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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
Alexander S. Macaulay, Circuit Court Judge

Case No. 2011-CP-04-2728
Appellate Case No. 2013-002341

LNv Corporation Respondent

v.

Affordable Hospitality Group-Anderson, LLC;
Diversified Capital Investment Group, LLC; Jay Berlye;
Anderson County, South Carolina, and the State of South
Carolina Defendants,

Of Whom Affordable Hospitality Group-Anderson, LLC;
Diversified Capital Investment Group, LLC; and Jay
Berlye are Appellants.

RECORD ON APPEAL – Volume One

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
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Table of Contents

Page

Volume One

Titlepage

Index 1

Orders

Order Denying Appellants' Motions (September 23, 2013) 5

Order Vacating Interim Order (July 1, 2013) 7

Order Denying 59(e) Motion (June 10, 2013) 9

Order Dismissing Counterclaims (November 14, 2012) 13

Consent Order Appointing Receiver (November 21, 2011) 22

Pleadings

Respondent's Verified Complaint (September 13, 2013) 31

Appellants' Amended Answer & Counterclaim (November 28, 2011) 190

Respondent's Answer to Amended Answer & Counterclaim (January 9, 2012) 266

Respondent's 12(b)(6) Motion to Dismiss (January 9, 2012) 284

Appellants' Rule 59(e) Motion (November 26, 2012) 286

Appellants' Motion to Amend (November 26, 2012) 300

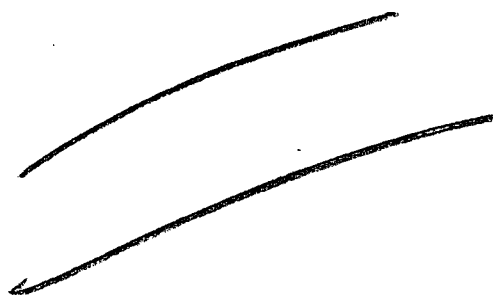
Transcripts

Transcript of Hearing on February 29, 2013 349

Transcript of Hearing on September 12, 2013 382

Memoranda

Appellants' Memorandum Opposing 12(b)(6) Motion (February 28, 2012) 418



Respondent’s Memorandum Supporting 12(b)(6) Motion (Feb. 28, 2012)	436

Volume Two

Appellants’ Supplemental Memorandum Opposing 12(b)(6) Motion (April 2, 2012)	454

Respondent’s Reply Brief (April 12, 2012)	512

Respondent’s Memorandum Opposing 59(e) Motion (May 6, 2013)	556

Respondent’s Memorandum Opposing Motion to Amend (May 6, 2013)	565

Certificate of Counsel	570

Certificate of Service	



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
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ANDERSON SC
IN THE COURT OF COMMON PLEAS
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LNv Corporation,
Plaintiff,
v.
Affordable Hospitality Group-Anderson,
LLC; Diversified Capital Investment Group,
LLC; Jay Berlye; Anderson County, South
Carolina; and the State of South Carolina
Defendants.

COMMON PLEAS AND
GENERAL SESSIONS

CASE NO.: 2011-CP-04-2728

ORDER DENYING DEFENDANTS' RULE 59(e)
MOTIONS FOR RECONSIDERATION
AND
RULE 15 TO AMEND THEIR PLEADINGS

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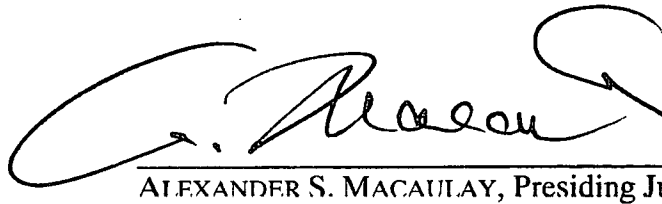
The Defendants' Motion to Alter or Amend, pursuant to Rule 59(e), SCRCP; this Court's November 14, 2012, Order Granting Motion to Dismiss Counterclaims of the Defendants, and the Defendants' Motion to Alter or Amend Judge McIntosh's Form 4C Order, dated August 20, 2013, denying Defendants' Motion to Amend Pleadings and asserting the "[m]atter resides with Judge Macaulay," were heard, together, September 12, 2013. At the hearing, the Defendants, collectively, were represented by Ronald M. Childress, Esquire, and the Plaintiff by Dowse "Brad" Rustin, IV, Esquire, and B. Rush Smith, III, Esquire. Counsel for each party timely filed memoranda with the Court in support or opposition of the respective motions and were heard.

The Defendants, *inter alia* and essentially, seeks clarification of the rulings of the Court, putting forward the arguments heretofore made in their filings and at previous hearings. After careful consideration of the record, to include the able arguments and filings of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Inasmuch as the terms of the document relied upon by the Defendants, dated November 6, 2007, expressly provided that: "If this loan is not closed within ninety (90) days from the date of acceptance, this Commitment will expire," and the loan was not closed within such time, i.e. February 4, 2008, no valid enforceable obligation arose between the parties. *Fender & Latham, Inc. v. First Union of South Carolina*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994). It would be *petitio principii* to argue that the subsequent loan transaction, closed May 15, 2008 — and ultimately defaulted upon by the Defendants after Haven Trust Bank was placed in receivership by the FDIC — created any obligation not expressly provided for in that loan transaction. *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 451 S.E.2d 907 (Ct. App. 1994). Moreover, any events allegedly occurring after the former offer expired would be insufficient to constitute a cause of action based on that offer. Rule 12(b)(6), SCRPC.

Accordingly, the Defendants' Motions to Reconsider, pursuant to Rule 59(e), SCRPC, and to Amend their Pleadings, pursuant Rule 15, SCRPC, are DENIED.

AND, IT IS SO ORDERED.


ALEXANDER S. MACAULAY, Presiding Judge

Walhalla, South Carolina
September 23, 2013

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SC PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

LVN Corporation,

Plaintiff,

vs.

Affordable Hospitality Group-Anderson,
LLC; Diversified Capital Investment
Group, LLC; Jay Berlye; Anderson County,
South Carolina; and the State of South
Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Civil Action No. 2011-CP-04-2728

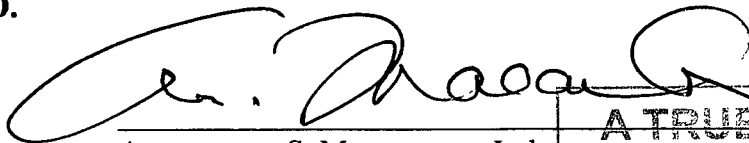
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GENERAL SESSIONS

After a careful consideration of the entire record, the Court vacates the Order entered June 10, 2013, denying Defendants' Rule 59(e) Motion to Reconsider the Order dismissing Defendants' Counterclaims, entered November 14, 2012. Inasmuch as there was a pending "MOTION TO AMEND ANSWER AND CONTERCLAIMS," seeking an amendment of the Defendants' counterclaim by way of a supplemental pleading, this Court finds that the Order denying Defendants' Rule 59(e) motion was improvidently granted. In order that there be a proper and complete disposition of this matter, the parties should be heard on the motions.

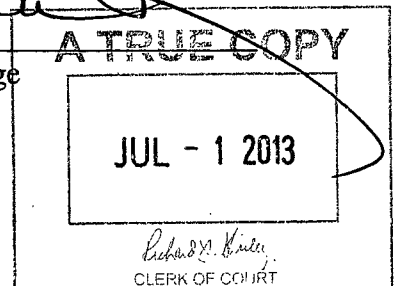
IT IS, THEREFORE, ORDERED that the June 10, 2013, Order denying Defendants' Rule 59(e) Motion to Reconsider is VACATED. It is further ordered that the Defendants' Motion to Amend Answer and Counterclaims and Defendants' Rule 59(e) Motion to Alter or Amend Judgment are to be heard during the next available term of court.

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

July 1, 2013
Walhalla, South Carolina



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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

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IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

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LNV Corporation,

COMMON PLEAS AND
GENERAL SESSIONS

Civil Action No. 2011-CP-04-2728

Plaintiff,)

vs.)

Affordable Hospitality Group-Anderson,
LLC; Diversified Capital Investment
Group, LLC; Jay Berlye; Anderson County,
South Carolina; and the State of South
Carolina,

Defendants.)

ORDER ON DEFENDANTS' MOTION
TO ALTER OR AMEND JUDGMENT

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CLERK OF COURT

This matter is before the Court for the purpose of hearing the Motion to Alter or Amend this Court's Order Granting Plaintiff's Motion to Dismiss the Counterclaims filed by the Defendants, Affordable Hospitality Group-Anderson, LLC; Diversified Capital Investment Group, LLC; Jay Berlye ("Defendants"). The Court obtained extensive briefing from both parties on the issues raised in Plaintiff's Motion to Dismiss and heard extensive oral argument on this matter during a hearing on February 29, 2012. After additional, extensive review of these matters and hearing arguments from counsel for both parties in the form of oral and written submissions, Defendants' Motion to Alter or Amend the Court's prior order granting the Motion to Dismiss the Defendants' Counterclaims is **DENIED**:

1. Defendants raise no new issues for the Court's consideration, but simply reargue its previous positions that: (1) the parties entered into a "3-part" agreement that contemplated "three successive transactions;"¹ (2) that the breach of this alleged 3-part agreement post-dated the

¹ This 3-part contract is alleged to have been: (1) a construction financing loan, (2) an interim "bridge" loan while obtaining SBA 504 financing, and (3) a permanent, 20-year, SBA 504 Loan. Though there is extensive documentation regarding the first construction loan, there is no indication that any documents were ever executed

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releases executed by the Defendants; and (3) the releases only dealt with one part of the 3-part agreement. (Motion to Alter or Amend (“Motion”), pp. 1-2).

2. These were the same issues argued before the Court at the prior hearing on February 29, 2012. The Court addressed each of these issues in its Order Granting Motion to Dismiss Counterclaims filed November 16, 2012. (First Issue: Order, pp. 2-3, 5, 7-8; Second Issue: Order, pp. 5, 7-8; Third Issue: Order, pp. 3-4, 6-8). However, to the extent that AHG now asks for additional clarification of its holding, the Court issues this Order.
3. The Court reiterates its decision in its previous Order that, as admitted by the Defendants in their Amended Answer, any breach of the alleged 3-part agreement arose before November 10, 2009—the date of the most recent Loan Modification Agreement which contained the blanket release language cited in the Court’s prior Order.
4. Regardless of Defendants’ renewed argument that there were “continuing negotiations” regarding the interim “bridge” loan and permanent, SBA 504 Loan, Defendants’ Amended Answer and Counterclaims allege that Plaintiff breached its agreement to obtain these replacement loans *prior to* the execution of the agreements containing the release language. *See* Order, ¶ 3 (citing relevant provisions of Defendants’ Amended Answer). For the sake of clarification, the Court expressly adopts the position articulated in Plaintiff’s briefing on the issue of the releases and the scope of the agreements.
5. Defendants’ claims for breach of contract are based upon the language of a November 6, 2007 Loan Commitment Letter (the “Letter”). The Letter, however, does not contain any terms for these second two “agreements” that Defendants’ now ask this Court to enforce. As articulated by the Plaintiff, the Letter contains numerous provisions stating that it is not final

regarding the second and third listed loans. The only mention of these future, “to be executed” contracts is in the context of the November 6, 2007 Loan Commitment Letter, described below.

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and contemplates that the interim and permanent loans will be agreed upon in the future, subject to additional terms. The Court adopts Plaintiff's arguments as to this issue. A Court cannot enforce a non-final agreement. "To be final, the agreement must extend to all of the terms which the parties intend to introduce and material terms cannot be left for future settlement." McLaurin v. Hamer, 165 S.C. 411, 164 S.E. 2, 5 (1932). The language of the Letter does not evidence the contract asserted by Defendants.

6. The Court additionally recognizes Plaintiff's arguments that it cannot, as a matter of law, guarantee that a potential borrower will, in the future, meet the criteria to qualify for an SBA 504 loan. Because there were qualifications that had to be satisfied before SBA funding, there is no way that the parties could have made such a final agreement at the time they signed the Letter.
7. Defendants' final argument, that the release language in the Loan Modification Agreements only released claims under the "construction loan" portion of the 3-part agreement is without any legal or factual basis. The documents clearly state that they release claims "OF ANY AND EVERY NATURE WHATSOEVER" "RELATING TO THE LOAN...OR ANY OTHER LOAN DOCUMENT." Where a "[r]elease unambiguously sets forth the contracting parties' intent, [the court is] bound by that clearly expressed intent." Bowers v. Dept. of Transp., 360 S.C. 149, 153, 600 S.E.2d 543, 545 (Ct. App. 2004). The Court must, therefore, reaffirm its prior position and enforce the Parties' agreement as it is written.
8. Defendants spend an extensive portion of their Motion arguing "intent," "inferences," and "purposes" of the releases. However, the Court is bound to the language of the agreements entered into by the parties and not the subjective intentions of the Defendants that were not included in the Loan Modification Agreements containing the release language. The Court

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hereby decides to enforce the Loan Modification Agreements as they are written within the "four corners" of the agreements.

9. The Court hereby expressly adopts the positions taken by Plaintiff in regards to the issues presented in its Motion to Dismiss and its Memorandum of Law In Opposition to the Motion to Alter or Amend.

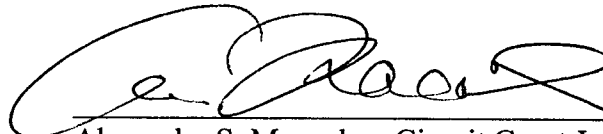
Based on the foregoing and the extensive arguments and briefing of counsel, this Court's Order Granting Plaintiff's Motion to Dismiss is correct. Therefore, it is hereby

ORDERED that Plaintiff's Motion to Alter or Amend this Court's Order Granting the Motion to Dismiss is denied; and

ORDERED that the Court restates and readopts its positions articulated in the original Order.

AND IT IS SO ORDERED

Date: June 10, 2013
Walhalla, South Carolina



Alexander S. Macaulay, Circuit Court Judge

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COMMON PLEAS AND
GENERAL SESSIONS

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

LVN Corporation,

Plaintiff,

vs.

Affordable Hospitality Group-Anderson,
LLC; Diversified Capital Investment
Group, LLC; Jay Berlye; Anderson County,
South Carolina; and the State of South
Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Civil Action No. 2011-CP-04-2728

**ORDER GRANTING MOTION TO
DISMISS COUNTERCLAIMS**

This matter came before this Court on February 29, 2012, on Plaintiff, LVN Corporation's ("LVN") motion to dismiss the counterclaims asserted by Affordable Hospitality Group-Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye (collectively, "Defendants"). Present at the hearing on behalf of LVN were Attorneys B. Rush Smith and Dowse ("Brad") Rustin of Nelson Mullins Riley & Scarborough, LLP. Present on behalf of Defendants were Attorneys Steven E. Buckingham of Gallivan White & Boyd, P.A. and Ron M. Childress. Following the hearing, this Court allowed the parties to submit supplemental briefing and issued a Form 4 Order dated June 7, 2012.

In reaching its decision on this matter, the Court reviewed and considered the following information: (a) LVN's Complaint (with exhibits attached thereto), (b) Defendants' Amended Answer and Counterclaim (with exhibits attached thereto), (c) LVN's amended motion to dismiss the amended counterclaims, (d) LVN's memorandum in support of its motion to dismiss, (e) Defendants' memorandum in opposition to the

motion to dismiss (with exhibits attached thereto), (f) LNV's reply memorandum in support of its motion to dismiss, (g) Defendants' supplemental brief, and (h) LNV's supplemental brief. Having reviewed these submissions and having heard the arguments presented by counsel during the hearing on this motion, the Court **GRANTS** the motion to dismiss Defendants' counterclaims.

Based on the applicable law, materials filed by the parties, and considering the parties' arguments at the hearing, this Court finds as follows:

STATEMENT OF THE CASE / FACTS CONTAINED IN COUNTERCLAIMS

This matter was initially filed as a foreclosure action by LNV against Defendants. The real property that is the subject of this action (the "Subject Property") is a Microtel hotel located in Anderson County, South Carolina. As of the date of filing the Complaint, LNV alleged that it was owed \$4,125,598.66 on the loan covering the Subject Property. Defendants admit that they did not make the payments due under the promissory note, mortgage, and guarantees given to LNV. (*See, e.g.*, Amended Answer and Counterclaim, dated November 28, 2011 (hereinafter "Answer,"), ¶¶ 34 and 116 (admitting Defendants' failure to make payments under Note and Mortgage as demanded) and ¶ 91 (Berlye's refusal to pay guaranty)).

In response to the Complaint, the Defendants filed a series of counterclaims (later amended through an Amended Answer with Counterclaims). Defendants asserted the following claims: (a) breach of contract, (b) breach of the duty of good faith and fair dealing, (c) breach of contract with fraudulent intent, (d) violation of the South Carolina Unfair Trade Practices Act, and (e) tortious interference. In pertinent part, all of the counterclaims revolve around Defendants' assertion that LNV was obligated replace the

construction financing loan (the loan being foreclosed upon) with a permanent loan backed by a United States Small Business Administration ("SBA") 504 guarantee. (See Answer, ¶ 227 ("Plaintiff...was required to grant the permanent loan and assist the Defendants in obtaining the SBA 504 Interim Loan")). The basis of Defendants' claims are an unsigned November 6, 2007, "Loan Commitment" Letter issued by Haven Trust Bank (the original lender that was later placed in receivership by the Federal Deposit Insurance Corporation). (See Commitment Letter, Exhibit A to Defendants' Counterclaims).¹

LNV filed its motion to dismiss Defendants' counterclaims pursuant to Rule 12(b), SCRCP. The crux of LNV's motion is that Defendants released the claims that they now seek to litigate when they entered into a series of loan modifications with LNV and its predecessors.² These modifications with LNV, dated June 1, 2009, and November 10, 2009, were attached as Exhibits B and C to Defendants' Counterclaims. Defendants admit that they signed agreements containing substantially the following language:

AS A MATERIAL INDUCEMENT TO LENDER [LNV] TO ENTER INTO THIS AGREEMENT, BORROWER AND GUARANTORS ... HEREBY FULLY, FINALLY AND COMPLETELY RELEASE AND FOREVER DISCHARGE ORIGINAL LENDER [HAVEN TRUST BANK], THE FEDERAL DEPOSIT INSURANCE CORPORATION ... [AND] LENDER [LNV] OF AND FROM ANY AND ALL CLAIMS, CONTROVERSIES, DISPUTES, LIABILITIES, OBLIGATIONS,

¹ "A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading." Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (citing Rule 10(c), SCRCP). Considering such matters does not convert a motion to dismiss into a motion for summary judgment. *Id.*

² Though not addressed by this Order, the parties presented a prior loan modification that had been executed with the Federal Deposit Insurance Corporation that similarly contained reaffirmation and release language.

DEMANDS, DAMAGES, EXPENSES ... DEBTS, LIENS, ACTIONS AND CAUSES OF ACTION OF ANY AND EVERY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY THEREOF RELATING TO THE LOAN, AND WAIVE AND RELEASE ANY DEFENSE, RIGHT OF COUNTERCLAIM, RIGHT OF SET-OFF OR DEDUCTION TO THE PAYMENT OF THE INDEBTEDNESS EVIDENCED BY THE NOTE AND/OR THE MORTGAGE OR ANY OTHER LOAN DOCUMENT WHICH OBLIGORS, ET AL. NOW HAVE OR MAY CLAIM TO HAVE AGAINST LENDER, ET AL., OR ANY THEREOF, ARISING OUT OF, CONNECTED WITH OR RELATING TO ANY AND ALL ACTS, OMISSIONS OR EVENTS OCCURRING PRIOR TO THE EXECUTION OF THIS AGREEMENT.

(Exhibits B and C to Defendants' Answer, ¶ 3). The Loan Modification Agreements also contained the Defendants' reaffirmation of their obligations and the Lender's right to enforce the Note and Mortgage:

Borrower hereby affirms, confirms, ratifies, renews and extends the debts, duties, obligations, liabilities, rights, titles, security interests, liens, powers and privileges created or arising by virtue of the Loan Documents, as amended hereby, until all of the indebtedness and obligations relating to the Loan have been paid or performed in full.

(Loan Modification Agreements, ¶ 6). The guarantors of the debt (Diversified Capital and Berlye) expressly disclaimed any offsets or claims against LNV in the Loan Modification Agreement:

Guarantor has executed this Agreement to evidence his consent. . . and to acknowledge, reaffirm and restate the continuing effect of the Guaranty and the obligations contained therein. Guarantor hereby represents that it has no offset or claims against Lender arising under, related to or connected with the Loans or any of the Loan Documents or otherwise.

(Id. at ¶ 7). Based on the foregoing language, LNV assert in its motion that this language released the claims asserted by Defendants in their counterclaims.

Defendants describe LNV's alleged obligations and breaches as follows:

- a. The Loan Commitment allegedly obligated Haven Trust (and its successors) to make a construction loan, followed by a permanent loan and an SBA loan. (Answer, ¶¶ 214-216).
- b. Defendants allege that as of May 2009, under the Loan Commitment, LNV was required to grant the permanent loan and assist Defendants in obtaining SBA financing pursuant to the Loan Commitment. (Id. ¶ 225) ("In May 2009, Defendants completed performance under the Construction Loan Agreement...[LNV] would have been required to grant the permanent loan and assist Defendants in obtaining the SBA 504 Interim Loan....").
- c. Defendants allege they repeatedly sought to learn Plaintiff's intentions, repeatedly sought compliance with the Loan Commitment, and/or to negotiate a modification of the Loan Commitment to no avail, and that LNV breached its duty under the Loan Commitment by failing to provide permanent first mortgage financing and by failing to assist Defendants in obtaining SBA financing or even to participate in that process (Id. ¶¶ 243-244).³

ORDER

³ Defendants' counterclaims for breach of the covenant of good faith and fair dealing, breach of contract with fraudulent intent, violation of the South Carolina Unfair Trade Practices Act, and tortious interference with prospective contractual relations, all incorporate and rely on the same basic facts and contentions.

"In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the [pleading]." Cole Vision Corp. v. Hobbs, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (2011); Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007). If the claimants fail "to state facts sufficient to constitute a cause of action" in their pleading, the circuit court should dismiss the claims. Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003).

Contractual releases are generally recognized by courts of the State of South Carolina. Contractual releases are governed by general principles of contract construction. "A release is a contract and contract principles of law should be used to determine what the parties intended." Ecclesiastes Production Ministries v. Outparcel Assoc., LLC, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). Where a "[r]elease unambiguously sets forth the contracting parties' intent, [the court is] bound by that clearly expressed intent." Bowers v. Dept. of Transp., 360 S.C. 149, 153, 600 S.E.2d 543, 545 (Ct. App. 2004).

Neither party disputes that they executed the loan modification agreements dated June 1 and November 10, 2009 (the "Releases"). Neither party disputes the contents of the Releases. The issue before the Court, therefore, is whether the releases apply to the claims asserted by the Defendants in this action. Based on the foregoing, this Court makes the following conclusions of law:

1. The note and mortgage are contractual obligations of the Defendants that are entitled to be enforced against Defendants by the holder of the note and mortgage, LNV. U.S. Bank Trust Nat. Ass'n v. Bell, 684 S.E.2d 199 (Ct. App. 2009).

2. In the Releases, Defendants released LNV “from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses, . . . debts, liens, actions and causes of action of any and every nature whatsoever.” The claims so released included, but were not limited to, any “claim,” “defense,” “counterclaim” or “set-off” that Defendants “have or may claim to have against” LNV “arising out of, connected with or relating to any and all acts, omissions or events occurring prior to [November 10, 2009].”
3. Based on the Defendants’ allegations in the Amended Answer and Counterclaim, Defendants’ claims arose prior to November 10, 2009, when Defendants executed, for the third time, a release of, among other things, “claims,” “demands,” and “causes of action of any nature whatsoever.” By way of example only, Defendants allege that LNV was obligated to provide permanent financing and assist with obtaining the SBA loan from the time it acquired the note from Haven Trust Bank (Answer, ¶ 227), that Defendants “began immediately to negotiate with Plaintiff the future performance” of their duties (*id.*, ¶ 229)—including, as of June 2009, a proposal of “various avenues to qualify Plaintiff for SBA purposes” to facilitate the SBA financing (*id.* ¶ 239)—all to no avail. Then, in November 2009, when LNV could have sought enforcement of its rights under the Note, Mortgage, and Guaranty, Defendants secured a loan modification that extended the term of the note and, “as a material inducement” for this modification, Defendants granted the broad release of all claims and causes of action, including, but not limited to, defenses and counterclaims arising prior to the time of execution of the modification agreement.

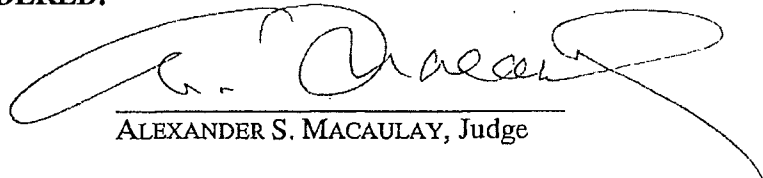
4. The claims asserted in this case by Defendants fall within the definition of released claims in the Releases.
5. When Defendants released all claims, causes of action, and defenses to the debt in the June 2009 and November 2009 Loan Modifications, Defendants did not reserve the claims they now seek to prosecute. Instead, Defendants released *all* claims, demands, and causes of action, and they reaffirmed their respective obligations under the Note and Guaranty.
6. The law does not allow a party, supposedly with a claim for breach of a loan contract, to: (a) sit on its rights and enter into a loan modification agreement with another party, who, in turn, forbears its right to seek contractual remedies, (b) execute, as part of the loan modification agreement, a broad release of all claims and causes of action in favor of the other party, and then (c) later sue the other party for breach of contract on claims that predated the release.
7. Defendants' assertion that they did not intend to release these claims is contradicted by the agreements that they signed. The terms of the release are judged by their plain language. Ecclesiastes Production Ministries v. Outparcel Assoc., LLC, 374 S.C. 483, 497-98, 649 S.E.2d 494, 501-02 (Ct. App. 2007) ("[I]f the language [of a release] is perfectly plain and capable of legal construction, it alone determines the document's force and effect. [The p]arties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." (Internal citations omitted)).
8. Based on the pleadings and attachments thereto, the arguments of the parties at the hearing and in their briefs—all of which this Court has considered—this Court finds

that Defendants have released the counterclaims asserted in this action, and these counterclaims should be and are hereby **DISMISSED** with prejudice.

9. As this holding disposes of the counterclaims, this Court elects not to reach the additional grounds raised by LNV in its motion to dismiss.

THEREFORE, IT IS ORDERED, that Defendants' counterclaims are dismissed, with prejudice. Plaintiff having prevailed on its motion to dismiss the counterclaims of the Defendants, Plaintiff may proceed with the foreclosure process and may seek, by motion, to have this matter referred to the master-in-equity for further proceedings.

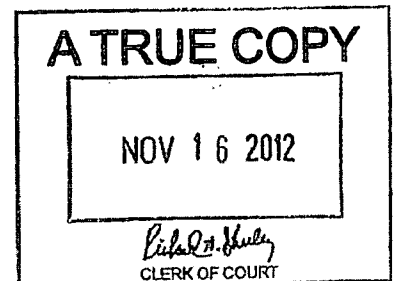
AND IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

November 14, 2012

Walhalla, South Carolina





STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

LNV Corporation,) Civil Action No. 2011-CP-04-2728
)

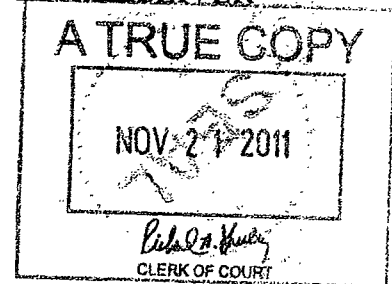
Plaintiff,)
)

vs.)

Affordable Hospitality Group-Anderson,)
LLC; Diversified Capital Investment)
Group, LLC; Jay Berlye; Anderson County,)
South Carolina; and the State of South)
Carolina,)

Defendants.)
)

**CONSENT ORDER OF IMMEDIATE
POSSESSION AND FOR
APPOINTMENT OF A RECEIVER**



This matter comes before the Court on Plaintiff's Motion for the Appointment of a Receiver and for Immediate Possession pursuant to South Carolina Code §§ 15-65-10 *et seq.* and § 15-69-100. By way of background, Plaintiff LNV Corp. has filed an action for Foreclosure and for Claim and Delivery against Defendants Affordable Hospitality Group-Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye (hereinafter referred to collectively as "Defendants"), claiming that Defendants are in default on a Note, Loan Agreement, and Mortgage.¹ Plaintiff has sought the appointment of a receiver to take immediate possession of the Property and Secured Property specified in the Verified Complaint pursuant to the provisions of the South Carolina Code referenced above. Defendants have filed an Answer to the Verified Complaint, which includes several counterclaims.

A hearing on the Motion was held on Thursday, November 10, 2011. Plaintiff was represented by D. Brad Rustin IV, of Nelson, Mullins, Riley & Scarborough, LLP. Defendants were represented by Steven Edward Buckingham of Gallivan, White & Boyd, P.A. At the outset

¹ Plaintiff and Defendants, together, the "Parties"

of the hearing, the Parties advised the Court that an agreement had been reached on the Motion; specifically, that the Parties would consent to the appointment of a designated receiver and that a formal written order establishing the terms and conditions of the receiver's appointment would be prepared by the Parties and submitted on or before Wednesday, November 16, 2011.

With the consent of the Parties, and upon good cause shown, the Court finds that Plaintiff is entitled to have a receiver take immediate possession of the Property and Secured Property described in the Verified Complaint, which includes the real property specified therein and the inventory, accounts, general intangibles, chattel paper, instruments, deposit accounts, letter of credit rights, furniture, and equipment of Affordable Hospitality Group—Anderson, LLC, all as more fully described in the Verified Complaint.

It is expressly agreed by the Parties that in the act of consenting to the appointment of a designated receiver, neither Party waives any rights or interests regarding the merits of the underlying action. The Parties' consent to this Order is limited solely to the appointment of a designated receiver and shall not be construed as an admission or waiver of the merits of any claims in the underlying action.

IT IS THEREFORE HEREBY ORDERED THAT:

In accordance with South Carolina Code §§ 15-65-10 *et seq.* and 15-69-100, the receiver identified herein shall take possession immediately of the Property and Secured Property described in the Verified Complaint upon the following terms and conditions:

1. Receivership. The Property and Secured Property of Affordable Hospitality Group—Anderson, LLC ("Borrower") as identified in the Verified Complaint is placed in receivership immediately upon the execution of this Order.

2. Receiver. Hospitality Management Advisors, Inc., a Tennessee corporation, whose address is 277 German Oak Drive, Cordova, Tennessee, Attention Mr. Charles G. Swan, is hereby appointed Receiver over the Property and Secured Property. All communication to Receiver shall be directed to Receiver at the address stated above. Confirmation of general insurance coverage as to Receiver or a bond of Twenty-Five Thousand (\$25,000.00) Dollars shall be filed with the Court within seven (7) business days after the date on which this Order is executed.

3. Restraint. Immediately upon execution of this Order, Defendants, including their respective agents, representatives, and employees (and any other individuals or entities receiving notice of this Order), are restrained from disposing of, transferring, conveying, or otherwise encumbering the Property or Secured Property or books, files, records, and accounts relating to the Property or the Secured Property, and they and all other parties having Property or Secured Property in their possession or under their control are hereby directed to deliver the same to Receiver.

4. Cooperation. Defendants, including their respective agents, representatives, and employees, are ordered to cooperate with the Receiver and appear at 102 Electric City Boulevard, Pendleton, South Carolina, at such reasonable times as may be required to sign such legal documents as may be reasonably necessary and to furnish such records as Receiver may reasonably require. The Parties are hereby ordered to cooperate reasonably with Receiver at all times during the pendency of this receivership. If the Parties are asked by the Receiver to provide assistance to the Receiver regarding any matters that could be performed by another party, the Receiver is ordered to pay the reasonable costs, expenses, and fees (the "Costs") of such parties incurred pursuant to Receiver's requests. If the Parties are the only individuals who

legally can execute a document or identify the location of documents, accounts, or property under the control of the Receiver, such cooperation shall not entitle the Parties to Costs.

5. Income. Defendants, including their respective agents, representatives, and employees, and any other person receiving actual notice of the terms of this Order are hereby ordered and directed to immediately collect and pay to Receiver all of the income and profits (both current and prepaid) that remain in any such person's possession as of the date of this Order or that are generated in the future, pending adjudication of the Parties' rights thereto and subject to such other orders of this Court as may be subsequently entered. In addition, Defendants shall execute any and all documents necessary to substitute Receiver for the current signatories on all of the bank accounts relating to the Property of Defendants.

6. Inventory and Reports. Receiver shall prepare and deliver to counsel for Plaintiff and Defendants within thirty (30) days from the date of this Order a full and detailed inventory, under oath, of all the Property which comes into his possession and thereafter he shall prepare and deliver to Plaintiff's and Defendants' counsel each thirty (30) days thereafter a full and complete report, under oath, reporting all activities and changes in the Receivership estate and all claims against the estate that have arisen or have occurred during the period covered by the report. Receiver shall deliver the original of each of its reports to Plaintiff's and Defendants' counsel, who, upon written request, will provide copies to any other party in this action who requests such reports. Plaintiff's and Defendants' counsel shall, upon request of the Court, provide such reports to the Court for its records.

7. Possession of Property. Receiver shall take and have exclusive possession, custody, and control of all the Property, monies, contracts, insurance policies, assets, files, papers, keys, accounts receivable, records, documents, licenses, permits, monies, securities,

choses-in-action, books of account, bank accounts and all other property, real, personal, or mixed, which relate to the Property, and shall retain custody of the same until further order of this Court. Defendants and other persons or corporations now or hereafter in possession of the Property, or any part thereof, or any other of the items entrusted to the Receiver as set forth herein, shall surrender such possession to the Receiver immediately upon execution of this Order.

8. Operating Account. Receiver shall establish and/or maintain, at a banking or savings and loan institution located in South Carolina whose deposits are insured by the FDIC, a separate operating account ("the Operating Account") into which Receiver shall deposit all receipts from the Property and from which Receiver shall disburse regularly and punctually (to the extent available), all amounts due and payable as are reasonable, necessary, and proper operating expenses of the Property, subject to the terms of this Order.

9. Costs. Receiver is hereby authorized, empowered, and directed to pay from the Operating Account all reasonable expenses necessary for the preservation of the Property, including, but not limited to, the costs of all labor, insurance, equipment, and supplies which are necessary to the preservation of the Property, together with any expenditure authorized by Plaintiff.

10. Operation. Receiver is hereby authorized, empowered and directed to contract with such individuals and entities as may be necessary to preserve, protect, supervise, operate and manage the Property. Receiver shall use his best efforts to operate the Property profitably, and to maintain the building, appurtenances and grounds of the Property in accordance with customary standards for a business of its type.

11. Collection of Income and Profits. Receiver is hereby authorized, empowered, and directed to enforce and collect all debts, accounts receivable, rents, or other obligations due and owing to or from the operation of the Property.

12. Insurance. Receiver is hereby authorized, empowered, and directed to maintain all policies of insurance or similar contracts affecting the Property in full force and effect, and if none exists, to insure the Property for its current fair market value against personal injury, property damage, and liability claims. Receiver shall maintain or purchase appropriate property insurance for the Property, public liability insurance, workmen's compensation insurance, fire and extended coverage insurance, and burglary and theft insurance. Plaintiff shall be listed as the insured and the loss payee on all such insurance policies. Receiver shall promptly investigate and provide Plaintiff's and Defendants' counsel a full, prompt written report as to all serious and material accidents, claims for damage relating to the ownership, operation and maintenance of the Property, and any damage or destruction to the Property and the estimated cost of repair thereof, and shall prepare any and all reports required by any insurance company in connection therewith. All existing insurance coverage purchased by Defendants or by any other person, which is now in force for the protection of the Property, is hereby assigned to Receiver.

13. Actions against Receiver. All persons, funds, corporations, associations, and all other parties are hereby enjoined and restrained from commencing, maintaining, or otherwise prosecuting any action at law or in equity against Receiver during the pendency of the receivership without prior leave of this Court.

14. Default. Entry of this Order shall not constitute a breach or default of any contract relating to the Property unless Receiver expressly cancels such contract.

15. Employment of Professionals. Receiver may employ attorneys, accountants, or other professionals if reasonably required to discharge its duties herein and shall, if necessary, apply to this Court for instructions and advice if in doubt concerning its rights and responsibilities as Receiver.

16. Sale of Property. Receiver is authorized to sell the Property on commercially reasonable terms and conditions, upon thirty (30) days' notice of such intent to sell to Plaintiff's and Defendants' counsel and to the Court, and subject to the Court's approval of such transaction. The Parties may consent to the sale of any Property, in writing, if such sale would not require notice beyond the Parties.

17. Other Tasks. Receiver is hereby authorized, empowered, and directed to perform all other tasks reasonably necessary for the proper administration, conservation, maintenance, security, and protection of the Property.

18. Fees. At the end of each month, Receiver shall present to Plaintiff and Defendants monthly financial reports which shall include all fees and expenses paid by the Receiver, including fees to Receiver, which Receiver shall pay in the ordinary course. In the event Plaintiff or Defendants object to the payment of any invoice contained in any Receiver Report, they may seek an order as to such payment or non-payment. The compensation of Receiver shall be at the discretion of the Court and shall be finally determined by the Court.

19. Legal Actions. Receiver is hereby authorized, empowered, and directed to apply to this Court for instructions and/or authorization should it seem to be necessary or desirable to sue or defend any legal action or otherwise compromise or settle same.

20. Use and Maintenance of Property. Receiver shall not permit the use of the Property for any purpose which may or will void any required policy of insurance, which may or

will render any loss thereunder uncollectible, or which may or would be in violation of any law or government restriction.

21. Records. Receiver shall maintain a comprehensive system of office records, books, and accounts concerning the operation of the Property. At all reasonable times, Plaintiff, Defendants, and their respective agents, employees, or other representatives shall have reasonable access to such records, accounts, and books and to all vouchers, files, and all other material pertaining to the operation of the Property, all of which Receiver agrees to keep safe, available, and separate from any records not having to do with the operation of the Property.

22. Legal Requirements. Receiver shall ensure that all aspects of the Property, and its operation and management, comply with any and all laws, regulations, orders, or requirements affecting the Property issued by any federal, state, county, or municipal authority having jurisdiction thereover.

23. Employment of Agents. Receiver is hereby authorized to employ agents, servants, and employees and to contract as necessary for the purpose of renting, operating, managing, preserving, protecting, and taking possession of the Property, and carrying out the terms of this Order. Receiver shall collect the rents, revenues, and profits generated from the Property on or after the date on which this Order is executed, including those now due and unpaid, and those hereafter to become due.

24. Licenses. All existing licenses that are transferable and not personal in nature relating to the operation of the Property, including but not limited any alcohol and beverage license(s), issued in the name of Defendants are hereby assigned to Receiver.

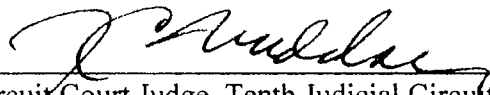
25. Termination of Receivership. Plaintiff or any Defendant may apply to the Court for entry of an order terminating the Receivership, discharging Receiver, or putting the

successful bidder at sale into possession of the Property once the purpose set forth in the appointment of Receiver through this Order has been accomplished.

26. Retention of Jurisdiction. The Court retains jurisdiction of this matter to enter such further orders as may be just and proper.

27. Sheriff's Assistance. Receiver is authorized and empowered to obtain the assistance of the Sheriff's Department of the counties of this State in performing those duties and responsibilities enumerated herein.

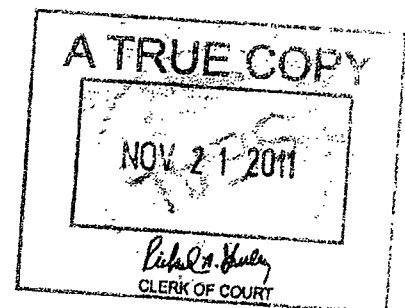
It is **SO ORDERED**.



Circuit Court Judge, Tenth Judicial Circuit
Anderson County, South Carolina

November 21, 2011

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GENERAL SESSIONS



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

LNV Corporation,)
Plaintiff,)

Civil Action No. 2011-CP-04-02728

vs.)

Affordable Hospitality Group –)
Anderson, LLC; Diversified Capital)
Investment Group, LLC; Jay Berlye;)
Anderson County, South Carolina; and)
the State of South Carolina)

Defendants.)

VERIFIED COMPLAINT

Collection on Note
Collection on Guaranties
Foreclosure
Exercise of Security Interest
Recovery of Personal Property
Receivership

Deficiency Reserved
(NON-JURY)

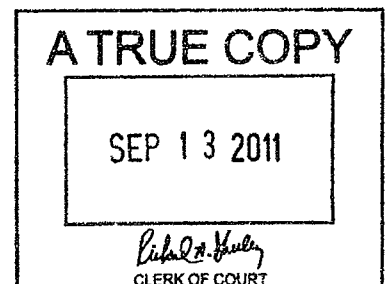
Plaintiff, LNV Corporation ("LNV Corporation"), would respectfully show unto
the Court as follows:

PARTIES

1. LNV Corporation is a company organized and existing under the laws of
the State of Nevada that operates as a subsidiary of Beal Bank USA, a chartered financial
institution regulated by the Federal Deposit Insurance Corporation.

2. Upon information and belief, Defendant, Affordable Hospitality Group –
Anderson, LLC ("Affordable Hospitality") is a company organized and existing under the
laws of the State of Georgia that does business and owns property in Anderson County,
South Carolina.

3. Upon information and belief, Defendant, Jay Berlye ("Berlye") is an
individual residing and living in the State of Georgia that does business and entered into
contracts in the State of South Carolina relating to property located in Anderson County,
South Carolina.



4. Upon information and belief, Defendant, Diversified Capital Investment Group, LLC ("Diversified Capital") is a corporation organized and existing under the laws of the State of Georgia that does business and entered into contracts in the State of South Carolina relating to property located in Anderson County, South Carolina.

5. Upon information and belief, Anderson County, South Carolina ("Anderson County") is a body politic and political subdivision of the State of South Carolina. Anderson County is named herein for notice purposes only, as more fully explained below. Anderson County is amenable to service of process pursuant to the provisions of Rule 4(d)(6), S.C. R. Civ. P.

6. Upon information and belief, the State of South Carolina (the "State of South Carolina") is a body politic. The State of South Carolina is named herein for notice purposes only, as more fully explained below. The State of South Carolina is amenable to service of process pursuant to the provisions of Rule 4(d)(4), S.C. R. Civ. P.

JURISDICTION & VENUE

7. This Court is vested with subject matter jurisdiction pursuant to Article V of the South Carolina Constitution, § 11 and South Carolina Code §§ 14-5-310 *et seq.*

8. Venue is proper under South Carolina Code § 15-7-30 because one or more of the defendants were or are residents of the County of Anderson, South Carolina as of the date that the causes of action arose. In addition, venue is proper under South Carolina Code § 15-7-10 because this matter involves the foreclosure of real property located in Anderson County, South Carolina.

9. This Court may exercise personal jurisdiction over the Parties pursuant to South Carolina Code §§ 36-2-802 and 36-2-803.

7. Pursuant to the South Carolina Supreme Court's Administrative Order filed on May 22, 2009, the mortgage loan identified herein is a commercial mortgage loan which is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac nor is any servicer of the loan participating in the Home Affordable Modification Program ("HMP"), as referenced in the above Administrative Order, is not applicable to the loan and mortgage identified herein.

THE ORIGINAL LOAN

10. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

11. Heretofore, on or about May 15, 2008, and for value received, Affordable Hospitality Group – Anderson, LLC executed and delivered to Haven Trust Bank ("Haven") a promissory note (the "Note") in the original principal sum of Three Million, Four Hundred Eleven Thousand, Seven Hundred Eighty-Two (\$3,411,782.00) Dollars, with interest thereon, the terms of which Note are more fully explained by reference thereto. A copy of said Note is attached hereto and incorporated herein by reference as **Exhibit A**.

12. This Note was guaranteed by Defendant, Diversified Capital (the "Diversified Capital Guaranty"). A copy of said Diversified Capital Guaranty is attached hereto and is incorporated herein by reference as **Exhibit B**.

13. In further consideration of Haven's extension of funds to Affordable Hospitality, Defendants Affordable Hospitality, Diversified Capital, and Berlye executed that certain Construction Loan Agreement ("Construction Agreement"). Pursuant to this Construction Agreement, the obligations under the Note were guaranteed by Diversified

Capital and Berlye, personally (the "Berlye Guaranty"). A copy of said Construction Agreement is attached hereto and incorporated herein by reference as **Exhibit C**.

14. In order to secure the payment thereof, the Defendant Affordable Hospitality executed and delivered to Haven that certain Mortgage and Security Agreement (hereinafter "Mortgage") dated May 15, 2008, and recorded in the Office of the Register of Deeds for Anderson County on May 20, 2008, in Mortgage Book 8670 at Page 204, wherein and whereby said Defendant mortgaged to Haven the real property more fully described herein as follows:

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book S1720 at page 7-A, records on Anderson County, South Carolina, said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws. AND ALSO a right of way and easement to construct and maintain a Retention Pond on Parcel Five (5) adjacent to said property as described and outlined in Easement and Agreement dated August 3, 2007, and recorded August 15, 2007 in Deed Book 8196, at page 53, records of Anderson County. Said right of way and easement being more fully described in said Easement and Agreement as identified as 0.396 acres, having such metes and bounds as are shown on said plat in the area shown as "Stormwater Detention (sic) Area for Parcels 4 & 5," said plat being incorporated herein by reference to the provisions of Section 30-5-250, South Carolina Code of Laws. This is the same property conveyed to Affordable Hospitality Group – Anderson, LLC, by deed of Real Investors of the Upstate, LLC, dated August 3, 2007, and recorded August 15, 2007, in Deed Book 8196, at page 60, records of Anderson County.

(Hereafter, the "Property"). A copy of said Mortgage is attached hereto and incorporated herein by reference as **Exhibit D**. *For convenience purposes only, this property is believed to constitute tax parcel ID number 0930003023.*

15. In order to secure the payment of the Note, the Defendant, Affordable Hospitality executed and delivered to Haven that certain Security Agreement (hereinafter, the "Security Agreement") dated May 15, 2008, wherein and whereby said Defendant granted to Haven a security interest in the following described property (the "Secured Property"):

All equipment and machinery, including power driven machinery and equipment, furniture and fixtures now owned of hereafter acquired and wherever located, together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith and proceeds therefrom. All inventory, raw materials, work-in-process and supplies now owned or hereafter acquired and proceeds therefrom. All accounts and accounts receivable now outstanding or hereafter arising. All contract rights, instruments, chattel paper and general intangibles now in force or hereafter acquired and proceeds therefrom.

A copy of said Security Agreement is attached hereto and incorporated herein by reference as **Exhibit E**.

16. The security interest granted by the Security Agreement was properly perfected by the filing of a UCC Financing Statement ("UCC") with the South Carolina Secretary of State. A copy of said UCC is attached hereto and incorporated herein by reference as **Exhibit F**.

17. In order to secure the payment of the Note, the Defendant, Affordable Hospitality executed and delivered to Haven that certain Assignment of Leases and Rents (hereinafter, the "Assignment of Leases and Rents") dated May 15, 2008, wherein and whereby said Defendant assigned to Haven all of its interests in "leases and rental agreements" and "security deposits and non-refundable deposits paid." A copy of said Assignment of Leases and Rents is attached hereto and incorporated herein by reference as **Exhibit G**.

18. In order to secure the payment of the Note, the Defendants, Affordable Hospitality and Berlye assigned that certain insurance contract, number ***272844 in the name of Jay L. Berlye (hereinafter, the "Insurance Assignment"). A copy of said Insurance Assignment is attached hereto and incorporated herein by reference as **Exhibit H**.

THE F.D.I.C. ACQUISITION OF HAVEN TRUST BANK

19. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

20. On or about December 12, 2008, Haven Trust Bank, Duluth, Georgia, was closed by the Georgia Department of Banking and Finance and the Federal Deposit Insurance Corporation ("FDIC") was named Receiver. (See, Failed Bank Information from FDIC, <http://www.fdic.gov/bank/individual/failed/haventrust.html>.)

21. The FDIC had the powers of a receiver as provided under state and federal law, including, without limitation, those powers proscribed by the Federal Deposit Insurance Act and 12 U.S.C. § 1821.

22. The FDIC subsequently entered into a certain Loan Modification Agreement ("FDIC Modification") with Affordable Hospitality dated April 20, 2009. This FDIC modification was similarly executed by Diversified Capital and Berlye, as guarantors of the Note. The FDIC Modification extended the Maturity Date under the Note and waived certain terms of the Loan Documents as more fully provided therein. A copy of said FDIC Modification is attached hereto and incorporated herein by reference as **Exhibit I**.

THE SALE OF THE LOAN TO LNV CORPORATION

23. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

24. On or about July 21, 2009, the Note, FDIC Modification, Diversified Capital Guaranty, Berlye Guaranty, Construction Agreement, Mortgage, Security Agreement, UCC, Assignment of Leases and Rents, and Insurance Assignment (collectively, the "Loan Documents") were allonged, pledged, sold, and transferred to LNV Corporation pursuant to those certain "Loan Acquisition Documents:"

- (a) A Note Allonge (the "Allonge") attached hereto and incorporated herein by reference as **Exhibit J**.
- (b) Re-recording of Assignment of Mortgage and Security Agreement (the "Security Agreement Assignment") attached hereto and incorporated herein by reference as **Exhibit K**.
- (c) A Corporate Assignment of Mortgage (the "Mortgage Assignment") attached hereto and incorporated herein by reference as **Exhibit L**.
- (d) A UCC Financing Statement Amendment (the "UCC Amendment") attached hereto and incorporated herein by reference as **Exhibit M**.
- (e) An Assignment of the Assignment of Leases and Rents (the "FDIC Leases and Rents Assignment") attached hereto and incorporated herein by reference as **Exhibit N**.

- (f) Providing notice to Prudential Financial of the Assignment of Life Insurance Policy as Collateral (the "FDIC Insurance Assignment") dated July 21, 2009 and attached hereto and incorporated herein by reference as **Exhibit O**.

25. The Plaintiff is the current owner and holder of the Note, FDIC Modification, Diversified Capital Guaranty, Berlye Guaranty, Construction Agreement, Mortgage, Security Agreement, UCC, Assignment of Leases and Rents, and Insurance Assignment.

26. The Defendants have defaulted in the payment of the Note¹ and have breached the Loan Documents by failing to pay Plaintiff, when due and on demand, the principal and interest due under said documents, and all interest due thereon. Said Note and Mortgage are in default, Defendants are in breach of the Loan Documents, and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

27. The Mortgage is a valid first lien on the Property.

28. There is due and unpaid on the Note and under the Loan Documents, as of August 18, 2011, the principal sum of Three Million, Six Hundred Forty-One Thousand, Six Hundred Seventy-Nine and 00/100 (\$3,641,679.00) Dollars, interest accrued in the amount of Fifty-Eight Thousand, Seven Hundred Five and 59/100 (\$58,705.59) Dollars, default interest in the amount of Four Hundred Twenty-Two Thousand, Two Hundred Eighty-Three and 03/100 (\$422,283.03) Dollars, and late fees of Two Thousand, Nine Hundred Thirty-One and 04/100 (\$2,931.04) Dollars. Demand has been made upon the

¹ As modified by the FDIC Modification. Hereinafter, the Note, as modified, shall continue to be referred to as the "Note."

Defendants to pay said amounts but said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of an amount in excess of Four Million, One Hundred Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011. This figure does not include reasonable attorneys' fees and the costs of expenses of this action, for which Defendants are responsible pursuant to the express provisions of the Loan Documents.

29. The following named parties may claim a lien on, or interest in the Property by virtue of instruments filed of record in the Office of the Register of Deeds for Anderson County, South Carolina or the Office of the Clerk of Court for the above-named county, but if such lien exists, it is junior and subordinate to that of LNV Corporation:

- (a) **Anderson County South Carolina:** Tax notice for Account Number 2010-2081388
- (b) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-511744478-6 filed in Anderson County South Carolina.
- (c) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-511744479-3 filed in Anderson County South Carolina.
- (d) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51252403-9 filed in Anderson County South Carolina.
- (e) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51252404-6 filed in Anderson County South Carolina.

- (f) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51274556-0 filed in Anderson County South Carolina.
- (g) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51274557-7 filed in Anderson County South Carolina.
- (h) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51293403-2 filed in Anderson County South Carolina.

30. The Plaintiff expressly reserves its right to enter a deficiency judgment against the Defendants, Affordable Hospitality, Diversified Capital, and Berlye after the sale of the subject Property, the sale of the Secured Property, collection upon the Insurance Assignment, and collection upon the Assignment of Leases and Rents.

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT/COLLECTION ON NOTE)

31. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

32. The Note is, and was at all times relevant, a valid and existing contract.

33. The Defendants have failed to make the payments, when due under said Note and have, therefore, breached their contract with Plaintiff. The Defendants have defaulted upon their contractual obligations under the Note.

34. As a result of said breaches of the Note, Plaintiff has been damaged in an amount not less than Four Million, One Hundred Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011. This figure does not include reasonable attorneys' fees and the costs of expenses of

this action, for which Defendants are responsible pursuant to the express provisions of the Note.

FOR A SECOND CAUSE OF ACTION
(ENFORCEMENT OF GUARANTY—AGAINST DEFENDANT DIVERSIFIED CAPITAL)

35. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

36. In consideration of the above referred to Note, Defendant, Diversified Capital, executed a Guaranty whereby it absolutely and unconditionally guaranteed and promised to pay all sums owed by Affordable Hospitality to Plaintiff, including those amounts due under the Note, the costs of collection of those amounts, and reasonable attorneys' fees.

37. Plaintiff has declared the entire balance under the Note due and payable and has demanded and does hereby demand payment of the same, but Defendant Diversified Capital has refused to pay, and is therefore in default under the terms of the Diversified Capital Guaranty

38. There is presently due and owing to Plaintiff from Diversified Capital, as of August 18, 2011, the sum of Four Million, One Hundred Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011. This figure does not include reasonable attorneys' fees and the costs of expenses of this action, for which Defendants are responsible pursuant to the express provisions of the Loan Documents and Diversified Capital Guaranty.

39. As a result, Plaintiff is entitled to recover from Defendant Diversified Capital monetary damages, including but not limited to, the sum of Four Million, One

Hundred Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011. In addition, Plaintiff is entitled to recover the costs of this action and previously accrued and continuing legal fees.

FOR A THIRD CAUSE OF ACTION
(ENFORCEMENT OF GUARANTY—AGAINST DEFENDANT BERLYE)

40. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

41. In consideration of the above referred to Note, Defendant Berlye, executed a Guaranty whereby he absolutely and unconditionally guaranteed and promised to pay all sums owed by Affordable Hospitality to Plaintiff, including those amounts due under the Note, the costs of collection of those amounts, and reasonable attorneys' fees.

42. Plaintiff has declared the entire balance under the Note due and payable and has demanded and does hereby demand payment of the same, but Defendant Berlye has refused to pay, and is therefore in default under the terms of the Berlye Guaranty

43. There is presently due and owing to Plaintiff from Berlye, as of August 18, 2011, the sum of Four Million, One Hundred Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011. This figure does not include reasonable attorneys' fees and the costs of expenses of this action, for which Defendants are responsible pursuant to the express provisions of the Loan Documents and Diversified Capital Guaranty.

44. As a result, Plaintiff is entitled to recover from Defendant Berlye monetary damages, including but not limited to, the sum of Four Million, One Hundred

Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011. In addition, Plaintiff is entitled to recover the costs of this action and previously accrued and continuing legal fees.

FOR A FOURTH CAUSE OF ACTION
(MORTGAGE FORECLOSURE)

45. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

46. On or about May 15, 2008 and in order to secure the payments due under the Note, the Defendant Affordable Hospitality executed and delivered to Haven the above-described mortgage, wherein and whereby said Defendant mortgaged to Haven the real property more fully described herein as follows:

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book S1720 at page 7-A, records on Anderson County, South Carolina, said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws. AND ALSO a right of way and easement to construct and maintain a Retention Pond on Parcel Five (5) adjacent to said property as described and outlined in Easement and Agreement dated August 3, 2007, and recorded August 15, 2007 in Deed Book 8196, at page 53, records of Anderson County. Said right of way and easement being more fully described in said Easement and Agreement as identified as 0.396 acres, having such metes and bounds as are shown on said plat in the area shown as "Stormwater Detention (sic) Area for Parcels 4 & 5," said plat being incorporated herein by reference to the provisions of Section 30-5-250, South Carolina Code of Laws. This is the same property conveyed to Affordable Hospitality Group – Anderson, LLC, by deed of Real Investors of the Upstate, LLC, dated August 3, 2007, and recorded August 15, 2007, in Deed Book 8196, at page 60, records of Anderson County.

For convenience purposes only, this property is believed to constitute tax parcel ID number 0930003023.

47. This Mortgage was subsequently transferred by the FDIC (as receiver for Haven Trust Bank) to LNV Corporation pursuant to the above-described Mortgage Assignment dated July 21, 2009 and recorded August 26, 2009 in the Office of the Register of Deeds for Anderson County, South Carolina at Book 9316, at Page 213.

48. The Defendants have defaulted in the payment of the Note and Mortgage held by Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said Note and Mortgage, and all interest due thereon.

49. Said Note and Mortgage are therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

50. The Plaintiff is the owner and holder of the Note and Mortgage and is seeking to foreclose.

51. There is due and unpaid on the Note and under the Loan Documents, as of August 18, 2011, the principal sum of Three Million, Six Hundred Forty-One Thousand, Six Hundred Seventy-Nine and 00/100 (\$3,641,679.00) Dollars, interest accrued in the amount of Fifty-Eight Thousand, Seven Hundred Five and 59/100 (\$58,705.59) Dollars, default interest in the amount of Four Hundred Twenty-Two Thousand, Two Hundred Eighty-Three and 03/100 (\$422,283.03) Dollars, and late fees of Two Thousand, Nine Hundred Thirty-One and 04/100 (\$2,931.04) Dollars. Demand has been made upon the Defendants to pay said amounts but said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of an amount in excess of Four Million, One Hundred Twenty-Five Thousand, Five

Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011. This figure does not include reasonable attorneys' fees and the costs of expenses of this action, for which Defendants are responsible pursuant to the express provisions of the Loan Documents

52. Based upon a review of records maintained in the Anderson County Register of Deed's Office and the Clerk of Court's Office, the following parties may claim a lien on or some interest in the above described Property. If such interests are found and claimed, each is junior and subordinate to those interests and liens of the Plaintiff.

County Taxes

- (a) **Anderson County South Carolina:** Tax notice for Account Number 2010-2081388

State Tax Liens

- (b) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-511744478-6 filed in Anderson County South Carolina.
- (c) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-511744479-3 filed in Anderson County South Carolina.
- (d) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51252403-9 filed in Anderson County South Carolina.
- (e) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51252404-6 filed in Anderson County South Carolina.
- (f) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51274556-0 filed in Anderson County South Carolina.
- (g) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51274557-7 filed in Anderson County South Carolina.

(h) **State of South Carolina, Department of Revenue:** Tax Lien Number 3-51293403-2 filed in Anderson County South Carolina.

53. The Plaintiff expressly demands judgment against the Defendants, Affordable Hospitality, Diversified Capital, and Berlye for the full amount found to be due to Plaintiff on the Note and Mortgage, to be entered immediately, with the right to reduce same by the amount realized thereon from the proceeds of the sale, pursuant to S.C. CODE ANN. § 29-3-650.

FOR A FIFTH CAUSE OF ACTION
(RECOVERY OF SECURED PROPERTY/CLAIM AND DELIVERY)

54. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

55. Contemporaneously with the execution of the above referenced Note and in order to induce Haven to enter into the Note, Affordable Hospitality executed the above-described Security Agreement by which Affordable Hospitality pledged a security interest in the following Secured Property to secure the Note and debts to Haven:

All equipment and machinery, including power driven machinery and equipment, furniture and fixtures now owned of hereafter acquired and wherever located, together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith and proceeds therefrom. All inventory, raw materials, work-in-process and supplies now owned or hereafter acquired and proceeds therefrom. All accounts and accounts receivable now outstanding or hereafter arising. All contract rights, instruments, chattel paper and general intangibles now in force or hereafter acquired and proceeds therefrom.

56. This Security Agreement was subsequently sold by the FDIC (as receiver for Haven Trust Bank) to Plaintiff, as more fully explained above.

57. Defendants are in breach of the Note and Loan Documents.

58. Defendants are now in possession of said Secured Property and refuse to allow Plaintiff to remove or take possession of the Secured Property.

59. Plaintiff has demanded possession of the Secured Property and herein demands immediate possession of said Secure Property. As a secured party, Plaintiff is legally entitled to possession of the Secured Property, as evidenced by the Security Agreement.

60. Borrower is now in possession of said Property, which possession is sought by the Plaintiff in this action, and should possession be granted Plaintiff, Plaintiff is entitled to a deficiency judgment for any damages incurred by reason of a commercially reasonable sale which results in Plaintiff receiving less than the stated amount due on the Note, plus costs of collection and reasonable attorney's fees.

FOR A SIXTH CAUSE OF ACTION
(APPOINTMENT OF A RECEIVER)

61. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

62. By virtue of the default and the rights provided to it under the Security Agreement and Assignment of Lease and Rents, Plaintiff seeks the appointment of a receiver to protect, preserve, receive and collect all Property described in the Mortgage, Security Agreement, and Assignment of Leases and Rents.

