOW COURT.

24 **Q** DO YOU REMEMBER THAT OR ARE YOU GUESSING?

25 **A** IT WAS AT RAINBOW COURT.

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SCRR.COM

1 **Q** AND IT WAS IN THE OFFICE THERE AT RAINBOW COURT
2 OR WAS IT IN THEIR HOME?

3 **A** I DIDN'T GO IN THEIR HOME.

4 **Q** DO YOU THINK IT WAS THE OFFICE?

5 **A** MUST'VE BEEN IN OFFICE. MOST OF THE TIME WE
6 JUST SIT OUTSIDE THE LOBBY ON THE COURT.

7 **Q** WAS ANYBODY BUT YOU AND MARY, TINA AND WILBUR
8 PRESENT?

9 **A** MARY AND TINA WAS NOT THERE. MARY AND TINA
10 WASN'T THERE OR TINA BROUGHT THE PAPERS. I
11 DON'T RECALL WHO WAS THERE, BUT I DON'T THINK
12 MARY WAS THERE, THAT'S FOR SURE.

13 **Q** HOW DID YOU GET THE PAPER IF TINA WASN'T THERE?
14 DO YOU REMEMBER HOW YOU GOT THE PAPER TO SIGN
15 IT?

16 **A** I THINK WILBUR BOUGHT THE PAPER.

17 **Q** DO YOU THINK IT WAS JUST YOU AND WILBUR?

18 **A** ME AND WILBUR, YEAH.

19 **Q** DID HE BRING IT TO YOU SOMEWHERE?

20 **A** YEAH, AT THE RAINBOW.

21 **Q** YOU WERE STILL GOING TO THE RAINBOW COURT EVERY
22 DAY?

23 **A** YES.

24 **Q** AND YOU STILL WENT EVERY DAY `TILL THAT LETTER
25 FROM ME?

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PEPPERMCCARTHY@SC.RR.COM

1 **A** THAT'S RIGHT.

2 **Q** DID JACK SIGN THAT PAPER, DO YOU KNOW?

3 **A** I DON'T REMEMBER HIM SIGNING IT.

4 **Q** WAS HE THERE, DO YOU REMEMBER?

5 **A** I THINK HE WAS THERE.

6 **Q** WHEN YOU SIGNED IT WHEN WILBUR BROUGHT YOU THE
7 PAPER?

8 **A** YES.

9 **Q** WE HAVE BEEN GOING ABOUT A HOUR AND A HALF.
10 WOULD YOU LIKE TO TAKE A BREAK?

11 OFF THE RECORD.

12 **Q** WE ARE LOOKING AT WHAT HAS COME OUT OF
13 EXHIBIT "112". IT'S A COMMERCIAL LEASE
14 AGREEMENT AND AT THE VERY TOP OF IT YOU CAN SEE
15 A FAX LEDGER THAT SAYS MARCH 4, 2010, 10:03
16 A.M. QUALITY INN IT LOOKS LIKE. 843-272 ...

17 **A** 4963.

18 **Q** IS THAT YOUR FAX NUMBER IN YOUR OFFICE?

19 **A** YES.

20 PACKET OF DOCUMENTS

21 COMMERCIAL LEASE AGREEMENT

22 MARKED FOR IDENTIFICATION

23 AND INTRODUCED INTO EVIDENCE

24 AS PLAINTIFF'S EXHIBIT "112".

25 **Q** AND AS YOU UNDERSTAND IT, IS THIS THE

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PEPPERMCCARTHY@SC.RR.COM

- 1 **Q** AND YOU SIGNED IT WITH WILBUR THERE?
- 2 **A** YES.
- 3 **Q** WAS JACK WITH WILBUR?
- 4 **A** HE WAS. IF I REMEMBER RIGHT, HE WAS WITH THEM.
- 5 **Q** DO YOU KNOW THIS FELLOW NAME ROBERT CAPPS?
- 6 **A** ROBERT CAPPS, NO.
- 7 **Q** OKAY. AFTER YOU SIGNED THE DOCUMENT ... DID
- 8 YOU SIGN THE DOCUMENT AS BEST YOU RECALL ON
- 9 DECEMBER THE 9TH?
- 10 **A** THAT'S RIGHT.
- 11 **Q** AFTER YOU SIGNED THAT, WHAT DID YOU DO WITH IT?
- 12 **A** I GAVE IT BACK TO WILBUR.
- 13 **Q** YOU GIVE IT BACK TO WILBUR? IS THAT THE LAST
- 14 TIME YOU'VE SEEN IT?
- 15 **A** YES.
- 16 **Q** YOU DIDN'T INSTRUCT ANYBODY TO TAKE IT TO THE
- 17 COURT HOUSE AND RECORD IT, DID YOU?
- 18 **A** NO.
- 19 **Q** AT THE TIME THAT YOU SIGNED IT, DID YOU KNOW
- 20 SOMEONE WAS GOING TO RECORD IT AT THE
- 21 COURTHOUSE?
- 22 **A** NO.
- 23 **Q** I AM GOING TO SHOW YOU WHAT I HAVE MARKED AS
- 24 EXHIBIT "113". IS THAT A DOCUMENT ENTITLED,
- 25 "FIRST PALMETTO BUSINESS DEPOSIT ACCOUNT

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PEPPERMCCARTHY@SC.RR.COM

1 APPLICATION."? TAKE A LOOK AT THAT AND LET ME
2 KNOW IF THAT IS YOUR SIGNATURE?

3 **A** YES.

4 BUSINESS DEPOSIT ACCOUNT
5 APPLICATION MARKED FOR
6 IDENTIFICATION AND INTRODUCED
7 INTO EVIDENCE AS DEFENDANT'S
8 EXHIBIT "113".

9 **Q** AND I BELIEVE YOU TESTIFIED EARLIER THAT AFTER
10 YOU ENTERED INTO THE MANAGEMENT AGREEMENT YOU
11 OPENED AN ACCOUNT AT FIRST PALMETTO ONE FOR
12 EMERALD SHORES AND ONE FOR RAINBOW COURT,
13 CORRECT?

14 **A** CORRECT.

15 **Q** AND THAT DOCUMENT IS DATED 3/21. DOES THAT
16 SOUND RIGHT ON 3/24 WHEN YOU WOULD HAVE GONE TO
17 THE BANK?

18 **A** POSSIBLY.

19 **Q** OKAY. I AM GOING TO SHOW YOU WHAT I'VE MARKED
20 AS EXHIBIT "114". IT IS ANOTHER FIRST PALMETTO
21 BUSINESS DEPOSIT ACCOUNT APPLICATION BUT THIS
22 TIME IT IS TYPED AND THIS ONE IS FOR BJC DOING
23 BUSINESS AS EMERALD SHORES. DO REMEMBER
24 SIGNING ... "113" WAS A HANDWRITTEN
25 APPLICATION. IS THAT YOUR HANDWRITING ON THAT

1 APPLICATION?

2 **A** YES.

3 BUSINESS DEPOSIT ACCOUNT
4 APPLICATION MARKED FOR
5 IDENTIFICATION AND INTRODUCED
6 INTO EVIDENCE AS DEFENDANT'S
7 EXHIBIT "114".

8 **Q** "114" IS A TYPEWRITTEN APPLICATION FOR BJC. DO
9 YOU REMEMBER SIGNING A SECOND APPLICATION THAT
10 WAS TYPED BY SOMEBODY?

11 **A** IT COULD'VE BEEN BANK.

12 **Q** AND IT'S NOT DATED BUT IS THAT YOUR SIGNATURE
13 ON THAT APPLICATION?

14 **A** YES, YES.

15 **Q** AND THEN LET ME SHOW YOU WHAT I HAVE MARKED AS
16 EXHIBIT "115". IT IS A TYPED BUSINESS DEPOSIT
17 ACCOUNT APPLICATION FOR FIRST PALMETTO FROM
18 AMERICANA. IS THAT YOUR SIGNATURE APPLYING FOR
19 A CHECKING ACCOUNT FOR AMERICANA?

20 **A** YES.

21 TYPED BUSINESS DEPOSIT
22 ACCOUNT APPLICATION AMERICANA
23 MARKED FOR IDENTIFICATION
24 AND INTRODUCED INTO EVIDENCE
25 AS DEFENDANT'S EXHIBIT "115".

1 JACK, IT WAS NOT DIRECTED AT ME, THE
2 DISCUSSION.

3 Q DO REMEMBER WHAT THEY WERE TALKING ABOUT?

4 A THEY WERE TALKING ABOUT SOME MORTGAGE LOAN ON
5 THE HOTEL.

6 Q IN PARTICULAR, DO YOU REMEMBER WHAT THEY TALKED
7 ABOUT?

8 A NOT REALLY.

9 Q DO YOU REMEMBER JACK WALKING OUTSIDE WITH THE
10 GENTLEMAN?

11 A THAT I DON'T REMEMBER.

12 Q DID YOU WALK OUTSIDE WITH JACK AND THE
13 GENTLEMAN AND WENDY WAS IN THE OFFICE AND TALK
14 TO THE BANKERS?

15 A THAT I DON'T REMEMBER.

16 Q NOW, YOU TALKED ABOUT THAT YOU HAD MET MR.
17 SMALL EARLIER ONE TIME?

18 A WE WENT TO CAMDEN.

19 Q WHO WENT TO CAMDEN?

20 A ME, WENDY AND JACK.

21 Q AND NOW THAT HAPPENED BEFORE THIS MEETING WHEN
22 HE CAME DOWN TO THE HOTEL AND MR. SMALL CAME TO
23 THE HOTEL?

24 A YES.

25 Q PRIOR TO THAT, YOU WENT WITH JACK AND WENDY TO

1 OTHERS?

2 **A** YES. MAYBE ONE, TWO. THERE MIGHT'VE BEEN ONE
3 OR TWO OTHERS OTHER THAN MR. SMALL.

4 **Q** WAS HARVEY PRESENT?

5 **A** NO.

6 **Q** WHAT IN PARTICULAR WAS DISCUSSED WITH THE BANK?

7 **A** IF I REMEMBER RIGHT, IT WAS JUST BUYING SOME
8 MORE TIME.

9 **Q** AND WHEN YOU LEFT THE BANK THAT DAY, WHAT WAS
10 YOUR UNDERSTANDING OF WHAT HAD BEEN
11 ACCOMPLISHED AT THE MEETING?

12 **A** I THOUGHT THE BANK SAID THAT THEY COULD WORK
13 WITH US 'TILL THE END OF MAY. THAT IS WHAT WAS
14 SAID.

15 **Q** WHEN Y'ALL LEFT, YOUR UNDERSTANDING WAS THE
16 BANK WAS GOING TO WORK WITH YOU TO THE END OF
17 MAY 2009?

18 **A** YES.

19 **Q** DO YOU RECALL AT THAT MEETING IF ANY PAYMENT
20 WAS MADE TO THE BANK?

21 **A** NO.

22 **Q** NO, THERE WASN'T A PAYMENT MADE OR YOU DON'T
23 RECALL?

24 **A** I DON'T RECALL.

25 **Q** WERE YOU INTRODUCED TO THE BANK OR WAS IT

1 DISCUSSED AT THE BANK THAT YOU WERE IN THERE
2 HELPING MANAGE THE PROPERTIES?

3 **A** THAT MIGHT HAVE BEEN A DISCUSSION BUT I DON'T
4 RECALL WHAT WAS ACTUALLY DISCUSSED.

5 **Q** OTHER THAN THESE TWO TIMES WHEN YOU WENT TO
6 CAMDEN WITH HARVEY AND WENDY AND THEN LATER
7 WHEN MR. SMALL SENIOR CAME TO THE PROPERTY, DID
8 YOU EVER MEET WITH ANYBODY WITH FIRST PALMETTO
9 ABOUT THESE PROPERTIES?

10 **A** NO.

11 **Q** DID YOU EVER HAVE A MEETING WITH ANYBODY AT THE
12 LOCAL BRANCH HERE ABOUT THE MORTGAGE?

13 **A** NO.

14 **Q** OR HELPING WENDY AND THEM WITH THE PROPERTIES?

15 **A** NO.

16 **Q** DID YOU EVER DISCUSS IT WITH TUMPIE AT ALL?

17 **A** NO. JUST TO OPEN AN ACCOUNT.

18 **Q** OKAY, OKAY. WHEN DID YOU LEARN THAT JACK OR
19 H&M HAD BOUGHT THE MORTGAGE FROM FIRST
20 PALMETTO?

21 **A** WELL, I DON'T KNOW THE EXACT DATE BUT IT WAS IN
22 JUNE OR JULY, SOMEWHERE AROUND THAT TIME.

23 **Q** OF '09?

24 **A** OR A LITTLE BIT LATER. I DON'T RECALL WHAT
25 DATE IT WAS.

1 **Q** AND HOW DID YOU LEARN THAT JACK HAD BOUGHT THE
2 LOAN?

3 **A** JACK HAD TOLD ME THAT HE WAS NEGOTIATING TO BUY
4 THE LOAN.

5 **Q** SO BEFORE HE BOUGHT IT, HE TOLD YOU HE WAS
6 NEGOTIATING TO BUY?

7 **A** THERE WAS A TIME HE SAID HE IS NEGOTIATING.

8 **Q** OKAY. AND DO YOU REMEMBER WHEN THAT WAS? WHEN
9 THE EARLIEST TIME HE TOLD YOU THAT?

10 **A** NO, I DON'T.

11 **Q** WAS THAT BEFORE OR AFTER Y'ALL WENT TO THE BANK
12 IN CAMDEN?

13 **A** THAT WAS WELL AFTER, WELL AFTER.

14 **Q** DID YOU EVER HEAR JACK TELL WENDY THAT HE HAD
15 BOUGHT THE LOAN OR THAT H&M HAD BOUGHT THE
16 LOAN?

17 **A** YES. HE MUST HAVE SAID TO WENDY.

18 **Q** DID YOU EVER HEAR HIM TELL HER HE HAD BOUGHT
19 THE LOAN?

20 **A** NO. THAT I DON'T. BUT HE MUST SAID IT.

21 **Q** I'M NOT ASKING YOU TO TELL ME WHAT YOU THINK HE
22 MIGHT HAVE SAID. I'M ASKING IF YOU EVER HEARD
23 HIM TELL WENDY THAT HE HAD BOUGHT THE LOAN?

24 **A** I DON'T REMEMBER.

25 **Q** DID YOU EVER HEAR HIM TELL WENDY HE WAS

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

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.

1 **A** NO.

2 **Q** AND AFTER H&M BOUGHT THE NOTE AND MORTGAGE AND
3 JACK LET YOU KNOW THAT, DID JACK REQUEST THAT
4 YOU, ON BEHALF ON BEHALF OF BJC, MAKE MORTGAGE
5 PAYMENTS TO H&M?

6 **A** NO.

7 **Q** DID YOU EVER MAKE MORTGAGE PAYMENTS TO H&M?

8 **A** NO.

9 **Q** DID WENDY EVER TELL YOU NOT TO MAKE MORTGAGE
10 PAYMENTS TO H&M?

11 **A** NO.

12 **Q** DID WENDY EVER TELL YOU NOT TO MAKE MORTGAGE
13 PAYMENTS FIRST PALMETTO?

14 **A** NO.

15 **Q** AND ME SHOW YOU WHAT I'M MARKING AS "121".

16 MS. COOK: I'M SORRY. I ONLY HAVE
17 TWO OF THESE COPIES.

18 OFF THE RECORD.

19 **Q** MR. PATEL, THIS IS A DOCUMENT THAT AFTER HAVING
20 READ IT, I WOULD SAY IT IS EVIDENCE OF A LOAN
21 AND REPAYMENT TERMS. SO IT'S KIND OF A NOTE
22 AND THIS SAYS, "THIS IS A CERTIFIED LETTER TO
23 JACK H. JONES LOANING, \$20,000 ON OR BEFORE
24 MAY 14TH, 2009, TO BE REPAID OUT OF PROCEEDS
25 AND PROFITS GENERATED BY THE BJC AND AMERICANA,

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PEPPERMCCARTHY@SC.RR.COM

1 AND IT'S TO BE REPAID IN FULL BY JULY 31, 2009.
2 HAVE YOU EVER SEEN THIS BEFORE?

3 **A** NO.

4 **Q** PARDON ME?

5 **A** NO.

6 DOCUMENT LOAN TERMS

7 MARKED FOR IDENTIFICATION

8 AND INTRODUCED INTO EVIDENCE

9 AS DEFENDANT'S EXHIBIT "121".

10 **Q** BUT YOU HAD TALKED EARLIER ABOUT WILBUR HAVING
11 LENT ABOUT \$50,000 AND JACK HAVING LENT ABOUT
12 \$20,000 TO GET THE MOTELS OPEN IN 2009, RIGHT?

13 **A** YES.

14 **Q** DID YOU EVER... AND YOU BEGIN MANAGING THE
15 PROPERTIES AFTER MARCH 21, 2009, CORRECT?

16 **A** RIGHT.

17 **Q** DID YOU, OWN BEHALF OF THE AMERICANA AND/OR
18 BJC, PAY JACK BACK THE \$20,000?

19 **A** I MUST HAVE.

20 **Q** WHY DO YOU SAY YOU MUST HAVE?

21 **A** THE WAY THE PAYMENT SCHEDULED TO JACK WAS SOME
22 OF THE PAYMENT JACK MADE WHILE I WAS NOT HERE,
23 AND I HAD TO REIMBURSE HIM THAT MONEY BACK.
24 BUT I HAVE NOT SEEN THIS PAPER. I'VE NEVER
25 SEEN THIS PAPER.

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

- 1 **Q** YOU'VE NEVER SEEN EXHIBIT "121".
- 2 **A** NO.
- 3 **Q** BUT YOU DID FROM THE OPERATIONS OF THE HOTEL
- 4 ...
- 5 **A** I HAD A SCHEDULE OF WHAT THE CHECK THAT WAS
- 6 WRITTEN. HE PRODUCED ME THE CHECK.
- 7 **Q** THE HOTEL DID PAY BACK JACK \$20,000?
- 8 **A** THAT'S RIGHT. THERE IS A LITTLE OUTSTANDING
- 9 BILL THAT WAS NOT PAID.
- 10 **Q** WHAT?
- 11 **A** THERE WAS A SMALL AMOUNT WHICH WAS NOT PAID
- 12 BACK.
- 13 **Q** BY THE TIME YOU LEFT IN FEBRUARY?
- 14 **A** YES.
- 15 **Q** DO YOU RECALL ABOUT HOW MUCH THAT WAS?
- 16 **A** I DON'T REMEMBER BUT I THINK IF I CAN GUESS
- 17 ABOUT 2 TO \$3,000.
- 18 **Q** YOU SAID YOU HAD A SCHEDULE OR SOMETHING. HAVE
- 19 YOU PRODUCED THAT OR DO YOU STILL HAVE A COPY
- 20 OF THAT?
- 21 **A** YES, I HAVE A COPY OF THAT.
- 22 **Q** YOU HAVE IT AT YOUR OFFICE IN NORTH MYRTLE
- 23 BEACH?
- 24 **A** YES, YES.
- 25 **Q** SO WE CAN GET THAT IF WE NEEDED THAT?

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PEPPERMCCARTHY@SC.RR.COM

1 **A** YES.

2 **Q** SO DID YOU PAY WILBUR BACK AS WELL?

3 **A** I PAID HIS 50,000 BACK.

4 **Q** YOU PAY HIS 50,000 BACK?

5 **A** YES.

6 **Q** THE TOP OF THIS EXHIBIT "121" ... I KNOW YOU
7 SAY YOU HAVEN'T SEEN IT BUT IT HAS GOT A FAX
8 LEGEND DATED SEPTEMBER 10, 2009 FROM CENTURY 21
9 BOLING, WHICH IS A LOCAL REAL ESTATE OFFICE.
10 DO YOU HAVE ANYTHING TO DO WITH CENTURY 21
11 BOLING?

12 **A** NO.

13 OFF THE RECORD.

14 **Q** MR. PATEL, I AM GOING TO HAND YOU WHAT WE HAVE
15 MARKED AS EXHIBIT NUMBER "122". IT IS A LETTER
16 FROM AUDRA BYRD TO ME BUT IT SHOWS YOU BEING
17 COPIED AND IT'S DATED DECEMBER 18TH, 2009. SO,
18 THAT IS AFTER WE HAD THE HEARING TO APPOINT YOU
19 RECEIVER AND JUDGE JOHNS DENIED A COPY OF THE
20 LETTER THAT AUDRA SENT TO ME SAYING THAT
21 BECAUSE OF THE MANAGEMENT AGREEMENT THAT YOU
22 HAVE THAT THE MANAGEMENT AGREEMENT IS GOING TO
23 REMAIN IN FULL FORCE AND EFFECT. YOU RECALL
24 GETTING THIS LETTER?

25 **A** I MUST HAVE GOT IT.

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 LETTER DATED 12/18/09
2 MARKED FOR IDENTIFICATION
3 AND INTRODUCED INTO EVIDENCE
4 AS DEFENDANT'S EXHIBIT "122".

5 Q AND SO ...

6 A I'M NOT A HUNDRED PERCENT SURE.

7 Q SO, EVEN AFTER JACK HAD BOUGHT THE NOTE FROM
8 THE BANK, THE FORECLOSURE HAD BEGUN AND H&M HAD
9 ASKED THAT YOU BE THE APPOINTED RECEIVER AND
10 THE COURT WOULDN'T ALLOW THAT YOU CONTINUE TO
11 MANAGE THE PROPERTY I THINK YOU SAID UNTIL
12 SOMETIME IN FEBRUARY AND THAT WAS WITH THE
13 AUTHORITY OF H&M, WHOSE ATTORNEY WAS AUDRA
14 BYRD, WHO SENT YOU THIS LETTER, CORRECT?

15 A RIGHT.

16 Q WHEN YOU LEFT THE PROPERTY ... WHEN YOU STOPPED
17 BEING THE MANAGER OF THE PROPERTY, DID YOU TAKE
18 THE CHECKING ACCOUNT AND THE CHECKING ACCOUNT
19 RECORDS WITH YOU? DID YOU PHYSICALLY REMOVE
20 THEM FROM THE PROPERTY?

21 A WHEN YOU SAY "CHECKING" ACCOUNT OR RECORDS?

22 Q THE CHECKBOOK?

23 A THE CHECKBOOK. I NEVER HAD ... IT WAS IN MY
24 OFFICE IN NORTH MYRTLE BEACH.

25 Q YOU DIDN'T KEEP THE CHECKBOOK AT RAINBOW COURT?

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 PAY THE BILLS THAT WERE COMING IN THAT YOU GOT?

2 **A** FOR 2009, YES.

3 **Q** HOW 'BOUT THROUGH FEBRUARY 2010?

4 **A** I THINK THERE WAS ENOUGH TO PAY ALL THE BILLS
5 THAT WAS DUE UP TO THAT TIME.

6 **Q** UP TO THAT POINT, OKAY. NOW, LET ME SHOW YOU
7 WHAT I HAVE MARKED AS EXHIBIT NUMBER "123". IT
8 IS A COPY OF A LETTER FROM ME TO YOU, DONALD,
9 JACK AND AUDRA STATING THAT YOU, JACK AND
10 DONALD WEREN'T TO COME BACK ON THE PROPERTY.
11 DID YOU GET A COPY OF THIS LETTER?

12 **A** YES.

13 LETTER FROM COOK AND ROY
14 MARKED FOR IDENTIFICATION.
15 AND INTRODUCED INTO EVIDENCE
16 AS DEFENDANT'S EXHIBIT "123".

17 **Q** WAS IT AFTER RECEIVING THIS LETTER THAT YOU
18 STOPPED MANAGING THE PROPERTIES?

19 **A** YES, RIGHT.

20 **Q** THIS LETTER IS DATED JANUARY 19TH, 2010. DID
21 YOU STOP AFTER THIS LETTER IN JANUARY OR DID
22 YOU CONTINUE THROUGH FEBRUARY?

23 **A** NO. I WENT THERE A COUPLE OF TIMES AND WENDY
24 ASKED ME TO, "JUST STAY HERE, HELP ME OUT."

25 **Q** SO YOU DIDN'T STOP AFTER JANUARY?

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 **A** THEN I ... THEN I ... I TOOK THIS LETTER TO
2 BILL AND BILL SAID, "YOU DON'T NEED TO BE
3 THERE."

4 **Q** AND THE ONLY THING YOU WERE DOING AT THAT POINT
5 IN JANUARY AND FEBRUARY WAS LOOKING AT THE
6 BILLS THAT CAME IN AND WRITING CHECKS IF YOU
7 HAD ENOUGH MONEY TO PAY THEM?

8 **A** THAT'S RIGHT.

9 **Q** AND WHEN YOU STOPPED DOING THAT AFTER TALKING
10 TO BILL, YOU HAD ENOUGH MONEY TO PAY ALL THE
11 BILLS THAT YOU HAVE GOTTEN TO THAT POINT?

12 **A** THAT'S RIGHT.

13 **Q** NOW, LET ME SHOW YOU WHAT I HAVE MARKED AS
14 EXHIBIT "124" AND I GOT THIS OUT OF THE FIRST
15 PALMETTO FILE AND I THINK YOU'VE TURNED OVER
16 SOME RECORDS TO ME FROM WHAT YOU SAID TODAY.
17 LET ME GO OVER THIS. "124" IS A COPY OF THE
18 MARCH 22, 2010 FIRST PALMETTO BANK STATEMENT
19 FOR RAINBOW COURT. THAT IS THE ACCOUNT NUMBER
20 IN EFFECT WHEN YOU HAD THE ACCOUNT ... WHEN YOU
21 OPENED THE ACCOUNT. AM I CORRECT THAT WHEN YOU
22 GOT THOSE NEW ACCOUNTS SET UP AT FIRST PALMETTO
23 FOR RAINBOW COURT AND EMERALD SHORES IT WAS SET
24 UP SO THAT PEOPLE GAVE YOU A CREDIT CARD TO PAY
25 BILLS OR MAKE A RESERVATION, THOSE PAYMENTS

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PEPPERMCCARTHY@SC.RR.COM

1 **A** RIGHT.

2 **Q** YOU'RE THE ONLY ONE WHO HAD SIGNATURE AND
3 AUTHORITY RIGHTS?

4 **A** RIGHT.

5 **Q** NOW, THERE IS ONE CHECK AT THE BOTTOM OF PAGE,
6 PAGE 4 THAT IS TO WENDY BELLAMY FOR A THOUSAND
7 DOLLARS. IS THAT HER SALARY OR DID SHE REQUEST
8 A PAYMENT AND YOU MADE IT? YOU SEE THE VERY
9 BOTTOM CHECK HERE THAT'S DATED JANUARY 3, 2010?

10 **A** I DON'T RECALL WHAT IT WAS.

11 **Q** AND THEN IF YOU LOOK ON THE LAST PAGE, PAGE 5,
12 THERE IS CHECK 1424 THAT BEARS THE DATE 3/21/09
13 AND WHAT DOES IT SAY? WHO IS THAT MADE PAYABLE
14 TO?

15 **A** RAINBOW COURT.