63. Further, Plaintiff seeks the appointment of a receiver to do all acts necessary or required in connection with the administration and management of the Property and Secured Property, including but not limited to the processing, administering, and liquidation of the Property and Secured Property as well as the collection of leases and rents from the Property.

FOR A SEVENTH CAUSE OF ACTION
(RECOVERY OF PROCEEDS OF INSURANCE POLICY)

64. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

65. Contemporaneously with the execution of the above referenced Note and in order to induce Haven to enter into the Note, Defendants executed the above-described Insurance Assignment by which they assigned the proceeds of insurance policy held in the name of Jay L. Berlye.

66. This Insurance Assignment was subsequently transferred by the FDIC (as receiver for Haven Trust Bank) to Plaintiff, as more fully explained above.

67. Defendants are in breach of the Note and Loan Documents.

68. Plaintiffs seek to immediately liquidate the insurance policy and collect upon the cash value thereof in accordance with the provisions of the Loan Documents.

WHEREFORE, LNV Corporation prays as follows:

1. That the amount due to LNV Corporation on the above-referenced Note be determined in the sum of Four Million, One Hundred Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011, plus costs of this action and previously accrued and continuing legal fees.

2. That judgment be entered against Affordable Hospitality in the sum of Four Million, One Hundred Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-

Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011, plus costs of this action and previously accrued and continuing legal fees.

3. That judgment be entered against Diversified Capital in the sum of Four Million, One Hundred Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011, plus costs of this action and previously accrued and continuing legal fees.

4. That judgment be entered against Jay Berlye in the sum of Four Million, One Hundred Twenty-Five Thousand, Five Hundred Ninety-Eight and 66/100 (\$4,125,598.66) Dollars, plus interest thereon at the rate of Eight Hundred Thirty-Four and 55/100 (\$834.55) Dollars *per diem* from August 18, 2011, plus costs of this action and previously accrued and continuing legal fees

5. That Plaintiff be granted pre- and post-judgment interest on all amounts found to be due.

6. That the Court ascertain which liens, if any, are superior or junior to that of the Plaintiff.

7. That the Plaintiff's Mortgage be declared to be a valid lien against the above referred to Property, with the appropriate priority, and that the Plaintiff have judgment of foreclosure against the Defendants subject to the liens of any mortgages found to be prior to the Mortgage held by the Plaintiff and for judgment the amount found to be due, together with attorneys' fees and costs of this action.

8. That the Plaintiff's Mortgage upon the above referred to real property be foreclosed, subject to any liens found to be superior to that of the Plaintiff, the equity of redemption barred, and the Property sold under the direction of this Court.

9. That the proceeds of the sale be applied as follows:

- (a) To the costs, disbursements, and expenses of this action, including reasonable attorneys' fees for the Plaintiff's attorneys;
- (b) To the amount due Plaintiff; and
- (c) The surplus, if any, be held subject to further order of this Court.

10. That the Plaintiff be granted, if necessary, a deficiency judgment against the Defendants Affordable Hospitality, Diversified Capital, and Berlye for any deficiency which exists after the sale of said Property.

11. For judgment against the Defendants awarding LNV Corporation possession of the Secured Property described hereinabove, and reserves the right to pursue any deficiency which might results from Plaintiff's sale of said Secured Property, and that in the event possession cannot be had, that the Court direct Defendants to immediately allow possession of such Secured Property.

12. That the Court appoint a receiver to protect, preserve, and liquidate the Secured Property that is the subject of the Security Agreement, applying those proceeds to amounts due to Plaintiff under the Note and Loan Documents.

13. For such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Greenville, SC 29601

(864) 250-2300

ATTORNEYS FOR LNV CORPORATION

Greenville, South Carolina
September 12, 2011

EXHIBIT A

Haven Trust Bank

\$3,411,782.00

May 15, 2008

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, jointly and severally if more than one, promises to pay to the order of Haven Trust Bank or its successors or assigns at 2175 Lawrenceville Highway, Decatur, GA 30033, or such other place as the holder hereof may from time to time designate in writing, the principal sum Three Million Four Hundred Eleven Thousand Seven Hundred Eighty-Two and No/100 Dollars (\$3,411,782.00), plus interest on the unpaid principal balance at the rate specified below. Interest shall be calculated on the basis of the actual number of days elapsed over a year of 360/365 days.

For the period commencing on the date hereof and continuing through and until the Maturity Date (hereinafter defined) interest on the principal balance hereof, or portions thereof, outstanding from time to time shall accrue at the rate per annum equal to One Hundred Fifty (150) basis points plus the prime interest rate (hereinafter referred to as the "Prime") quoted or published from time to time in the Money Rates section of the Wall Street Journal, or if no such rate is published in the Wall Street Journal, then the nearest comparable published rate, as determined by the holder of this Note. The interest rate shall be adjusted daily hereafter upon any change in the Prime to the appropriate percentage above the Prime in effect on such date. As of the date hereof, the Prime is five and 00/100ths percent (5.00%); accordingly, the rate of interest in effect as of the date hereof, and remaining in effect until and unless a daily change occurs to the Prime is and shall be six and 50/100ths percent (6.50%) per annum.

The repayment of this note shall be as follows:

- (i) Commencing, June 1, 2008 and continuing on the same day of each month thereafter through and including March 1, 2009, payment of accrued interest only shall be due and payable;
- (ii) On March 1, 2009 (the "Maturity Date"), the entire outstanding principal balance of the indebtedness hereby evidenced, together with all accrued but unpaid interest thereon, and all other sums due to holder hereunder shall be due and payable in full.

Payments, when made, shall be applied in a manner and order according to the sole discretion of the holder of this Note.

If any payment required to be paid by this Note is not paid in full within ten (10) days after its scheduled due date, the holder hereof may assess a late charge in the amount of five percent (5%) of the unpaid amount of the payment, or the maximum permitted by applicable law, whichever is less.

Promissory Note

The undersigned and all guarantors and endorers of this Note waive presentment, demand, protest and notice of non-payment and each of the undersigned is bound as a principal and not as a surety. The undersigned and all guarantors and endorers hereof agree to any extensions of time of payment and partial payment, before, at or after maturity, without notice. This Note shall bear interest at the rate of five points (5%) per annum above the interest rate otherwise payable under the terms of this Note after maturity or in the event of default until paid in full, or the maximum permitted by applicable law, whichever is less.

This Note and any extensions or renewals hereof is secured by (i) that certain Mortgage and Security Agreement dated of even date herewith and recorded in the Office of the Records of Anderson County, South Carolina, and any and all amendments and replacements thereto, executed by the undersigned in favor of Haven Trust Bank and (ii) other security.

Failure to make any payment when due, or any default under any encumbrance or agreement securing this Note, or any default in any document executed simultaneously herewith in connection with the loan, shall cause the entire remaining unpaid balance of principal and interest to be declared immediately due and payable at the option of the holder of this Note.

In the event holder shall employ counsel to collect this obligation or to administer, protect or foreclose the security given in connection herewith, the undersigned, jointly and severally if more than one, agrees to pay reasonable attorney's fees for services of such counsel, whether or not suit is brought, plus costs incurred in connection therewith.

This Promissory Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Georgia, except and only to the extent of procedural matters related to the perfection and enforcement of Lender's rights and remedies against the property, secured by the Mortgage and Security Agreement; which matters shall be governed by the laws of the state of South Carolina. However, in the event that the enforceability or validity of any provision of this Promissory Note is challenged or questioned, such provision shall be governed by which whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by this Promissory Note and the Mortgage and Security Agreement has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Georgia.

If the Note is mutilated, lost, stolen or destroyed, then upon surrender thereof (if mutilated) or receipt of evidence and indemnity (if lost, stolen or destroyed) the undersigned shall execute and deliver a new note of like tenor, which shall show all payments which have been made on account of the principal hereof.

THE UNDERSIGNED AND ANY ENDORSER OR GUARANTOR OF THIS NOTE HEREBY EACH WAIVE, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY AND ALL RIGHTS TO ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

[Handwritten signature]

IN WITNESS WHEREOF, the undersigned has executed this Note under seal as of the date first above written.

Affordable Hospitality Group – Anderson, LLC

By: Diversified Capital Investment Group, LLC,
Manager

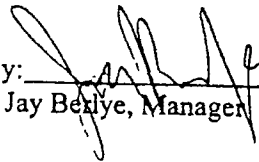
By:  (L.S.)
Jay Benlye, Manager

EXHIBIT B

GUARANTY

1. As an inducement for and in consideration of any loan(s), lease(s), or other financial accommodation(s) of even date herewith granted Affordable Hospitality Group - Anderson, LLC, a Georgia limited liability company (hereinafter called "Obligor"), by HAVEN TRUST BANK (hereinafter, together with its successors and assigns, called "Lender"), the undersigned, Diversified Capital Investment Group, LLC, (hereinafter called "Guarantor"), hereby, jointly and severally if more than one, unconditionally guarantees the full and prompt payment, observance and performance when due, whether at the stated time, by acceleration or otherwise, of all obligations of Obligor to Lender, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, whether or not of the same or similar class or of like kind to any indebtedness incurred contemporaneously with the execution of this Guaranty, and whether now or hereafter existing, or due or to become due, including without limitation, the following:

(a) Any and all amounts owed by Obligor under, in connection with, and/or pursuant to the indebtedness evidenced by that certain Promissory Note of even date herewith, in the original principal sum Three Million Four Hundred Eleven Thousand Seven Hundred Eighty-Two and No/100 Dollars (\$3,411,782.00) (the "Note"), with interest thereon according to the provisions thereof, and all obligations of Obligor thereunder, in connection therewith and/or pursuant to any and all agreements and other documents in connection therewith; and

(b) All sums advanced or expenses or costs paid or incurred (including without limitation reasonable attorneys' fees and other legal expenses) by Lender pursuant to or in connection with the Note or any agreements and other documents in connection therewith plus applicable interest on such sums, expenses or costs; and

(c) Any extensions, modifications, changes, substitutions, restatements, renewals or increases or decreases of any or all of the indebtedness referenced above; and

(d) Any and all other indebtedness, obligations and liabilities of any kind, of Obligor to Lender, now or hereafter existing, absolute or contingent, joint and/or several, due or not due, secured or unsecured, arising by operation of law or otherwise, direct or indirect, including without limitation indebtedness, obligations and liabilities of Obligor to Lender as a member of any partnership, syndicate or association or other group and whether incurred by Obligor as principal, surety, endorser, guarantor, accommodation party or otherwise, and any obligations which give rise to an equitable remedy for breach of performance if such breach gives rise to an obligation by Obligor to pay Lender.

2. All of the obligations described in paragraph 1, above, shall be referred to hereafter as the "Liabilities". In the event any of the Liabilities shall not be paid or performed according to their terms, Guarantor, shall immediately pay, perform or cause the performance of the same, this Guaranty being a guarantee of full payment and performance and not of collectibility and in no way conditional or contingent. This Guaranty is an absolute, unconditional and continuing guarantee the Guarantor being jointly and severally liable with the

Obligor and is in no way conditioned upon any requirement that Lender first attempt to collect payment or seek performances of any of the Liabilities from Obligor or any other obligor or guarantor, or resort to any other security or other means of obtaining payment or performance of any of the Liabilities, or upon any other contingency whatsoever.

3. Guarantor further agrees to pay all expenses (including reasonable attorneys' fees and legal expenses) paid or incurred by Lender in endeavoring to collect the Liabilities, or any part thereof, and in enforcing or defending this Guaranty, whether or not a lawsuit is commenced.

4. Guarantor represents and warrants that Guarantor is either financially interested in Obligor or will receive other material economic benefits as a result of any loan(s), leases(s) or other financial accommodation(s) made or granted to Obligor by Lender from time to time. Guarantor further represents and warrants that Guarantor is willing to enter into this Guaranty as a material inducement to Lender to extend loan(s) or other financial accommodation(s), or to enter into lease(s), from time to time to or with Obligor, and acknowledges that Lender would not be willing to extend any such loan(s) or other financial accommodation(s) or enter into such lease(s) absent this Guaranty. In any community property state, if Guarantor is married, Guarantor's promise is made for the benefit of Guarantor's marital community.

5. Guarantor agrees that the occurrence of any of the following events shall constitute a default under this Guaranty: (a) the failure of Guarantor to perform or observe any obligation under this Guaranty or (b) the death, incompetency, dissolution or insolvency of Obligor or Guarantor or any other guarantor of any of the Liabilities, or (c) the inability of Obligor or Guarantor or any other guarantor of any of the Liabilities to pay debts as they mature, or (d) an assignment by Obligor or Guarantor or any other guarantor of any of the Liabilities for the benefit of creditors, or (e) the institution of any proceeding by or against Obligor or Guarantor or any other guarantor of any of the Liabilities (under the Bankruptcy Code or otherwise) seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the appointment of a receiver, trustee or custodian for itself or for all or a substantial part of its property unless such petition and the case or proceeding initiated thereby are dismissed within thirty (30) days from the date of such filing, or (f) the institution by Guarantor or any other person or entity of any liquidation, dissolution or reorganization proceedings with respect to Guarantor, or (g) the default by Obligor under any other agreement or document concerning or relating to the Liabilities, or (h) the default by Guarantor under the terms of any other obligation of Guarantor to Lender, or (i) any representation or warranty contained herein or in any other document delivered by or on behalf of Guarantor or Obligor to Lender shall be false or misleading in any material respect, or (j) there shall be a default or event of default under any other agreement or document securing or guaranteeing any of the obligations secured by this Guaranty; or there shall be a default or event of default under any indebtedness or obligation of Guarantor or Obligor to any third party that causes that third party to declare such indebtedness or other obligation due prior to its scheduled date of maturity, or (k) if Guarantor is a corporation, the sale, pledge or assignment by the shareholders of Guarantor of any shares of the stock of Guarantor without the prior written consent of Lender; the transfer of Guarantor's assets not in the ordinary course of the Guarantor's business; the merger or consolidation of Guarantor with another company or entity; the liquidation of Guarantor; or the issuance by Guarantor of any new stock or warrants, or the transfer of issued and outstanding treasury stock or warrants of Guarantor, or (l) if Guarantor is a partnership or joint venture, the sale, pledge, transfer or assignment by any of the partners or joint

withdrawal of any general partner(s) or joint venturer(s); or the admittance of any additional partner(s) or joint venturer(s) into Guarantor without the prior written consent of Lender. Upon and after the occurrence of a default hereunder, the Liabilities shall be automatically accelerated and shall become immediately due and payable by Guarantor, or Guarantor's successor or estate, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Guarantor.

6. Guarantor further agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time payment to or for the benefit of Lender of the Liabilities, or any part thereof, is rescinded or must otherwise be returned by Lender due to the insolvency, bankruptcy or reorganization of Obligor or otherwise, all as though such payment to or for the benefit of Lender had not been made.

7. Lender may, without demand or notice of any kind, at any time when any amount shall be due and payable hereunder by Guarantor, appropriate and apply toward the payment of such amount, and in such order of application as Lender may from time to time elect, any property, balances, credits, deposits, accounts, instruments or moneys of Guarantor in the possession or control of Lender for any purpose.

8. This Guaranty shall be a continuing, absolute and unconditional guaranty of payment and performance and not of collectibility and shall remain in full force and effect as to Guarantor, subject to discontinuance only as follows: Guarantor, or any person duly authorized and acting on behalf of Guarantor, may give written notice to Lender of discontinuance of this Guaranty, but no such notice shall be effective in any respect until it is actually received by Lender and no such notice shall affect or impair the obligations hereunder of Guarantor with respect to any Liabilities existing at the date of receipt of such notice by Lender (or any Liabilities required or permitted to be advanced by Lender on or after such date), or for renewals or extensions of such Liabilities made after Lender receives Guarantor's notice, or any interest thereon or any expenses paid or incurred by Lender in endeavoring to collect such Liabilities, or any part thereof, or in enforcing this Guaranty against Guarantor. Any such notice of discontinuance by or on behalf of any Guarantor shall not affect, impair or release the obligations hereunder of any other guarantor with respect to any of the Liabilities.

9. If requested by Lender, Guarantor hereby agrees to provide Lender, within 60 days after the end of each calendar year, a certified copy of Guarantor's most recent federal tax return, and a compiled financial statement prepared in accordance with generally accepted accounting principles, and concurrently therewith a certificate to the effect that such Guarantor is not aware of any condition or event which constitutes a default under this Guaranty or a default under any franchise agreement (to which Guarantor or Obligor is a party), or under any notes or other obligations of Guarantor or which, with the mere passage of time or notice, or both, would constitute a default under this Guaranty.

10. Lender may at any time and from time to time, without the consent of, or notice to, Guarantor, and without affecting, impairing or releasing the obligations of Guarantor hereunder, do any or all of the following: (a) retain or obtain a security interest in any property to secure any of the Liabilities or any obligations hereunder, (b) retain or obtain the primary or secondary liability of any party or parties, in addition to Guarantor, with respect to any of the Liabilities, (c) renew, extend (including extensions beyond the original term), modify, alter, change the interest rate of, release or discharge any of the Liabilities, (d) settle, release or

change the interest rate of, release or discharge any of the Liabilities, (d) settle, release or compromise any liability of any other guarantor of any of the Liabilities or any liability of any nature of any other party or parties with respect to the Liabilities or any security therefor, (e) accept partial payments of the Liabilities, (f) settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of the Liabilities and any property securing any of the Liabilities, (g) consent to the transfer of any property securing any of the Liabilities, (h) resort to Guarantor for payment of any of the Liabilities, whether or not Lender shall have resorted to any property securing any of the Liabilities or any obligation hereunder or shall have proceeded against any other guarantor or any other party primarily or secondarily liable on any of the Liabilities, (i) make any other changes in its agreements with Obligor, and (j) stop lending money or extending other credit to Obligor.

11. Any amount received by Lender from whatsoever source and applied by it to the payment of the Liabilities may be applied in such order of application as Lender may from time to time elect.

12. Guarantor is now adequately informed of Obligor's financial condition, and Guarantor agrees to keep so informed. Guarantor agrees that Lender has no obligation to provide Guarantor with any present or future information concerning the financial condition of Obligor. Guarantor has not relied on financial information furnished by Lender in deciding to execute this Guaranty.

13. Guarantor hereby agrees that any debt of Obligor to Guarantor is expressly subordinate to the right of Lender to payment of the Liabilities, and that Lender shall be entitled to full payment of all of the Liabilities prior to the exercise by Guarantor of any rights to payment or performance of any debt which the Obligor may owe Guarantor. Guarantor assigns to Lender all rights Guarantor may have in any proceeding under the Federal Bankruptcy Code or any receivership or insolvency proceeding of Obligor, including all rights of Guarantor to be paid by Obligor. This assignment does not prevent Lender from enforcing Guarantor's obligations hereunder in any way.

14. Guarantor hereby expressly waives: (a) notice of the acceptance of this Guaranty, (b) notice of the existence or creation of all or any of the Liabilities, (c) presentment, demand, notice of dishonor, protest, and all other notices whatsoever, (d) all diligence in collection or protection of or realization upon the Liabilities or any part thereof, any obligation hereunder, or any security for any of the foregoing, (e) all defenses based on suretyship or impairment of collateral, and (f) all events and circumstances which might otherwise constitute a defense or discharge of the obligations of Obligor, Guarantor or any other guarantor. Guarantor shall not be released or discharged, either in whole or in part, by Lender's failure to perfect, delay in perfection or failure to continue the perfection of any security interest in any property that secures any of the Liabilities or any obligation of Guarantor hereunder, or to protect the property covered by any such security interest.

15. Lender may, without notice to Guarantor or Obligor of any kind, sell, assign, or transfer all or any of the Liabilities, and in such event each and every immediate and successive assignee, transferee, or holder of all or any of the Liabilities shall have the right to enforce this Guaranty, by suit or otherwise, for the benefit of such assignee, transferee, or holder, as fully as if such assignee, transferee or holder were herein by name specifically given such rights, powers and benefits. Lender shall have an unimpaired right, prior and superior to that of any such

assignee, transferee or holder, to enforce this Guaranty for the benefit of Lender as to so much of the Liabilities as it has not sold, assigned, or transferred.

16. No delay on the part of Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Lender of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

17. No action of Lender permitted hereunder shall in any way affect, impair or release this Guaranty.

18. For purposes of this Guaranty, Liabilities shall include all obligations of Obligor to Lender stated herein, notwithstanding any right or power of Obligor or anyone else to assert any claim or defense as to the payment or performance of such Liabilities, and no such claim or defense shall affect, impair or release the obligations of Guarantor hereunder.

19. This Guaranty shall be binding upon Guarantor and the heirs, legal representatives, successors and assigns of Guarantor. If more than one party shall execute this Guaranty, the term "Guarantor" shall mean all parties executing this Guaranty, and all such parties shall be jointly and severally obligated hereunder.

20. As further consideration for the loan(s), lease(s), or other financial accommodation(s) by Lender to Obligor and as a material inducement to Lender to make or enter into the loan(s), lease(s), or other financial accommodation(s) and accept this Guaranty, and notwithstanding anything to the contrary contained in this Guaranty or any other document delivered in connection with this Guaranty, Guarantor hereby irrevocably waives, disclaims and relinquishes any and all claims, rights or remedies which Guarantor may now have or hereafter acquire against Obligor that arise in connection with this Guaranty and/or the performance by Guarantor hereunder, including without limitation any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of Lender against Obligor or any security which Lender now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

21. All notices pursuant to this Guaranty shall be in writing and shall be directed to the addresses set forth herein or such other address as may be specified in a notice given in accordance with the requirements of this paragraph. Except as otherwise specifically provided herein, notices shall be deemed to be given three (3) days after mailing by certified or registered mail, return receipt requested, or one (1) business day after deposit with a recognized overnight courier, or when personally delivered to and received at the required address.

22. In the event any provision contained in this Guaranty is invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

23. Governing Law and Parties Bound. This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of Georgia, except and only to the extent of procedural matters related to the perfection and enforcement of Lender's rights and remedies against the real and personal property collateral, which matters

shall be governed by the laws of the state of South Carolina. However, in the event that the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by which whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Agreement has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Georgia.

GUARANTOR, AND LENDER BY ACCEPTANCE OF THIS GUARANTY, EACH HEREBY WAIVE, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTION UNDER OR IN ANY WAY CONNECTED WITH THIS GUARANTY AND IN NO EVENT SHALL LENDER BE LIABLE FOR PUNITIVE OR CONSEQUENTIAL DAMAGES.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date written below.

May 15, 2008

Diversified Capital Investment Group, LLC

By: [Signature] (L.S.)
Jay Berlye, Manager

Address of Guarantor:

3904 North Perry Hills Rd.
DECATUR, GA 30033

EXHIBIT C

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT, made and entered into this 15 day of May, 2008, by and between Affordable Hospitality Group – Anderson, LLC (hereinafter referred to as "Borrower"), and HAVEN TRUST BANK (hereinafter referred to as "Lender"):

WITNESSETH:

WHEREAS, Lender has agreed to lend to Borrower up to the maximum amount of Three Million Four Hundred Eleven Thousand Seven Hundred Eighty-Two and No/100 Dollars (\$3,411,782.00) (hereinafter referred to as the "Loan"), said Loan to be used in part by Borrower to construct on certain real property and located in Anderson County, South Carolina (hereinafter referred to as "Land" and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof), a motel (hereinafter referred to as "Improvements"); (the Improvements and the Land being hereinafter collectively referred to as the "Premises"); and

WHEREAS, Borrower and Lender wish to enter into this Agreement in order to set forth the terms and conditions of the disbursement of said construction loan to be made in accordance with this Construction Loan Agreement;

NOW, THEREFORE, in consideration of the premises and the sum of TEN AND NO/100THS (\$10.00) DOLLARS in hand paid by Lender to Borrower, the receipt and sufficiency of which are hereby acknowledged by Borrower, Borrower and Lender declare and agree as follows:

ARTICLE I

LOAN DOCUMENTS

Borrower has duly authorized, executed and delivered or caused to be delivered to Lender the following documents (hereinafter, together with this Agreement and any and all other instruments evidencing or securing said construction loan, being referred to as "Loan Documents"):

1. Note. A promissory note (hereinafter referred to as "Note") of even date herewith, to the order of Lender, in the principal amount of Three Million Four Hundred Eleven Thousand Seven Hundred Eighty-Two and No/100 Dollars (\$3,411,782.00).
2. Mortgage. A Mortgage and Security Agreement (hereinafter referred to as "Mortgage") of even date herewith, conveying to Lender, as security for the Note, a first priority security interest in and to the Premises located in Anderson County, South Carolina;

3. Guaranty. The personal guarantee of Jay Berlye and company guarantee of Diversified Capital Investment Group, LLC;

4. Security Agreement: A Security Agreement dated of even date herewith conveying Lender a first priority security interest on all assets of the Borrower.

5. Collateral Assignment of Certificate of Deposit. A Collateral Assignment of Certificate of Deposit from Borrower in the amount of \$100,000.00.

6. Assignment of Life Insurance. A life insurance policy on the life of Jay Berlye in the amount of \$1,250,000.00, assigned to Lender as collateral for the Loan.

7. Other Documents. All documents necessary to perfect Lender's first priority security interest as set forth in Paragraphs 2,4,5 and 6 hereinabove.

ARTICLE II

WARRANTIES OF THE BORROWER

Borrower hereby warrants to Lender as follows:

1. Plans and Specifications. That Borrower has obtained certain plans and specifications which are detailed in the Construction Contract dated May 2, 2008 between Affordable Hospitality Group, LLC and RCO Construction, Inc. and by this reference made a part hereof (hereinafter collectively referred to as the "Plans and Specifications").

2. Validity of Loan Documents. That the Loan Documents are in all respects legal, valid and binding according to their terms and grant to Lender a direct, valid and enforceable first lien security interest in the Premises and the personalty located thereon.

3. Priority of Lien on Personalty. That no chattel Mortgage, bill of sale, security agreement, financing statement or other title retention agreement (except those executed in favor of Lender) has or will be, other than purchase money installment agreements or capital leases incurred in the ordinary course of business, executed with respect to any personal property, chattel or fixture used in conjunction with the construction, operation or maintenance of the Improvements.

4. Conflicting Transactions of Borrower. That the consummation of the transaction hereby contemplated and the performance of the obligations of Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any Mortgage, deed of trust, lease, bank loan or credit agreement, partnership agreement, corporate charter or by-laws, or other instrument to which Borrower is a party or by which it may be bound or affected.

5. Pending Litigation. That there are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting it or the Premises, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien thereof, at law or in equity,

or before or by any governmental authority, except actions, suits and proceedings which are fully covered by insurance and which, if adversely determined, would not substantially impair the ability of Borrower to perform each and every one of its obligations under and by virtue of the Loan Documents; and to Borrower's knowledge it is not in default with respect to any order, writ, injunction, decree or demand of any court of any governmental authority.

6. Violations of Governmental Law, Ordinances or Regulations. That Borrower has no knowledge of any violations or notices of violations of any federal law or municipal ordinance or order or requirement of the state in which the Premises are located or any municipal department or other governmental authority having jurisdiction affecting the Premises, which violations in any way relate to or affect the Premises.

7. Compliance with Zoning Ordinances and Similar Laws. That, to Borrower's knowledge, the Plans and Specifications and construction of the improvements thereto and the use of the Premises contemplated thereby comply and will comply with all governmental laws and regulations, and with all requirements, standards and regulations of appropriate supervising boards of fire underwriters and similar agencies.

8. Status and Authority. That if Borrower purports to be a corporation, partnership or other legal entity, (i) it is duly organized, existing and in good standing under the laws of the state in which it was formed, (ii) it is duly qualified to do business and is in good standing in the state in which the Premises are located, (iii) it has full power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents, and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized.

9. Availability of Utilities. That all utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are available at the boundaries of the Land, including water supply, storm and sanitary sewer facilities, gas, electric, and telephone facilities, in capacity, to Borrower's knowledge, sufficient to serve the reasonable needs of the Premises.

10. Permits. That, to Borrower's knowledge, all grading, curb cut, and building permits required for the construction of the Improvements have been obtained.

11. Condition of Premises. That the Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty.

12. Brokerage Commissions. That any brokerage commissions due in connection with the transaction contemplated hereby have been paid in full and that any such commissions coming due in the future will be promptly paid by Borrower. Borrower agrees to and shall indemnify Lender from any liability, claim or loss arising by reason of any such brokerage commissions. This provision shall survive the repayment of the Loan made in connection herewith and shall continue in full force and effect so long as the possibility of any such liability, claim or loss exists.

ARTICLE III

COVENANTS OF BORROWER

Borrower hereby covenants and agrees with Lender as follows:

1. Insurance. To obtain such insurance or evidence of insurance as Lender may reasonably require, including but not limited to the following:

(a) Title Insurance. A Mortgage title insurance policy in an amount, form and substance and written by a title insurance company satisfactory to Lender and insuring a valid first lien upon the Premises by virtue of the Mortgage, the original of which policy shall be promptly delivered to Lender. The policy shall contain no exceptions except those specifically permitted by Lender.

(b) Builder's Risk Insurance. Builder's risk and such other hazard insurance as Lender may require with standard noncontributing Mortgage clauses and standard subrogation clauses, such insurance to be in such amounts and form and by such companies as shall be approved by Lender, and, upon request, copies of such policies (together with appropriate endorsements thereto, evidence of payment of premiums thereon and written agreement by the insurer or insurers therein to endeavor to give Lender no less than ten (10) days' prior written notice of intention to cancel) shall be promptly delivered to Lender; said insurance coverage to be kept in full force and effect at all times until the completion of construction of said Improvements and the obtaining of the insurance described in the immediately following paragraph.

(c) Hazard Insurance. Fire and extended coverage insurance and such other hazard insurance as Lender may reasonably require with standard noncontributing Mortgage clauses and standard subrogation clauses, such insurance to be in such amounts and form and by such companies as shall be reasonably approved by Lender, and the originals of such policies (together with appropriate endorsements thereto, evidence of payment of premiums thereon and written agreement by the insurer or insurers therein to endeavor to give Lender ten (10) days' prior written notice of intention to cancel) shall be promptly delivered to Lender; such insurance to be obtained immediately upon completion of construction of said Improvements and before any portion of the Premises is occupied by Borrower or any tenant of Borrower with such insurance to be kept in full force and effect at all times thereafter until the payment in full of the loan evidenced by the Note.

(d) Public Liability and Workmen's Compensation Insurance. A certificate from an insurance company indicating that Borrower is covered by public liability and workmen's compensation insurance, in form and content reasonably satisfactory to Lender.

(e) Payment and Performance Bonds. If required by Lender, one hundred percent (100%) payment and performance bonds, and a dual obligee rider, all in form and substance satisfactory to Lender.

2. Collection of Insurance Proceeds. To cooperate with Lender in obtaining for Lender the benefits of any insurance or other proceeds lawfully or equitably payable to it in connection with

the transaction contemplated hereby and the collection of any indebtedness or obligation of Borrower to Lender incurred hereunder.

3. Application of Loan Proceeds. To use the loan being made pursuant to the Loan Documents solely for the purpose of paying for the cost of construction of the Improvements and such incidental costs relative to such construction as may be approved, solely in the discretion of the Lender, from time to time in writing, solely in the discretion of the Lender.

4. Expenses. Borrower will pay all costs and expenses incurred with respect to any and all transactions contemplated herein and the prosecution or defense of any action or proceeding relating to any transaction contemplated herein or affecting the Premises or any other security given for the Loan, including (without limiting the generality of the foregoing) all title and conveyance charges, recording and filing fees and taxes, intangible taxes, escrow fees, insurance premiums (including title insurance premiums); brokerage commissions, finder's fees, placement fees, court costs, surveyor's, photographer's, appraiser's, architect's, engineer's, Architect's, construction consultant, accountant's and reasonable attorney's fees actually incurred without regard to statutory presumption; and Borrower will reimburse Lender for all expenses paid to third parties of the nature described in this paragraph which have been or may be incurred by Lender with respect to any and all of the transactions contemplated herein of which Borrower has advance notice. In addition, Borrower will indemnify Lender for all costs and expenses incurred by Lender with respect to all transactions contemplated hereby as a result of any changes in taxation or other regulation applicable to Lender. Lender may pay or deduct from the Loan proceeds any of such costs and expenses and any Loan proceeds so applied shall be deemed advanced under this Agreement and secured by the Mortgage. The obligations of Borrower to indemnify Lender hereunder shall survive the repayment by Borrower of all other amounts owed to Lender hereunder.

5. Commencement and Completion of Construction. To commence construction of the Improvements within thirty (30) days from the date of this Agreement; to diligently pursue said construction to completion; and to supply such moneys and to perform such duties as may be necessary to complete the construction of said Improvements pursuant to the Plans and Specifications and in full compliance with all terms and conditions of the Commitment and the Loan Documents, all of which shall be accomplished on or before March 1, 2009 ("Completion Date") and without liens, claims or assessments (actual or contingent) asserted against the Premises which have not been bonded over for any material, labor or other items furnished in connection therewith, and all in material compliance with all construction, use, building, zoning and other similar requirements of any pertinent governmental jurisdiction; reasonable evidence of satisfactory completion with all of which Borrower will provide to Lender upon request therefor by Lender.

6. Right of Lender to Inspect Premises. To permit Lender and its representatives and agents to enter upon the Premises and to inspect the Improvements and all materials to be used in the construction thereof (including making available to Lender working copies of the Plans and Specifications together with all related supplementary materials) and the right to inspect all books, contracts and records of Borrower relating to the Improvements; provided, however, that this provision shall not be deemed to impose upon Lender any obligation to undertake such inspections.

7. Correction of Defects. To promptly correct any departure from the Plans and Specifications not previously approved by Lender. The advance of any loan proceeds shall not constitute a waiver of Lender's right to require compliance with this covenant.
8. Sign Regarding Construction Financing. At the request of Lender, to promptly erect and maintain on a suitable site on the Premises a sign indicating that construction financing is being provided by Lender, all to the reasonable satisfaction of Lender; and to prevent the destruction or removal of said sign without the prior written approval of Lender.
9. Modifications of Plans and Specifications. No material modifications of the Plans and Specifications shall be made without first obtaining the approval in writing of Lender and of all Governmental Authorities that have previously approved the Plans for the construction of the Improvements (if approval of such Governmental Authorities is necessary).
10. Approval of Change Orders. To permit no change from the Plans and Specifications without the prior written approval of Lender which results in additional cost.
11. Notice of Occupancy. To immediately notify Lender upon the acceptance by any tenant of occupancy of any portion of the Premises, such notice to include the name of the tenant and the date of occupancy.
12. Books and Records. To keep and maintain proper and accurate books, records and accounts reflecting all items of income and expense of Borrower in connection with the Premises and the construction thereon; and, upon the request of Lender and reasonable notice, to make such books, records and accounts immediately available to Lender for inspection or independent audit during business hours.
13. Notification of Claims by Subcontractors and Materialmen. To advise Lender promptly, and in writing, if Borrower receives any written notice, written from any laborer, subcontractor or materialmen to the effect that said laborer or materialman has not been paid when due for any labor or materials furnished in connection with the construction of the Improvements.
14. Additional Covenants of Borrower:
- (a) Borrower shall not mortgage, assign, or otherwise dispose of or encumber its interest in the Premises, or any part thereof, or the income stream therefrom, or permit any such action to be taken.
 - (b) Borrower shall upon demand of Lender correct any departure from the Plans not approved in accordance with this Agreement, and the advance of any Loan proceeds shall not constitute a waiver of the right of Lender to have corrected any such defects or departures from the Plans.
 - (c) The Improvements shall be constructed entirely on the Premises and will not encroach upon or overhang any easement, right-of-way, realty or other property right of any other

party whomsoever, and, when erected, shall be wholly within any building restriction lines, however established, to which the Premises are subject.

(d) Borrower will promptly advise Lender in writing of (i) all litigation, regardless of amount, affecting Borrower, any Guarantor, or any part of the Property which isn't covered by insurance, and (ii) all written complaints and charges made by any Governmental Authority affecting the Property or affecting Borrower or its business which may delay or require changes in the construction of the Improvements or impair the security of Lender.

(e) Borrower shall not intentionally create or suffer to exist any choate mechanic's, materialman's, laborer's or other such liens which encumber title to the Property, whether superior or inferior to the Mortgage.

(f) Borrower agrees upon demand of Lender to do any act or execute any additional documents (including, but not limited to, security agreements on any personalty owned by Borrower included or to be included in the Property) as may be reasonably required by Lender to confirm the Lien of the Mortgage or other agreement securing the Loan or to comply with any of the conditions contained in the Loan Documents.

(g) Borrower shall duly observe in all material respects all of the covenants, agreements and conditions on its part to be performed and observed hereunder and under any and all other agreements and instruments herein mentioned to which Borrower is a party, and Borrower shall not, surrender, terminate, cancel, rescind, supplement, alter, revise, modify, or amend any such other agreement or instrument or permit any such action to be taken in violation of the express terms of this Agreement.

(h) If Lender at any time determines in Lender's reasonable discretion that the remaining undisbursed Loan proceeds are not sufficient to pay for the remaining costs of completing the construction and equipping of the Improvements in accordance with the Plans and Specifications and to pay for the interest on the Loan until the Completion Date, Borrower shall within fourteen (14) days after written notice from Lender, deposit with Lender an additional sum of money in an amount equal to the amount of such deficit as so determined. In addition to any other remedies available to Lender, Lender shall have the right to refuse to make any further disbursements of the Loan until the provisions of this subparagraph have been complied with in full. All sums so deposited by Borrower shall be disbursed in the same manner as Loan funds are to be disbursed thereunder and shall be subject to the same terms and conditions as the Loan funds are subject to hereunder; and Lender may require that all sums so deposited may be disbursed in full before any further advances of the Loan funds are made.

(i) Borrower shall comply with all valid and applicable statutes, ordinances, rules and regulations and shall keep in force and effect all licenses, permits, bonds and franchises necessary for the proper conduct of its business.

(j) Borrower shall immediately inform Lender of any material adverse change in its financial condition, or the financial condition of Guarantors, and shall promptly inform Lender of any litigation or threatened litigation or of the occurrence of any other event or

circumstance which might substantially affect the financial condition or business of Borrower or Guarantors.

(k) No material adverse change shall be made without the prior written consent of Lender in the management or ownership of Borrower, or in the manner in which its business is conducted. Said consent shall not be unreasonably withheld by Lender.

(l) Within sixty (60) days of Borrower's and Guarantor's fiscal year end, Borrower and Guarantor shall furnish to Lender a copy of its compiled financial statement. Borrower's and Guarantor's financial statements shall contain a balance sheet, profit and loss statement and aging of accounts receivable and accounts payable, all in reasonable detail, prepared in accordance with generally accepted accounting principles, consistently applied. Each set of financial statements shall be prepared by a certified public accountant or accountants acceptable to Lender and certified by a duly authorized officer of Borrower and Guarantor to be correct and accurate. Borrower and Guarantor shall also furnish a copy of its income tax returns, and such other or additional financial information as Lender may from time to time request. Borrower and Guarantor shall also furnish evidence of payment of real estate taxes on the Property to Lender on an annual basis.

(m) Other than the loan from Lender of even date herein in the principal amount of \$3,411,782.00, the Borrower shall not directly or indirectly incur, create, assume or permit to exist any obligation for payment of borrowed money, excepting only unsecured current liabilities incurred in the ordinary course of business and obligations contemplated by this Agreement, without the express written consent of Lender, which consent shall not be unreasonably withheld. Further, Borrower shall not guarantee the obligations of any person or entity, excepting only obligations contemplated by this Agreement.

(n) Borrower shall not sell, lease, transfer or otherwise dispose of any of the Collateral as described herein, other than in the ordinary course of Borrower's business. If Borrower should desire to sell any of the Collateral, a release price therefor will be determined at the sole discretion of Lender, and upon the sale of that Collateral, the release price will be paid over by Borrower to Lender and applied by Lender to payments due on the Note, in inverse order of the due dates, and Lender shall thereupon release its lien or security interest upon the Collateral sold.

(o) The Borrower shall not, without the prior written consent of the Lender, sell, transfer or convey all or any part of its interest in its assets to another entity.

(p) Borrower shall not incur or permit to exist nor allow Guarantors to incur or permit to exist any encumbrance, pledge or lien upon or against any of the Collateral, except:

(i) Liens or security interests required or expressly contemplated or permitted by this Agreement;

(ii) Liens for taxes, assessments and other governmental charges not yet due and liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due; and

(iii) Tax liens which are being contested in good faith.

(q) Borrower shall pay promptly, when due, all taxes, assessments and governmental charges or levies imposed upon the Borrower or upon the income or any property of the Borrower, as well as all claims of any kind (including claims for labor, material, supplies or rent) which, if unpaid, might become a lien upon any or all of the Collateral.

(r) Borrower shall permit any representative of Lender to examine and to audit any or all of Borrower's books and records and to copy portions thereof, and to visit and inspect any of the Collateral upon receipt of reasonable notification and request.

(s) Environmental Matters.

(1) Any and all real property or interests in real property pledged as collateral security for the Loan, are free of any substantial amounts of waste or debris, and are free from any material amounts of contamination, including:

(i) "Any Hazardous Waste," as defined by the Resource Conservation and Recovery Act of 1976 or any "Hazardous Substance" as defined in Alabama law both as amended from time to time, and regulations promulgated thereunder;

(ii) "Any Hazardous Substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1989, as amended from time to time, and regulations promulgated thereunder;

(iii) Any substance, the presence of which on the real property is prohibited by any law similar to those set forth in this section; and

(iii) Any material which, under federal, state or local law, statute, ordinance or regulation, or court administrative order or decree, or private agreement, requires special handling in collection, storage, treatment or disposal.

(2) Borrower has not filed any notice under any federal or state law indicating past or present treatment, storage or disposal of a hazardous waste, substance or constituent, or other substance into the environment. None of the operations of Borrower is the subject of federal or state litigation or proceedings, or of any investigation evaluating whether any remedial action involving a material expenditure is needed to respond to any improper treatment, storage, recycling, disposal or release into the environment of any hazardous or toxic substance, waste or constituent. None of the operations of Borrower is subject to any judicial or administrative proceeding alleging the violation of any federal, state or local environmental, health or safety statute or regulation. Borrower does not transport any hazardous wastes, substances or constituents.

(3) All notices, permits, licenses or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of any and all real

property pledged as collateral security for the Loan, including, without limitation, past or present treatment, storage, disposal or release of a hazardous substance or solid waste into the environment, have been, to the knowledge of the Borrower, duly obtained or filed.

(4) Borrower will take and continue to take prompt action to remedy all environmental pollution and contamination, hazardous waste disposal and other environmental clean-up problems, if any, whether or not such clean-up problems have resulted from the order or request of a municipal, state, federal, administrative or judicial authority, or otherwise. Borrower will not violate any applicable municipal ordinance, state or federal statute, administrative rule or regulation, or order or judgment of any court with respect to environmental pollution or contamination, hazardous waste disposal or any other environmental matter.

(5) Borrower will indemnify and hold Lender, its officers, directors, employees, representatives, agents, and affiliates harmless against, and promptly pay on demand or reimburse each of them with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses of any and every kind or nature whatsoever asserted against or incurred by any of them by reason of or arising out of or in any way related to (a) the breach of any representation or warranty as set forth herein regarding Environmental Laws, or (b) the failure of Borrower to perform any obligation herein required to be performed pursuant to Environmental Laws. The provisions of this section shall survive the final payment of the Loan and the termination of this Agreement, and shall continue thereafter in full force and effect.

(6) Notwithstanding anything contained herein to the contrary, any covenants of Borrower concerning any environmental matter addressed herein shall not be applicable to any condition which is first created or introduced after a foreclosure, conveyance or other transfer of title of the real property pledged as collateral security for the Loan.

(t) To perform hereunder as follows:

(i) To furnish to Lender with copies of all initial surveys, certificates, plans and specifications, appraisals, title and other insurance, reports and agreements and each and every other document and instrument reasonably required to be furnished by Lender, all at Borrower's expense.

(ii) To execute and deliver to Lender such documents, instruments, assignments and other writings, and to do such other acts necessary or desirable, to preserve and protect the collateral at any time securing or intended to secure the Note, as Lender may require.

(iii) To do and execute all and such further lawful and reasonable acts, conveyances and assurances in the law for the better and more effective carrying out of the intents and purposes of this Agreement as Lender shall reasonably require from time to time.

15. Additional Documents. To perform hereunder as follows:

(a) Regarding Construction. To furnish to Lender with copies of all initial surveys, certificates, plans and specifications, appraisals, title and other insurance, reports and agreements and each and every other document and instrument reasonably required to be furnished by Lender, all at Borrower's expense.

(b) Regarding Preservation of Security. To execute and deliver to Lender such documents, instruments, assignments and other writings, and to do such other acts necessary or desirable, to preserve and protect the collateral at any time securing or intended to secure the Note, as Lender may require.

(c) Regarding This Agreement. To do and execute all and such further lawful and reasonable acts, conveyances and assurances in the law for the better and more effective carrying out of the intents and purposes of this Agreement as Lender shall reasonably require from time to time.

ARTICLE IV

METHOD AND CONDITIONS OF
DISBURSEMENT OF LOAN PROCEEDS

Lender agrees to make disbursements to Borrower against the Note up to the full principal amount thereof, in accordance with a cost breakdown furnished to and approved by Lender, and in accordance with the following procedure:

1. Request for Advance. At such time as Borrower shall desire to obtain, subject to the other requirements hereof, a disbursement of any portion of the loan proceeds, Borrower, Contractor and Lender's inspector shall complete, execute and deliver to Lender a request for an advance ("Draw Request") on the Lender's standard form certificate of payment which shall provide for retainage in such amounts as Lender, in its sole discretion, shall deem appropriate, but not to exceed ten percent (10%).

2. Evidence of Progress of Construction. Said Draw Request shall, upon the request of Lender, be accompanied by evidence in form and content reasonably satisfactory to Lender, including but not limited to certificates and affidavits of Borrower, and Contractor or such other person as Lender may require, showing:

(a) written certification from Borrower that all requirements of this Agreement have been complied with, together with an estimate by Borrower of the costs of construction theretofore and then incurred and the cost of completing the construction of the Improvements (with such supporting details as Lender may require);

(b) written certification from the General Contractor, stating an estimate of the costs of construction under the Construction Contract theretofore and then incurred and the cost of completing performance under the Construction Contract, with such supporting details as Lender

shall reasonably require, including such information as shall be sufficient to reveal that the amounts to be subsequently advanced will be sufficient to pay the remaining costs of construction, and an affidavit and warranty that all payments theretofore made to the General Contractor by Borrower have been used by the General Contractor solely to pay for labor, materials and subcontracts, if any, in performance of the construction of the Improvements and, that no preliminary notices of lien rights have been filed, and that all labor, services, materials theretofore provided (excluding labor, services, and materials to be paid for from the disbursement to be made pursuant to said Draw Request) have been paid for;

(c) written certification from the Lender's inspector or construction consultant ("Inspector") approving such Draw Request and certifying (i) that the Inspector has inspected the Property (ii) that the Loan funds requested are to be applied to costs set out in the Construction Budget and were incurred in connection with the construction and equipping of the Improvements in accordance with the Plans, (iii) that each category of work, with respect to which such application for an advance relates, has been done in substantial compliance with the Plans, (iv) that all labor and materials incorporated into the work as of the date of such statement substantially complies with the Plans, (v) that the undistributed balance of the Loan after payment of the advance then applied for is in his opinion sufficient for the completion of the Improvements in conformity with the Plans, and (vi) as to such other information as Lender may from time to time reasonably require;

(d) the value of that portion of the Improvements completed at that time;

(e) that all outstanding claims for labor, materials and fixtures have been paid;

(f) that there are no liens outstanding against the Premises except for Lender's security interest, other than inchoate liens for property taxes not yet due;

(g) that Borrower has complied with all of Borrower's obligations, as of the date thereof, under the Loan Documents;

(h) that all construction prior to the date of the draw request has been done in substantial accordance with the Plans and Specifications;

(j) that all funds previously disbursed by Lender have been applied directly to the cost of the construction of the Improvements or such other incidental costs as Lender shall have approved in writing;

(k) that copies of all bills or statements for expenses for which the advance is requested are attached to said draw request; and

(l) that all change orders have been approved in writing by Lender.

3. Continuation of Title Insurance Coverage. Within ten (10) days before each disbursement under the Note, Lender shall be authorized to obtain at Borrower's expense a satisfactory endorsement of the previously delivered Mortgage title insurance policy, dated not earlier than the date of the most recent disbursement, which endorsement shall indicate that since

the effective date of said policy (or the effective date of the last such endorsement, if any) there has been no change in the status of title to the Land as set out in said policy, and have the effect of increasing the coverage of the policy up to the total amount then disbursed under the Note.

4. Conditions of Lender's Obligation to Make Advances After the First Advance.
Lender's obligation to make any advance of Loan proceeds after the first advance shall be subject to the satisfaction of each of the following conditions as well as all of the other terms and conditions of this Agreement:

(a) all conditions for the first advance of the Loan shall have been satisfied as of the date of each subsequent advance.

(b) no Default or Event of Default (as hereinafter defined) shall have occurred; and be continuing provided, however, that Lender may in its sole discretion make advances notwithstanding the existence of such a Default or Event of Default, and any advance so made shall be deemed to have been made pursuant to this Agreement but shall not constitute a waiver of or consent to such Default or Event of Default.

(c) the Mortgage shall constitute a valid first lien and security title and interest on the Property therein described for the full amount then and theretofore advanced, free and clear of all liens and encumbrances except permitted exceptions thereunder or such as may be approved in writing by Lender.

(d) all materials and fixtures incorporated in the construction of the Improvements shall have been purchased so that the absolute ownership thereof shall have vested in Borrower immediately upon delivery thereof to the Premises, and Borrower shall have produced and furnished the contracts, bills of sale or other agreements under which title thereto is claimed.

(e) all instruments relating to each advance and all proceedings taken on or prior to each advance in connection with the performance of this Agreement shall be satisfactory to Lender, and Lender shall have been furnished with such documents, reports, certifications, affidavits, and other information, in form and substance reasonably satisfactory to Lender, a Lender may require to evidence compliance by Borrower with all of the provisions of this Agreement.

(f) Lender shall have been furnished with a Draw Request.

(g) Lender shall have been furnished with an endorsement to the title insurance policy, indicating (i) that since the last preceding disbursement, there has been no change in the state of title not theretofore approved by Lender, except as shall be approved in writing by Lender, and (ii) that Lender has title insurance in an amount equal to at least the full amount of Loan proceeds disbursed including the advance for which such endorsement is delivered.

(h) the value of the work in place with respect to the Improvements as certified to by the Inspector shall be equal to or greater than the amount of the Loan funds which will upon such advance have been disbursed by Lender for construction costs, and no change orders shall have been executed except in compliance as stated herein.

5. Conditions Precedent to Final Disbursement. The final disbursement hereunder shall be disbursed only upon compliance with the following requirements (in addition to the requirements for all other disbursements).

(a) evidence of the approval of all appropriate Governmental Authorities of the Improvements in their entirety as being complete as to construction to the extent any such approval is a condition to the lawful use and occupancy of the Improvements.

(b) the accurate and complete certification of the Inspector, the General Contractor and the Borrower that the Improvements have been completed substantially in accordance with the Plans, that direct connection has been made to all appropriate utility facilities and that the Improvements are ready for occupancy.

(c) General Contractor's affidavit or such other document or documents sufficient in the opinion of Lender's counsel to dissolve, under the law of the state in which the Improvements are located, any and all mechanic's and materialman's liens (choate or inchoate) affecting or which may affect title to the Property.

(d) the occurrence of all conditions reasonably required by Lender to deem the construction of the Improvements to have been completed or substantially completed.

6. Notice and Frequency of Disbursements. The Lender shall have no duty or obligation to make any disbursements until the tenth (10th) business day after the Lender has received an approved draw request from the General Contractor and other information or documentation required by the Lender. All disbursements shall be made no more frequently than monthly, unless otherwise approved by Lender, and shall be made jointly to the Borrower and the General Contractor, subject to the provisions set forth below. All disbursements shall be made at the principal office of Lender or at such other place as Lender may designate in writing.

7. Advances.

(a) At the Lender's option, all advances of Loan funds may be made by check payable to the Borrower, by crediting the amount of the advance to an account of Borrower maintained with Lender, or, with respect to construction costs, directly to the General Contractor or any subcontractors, mechanics, materialmen, laborers, or suppliers. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization by Borrower to Lender to advance Loan funds directly to the General Contractor and to any and all subcontractors, mechanics, materialmen, laborers and suppliers engaged with respect to the construction of the Property upon written notice to Borrower. No further direction or authorization from Borrower shall be necessary to authorize such direct advances to the General Contractor or the subcontractors, and all such advances shall constitute advances under the Loan and shall be secured by the Mortgage and other documents securing the Loan as fully as if made directly to Borrower regardless of the disposition thereof by the General Contractor or subcontractors.

(b) Procedures outlined in this Agreement for disbursements of Loan proceeds will not be deemed in any way to limit Lender's ability, in its sole discretion, to advance Loan funds without Borrower's submitting a Draw Request in the event of a Default as provided for hereinafter or to apply any of the Loan proceeds, regardless of whether a Draw Request is submitted therefor, as may be necessary, in Lender's sole discretion, to protect the collateral for the Loan or to protect the priority of its security interest therein; and any such use of the Loan proceeds shall become a part of the outstanding principal amount of the Promissory Note and shall be secured by the Mortgage and other documents securing the Loan.

(c) No advance of Loan proceeds hereunder shall constitute a waiver of any of the conditions to Lender's obligations to make further advances nor, in the event Borrower is unable to satisfy any such condition, shall any such advance have the effect of precluding Lender from thereafter declaring such inability to be a Default or Event of Default hereunder. No advance of any Loan proceeds shall be deemed to be an approval or acceptance by Lender of work done toward the completion of construction, erection and equipping of the Improvements.

(d) All advances shall be solely for the hard construction costs in accordance with a cost breakdown approved solely by the Lender and advances, if any, for incidental costs relative to such construction shall only be made by the Lender as may be approved by the Lender, from time to time in writing, solely in the discretion of the Lender. Any funds up to the loan amount not advanced by the Lender shall result in reducing the loan amount by a like sum.

8. Retainage. The Lender may withhold from disbursement hereunder the greater of (a) ten percent (10%) of construction costs actually incurred for work in place as part of the Improvements as so certified, from time to time, by the Inspector, or (b) the amount actually held back by the Borrower from the General Contractor (such greater amount being hereinafter referred to as the "Retainage"). If there is no Event of Default under this Agreement, an amount equal to the Retainage so withheld shall be released upon completion of the construction of the building constituting a part of the Improvements to be completed and receipt by the Lender of a statement or certificate of the Inspector certifying that the construction of said building has been completed in accordance with the Plans and all necessary certificates, permits, licenses, consents and approvals relating thereto have been issued or obtained.

9. Materials Stored Off Premises. Lender shall have no obligation to make (but may, in its sole discretion and upon such conditions as it may determine advisable, make) disbursements for the costs of material not in place, whether stored on or off the Premises.

10. Default. Under no circumstances shall Lender be obligated to honor any Draw Request or otherwise make any disbursements of any of the Loan proceeds if there is a Default or Event of Default hereunder or if all conditions to such advance have not been strictly satisfied in accordance with the terms hereof.

ARTICLE V

DEFAULTS

An event of default shall be deemed to have occurred hereunder if:

1. Default Under Loan Documents. Any default or event of default shall occur under this Agreement, or under any of the Loan Documents which shall include a failure by Borrower or any Guarantor to pay when due any amount owing under any of the Loan Documents;
2. Breach of Covenant or Condition. Borrower or any Guarantor breaches or fails to perform, observe or meet any material covenant or condition made in any of the Loan Documents;
3. Breach of Representation or Warranty. Any representation or warranty made or agreed to be made in any of the Loan Documents, shall be breached by Borrower or shall prove to be materially false or misleading;
4. Filing of Liens Against the Premises. Any lien for labor, material, taxes or otherwise shall be filed against the Premises or any part thereof and not be removed within thirty (30) days thereafter;
5. Litigation Against Borrower. Any suit shall be filed against Borrower or any guarantor of the construction loan which, if adversely determined, could reasonably be expected to substantially impair the ability of Borrower or such guarantor to perform each and every one of its obligations under and by virtue of the Loan Documents;
6. Levy Upon the Premises. A levy, attachment or garnishment be made under any process on, or a receiver be appointed for, the Premises and the same be not dismissed within thirty (30) days;
7. Bankruptcy of Borrower. Borrower or any guarantor of the loan commits any act of bankruptcy; or any proceeding under bankruptcy laws or other laws of general application to creditors be brought by or against Borrower or any guarantor and the same be not dismissed within thirty (30) days;
8. Insolvency of Borrower. In any legal proceeding Borrower or any guarantor of the Loan is alleged to be insolvent or unable to pay Borrower's debts or any guarantor's debts, respectively, as they become due, and the same be not dismissed within thirty (30) days;
9. Assignment for the Benefit of Creditors. Borrower or any guarantor of the loan shall make a general assignment for the benefit of creditors;
10. Transfer of Premises. Borrower shall without the prior written consent of Lender, sell, transfer or convey, whether absolutely or as security, and whether voluntarily or not, all or any part of its interest in the Premises or in any of the personalty located thereon, or other real estate used as collateral for this Loan, or used or intended to be used in connection therewith;

11. Personal Property Placed in Improvements. Borrower executes (other than to Lender) any conditional bill of sale, chattel Mortgage, security agreement or other security instrument covering any materials, fixtures or articles intended to be incorporated in the Improvements or the appurtenances thereto, or covering articles of personal property placed in the Improvements, or a financing statement publishing notice of such security instrument shall be filed, or if any of such materials, fixtures or articles shall not be purchased so that the ownership thereof shall vest unconditionally in Borrower, free from encumbrances other than to Lender, on delivery at the Premises, or if Borrower shall not produce to Lender upon demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which Borrower claims title to such materials, fixtures and articles; or

12. Completion of the Improvements. The Improvements, in the reasonable judgment of the Lender, are not or cannot be completed on or before the Completion Date for any Improvements or insufficient funds remaining undisbursed under the Loan to complete the Improvements; or

13. Abandonment or Cessation of Construction. Construction of the Improvements shall be abandoned or shall cease and not be resumed within fifteen (15) days thereafter;

15. Adverse Change. The occurrence of any material adverse change in the condition of Borrower, financial or otherwise, from the condition shown by Borrower's financial statement; or

16. Representations in Loan Applications. Except as may be otherwise required, the Premises and all other features of the subject loan transaction shall differ in any adverse material way from the representations of Borrower made in Borrower's loan applications to Lender.

ARTICLE VI

REMEDIES OF LENDER

Upon the occurrence of any one or more of the events of default set out in Article V hereof, Lender shall at its option be entitled, in addition to and not in lieu of, the remedies provided for in the Note, Mortgage or other Loan Documents, to proceed to exercise any one or more of the following remedies:

1. Default Constitutes Default Under Loan Documents. Borrower agrees that the occurrence of such event of default hereunder shall constitute a default under each of the Loan Documents, thereby entitling Lender (i) to exercise any of the various remedies therein provided, including the acceleration of the indebtedness evidenced by the Note and the foreclosure of the Mortgage and (ii) to cumulatively exercise all other rights, options and privileges provided by law or in equity.

2. Right of Lender to Assume Possession and Complete Construction. Borrower agrees, upon the request of Lender, to vacate the premises and permit Lender:

- (a) to enter into possession;
- (b) to perform or cause to be performed any and all work and labor necessary to complete the Improvements in accordance with Plans and Specifications;
- (c) to employ security watchmen to protect the Premises; and
- (d) to disburse that portion of the loan proceeds not previously disbursed (including any retainage) to the extent necessary to complete construction of the Improvements in accordance with Plans and Specifications, and if the completion requires a larger sum than the remaining undisbursed portion of the loan, to disburse such additional funds, all of which funds so disbursed by Lender shall be deemed to have been disbursed to Borrower under and secured by the Mortgage. For this purpose, Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact to take all actions necessary in connection therewith including but not limited to the following: to use any funds of Borrower including any balance which may be held in escrow and any funds which may remain unadvanced hereunder for the purpose of completing the Improvements in the manner called for by the Plans and Specifications; to make such additions and changes and corrections in the Plans and Specifications which shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans and Specifications; to employ such subcontractors, agents, architects and inspectors as shall be required for said purposes; to pay, settle or compromise all existing or future bills and claims which are or may be liens against said Premises, or may be necessary or desirable for the completion of the Improvements or the clearance of title to the Premises; to execute all applications and certificates in the name of Borrower which may be required by any construction contract and to do any and every act with respect to the construction of the Improvements which Borrower might otherwise do in its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked by death or otherwise. Said attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with the construction of the Improvements and to take such action and require such performance as it deems necessary. In accordance therewith Borrower hereby assigns to Lender all sums to be advanced hereunder including retainage and any sums in escrow, conditioned upon the use of said sums, if any, for the completion of the Improvements.

ARTICLE VII

GENERAL CONDITIONS

The following conditions shall be applicable throughout the term of this Agreement:

1. Rights of Third Parties. All conditions of the obligations of Lender hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Lender and its successors and assigns and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by the Lender at any time if in its sole discretion it deems

it desirable to do so. In particular, Lender makes no representations and assumes no obligations as to third parties concerning the quality of the construction by Borrower of the Improvements or the absence thereof of defects. In this connection, Borrower agrees to and shall indemnify Lender from any liabilities, claims or losses resulting from the Premises whether related to the quality of construction or otherwise and whether arising during or after the term of the Loan made by Lender to Borrower in connection herewith. This provision shall survive the repayment of said Loan and shall continue in full force and effect so long as the possibility of such liabilities, claims or losses exists.

2. Evidence of Reasonable Satisfaction of Conditions. Any condition of this Agreement which requires the submission of evidence of the existence or nonexistence of a specified fact or facts implies as a condition the existence or nonexistence, as the case may be, of such fact or facts, and Lender shall, at all times, be free independently to establish to its reasonable satisfaction and in its reasonable absolute discretion such existence or nonexistence.

3. Assignment By Borrower. Borrower may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Lender.

4. Assignment by Lender. Lender may assign this Agreement, the other documents executed with respect to the Loan to any other person, firm or corporation. In the event of such assignment, it shall be deemed to be in compliance by Lender with this Agreement and to have been made pursuant to this Agreement.

5. Inspections. The inspections and approvals of the Plans and the Improvements and the workmanship and materials used therein impose no responsibility or liability of any nature whatsoever on Lender, Lender's sole obligation hereunder being to make the advances if and to the extent required by this Agreement.

6. Relationship. It is hereby acknowledged by Lender and Borrower that the relationship between them created hereby and by the other Loan Documents is that of creditor and debtor and is not intended to be and shall not in any way be construed to be that of a partnership, a joint venture or that of principal and agent; and it is hereby further acknowledged that any control of or supervision over the construction of the Improvements by Lender or disbursement of any Loan proceeds to any one other than Borrower shall not be deemed to make Lender a partner, joint venturer or principal or agent of Borrower, but rather shall be deemed to be solely for the purpose of protecting Lender's security for the indebtedness evidenced by the promissory note and other indebtedness of Borrower to Lender.

7. Successors and Assigns Included in Parties. Whenever in this Agreement one of the Parties hereto is named or referred to, the heirs, executors, legal representatives, successors and assigns of such party shall be included and all covenants and agreements contained in this Agreement by or on behalf of the Borrower or by or on behalf of the Lender shall bind and inure to the benefit of their respective heirs, executors, legal representatives, successors and assigns, whether so expressed or not.

8. Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

9. Invalid Provisions to Affect No Others. If fulfillment of any provision hereof or any transaction related hereto at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

10. Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

11. Amendments. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

12. Governing Law. This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of Georgia, except and only to the extent of procedural matters related to the perfection and enforcement of Lender's rights and remedies against the Premises, which matters shall be governed by the laws of the state of South Carolina. However, in the event that the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by which whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Agreement has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Georgia.

13. Notices. Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt requested (the delivery date being the date of the confirmed return receipt requested), or upon being deposited with an overnight commercial delivery service requiring proof of delivery, to the other party or parties at the address of such other party or parties set forth below or at such other address within the continental United States as such other party or parties may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response, if given to Lender, shall be addressed as follows:

Haven Trust Bank
2175 Lawrenceville Highway
Decatur, GA 30033
Attn: Susan Battle

with a copy to:

STURGEON & HARBIN, LLC
3060 Peachtree Road, NW, Ste. 970
Atlanta, Georgia 30305
Attn: Reid H. Harbin, Esq.

and, if given to Borrower, shall be addressed as follows:

Affordable Hospitality Group – Anderson, LLC
3904 N. Druid Hills Rd. #221
Decatur, Georgia 30033

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their seals, the date first above written.

BORROWER:

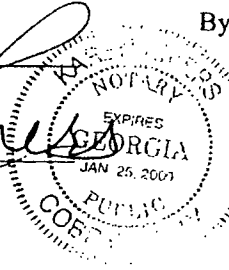
Signed, sealed and delivered
in the presence of:

Affordable Hospitality Group – Anderson, LLC

By: Diversified Capital Investment
Group, LLC, Manager

Witness

Notary Public



By:

Jay Berly, Manager

(L.S.)

LENDER:

Signed, sealed and delivered
in the presence of:

HAVEN TRUST BANK

Witness

Notary Public

BY:

NAME:

TITLE:

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Braayon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book S1720, at page 7-A, records of Anderson County, South Carolina.

EXHIBIT D

PREPARED BY AND WHEN RECORDED RETURN TO:

* Reid H. Harbin, Esq.
Sturgeon & Harbin, LLC
3060 Peachtree Road, NW, Suite 970
Atlanta, Georgia 30305

Tax Parcel ID No.: 0930003023

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement (the "Mortgage"), dated 15th day of May 2008, between Affordable Hospitality Group – Anderson, LLC, a Georgia limited liability company, whose mailing address is 3904 N. Druid Hills Rd. #221, Decatur, Georgia 30033 (hereinafter "Mortgagor") and Haven Trust Bank, the address of which is 2175 Lawrenceville Highway, Decatur, GA 30033, (hereinafter "Mortgagee").

WITNESSETH:

MORTGAGOR HEREBY IRREVOCABLY GRANTS, TRANSFERS, ASSIGNS AND CONVEYS TO MORTGAGEE WITH WARRANTY COVENANTS:

All that certain property and all buildings and all other improvements now thereon or hereafter constructed thereon situated in the County of Anderson, State of South Carolina, described in Exhibit "A" attached hereto and made a part hereof by reference, (commonly known as 1.51 Acres with an unspecified frontage on Electric City Boulevard in Anderson County, South Carolina) (the "Premises");

TOGETHER WITH all of the following which, with the Premises, are herein collectively called the "Mortgaged Property":

(a) All appurtenances and all estate and rights of Mortgagor in and to the Premises;

(a) All water and water rights, ditch and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, royalties, minerals, oil and gas rights, lease or leasehold interests owned by Mortgagor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;

(a) All right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises;

(b) All improvements, fixtures, equipment, furniture, inventory and other articles of personal property, and all rights therein, now owned or hereafter acquired by Mortgagor and affixed to, placed upon or used in connection with the Premises, and all replacements thereof and substitutions therefor (as further described in paragraph A.7); and

(c) All awards, payments or other amounts, including interest thereon, which may be made with respect to the Mortgaged Property as a result of injury to or decrease in the value of the Mortgaged Property or as a result of the exercise of the power of condemnation or eminent domain.

(d) All rights to the rents, issues and profits of the Mortgaged Property as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities (provided, however, that the Mortgagor shall be entitled to the collect and retain the above until a Default has occurred hereunder).

FOR THE PURPOSE OF SECURING, in such order of priority as Mortgagee may elect, the full and prompt payment, observance and performance when due, of all present and future obligations and indebtedness of Mortgagor to Mortgagee, whether at the stated time, by acceleration or otherwise, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, whether or not of the same or similar class or of like kind to any indebtedness incurred contemporaneously with the execution of this Mortgage, and whether now or hereafter existing, or due or to become due, including without limitation, the following:

Obligations under Promissory Note. Payment of any and all amounts owed by Mortgagor under, in connection with and/or pursuant to the indebtedness evidenced by that certain Promissory Note of even date herewith, in the original principal sum of Three Million Four Hundred Eleven Thousand Seven Hundred Eighty-Two and No/100 Dollars (\$3,411,782.00) (the "Note"), with interest thereon according to the provisions thereof, and all obligations of Mortgagor under, in connection with and/or pursuant to this Mortgage granted by Mortgagor as security for payment of the foregoing indebtedness; and

(a) All Sums in Connection with Note and Mortgage. All sums advanced or expenses or costs paid or incurred (including without limitation reasonable attorneys' fees and other legal expenses) by Mortgagee pursuant to or in connection with the Note or this Mortgage, plus any interest on such sums, expenses or costs; and

(b) Any Changes to Note. Any extensions, amendments, modifications, changes, substitutions, restatements, renewals or increases or decreases to the Note and all other indebtedness secured by this Mortgage; and

(c) Any Additional Loans. Such additional sums with interest thereon as may be hereafter borrowed from Mortgagee, its successors or assigns, by the then record owner or owners of the Mortgaged Property when evidenced by another promissory note or notes, which are by the terms thereof secured by this Mortgage; and

(d) Any and All Other Indebtedness. All other indebtedness, obligations and liabilities of any kind, of Mortgagor to Mortgagee, now or hereafter existing, absolute or contingent, direct or indirect, joint and/or several, due or not due, secured or unsecured, arising by operation of law or otherwise including indebtedness, obligations and liabilities to Mortgagee of Mortgagor as a member of any partnership, syndicate or association or other group and whether incurred by Mortgagor as principal, surety, endorser, guarantor, accommodation party or otherwise, and any obligations which give rise to an equitable remedy for breach of performance if such breach gives rise to an obligation by Mortgagor to pay Mortgagee.

This Mortgage shall secure all of such obligations up to the maximum principal amount of Three Million Four Hundred Eleven Thousand Seven Hundred Eighty-Two and No/100 Dollars (\$3,411,782.00) and such amount may be advanced and repaid in whole or in part and again advanced and repaid in whole or in part from time to time without affecting the existence or priority of the lien of this Mortgage and this total shall limit only the total amount of principal which may be secured by this Mortgage at any one time.

A. PROVISIONS RELATING TO THE MORTGAGED PROPERTY

A.1 Taxes and Governmental Claims and Other Liens. Mortgagor agrees to pay or cause to be paid, prior to the date they would become delinquent if not paid, all taxes, assessments and governmental charges whatsoever levied upon or assessed or charged against the Mortgaged Property, including, without limitation, all water and sewer taxes, assessments and other charges, taxes, impositions and rents, if any. Mortgagor shall give to Mortgagee a receipt or receipts, or certified copies thereof, evidencing every such payment by Mortgagor, not later than forty-five (45) days after such payment is made but not later than forty-five (45) days after such payment would become delinquent if not paid. Mortgagor also agrees to promptly and faithfully pay, satisfy, and obtain the release of all other claims, liens, encumbrances, and contracts, affecting or purporting to affect the title to, or which may be or appear to be liens on, the Mortgaged Property or any part thereof, and all costs, charges, interest and penalties on account thereof, including, without limitation, the claims of all persons supplying labor or materials to the Mortgaged Property and to give Mortgagee, upon demand, evidence satisfactory to Mortgagee of the payment, satisfaction or release thereof.

A.2 Insurance. Mortgagor agrees to keep the Mortgaged Property insured against loss or damage by fire and other casualty with extended coverage and against any other risks or

hazards which in the opinion of Mortgagee should be insured against, and in any case against all risks which persons engaged in the same business as is carried on at the Premises customarily insure against, with the minimum amount of said insurance to be no less than the amount of the Note. Mortgagor shall also carry insurance against the risk of rental or business interruption at the Premises, in an amount deemed satisfactory by Mortgagee. All of such insurance shall be placed with a company or companies and in such form and with such endorsements as may be approved or required by Mortgagee. Loss under all such insurance shall be payable to Mortgagee in accordance with this paragraph, and all such insurance policies shall be endorsed with a standard, non-contributory Mortgagee's clause in favor of Mortgagee. Mortgagor shall also carry public liability insurance, in such form, amount and with such companies as Mortgagee may from time to time require, naming Mortgagee as an additional insured. The policy or policies evidencing all insurance referred to in this paragraph and receipts for the payments of premiums thereon shall be delivered to and held by Mortgagee. All such insurance policies shall contain a provision requiring at least ten (10) days notice to Mortgagee prior to any cancellation or modification. Mortgagor shall give Mortgagee satisfactory evidence of renewal of all such policies with premiums paid at least thirty (30) days before expiration. Mortgagor agrees to pay all premiums on such insurance as they become due, and will not permit any condition to exist on or with respect to the Mortgaged Property which would wholly or partially invalidate any insurance thereon. Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any such insurance, incur any liability for the form or legal sufficiency or absence of insurance contracts, solvency of insurers, or payment of losses, and Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, thereunder. Effective upon any default hereunder, all of Mortgagor's right, title and interest in and to all such policies and any unearned premiums paid thereon are hereby assigned to Mortgagee, which shall have the right, but not the obligation, to assign the same to any purchaser of the Mortgaged Property at any foreclosure sale or other disposition thereof. The requirements of Mortgagee for insurance under the provisions of this paragraph may be modified or amended in whole or in part by Mortgagee, in its reasonable discretion, and Mortgagor agrees, upon any expiration of any existing policy or policies of insurance, to provide a replacement policy or policies which shall meet such amended or modified insurance standards. In the event of a loss, Mortgagor shall give immediate written notice to the insurance carrier and Mortgagee. Mortgagor hereby appoints Mortgagee its attorney-in-fact for the purposes hereinafter set out, and authorizes and empowers Mortgagee, at Mortgagee's option and in Mortgagee's sole discretion as attorney-in-fact for Mortgagor, to make proof of loss, to adjust and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds. Mortgagor understands and agrees that the power of attorney hereby granted to Mortgagee is a power coupled with an interest and is irrevocable until Mortgagee's interest hereunder is terminated by the payment and performance of all of Mortgagor's obligations and indebtedness secured hereby. In the event of any insured damage to or destruction of the Mortgaged Property or any part thereof (herein called an "Insured Casualty"), if (A) in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months after insurance proceeds are made available to an economic unit not less valuable and not less useful than the same was prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Indebtedness, and (B) no Event of Default (hereinafter defined) shall have occurred and be then

continuing, then the proceeds of insurance may, in Mortgagee's sole discretion, be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Insured Casualty, as provided below; and Mortgagor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, however, in any event Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof. Notwithstanding the above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Mortgagee, in its sole discretion, be applied to the payment of the Indebtedness, whether or not then due, or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Indebtedness shall not be considered a voluntary prepayment requiring payment of the prepayment consideration provided in the Note, and shall not reduce or postpone any payments otherwise required pursuant to the Note, other than the final payment on the Note. If proceeds of insurance, if any, are made available to Mortgagor for the restoring, repairing, replacing or rebuilding of the Mortgaged Property, Mortgagor hereby covenants to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law and plans and specifications approved in advance by Mortgagee. If Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it (which evidence may include inspection[s] of the work performed) that the restoration, repair, replacement and rebuilding covered by the disbursement has been completed in accordance with plans and specifications approved by Mortgagee, (2) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (3) funds, or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (4) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Mortgagee may reasonably require and approve; and Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. With respect to disbursements to be made by Mortgagee: (A) no payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; (B) funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and (C) at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien and the costs. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to any party entitled thereto. In no event shall Mortgagee assume any duty or obligation for the adequacy, form or content of any such plans and

specifications, nor for the performance, quality or workmanship of any restoration, repair, replacement and rebuilding. Notwithstanding anything to the contrary contained herein, the proceeds of insurance reimbursed to Mortgagor in accordance with the terms and provisions of this Mortgage shall be reduced by the reasonable costs (if any) incurred by Mortgagee in the adjustment and collection thereof and in the reasonable costs incurred by Mortgagee of paying out such proceeds (including, without limitation, reasonable attorney's fees and costs paid to third parties for inspecting the restoration, repair, replacement and rebuilding and reviewing the plans and specifications therefor). If the insurance proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall be in such order as Mortgagee may determine and, if after so applying such insurance proceeds Mortgagee reasonably determines the remaining security to be inadequate to secure the remaining indebtedness, Mortgagor shall upon written demand from Mortgagee prepay on principal such an amount as will reduce the remaining indebtedness to a balance for which adequate security is present.

A.3 Condemnation and Other Awards. If the Mortgaged Property or any part thereof is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Mortgagor by virtue of its interest in the Mortgaged Property shall be, and by these presents is, assigned, transferred and set over unto, and to be held by Mortgagee subject to the lien and security interest of this Mortgage, and disbursed at Mortgagee's option, (a) to hold all or any portion of such proceeds to be used to reimburse Mortgagor for the costs of reconstruction or repair of the Mortgaged Property, or (b) to apply all or any portion of such proceeds to the payment of the sums secured by this Mortgage, whether or not then due. In the event of a taking of the Mortgaged Property or any part thereof (herein called a "Condemnation"), if (A) in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months after the proceeds of the condemnation proceeds are made available to an economic unit not less valuable (including an assessment by Mortgagee of the impact of the termination of any Leases due to such Condemnation) and not less useful than the same was prior to the Condemnation, and after such restoration will adequately secure the outstanding balance of the Indebtedness, and (B) no Event of Default (hereinafter defined) shall have occurred and be then continuing, then the proceeds may, in Mortgagee's sole discretion, be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Condemnation, as provided below; and Mortgagor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, however, in any event Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of the Condemnation made available pursuant to the terms hereof. Notwithstanding the above, the proceeds collected upon any Condemnation shall, at the option of Mortgagee, in its sole discretion, be applied to the payment of the Indebtedness, whether or not then due, or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Condemnation, in the manner set forth below. Any such application to the Indebtedness shall not be considered a voluntary prepayment requiring payment of the prepayment consideration provided in the Note, and shall not reduce or postpone any payments otherwise required pursuant

to the Note, other than the final payment on the Note. If proceeds of the Condemnation, if any, are made available to Mortgagor for the restoring, repairing, replacing or rebuilding of the Mortgaged Property, Mortgagor hereby covenants to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law and plans and specifications approved in advance by Mortgagee. If Mortgagor is entitled to reimbursement out of the proceeds of the Condemnation held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it (which evidence may include inspection[s] of the work performed) that the restoration, repair, replacement and rebuilding covered by the disbursement has been completed in accordance with plans and specifications approved by Mortgagee, (2) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (3) funds, or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of Condemnation to complete the proposed restoration, repair, replacement and rebuilding, and (4) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Mortgagee may reasonably require and approve; and Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. With respect to disbursements to be made by Mortgagee: (A) no payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; (B) funds other than proceeds of the Condemnation shall be disbursed prior to disbursement of such proceeds; and (C) at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien and the costs. Any surplus which may remain out of the Condemnation proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to any party entitled thereto. In no event shall Mortgagee assume any duty or obligation for the adequacy, form or content of any such plans and specifications, nor for the performance, quality or workmanship of any restoration, repair, replacement and rebuilding. Notwithstanding anything to the contrary contained herein, the proceeds of the Condemnation reimbursed to Mortgagor in accordance with the terms and provisions of this Mortgage shall be reduced by the reasonable costs (if any) incurred by Mortgagee in the adjustment and collection thereof and in the reasonable costs incurred by Mortgagee of paying out such proceeds (including, without limitation, reasonable attorney's fees and costs paid to third parties for inspecting the restoration, repair, replacement and rebuilding and reviewing the plans and specifications therefor). If the Condemnation proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall be in such order as Mortgagee may determine and, if after so applying such proceeds Mortgagee reasonably determines the remaining security to be inadequate to secure the remaining indebtedness, Mortgagor shall upon written demand from Mortgagee prepay on principal such an amount as will reduce the remaining indebtedness to a balance for which adequate security is present.

A.4 Condition of Mortgaged Property.

(a) Mortgagor agrees to properly care for and keep the Mortgaged Property in good condition and repair. Without the prior written consent of Mortgagee, Mortgagor agrees not to cause or permit any building or improvement which constitutes a part of the Premises to be removed, demolished or structurally altered, in whole or in part, or any fixture or article of personal property which constitutes a portion of the Mortgaged Property to be removed (other than in the ordinary course of Mortgagor's business), damaged or destroyed. Mortgagee consents to the removal and replacement of fixtures and articles of personal property if such articles of personal property are simultaneously replaced with fixtures and articles of equal or greater value, that are free and clear of all liens other than that of Mortgagee's, and if the value of the Mortgaged Property is not diminished thereby. Mortgagor agrees not to abandon the Premises or leave the Premises unprotected, unguarded, vacant or deserted, and not to cause or permit any waste to the buildings, improvements or fixtures constituting any portion of the Mortgaged Property. Mortgagor agrees (i) to repair, restore and reconstruct in good and workmanlike manner to the condition required hereby any improvement which constitutes a part of the Mortgaged Property which may be damaged or destroyed, in accordance with the provisions of Paragraph A.2 hereof (provided however, Mortgagor shall not be required to so repair, restore or reconstruct if Mortgagee elects under Paragraph A.2 to retain the insurance proceeds and apply them to the sums secured by this Mortgage, and further provided, if Mortgagee elects to use such proceeds to reimburse Mortgagor for the costs of such repair, restoration or reconstruction, provided however, if such proceeds are not adequate, Mortgagor shall deposit with Mortgagee such additional funds as may be required to accomplish such repair, restoration or reconstruction); (ii) not to permit any lien of mechanics or materialmen to attach to the Mortgaged Property, provided, however, that the filing of any such lien shall not constitute a default hereunder if Mortgagor shall provide an adequate bond with respect to any such lien, in accordance with applicable law or shall provide indemnification with respect to such lien with security therefor acceptable to Mortgagee in Mortgagee's sole discretion; (iii) to comply with all laws, ordinances, regulations or governmental orders affecting the Mortgaged Property or requiring any alterations or improvements thereto; (iv) not to commit, suffer or permit any act with respect to the Mortgaged Property in violation of law or of any covenants, prior encumbrances, conditions or restrictions affecting the Mortgaged Property; (v) to make or cause to be made from time to time all needed or proper replacements, repairs and renewals; (vi) to perform all obligations and pay all amounts as and when required to protect Mortgagor's interest in the Premises; and (vii) to do any other act or acts, all in a timely and proper manner which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve the value of the Mortgaged Property. Mortgagor covenants and agrees that the Mortgaged Property shall be used for a motel and for no other purpose without Mortgagee's prior written consent.

(b) Mortgagee may, during normal business hours and upon reasonable notice to Mortgagor, enter and inspect or protect the Mortgaged Property, in person or by agent, in such manner and to such extent as it may deem necessary. In the event that Mortgagor fails to maintain the Mortgaged Property in the manner specified herein, Mortgagee may, at its option,

undertake such repairs or maintenance, for the account of Mortgagor, as Mortgagee deems necessary. The cost of any such repairs or maintenance undertaken by Mortgagee shall become immediately due and payable by Mortgagor to Mortgagee and Mortgagee shall be reimbursed therefor in accordance with the provisions of Paragraph B.2 hereof. The right of Mortgagee to undertake such repairs or maintenance shall be optional, shall not impose any duties on Mortgagee, and shall not be deemed to cure any Default under this Mortgage for failure to maintain the Mortgaged Property in accordance with the covenants herein.

A.5 Alterations and Additions. Mortgagor agrees that, as to any alteration, addition, construction or improvement to be made upon the Premises, all plans and specifications therefor shall be prepared by or on behalf of Mortgagor and shall be subject to Mortgagee's written approval in advance of the commencement of work; once commenced, all work thereunder shall be prosecuted with due diligence; all construction thereof will be in substantial accordance with the plans and specifications so approved and will comply with all laws, ordinances or regulations made or promulgated by any governmental agency or other lawful authority and with the rules of the applicable Board of Fire Underwriters. Should Mortgagor at any time fail to comply with any notice or demand by any governmental agency, which alleges a failure to comply with any such plan, specification, law, ordinance or regulation, such failure shall, at Mortgagee's option, constitute a default hereunder.

A.6 Status of Title. Mortgagor represents and warrants that it is the lawful owner of the Mortgaged Property in fee simple, subject to no liens or encumbrances, except for covenants, conditions, restrictions, easements and rights-of-way of record, if any and that certain superior lien in favor of Mortgagee in the amount of \$3,411,782.00. Mortgagor represents and warrants that it has full right, power and authority to convey and mortgage the Mortgaged Property and to execute this Mortgage. Mortgagor also agrees to protect, preserve and defend its interest in the Mortgaged Property and title thereto, including full performance of any prior claim or lien; to appear and defend this Mortgage in any action or proceeding affecting or purporting to affect the Mortgaged Property, the lien of this Mortgage thereon or any of the rights of Mortgagee hereunder, and to pay all costs and expenses incurred by Mortgagee in connection with any such action or proceeding, including, without limitation, reasonable attorneys' fees, whether any such action or proceeding progresses to judgment and whether brought by or against Mortgagee, Mortgagor, or the Mortgaged Property. Mortgagee shall be reimbursed for any such costs and expenses in accordance with the provisions of Paragraph B.2 hereof. Mortgagee may, but shall not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as it may deem advisable or may settle or compromise the same and, for any of such purposes, may expend and advance such sums of money as it may deem necessary, and Mortgagee shall be reimbursed therefor in accordance with the provisions of Paragraph B.2 hereof.

A.7 Personal Property Security Interest.

(a) This Mortgage shall cover, and Mortgagor hereby grants to Mortgagee a security interest in, all property now or hereafter affixed or attached or incorporated upon the Mortgaged Property including without limitation all furnaces, heating equipment, air

conditioners, fans, water heaters, pipes, ducts, wiring and electrical fixtures, conduits, plumbing, sinks, partitions, restroom fixtures, light fixtures, windows and window coverings, and floor, ceiling and wall coverings, and all replacements thereof and substitutions therefor, which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property. In addition, this Mortgage shall cover, and Mortgagor hereby grants to Mortgagee a security interest in: (i) all building materials, fixtures, equipment and other personal property to be incorporated into any improvements constructed on the Premises; (ii) all interest of Mortgagor in all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishing and other personal property which are now or hereafter affixed to, placed upon or used in connection with, the Premises, and all replacements thereof, and substitutions therefor; (iii) all interest of Mortgagor in all rents, issues and profits, as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities, and all accounts, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, tradenames, trademarks and service marks, arising from or related to the Premises and any other business conducted on the Premises; (iv) all of Mortgagor's interest in and rights pursuant to any franchise or licensing agreement or other similar agreement with respect to the Premises but only to the extent such grant does not violate any such agreement; and (v) all books, records and files relating to, any of the foregoing. The security interests hereby granted are first and prior liens on the property described. To the extent any property covered by this Mortgage consists of rights in action or personal property covered by the Uniform Commercial Code, this Mortgage constitutes a Security Agreement and is intended to create a security interest in such property in favor of Mortgagee. This Mortgage shall be self-operative with respect to such property, but Mortgagor agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Mortgagee may request in order to manifest or perfect the lien hereof more specifically upon any of such property. If the lien of this Mortgage on any property is subject to a prior security agreement covering such property, then in the event of any default hereunder, all the right, title and interest of Mortgagor in and to any and all deposits made in connection with the transaction whereby such prior security agreement was made is hereby assigned to Mortgagee, together with the benefit of any payments now or hereafter made in connection with such transactions.

(b) Mortgagor agrees that all property of every nature and description, whether real or personal covered by this Mortgage, together with all personal property covered by any separate security interests granted to Mortgagee, are encumbered as one unit, and that upon default by Mortgagor under the Note, or under this Mortgage or any security agreement given pursuant to this paragraph, this Mortgage and such security interest, at Mortgagee's option, may be foreclosed and the security sold in the same proceedings, and all of the Premises (both realty and personalty) may, at Mortgagee's option, be sold as such in one unit as a going business. The filing of any financing statement relating to any personal property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Mortgagee's rights or priorities hereunder.

A.8 Severability. Should any term, provision, covenant or condition of this Mortgage be held to be void or invalid, the same shall not affect any other term, provision, covenant or

condition of this Mortgage, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein.

A.9 Usury Disclaimer. Any provision contained herein or in the Note or in any other instrument now or hereafter evidencing, securing or otherwise relating to any indebtedness secured by this Mortgage to the contrary notwithstanding, neither Mortgagee nor the holder of any such indebtedness shall be entitled to receive or collect, nor shall Mortgagor be obligated to pay, interest on any of the secured indebtedness in excess of the maximum rate of interest at the particular time in question, if any, which, under applicable law, Mortgagee is then permitted to charge Mortgagor (herein the "Maximum Rate") provided that the Maximum Rate shall be automatically increased or decreased as the case may be, without notice to Mortgagor from time to time as of the effective time of each change in the Maximum Rate, and if any provision herein or in the Note or in such other instrument shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by applicable law, the provisions of this Paragraph A.9 shall control and shall override any contrary or inconsistent provision herein or in the Note or in such other instrument. The intention of the parties being to conform strictly to the usury limitations under applicable law, the Note, this Mortgage, and each other instrument now or hereafter evidencing or relating to any indebtedness secured by this Mortgage shall be held subject to reduction to the maximum amount allowed under said applicable law as now or hereafter construed by the courts having jurisdiction, and any payment by Mortgagor over the Maximum Rate shall be applied to reduce the principal amount due and owing to Mortgagee.

A.10 Impounds. Upon an Event of Default, Mortgagor shall, if requested by Mortgagee, deposit with Mortgagee or Mortgagee's designee on each monthly payment date as set forth in the Note one-twelfth (1/12) of the reasonably estimated amount of real estate taxes assessed or to be assessed against the Mortgaged Property for the then current year, together with one-twelfth (1/12) of the reasonably estimated total of all insurance premiums required to be paid for the then current year, as estimated by Mortgagee, together with any extra amount necessary so that the next installments of real property taxes and insurance premiums may be paid from the deposit. Such moneys shall at proper times be progressively returned to Mortgagor for use in the actual payment of said taxes and said insurance premiums or, at the sole election of Mortgagee, Mortgagee may use said moneys in actual payment of such taxes and premiums, but nothing in this paragraph shall release Mortgagor from its obligations to pay said taxes as the same become due and payable under the provisions hereof and to maintain in force all insurance policies as required hereby. All impounds required under this paragraph shall be deposited in a non-interest bearing account of Mortgagee, to be withdrawn by Mortgagee at such times and in such amounts as shall be deemed appropriate by Mortgagee. All amounts deposited under this paragraph are hereby assigned to Mortgagee as additional security for all indebtedness secured by this Mortgage, and so long as any Default as set forth herein including a default in the payment of any money or the performance of any covenant or obligation herein contained or secured hereby exists, then any deposits made by Mortgagor under this paragraph may, at the option of Mortgagee, be applied to the payment of principal and interest or other indebtedness secured hereby, in lieu of being applied to any of the purposes of this paragraph A.10 previously stated.

A.11 Environmental Representations and Warranties. Mortgagor represents and warrants to Mortgagee that: (a) during the period of Mortgagor's ownership of the Mortgaged Property, there has not been, nor will there be in the future, any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any person or entity on, or about the Mortgaged Property; (b) Mortgagor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Mortgagee in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Mortgaged Property or (ii) any actual or threatened litigation or claims of any kind by any person or entity relating to such matters; and (c) except as previously disclosed to and acknowledged by Mortgagor in writing, (i) neither Mortgagor nor any tenant, contractor, agent, or other authorized user of the Mortgaged Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Mortgaged Property and (ii) all such activity shall be conducted in full compliance with all applicable federal, state, and local laws, regulations and ordinances. Mortgagor, at any time during usual business hours, authorizes Mortgagee and its agents to enter upon the Mortgaged Property to make such inspections and tests, including, without limitation, intrusive tests, at Mortgagor's expense, as Mortgagee may deem appropriate to determine compliance with this section of the Mortgage and the absence of any hazardous waste or hazardous substance on or near the Mortgaged Property. Any inspections or tests made by Mortgagee shall be for Mortgagee's purposes only and shall not be construed to create any responsibility or liability on the part of Mortgagee. Mortgagor hereby (a) releases and waives any future claims against Mortgagee for indemnity or contribution in the event Mortgagor becomes liable for cleanup or other costs associated therewith, and (b) agrees to indemnify and hold harmless Mortgagee against any and all claims, losses, liabilities, damages, penalties, and expenses, which Mortgagee may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release, or threatened release occurring prior to Mortgagor's ownership or interest in the Mortgaged Property, whether or not the same was or should have been known to Mortgagor. The provisions of this paragraph of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness secured herein and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Mortgagee's acquisition of any interest in the Mortgaged Property, whether by foreclosure or otherwise. The terms "hazardous waste," "disposal," "release," and "threatened release," as used in this Mortgage shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA") the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation Act, 49 U.S.C. Section 6901 et seq., as amended, or other applicable state or federal laws, rules or regulations adopted pursuant to any of the foregoing. The term "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products and asbestos.

A.12 Time of the Essence. Time of each payment and performance of each of Mortgagor's obligations pursuant to the Note, this Mortgage, and each other instrument or

obligation of Mortgagor secured by this Mortgage or given in connection with this Mortgage is specifically declared to be of the essence.

B. GENERAL PROVISIONS.

B.1 Non-Waiver. Mortgagee's acceptance of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a Default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay said entire sum then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Mortgagee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this Mortgage conferred upon Mortgagee, upon the occurrence of a default, and the right to proceed with a sale under any notice of default and election to sell shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice. Consent by Mortgagee to any transaction or action which is subject to consent or approval of Mortgagee hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive transactions or actions.

B.2 Substitute Performance by Mortgagee. Should Mortgagor fail to pay or perform when required hereunder any obligation of Mortgagor hereunder, or if any action or proceeding is commenced which affects the Mortgaged Property or title thereto or the interest of Mortgagee therein, including but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving bankruptcy, insolvency or reorganization, Mortgagee may, but shall not be obligated to, without regard to the adequacy of its security and without prejudice to its right to declare a Default hereunder, make such appearances, disburse such sums or take such actions as Mortgagee reasonably deems necessary to protect Mortgagee's interest, including, but not limited to disbursement of attorneys' fees and entry upon the Mortgaged Property to make repairs without notice or demand to or upon Mortgagor. Mortgagor hereby grants to Mortgagee an easement to enter upon the Property at any time, which easement shall continue for the duration of this Mortgage. The payment by Mortgagee of any delinquent tax, assessment or governmental charge, or any lien or encumbrance which Mortgagee in good faith believes may be prior to the lien of this Mortgage, or any insurance premium for insurance which Mortgagor is obligated to provide hereunder but which Mortgagee in good faith believes has not been supplied, shall be conclusive between Mortgagor and Mortgagee as to the propriety and amount so paid. Mortgagee shall be subrogated to all rights, equities and liens discharged by any such expenditure. After any Default hereunder and whether or not any action is instituted to enforce any provision of this Mortgage or the Note, Mortgagor promises to pay to Mortgagee, as incurred, all reasonable sums incurred by Mortgagee for attorneys' fees and costs to enforce this Mortgage or the Note or to defend any claims arising from this Mortgage or the Note. Any amounts so paid pursuant to this Paragraph B.2, or the cost of such performance, together with all costs and expenses incurred by Mortgagee in connection with such payment or performance, and any amounts for which Mortgagor is specifically obligated to reimburse Mortgagee pursuant to

provisions hereof, including reasonable attorneys' fees and interest on all such amounts at the default rate, as described in the Note, from the date paid by Mortgagee until repaid to Mortgagee, shall be payable by Mortgagor to Mortgagee immediately upon notice to Mortgagor of the amount owing, without further demand, shall be secured by this Mortgage and shall be added to the judgment in any suit brought by Mortgagee against Mortgagor. Failure to pay any such amount within ten (10) days after notice to Mortgagor of the amount owing shall constitute a Default hereunder and Mortgagee may, at its option, accelerate and demand full payment of all amounts secured hereby.

B.3 Powers of Mortgagee. At any time or from time to time, without liability therefor and without notice, without affecting the personal liability of any person or entity for the payment of the indebtedness secured hereby and without affecting the lien of this Mortgage upon the Mortgaged Property for the full amount of all amounts secured hereby, Mortgagee may (a) release all or any part of the Mortgaged Property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon or in creating any covenants or conditions restricting use or occupancy thereof, or (d) join in any extension agreement or in any agreement subordinating the lien or charge hereof.

B.4 Certain Definitions. The term "Mortgagee" means the original Mortgagee hereunder, its successors or assigns, and any future owner and holder, including pledgee, of the Note. All obligations of each Mortgagor hereunder are joint and several, and this Mortgage in all its parts applies to and binds the heirs, personal representatives, administrators, executors, successors and assigns of all and each of the parties hereto. If Mortgagor is two or more entities or persons, the term "Mortgagor" as used herein shall refer to them collectively, as well as individually.

B.5 Financial Statements and Other Disclosures. Mortgagor represents and warrants to Mortgagee that all financial statements and credit applications delivered by Mortgagor to Mortgagee accurately reflect the financial condition and operations of Mortgagor at the times and for the periods therein stated. So long as this Mortgage is in force and effect, Mortgagor agrees to deliver to Mortgagee, within sixty (60) days after the end of each of Mortgagor's fiscal years, an income statement on the use and operation of the Mortgaged Property, a complete and accurate copy of Mortgagor's federal tax returns and financial statements, including a balance sheet, profit and loss statement and aging of accounts receivable and accounts payable, all schedules, all prepared in accordance with generally accepted accounting principles certified by an officer of the Mortgagor, showing the consolidated financial position of Mortgagor at the close of such fiscal year, and concurrently therewith a certificate of its Managing Member or chief financial officer to the effect that such officer is not aware of any condition or event which constitutes a default under this Mortgage or a default under any franchise agreement to which Mortgagor is a party, or under any notes or obligations or which, with the mere passage of time or notice, or both, would constitute a default under this Mortgage or a default under any such franchise agreement or under any notes or obligations of the Mortgagor. Mortgagor hereby agrees to immediately notify Mortgagee in writing as to the existence of any notes payable by Mortgagor, or any related person or entity, to any franchisor for unpaid royalties or other unpaid obligations to such franchisor.

B.6 Amendment. No alteration, amendment or waiver of this Mortgage, or the Note shall be effective unless in writing and signed by the parties sought to be charged or bound thereby.

B.7 Governing Law. This Mortgage will be governed by, construed and enforced in accordance with federal law and the laws of the State of Georgia, except and only to the extent of procedural matters related to the perfection and enforcement of Lender's rights and remedies against the Mortgaged Property, which matters shall be governed by the laws of the State of South Carolina. However, in the event that the enforceability or validity of any provision of this Mortgage is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Mortgage has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Georgia.

B.8 Statement Fee. For any statement requested by Mortgagor regarding the obligations and indebtedness secured by this Mortgage, or regarding the amounts held in any impound or reserve fund established hereunder, Mortgagee may charge a reasonable fee, not to exceed any maximum amount provided by any applicable law at the time of the request therefor.

B.9 Notices.

(a) All notices required or permitted to be given hereunder shall be delivered in person or by United States mail, postage prepaid, registered or certified with return receipt requested. If any written notice is mailed, it shall be deemed effective on the earlier of actual receipt or on the third (3rd) calendar day following the date of mailing. Notice given in person shall be effective only if, and when, received. The addresses of the parties for delivery of notices shall be the addresses set forth above.

(b) Any party may change its address for notice hereunder to any other location within the continental United States by giving ten (10) days notice to other parties in the manner set forth above.

B.10 Representations and Warranties of Mortgagor. Mortgagor and each signatory who signs on Mortgagor's behalf hereby represents and warrants as follows:

(a) That this Mortgage, the Note and all other documents executed and delivered to Mortgagee in connection herewith were executed in accordance with the requirements of law and are valid, binding and enforceable in accordance with their terms.

(b) That the execution of this Mortgage, the Note and any other document executed and delivered to Mortgagee in connection herewith, and the full and complete performance of the provisions hereof and thereof, will not result in any breach of, or constitute a default under any indenture, mortgage, bank loan or credit agreement or other agreement or

instrument to which Mortgagor is a party or by which Mortgagor is bound, and will not result in the creation of any lien, charge or encumbrance (other than those in favor of Mortgagee) upon any property or assets of Mortgagor.

(c) That as of the date of execution of this Mortgage, Mortgagor is the owner of the Mortgaged Property.

(d) The improvements on the Premises, existing and proposed, and their intended use will, when completed, comply fully with all applicable environmental, air quality, zoning, planning, building, subdivision and other governmental laws and requirements. Mortgagor specifically warrants that the existing improvements on each property listed on Exhibit "A" attached hereto and made a part hereof by reference, complies with all local zoning ordinances.

(e) The Premises are composed of one or more whole tax parcels with a separate tax assessment, independent of any land or improvements not encumbered by this Mortgage.

(f) There is no litigation pending or, to the best of Mortgagor's knowledge, threatened against the Mortgaged Property. There is no litigation pending or, to the best of Mortgagor's knowledge, threatened against Mortgagor, which might, so far as Mortgagor can now reasonably foresee, have a material adverse effect on Mortgagor's ability to repay the Note or to perform the provisions of this Mortgage or of any other document delivered to Mortgagee in connection herewith. Mortgagor has disclosed all litigation pending and threatened against Mortgagor to Mortgagee in writing, and will disclose all future such litigation to Mortgagee in writing within thirty (30) days of its receipt of notice thereof.

(g) The Mortgaged Property complies with all applicable subdivision laws, ordinances, regulations, rules and other requirements.

(h) Mortgagor is not in default with respect to any existing indebtedness or obligation.

(i) Mortgagor has the power and authority to enter into and perform all terms and conditions of this Mortgage, the Note, and all other documents executed in connection with this transaction, and to incur the obligations herein and therein provided for.

(j) Unless previously disclosed to Mortgagee in writing, Mortgagor has not made any agreement or taken any action which may cause anyone to become entitled to a commission or finder's fee as a result of the making of any loan to Mortgagor by Mortgagee.

These representations and warranties may be relied upon by Mortgagee with or without investigation by Mortgagee and they shall survive any such investigation, and shall continue and may be relied upon by Mortgagee until all obligations secured by this Mortgage have been paid in full.

B.11 Extensions and Modifications. From time to time, without affecting the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Mortgage and to observe the obligations of Mortgagor contained herein, without affecting the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Mortgaged Property, Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any other lienholders or guarantors, and without liability on Mortgagee's part, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from this Mortgage any part of the Mortgaged Property, take or release other or additional security, reconvey any part of the Mortgaged Property, consent to the granting of any easement or dedication, join in any extension or subordination agreement and agree in writing with any person obligated to pay the same to modify the rate of interest or period of amortization of any indebtedness secured hereby or change the amount of the installments payable thereon. Mortgagor shall pay Mortgagee a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred by Mortgagee in connection with any such action.

B.12 Waiver by Mortgagor. Mortgagor waives any requirement of presentment, demand for payment, notice of nonpayment or late payment, protest, notice of protest, notice of dishonor, and all other formalities. Mortgagor waives all rights and/or privileges it might otherwise have to require Mortgagee to proceed against or to pursue any remedy available to Mortgagee in any particular manner or order as to any particular collateral, person or entity under any legal or equitable doctrine or principle including, without limitation, marshalling of assets and/or suretyship principles, and further agrees that Mortgagee may proceed against any or all of the assets encumbered hereby or by any other security document or instrument in the event of Default in such order and manner as Mortgagee in its sole discretion may determine. Any Mortgagor that has signed this Mortgage as a surety or accommodation party, or that has subjected its property to this Mortgage to secure the indebtedness of another, hereby expressly waives any defense arising by reason of the cessation from any cause whatsoever of the liability of Mortgagor, and waives the benefit of any statutes of limitation affecting the enforcement hereof.

B.13 Corrections. Mortgagor will, upon request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further documents and do such further acts as may be necessary or as may be reasonably requested by Mortgagee to carry out more effectively the purposes of this Mortgage, to subject to the liens and security interests hereby created any of Mortgagor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such liens and security interests.

B.14 Mortgagee Indemnification. Mortgagor shall and does hereby agree to indemnify and to hold Mortgagee and Mortgagee's affiliates and parent companies, and all of its and their

1

respective officers, directors, employees and agents (the "Indemnified Parties"), harmless from and against all claims, demands, liabilities, losses or damages (including all related costs, expenses, and reasonable attorney's fees) asserted against, imposed on or incurred by the Indemnified Parties in connection with or as a result of this Mortgage or the exercise of any rights or remedies under this Mortgage or by reason of any alleged obligations or undertakings of Mortgagee to perform or discharge any of the terms, covenants or agreements contained in this Mortgage. Should Mortgagee incur any such liability, the amount thereof, together with interest thereon at the Default Rate stated in the Note, shall be secured hereby and Mortgagor shall reimburse the Mortgagee therefor immediately upon demand.

B.15 Late Payment Charge. Mortgagor acknowledges that late payment to Mortgagee will cause Mortgagee to incur costs not contemplated by this Mortgage. Such costs include, without limitation, processing and accounting charges. Therefore, if any payment required by the Note or this Mortgage is not received by Mortgagee within ten (10) days after the due date, Mortgagee hereby may assess a late charge in the amount of five percent (5.0%) of the unpaid amount of the payment, or the maximum permitted by applicable law, whichever is less.

The parties agree that this late charge represents a reasonable sum considering all of the circumstances existing on the date of this Mortgage and represents a fair and reasonable estimate of the costs that Mortgagee will incur by reason of the late payment. The parties further agree that proof of actual damages would be costly or inconvenient. Acceptance of any late charge shall not constitute a waiver of the Default with respect to the overdue amount, and shall not prevent Mortgagee from exercising any of the other rights and remedies available to Mortgagee.

B.16 Exhibits. All of the provisions in each of the attached Exhibits are incorporated herein by this reference for all purposes.

B.17 Acknowledgment of Notice. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

C. DEFAULT PROVISIONS.

C.1 Events of Default. Any of the following shall constitute a "Default" hereunder:

(a) The failure of Mortgagor to pay any payment required under the Note or on any other indebtedness to Mortgagee or any payment required hereunder or under any other agreement securing the Note;

(b) The filing of any petition, or the commencement of any case or proceeding, or the entry of any order for relief, under the Federal Bankruptcy Code or any other federal or state law relating to insolvency, bankruptcy, reorganization, or composition of debts by Mortgagor or any guarantor or endorser of the Note or any other obligation of Mortgagor to

Mortgagee; or any adjudication that Mortgagor or any such guarantor or endorser is insolvent or bankrupt;

(c) If Mortgagee, in good faith, believes the prospect of payment of the Note or any other obligation secured by this Mortgage is impaired, or believes that a substantial part of Mortgagor's property is in danger of loss, misuse, seizure or confiscation;

(d) (i) The filing of any petition or the commencement of any case or proceeding described in subparagraph C.1(b) above against Mortgagor or against any endorser or guarantor of the Note or any other obligation of Mortgagor to Mortgagee, unless such petition and the case or proceeding initiated thereby are dismissed within thirty (30) days from the date of such filing; the filing of an answer by Mortgagor or such endorser or guarantor admitting the allegations of any such petition; or (ii) the appointment of or the taking of possession by a custodian, trustee or receiver for all or any assets of Mortgagor or any such endorser or guarantor, unless such appointment is vacated or dismissed or such possession is terminated within thirty (30) days from the earlier of the date of such appointment or commencement of such possession, but not later than five (5) days before the proposed sale of any assets of Mortgagor or any such endorser or guarantor by such custodian, trustee or receiver;

(e) The insolvency of Mortgagor or of any guarantor or endorser of the Note or any other obligation of Mortgagor to Mortgagee; or the execution by Mortgagor or any such guarantor or endorser of an assignment for the benefit of creditors; or the convening by Mortgagor or any such guarantor or endorser of a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium upon or extension or composition of its debts; or the failure of Mortgagor or of any such guarantor or endorser to pay its debts as they mature; or if Mortgagor or any such guarantor or endorser is generally not paying its debts as they mature;

(f) The admission in writing by Mortgagor or any endorser or guarantor of the Note or any other obligation of Mortgagor to Mortgagee that it is unable to pay its debts as they mature or that it is generally not paying its debts as they mature;

(g) The liquidation, termination or dissolution of Mortgagor or any guarantor or endorser of the Note or any other obligation of Mortgagor to Mortgagee which are corporations, partnerships or joint ventures;

(h) The sale, lease, exchange, conveyance or transfer, of any legal or equitable interest in and to the Mortgaged Property, or the agreement to do so; or the mortgage, assignment, pledge or encumbrance, either voluntarily or involuntarily, or the agreement to do so, without the prior written consent of Mortgagee being first obtained, or the levy, attachment, foreclosure, or seizure, of (i) any right, title or interest of Mortgagor or of any successor to Mortgagor, in and to the Mortgaged Property; or (ii) any material portion of the assets of Mortgagor or of any successor to Mortgagor;

(i) The falsity or misleading nature of any representation or warranty contained herein or any representation to Mortgagee concerning the financial condition or credit

standing of either Mortgagor or any endorser or guarantor of the Note or any other obligation of Mortgagor to Mortgagee;

(j) The failure of Mortgagor to make any deposit of funds required hereunder or under the Note within the time period provided herein or in the Note, or in the absence of such a provision, within five (5) days after written demand therefor from Mortgagee;

(k) The existence of any encroachment upon the Premises which has occurred without the approval of Mortgagee and which is not removed or corrected within thirty (30) days after its creation, or if litigation to remove or correct such encroachment is not instigated by Mortgagor within such thirty (30) day period and thereafter diligently prosecuted;

(l) The filing of any claim of lien against the Premises, any improvements thereon or any part thereof, or any interest or right made appurtenant thereto or the service on Mortgagee, as a disburser, of any notice to withhold funds and the continued maintenance of said claim of lien or notice to withhold for a period of ten (10) days without discharge or satisfaction thereof or provision therefor satisfactory to Mortgagee in its sole discretion, including the posting of a bond or indemnification satisfactory to Mortgagee;

(m) The obtaining by any person of an order or decree in any court of competent jurisdiction enjoining the construction or development of any improvements needed for the operation of Mortgagor's business on the Premises or enjoining or prohibiting Mortgagor or Mortgagee or both of them from performing any of their agreements or obligations with respect to this Mortgage, which proceedings are not discontinued and such decree is not vacated within fifteen (15) days after the granting thereof;

(n) The demolition, destruction or substantial damage of the Mortgaged Property unless Mortgagor either (i) commences and completes restoration or rebuilding within a reasonable time, not to exceed six (6) months, or (ii) prepays the Note, by the amount equal to the percentage of reduction of leasable or otherwise productive area of the Premises caused by such demolition, destruction or substantial damage; provided, however, that the loan to value ratio after giving effect to the demolition, destruction or substantial damage, the restoration or repair thereof and the prepayment as a result thereof shall not be greater than eighty percent (80%);

(o) The failure of Mortgagor to perform any obligations constituting, set forth in, or relating to (a) this Mortgage, the Note, or any other obligation of Mortgagor to Mortgagee now existing or hereafter arising (b) any other agreement or indebtedness of Mortgagor to any affiliate of Mortgagee now existing or hereafter arising irrespective of whether Mortgagee or such affiliate elects pursuant to a provision thereof to declare immediately due and payable the entire unpaid principal sum together with all interest, or other balance thereon, plus any other sums due thereunder;

(p) If Mortgagor is a corporation, the sale, pledge, transfer or assignment by the shareholders of Mortgagor of any shares of the stock of Mortgagor without the prior written

consent of Mortgagee, the merger or consolidation of Mortgagor with another company or entity, the liquidation of Mortgagor, the issuance of any new stock or warrants, or the transfer of issued and outstanding treasury stock or warrants of Mortgagor. If Mortgagor is a corporation, the sale, pledge, transfer or assignment of any of the members of Mortgagor of any of their interest in Mortgagor, or the withdrawal or the admittance of any members into Mortgagor without the prior written consent of Mortgagee;

(q) Any guaranty of the obligations and indebtedness secured by this Mortgage ceases to be effective, except pursuant to a written release from Mortgagee, or any guarantor denies liability thereunder or any default occurs under any such guaranty; or

(r) The failure of Mortgagor to abide by the terms and conditions of any franchise or license agreement to which it is a party.

C.2 Remedies Upon Default. At any time after a Default hereunder, Mortgagee may, at its option, declare all indebtedness secured by this Mortgage immediately due and payable, and collectible without notice, regardless of maturity, and irrespective of whether Mortgagee exercises such option, and regardless of (i) Mortgagee's delay in exercising such option, (ii) Mortgagee's failure to exercise such option on the occasion of any prior Default or (iii) the adequacy of Mortgagee's security, Mortgagee may, at its option and in its sole discretion, without prior notice or demand to or upon Mortgagor, do any one or more of the following:

(a) Mortgagee may in person or by agent enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof, make repairs and alterations, and do any acts which Mortgagee deems proper to protect the security hereof or to operate and maintain the Mortgaged Property and the business operated thereon; and either with or without taking possession, in its own name, sue for or otherwise collect and receive rents, issues, and profits as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities including those past due and unpaid, and apply the same less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. Upon request of Mortgagee, Mortgagor shall assemble and make available to Mortgagee at the Premises any of the Mortgaged Property which has been removed therefrom. The entering upon and taking possession of the Mortgaged Property, the collection of any rents, issues and profits as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities and the application thereof as aforesaid, shall not cure or waive any Default theretofore or thereafter occurring, or affect any notice of Default hereunder or invalidate any act done pursuant to any such notice. Mortgagee or Mortgagee's agent shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and the business operated thereon and shall be liable to account only for those rents, issues and profits as well actually received by Mortgagee. Mortgagee shall not be liable to Mortgagor, anyone claiming by, from, under or through Mortgagor or anyone having an interest in the Mortgaged Property by reason of anything done or undone by Mortgagee. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act. If the rents, issues and profits of the Mortgaged Property and the business operated thereon are not sufficient to meet the costs of

taking control of and managing the Mortgaged Property and collecting the rents, issues and profits, any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Such amounts, together with interest and attorneys' fees if applicable as provided in Paragraph B.2. hereof, shall be immediately due and payable in accordance with the provisions of Paragraph B.2. hereof. Notwithstanding Mortgagee's continuance in possession or receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law upon or after the occurrence of a default, including any right to exercise the power of sale. Any of the actions referred to in this Paragraph may be taken by Mortgagee at such time as Mortgagee is so entitled, without regard to the adequacy of any security for the indebtedness hereby secured.

(b) Mortgagee shall, without regard to the adequacy of any security for the indebtedness hereby secured, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect the Mortgaged Property and the business operated thereon, and, in Mortgagee's discretion, operate the same, in whole or in part, and collect the rents, issues and profits as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities therefrom.

(c) Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage or to enforce any of the covenants, agreements or other obligations contained in this Mortgage.

(d) Mortgagee may elect to cause the Mortgaged Property or any part thereof to be sold as follows:

(i) Mortgagee may cause any such sale or other disposition of personal property to be conducted immediately following the expiration of any grace period, if any, herein provided (or immediately upon the expiration of any applicable redemption period), and may cause any such sale of real property to be conducted as soon after foreclosure as is permitted by law, or Mortgagee may delay any such sale or other disposition for such period of time as Mortgagee deems to be in its best interest. Should Mortgagee desire that more than one such sale or other disposition be conducted, Mortgagee may at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Mortgagee may deem to be in its best interest.

(ii) Should Mortgagee elect to cause any of the Mortgaged Property to be disposed of as personal property as permitted by subparagraph (i) above, it may dispose of any part thereof in any manner now or hereafter permitted by Article 9 of the Uniform Commercial Code or in accordance with any other right or remedy provided by applicable law. Both Mortgagor and Mortgagee shall be eligible to purchase all or any part of such property at any such disposition. Any such disposition may be either by public or private sale or other disposition as Mortgagee may elect in its sole discretion. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended

disposition is to be made, and if such notice is sent to Mortgagor as provided in Paragraph B.10 hereof, it shall constitute reasonable notice to Mortgagor.

(iii) At the foreclosure sale of the Mortgaged Property which is real property, the Mortgaged Property or any portion thereof specified by Mortgagee shall be sold at public auction to the highest bidder for cash in lawful money of the United States, subject, however, to the provisions of Paragraph C.6 hereof. If the Mortgaged Property consists of several lots or parcels, it may be sold as a whole or in separate lots or parcels, if directed by Mortgagee. Any person or entity, including Mortgagee, may purchase at the sale.

(iv) Mortgagee may, in any manner that it deems appropriate, apply the proceeds of any judicial foreclosure sale or sale made pursuant to the power of sale created hereby (to the extent permitted by applicable law) or other disposition of any of the Mortgaged Property hereunder to payment of the following: (1) the expenses of such sale or disposition, together with Mortgagee's fees, costs and expenses and reasonable attorneys' fees incurred by Mortgagee, and the actual cost of publishing, recording, mailing and posting notice; (2) the cost of any search and/or other evidence of title procured in connection therewith and revenue stamps on any deed or conveyance; (3) the payment of the Note secured by this Mortgage; (4) any or all other sums secured by this Mortgage; and (5) the remainder, if any, to the person or persons legally entitled thereto, in the order of their priority.

(e) Mortgagee may take any other appropriate action permitted by applicable law.

C.3 Deficiency; Liabilities and Rights After Default. To the extent permitted by law, Mortgagor shall be and remain liable for any deficiency remaining after sale either pursuant to the Uniform Commercial Code, judicial proceedings, or otherwise. After Default or the occurrence of an event which after the passage of time or giving of notice, or both, could become a Default, Mortgagor shall pay Mortgagee's reasonable attorneys' fees, Mortgagee's fees and its costs and expenses incurred as a result of said Default or other such event, and if suit is brought, all costs of suit, all of which sums shall be secured by this Mortgage. Mortgagor's statutory rights of reinstatement, if any, are expressly conditioned upon Mortgagor's payment of all sums required under the applicable statute and performance of all required acts.

C.4 Right of Setoff. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, Mortgagee is hereby authorized by Mortgagor at any time or from time to time, without notice to Mortgagor, any guarantor or endorser of the Note or any other indebtedness or obligation secured by this Mortgage, or any other person, any such notice being hereby expressly waived, to set off any obligations or liabilities any time held or owing by Mortgagee to or for the credit or the account of Mortgagor or any such guarantor or endorser against the obligations and liabilities of Mortgagor or any such guarantor or endorser to Mortgagee, including, but not limited to, all claims of any nature or description arising out of or connected with this Mortgage, the Note or any other indebtedness or obligation secured by this Mortgage, irrespective of whether or not (a) Mortgagee shall have made any demand hereunder or (b) Mortgagee shall have declared the principal of and interest on

the Note to be due and owing and although said obligations and liabilities, or any of them, shall be contingent and unmatured.

C.5 Foreclosure Procedure. Mortgagor hereby expressly waives, to the extent permitted by law, any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto.

C.6 Foreclosure Purchase. Upon any sale of the Mortgaged Property, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the indebtedness then secured by this Mortgage for or in settlement or payment of all or any portion of the purchase price of the Mortgaged Property purchased.

C.7 Cumulative Remedies. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this Mortgage to Mortgagee, or to which it may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. The unenforceability of any provision in this Mortgage shall not affect the enforceability of any other provision herein. If there exists additional security for the performance of the obligations secured hereby, the Mortgagee, at its sole option, and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

C.8. Marshalling of Assets. Mortgagor agrees that all of the Mortgaged Property and all other collateral or security which may be granted to Mortgagee in connection with the obligations secured by this Mortgage constitutes equal security for all of the obligations secured hereby, and Mortgagor agrees that Mortgagee shall be entitled to sell, retain or otherwise deal with any or all of the Mortgaged Property and all other collateral or security, in any order or simultaneously as Mortgagee shall determine in its sole and absolute discretion, free of any requirement for the marshalling of assets or other restriction upon Mortgagee in dealing with the Mortgaged Property and all other collateral or security.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year set forth above.

MORTGAGOR:

Affordable Hospitality Group – Anderson, LLC

By: Diversified Capital Investment Group, LLC,
Manager

By: [Signature] (L.S.)
Jay Berlye, Manager

Witness

Witness

GEORGIA
STATE OF ~~SOUTH CAROLINA~~)
COUNTY OF FULTON) SS.

ACKNOWLEDGEMENT

Personally appeared before me Reid H. Hurlin and made oath that s/he saw the within Jay Berlye, Manager of Diversified Capital Investment Group, LLC, the Manager of Affordable Hospitality Group – Anderson, LLC, sign, seal and as his act and deed, deliver the within written instrument, and that s/he, with Karen Rivers, witnessed the execution thereof.

Sworn to before me this 15 day of
May, 2008

[Signature]

[Signature] (SEAL)
Notary Public for South Carolina
Georgia

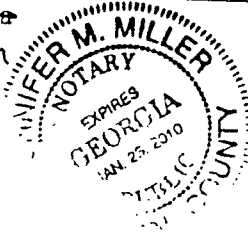


EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book 51720, at page 7-A, records of Anderson County, South Carolina, said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws.

AND ALSO a right of way and easement to construct and maintain a Retention Pond on Parcel Five (5) adjacent to said property as described and outlined in Easement and Agreement dated August 3, 2007, and recorded 8-15-07 in Deed Book 8196, at page 53, records of Anderson County. Said right of way and easement being more fully described in said Easement and Agreement as identified as 0.396 acres, having such metes and bounds as are shown on said plat in the area shown as "Stormwater Detention (sic) Area for Parcels 4 & 5," said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws.

This is the same property conveyed to Affordable Hospitality Group - Anderson, LLC, by deed of Real Investors of the Upstate, LLC, dated August 3, 2007, and recorded 8-15-07 in Deed Book 8196, at page 60, records of Anderson County.

080014303 5/20/2008 09:57:46 AM
FILED, RECORDED, INDEXED
Bk: 08670 Pg: 00204 Pages: 026
Rec Fee: 32.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

EXHIBIT E

HAVEN TRUST BANK

SECURITY AGREEMENT

This Security Agreement (hereinafter called "Agreement") is between Affordable Hospitality Group – Anderson, LLC, a Georgia limited liability company (hereinafter collectively called the "Debtor") and Haven Trust Bank (collectively hereinafter called "Secured Party").

1. Grant of Security Interest. Subject to the terms and conditions of this Agreement, Debtor, for consideration, and to secure the full and prompt payment, observance and performance when due of all present and future obligations and indebtedness of Debtor to Secured Party, whether at the stated time, by acceleration or otherwise, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, whether or not of the same or similar class or of like kind to any indebtedness incurred contemporaneously with the execution of this Agreement, and whether now or hereafter existing, or due or to become due, and whether such indebtedness from time to time is reduced and thereafter increased, or entirely extinguished and thereafter reincurred, including without limitation, the following:

(a) Any and all amounts owed by Debtor under, in connection with, and/or pursuant to the indebtedness evidenced by that certain Promissory Note of even date herewith, in the original principal sum of Three Million Four Hundred Eleven Thousand Seven Hundred Eighty-Two and No/100 Dollars (\$3,411,782.00) (the "Note"), with interest thereon according to the provisions thereof, and all obligations thereunder, in connection therewith and/or pursuant to any and all agreements and other documents in connection therewith; and

(b) All sums advanced or expenses or costs paid or incurred (including without limitation reasonable attorneys' fees and other legal expenses) by Secured Party pursuant to or in connection with the Note or any other agreements and documents in connection therewith plus applicable interest on such sums, expenses or costs; and

(c) Any extensions, modifications, changes, substitutions, restatements, renewals or increases or decreases of any or all of the indebtedness referenced above; and

(d) Any and all other indebtedness, obligations and liabilities of any kind, of Debtor to Secured Party, now or hereafter existing, absolute or contingent, joint and/or several, due or not due, secured or unsecured, arising by operation of law or otherwise, direct or indirect, including without limitation indebtedness, obligations and liabilities of Debtor to Secured Party as a manager of any partnership, syndicate or association or other group and whether incurred by Debtor as principal, surety, endorser, guarantor, accommodation party or otherwise, and any obligations which give rise to an equitable

remedy for breach of performance if such breach gives rise to an obligation by Debtor to pay Secured Party;

Debtor hereby grants to Secured Party a security interest in the collateral described in Schedule 1 to this Agreement and made a part hereof and the proceeds of such collateral (hereinafter collectively called the "Collateral").