16 **Q** IS THAT YOUR SIGNATURE?

17 **A** YES.

18 **Q** WHY WERE YOU SIGNING A CHECK MADE PAYABLE TO
19 RAINBOW COURT IN THE AMOUNT \$640.00 ON
20 MARCH 21ST, 2009?

21 **A** SOME BILLS MUST HAVE PAID CASH.

22 **Q** AND IT'S GOT MARCH 21ST, 2009, BUT THE CHECK
23 ABOVE IT IS 1423?

24 **A** IT MUST HAVE BEEN AN ERROR.

25 **Q** YOU THINK IT WAS 2010?

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 TWO CHECKS. SHE WOULD GIVE YOU THE MONEY BACK
2 AND GIVE YOU THE MONEY BACK AND PAY THE PREMIUM
3 FROM THE INSURANCE?

4 **A** THAT'S RIGHT.

5 **Q** LET ME SHOW YOU WHAT I'M MARKING AS
6 EXHIBIT "127". IT IS A COPY OF FIRST PALMETTO
7 REQUEST FOR PAYMENT DEFERRAL. IT IS DATED
8 2/4/2009. SO, JANUARY 4, 2009, IT IS FOR THE
9 CUSTOMER BJC AND IT'S STATING THAT THE CUSTOMER
10 BJC GOT PAID \$95,000 IN DELINQUENT INTEREST AND
11 ATTORNEYS FEES EFFECTED IN MAY 2009. TIME TO
12 SELL THE PROPERTY AND PAY FIRST PALMETTO OFF.
13 HAVE EVER SEEN THIS DOCUMENT?

14 **A** NO.

15 REQUEST FOR PAYMENT FROM BANK
16 MARKED FOR IDENTIFICATION
17 AND INTRODUCED INTO EVIDENCE
18 AS PLAINTIFF'S EXHIBIT "127".

19 **Q** THIS IS FEBRUARY OF '09. YOU DIDN'T START
20 WORKING AND MANAGING THE PROPERTY UNTIL
21 MARCH 21ST OF '09?

22 **A** YES.

23 **Q** AND YOUR VISIT TO CAMDEN WAS SOMETIME AFTER
24 MARCH 21ST OF '09 WHEN YOU AND WENDY AND JACK
25 WENT TO CAMDEN TO ASK FOR MORE TIME, CORRECT?

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PEPPER M. MCCARTHY (843) 967-7653

PEPPERMCCARTHY@SC.RR.COM

1 SOUTH CAROLINA
2 COUNTY OF HORRY

COURT OF COMMON PLEAS
15TH JUDICIAL DISTRICT

3 2009-CP-26-5550

4
5 HOTEL AND MOTEL HOLDINGS,
6 LLC.

PLAINTIFF

7 V.
8 WENDY J. BELLAMY,
9 DEFENDANT/THIRD
10 PARTY PLAINTIFF

11 V.
12 FIRST PALMETTO SAVINGS
13 BANK, FSB, JACK JONES,
14 DONALD D. GODWIN, AND
15 BHUPENDRA PATEL,

16 THIRD PARTY DEFENDANTS.

 COPY

17 DEPOSITION OF
18 **SAMUEL SMALL, JR.**

19 FROM 9:30 A.M. UNTIL 3:30 P.M.
20 OCTOBER 22, 2010

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

25 ****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.**

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

APPEARANCES

FOR PLAINTIFF: (GODWIN & JONES)
TURNER PADGET GRAHAM & LACEY P.A.
AUDRA M. BYRD, ESQ.
R. WAYNE BYRD, ESQ.
2411 NORTH OAK STREET, SUITE 301
MYRTLE BEACH, SC 29577

FOR DEFENDANT:
WENDY BELLAMY

COOK & ROY
KATHRYN M. COOK, ESQ.
JAMES LEWIS, ESQ.
10409 NORTH KINGS HIGHWAY
MYRTLE BEACH, SC 29572

FIRST PALMETTO:

HAYNSWORTH SINKLER BOYD, P.A.
WILLIAM H. SHORT, JR. ESQ.
1201 MAIN STREET
22ND FLOOR
COLUMBIA, SC 29201

ALSO APPEARING

DONALD GODWIN
WENDY J. BELLAMY
HARVEY JONES

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 YOU GO TO UNDERGRADUATE SCHOOL?

2 **A** UNIVERSITY OF SOUTH CAROLINA IN COLUMBIA.

3 **Q** WHEN DID YOU GRADUATE?

4 **A** 2001.

5 **Q** WHAT WAS YOUR MAJOR IN?

6 **A** ACCOUNTING.

7 **Q** THEN YOU WENT ONTO LAW SCHOOL AT USC?

8 **A** CORRECT.

9 **Q** WHEN DID YOU FINISH LAW SCHOOL?

10 **A** 2005.

11 **Q** AFTER GRADUATION FROM LAW SCHOOL, HOW DID YOU
12 BECOME EMPLOYED? WHO WERE YOU EMPLOYED WITH?

13 **A** THE HONORABLE G. THOMAS COOPER, 5TH CIRCUIT
14 JUDGE.

15 **Q** YOU WERE A CLERK?

16 **A** YES.

17 **Q** WELL, I'LL REMEMBER WE CANNOT SEND REMEDIATION
18 TO JUDGE COOPER. WERE YOU WITH HIM ONE YEAR OR
19 TWO?

20 **A** ONE.

21 **Q** AFTER YOU LEFT JUDGE COOPER IN 2006, WHAT DID
22 YOU DO?

23 **A** I BEGAN WITH THE BANK AFTER THE CLERKSHIP.

24 **Q** WHAT BANK IS THAT?

25 **A** FIRST PALMETTO.

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 **Q** DO YOU HAVE ANY STOCK OWNERSHIP INTEREST IN
2 FIRST PALMETTO?

3 **A** YES.

4 **Q** HOW MUCH?

5 **A** CURRENTLY, I BELIEVE ELEVEN SHARES.

6 **Q** DO YOU KNOW WHAT THE TOTAL OUTSTANDING NUMBER OF
7 SHARES IS?

8 **A** CURRENTLY, I WOULD APPROXIMATE 1050.

9 **Q** HOW LONG HAVE YOU OWNED THOSE SHARES?

10 **A** THEY WERE ACQUIRED OVER A PERIOD OF TIME. I
11 WOULD SAY FOUR OF FIVE HAVE BEEN WIRED SINCE MY
12 EMPLOYMENT AND THE REMAINING ONES PRIOR TO THAT.

13 **Q** WHEN DID YOU BECOME EMPLOYED BY THE BANK IN
14 2006? IF NOT THE EXACT DATE MAYBE JUST THE
15 MONTH.

16 **A** I THINK IT WAS LABOR DAY WEEKEND OF '06. THE
17 FIRST WEEK IN SEPTEMBER OF '06.

18 **Q** WHEN YOU BECAME EMPLOYED AT FIRST PALMETTO IN
19 WHAT POSITION AND OR WHAT WAS YOUR TITLE?

20 **A** MY POSITION WAS GENERAL COUNSEL.

21 **Q** IT HAS BEEN SINCE YOUR EMPLOYMENT WITH THE BANK?

22 **A** CORRECT.

23 **Q** PRIOR TO BECOMING EMPLOYED BY THE BANK IN 2006,
24 AND YOUR CLERKSHIP WITH THE JUDGE WHILE IN HIGH
25 SCHOOL OR UNDERGRADUATE SCHOOL OR IN LAW SCHOOL,

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 WORKING DUTIES ARE AS GENERAL COUNSEL AND THEN
2 I'M GOING TO ASK YOU THE SAME QUESTION WITH
3 REGARD TO CHIEF OPERATING OFFICER?

4 **A** WE WILL START WITH GENERAL COUNSEL?

5 **Q** YES.

6 **A** TO SUMMARIZE I SUPPOSE IT IS TO OVERSEE ANY
7 LITIGATION THAT THE BANK MAY BE IN. THE
8 ENGAGEMENT OF ATTORNEYS THROUGH THE LITIGATION
9 PROCESS, NO MATTER WHAT THE SCOPE OR THE ISSUE.

10 **Q** THAT IS THE TOTAL SCOPE OF RESPONSIBILITY THAT
11 YOU HOLD AS GENERAL COUNSEL?

12 **A** AND TO ADVISE MY SENIOR MANAGEMENT WHAT OUTSIDE
13 COUNSEL AND I ARE DISCUSSING AND DEBATING.

14 **Q** WOULD YOU SAY THAT HAS BEEN YOUR SCOPE OF
15 RESPONSIBILITY AS GENERAL COUNSEL SINCE YOUR
16 EMPLOYMENT WITH THE BANK?

17 **A** YES.

18 **Q** WHAT IS YOUR SCOPE OF RESPONSIBILITY AS CHIEF
19 OPERATING OFFICER?

20 **A** TO OVERSEE OPERATIONAL DEPARTMENTS AND BRANCH
21 OPERATIONS.

22 **Q** PRIOR TO YOU BECOMING COO, WHO HELD THAT
23 POSITION WITHIN THE BANK?

24 **A** IT DIDN'T EXIST. THE TITLE DID NOT EXIST.

25 **Q** WHO HELD THE FUNCTIONS OF COO?

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SC.RR.COM

1 **Q** NOW, CURRENTLY, YOU SAID HE IS SOMEWHAT OF A
2 CONSULTANT TO THE BANK IN WHAT REGARD? WHAT
3 WOULD HE CONSULT ON?

4 **A** PROPERTY VALUATION.

5 **Q** IS HE AN APPRAISER?

6 **A** I BELIEVE HE IS CERTIFIED. I DO NOT KNOW THE
7 INITIALS BUT I BELIEVE HE IS CERTIFIED.

8 **Q** WHEN HE WAS EMPLOYED BY THE BANK, DID HE HAVE
9 HIS OWN APPRAISAL COMPANY, DO YOU KNOW?

10 **A** I AM NOT SURE.

11 **Q** WHAT IS YOUR CELL PHONE NUMBER?

12 **A** 8-0-3-4-2-7-4-5-6-4.

13 **Q** WHO IS YOUR SERVICE WITH?

14 **A** VERIZON.

15 **Q** HOW LONG HAVE YOU BEEN WITH VERIZON?

16 **A** SINCE IT WAS ALLTEL. THAT HAS BEEN MY PRIMARY
17 NUMBER FOR SEVERAL YEARS.

18 **Q** I AM GOING TO SHOW YOU WHAT I MARKED AS EXHIBIT
19 "104". IT IS AN AMENDED NOTICE OF YOUR
20 DEPOSITION. HAVE YOU SEEN THIS BEFORE?

21 **A** YES.

22 AMENDED NOTICE OF
23 DEPOSITION OF SAMUEL.
24 SMALL, JR. WAS MARKED.
25 FOR IDENTIFICATION AND

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 **A** WE TRIED TO SEGMENT IT AS BEST WE COULD WITH THE
2 SUBPOENA. THEN WHEN THEY GOT BATE STAMPED, THEY
3 GOT MIXED LIKE CRAZY. BUT, YES.

4 **Q** IN YOUR EFFORTS TO DO THAT, WOULD YOU SAY YOU
5 ARE -- AND I AM NOT ASKING YOU TO RECOUNT BUT
6 YOU'RE FAMILIAR WITH THE DOCUMENTATION THAT HAS
7 BEEN PREVIOUSLY PRODUCED?

8 **A** YES.

9 **Q** IN THAT FIRST DOCUMENT PRODUCTION THAT WAS DONE
10 SEVERAL MONTHS AGO AND GIVEN TO ME, TO YOUR
11 KNOWLEDGE, WAS ANYTHING WITHHELD DUE TO
12 PRIVILEGE OR CONFIDENTIALITY THAT WAS NOT
13 PRODUCED?

14 **A** YES. ATTORNEY/CLIENT E-MAILS AND ATTORNEY
15 INVOICES.

16 **Q** I UNDERSTAND THAT RECENTLY THAT HAS BEEN
17 GATHERED AND PRODUCED TO YOUR OUTSIDE COUNSEL
18 WHO IS IN THE PROCESS OF REVIEWING ALL THAT AND
19 GOING TO DO THE PROPER LOG AND ALL THAT TYPE OF
20 THING, BUT OTHER THAN THAT DOCUMENTATION --
21 OTHER THAN E-MAILS AND ATTORNEY BILLINGS, DID
22 YOU PULL OUT AND NOT PRODUCE ANY OTHER
23 DOCUMENTATION BASED ON ANY TYPE OF PRIVILEGE?

24 **A** NOT THAT I RECALL.

25 **Q** THE E-MAILS THAT WERE NOT PRODUCED THAT I

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1 ANYTHING TO DO WITH THE BJC LOAN WOULD HAVE BEEN
2 JANUARY 2009?

3 **A** RIGHT. IF I HAVE MY YEARS CORRECT.

4 **Q** WHAT WOULD YOU NEED TO SEE TO MAKE SURE YOU GOT
5 YOUR YEARS CORRECT?

6 **A** PROBABLY A DELINQUENCY HISTORY. IF THE NOTE OR
7 THE LATEST NOTE COULD REFRESH MY MEMORY.

8 **Q** HOLD ON JUST A MINUTE. THERE ARE A COUPLE OF
9 THINGS I WANT TO ASK ABOUT IT AND YOUR ANSWER
10 JUST THEN. WE WERE TALKING ABOUT DIFFERENT
11 REPORTS THAT WERE GENERATED BY DIFFERENT
12 DEPARTMENTS WITHIN THE BANK AND I WAS
13 SPECIFICALLY, KIND OF, FOCUSING IN ON REPORTS
14 GENERATED BY THE COMMERCIAL LENDING DEPARTMENT
15 AND THEN THE COLLECTIONS DEPARTMENT AND YOU JUST
16 MENTIONED A DELINQUENCY HISTORY REPORT, AND I
17 DIDN'T ASK YOU A BROAD BASED QUESTION, BUT TELL
18 ME ABOUT THIS DELINQUENCY HISTORY REPORT AND
19 WHAT IT SHOWS AND HOW OFTEN IT COMES OUT OR HAS
20 TO REQUESTED?

21 **A** IT IS NOT A REPORT. YOU REALLY HAVE TO NAVIGATE
22 TO FIND IT. BUT THERE IS A WAY TO FIND OUT HOW
23 MANY TIMES A LOAN HAS BEEN DELINQUENT IN A
24 TWELVE MONTH PERIOD. FOR EXAMPLE, JANUARY
25 THROUGH DECEMBER YOU KNOW 10 DAYS, 12 DAYS, 15

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1 Q WHAT DO YOU BELIEVE THAT NUMBER TO REPRESENT?

2 A WHICH, THE TOP NUMBER?

3 Q YES, SIR.

4 A IT'S UNDER THE PRINCIPAL BALANCE COLUMN. SO, IT
5 IS RELATED TO THE PRINCIPAL BALANCE OF THE LOAN.

6 Q DOES IT RELATE TO WHERE IT SAYS, "BEGINNING
7 BALANCE" AND THEN IT GIVES THE NUMBER?

8 A THAT MAY BE THE ORIGINAL BEGINNING BALANCE ...

9 Q BALANCE AS OF ...

10 A ... BUT I'M SPECULATING.

11 Q IT COULD BE THE BEGINNING BALANCE OF JANUARY OF
12 '09, BUT YOU'RE NOT SURE?

13 A IT COULD BE THE BEGINNING BALANCE WHEN THE NOTE
14 WAS PUT ON THE SYSTEM, IT COULD BE. I'M NOT
15 SURE.

16 Q SO, YOU DON'T KNOW WHAT THAT IS?

17 A NO.

18 Q IT'S AS IMPORTANT TO KNOW WHAT YOU DON'T KNOW AS
19 WHAT YOU DO KNOW. LET'S BACK -- BACK UP. THEN
20 THE FIRST LEFT-HAND COLUMN OF NUMBERS LOOKS LIKE
21 DATES TO ME, BUT I DON'T KNOW. DO YOU KNOW WHAT
22 THAT COLUMN REPRESENTS? DO YOU SEE WHERE IT
23 SAYS 01/22/09?

24 A I PRESUME THOSE ARE TRANSACTION DATES.

25 Q BUT YOU DON'T KNOW THAT?

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- 1 **A** I CANNOT CONFIRM THAT WITH CERTAINTY BUT THAT'S
2 WHAT I PRESUME THOSE DATES ARE ...
- 3 **Q** WHO IN THE BANK COULD?
- 4 **A** I BET JOHN KINER COULD.
- 5 **Q** HE'S THE I.T. GUY?
- 6 **A** NO. THAT'S STEVE WILLIAMS. JOHN KINER OVERSEES
7 THE LOANS ADMINISTRATION, LOAN OPERATIONS.
8 PATTY DID TOO, BUT SHE'S A CLERICAL.
- 9 **Q** DO YOU KNOW WHAT THE NEXT SERIES OF NUMBERS ARE
10 THAT ARE ALL 001?
- 11 **A** I DO NOT KNOW THAT.
- 12 **Q** DO YOU KNOW WHAT THE COLUMN THAT REPRESENTS
13 "A-1" IS, THAT SAYS "A-1"?
- 14 **A** NO.
- 15 **Q** DO YOU KNOW WHAT THE NEXT COLUMN ...
- 16 **A** EXCUSE ME, I DON'T MEAN TO INTERRUPT YOU, BUT IF
17 YOU LOOK AT THE VERY TOP, THERE'S HEADERS AT THE
18 VERY TOP. YOU DON'T HAVE HEADERS.
- 19 **Q** NO. SO ...
- 20 **A** I DIDN'T SEE THEM AT FIRST, BUT IF YOU LOOK AT
21 THE VERY TOP THERE'S HEADERS.
- 22 **Q** THERE ... NOT ON MY REPORT.
- 23 **A** SAYS TRANS DATE "TRANS DT" AND THEN THE DATES,
24 THAT'S WHY I ASSUMED IT WAS TRANSACTION DATE.
- 25 **Q** YOU NEED TO LET ME FINISH AND THEN YOU ANSWER.

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 AND I KNOW YOU'RE TRYING TO HELP. MY REPORT
2 DOESN'T HAVE IT ON IT. IT MAY JUST BE THAT THE
3 COPIES HAD BEEN CUT OFF. SO, IF YOU WANT
4 PREFACE ALL YOUR ANSWERS BY WHAT THAT HEADER
5 SAYS, THAT'S FINE. DO YOU KNOW OR CAN YOU TELL
6 ME WHAT YOU BELIEVE THE COLUMN THAT ARE ALL 001
7 IS? DO YOU KNOW WHAT THAT MEANS?

8 **A** I BELIEVE THAT TO BE BRANCH.

9 **Q** WOULD THAT BE THE BRANCH THAT GENERATED THE
10 LOAN?

11 **A** I DON'T KNOW, NO.

12 **Q** DO YOU KNOW WHAT THE COLUMN THAT HAS ALL HAS
13 "A-1'S" IN IT IS?

14 **A** NO.

15 **Q** THAT WOULD BE THE THIRD COLUMN.

16 **A** NO.

17 **Q** DO YOU KNOW WHAT THE FOURTH COLUMN REPRESENTS?

18 **A** NO.

19 **Q** DO YOU KNOW WHAT THE FIFTH COLUMN REPRESENTS?

20 **A** TRANSACTION AMOUNT.

21 **Q** DO YOU KNOW WHAT THE SIXTH COLUMN REPRESENTS?

22 **A** THE AMOUNT OF PRINCIPAL.

23 **Q** DO YOU KNOW WHAT THE SEVENTH COLUMN REPRESENTS?

24 **A** AMOUNT OF INTEREST.

25 **Q** DO YOU KNOW WHAT THE EIGHTH COLUMN REPRESENTS?

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1 **A** NO.

2 **Q** DO YOU KNOW WHAT THE NINTH COLUMN REPRESENTS?

3 **A** I BELIEVE IT TO BE LATE CHARGE, NSF,
4 INSUFFICIENT FUNDS.

5 **Q** DO YOU KNOW WHAT THE TENTH COLUMN REPRESENTS?

6 **A** NO.

7 **Q** DO YOU KNOW WHAT THE ELEVENTH COLUMN REPRESENTS?

8 **A** NO.

9 **Q** DO YOU KNOW THAT THE TWELFTH COLUMN REPRESENTS?

10 **A** NO.

11 **Q** FOR EXAMPLE, ON THIS PAGE, THE FIRST ENTRY HAS
12 GOT A TRANSACTION DATE OF 1/22/09. IT HAS A
13 TRANSACTION AMOUNT, FROM WHAT YOU JUST
14 TESTIFIED, THAT COLUMN REPRESENTS OF 500. IT'S
15 GOT A PRINCIPAL ... IN THE PRINCIPAL COLUMN IT'S
16 GOT 500 AND THEN IT'S GOT IN THE 12TH COLUMN AN
17 AMOUNT OF \$5,019,628.41. DOES THAT REPRESENT
18 ... DOES THAT MEAN THAT THERE WAS A \$500.00
19 PAYMENT OR CREDIT OF SOME TYPE THAT WAS MADE TO
20 THIS BJC LOAN ON JANUARY 22, 2009?

21 **A** NO.

22 **Q** DO YOU KNOW WHAT IT MEANS? DO YOU KNOW WHAT
23 THAT 5 ...

24 **A** IT'S NOT A \$500.00. IT'S 500,000. IT APPEARS
25 TO BE A CREDIT TOWARDS PRINCIPAL FOR \$500,000.

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 **A** YES. I AM AWARE THAT THERE WAS \$500,000
2 REDUCTION ON IT.

3 **Q** WHAT DO YOU KNOW ABOUT THAT REDUCTION?

4 **A** FROM WHAT I RECALL I BELIEVE, THERE WAS A CD
5 PLEGGED TO THE LOAN AND THE CD WAS APPLIED TO
6 THE LOAN AS A PRINCIPAL REDUCTION.

7 **Q** THAT WAS DONE ON JANUARY 22ND?

8 **A** THIS REPORT SAYS IT WAS A \$500,000 REDUCTION ON
9 THE 22ND, I DO NOT REMEMBER THE DATES.

10 **Q** DO YOU KNOW WHY THAT PLEDGED CD WAS APPLIED TO
11 LOAN, WHENEVER IT WAS?

12 **A** I BELIEVE IT WAS APPLIED BECAUSE THE LOAN WENT
13 INTO DEFAULT.

14 **Q** ONCE A LOAN IS IN DEFAULT, WHAT IS YOUR
15 RESPONSIBILITY AS GENERAL COUNSEL, WITH REGARD
16 TO ACCEPTANCE OF PAYMENTS OR APPLICATION OF
17 PAYMENTS ONCE A LOAN IS IN DEFAULT, IF ANY?

18 **A** WHEN A LOAN BECOMES IN DEFAULT, IF THE LOAN IS
19 NOT CURED IT'S TURNED OVER TO AN ATTORNEY FOR
20 COLLECTION IN FULL. AT THAT TIME, I HAVE NO
21 FURTHER DUTIES I TURN IT OVER TO THE ATTORNEY
22 AND THE ATTORNEY INFORMS ME OF ANY ADDITIONAL
23 ACTIONS ON THE LOAN, GENERALLY.

24 **Q** NOW, I'M TALKING SPECIFICALLY, ABOUT THIS LOAN.
25 WAS THIS LOAN, THE BJC LOAN, TURNED OVER TO

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 SENIOR MANAGEMENT, MORE SENIOR THAN ME, THIS
2 LOAN IS DUE AN UN-COLLECTED PER POLICY WE WOULD
3 TURN THIS OVER FOR FORECLOSURE THAT'S MY
4 UNDERSTANDING OF POLICY. DO YOU WISH FOR ME TO
5 DO THAT, YES OR NO? AND IF I WAS TO RECEIVE THE
6 ANSWER YES, IT WOULD'VE BEEN TURNED OVER.

7 Q DID YOU DO THAT WITH REGARD TO THIS LOAN?

8 A YES.

9 Q WHO DID YOU TALK TO SENIOR MANAGEMENT-WISE?

10 A THE CHIEF EXECUTIVE.

11 Q THAT'S WHO?

12 A SAMUEL SMALL.

13 Q DO YOU KNOW IF THAT WAS BEFORE OR AFTER
14 JANUARY 22ND, 2009?

15 A I DO NOT RECALL.

16 Q DO YOU RECALL WHAT FORECLOSURE COUNSEL THE LOAN
17 WAS TURNED OVER TO?

18 A YES.

19 Q WHO?

20 A DEBOSE ROBINSON, PC.

21 Q WAS IT TO A CERTAIN LAWYER WITHIN DEBOSE
22 ROBINSON OR WAS IT...

23 A IT WOULD HAVE BEEN EITHER KEN DEBOSE OR JOHN
24 DEBOSE.

25 Q DO YOU KNOW WHICH ONE TOOK THIS ...

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1 **A** I DON'T KNOW WHICH ONE TOOK THE FILE, BUT IT
2 WOULD NOT HAVE BEEN ROBINSON IT WOULD'VE BEEN
3 DEBOSE.

4 **Q** HOW LONG DID THE BANK ... HOW MUCH TIME ELAPSED
5 BETWEEN WHEN THE BANK TURN THIS BJC LOAN OVER TO
6 FORECLOSURE COUNSEL AND THE FILING OF THE
7 FORECLOSURE ACTION, HOW MUCH TIME ELAPSED DO YOU
8 KNOW?

9 **A** NO.

10 **Q** DID YOU EVER ATTEND ANY PHYSICAL MEETINGS
11 ANYWHERE OR HAVE OCCASION TO MEET ANY OF THE
12 BORROWERS, THE PRINCIPLES OF BJC?

13 **A** YES.

14 **Q** TELL ME THE FIRST TIME THAT YOU EVER ATTENDED A
15 MEETING OR MET ANY OF THE PRINCIPLES OF BJC?

16 **A** TO THE BEST I CAN RECALL, I WAS SUMMONED TO ONE
17 MEETING BY THE CEO, TO COME INTO HIS OFFICE.

18 **Q** WHEN WAS THAT?

19 **A** IN WHAT I CALL THE RELEVANT TIME PERIOD, AROUND
20 THIS TIME PERIOD, I DON'T KNOW. I DON'T KNOW
21 THE EXACT DATE.

22 **Q** WHEN YOU SAY "THIS ...

23 **A** AFTER JANUARY OF '09, IT WOULD'VE BEEN ABOUT
24 THIS TIME OR SOON THEREAFTER. SOME TIME AFTER
25 JANUARY 1ST, AND BEFORE JUNE 30TH.

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 **Q** THEN YOU SAID YOUR FATHER, SUMMONED YOU TO A
2 MEETING?

3 **A** RIGHT.

4 **Q** IN HIS OFFICE?

5 **A** RIGHT.

6 **Q** WHO ELSE WAS AT THAT MEETING?

7 **A** TO THE BEST I CAN RECALL, I WAS IN THE MEETING.
8 WENDY BELLAMY WAS IN THE MEETING. JACK JONES
9 WAS IN THE MEETING. I THINK HIS NAME IS BUPI
10 PATEL, WHOEVER THE GENTLEMEN WAS THAT WAS HERE
11 THE OTHER DAY. I THINK THAT WAS BUPI PATEL?