2. Representations, Warranties and Covenants of Debtor. Debtor expressly represents, warrants and covenants as follows:

(a) The address appearing with Debtor's signature below is the address of Debtor's chief executive office or, if Debtor has no place of business, Debtor's residence. If the Collateral is not located at Debtor's address appearing below, it will be located at: Lot 4 Electric City Blvd., Anderson, SC or wherever located.

(b) If Debtor does not keep the records concerning the Collateral and concerning accounts, general intangibles, mobile goods and contract rights at the address appearing below, these records will be located at: Lot 4 Electric City Blvd., Anderson, SC or wherever located.

(c) Debtor will give Secured Party sixty (60) days prior written notice of any change in (i) Debtor's chief executive office (or, if Debtor has no place of business, Debtor's residence), the location of the Collateral or the location of the records described above, or (ii) the ownership of Debtor's business, (iii) the principals responsible for the management of Debtor's business, (iv) Debtor's corporate structure or identity, or (v) Debtor's name or trade name, or prior to commencing to use an assumed name not set forth in this Agreement.

(d) If any of the Collateral is to be or has been attached to real estate, the legal description of the real estate is attached to this Agreement as Schedule 2 and made a part hereof.

(e) If Debtor does not have a record interest in the real estate described above, the record owner is indicated on the attached Schedule 2.

(f) Without the prior written consent of Secured Party, Debtor will not move, sell, lease, permit any encumbrance on or otherwise dispose of the Collateral, other than its inventory in the ordinary course of its business. Debtor represents and warrants that Debtor is the sole owner of the Collateral, free and clear of all liens, charges, interests, and encumbrances, other than in favor of Secured Party, that no other person or other entity has any interest in the Collateral whatsoever, and that Debtor will defend same against all adverse claims and demands.

(g) Debtor will keep the Collateral insured by such companies, in such amounts and against such risks as shall be acceptable to Secured Party, with loss payable and additional insured clauses in favor of Secured Party as are satisfactory to Secured Party. Debtor will deposit such insurance policies with Secured Party. Debtor hereby assigns to Secured Party and grants to Secured Party a security interest in any return of unearned premium due upon cancellation of any

such insurance and directs the insurer thereunder to pay to Secured Party all amounts so due. All amounts received by Secured Party in payment of insurance losses or return of unearned premium may, at Secured Party's option, be applied to the indebtedness by Secured Party, or all or any part thereof may be used for the purpose of repairing, replacing or restoring the Collateral. If Debtor fails to maintain satisfactory insurance, Secured Party shall have the option, but not the obligation, to obtain such insurance in such amounts as Secured Party deems necessary, and Debtor agrees to repay, with interest at the highest rate applicable to any indebtedness which this Agreement secures, all amounts so expended by Secured Party.

(h) Debtor represents and warrants to Secured Party that all financial statements and credit applications delivered by Debtor to Secured Party accurately reflect the financial condition and operations of Debtor at the times and for the periods therein stated. So long as this Agreement is in force and effect, Debtor agrees to deliver to Secured Party within sixty (60) days after the end of each of Debtor's fiscal years, a complete and accurate copy of Debtor's compiled financial statements, including consolidated statements of cash flow, and a consolidated balance sheet and statement of income, together with all schedules, showing the consolidated financial position of Debtor at the close of such fiscal year, and concurrently therewith a certificate of its Manager or chief financial officer to the effect that such officer is not aware of any condition or event which constitutes a default under this Agreement or under any notes or other obligations of Debtor or which, with the mere passage of time or notice, or both, would constitute a default under this Agreement or a default under any such franchise agreement or under any notes or other obligations of Debtor.

(i) Secured Party shall not be deemed to have waived any of its rights in any Collateral unless such waiver is in writing and signed by an authorized representative of Secured Party. No delay or omission by Secured Party in exercising any of Secured Party's rights shall operate as a waiver thereof or of any other rights. Secured Party shall have, in addition to all other rights and remedies provided by this Agreement or applicable law, the rights and remedies of a secured party under the Uniform Commercial Code.

(j) Debtor will maintain the Collateral in good condition and repair and will pay promptly all taxes, levies, and encumbrances and all repair, maintenance and preservation costs pertaining to the Collateral. If Debtor fails to make such payments, Secured Party shall have the option, but not the obligation, to pay the same and Debtor agrees to repay, with interest at the highest rate applicable to any indebtedness which this Agreement secures, all amounts so expended by Secured Party. Debtor will at any time and from time to time, upon request of Secured Party, give any representative of Secured Party access during normal business hours to inspect the Collateral or the books and records thereof.

(k) Debtor agrees to pay on demand, all expenses, including reasonable attorney fees and expenses, incurred by Secured Party in protecting or enforcing its rights in the Collateral or otherwise under this Agreement. After deducting all said expenses, the remainder of any proceeds of sale or other disposition of the Collateral shall be applied to the indebtedness due Secured Party in such order of preference as Secured Party shall determine.

(l) Debtor hereby agrees to faithfully preserve and protect Secured Party's security interest in the Collateral at all times, and further agrees to execute and deliver, from time to time, any and all further, or other, documents, instruments, continuation statements and perform or refrain from performing such acts, as Secured Party may reasonably request to effect the purposes of this Agreement and to secure to Secured Party the benefits of all the rights, authorities and remedies conferred upon Secured Party by the terms of this Agreement. Debtor shall permit, or cause to be permitted, at Debtor's expense, representatives of Secured Party to inspect and make copies of the books and records of Debtor relating to the Collateral at any reasonable time during normal business hours upon prior written notice.

3. Defaults. The occurrence of any of the following events shall constitute a default (hereinafter called "Default") hereunder:

(a) The failure of Debtor to make any payment on any indebtedness to Secured Party whether pursuant to the Note or any other obligation to Secured Party, or a default in any provision of the Note or any other agreement or document secured hereby or any other encumbrance or agreement securing the Note, which is not cured within any applicable cure period;

(b) The breach of or failure to perform promptly any obligation or covenant set forth in this Agreement, or the breach or the failure to perform promptly any obligation or covenant set forth in the Note or any other agreement secured hereby or securing the Note, which is not cured within any applicable cure period;

(c) The suspension of business, insolvency, failure generally to pay debts as they became due, or the commission of any act constituting or resulting in a business failure, in each case on the part of Debtor's business; the concealment or removal of any substantial portion of Debtor's property with the intent to hinder, delay or defraud any one or more creditors, or the making of any other transfer which is fraudulent or otherwise voidable under the Bankruptcy Code or other applicable federal or state law; the existence or creation of any lien, including without limitation any tax or judgment lien, upon the Collateral or any substantial part of Debtor's property; an assignment for the benefit of creditors; the commencement of any proceedings by or against Debtor (under the Bankruptcy Code or otherwise) seeking to adjudicate if bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the appointment of a receiver, trustee or custodian for Debtor or for the Collateral or a substantial part of the property of Debtor; or the institution by Debtor or any other person or entity of any liquidation, dissolution or reorganization proceedings with respect to Debtor;

(d) The failure to effectively and promptly discharge, stay or indemnify against, to Secured Party's satisfaction, any lien or attachment against any of Debtor's property or the Collateral;

(e) Any representation or warranty contained herein or in any other document delivered by or on behalf of Debtor to Secured Party shall be false or misleading when made;

(f) If Secured Party, in good faith, believes the prospect of payment secured by this Agreement is impaired, or believes that any of the Collateral is in danger of loss, misuse, seizure or confiscation;

(g) Any guaranty of the obligations described herein ceases to be effective, except pursuant to a written release from Secured Party, or any guarantor denies liability thereunder, or one of the events described in Paragraph 3(c) hereof occurs with respect to any guarantor, or any default occurs under any such guaranty;

(h) If Debtor is a corporation, the occurrence of any of the following without the Secured Party's written consent: the sale, pledge or assignment by the shareholders of Debtor of any shares of stock of Debtor; the merger or consolidation of Debtor with another company or entity; the change of the Debtor's name; the liquidation of Debtor; or the issuance by Debtor of any new stock or warrants, or the transfer of issued and outstanding treasury stock or warrants of Debtor. If Debtor is a limited liability company, the sale, pledge, transfer or assignment of any of the Managers or members of Debtor of any of their interest in Debtor, or the withdrawal or the admittance of any Managers into Debtor without the prior written consent of Secured Party. If Debtor is a partnership or joint venture, the occurrence of any of the following without Secured Party's written consent: the sale, pledge, transfer or assignment by any of the partners or joint ventures of Debtor of any of their partnership or joint venture interest in Debtor; the withdrawal of any general partner(s) or joint venturer(s); or the admittance of any additional partner(s) or joint venturer(s) into Debtor;

(i) The occurrence of any default, after the expiration of all cure periods, if any, or event of default under any other document or agreement securing or guaranteeing any of the obligations secured by the Agreement; or the occurrence of any default, after the expiration of all cure periods, if any or event of default due to any material indebtedness or obligation of Debtor to any third party that causes such third party to declare such indebtedness or other obligation due prior to its scheduled date of maturity; or

(j) The occurrence of any default, after the expiration of all cure periods, if any, or event of default under or with respect to any obligation of Debtor to any affiliate of Secured Party (for the purposes of this subparagraph, "affiliate" is defined as Haven Trust Bank or any entity owned or controlled, directly or indirectly, by Haven Trust Bank).

4. Remedies.

(a) Upon the occurrence of any default under this Agreement, after the expiration of all cure periods, if any, Secured Party is authorized in its discretion to declare any or all of the indebtedness to be immediately due and payable without demand or notice to Debtor, and may exercise any one or more of the rights and remedies granted pursuant to this Agreement or given to a secured party under applicable law, including without limitation the Uniform Commercial Code, such rights and remedies to include without limitation the right to take possession and sell, lease or otherwise dispose of the Collateral. If reasonable notice of any disposition of Collateral or other enforcement is required, such requirement will be met if such notice is mailed, postage pre-paid, to the address of Debtor shown below Debtor's signature on this Agreement at least fifteen (15) days prior to the time of disposition or other enforcement. Debtor agrees that upon demand by Secured Party after default, Debtor will promptly assemble the Collateral and make the Collateral available to Secured Party at a place convenient to Secured Party.

(b) Debtor agrees that all of the Collateral and all of the other security which may be granted to Secured Party in connection with the obligations secured hereby constitute equal security for all of the obligations secured hereby, and agrees that Secured Party shall be entitled to sell, retain or otherwise deal with any or all of the Collateral, in any order or simultaneously as Secured Party shall determine in its sole and absolute discretion, free of any requirement for the marshaling of assets or other restriction upon Secured Party in dealing with the Collateral or such other security.

(c) Upon the occurrence of any default under this Agreement, after the expiration of all cure periods, if any, Debtor hereby irrevocably constitute and appoints Secured Party (and any employee or agent of Secured Party) as Debtor's true and lawful attorney-in-fact with full power of substitution, in Secured Party's name or Debtor's name or otherwise, for Secured Party's sole use and benefit, at Debtor's cost and expense, to exercise the following powers with respect to the Collateral:

To demand, sue for collection, receive, and give acquittance for any and all monies due or owing with respect to the Collateral;

1. To receive, take, endorse Debtor's name on, assign and deliver any checks, notes, drafts, documents or other instruments taken or received by Secured Party in connection with the Collateral;

2. To settle, compromise, prosecute, or defend any action or proceeding with respect to the Collateral;

3. To sell, transfer, assign or otherwise deal in or with the Collateral or the proceeds thereof, as fully as if Secured Party were the absolute owner thereof;

4. To sign Debtor's name to and file financing statements or such other documents and instruments as Secured Party may deem appropriate; and

5. To take any and all action that Secured Party deems necessary or proper to preserve its interest in the Collateral, including without limitation, the payment of debts of Debtor that might impair the Collateral or Secured Party's security interest therein, the purchase of insurance on the Collateral, the repair or safeguard of the Collateral, or the payment of taxes thereon; and

6. To notify account debtors of Secured Party's security interest in Debtor's accounts and to instruct them to make payment directly to Secured Party.

(d) Debtor agrees that the powers of attorney granted herein are coupled with an interest and shall be irrevocable until full, final and irrevocable payment and performance of the indebtedness secured hereby; and that neither Secured Party nor any officer, director, employee or agent of Secured Party shall be liable for any act or omission, or for any mistake or error of judgment, in connection with any such powers.

(e) Notwithstanding the foregoing, Secured Party shall be under no duty to exercise any such powers, or to collect any amount due on the Collateral, to realize on the Collateral, to keep the Collateral, to make any presentment, demand or notice of protest in connection with the Collateral, or to perform any other act relating to the enforcement, collection or protection of the Collateral.

(f) This Agreement shall not prejudice the right of Secured Party at its option to enforce the collection of any indebtedness secured hereby or any other instrument executed in connection with this transaction, by suit or in any other lawful manner. No right or remedy is intended to be exclusive of any other right or remedy, but every such right or remedy shall be cumulative to every other right or remedy herein or conferred in any other agreement or document for the benefit of Secured Party, or now or hereafter existing at law or in equity.

(g) Any action or proceeding to enforce this Agreement may be taken by Secured Party either in Debtor's name or in Secured Party's name, as Secured Party may deem necessary.

(h) All rights of marshaling of assets of Debtor, including any such right with respect to the Collateral, are hereby waived by Debtor.

5. Remedies Cumulative; Delay Not Waiver.

(a) No right, power or remedy herein conferred upon or reserved to Secured Party hereunder is intended to be exclusive of any other right, power or remedy, and every such right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The

assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy. Resort to any or all security now or hereafter held by Secured Party, may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both.

(b) No delay or omission of Secured Party to exercise any right or power accruing upon the occurrence and during the continuance of any default as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by Secured Party.

6. Further Assurances; Certain Waivers.

(a) Debtor agrees that, from time to time, at the expense of Debtor, Debtor shall promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable, or that Secured Party may reasonably request, in order to perfect and protect the assignment and security interest granted or intended to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Debtor shall: (i) if any Collateral shall be evidenced by a promissory note or other instrument, deliver and pledge to Secured Party such note or instrument duly endorsed (without recourse) and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Secured Party; and (ii) execute and file such financing statements or continuation statements, or amendments thereto, and such other instruments, endorsements or notices, as may be reasonably necessary or desirable, or as Secured Party may reasonably request, in order to perfect and preserve the assignments and security interests granted or purported to be granted hereby.

(b) Debtor hereby authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Debtor where permitted by law. Copies of any such statement or amendment thereto shall promptly be delivered to Debtor.

(c) Debtor shall pay all filing, registration and recording fees or re-filing, re-registration and re-recording fees, and all reasonable expenses incident to the execution and acknowledgment of this Agreement, any assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, any agreement supplemental hereto and any instruments of further assurance.

(d) Debtor hereby waives, to the maximum extent permitted by law (i) all rights under any law limiting remedies, including recovery of a deficiency, under an obligation secured by a security deed on real property if the real property is sold under a power of sale contained in the security deed, and all defenses based on any loss whether as a result of any such sale or otherwise; (ii) all rights under any law to require Secured Party to pursue any other person, any security which Secured Party may hold, or any other remedy before proceeding against Debtor; (iii) all rights to participate in any security held by Secured Party until the obligations have been paid in full; and (iv) all rights to require Secured Party to give any notices of any kind including, without limitation, notices of nonpayment, nonperformance, protest, dishonor, default, delinquency or acceleration, or to make any presentments, demands or protests, except as expressly provided in this Agreement. Secured Party shall incur no liability as a result of the sale of the Collateral, or any part thereof, at any private sale pursuant to this Agreement conducted in a commercially reasonable manner. Debtor hereby waives any claims against Secured Party arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price that might have obtained at a public sale or was less than the aggregate amount of the obligations, even if Secured Party accepts the first offer received and does not offer the Collateral to more than one offeree, provided that such private sale is conducted in a commercially reasonable manner.

7. Miscellaneous.

(a) This Agreement and the security interest in the Collateral created hereby shall terminate when the obligations and indebtedness hereunder have been fully, finally and irrevocably paid and all other obligations of Debtor to Secured Party have been performed in full. Prior to such termination, this shall be a continuing agreement.

(b) **THIS AGREEMENT WILL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH FEDERAL LAW AND THE LAWS OF THE STATE OF GEORGIA, EXCEPT AND ONLY TO THE EXTENT OF PROCEDURAL MATTERS RELATED TO THE PERFECTION AND ENFORCEMENT OF LENDER'S RIGHTS AND REMEDIES AGAINST THE COLLATERAL, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF SOUTH CAROLINA. HOWEVER, IN THE EVENT THAT THE ENFORCEABILITY OR VALIDITY OF ANY PROVISION OF THIS AGREEMENT IS CHALLENGED OR QUESTIONED, SUCH PROVISION SHALL BE GOVERNED BY WHICH WHICHEVER APPLICABLE STATE OR FEDERAL LAW WOULD UPHOLD OR WOULD ENFORCE SUCH CHALLENGED OR QUESTIONED PROVISION. THE LOAN TRANSACTION WHICH IS EVIDENCED BY THE NOTE AND THIS AGREEMENT HAS BEEN**

APPLIED FOR, CONSIDERED, APPROVED AND MADE, AND ALL NECESSARY LOAN DOCUMENTS HAVE BEEN ACCEPTED BY LENDER IN THE STATE OF GEORGIA.

(c) **DEBTOR AND SECURED PARTY BY ACCEPTANCE OF THIS AGREEMENT, EACH HEREBY WAIVE, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTION UNDER OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, AND IN NO EVENT SHALL SECURED PARTY BE LIABLE FOR PUNITIVE OR CONSEQUENTIAL DAMAGES.**

(d) This Agreement shall inure to the benefit of Secured Party, its successors and assigns and to any other holder who derives from Secured Party title to or an interest in the indebtedness which this Agreement secures, and shall be binding upon Debtor, its successors and assigns.

(e) In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been included.

(f) Any provision to the contrary notwithstanding contained herein or in the Note or in any other instrument now or hereafter evidencing, securing or otherwise relating to any secured indebtedness, neither Secured Party nor any other holder of the secured indebtedness shall be entitled to receive or collect, nor shall Debtor be obligated to pay, interest on any of the secured indebtedness in excess of the maximum rate of interest at the particular time in question, if any, which, under applicable law, may be charged to Debtor (herein the "Maximum Rate"), provided that the Maximum Rate shall be automatically increased or decreased, as the case may be, without notice to Debtor from time to time as of the effective time of each change in the Maximum Rate, and if any provision herein or in the Note or in such other instrument shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by applicable law, the provisions of this paragraph shall control and shall override any contrary or inconsistent provision herein or in the Note or in such other instrument. The intention of the parties being to conform strictly to the usury limitations under applicable law, the Note, this Agreement, and each other instrument now or hereafter evidencing or relating to any secured indebtedness shall be held subject to reduction to the amount allowed under said applicable law as now or hereafter construed by the courts having jurisdiction.

(g) All notices pursuant to this Security Agreement shall be in writing and shall be directed to the addresses set forth below or such other address as may be specified in writing, by certified or registered mail, return receipt requested by the party to which or whom notices are to be given. Notices shall be deemed to be given three (3) days after

mailing by depositing same in any United States post office station or letter box in a post-paid envelope.

(h) The singular used herein shall include the plural.

(i) If more than one party shall execute this Agreement as "Debtor", the term "Debtor" shall mean all such parties executing this Agreement, and all such parties shall be jointly and severally obligated hereunder.

(j) A photocopy or other reproduction of this Agreement or of any financing statement is sufficient as a financing statement and may be filed as a financing statement in any government office.

(k) THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

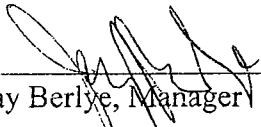
IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date written below.

Dated: 15 day of May, 2008.

DEBTOR:

Affordable Hospitality Group – Anderson,
LLC

By: Diversified Capital Investment Group,
LLC, Manager

By:  (L.S.)
Jay Berlye, Manager

Address of Debtor:

3904 N. Druid Hills Rd. #221
Decatur, Georgia 30033

SCHEDULE I
(All Property)

This is Schedule I to the Security Agreement dated May 15, 2008 between Community South Bank ("Secured Party") and Affordable Hospitality Group – Anderson, LLC, a Georgia limited liability company ("Debtor").

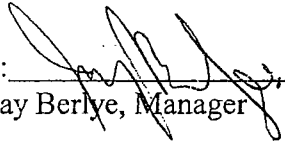
Debtor hereby grants to Secured Party a security interest in all of the following:

All equipment and machinery, including power driven machinery and equipment, furniture and fixtures now owned or hereafter acquired and wherever located, together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith and proceeds therefrom. All inventory, raw materials, work-in-process and supplies now owned or hereafter acquired and proceeds therefrom. All accounts and accounts receivable now outstanding or hereafter arising. All contract rights, instruments, chattel paper and general intangibles now in force or hereafter acquired and proceeds therefrom.

DEBTOR:

Affordable Hospitality Group – Anderson,
LLC

By: Diversified Capital Investment Group,
LLC, Manager

By:  (L.S.)
Jay Berlye, Manager

Address of Debtor:

3904 N. Druid Hills Rd. #221
Decatur, Georgia 30033

SCHEDULE 2
(Legal Description of Property)

This is Schedule 2 to the Security Agreement dated May 15, 2008 between Community South Bank ("Secured Party") and Affordable Hospitality Group – Anderson, LLC, a Georgia limited liability company ("Debtor").

Lot 4 Electric City Blvd., Anderson, SC location legally described on attached Exhibit "A".

Record owner of Property described in Exhibit "A": Affordable Hospitality Group – Anderson, LLC ("Debtor").

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book S1720, at page 7-A, records of Anderson County, South Carolina.

EXHIBIT F

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] 404-419-0800
B. SEND ACKNOWLEDGMENT TO: (Name and Address) Reid H. Harbin, Esq. Sturgeon and Harbin, LLC 3060 Peachtree Road, Suite 970 Atlanta, GA 30305

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Affordable Hospitality Group – Anderson, LLC				
OR 1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS 3904 N. Druid Hills Rd. #221		CITY Decatur	STATE GA	POSTAL CODE 30033
1d. TAX ID #: SSN OR EIN 35-2301907	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION ltd. liability co.	1f. JURISDICTION OF ORGANIZATION Georgia	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
2d. TAX ID #: SSN OR EIN	ADD'L 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 S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Haven Trust Bank				
OR 3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS 2175 Lawrenceville Highway		CITY Decatur	STATE GA	POSTAL CODE 30033
3d. TAX ID #: SSN OR EIN		ADD'L INFO RE ORGANIZATION DEBTOR	3e. TYPE OF ORGANIZATION	3f. JURISDICTION OF ORGANIZATION

4. This FINANCING STATEMENT covers the following collateral:

All Inventory, Furniture, Fixtures, Equipment, Inventory, Accounts, Accounts Receivable, Instruments, Chattel Paper, General Intangibles and Exhibit "B" attached hereto and made a part hereof by reference; said items primarily are located on the property described in Exhibit "A" or wherever same may be located.

5. ALTERNATIVE DESIGNATION (if applicable):	☐ LESSEE/LESSOR	☐ CONSIGNEE/CONSIGNOR	☐ BAILEE/BAILOR	☐ SELLER/BUYER	☐ AG. LIEN	☐ NON-UCC FILING
6. ☒ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum.				7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		
8. OPTIONAL FILER REFERENCE DATA File with Anderson County, South Carolina				☐ All Debtors ☐ Debtor 1 ☐ Debtor 2		

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME		
Affordable Hospitality Group – Anderson, LLC		
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME				
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	
			11g. ORGANIZATIONAL ID #, if any	
			NONE	

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☒ fixture filing.

14. Description of real estate:

See Exhibit "A" attached hereto and by reference made a part hereof

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate18. Check only if applicable and check only one box.☐ Debtor is a TRANSMITTING UTILITY☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years☐ Filed in connection with a Public-Finance Transaction — effective 30 years

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98)

FORM SHOULD BE TYPEWRITTEN OR COMPUTER GENERATED

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book S1720, at page 7-A, records of Anderson County, South Carolina.

PERSONAL PROPERTY DESCRIPTION

All equipment and machinery, including power driven machinery and equipment, furniture and fixtures now owned or hereafter acquired and wherever located, together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith and proceeds therefrom. All inventory, raw materials, work-in-process and supplies now owned or hereafter acquired, wherever located and proceeds therefrom. All accounts and accounts receivable now outstanding or hereafter arising. All contract rights, chattel paper, instruments and general intangibles now in force or hereafter acquired, wherever located and proceeds therefrom.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
404-419-0800

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Reid H. Harbin, Esq.
Sturgeon and Harbin, LLC
3060 Peachtree Road, Suite 970
Atlanta, GA 30305

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Affordable Hospitality Group - Anderson, LLC				
OR 1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 3904 N. Druid Hills Rd. #221		CITY Decatur	STATE GA	POSTAL CODE 30033
1d. TAX ID #: SSN OR EIN 35-2301907		1e. TYPE OF ORGANIZATION ltd. liability co.	1f. JURISDICTION OF ORGANIZATION Georgia	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
2d. TAX ID #: SSN OR EIN		2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any ☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Haven Trust Bank				
OR 3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 2175 Lawrenceville Highway		CITY Decatur	STATE GA	POSTAL CODE 30033
				COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

All Inventory, Furniture, Fixtures, Equipment, Inventory, Accounts, Accounts Receivable, Instruments, Chattel Paper, General Intangibles and Exhibit "B" attached hereto and made a part hereof by reference; said items primarily are located on the property described in Exhibit "A" or wherever same may be located.

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum if applicable.	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE)		All Debtors Debtor 1 Debtor 2			
8. OPTIONAL FILER REFERENCE DATA						

File with Georgia Clerk's Authority

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

EXHIBIT "B"

PERSONAL PROPERTY DESCRIPTION

All equipment and machinery, including power driven machinery and equipment, furniture and fixtures now owned or hereafter acquired and wherever located, together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith and proceeds therefrom. All inventory, raw materials, work-in-process and supplies now owned or hereafter acquired, wherever located and proceeds therefrom. All accounts and accounts receivable now outstanding or hereafter arising. All contract rights, chattel paper, instruments and general intangibles now in force or hereafter acquired, wherever located and proceeds therefrom.

EXHIBIT G

WHEN RECORDED RETURN TO:

Reid H. Harbin, Esq.
Sturgeon & Harbin, LLC
3060 Peachtree Road, Suite 970
Atlanta, Georgia 30305

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT, made and entered into as of this 15th day of May, 2008, between Affordable Hospitality Group – Anderson, LLC, a limited liability company duly organized, existing and in good standing under the laws of the Georgia, whose mailing address is 3904 N. Druid Hills Rd. #221, Decatur, Georgia 30033 (hereinafter referred to as "Borrower"), and Haven Trust Bank the address of which is 2175 Lawrenceville Highway, Decatur, GA 30033 (hereinafter referred to as "Lender");

W I T N E S S E T H:

THAT FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, Borrower does hereby grant, transfer and assign to Lender, its successors, successors-in-title and assigns, all of Borrower's right, title and interest in, to and under any and all of those leases and rental agreements now existing and hereafter made, including any and all extensions, renewals and modifications thereof, and all security deposits and other refundable and non-refundable deposits paid by the tenants thereunder (said leases and rental agreements are hereinafter referred to collectively as the "Leases", and the tenants and lessees thereunder are hereinafter referred to collectively as "Tenants" or individually as "Tenant" as the context requires), which Leases cover or shall cover portions of certain real property described in Exhibit "A" attached hereto and by this reference made a part hereof and/or the improvements thereon, (commonly known as 1.51 Acres with an unspecified frontage on Electric City Boulevard in Anderson County, South Carolina with Parcel Identification Number 0930003023, said real property and improvements hereinafter collectively referred to as the "Premises"); together with all of Borrower's right, title and interest in and to all rents, issues and profits from the Leases and from the Premises.

and upon the terms and conditions set forth herein. This Assignment is made for the purpose of securing (a) the full and prompt payment when due, whether by acceleration or otherwise, with such interest as may accrue thereon, either before or after maturity thereof, of that certain Note dated of even date herewith, made by Borrower to the order of Lender in the principal face Three Million Four Hundred Eleven Thousand Seven Hundred Eighty-Two and No/100 Dollars (\$3,411,782.00) (hereinafter referred to as the "Note"), together with any renewals, modifications, consolidations and extensions thereof and amendments thereto and all advances of principal thereunder, (b) the full amount and prompt payment and performance of any and all obligations of Borrower to Lender under the terms of a Mortgage and Security Agreement from Borrower to Lender, dated of even date herewith and securing the indebtedness evidenced by the Note (hereinafter referred to as the "Security Instrument"), (c) the full and prompt payment and performance of all obligations of Borrower to Lender under the terms of that certain Loan Agreement of even date herewith (hereinafter referred to as the "Loan Agreement"), and (d) the full and prompt payment and performance of any and all other obligations of Borrower to Lender under any other instruments now or hereafter evidencing, securing, or otherwise relating to the indebtedness evidenced by the Note (the Note, Security Instrument, the Loan Agreement, and said other instruments are hereinafter referred to collectively as the "Loan Documents," and said indebtedness is hereinafter referred to as the "Indebtedness").

ARTICLE I.

WARRANTIES AND COVENANTS

1.1. Warranties of Borrower. To the extent that there are Leases, Borrower hereby warrants and represents as follows:

- (a) Borrower is the sole holder of the landlord's interest under the Leases, is entitled to receive the rents, issues and profits from the Leases and from the Premises, and has good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interests, powers, and authorities herein granted and conferred;
- (b) Borrower has made no assignment other than this Assignment of any of the rights of Borrower under any of the Leases or with respect to any of said rents, issues or profits;
- (c) Borrower has neither done any act nor omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment;
- (d) All Leases provide for rental to be paid monthly, in advance, and Borrower has not accepted payment of rental under any of the Leases for more than one (1) month in advance of the due date thereof;
- (e) So far as is known to Borrower, there exists no default or event of default or any state of facts which would, with the passage of time or the giving of notice,

(f) Neither the execution and delivery of this Assignment or any of the Leases, the performance of each and every covenant of Borrower under this Assignment and the Leases, nor the meeting of each and every condition contained in this Assignment, conflicts with, or constitutes a breach or default under any agreement, indenture or other instrument to which Borrower is a party, or any law, ordinance, administrative regulation or court decree which is applicable to Borrower;

(g) No action has been brought or, so far as is known to Borrower, is threatened, which would interfere in any way with the right of Borrower to execute this Assignment and perform all of Borrower's obligations contained in this Assignment and in the Leases;

(h) The Leases are valid, enforceable and in full force and effect; and

(i) All security deposits and other deposits (whether refundable or non-refundable pursuant to the terms of the Leases) are held by Borrower in a segregated account and have been received and applied for the uses and purposes designated in the Leases.

1.2. Covenants of Borrower. Borrower hereby covenants and agrees as follows:

(a) Borrower shall (i) fulfill, perform and observe each and every condition and covenant of landlord or lessor contained in each of the Leases; (ii) give prompt notice to Lender of any claim of default under any of the Leases, whether given by the Tenant to Borrower, or given by Borrower to the Tenant, together with a complete copy of any such notice; (iii) at no cost or expense to Lender, enforce, short of termination, the performance and observance of each and every covenant and condition of each of the Leases, to be performed or observed by the Tenant thereunder; and (iv) appear in and defend any action arising out of, or in any manner connected with, any of the Leases, or the obligations or liabilities of Borrower as the landlord thereunder, or of the Tenant or any guarantor thereunder;

(b) Borrower shall not, without the prior written consent of Lender, (i) modify any of the Leases; (ii) terminate the term or accept the surrender of any of the Leases; (iii) waive or release the Tenant from the performance or observance by the Tenant of any obligation or condition of any of the Leases; (iv) permit the prepayment of any rents under any of the Leases for more than one (1) month prior to the accrual thereof; (v) give any consent to any assignment or sublease by the Tenant under any of the Leases; or (vi) assign its interest in, to or under the Leases or the rents, issues and profits from the Leases and from the Premises to any person or entity other than Lender;

(c) Borrower shall not, without the prior written consent of Lender, enter into any Lease unless the Tenant thereunder shall have been approved in writing by

(d) Borrower shall protect, indemnify and save harmless Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by Lender by reason of this Assignment and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under this Assignment. In the event Lender incurs any liability, loss or damage by reason of this Assignment, or in the defense of any claim or demand arising out of or in connection with this Assignment, the amount of such liability, loss or damage shall be added to the Indebtedness, shall bear interest at the rate of Default Interest specified in the Note from the date incurred until paid and shall be payable on demand;

(e) Borrower shall authorize and direct, and does hereby authorize and direct each and every present and future Tenant of the whole or any part of the Premises to pay all rental to Lender upon receipt of written demand from Lender to so pay the same;

(f) The warranties and representations of Borrower made in Paragraph 1.01 hereof and the covenants and agreements of Borrower made in this Paragraph apply to each Lease in effect as of the time of execution of this Assignment, and shall apply to each Lease hereafter made at the time each such future Lease becomes effective.

(g) At the request of Lender, Borrower immediately shall deliver to Lender evidence that all security deposits and other deposits (whether refundable or non-refundable) paid by Tenants under the Leases have been placed in a separate account in accordance with applicable law.

1.3. Covenants of Lender. Lender, by its acceptance of this Assignment, hereby covenants and agrees with Borrower as follows:

(a) Although this Assignment constitutes a present and current assignment of all rents, issues and profits from the Premises, so long as there shall exist no Default, Lender shall not demand that such rents, issues and profits be paid directly to Lender, and Borrower shall have the right to collect, but no more than one (1) month prior to accrual, all such rents, issues and profits from the Premises (including, but not by way of limitation, all rental payments under the Leases); and

(b) Upon the payment in full of the Indebtedness, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Security Instrument without the recording of another security instrument in favor of Lender affecting the Premises, this Assignment shall be terminated and released of record by Lender and shall thereupon be of no further force or effect.

2.1. Default. The term, "Default," wherever used in this Assignment, shall mean any one or more of the following events:

- (a) The occurrence of any "Default" under any of the Loan Documents;
- (b) The failure by Borrower duly and fully to comply with any covenant, condition or agreement of this Assignment; or
- (c) The breach of any warranty by Borrower contained in this Assignment.

2.2. Remedies. Upon the occurrence of any Default, Lender may at its option, with or without notice or demand of any kind, exercise any or all of the following remedies:

- (a) Declare any part or all of the Indebtedness to be due and payable, whereupon the same shall become immediately due and payable;
- (b) Perform any and all obligations of Borrower under any or all of the Leases or this Assignment and exercise any and all rights of Borrower herein or therein as fully as Borrower himself could do, including, without limitation of the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the Leases; collecting, modifying, compromising, waiving or increasing any or all the rents payable thereunder; and obtaining new tenants and entering into new leases on the Premises on any terms and conditions deemed desirable by Lender; and, to the extent Lender shall incur any costs in connection with the performance of any such obligations of Borrower, including costs of litigation, then all such costs shall become a part of the Indebtedness, shall bear interest from the incurring thereof at the rate of Default Interest specified in the Note, and shall be due and payable on demand;
- (c) In Borrower's or Lender's name, institute any legal or equitable action which Lender in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein;
- (d) Collect the rents, issues and profits and any other sums due under the Leases and with respect to the Premises, and apply the same in such order as Lender in its sole discretion may elect against (i) all costs and expenses, including reasonable attorneys' fees, incurred in connection with the operation of the Premises, the performance of Borrower's obligations under the Leases and collection of the rents thereunder; (ii) all the costs and expenses, including reasonable attorneys' fees, incurred in the collection of any or all of the Indebtedness, including all costs, expenses and attorneys' fees incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Indebtedness; and (iii) any or all unpaid principal and interest on the Indebtedness.

commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have full right to enter upon, take possession of, use and operate all or any portion of the Premises which Lender in its sole discretion deems desirable to effectuate any or all of the foregoing remedies.

ARTICLE III.

GENERAL PROVISIONS

3.1. Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Lender", such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Lender.

3.2. Terminology. All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of articles are for convenience only and neither limit nor amplify the provisions of this Assignment.

3.3. Severability. If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.4. Applicable Law. This Assignment shall be governed by and construed and enforced in accordance with federal law and the substantive, and not the conflict laws of the State of Georgia, except and only to the extent of procedural matters related to the perfection and enforcement of Lender's rights and remedies against the Premises, which matters shall be governed by the laws of the State of South Carolina. However, in the event that the enforceability or validity of any provision of this Assignment is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Assignment has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Georgia.

3.5. No Third Party Beneficiaries. This Assignment is made solely for the benefit of Lender and its assigns. No Tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.6. No Oral Modifications. Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

in law or equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue to be each and all available to Lender until the Indebtedness shall have been paid in full.

3.8. Cross-Default. A Default by Borrower under this Assignment shall constitute a Default under the other Loan Documents.

3.9. Counterparts. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Assignment by signing any such counterpart.

3.10. Further Assurance. At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases and the rents, issues and profits from the Premises. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

3.11. Notices. Any and all notices, elections or demands permitted or required to be made under this Assignment shall be in writing, signed by the party giving such notice, election or demand and shall be delivered personally, or sent by overnight courier service by a company regularly engaged in the business of delivering business packages (such as Federal Express or Purolator), or sent by registered or certified United States mail, postage prepaid, to the other party at the address set forth below, or at such other address within the continental United States of America as may have theretofore been designated in writing. The effective date of such notice, election or demand shall be the date of personal delivery or, if sent by overnight courier then the date of delivery as evidenced by the courier's receipt, or, if mailed, then the date of postmark. For the purposes of this Assignment:

Haven Trust Bank
2175 Lawrenceville Highway
Decatur, GA 30033

The Address of Borrower is:

Affordable Hospitality Group – Anderson, LLC
3904 N. Druid Hills Rd. #221,
Decatur, Georgia 30033

3.12. Modifications, etc. Borrower hereby consents and agrees that Lender may at any time, and from time to time, without notice to or further consent from Borrower, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account, securing the Indebtedness; substitute for any collateral so held by it, other collateral of like kind, or of any kind; agree to modification of the terms of the Note or the Loan Documents; extend or renew the Note or any of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Note or the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note, the Security Instrument, the Loan Agreement, or any other Loan Document; or take or fail to take any action of any type whatsoever, and no such action which Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the Indebtedness or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Assignment in any way or afford Borrower any recourse against Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Loan Documents and the Leases, and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extension, consolidation or modifications thereof.

BORROWER:

Affordable Hospitality Group – Anderson, LLC

By: Diversified Capital Investment Group, LLC,
Manager

By: [Signature] (L.S.)
Jay Berlye, Manager

Witness

Witness

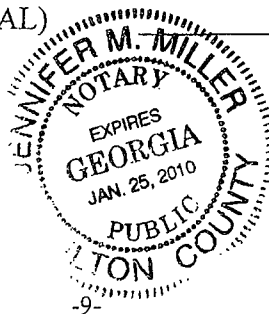
GEORGIA
STATE OF SOUTH CAROLINA)
COUNTY OF FULTON) SS.

ACKNOWLEDGEMENT

Personally appeared before me Reid Huber and made oath that s/he saw the within Jay Berlye, Manager of Diversified Capital Investment Group, LLC, the Manager of Affordable Hospitality Group – Anderson, LLC, sign, seal and as his act and deed, deliver the within written instrument, and that s/he, with Karen Rivers, witnessed the execution thereof.

Sworn to before me this 15 day of
May, 2008

[Signature] (SEAL)
Notary Public for South Carolina
Georgia



LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book S1720, at page 7-A, records of Anderson County, South Carolina.

EXHIBIT H



Pruco Life Insurance Company,
a Prudential company

NSAXB ADD

HAVEN TRUST BANK
21751 LAWRENCEVILLE HIGHWAY
DECATUR GA 30033

Affordable Hospitality

Notice of Contract Assignment

For insurance service, get in touch with your
representative or this office:

PRUDENTIAL
PO BOX 7390
PHILADELPHIA PA 19176
TEL 800-782-5356

Contract Number [REDACTED] 272 844
JAY L BERLYE
2008 Term

June 6, 2008

We have recorded and filed the assignment on this contract. A copy of the assignment is enclosed. We do not assume responsibility for the validity or sufficiency of the assignment.

Premiums are paid to May 15, 2009, and are payable annually.

We have not received written notice of any prior loans or claims on this contract.

Your Pruco Life representative is
ALAN D DAVIS
telephone number 732-431-5100

Sincerely,

Paul M. McLean

Paul M. McLean
Vice President, Customer Service Office

Please print using blue or black ink. See instructions on page 1 before completing.

1 About Your Policy

Policy number (Eight or nine characters. If eight, leave last space empty.)

28272844

Name of insured (first, middle initial, last name)

JAY BERLYE

Name of joint insured, if any (first, middle initial, last name)

If the policy has been applied for, but not yet issued, we will provide the policy number.

2 About the Policyowner(s)

Name of policyowner (first, middle initial, last name) Enter "same" if same as insured.

JAY BERLYE

Policyowner's daytime telephone number

404 633-6779

Evening telephone number

404 633-8125

Name of joint owner, if any (first, middle initial, last name)

3 Request for a Collateral Assignment

I assign to the collateral assignee(s) named in this section, a collateral interest in the policy(ies) indicated in section 1, subject to the provisions of the policy and to any indebtedness that may exist. As a result of this collateral assignment, policy rights may be exercised as follows:

The owner, without the consent of the assignee, will have the following rights:

- to designate and change the beneficiary and mode of settlement
- to change the ownership of the policy
- to collaterally assign the policy to another assignee
- to change the frequency of premium payments

List below any other rights to be exercised by the owner without the consent of the assignee. (For example, if chosen, the right to make changes in the allocation of any invested premium amounts.)

Haven Trust Bank
2175 Lawrenceville Highway
Decatur, GA 30033

The assignee will have the right to receive any Death Benefit as its (his or her) interest may appear without the consent of the owner. List below any other rights to be exercised by the assignee without the consent of the owner.

Any other rights and privileges granted by the policy or by us will require the consent of the owner and the assignee.

a Collateral Assignment
(continued)

Street															Apt				
City										State		ZIP code							

Name of joint assignee, if any (first, middle initial, last name)

Street															Apt				
City										State		ZIP code							

If there are two or more persons named as joint assignees, please check one of the boxes below. If neither box is checked, we will assume that the assignment is made jointly with the right of survivorship.

☐ jointly or the survivor(s) ☐ as tenants in common

4 Additional Information

Use this section if the assignment is for more than two joint assignees. For each additional joint assignee, please provide a full name and address.

Signature Requirements

Please review these signature requirements before signing in section 6 for a collateral assignment or in section 7 for a Discharge of Assignment.

- For **corporations**, an authorized officer must sign. Be sure to include the title of the officer.
 - If **president** – no additional requirements
 - If **vice president** – for policies over \$1,000,000, provide a Corporate Secretary's statement reflecting the vice president's authority to sign
 - If **any other officer** – provide a corporate resolution
- For **partnerships** with at least two general partners, two authorized general partners must sign with the title "general partner" after each name (if only one, use "sole general partner") and include the name of the partnership.
- For **sole proprietorships**, submit the signature of the owner, followed by "doing business as (company name), a sole proprietorship."
- For **trusts**, each trustee must sign unless the trust itself or state law provides otherwise. Trustee must include trustee designation (for example, "John Doe, Trustee under Trust Agreement dated 1/1/1998").
- A **holder of power of attorney** must provide a copy of the power of attorney and include, following his or her signature, the words "Attorney-in-fact for (owner's name)."
- For a policy containing a **limitation of rights**, the person or entity in whose favor the rights have been limited must also sign.

COMB 99636

Ed. 9/2007

Page 3 of 4
Return this page to Prudential

Assignment Signature(s)
(All owners must sign.)

By signing this form, I:

- certify that I am authorized to sign this form,
- authorize the collateral assignment requested on this form, which is subject to the terms and conditions of the policy, and
- certify that if the owner is a corporation or partnership, that it is not under receivership, trusteeship, or conservatorship, and/or has not been dissolved, and if a partnership, that no notice of disassociation has been filed by any partner.

X [Signature]
Policyowner's signature and date

05 15 2008
month day year

X _____
Joint owner's signature (if applicable) and date

month day year

Signer's title for business or trust owner Company name

Discharge of Assignment Signature(s)

If there is more than one assignment to the same assignee, specify which one(s) to release by indicating the date(s) of the assignment(s) below. We will release all assignments to that assignee unless otherwise requested.

If the assignee is a bank or lending institution that has merged with or been purchased by another institution, an officer of the new bank or lending institution must sign this form in order to discharge the collateral assignment. This officer must also provide a statement indicating that the new bank or lending institution is the successor to the previous assignee.

By signing this form, I authorize the release and discharge of any and all assignments indicated above. (If none are specified, we will release all assignments to that assignee.)

X _____
Collateral assignee's signature and date

month day year

Signer's title for business or trust assignee Company name

X _____
Joint assignee's signature (if applicable) and date

month day year

Acknowledgment
(For Home Office use only.)

We will not be considered as having any notice or knowledge of this assignment or discharge unless it is filed at our Home Office. We are not obligated to see that the assignment or discharge is valid or sufficient.

Assignment recorded and filed by us.

Discharge recorded and filed by us.

Secretary

Secretary

Date

By

Date

By

For Prudential Use Only

Contract/Agency _____ Prudential Representative _____
Submitting office _____ RMO _____

COMB 99636

Ed. 9/2007

Page 4 of 4
Return this page to Prudential

EXHIBIT I

PREPARED BY AND WHEN RECORDED,
RETURN TO:

ERIC L. WEISS, ESQ.
SCHULTEN WARD & TURNER LLP
260 PEACHTREE STREET
SUITE 2700
ATLANTA, GEORGIA 30303

CROSS REFERENCE:

MORTGAGE AND SECURITY AGREEMENT
RECORDED AT DEED BOOK 08670, PAGE 00204,
REGISTER OF DEEDS,
ANDERSON COUNTY, SOUTH CAROLINA

TAX PARCEL ID NO.: 0930003023

LOAN MODIFICATION AGREEMENT

This LOAN MODIFICATION AGREEMENT (this "*Agreement*"), is made and entered into this 20th day of April, 2009 (the "*Effective Date*") by and between FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver ("*Receiver*") of Haven Trust Bank, a Georgia banking corporation ("*Bank*"), AFFORDABLE HOSPITALITY GROUP - ANDERSON, LLC, a Georgia limited liability company, having an address of 3904 N. Druid Hills Road, #221, Decatur, Georgia 30033 ("*Borrower*"), and JAY BERLYE, an individual resident of the State of Georgia, and DIVERSIFIED CAPITAL INVESTMENT GROUP, LLC, a Georgia limited liability company (collectively, "*Guarantors*").

WITNESSETH:

WHEREAS, on May 15, 2008, Borrower and Bank consummated a certain loan (the "*Loan*") in the principal amount of \$3,411,782.00, as evidenced by that certain Promissory Note (the "*Note*") and that certain Construction Loan Agreement (the "*Loan Agreement*") of even date, and secured by real property of Borrower located in Pendleton Township School District Number 4, Anderson County, South Carolina (the "*Property*"), more particularly described in that certain Mortgage and Security Agreement dated of even date, recorded at Deed Book 08670, Page 00204, Anderson County, South Carolina real property records (the "*Security Deed*"); and

WHEREAS, the Note, the Security Deed, the Loan Agreement and any other instrument executed in connection with the Loan, are hereinafter referred to as the "Loan Documents"; and

WHEREAS, the payment and performance by Borrower under the Loan Documents have been guaranteed to Bank by Guarantors; and

WHEREAS, on December 12, 2008, the Georgia Department of Banking and Finance placed the Bank in receivership and appointed Receiver as receiver of Bank, thus granting to Receiver all rights and powers as receiver pursuant to the F.D.I. Act, including 12 U.S.C. Section 1821, and all other applicable state and federal laws; and

WHEREAS, Receiver is the successor-in-interest to all right, title and interest of Bank in and to the Loan Documents; and

WHEREAS, Receiver has agreed to extend the Maturity Date and modify and waive certain terms of the Loan Documents, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for the sum of TEN AND NO/100THS DOLLARS and other good and valuable consideration, the sufficiency and receipt of which are hereby mutually acknowledged, Borrower and Receiver hereby agree and covenant as follows:

ARTICLE I DEFINITIONS, RECITALS

1.1 *Definitions.* Unless otherwise specifically defined herein (including the Recitals hereof), each term used in this Agreement shall have the meaning assigned to such term in the Loan Documents.

1.2 *Recitals.* The foregoing recitals are confirmed by the parties as true and correct and are incorporated herein by reference. The recitals are a substantive, contractual part of this Agreement.

1.3 *General.* References in this Agreement to "Sections," "Articles" and "Exhibits" are to sections, articles and exhibits herein and attached hereto unless otherwise indicated. References in this Agreement to any document, instrument or agreement (a) shall include all exhibits, schedules, riders and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time and in effect at any given time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural. Unless otherwise indicated, all references to time are references to Eastern Standard Time.

ARTICLE II
ACKNOWLEDGMENTS OF VALIDITY OF LOAN DOCUMENTS
AND INDEBTEDNESS

2.1 *Amount of Obligations.* Borrower hereby acknowledges and agrees that the amount of outstanding principal and interest owed directly, primarily, unconditionally, jointly and severally to Bank, under the Loan Documents, by Borrower, free of any defenses, counterclaims, setoffs or offsets whatsoever, is as follows:

Amount of Principal as of the <u>Effective Date</u>	Amount of Interest as of the <u>Effective Date</u>	Total as of the <u>Effective Date</u>
\$ <u>2,688,244⁹⁷</u>	\$ <u>0-</u>	\$ <u>2,688,244⁹⁷</u>

In addition to the foregoing principal and interest amounts, Borrower hereby acknowledges and agrees that Borrower is jointly, severally, primarily and unconditionally liable for other, additional amounts and charges due under the Loan Documents, including by way of illustration and not limitation, additional interest accruing at the rate specified in the Loan Documents, and attorneys' fees and expenses of Bank and Receiver.

2.2 *No Novation.* This Agreement and the transactions contemplated hereby are not and shall not be construed to be a novation of any of the obligations owing under or in connection with any of the Loan Documents. Further, the parties do not intend this Agreement, or the transactions contemplated hereby, to adversely affect or impair the continuity or priority of Receiver's existing security interest in any of the collateral securing the obligations in any way. Except as specifically provided herein, nothing herein contained and no actions taken by Receiver in connection herewith shall constitute nor shall they be deemed to be a waiver, release or impairment of any rights, remedies or privileges afforded to Receiver under the Loan Documents or under the UCC or under any other applicable law or in equity. Except as specifically provided herein, nothing herein shall constitute a waiver, amendment or modification by Receiver of Borrower's or Guarantors' obligation to strictly comply with the terms of the Loan Documents, nor shall anything contained herein constitute an agreement by Receiver to enter into any further agreement with or to grant any further modifications or other accommodations to Borrower.

2.3 *Ratification, Waiver, Release and Discharge.* Receiver, Borrower and Guarantors hereby ratify and affirm the Loan Documents, waive any defenses thereto and RELEASE AND DISCHARGE Receiver and its predecessors, successors, assigns, officers, managers, directors, employees, agents, attorneys, representatives and affiliates, but specifically excluding any purchaser or assignee of the Loan (collectively referred to as "*Receiver Affiliates*"), jointly and severally from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions and causes of action of any nature whatsoever, including, without limitation, all claims, demands, and causes of action for contribution and indemnity, whether arising at law or in equity (including without limitation, claims of

fraud, duress, mistake, tortious interference or usury), whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, or because of or as a result of any act, omission, communication, transaction, occurrence, representation, promise, damages, breach of contract, fraud, violation of any statute or law, commission of any tort, or any other matter whatsoever or thing done, omitted or suffered to be done by Receiver or Receiver Affiliates, which have occurred in whole or in part, or were initiated at any time up to and through the date this Agreement is signed and delivered to Receiver.

2.4 *Partial Payments.* Except as otherwise specifically provided herein, if Borrower makes future partial payments on the obligations, such payments will be applied in such order of application as Receiver deems appropriate to reduce the amounts outstanding under the Loan Documents, but Receiver's acceptance of such payments and their application shall not cure the defaults under the Loan Documents, shall not affect Receiver's exercise of its remedies, shall not be or in any way constitute an agreement or commitment to modify, renew or extend the Loan Documents, and shall not constitute a waiver of any kind by Receiver.

ARTICLE III MODIFICATION

In exchange for Receiver's agreement to modify the Loan Documents, Borrower hereby acknowledges and agrees to the following terms and conditions:

3.1 *Maturity Date, Loan Amount, Construction Draws, Certificate of Deposit.* Provided that Borrower fully performs and complies with its obligations under this Agreement and no new event of default as provided in Article VI of this Agreement occurs, (a) the Maturity Date shall be extended until June 1, 2009, whereupon all unpaid principal, interest and other charges shall be immediately due and payable, without notice or demand, (b) the principal amount of the Loan shall be increased to \$3,641,679.00, (c) Borrower shall be permitted to continue to draw down on the full amount of the Loan in accordance with the procedures set forth in the Loan Agreement, and (d) that certain \$100,000 Certificate of Deposit assigned to Bank as additional security for the Loan shall be retained by Receiver as collateral for the permanent loan on the Property and shall not be released by Receiver until the earlier of the payment in full of the permanent loan or as otherwise determined by Receiver. Upon the occurrence of any new event of default, no further draws shall be permitted and the Maturity Date shall be shortened to coincide with the occurrence of such event of default. Until the Maturity Date, Borrower shall continue to pay monthly payments of all accrued unpaid interest due as of each payment date as required pursuant to the Note.

3.2 *Ratification.* The modifications provided hereinabove are cumulative and in addition to Borrower's preexisting obligations under the prior Loan Documents. Except as otherwise specifically and expressly set forth herein, all terms of the Loan Documents, and Borrower's and Guarantors' obligations, undertakings, representations, warranties

and covenants thereunder, remain unchanged, are hereby ratified and affirmed and remain in full force and effect.

ARTICLE IV CONDITIONS PRECEDENT

4.1 *Conditions Precedent.* The effectiveness of Receiver's undertakings pursuant to this Agreement is subject to performance by Borrower of the following conditions:

- (a) Borrower's satisfaction of the provisions of Section 3.1 above;
- (b) Execution and delivery of this Agreement by Borrower and Guarantors;
- (c) Payment by Borrower, within five (5) business days of the Effective Date, of all taxes due and payable from the next disbursement of the Loan, proof of which shall be provided to Receiver;
- (d) Receiver's receipt of updated title and UCC lien search results confirming (i) Receiver's first priority security interest in the collateral for the Loan, and (ii) there are no liens of record on the Property; and
- (e) Execution and delivery of such other documents in form and substance satisfactory to Receiver in its sole good faith discretion as may be necessary to give effect to this Agreement.

ARTICLE V REPRESENTATIONS AND WARRANTIES

5.1 *Representations and Warranties.* Borrower and/or Guarantors hereby represent and warrant to Receiver as follows:

(a) Authorization and Compliance with Laws and with Other Documents. Borrower and Guarantors have the right and power to execute, deliver and perform this Agreement. This Agreement has been duly executed and delivered by Borrower and Guarantors, and is the legal, valid and binding obligation of Borrower and Guarantors enforceable against them in accordance with its terms. Borrower and Guarantors are in compliance with all applicable laws binding upon them and/or their properties. The execution, delivery and performance by Borrower and Guarantors of this Agreement do not require any governmental approval and do not conflict

(b) Title. Borrower is the owner of the personal property as secured by the Loan Documents and is the owner of the fee simple title to the Property, is in possession thereof, and no other person or entity has any right to possession thereof. Borrower has no knowledge of any disputes concerning the location of the lines and corners of the Property. All improvements on the Property, if any, are within the boundary lines of the Property and do not encroach upon any other land, improvements on adjoining property

do not encroach upon the Property, and the Property is not in violation of any applicable zoning regulations, covenants or restrictions.

(c) Litigation: Liens. There are no pending suits, proceedings, judgments, bankruptcies or executions against Borrower or Guarantors, or their properties, including the personal property as secured by the Loan Documents, or which might affect the Property either in the county where the Property is located or any other county in the State of South Carolina, and there are no liens or claims thereof, by laborers, materialmen or others for improvements on the Property. In accordance with the Loan Documents, Borrower shall continue to provide to Receiver copies of affidavits of the General Contractor stating that payments to the General Contractor shall be used to pay for any work, improvements or repairs which have been made on the Property during the ninety-five (95) days immediately preceding the date of this Agreement for which full payment has not been made, for which there are outstanding bills incurred by Borrower for labor and materials used in making improvements or repairs on the Property, or for services of architects, surveyors or engineers in connection therewith which have not been fully paid. Borrower has not received notice of any special assessments for water, sewage or street improvements or taxes that could constitute a lien against the Property. There is no outstanding indebtedness for or liens against equipment or fixtures owned by Borrower and attached to, installed on, incorporated in or located on, or otherwise used in connection with the operation or maintenance of, the Property or the improvements thereon, if any. The Property is free and clear of all claims, liens and encumbrances.

(d) Tax Returns: Payments / Filings. All federal, state, and other taxes, assessments and other governmental charges or levies upon Borrower or Guarantors and their properties, income, profits and assets which are due and payable have been paid. Borrower and Guarantors have filed all federal and state tax returns which are required to be filed under applicable law.

(e) Violations. There has been no violation of any restriction that may have been imposed on the Property by any predecessor in title to the Property, governmental authority or any other person or entity whatsoever.

(f) Default. Borrower and Guarantors hereby represent and warrant that no default or event of default has occurred and is continuing under the Loan Documents or any other material agreement to which Borrower and/or Guarantors are a party.

ARTICLE VI DEFAULT

6.1 *Events of Default*. Any failure of Borrower to perform any covenant, provision or other obligation under this Agreement, including the failure to satisfy Borrower's obligations on or before the Maturity Date, shall constitute an event of default under this Agreement and the Loan Documents.

6.2 *Remedies.* Upon the occurrence of any default or event of default, Receiver shall be entitled to pursue its remedies afforded by the Loan Documents and applicable law without further notice or demand, including, without limitation, institution of collection proceedings against Borrower and/or Guarantors.

6.3 *Rights Cumulative.* The rights and remedies of Receiver under this Agreement and the Loan Documents shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. In exercising its rights and remedies Receiver may be selective and no failure or delay by Receiver in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

6.4 *Bankruptcy.*

(a) *Dismissal.* In entering into this Agreement, the parties hereto hereby stipulate, acknowledge and agree that Receiver gave up valuable rights and agreed to forbear from exercising legal remedies available to it in exchange for the promises, covenants, representations, acknowledgments and warranties of Borrower and Guarantors, as contained herein, and that Receiver would not have entered into this Agreement but for such promises, covenants, representations, acknowledgments, agreements, and warranties, all of which have been accepted by Receiver in good faith, the breach of which by Borrower or Guarantors in any way, at any time, now or in the future, would admittedly and confessedly constitute cause for dismissal of any bankruptcy petition pursuant to 11 U.S.C. § 1112(b).

(b) *Relief from Automatic Stay.* As additional consideration for Receiver agreeing to forbear from immediately enforcing its rights and remedies under the Loan Documents, Borrower and Guarantors agree that in the event a bankruptcy petition under any Chapter of the Bankruptcy Code (11 U.S.C. § 101, *et seq.*) is filed by or against Borrower or Guarantors at any time after the execution of this Agreement, Receiver shall be entitled to the immediate entry of an order from the appropriate bankruptcy court granting Receiver complete relief from the automatic stay imposed by section 362 of the Bankruptcy Code (11 U.S.C. § 362), such that Receiver may exercise its security interest in the collateral upon the filing with the appropriate court of a motion for relief from the automatic stay with a copy of this Agreement attached thereto. Borrower and Guarantors specifically agree (i) that upon filing a motion for relief from the automatic stay, Receiver shall be entitled to relief from the stay without the necessity of an evidentiary hearing and without the necessity or requirement of Receiver to establish or prove the value of the collateral, the lack of adequate protection of its interest in the collateral, or the lack of equity in the collateral; (ii) that the lifting of the automatic stay hereunder by the appropriate bankruptcy court shall be deemed to be "for cause" pursuant to section 362(d)(1) of

(c) *Exclusivity.* As additional consideration for Receiver's forbearance, Borrower and Guarantors hereby waive in favor of Receiver the exclusivity provisions of 11 U.S.C. § 1121 so that Receiver shall be entitled and allowed at its option to file a plan at any

time after entry of an order for relief under Title 11, United States Code; and Borrower and Guarantors hereby consent, stipulate and agree to entry of an order waiving or shortening the exclusivity period pursuant to this paragraph.

(d) Acknowledgment. All of the above terms and conditions have been freely bargained for and are all supported by reasonable and adequate consideration and the provisions herein are material inducements for the parties entering into this Agreement.

ARTICLE VII MISCELLANEOUS

7.1 *Notices.* Unless otherwise provided herein, communications provided for hereunder, in the Loan Documents, or by applicable law, shall be in writing and addressed as follows:

If to Receiver: Federal Deposit Insurance Corporation
Attn: Asset Management
1601 Bryan Street
Dallas, Texas 75201

with a copy to: Schulten Ward & Turner, LLP
Attn: Eric L. Weiss, Esq.
260 Peachtree Street, Suite 2700
Atlanta, Georgia 30303

If to Borrower: Affordable Hospitality Group – Anderson, LLC
3904 N. Druid Hills Road, #221
Decatur, Georgia 30033

If to Guarantors: Jay Berlye
2684 Spicer Lane
Decatur, Georgia 30033

Diversified Capital Investment Group, LLC
3904 N. Druid Hills Road, #221
Decatur, Georgia 30033

or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier, or (b) sent by e-mail, with written confirmation by overnight or first class mail, in which case notice shall be deemed delivered upon receipt of such e-mail notice. Any notice sent by e-mail and received after 5:00 p.m. EST shall be deemed received on the next business day. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been received shall also constitute service of notice. The parties

hereto may change such address by sending written notice to the others in accordance with the foregoing; however, no written notice of change of address shall be effective until the date of receipt thereof.

7.2 Governing Law. This Agreement and all of the Loan Documents shall be governed by, and construed in accordance with the laws of the State of Georgia. This provision supersedes all prior choice of governing law provisions contained in the Loan Documents.

7.3 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, successors, legal representatives, and assigns.

7.4 Paragraph Headings. The headings of paragraphs in this Agreement are for convenience of reference only and shall not in any way affect the interpretation or construction of this Agreement.

7.5 Reservation of Rights. Except as otherwise provided expressly herein, nothing in this Agreement shall be deemed to (1) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in this agreement; (2) be a waiver by Receiver of the protection afforded to it by 12 U.S.C. § 91 or any substantially equivalent state law; or (3) limit the right of Receiver (a) to exercise self help remedies such as (but not limited to) setoff; (b) to foreclose against any real or personal property collateral; or (c) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession or the appointment of a receiver.

7.6 Agreement Regarding Interest and Charges. The parties hereto hereby agree and stipulate that the only charge imposed upon Borrower for the use of money in connection with this Agreement and the other Loan Documents is and shall be the interest described in the Loan Documents. The parties hereto further agree and stipulate that all other charges imposed by Receiver upon Borrower in connection with this Agreement, including all default charges, late charges, and attorneys' fees incurred by Bank and Receiver, are charges made to compensate Receiver for underwriting or administrative services and costs or losses performed or incurred, and to be performed or incurred, by Receiver in connection with this Agreement, and shall under no circumstances be deemed to be interest or other charges for the use of money. No provision of this Agreement, any of the other Loan Documents, or any instrument evidencing or securing the Loan Documents, or otherwise relating to the indebtedness evidenced by the Loan Documents, shall require the payment or permit the collection, application or receipt of interest in excess of the maximum rate permitted by applicable state or federal law. If any excess of interest in such respect is herein or in any such other instrument provided for, or shall be adjudicated to be so provided for herein or in any such instrument, the provisions of this paragraph shall govern, and neither Borrower nor Borrower's respective heirs, personal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent it is in excess of the amount permitted by applicable law. It is

expressly stipulated and agreed to be the intent of Borrower and Receiver at all times to comply with the usury and other laws relating to the Loan Documents and any subsequent revisions, repeals or judicial interpretations thereof, to the extent applicable to the Loan Documents. In the event Receiver ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance of the Loan Documents, and, if upon such application the principal balance of the Loan is paid in full, any remaining excess shall be paid forthwith to Borrower and the provisions of the Loan Documents and any demand or other charging document shall immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of execution of any new document, so as to comply with the then applicable law, but so as otherwise to permit the recovery of the fullest amount called for thereunder. In determining whether or not the interest paid or payable under any specific contingency exceeds the maximum rate of interest allowed to be charged by applicable law, Borrower and Receiver shall, to the maximum extent permitted under applicable law, amortize, prorate, allocate and spread the total amount of interest throughout the entire term of the respective obligation so that the amount or rate of interest charged for any and all periods of time during the term of the obligation is, to the greatest extent possible, less than the maximum amount or rate of interest allowed to be charged by law during the relevant period of time. Notwithstanding any of the foregoing, if at any time applicable laws shall be changed so as to permit a higher rate or amount of interest to be charged than that permitted prior to such change, then unless prohibited by law, references in the Loan Documents to "applicable law" for purposes of determining the maximum interest or rate of interest that can be charged shall be deemed to refer to such applicable law as so amended to allow the greater amount or rate of interest.

7.7 Amendments. Any term, covenant, agreement, provision or condition of this Agreement or any Loan Document may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by all parties, it being expressly agreed that neither the Loan Documents nor this Agreement can be modified orally, by course of dealing or by implied agreement. Any delay by Receiver in enforcing its rights after an event of default shall not be a release or waiver of the event of default and shall not be relied upon by Borrower or Guarantors as a release or waiver of the default.

7.8 Integration. This Agreement and the Loan Documents constitute the entire agreement between the parties hereto with respect to the modifications provided herein and the loan transactions described therein. There are no unwritten agreements between the parties hereto.

7.9 Survival. The warranties and representations of the parties in this Agreement shall survive the termination of this Agreement.

7.10 Severability. Any term, condition, agreement, or other provision contained in this Agreement which shall be deemed unenforceable in any court or other tribunal shall, as to the jurisdiction of such court or tribunal, be ineffective only to the extent of its unenforceability without invalidating or in any other way affecting the validity of the

remaining terms, conditions, agreements or provisions hereto in any other court or jurisdiction.

7.11 *Further Assurances.* Borrower and Guarantors shall perform or cause to be performed such acts and shall execute and deliver such documentation as may be reasonably required by Receiver to effect the transactions contemplated hereby, including, but not limited to, any acts or documentation deemed necessary to establish and maintain for Receiver a valid and perfected security interest in and security title to any and all of the collateral constituting security for the obligations owed to Receiver by Borrower.

7.12 *Draftsmanship.* The terms and conditions set forth in this Agreement are the product of joint draftsmanship by both parties hereto, and any ambiguities in this Agreement or any documentation prepared pursuant to or in connection with this Agreement shall not be construed against any of the parties because of draftsmanship.

7.13 *Counterparts.* This Agreement may be executed in multiple original counterparts with all such counterparts constituting one and the same Agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

[Signatures on Subsequent Page]

BORROWER:

**AFFORDABLE HOSPITALITY
GROUP - ANDERSON, LLC,**
a Georgia limited liability company

By: Diversified Capital Investment Group,
LLC, a Georgia limited liability company

By: Jay Berlye (SEAL)
Jay Berlye, Manager

Signed, sealed and delivered in the
presence of:

Joy M. Barnes
WITNESS

Judith C. Torrus
WITNESS

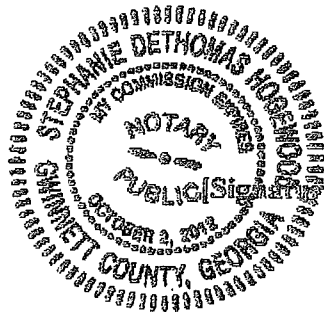
STATE OF GEORGIA
COUNTY OF Winnett

ACKNOWLEDGMENT

Personally appeared before me Joy M. Barnes and made oath that s/he saw the within
Jay Berlye, Manager of Diversified Capital Investment Group, LLC, the Manager of
Affordable Hospitality Group - Anderson, LLC, sign, seal and as his act and deed,
deliver the within written instrument, and that s/he, with Judith C. Torrus witnessed
the execution thereof.

Sworn to before me this 20 day
of April, 2009.

Stephanie Dethomas Hogenwood
Notary Public



[Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

GUARANTOR:

Signed, sealed and delivered in the
presence of:

By: Jay Berlye (SEAL)

Joy M. Barnes
WITNESS

Judith C. Town
WITNESS

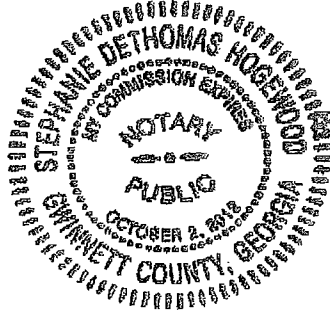
STATE OF GEORGIA
COUNTY OF Gwinnett

ACKNOWLEDGMENT

Personally appeared before me Joy M. Barnes and made oath that s/he saw the within
Jay Berlye, sign, seal and as his act and deed, deliver the within written instrument, and
that s/he, with Judith C. Town, witnessed the execution thereof.

Sworn to before me this 20 day
of April, 2009.

Stephanie D. Thomas Hogwood (SEAL)
Notary Public



[Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

GUARANTOR:

DIVERSIFIED CAPITAL
INVESTMENT GROUP, LLC,
a Georgia limited liability company

Signed, sealed and delivered in the
presence of:

[Signature]
WITNESS

[Signature]
WITNESS

By: [Signature] (SEAL)
Jay Berlye, Manager

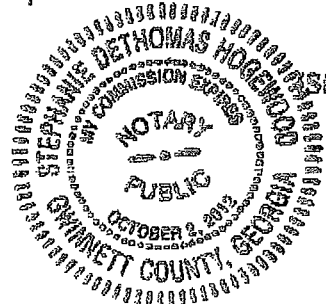
STATE OF GEORGIA -
COUNTY OF Gwinnett

ACKNOWLEDGMENT

Personally appeared before me Jay M. Barnes and made oath that s/he saw the within
Jay Berlye, Manager of Diversified Capital Investment Group, LLC, sign, seal and as his
act and deed, deliver the within written instrument, and that s/he, with Judith C. Thomas
witnessed the execution thereof.

Sworn to before me this 20 day
of April, 2009.

[Signature]
Notary Public



Signatures Continued on Following Page]

[Signatures Continued from Previous Page]

RECEIVER:

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver of Haven
Trust Bank

Signed, sealed and delivered in the
presence of:

[Signature]
WITNESS

[Signature]
WITNESS

By: [Signature]
Samuel C. Hill
Attorney-in-Fact

(SEAL)

STATE OF GEORGIA

COUNTY OF Cherokee

ACKNOWLEDGMENT

Personally appeared before me Judy K. Ford and made oath that s/he saw the within
Samuel C. Hill, Attorney-in-Fact for Federal Deposit Insurance Corporation, as Receiver
of Haven Trust Bank, seal and as his act and deed, deliver the within written instrument,
and that s/he, with Claudette B. Hill, witnessed the execution thereof.

Sworn to before me this 21 day
of April, 2009.

[Signature] (SEAL)
Notary Public



EXHIBIT J

BC: 677366
LN: 4010046607

NOTE ALLONGE

This Allonge is to be attached to and made a part of that certain Promissory Note made by Affordable Hospitality Group – Anderson, LLC; By: Diversified Capital Investment Group, LLC, Manager, executed by Jay Berlye, Manager, in the original principal amount of \$3,411,782.00, dated May 15, 2008, and payable to Haven Trust Bank, as amended or modified (the "Note").

Pay to the order of LNV CORPORATION, ("Assignee"), without recourse and without representation or warranty whether express, implied or created by operation of law.

Federal Deposit Insurance Corporation,
as Receiver for Haven Trust Bank, Duluth,
Georgia

By: 

James Erwin, Sr. Vice President
LNV Corporation
Attorney-in-Fact

EXHIBIT K

This Document Prepared By and
After Recording Please Return To:
MGC MORTGAGE, INC.
Attn: Carissa Golden, Manager
Post Closing/Lien Release Dept.
P.O. Box 251686
Plano, TX 75025-9933
BC #: 677366

**RE-RECORDING OF ASSIGNMENT OF MORTGAGE AND SECURITY
AGREEMENT**

(recorded on n/a, in Book n/a, at Page n/a, as Instrument No. n/a)

THIS ASSIGNMENT IS BEING RE-RECORDED TO INCLUDE THE FOLLOWING:

"This assignment is made without recourse, representation or warranty, express or implied, by the FDIC in its corporate capacity or as Receiver."

**Grantor: FEDERAL DEPOSIT INSURANCE CORPORATION
as Receiver for Haven Trust Bank, Duluth, Georgia
1601 Bryan Street, Dallas, TX 75201**

**Grantee: LNV CORPORATION
7195 Dallas Parkway, Plano, TX 75024**

EXHIBIT L

When Recorded Return To:

MGC MORTGAGE, INC.
DOCUMENT CONTROL DEPT.
PO BOX 251888
PLANO, TX 75025-9933

CORPORATE ASSIGNMENT OF MORTGAGE

Anderson, South Carolina
SELLER'S SERVICING #:4010040007 "AFFORDABLE HOSP"

Date of Assignment: July 21st, 2009
 Assignor: Federal Deposit Insurance Corporation as Receiver for Haven Trust Bank, Duluth Georgia at 7195
 DALLAS PKWY, PLANO, TX 75024
 Assignee: LNV CORPORATION at 7195 DALLAS PARKWAY, PLANO, TX 75024

Executed By: AFFORDABLE HOSPITALITY GROUP-ANDERSON, LLC, A GEORGIA LIMITED LIABILITY COMPANY To: HAVEN TRUST BANK
Date of Mortgage: 05/15/2008 Recorded: 05/20/2008 in Book/Real/Liber: 8670 Page/Folio: 204 as Instrument No.: 080014303 in Anderson, South Carolina

Assessor's/Tax ID No. 0930003023

Property Address: 102 ELECTRIC CITY BLVD, PENDLETON, SC 29670

Legal: See Exhibit "A" Attached Hereto And By This Reference Made A Part Hereof

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of TEN and NO/100th DOLLARS and other good and valuable consideration, paid to the above named Assignor, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Mortgage together with the Note or other evidence of indebtedness (the "Note"), said Note having an original principal sum of \$3,411,782.00 with interest, secured thereby, together with all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisions therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's beneficial interest under the Mortgage.

TO HAVE AND TO HOLD the said Mortgage and Note, and also the said property unto the said Assignee forever, subject to the terms contained in said Mortgage and Note.

Federal Deposit Insurance Corporation as Receiver for Haven Trust Bank, Duluth Georgia
On 7/21/99

By: James Erwin, SVP, LNV Corporation, Attorney
In Fact

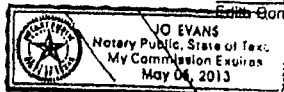
WITNESS

WITNESS

Brock Henslee

~~Enrique Gomez~~

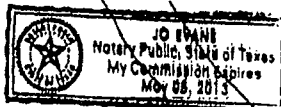
STATE OF TEXAS
COUNTY OF COLLIN



On 7/21/09, before me, JO EVANS, a Notary Public in and for Collin in the State of Texas, personally appeared James Erwin, SVP, LNV Corporation, Attorney In Fact, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

JO EVANS
Notary Expires: 05/05/2013 #12889043-5



(This area for notarial seal)

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book 51720 at page 7-A, records of Anderson County, South Carolina, said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws.

AND ALSO a right of way and easement to construct and maintain a Retention Pond on Parcel Five (5) adjacent to said property as described and outlined in Easement and Agreement dated August 3, 2007, and recorded 8-15-07 in Deed Book 8196 at page 53, records of Anderson County. Said right of way and easement being more fully described in said Easement and Agreement as identified as 0.396 acres, having such metes and bounds as are shown on said plat in the area shown as "Stormwater Detention (sic) Area for Parcels 4 & 5," said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws.

This is the same property conveyed to Affordable Hospitality Group - Anderson, LLC, by deed of Real Investors of the Upstate, LLC, dated August 3, 2007, and recorded 8-15-07 in Deed Book 8196, at page 60, records of Anderson County.

090020160 8/26/2009 02:19:50 PM
FILED, RECORDED, INDEXED
Bk: 09316 Pg: 00213 Pages: 002
Rec Fee: 7.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

EXHIBIT M

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY.

A. NAME & PHONE OF CONTACT AT FILER (optional)

POST CLOSING DEPT. 469-229-8600

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

LNV CORPORATION
C/O MGC MORTGAGE, INC.
7195 DALLAS PARKWAY 3E
PLANO, TX 75024

B/C 677366

090020790 9/02/2009 11:34:20 AM
FILED, RECORDED, INDEXED
Bk: 09325 Pg: 00258 Pages: 005
Rec Fee: 12.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

080014305 05/20/2008 BK 08670 PG 00240

1b. This FINANCING STATEMENT AMENDMENT is
to be filed (for record) (or recorded) in the
REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.4. ☒ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party.☐ DELETE name: Give record name to be deleted in item 6a or 6b.☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR AFFORDABLE HOSPITALITY GROUP-ANDERSON, LLC

6b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR LNV CORPORATION

7b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS

7195 DALLAS PARKWAY

CITY

PLANO

STATE

TX

POSTAL CODE

75024

COUNTRY

USA

7d. SEE INSTRUCTIONS

ADDL INFO RE
ORGANIZATION
DEBTOR

7e. TYPE OF ORGANIZATION

CORP

7f. JURISDICTION OF ORGANIZATION

TX

7g. ORGANIZATIONAL ID #, if any

NA

☒ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☒ assigned.

ALL COLLATERAL PER THE ORIGINAL UCC FILING IS HEREBY BEING ASSIGNED.
SEE ATTACHED EXHIBIT "A" AND EXHIBIT "B" FIXTURE FILING

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR FDIC AS RECEIVER FOR HAVEN TRUST BANK

9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

10. OPTIONAL FILER REFERENCE DATA

SC-ANDERSON COUNTY

AFFORDABLE HOSPITALITY GROUP

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02)

LexisNexis Document Solutions
801 Adlai Stevenson Drive
Springfield, IL 62703-4261

unin046607

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as Item 1a on Amendment form)

080014305 05/20/2008 BK 08670 PG 00240

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 9 on Amendment form)

12a. ORGANIZATION'S NAME

FDIC AS RECEIVER FOR HAVEN TRUST BANK

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

DEBTOR:
 AFFORDABLE HOSPITALITY GROUP-ANDERSON LLC
 3904 N DRUID HILLS RD. #221
 DECATUR, GA 30033

SC-ANDERSON COUNTY

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3Ad) (REV. 07/28/98)

LexisNexis Document Solutions
 501 Adlai Stevenson Drive
 Springfield, IL 62761-4261

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Braayon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book S1720, at page 7-A, records of Anderson County, South Carolina.

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book 51720 at page 7-A, records of Anderson County, South Carolina, said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws.

AND ALSO a right of way and easement to construct and maintain a Retention Pond on Parcel Five (5) adjacent to said property as described and outlined in Easement and Agreement dated August 3, 2007, and recorded 8-15-07 in Deed Book 8196, at page 53, records of Anderson County. Said right of way and easement being more fully described in said Easement and Agreement as identified as 0.396 acres, having such metes and bounds as are shown on said plat in the area shown as "Stormwater Detention (sic) Area for Parcels 4 & 5," said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws.

This is the same property conveyed to Affordable Hospitality Group - Anderson, LLC, by deed of Real Investors of the Upstate, LLC, dated August 3, 2007, and recorded 8-15-07 in Deed Book 8196, at page 60, records of Anderson County.

EXHIBIT "B"PERSONAL PROPERTY DESCRIPTION

All equipment and machinery, including power driven machinery and equipment, furniture and fixtures now owned or hereafter acquired and wherever located, together with all replacements thereof, all attachments, accessories, parts and tools belonging thereto or for use in connection therewith and proceeds therefrom. All inventory, raw materials, work-in-process and supplies now owned or hereafter acquired, wherever located and proceeds therefrom. All accounts and accounts receivable now outstanding or hereafter arising. All contract rights, chattel paper, instruments and general intangibles now in force or hereafter acquired, wherever located and proceeds therefrom.

EXHIBIT N

After Recording Please Return To:
MGC MORTGAGE, INC.
Attn: Allison Martin, VP
Document Control
P.O. Box 251686
Plano, Texas 75025-9933
(866) 544-9820
BC #677366

ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS

APN No: 0930003023

Grantor: **FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver
for Haven Trust Bank, Duluth, Georgia
1601 Bryan Street, Dallas, TX 75201**

Grantee: **LNV Corporation
7195 Dallas Parkway, Plano, TX 75024**

Legal Description: See Exhibit "A" attached and made a part hereof.

BC: 677366

ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made by FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR HARVEST TRUST BANK whose address is 1601 Bryan Street, Dallas, Texas 75201 ("Assignor"), to and in favor of LNV CORPORATION, whose address is 7195 Dallas Parkway, Plano, Texas 75024 ("Assignee"), pursuant to the terms of that certain Loan Sale Agreement, (the "Purchase Agreement"), effective March 10, 2009, between Federal Deposit Insurance Corporation in its Corporate and/or Receivership Capacity and LNV Corporation.

THIS ASSIGNMENT WITNESSES THAT, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration paid by Assignee, Assignor hereby assigns, transfers, sets over and conveys to Assignee and its successors and assigns, without recourse and without representation or warranty, whether express, implied or created by operation of law, except as expressly set forth in the Purchase Agreement, the following:

1. that certain Assignment of Leases and Rents by AFFORDABLE HOSPITALITY GROUP - ANDERSON, LLC, a limited liability company duly organized, existing and in good standing under the laws of the State of Georgia, dated May 15, 2008 and recorded May 20, 2008, in Book 8670, Pages 230-239, in the Clerk's Office of the County of Anderson, State of South Carolina, (the "Assignment of Leases and Rents"), which Assignment of Leases and Rents secures that certain Promissory Note dated May 15, 2008, in the original principal amount of \$3,411,782.00, made by Affordable Hospitality Group - Anderson, LLC; By: Diversified Capital Investment Group, LLC, Manager, executed by Jay Berlye, Manager, and payable to the order of HAVEN TRUST BANK, as modified or amended (the "Note");
2. such other documents, agreements, instruments and other collateral that evidence, secure or otherwise relate to Assignor's right, title or interest in and to the Mortgage and/or the Note and/or the loan evidenced by the Note, including without limitation the title insurance policies and hazard insurance policies relating thereto that are in effect.

BC: 677366

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered by its Authorized Representative as of the 21 day of July, 2009.

Michael Barnett
Witness: Michael Barnett
Felecia White
Witness: Felecia White

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for
HAVEN TRUST BANK, Duluth, Georgia

By: [Signature]
James Erwin, Sr. Vice President
LNV Corporation
Title: Attorney-In-Fact

ACKNOWLEDGMENT

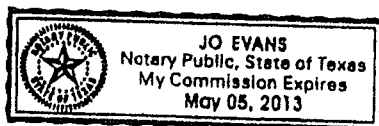
STATE OF TEXAS

§
§
§

COUNTY OF COLLIN

Before me, the undersigned, a Notary Public, on this day personally appeared James Erwin, who is personally well known to me (or sufficiently proven) to be the Sr. Vice President of LNV Corporation, Attorney-In-Fact of Federal Deposit Insurance Corporation, as Receiver for Haven Trust Bank, Duluth, Georgia and the person who executed the foregoing instrument by virtue of the authority vested in him/her, and he/she acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacities therein stated.

Given under my hand and seal this 21 day of July, 2009.



AFFIX NOTARY SEAL

[Signature]
Notary Name: ~~Linda Hilton~~ Jo Evans
Notary Public, State of Texas
My commission expires: ~~3/17/2013~~
5/5/2013

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book 51720 at page 7-A, records of Anderson County, South Carolina, said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws.

AND ALSO a right of way and easement to construct and maintain a Retention Pond on Parcel Five (5) adjacent to said property as described and outlined in Easement and Agreement dated August 3, 2007, and recorded 8-15-07 in Deed Book 8196 at page 53, records of Anderson County. Said right of way and easement being more fully described in said Easement and Agreement as identified as 0.396 acres, having such metes and bounds as are shown on said plat in the area shown as "Stormwater Detention (sic) Area for Parcels 4 & 5," said plat being incorporated herein by reference pursuant to the provisions of Section 30-5-250, South Carolina Code of Laws.

This is the same property conveyed to Affordable Hospitality Group - Anderson, LLC, by deed of Real Investors of the Upstate, LLC, dated August 3, 2007, and recorded 8-15-07 in Deed Book 8196 at page 60, records of Anderson County.

090020161 8/26/2009 02:20:05 PM
FILED, RECORDED, INDEXED
Bk: 09316 Pg: 00215 Pages: 004
Rec Fee: 10.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

EXHIBIT O

MGC Mortgage, Inc.

7195 Dallas Parkway
Plano, Texas 75024
www.mgcmortgage.com
Tel 866-973-3399

August 14, 2009

Prudential Financial
Pruco Life Insurance Company
A Prudential company
PO Box 7390
Philadelphia, PA 19176
(800) 782-5356

RE: Policy No. L8 272 844
Issued Date: June 6, 2008
Insured: Jay L. Bertye

Dear Agent:

LNV Corporation, a Nevada Corporation purchased the above referenced loan from the Federal Insurance Corporation as receiver for Haven Trust Bank. Please change your records to reflect LNV Corporation as holder of the subject Life Insurance Policy as collateral securing said loan.

An original Assignment of Life Insurance Policy is enclosed for your records. Please acknowledge receipt of the enclosed assignment by signing where indicated below and return to me in the provided, postage paid envelope. Thank you very much for assistance and please feel free to contact the Document Control Department should have any questions regarding this loan at (469) 229-8634.

Sincerely,



Michael Barnett
Document Control Dept.

Received By _____

Date _____

Mail to:
Prudential Financial
Pruco Life Insurance Company,
A Prudential company
PO Box 7390
Philadelphia, PA 19176
(800) 782-5356

Return signed document(s) to:
MGC Mortgage
Document Control Dept
PO Box 251686
Plano, TX 75025-9933

BC: 677366

ASSIGNMENT OF LIFE INSURANCE POLICY AS COLLATERAL

THIS ASSIGNMENT OF LIFE INSURANCE POLICY AS COLLATERAL (this "Assignment") is made by FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR HAVEN TRUST BANK, whose address is 1601 Bryan Street, Dallas, TX 75201 ("Assignor"), to and in favor of LNV Corporation, a Nevada Corporation, whose address is 7195 Dallas Parkway, Plano, TX 75024 ("Assignee"), pursuant to the terms of that certain Loan Sale Agreement, (the "Purchase Agreement"), effective March 10, 2009, between Federal Deposit Insurance Corporation in its Corporate and/or Receivership Capacity and LNV Corporation, a Nevada Corporation.

THIS ASSIGNMENT WITNESSES THAT, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration paid by Assignee, Assignor hereby assigns, transfers, sets over and conveys to Assignee and its successors and assigns, without recourse and without representation or warranty, whether express, implied or created by operation of law, except as expressly set forth in the Purchase Agreement, the following:

1. that certain Assignment of Life Insurance Policy as Collateral, dated May 15, 2008, issued by Prudential Financial, executed by Jay L. Berlye, Life Insurance Policy No. L8 272 844 on the life of Jay L. Berlye, (the "Assignment") which Assignment secures that certain Promissory Note dated May 15, 2008, in the original principal amount of \$3,411,782.00, made by Affordable Hospitality Group - Anderson, LLC; By: Diversified Capital Investment Group, LLC, Manager, executed by Jay Berlye, Manager, and payable to the order of HAVEN TRUST BANK, as modified or amended (the "Note");
2. such other documents, agreements, instruments and other collateral that evidence, secure or otherwise relate to Assignor's right, title or interest in and to the Mortgage and/or the Note and/or the loan evidenced by the Note, including without limitation the title insurance policies and hazard insurance policies relating thereto that are in effect.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered by its Authorized Representative as of the 21st day of July, 2009.

FEDERAL DEPOSIT INSURANCE
CORPORATION as Receiver for HAVEN TRUST
BANK

By: 
James Erwin, Sr. Vice President
LNV Corporation
Title: Attorney-in-Fact

ACKNOWLEDGMENT OF ASSIGNMENT BY INSURER

Prudential Financial hereby acknowledges receipt of a duplicate of this Assignment of Policy as Collateral Policy Number L8 272 844, which has been filed at the home office of Prudential Financial on this _____ day of _____, 2009.

Prudential Financial
By: _____
Authorized Officer for Prudential Financial

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
 LNV Corporation,	)	AMENDED
	)	ANSWER AND COUNTERCLAIM
Plaintiff,	)	OF DEFENDANTS AFFORDABLE
	)	HOSPITALITY GROUP-ANDERSON,
-vs-	)	LLC, DIVERSIFIED CAPITAL
	)	INVESTMENT GROUP, LLC, AND
Affordable Hospitality Group-Anderson, LLC;	)	JAY BERLYE
Diversified Capital Investment Group, LLC;	)	
Jay Berlye; Anderson County, South Carolina;	)	C.A. No. 2011-CP-04-2728
and the State of South Carolina,	)	
	)	JURY TRIAL REQUESTED
Defendants.	)	
	)	

Come now the Defendants, Affordable Hospitality Group-Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye, by and through their undersigned counsel, and, by way of answer and counterclaim to the Complaint of Plaintiff LNV Corporation, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE TO THE COMPLAINT

1. Paragraph 1, which pertains to Plaintiff LNV Corporation referred to hereinafter as "LNV," is admitted.
2. Paragraph 2, which pertains to Defendant Affordable Hospitality Group-Anderson, LLC, referred to hereinafter as "Affordable Hospitality," is admitted.
3. Paragraph 3, which pertains to Defendant Jay Berlye, referred to hereinafter as "Berlye," is admitted.
4. Paragraph 4, which pertains to Defendant Diversified Capital Investment Group, LLC,

referred to hereinafter as "Diversified Capital," is admitted.

5. Paragraph 5, which pertains to Defendant Anderson County, South Carolina, referred to hereinafter as "Anderson County," contains assertions of legal procedure to which no response is required, and none is given. To the extent that the allegations set out in Paragraph 5 require some other or further response, Paragraph 5 is admitted.

6. Paragraph 6, which pertains to Defendant the State of South Carolina, referred to hereinafter as "South Carolina," contains assertions of legal procedure to which no response is required, and none is given. To the extent that the allegations set out in Paragraph 6 require some other or further response, Paragraph 6 is admitted.

7. Paragraph 7 is an assertion of jurisdiction to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the South Carolina State Constitution or Code, Affordable Hospitality, Diversified Capital, and Berlye (which are collectively referred to hereinafter as the "Defendants") crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 7 require some other or further response, Paragraph 7 is admitted on information and belief; provided, however, that Defendants reserve all rights to challenge the existence or exercise of subject matter jurisdiction as they deem necessary or appropriate.

8. Paragraph 8 is an assertion of venue to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the South Carolina State Code, the Defendants crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 8 require some other or further response, Paragraph 8 is admitted on information and belief; provided, however, that Defendants

reserve all rights to challenge the existence or exercise of venue as they deem necessary or appropriate.

9. Paragraph 9 is an assertion of jurisdiction to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the South Carolina State Code, the Defendants crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 9 require some other or further response, Paragraph 9 is admitted on information and belief; provided, however, that Defendants reserve all rights to challenge the existence or exercise of personal jurisdiction as they deem necessary or appropriate.

10. Paragraph 10 is an assertion of legal procedure to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the South Carolina State Supreme Court's Administrative Order of May 22, 2009, the Defendants crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 10 require some other or further response, Paragraph 10 is admitted on information and belief; provided, however, that Defendants reserve all rights to challenge such aspects of legal procedure described therein as they deem necessary or appropriate.

11. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

12. Responding to Paragraph 11, such Paragraph incorporates the terms of a Promissory Note, executed on or about May 15, 2008, between Affordable Hospitality and third-party Haven Trust Bank in the amount of Three Million, Four Hundred Eleven Thousand, Seven Hundred Eighty-Two Dollars and 00/Cents (\$3,411,782.00). Defendants crave reference to such Promissory

Note, the terms of which shall speak for themselves.

13. To the extent that Paragraph 11 requires some other or further response, the allegations of Paragraph 11 are admitted subject to the express qualification and limitation that such Promissory Note does not set out the complete agreement of Haven Trust Bank and Defendants. This complete agreement (referred to hereinafter as the "Basic Contract" by and between Haven Trust Bank and Defendants as contracting parties) was established by a written commitment offered and accepted on November 6, 2007 and attached hereto as Exhibit A. In the Basic Contract, Haven Trust Bank agreed to fund a permanent mortgage loan to the Defendants and to assist Defendants in obtaining financing from the United States Small Business Administration ("SBA"). In this Basic Contract, Defendants agreed to execute and did subsequently execute the Promissory Note and other loan documents which Plaintiff seeks to enforce by this action. Affordable Hospitality relied in good faith on Haven Trust Bank's written commitment and would not have entered into the Promissory Note and other loan documents but for Haven Trust Bank's written commitment as the Basic Contract.

14. Responding to Paragraph 12, such Paragraph incorporates the terms of a guaranty given by Diversified Capital with regard to the Promissory Note referenced in Paragraph 11. Defendants crave reference to such guaranty, the terms of which shall speak for themselves.

15. To the extent that Paragraph 12 requires some other or further response, the allegations of Paragraph 12 are admitted subject to the express qualification and limitation that such guaranty does not set out the complete agreement of the parties and that the guaranty was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Diversified Capital relied in good faith on Haven Trust Bank's

written commitment and would not have given the guaranty but for Haven Trust Bank's written commitment as the Basic Contract.

16. Responding to Paragraph 13, such Paragraph incorporates the terms of a Construction Loan Agreement and a document referred to as the Berlye Guaranty. The Defendants crave reference to such Construction Loan Agreement and Berlye Guaranty, the terms of which shall speak for themselves.

17. To the extent that Paragraph 13 requires some other or further response, the allegations of Paragraph 13 are admitted subject to the express qualification and limitation that such Defendants were induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Defendants relied in good faith on Haven Trust Bank's written commitment and would not have entered into the Construction Loan Agreement and/or have given the Berlye Guaranty but for Haven Trust Bank's written commitment as the Basic Contract.

18. Responding to Paragraph 14, such Paragraph incorporates the terms of a legal instrument which is purportedly on record with the Office of the Register of Deeds of Anderson County, South Carolina. Defendants crave reference to such instrument, the terms of which shall speak for themselves.

19. To the extent that some other or further response is required, Paragraph 14 is admitted on information and belief.

20. Responding to Paragraph 15, such Paragraph incorporates the terms of a security agreement executed on or about May 15, 2008, between Affordable Hospitality and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such

security agreement, the terms of which shall speak for themselves.

21. To the extent that Paragraph 15 requires some other or further response, the allegations of Paragraph 15 are admitted subject to the express qualification and limitation that such security agreement was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Affordable Hospitality relied in good faith on Haven Trust Bank's written commitment and would not have given the security agreement but for Haven Trust Bank's written commitment as the Basic Contract.

22. Paragraph 16 is a conclusion of law to which no response is required, and none is given. To the extent that some other or further response is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged therein, and so deny the same. By way of further response, Defendants reserve all rights to challenge the sufficiency of the perfection of the security agreement in question as Defendants deem necessary or appropriate.

23. Responding to Paragraph 17, such Paragraph incorporates the terms of an assignment of leases and rents, executed on or about May 15, 2008, between Affordable Hospitality and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such security agreement, the terms of which shall speak for themselves.

24. To the extent that Paragraph 17 requires some other or further response, the allegations of Paragraph 17 are admitted subject to the express qualification and limitation that such assignment was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Affordable Hospitality relied in good faith on Haven Trust Bank's written commitment and would not have given the assignment

but for Haven Trust Bank's written commitment as the Basic Contract.

25. Responding to Paragraph 18, such Paragraph incorporates the terms of an insurance assignment between Affordable Hospitality and Berlye and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such assignment, the terms of which shall speak for themselves.

26. To the extent that Paragraph 18 requires some other or further response, the allegations of Paragraph 18 are admitted subject to the express qualification and limitation that such assignment was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Defendants Affordable Hospitality and Berlye relied in good faith on Haven Trust Bank's written commitment and would not have given the assignment but for Haven Trust Bank's written commitment as the Basic Contract.

27. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

28. Paragraph 20 is admitted on information and belief.

29. Paragraph 21 is an assertion of legal authority to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the United States Code, the Defendants crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 21 require some other or further response, Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged therein, and so deny the same. By way of further response, Defendants reserve all rights to challenge the existence or exercise of such legal authority as they deem necessary or

appropriate.

30. Responding to Paragraph 22, such Paragraph incorporates the terms of a loan modification agreement. Defendants crave reference to such agreement, the terms of which shall speak for themselves. To the extent that some other or further answer is required, Paragraph 22 is admitted.

31. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 24, and so deny the same. Defendants demand strict proof of such transaction from Plaintiff.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 25 and so deny the same. Defendants demand strict proof of such ownership from Plaintiff.

34. Responding to Paragraph 26, it is admitted that certain of the Defendants have failed to make all payments claimed by Plaintiff to be due. It is expressly denied that Plaintiff may enforce the loan documents as alleged.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 27 and so deny the same. Defendants demand strict proof of such priority from Plaintiff.

36. Responding to Paragraph 28, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. However, Plaintiff has never provided Defendants with an accounting of amounts due and owing, and therefore Defendants are without

knowledge or information sufficient to form a belief as to the truth or accuracy of the amounts claimed to be owed. Accordingly, Defendants deny the same. Defendants demand strict proof from Plaintiff of such amounts due and owing. To the extent that some other or further response is required, Paragraph 28 is denied.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 29 and so deny the same.

38. Paragraph 30 is an assertion of intention for which no answer is required, and none is given. To the extent that an answer may be required, Paragraph 30 is denied.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract/Collection on Note)

39. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

40. Paragraph 32 is denied insofar as the Note referenced in Paragraph 32 does not constitute the Basic Contract but instead represents partial performance by the contracting parties to the Basic Contract. Moreover, such interest as Plaintiff acquired by transactions alleged in Paragraphs 24 and 25 of the Complaint includes all obligations of the Basic Contract which Plaintiff assumed as assignee. By reason of Plaintiff's prior and contemporaneous breaches of the Basic Contract, Plaintiff is barred from enforcing any part of the other loan documents against Defendants.

41. Paragraph 33 is denied. Any alleged breach by Defendants is excused by the prior and contemporaneous breaches by Plaintiff in failing to abide by the terms of the Basic Contract.

42. Paragraph 34 is denied.

FOR A SECOND DEFENSE TO THE FIRST CAUSE OF ACTION

43. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

44. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

45. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the United States Federal Deposit Insurance Corporation ("FDIC"). As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

46. Plaintiff has failed to perform either obligation under the Basic Contract and is therefore estopped from seeking any recovery from the Defendants.

FOR A THIRD DEFENSE TO THE FIRST CAUSE OF ACTION

47. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

48. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

49. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

50. As part of its representations, Plaintiff advanced construction loan funds pursuant to a "Loan Modification" agreement, attached hereto as Exhibit B, which Defendants were induced to

execute in June 2009.

51. Continuing its representations, Plaintiff postponed the maturity date under the first "Loan Modification" agreement, thereby inducing Defendants to execute a second "Loan Modification" agreement, attached hereto as Exhibit C, in November 2009.

52. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

53. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance. Plaintiff comes before this Court with unclean hands and is therefore barred from seeking any recovery from the Defendants.

FOR A FOURTH DEFENSE TO THE FIRST CAUSE OF ACTION

54. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

55. Plaintiff's attempts to collect monetary damages from Defendants are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE FIRST CAUSE OF ACTION

56. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

57. By inducing Defendants to continue performance under the Basic Contract and by failing at any time to seek modification of the Basic Contract, Plaintiff has forfeited its claims

against Defendants by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE FIRST CAUSE OF ACTION

58. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

59. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

60. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

61. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

62. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

63. At no time, in negotiating these "Loan Modification" agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including such "Loan Modification" agreements, as the contract of the parties, Plaintiff's claims are unenforceable due to a failure of contract.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Enforcement of Guaranty – against Defendant Diversified Capital)

64. Defendants incorporate the foregoing answers to the averments of the Complaint

herein, to the extent such answers are not inconsistent with those that follow.

65. Paragraph 36 is denied. The guaranty executed by Diversified Capital was induced by the Basic Contract upon which Diversified Capital relied in good faith to its detriment. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing. Plaintiff has failed to perform either obligation, thereby breaching the Basic Contract and forfeiting any rights under the guaranty executed by Diversified Capital.

66. Responding to Paragraph 37, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. It is further admitted that Diversified Capital has refused to pay. All remaining allegations set out in Paragraph 37 are denied.

67. Paragraph 38 is denied.

68. Paragraph 39 is denied.

FOR A SECOND DEFENSE TO THE SECOND CAUSE OF ACTION

69. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

70. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

71. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

72. Plaintiff has failed to perform either of its obligations under the Basic Contract and

is therefore estopped from enforcing the guaranty executed by Diversified Capital.

FOR A THIRD DEFENSE TO THE SECOND CAUSE OF ACTION

73. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

74. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

75. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

76. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

77. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

78. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from enforcing the guaranty executed by Diversified Capital.

FOR A FOURTH DEFENSE TO THE SECOND CAUSE OF ACTION

79. Defendants incorporate the foregoing answers to the averments of the Complaint

herein, to the extent such answers are not inconsistent with those that follow.

80. Plaintiff's attempts to enforce the guaranty executed by Diversified Capital are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE SECOND CAUSE OF ACTION

81. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

82. By inducing Defendants to continue performance under the Basic Contract and the loan documents, and by failing at any time to seek modification of the Basic Contract, Plaintiff has forfeited any claims under the guaranty executed by Diversified Capital by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE SECOND CAUSE OF ACTION

83. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

84. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

85. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

86. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of

the type contemplated by the Basic Contract, including support for SBA financing.

87. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

88. At no time, in negotiating these "Loan Modification" agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the guaranty executed by Diversified Capital, Plaintiff's claims are unenforceable due to a failure of contract.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Enforcement of Guaranty – against Defendant Berlye)

89. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

90. Responding to Paragraph 41, it is admitted that Berlye executed a guaranty. However, it is denied that such guaranty may be enforced against Berlye. The Berlye Guaranty was induced by the Basic Contract upon which Berlye relied in good faith to his detriment. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing. Plaintiff has failed to perform either obligation, thereby breaching the Basic Contract and forfeiting any rights under the Berlye Guaranty. To the extent that some other or further response is required, Paragraph 41 is denied.

91. Responding to Paragraph 42, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. It is further admitted that Berlye has refused to pay. All remaining allegations set out in Paragraph 42 are denied.

92. Paragraph 43 is denied.

93. Paragraph 44 is denied.

FOR A SECOND DEFENSE TO THE THIRD CAUSE OF ACTION

94. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

95. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

96. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

97. Plaintiff has failed to perform either obligation under the Basic Contract and is therefore estopped from enforcing the Berlye Guaranty.

FOR A THIRD DEFENSE TO THE THIRD CAUSE OF ACTION

98. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

99. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

100. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

101. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

102. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

103. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from enforcing the Berlye Guaranty.

FOR A FOURTH DEFENSE TO THE THIRD CAUSE OF ACTION

104. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

105. Plaintiff's attempts to enforce the Berlye Guaranty are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE THIRD CAUSE OF ACTION

106. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

107. By inducing Defendants to continue performance under the Basic Contract and by failing at any time to seek modification of the Basic Contract, Plaintiff has forfeited any claims under the Berlye Guaranty by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE THIRD CAUSE OF ACTION

108. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

109. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

110. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

111. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

112. At no time, in negotiating these "Loan Modification" agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the Berlye Guaranty, Plaintiff's claims are unenforceable due to a failure of contract.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION
(Mortgage Foreclosure)

113. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

114. Responding to Paragraph 46, such Paragraph incorporates the terms of a legal instrument which is purportedly on record with the Office of the Register of Deeds of Anderson County, South Carolina. Defendants crave reference to such instrument, the terms of which shall

speaking for themselves. To the extent that some other or further response is required, Paragraph 46 is admitted on information and belief.

115. Responding to Paragraph 47, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out therein and so deny the same.

116. Responding to Paragraph 48, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. It is further admitted that Defendants have refused to pay. All remaining allegations set out in Paragraph 48, including specifically the allegation that Defendants are in default, are denied.

117. Responding to Paragraph 49, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. All remaining allegations set out in Paragraph 49, including specifically the allegation that Defendants are in default, are denied.

118. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 50, and so deny the same. Defendants demand strict proof of such ownership from Plaintiff. The Note and Mortgage referenced in Paragraph 50 do not constitute the Basic Contract of the parties but instead represent partial performance by the contracting parties to the Basic Contract. Moreover, such interest as Plaintiff acquired by transactions alleged in Paragraphs 46 and 47 of the Complaint includes all obligations of the Basic Contract which Plaintiff assumed as assignee. By reason of Plaintiff's prior and contemporaneous breaches of the Basic Contract, Plaintiff is barred from enforcing any part of the Basic Contract against Defendants, including foreclosure of the Mortgage described in the Complaint.

119. Paragraph 51 is denied.

120. Defendants are without knowledge or information sufficient to form a belief as to the

truth of the averments set out in Paragraph 52, and so deny the same.

121. Paragraph 53 is stated in the form of a prayer for relief for which no answer is required, and none is given. To the extent that some other or further response may be required, Paragraph 53 is denied.

FOR A SECOND DEFENSE TO THE FOURTH CAUSE OF ACTION

122. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

123. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

124. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

125. Plaintiff has failed to perform either obligation under the Basic Contract and is therefore estopped from foreclosing the Mortgage described in the Complaint.

FOR A THIRD DEFENSE TO THE FOURTH CAUSE OF ACTION

126. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

127. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

128. Upon assuming all obligations of Haven Trust Bank under the Basic Contract,

Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

129. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

130. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

131. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from foreclosing the Mortgage described in the Complaint.

FOR A FOURTH DEFENSE TO THE FOURTH CAUSE OF ACTION

132. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

133. Plaintiff's attempts to foreclose the Mortgage described in the Complaint are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE FOURTH CAUSE OF ACTION

134. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

135. By inducing Defendants to continue performance under the Basic Contract and by

failing at any time to seek modification of the Basic Contract, Plaintiff is barred from foreclosing the Mortgage described in the Complaint by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE FOURTH CAUSE OF ACTION

136. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

137. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

138. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

139. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

140. At no time, in negotiating these "Loan Modification" agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the Mortgage described in the Complaint, Plaintiff's claims are unenforceable due to a failure of contract.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION
(Recovery of Secured Property/Claim & Delivery)

141. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

142. Responding to Paragraph 55, such Paragraph incorporates the terms of a security agreement executed on or about May 15, 2008, between Affordable Hospitality and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such security agreement, the terms of which shall speak for themselves.

143. To the extent that Paragraph 55 requires some other or further response, the allegations of Paragraph 55 are admitted subject to the express qualification and limitation that such security agreement was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Affordable Hospitality relied in good faith on Haven Trust Bank's written commitment and would not have given the security agreement but for Haven Trust Bank's written commitment as the Basic Contract.

144. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 56, and so deny the same. Defendants demand strict proof of such ownership from the Plaintiff.

145. Paragraph 57 is denied.

146. Paragraph 58 is admitted, as Defendants are presently entitled to possession of the property at issue.

147. Responding to Paragraph 59, it is admitted that Plaintiff's only demand for possession of the property at issue has been in the form of the Complaint to which this Answer is submitted in response. It is denied that there has been some other or further demand made by Plaintiff to Defendants. It is further denied that Plaintiff is entitled to present possession of the property at issue. To the extent that some other or further response is required, Paragraph 59 is denied.

148. Responding to Paragraph 60, it is admitted that Defendants are presently in possession

of the property at issue and have a right to such possession. To the extent that some other or further response is required, Paragraph 60 is denied.

FOR A SECOND DEFENSE TO THE FIFTH CAUSE OF ACTION

149. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

150. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

151. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

152. Plaintiff has failed to perform either obligation under the Basic Contract and is therefore estopped from taking possession of the property at issue pursuant to the security agreement referenced above.

FOR A THIRD DEFENSE TO THE FIFTH CAUSE OF ACTION

153. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

154. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

155. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed

by it under the Basic Contract.

156. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

157. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

158. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from taking possession of the property at issue pursuant to the security agreement referenced above.

FOR A FOURTH DEFENSE TO THE FIFTH CAUSE OF ACTION

159. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

160. Plaintiff's attempts to take possession of the property at issue pursuant to the security agreement referenced above are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE FIFTH CAUSE OF ACTION

161. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

162. By inducing Defendants to continue performance under the Basic Contract and by failing at any time to seek modification of the Basic Contract, Plaintiff is barred from taking

possession of the property at issue pursuant to the security agreement referenced above by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE FIFTH CAUSE OF ACTION

163. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

164. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

165. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

166. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

167. At no time, in negotiating these "Loan Modification" agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the security agreement referenced above, Plaintiff's claims are unenforceable due to a failure of contract.

FOR A DEFENSE TO THE SIXTH CAUSE OF ACTION
(Appointment of a Receiver)

168. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

169. Paragraph 62 is a conclusion of law for which no response is required, and none is given. To the extent that a response may be required, Defendants have consented to appointment of a receiver in the interest of continuing operations of Microtel Inn & Suites (referred to hereinafter as the "Microtel") in Anderson County to preserve its value and protect its employees.

170. Paragraph 63 is a conclusion of law for which no response is required, and none is given. To the extent that a response may be required, Defendants have consented to appointment of a receiver.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION
(Recovery of Proceeds of Insurance Policy)

171. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

172. Responding to Paragraph 65, such Paragraph incorporates the terms of an insurance assignment between Affordable Hospitality and Berlye and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such assignment, the terms of which shall speak for themselves.

173. To the extent that Paragraph 65 requires some other or further response, the allegations of Paragraph 65 are admitted subject to the express qualification and limitation that such assignment was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Affordable Hospitality relied in good faith on Haven Trust Bank's written commitment and would not have given the assignment but for Haven Trust Bank's written commitment as the Basic Contract.

174. Defendants are without knowledge or information sufficient to form a belief as to the

truth of the averments set out in Paragraph 66, and so deny the same. Defendants demand strict proof of such ownership from the Plaintiff. The insurance assignment was granted to secure payment of a Promissory Note which does not constitute the Basic Contract of the parties but instead represents partial performance by the contracting parties to the Basic Contract. Moreover, such interest as Plaintiff acquired by transactions alleged in Paragraph 66 of the Complaint includes all obligations of the Basic Contract which Plaintiff assumed as assignee. By reason of Plaintiff's prior and contemporaneous breaches of the Basic Contract, Plaintiff is barred from enforcing any part of the Basic Contract against Defendants, including liquidation of the insurance policy subject to the assignment referenced above.

175. Paragraph 67 is denied.

176. Paragraph 68 is an assertion of intention for which no response is required, and none is given. To the extent that a response may be required, Paragraph 68 is denied.

FOR A SECOND DEFENSE TO THE SEVENTH CAUSE OF ACTION

177. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

178. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

179 Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

180. Plaintiff has failed to perform either obligation under the Basic Contract and is

therefore estopped from liquidating the insurance policy referenced above.

FOR A THIRD DEFENSE TO THE SEVENTH CAUSE OF ACTION

181. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

182. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

183. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

184. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

185. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

186. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from liquidating the insurance policy referenced above.

FOR A FOURTH DEFENSE TO THE SEVENTH CAUSE OF ACTION

187. Defendants incorporate the foregoing answers to the averments of the Complaint

herein, to the extent such answers are not inconsistent with those that follow.

188. Plaintiff's attempts to liquidate the insurance policy referenced above are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE SEVENTH CAUSE OF ACTION

189. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

190. By inducing Defendants to continue performance under the Basic Contract and by failing at any time to seek modification of the Basic Contract, Plaintiff is barred from liquidating the insurance policy referenced above by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE SEVENTH CAUSE OF ACTION

191. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

192. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

193. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

194. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

195. At no time, in negotiating these "Loan Modification" agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the insurance policy referenced above, Plaintiff's claims are unenforceable due to a failure of contract.

FOR A DEFENSE TO THE PRAYER FOR RELIEF

196. Responding to the Paragraph beginning with the word "Wherefore," and including each and every subpart, such Paragraph constitutes a prayer for relief for which no response is required, and none is given. To the extent that a response may be required, such Paragraph is denied.

197. Unless specifically admitted, qualified, or otherwise explained in the preceding paragraphs, each and every one of the allegations of the Complaint is denied.

RESERVATION OF RIGHTS

198. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

199. Defendants hereby expressly reserve the right to alter, amend, supplement, modify, or otherwise revise this Answer to the Complaint as investigation continues.

GENERAL ALLEGATIONS IN SUPPORT OF THE COUNTERCLAIM

200. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

201. Defendant Affordable Hospitality Group—Anderson, LLC ("Affordable Hospitality") is a limited liability company organized and existing under the laws of the State of Georgia, authorized to do business and doing business in Anderson County, South Carolina.

202. Defendant Diversified Capital Investment Group, LLC ("Diversified Capital") is a

limited liability company organized and existing under the laws of the State of Georgia, authorized to do business and doing business in Anderson County, South Carolina.

203. Defendant Jay Berlye ("Berlye") is a citizen and resident of the State of Georgia, doing business in Anderson County, South Carolina.

204. Plaintiff LNV Corporation ("LNV") is a business entity incorporated and existing under the laws of the State of Nevada, doing business in Anderson County, South Carolina.

205. LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC.

206. Upon information and belief, LNV is the successor-in-interest to certain assets and interests which previously belong to Haven Trust Bank.

207. Haven Trust Bank ("Haven Trust") was a business entity incorporated and existing under the laws of the State of Georgia, doing business in Anderson County, South Carolina.

208. Haven Trust has been dissolved.

209. On December 12, 2008. Haven Trust was closed by the Georgia Department of Banking and Finance and the FDIC was named receiver.

210. The Court is vested with subject matter jurisdiction by virtue of Article V of the South Carolina Constitution, §11, and South Carolina Code § 14-5-310 *et. seq.*

211. The Court has personal jurisdiction over the Parties by virtue of South Carolina Code §§ 36-2-802 and 36-2-803.

212. Venue is proper under South Carolina Code § 15-7-30.

FOR A FIRST CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Breach of Contract)

213. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

214. During 2007, Defendants Affordable Hospitality and Berlye negotiated with Haven Trust Bank to obtain construction and permanent first mortgage financing for construction and operation of a Microtel hotel in Anderson County, South Carolina. On November 6, 2007, as a result of these negotiations, Haven Trust Bank provided to Defendants a written "Loan Commitment," attached hereto as Exhibit A, which recited the following in its preamble:

"Subject to the facts presented by you and further subject to the terms and conditions hereafter set forth, Haven Trust Bank (Bank) commits to Affordable Hospitality Group—Anderson, LLC d/b/a Microtel Inn & Suites, to place a loan in conjunction with a 504 loan from the U.S. Small Business Administration (SBA), with the provisions as described in this letter. This commitment is subject to satisfactory completion of credit investigation and analysis, satisfactory documentation and such other terms and conditions as are determined by Bank and SBA."

215. As its purpose, the written commitment stated the following: "To provide construction and permanent mortgage financing associated with Microtel Inn & Suites to be located on Electric City Boulevard in Anderson, South Carolina."

216. The written commitment contemplated three loans as follows: "a. Construction Loan of \$3,384,000[;] b. Conventional Permanent Loan of \$2,115,000[;] c. SBA 504 Interim Loan of \$1,269,000."

217. The terms of the contemplated loans were as follows:

"a. Construction loan shall be for a period of nine (9) months from the date of closing. Interest will be accrued during the construction period and interest payments will be paid from permanent loan proceeds.

b. Proposed permanent loan will be for a period of twenty (20) years

from the date of closing payable in two hundred and forty (240) installments of principal and interest.
c. SBA 504 Interim Loan will be for a period of three (3) months.”

218. Defendant Affordable Hospitality and Defendant Berlye as Guarantor accepted the written commitment on November 6, 2007. Acceptance of the written commitment by these Defendants formed the Basic Contract at issue in this action.

219. In good faith, the parties commenced performance under the Basic Contract. On May 15, 2008, in partial performance of the parties’ Basic Contract, the following instruments (loan documents) were executed:

A Promissory Note to Haven Trust Bank by Affordable Hospitality (Exhibit A to the Complaint)

A Guaranty to Haven Trust Bank by Diversified Capital (Exhibit B to the Complaint)

A Construction Loan Agreement by and between Affordable Hospitality and Haven Trust Bank (Exhibit C to the Complaint)

A Mortgage and Security Agreement to Haven Trust Bank by Affordable Hospitality (Exhibit D to the Complaint)

A Security Agreement by and between Affordable Hospitality as Debtor and Haven Trust Bank as Secured Party (Exhibit E to the Complaint)

An Assignment of Leases and Rents from Affordable Hospitality to Haven Trust Bank (Exhibit G to the Complaint)

An Insurance Policy Collateral Assignment from Jay Berlye to Haven Trust Bank (Exhibit H to the Complaint)

220. All the instruments listed above, together with subsequent obligations undertaken by Defendants, were executed and entered into by Defendants in good faith reliance upon expected performance by the parties of their obligations under the Basic Contract.

221. From May 2008 until December 2008, the parties performed their respective duties under the Basic Contract, from time to time advancing and disbursing funds, accomplishing construction of the planned hotel, providing progress reports and other documentation as well as

other actions contemplated by the Basic Contract.

222. On or about December 12, 2008, Haven Trust Bank was closed by the Georgia Department of Banking and Finance and the FDIC was named Receiver.

223. From December 2008, to the extent possible, Defendants continued performance under the Basic Contract.

224. On April 20, 2009, a "Loan Modification Agreement" was concluded by and between FDIC and Defendants. This agreement is attached to the Complaint as Exhibit I.

225. In May 2009, Defendants completed performance under the Construction Loan Agreement, and the Microtel, contemplated by the parties' Basic Contract, opened for business. At that time, Haven Trust Bank would have been required to grant the permanent loan and assist Defendants in obtaining the SBA 504 Interim Loan contemplated by the parties' contract.

226. On May 1, 2009, FDIC notified Defendants that Defendants' Promissory Note to Haven Trust Bank had been sold and servicing of the loan had been transferred to Plaintiff LNV.

227. At the time it purchased Defendants' Promissory Note, Plaintiff knew or should have known that as successor to Haven Trust Bank under the parties' Basic Contract, it was required to grant the permanent loan and assist Defendants in obtaining the SBA 504 Interim Loan.

228. In fact, however, Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

229. In good faith and in reliance upon the parties' Basic Contract, Defendants began immediately to negotiate with Plaintiff the future performance of their respective duties under the Basic Contract.

230. On or about June 1, 2009, a "Loan Modification Agreement," attached hereto as Exhibit B, was concluded by and between Plaintiff and Defendants under which Plaintiff advanced approximately Two Hundred Fifty Thousand Dollars to the Defendants.

231. In August 2009, Plaintiff offered a draft commitment letter to Defendants by which Plaintiff represented that it would continue the performance promised by Haven Trust Bank under the Basic Contract, in granting a permanent loan and assisting in procurement of a 504 Interim Loan from the SBA.

232. Prior to August 2009, Plaintiff had never originated a loan of the type contemplated by the Basic Contract nor participated in a loan transaction that involved SBA financing.

233. On or about November 10, 2009, a second "Loan Modification Agreement," attached hereto as Exhibit C, was concluded by and between Plaintiff and Defendants which changed the maturity date from December 6, 2009, to March 31, 2010.

234. At no time during the negotiation of the first or the second loan modification agreement did the Plaintiff propose any modification of the Basic Contract whatsoever, much less any modification of the terms calling for permanent loan financing or assistance in obtaining the SBA 504 Interim Loan.

235. At all times relevant, Defendants justifiably relied upon Plaintiff's actions and representations. Defendants operated the Microtel prudently in performance of the Basic Contract anticipating performance by the Plaintiff as successor to Haven Trust Bank.

236. At all times relevant, Plaintiff knew or should have known that it lacked knowledge and experience to assist Defendants in obtaining the SBA 504 Interim Loan.

237. Plaintiff knew or should have known that the Basic Contract required such knowledge

and experience and that, therefore, measures needed to be taken so that it could qualify and satisfactorily perform its duties as successor to Haven Trust Bank under the Basic Contract.

238. At no time did Plaintiff undertake measures to qualify as a lender under SBA rules, despite multiple and repeated requests by Defendants so to do.

239. Commencing in June 2009, Defendants proposed various avenues to qualify Plaintiff for SBA purposes.

240. These proposals, and communications from others on behalf of Defendants, elicited no response or action from Plaintiff.

241. On information and belief, Plaintiff has not originated any comparable commercial loans in conjunction with the SBA.

242. For extended periods of time, Plaintiff ceased all communications with Defendants.

243. Defendants repeatedly sought to learn Plaintiff's intentions, repeatedly sought compliance by Plaintiff with the Basic Contract, and/or in the alternative repeatedly sought to negotiate a modification of the Basic Contract. Defendants' communications elicited no meaningful response from Plaintiff.

244. Plaintiff has breached material and substantial terms of the Basic Contract of the parties as follows:

- (a) By failing to provide Defendants with permanent first mortgage financing;
- (b) By failing to assist Defendants in obtaining SBA financing or even to participate in that process.

245. As a result of Plaintiff's failure to honor the terms of the Basic Contract and to make

the permanent loan contemplated by the Basic Contract, Defendants have lost the opportunity to obtain the SBA 504 Interim Loan or any other financing to operate the Microtel and/or to attract new capital and stabilize the operations of the Microtel or prudently to manage its financial affairs as they had planned.

246. As a result of Plaintiff's material and substantial breaches of the Basic Contract, Defendants have sustained and will continue to sustain actual, consequential, direct and incidental damages in an amount not less than Three Million Dollars and 00/cents (\$3,000,000).

FOR A SECOND CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Breach of the Duty of Good Faith and Fair Dealing)

247. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

248. In addition to the material and substantial breaches of the Basic Contract, Plaintiff has breached the duty of good faith and fair dealing implied in every contract through its course of dealing, including but not limited to recurring misrepresentations accompanied by failure and refusal to communicate with Defendants.

249. As a result of Plaintiff's breach of its duty of good faith and fair dealing, Defendants have sustained and will continue to sustain actual, consequential, direct and incidental damages in an amount not less than Three Million Dollars and 00/cents (\$3,000,000).