12 **Q** YEAH.

13 **A** THAT GUY WAS IN THE MEETING. I THINK THERE WAS
14 ONE OTHER OFFICER IN THE MEETING, I THINK, THERE
15 WAS ONE OTHER OFFICER AT THE MEETING.

16 **Q** ONE OTHER BANK OFFICER?

17 **A** YES, I THINK. IF I HAD TO SPECULATE I WOULD SAY
18 LINT BRIDGES, BUT I DON'T KNOW FOR SURE.

19 **Q** BUT YOU DON'T KNOW FOR SURE? BUT YOU'RE PRETTY
20 SURE THERE WAS ANOTHER BANK OFFICER THERE?

21 **A** I'M NOT PRETTY SURE, I DON'T KNOW. I DON'T KNOW
22 WHO ALL WAS THERE.

23 **Q** DO YOU RECALL THAT MEETING WAS HELD BEFORE OR
24 AFTER THE \$500,000 CD HAD BEEN APPLIED TO THE
25 LOAN?

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 **A** NO.

2 **Q** NO. YOU DON'T KNOW, YOU REMEMBER?

3 **A** I DON'T RECALL.

4 **Q** YOU USED THE CUT OFF DATE OF JUNE. YOU SAID IT
5 WAS SOMETIME BETWEEN JANUARY 1ST, AND JUNE 30TH,
6 WHAT SIGNIFICANCE IS JUNE 30TH, TO YOU THAT
7 ALLOWS YOU TO PUT THAT AS A CUT OFF DATE?

8 **A** ON JUNE 30TH, THE LOAN TO BJC WAS SOLD.

9 **Q** PRIOR TO THIS MEETING, WHERE YOUR FATHER,
10 YOURSELF, WENDY, JACK, AND BUPI WERE PRESENT AND
11 MAYBE ANOTHER BANK OFFICER IN THAT MEETING WAS
12 IN YOUR FATHER'S OFFICE AT CAMDEN BANK, RIGHT?

13 **A** RIGHT.

14 **Q** HAD YOU EVER MET ANY OF THE OTHER ... HAD YOU
15 EVER MEET ... HAD YOU EVER BEEN IN ANY OTHER
16 MEETING WHERE EITHER WENDY OR HARVEY OR TRIPP
17 COAN OR ED FARMER WERE PRESENT?

18 **A** I DON'T THINK SO, I DON'T RECALL THOUGH.

19 **Q** BEFORE THIS MEETING IN THE CAMDEN OFFICE, HAD
20 YOU EVER PHYSICALLY MET WENDY BELLAMY BEFORE?

21 **A** I DON'T THINK SO.

22 **Q** BEFORE THIS LITIGATION STARTED, HAD YOU EVER MET
23 HARVEY?

24 **A** I DON'T KNOW MAYBE.

25 **Q** HAD YOU EVER MET BUPI?

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRP.COM

1 **Q** TWO BROTHERS. THERE IN THE SAME OFFICE, BUT YOU
2 WERE DOWN HERE IN MYRTLE BEACH?

3 **A** CORRECT.

4 **Q** WHO WAS PRESENT AT THAT MEETING?

5 **A** I CALL IT A CLOSING, NOT A MEETING. BUT AT THE
6 CLOSING I WAS PRESENT. BRENT HUTTO WAS PRESENT
7 FOR THE BANK. THERE WAS A PARALEGAL WHO'S NAME
8 I DON'T RECALL.

9 **Q** WE ALL KNOW WHO THAT IS SO THAT'S ALRIGHT.

10 **A** JACK JONES WAS PRESENT AND THEN ONE OR BOTH THE
11 LESTER'S WERE IN AT THE CONFERENCE TABLE.

12 **Q** WELL, WAS IT ONE OR WAS IT BOTH? DO YOU
13 REMEMBER?

14 **A** ONE OF THEM I BELIEVE'S NAME JON.

15 **Q** THERE IS JON AND THERE IS DICKIE. JON HAS GREY
16 HAIR AND DICKIE HAS BLACK HAIR. WELL, SALT AND
17 PEPPER HAIR.

18 **A** I'M NOT SURE, WHICH ONE WAS ON THE OTHER SIDE
19 COUNSELING, MR. JONES.

20 **Q** WERE THEY BOTH THERE OR JUST ONE OF THEM?

21 **A** THEY WERE COMING AND GOING, I GUESS, IT SUCH A
22 SMALL OFFICE THEY WERE COMING GOING AND TALKING,
23 I DON'T RECALL. THEY WERE THERE THAT DAY.

24 **Q** OTHER THAN YOURSELF AS A LAWYER ON BEHALF OF THE
25 BANK, WAS THERE ANY OTHER BANK LAWYER PRESENT?

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1 **A** I DON'T KNOW. I DON'T HAVE IT IN FRONT OF ME.

2 **Q** DID THE BANK EXCEPT PAYMENT ON THIS MATURED LOAN
3 AFTER JANUARY 2009?

4 **A** IT APPEARS SO, FROM THIS SCREEN. EXHIBIT "91".

5 **Q** DID THE BANK NEGOTIATE WITH THE BORROWER AFTER
6 JANUARY 17, 2009, TOWARDS RENEWAL OF THE LOAN?

7 **A** RESTATE.

8 **Q** SURE. DID THE BANK NEGOTIATE WITH THE BJC
9 BORROWERS AFTER JANUARY 17, 2009, CONCERNING THE
10 RENEWAL OF MODIFICATION OF THE ALREADY MATURED
11 LOAN?

12 **A** IF THE BANK DID I WAS NOT RISEN DURING THE
13 NEGOTIATION.

14 **Q** THE MEETING THAT YOU DID ATTEND WITH YOUR DAD IN
15 YOUR DAD'S OFFICE, WHERE WENDY BELLAMY WAS
16 PRESENT, JACK JONES IS PRESENT, AND BUPI PATEL
17 WAS PRESENT, TELL ME WHAT WAS DISCUSSED IN THAT
18 MEETING?

19 **A** THIS IS GOING TO SOUND STRANGE TO YOU, BUT WHEN
20 I WAS SUMMONED TO THE MEETING I WAS IN THE
21 MIDDLE OF SOMETHING. THE CEO SAID COME DOWN THE
22 HALL TO THE MEETING...

23 **Q** CEO IS YOUR DADDY, TOO, ISN'T IT?

24 **A** HE IS. BUT I HAVEN'T CALLED HIM THAT SINCE I
25 WAS SIX.

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1 THAT I WAS DIRECTED FROM THE CEO THAT THE LOAN
2 WAS GOING TO BE SOLD TO JACK JONES.

3 **Q** AND THAT UNDERSTANDING CAME ABOUT AFTER YOU HAD
4 ATTENDED THIS MEETING JACK WAS FIRST PRESENT,
5 WHERE YOU MET JACK FOR THE FIRST TIME?

6 **A** I THINK SO.

7 **Q** WAS IT KIND OF, CLOSE IN PROXIMITY OR DO YOU
8 REALLY REMEMBER WHEN YOUR DAD TOLD YOU THAT?

9 **A** I DON'T KNOW WHAT "APPROXIMATELY" MEAN, BUT I
10 REALLY DON'T REMEMBER.

11 **Q** TELL ME WHAT YOUR FATHER OR THE CEO, TOLD YOU IN
12 THAT CONVERSATION ABOUT THE TERMS OF THE SALE
13 AND THAT, KIND OF, THING AND WHAT PART YOU WERE
14 TO PLAY IN THAT?

15 **A** BEST I CAN RECALL, HE TOLD ME THE LOAN WAS GOING
16 TO BE SOLD, TO FIND COUNSEL IF I CANNOT DO IT
17 MYSELF, GET THE DOCUMENTS PREPARED UNDER TERMS
18 THAT HE NEGOTIATED. AND I SAID, "OKAY. I'LL DO
19 THAT".

20 **Q** HE TELL YOU AT THAT TIME WHAT THE TERMS WERE?

21 **A** I DON'T REMEMBER WHEN HE TOLD ME THE TERMS. I
22 THINK IF I RECALL, THE TERMS -- I CAN'T REMEMBER
23 WHEN I WAS TOLD THE TERMS THEY MAY HAVE
24 FLUCTUATED, YOU KNOW, DATES MAY HAVE CHANGED OR
25 YOU...

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1 **Q** THE GENERAL STARTING POINT, KIND OF, OF THE
2 TERMS, DO YOU THINK HE TOLD YOU IN THAT
3 CONVERSATION OR SOMETIME LATER?

4 **A** THE CLEAREST THING I CAN REMEMBER, IS THE CEO
5 TELLING ME THE LOAN IS GOING TO BE SOLD A
6 MILLION DOLLARS WITH BE PAID DOWN, A MILLION
7 DOLLARS WILL BE PAID FOR INTEREST CARRIED. I
8 REMEMBER THAT.

9 **Q** THAT'S WHAT THE CEO TOLD YOU TO DO. SO, IN
10 CARRYING OUT HIS INSTRUCTIONS, HOW DID YOU MAKE
11 A DETERMINATION ABOUT WHETHER YOU WERE GOING TO
12 DO THAT DOCUMENTATION OR WHETHER YOU WOULD HIRE
13 SOMEBODY ELSE TO DO IT?

14 **A** I KNEW IMMEDIATELY, I WOULD NOT DO IT.

15 **Q** WHY IS THAT?

16 **A** BECAUSE I'M GENERAL COUNSEL. SO, I ENGAGED THE
17 SERVICES OF HAYNSWORTH, SINKLER AND BOYD WHO
18 PREPARED THE DOCUMENTS SUBJECT TO THE TERMS THAT
19 I CONVEYED TO HAYNSWORTH.

20 **Q** BEFORE WE GET INTO -- MAYBE IN A MINUTE, THAT'S
21 GOING TO BE A GOOD PLACE TO BREAK FOR LUNCH.
22 FIRST OF ALL, WHEN THE BANK HAD ENGAGED -- AND
23 WE'RE GOT DOCUMENTATION IN HERE THAT SHOWS AS OF
24 FEBRUARY 2ND, THE DEBOSE FIRM HAD FILED IN HORRY
25 COUNTY THE FIRST PALMETTO FORECLOSURE ACTION, OF

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 '09, FEBRUARY OF 09. IT SO HAPPENS THAT HE
2 DISMISSED THAT ACTION ON FEBRUARY 13TH, 2009.
3 SO, FROM THAT WE KNOW -- AND YOU WERE THE ONE
4 WHO RETAINED THE DEBOSE LAW FIRM TO FILE THAT
5 FORECLOSURE ACTION, CORRECT?

6 **A** YES.

7 **Q** SO, WE KNOW AS OF FEBRUARY THAT FORECLOSURE
8 COUNSEL HAD BEEN RETAINED?

9 **A** RIGHT.

10 **Q** AND THEN WE KNOW THAT -- I'M GOING TO PUT THIS
11 IN AFTER LUNCH, BUT WE KNOW THAT THE DRAFTING OF
12 THE LOAN SALES DOCUMENT THAT HAYNSWORTH DID
13 BEGAN IN JUNE OF 2009. I'M SORRY. BEGAN IN
14 MAY 2009. WHY DID YOU CHOOSE TO GO TO THE
15 HAYNSWORTH FIRM FOR THIS PART OF THE
16 TRANSACTION, FOR THE SALE PART OF THE
17 TRANSACTION INSTEAD OF HAVING THE DEBOSE FIRM
18 THAT DO THAT PART OF THE TRANSACTION?

19 **A** THE SIZE AND EXPERIENCE OF THE FIRM.

20 **Q** HAD YOU USED TO HAYNSWORTH, SINKLER, BOYD BEFORE
21 IN LOAN SALES TRANSACTIONS THE BANK SELLING THE
22 LOAN?

23 **A** I DON'T BELIEVE SO. IN LOAN SALES?

24 **Q** YES.

25 **A** I DON'T THINK SO.

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1 **Q** WHILE YOU HAD BEEN WITH THE BANK, HAVE YOU EVER
2 BEEN INVOLVED WITH SELLING A LOAN? I'M NOT
3 TALKING ABOUT ANYTHING WITH THE FREDDIE MAC OR
4 SECONDARY. I'M TALKING ABOUT SELLING A
5 COMMERCIAL LOAN TO A THIRD-PARTY IN A GENERAL
6 SIMILAR WAY TO WHAT WE ARE TALKING ABOUT HERE?

7 **A** NO.

8 **Q** YOU HAD NEVER BEEN INVOLVED SINCE '06, SINCE YOU
9 HAVE BEEN INVOLVED WITH THE BANK, BEEN INVOLVED
10 IN THAT?

11 **A** RIGHT.

12 **Q** ARE YOU AWARE, DURING THE TIME THAT YOU HAVE
13 BEEN WITH THE BANK FROM SEPTEMBER '06 TO '09 IF
14 THE BANK, WHETHER YOU WERE INVOLVED OR NOT, HAD
15 SOLD LOANS, SIMILAR TO A COMMERCIAL LOANS TO A
16 THIRD-PARTY?

17 **A** I'M NOT AWARE.

18 **Q** IF YOU ARE NOT AWARE, WHO IN THE BANK WOULD KNOW
19 IF OTHER LOANS HAD BEEN SOLD?

20 **A** CEO.

21 **Q** SO, HE COULDN'T ANSWER THAT QUESTIONS DURING HIS
22 DEPOSITION, IS THERE SOMEBODY ELSE OR SOMETHING
23 ELSE WITHIN THE BANK YOU CAN -- DOCUMENTATION
24 YOU CAN GO TO AND LOOK AT TO SEE IF THE BANK HAD
25 SOLD TO A THIRD-PARTY A COMMERCIAL LOAN BEFORE

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 THIS ONE? THIS ONE BEING THE BJC LOAN.

2 **A** I DON'T KNOW.

3 **Q** HAD YOU BEEN INVOLVED IN THE SALE OF LOANS TO
4 THIRD-PARTIES COMMENSURATE WITH THIS ONE OR
5 AFTER THIS ONE? WHILE YOU HAVE BEEN WITH THE
6 BANK, HAVE YOU BEEN INVOLVED IN OTHER SALES OF
7 OTHER LOANS BY THE BANK AFTER THE BJC
8 TRANSACTION?

9 **A** THERE HAD NOT BEEN ANOTHER SALE COMPLETED THAT
10 I'M AWARE OF, BUT DISCUSSIONS OF SALES, YOU
11 KNOW, THAT DOESN'T MEAN THAT...

12 **Q** SO, YOU HAVE NOT BEEN INVOLVED SINCE '06, OTHER
13 THAN IN THIS TRANSACTION WITH ANY SALE OF A LOAN
14 THAT HAS CLOSED BY FIRST PALMETTO, IS THAT A
15 FAIR STATEMENT?

16 **A** CORRECT.

17 **Q** WHEN I TALK ABOUT SALE OF A LOAN I'M TALKING
18 ABOUT COMMERCIAL LOANS. NON-PAYMENT. I'M
19 TALKING ABOUT A TROUBLED LOAN, HAVE YOU BEEN
20 INVOLVED IN OTHER THAN THIS TRANSACTION THE SALE
21 BY FIRST PALMETTO OF A TROUBLED OR PROBLEM OR
22 DELINQUENT LOAN TO A THIRD-PARTY?

23 **A** NO.

24 **Q** HAVE YOU BEEN INVOLVED IN DISCUSSIONS WERE FIRST
25 PALMETTO HAS BEEN NEGOTIATING TO SELL COMMERCIAL

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 LOANS OTHER THAN THIS, THAT WOULD BE A PROBLEM
2 OR DELINQUENT LOAN?

3 **A** I DON'T THINK I HAVE BEEN.

4 **Q** ARE YOU AWARE OF OTHER DISCUSSIONS OR
5 NEGOTIATIONS GOING ON OR THAT HAVE GONE ON, BY
6 FIRST PALMETTO TO SELL COMMERCIAL LOANS SINCE
7 JANUARY 2009? YOU DON'T HAVE TO HAVE BEEN
8 INVOLVED, ARE YOU AWARE OF ANY?

9 **A** I AM NOT PERSONALLY AWARE.

10 **Q** WELL, IN YOUR ROLE A THE BANK AS COO, ARE YOU
11 AWARE OF ANY?

12 **A** NO.

13 **Q** YOU JUST TESTIFIED A MINUTE AGO THAT YOU'RE NOT
14 AWARE OF ANY THAT HAVE CLOSED OR WERE IN
15 NEGOTIATIONS, TELL ME ABOUT THOSE PARTICULAR
16 NEGOTIATIONS.

17 **A** I'M NOT AWARE OF ANY NEGOTIATION. I WOULD
18 ASSUME, I DON'T KNOW, BUT MAYBE THE CEO, OR THE
19 CHIEF LENDING OFFICER DISCUSSES NEGOTIATIONS OR
20 TROUBLED LOANS OUTSIDE MY PRESENCE I DON'T KNOW.
21 I WOULDN'T KNOW UNTIL IT WAS MORE FORMAL AND
22 THEY WERE SAYING THIS IS WHAT WE'RE GOING TO DO,
23 YOU KNOW, EXECUTE.

24 **Q** BUT YOU KNOW IF ANY OF THOSE DISCUSSIONS ARE
25 GOING ON OR HAVE GONE ON?

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 **A** I HAVE NOT HAD ANY.

2 **Q** EXCLUDING RESIDENTIAL MORTGAGE LITIGATION, WHAT
3 LITIGATION OTHER THAN THESE LAWSUITS IS FIRST
4 PALMETTO INVOLVED? I DON'T WANT TO KNOW ABOUT
5 HOME FORECLOSURES, AND YOU KNOW, BUT IS FIRST
6 PALMETTO A PARTY TO ANY OTHER LITIGATION IN THIS
7 STATE, RIGHT NOW, OTHER THAN RESIDENTIAL HOME
8 FORECLOSURE MATTERS?

9 **A** WHAT ABOUT OUTSIDE OF THE SCOPE OF FORECLOSURE
10 MATTER? COMMERCIAL OR OUTSIDE THAT SCOPE?

11 **Q** ANYTHING OTHER THAN FORECLOSURE MATTERS?

12 **A** I'M NOT AWARE OF ANY OTHER LITIGATION OUTSIDE OF
13 FORECLOSURE MATTERS OR COLLECTION MATTERS?

14 **Q** I WANTED YOU TO TELL ME ABOUT FORECLOSURES THAT
15 AREN'T RESIDENTIAL MORTGAGE FORECLOSURES?
16 SINGLE-FAMILY HOMES OR SINGLE CONDOS THAT MARY
17 SMITH OWNS, IF IT'S ANYTHING A DEVELOPER OR
18 COMMERCIAL LOAN I WANT TO KNOW ABOUT THOSE.
19 IT'S JUST SINGLE-FAMILY RESIDENCES THAT MARY
20 SMITH OWNS THAT YOU'RE HAVING TO FORECLOSE ON
21 MARY'S HOUSE BECAUSE SHE IS NOT PAYING HER
22 MORTGAGE. I DON'T WANT TO KNOW ABOUT THOSE
23 BECAUSE I WOULD IMAGINE THEY MIGHT BE SOMEWHAT
24 VOLUMINOUS.

25 **A** COMMERCIAL LOTS. THERE ARE FORECLOSURES PENDING

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 WOULD YOU HAVE BEEN PRIVY TO IT?

2 **A** I WOULD THINK SO.

3 **Q** IT IS YOUR TESTIMONY, THAT THERE WAS NO
4 AGREEMENT WITH THIS BORROWER AS TO WHAT BANK --
5 AS TO WHAT ACTIONS THE BANK WOULD OR WOULD NOT
6 TAKE IF SOME PAYMENTS WERE MADE ON THIS LOAN
7 EVEN AFTER FORECLOSURE WAS STARTED IN FEBRUARY?

8 **A** I DON'T KNOW. I WOULD NOT HAVE NOT NEGOTIATED
9 THAT OR KNOWN. I CERTAINLY, DON'T RECALL SEEING
10 ANYTHING WRITTEN ABOUT IT. I WOULD HAVE BEEN
11 PRODUCED.

12 **Q** NOBODY HAS ASKED YOU TO WRITE ANYTHING, IN
13 TERMS, OF ANY AGREEMENT?

14 **A** I DON'T RECALL EVER BEING ASKED, NO.

15 **Q** WHO NEGOTIATED ON BEHALF OF THE BANK OR
16 DISCUSSED ON BEHALF OF THE BANK, WITH THE
17 BORROWER'S, WHAT ACTION THEY WOULD OR WOULD NOT
18 TAKE IF SUBSEQUENT PAYMENT WAS MADE ON THIS NOTE
19 AFTER THE FORECLOSURE WAS STARTED IN FEBRUARY?

20 **A** I WOULD ASSUME, THE CEO BECAUSE HE IS THE ONE
21 THAT TELLS ME TO FORECLOSE OR NOT TO FORECLOSE.

22 **Q** SO, ANY AGREEMENT THAT WAS REACHED, WOULD HAVE
23 BEEN REACHED BETWEEN THE CEO AND THE BORROWER...
24 YOU WEREN'T A PARTY TO ANY AGREEMENT?

25 **A** NO.

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 **Q** YOU DON'T KNOW WHAT, IF ANYTHING, THE CEO AGREED
2 TO?

3 **A** NO.

4 **Q** THE CEO NEVER ASK YOU TO MEMORIALIZE ANYTHING
5 AGREEMENT IN WRITING?

6 **A** I DON'T THINK SO.

7 **Q** WERE YOU INVOLVED WITH ANY MEETING WITH ANYONE
8 AT THE BANK THAT DISCUSSED, WHAT ACTIONS THE
9 BANK WOULD OR WOULD NOT AGREE TO TAKE IF
10 PAYMENTS WERE MADE BY THE BORROWER AFTER THE
11 FEBRUARY FORECLOSURE WAS INSTITUTED?

12 **A** NO. WHEN THE PAYMENTS WERE RECEIVED BY THE
13 BORROWER WHAT HAPPENED?

14 **Q** WERE YOU INVOLVED IN ANY DISCUSSIONS WITH BANK
15 OFFICIALS?

16 **A** I DON'T REMEMBER.

17 **Q** WHEN THE CEO TOLD YOU THAT THE BANK WAS GOING TO
18 SELL THIS LOAN, FOR 1 MILLION DOWN AND 1 MILLION
19 IN INTEREST CARRY, DID THE CEO AT THAT TIME TELL
20 YOU HOW MUCH THE SALES PRICE FOR THE LOAN WAS?

21 **A** YES.

22 **Q** WHAT DID HE TELL YOU?

23 **A** \$5 MILLION.

24 **Q** AT THAT POINT, YOU RETAINED HAYNESWORTH FIRM TO
25 HELP CARRY OUT THE TERMS OF THE TRANSACTION?

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 **A** CORRECT.

2 **Q** DID YOU USE THE HAYNESWORTH FIRM BEFORE?

3 **A** I THINK SO.

4 **Q** WHAT DO YOU RECALL, HAVING USED THE HAYNESWORTH
5 FIRM FOR, CLOSEST IN PROXIMITY IN TIME TO USING
6 THEM FOR THIS?

7 **A** CLOSEST IN PROXIMITY. I THINK I ENGAGED THEM IN
8 ANOTHER COLLECTION MATTER, INVOLVING ANOTHER
9 BORROWER TO THE BANK.

10 **Q** WAS IT COMMERCIAL MATTER?

11 **A** YES. I BELIEVE IT WAS COMMERCIAL.

12 **Q** WHERE WAS THAT BORROWER OUT OF?

13 **A** EVERYWHERE. CHARLESTON, RHODESIAN, LEXINGTON
14 EVERYWHERE.

15 **Q** WAS THERE LITIGATION THAT WAS FILED IN THAT
16 MATTER?

17 **A** I THINK THERE IS STILL SOME PENDING BANKRUPTCY
18 LITIGATION.

19 **Q** SINCE, IT'S A MATTER OF PUBLIC RECORD, WHO IS
20 THAT BORROWER?

21 **A** ARNOLD GOODSTEIN.

22 **Q** LORD, HOW MERCY. WAS ANY THOUGHT GIVEN TO
23 LETTING DEBOSE ROBINSON HANDLE THE PAPERWORK FOR
24 THE SALE OF THIS LOAN?

25 **A** NO.

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 OF STATE ON JUNE 15TH, 2009. DO YOU RECALL WHEN
2 YOU FIRST LEARNED THAT THE NAME OF THE BUYER OF
3 THE BJC NOTE WAS GOING TO BE THIS LLC, THIS
4 HOTEL AND MOTEL HOLDINGS, LLC?

5 **A** I DON'T RECALL A SPECIFIC DATE, BUT I FEEL LIKE
6 IT WAS VERY LATE IN THE PROCESS, BUT NO RECALL
7 THE DATE.

8 **Q** UNTIL YOU LEARNED THAT, WHO DID YOU BELIEVE THE
9 BUYER TO BE OF THE LOAN?

10 **A** JACK JONES.

11 **Q** DO YOU REMEMBER HOW YOU LEARNED IT WAS GOING TO
12 BE AN, LLC WHAT WAS BUYING THE LOAN?

13 **A** I BELIEVE I WAS TOLD THAT, BUT I'M NOT SURE WHO
14 TOLD ME. I DON'T KNOW IF IT WAS COUNSEL FOR
15 JONES. LESTER. I DON'T KNOW WHO IT WAS, BUT I
16 REMEMBER -- I JUST REMEMBER BEING TOLD AND
17 WONDERING IF IT WAS SINGULAR OR PLURAL, BUT IT
18 WAS LATE IN THE PROCESS.

19 **Q** WHEN THE CEO TOLD YOU THAT THE LOAN WAS GOING TO
20 BE SOLD, THE BJC LOAN WAS GOING TO BE SOLD FOR
21 \$5 MILLION, MILLION DOWN AND A MILLION TO BE
22 HELD FOR INTEREST CARRY. DID HE GIVE YOU ANY
23 FURTHER DETAILS ABOUT THE TRANSACTION TO
24 INCORPORATE OR GIVE GUIDANCE TO THE HAYNESWORTH
25 FIRM IN DRAFTING DOCUMENTS TO CARRY THAT OUT?

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 DID YOUR DAD GAVE YOU A TIMEFRAME OR ANYTHING
2 LIKE THAT?

3 **A** I THINK HE SAID CLOSE IT AS SOON AS POSSIBLE.
4 GO TO WORK ON IT.

5 **Q** LET ME BACK UP. YOU LEARNED EARLY ON FROM THE
6 CEO THAT THE DEAL WAS \$5 MILLION, MILLION DOWN,
7 MILLION IN CARRY COST. THAT LEFT \$4 MILLION OF
8 THE \$5 MILLION PURCHASE PRICE, WHAT WERE YOU
9 TOLD OR WHAT DID YOU LEARN ABOUT WHERE AND HOW
10 THE ADDITIONAL \$4 MILLION WAS GOING TO BE PAID?

11 **A** IT WOULD'VE BEEN AT THAT TIME, FINANCE THE \$4
12 MILLION.

13 **Q** OKAY. FINANCE THE \$4 MILLION. DID THE CEO TELL
14 YOU TO DO ANYTHING ABOUT THE TERMS OF FINANCING,
15 LENGTH OF TERM OF FINANCING, INTEREST RATE,
16 PAYMENT TERMS?

17 **A** I THINK I HANDLE MORE OF THE TRANSACTIONAL LEGAL
18 DOCUMENTS, IN TERMS, OF THE SALE DOCUMENTS,
19 ALLONGES??? THOSE TYPES OF THINGS. I THINK
20 BRENT? DID MORE OF THE LOAN THE UNDERWRITING,
21 MORE OF THE...

22 **Q** H&M BORROWING SIDE OF THINGS?

23 **A** RIGHT. I DON'T DO THE UNDERWRITING FOR A LOANS
24 I DO THE SALE PART.

25 **Q** IN TERMS, OF THE SALE OF THE LOAN YOU WORKED ON

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 THAT IN COORDINATION WITH THE HAYNESWORTH FIRM?
2 THE SALE OF THE BJC LOAN TO JACK JONES AND THEN
3 LEARNED IT WAS HIS LLC?

4 **A** RIGHT.

5 **Q** IN TERMS, OF FINANCING THAT PURCHASE, JACK JONES
6 FINANCING THAT PURCHASE, BRENT? HUTTO WOULD OF
7 HANDLED THAT PART OF THE TRANSACTION FOR THE
8 BANKS...

9 **A** RIGHT, THE UNDERWRITING OR THE CREATION OF THE
10 LOAN DOCUMENTS, SO TO SPEAK.

11 **Q** IS IT YOUR UNDERSTANDING THAT BRENT HUTTO OR THE
12 BANK, DID THEY MAKE JACK JONES FILL OUT A LOAN
13 APPLICATION?

14 **A** I DON'T KNOW. WHATEVER IS IN THE FILES IS WHAT
15 WE HAVE.

16 **Q** DID THE BANK REQUIRE MR. JONES TO PROVIDE
17 FINANCIAL STATEMENTS?

18 **A** I DON'T KNOW.

19 **Q** DID THE BANK REQUIRE MR. JONES TO PROVIDE TAX
20 RETURNS?

21 **A** I DON'T KNOW.

22 **Q** ARE YOU AWARE OF ANY LOANS THAT HAVE BEEN MADE
23 BY FIRST PALMETTO SINCE YOU WENT TO WORK THERE
24 IN '06 WHERE \$4 MILLION WAS LOANED TO A
25 BORROWER, WHICH FIRST PALMETTO DID NOT REQUIRE

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 THE BORROWER TO PROVIDE TAX RETURNS OR A
2 FINANCIAL STATEMENT OR BOTH?

3 **A** YES.

4 **Q** WHAT LOANS IN EXCESS OF \$4 MILLION, WOULD HAVE
5 BEEN MADE WERE THE BANK DID NOT REQUIRE A TAX
6 RETURN -- TAX RETURNS OR FINANCIAL STATEMENTS?

7 **A** I DON'T KNOW THE DOLLAR AMOUNT WHETHER IT'S 3, 4
8 OR 5, BUT THERE ARE LOANS OVER \$1 MILLION WHERE
9 -- I DON'T KNOW THE TERMINOLOGY BUT IT'S A...

10 **Q** A NO DOC LOAN?

11 **A** NO. IT'S A NON-RECOURSE LOAN. SO, THERE'S NO
12 GUARANTORS, BUT IT'S A CASH FLOW -- LET ME THINK
13 OF THE TERM. I CAN'T RECALL THE TERM, BUT A
14 GOOD EXAMPLE WOULD BE A LOAN TO A HOTEL. THE
15 LOAN IS DEPENDENT ON THE HOTEL PAYING BACK THE
16 LOAN. NOT ANY GUARANTORS ON BEHALF OF THE HOTEL
17 SO WE WOULDN'T REQUIRE A TAX RETURN ON THE
18 PERSON WHO OWNS FIFTY PERCENT OF THE HOTEL.
19 DOES THAT MAKE SENSE?

20 **Q** IT DOES.

21 **A** INCOME PRODUCING PROPERTY DEALS.

22 **Q** BUT AN INCOME PRODUCING PROPERTY DEALS WHERE IT
23 MIGHT NOT HAVE REQUIRED A GUARANTOR TO PROVIDE A
24 FINANCIAL STATEMENT OR TAX RETURNS, YOU WOULD
25 HAVE REQUIRED SOME TYPE OF VERIFICATION OF THE

1 INCOME PRODUCTION OF THE PROPERTY OVER THE PAST
2 -- HISTORIC PERIOD OF TIME, WOULD YOU NOT?

3 **A** I DON'T KNOW BECAUSE I DON'T DO UNDERWRITING.

4 **Q** ARE YOU AWARE OF ANY LOANS OVER A \$1 MILLION
5 WHERE SOME VERIFICATION, OF EITHER THE INCOME
6 PRODUCING HISTORY OF THE PROPERTY WAS REQUIRED
7 OR A FINANCIAL STATEMENT OR A TAX RETURN WAS
8 REQUIRED BY THE BORROWER OR THE BORROWER'S
9 PRINCIPAL?

10 **A** I THINK I MISS A WORD. I'M SORRY.

11 **Q** ARE YOU AWARE OF ANY LOANS MADE BY FIRST
12 PALMETTO IN EXCESS OF \$1 MILLION, WHERE FIRST
13 PALMETTO DID NOT REQUIRE EITHER A HISTORICAL
14 INCOME -- A HISTORICAL -- A PRODUCTION OF INCOME
15 STATEMENT SHOWING HISTORICAL PRODUCTION OF
16 INCOME FOR THE PROPERTY, THAT IS THE COLLATERAL
17 OR A TAX RETURN OR FINANCIAL STATEMENT FROM THE
18 ENTITY OR PRINCIPAL OF THE ENTITY?

19 **A** I'M NOT AWARE OF ANY.

20 **Q** LET'S LOOK FIRST AT THE -- AND I'M GOING TO CALL
21 THIS THE JACK JONES PURCHASE TRANSACTION. LET'S
22 LOOK AT THE DOCUMENT DEALING WITH THE JACK JONES
23 PURCHASE OF THE BJC LOAN.

24 MR. BYRD: OBJECT TO THE FORM OF THE
25 QUESTION.

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNEST NORTH MYRTLE BEACH SC 29582 MICHAEL.MCCARTHY@SCRP.COM

1 **Q** IF YOU LOOK AT EXHIBIT "31". CAN YOU TELL ME
2 WHAT THIS DOCUMENT IS?

3 **A** THIS APPEARS TO BE A DRAFT OF THE LOAN SALES
4 AGREEMENT FOR THE SALE OF THE BJC LOAN.

5 **Q** WAS THIS DOCUMENT AND IT'S GOT DRAFT STAMPED ON
6 TOP OF IT. WAS THIS DRAFT GENERATED BY YOU AND
7 SENT TO YOU AT THE HAYNSWORTH FIRM OR IS THIS A
8 DRAFT THAT WAS GENERATED VIA THE HAYNSWORTH FIRM
9 AND SENT TO YOU.

10 **A** IT WAS DRAFTED BY THE HAYNESWORTH FIRM AND SENT
11 TO ME.

12 **Q** UPON RECEIPT OF THIS DRAFT OF THIS LOAN SALES
13 AGREEMENT, AND IT'S ENTITLED, "LOAN SALES
14 AGREEMENT BETWEEN FIRST PALMETTO SAVINGS BANK,
15 SELLER AND IT'S GOT BLANK FOR THE BUYER." WHAT
16 DID YOU DO UPON RECEIPT OF THIS AGREEMENT?

17 **A** I AM SURE I WOULD REVIEW THE AGREEMENT AND TRY
18 TO MAKE SURE THAT THE AGREEMENT WAS AS CLOSE TO
19 BEING WHAT THE TERMS THE CEO HAD NEGOTIATED ON
20 BEHALF OF THE BANK IN TERMS OF THE SALE.

21 **Q** DO YOU REMEMBER ANYTHING AFTER YOUR REVIEW OF
22 THIS DRAFT THAT YOU CHANGED OR REQUESTED TO BE
23 ADDED OR MODIFIED?

24 **A** I KNOW THINGS WERE PROBABLY MODIFIED BETWEEN
25 THIS AND THE FINAL ONE BUT I DON'T KNOW WHICH

1 THINGS. I MEAN, THEY WOULD BE APPARENT BECAUSE
2 THEY WOULD BE DIFFERENT. SO, ANYTHING THAT WAS
3 DIFFERENT THAN THE ACTUAL ONE AND THIS ONE, I
4 DON'T KNOW WHO INSTIGATED THE CHANGES BUT
5 CERTAINLY, THIS WAS NOT THE FINAL DRAFT.

6 **Q** DO YOU REMEMBER ANYTHING IN THE DRAFTING PROCESS
7 THAT YOU REQUESTED BE CHANGED?

8 **A** I DON'T THINK SO.

9 **Q** DID YOU KEEP NOTES OR ANY KIND OF WRITTEN RECORD
10 OR ANYTHING THAT WOULD BE MAINTAINED ON A
11 COMPUTER? CHANGES OR ADDITIONS OR MODIFICATIONS
12 THAT YOU REQUESTED ON BEHALF OF THE BANK?

13 **A** I DON'T THINK SO. I KNOW -- TO ANSWER YOUR
14 QUESTION, I DON'T HAVE LIKE A FILE WITH
15 MODIFICATIONS BUT IF I REQUESTED A CHANGE OR HAD
16 A QUESTION ABOUT A CHANGE, I WOULD'VE E-MAILED
17 OUR COUNSEL AT HAYNSWORTH.

18 **Q** SO, WOULD YOU AGREE THAT THE E-MAIL TRAIN -- THE
19 E-MAIL TRAIL OF THAT WOULD BE THE MOST ACCURATE
20 RECORD OF CHANGES THAT YOU WERE REQUESTING OR
21 FEEDBACK THAT YOU WERE GIVING TO COUNCIL ON
22 BEHALF OF FIRST PALMETTO?

23 **A** YES.

24 **Q** IF WE LOOK AT THE TOP OF EXHIBIT "31" AND I HOPE
25 YOURS ISN'T CUT OFF. I CAN SEE ON THE TOP OF

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29587 MICHAEL.MCCARTHY@SCDR.COM

1 MINE IT'S GOT A JUNE 18, 2009. IT'S GOT A
2 LEDGER FROM A FAX MACHINE IT LOOKS LIKE. DOES
3 YOURS SAY THAT OR IS IT CUT OFF?

4 **A** IT'S CUT OFF. I'LL TAKE YOUR WORD TO BE
5 IDENTICAL.

6 **Q** LET ME JUST ASK YOU SOME NUMBERS. THERE'S A
7 NUMBER AND IT SAYS FROM AND THEN IT'S GOT A
8 BLANK AND THEN IT'S GOT TWO AND THE NUMBER ON
9 THE TWO IS 18434490298. DO YOU RECOGNIZE THE
10 0298 NUMBER?

11 **A** NO.

12 **Q** IT'S GOT JUNE 18TH 2009, AND I BELIEVE THE
13 RECORDS WILL REFLECT THAT THAT IS THE DICKIE
14 LESTER'S TELEPHONE NUMBER, FAX NUMBER. THE FAX
15 LEDGER SHOWING JUNE 18TH OF '09, DOES THAT KIND
16 OF COINCIDE WITH YOUR RECOLLECTION OF WHEN YOU
17 MIGHT HAVE SEEN THE FIRST DRAFT OF THE LOAN
18 AGREEMENT? I MEAN THE LOAN SALES AGREEMENT?

19 **A** YES.

20 **Q** HOW LONG DO YOU THINK IT TOOK FROM WHEN THE CEO
21 DIRECTED OR ADVISED YOU THAT THE LOAN WAS GONNA
22 BE SOLD, HERE'S THE GENERAL TERMS AND THIS FIRST
23 DRAFT COMING OUT? DO YOU KNOW WHAT THE TIME
24 TABLE THERE WAS?

25 **A** I THINK IT WAS RELATIVELY QUICK.

1 **Q** DO YOU RECALL HAVING HAD INPUT AND DISCUSSIONS
2 BACK AND FORTH WITH THE HAYNSWORTH FIRM AS EARLY
3 AS IN MAY OF 09?

4 **A** I DON'T KNOW THE DATES OF WHEN I WAS TALKING
5 WITH HAYNSWORTH.

6 **Q** DO YOU HAVE AN IMPRESSION WHETHER IT TOOK FROM
7 THE TIME THE CEO TO GET THIS DEAL DONE `TIL IT'S
8 CLOSING ON JUNE 30TH '09? DO YOU HAVE AN
9 IMPRESSION ON WHETHER IT TOOK 60 DAYS TO GET IT
10 DONE OR DID IT TAKE 45 OR 30 OR DO YOU KNOW?

11 **A** I THINK FROM THE DAY HE TOLD ME, "SELL THE NOTE
12 FOR A MILLION DOWN AND A MILLION INTEREST
13 CARRIED. FINANCE FIVE PERCENT." TO THE DATE IT
14 WAS CLOSED WAS A VERY QUICK TIME WINDOW.

15 **Q** WITHIN THAT 60 DAY TIME FRAME?

16 **A** I WOULD SAY WITHIN 30.

17 **Q** WITHIN 30, OKAY. THIS INITIAL DRAFT SAYS THAT
18 IT'S GONNA CLOSE ON OR BEFORE JULY 31, 2009. DO
19 YOU KNOW IF THAT WAS CHANGED?

20 **A** I AM SORRY. WHERE ARE YOU SEEING THAT?

21 **Q** PARAGRAPH 3. CLOSING DATE ON OR BEFORE
22 JULY 31ST?

23 **A** I THINK THAT WAS INSERTED BY HAYNSWORTH TODD
24 HANEY NOT KNOWING A DATE.

25 **Q** DO YOU RECALL AFTER IT BEING MOVED FORWARD?

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MICHAEL J. MCCARTHY (843) 957-7652

802 5TH ST. NORTH SUITE 100 DAYTON, OH 45424-1000

1 **A** I'M SURE I DID.

2 **Q** THEN IT TALKS ABOUT THAT THE BUYER SHALL PAY A
3 SUM OF \$5 MILLION. AND IT SAYS THEY'RE GONNA
4 PUT DOWN EARNEST MONEY OF A MILLION DOLLARS?
5 WAS THAT CHANGED?

6 **A** YES.

7 **Q** WHY WAS THAT CHANGED AND WHO REQUESTED THAT BE
8 CHANGED?

9 **A** THE EARNEST MONEY WAS WHEN THIS WAS DRAFTED.
10 THIS WAS DRAFTED UNDER THE PRESUMPTION THAT IT
11 WOULD CLOSE IN HOWEVER MANY DAYS, 40 DAYS,
12 50 DAYS, 60 DAYS OUT. EARNEST MONEY -- IT IS
13 KIND OF LIKE SELLING A PIECE OF REAL ESTATE.
14 THE EARNEST MONEY WAS SO THAT THE PURCHASE --
15 SOMEBODY WOULD REQUEST THE PURCHASE AND IT WOULD
16 TAKE 50 DAYS OF DUE DILIGENCE OR WHATEVER, AND
17 THEN THE PURCHASER WALK AWAY FROM THE DEAL. BUT
18 IN THIS CASE, I THINK IT HAPPENED SO QUICKLY.
19 LIKE I'M SAYING 20 DAYS OR 15 DAYS, THAT EARNEST
20 MONEY WAS NOT NECESSARY.

21 **Q** DID MR. JONES REQUEST THAT IT BE CHANGED FROM A
22 MILLION DOLLARS TO \$50,000.00 OR DID Y'ALL AGREE
23 TO THAT? Y'ALL BEING FIRST PALMETTO?

24 **A** I'M NOT SURE. I'M NOT SURE.

25 **Q** THE FIRST DRAFT ALSO SAYS THAT THERE'S A

1 \$100,000.00 EARNEST MONEY THAT WOULD BE
2 NONREFUNDABLE. WAS THAT TAKEN OUT OF THE DEAL?

3 **A** I WOULD HAVE TO LOOK AT THE DEAL. I WOULD HAVE
4 TO TAKE A LOOK AT THE ACTUAL DOCUMENT. WHATEVER
5 IS IN THE ACTUAL DOCUMENT WAS EITHER TAKEN OUT
6 OR PUT IN BASED ON THIS.

7 **Q** OKAY. THE ACTUAL LOAN AGREEMENT THAT WAS SIGNED
8 IS EXHIBIT "33". AND WE MAY ALSO WANT TO REFER
9 TO "34" WHICH IS AN ADDENDUM TO THE SALES
10 AGREEMENT?

11 **A** RIGHT.

12 **Q** SO, THE INITIAL VERSION CALLED FOR A MILLION
13 DOLLAR EARNEST MONEY DEPOSIT WITH \$100,000.00 OF
14 IT BEING NONREFUNDABLE ACCORDING TO THE FIRST
15 DRAFT IN 3.2, CORRECT.

16 **A** YES.

17 **Q** WHEN WE GET TO THE EXECUTED CONTRACT, AND IF YOU
18 LOOK AT THE ADDENDUM TO THAT CONTRACT 3.1, 3.2
19 AND 3.3 WERE TAKEN OUT OF THE DEAL ALL TOGETHER,
20 ISN'T THAT CORRECT?

21 **A** OKAY.

22 **Q** WELL, I WANT YOU TO VERIFY THAT I AM NOT MAKING
23 SOMETHING UP.

24 **A** THEY WERE DELETED AND REPLACED. NOT DELETED IN
25 THEIR ENTIRETY BUT DELETED AND REPLACED WITH THE

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MICHAEL J. MCCARTHY (843) 957-7652

801 ANNE ST. NORTH MYRTLE BEACH, SC 29577 MICHAEL.MCCARTHY@MCCCR.COM

1 ADDENDUM.

2 Q DO YOU REMEMBER WHO DRAFTED THE ADDENDUM?

3 A I BELIEVE I CONSULTED WITH HANEY IN
4 COLLABORATION ON THE ADDENDUM.

5 Q THE ACTUAL LOAN SALES AGREEMENT AT THE BEGINNING
6 SAYS IT'S DATED JUNE 24TH. IT WAS ACTUALLY
7 EXECUTED ACCORDING TO THE -- WELL, I DON'T KNOW
8 WHEN IT WAS EXECUTED. THE LOAN AGREEMENT SAYS
9 IT WAS JUNE 24TH. THE ADDENDUM SAYS IT IS
10 CHANGING THE 24TH OF JUNE LOAN SALES AGREEMENT
11 AND THE ADDENDUM IS DATED JUNE 30TH. WHAT
12 HAPPENED BETWEEN THE 24TH OF JUNE AND THE 30TH
13 OF JUNE TO CAUSE THE ADDENDUM TO BE DRAWN UP AND
14 EXECUTED?

15 A I BELIEVE, AND I'LL HAVE TO STUDY THE ADDENDUM,
16 BUT I BELIEVE IT HAD TO DO WITH THE LOCATION OF
17 THE CASH. THE CASH WAS AT THREE OR FOUR BANKS.
18 AND INSTEAD OF BEING ABLE TO BRING A MILLION
19 CASH WITH EITHER THE EXECUTION OF THE SALE OR AT
20 CLOSING, THE CASH HAD TO BE PLEDGED FROM A THIRD
21 PARTY BANK, WHETHER IT WAS WACCAMAW OR WHETHER
22 IT WAS SUNTRUST OR WHEREVER THEY WERE. SO IT
23 WAS NECESSARY TO AMEND THE AGREEMENT SO THAT THE
24 CASH, RATHER THAN BEING PHYSICALLY HANDED OVER
25 IN A BRIEFCASE ...

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 **A** AT CLOSING?

2 **Q** ... WAS SECURED.

3 **Q** WHEN DID THE BANK LEARN THAT MR. JONES WAS NOT
4 ON JUNE 30TH GOING TO PUT DOWN A MILLION DOLLARS
5 IN CASH AND A MILLION DOLLARS IN CARRY COSTS,
6 BUT WAS, IN FACT, ONLY GOING TO PUT DOWN
7 \$250,000.00 IN CASH AND PLEDGE 1,750,000 IN CDS?
8 WHEN DID THE BANK LEARN THAT?

9 **A** VERY CLOSE.

10 **Q** LIKE BETWEEN JUNE 24TH, THE LOAN SALES AGREEMENT
11 AND THE ADDENDUM ON THE 30TH?

12 **A** I THINK I HAD THE AGREEMENT DRAWN UP AND THEN I
13 RECEIVED WORD BY THE CEO THAT THE CASH WILL COME
14 BY WIRE ON THAT DAY, CURRENTLY IN CD. WE WILL
15 TAKE THE CASH THROUGH A SECURITY AGREEMENT. WE
16 WILL ENCUMBER THE CASH. SO RATHER THAN
17 PHYSICALLY HAVING THE CASH, WE HAD IT
18 ENCUMBERED, WHICH IS ESSENTIALLY THE SAME THING
19 IN MY MIND.

20 **Q** WOULD YOU AGREE THAT AT SOME TIME WITHIN SIX
21 DAYS OF THE CLOSING, INSTEAD OF GETTING ON JUNE
22 24TH OR 30TH A MILLION DOLLARS THE BANK WAS
23 GONNA GET \$250,000.00 AND IT WAS GONNA GET A
24 PLEDGE OF CDS, NOT FOR A MILLION DOLLARS, BUT
25 FOR \$1,750,000.00?

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 **A** RIGHT. WHICH IS TWO MILLION IN TOTAL.

2 **Q** RIGHT. BUT YOU WEREN'T BEING PAID BUT
3 \$250,000.00 IN CASH AT CLOSING?

4 **A** AND AN ENCUMBRANCE OF \$750,000.00 PLUS ANOTHER
5 MILLION. SO, IT WAS STILL AN ENCUMBRANCE OF TWO
6 MILLION.

7 **Q** I UNDERSTAND IT WAS ENCUMBERED FOR TWO MILLION
8 ...

9 **A** PHYSICAL CASH WAS NOT TRANSFERRED FOR TWO
10 MILLION AT CLOSING.

11 **Q** WHEN DID THE REMAINING \$750,000.00 IN CASH GET
12 PAID TO THE BANK?

13 **A** I BELIEVE AT THE MATURITY OF THOSE CDS.

14 **Q** WHEN WAS THAT?

15 **A** I DON'T HAVE THE EXACT DATE BUT I BELIEVE IF IT
16 WAS SOLD ON JUNE 30TH, I BELIEVE THEY MATURED IN
17 OCTOBER MAYBE.

18 **Q** OKAY.

19 **A** DOES IT SAY HERE? DOES IT SAY IN THE AGREEMENT?

20 **Q** I HAVE A DOCUMENT THAT MAY SHOW YOU WHEN IT WAS.
21 DID MR. JONES OR HIS COMPANY PAY ANY INTEREST ON
22 -- WELL, LET ME STOP. ONCE THE CHANGE WAS MADE
23 THE BANK DIDN'T LOAN \$4,000,000.00, THE LOAN WAS
24 FOR \$4,750,000.00, CORRECT?

25 **A** YES.

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1 Q THEN \$750,000.00 WAS PAID DOWN AT SOME POINT
2 WHEN THE CDS MATURED?

3 A RIGHT.

4 Q BETWEEN WHEN THE LOAN WAS MADE ON JUNE 30, 2009,
5 AND WHEN YOU RECEIVED THE \$750,000.00 IN CASH,
6 WAS INTEREST PAID BY MR. JONES OR THE BORROWER
7 ON THAT \$750,000.00 EXTRA IN CASH THAT THEY
8 BORROWED OVER THE FOUR MILLION THAT THEY WERE
9 ORIGINALLY GOING TO BORROW?

10 A IT IS MY UNDERSTANDING, YES.

11 Q SO CLOSE TO THE END OF THIS TERM, INSTEAD OF
12 BORROWING FOUR MILLION, THE BANK AGREED THAT THE
13 BORROWER COULD BORROW \$4,750,000.00?

14 A WITH THE UNDERSTANDING THAT \$750,000.00 WAS
15 PLEDGED IRREVOCABLY TO THE LOAN AND WILL BE
16 CASHED IN THREE MONTHS OR APPROXIMATELY THREE
17 MONTHS FROM THE DATE OF THE SALE.

18 Q RIGHT.

19 A YES.

20 Q AND, ADDITIONALLY, CLOSE TO THE TIME OF THE
21 CLOSING, THE BANK LEARNED THAT IT WASN'T MR.
22 JONES WHO WAS THE BORROWER, IT WAS A CORPORATION
23 HOTEL AND MOTEL HOLDINGS, LLC, THAT WAS THE
24 BORROWER?

25 MR. BYRD: OBJECT TO THE FORM OF THE

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCDR.COM

1 QUESTION.

2 Q IS THAT CORRECT?

3 A I'M SORRY. WHAT WAS ...

4 Q CLOSE TO THE END OF THE CLOSING PROCESS I
5 BELIEVED THAT YOU TESTIFIED EARLIER THAT YOU
6 LEARNED THAT IT WASN'T MR. JONES INDIVIDUALLY
7 WHO WAS BUYING THE LOAN AND WAS THE BORROWER,
8 BUT IT WAS A CORPORATION HOTEL AND MOTEL
9 HOLDINGS, LLC ...

10 MR. BYRD: OBJECT TO THE FORM OF THE
11 QUESTION.

12 Q IS THAT CORRECT?

13 A RIGHT.

14 Q ONCE THAT CHANGE WAS MADE, DID THE BANK DISCUSS
15 REQUIRING THERE TO BE A PERSONAL GUARANTY OF THE
16 \$4,750,000.00 LOAN?

17 A NOT THAT I KNOW OF.

18 Q DO YOU RECALL ANY CHANGES OR MODIFICATIONS THAT
19 MR. JONES' COUNSEL, MR. LESTER, REQUESTED WITH
20 REGARDS TO THIS TRANSACTION?

21 A I THINK THEY REVIEWED IT AND HAD A CHANGE OR TWO
22 BUT I DON'T RECALL WHICH ONES THEY WERE.

23 Q NOTHING STANDS OUT?

24 A IT MAY IF THERE IS SOMETHING THAT CAN REFRESH --
25 I MEAN, IF I CAN ...

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL J. MCCARTHY

1 **Q** YOU CAN TAKE AS MUCH TIME AS YOU WANT TO LOOK AT
2 ANY OF IT.

3 **A** I DON'T RECALL. I DO KNOW THAT WHEN WE SENT
4 OVER THE DRAFT FROM OUR ATTORNEY, IT WASN'T ONE
5 HUNDRED PERCENT ACCEPTABLE BUT IT WAS RELATIVELY
6 MINOR CHANGES FROM WHAT I RECALL.

7 **Q** ON EXHIBIT "31", WHICH IS THE FIRST DRAFT THAT I
8 HAVE MARKED AND PUT INTO EVIDENCE. YOU CAN TELL
9 FROM THE FAX LEDGER THAT IT WAS SENT TO DICKIE
10 LESTER'S OFFICE ON JUNE 18 AT THAT 843-449-0298
11 NUMBER. THIS FIRST DRAFT -- THIS DRAFT. I
12 DON'T KNOW IF IT WAS THE FIRST DRAFT, BUT THIS
13 DRAFT WAS SENT TO DICKIE LESTER'S OFFICE. DO
14 YOU REMEMBER ANY DRAFT THAT WAS SENT TO YOU
15 PRIOR TO THIS ONE?