FOR A THIRD CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Breach of Contract with Fraudulent Intent)

250. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

251. At the time it purchased the Defendants' Promissory Note and mortgage, as well as

acquiring its interest in the related construction loan documents, Plaintiff did not intend to perform the remaining obligations of Haven Trust Bank under the Basic Contract.

252. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

253. Plaintiff, however, fraudulently represented to Defendants that it did intend to perform such obligations.

254. Plaintiff's fraudulent intent is demonstrated by its initial representation that it would grant the permanent loan to Defendants and assist in obtaining SBA 504 Interim Loan, including but not limited to its draft commitment letter transmitted to Defendants in August 2009.

255. Plaintiff's initial misrepresentations were followed by extended periods of inaction and failure to respond to Defendant's communications culminating in this action seeking foreclosure.

256. Plaintiff's breach of the Basic Contract was accompanied by fraudulent acts, including but not limited to advancing funds which induced Defendants to execute two loan modification agreements in justifiable reliance upon anticipated performance by the Plaintiff of its duties as successor to Haven Trust Bank under the Basic Contract.

257. As a result of Plaintiff's material and substantial breaches of the Basic Contract, accompanied by fraudulent intent and fraudulent acts, Defendants are entitled to recover actual, consequential, direct and incidental damages in an amount not less than Three Million Dollars and 00/cents (\$3,000,000) as well as punitive damages in such amount as a jury may deem proper.

FOR A FOURTH CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

258. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

259. Plaintiff's practices in purchasing, holding and enforcing loan instruments acquired from the FDIC are oppressive, deceptive and capable of repetition to the detriment of the public interest and therefore violate the South Carolina Unfair Trade Practices Act (SCUTPA), South Carolina Code § 39-5-10 *et seq.*

260. Defendants request entry of judgment against Plaintiff to include all actual and statutory damages provided by the SCUTPA.

FOR A FIFTH CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Tortious Interference with Prospective Contractual Relations)

261. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

262. In May 2009, after acquiring its interest in Defendant's Promissory Note, mortgage and other construction loan documents, Plaintiff knew that Defendants were completing their contract performance under the construction loan agreement which was part of the Basic Contract with Haven Trust Bank.

263. Plaintiff also knew that under the Basic Contract, Defendants would soon require a permanent loan and assistance in obtaining a 504 Interim Loan from the SBA.

264. Plaintiff knew that the permanent loan and SBA interim financing both represented business opportunities justifiably expected by Defendants under the Basic Contract.

265. Plaintiff never intended to provide any assistance to Defendants and made no effort to qualify as a lender under SBA rules for the purpose of assisting Defendants in obtaining SBA

interim financing.

266. After its initial misrepresentations, Plaintiff ceased all communications with Defendants as to SBA and other permanent financing,

267. SBA interim financing represented a prospective contractual relation which Defendants could have established with the assistance of Plaintiff.

268. Had Plaintiff timely and promptly performed the obligations of the Basic Contract, Defendants would have received funding from SBA based on the Microtel's projected income.

269. By the time the Defendants realized that Plaintiff would not provide permanent financing or assistance in obtaining the SBA Interim Loan, Defendants were unable to obtain alternative financing with the result that Plaintiff has brought this action.

270. As a result of Plaintiff's delay and inaction, Defendants were deprived of the opportunity to obtain advantageous long-term financing based on the projected revenues of the Microtel.

271. Plaintiff's failure to provide assistance in obtaining SBA financing was unjustified, motivated by an improper purpose and aggravated by an unconscionable failure and refusal to communicate with Defendants.

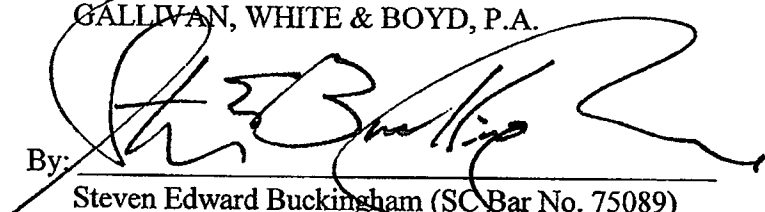
272. As a result of Plaintiff's tortious interference with the prospective contractual relation offered by SBA interim financing, Defendants are entitled to recover actual, consequential, direct and incidental damages in an amount not less than Three Million Dollars and 00/cents (\$3,000,000) as well as such punitive damages as a jury may deem proper

WHEREFORE, having fully responded to the allegations of the Complaint, and having stated its counterclaim against LNV Corporation, Defendants Affordable Hospitality

Group-Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye respectfully request an order of the Court which dismisses Plaintiff's Complaint with prejudice, grants Defendants judgment as a matter of law with actual, consequential, direct, incident, punitive and statutory damages as permitted by law, and awards Defendants costs, fees, and expenses, to include attorneys' fees, incurred in the course of bringing or defending this action.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: 

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*Attorneys for Defendants,
Affordable Hospitality-Anderson, LLC,
Diversified Capital Investment Group, LLC, and
Jay Berlye*

November 28, 2011
Greenville, South Carolina

DEMAND FOR TRIAL BY JURY

I, the undersigned legal representative for the Defendants, Affordable Hospitality Group-Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye respectfully request that a trial by jury be had upon all issues presented in this matter for which a jury trial is available.

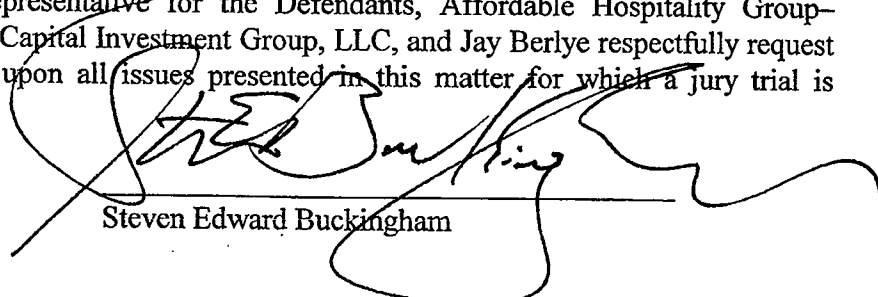
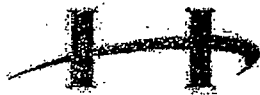

Steven Edward Buckingham

EXHIBIT A



HAVEN TRUST BANK

November 6, 2007

Mr. Jay Berlye
Affordable Hospitality Group - Anderson, LLC d/b/a
Microtel Inn & Suites
3904 N. Druid Hills Rd. #221
Decatur, GA 30033

Re: Loan Commitment

Dear Mr. Berlye:

Subject to the facts presented by you and further subject to the terms and conditions hereafter set forth, Haven Trust Bank (Bank) commits to Affordable Hospitality Group - Anderson, LLC d/b/a Microtel Inn & Suites to place a loan in conjunction with a 504 loan from the U. S. Small Business Administration (SBA), with the provisions as described in this letter. This commitment is subject to satisfactory completion of credit investigation and analysis, satisfactory documentation and such other terms and conditions as are determined by Bank and SBA.

1. Borrower: Affordable Hospitality Group - Anderson, LLC d/b/a Microtel Inn & Suites

2. Purpose: To provide construction and permanent first mortgage financing associated with Microtel Inn & Suites to be located on Electric City Boulevard in Anderson, South Carolina.

USES:

Land	\$650,000	15%
Construction	\$2,619,628	62%
Construction Contingency (5%)	\$130,981	3%
Construction Management	\$25,000	1%
Landscaping	\$34,000	1%
F.F.E	\$542,394	13%
Interest Carry	\$163,159	4%
Soft Costs	\$74,838	2%
Total project costs	\$4,230,000	100%

SOURCES:

Haven Trust Bank	\$2,115,000	50%
SBA 504	\$1,269,000	30%
Borrower Equity	\$846,000	20%
	\$4,230,000	

(See the attached for the Project Cost Worksheet which outlines the costs and equity requirement.)

2175 LAWRENCEVILLE HIGHWAY • DECATUR, GEORGIA 30033 • TEL: 404.638.6940 • FAX: 404.638.6941

Member
FDIC

A Preferred SBA Lender

3. Loan Amount:

- a. Construction Loan of \$3,384,000
- b. Conventional Permanent Loan of \$2,115,000
- c. SBA 504 Interim Loan of \$1,269,000

4. Term:

- a. Construction loan shall be for a period of nine (9) months from the date of closing. Interest will be accrued during the construction period and interest payments will be paid from permanent loan proceeds.
- b. Proposed permanent loan will be for a period of twenty (20) years from the date of closing payable in two hundred and forty (240) installments of principal and interest.
- c. SBA 504 Interim Loan will be for a period of three (3) months.

5. Interest Rate:

- a. The interest rate shall be a variable rate based on the Wall Street Journal Prime plus 1.50% adjusting daily. Interest shall be calculated on the accrual basis of 365/360. The initial interest rate today would be 9.0%.
- b. The interest rate shall be a variable rate based on the Wall Street Journal Prime plus 1.50% adjusting daily. Interest shall be calculated on the accrual basis of 365/360. The initial interest rate today would be 9.0%. Or a 5-year fixed rate adjustable every 5-years based on the five-year swap rate plus 400 basis points (currently 8.86%). This rate will be fixed at the time the loan converts to the term loan. Interest shall be calculated on the accrual basis of 365/360.
- c. The interest rate shall be a variable rate based on the Wall Street Journal Prime plus 1.50% adjusting daily. Interest shall be calculated on the accrual basis of 365/360. The initial interest rate today would be 9.0%.

6. Collateral:

- a-b. The loan will be secured by a First Deed to Secure Debt conveying first security title to the real property and improvements, including a general collateral assignment of all rents and leases. The said property will be located at Electric City Boulevard, Anderson, South Carolina.

The loan will be further secured by a first lien position on all assets of the Borrower including, but not limited to, furniture, fixtures and equipment of the Borrower.

In addition, the loan will be secured by an assignment of \$100,000 certificate of deposit to be held at the Bank. The certificate of deposit will be released once the interim SBA 504 loan is paid off by the SBA 504 debenture.

- c. The loan will be secured by a Second Deed to Secure Debt conveying second security title to the real property and improvements located at Electric City Boulevard, Anderson, South Carolina.

7. Guarantors: Jay Berlye

8. Prepayment Penalty: There will be a five (5) year prepayment penalty at a 5% decreasing rate per year, i.e., 5,4,3,2,1 as it relates to the permanent loan first mortgage. The pre-payment penalty will be calculated on the entire principal balance at the time of payoff.

9. Loan Fees:

a-b. There is an Interim Loan Fee of 1.311% on the construction loan which will be deemed earned by the Bank upon issuance of this Commitment. Lender will pay the SBA fee of 1/2% of the first mortgage loan from these funds.

There is an Expense Deferment Fee in the amount of \$10,000 due and payable on acceptance of this proposal.

c. The SBA fees which will be added to the debenture total approximately \$30,000 as shown on the attached Project Cost Worksheet.

10. Borrower's Cost: Borrower shall otherwise be responsible for all costs associated with the proposed Loan including, but not limited to, recording costs, state of South Carolina intangible taxes, costs to obtain credit reports, Lender's and Borrower's attorney fees and expenses, property inspection, environmental assessment and appraisal. Borrower is required to pay such costs incurred whether or not closing occurs.

11. Title Insurance: The Bank shall be furnished with a mortgagee title insurance policy in an amount and form and substance written by a title insurance company that is satisfactory to the Bank, insuring the title conveyed by the security instrument as a valid first lien upon and security title in and to the collateral property.

12. Collateral Restrictions: So long as this Loan commitment or any part of the Loan is outstanding, the collateral property and any additional property, if any, shall remain free and clear of all encumbrances, liens, mortgages, security interests and secondary financing, except those approved in writing by the Bank. The Borrower shall not, without the prior written consent of the Bank, sell, transfer or convey all or part of its interest in the property or the business or any portion thereof. The occurrence of any of the foregoing shall, at the option of the Bank, constitute grounds for terminating this Commitment and for accelerating any and assumes unpaid under this anticipated Loan or under any Loan with the Bank.

13. Financial Reports: The Borrower and Guarantors shall furnish to the Bank the following information: () *Initials*.

- a. Quarterly financial statements on Borrower to include, but not limited to, Balance Sheet and Income Statement;
- b. Annual Financial Statement on Borrower to include, but not limited to, Balance Sheet and Income Statement;

- c. Copy of Borrower and Guarantors' Tax Returns for previous year, within 30 days after said returns have been completed; and
 - d. Annual Personal Financial Statement for each Guarantor, in its original format, signed and dated by Guarantor.
14. **Power of Attorney:** Bank shall not accept a power of attorney. All persons needed to finalize the closing must be present.
15. **Additional Provisions:**
- a. This Commitment is subject to receipt and review of an Appraisal satisfactory to the Bank, reporting a minimum appraisal value of the real state and business value located at Electric City Boulevard, Anderson, South Carolina. This appraisal will be ordered by the Bank and must show a minimum current value of \$4,230,000 or maximum 80% loan to value.
 - b. A current A.L.T.A. survey of the land to be mortgaged (no older than 60 days) prepared and certified by a duly registered land surveyor or engineer showing the location of all improvements, encroachments, easements and rights-of-way must be received and approved by Bank. The survey must bear the name(s) of the intended Borrower(s) and must also show Bank as Mortgagee. In addition, a Surveyor's Inspection Report, as required by the title company, must accompany the survey. The survey must contain an acceptable surveyor's certification.
 - c. A mortgagee's title insurance policy in an amount, in form and substance, and written by a title insurance company, satisfactory to the Bank, insuring the title conveyed by the security instrument as a valid first lien upon and security interest in and to the Property. Said policy shall contain affirmative insurance against liens of mechanics and materialmen and shall contain no exceptions other than approved by Bank. Said policy shall be updated by endorsement, from time to time, as required by Bank. Bank's legal counsel will be the agent for this policy. **TO INSURE THE BEST PREMIUM, PLEASE PROVIDE A COMPLETE COPY OF ANY EXISTING TITLE INSURANCE POLICY.**
 - d. A true and correct copy of the Articles of Incorporation, By-Laws, Certificate of Good Standing and borrowing resolution or the appropriate partnership agreements, if applicable, must be received by Bank.
 - e. Proof of insurance for the Property in an amount not less than the loan amount, in the name of the Borrower with an insurer satisfactory to Bank and policy (ies) satisfactory to Bank in both form and content, showing Bank as both mortgagee and additional insured. In addition, Bank must receive proof of general public liability insurance of not less than \$1,000,000.
 - f. Evidence in a form satisfactory to Bank that final zoning approval consistent with the intended use has been rendered to the Property by the appropriate governmental authorities.

- g. Borrower shall certify to Bank in writing that the Property is in compliance with all applicable government laws and government regulation, including but not limited, to the National Environmental Policy Act, Clean Air Act, National Flood Insurance Program and the Americans with Disabilities Act.
- h. The Bank will require evidence that the real property submitted as collateral by Borrower complies with all applicable laws and regulations (both federal and state) pertaining to the protection and preservation of the environment. In the Bank's sole discretion, this evidence will include (but not limited to) a Phase I Environmental Site Assessment report prepared by a consultant acceptable to the Bank attesting to the satisfactory environmental condition of the real property and certifying that you and prior occupants of the real property have complied with and are complying with all federal, state, and local environmental statutes, laws and regulations. Following a review of such report, the Bank may require additional testing at your expense. The Bank will not be required to fund the loan if the property to be taken as collateral is subject to any existing or threatened contamination.
- i. A detailed estimate of all site development and/or direct construction costs, executed by the Borrower and the Borrower's engineer, certifying that such cost estimates are fair and reasonable and sufficient to complete the proposed development, must be submitted to Bank. A front-end analysis of the proposed improvements and cost budget by Bank's designated inspector will be required.
- j. All fully executed contracts and their counterparts for site planning, development, and construction of the improvements must be submitted to Bank.
- k. Letter from the appropriate utility companies and governmental agencies stating that all utilities, including but not limited to, electricity, gas, water, sanitary sewer, storm water retention and telephone services are available to the Property.
- l. Two (2) complete sets of final plans and specifications as certified by the Borrower's architects and appropriate engineers, and with the seals of such architects and engineers affixed, are to be submitted to and approved by Bank. Any deviation from the approved plans and specifications must be submitted to and approved by Bank, in writing. Borrower's architect shall certify to Bank, in writing, that the Project, as shown in said plan and specifications, is in compliance with all applicable government laws and government regulations including, but not limited to, the National Environmental Policy Act, Clean Air Act, Americans with Disabilities Act, and National Flood Insurance Program.
- m. Builder's risk insurance is required.
- n. Haven Trust Bank reserves the right to request and review the resume and financial information from the contractor. Said review may determine Bank's willingness to approve the contractor for the project.

- b. Haven Trust Bank will require the Borrower to use a Hotel Management Company that is acceptable to the Bank at its sole discretion.
 - p. Haven Trust Bank will require an assignment of key man life insurance in the amount of \$1.25MM for Jay Berlye during construction.
16. **Construction Requirements:** Prior to the Bank's disbursement of each draw request, the following conditions must be met by Borrower.
- a. The first draw will cover the acquisition of the property. No other draws will be processed until all the requirements have been met in accordance to the loan agreement.
 - b. There will be 10% retainage on all construction draws.
 - c. Requests for disbursement must be made in writing on AIA Form with appropriate lien waivers. Bank shall allocate and disburse funds based upon a complete construction cost breakdown to be attached to the Construction Loan Agreement after Bank's inspector completes the front-end analysis ("Approved Budget"). Soft Costs paid by Borrower must be supported by paid invoices and/or invoices due. Bank shall disburse funds for direct construction based on line-item draw schedule not to exceed the total amount allocated in Approved Budget. Any changes in loan allocations are subject to Bank's approval.
 - d. Inspections will be performed by an independent inspector satisfactory to Bank. Borrower shall pay costs of all such inspections.
 - e. Requests for funding shall be received no later than the 20th of each month and disbursement made on the first.
 - f. The loan must be current in all respects and no event of default may exist.
 - g. If requested by Bank, Borrower shall deliver to Lender an endorsement of Bank's title insurance policy, indicating that there has been no change in the condition of title to the secured property from that previously reported and containing no exceptions not previously approved by Bank. The endorsement shall, expressly or by virtue of a proper "pending disbursement" clause in the policy, increase the coverage of the policy to aggregate amount of all loan proceed advances on or before the effective date thereof.
 - h. Borrower shall deliver waivers or subordinations of lien rights, in form satisfactory to Bank, executed by all contractors in connection with direct costs applicable to the preceding disbursements of the loan.

- i. In the event that Bank's total disbursement for any category in Approved Budget is less than the amount scheduled, said amount shall be re-allocated to increase the Contingency category.
- j. Borrower must provide a slab survey to ALTA specifications prior to any draw request, including the foundation/slab.
- k. Borrower must provide an "as built" survey to ALTA specifications before the loan converts to permanent term.
- l. Borrower must provide a copy of building's Certificate of Occupancy before the loan converts to permanent term.

17. Borrower's Representation: Issuance of this letter, converting the application into a commitment on the part of Bank is based upon the accuracy of Borrower's representations and statements, loan application and all additional information, representations, exhibits, and other matters submitted to Bank in connection with the loan request. Bank shall have the right to declare the Commitment to be breached if there shall have been any material misrepresentation nor misstatement or any material error in the factual data previously submitted to Bank, or if prior to the initial loan disbursement, there shall have been any material or adverse change in the state of facts regarding the Borrower, Guarantors, Property or any other matter associated with the closing of the loan.

18. Non-Assignability: This Commitment is made exclusively to the Borrower and is non-transferable and non-assignable by operation or law or otherwise without the prior written consent of Bank.

19. Voiding of Commitments: This Commitment shall become voided at the option of the Bank if any of the following events occur:

- a. The borrower fails to meet for any reason any of the requirements or conditions of this Commitment letter within the specified time frame.
- b. An act of bankruptcy or insolvency with voluntary or involuntary is filed by or asserted against the Borrower, any Guarantors, any entity related to the Borrower or any Guarantors or any tenant of the Property.
- c. The expiration date of this Commitment passes without a written extension from Bank.
- d. Any other material event, occurrence or change in circumstances which in the opinion of Bank adversely affects any of the collateral or the Property or the financial condition of the Borrower or any Guarantor.

20. Modifications and Amendments: No change, amendment or modification the provisions of this Commitment shall be binding unless it is changed in writing and executed in the name of and by an officer of the Bank and in the name of and by Borrower and each Guarantor.

21. Laws Governing: This commitment shall be construed according to and governed by the laws of the state of Georgia. However, this shall not limit the applicability of federal law to the transaction. This commitment may be executed in any number of counterparts and each counterpart will be considered an original and constitute one and the same instrument.

22. Waivers: Waivers of any of the terms or conditions of the commitment shall not constitute a continuing waiver or waivers of strict performance of any other provision in this Commitment by Bank.

23. Pre-closing Property Inspection: Bank's obligation to close and fund the loan is subject to Bank's completion of a satisfactory property inspection immediately prior to closing by Bank and/or Bank's designated inspector. If this inspection reveals any material adverse change in the occupancy or condition of the property, at Bank's option, the closing may be delayed until the property is restored to its original condition or the cost to cure any discrepancies found during such inspection shall be deducted from the loan proceeds and placed into escrow until such time as the discrepancies have been corrected to the satisfaction of Bank. Bank will have no obligation to extend the expiration date of this commitment in order to accommodate any delay created by the above.

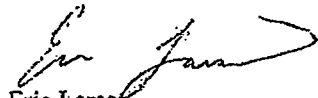
24. Loan Closing: The closing of this loan shall be arranged by the Bank. All documents and proceeds relating to the completion of the loan shall be satisfactory to Bank and the Bank's counsel.

25. Acceptance: If the provisions contained in this letter are in accordance with Borrower's and Guarantors' understanding, please indicate your acceptance by executing and returning this Commitment Letter, together with the required Expense Deferment Fee in the amount of \$10,000 to Bank on or before November 16, 2007. Should Bank not receive this Commitment Letter executed by Borrower and Guarantors and the required fee on or before such date, this Commitment Letter shall become null and void. Furthermore if this loan is not closed with ninety (90) days from the date of acceptance, this Commitment will expire.

The Expense Deferment Fee of \$10,000 will be due and payable upon acceptance of this Commitment. This Expense Deferment Fee will be refunded to the Borrower if/when all outstanding fees associated the loan have been paid in full. In the event the above-mentioned loan does not close for any reason other than a failure or default by the Borrower, Lender will return the Expense Deferment Fee less any expenses incurred to the borrower and this agreement shall be null and void. Lender will have no further responsibility or liability to the Borrower. Should the Borrower for any reason not close the loan as approved by SBA with Bank, the Bank shall keep the Expense Deferment Fee as compensation for services rendered.

Haven Trust Bank is pleased to have the opportunity to offer this Loan Commitment to you. We look forward to working with you on this transaction and any future proposals.

Sincerely yours,



Eric Larson
Assistant Vice President

Attachment: Project Cost Worksheet

**THIS COMMITMENT IN NO WAY IS TO BE CONSTRUED AS FINAL
APPROVAL BY HAVEN TRUST BANK OR ITS ASSIGNS.**

ACCEPTANCE OF COMMITMENT:

The undersigned hereby accepts this Commitment and agrees to the terms and conditions contained herein, the ___ day of _____ 2007.

**AFFORDABLE HOSPITALITY GROUP, ANDERSON, LLC
D/B/A MICROTTEL INN & SUITES**

By: _____
Jay Berlye, Managing Member

GUARANTORS:

Jay Berlye, Individually

Haven Trust Bank is pleased to have the opportunity to offer this Loan Commitment to you. We look forward to working with you on this transaction and any future proposals.

Sincerely yours,



Eric Larson
Assistant Vice President

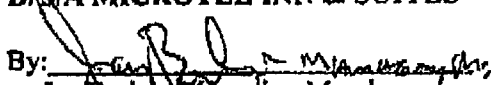
Attachment: Project Cost Worksheet

**THIS COMMITMENT IN NO WAY IS TO BE CONSTRUED AS FINAL
APPROVAL BY HAVEN TRUST BANK OR ITS ASSIGNS.**

ACCEPTANCE OF COMMITMENT:

The undersigned hereby accepts this Commitment and agrees to the terms and conditions contained herein, the 6 day of Nov. 2007.

**AFFORDABLE HOSPITALITY GROUP - ANDERSON, LLC
D/B/A MICROTTEL INN & SUITES**

By: 
Jay Berlye, Managing Member

GUARANTORS:


Jay Berlye, Individually

AFFORDABLE HOSPITALITY GROUP - ANDERSON, LLC D/B/A MICROTREL INN & SUITES ANDERSON, ANDERSON COUNTY, GEORGIA EXHIBIT A- ESTIMATED PROJECT COSTS November 3, 2007									
Brief Project Description: Conversion of a 69-room Microtel Inn & Suites located at Electric City Boulevard in Anderson, South Carolina.									
Total Project Costs/Uses:									
Acquisition/Purchase Price									0
Building/Improvements									0
Leasehold Improvements									0
Land									650,000
Construction									2,619,628
Survey, Soil Tests, Landscaping, Etc.									24,000
Architectural & Engineering									25,000
Construction Contingency	Percentage	5%							130,981
Construction Period Interest	Months	9	Interest Rate	9.00%					124,606
Machinery & Equipment									0
F, F & E									542,394
Inventory									0
Working Capital									50,000
Interim SBA 504 Interest	Months	3	Interest Rate	9.00%					28,353
Franchise/Transfer Fee									35,000
Lender's and Owner's Title Policy- 1st Mortgage and Interim 504									0,968
Lender's and Owner's Title Work/Title Policy- SBA 504 Loan									2,798
Survey									4,000
Environmental Report(s)									2,500
Intangible Recording Tax (Permanent Third Party Loan & Interim 504 Loan)									6,345
Intangible Recording Tax (SBA 504 Loan)									2,897
Appraisal									3,500
Miscellaneous Closing Costs									500
Legal- Third Party Lender Attorney									2,300
Legal- SBA Closing Attorney									2,500
Interim Loan Points	Percentage	1.31%							44,330
Permanent Loan Points	Percentage	0.00%							0
Total									4,326,000 100.00%
Ineligible SBA Project Costs									
Inventory									0
Working Capital									50,000
Legal									2,500
Franchise/Transfer Fee									35,000
Permanent Loan Points									0
Total									87,500
Total SBA 504 Project Costs/Uses									
Acquisition/Purchase Price									0
Building/Improvements									0
Leasehold Improvements									0
Land									650,000
Construction									2,619,628
Survey, Soil Tests, Landscaping, Etc.									24,000
Architectural & Engineering									25,000
Construction Contingency									130,981
Construction Period Interest									124,606
Machinery & Equipment									0
F, F & E									542,394
Interim SBA 504 Interest									28,353
Lender's and Owner's Title Policy- 1st Mortgage and Interim 504									0,968
Lender's and Owner's Title Work/Title Policy- SBA 504 Loan									2,798
Survey									4,000
Environmental Report(s)									2,500
Intangible Recording Tax (Permanent Third Party Loan & Interim 504 Loan)									6,345
Intangible Recording Tax (SBA 504 Loan)									2,897
Appraisal									3,500
Miscellaneous Closing Costs									500
Interim Loan Points									44,330
Total									4,320,000
SBA 504 Project Sources									
First Mortgage									2,715,000 50.00%
SBA 504 Net Debenture Proceeds*									1,269,000 30.00%
Other Financing- Seller Note									0 0.00%
Equity									845,000 20.00%
Total									4,829,000
Total Equity Requirements									
Eligible SBA 504 Project Costs									845,000
Ineligible SBA 504 Project Costs									87,500
Total									932,500 21.61%
* Net SBA 504 debenture proceeds. The actual SBA 504 debenture amount will be higher, reflecting the inclusion of SBA 504 debenture fees, which are financed as part of the gross SBA 504 debenture. Please refer to Exhibit B for more information.									



GCDC
Georgia Community Development Corporation



TCDC
Tennessee Community Development Corporation

990 EAST PACES FERRY ROAD
SUITE 3250 ATLANTA PLAZA
ATLANTA, GEORGIA 30328

F: 404.240.1733 F: 404.240.1725 E: loans@gscdc.com W: www.gscdc.com

AFFORDABLE HOSPITALITY GROUP - ANDERSON, LLC
2007 SBA 504 GROSS DEBENTURE
CALCULATION WORKSHEET
EXHIBIT B
November 3, 2007

A. SBA 504 Net Debenture Amount (from Exhibit A) \$ 1,269,000.00

B. Administrative Costs

1	Funding Fee (A x 0.0025)	\$	3,172.50
2	CDC Processing Fee (A x 0.015)	\$	19,035.00
3	Closing Costs	\$	2,500.00
4	Subtotal (B.1 through B.3)	\$	24,707.50
5	Underwriter Fee Calculation*		
a.	Sum of A and B.5	\$	1,293,707.50
b.	a. divided by 0.99600	\$	1,298,903.11
c.	6.b Rounded up to the next thousand	\$	1,299,000.00
	Underwriter Fee Result	\$	5,196.00
6	Total (B.5 plus B.6)	\$	29,903.50

C. Total Debenture Amount Calculation

1.	A plus B.7	\$	1,298,903.50
2.	C.1 Rounded up to the next thousand	\$	1,299,000.00

Total Debenture Amount \$ 1,299,000.00

D. Balance to Borrower (C minus (A plus B.7)) \$ 96.50

The fees associated with the SBA 504 loan are added to the loan amount so that the Borrower can amortize their cost over the loan term. The Borrower will sign a note for the gross debenture amount shown above in section C.

- 1/4 of 1% of the net debenture is a Funding Fee
- 1.5% of the net debenture amount goes to GCDC as its processing fee
- Underwriter's fee calculated as follows: Sum of A and B.4 divided by 0.99600; round this number up to the highest thousand; multiply this number by 0.00400.
- \$2,500 towards the closing attorney fee is included. E.g. if the closing attorney charges \$5,000, the borrower pays \$2,500 out of pocket and the remaining \$2,500 is funded by the SBA loan.

In addition, when the loan closes, your monthly payment will include annual servicing fees based on the declining balance of the SBA 504 loan: 1% to CDC; 1/8% to SBA; 1/10% to the central servicing agent.



GCDC
 Georgia Certified Development Corporation
 Your SBA 504 Lending Source



TCDC
 Tennessee Certified Development Corporation
 Your SBA 504 Lending Source

950 EAST PACES FERRY ROAD
 SUITE 3250- ATLANTA PLAZA
 ATLANTA, GEORGIA 30326

P: 404.240.1733 F: 404.240.1725 E: loans@gacdc.com W: www.gacdc.com

EXHIBIT B

LOAN MODIFICATION AGREEMENT

THIS LOAN MODIFICATION AGREEMENT (this "Agreement") is made and entered into effective as of June 1, 2009, by and between AFFORDABLE HOSPITALITY GROUP - ANDERSON, LLC, a Georgia limited liability company ("Borrower"), LNV CORPORATION, a Nevada corporation ("Lender"), DIVERSIFIED CAPITAL INVESTMENT GROUP, LLC, a Georgia limited liability company ("DCIG"), and JAY BERLYE ("Berlye") (individually and collectively DCIG and Berlye are referred to as "Guarantor").

WITNESSETH:

A. Haven Trust Bank ("Original Lender") made a construction loan to Borrower, evidenced by that certain Promissory Note (the "Note"), dated May 15, 2008, in the stated principal amount of \$3,411,782.00 (the "Loan"), executed and delivered by Borrower and payable to the order of Original Lender; said Note being secured by, among other things, that certain Mortgage and Security Agreement (the "Mortgage"), dated as of May 15, 2008, executed and delivered by Borrower for the benefit of Original Lender, which encumbers, among other things, certain real property and improvements located in Anderson County, South Carolina, and more particularly described below, and all improvements and fixtures thereon (the "Property"), recorded in Deed Book 08670, Page 00204, Anderson County, South Carolina.

B. The Loan was modified pursuant to the terms of that certain Loan Modification Agreement dated April 20, 2009, recorded in Deed Book 9140, Page 159, Anderson County, South Carolina (the "First Modification"). Pursuant to the terms of the First Modification, the principal amount of the Loan was increased to \$3,641,679.00 and the maturity date was extended until June 1, 2009.

C. The Loan is further secured by, among other things, that certain Guaranty (the "Guaranty") dated May 15, 2008 executed by Guarantor (the Note, the Mortgage, the Guaranty and the other documents executed and/or delivered in regard to the Loan and as modified from time to time are collectively referred to in this Agreement as the "Loan Documents").

D. The Property is legally described on Exhibit A hereto:

E. Lender is the current owner and holder of the Loan, the Note, the Mortgage and the Loan Documents.

F. Lender and Borrower desire to modify, but not replace, the Note and the Mortgage and any other Loan Documents as set forth herein.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by each of the parties hereto, the parties hereto hereby agree as follows:

1. The Loan, the Note, the Mortgage and the other Loan Documents are hereby modified as follows:

- (a) the Maturity Date is extended to December 6, 2009;
- (b) Notwithstanding anything to the contrary contained in the Loan Documents, including, without limitation, the First Modification, the \$100,000 certificate of deposit presently held as additional collateral for the permanent loan shall be transferred into a cash reserve account held by Lender or an affiliate of Lender. Such cash reserve account shall continue to be additional security for the Loan; however, Borrower hereby authorizes Lender to apply funds immediately from such cash reserve account to pay Loan interest due to July 1, 2009 and thereafter, to the extent that cash flow from operations at the Mortgaged Property cannot satisfy the monthly interest payment due, funds from such cash reserve account may be applied to the net remaining interest payment due on the Loan until such time as the Small Business Administration funds its new subordinate loan at which time such funds may be used to pay closing costs (e.g., title premiums, lender costs, attorneys' fees for Lender and Borrower, SBA loan points or fees if any, appraisal and inspection fees if any, survey costs, etc.) in connection with the closing of the permanent loan, the SBA Loan, or as otherwise determined by Lender;
- (c) All payments due on the Loan shall be paid to Lender at 13770 Dallas Parkway, Lockbox 65, Dallas, TX 75248, or such other address as Lender may hereafter from time to time designate in a written notice to Borrower.

2. Concurrently with the execution and delivery hereof, Borrower shall pay all reasonable closing costs and fees and expenses incurred by Lender in connection with this Agreement and the transactions contemplated hereby, including, without limitation, Lender's reasonable attorneys' fees and expenses.

3. AS A MATERIAL INDUCEMENT TO LENDER TO ENTER INTO THIS AGREEMENT, BORROWER AND GUARANTOR, ON BEHALF OF THEMSELVES AND THEIR SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES AND CONSTITUENTS (WHETHER OR NOT A PARTY HERETO) (BORROWER AND SUCH SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES AND CONSTITUENTS BEING REFERRED TO HEREIN COLLECTIVELY AND INDIVIDUALLY, AS "OBLIGORS, ET AL."), HEREBY FULLY, FINALLY AND COMPLETELY RELEASE AND FOREVER DISCHARGE ORIGINAL LENDER, THE FEDERAL DEPOSIT INSURANCE CORPORATION, IN BOTH ITS CORPORATE CAPACITY AND ITS CAPACITY AS RECEIVER, LENDER AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, AFFILIATES, SUBSIDIARIES, PARENTS, OFFICERS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, ATTORNEYS AND AGENTS, PAST, PRESENT AND FUTURE, AND THEIR RESPECTIVE HEIRS, PREDECESSORS, SUCCESSORS AND ASSIGNS (COLLECTIVELY AND INDIVIDUALLY, "LENDER, ET AL.") OF AND FROM ANY AND ALL CLAIMS, CONTROVERSIES, DISPUTES, LIABILITIES, OBLIGATIONS, DEMANDS, DAMAGES, EXPENSES (INCLUDING, WITHOUT LIMITATION,

REASONABLE ATTORNEYS' FEES), DEBTS, LIENS, ACTIONS AND CAUSES OF ACTION OF ANY AND EVERY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY THEREOF RELATING TO THE LOAN, AND WAIVE AND RELEASE ANY DEFENSE, RIGHT OF COUNTERCLAIM, RIGHT OF SET-OFF OR DEDUCTION TO THE PAYMENT OF THE INDEBTEDNESS EVIDENCED BY THE NOTE AND/OR THE MORTGAGE OR ANY OTHER LOAN DOCUMENT WHICH OBLIGORS, ET AL. NOW HAVE OR MAY CLAIM TO HAVE AGAINST LENDER, ET AL., OR ANY THEREOF, ARISING OUT OF, CONNECTED WITH OR RELATING TO ANY AND ALL ACTS, OMISSIONS OR EVENTS OCCURRING PRIOR TO THE EXECUTION OF THIS AGREEMENT.

4. As an additional material inducement to Lender to enter into this Agreement, each of Borrower and Guarantor hereby represents and warrants to Lender that:

- (a) the Loan Documents, all as modified hereby, are in full force and effect and are not in default and neither Borrower nor Guarantor has any defense, counterclaim or offset to the Loan or any of the Loan Documents, as all are modified hereby;
- (b) the representations and warranties of Borrower set forth in the Loan Documents are true and correct in all material respects as of the date hereof and are hereby reaffirmed as if such representations and warranties had been made on the date hereof and shall continue in full force and effect; and
- (c) this Agreement constitutes the legal, valid and binding obligation of Borrower and Guarantor enforceable against Borrower and Guarantor in accordance with the terms hereof.

The representations and warranties of Borrower and Guarantor contained in this Agreement and in the Loan Documents shall survive the consummation of the transactions contemplated by this Agreement.

5. In addition to the documents, instruments and acts described in this Agreement and which are to be executed and/or delivered and/or taken pursuant to this Agreement, Borrower agrees to execute and deliver from time to time upon request by Lender such other documents and instruments, and take such other action, as Lender may request or require to more fully and completely evidence and carry out the transactions contemplated by this Agreement.

6. Borrower hereby affirms, confirms, ratifies, renews and extends the debts, duties, obligations, liabilities, rights, titles, security interests, liens, powers and privileges created or arising by virtue of the Loan Documents, as each is amended hereby, until all of the indebtedness and obligations relating to the Loan have been paid and performed in full. Borrower confirms that Lender has not released, forgiven, discharged, impaired, waived or relinquished, and does not hereby release, forgive, discharge, impair, waive or relinquish any rights, titles, interests, liens, security interests, collateral, parties, remedies or any other matter with respect to the Loan, or any of the Loan Documents, but rather Lender is expressly retaining and reserving the same to their fullest extent.

7. Guarantor has executed this Agreement to evidence his consent to the modifications, amendments and terms as described herein, and to acknowledge, reaffirm and restate the continuing effect of the Guaranty and the obligations contained therein. Guarantor hereby represents that it has no offsets or claims against Lender arising under, related to or connected with the Loans or any of the Loan Documents or otherwise.

8. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns. Nothing contained in this paragraph shall act to amend or modify any of the provisions of the Loan Documents which restrict or prohibit assignment or transfer.

9. Neither this Agreement nor any provision of the Loan Documents may be waived, modified or amended, except by an instrument in writing signed by the party against which the enforcement of such waiver, modification or amendment is sought, and then only to the extent set forth in such instrument.

10. THIS AGREEMENT AND THE OTHER DOCUMENTS ENTERED INTO IN REGARD TO THE LOAN REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES.

11. This Agreement may be executed in multiple counterparts.

12. BORROWER, GUARANTOR AND LENDER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY WAIVE TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, WHICH WAIVER IS INFORMED AND VOLUNTARY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALING OF ASSETS BY LENDER, WITH RESPECT TO ITS RIGHTS UNDER THE LOAN DOCUMENTS OR OTHERWISE.

EXECUTED as of the day and year first above written.

BORROWER:

AFFORDABLE HOSPITALITY GROUP-
ANDERSON, LLC,
a Georgia limited liability company

By: Diversified Capital Investment Group, LLC, a
Georgia limited liability company, its Manager

By: [Signature]
 Name: Jay Berlye
 Title: Manager

GUARANTOR:

[Signature]
 JAY BERLYE, Individually

DIVERSIFIED CAPITAL INVESTMENT GROUP,
 LLC, a Georgia limited liability company

By: [Signature]
 Name: Jay Berlye
 Title: Manager

LENDER:

INV CORPORATION,
 a Nevada corporation

By: _____
 Name: _____
 Title: _____

STATE OF Georgia
COUNTY OF Henry

Before me, on this 31st day of July, 2009, personally appeared Jay Berlye, the Manager of Diversified Capital Investment Group, LLC, a Georgia limited liability company, the Manager of AFFORDABLE HOSPITALITY GROUP - ANDERSON, LLC, a Georgia limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Douglas L. Murriel
Notary Public

My Commission expires: _____

STATE OF Georgia
COUNTY OF Henry

On this 31st day of July, 2009, before me, the undersigned official, personally appeared JAY BERLYE, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

Douglas L. Murriel
Notary Public

My Commission expires: _____

STATE OF Georgia
COUNTY OF Henry

Before me, on this 31st day of July, 2009, personally appeared _____, the Manager of DIVERSIFIED CAPITAL INVESTMENT GROUP, LLC, a Georgia limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Douglas L. Murriel
Notary Public

My Commission expires: _____

By: _____
Name: Jay Berlye
Title: Manager

GUARANTOR:

JAY BERLYE, individually

DIVERSIFIED CAPITAL INVESTMENT GROUP,
LLC, a Georgia limited liability company

By: _____
Name: Jay Berlye
Title: Manager

LENDER:

LNV CORPORATION,
a Nevada corporation

By:  _____
Name: James Ewing
Title: Sr. Vice President

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me, on this 31st day of July, 2009, personally appeared Jamel Erwin, the SV Vice President of LNV CORPORATION, a Nevada corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Ruth B Harrison
Notary Public
My Commission expires: 4/24/2013

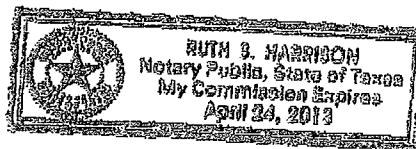


EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and situated in Pendleton Township School District Number Four (4), Anderson County, South Carolina containing 1.511 acres, more or less, and being shown on a plat of survey prepared for Cherokee Contractor Developer, LLC, by Steven G. Branyon, PLS No. 22741, dated May 10, 2007, and recorded in Plat Book 51728, at page 7-8, records of Anderson County, South Carolina, said plat being incorporated herein by reference pursuant to the provisions of Section 30-3-250, South Carolina Code of Laws.

AND ALSO a right of way and easement to construct and maintain a Retention Pond on Parcel Five (5) adjacent to said property as described and outlined in Easement and Agreement dated August 3, 2007, and recorded 3-15-07 in Deed Book 2196, at page 53, records of Anderson County. Said right of way and easement being more fully described in said Easement and Agreement as identified as 0.396 acres, having such metes and bounds as are shown on said plat in the area shown as "Stormwater Detention (sic) Area for Parcels 4 & 5," said plat being incorporated herein by reference pursuant to the provisions of Section 30-3-250, South Carolina Code of Laws.

This is the same property conveyed to Affordable Hospitality Group - Anderson, LLC, by deed of Real Investors of the Upstate, LLC, dated August 3, 2007, and recorded 3-15-07 in Deed Book 2196, at page 60, records of Anderson County.

080014282 5/20/2008 09:57:46 AM
FILED, RECORDED, INDEXED
08:08:27 08270 7:01 00222
Doc Fees 22.00 St Fees
Cd Fees
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

EXHIBIT C

LOAN MODIFICATION AGREEMENT

THIS LOAN MODIFICATION AGREEMENT (this "Agreement") is made and entered into effective as of November 10, 2009, by and between AFFORDABLE HOSPITALITY GROUP - ANDERSON, LLC, a Georgia limited liability company ("Borrower"), LNV CORPORATION, a Nevada corporation ("Lender"), DIVERSIFIED CAPITAL INVESTMENT GROUP, LLC, a Georgia limited liability company ("DCIG"), and JAY BERLYE ("Berlye") (individually and collectively DCIG and Berlye are referred to as "Guarantor").

WITNESSETH:

A. Haven Trust Bank ("Original Lender") made a construction loan to Borrower, evidenced by that certain Promissory Note (the "Note"), dated May 15, 2008, in the stated principal amount of \$3,411,782.00 (the "Loan"), executed and delivered by Borrower and payable to the order of Original Lender; said Note being secured by, among other things, that certain Mortgage and Security Agreement (the "Mortgage"), dated as of May 15, 2008, executed and delivered by Borrower for the benefit of Original Lender, which encumbers, among other things, certain real property and improvements located in Anderson County, South Carolina, and more particularly described below, and all improvements and fixtures thereon (the "Property"), recorded in Deed Book 08670, Page 00204, Anderson County, South Carolina.

B. The Loan was modified pursuant to the terms of that certain Loan Modification Agreement dated April 20, 2009, recorded in Deed Book 9140, Page 159, Anderson County, South Carolina (the "First Modification"). Pursuant to the terms of the First Modification, the principal amount of the Loan was increased to \$3,641,679.00 and the maturity date was extended until June 1, 2009. The Loan was subsequently modified by that certain Loan Modification Agreement dated as of June 1, 2009 by and between Borrower and Lender and the maturity date was extended until December 31, 2009.

C. The Loan is further secured by, among other things, that certain Guaranty (the "Guaranty") dated May 15, 2008 executed by Guarantor (the Note, the Mortgage, the Guaranty and the other documents executed and/or delivered in regard to the Loan and as modified from time to time are collectively referred to in this Agreement as the "Loan Documents").

D. The Property is legally described on Exhibit A hereto:

E. Lender is the current owner and holder of the Loan, the Note, the Mortgage and the Loan Documents.

F. Lender and Borrower desire to modify, but not replace, the Note and the Mortgage and any other Loan Documents as set forth herein.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by each of the parties hereto, the parties hereto hereby agree as follows:

1. The Loan, the Note, the Mortgage and the other Loan Documents are hereby modified as follows:

(a) the Maturity Date is further extended to March 31, 2010.

2. Concurrently with the execution and delivery hereof, Borrower shall pay all reasonable closing costs and fees and expenses incurred by Lender in connection with this Agreement and the transactions contemplated hereby, including, without limitation, Lender's reasonable attorneys' fees and expenses.

3. AS A MATERIAL INDUCEMENT TO LENDER TO ENTER INTO THIS AGREEMENT, BORROWER AND GUARANTOR, ON BEHALF OF THEMSELVES AND THEIR SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES AND CONSTITUENTS (WHETHER OR NOT A PARTY HERETO) (BORROWER AND SUCH SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES AND CONSTITUENTS BEING REFERRED TO HEREIN COLLECTIVELY AND INDIVIDUALLY, AS "OBLIGORS, ET AL."), HEREBY FULLY, FINALLY AND COMPLETELY RELEASE AND FOREVER DISCHARGE ORIGINAL LENDER, THE FEDERAL DEPOSIT INSURANCE CORPORATION, IN BOTH ITS CORPORATE CAPACITY AND ITS CAPACITY AS RECEIVER, LENDER AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, AFFILIATES, SUBSIDIARIES, PARENTS, OFFICERS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, ATTORNEYS AND AGENTS, PAST, PRESENT AND FUTURE, AND THEIR RESPECTIVE HEIRS, PREDECESSORS, SUCCESSORS AND ASSIGNS (COLLECTIVELY AND INDIVIDUALLY, "LENDER, ET AL.") OF AND FROM ANY AND ALL CLAIMS, CONTROVERSIES, DISPUTES, LIABILITIES, OBLIGATIONS, DEMANDS, DAMAGES, EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), DEBTS, LIENS, ACTIONS AND CAUSES OF ACTION OF ANY AND EVERY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY THEREOF RELATING TO THE LOAN, AND WAIVE AND RELEASE ANY DEFENSE, RIGHT OF COUNTERCLAIM, RIGHT OF SET-OFF OR DEDUCTION TO THE PAYMENT OF THE INDEBTEDNESS EVIDENCED BY THE NOTE AND/OR THE MORTGAGE OR ANY OTHER LOAN DOCUMENT WHICH OBLIGORS, ET AL. NOW HAVE OR MAY CLAIM TO HAVE AGAINST LENDER, ET AL., OR ANY THEREOF, ARISING OUT OF, CONNECTED WITH OR RELATING TO ANY AND ALL ACTS, OMISSIONS OR EVENTS OCCURRING PRIOR TO THE EXECUTION OF THIS AGREEMENT.

4. As an additional material inducement to Lender to enter into this Agreement, each of Borrower and Guarantor hereby represents and warrants to Lender that:

- (a) the Loan Documents, all as modified hereby, are in full force and effect and are not in default and neither Borrower nor Guarantor has any defense, counterclaim or offset to the Loan or any of the Loan Documents, as all are modified hereby;
- (b) the representations and warranties of Borrower set forth in the Loan Documents are true and correct in all material respects as of the date hereof and are hereby reaffirmed as if such representations and warranties had been made on the date hereof and shall continue in full force and effect; and

- (c) this Agreement constitutes the legal, valid and binding obligation of Borrower and Guarantor enforceable against Borrower and Guarantor in accordance with the terms hereof.

The representations and warranties of Borrower and Guarantor contained in this Agreement and in the Loan Documents shall survive the consummation of the transactions contemplated by this Agreement.

5. In addition to the documents, instruments and acts described in this Agreement and which are to be executed and/or delivered and/or taken pursuant to this Agreement, Borrower agrees to execute and deliver from time to time upon request by Lender such other documents and instruments, and take such other action, as Lender may request or require to more fully and completely evidence and carry out the transactions contemplated by this Agreement.

6. Borrower hereby affirms, confirms, ratifies, renews and extends the debts, duties, obligations, liabilities, rights, titles, security interests, liens, powers and privileges created or arising by virtue of the Loan Documents, as each is amended hereby, until all of the indebtedness and obligations relating to the Loan have been paid and performed in full. Borrower confirms that Lender has not released, forgiven, discharged, impaired, waived or relinquished, and does not hereby release, forgive, discharge, impair, waive or relinquish any rights, titles, interests, liens, security interests, collateral, parties, remedies or any other matter with respect to the Loan, or any of the Loan Documents, but rather Lender is expressly retaining and reserving the same to their fullest extent.

7. Guarantor has executed this Agreement to evidence his consent to the modifications, amendments and terms as described herein, and to acknowledge, reaffirm and restate the continuing effect of the Guaranty and the obligations contained therein. Guarantor hereby represents that it has no offsets or claims against Lender arising under, related to or connected with the Loans or any of the Loan Documents or otherwise.

8. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns. Nothing contained in this paragraph shall act to amend or modify any of the provisions of the Loan Documents which restrict or prohibit assignment or transfer.

9. Neither this Agreement nor any provision of the Loan Documents may be waived, modified or amended, except by an instrument in writing signed by the party against which the enforcement of such waiver, modification or amendment is sought, and then only to the extent set forth in such instrument.

10. THIS AGREEMENT AND THE OTHER DOCUMENTS ENTERED INTO IN REGARD TO THE LOAN REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES.

11. This Agreement may be executed in multiple counterparts.

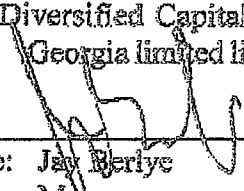
12. BORROWER, GUARANTOR AND LENDER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY WAIVE TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, WHICH WAIVER IS INFORMED AND VOLUNTARY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALING OF ASSETS BY LENDER, WITH RESPECT TO ITS RIGHTS UNDER THE LOAN DOCUMENTS OR OTHERWISE.

EXECUTED as of the day and year first above written.

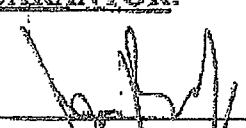
BORROWER:

AFFORDABLE HOSPITALITY GROUP-
ANDERSON, LLC,
a Georgia limited liability company

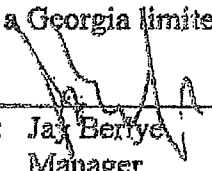
By: Diversified Capital Investment Group, LLC, a
Georgia limited liability company, its Manager

By: 
Name: Jay Berlye
Title: Manager

GUARANTOR:


JAY BERLYE, individually

DIVERSIFIED CAPITAL INVESTMENT GROUP,
LLC, a Georgia limited liability company

By: 
Name: Jay Berlye
Title: Manager

LENDER:

LNV CORPORATION,
a Nevada corporation

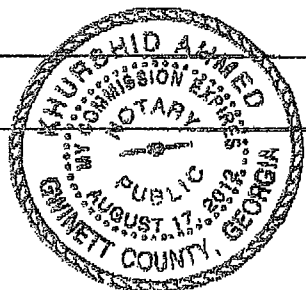
By: _____
Name: _____
Title: _____

STATE OF GA §
COUNTY OF GINNETT §

Before me, on this 24th day of NOV, 2009, personally appeared Jay Berlye, the Manager of Diversified Capital Investment Group, LLC, a Georgia limited liability company, the Manager of AFFORDABLE HOSPITALITY GROUP - ANDERSON, LLC, a Georgia limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

[Signature]
Notary Public

My Commission expires: _____

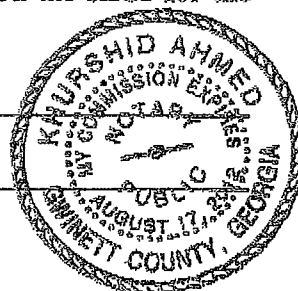


STATE OF GA §
COUNTY OF GINNETT §

On this 24th day of NOV, 2009, before me, the undersigned officer, personally appeared JAY BERLYE, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

[Signature]
Notary Public

My Commission expires: _____

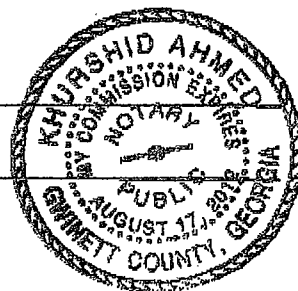


STATE OF GA §
COUNTY OF GINNETT §

Before me, on this 24th day of NOV, 2009, personally appeared Jay Berlye, the Manager of DIVERSIFIED CAPITAL INVESTMENT GROUP, LLC, a Georgia limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

[Signature]
Notary Public

My Commission expires: _____



STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me, on this ____ day of _____, 2009, personally appeared _____, the _____ of LNV CORPORATION, a Nevada corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Notary Public

My Commission expires: _____

EXHIBIT A

Legal Description

{To be attached}

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
LNV Corporation,	)	Civil Action No. 2011-CP-04-2728
	)	
Plaintiff,	)	
vs.	)	
	)	
Affordable Hospitality Group-Anderson,	)	<u>LNV CORPORATION'S ANSWER TO</u>
LLC; Diversified Capital Investment	)	<u>AMENDED COUNTERCLAIMS</u>
Group, LLC; Jay Berlye; Anderson County,	)	
South Carolina; and the State of South	)	
Carolina,	)	
	)	
Defendants.	)	
	)	

The Plaintiff, LNV Corporation (hereinafter "LNV"), hereby replies to the Amended Answer and Counterclaim of Defendants (the "Amended Answer") Affordable Hospitality Group-Anderson, LLC, Diversified Capital Investment Group, LLC and Jay Berlye (hereinafter "Defendants"). Except as specifically admitted herein, each and every allegation of Defendants' Amended Answer and Counterclaim is expressly denied. LNV realleges and incorporates Paragraphs 1 through 68 of its Complaint, as well as its prayer for relief, as fully and effectively as if restated verbatim herein.

FOR A FIRST DEFENSE

1. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.
2. Paragraphs 1 through 199 of the Defendants' Amended Answer consist of the Defendants' answer to the original Complaint and, therefore, require no response from LNV. To the extent LNV is required to respond to the allegations of Paragraphs 1 through 199 of the Defendants' Answer, those allegations are denied.

3. Paragraphs 1 through 199 of the Defendants' Amended Answer contains affirmative defenses, to which no response is required. To the extent a response is required, LNV denies the allegations therein and denies the applicability of those affirmative defenses.

FOR A FIRST DEFENSE TO THE GENERAL ALLEGATIONS
(Breach of Contract)

4. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

5. Paragraphs 201 to 203 of the Defendants' Amended Answer are admitted upon information and belief.

6. Paragraphs 204 to 205 are admitted.

7. Paragraph 206 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 206, admitting that it purchased the subject loan from the FDIC, as receiver for Haven Trust Bank.

8. Paragraphs 207 to 209 of the Defendants' Amended Answer are admitted upon information and belief.

9. Paragraphs 210 to 212 state legal conclusions, to which no response is required. To the extent a response is required, LNV admits the allegations of Paragraphs 210-212.

FOR A FIRST DEFENSE TO THE FIRST COUNTERCLAIM
(Breach of Contract)

10. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

11. Paragraph 214 states legal conclusions, to which no response is required. To the extent a response is required, LNV states that it is without sufficient information to form

a belief as to the allegations of Paragraph 214. With regards to any agreements with Haven Trust Bank, LNV would crave reference to those agreements as the best evidence of the terms thereof.

12. Paragraph 215 states legal conclusions, to which no response is required. To the extent a response is required, LNV states that it is without sufficient information to form a belief as to the allegations of Paragraph 215. With regards to any agreements with Haven Trust Bank, LNV would crave reference to those agreements as the best evidence of the terms thereof.

13. Paragraph 216 states legal conclusions, to which no response is required. To the extent a response is required, LNV states that it is without sufficient information to form a belief as to the allegations of Paragraph 216. With regards to any agreements with Haven Trust Bank, LNV would crave reference to those agreements as the best evidence of the terms thereof.

14. Paragraph 217 states legal conclusions, to which no response is required. To the extent a response is required, LNV states that it is without sufficient information to form a belief as to the allegations of Paragraph 217. With regards to any agreements with Haven Trust Bank, LNV would crave reference to those agreements as the best evidence of the terms thereof.

15. Paragraph 218 states legal conclusions, to which no response is required. To the extent a response is required, LNV states that it is without sufficient information to form a belief as to the allegations of Paragraph 218. With regards to any agreements with Haven Trust Bank, LNV would crave reference to those agreements as the best evidence of the terms thereof.

16. Paragraph 219 states legal conclusions, to which no response is required. To the extent a response is required, LNV states that it is without sufficient information to form a belief as to the allegations of Paragraph 219. With regards to the terms of the documents referenced therein, LNV would crave reference to those documents as the best evidence of the terms thereof.
17. Paragraph 220 states legal conclusions, to which no response is required. To the extent a response is required, LNV states that it is without sufficient information to form a belief as to the allegations of Paragraph 220.
18. Responding to Paragraph 221, LNV is without sufficient information to form a belief as to the allegations contained therein. LNV admits that Affordable has failed to perform its obligations under the loan documents with Haven Trust Bank.
19. Paragraph 222 of the Defendants' Amended Answer is admitted upon information and belief.
20. Responding to Paragraph 223, LNV is without sufficient information to form a belief as to the allegations contained therein. LNV admits that Affordable has failed to perform its obligations under the loan documents with Haven Trust Bank.
21. Paragraph 224 of the Defendants' Amended Answer is admitted upon information and belief.
22. Paragraph 225 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 225. With regards to any agreements with Haven Trust Bank or LNV, LNV would crave reference to those agreements as the best evidence of the terms thereof.

23. Responding to Paragraph 226, LNV is without sufficient information to form a belief as to the allegations contained therein. LNV admits that it purchased the subject loan from the FDIC as the receiver for Haven Trust Bank.
24. Paragraph 227 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 227 to the extent that it alleges that LNV determines whether the SBA loan would issue from the United States Small Business Administration.
25. The allegations of Paragraph 228 of the Defendants' Amended Answer are admitted upon information and belief to the extent it asserts that LNV is a subsidiary of Beal Bank and that it is regulated by the FDIC. LNV denies that it is without experience with SBA loans and states that it has handled SBA loans and assisted borrowers in transferring SBA loans to permanent financing.
26. Paragraph 229 states legal conclusions, to which no response is required. To the extent a response is required, LNV states that it is without sufficient information to form a belief as to the actions of Affordable. LNV admits that it has discussed this matter with Affordable.
27. Paragraph 230 states legal conclusions, to which no response is required. To the extent a response is required, LNV admits the allegations to the extent consistent with the terms of the referenced document.
28. Paragraph 231 states legal conclusions, to which no response is required. To the extent a response is required, LNV admits the allegations to the extent consistent with the terms of the referenced document.
29. LNV denies the allegations of Paragraph 232.

30. Paragraph 233 states legal conclusions, to which no response is required. To the extent a response is required, LNV admits the allegations to the extent consistent with the terms of the referenced document.
31. Paragraph 234 states legal conclusions, to which no response is required. To the extent a response is required, LNV admits the allegations to the extent consistent with the terms of the referenced document.
32. Paragraph 235 states legal conclusions, to which no response is required. To the extent a response is required, LNV states that it is without sufficient information to form a belief as to the allegations of Paragraph 235.
33. Paragraph 236 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations contained therein.
34. Paragraph 237 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations contained therein. LNV further states that Beal Bank was listed as a “Top Macro Business Lender” by the SBA.
35. Paragraph 238 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations contained therein. LNV further states that Beal Bank was listed as a “Top Macro Business Lender” by the SBA and has successfully transferred SBA loans to permanent financing.
36. LNV admits the allegations of Paragraph 239 to the extent they allege that LNV proposed various ways for Affordable to meet the requirements for SBA permanent financing.
37. LNV denies the allegations of Paragraph 240 and would crave reference to the unidentified documents referenced therein.

38. Paragraph 241 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations contained therein. LNV further states that Beal Bank was listed as a "Top Macro Business Lender" by the SBA and has successfully transferred SBA loans to permanent financing.

39. LNV denies the allegations of Paragraph 242.

40. Paragraph 243 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations contained therein.

41. Paragraph 244 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations contained therein.

42. Paragraph 245 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations contained therein.

43. Paragraph 246 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations contained therein.

FOR A FIRST DEFENSE TO THE SECOND COUNTERCLAIM
(Breach of the Duty of Good Faith and Fair Dealing)

44. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

45. Paragraph 248 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 248.

46. Paragraph 249 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 249.

FOR A FIRST DEFENSE TO THE THIRD COUNTERCLAIM
(Breach of Contract with Fraudulent Intent)

47. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.
48. Paragraph 251 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 251.
49. Paragraph 252 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 252. LNV denies the factual allegations of Paragraph 252.
50. Paragraph 253 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 253.
51. Paragraph 254 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 254 and would specifically state that qualification for SBA permanent loan financing is determined by the SBA guidelines and the SBA.
52. Paragraph 255 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 255.
53. Paragraph 256 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 256.
54. Paragraph 257 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 257.

FOR A FIRST DEFENSE TO THE FOURTH COUNTERCLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

55. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

56. Paragraph 259 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 259.

57. Paragraph 260 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 260.

FOR A FIRST DEFENSE TO THE FIFTH COUNTERCLAIM
(Tortious Interference with Prospective Contractual Relationship)

58. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

59. Paragraph 262 states legal conclusions, to which no response is required. To the extent a response is required, LNV admits that it was aware that construction was occurring on the subject property.

60. Paragraph 263 states legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraph 263. LNV admits that it was aware that Haven Trust Bank had initially qualified the proposed loan for SBA financing.

61. Paragraphs 264 to 272 state legal conclusions, to which no response is required. To the extent a response is required, LNV denies the allegations of Paragraphs 264 to 272.

FOR A SECOND DEFENSE
(Failure to State a Claim)

62. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

63. Defendants' Amended Answer fails to state a claim upon which relief can be granted against LNV and, therefore, Plaintiff cannot recover against LNV pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE
(Impossibility)

64. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

65. Upon information and belief, all or part of Defendants' claims are precluded because they were unable to meet SBA guidelines for the closing of a permanent loan facility.

FOR A FOURTH DEFENSE
(Comparative Fault)

66. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

67. Any injuries sustained by Defendants may have been due to and proximately caused by the negligence, recklessness, willfulness, and wantonness of Defendants and/or Defendants' agent(s) and/or attorney(s)-in-fact, and, therefore, the doctrine of comparative negligence may bar any recovery.

FOR A FIFTH DEFENSE
(Equity)

68. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

69. Defendants' claims are barred by the defenses of unclean hands, waiver, laches and/or estoppel.

FOR A SIXTH DEFENSE
(Authorization Under Contract/At Law)

70. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

71. LNV would show that Defendants' claims are barred by the express terms of the contracts and agreement between LNV and the Defendants.

72. LNV would show that Defendants' claims are barred by law and regulations that govern the issuance and closing of SBA loans.

FOR A SEVENTH DEFENSE
(Disclosure)

73. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

74. Defendants' claims are barred, in whole or in part, because the alleged matters they complain of were adequately disclosed to Defendants in documents or in laws and regulations and/or Defendants failed to read documents that were provided to them, and which disclosed such matters.

FOR AN EIGHTH DEFENSE
(Preceding Breach)

75. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

76. Some or all of Defendants' claims are barred by the doctrine of preceding breach.

FOR A NINTH DEFENSE
(Failure to Mitigate)

77. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

78. The Defendants are barred from a recovery in this case because of their failure to mitigate their damages.

FOR A TENTH DEFENSE
(Damages Unrecoverable/Set-Off)

79. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

80. Defendants' alleged damages are speculative and impossible to ascertain or allocate.

81. Defendants have not suffered, and will not suffer, any injury to a legally protected or cognizable interest by reason of the conduct of LNV as alleged in the Answer and Counterclaims.

82. Any damages found to be due from LNV must be offset by any amount that Defendants owe to LNV or that is received from any third-parties.

FOR AN ELEVENTH DEFENSE
(Economic Loss)

83. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

84. The claims, to the extent they seek to recover only economic loss in tort, are barred by the economic loss doctrine.

FOR A TWELFTH DEFENSE
(Punitive Damages/Attorneys' Fees Unrecoverable)

85. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

86. Defendants have failed to state facts or a claim sufficient to support an award of punitive damages.

87. LNV would show that some awards of punitive damages can and do violate the South Carolina and United States Constitutions. LNV reserves the right to challenge any award of punitive damages pursuant to the authority established by the United States Supreme Court and the South Carolina Supreme Court interpreting the United States and South Carolina Constitutions.

88. To the extent Defendants seeks to recover attorneys' fees, Defendants have failed to state facts sufficient or a claim to support the award of attorneys' fees. LNV reserves the right to challenge any award of attorneys' fees on the basis of unreasonableness.

FOR A THIRTEENTH DEFENSE
(Good Faith)

89. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

90. LNV would show that any actions taken by LNV and/or procedures followed by LNV concerning Defendants or Defendants' loans were taken in good faith, in a reasonable manner, and that said actions and/or procedures were reasonable in time and manner, and Defendants are therefore precluded from recovery against LNV under Defendants' theory of liability.

FOR A FOURTEENTH DEFENSE
(Failure to Join an Indispensible Party)

91. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

92. Because Defendants are attempting to challenge the policies of the SBA for the issuance of permanent loan facilities, Defendants must join the SBA pursuant to Rule 19(a). In the case that Defendants are unable to join this party, this case must be dismissed pursuant to Rule 19(b).

FOR A FIFTEENTH DEFENSE
(Acts of Third Party/Independent Acts)

93. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

94. The damages allegedly sustained by Defendants, if any, were caused by the acts and/or omissions of another party including, but not limited to the Defendants or the SBA, and, therefore, Defendants may not recover from LNV due to the same.

95. The damages allegedly sustained by Defendants, if any, were caused by the acts and/or omissions of a person or entity not acting as an agent of LNV and therefore that party's act and/or omissions cannot be attributed to LNV.

FOR A SIXTEENTH DEFENSE
(Rule 9(b))

96. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

97. Defendants have failed to plead their claims sounding in fraud with particularity as required by Rule 9(b), SCRC.P.

FOR A SEVENTEENTH DEFENSE
(Unfair Trade Practices)

98. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

99. Any claim under the South Carolina Unfair Trade Practices Act is barred because, among other reasons, the Defendants cannot establish that any of LNV's acts adversely affect the public interest or affected the Defendants.

100. Defendants have failed to satisfy the prerequisites for recovery under S.C. Code §§ 39-5-10 et seq. Specifically, the damages prayed for by the Defendants are barred because, among other reasons, LNV did not willfully, knowingly, or in any other way, violate the South Carolina Unfair Trade Practices Act.

101. As the subsidiary of a federally regulated bank, LNV is not subject to the South Carolina Unfair Trade Practices Act.

FOR AN EIGHTEENTH DEFENSE
(Reservation of Defenses)

102. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

103. LNV reserves the right to amend and supplement its affirmative defenses to include any applicable defenses of which it is not presently aware.

104. LNV has not had an opportunity to conduct a full investigation or to engage in adequate discovery touching on all the circumstances of Defendants' allegations. LNV is acting as best it can to inform itself as to the pertinent facts and prevailing circumstances surrounding any claimed damage by Defendants and gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate could be supported by fact and law, including but not limited to, a defense that the action is barred in part by applicable statute, contract, release, covenant, equitable doctrine, accord and satisfaction, or other legal principle. LNV thus reserves the right to amend this Reply to assert any such defenses.

FOR AN EIGHTEENTH DEFENSE
(More Definite Statement)

105. The preceding Paragraphs, not inconsistent herewith, are incorporated herein by reference.

106. Pursuant to Rules 8 and 12(e), SCRC, the Defendants' Answer and Counterclaim is so vague and ambiguous that Plaintiff is not reasonably able to respond to those allegations relating to a failure of the SBA loan to close its permanent financing.

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Greenville, South Carolina
January 9, 2012

Attorneys for LNV Corporation

CERTIFICATE OF SERVICE

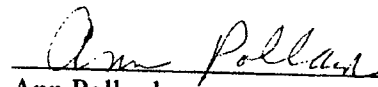
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for LNV Corporation, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by delivering a copy of the same by United States Mail, postage prepaid, to the following address(es):

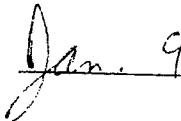
Pleadings:

Answer to Amended Counterclaims

Counsel Served:

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Gallivan, White & Boyd, P.A.
55 Beattie Place, Suite 1200
Post Office Box 10589 (29603)
Greenville, SC 29601


Ann Pollard
Administrative Assistant

 Jan. 9, 2011²⁰¹²

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
LNV Corporation,	)	Civil Action No. 2011-CP-04-2728
	)	
Plaintiff,	)	
vs.	)	
	)	<u>LNV CORPORATION'S AMENDED</u>
Affordable Hospitality Group-Anderson,	)	<u>MOTION TO DISMISS AMENDED</u>
LLC; Diversified Capital Investment	)	<u>COUNTERCLAIMS</u>
Group, LLC; Jay Berlye; Anderson County,	)	
South Carolina; and the State of South	)	
Carolina,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 12(b)(6) SCRCP, Plaintiff LNV Corporation hereby moves to dismiss the Defendants' amended counterclaims because they fail to state a claim on which relief can be granted.

The basis for this motion is that the Defendants' amended counterclaims are based upon an alleged failure to obtain small business administration ("SBA") financing. However, pursuant to statute, 15 USC §§ 631 et seq., such determinations are not made by Plaintiff or Haven Trust Bank (the originator of this loan). Therefore, Defendants' counterclaims fail as a matter of law because Plaintiff cannot be held liable for the funding determination of the Federal SBA. This motion is based upon the South Carolina Rules of Civil Procedure, South Carolina caselaw interpreting the same, and a memorandum of law to be filed prior to the hearing on this motion. We hereby move to dismiss the counterclaims asserted by Affordable.

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Greenville, South Carolina
January 9, 2012

Attorneys for LNV Corporation

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
 LNV Corporation,	)	 C.A. No. 2011-CP-04-2728
	)	
Plaintiff,	)	
	)	
-vs-	)	MOTION TO ALTER OR
	)	AMEND JUDGMENT
Affordable Hospitality Group–Anderson, LLC;	)	
Diversified Capital Investment Group, LLC;	)	
Jay Berlye; Anderson County, South Carolina;	)	
and the State of South Carolina,	)	
	)	
Defendants.	)	

The Defendants, Affordable Hospitality Group–Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye, (hereinafter, the “Defendants”) by and through undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, move for reconsideration of this Court’s Order dismissing Defendants’ Counterclaim. The Order was filed on November 14, 2012, and received by counsel on November 16, 2012.

This Motion is based upon the following grounds:

1. The Order ignores the Defendants’ pleading and arguments that:
 - (a) the Basic Contract with Haven Trust Bank in November 2007 was a complete, unambiguous and binding agreement contemplating three successive transactions – [i] a 9-month construction loan to be replaced by [ii] a conventional 20-year permanent loan and [iii] SBA 504 funding applied for by Defendants with the cooperation of Haven Trust Bank;
 - (b) Defendants would not have entered into the Basic Contract without the

provision for three successive transactions; and

(c) as successor to Haven Trust Bank, Plaintiff LNV assumed the obligation to perform all three successive transactions

2. The Order ignores the fact that Defendants alleged and described to the Court a process of continuing negotiations between the parties under the Basic Contract well beyond November 2009, which precludes a reading of the Amended Answer and Counterclaim that Defendants claims arose before November 2009. .

3. The Order not only misconstrues the clear language of the parties' modifications to the construction loan agreement but also ignores Defendants' pleading and arguments that the modifications touched only the construction loan agreement and were executed while the parties were actually negotiating the two remaining components of performance under the Basic Contract.

ARGUMENT

1. Defendants Relied Upon the Obligations of the Basic Contract and Plaintiff LNV Assumed the Obligation of a Threefold Performance Under the Basic Contract

(a) The Basic Contract was complete, unambiguous and binding upon the parties, and their successors in interest. Defendants' Answer to the Complaint and subsequent memoranda make clear that a Basic Contract with Haven Trust Bank was concluded in November 2007 contemplating performance by the parties of three successive transactions: (a) an initial construction loan of \$3,384,000 with a 9-month term; (b) a conventional permanent loan of \$2,115,000 with a 20-year term; and (c) an interim 3-month loan of \$1,269,000 to be replaced by SBA-backed funding of a 20-year permanent loan. Together, the conventional permanent loan and the interim financing / SBA-backed loan were intended to replace the construction loan. Defendants' pleading clearly alleged

all elements of a binding contract and also alleged that Defendants and Haven Trust Bank fully performed their respective duties until December 2008. At that time Haven Trust Bank was closed, yet the Basic Contract continued to be recognized as binding by two agencies of the United States government, the Small Business Administration (SBA) and the Federal Deposit Insurance Corporation (FDIC). (See ¶¶ 25, 219 and 224 of the Answer and Counterclaim as well as Defendants' Supplemental Memorandum in Opposition to Plaintiff LNV Corporation's Motion to Dismiss [hereinafter, "Defendants' Supplemental Memorandum"], pp. 6-7 and 11-12)

The Order dismissing Defendants' Counterclaim completely ignores Defendants' pleading and argument in regard to the financing structure of the Basic Contract. In fact the Order merely characterizes the Basic Contract as an "unsigned" loan commitment letter.¹ Defendants request that this Court amend its Order to address the threefold performance contemplated by the Basic Contract and make an explicit holding upon the pleadings that articulates the Court's interpretation of the Basic Contract and its obligations.

(b) Defendants would not have entered into the Basic Contract with Haven Trust Bank in the absence of provisions for the three-staged performance described above. Repeatedly, the Defendants' Answer and Counterclaim stated that they executed a promissory note, mortgage, and all other construction loan documents in reliance upon the written commitment contemplated by the Basic Contract and that they would not have done so without Haven Trust Bank's written commitment to perform three successive transactions. (See ¶¶ 13, 15, 17, 21, 24, 26, 49, 50, 51, 57, 62, 63.)

¹ – In fact, the Basic Contract attached to Defendants' Amended Answer and Counterclaim is signed by Haven Trust Bank. Inadvertently, however, the signature page executed by the Defendants was omitted. A copy of that page is attached to this Motion as Exhibit A.

In support of its Motion to Dismiss, Plaintiff LNV argued that the Basic Contract did not require Haven Trust Bank to replace the 9-month construction loan with permanent financing and SBA 504 funding. Defendants' Supplemental Memorandum (p. 8) explained to this Court that such an interpretation of the Basic Contract would be "non-sensical" because:

According to LNV, Defendants undertook a 9-month construction loan of \$3,384,000 at 9% interest to build a hotel for which there was obviously no pre-existing stream of revenue. If LNV's position is correct that Haven Trust had no obligation to provide permanent financing, Defendants would have been leaving themselves without any way to pay off the loan or manage the debt.

The Order dismissing Defendants' Counterclaim is completely silent with regard to Defendants' specific allegations of reliance upon the good faith of Haven Trust Bank and any successors to the Basic Contract. These allegations provided the fundamental premise for the Counterclaim. The Defendants request that this Court amend its Order to address these allegations and that the Court either reconsider its Order or make a specific holding that (as Plaintiff LNV contends) Defendants merely contracted with Haven Trust Bank to receive a 9-month construction loan with no expectation of any subsequent permanent financing or SBA 504 funding.

(c) By purchasing the loan portfolio of Haven Trust Bank from the FDIC, Plaintiff LNV became the successor to Haven Trust Bank under the Basic Contract. Defendants so alleged throughout their responsive pleading. (See ¶¶ 44, 49, 59, 60, 65, 70, 74, 75, 84, 90, 94, 99, 100, 108, 109, 118, 123, 127, 128, 136, 137, 150, 154, 155, 163, 164, 174, 178, 182, 183, 192, 192, 206, 225, 226, 227.)

In response to Defendants' Answer, Plaintiff entered a general denial. Paragraph 206 of the Defendants' Counterclaim described Plaintiff LNV as the "successor-in-interest" to Haven

Trust Bank under the Basic Contract. Plaintiff responded to this Counterclaim allegation by admitting purchase of the Haven Trust Bank construction loan, while denying Paragraph 206 and describing it as a statement of legal conclusions. (Plaintiff Answer to Counterclaims ¶ 7.) Similarly, Paragraphs 225, 226 and 227 of the Defendants' Counterclaim alleged that the obligations of Haven Trust Bank under the Basic Contract were assumed by Plaintiff LNV on May 1, 2009 when it purchased the Haven Trust loan portfolio. The portfolio was purchased at a rate of less than 32 cents on the dollar as revealed by an excerpt from an official FDIC notation of "Closed Loan Sales" attached as Exhibit D to Defendants' Supplemental Memorandum. (See p. 4, footnote 9.) Plaintiff responded by admitting only that it purchased the Haven Trust Bank construction loan again characterizing Defendants' allegations as a mere statement of legal conclusions.

Thus, Plaintiff's responses placed before this Court a question of law: under the pleadings, was LNV a successor to Haven Trust Bank under the Basic Contract or not? The Order of this Court is silent on this point. Defendants request an amendment to the Order to set forth an explicit holding on the issue.

2. The Answer and Counterclaim Cannot Be Construed to Allege That Defendants' Claims Arose Before November 2009

The Order of this Court holds: "Based on the Defendants' allegations in the Amended Answer and Counterclaim, Defendants' claims arose prior to November 10, 2009...." This holding directly contradicts the express representation found in ¶ 4(b) of the November 2009 modification in which paragraph Defendants explicitly stated that as of November 10, 2009, they had no defenses or counterclaims regarding their obligations under the construction loan agreement. Defendants request that the Court reconsider its holding or amend its Order to reconcile its holding with the

Trust Bank under the Basic Contract. Plaintiff responded to this Counterclaim allegation by admitting purchase of the Haven Trust Bank construction loan, while denying Paragraph 206 and describing it as a statement of legal conclusions. (Plaintiff Answer to Counterclaims ¶ 7.) Similarly, Paragraphs 225, 226 and 227 of the Defendants' Counterclaim alleged that the obligations of Haven Trust Bank under the Basic Contract were assumed by Plaintiff LNV on May 1, 2009 when it purchased the Haven Trust loan portfolio. The portfolio was purchased at a rate of less than 32 cents on the dollar as revealed by an excerpt from an official FDIC notation of "Closed Loan Sales" attached as Exhibit D to Defendants' Supplemental Memorandum. (See p. 4, footnote 9.) Plaintiff responded by admitting only that it purchased the Haven Trust Bank construction loan again characterizing Defendants' allegations as a mere statement of legal conclusions.

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The Order of this Court holds: "Based on the Defendants' allegations in the Amended Answer and Counterclaim, Defendants' claims arose prior to November 10, 2009...." This holding directly contradicts the express representation found in ¶ 4(b) of the November 2009 modification in which paragraph Defendants explicitly stated that as of November 10, 2009, they had no defenses or counterclaims regarding their obligations under the construction loan agreement. Defendants request that the Court reconsider its holding or amend its Order to reconcile its holding with the

express representation by Defendants that they had no claims to release in November 2009. It should also be noted that the same declaration by Defendants is found in ¶ 4(a) of the June 2009 modification.

The Court's Order also ignores the fact that the Defendants' pleading does not allege a point in time at which the five causes of action under their Counterclaim arose. Defendants alleged that in June 2009 they commenced a process of negotiating performance by Plaintiff of its obligations under the Basic Contract. (¶ 238 Amended Answer and Counterclaim.) Nowhere in their pleading did the Defendants allege that they abandoned these negotiations. The inference arises that Defendants could not have known, at the time they filed their pleading, precisely when their claims arose. Instead, Defendants anticipated that discovery would information needed to identify the precise point in time at which Plaintiff determined to breach its obligation to make a permanent loan to Defendants, at which time Plaintiff's actions gave rise to cognizable claims. (See ¶¶ 229, 231, 235, 240, 242, and 243.) In any event, any fair reading of the Counterclaims would conclude that Defendants' claims arose **after** November 2009.

For example, regarding their cause of action for Tortious Interference with Prospective Contractual Relations, Defendants alleged "By the time the Defendants realized that Plaintiff would not provide permanent financing or assistance in obtaining the SBA Interim Loan, Defendants were unable to obtain alternative financing with the result that Plaintiff has brought this action." (¶ 269 Amended Answer and Counterclaim.) The phrase "by the time" in itself suggests an extended period of interaction between the parties. Read as a whole, Defendants' pleading alleged precisely such an extended period of interaction between the parties.

In ruling that Defendants' claims arose before November 10, 2009, the Court has

drawn an inference from Defendants' pleading that cannot logically be sustained. A fair reading of the Defendants' Answer and Counterclaim would be that the parties were negotiating performance under the Basic Contract from June 2009 well into 2011. Defendants request that this Court reconsider its conclusion that their Counterclaim arose prior to November 10, 2009, or amend its Order to identify when, according to the pleadings before the Court, each of the five counterclaims arose.²

3. **Neither the Language of the Loan Modifications by the Parties Nor Circumstances Alleged by Defendants Can Be Construed to Release Defendants' Counterclaim.**

Neither the June 2009 nor the November 2009 modification of the construction loan agreement can be deemed a release of Plaintiff's performance under the Basic Contract. The parties never intended such a release. The only reference to the Basic Contract in either modification obviously anticipated full performance thereunder. The releases contained in the June 2009 and November 2009 modifications are identical and closely resemble the release found in an April 2009 modification executed by FDIC and Defendants which also anticipated full performance of the Basic Contract. Finally, the plain language of both the June and November 2009 modifications specifically refer to and are limited to the construction loan agreement.

Defendants alleged that at no time during the negotiation of either the June 2009

² – Along with this Motion, Defendants are filing a Motion to Amend their pleading. A proposed Second Amended Answer and Counterclaim is attached to that Motion, which includes supplemental allegations that clearly reveal continuing negotiations between the parties for well over a year after November 2009 as well as Defendants' continuing reliance upon specific representations by Plaintiff LNV that it intended to fully perform its obligations under the Basic Contract. This further amendment of Defendants' pleading was made possible only because Plaintiff LNV produced documents, subject to reservations, in February 2012.

modification or the November 2009 modification of the construction loan agreement did Plaintiff LNV propose any modification of the Basic Contract, much less any changes to the terms calling for three successive transactions. (Answer and Counterclaim ¶ 234.) The Plaintiff's Answer to the Counterclaim admitted this allegation (¶ 31.)

Thus, the parties have essentially stipulated that neither modification to the construction loan agreement was intended to modify the Basic Contract. Defendants have clearly alleged that these modifications were interpreted as indications of Plaintiff's intended good faith performance under the Basic Contract. (¶¶ 230, 232-233 and 235 of the Answer and Counterclaim.) Given this stark fact demonstrated by the pleadings, exhibits and memoranda in this case, Defendants request that the Court reconsider or, in the alternative, amend its Order to reconcile its holdings with the admission in both parties' pleadings that neither the June 2009 nor November 2009 modifications were intended to waive performance of the three successive transactions contemplated by the Basic Contract.

The only reference to the terms of the Basic Contract is found in the June 2009 modification. No reference whatsoever appears in the November 2009 modification. The single reference clearly indicated that the parties intended (or represented an intention) to replace the construction loan with a permanent loan augmented by SBA 504 funding:

Notwithstanding anything to the contrary contained in the Loan Documents, including, without limitation, the [FDIC modification dated April 20, 2009], the \$100,000 certificate of deposit presently held as additional collateral **for the permanent loan** shall be transferred into a cash reserve account held by Lender or an affiliate of Lender. Such cash reserve account shall continue to be additional security for the Loan; however, Borrower hereby authorizes Lender to apply funds immediately from such cash reserve account to pay Loan interest due to July 1, 2009 and thereafter, to the extent that

cash flow from operations at the Mortgaged Property cannot satisfy the monthly interest payment due, funds from such cash reserve account may be applied to the net remaining interest payment due on the Loan **until such time as the Small Business Administration funds its new subordinate loan** at which time such funds may be used to pay closing costs (e.g., title premiums, lender costs, attorneys' fees for Lender and Borrower, SBA loan points or fees if any, appraisal and inspection fees if any, survey costs, etc.) **in connection with the closing of the permanent loan, the SBA Loan,** or as otherwise determined by Lender.

(emphasis added).

By way of explanation, the modification was designed to grant Plaintiff LNV direct access to a certificate of deposit that had constituted collateral under the Basic Contract but which, as stated, would be converted into a cash reserve while the parties negotiated the remaining performance under the same Basic Contract. It is worth noting that in April 2009, Defendants and FDIC executed a similar modification to the construction loan agreement which, in pertinent part, provided that the same certificate of deposit would be retained by FDIC "as collateral for the permanent loan on the Property and shall not be released by Receiver until the earlier of the payment in full of the permanent loan or as otherwise determined by Receiver." (See ¶ 3.1, Exhibit I to Plaintiff's Complaint.) In other words, Defendants were justified in relying upon the April, June and November modifications to the construction loan agreement as part of performance by the parties under the Basic Contract.

The release provisions of both June and November modifications are identical. They also resemble closely – but are far less exhaustive than – the release provisions found in ¶ 2.3 of the April 2009 modification executed by Defendants and FDIC:

Receiver, Borrower and Guarantors hereby ratify the Loan Documents, waive any defenses thereto and RELEASE AND

DISCHARGE Receiver and its predecessors, successors, assigns, officers, managers, directors, employees, agents, attorneys, representatives and affiliates, but specifically excluding any purchaser or assignee of the Loan (collectively referred to as “*Receiver Affiliates*”), jointly and severally from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions and causes of action of any nature whatsoever, including, without limitation all claims, demands, and causes of action for contribution and indemnity, whether arising at law or in equity (including without limitation, claims of fraud, duress, mistake, tortious interference or usury), whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted or because of or as a result of any act, omission, communication, transaction, occurrence, representation, promise, damages, breach of contract, fraud, violation of any statute or law, commission of any tort, or any other matter whatsoever or thing done, omitted or suffered to be done by Receiver or Receiver Affiliates, which have occurred in whole or in part, or were initiated at any time up to and through the date this Agreement is signed and delivered to Receiver.

In a footnote to its Order, the Court recognizes that FDIC and Defendants concluded this modification, yet the Order does not reconcile the release in this modification of the construction loan agreement with the fact that all parties (including Plaintiff LNV upon purchasing the Haven Trust loan portfolio) continued to act as if the Basic Contract were still in effect and binding. Defendants request that the Court amend its Order to account for the continuing course of conduct by all parties after April and June 2009. Such amendment could profitably explain why the Court has not read either the April 2009 FDIC modification or the June 2009 modification as an earlier and complete release of any successor-in-interest to the Basic Contract, such as Plaintiff LNV. If the November 2009 modification of the construction loan agreement can be read as such a complete release, then the April 2009 and June 2009 modifications should be amenable to the same

interpretation as a matter of consistency.

Except for the provisions in the June 2009 modification that granted Plaintiff LNV direct access to the cash reserve created from the \$100,000.00 certificate of deposit as well as those granting additional funds to Defendants and extending maturity dates, the modifications in June 2009 and November 2009 are identical in their organization and language. From the original recitals through definitions and repeatedly in the substantive provisions, both instruments of modification limit themselves to the construction loan agreement. A complete and exhaustive listing of these provisions is impractical, but the following provisions are illustrative:

In Recital A, the “Note,” the “Loan” and the “Mortgage” are clearly identified as instruments executed on May 15, 2008, which constituted the construction loan agreement, with no reference whatsoever to the Basic Contract or commitment letter of Haven Trust Bank.

In Recital B, the FDIC “first” modification in April 2009 is limited in its application to the “Loan” (the construction loan) mentioned above. The same Recital B in the November modification is limited to the same “Loan.” Nowhere does Recital B refer to the Basic Contract or commitment letter of Haven Trust Bank.

In Recital C, the “Loan Documents” are identified as documents “executed and/or delivered in regard to the Loan” – meaning the construction loan agreement of May 15, 2008. Nowhere does Recital C refer to the Basic Contract or commitment letter of Haven Trust Bank.

In Recital F, the intention of the parties is expressly limited to the “Note,” the “Mortgage” and “any other Loan Documents as set forth herein.” Nowhere does Recital F refer to the Basic Contract or commitment letter of Haven Trust Bank. Nor do subsequent provisions of these modifications, except for the language cited above from the June 2009 modification.

¶ 3 contains the release upon which the Court has based its Order, yet that release is itself similarly limited to the “Loan,” “the Note and/or

the Mortgage” and “any other Loan Document” clearly referring to the instruments in Recitals A and C. Nowhere does ¶ 3 refer to the Basic Contract or commitment letter of Haven Trust Bank.

¶ 4(a) confirms that Defendants, as of November 10, 2009, had no “defense, counterclaim or offset to the Loan or any of the Loan Documents,” which was a correct statement of fact simply because it pertained only to the construction loan agreement clearly identified in Recitals A and C. Nowhere does ¶ 4(a) refer to the Basic Contract or commitment letter of Haven Trust Bank.

¶ 10 declares that the given loan modification agreement together with other documents “entered into in regard to the Loan” was final and complete, not to be contradicted by evidence of prior, contemporaneous or subsequent “oral agreements.” Clearly this provision governs relations of the parties with respect to the “Loan” and not the Basic Contract or commitment letter of Haven Trust. Nowhere, in fact, does ¶ 10 refer to the Basic Contract or commitment letter of Haven Trust Bank.

¶ 12 contains a waiver of jury trial, again limited to “this Agreement, the Note or any of the other Loan Documents.” Nowhere does ¶ 12 refer to the Basic Contract or commitment letter of Haven Trust Bank.

CONCLUSION

To the extent that the Order of this Court stretches the effect of the November 2009 “release” to encompass the entire Basic Contract – never mentioned once in that modification to the construction loan agreement – the Order achieves a result never intended by the parties and insupportable in light of the agreement itself. Defendants therefore request that the Court reconsider its Order. In the alternative, Defendants request specific holdings with regard to the matters described above which were presented by their pleadings and memoranda and argued before this Court at hearing.

(Signature page follows.)

Respectfully submitted,

BY: 
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November 26, 2012
Columbia, South Carolina

*Attorney for Defendants,
Affordable Hospitality-Anderson, LLC,
Diversified Capital Investment Group, LLC, and
Jay Berlye*

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
LNV Corporation,	)	C.A. No. 2011-CP-04-2728
	)	
Plaintiff,	)	
	)	
-vs-	)	MOTION TO AMEND
	)	ANSWER AND COUNTERCLAIMS
Affordable Hospitality Group–Anderson, LLC;	)	
Diversified Capital Investment Group, LLC;	)	
Jay Berlye; Anderson County, South Carolina;	)	
and the State of South Carolina,	)	
	)	
Defendants.	)	

The Defendants, Affordable Hospitality Group–Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye, (hereinafter, the “Defendants”) by and through undersigned counsel and pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, move for leave to file a Second Amended Answer and Counterclaim in light of this Court’s Order dismissing Defendants’ Counterclaims. The Order was filed on November 14, 2012, and received by counsel on November 16, 2012.

In the interest of justice, Defendants should be allowed to file the attached Second Amended Answer and Counterclaim. (See Exhibit A.) This proposed pleading revises ¶ 231 and adds new ¶¶ 236 through 248, 257, 269, and 281, all of which describe the parties’ course of conduct subsequent to the construction loan agreement modification in November 2009. To the extent that the Court finds that the first Amended Answer and Counterclaim is solely confined to events occurring prior to November 2009, the new pleading cures any such deficiency.

Defendants’ Second Amended Answer and Counterclaim is offered at this time, and

not earlier, because Defendants received documents from Plaintiff in February 2012 from which Defendants have concluded that the new allegations can indeed be proven in the course of discovery and at trial. The evidence itself is not offered at this time, since the present case remains at the pleading stage. Defendants believe that the new pleading precludes any holding by this Court that their Counterclaim arose and ripened into cognizable causes of action prior to November 2009.

Respectfully submitted,

BY: 

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November 26, 2012
Columbia, South Carolina

*Attorney for Defendants,
Affordable Hospitality-Anderson, LLC,
Diversified Capital Investment Group, LLC, and
Jay Berlye*

EXHIBIT A

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
 LNV Corporation,	)	SECOND AMENDED
	)	ANSWER AND COUNTERCLAIM
Plaintiff,	)	OF DEFENDANTS AFFORDABLE
	)	HOSPITALITY GROUP-ANDERSON,
-vs-	)	LLC, DIVERSIFIED CAPITAL
	)	INVESTMENT GROUP, LLC, AND
Affordable Hospitality Group-Anderson, LLC;	)	JAY BERLYE
Diversified Capital Investment Group, LLC;	)	
Jay Berlye; Anderson County, South Carolina;	)	C.A. No. 2011-CP-04-2728
and the State of South Carolina,	)	
	)	JURY TRIAL REQUESTED
Defendants.	)	
	)	

Come now the Defendants, Affordable Hospitality Group-Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye, by and through their undersigned counsel, and, by way of answer and counterclaim to the Complaint of Plaintiff LNV Corporation, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE TO THE COMPLAINT

1. Paragraph 1, which pertains to Plaintiff LNV Corporation referred to hereinafter as "LNV," is admitted.
2. Paragraph 2, which pertains to Defendant Affordable Hospitality Group-Anderson, LLC, referred to hereinafter as "Affordable Hospitality," is admitted.
3. Paragraph 3, which pertains to Defendant Jay Berlye, referred to hereinafter as "Berlye," is admitted.
4. Paragraph 4, which pertains to Defendant Diversified Capital Investment Group, LLC,

referred to hereinafter as “Diversified Capital,” is admitted.

5. Paragraph 5, which pertains to Defendant Anderson County, South Carolina, referred to hereinafter as “Anderson County,” contains assertions of legal procedure to which no response is required, and none is given. To the extent that the allegations set out in Paragraph 5 require some other or further response, Paragraph 5 is admitted.

6. Paragraph 6, which pertains to Defendant the State of South Carolina, referred to hereinafter as “South Carolina,” contains assertions of legal procedure to which no response is required, and none is given. To the extent that the allegations set out in Paragraph 6 require some other or further response, Paragraph 6 is admitted.

7. Paragraph 7 is an assertion of jurisdiction to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the South Carolina State Constitution or Code, Affordable Hospitality, Diversified Capital, and Berlye (which are collectively referred to hereinafter as the “Defendants”) crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 7 require some other or further response, Paragraph 7 is admitted on information and belief; provided, however, that Defendants reserve all rights to challenge the existence or exercise of subject matter jurisdiction as they deem necessary or appropriate.

8. Paragraph 8 is an assertion of venue to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the South Carolina State Code, the Defendants crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 8 require some other or further response, Paragraph 8 is admitted on information and belief; provided, however, that Defendants

reserve all rights to challenge the existence or exercise of venue as they deem necessary or appropriate.

9. Paragraph 9 is an assertion of jurisdiction to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the South Carolina State Code, the Defendants crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 9 require some other or further response, Paragraph 9 is admitted on information and belief; provided, however, that Defendants reserve all rights to challenge the existence or exercise of personal jurisdiction as they deem necessary or appropriate.

10. Paragraph 10 is an assertion of legal procedure to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the South Carolina State Supreme Court's Administrative Order of May 22, 2009, the Defendants crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 10 require some other or further response, Paragraph 10 is admitted on information and belief; provided, however, that Defendants reserve all rights to challenge such aspects of legal procedure described therein as they deem necessary or appropriate.

11. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

12. Responding to Paragraph 11, such Paragraph incorporates the terms of a Promissory Note, executed on or about May 15, 2008, between Affordable Hospitality and third-party Haven Trust Bank in the amount of Three Million, Four Hundred Eleven Thousand, Seven Hundred Eighty-Two Dollars and 00/Cents (\$3,411,782.00). Defendants crave reference to such Promissory

Note, the terms of which shall speak for themselves.

13. To the extent that Paragraph 11 requires some other or further response, the allegations of Paragraph 11 are admitted subject to the express qualification and limitation that such Promissory Note does not set out the complete agreement of Haven Trust Bank and Defendants. This complete agreement (referred to hereinafter as the “Basic Contract” by and between Haven Trust Bank and Defendants as contracting parties) was established by a written commitment offered and accepted on November 6, 2007 and attached hereto as Exhibit A. In the Basic Contract, Haven Trust Bank agreed to fund a permanent mortgage loan to the Defendants and to assist Defendants in obtaining financing from the United States Small Business Administration (“SBA”). In this Basic Contract, Defendants agreed to execute and did subsequently execute the Promissory Note and other loan documents which Plaintiff seeks to enforce by this action. Affordable Hospitality relied in good faith on Haven Trust Bank’s written commitment and would not have entered into the Promissory Note and other loan documents but for Haven Trust Bank’s written commitment as the Basic Contract.

14. Responding to Paragraph 12, such Paragraph incorporates the terms of a guaranty given by Diversified Capital with regard to the Promissory Note referenced in Paragraph 11. Defendants crave reference to such guaranty, the terms of which shall speak for themselves.

15. To the extent that Paragraph 12 requires some other or further response, the allegations of Paragraph 12 are admitted subject to the express qualification and limitation that such guaranty does not set out the complete agreement of the parties and that the guaranty was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Diversified Capital relied in good faith on Haven Trust Bank’s

written commitment and would not have given the guaranty but for Haven Trust Bank's written commitment as the Basic Contract.

16. Responding to Paragraph 13, such Paragraph incorporates the terms of a Construction Loan Agreement and a document referred to as the Berlye Guaranty. The Defendants crave reference to such Construction Loan Agreement and Berlye Guaranty, the terms of which shall speak for themselves.

17. To the extent that Paragraph 13 requires some other or further response, the allegations of Paragraph 13 are admitted subject to the express qualification and limitation that such Defendants were induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Defendants relied in good faith on Haven Trust Bank's written commitment and would not have entered into the Construction Loan Agreement and/or have given the Berlye Guaranty but for Haven Trust Bank's written commitment as the Basic Contract.

18. Responding to Paragraph 14, such Paragraph incorporates the terms of a legal instrument which is purportedly on record with the Office of the Register of Deeds of Anderson County, South Carolina. Defendants crave reference to such instrument, the terms of which shall speak for themselves.

19. To the extent that some other or further response is required, Paragraph 14 is admitted on information and belief.

20. Responding to Paragraph 15, such Paragraph incorporates the terms of a security agreement executed on or about May 15, 2008, between Affordable Hospitality and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such

security agreement, the terms of which shall speak for themselves.

21. To the extent that Paragraph 15 requires some other or further response, the allegations of Paragraph 15 are admitted subject to the express qualification and limitation that such security agreement was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Affordable Hospitality relied in good faith on Haven Trust Bank's written commitment and would not have given the security agreement but for Haven Trust Bank's written commitment as the Basic Contract.

22. Paragraph 16 is a conclusion of law to which no response is required, and none is given. To the extent that some other or further response is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged therein, and so deny the same. By way of further response, Defendants reserve all rights to challenge the sufficiency of the perfection of the security agreement in question as Defendants deem necessary or appropriate.

23. Responding to Paragraph 17, such Paragraph incorporates the terms of an assignment of leases and rents, executed on or about May 15, 2008, between Affordable Hospitality and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such security agreement, the terms of which shall speak for themselves.

24. To the extent that Paragraph 17 requires some other or further response, the allegations of Paragraph 17 are admitted subject to the express qualification and limitation that such assignment was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Affordable Hospitality relied in good faith on Haven Trust Bank's written commitment and would not have given the assignment

but for Haven Trust Bank's written commitment as the Basic Contract.

25. Responding to Paragraph 18, such Paragraph incorporates the terms of an insurance assignment between Affordable Hospitality and Berlye and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such assignment, the terms of which shall speak for themselves.

26. To the extent that Paragraph 18 requires some other or further response, the allegations of Paragraph 18 are admitted subject to the express qualification and limitation that such assignment was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Defendants Affordable Hospitality and Berlye relied in good faith on Haven Trust Bank's written commitment and would not have given the assignment but for Haven Trust Bank's written commitment as the Basic Contract.

27. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

28. Paragraph 20 is admitted on information and belief.

29. Paragraph 21 is an assertion of legal authority to which no response is required, and none is given. Furthermore, to the extent that the Complaint refers to statements of law set out in the United States Code, the Defendants crave reference to such statements which shall speak for themselves. To the extent that the allegations set out in Paragraph 21 require some other or further response, Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged therein, and so deny the same. By way of further response, Defendants reserve all rights to challenge the existence or exercise of such legal authority as they deem necessary or

appropriate.

30. Responding to Paragraph 22, such Paragraph incorporates the terms of a loan modification agreement. Defendants crave reference to such agreement, the terms of which shall speak for themselves. To the extent that some other or further answer is required, Paragraph 22 is admitted.

31. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 24, and so deny the same. Defendants demand strict proof of such transaction from Plaintiff.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 25 and so deny the same. Defendants demand strict proof of such ownership from Plaintiff.

34. Responding to Paragraph 26, it is admitted that certain of the Defendants have failed to make all payments claimed by Plaintiff to be due. It is expressly denied that Plaintiff may enforce the loan documents as alleged.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 27 and so deny the same. Defendants demand strict proof of such priority from Plaintiff.

36. Responding to Paragraph 28, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. However, Plaintiff has never provided Defendants with an accounting of amounts due and owing, and therefore Defendants are without

knowledge or information sufficient to form a belief as to the truth or accuracy of the amounts claimed to be owed. Accordingly, Defendants deny the same. Defendants demand strict proof from Plaintiff of such amounts due and owing. To the extent that some other or further response is required, Paragraph 28 is denied.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 29 and so deny the same.

38. Paragraph 30 is an assertion of intention for which no answer is required, and none is given. To the extent that an answer may be required, Paragraph 30 is denied.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract/Collection on Note)

39. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

40. Paragraph 32 is denied insofar as the Note referenced in Paragraph 32 does not constitute the Basic Contract but instead represents partial performance by the contracting parties to the Basic Contract. Moreover, such interest as Plaintiff acquired by transactions alleged in Paragraphs 24 and 25 of the Complaint includes all obligations of the Basic Contract which Plaintiff assumed as assignee. By reason of Plaintiff's prior and contemporaneous breaches of the Basic Contract, Plaintiff is barred from enforcing any part of the other loan documents against Defendants.

41. Paragraph 33 is denied. Any alleged breach by Defendants is excused by the prior and contemporaneous breaches by Plaintiff in failing to abide by the terms of the Basic Contract.

42. Paragraph 34 is denied.

FOR A SECOND DEFENSE TO THE FIRST CAUSE OF ACTION

43. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

44. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

45. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the United States Federal Deposit Insurance Corporation ("FDIC"). As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

46. Plaintiff has failed to perform either obligation under the Basic Contract and is therefore estopped from seeking any recovery from the Defendants.

FOR A THIRD DEFENSE TO THE FIRST CAUSE OF ACTION

47. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

48. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

49. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

50. As part of its representations, Plaintiff advanced construction loan funds pursuant to a "Loan Modification" agreement, attached hereto as Exhibit B, which Defendants were induced to

execute in June 2009.

51. Continuing its representations, Plaintiff postponed the maturity date under the first “Loan Modification” agreement, thereby inducing Defendants to execute a second “Loan Modification” agreement, attached hereto as Exhibit C, in November 2009.

52. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

53. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance. Plaintiff comes before this Court with unclean hands and is therefore barred from seeking any recovery from the Defendants.

FOR A FOURTH DEFENSE TO THE FIRST CAUSE OF ACTION

54. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

55. Plaintiff’s attempts to collect monetary damages from Defendants are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE FIRST CAUSE OF ACTION

56. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

57. By inducing Defendants to continue performance under the Basic Contract and by failing at any time to seek modification of the Basic Contract, Plaintiff has forfeited its claims

against Defendants by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE FIRST CAUSE OF ACTION

58. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

59. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

60. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

61. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

62. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

63. At no time, in negotiating these “Loan Modification” agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including such “Loan Modification” agreements, as the contract of the parties, Plaintiff’s claims are unenforceable due to a failure of contract.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Enforcement of Guaranty – against Defendant Diversified Capital)

64. Defendants incorporate the foregoing answers to the averments of the Complaint

herein, to the extent such answers are not inconsistent with those that follow.

65. Paragraph 36 is denied. The guaranty executed by Diversified Capital was induced by the Basic Contract upon which Diversified Capital relied in good faith to its detriment. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing. Plaintiff has failed to perform either obligation, thereby breaching the Basic Contract and forfeiting any rights under the guaranty executed by Diversified Capital.

66. Responding to Paragraph 37, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. It is further admitted that Diversified Capital has refused to pay. All remaining allegations set out in Paragraph 37 are denied.

67. Paragraph 38 is denied.

68. Paragraph 39 is denied.

FOR A SECOND DEFENSE TO THE SECOND CAUSE OF ACTION

69. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

70. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

71. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

72. Plaintiff has failed to perform either of its obligations under the Basic Contract and

is therefore estopped from enforcing the guaranty executed by Diversified Capital.

FOR A THIRD DEFENSE TO THE SECOND CAUSE OF ACTION

73. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

74. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

75. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

76. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

77. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

78. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from enforcing the guaranty executed by Diversified Capital.

FOR A FOURTH DEFENSE TO THE SECOND CAUSE OF ACTION

79. Defendants incorporate the foregoing answers to the averments of the Complaint

herein, to the extent such answers are not inconsistent with those that follow.

80. Plaintiff's attempts to enforce the guaranty executed by Diversified Capital are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE SECOND CAUSE OF ACTION

81. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

82. By inducing Defendants to continue performance under the Basic Contract and the loan documents, and by failing at any time to seek modification of the Basic Contract, Plaintiff has forfeited any claims under the guaranty executed by Diversified Capital by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE SECOND CAUSE OF ACTION

83. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

84. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

85. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

86. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of

the type contemplated by the Basic Contract, including support for SBA financing.

87. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

88. At no time, in negotiating these “Loan Modification” agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the guaranty executed by Diversified Capital, Plaintiff’s claims are unenforceable due to a failure of contract.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Enforcement of Guaranty – against Defendant Berlye)

89. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

90. Responding to Paragraph 41, it is admitted that Berlye executed a guaranty. However, it is denied that such guaranty may be enforced against Berlye. The Berlye Guaranty was induced by the Basic Contract upon which Berlye relied in good faith to his detriment. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing. Plaintiff has failed to perform either obligation, thereby breaching the Basic Contract and forfeiting any rights under the Berlye Guaranty. To the extent that some other or further response is required, Paragraph 41 is denied.

91. Responding to Paragraph 42, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. It is further admitted that Berlye has refused to pay. All remaining allegations set out in Paragraph 42 are denied.

92. Paragraph 43 is denied.

93. Paragraph 44 is denied.

FOR A SECOND DEFENSE TO THE THIRD CAUSE OF ACTION

94. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

95. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

96. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

97. Plaintiff has failed to perform either obligation under the Basic Contract and is therefore estopped from enforcing the Berlye Guaranty.

FOR A THIRD DEFENSE TO THE THIRD CAUSE OF ACTION

98. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

99. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

100. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

101. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

102. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

103. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from enforcing the Berlye Guaranty.

FOR A FOURTH DEFENSE TO THE THIRD CAUSE OF ACTION

104. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

105. Plaintiff’s attempts to enforce the Berlye Guaranty are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE THIRD CAUSE OF ACTION

106. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

107. By inducing Defendants to continue performance under the Basic Contract and by failing at any time to seek modification of the Basic Contract, Plaintiff has forfeited any claims under the Berlye Guaranty by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE THIRD CAUSE OF ACTION

108. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

109. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

110. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

111. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

112. At no time, in negotiating these “Loan Modification” agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the Berlye Guaranty, Plaintiff’s claims are unenforceable due to a failure of contract.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION
(Mortgage Foreclosure)

113. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

114. Responding to Paragraph 46, such Paragraph incorporates the terms of a legal instrument which is purportedly on record with the Office of the Register of Deeds of Anderson County, South Carolina. Defendants crave reference to such instrument, the terms of which shall

speak for themselves. To the extent that some other or further response is required, Paragraph 46 is admitted on information and belief.

115. Responding to Paragraph 47, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out therein and so deny the same.

116. Responding to Paragraph 48, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. It is further admitted that Defendants have refused to pay. All remaining allegations set out in Paragraph 48, including specifically the allegation that Defendants are in default, are denied.

117. Responding to Paragraph 49, it is admitted that Plaintiff has demanded that Defendants make payments under the contract documents. All remaining allegations set out in Paragraph 49, including specifically the allegation that Defendants are in default, are denied.

118. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 50, and so deny the same. Defendants demand strict proof of such ownership from Plaintiff. The Note and Mortgage referenced in Paragraph 50 do not constitute the Basic Contract of the parties but instead represent partial performance by the contracting parties to the Basic Contract. Moreover, such interest as Plaintiff acquired by transactions alleged in Paragraphs 46 and 47 of the Complaint includes all obligations of the Basic Contract which Plaintiff assumed as assignee. By reason of Plaintiff's prior and contemporaneous breaches of the Basic Contract, Plaintiff is barred from enforcing any part of the Basic Contract against Defendants, including foreclosure of the Mortgage described in the Complaint.

119. Paragraph 51 is denied.

120. Defendants are without knowledge or information sufficient to form a belief as to the

truth of the averments set out in Paragraph 52, and so deny the same.

121. Paragraph 53 is stated in the form of a prayer for relief for which no answer is required, and none is given. To the extent that some other or further response may be required, Paragraph 53 is denied.

FOR A SECOND DEFENSE TO THE FOURTH CAUSE OF ACTION

122. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

123. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

124. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

125. Plaintiff has failed to perform either obligation under the Basic Contract and is therefore estopped from foreclosing the Mortgage described in the Complaint.

FOR A THIRD DEFENSE TO THE FOURTH CAUSE OF ACTION

126. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

127. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

128. Upon assuming all obligations of Haven Trust Bank under the Basic Contract,

Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

129. Plaintiff LNV is a subsidiary of Bcal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

130. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

131. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from foreclosing the Mortgage described in the Complaint.

FOR A FOURTH DEFENSE TO THE FOURTH CAUSE OF ACTION

132. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

133. Plaintiff’s attempts to foreclose the Mortgage described in the Complaint are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE FOURTH CAUSE OF ACTION

134. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

135. By inducing Defendants to continue performance under the Basic Contract and by

failing at any time to seek modification of the Basic Contract, Plaintiff is barred from foreclosing the Mortgage described in the Complaint by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE FOURTH CAUSE OF ACTION

136. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

137. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

138. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

139. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

140. At no time, in negotiating these “Loan Modification” agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the Mortgage described in the Complaint, Plaintiff’s claims are unenforceable due to a failure of contract.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION
(Recovery of Secured Property/Claim & Delivery)

141. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

142. Responding to Paragraph 55, such Paragraph incorporates the terms of a security agreement executed on or about May 15, 2008, between Affordable Hospitality and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such security agreement, the terms of which shall speak for themselves.

143. To the extent that Paragraph 55 requires some other or further response, the allegations of Paragraph 55 are admitted subject to the express qualification and limitation that such security agreement was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Affordable Hospitality relied in good faith on Haven Trust Bank's written commitment and would not have given the security agreement but for Haven Trust Bank's written commitment as the Basic Contract.

144. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments set out in Paragraph 56, and so deny the same. Defendants demand strict proof of such ownership from the Plaintiff.

145. Paragraph 57 is denied.

146. Paragraph 58 is admitted, as Defendants are presently entitled to possession of the property at issue.

147. Responding to Paragraph 59, it is admitted that Plaintiff's only demand for possession of the property at issue has been in the form of the Complaint to which this Answer is submitted in response. It is denied that there has been some other or further demand made by Plaintiff to Defendants. It is further denied that Plaintiff is entitled to present possession of the property at issue. To the extent that some other or further response is required, Paragraph 59 is denied.

148. Responding to Paragraph 60, it is admitted that Defendants are presently in possession

of the property at issue and have a right to such possession. To the extent that some other or further response is required, Paragraph 60 is denied.

FOR A SECOND DEFENSE TO THE FIFTH CAUSE OF ACTION

149. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

150. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

151. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

152. Plaintiff has failed to perform either obligation under the Basic Contract and is therefore estopped from taking possession of the property at issue pursuant to the security agreement referenced above.

FOR A THIRD DEFENSE TO THE FIFTH CAUSE OF ACTION

153. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

154. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

155. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed

by it under the Basic Contract.

156. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

157. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

158. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from taking possession of the property at issue pursuant to the security agreement referenced above.

FOR A FOURTH DEFENSE TO THE FIFTH CAUSE OF ACTION

159. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

160. Plaintiff’s attempts to take possession of the property at issue pursuant to the security agreement referenced above are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE FIFTH CAUSE OF ACTION

161. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

162. By inducing Defendants to continue performance under the Basic Contract and by failing at any time to seek modification of the Basic Contract, Plaintiff is barred from taking

possession of the property at issue pursuant to the security agreement referenced above by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE FIFTH CAUSE OF ACTION

163. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

164. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

165. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

166. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

167. At no time, in negotiating these “Loan Modification” agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the security agreement referenced above, Plaintiff’s claims are unenforceable due to a failure of contract.

FOR A DEFENSE TO THE SIXTH CAUSE OF ACTION
(Appointment of a Receiver)

168. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

169. Paragraph 62 is a conclusion of law for which no response is required, and none is given. To the extent that a response may be required, Defendants have consented to appointment of a receiver in the interest of continuing operations of Microtel Inn & Suites (referred to hereinafter as the “Microtel”) in Anderson County to preserve its value and protect its employees.

170. Paragraph 63 is a conclusion of law for which no response is required, and none is given. To the extent that a response may be required, Defendants have consented to appointment of a receiver.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION
(Recovery of Proceeds of Insurance Policy)

171. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

172. Responding to Paragraph 65, such Paragraph incorporates the terms of an insurance assignment between Affordable Hospitality and Berlye and third-party Haven Trust Bank to secure payment of a Promissory Note. The Defendants crave reference to such assignment, the terms of which shall speak for themselves.

173. To the extent that Paragraph 65 requires some other or further response, the allegations of Paragraph 65 are admitted subject to the express qualification and limitation that such assignment was induced by the written commitment given by Haven Trust Bank to Defendants, attached hereto as Exhibit A, which constitutes the Basic Contract. Affordable Hospitality relied in good faith on Haven Trust Bank’s written commitment and would not have given the assignment but for Haven Trust Bank’s written commitment as the Basic Contract.

174. Defendants are without knowledge or information sufficient to form a belief as to the

truth of the averments set out in Paragraph 66, and so deny the same. Defendants demand strict proof of such ownership from the Plaintiff. The insurance assignment was granted to secure payment of a Promissory Note which does not constitute the Basic Contract of the parties but instead represents partial performance by the contracting parties to the Basic Contract. Moreover, such interest as Plaintiff acquired by transactions alleged in Paragraph 66 of the Complaint includes all obligations of the Basic Contract which Plaintiff assumed as assignee. By reason of Plaintiff's prior and contemporaneous breaches of the Basic Contract, Plaintiff is barred from enforcing any part of the Basic Contract against Defendants, including liquidation of the insurance policy subject to the assignment referenced above.

175. Paragraph 67 is denied.

176. Paragraph 68 is an assertion of intention for which no response is required, and none is given. To the extent that a response may be required, Paragraph 68 is denied.

FOR A SECOND DEFENSE TO THE SEVENTH CAUSE OF ACTION

177. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

178. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

179 Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

180. Plaintiff has failed to perform either obligation under the Basic Contract and is

therefore estopped from liquidating the insurance policy referenced above.

FOR A THIRD DEFENSE TO THE SEVENTH CAUSE OF ACTION

181. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

182. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

183. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

184. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

185. Nevertheless, Plaintiff induced Defendants to execute two “Loan Modification” agreements, attached hereto as Exhibit B and Exhibit C.

186. Notwithstanding its acts and representations, Plaintiff has failed and refused to perform its obligations under the Basic Contract while inducing Defendants to rely upon such promised performance through its course of conduct, as described hereinabove. Plaintiff comes before this Court with unclean hands and is therefore barred from liquidating the insurance policy referenced above.

FOR A FOURTH DEFENSE TO THE SEVENTH CAUSE OF ACTION

187. Defendants incorporate the foregoing answers to the averments of the Complaint

herein, to the extent such answers are not inconsistent with those that follow.

188. Plaintiff's attempts to liquidate the insurance policy referenced above are subject to reduction by and through the doctrine of loss avoidance, as Plaintiff has failed to mitigate the nature and extent of any alleged damages.

FOR A FIFTH DEFENSE TO THE SEVENTH CAUSE OF ACTION

189. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

190. By inducing Defendants to continue performance under the Basic Contract and by failing at any time to seek modification of the Basic Contract, Plaintiff is barred from liquidating the insurance policy referenced above by and through the doctrine of laches.

FOR A SIXTH DEFENSE TO THE SEVENTH CAUSE OF ACTION

191. At all times relevant, Plaintiff has been and remains bound by the written commitment of Haven Trust Bank, attached hereto as Exhibit A, to fund a permanent mortgage and to assist Defendants in obtaining SBA financing.

192. Upon assuming all obligations of Haven Trust Bank under the Basic Contract, Plaintiff represented to the Defendants that it was prepared fully to perform the obligations assumed by it under the Basic Contract.

193. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

194. Nevertheless, Plaintiff induced Defendants to execute two "Loan Modification" agreements, attached hereto as Exhibit B and Exhibit C.

195. At no time, in negotiating these “Loan Modification” agreements, did Plaintiff propose or even suggest a modification of the Basic Contract. Insofar as Plaintiff relies upon the loan documents referenced in the Complaint, including the insurance policy referenced above, Plaintiff’s claims are unenforceable due to a failure of contract.

FOR A DEFENSE TO THE PRAYER FOR RELIEF

196. Responding to the Paragraph beginning with the word “Wherefore,” and including each and every subpart, such Paragraph constitutes a prayer for relief for which no response is required, and none is given. To the extent that a response may be required, such Paragraph is denied.

197. Unless specifically admitted, qualified, or otherwise explained in the preceding paragraphs, each and every one of the allegations of the Complaint is denied.

RESERVATION OF RIGHTS

198. Defendants incorporate the foregoing answers to the averments of the Complaint herein, to the extent such answers are not inconsistent with those that follow.

199. Defendants hereby expressly reserve the right to alter, amend, supplement, modify, or otherwise revise this Answer to the Complaint as investigation continues.

GENERAL ALLEGATIONS IN SUPPORT OF THE COUNTERCLAIM

200. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

201. Defendant Affordable Hospitality Group–Anderson, LLC (“Affordable Hospitality”) is a limited liability company organized and existing under the laws of the State of Georgia, authorized to do business and doing business in Anderson County, South Carolina.

202. Defendant Diversified Capital Investment Group, LLC (“Diversified Capital”) is a

limited liability company organized and existing under the laws of the State of Georgia, authorized to do business and doing business in Anderson County, South Carolina.

203. Defendant Jay Berlye (“Berlye”) is a citizen and resident of the State of Georgia, doing business in Anderson County, South Carolina.

204. Plaintiff LNV Corporation (“LNV”) is a business entity incorporated and existing under the laws of the State of Nevada, doing business in Anderson County, South Carolina.

205. LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC.

206. Upon information and belief, LNV is the successor-in-interest to certain assets and interests which previously belong to Haven Trust Bank.

207. Haven Trust Bank (“Haven Trust”) was a business entity incorporated and existing under the laws of the State of Georgia, doing business in Anderson County, South Carolina.

208. Haven Trust has been dissolved.

209. On December 12, 2008. Haven Trust was closed by the Georgia Department of Banking and Finance and the FDIC was named receiver.

210. The Court is vested with subject matter jurisdiction by virtue of Article V of the South Carolina Constitution, §11, and South Carolina Code § 14-5-310 *et. seq.*

211. The Court has personal jurisdiction over the Parties by virtue of South Carolina Code §§ 36-2-802 and 36-2-803.

212. Venue is proper under South Carolina Code § 15-7-30.

FOR A FIRST CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Breach of Contract)

213. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

214. During 2007, Defendants Affordable Hospitality and Berlye negotiated with Haven Trust Bank to obtain construction and permanent first mortgage financing for construction and operation of a Microtel hotel in Anderson County, South Carolina. On November 6, 2007, as a result of these negotiations, Haven Trust Bank provided to Defendants a written “Loan Commitment,” attached hereto as Exhibit A, which recited the following in its preamble:

“Subject to the facts presented by you and further subject to the terms and conditions hereafter set forth, Haven Trust Bank (Bank) commits to Affordable Hospitality Group–Anderson, LLC d/b/a Microtel Inn & Suites, to place a loan in conjunction with a 504 loan from the U.S. Small Business Administration (SBA), with the provisions as described in this letter. This commitment is subject to satisfactory completion of credit investigation and analysis, satisfactory documentation and such other terms and conditions as are determined by Bank and SBA.”

215. As its purpose, the written commitment stated the following: “To provide construction and permanent mortgage financing associated with Microtel Inn & Suites to be located on Electric City Boulevard in Anderson, South Carolina.”

216. The written commitment contemplated three loans as follows: “a. Construction Loan of \$3,384,000[;] b. Conventional Permanent Loan of \$2,115,000[;] c. SBA 504 Interim Loan of \$1,269,000.”

217. The terms of the contemplated loans were as follows:

“a. Construction loan shall be for a period of nine (9) months from the date of closing. Interest will be accrued during the construction period and interest payments will be paid from permanent loan proceeds.

b. Proposed permanent loan will be for a period of twenty (20) years

from the date of closing payable in two hundred and forty (240) installments of principal and interest.
c. SBA 504 Interim Loan will be for a period of three (3) months.”

218. Defendant Affordable Hospitality and Defendant Berlye as Guarantor accepted the written commitment on November 6, 2007. Acceptance of the written commitment by these Defendants formed the Basic Contract at issue in this action.