16 **A** NO.

17 **Q** IS IT YOUR RECOLLECTION THAT THE FIRST DRAFT
18 THAT THE HAYNSWORTH FIRM SENT TO YOU WOULD HAVE
19 BEEN SENT UNMODIFIED ON TO DICKIE LESTER'S
20 OFFICE TO LOOK AT THE SAME TIME?

21 **A** RIGHT. I WOULD NOT HAVE MODIFIED IT.

22 **Q** IF YOU WOULD LOOK AT EXHIBIT "32".
23 OFF THE RECORD.

24 **Q** IF YOU WILL LOOK AT EXHIBIT "32". IT IS A LATER
25 DRAFT THAN EXHIBIT "31" WAS, A BALLOON

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 **Q** DO YOU REMEMBER ANY BIG CHANGES THAT THE BANK
2 REQUESTED FROM THE SECOND ONE TO WHAT IS BEHIND
3 EXHIBIT "33", WHICH IS THE ACTUAL JUNE 24TH
4 AGREEMENT THAT I THINK WAS ACTUALLY EXECUTED ON
5 THE 30TH OF JUNE? DO YOU RECALL ANY DIFFERENCES
6 OR ANY CHANGES THAT THE BANK REQUESTED OF ANY
7 SIGNIFICANCE BETWEEN THE SECOND AND THIRD
8 VERSION?

9 **A** I DON'T RECALL ANY.

10 **Q** DO YOU RECALL ANY CHANGES THAT WERE REQUESTED ON
11 BEHALF OF H&M OR MR. JONES BETWEEN THE SECOND
12 VERSION AND THE THIRD VERSION OR THE ACTUAL
13 EXECUTED DOCUMENT?

14 **A** I DON'T RECALL ANY.

15 **Q** THEN I AM GOING TO FLIP OVER TO "33" SO WE CAN
16 TALK ABOUT THE ACTUAL EXECUTED DOCUMENT, OKAY?

17 **A** WHICH ONE?

18 **Q** "33". WOULD YOU LOOK AT EXHIBIT "33" AND LOOK
19 AT THE SIGNATURES. LOOK THROUGH THAT AND TELL
20 ME IF THAT IS THE LOAN SALES AGREEMENT THAT WAS
21 EXECUTED BY THE BUYER AND THE SELLER OF THE BJC
22 LOAN?

23 **A** THIS APPEARS TO BE IT.

24 **Q** ON PAGE ELEVEN OF THIS AGREEMENT, AND THAT IS
25 THE SIGNATURE PAGE OF THE LOAN SALES AGREEMENT.

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 DO YOU RECOGNIZE THE PERSONS SIGNATURE WHO
2 SIGNED ON BEHALF OF FIRST PALMETTO?

3 **A** IT APPEARS TO BE BRETT HUTTO.

4 **Q** TO YOUR RECOLLECTION, WAS THIS DOCUMENT SIGNED
5 WHEN YOU WERE IN DICKIE LESTER'S OFFICE DOWN
6 HERE IN MYRTLE BEACH?

7 **A** I DON'T KNOW IF THIS WAS SIGNED ON THE 24TH OR
8 THE 30TH.

9 **Q** DO YOU REMEMBER ONLY BEING DOWN HERE ONE TIME?

10 **A** RIGHT. I WAS ONLY HERE ONE TIME ON THE 30TH.
11 THIS MAY HAVE BEEN SIGNED ON THE 24TH.

12 **Q** YOU KNOW THAT YOU WERE HERE ON THE 30TH?

13 **A** IF THAT WAS THE CLOSING DAY, AND I THINK IT IS.
14 I HAVE TO CONFIRM THAT BUT I AM PRETTY POSITIVE
15 THAT THE 30TH WAS THE DAY.

16 **Q** THAT YOU WERE HERE?

17 **A** THAT IS THE DAY I CAME DOWN HERE. I THINK THE
18 ADDENDUM WAS SIGNED ON THE 30TH BUT THIS LOOKS
19 LIKE IT WAS SIGNED ON THE 24TH. THE ADDENDUM
20 SAYS, "ADDENDUM TO LOAN SALES DATED THE 24TH".

21 **Q** OKAY. I WANT TO SPECIFICALLY ASK YOU SOME
22 QUESTIONS ABOUT PARAGRAPH 6 OF THIS AGREEMENT.
23 IF YOU LOOK AT PARAGRAPH 6, IT IS ENTITLED,
24 "PROVISIONS CONCERNING ENFORCEMENT OF LOAN
25 DOCUMENTS AND REALIZATION OF COLLATERAL."

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 BEFORE WE GET INTO THE EXACT TERMS OF THIS
2 AGREEMENT, DID YOU HAVE ANY DISCUSSIONS WITH THE
3 CEO OR ANYBODY ELSE WITH FIRST PALMETTO, AND I
4 AM NOT TALKING ABOUT YOUR OUTSIDE COUNSEL YET
5 THAT DRAFTED THE DOCUMENTS, BUT DID YOU HAVE A
6 DISCUSSION WITH ANYBODY WITHIN THE BANK ABOUT
7 THE BUYER OF THE LOAN, USE OF THE FORECLOSURE
8 COUNSEL THAT Y'ALL HAD ALREADY BEEN USING OR THE
9 BANK'S AGREEMENT TO PAY FOR THE FORECLOSURE
10 COUNSEL FOR THE BUYER OR FOR THE BANK'S
11 OBLIGATIONS? WELL, LET ME JUST STOP IT THERE.
12 THOSE TWO THINGS?

13 **A** I THINK THE CEO INFORMED ME THAT THE BANK WOULD
14 PAY THE FORECLOSURE.

15 **Q** WOULD THAT HAVE BEEN PART OF YOUR VERY FIRST
16 DISCUSSION WITH THE CEO WHEN HE WAS TELLING YOU
17 THE TERMS OR WAS THAT WHEN YOU GOT DEEPER INTO
18 THE MEAT OF THE DRAFTING OF YOUR DOCUMENT OR
19 YOUR COUNSEL GOT DEEPER INTO THE MEAT OF THE
20 DRAFTING OF THE DOCUMENT?

21 **A** I'M NOT SURE.

22 **Q** THAT'S IMPORTANT. YOU CAN'T REMEMBER THAT?

23 **A** I DON'T REMEMBER. I REMEMBER A MILLION CASH, A
24 MILLION INTEREST CARRIED.

25 **Q** AND \$5,000,000.00 TOTAL?

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1 **A** YES.

2 **Q** DO YOU REMEMBER ANY DISCUSSION WITH ANYONE
3 WITHIN THE BANK ABOUT REQUIREMENTS OR RIGHTS THE
4 BANK WOULD HAVE CONCERNING THE SALE, THE BIDDING
5 OR THE MINIMUM BIDDING AT A FORECLOSURE SALE OF
6 THIS BJC COLLATERAL?

7 **A** NO. I DON'T REMEMBER THAT. I REMEMBER OUR
8 TRANSACTION COUNSEL, WHO I'LL CALL HAYNSWORTH,
9 ADVISING THE BANK, BEING US, OF WHAT WE NEEDED
10 TO DO TO PROTECT OURSELVES IN THE EVENT A
11 FORECLOSURE PROCEEDED ALL THE WAY THROUGH.

12 **Q** OKAY. YOUR RECOLLECTION OF THOSE ISSUES IS ...
13 THAT ISSUE ABOUT FORECLOSURE AND THE BIDDING,
14 THAT WAS WITH REGARD TO INPUT FROM YOUR
15 TRANSACTION COUNSEL?

16 **A** I THINK SO, YEAH.

17 **Q** IS THAT SOMETHING YOU THEN TOOK UP WITH THE CEO
18 OR OTHER BANK OFFICIALS OR DID YOU HAVE THE
19 AUTHORITY TO SAY BLESSINGS OVER THOSE TYPES OF
20 ISSUES?

21 **A** I WOULDN'T HAVE BLESSED IT.

22 **Q** YOU WOULD HAVE TAKEN THAT TO OTHERS WITHIN THE
23 BANK TO DISCUSS AS WELL?

24 **A** I DON'T KNOW THAT THERE ARE OTHERS TO TAKE IT
25 TO. AT THIS POINT, THERE IS THE CEO, GENERAL

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@MCCRR.COM

1 COUNSEL AND THE TRANSACTION COUNSEL FOR DRAFTING

2 . . .

3 **Q** YOU WOULD HAVE TAKEN IT TO THE CEO, YOUR DAD?

4 **A** RIGHT. IF I HAD A QUESTION ABOUT WHETHER THE
5 DOCUMENT THAT WE WERE GOING TO EXECUTE OR HAD
6 BEEN EXECUTED REFLECTED ACCURATELY THE TERMS
7 THAT HE NEGOTIATED, I WOULD HAVE ASKED HIM.

8 **Q** FIRST OF ALL, DO YOU REMEMBER HAVING YOUR
9 FATHER, THE CEO, REVIEW THE FINAL DRAFT OF THIS
10 LOAN SALES AGREEMENT THAT WAS EXECUTED?

11 **A** I DON'T REMEMBER.

12 **Q** DO YOU REMEMBER DISCUSSIONS WITH YOUR FATHER
13 ABOUT THE PROVISIONS WITHIN THIS LOAN SALES
14 AGREEMENT ABOUT SELLER SHALL BE RESPONSIBLE FOR
15 ALL ATTORNEYS FEES AND EXPENSES OF FORECLOSURE
16 COUNSEL THROUGH THE DATE OF CLOSING? DO YOU
17 REMEMBER DISCUSSING ANYTHING ABOUT THOSE ISSUES
18 WITH YOUR FATHER?

19 **A** I DON'T REMEMBER RECEIVING INSTRUCTIONS THAT THE
20 BANK WOULD PAY FOR FORECLOSURE SHOULD IT
21 CONTINUE TO PROCEED GOING FORWARD.

22 **Q** THAT WAS FROM YOUR DAD TO YOU?

23 **A** YES.

24 **Q** DID YOU ADVISE HAYNSWORTH OF THAT?

25 **A** I THINK SO.

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1 **Q** AT THIS POINT, THE ONLY DISCUSSIONS WITH ANYBODY
2 AT THE BANK YOU'RE GONNA HAVE IS GONNA BE YOUR
3 DAD, THE CEO, RIGHT?

4 **A** UNLESS IT IS SOMETHING MINOR THAT BRETT IS GONNA
5 DO THEN ...

6 **Q** FOR THE LOAN ...

7 **A** ... IN PREPARING THE NOTE, YES.

8 **Q** 6.1 ALSO SAYS TO BEGIN WITH, "THAT THE, BOTH
9 PARTIES, THAT'S THE BUYER AND THE SELLER,
10 ACKNOWLEDGE THAT DEBOSE ROBINS HAS ACTED AS THE
11 SELLERS COUNSEL IN CONNECTION WITH THE ACTIONS
12 TAKEN TODAY TO FORECLOSE ON THE MORTGAGE." NOW,
13 AS OF JUNE 30TH, FIRST PALMETTO EVEN WHILE
14 NEGOTIATING THIS LOAN SALE, HAD ALREADY
15 INSTITUTED FOR A SECOND TIME, A FORECLOSURE
16 ACTION, IS THAT CORRECT?

17 **A** I BELIEVE SO.

18 **Q** IN FACT, THAT FORECLOSURE ACTION WAS FILED ON
19 JUNE 4, 2009 IN HORRY COUNTY. THAT ACTION WAS
20 ACTUALLY FILED BY DEBOSE ROBINS IN JUNE -- WAIT.
21 LET'S LOOK AT THIS. IT'S JUNE 9, 2009. EXCUSE
22 ME. JUNE 4, 2009?

23 **A** SOUNDS CORRECT.

24 **Q** YOU WOULD HAVE BEEN THE ONE WHO WOULD HAVE BEEN
25 THE CONTACT WITH THE BANK THAT SAID TO THE

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 DEBOSE ROBINS FIRM, "START IT UP AGAIN."?

2 **A** CORRECT.

3 **Q** THE BUYER, MR. JONES AND H&M, KNEW THAT THE
4 FORECLOSURE ACTION HAD ALREADY BEEN STARTED
5 AGAIN AND WAS GOING FORWARD AS THIS TRANSACTION
6 WAS BEING NEGOTIATED, CORRECT?

7 **A** I DON'T KNOW ABOUT THE NEGOTIATION BUT I KNOW
8 THAT THEY PRESUMABLY HAD A COPY OF THIS DOCUMENT
9 THROUGH THEIR ATTORNEY. LET ME READ IT. I CAN
10 ASSUME IF THEY READ THIS THAT THEY KNEW THERE
11 WAS A FORECLOSURE ACTION PENDING.

12 **Q** THIS AGREEMENT SAYS THAT THE BANK IS GOING TO BE
13 RESPONSIBLE FOR PAYING THE ATTORNEY FEES AND
14 EXPENSES OF DEBOSE ROBINSON THROUGH THE DATE OF
15 THE CLOSING OF THIS TRANSACTION, CORRECT?

16 **A** IT SAYS WHAT IT SAYS. LET ME READ IT. WHICH?

17 **Q** IF YOU LOOK AT THE SECOND SENTENCE ...

18 **A** OKAY.

19 **Q** ... IT SAYS, "THE SELLER SHOULD BE RESPONSIBLE
20 FOR ALL ATTORNEY FEES AND EXPENSES OF
21 FORECLOSURE COUNSEL THROUGH THE DATE OF
22 CLOSING."

23 **A** OKAY.

24 **Q** IT SAYS, "AFTER THE CLOSING, THE PARTIES AGREE
25 THAT FORECLOSURE COUNSEL SHALL TO CONTINUE TO

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 REPRESENT THE BUYER WITH RESPECT TO THE
2 FORECLOSURE OF THE MORTGAGE AND THE ENFORCEMENT
3 OF THE LOAN DOCUMENTS, AND SUCH REPRESENTATION
4 WILL BE AT THE DISCRETION OF THE BUYER. WITH
5 THE BUYER BEING RESPONSIBLE FOR THE COST OF THAT
6 COUNSEL", RIGHT?

7 **A** I'M SORRY. I WAS READING AHEAD. "CONTINUE TO
8 REPRESENT THE BUYER WITH RESPECT TO THE
9 FORECLOSURE OF THE MORTGAGE AND THE ENFORCEMENT
10 OF THE LOAN DOCUMENTS SUBJECT TO FORECLOSURE
11 COUNSEL DETERMINING IT CAN DO SO. SUCH
12 REPRESENTATION SHALL BE AT THE DISCRETION OF THE
13 BUYER. AND BUYER SHALL BE ENTITLED AT ITS
14 DISCRETION TO REPLACE FORECLOSURE COUNSEL AS
15 COUNSEL." IS THAT WHAT YOUR SAYING?

16 **Q** YES. IF THE BUYER CHOSE TO USE OTHER COUNSEL TO
17 MOVE FORWARD WITH THE FORECLOSURE, THEN THE
18 BUYER HAD TO PAY FOR IT, RIGHT?

19 **A** I DON'T KNOW. I DON'T KNOW THAT'S WHAT THAT
20 SAYS.

21 **Q** OKAY. THE NEXT SENTENCE SAYS, "SHOULD BUYER
22 CONTINUE TO RETAIN FORECLOSURE COUNSEL AS
23 COUNSEL FOR SUCH PURPOSES, THE SELLER WILL PAY
24 ALL LEGAL FEES AND EXPENSES OF FORECLOSURE
25 COUNSEL AFTER THE CLOSING DAY."

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 **A** OKAY.

2 **Q** THAT IS WHAT THAT SENTENCE SAYS?

3 **A** RIGHT.

4 **Q** DOES THAT SENTENCE MEAN TO YOU AS A LAWYER THAT
5 FIRST PALMETTO WAS SAYING IF YOU USE DEBOSE
6 ROBINSON THROUGH THE FORECLOSURE ACTION, WE,
7 FIRST PALMETTO, WILL PAY ALL THE LEGAL FEES AND
8 EXPENSES OF DEBOSE ROBINSON?

9 **A** THAT IS WHAT IT SEEMS TO SAY.

10 **Q** THE BANK AGREED TO THAT?

11 **A** CORRECT.

12 **Q** HAS THE BUYER CONTINUED TO USE DEBOSE ROBBINS AS
13 FORECLOSURE COUNSEL?

14 **A** NO.

15 **Q** IS THE BANK, NONETHELESS, PAYING THE BUYERS
16 FORECLOSURE COUNSEL, THE BYRDS?

17 **A** YES.

18 **Q** DID THIS PROVISION OF THE CONTRACT CHANGE, 6.1,
19 BY ANYTHING THAT IS WITHIN THE ADDENDUM THAT WAS
20 EXECUTED ON JUNE THE 30TH?

21 **A** I'M NOT AWARE OF ANY CHANGES.

22 **Q** HAS THE BANK EXECUTED ANY AGREEMENT OR COME TO
23 ANY AGREEMENT WITH THE BUYER, H&M, THAT CHANGES
24 THE PROVISIONS OF 6.1 OF THIS LOAN SALES
25 AGREEMENT?

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MICHAEL J. MCCARTHY (843) 957-7652

201 ANNE ST. NORTH MYRTLE BEACH, SOUTH CAROLINA 29577

1 **A** NOT THAT I'M AWARE OF.

2 **Q** WHY IS THE BANK PAYING H&M'S COUNSEL THAT IS NO
3 LONGER DEBOSE ROBINS BUT IS A NEW COUNSEL?

4 **A** I THINK THAT DEBOSE ROBINS' SON EITHER
5 CONFLICTED OUT OR HAD AN ETHICAL REASON THAT
6 THEY WANTED OUT. I DON'T THINK BUYER TERMINATED
7 THE RELATIONSHIP WITH DEBOSE AND SAID, "I'M
8 GETTING NEW GUYS." I THINK DEBOSE SAID, "I MAY
9 HAVE A POTENTIAL CONFLICT HERE OR WHATEVER, I
10 MUST WITHDRAW." SO COUNSEL HAD TO BE
11 SUBSTITUTED FOR DEBOSE.

12 **Q** RATHER THAN THE BUYER CHOOSING TO DISCONTINUE
13 USING DEBOSE.

14 **A** RIGHT. THAT'S CORRECT. I THINK BUYER HAD THE
15 RIGHT TO WITHDRAW -- EXCUSE ME. I THINK DEBOSE
16 HAD THE RIGHT TO WITHDRAW IF DEBOSE FELT THERE
17 WAS A CONFLICT. HAVING HAD SEVERAL DEALINGS
18 WITH US IN THE PAST. REPRESENTING US ON OTHER
19 UNRELATED MATTERS. OF COURSE, NOW, WE'RE A
20 DEFENDANT AND I DON'T KNOW -- IT'S A TANGLED WEB
21 BUT I THINK THAT'S HOW THAT CAME ABOUT. IT
22 WASN'T A TERMINATION TO MY KNOWLEDGE.

23 **Q** NOW, WHEN THIS PART OF THE LOAN SALES
24 TRANSACTION WAS BEING NEGOTIATED AND THEN SIGNED
25 UP ON IN THE FINAL AGREEMENT DID DEBOSE ROBINS,

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCDR.COM

1 THAT FIRM, AND SPECIFICALLY THE ATTORNEY OR THE
2 ATTORNEYS WITHIN THAT FIRM THAT WERE
3 REPRESENTING FIRST PALMETTO IN THE ONGOING
4 FORECLOSURE ACTION THAT WAS TAKING PLACE, AND
5 INSTITUTED BEFORE THIS AGREEMENT WAS SIGNED, DID
6 THEY REVIEW THIS AGREEMENT AND SPECIFICALLY DID
7 THEY AGREE TO PROVISION 6.1 OF THE AGREEMENT?

8 **A** I THINK SO. I THINK THEY KNEW.

9 **Q** OKAY. COULD I HAVE YOU LOOK SPECIFICALLY AT 6.3
10 OF THE AGREEMENT. IT'S ENTITLED, "MINIMUM BID
11 AT FORECLOSURE SALE." IS THIS A PROVISION THAT
12 WAS BROUGHT UP TO YOU BY YOUR TRANSACTIONAL
13 COUNSEL OR WAS THIS SOMETHING THAT YOU CAME UP
14 WITH? OR WAS IT SOMETHING THAT THE BUYER CAME
15 UP WITH?

16 **A** 6.3 CAME FROM TRANSACTIONAL COUNSEL.

17 **Q** YOUR TRANSACTION COUNSEL?

18 **A** BY SAYING THAT I MEAN HAYNSWORTH.

19 **Q** TO YOUR KNOWLEDGE, IS THERE ANYTHING THAT WAS IN
20 THE ADDENDUM THAT WAS SIGNED ON JUNE 30TH THAT
21 CHANGES THE PROVISIONS OR ALTERS THE PROVISIONS
22 OF 6.3?

23 **A** WHICH ONE IS THE ADDENDUM, IS IT "34"?

24 **Q** YES, SIR.

25 **A** 6.3?

1 Q UH-HUH. (AFFIRMATIVE RESPONSE.)

2 A NO.

3 Q SO, THE AGREEMENT BETWEEN THE PARTIES, FIRST
4 PALMETTO AND H&M, ACCORDING TO 6.3, WAS THAT IF
5 H&M IS AGREEING THAT IF IT FORECLOSES ON THE
6 MORTGAGE THAT H&M WILL NOT ALLOW THE PROPERTY TO
7 BE SOLD TO A THIRD PARTY FOR LESS THAN THE
8 PURCHASE PRICE? THE PURCHASE PRICE ... EXCUSE
9 ME. LESS THE AMOUNT OF THE NOTE. THE AMOUNT ON
10 THE NOTE WAS ON \$4,750,000.00, IS THAT CORRECT?

11 A \$4,750,000.00. RIGHT.

12 Q IF THEY'RE THE BIDDER. IF H&M IS THE BIDDER
13 THAT BIDS IT IN, THAT THEY WON'T BID LESS THEN
14 \$5,000,000.00, THE PURCHASE PRICE? THAT IS WHAT
15 THIS AGREEMENT OBLIGATES THE BUYER TO. IS THAT
16 -- AS AN ATTORNEY AND AS GENERAL COUNSEL FOR
17 FIRST PALMETTO, IS THAT YOUR UNDERSTANDING OF
18 THIS PROVISION?

19 A I THINK THE AGREEMENT SPEAKS FOR ITSELF.

20 Q YOUR TRANSACTIONAL COUNSEL -- FIRST
21 PALMETTO'S TRANSACTIONAL COUNSEL THOUGHT IT
22 WOULD BE IN THE BENEFIT OF ITS CLIENT TO PUT A
23 RANGE, A FLOOR LIMIT ON WHICH THE PROPERTY COULD
24 BE SOLD AT FORECLOSURE TO A THIRD PARTY AND THEN
25 ANOTHER FLOOR LIMIT BY WHICH THE BUYER WOULD

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1 HAVE TO BID IT IN?

2 **A** I DON'T KNOW WHAT OUR TRANSACTIONAL COUNSEL
3 THOUGHT.

4 **Q** WHAT DID YOU THINK WHEN THIS WAS BROUGHT UP TO
5 YOU? WHAT WERE YOUR THOUGHTS ABOUT THIS
6 PROVISION? DID YOU HAVE ANY THOUGHTS ABOUT THIS
7 PROVISION?

8 **A** MY THOUGHTS ARE IF IT GOES TO FORECLOSURE SALE,
9 AS LONG AS FIRST PALMETTO IS PAID ON ITS LOAN
10 AND PROTECTED, PAID OFF.

11 **Q** PAID OFF NOT JUST PAID ON, RIGHT?

12 **A** RIGHT. FOR EXAMPLE, THE PROPERTY COULD NOT GO
13 TO SALE FOR A DOLLAR. SOMEBODY BUYS THE
14 PROPERTY FOR A DOLLAR AND FIRST PALMETTO GETS A
15 DOLLAR.

16 **Q** IT DOESN'T MATTER WHAT THE PROPERTY SOLD FOR,
17 DOES IT, YOU'VE GOT A NOTE FOR \$4,750,000.00?

18 **A** BUT IF THE BUYER IS THE SUCCESSFUL BIDDER, WE
19 HAVE A MORTGAGE SECURING THAT NOTE.

20 **Q** SO YOU WERE LOOKING SOLELY TO THE PROPERTY AS
21 THE COLLATERAL FOR THIS \$4,750,000.00 NOTE? YOU
22 WEREN'T LOOKING TO THE BUYER OR MR. JONES? YOU
23 WEREN'T LOOKING TO MR. JONES OR H&M AS BEING
24 ABLE TO PAY YOU BACK? YOU WERE WILLING TO LEND
25 THIS MONEY JUST BASED ON WHATEVER THE PROPERTY

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1 COULD BRING, BASED ON WHAT THIS CONTRACT SAYS,
2 RIGHT?

3 A THE CONTRACT SAYS WHAT IT SAYS. THE LOAN
4 TO H&M IS SECURED BY THE LOAN DOCUMENTS TO BJC.
5 SO, FIRST PALMETTO HAD TO EXERCISE ITS RIGHT AND
6 TAKE BACK THE LOAN TO BJC, IT WOULD HAVE TO
7 FORECLOSE ON REAL PROPERTY. SO THAT PROPERTY
8 CANNOT BE SOLD FOR A DOLLAR AND GO AWAY. IF
9 FIRST PALMETTO EVER FORECLOSED -- FORECLOSED
10 MIGHT NOT BE THE RIGHT WORD. IF FIRST PALMETTO
11 EVER EXERCISED ITS RIGHT AGAINST THE H&M LOAN,
12 IT WOULD THEN HAVE THE PAPER SECURED BY THE
13 UNDERLYING DIRT. THAT DIRT CANNOT BE SOLD. DO
14 YOU UNDERSTAND THE THOUGHT PROCESS?

15 Q I UNDERSTAND THE THOUGHT PROCESS. SO, THE
16 BANK, FIRST PALMETTO, WAS NOT LOOKING TO THE
17 WHEREWITHAL OR THE ABILITY OF REPAYMENT OF THE
18 \$4,750,000.00 COMING FROM H&M OR JACK JONES AT
19 ALL? THAT WAS NOT A CONSIDERATION IN THIS
20 TRANSACTION?

21 A WELL, IT WASN'T \$4,750,000.00. 750,000 WAS
22 SECURE AND WAS GOING TO BE PAID TOWARDS THE
23 LOAN. SO REALLY IT IS 4,000,000. YOU HAD TO
24 ASK UNDERWRITERS OR PEOPLE THAT DO LENDING, WHAT
25 THE THOUGHT PROCESS WAS ON REPAYMENT OF THE

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SCRR.COM

1 LOAN. MY ROLE IS TO SELL THE LOAN.

2 **Q** THAT WAS YOUR SOLE ROLE WAS TO SELL THE LOAN?

3 **A** CORRECT.

4 **Q** BUT YOU DON'T DISPUTE THE FACT THAT WHAT THE
5 BANK LENT, THE NOTE THAT THE BANK TOOK FROM H&M
6 WAS \$4,750,000.00, DO YOU?

7 **A** THAT'S RIGHT.

8 **Q** NOW, IF YOU WOULD, COULD I ASK YOU TO LOOK AT
9 6.4. IT'S A PROVISION THAT'S ENTITLED,
10 "PROVISION TO APPLY WHEN BUYER" THAT WOULD BE
11 H&M "IS SUCCESSFUL BIDDER AT FORECLOSURE." I
12 LOOKED AND READ THAT AND THEN YOU LOOK AT THE
13 ADDENDUM -- THE ADDENDUM COMPLETELY DELETES THAT
14 PROVISION, DOES IT NOT?

15 **A** IT REPLACES 6.4. ALL IT DOES IS INSTEAD OF
16 HANDWRITING THE WORD "SELLER" IT INCORPORATES IT
17 IN TYPEWRITER. I THINK IS THE ONLY DIFFERENCE.

18 **Q** I THINK YOU'RE CORRECT. NOW, IT SAYS, "THE
19 SELLER SHALL ALSO PROVIDE, AT ITS EXPENSE, A
20 TITLE INSURANCE POLICY INSURING THE SELLERS"
21 THAT'S YOURS "FIRST MORTGAGE". DID THE SELLER
22 OBTAIN A TITLE INSURANCE POLICY?

23 **A** NOT THAT I AM AWARE OF. BUT THE TITLE OF THING
24 SAYS, "PROVISION TO APPLY WHEN BUYER IS
25 SUCCESSFUL BIDDER AT FORECLOSURE." I DON'T

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SC.RR.COM

1 THINK THE BUYER HAS BEEN A SUCCESSFUL BIDDER AT
2 FORECLOSURE. SO, I DON'T KNOW HOW THAT
3 PROVISION IS APPLYING TO WHERE WE WOULD WANT TO
4 BUY A TITLE POLICY.

5 **Q** IN THIS TRANSACTION WHERE THE BANK LENT -- TOOK
6 A NOTE FOR \$4,750,000, DID THE BANK REQUIRE THE
7 BORROWER H&M TO PROVIDE LENDERS TITLE INSURANCE?

8 **A** NO. NOT THAT I AM AWARE OF. THE DOCUMENTS
9 SPEAK FOR THEMSELVES. I DON'T RECALL THAT. I
10 WOULD HAVE TO REFER TO THE LOAN DOCUMENTS, BUT I
11 DON'T PERSONALLY RECALL THAT.

12 **Q** IN 6.6 OF THE AGREEMENT FIRST PALMETTO REQUIRED
13 THAT IF H&M WAS GOING TO SETTLE ANY LITIGATION
14 TO ENFORCE THE LOAN DOCUMENTS IT HAD TO GET
15 FIRST PALMETTO'S APPROVAL, NUMBER ONE, AND H&M'S
16 NOTE HAD TO BE PAID IN FULL, AS WELL. IS THAT
17 CORRECT?

18 **A** 6.6?

19 **Q** YES.

20 **A** YES.

21 **Q** AND SO, "ANYTHING HAVING TO DO WITH THIS
22 LITIGATION, THIS PENDING LITIGATION PROCESSING
23 IN BANKRUPTCY, IN ORDER FOR H&M, MY CLIENT, TO
24 SETTLE THIS MATTER FIRST PALMETTO HAS TO AGREE
25 TO IT AND H&M HAS TO HAVE PAID FIRST PALMETTO

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803 ANNE ST, NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 ITS NOTE IN FULL, IS THAT CORRECT?

2 **A** IT APPEARS THAT WAY.

3 **Q** AT THAT TIME THAT THIS LOAN TRANSACTION AND
4 PURCHASE TRANSACTION WAS CLOSED, WAS FIRST
5 PALMETTO AWARE THAT MR. JONES HELD A POWER OF
6 ATTORNEY FOR MRS. BELLAMY?

7 **A** YOU SAY WAS FIRST PALMETTO AWARE, I DON'T KNOW.
8 I KNOW THERE'S ONE IN THE FILE. I HAVE SEEN THE
9 DISCOVERY THAT YOU HAVE BEEN PRODUCED. I DON'T
10 KNOW WHEN THAT CAME, BUT I HAVE SEEN THAT.

11 **Q** DO YOU RECALL YOUR FATHER TESTIFYING, NOT IN
12 COLUMBIA, HERE, BUT THAT IN A MEETING THAT WAS
13 IN THE CAMDEN OFFICE WHERE MR. COAN AND ED
14 FARMER WERE PRESENT, AS WAS HARVEY AND CASEY
15 SCHROFF AND JACK JONES THAT HE WAS MADE AWARE
16 THAT JACK JONES WAS THERE AND COULD HEAR WHAT
17 WAS GOING TO BE DISCUSSED BECAUSE HE HAD A POWER
18 OF ATTORNEY FOR MRS. BELLAMY?

19 **A** I RECALL BEING AT A DEPOSITION. I DON'T RECALL
20 THE EXACT TESTIMONY.

21 **Q** THAT'S FINE. WERE YOU AWARE AT THE TIME THAT
22 THESE DOCUMENTS WERE BEING DRAFTED, THESE LOAN
23 SALES AGREEMENT DOCUMENTS WERE BEING DRAFTED AND
24 THE BANK WAS LENDING H&M \$4,750,000 THAT MR.
25 JONES HAD A POWER OF ATTORNEY FOR MRS. BELLAMY?

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH SC 29582 MICHAEL MCCARTHY@SCRR.COM

1 I AM ASKING IF YOU WERE AWARE?

2 **A** DO I KNOW THAT HE HAD A BINDING POWER OF
3 ATTORNEY OVER HER?

4 **Q** YES, SIR.

5 **A** NO. I WAS NOT OPERATING UNDER THE ASSUMPTION
6 THAT HE HAD A POWER OF ATTORNEY.

7 **Q** YOU HAD ACCESS TO THE BJC LOAN FILE, DID YOU
8 NOT?

9 **A** RIGHT.

10 **Q** YOU SAID YOU HAD SEEN THE POWER OF ATTORNEY IN
11 THE BJC LOAN FILE THAT THE BANK POSSESSED, IS
12 THAT CORRECT?

13 **A** RIGHT, I SEEN IT.

14 **Q** YOU JUST DON'T KNOW WHEN IT GOT INTO THE FILE?

15 **A** RIGHT. I DON'T KNOW WHEN IT GOT INTO THE FILE.
16 I THINK I REMEMBER FROM SEEING THE FILE, WHAT WE
17 HAVE IS NOT EVEN A RECORDED COPY. IT IS NOT
18 EVEN CLOCKED IN AT THE COURTHOUSE.

19 **Q** YOUR COPY IS NOT RECORDED?

20 **A** I DON'T THINK SO. THAT IS WHY I WAS OPERATING
21 UNDER THE ASSUMPTION THAT...

22 **Q** IS IT A SIGNED COPY THOUGH?

23 **A** I DON'T REMEMBER. I AM SURE IT IS IN HERE.

24 **Q** IT IS. I THINK IT IS EXHIBIT "102", BUT ANYWAY.
25 DO YOU KNOW IF YOU ADVISED YOUR TRANSACTIONAL

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRP.COM

1 COUNSEL AT THE TIME THEY WERE DRAFTING THESE
2 DOCUMENTS THAT MR. JONES HAD A POWER OF ATTORNEY
3 FOR MRS. BELLAMY?

4 **A** I DON'T RECALL THAT.

5 **Q** IF YOU WOULD LOOK AT SECTION 7.4 OF THE LOAN
6 SALES AGREEMENT. THE LAST SENTENCE OF 7.4,
7 WHICH IS ENTITLED "FINANCIAL CONDITIONS AS THE
8 BUYER", WHICH IS H&M. "HAS NOW AND WILL HAVE AS
9 OF THE CLOSING DATE", WHICH IS EITHER JUNE 24,
10 OR JUNE 30, 2009 "SUFFICIENT LIQUID ASSETS,
11 CAPITAL AND NET WORTH TO MEET ITS OBLIGATION
12 UNDER THE TRANSACTION DOCUMENTS AND TO PAY THE
13 PURCHASE PRICE WITHOUT ANY FINANCING OR OTHER
14 CONTINGENCY." THAT IS WHAT THE SENTENCE SAYS,
15 CORRECT?

16 **A** YES.

17 **Q** THE PURCHASE PRICE WAS \$5,000,000. IS THAT
18 CORRECT?

19 **A** RIGHT.

20 **Q** WHAT PROOF DID THE BANK REQUIRE THAT H&M SHOW OR
21 HAVE THAT VERIFIED H&M HAD SUFFICIENT LIQUID
22 ASSETS, CAPITAL OR NET WORTH TO PAY THE
23 \$5,000,000 WITHOUT FINANCING OR OTHER
24 CONTINGENCIES?

25 **A** I DON'T KNOW.

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29587 MICHAEL MCCARTHY@MABRYCOURTREPORTING.COM

1 IN THAT DOCUMENT PRODUCTION...

2 **A** YES, IT WOULD HAVE BEEN IN THE FILE.

3 **Q** PARAGRAPH 9, OF THE LOAN SALES AGREEMENT SAYS
4 "THE SALE IS MADE WITHOUT RECOURSE AGAINST THE
5 SELLER." WHAT DOES THAT MEAN TO YOU?

6 **A** I WOULD HAVE TO ASK MY TRANSACTIONAL ATTORNEY.
7 THIS WAS DRAFTED BY THEM.

8 **Q** YOU GOT AN ACCOUNTING UNDERGRADUATE DEGREE?

9 **A** YES.

10 **Q** YOU GOT A DEGREE FROM THE MIPPS PROGRAM AT
11 CAROLINA?

12 **A** RIGHT.

13 **Q** IS THERE A SPECIALTY WITHIN THAT?

14 **A** I DID ENGLISH. I DIDN'T DO A FOREIGN LANGUAGE.
15 SOME PEOPLE DO FOREIGN LANGUAGE. THE LAWYERS DO
16 ENGLISH.

17 **Q** SOMETIMES DON'T DO THAT TO WELL. AS A LAWYER,
18 DO YOU HAVE A OPINION AS TO WHAT A SALE MADE
19 WITHOUT RECOURSE OF A SELLER IS?

20 **A** NO.

21 **Q** IF I COULD ASK YOU TO LOOK AT PAGE 8, PARAGRAPH
22 12, IT SAYS "NOTICE TO BJC AND GUARANTORS" THIS
23 PROVISION SAYS, "THAT THE BUYER" AND THAT WOULD
24 BE H&M IN THIS INSTANCE, "SHALL WITHIN FIVE
25 BUSINESS DAYS AFTER THE CLOSING DAY GIVE THROUGH

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 FORECLOSURE COUNSEL". THAT FORECLOSURE COUNSEL
2 AT THAT TIME, WOULD HAVE BEEN DEBOSE ROBINSON,
3 RIGHT?

4 **A** RIGHT.

5 **Q** "GIVE NOTICE THROUGH DEBOSE ROBINSON OF THIS
6 TRANSFER TO BJC AND ALL GUARANTORS OF THE LOAN
7 WITH A COPY OF THE NOTICE TO THE SELLER" THAT IS
8 FIRST PALMETTO, "BY REGULAR US MAIL RETURN
9 RECEIPT REQUEST. DO YOU KNOW IF THAT WAS DONE
10 BY H&M THROUGH DEBOSE ROBINSON?

11 **A** I DON'T KNOW.

12 **Q** DO YOU KNOW IF IT WAS DONE BY H&M THROUGH
13 ANYBODY?

14 **A** I DON'T KNOW.

15 **Q** DO YOU KNOW IF A COPY OF THE NOTICE OF THAT
16 TRANSFER, BEING GIVEN TO BJC AND ITS GUARANTORS,
17 WAS EVER SENT TO FIRST PALMETTO AS THIS
18 PARAGRAPH 12 REQUIRES?

19 **A** I DON'T KNOW.

20 **Q** IF IT WAS, WOULD IT BE IN THE DOCUMENT
21 PRODUCTION THAT YOU PRODUCED TO ME SOME TIME
22 AGO?

23 **A** I WOULD THINK SO.

24 **Q** IF IT IS NOT THERE, DOES THAT MEAN YOU DIDN'T
25 GET IT?

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1 **A** I DON'T KNOW.

2 **Q** AND THAT NOTICE ACCORDING TO PARAGRAPH 14, THAT
3 YOU WERE SUPPOSED TO GET, PROVED THAT H&M SENT
4 THAT NOTICE OF THIS TRANSFER TO MY CLIENT FOR
5 THE BANK, THAT NOTICE WAS SUPPOSED TO GO TO YOU,
6 WASN'T IT? BECAUSE UNDER SELLER YOUR DESIGNATED
7 AS THE PERSON TO GET NOTICES?

8 **A** RIGHT.

9 **Q** DO YOU REMEMBER GETTING THAT?

10 **A** I DON'T RECALL.

11 **Q** ALSO A COPY OF THAT SHOULD HAVE GONE TO TODD
12 HANEY AT THE HAYNESWORTH FIRM, CORRECT?

13 **A** YES.

14 **Q** UNLIKE SOME CONTRACTS WE HAVE IN TRANSACTIONS
15 THIS CONTRACT THIS LOAN SALE AGREEMENT, ALL THE
16 TERMS OF THIS AGREEMENT SURVIVE THE CLOSING.
17 THEY CARRY ON AFTER THE CLOSING OF THIS SALE TO
18 H&M, IS THAT CORRECT?

19 **A** THAT IS WHAT IT SAYS IN 19.

20 **Q** IS THERE ANY LITIGATIONS PENDING BETWEEN H&M AND
21 FIRST PALMETTO CONCERNING THIS SITUATION, THIS
22 BJC LOAN?

23 **A** NOT THAT I AM AWARE OF.

24 **Q** TO YOUR KNOWLEDGE, ARE THE INTEREST PAYMENTS ON
25 THE \$4,750,000 NOTE DUE BY H&M TO FIRST PALMETTO

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRR.COM

1 **A** I DON'T RECALL WHEN I FIRST SAW THIS.

2 **Q** DO YOU KNOW IF THIS WAS ONE OF THE DOCUMENTS
3 THAT WAS EXECUTED IN DICKIE LESTER'S OFFICE THE
4 DAY YOU WERE THERE?

5 **A** I DON'T RECALL. I DON'T KNOW.

6 **Q** COULD I HAVE YOU TURN TO EXHIBIT "39". IT IS A
7 COPY OF A CASHIERS CHECK DRAWN ON Horry COUNTY
8 STATE BANK, WITH JACK JONES AS THE REMITTER AND
9 IT IS PAYABLE TO FIRST PALMETTO IN THE AMOUNT OF
10 \$250,000. IS THIS THE CASH THAT WAS PAID ON
11 BEHALF OF H&M FOR THE LOAN SALES AGREEMENT,
12 TOWARDS THE PURCHASE PRICE OF \$5,000,000?

13 **A** I BELIEVE SO.

14 **Q** IS THIS THE ONLY CASH THAT WAS PAID WITH REGARD
15 TO THE TRANSACTION ON JUNE 30TH?

16 **A** I BELIEVE SO.

17 **Q** IS THAT YOUR SIGNATURE ON THE BOTTOM SIGNIFYING
18 THAT YOU DID RECEIVE THIS CASHIERS CHECK?

19 **A** THAT'S RIGHT.

20 **Q** DO YOU REMEMBER BEING HANDED THAT AT DICKIE
21 LESTER'S OFFICE OR DO YOU RECALL?

22 **A** I DON'T RECALL. I WOULD ASSUME SO, BUT I DON'T
23 RECALL.

24 **Q** IF WE LOOK AT EXHIBIT "41", "42" AND -- NO, WAIT
25 A MINUTE. LET'S LOOK AT EXHIBIT "41". IT IS

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH SC 29582 MICHAEL.MCCARTHY@SCRP.COM

1 ENTITLED BILL OF SALE. IS THIS ONE OF THE
2 DOCUMENTS THAT BRENT HUTTO WOULD HAVE HAD WITH
3 REGARD TO THE LOAN SIDE OF THE TRANSACTION OR IS
4 THIS ONE OF THE DOCUMENTS THAT YOU AND THE
5 TRANSACTION LAWYERS WOULD HAVE HAD HAVING TO DO
6 WITH THE SALE DOCUMENTATION?

7 **A** THIS IS THE SALE DOCUMENTATION.

8 **Q** THIS BILL OF SALE IS BETWEEN FIRST PALMETTO AS
9 THE SELLER AND H&M AS THE BUYER AND YOU ARE
10 SELLING THEM THE RIGHTS, TITLE, AND INTEREST OF
11 FIRST PALMETTO TO THE BJC LOAN, IS THAT RIGHT?

12 **A** IT IS WHAT IT SAYS.

13 **Q** IT SAYS "THIS BILL OF SALE IS EXECUTED WITHOUT
14 RECOURSE AND WITHOUT REPRESENTATION OR
15 WARRANTIES OF ANY KIND OR NATURE, EXPRESSED OR
16 IMPLIED IMPOSED BY LAW EXCEPT AS PROVIDED IN THE
17 LOAN SALES AGREEMENT." AGAIN, DO YOU KNOW WHAT
18 SIGNIFICANCE, IF ANY, THAT THIS BILL OF SALE HAS
19 INCLUDING THE LANGUAGE THAT THE BILL OF SALE IS
20 EXECUTED WITHOUT RECOURSE?

21 **A** NO.

22 **Q** WAS THIS DOCUMENT DRAFTED BY YOUR TRANSACTION
23 COUNSEL?

24 **A** YES.

25 **Q** THE NOTE THAT WAS SOLD AS PART OF THIS

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAELMCCARTHY@SC.RR.COM

1 TRANSACTION TO H&M WAS THE JUNE 17TH, 2008 NOTE
2 AND THE ORIGINAL PRINCIPAL AMOUNT OF
3 \$5,573,146.62 ACCORDING TO EXHIBIT "A", IS THAT
4 CORRECT?

5 **A** I BELIEVE SO.

6 MR. SHORT: DID YOU SAY JUNE OR
7 JANUARY?

8 MS. COOK: I MIGHT HAVE SAID JUNE
9 AND MENT JANUARY. JANUARY 17,
10 2008.

11 **Q** DID YOU UNDERSTAND THIS TRANSACTION WITH H&M?
12 DID H&M GIVE BACK TO FIRST PALMETTO AND
13 ASSIGNMENT OF THE BJC LOAN AS COLLATERAL FOR THE
14 \$4,750,000 NOTE?

15 **A** CORRECT.

16 **Q** WHAT WOULD ENTITLE FIRST PALMETTO TO OBTAIN THE
17 COLLATERAL OF THE BJC LOAN BACK FROM H&M?

18 **A** TO REPOSSESS IT?

19 **Q** YES.

20 **A** THE TERMS OF THE LOAN DOCUMENTATION WOULD
21 CONTROL THAT.

22 **Q** UNDER YOUR UNDERSTANDING UNDER THE LOAN
23 DOCUMENTS, WHAT WOULD HAVE TO HAPPEN FOR FIRST
24 PALMETTO TO EXERCISE ITS RIGHTS TO THE
25 COLLATERAL OF THE BJC LOAN?

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29585 MICHAEL.MCCARTHY@MABRYCOURTREPORTING.COM

1 **A** "56"?

2 **Q** YES, SIR. "56".

3 **A** OKAY.

4 **Q** DID YOUR TRANSACTIONAL COUNSEL DRAW UP THE
5 PLEDGE AGREEMENTS FOR THE CERTIFICATES OF
6 DEPOSIT THAT WERE PART OF THE SECURITY OF THE
7 H&M LOAN TRANSACTION?

8 **A** I THINK SO.

9 **Q** THE CD'S THAT WERE PLEDGED WERE CD'S OF MR.
10 JONES NOT OF H&M, IS THAT CORRECT?

11 **A** TO THE BEST OF MY KNOWLEDGE.

12 **Q** COULD YOU LOOK AT EXHIBIT "60". WHAT IS EXHIBIT
13 "60"?

14 **A** I THINK THIS IS AN ASSIGNMENT FOR WHEN THE CD'S
15 COME FORWARD FROM THE OTHER BANK'S TO OUR BANK.
16 THIS IS AN ASSIGNMENT OF THE ACCOUNT WHEN THE
17 FUNDS, WHEN THE INTEREST CARRY FUNDS ARE BROUGHT
18 OVER. THIS WAS SIGNED SO THAT WHEN WE DEPOSIT
19 THESE, IMMEDIATELY, WE HAVE AN IMMEDIATE
20 ASSIGNMENT. I THINK THIS IS WHAT THIS SAYS.
21 THIS IS A BRENT QUESTION.

22 **Q** THIS IS AN ASSIGNMENT EXECUTED BY JACK JONES IN
23 HIS INDIVIDUAL CAPACITY, ASSIGNING CERTAIN
24 CERTIFICATES OF DEPOSIT TO FIRST PALMETTO?

25 **A** ONE ACCOUNT. IS THERE AN ACCOUNT NUMBER?

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803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRB.COM

1 **Q** IT LOOKS LIKE...

2 **A** 41. SO, THIS IS AN ASSIGNMENT OF FUNDS IN THAT
3 ACCOUNT.

4 **Q** THAT ACCOUNT IS A PERSONAL ACCOUNT OF MR. JONES?

5 **A** I DON'T KNOW.

6 **Q** THAT IS WHAT IT SAYS ON THE DOCUMENT, RIGHT? IS
7 THAT WHAT IT SAYS ON THE DOCUMENT?

8 **A** WHERE DOES IT SAY IT?

9 **Q** AT THE TOP. JACK H. JONES AND THEN IT MR. JONES
10 SIGNED IT AT THE BOTTOM.

11 **A** RIGHT.

12 **Q** COULD I ASK YOU TO LOOK AT EXHIBIT "62".

13 **A** YES.

14 **Q** THE DOCUMENT AND I UNDERSTAND THAT THIS MIGHT BE
15 A BRENT HUTTO QUESTION, AGAIN. THE DOCUMENT IS
16 CALLED AN AUTOMATIC TRANSFER AUTHORIZATION.
17 WHAT IS THIS DOCUMENT?

18 **A** I BELIEVE THE INTENT OF THIS DOCUMENT IS TO
19 AUTOMATICALLY TRANSFER FUNDS FROM THE DEPOSIT
20 ACCOUNT TO THE LOAN FOR INTEREST PAYMENT ON THE
21 LOAN.

22 **Q** MR. JONES SIGNED THIS DOCUMENT IN HIS INDIVIDUAL
23 CAPACITY?

24 **A** IT APPEARS SO.

25 **Q** SO, MR. JONES IN SIGNING THIS DOCUMENT WAS

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1 A DECISION, WHETHER STRATEGICALLY OR OTHERWISE,
2 INSTEAD OF INCLUDING ALL THESE MATTERS IN ONE
3 ACTION TO SEPARATE THEM INTO FOUR ACTIONS?

4 A HE MAY HAVE ASKED ME HOW TO DO IT PROCEDURALLY,
5 BUT, GENERALLY, I YIELD TO THE DISCRETION OF THE
6 FORECLOSURE ATTORNEY. WHATEVER THEY --
7 DIFFERENT FORECLOSURE ATTORNEYS DO IT DIFFERENT
8 WAYS. SO, WHATEVER THEY ARE GENERALLY INCLINED
9 TO DO I DON'T DISAGREE WITH.

10 Q DO YOU HAVE ANY KNOWLEDGE OF WHY HE CHANGED THE
11 WAY, IN WHICH, HE FILED THE ACTIONS FORM THE
12 FEBRUARY FILING WHEN HE PUT IT ALL IN ONE ACTION
13 AND THEN IN JUNE, WHERE HE BROKE IT UP INTO FOUR
14 ACTIONS?

15 A I DON'T KNOW WHY HE DID THAT.

16 Q DID I UNDERSTAND YOU CORRECTLY, THAT OTHER THAN
17 THIS TRANSACTION AND EXCLUDING ANY SALES OF
18 MORTGAGE LOANS TO FREDDIE MAC AND FANNIE MAE
19 THIS IS THE ONLY SALE OF A LOAN BY FIRST
20 PALMETTO TO A THIRD-PARTY THAT HAS GONE TO
21 CONCLUSION, THE SALE HAS OCCURRED, THAT YOUR
22 AWARE OF?

23 A THAT I AM AWARE OF, SINCE I HAVE BEEN AT THE
24 BANK.

25 Q SO, THAT IS YES, THAT I AM AWARE OF IT?

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MICHAEL J. MCCARTHY (843) 957-7652

803 ANNE ST. NORTH MYRTLE BEACH, SC 29582 MICHAEL.MCCARTHY@SCRP.COM

1
2 STATE OF SOUTH CAROLINA

IN THE COURT OF
COMMON PLEAS

3
4 COUNTY OF HORRY.

09-CP-26-5550

5
6
7 HOTEL AND MOTEL HOLDINGS, LLC,

8 PLAINTIFF,

9 -VS-

10 WENDY J. BELLAMY,

11 DEFENDANT/THIRD PARTY PLAINTIFF,

12 -VS-

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

15 THIRD PARTY DEFENDANTS,

16 DEPOSITION OF

17
18 **BRENT HUTTO**

19 JUNE 8, 2010

20 1:42 P.M. THROUGH 5:37 P.M.

21
22 AS TAKEN AND TRANSCRIBED BY JERRY S.
23 MABRY, NOTARY PUBLIC AND VERBATIM REPORTER, IN THE
24 OFFICE OF THE COOK AND ROY LAW FIRM, 10409 KINGS
HIGHWAY NORTH, N. MYRTLE BEACH, SOUTH CAROLINA
25 29572.

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4 BELONGING TO THE COURT REPORTER. ANY AND ALL
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6 COURT REPORTER.

7
8 A P P E A R A N C E S

9 FOR THE PLAINTIFF; AUDRA M. BYRD, ESQ.
10 JONES AND GODWIN, TURNER PADGET
11 THIRD PARTY DEF: 2411 N. OAK STREET, SUITE 301
 MYRTLE BEACH, S.C. 29577

12 FOR THE DEFENDANT, KATHRYN M. COOK ESQ.
13 THIRD PARTY PLF: COOK & ROY
 10409 N. KINGS HIGHWAY
 N. MYRTLE BEACH, S.C. 29572

14
15 FOR THIRD PARTY WILLIAM H. SHORT, JR., ESQ.
16 DEFENDANT: HAYNSWORTH, SINKLER & BOYD
 1201 MAIN ST., 22ND FLOOR
 COLUMBIA, S.C. 29201

17 AND

18
19 FOR FIRST PALMETTO: SAMMY SMALL, JR., ESQ.
20 FIRST PALMETTO BANK
 COLUMBIA, S.C.

21
22 FOR PATEL, THIRD WILLIAM W. DESCHAMPS, JR.,
23 PARTY DEFENDANT: ESQ.
24 1551 21ST AVE., N. STE. 14
 MYRTLE BEACH, S.C. 29577

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INDEX TO EXAMINATION

DIRECT EXAMINATION BY MS. COOK: PAGE 5

EXHIBITS

DEFENDANT' S:

2.	BRENT HUTTO NOTICE OF DEPOSITION AND SUBPOENA	PAGE 8
9.	BJC SETTLEMENT STATEMENT	PAGE 71
10.	DEED TO BJC	PAGE 73
11.	BJC MORTGAGE	PAGE 74
12.	AMERICANA MORTGAGE	PAGE 76
13.	WENDY BELLAMY MORTGAGE	PAGE 76
14.	HAND DRAWN MAP BY MS. COOK	PAGE 76
15.	BJC UCC	PAGE 79
16.	BJC ASSIGNMENT OF RENTS & LEASES ..	PAGE 80
17.	AMERICANA ASSIGNMENT OF RENTS AND LEASES	PAGE 80
18.	BELLAMY ASSIGNMENT OF RENTS AND LEASES	PAGE 80
19.	2008 NOTE RENEWAL FOR 5 MILLION ...	PAGE 82
26.	H&M ARTICLES OF ORGANIZATION	PAGE 120
27.	SOUTH CAROLINA SECRETARY OF STATE CERTIFICATE OF EXISTENCE OF H&M ...	PAGE 121
28.	IRS EIN NUMBER FOR H&M	PAGE 121

MABRY COURT REPORTING
Verbatim Reporters

Jerry S. Mabry
1607 Magnolia Drive
N. Myrtle Beach, SC 29582
(843) 249-2831

1	29.	H&M OPERATING AGREEMENT	PAGE 122
2	30.	SOUTH CAROLINA SECRETARY OF STATE FILING AGENT	PAGE 123
3	33.	SIGNED LOAN AGREEMENT WITH H&M	PAGE 151
4	34.	ADDENDUM TO LOAN AGREEMENT WITH H&M	PAGE 153
6	36.	LOAN APPLICATION DATED 6/30/09	PAGE 124
7	47.	H&M NOTE FOR \$4,750,000.00	PAGE 129
8	48.	H&M MORTGAGE TO FIRST PALMETTO	PAGE 132
9	49.	H&M ASSIGNMENT OF LEASES AND RENTS	PAGE 133
10	60.	JACK JONES ASSIGNMENT OF DEPOSIT ...	PAGE 135
11	61.	HYPOTHECATION ON CD BY JACK JONES ..	PAGE 138
12	62.	AUTOMATIC TRANSFER AUTHORIZATION ...	PAGE 140
13	63.	JACK JONES SIGNATURE CARD	PAGE 141
14	64.	H&M AGREEMENT TO PROVIDE INSURANCE .	PAGE 146
15	66.	ERRORS & OMISSIONS AGREEMENT	PAGE 148
16	81.	GRANT OF OWNERSHIP INSURANCE CERTIFICATE	PAGE 164
17	84.	LOAN APPROVAL MEMO	PAGE 61
18	85.	NOTE FROM JACK JONES TO FIRST PALMETTO	PAGE 65
19	86.	LOAN RENEWAL MEMO FOR `07	PAGE 86
20	87.	COMMITMENT LETTER DATED 11/24/04 ...	PAGE 65
21	90.	EMAIL FROM HUTTO TO BULL, WILDER, HANSON, ETC.	PAGE 159
22	91.	PAYMENT HISTORY	PAGE 104
23			
24			
25			

MABRY COURT REPORTING
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1607 Magnolia Drive
N. Myrtle Beach, SC 29582
(843) 249-2831

— Brent Hutto - Cross
Examination by Ms. Cook

1 Q SO YOU DO KEEP ONE BUT YOUR ... A DAILY
2 CALENDAR ...

3 A CORRECT. AND I KEEP THAT ...

4 Q FOR A MONTH AND THEN YOU SHRED IT?

5 A CORRECT.

6 Q SINCE THE INSTITUTION OF THIS LITIGATION BY
7 FIRST PALMETTO IN JUNE OF 200 ... WELL, LET
8 ME BACK UP. IN FEBRUARY OF 2009, THAT
9 LITIGATION WAS SUBSEQUENTLY DISMISSED ELEVEN
10 DAYS LATER. BUT SINCE FEBRUARY OF 2009, HAS
11 ANY COUNSEL ADVISED YOU NOT TO DESTROY OR
12 SHRED ANY DOCUMENTS?

13 A NO.

14 Q FROM FEBRUARY, 2009 FORWARD, WOULD YOU HAVE
15 KEPT THAT ON A DESK CALENDAR AND THEN JUST
16 DESTROYED IT MONTHLY JUST IN THE NORMAL
17 COURSE OF BUSINESS?

18 A YES, I WOULD HAVE. I MEAN, I WOULD NOT HAVE
19 A RECORD OF THAT.

20 Q HAVE YOU EVER BEEN A PARTY, PLAINTIFF OR
21 DEFENDANT TO A LAWSUIT?

22 A NO.

23 Q HAVE YOU EVER TESTIFIED IN COURT BEFORE?

24 A NO.

25 Q WHILE YOU HAVE BEEN WITH FIRST PALMETTO SINCE

1 INTRODUCED INTO EVID-
2 ENCE AS DEFENDANT'S
3 EXHIBIT "85".

4 Q AND YOU DID NOT SIGN ... I NOTE THAT'S NOT
5 YOUR SIGNATURE ON THE NOTE ON BEHALF OF THE
6 BANK, IT'S MR. WILDER'S, CORRECT?

7 A CORRECT.

8 Q DOES THAT AID YOU IN ANY WAY IN DETERMINING
9 IF, ON JANUARY 14, 2005, YOU WERE VICE
10 PRESIDENT OF COMMERCIAL LENDING OR IF YOU HAD
11 BEEN PROMOTED TO SENIOR VICE PRESIDENT?

12 A IT DOES NOT.

13 Q OKAY. IT DOES NOT?

14 A NO.

15 Q EVEN IF YOU HAD BEEN PROMOTED TO SENIOR VICE
16 PRESIDENT, IT STILL WOULD HAVE BEEN WITHIN
17 MR. WILDER'S SCOPE OF RESPONSIBILITY TO HAVE
18 SIGNED THE NOTE?

19 A RIGHT. CORRECT.

20 Q IT'S BEEN ESTABLISHED THAT AT THE TIME OF THE
21 MATURITY OF THIS NOTE, WHICH WAS TWENTY-FOUR
22 MONTHS FROM THE NOTE, ACCORDING TO THE NOTE?

23 A CORRECT.

24 Q SO THAT IN JANUARY, 2007, THE ORIGINAL NOTE
25 WOULD HAVE MATURED. IT'S BEEN ESTABLISHED

1 THAT THAT NOTE WAS RENEWED FOR ANOTHER TWELVE
2 MONTHS, 2007 TO 2008?

3 A THAT'S CORRECT.

4 Q IN THE LAST YEAR, HAVE YOU SEEN THE ORIGINAL
5 OF THAT NOTE, THE PHYSICAL ORIGINAL NOTE?

6 A I DON'T RECALL THAT.

7 Q AND THEN IT'S BEEN ESTABLISHED THAT IN
8 JANUARY OF '08 ... NO, NO, NO. IN '07. I
9 JUST COVERED '07 TO '08. IT'S BEEN ESTAB-
10 LISHED THAT IN JANUARY OF '08 THAT THE LOAN
11 WAS RENEWED AGAIN FOR A TWELVE MONTH TIME
12 PERIOD. IS THAT YOUR UNDERSTANDING?

13 A YES.

14 Q HAVE YOU SEEN THE ORIGINAL OF THE 2008 NOTE
15 WITHIN THE LAST YEAR?

16 A NOT THAT I RECALL.

17 Q IT IS MY UNDERSTANDING THAT IT IS THAT 2008
18 NOTE THAT WAS PURCHASED BY H&M IN JUNE OF
19 2009. IS THAT YOUR UNDERSTANDING?

20 A IT IS.

21 Q DO YOU KNOW IF, AS PART OF THAT PURCHASE, WAS
22 THE ORIGINAL 2008 NOTE, POSSESSION OF IT
23 GIVEN TO H&M?

24 A I DO NOT RECALL THAT. I DO NOT RECALL THAT.
25 I DO NOT BELIEVE IT WAS BUT I DON'T RECALL.

1 WHERE WE WERE. I WAS TOLD WHAT TRANSACTION
2 AND WHAT WE HAD AGREED TO, AND THE EXECUTION
3 OF THE DOCUMENTS.

4 Q WHO TOLD YOU THAT?

5 A I GOT THAT THROUGH THE LOAN COMMITMENT ... OR
6 THE LENDING DOCUMENT, BUT SPECIFICALLY,
7 GENERAL COUNSEL SAID THAT WE HAD DONE THAT.

8 Q SO, THE INFORMATION YOU HAD ABOUT THE TRANS-
9 ACTION, THE H&M PURCHASE TRANSACTION CAME
10 FROM MR. SMALL, JUNIOR?

11 A IT CAME FROM THE LOAN DOCUMENTS, THE
12 APPROVAL, BUT THE ACTUAL COMMUNICATION OF IT
13 CAME FROM OUR GENERAL COUNSEL, YES.

14 Q AND THAT'S MR. SMALL, JUNIOR?

15 A CORRECT.

16 Q AND HE'S AN EMPLOYEE OF THE BANK?

17 A CORRECT.

18 Q NOW, YOU SAID THE LOAN APPROVAL. IS THERE
19 ...

20 A THE DOCUMENT ... THIS.

21 Q SO, SIMILAR TO WHAT Y'ALL CALL YOUR LOAN
22 APPROVAL MEMO?

23 A LOAN APPROVAL.

24 Q LOAN APPROVAL MEMO?

25 A CORRECT.

1 Q IT WOULD BE A LOAN APPROVAL MEMO FOR THE H&M
2 TRANSACTION?

3 A CORRECT.

4 Q WHEN YOU SAW THAT LOAN APPROVAL MEMO, IT HAD
5 ALREADY BEEN PREPARED BY SOMEONE OTHER THAN
6 YOURSELF?

7 A CORRECT.

8 Q DID YOU PLAY ANY PART IN THE DUE DILIGENCE
9 THAT THE BANK UNDERTOOK WITH REGARDS THE MEMO
10 OR THE LOAN COMMITMENT OR THE TERMS OF THIS
11 TRANSACTION?

12 A DID NOT.

13 Q DO YOU KNOW WHO DID UNDERTAKE ROLES WITH
14 REGARDS TO DUE DILIGENCE THAT THE BANK UNDER-
15 TOOK?

16 A MY ASSUMPTION IS THE LOAN COMMITTEE WAS
17 INVOLVED WITH THAT.

18 Q HAVE YOU EVER SEEN A LOAN COMMITMENT LETTER
19 WITH REGARDS TO THE TRANSACTION?

20 A HAVE NOT.

21 Q YOU DISCUSSED THE MATTER WITH MR. SMALL,
22 JUNIOR, AND YOU SAW THE LOAN APPROVAL MEMO?

23 A CORRECT.

24 Q FROM THAT INFORMATION, WHAT DID YOU THEN DO?

25 A ACTED ON WHAT WE HAD DETERMINED THE DEAL WAS

1 GONNA BE. THAT WE HAD AGREED TO.

2 Q WHEN YOU SAY, "WE", YOU'RE TALKING ABOUT
3 FIRST PALMETTO?

4 A FIRST PALMETTO, CORRECT.

5 Q DID YOU DRAFT THE DOCUMENTS TO CARRY OUT ON
6 THE BANK'S BEHALF THE DOCUMENTATION TO TAKE
7 CARE OF IT?

8 A WELL, I DRAFTED A PORTION OF THE INTERNAL
9 DOCUMENTS FOR US. I THINK OUR ATTORNEYS DID
10 SOME OF THE DOCUMENTATION ... DRAFTED SOME OF
11 THE DOCUMENTS.

12 Q PRIOR TO THE H&M TRANSACTION, HAD YOU BEEN
13 INVOLVED IN ANY OTHER TRANSACTIONS WHERE
14 FIRST PALMETTO SOLD LOANS TO A THIRD PARTY
15 THAT WERE NOT IN THE BANKING INDUSTRY? NOT
16 LIKE SELLING TO FANNIE MAE, FREDDIE MAC OR
17 WHOEVER SAVINGS AND LOANS SELL THEM TO. I'M
18 TALKING SELLING THEM TO A THIRD PARTY
19 PURCHASER SIMILAR TO H&M OR ...

20 A NOT ME SPECIFICALLY, NO. NOT THAT I RECALL.

21 Q WERE YOU AWARE OF WHETHER OR NOT THE BANK,
22 FIRST PALMETTO, HAD SOLD LOANS TO THIRD
23 PARTIES, NOT THIRD PARTIES IN THE NORMAL
24 COURSE OF WHO YOU SELL LOANS TO?

25 A I HAVE NO ... I COULDN'T ... I'VE BEEN TOLD

- 1 THAT BUT I HAVE NO DIRECT KNOWLEDGE OF THAT.
- 2 Q SINCE THE H&M TRANSACTION, WHICH I THINK
- 3 CLOSED ON JUNE 30TH 2009, HAVE YOU BEEN
- 4 INVOLVED IN ANY OTHER TRANSACTIONS WHERE
- 5 FIRST PALMETTO SOLD LOANS TO THIRD PARTIES
- 6 NOT IN THE NORMAL COURSE OF SELLING LOANS ON
- 7 THE MARKET?
- 8 A I HAVE NOT.
- 9 Q ARE YOU AWARE OF WHETHER OR NOT FIRST
- 10 PALMETTO HAS SOLD OTHER LOANS?
- 11 A NOT TO MY KNOWLEDGE.
- 12 Q BUT YOU DRAFTED NO DOCUMENTS OR PORTIONS OF
- 13 DOCUMENTS FOR ANY OTHER SIMILAR TRANSACTION?
- 14 A CORRECT.
- 15 Q WHAT DID YOU GO BY IN ORDER ... WHAT DID YOU
- 16 UTILIZE TO ASSIST YOU IN DRAFTING THE DOCU-
- 17 MENTS OR PORTIONS OF DOCUMENTS THAT YOU DID
- 18 DRAFT?
- 19 A SAME. ALL OUR (INAUDIBLE) SYSTEMS AS FAR AS
- 20 DOCUMENTS GO.
- 21 Q WERE YOU RESPONSIBLE OR DID YOU GATHER IN ANY
- 22 WAY ANY DOCUMENTATION TO VERIFY IN DEALING
- 23 WITH DUE DILIGENCE CONCERNING THE FORMATION
- 24 OF H&M?
- 25 A DID NOT.

1 Q THE APPLICATION IS DATED THE SAME DAY AS THE
2 CLOSING, CORRECT?

3 A YES, IT IS.

4 Q THE BORROWER DID NOT FILL OUT THIS LOAN
5 APPLICATION PRIOR TO THE CLOSING OF THE LOAN?

6 A AGAIN, WE OBTAINED THIS INFORMATION FROM THE
7 ATTORNEY AS FAR AS THEIR PERSONAL INFORMA-
8 TION, BUT NO, WE DID NOT DO THAT.

9 Q TYPICALLY, WOULD THE BORROWER FILL OUT A LOAN
10 APPLICATION ON THE DAY OF THE CLOSING OR
11 WOULD THEY FILL OUT THE LOAN APPLICATION
12 PREVIOUS TO THE DATE OF THE CLOSING?

13 A IT IS NOT ... TYPICALLY, YES.

14 Q TYPICALLY, THEY'D FILL OUT A LOAN APPLICATION
15 PRIOR ...

16 A TYPICALLY, YOU HAVE AN APPLICATION PRIOR TO
17 CLOSING, YES.

18 Q THAT WOULD BE PART OF THE TYPICAL DUE DILI-
19 GENCE THAT THE BANK WOULD DO BEFORE MAKING
20 THE LOAN?

21 A IT'S NOT UNCOMMON TO HAVE AN APPLICATION LIKE
22 THIS DONE AT CLOSING, BUT AS A MATTER ...
23 NORMALLY, YES, IT'S DONE PRIOR TO THAT.

24 Q EVEN THOUGH YOU MIGHT HAVE A BORROWER SIGN A
25 LOAN APPLICATION ON THE DAY OF CLOSING,

- 1 A LET ME CLARIFY THAT TOO. I'M REALLY NOT SURE
2 OF THE AMOUNT BECAUSE AT THE TIME THIS
3 CLOSED, WE TOOK AN ASSIGNMENT FROM OTHER
4 BANKS. THE CDS WERE IN PLACE THEN AND HAD
5 NOT MATURED. SO, I'M NOT REAL SURE WHAT THIS
6 ... I BELIEVE WE JUST PUT THIS IN EFFECT WHEN
7 THOSE CDS MATURED THAT WE COULD PLACE THE
8 MONEY IN THIS ACCOUNT. SO, I'M NOT ... I
9 DON'T BELIEVE ...
- 10 Q YOU DON'T KNOW THAT IT WAS FUNDED?
- 11 A I DON'T BELIEVE IT WAS FUNDED AT THE TIME
12 THIS WAS DONE.
- 13 Q YOU SET UP A CD NUMBER BUT YOU DON'T BELIEVE
14 A CD WAS FUNDED AS OF JUNE 30TH 2009?
- 15 A CORRECT. I BELIEVE IT WAS FUNDED AT THE TIME
16 THAT ...
- 17 Q AS THE CDS MATURED ...
- 18 A CORRECT.
- 19 Q ... THAT HAD BEEN PLEDGED?
- 20 A CORRECT.
- 21 Q BUT IT WAS NO DOUBT CDS AND MONIES OF JACK
22 JONES?
- 23 A CORRECT.
- 24 Q WERE YOU AWARE OF ANY INCOME STREAM THAT H&M
25 HAD AT THE TIME YOU MADE THE LOAN TO H&M?

1 A I'M NOT AWARE OF ANY.

2 Q WERE YOU AWARE OF ANY FUNDING H&M WAS GOING
3 TO HAVE OTHER THAN INFILTRATION OR FUNNELING
4 OF MONEY BY JACK JONES INTO H&M?

5 A WAS NOT AWARE OF ANY.

6 Q THAT WAS THE SOLE SOURCE OF FUNDING OR
7 OPERATING INCOME OR REPAYMENT ABILITY AS YOU
8 UNDERSTOOD IT?

9 A CORRECT.

10 Q AT THE TIME OF THE LOAN?

11 A AT THE TIME OF THE LOAN.

12 Q DID YOU PREPARE OR PLAY ANY PART IN PREPARA-
13 TION OF THE HYPOTHECATION AGREEMENTS?

14 A I DID.

15 Q LET ME SHOW YOU WHAT I HAVE MARKED AS EXHIBIT
16 NUMBER "61". THIS IS A HYPOTHECATION AGREE-
17 MENT DATED JUNE 30, 2009, SIGNED BY JACK
18 JONES IN FAVOR OF FIRST PALMETTO. YOU PRE-
19 PARED THAT DOCUMENT?

20 A I DID.

21 HYPOTHECATION AGREEMENT
22 DATED 6/30/09 FROM JACK
23 JONES TO FIRST PALMETTO
24 MARKED FOR IDENTIFICA-
25 TION AND INTRODUCED

1 YOU TELL ME WHAT OCCURRED THAT PROMPTED YOU TO
2 SEND THAT EMAIL?

3 A JUST THE GENERAL CONDITION OF THE LOAN AT THE
4 TIME. WE FELT LIKE IT WAS GOING TO BE AN
5 ISSUE, A COLLECTION ISSUE, AND WE DID NOT WANT
6 THREE DIFFERENT PEOPLE TALKING TO THEM.

7 Q IN PARTICULAR, THIS SAYS, "ADDITIONALLY, ANY
8 FUTURE DISCUSSION WITH CASEY SHROFF IS NOT
9 AUTHORIZED." WHY IS THAT LAST SENTENCE IN
10 THAT MEMO OF FEBRUARY 3, 2009?

11 A THERE WAS A DISCUSSION THAT CASEY SPECIFICALLY
12 HAD BEEN CALLING NUMEROUS PEOPLE AT THE TIME,
13 AND HE WAS NOT AN ACTUAL MEMBER OF BJC. AT
14 THAT POINT, WE DID NOT WANT TO FURTHER DISCUSS
15 ANYTHING.

16 Q WHEN YOU SAY, "THERE WAS SOME DISCUSSION THAT
17 CASEY HAD BEEN CALLING OTHER PEOPLE", LIKE A
18 DAVID BRITTAIN, LIKE A GEORGE BUCHANAN ...

19 A NO. HE HAD BEEN TRYING TO CALL US SPECIFIC-
20 ALLY TO DISCUSS THE LOAN. AT THAT POINT, WE
21 WERE NOT GONNA DISCUSS IT BECAUSE HE WAS NOT A
22 PARTY OF BJC.

23 Q BUT PREVIOUS TO THAT YOU HAD BEEN TALKING TO
24 HIM ABOUT THE LOAN?

25 A I HAD DISCUSSED THINGS WITH HIM, SPECIFICALLY.

4
ve
N

181-11-01-003		
181-11-01-002 Emerald Shores Lots 1+2 B2C	181-11-01-001 64 units Lots 3+4	181-10-32-001 Holiday Sands North

4
4
AV.
N

Ocean Blvd

181-10-10-006 Annex 22 units Wendy + Harvey L41, B113	181-10-10-007 ES Park B3C L43, B113	HSN	Pavilack	HSN	Chandler
--	--	-----	----------	-----	----------

Flag street

181-10-10-005 Rainbow Court 126 units Americana Lots 2-9, B121		HSN
181-10-10-004 Americana		Grivakis
181-10-10-003 Americana		Hueks
181-10-10-002 Americana		181-10-10-016 2 houses Wendy Smith
181-10-10-001 Americana		181-10-10-001 1 house Americana

Chesler street

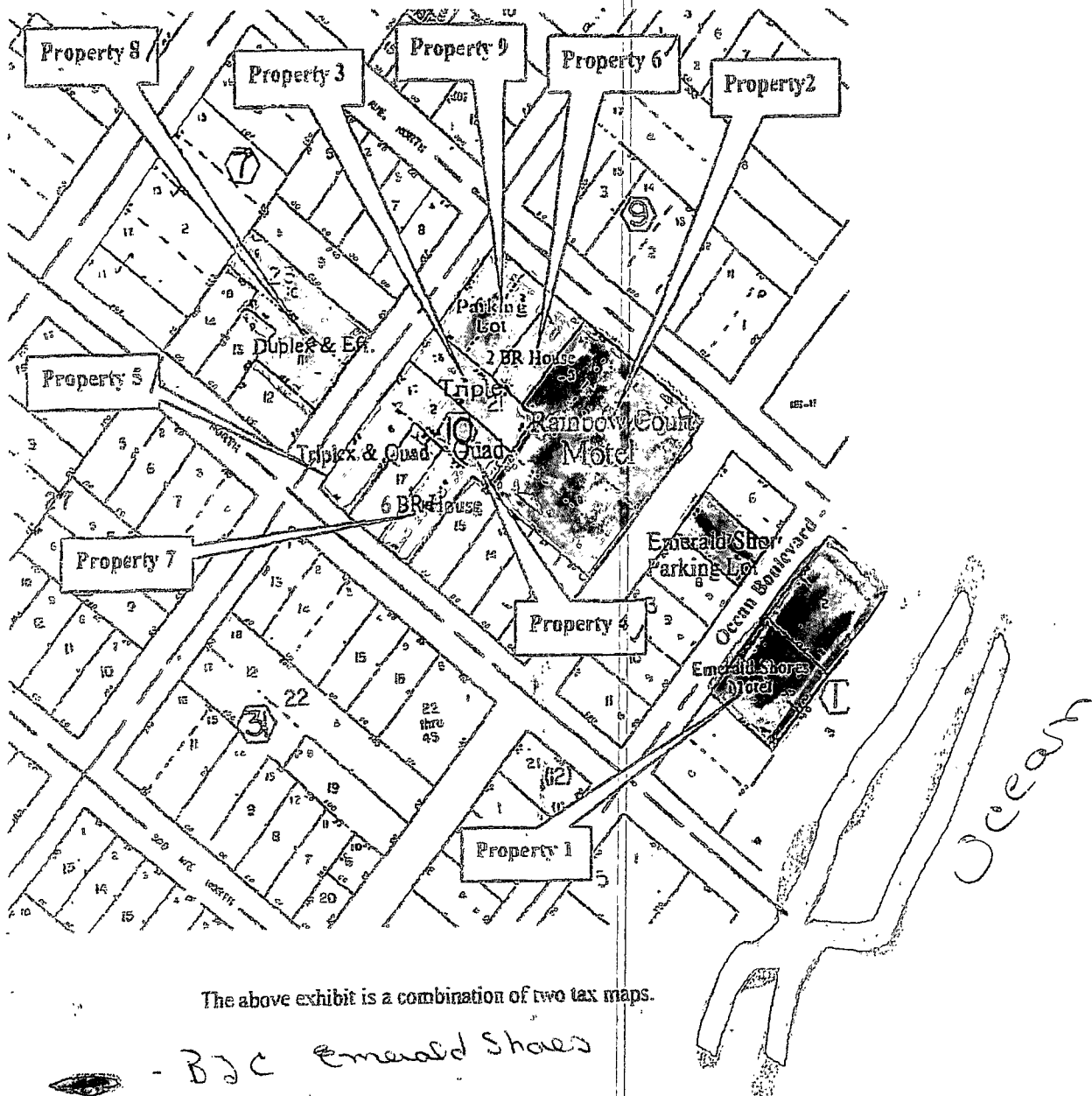
181-10-07-008 Wendy + Harvey Lautman	Lautman Lau	181-10-07-010 Americana	181-10-07-011 Garrison
Bell		Ames	Paole
Riderette			Hurt
181-10-07-004 Paraschos	181-10-07-002 Tropical Plaza		

DEPOSITION
EXHIBIT

7-23-10 J&K

EXHIBIT A

TAX MAP



The above exhibit is a combination of two tax maps.

-  - BJC Emerald Shore
-  - Americana Rainbow Court
-  - Americana Long Term Rentals
Wendy Bellamy

- other Properties owned by Wendy Bellamy + Harry Jones

SALE AND PURCHASE AGREEMENT

This agreement made this 30th day of August between Seller, James C. Journey and the Buyer, Wendy Jones the following properties:

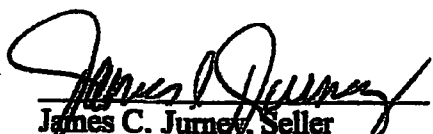
1. LTs 1-2, BL 4, Hotel Sec.
2. LTs 3-4, BL 4, Hotel Sec
3. LT 2, BL 13, Hotel Sec
4. Pt of LT 1, BL 32 Kozy Korner

This is a legal document, upon acceptance by the buyer, it constitutes a binding agreement on both parties.

I hereby offer to sell the premises so stated, subject to the terms and conditions so stated.

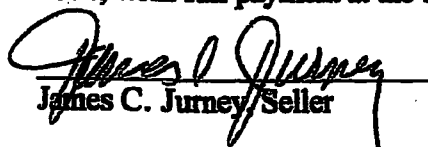
1. I will sell the premises 1,2, and 3 (listed above) for \$6,300,000.00.
2. I will sell the premises 4 (listed above) for \$600,000.00
3. Including in the sale of the premises known as Emerald Shores Motel & The Kozy Corner, are all buildings, structures and improvements thereon, and all fixtures and personal property used exclusively in connecting thereon. This excludes all personal items located on the 3rd floor storage area of the motel and any items at the Kozy Korner.
4. A \$1,000.00 check is paid herewith as a deposit to validate this offer.

This offer is hereby accepted upon the forgoing terms and conditions and the receipt of the deposit.


James C. Journey, Seller


Wendy Jones, Buyer

The closing and transfer of this offer shall take place on or before the 30th of September 2004, with full payment at the time of delivery of the Deeds.


James C. Journey, Seller


Wendy Jones, Buyer

BJC ENTERPRISES, LLC
405 FLAG STREET
MYRTLE BEACH, SC 29577

FIRST PALMETTO SAVINGS BANK, FSB
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577

Loan Number _____
Date 01-14-2005
Maturity Date 01-14-2007
Loan Amount \$ 5,500,000.00
Renewal Of _____

DEPOSITION
EXHIBIT

W 185
172-10 9/8/05

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 EIGHTY THOUSAND AND NO/100** Dollars \$ **5,500,000.00**

☒ **Single Advance:** I will receive all of this principal sum on **01-14-2005**. 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 **01-14-2005** at the rate of **5.500%** per year until **01-14-2007**

☐ **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 _____ %.

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.

ACCRUAL METHOD: Interest will be calculated on a **ACTUAL/365** 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:

23 MONTHLY INTEREST PAYMENTS RANGING FROM \$23543.01 TO \$26065.48 BEGINNING 02-14-2005 AND 1 PAYMENT OF \$5,608,065.48 ON 01-14-2007.

ADDITIONAL TERMS: 23 MONTHLY PAYMENTS OF INTEREST ONLY AND A FINAL (24TH) PAYMENT OF ACCRUED INTEREST AND UNPAID PRINCIPAL.

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): **MORTGAGES DATED 01-14-2005**

(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 Will

BOB WILDER, VICE PRESIDENT

PURPOSE: The purpose of this loan is **PURCHASE PROPERTY FOR DEVELOPMENT**

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 Bellamy
WENDY BELLAMY, MANAGING MEMBER

FILED
HORRY COUNTY, S.C.

2005 JAN 19 AM 9:00

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

BALLERY V. SKIPPER
REGISTRAR OF DEEDS

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE (With Future Advance Clause)

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

MORTGAGOR: BJC ENTERPRISES, LLC

405 FLAG STREET

MYRTLE BEACH, SC 29577

20-1820862

☐ 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
(City) (Zip Code)
(Address)

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

(page 2 of 7)

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

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

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

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

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

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

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

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

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

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

- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

16. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

17. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

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

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims,

(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 Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.

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

19. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

20. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

21. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

23. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend,

(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 guarantied, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

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

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

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

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

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

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

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

(page 6 of 7)

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

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

(Signature) (Date) (Seal)

Signed, Sealed and delivered in the presence of:

(Witness)

Jarvis C. Walk
(Witness)

STATE OF SOUTH CAROLINA, COUNTY OF Harley } ss.

Sworn to and subscribed before me this 14TH day

OF JANUARY, 2005

Jerry C. Walk (Seal)

Notary Public for South Carolina



EXHIBIT "A"

Property 1 (Emerald Shores Motel)

TMS# 181-11-01-002

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

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

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

Property 2 (Emerald Shores Motel)

TMS#181-11-01-001

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

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

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

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

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

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

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

446924
Rice & McDonald, P.A.
Attorneys at Law
P.O. Box 100, Suite 200
Myrtle Beach, S.C. 29577

FILED
HORRY COUNTY, S.C.
2005 JAN 19 AM 9:03
BALLEY V. SKIPPER
REGISTRAR OF DEEDS

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

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE (With Future Advance Clause)

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

MORTGAGOR: AMERICANA MOTEL OF MYRTLE BEACH, INC AKA AMERICANA, INC
20-1820882

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

LENDER: FIRST PALMETTO SAVINGS BANK, FSB
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577
57-0921408

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

See Attached Exhibit "A"

AND Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. does hereby acknowledge that the Premises described herein shall be collateral to secure any present and future indebtedness, obligation or liability howsoever evidenced, owing by BJC Enterprises, LLC to Lender, or any extension or renewal thereof. Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. hereby consents to the extension or renewal from time to time of any such indebtedness, obligation or liability, and waives any notice of such indebtedness, obligation, liability, extension or renewal. Americana Motel of Myrtle Beach, Inc. a/k/a Americana, Inc. further agrees that the within mortgage shall be subject to disposition in accordance with the terms and conditions of the instruments evidencing the indebtedness, obligation and liabilities of BJC Enterprises, LLC.

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

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

MORTGAGE
3904 0028



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.

(page 2 of 7)

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

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

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

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

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

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

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

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

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

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

- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

16. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage 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,

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

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

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

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

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

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

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

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

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

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

Wendy J. Bellamy (Signature) _____ (Date) _____ (Seal)
(Signature) WENDY J. BELLAMY

(Signature) _____ (Date) _____ (Seal)

Signed, Sealed and delivered in the presence of:

[Signature]
(Witness)

Jennifer C. Walsh
(Witness)

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

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Low } ss.

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

Sworn to and subscribed before me this 14TH day

of JANUARY, 2005

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

[Signature]

My commission expires: 4-13-2010

EXHIBIT "A"

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

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

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

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

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

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

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

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

All and singular, all that certain piece, parcel or lot of land, together with the improvements

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

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

Property 4 (Lot 17 Block 21)

TMS#181-10-10-002

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

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

Property 5 (Lot 16 Block 21)

TMS#181-10-10-001

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

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

Property 6 (Lot 3 Block 21)

Portion of TMS#181-10-10-005

All and singular, all that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County,

South Carolina, being more particularly shown and designated as Lot No. Three (3) of Block Twenty- One (21), of the Hotel Section of Myrtle Beach, on a map of the said section made under the supervision of Stanley H. Wright, Engineer, dated June and July 1926, and recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 1, at Page 84, reference to which is craved as forming a part of these presents.

This being the identical property conveyed to the Mortgagor herein by Deed from Lila McCall 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 7 (Lot 6 Block 28 & 1/2 of Lot 7 & 8 & Part of Lot 9)
TMS#181-10-07-010 & 011

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

ALSO

All that certain piece, or lot of land, situate and being in the State of South Carolina, County of Horry; known and designated as one-half ($\frac{1}{2}$) of Lots Seven (7) and Eight (8) of block Twenty-Eight (28) in the Hotel Section; a subdivision of the property of Myrtle Beach according to a plat made under the direction of Stanley H. Wright, consulting engineer, in June 1926, reference to said plat is hereby made. The said lot of land being more particularly described by metes and bounds as follows: Beginning at a stake on Chester Street at 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 ($\frac{1}{2}$) of Lots Number seven (7) and eight (8) mentioned above.

ALSO

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

corner. The above description being twenty five feet by sixty feet, a part of lot 9, block 28, Hotel Section.

ALSO

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

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

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

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

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

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

Parcel 9 (Lot 2 Block 21)

Portion of TMS#181-10-10-005

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

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

Handwritten initials or mark.

FILED
HORRY COUNTY, S.C.
2005 JAN 19 AM 9:02
BALLEKY V. SKIPPER
REGISTRAR OF DEEDS

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

_____ State of South Carolina _____ Space Above This Line For Recording Data _____

REAL ESTATE MORTGAGE
(With Future Advance Clause)

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

MORTGAGOR: WENDY J. BELLAMY

20-1820982

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

LENDER: FIRST PALMETTO SAVINGS BANK, FSB
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577
57-0921408

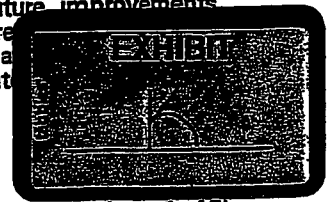
2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

See Attached Exhibit "A" **MORTGAGE**
3904 0020

AND Wendy J. Bellamy does hereby acknowledge that the Premises described herein shall be collateral to secure any present and future indebtedness, obligation or liability howsoever evidenced, owing by BJC Enterprises, LLC to Lender, or any extension or renewal thereof. Wendy J. Bellamy hereby consents to the extension or renewal from time to time of any such indebtedness, obligation or liability, and waives any notice of such indebtedness, obligation, liability, extension or renewal. Wendy J. Bellamy further agrees that the within mortgage shall be subject to disposition in accordance with the terms and conditions of the instruments evidencing the indebtedness, obligation and liabilities of BJC Enterprises, LLC.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

- 10. TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.
- 11. ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:
- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
 - B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
 - C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.
- 12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.
- No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.
- 13. AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.
- Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.
- 14. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
- 15. DEFAULT.** Mortgagor will be in default if any of the following occur:
- A. Any party obligated on the Secured Debt fails to make payment when due;
 - B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
 - C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
 - D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
 - E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
 - F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or

- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

16. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

17. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

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

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims,

(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 Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.

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

19. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

20. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

21. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

23. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend,

(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.** _____

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

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

Entity Name: _____

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

(Signature) (Date)

Signed, Sealed and delivered in the presence of:

[Signature]
(Witness)

Jennifer C. Wake
(Witness)

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

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Way } ss.

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

Sworn to and subscribed before me this 14TH day

of JANUARY, 2005

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

[Signature]

My commission expires: 4-13-2010

EXHIBIT "A"

(Lot 14 Block 21)

TMS#181-10-10-016

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

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

DEFENDANT'S EXHIBIT

15

7-28-10 JSM

UCC1

STATE OF SOUTH CAROLINA FILING FEES:

- \$ 8.00 - For the FIRST TWO pages \$20.00 - Public Finance Transaction
 - \$ 2.00 - For THIRD page \$20.00 - Manufactured Home Transaction
 - \$ 1.00 - Each ADDITIONAL page after the THIRD page.
- For each additional Debtor more than two (2), add \$2.00 for each additional Debtor.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

Ray H. Winters, Esquire

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Rice, MacDonald & Winters, P.A.
950 48th Ave. North, Suite 200
Myrtle Beach, SC 29577

FILED
HOPKINS COUNTY, S.C.
2005 JAN 19 AM 9:01
CLERK OF SUPERIOR COURT
REGISTRAR OF DEEDS

THE ABOVE SPACE IS FOR FILING CHARGE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a ORGANIZATION'S NAME

BJC Enterprises, LLC

OR 1b INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

405 Flag St.

Myrtle Beach

STATE SC

POSTAL CODE 29577

COUNTRY US

1d. TAX ID # (Organizations)

20-1820962

ADDL INFO RE ORGANIZATION DEBTOR

1e TYPE OF ORGANIZATION

LLC

1f JURISDICTION OF ORGANIZATION

South Carolina

1g ORGANIZATIONAL ID # if any

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME

OR 2b INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. TAX ID # (Organizations)

ADDL INFO RE ORGANIZATION DEBTOR

2e TYPE OF ORGANIZATION

2f JURISDICTION OF ORGANIZATION

2g ORGANIZATIONAL ID # if any

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR SP) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME

First Palmetto Savings Bank, FSB

OR 3b INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

1204 48th Avenue North

Myrtle Beach

SC

29577

US

4. This FINANCING STATEMENT covers the following collateral:

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

MORTGAGE
3904 0017

5. ALTERNATIVE DESIGNATION (if applicable)	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOB	SELLER/BUYER	AG LIEN	NON-UCC FILING
6. ☒ This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	7. REQUEST SEARCH REPORT(S) ON UCC 11 FORM		All Debtors		Debtor 1	Debtor 2
8. OPTIONAL FILER REFERENCE DATA						

EXHIBIT

EXHIBIT "A"

Property 1 (Emerald Shores Motel)

TMS# 181-11-01-002

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

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

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

Property 2 (Emerald Shores Motel)

TMS#181-11-01-001

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

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

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

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

Property 4 (Parking Lot)

TMS#181-10-10-007

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

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

B/C ENTERPRISES, LLC 405 FLAG STREET MYRTLE BEACH, SC 29577 BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	FIRST PALMETTO SAVINGS BANK, FSB 1204 48TH AVENUE NORTH MYRTLE BEACH, SC 29577 LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	Loan Number <u>75-073840-1</u> Date <u>01-12-2007</u> Maturity Date <u>01-12-2008</u> Loan Amount <u>\$ 5,573,148.62</u> Renewal <u>01-12-2010</u>
---	---	--

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 57/100 Dollars \$ 5,573,148.62

☒ **Single Advance:** I will receive all of this principal sum on 01-12-2007. No additional advances are contemplated under this note.

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

Conditions: The conditions for future advances are _____

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

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

INTEREST: I agree to pay interest on the outstanding principal balance from 01-12-2007 at the rate of 8.25% per year until 01-12-2008

☐ **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 _____ %.

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/365 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 5.00% 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 interest payments ranging from \$35271.15 to \$38050.20 beginning 02-12-2007 and 1 payment of \$5,612,198.82 on 01-12-2008.

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): MORTGAGES DATED 01-14-2005 & COMMERCIAL SECURITY AGREEMENT DATED 01-14-2005

(This section is for your internal use. Failure to file 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 PURCHASE PROPERTY FOR DEVELOPMENT

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

Wendy Bellamy 1-12-07
B/C ENTERPRISES, LLC
WENDY BELLAMY, MANAGING MEMBER

DEFENDANT'S EXHIBIT

130
11-22-10 JS

75-0738401 (R)

FPSB_001503

FPSB 001504

This document was prepared by:

FIRST PALMETTO SAVINGS BANK, FSB
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577

State of South Carolina

Space Above This Line For Recording Data

MODIFICATION OF MORTGAGE

DATE AND PARTIES. The date of this Real Estate Modification (Modification) is 01-12-2007

_____. The parties and their addresses are:

MORTGAGOR: BJC ENTERPRISES, LLC, FEE SIMPLE

405 FLAG STREET
MYRTLE BEACH, SC 29577

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

BACKGROUND. Mortgagor and Lender entered into a Security Instrument dated 01-14-2005
and recorded on 01-18-2005. The Security
Instrument was recorded in the records of HORRY County, South Carolina at
REGISTER OF DEEDS BOOK 3804 PAGE 0008. The property is located in _____
County at _____.

Described as:

MODIFICATION. For value received, Mortgagor and Lender agree to modify the original Security Instrument. Mortgagor and Lender agree that this Modification continues the effectiveness of the original Security Instrument. The Security Instrument was given to secure the original debts and obligations (whether identified as Secured Debts, Sums Secured, or otherwise) that now have been modified. Together with this Modification, the Security Instrument now secures the following debts and all extensions, renewals, refinancings, modifications and replacements. (Include items such as borrower's name, note or contract amounts, interest rates (whether variable), maturity dates, etc.)

BJC ENTERPRISES, LLC

\$5,573,146.62 LOAN AMOUNT

8.25% FIXED

11 MONTHLY PAYMENTS OF INTEREST ONLY AND A FINAL (12TH) PAYMENT OF ACCRUED INTEREST AND UNPAID PRINCIPAL

MATURITY DATE OF JANUARY 12, 2008

☐ **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by the Security Instrument at any one time will not exceed \$ _____ ☐ which is a \$ _____

☐ increase ☐ decrease in the total principal amount secured. This limitation of amount does not include interest and other fees and charges validly made pursuant to the Security Instrument. Also, this limitation does not apply to advances made under the terms of the Security Instrument to protect Lender's security and to perform any of the covenants contained in the Security Instrument.

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

CONTINUATION OF TERMS. Except as specifically amended in this Modification, all terms of the Security Instrument remain in effect.

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Modification. Mortgagor also acknowledges receipt of a copy of the Modification.

BJC ENTERPRISES, LLC

Wendy Bellamy 1/12/07 (Seal)
(Signature) (Date)
Wendy Bellamy, Managing Member

(Signature) (Date)

(Signature) (Date)

(Signature) (Date)

(Signature) (Date)

(Signature) (Date)

Signed, sealed and delivered in the presence of:

R. L. Z. Wilk
(Witness)

Signed, sealed and delivered in the presence of:

Harold Hester
(Witness)

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Horry } ss.

Personally appeared before me the undersigned witness who, being duly sworn, depose and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Agreement 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 12TH day

of JANUARY, 2007

R. L. Z. Wilk
Notary Public for South Carolina

(Seal) Harold Hester

My commission expires: MY COMMISSION EXPIRES 08/18/2013

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

State of South Carolina

Space Above This Line For Recording Data

MODIFICATION OF MORTGAGE

DATE AND PARTIES. The date of this Real Estate Modification (Modification) is 01-12-2007
The parties and their addresses are:

MORTGAGOR: BJC ENTERPRISES, LLC, FEE SIMPLE
405 FLAG STREET
MYRTLE BEACH, SC 29577

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

BACKGROUND. Mortgagor and Lender entered into a Security Instrument dated 01-14-2007
and recorded on 01-18-2005. The Security
Instrument was recorded in the records of HORRY County, South Carolina at
REGISTER OF DEEDS BOOK 3804 PAGE 0028. The property is located in _____
County at _____.

Described as:

MODIFICATION. For value received, Mortgagor and Lender agree to modify the original Security Instrument. Mortgagor and Lender agree that this Modification continues the effectiveness of the original Security Instrument. The Security Instrument was given to secure the original debts and obligations (whether identified as Secured Debts, Sums Secured, or otherwise) that now have been modified. Together with this Modification, the Security Instrument now secures the following debts and all extensions, renewals, refinancings, modifications and replacements. (Include items such as borrower's name, note or contract amounts, interest rates (whether variable), maturity dates, etc.)

BLC ENTERPRISES, LLC

\$5,573,146.82 LOAN AMOUNT

8.25% FIXED

11 MONTHLY PAYMENTS OF INTEREST ONLY AND A FINAL (12TH) PAYMENT OF ACCRUED INTEREST AND UNPAID PRINCIPAL

MATURITY DATE OF JANUARY 12, 2008

☐ **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by the Security Instrument at any one time will not exceed \$ _____ ☐ which is a \$ _____
☐ increase ☐ decrease in the total principal amount secured. This limitation of amount does not include interest and other fees and charges validly made pursuant to the Security Instrument. Also, this limitation does not apply to advances made under the terms of the Security Instrument to protect Lender's security and to perform any of the covenants contained in the Security Instrument.

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

CONTINUATION OF TERMS. Except as specifically amended in this Modification, all terms of the Security Instrument remain in effect.

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Modification. Mortgagor also acknowledges receipt of a copy of the Modification.

BLC ENTERPRISES, LLC

Wanda Bellamy 1-12-07 (Seal)
(Signature) Wanda Bellamy, MANAGING MEMBER (Date)

(Signature) _____ (Date)

(Signature) _____ (Date) (Seal)

(Signature) _____ (Date) (Seal)

(Signature) _____ (Date) (Seal)

(Signature) _____ (Date) (Seal)

Signed, sealed and delivered in the presence of:

Ruth Z. Willey
(Witness)

Signed, sealed and delivered in the presence of:

Starla D. Hester
(Witness)

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 Agreement 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 12TH day

of JANUARY 2007

Ruth Z. Willey (Seal)
Notary Public for South Carolina

Starla D. Hester

My Commission expires: MY COMMISSION EXPIRES 08/18/2013

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

_____ State of South Carolina _____ Space Above This Line For Recording Date _____

MODIFICATION OF MORTGAGE

DATE AND PARTIES. The date of this Real Estate Modification (Modification) is 01-12-2007
_____. The parties and their addresses are:

MORTGAGOR: BJC ENTERPRISES, LLC, FEE SIMPLE
406 FLAG STREET
MYRTLE BEACH, SC 29577

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

BACKGROUND. Mortgagor and Lender entered into a Security Instrument dated 01-14-2005
_____ and recorded on 01-19-2005 . The Security
Instrument was recorded in the records of Horry County, South Carolina at
REGISTER OF DEEDS BOOK 3804 PAGE 0020 . The property is located in _____
County at _____.

Described as:

MODIFICATION. For value received, Mortgagor and Lender agree to modify the original Security Instrument. Mortgagor and Lender agree that this Modification continues the effectiveness of the original Security Instrument. The Security Instrument was given to secure the original debts and obligations (whether identified as Secured Debts, Sums Secured, or otherwise) that now have been modified. Together with this Modification, the Security Instrument now secures the following debts and all extensions, renewals, refinancings, modifications and replacements. *(Include items such as borrower's name, note or contract amounts, interest rates (whether variable), maturity dates, etc.)*

BJC ENTERPRISES, LLC

\$5,573,148.82 LOAN AMOUNT

8.25% FIXED

11 MONTHLY PAYMENTS OF INTEREST ONLY AND A FINAL (12TH) PAYMENT OF ACCRUED INTEREST AND UNPAID PRINCIPAL

MATURITY DATE OF JANUARY 12, 2008

☐ **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by the Security Instrument at any one time will not exceed \$ _____ ☐ which is a \$ _____
☐ increase ☐ decrease in the total principal amount secured. This limitation of amount does not include interest and other fees and charges validly made pursuant to the Security Instrument. Also, this limitation does not apply to advances made under the terms of the Security Instrument to protect Lender's security and to perform any of the covenants contained in the Security Instrument.

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

CONTINUATION OF TERMS. Except as specifically amended in this Modification, all terms of the Security Instrument remain in effect.

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Modification. Mortgagor also acknowledges receipt of a copy of the Modification.

BJC ENTERPRISES, LLC

Wendy Bellamy 1/10/07 (Seal)
(Signature) _____ (Date) _____

(Signature) _____ (Date) _____

(Signature) _____ (Date) _____

(Signature) _____ (Date) _____

(Signature) _____ (Date) _____

(Signature) _____ (Date) _____

Signed, sealed and delivered in the presence of:
Ruth Willy
(Witness)

Signed, sealed and delivered in the presence of:
Starla D. Hester
(Witness)

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 Agreement 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 12TH day

of JANUARY 2007

Ruth Willy (Seal)
Notary Public for South Carolina

Starla D. Hester

My commission expires:

MY COMMISSION EXPIRES 08/18/2013

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 01 <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

ACCURAL 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 \$47,505.19 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 the 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

SOUTH CAROLINA - UNIVERSAL NOTE

Exempt © 1994, 1991 Bankers Systems, Inc., St. Cloud, MN Form UN-SC 3/7/2002

⑦ 75-084095-9

(page 1 of 2)

FPSB 000839

This document was prepared by:
FIRST PALMETTO SAVINGS BANK, FSB
407 E DEKALB STREET
CAMDEN, SC 29020

State of South Carolina

Space Above This Line For Recording Data

MODIFICATION OF MORTGAGE

DATE AND PARTIES. The date of this Real Estate Modification (Modification) is 01-17-2006
The parties and their addresses are:

MORTGAGOR: BJC ENTERPRISES, LLC, FEE SIMPLE
405 FLAGG STREET
MYRTLE BEACH, SC 29577

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

BACKGROUND. Mortgagor and Lender entered into a Security Instrument dated 01-14-2005
and recorded on 01-19-2005 The Security
Instrument was recorded in the records of HORRY County, South Carolina at
REGISTER OF DEEDS BOOK 3904 PAGE 0108. The property is located in
County at SEE ATTACHED EXHIBIT

Described as.

DEFENDANT'S
EXHIBIT

5-16 12 *2006*

FPSB_000795

MODIFICATION. For value received, Mortgagor and Lender agree to modify the original Security Instrument. Mortgagor and Lender agree that this Modification continues the effectiveness of the original Security Instrument. The Security Instrument was given to secure the original debts and obligations (whether identified as Secured Debts, Sums Secured, or otherwise) that now have been modified. Together with this Modification, the Security Instrument now secures the following debts and all extensions, renewals, refinancings, modifications and replacements. *(Include items such as borrower's name, note or contract amounts, interest rates (whether variable), maturity dates, etc.)*

BJC ENTERPRISES, LLC

\$5,573,146.62

8.25% FIXED

20 YEAR AMORTIZATION / 1 YEAR BALLOON

☐ **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by the Security Instrument at any one time will not exceed \$ _____ ☐ which is a \$ _____
☐ increase ☐ decrease in the total principal amount secured. This limitation of amount does not include interest and other fees and charges validly made pursuant to the Security Instrument. Also, this limitation does not apply to advances made under the terms of the Security Instrument to protect Lender's security and to perform any of the covenants contained in the Security Instrument.

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

CONTINUATION OF TERMS. Except as specifically amended in this Modification, all terms of the Security Instrument remain in effect.

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Modification. Mortgagor also acknowledges receipt of a copy of the Modification.

BJC ENTERPRISES, LLC

Wendy Bellamy 1/17/08 (Seal)
(Signature) (Date)

(Signature) (Date) (Seal)

(Signature) (Date) (Seal)

(Signature) (Date) (Seal)

(Signature) (Date) (Seal)

(Signature) (Date) (Seal)

Signed, sealed and delivered in the presence of:

R. L. Willy
(Witness)

Signed, sealed and delivered in the presence of:

Brooke U. [Signature]
(Witness)

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF HURRY } ss.

Personally appeared before me the undersigned witness who, being duly sworn, depose and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Agreement 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 17TH day

of JANUARY 2008

R. L. Willy (Seal)
Notary Public for South Carolina

Brooke U. [Signature]

My commission expires.

MY COMMISSION EXPIRES 08/18/2013

EXHIBIT "A"

Property 1 (Emerald Shores Motel)

TMS# 181-11-01-002

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

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

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

Property 2 (Emerald Shores Motel)

TMS#181-11-01-001

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

Property 3 (Emerald Shores Motel)

TMS#181-11-01-001

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

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

Property 4 (Parking Lot)

TMS#181-10-10-007

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

These being the identical properties conveyed to the Mortgagor herein by Deed from James C. Journey, dated January 13, 2005 and recorded January 19, 2005 in Mortgage Book 284 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 284 at Page 167 records of the office of the Register of Deeds for Horry County, South Carolina.

This document was prepared by
FIRST PALMETTO SAVINGS BANK, FSB
1204 48TH AVENUE NORTH
MYRTLE BEACH, SC 29577

State of South Carolina

Space Above This Line For Recording Data

MODIFICATION OF MORTGAGE

DATE AND PARTIES. The date of this Real Estate Modification (Modification) is 01-17-2008
The parties and their addresses are

MORTGAGOR: AMERICANA MOTEL OF MYRTLE BEACH, INC AKA AMERICANA, INC, FEE SIMPLE

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

BACKGROUND. Mortgagor and Lender entered into a Security Instrument dated 01-14-2005
and recorded on 01-19-2005 The Security
Instrument was recorded in the records of HORRY County, South Carolina at
REGISTER OF DEEDS BOOK 3904 PAGE 0028. The property is located in
County at SEE ATTACHED EXHIBIT

Described as

DEFENDANT'S
EXHIBIT

5-12
501 13 LHM

FPSB_000802