219. In good faith, the parties commenced performance under the Basic Contract. On May 15, 2008, in partial performance of the parties’ Basic Contract, the following instruments (loan documents) were executed:

- A Promissory Note to Haven Trust Bank by Affordable Hospitality (Exhibit A to the Complaint)
- A Guaranty to Haven Trust Bank by Diversified Capital (Exhibit B to the Complaint)
- A Construction Loan Agreement by and between Affordable Hospitality and Haven Trust Bank (Exhibit C to the Complaint)
- A Mortgage and Security Agreement to Haven Trust Bank by Affordable Hospitality (Exhibit D to the Complaint)
- A Security Agreement by and between Affordable Hospitality as Debtor and Haven Trust Bank as Secured Party (Exhibit E to the Complaint)
- An Assignment of Leases and Rents from Affordable Hospitality to Haven Trust Bank (Exhibit G to the Complaint)
- An Insurance Policy Collateral Assignment from Jay Berlye to Haven Trust Bank (Exhibit H to the Complaint)

220. All the instruments listed above, together with subsequent obligations undertaken by Defendants, were executed and entered into by Defendants in good faith reliance upon expected performance by the parties of their obligations under the Basic Contract.

221. From May 2008 until December 2008, the parties performed their respective duties under the Basic Contract, from time to time advancing and disbursing funds, accomplishing construction of the planned hotel, providing progress reports and other documentation as well as

other actions contemplated by the Basic Contract.

222. On or about December 12, 2008, Haven Trust Bank was closed by the Georgia Department of Banking and Finance and the FDIC was named Receiver.

223. From December 2008, to the extent possible, Defendants continued performance under the Basic Contract.

224. On April 20, 2009, a “Loan Modification Agreement” was concluded by and between FDIC and Defendants. This agreement is attached to the Complaint as Exhibit I.

225. In May 2009, Defendants completed performance under the Construction Loan Agreement, and the Microtel, contemplated by the parties’ Basic Contract, opened for business. At that time, Haven Trust Bank would have been required to grant the permanent loan and assist Defendants in obtaining the SBA 504 Interim Loan contemplated by the parties’ contract.

226. On May 1, 2009, FDIC notified Defendants that Defendants’ Promissory Note to Haven Trust Bank had been sold and servicing of the loan had been transferred to Plaintiff LNV.

227. At the time it purchased Defendants’ Promissory Note, Plaintiff knew or should have known that as successor to Haven Trust Bank under the parties’ Basic Contract, it was required to grant the permanent loan and assist Defendants in obtaining the SBA 504 Interim Loan.

228. In fact, however, Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

229. In good faith and in reliance upon the parties’ Basic Contract, Defendants began immediately to negotiate with Plaintiff the future performance of their respective duties under the Basic Contract.

230. On or about June 1, 2009, a "Loan Modification Agreement," attached hereto as Exhibit B, was concluded by and between Plaintiff and Defendants under which Plaintiff advanced approximately Two Hundred Fifty Thousand Dollars to the Defendants.

231. By the express terms of the June 2009, the parties contemplated full performance of the Basic Contract in that the modification authorized transfer of \$100,000 from a certificate of deposit that was being "held as additional collateral for the permanent loan" into a cash reserve for the benefit of the Plaintiff "until such time as the Small Business Administration" funds its new subordinate loan" whereupon the cash reserve would be used to pay closing costs "of the permanent loan, the SBA loan, or as otherwise determined by Lender [the Plaintiff]."

232. In August 2009, Plaintiff offered a draft commitment letter to Defendants by which Plaintiff represented that it would continue the performance promised by Haven Trust Bank under the Basic Contract, in granting a permanent loan and assisting in procurement of a 504 Interim Loan from the SBA.

233. Prior to August 2009, Plaintiff had never originated a loan of the type contemplated by the Basic Contract nor participated in a loan transaction that involved SBA financing.

234. On or about November 10, 2009, a second "Loan Modification Agreement," attached hereto as Exhibit C, was concluded by and between Plaintiff and Defendants which changed the maturity date from December 6, 2009, to March 31, 2010.

235. At no time during the negotiation of the first or the second loan modification agreement did the Plaintiff propose any modification of the Basic Contract whatsoever, much less any modification of the terms calling for permanent loan financing or assistance in obtaining the SBA 504 Interim Loan.

236. On November 10, 2009, on the same day that the Plaintiff and Defendants concluded the second “Loan Modification Agreement,” Howard Schreiber, as an attorney representing Plaintiff LNV, communicated to Reid Harbin, attorney for the Defendants, that the new permanent loan commitment from LNV under the Basic Contract had received committee approval.

237. On November 11, 2009, Howard Schreiber reported to Reid Harbin that documents for the new permanent loan commitment were being sent to Defendant Berlye “that day” and that the terms for concluding SBA participation might require further revisions.

238. On November 30, 2009, Mark Pulliam, as agent of Plaintiff LNV, sent to Defendant Jay Berlye a proposed instrument releasing to LNV an additional One Hundred Thousand Dollars (\$100,000.00) as collateral under the Basic Contract.

239. In reliance upon Plaintiff LNV’s continued performance of its obligation to grant a permanent loan, with SBA participation, under the Basic Contract, the Defendants obtained a one-year extension of the SBA approval in December 2009, even though Plaintiff had not yet sent its proposed permanent loan commitment letter to Defendants.

240. On January 28, 2010, Howard Schreiber sent to Reid Harbin a “redline” version of the new commitment letter and indicated that Mark Pulliam, as agent of LNV, approved the document, although a further and final approval by Pulliam’s supervisor would be awaited before final closing. Nevertheless, Schreiber planned to prepare a closing checklist.

241. The proposed permanent loan commitment letter sent by Howard Schreiber to the Defendants and their attorney precisely implemented the terms of the Basic Contract, a fact which clearly conveyed to the Defendants the intention of Plaintiff LNV to fully perform the obligations which it had assumed as successor to Haven Trust Bank through its purchase of the Haven Trust

Bank loan portfolio from the FDIC.

242. In February 2010, the Defendants prepared for closing of the permanent loan and funding of the SBA 504 loan in coordination with George Long, agent of the Appalachian Development Corporation which served as the SBA Certified Development Corporation (CDC) processing the parties' performance under the Basic Contract. In late February 2010, Defendants through their attorney requested that Plaintiff LNV contact Appalachian Development Corporation directly to facilitate SBA 504 funding.

243. On February 24, 2010, Mark Pulliam communicated by email with Defendant Berlye promising to "call you tomorrow morning to discuss" – a reference indicating progress toward closing the permanent loan and accomplishing SBA 504 funding.

244. In March 2010, delays in closing the permanent loan arose due to requirements for SBA to review all construction documentation and also to sell its debenture. Defendants urged Mark Pulliam, as agent for the Plaintiff LNV, to initiate direct contacts and sharing of information with Appalachian Development Corporation.

245. Plaintiff LNV remained unresponsive to Defendants' inquiries from April 2010 until July 12, 2010, at which time Mark Pulliam contacted Defendant Berlye. Subsequently, communications between Plaintiff and Defendants were conducted through Marc Occhiuti, introduced as a specialist in hotel operations, acting as Plaintiff's agent. Mr. Occhiuti began requiring information from Defendants regarding operations of the Microtel as well as financial data about Defendants. From these communications, Defendants justifiably believed that progress to close the permanent loan was being made.

246. By September 2010, as Plaintiff's conduct began to appear dilatory, Defendants

requested direct negotiations regarding performance under the Basic Contract. Negotiations in fact commenced, leading in early October to a discussion of proposals for modification of the Basic Contract. Relying upon these negotiations, Defendants sought a further extension of the SBA authorization through early December 2011. In order for Defendants to receive the extension, however, Plaintiff LNV would need to contact Appalachian Development Corporation directly to provide “paperwork.” This fact was communicated directly to Mark Pulliam and Marc Occhiuti on November 22, 2010.

247. On November 23, 2010, Mark Pulliam sent a message to George Long at Appalachian Development Corporation stating that: “LNV Corporation (holder of the Note on the [AHG] collateral) will be reviewing the prior loan commitment (by Haven Trust Bank) and will be working with [Berlye] on the loan in the next few weeks.” On November 24, 2010, George Long informed Mark Pulliam that the SBA authorization had been extended until December 6, 2011.

248. From November 2010 until March 2011, Plaintiff LNV continued its practice of desultory communications until, through its present counsel, Plaintiff declared the construction loan to be in default on March 10, 2011. Inconclusive negotiations continued until filing of the within action in September, 2011.

249. At all times relevant, Defendants justifiably relied upon Plaintiff’s actions and representations. Defendants operated the Microtel prudently in performance of the Basic Contract anticipating performance by the Plaintiff as successor to Haven Trust Bank.

250. At all times relevant, Plaintiff knew or should have known that it lacked knowledge and experience to assist Defendants in obtaining the SBA 504 Interim Loan.

251. Plaintiff knew or should have known that the Basic Contract required such knowledge

and experience and that, therefore, measures needed to be taken so that it could qualify and satisfactorily perform its duties as successor to Haven Trust Bank under the Basic Contract.

252. At no time did Plaintiff undertake measures to qualify as a lender under SBA rules, despite multiple and repeated requests by Defendants so to do.

253. Commencing in June 2009, Defendants proposed various avenues to qualify Plaintiff for SBA purposes.

254. These proposals, and communications from others on behalf of Defendants, elicited no response or action from Plaintiff.

256. On information and belief, Plaintiff has not originated any comparable commercial loans in conjunction with the SBA.

257. For extended periods of time, especially in early and late 2010, Plaintiff ceased all communications with Defendants.

258. Defendants repeatedly sought to learn Plaintiff's intentions, repeatedly sought compliance by Plaintiff with the Basic Contract, and/or in the alternative repeatedly sought to negotiate a modification of the Basic Contract. Defendants' communications elicited no meaningful response from Plaintiff.

259. Plaintiff has breached material and substantial terms of the Basic Contract of the parties as follows:

- (a) By failing to provide Defendants with permanent first mortgage financing;
- (b) By failing to assist Defendants in obtaining SBA financing or even to participate in that process.

260. As a result of Plaintiff's failure to honor the terms of the Basic Contract and to make the permanent loan contemplated by the Basic Contract, Defendants have lost the opportunity to obtain the SBA 504 Interim Loan or any other financing to operate the Microtel and/or to attract new capital and stabilize the operations of the Microtel or prudently to manage its financial affairs as they had planned.

261. As a result of Plaintiff's material and substantial breaches of the Basic Contract, Defendants have sustained and will continue to sustain actual, consequential, direct and incidental damages in an amount not less than Three Million Dollars and 00/cents (\$3,000,000).

FOR A SECOND CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Breach of the Duty of Good Faith and Fair Dealing)

262. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

263. In addition to the material and substantial breaches of the Basic Contract, Plaintiff has breached the duty of good faith and fair dealing implied in every contract through its course of dealing, including but not limited to recurring misrepresentations accompanied by failure and refusal to communicate with Defendants.

264. As a result of Plaintiff's breach of its duty of good faith and fair dealing, Defendants have sustained and will continue to sustain actual, consequential, direct and incidental damages in an amount not less than Three Million Dollars and 00/cents (\$3,000,000).

FOR A THIRD CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Breach of Contract with Fraudulent Intent)

265. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

266. At the time it purchased the Defendants' Promissory Note and mortgage, as well as acquiring its interest in the related construction loan documents, Plaintiff did not intend to perform the remaining obligations of Haven Trust Bank under the Basic Contract.

267. Plaintiff LNV is a subsidiary of Beal Bank USA, a chartered financial institution regulated by the FDIC. As a business practice, neither LNV nor Beal Bank USA originate loans of the type contemplated by the Basic Contract, including support for SBA financing.

268. Plaintiff, however, fraudulently represented to Defendants that it did intend to perform such obligations.

269. Plaintiff's fraudulent intent is demonstrated by its initial representation that it would grant the permanent loan to Defendants and assist in obtaining SBA 504 Interim Loan, including but not limited to its draft commitment letter transmitted to Defendants in August 2009 and its communications from late November 2009 through November 2010.

270. Plaintiff's initial misrepresentations were followed by extended periods of inaction and failure to respond to Defendant's communications culminating in this action seeking foreclosure.

271. Plaintiff's breach of the Basic Contract was accompanied by fraudulent acts, including but not limited to advancing funds which induced Defendants to execute two loan modification agreements in justifiable reliance upon anticipated performance by the Plaintiff of its duties as successor to Haven Trust Bank under the Basic Contract.

272. As a result of Plaintiff's material and substantial breaches of the Basic Contract, accompanied by fraudulent intent and fraudulent acts, Defendants are entitled to recover actual, consequential, direct and incidental damages in an amount not less than Three Million Dollars and 00/cents (\$3,000,000) as well as punitive damages in such amount as a jury may deem proper.

FOR A FOURTH CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

273. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

274. Plaintiff's practices in purchasing, holding and enforcing loan instruments acquired from the FDIC are oppressive, deceptive and capable of repetition to the detriment of the public interest and therefore violate the South Carolina Unfair Trade Practices Act (SCUTPA), South Carolina Code § 39-5-10 *et seq.*

275. Defendants request entry of judgment against Plaintiff to include all actual and statutory damages provided by the SCUTPA.

FOR A FIFTH CAUSE OF ACTION BY WAY OF COUNTERCLAIM
(Tortious Interference with Prospective Contractual Relations)

276. Defendants incorporate the foregoing allegations herein, to the extent such allegations are not inconsistent with those that follow.

277. In May 2009, after acquiring its interest in Defendant's Promissory Note, mortgage and other construction loan documents, Plaintiff knew that Defendants were completing their contract performance under the construction loan agreement which was part of the Basic Contract with Haven Trust Bank.

276. Plaintiff also knew that under the Basic Contract, Defendants would soon require a permanent loan and assistance in obtaining a 504 Interim Loan from the SBA.

277. Plaintiff knew that the permanent loan and SBA interim financing both represented business opportunities justifiably expected by Defendants under the Basic Contract.

278. Plaintiff never intended to provide any assistance to Defendants and made no effort

to qualify as a lender under SBA rules for the purpose of assisting Defendants in obtaining SBA interim financing.

279. SBA interim financing represented a prospective contractual relation which Defendants could have established with the assistance of Plaintiff.

280. Had Plaintiff timely and promptly performed the obligations of the Basic Contract, Defendants would have received funding from SBA based on the Microtel's projected income.

281. After its initial misrepresentations, Plaintiff conducted a calculated course of conduct designed to delay its grant of a permanent loan and to prevent SBA 504 funding of the loan. Plaintiff's declaration of default in March 2011, seven months before final expiration of the SBA authorization, finally gave rise to Defendant's claim for tortious interference with a prospective contractual relation.

282. By the time the Defendants realized that Plaintiff would not provide permanent financing or assistance in obtaining the SBA Interim Loan, Defendants were unable to obtain alternative financing with the result that Plaintiff has brought this action.

283. As a result of Plaintiff's delay and inaction, Defendants were deprived of the opportunity to obtain advantageous long-term financing based on the projected revenues of the Microtel.

284. Plaintiff's failure to provide assistance in obtaining SBA financing was unjustified, motivated by an improper purpose and aggravated by an unconscionable failure and refusal to communicate with Defendants.

285. As a result of Plaintiff's tortious interference with the prospective contractual relation offered by SBA interim financing, Defendants are entitled to recover actual, consequential, direct

and incidental damages in an amount not less than Three Million Dollars and 00/cents (\$3,000,000) as well as such punitive damages as a jury may deem proper

WHEREFORE, having fully responded to the allegations of the Complaint, and having stated its counterclaim against LNV Corporation, Defendants Affordable Hospitality Group–Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye respectfully request an order of the Court which dismisses Plaintiff's Complaint with prejudice, grants Defendants judgment as a matter of law with actual, consequential, direct, incident, punitive and statutory damages as permitted by law, and awards Defendants costs, fees, and expenses, to include attorneys' fees, incurred in the course of bringing or defending this action.

Respectfully submitted,

BY: _____
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November 26, 2012
Columbia, South Carolina

*Attorney for Defendants,
Affordable Hospitality–Anderson, LLC,
Diversified Capital Investment Group, LLC, and
Jay Berlye*

DEMAND FOR TRIAL BY JURY

I, the undersigned legal representative for the Defendants, Affordable Hospitality Group–Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye respectfully request that a trial by jury be had upon all issues presented in this matter for which a jury trial is available.

Ronald M. Childress

STATE OF SOUTH CAROLINA	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
	)	2011-CP-04-02728
LNv CORPORATION,	)	
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
AFFORDABLE HOSPITALITY	)	
GROUP-ANDERSON LLC,	)	
DIVERSIFIED CAPITAL	)	
INVESTMENT GROUP, LLC;	)	
JAY BERLYE; ANDERSON COUNTY,	)	
SOUTH CAROLINA; AND	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
DEFENDANTS.	)	DATE: FEBRUARY 29, 2012

MOTIONS

B E F O R E:

THE HONORABLE ALEXANDER STEPHENS MACAULAY

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

BRADWELL RUSTIN, ESQUIRE
BENJAMIN RUSH SMITH, III, ESQUIRE
 ATTORNEYS FOR PLAINTIFF, LNv

STEVEN EDWARD BUCKINGHAM, ESQUIRE
RON M. CHILDRESS, ESQUIRE
 ATTORNEYS FOR THE DEFENDANT, AFFORDABLE HOSPITALITY
 GROUP-ANDERSON, DIVERSIFIED CAPITAL INVESTMENT
 GROUP, LLC AND JAY BERLYE

MICHAEL STUART PITTS, ESQUIRE
 ATTORNEY FOR ANDERSON COUNTY
MILTON GARY KIMPSON, ESQUIRE
 ATTORNEY FOR THE STATE OF SOUTH CAROLINA

JO RICE
 CIRCUIT COURT REPORTER

P R O C E E D I N G S

1
2 THE COURT: LNV Corporation versus Affordable Hospital
3 Group-Anderson, LLC versus Capital Investment Groups, LLC,
4 Jay Berlye, Anderson County, South Carolina and the State
5 of South Carolina, 2011-CP-04-02728. Mister Rustin here on
6 behalf of the Plaintiff and Mr. Buckingham on behalf of
7 Affordable Hospitality Group, Diversified Capital
8 Investment and Jay Berlye, and Mr. Pitts on behalf of
9 Anderson County and Mr. Kimpson on behalf of The State of
10 South Carolina. Do we have all those people here?

11 MR. RUSTIN: Yes, Your Honor. Rush Smith is joining
12 me on behalf of LNV Corporation.

13 THE COURT: All right.

14 MR. SMITH: Also, Your Honor, if I may approach, I
15 have binders for the Court's benefit.

16 THE COURT: Very good.

17 MR. SMITH: And because I was a clerk once, I have one
18 for the clerk, too.

19 THE COURT: Don't spoil him.

20 MR. SMITH: I think it's the clerkship that will spoil
21 him, Judge.

22 MR. SMITH: Your Honor, I spoke with your clerk
23 earlier. Your docket shows that there are two motions to
24 dismiss, but really there is just one pending before the
25 Court, because one was a motion to dismiss their original

LVN V AFFORDABLE HOSPITALITY GROUP-ANDERSON, LLC, ET AL.

1 Complaint. They've amended their Complaint and so we've
2 amended the Motion to Dismiss and so there is just one
3 pending Motion to Dismiss.

4 THE COURT: Is that all we have this morning?

5 MR. RUSTIN: Your Honor, there's also a motion to
6 strike a jury demand for certain damages and it's my
7 understanding Mr. Buckingham does intend to go forward on
8 the discovery matter as well.

9 MR. BUCKINGHAM: That's correct, Judge.

10 THE COURT: All right, in the order of filing, which
11 do we have first? The Motion to Dismiss?

12 MR. SMITH: Yes, Your Honor.

13 THE COURT: All right. Mister Smith?

14 MR. SMITH: Thank you very much, Your Honor. This is
15 a motion to dismiss under Rule 12(b)(6), a plain old
16 failure to state facts sufficient to constitute a cause of
17 action, so we're looking at the allegations of the
18 pleadings. The counterclaims are relevant to this and
19 we're also looking at the exhibits to the counterclaim
20 which are referred to, incorporated herein, specific ---

21 THE COURT: They are exhibits to the counterclaim, for
22 the pleadings, so you are not introducing any other matter
23 that might make this 12(b)(6) motion a summary judgment?

24 MR. SMITH: That's correct, Your Honor. We are not
25 asking the Court to convert it under the Brazell case that

1 the Supreme Court has recognized that ---

2 THE COURT: I understand that.

3 MR. SMITH: --- are a part of the pleadings. There are
4 several reasons that the Complaint fails to state a claim,
5 fails to state facts sufficient to constitute a cause of
6 action. I'm going to go through those in series.

7 First of all, the exhibits that we will refer to are
8 Loan Modification Agreements that the Plaintiff, that the
9 Defendants allege they signed that contain releases. Now,
10 I won't read the releases in their entirety, but I will hit
11 the high points. One of those releases was signed on
12 June 1, 2009, Exhibit "B". Another was signed November 10,
13 2009. That's Exhibit "C". They are materially the same
14 and so I'll just look at Exhibit "C". In it, the borrower
15 and the guarantor, that is the Defendants, release, fully,
16 finally and completely release and forever discharge the
17 original lender, the FDIC, and their successors and
18 assigns. According to the allegations, the pleadings, the
19 assigns, the successors, would include the Plaintiff in
20 this case, LNV Corporations, Inc. What is released?
21 According to the terms of the release, the Loan
22 Modification Agreement release, these are unambiguous. The
23 following are released: Claims, liabilities, obligations,
24 demands, causes of action of any nature, defenses to the
25 counterclaim arising prior to the execution of the release,

LNV V AFFORDABLE HOSPITALITY GROUP-ANDERSON, LLC, ET AL.

1 the last of which was signed, as I said, on November 10,
2 2009. So, if we turn to the Complaint, excuse me, turning
3 to the counterclaim, the question is: are the allegations
4 there; claims, liabilities, obligations, demands, and
5 causes of action arising prior to that date? And they are,
6 Your Honor.

7 Walking through the allegations in the counterclaim,
8 the thing that the Defendants rely on is a Commitment
9 Letter by Haven Trust Bank, dated November 6, 2009,
10 approximately two years before that last release. They say
11 that this is the obligation that LNV succeeded to when it
12 took the loan that's the subject of this lawsuit. The
13 things that they claim the Commitment Letter required are
14 for the lender to make the permanent loan and to procure
15 SBA financing. According to the allegations of the
16 Complaint, paragraph 225 ---

17 THE COURT: Counterclaim.

18 MR. SMITH: Counterclaim. Excuse me.

19 THE COURT: I'm not being factitious, but I do want to
20 be sure that I'm following.

21 MR. SMITH: Yes, sir. According to the allegations of
22 the counterclaim, paragraph 225, the Defendants completed
23 performance of this, what they've alleged to be a basic
24 contract, giving rise to the obligation to make the SBA
25 loan a permanent loan, and that's paragraph 225 of the

1 counterclaim, and they say that happened in May of 2009.
2 They go on to allege in paragraph 226 that they were
3 notified that the Defendants had taken over the loan and
4 servicing on May 1, 2009. They allege in paragraph 229,
5 that they began to negotiate immediately. After being
6 notified that LNV was taking over the loan, they began to
7 negotiate, immediately, with LNV, and that's paragraph 229
8 about performance under this contract. In paragraphs 238
9 and 240, they allege that they proposed a number of ways in
10 which LNV could procure this SBA financing and LNV did not
11 respond. Shortly thereafter, June 1, 2009, they signed the
12 Loan Modification Agreement that contained the release and
13 that is Exhibit "B". It contains the release that I
14 highlighted for the Court just a minute ago. They go on to
15 allege that after they signed that loan modification and
16 release, LNV offered to draft a commitment letter and,
17 according to their memorandum in opposition to our motion
18 to dismiss in late 2009, LNV showed signs that it was not
19 going to form another loan under the "basic contract". The
20 -- what happened next, November 10, 2009, the Defendants
21 executed another Loan Modification Agreement. That Loan
22 Modification Agreement included the release that I've
23 highlighted for Your Honor. I scoured through the
24 counterclaim looking for dates that came after November 10,
25 2009, the date that Exhibit "C" to the counterclaim, the

1 release, was executed. I found none. It's clear from the
2 allegations of the counterclaim that the obligation stems
3 from this so-called "basic contract" of November, 2007.
4 The duty of performance arose in May of 2009, before the
5 first release and loan modification was executed.
6 Negotiations occurred, the duty existed, the negotiations
7 occurred and it's alleged, in paragraphs 238 and 240 and
8 elsewhere, that LNV never did what the Defendants claim the
9 commitment letter required them to do and yet, on November
10 10, 2009, they executed a release that is Exhibit "C".

11 It's an unusual case, that we have the pleadings that
12 we have before us, but we do. We've got a release that the
13 Defendants admit, they alleged they signed, we've got the
14 allegations of the counterclaims that fall squarely within
15 that release and so, that's the first reason that this
16 Complaint fails to state a cause of action on these facts.

17 THE COURT: Again, we're talking about the
18 counterclaim.

19 MR. SMITH: The counterclaim.

20 THE COURT: All right. Anything else on that point,
21 or are you done?

22 MR. SMITH: That's all for that point, Your Honor.

23 THE COURT: Let's see if that's what the Defense says.

24 MR. SMITH: All right, sir.

25 THE COURT: Yes, sir?

1 MR. CHILDRESS: Thank you, Your Honor. I'm Ron
2 Childress, up from Columbia today, aiding Mr. Buckingham
3 today.

4 THE COURT: Okay, and you are with ---

5 MR. CHILDRESS: I'm on my own. I've just joined the
6 Defense team. I'm not with Gallivan, Bass, White and Boyd.

7 THE COURT: But you are representing ---

8 MR. CHILDRESS: Yes, I am.

9 THE COURT: Who? Mr. Berlye?

10 MR. CHILDRESS: The Defendants.

11 THE COURT: Affordable, Diversified and Berlye?

12 MR. CHILDRESS: Steve is the captain of the team and
13 I'm just a member of the defense.

14 MR. BUCKINGHAM: Yes, sir.

15 THE COURT: That's all I need to know. All right.
16 And, excuse me, I forgot the name, please?

17 MR. CHILDRESS: Childress.

18 THE COURT: Childress. Very good. Thank you, sir.
19 All right, Mr. Childress.

20 MR. CHILDRESS: Yes, sir. I'd be glad to answer the
21 argument on the matter of the releases. The curiosity
22 here, of course, is that the motion to dismiss is
23 completely ungrounded. They don't control SBA and we'll
24 speak to that point. The matter of the releases, as a part
25 of their memorandum, which I'm sure the Court received,

1 along with us, yesterday afternoon, none the less, we are
2 quite ready to address it. The releases, to which, upon
3 which the Plaintiffs rely, are a part of a construction
4 loan agreement that was the first phase of the basic
5 contract which out counterclaim alleges. There was a basic
6 contract and I will be happy to speak more to that, but I
7 don't want to take up the Court's time ---

8 THE COURT: Take up the Court's time as much as you
9 feel it's necessary.

10 MR. CHILDRESS: Thank you, sir. Thank you very much.

11 THE COURT: I'm sure you will be relevant and
12 material.

13 MR. CHILDRESS: Well, with the Court's blessing, I
14 will proceed.

15 THE COURT: Okay.

16 MR. CHILDRESS: The Defendants in this case, in 2007 --
17 counsel mis-stated it being in November of 2009, but I'm
18 sure that was inadvertent -- The Defendants negotiated with
19 a bank called Haven Trust in Atlanta.

20 THE COURT: Well, that was the original group.

21 MR. CHILDRESS: That was the original and we ---

22 THE COURT: But he was addressing these ---

23 MR. CHILDRESS: Loan Modification Agreements.

24 THE COURT: Loan Modification Agreements in June of
25 2009 to November of 2009. I don't know that he mis-stated

1 anything.

2 MR. CHILDRESS: No, no, no. He was quite correct in
3 citing our exhibits.

4 THE COURT: I just want to be sure I didn't miss
5 something.

6 MR. CHILDRESS: No, no. You did not. The basic
7 contract that was a Commitment Letter signed by Mr. Berlye
8 in November, 2007, had three aspects to it, three phases.
9 The first was a construction loan which was concluded as a
10 Construction Loan Agreement in May of 2008. All of the
11 loan documents upon which the Plaintiff relied come from
12 that Construction Loan Agreement. Now, the basic agreement
13 consisted, not just of the construction loan, but at the
14 end of the construction -- and the construction loan was
15 3.4 million dollars. At the completion of the construction
16 loan, which was supposed to take nine months, then that
17 debt would be replaced or turned into or converted into a
18 permanent loan for twenty years and then an interim loan
19 for three months for which SBA would come in and pay the
20 balance, but the two, second and third phases of the basic
21 contract, amounted to the 3.4 million of the construction
22 loan. So, what the Plaintiffs are relying on here and what
23 is actually done in this foreclosure action as a whole is
24 pretend, if I might be so bold as to say, that the
25 Construction Loan Agreement in May, 2008, is the original

1 loan and there is nothing else in the world but this loan
2 agreement. No, as a matter of fact, there was a permanent
3 loan contemplated by the parties and SBA interim loan phase
4 after the completion of the construction.

5 To everyone's surprise, what happened was, in December
6 of 2008, the original bank went away. It was closed by the
7 State of Georgia, FDIC became the receiver, and the parties
8 sort of moved along until finally the motel was actually
9 opened for occupancy in May, 2009. Coincidentally, at the
10 same time, that's when LNV purchased the packet, the
11 portfolio, from Haven Trust Bank.

12 Now, with respect to the releases that are cited here,
13 the releases all were modifications of the construction
14 loan document. There was no release and no mention of the
15 basic contract in those two releases that we have affixed
16 to our ---

17 THE COURT: Now, when the basic contract begins, is
18 that in '07?

19 MR. CHILDRESS: I'm sorry, Your Honor?

20 THE COURT: The basic contract, was that '07?

21 MR. CHILDRESS: Yes. That was in '07. Correct, sir.
22 Yes. And so ---

23 THE COURT: So, it was in existence when these
24 agreements, these Loan Modification Agreements were ---

25 MR. CHILDRESS: As a matter of fact, the obligation of

1 Havens Trust and its successors, the Plaintiffs here, began
2 in November of 2007 and we don't have these facts in the
3 record. We are talking about the pleadings at this point,
4 but as a matter of fact, SBA's authorization for the
5 interim loan came a month after the original closing, long
6 before LNV appeared on the scene. Now, the obligation of
7 Havens Trust was not released by these loan modifications
8 because, if I might quote the language itself, "As material
9 inducement to the lender to enter into this agreement,"
10 meaning a modification of the Construction Loan Agreement,
11 and the same language appears in the November, 2009, "of
12 this agreement", not that agreement, not some other
13 agreement, not the basic contract ---

14 THE COURT: In other words, the other two, the interim
15 SBA financing and the permanent loan, were not part and
16 parcel of the original agreement?

17 MR. CHILDRESS: It was a part of the original
18 agreement, but the construction loan is only the first
19 phase of ---

20 THE COURT: I understand that. I'm just saying, when
21 I say "part and parcel", that meant that it is a part of it
22 and is parcel of it ---

23 MR. CHILDRESS: Right.

24 THE COURT: --- which makes it complete. Am I right?

25 MR. CHILDRESS: The Court has before it, with the

1 Plaintiff's pleadings, all the loan documents from the
2 construction loan. It has our amendments and modifications
3 to the construction loan, but at no point -- and of course,
4 this is what we are saying in the pleadings, and we don't
5 have any evidence in front of us today, but we're saying --

6 THE COURT: Well, it looks like, as I say, under our
7 Rules, you have voluminous ---

8 MR. CHILDRESS: These exhibits, but there are much
9 more, Your Honor.

10 THE COURT: What?

11 MR. CHILDRESS: There are much more out there.

12 THE COURT: I'm sure. But I'm saying that it looks
13 like you have enough to satisfy curiosity.

14 MR. CHILDRESS: Yes, sir. And for the moment, it's a
15 nice package, but there's a bit more. What I'm trying to
16 say is ---

17 THE COURT: Actually, we are here on a 12(B)(6) motion
18 and I am limited to the pleadings, unless you want to
19 extend it into a Summary Judgment Motion and also, the
20 pleadings and what's alleged and any inferences that might
21 reasonably be drawn from those pleadings.

22 MR. CHILDRESS: Right. The loan modifications went
23 only to the construction loan and not to the basic contract
24 and as we state in the pleadings, at no time during the
25 summer of 2009 when LNV took over, the portfolio from Haven

1 Trust, which included the promissory note and the mortgage,
2 at no time in that summer or even in the fall of 2009, as
3 it states in the pleadings, was there a discussion of
4 modifying the basic contract, nowhere in the loan
5 modification is there any reference to the big contract
6 and, in fact ---

7 THE COURT: So, you are saying there's an ambiguity in
8 the Loan Modification Agreements?

9 MR. CHILDRESS: Actually, no. To the contrary, it's
10 crystal clear that we are only talking about the
11 construction loan, not the larger contract, because the
12 only thing that existed at that point was the construction
13 loan and ---

14 THE COURT: Wasn't the construction loan, again, a
15 part of the original contract? I mean, the construction
16 loan had no existence without the original loan agreement.

17 MR. CHILDRESS: Without the basic contracts, sir?

18 THE COURT: Uh-huh.

19 MR. CHILDRESS: That's correct.

20 THE COURT: Again, I still don't quite understand the
21 difference of it not being a part of the original contract,
22 yet it wouldn't have existence if they did not have the
23 original contract.

24 MR. CHILDRESS: Actually, Your Honor, what we are
25 trying to say is that the construction loan was only one of

1 three phases of ---

2 THE COURT: And most, I guess, and this is the first
3 time I've looked at all of this, but I had a little
4 experience in private practice with construction and
5 financing and I keep coming back to the part and parcel.
6 You have the construction loan first and then you have the
7 permanent financing. They are not separate, they are a
8 part of a process and I'm just trying to understand how you
9 are limiting it to only, well you're limiting it to a third
10 part of a three-part agreement.

11 MR. CHILDRESS: The releases that were a part of the
12 modification loan documents in August and November of 2009
13 were a part of the ongoing loan construction process and
14 the loan agreement. They were not released as directly to
15 any obligation under the basic contract, and quite contrary
16 to what has been suggested here this morning, our pleading
17 clearly indicates that throughout 2009 and ---

18 THE COURT: How about addressing this: I mean, again,
19 I'm looking for some way I can deny the motion. It's a lot
20 easier for me just to say, "deny," rather than come up with
21 findings of facts and conclusions of law, but the language
22 that I'm reading, and correct me if that is incorrect, any
23 relief and release any Defense's right of counterclaim and
24 right of setoff, deduction to the payment of the
25 indebtedness as evidenced by the note and/or the mortgage

1 or any other loan document. Now, I mean, that's why I come
2 back to the fact that, you know, these things aren't done
3 in a vacuum. I doubt anybody would undertake a project of
4 \$3,000.000.00 with only a construction contract with no
5 idea of how it's going to be ultimately financed on a
6 permanent basis.

7 MR. CHILDRESS: In placing emphasis on the phrase,
8 "loan documents," Your Honor, you have hit precisely on
9 the point I'm trying to make. That it is to say, the loan
10 documents, only loan documents ---

11 THE COURT: It doesn't say, "only loan documents."

12 MR. CHILDRESS: No, no ---

13 THE COURT: It says, "or any other loan documents".

14 MR. CHILDRESS: Loan documents related to the actual
15 agreements signed in May of 2008.

16 THE COURT: No. It says, "any other loan documents
17 now have or may claim to have." That's sort of -- I mean,
18 I don't know who drafted the language, but I'm just trying
19 to see what the clear meaning. In other words, you keep
20 referring to, "Oh, we've got these three separate loan
21 documents or evidences or memorandum of some loan
22 agreement," the construction loan and the interim financing
23 and the permanent financing, but then it says, "any other
24 loan document". It doesn't say ---

25 MR. CHILDRESS: Your Honor ---

1 THE COURT: It does say that or it doesn't?

2 MR. CHILDRESS: The loan documents, the only ones that
3 existed -- there's reference here to other loan documents,
4 but no other loan documents existed outside of the
5 construction loan at that point in time.

6 THE COURT: "Or any thereof, arising out of, connected
7 with, or relating to any act and all acts, admissions or
8 events occurring prior to the execution of this agreement.

9 MR. CHILDRESS: But the emphasis should be on "this"---

10 THE COURT: Listen, I'm only reading. I'm not
11 emphasizing anything.

12 MR. CHILDRESS: No, but we're asking the Court to
13 place the emphasis on the phrase, "This agreement", meaning
14 this modification ---

15 THE COURT: Well, there's only one modification
16 agreement, or two, but one at a time.

17 MR. CHILDRESS: Correct.

18 THE COURT: So, that's what it was addressing, any
19 other loan document that would create a claim or a
20 counterclaim.

21 MR. CHILDRESS: Within the context of the construction
22 loan. There was no other loan document out there at the
23 time. There were no other loan documents that existed at
24 the time.

25 THE COURT: "Connected with or relating to any and all

1 acts -- or excuse me -- any thereof, arising out of,
2 connected with or related to any and all acts occurring
3 prior to the execution of this agreement. In regards, now
4 have or may have or claim to have against any lender or any
5 thereof, arising out of." As I say -- let me just be sure
6 that I understand your argument. You are saying that there
7 are three separate loan documents?

8 MR. CHILDRESS: No, sir. There were three separate
9 phases to be accomplished under the basic agreement.

10 THE COURT: All right. Now, I agree with you. That's
11 the way I understand it, too. So, I'm not quite sure how
12 you are being able to compartmentalize or isolate these
13 various documents that are related to.

14 MR. CHILDRESS: I wouldn't ask this Court to declare
15 them unrelated. On the contrary, our argument is that it is
16 a basic contract, but if the Court will permit me ---

17 THE COURT: I'm permitting you all the time in the
18 world, but at some point I need to find out what your
19 position is and that is, apparently, that there are three
20 separate independent documents and so when this release, or
21 whatever, refers to any other loan documents, that it means
22 something else.

23 MR. CHILDRESS: I don't want to take any more of the
24 Court's time, but ---

25 THE COURT: No, unless you have something to offer ---

1 again, that's all I'm asking, what do you want, Mr.
2 Childress?

3 MR. CHILDRESS: If you will permit me, once again ---

4 THE COURT: I am permitting you anything that you
5 want, but if I can understand your position. You are
6 saying there are three separate documents.

7 MR. CHILDRESS: No, sir.

8 THE COURT: You are saying -- all right. That's where
9 we have a problem. I can understand when you say there are
10 three separate documents, so when they refer to evidence of
11 indebtedness or any other loan document, that sounds like
12 you are talking about anything that might arise out of that
13 original transaction. I mean, this release would be.
14 Well, let me ask you this, what was the release? How do
15 you interpret the release?

16 MR. CHILDRESS: As one might say, boiler plating in
17 the course of modifying the existing Construction Loan
18 Agreement and nothing more.

19 THE COURT: So, the SBA interim financing and the
20 permanent loan are not a part of it?

21 MR. CHILDRESS: Not a part of the original
22 Construction Loan Agreement.

23 THE COURT: Okay.

24 MR. CHILDRESS: And if I might bring you back to the
25 point that I made at the outset, Your Honor. We are

1 talking about an argument added in the memorandum, not in
2 their original motion.

3 THE COURT: Well, you're saying you're not having
4 notice?

5 MR. CHILDRESS: Well, yes ---

6 THE COURT: I mean, I'll be glad to continue this for
7 another judge to listen to this delightful argument, but
8 you seem to be prepared pretty well. In other words, I
9 don't know if you were totally surprised.

10 MR. CHILDRESS: Well, to be honest with you ---

11 THE COURT: Well, then, I'm going to continue it,
12 because I certainly don't want to ask anybody to argue
13 something that they had no notice of and our rules provide
14 for the notice.

15 MR. CHILDRESS: Well, if that will suit the Court.

16 THE COURT: It doesn't suit me. I think it's an
17 unfortunate thing that we come to this point and start
18 suggesting we don't know what our case is about.

19 MR. BUCKINGHAM: Sure. And, Your Honor, just for
20 purposes for the record, this is Steve Buckingham. I just
21 want to tag on to what Mr. Childress was saying ---

22 THE COURT: Now, you know, of course, what is it, you
23 two are representing the same parties, then only one of you
24 argues, but I'm going to relax the rules there, because I
25 understand that Mr. Childress has only come in more

1 recently.

2 MR. BUCKINGHAM: Yes, Your Honor, and I just wanted to
3 clarify some of the Court's questions about these
4 agreements. What I think Mr. Childress was trying to
5 articulate is that, in terms of the total scope of the
6 construction loan documents that are out there, the basic
7 contract and the three phases, the only documents that were
8 ever created, were the basic contract and the construction
9 loan documents. The permanent loan documents were never
10 created and the SBA documents were never created. So, I
11 think that was the disconnect. I think there might have
12 been, maybe, some questions going back and forth and some
13 misunderstanding between the Court and Mr. Childress. So,
14 the phases were there, it was all part and parcel of the
15 same type of agreement that was being contemplated, but we
16 never got to a point when the permanent loan replaced the
17 construction loan documents and we never got to a point
18 when the SBA loan was able to replace the construction loan
19 documents. They just never ---

20 THE COURT: Well, if you had gotten to that point and
21 they had been completed, in other words, or performed ---

22 MR. BUCKINGHAM: Yes, sir.

23 THE COURT: --- in a binding performance, such as a
24 thirty year, or was it a twenty ---

25 MR. BUCKINGHAM: Twenty year. Yes, sir.

1 THE COURT: Twenty year financing, then we wouldn't be
2 here.

3 MR. BUCKINGHAM: If they had fully performed, Your
4 Honor?

5 THE COURT: Yes.

6 MR. BUCKINGHAM: Yes. If they had fully ---

7 THE COURT: The fact is, because if they didn't get
8 the opportunity to perform, because the other parts of this
9 parcel never came into fruition.

10 MR. BUCKINGHAM: That's correct. And it's our
11 contention from the pleadings that it never came into
12 fruition because of the wrongful conduct of LNV once they
13 acquired our note.

14 THE COURT: That sounds like an issue of fact rather
15 than law.

16 MR. BUCKINGHAM: In terms of stating a claim for which
17 relief can be granted.

18 THE COURT: Well, then you would have to establish
19 that they didn't perform and that's a fact. That's not an
20 allegation, that's for you, your reply to their
21 counterclaim. I'm confident that there's either one in
22 there now or will, in your pleading.

23 MR. BUCKINGHAM: Yes, Your Honor. That is our
24 pleading, that's our claim against them.

25 THE COURT: Well, that's what I'm saying. I'm not

1 looking at the merits or the evidence. I have to take the
2 pleadings as they allege as being factual.

3 MR. BUCKINGHAM: Yes, Your Honor.

4 THE COURT: And you, in your pleadings and then,
5 apparently, if it gets as far as to the jury, it's for
6 them, whether or not they performed or didn't perform.

7 MR. BUCKINGHAM: Absolutely. And for today's
8 purposes, just for the sake of, do we state a claim
9 sufficient to move forward, we do. We are saying their
10 obligations to us, that they did not perform, and as a
11 consequence, we are where we are today.

12 THE COURT: Obviously, you wouldn't be there, if that
13 -- all right. Anything else?

14 MR. BUCKINGHAM: Well, I believe that Mr. Smith has
15 additional arguments ---

16 THE COURT: I'm sure. What I'm trying to do is
17 address each one rather than keeping my little mind
18 confused with a whole lot of ---

19 MR. BUCKINGHAM: Yes, sir.

20 THE COURT: --- genuine issues and all of that. Okay.
21 So, that's your point, that they didn't do what they were
22 supposed to and that's why the other two parts of the
23 original agreement didn't come in.

24 MR. BUCKINGHAM: Absolutely. It's as simple as that.
25 We had a contract, they didn't perform, creating the

1 breach:

2 THE COURT: Very good. Now, Mr. Smith, have you got
3 anything else?

4 MR. SMITH: Well, I want to be sure I understand where
5 we stand with regard to the particular ground that I argued
6 already, the release. And again, I apologize to counsel
7 and I apologize to the Court for wasting the Court's time
8 if they didn't have notice.

9 THE COURT: Let's not waste anymore of the Court's
10 time with your apology.

11 MR. SMITH: I won't. I'll keep my comments brief in
12 reply to what they said. I want to make sure I understand.
13 The Court is going to continue that part of the motion?

14 THE COURT: No. I'm trying -- if Mr. Childress wanted
15 to insist that he had been prejudiced, then I would
16 continue, because, obviously, I would consider continuing,
17 but there again, I'm not sure that I find prejudice
18 because, apparently, you have defenses to your -- it had
19 already been contemplated. So, in other words, I don't
20 find surprise.

21 MR. SMITH: I will reply, then, Your Honor. The
22 release ---

23 THE COURT: Let me be careful, because, I really do.
24 If you want to insist on it, I'll ask you where the
25 prejudice is, that you had no notice that that was going to

1 be their position.

2 MR. BUCKINGHAM: Well, Your Honor, I think that the
3 prejudice is that when the motion was filed some two months
4 ago, they only identified one specific basis, which is LNV
5 has not control over the SBAs decision-making process and
6 up until yesterday, that's what we perceived the basis of
7 the motion was going to be about today.

8 THE COURT: All right. What do you say about that?

9 MR. SMITH: It was a motion based on Rule 12(b)(6) for
10 failure to state a claim, but we were within the pleadings
11 and I didn't get outside the pleadings. To clarify, I
12 didn't get outside the pleadings, plus the exhibits.

13 THE COURT: Let me see, again, Mr. Childress, your
14 position is that the SBA funding never came into being.

15 MR. CHILDRESS: It never even began.

16 THE COURT: Right.

17 MR. CHILDRESS: In the sense that without a lender,
18 LNV themselves, stepping up and presenting a commitment
19 letter to SBA ---

20 THE COURT: So, then, that is a claim relating to the
21 original loan document, then.

22 MR. CHILDRESS: Yes, Your Honor. Our counterclaim, if
23 I might, it might assist you a little bit. The argument of
24 the counterclaim ---

25 THE COURT: I'll tell you what I'm going to do. We've

1 already devoted this much time to it and I think what I'll
2 do is hear your oral arguments today and then ask if you
3 would like to more thoroughly brief. I think that -- I am
4 somehow, my credulity is being somewhat tested in that I
5 don't think that you are that ill prepared.

6 Mr. CHILDRESS: I'm quite familiar with the basic
7 contract. I will say that.

8 THE COURT: Very good. Also, the other aspects of it
9 might have been in effect in June of 2009, November of
10 2009, or not in effect.

11 Mr. CHILDRESS: Thank you, Judge.

12 THE COURT: So, that's what we will do. Rather than
13 waste the Court's time and all of your valuable time. So,
14 let's move on to your other points.

15 MR. SMITH: Yes, sir. The other grounds, we'll do
16 these much more briefly, and this is one that they are
17 aware of that were discussed in the motions, specifically.
18 The counterclaim, essentially, asserts a claim of liability
19 against LNV for failure to make or procure a SBA loan when
20 LNV has no control over SBA, therefore, should have no
21 liability for failure to procure the SBA loan.

22 The other grounds are, if you look at the Commitment
23 Letter itself, the Haven Trust Commitment Letter, that is
24 Exhibit "A" to the counterclaim, it states very clearly
25 that it is not the final approval. It states very clearly

1 that it is subject to satisfactorily completion of credit
2 analysis and documentation. It states very clearly that
3 there are certain conditions that apply. There must be no
4 tax liens. There are no allegations that there have been
5 no tax liens placed on this property. One of the
6 conditions is that the property must appraise at \$4.23
7 million dollars. There is no allegation that this property
8 appraised at \$4.23 million dollars. Those allegations
9 weren't made, conditions weren't satisfied, therefore,
10 there is no obligation created on the allegations in the
11 Complaint and based on the allegations of the Complaint.

12 The gist of the argument seems to be that there is
13 this duty. If you look at the document itself, it doesn't
14 create the duty. The allegations are that the claims are,
15 essentially, that there is some fiduciary duty of LNV to
16 the Defendants in this case. It's a well recognized black
17 letter law, that in limited liability cases, there is no
18 fiduciary duty between the lender and the borrower. It is
19 simply a contractual relationship.

20 The other claims, Your Honor, they come within the
21 scope of the release based on the way they are plead. The
22 other thing I would call to the Court's attention,
23 paragraph 259 of the Complaint, the Unfair Trade Practices
24 Act claim, this one is a little bit surprising because the
25 alleged unfair trade practice is the purchasing, holding

1 and enforcing of loan instruments. There is no support in
2 the law of South Carolina or the Unfair Trade Practices Act
3 that purchasing, holding, and enforcing loan instruments is
4 unfair and deceptive trade practice and that alone won't
5 create a cause of action under SBA and for that reason it
6 should be dismissed. Thank you, Your Honor.

7 THE COURT: All right. Mr. Childress or Mr.
8 Buckingham?

9 MR. CHILDRESS: Thank you, Your Honor. If I may, the
10 matter of the Unfair Trade Practices Act, I will tell the
11 Court, I am flat footed this morning to answer that.

12 THE COURT: Okay.

13 MR. CHILDRESS: That was nowhere brought up before,
14 but besides, the allegation is the Plaintiff's practices,
15 not the mere act of purchasing loans and whatnot, but I
16 plead for a little more time.

17 THE COURT: Well, that's -- but again, you are saying
18 that it does state a claim?

19 MR. CHILDRESS: Yes, sir.

20 THE COURT: And again, that should be a fairly easy
21 question. Both of you will provide the Court with, not
22 only persuasive, but controlling law on that issue.

23 MR. CHILDRESS: I promise we will be ---

24 THE COURT: Let's get to the point now, of how we are
25 going to resolve this. So, how much time -- I will give

1 you the benefit of how much time you need to address the
2 issues that now seem to be pretty clear and I would say
3 that's the original loan agreement, how far it goes in
4 light of or as far as its release is concerned and then,
5 also, if there is an unfair trade practice allegation there
6 that would be supported by law, if correct.

7 MR. SMITH: You're not asking how much time to submit
8 it or ----

9 THE COURT: I usually work in increments of months,
10 like thirty days or ---

11 MR. BUCKINGHAM: We could do ten days, Your Honor.

12 THE COURT: I haven't been out of the practice of law
13 that long. Ten days is not an easy time to make,
14 particularly, when you seem to have been surprised today.
15 Thirty days, I can live with. This is a 2011 case?

16 MR. SMITH: Yes, Your Honor.

17 THE COURT: All right. So, it's less than six months
18 or so. March 30th is a Friday, but now, I'll even do this
19 to you, because I want to cause as much problems for your
20 families as I can, I'll give you until Monday so if you
21 procrastinate, you'll be working on the weekend. So, we'll
22 say April 2nd. And, of course, do it by email. Whatever I
23 look at, and of course, as I say, if I deny the motion,
24 that's very simple and then if I grant it, I will have to
25 have a basis for it.

1 MR. BUCKINGHAM: Yes, Your Honor. Would you prefer
2 that be sent in Word format or PDF? Do you have a
3 preference?

4 THE COURT: I have no idea. Word will be fine.

5 MR. BUCKINGHAM: Word. Okay, be glad to.

6 THE COURT: Like you say, that's why we have law
7 clerks.

8 MR. BUCKINGHAM: And I suppose your preference would
9 be to send it to your law clerk or do you want us to copy
10 you ---

11 THE COURT: You can send it to me, too. Sometimes, I
12 read them.

13 MR. BUCKINGHAM: Yes, Your Honor.

14 THE COURT: Okay. So, that's thirty days for -- well,
15 let's see. Have you got anything else to add? You can
16 amplify yours in that thirty day period, too.

17 MR. SMITH: Yes, sir. We'll take a look at that.

18 THE COURT: All right. And if you need to reply, I'll
19 give you ten days on that.

20 MR. SMITH: I think that will probably be sufficient
21 on that. I think we've pretty much covered ---

22 THE COURT: I would hope, by now. That's why we're
23 here.

24 MR. SMITH: I don't think we have much to add.

25 THE COURT: Well, as I say, if anything, I feel

1 certain compassion for the Defendants here.

2 MR. BUCKINGHAM: What's your preference going forward
3 today?

4 MR. RUSTIN: Judge, I think we could go ahead and
5 argue the motion to strike the jury claim. That should be
6 a very straightforward issue for the Court.

7 THE COURT: Well, the thing is, if I find that there
8 have been claims, then they have to be resolved anyway.
9 Talk about black letter, that's almost Lord Cooke.

10 MR. RUSTIN: Yes, Your Honor, and in that case, we are
11 happy to push the other motions until Your Honor has the
12 chance to rule on those motions as well.

13 THE COURT: Because if I dismiss the counterclaims as
14 properly pled. How many counterclaims do you have?

15 MR. RUSTIN: They've got five separate counterclaims,
16 Your Honor.

17 MR. BUCKINGHAM: That's correct, Your Honor.

18 THE COURT: Well, you've got some that are going to
19 survive whatever my ruling will be on your ---

20 MR. RUSTIN: No, Your Honor, the waiver would be
21 dispositive on all that.

22 MR. SMITH: I don't know if the waiver would be
23 dispositive for the unfair trade practices, Your Honor.
24 That is what, I suppose, we will be arguing about. We will
25 be arguing ---

1 THE COURT: I understood that the unfair trade
2 practices was one of the things that they felt they didn't
3 have enough notice on and that's why I'm giving you that.

4 MR. SMITH: Yes, sir. It's going to be our position
5 that the release and the unfair trade practices claim
6 doesn't stand on its own anyway and so I think the motion,
7 your honor is correct, that the motion to dismiss would
8 dispose of the counterclaim ---

9 THE COURT: That's was how I was seeing it. They've
10 got really, and it's pretty broad, they've got all their
11 eggs, be their claims, potential claims, and everything
12 else in this one little basket with two releases, which
13 would go to any sort of claim of unfair trade practices and
14 and so that's what I wanted to address, but also, at the
15 same time, if you've got something that either side has on
16 unfair trade practices being an independent claim, I need
17 to know that, too.

18 MR. SMITH: Thank you, Your Honor.

19 THE COURT: All right. I appreciate your patience
20 today. I'll look forward to hearing from you in April.
21 Thank you.

22 MR. RUSTIN: Thank you, Your Honor.

(WHEREUPON, THE HEARING IN THE
ABOVE-ENTITLED MATTER WAS CONCLUDED.)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
 COUNTY OF ANDERSON)

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, SO GIVEN ON FEBRUARY 29, 2012, TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 19TH DAY OF MARCH, 2012.



 JO RICE
 OFFICIAL COURT REPORTER

LVN V AFFORDABLE HOSPITALITY GROUP-ANDERSON, LLC, ET AL.

INDEX

	PAGE
Motion to Amend and Reconsider	3
Certificate of Reporter	36

EXHIBITS

No	DESCRIPTION	ID	EV

No exhibits were presented during the hearing

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 11:03 a.m.)

4 THE COURT: Mr. Smith, are the Defendants ready
5 to proceed?

6 MR. SMITH: Yes, Your Honor. And Mr. Rustin's
7 ---

8 THE COURT: Oh, excuse me. Are the Plaintiff's
9 ready to proceed?

10 MR. SMITH: Yes, sir. Mr. Rustin's going to
11 take the motion to amend, Your Honor, and I'm going to
12 take the motion for reconsideration.

13 THE COURT: All right. And are the Defendants
14 ready to proceed, Mr. Childress?

15 MR. CHILDRESS: The Defendant's are ready, Your
16 Honor. I'm Ron Childress for the Defendants.

17 THE COURT: Are you ready to proceed?

18 MR. CHILDRESS: Ready.

19 THE COURT: All right. This is an action
20 L.N.V. Corporation versus Affordable Hospital [sic] Group
21 of Anderson, L.L.C., Diversified Capital Investment
22 Group, L.L.C., Jay Berlye, Anderson County South
23 Carolina, State of South Carolina. Mr. Rustin and Mr.
24 Smith on behalf of the Plaintiff. Mr. Childress on
25 behalf of Affordable Hospital Group, Diversified Capital

1 Investments and Jay Berlye. Is it Berlye; is that
2 correct?

3 MR. CHILDRESS: Berlye, yes, sir.

4 THE COURT: All right. I understand Anderson
5 County and the State of South Carolina are not involved
6 in these motions?

7 MR. RUSTIN: That's correct, Your Honor.

8 THE COURT: Very good. All right. As I
9 notice, there are six motions because you have three
10 different defendants. I would suggest that it would be
11 best to start with the Rule 59 motion to amend inasmuch
12 as it could be, not necessarily, but could be dispositive
13 of the motions to amend the answer and counterclaims.
14 Any objection to that?

15 Does that put you up, Mr. Rustin?

16 MR. RUSTIN: That puts Mr. Smith up.

17 THE COURT: All right. Mr. Smith, any
18 objection to that?

19 MR. SMITH: No, sir.

20 THE COURT: All right. Any objection, Mr.
21 Childress?

22 MR. CHILDRESS: No, sir.

23 THE COURT: Very good. Mr. Rustin?
24 I mean, excuse me. Mr. Childress?

25 MR. CHILDRESS: Yes, sir, thank you. Actually,

1 there are only two motions before the Court for all of
2 the Defendants.

3 THE COURT: Well, that's what I'm saying.
4 There are two motions, but they're for three defendants.
5 So therefore, on the schedule we have six.

6 MR. CHILDRESS: And I'm responsible for all the
7 Defendants. If you have problems with courtroom time and
8 space this morning, I think I can make my presentation
9 pretty expeditious. The first step would be to explain
10 to the Court why we have the two motions. The motions --
11 when we received the Court's order November 16th last
12 year -- as you know there's only ten days in which you
13 can do your Rule 59. But the thing about the Court's
14 order -- and I see -- I recognize the things here on the
15 sheet that's just been handed that are relevant to the
16 motion to amend. That is to say the order in November
17 said that our claims all arose before November of 2009.
18 And although the June 10th order's been vacated, that
19 copy -- that position continues to be expressed by the
20 Court.

21 Our initial reaction was perhaps our pleading
22 insufficiently alleged the ultimate facts of conduct
23 beyond November of 2009. As the Court remembers,
24 ultimate facts in South Carolina -- Judge Goolsby very
25 aptly described how shall we find them. That is to say

1 they're somewhere between verbosity of evidentiary facts
2 and the sparsity of legal conclusions. We believe and
3 still argue under our 59(e) motion that the pleading was
4 sufficient to allege conduct beyond November 2009. But
5 it occurred to us in looking at *Smith v. Spence* that --
6 Congressman Spence is a state case back in 2006. At the
7 end there's a very long discussion by the Supreme Court
8 of the significance of with prejudice, without prejudice
9 the right to amend the complaint after a 12(b)(6)
10 dismissal, so forth and so on.

11 We deemed it prudent to file an amended pleading
12 with a motion in order that the record reflects that
13 there were evidentiary facts carrying on well beyond
14 November 2009. So we've opted for the verbosity of
15 evidentiary facts in our second amended complaint.

16 Now, the merits of the motion to amend, of course,
17 will be questions of delay and prejudice. But if the
18 Court wishes to hear first about the 59(e) motion, I
19 think I can state our position fairly quickly because
20 there are three points in our memo. And of course, 59(e)
21 motions, originally most of us thought were only
22 appropriate when the judge wasn't clear what he meant to
23 say. It became a threshold requirement, of course, as we
24 know, a quarter century ago for any kind of appeal.

25 So a 59(e) motion is addressed to points about the

1 order. But basically, basically all we're asking and all
2 we're really doing under the 59(e) motion is obtain some
3 clarification from the Court.

4 The first point in the memorandum itself has to do
5 with the binding effect of the loan commitment letter.
6 We call it a basic contract between the Defendant and the
7 Haven Trust Bank. And as I glanced at what we've been
8 given this morning, I see that issue was raised again.
9 And in fact, this Court's order in November 2012 as well
10 as the vacated order from June does suggest that the
11 original what we call basic contract was not binding.
12 However, the order could be read in three different ways.
13 So we're asking for, if possible, an amendment to
14 clarify.

15 What do I mean by three different ways? Well, one
16 interpretation could be that means the contract was not
17 binding from the get-go. Ab initio, as they say. That
18 would be one reading.

19 The other reading would be it was binding between
20 the original parties, but somehow L.N.V. when it came
21 along escaped being the successor to Haven Trust. And I
22 see some new argument here that I'm not prepared to
23 address today, that when it passed through the F.D.I.C.
24 receivership, somehow it was absolved of any
25 responsibility.

1 The third interpretation would be that it was
2 binding between the Defendants and Haven Trust. Also
3 binding between the Defendants and L.N.V. as successor to
4 Haven Trust, but that those obligations were waived in
5 the modification of November 2009.

6 So simply stated what our motion asks of the Court
7 is that we get a clear indication of does the Court
8 consider the basic contract null from the beginning, not
9 binding, binding at the beginning but not applicable to
10 L.N.V., or both, binding and applicable to L.N.V. but
11 waived by reason of the modification in November 2009.
12 Now, that's the first point.

13 The second point, of course, goes to the part of the
14 order that declares that our claims all arose before
15 November 2009. The difficulty with that portion of the
16 Court's order from the Defendant's point of view is that
17 the order itself dismisses claims, all claims, including
18 but not limited to those that arose before 2009. So in
19 order to address this perhaps in another forum, we would
20 like to understand whether that modification waived only
21 the claims that arose before 2009 -- which in other parts
22 of the order that's what the indication is, that it arose
23 before 2009. Or if that modification in November 2009 is
24 understood by the Court to be a prospective waiver of all
25 performance under the loan commitment letter, including

1 claims that might arise in the future, we respectfully
2 ask the Court to give us some guidance on that.

3 And my final point in the memorandum, which I can
4 summarize briefly -- and I'm sure that the Court is sick
5 of hearing about this -- is our contention that the
6 modification of November 2009 does not address the loan
7 commitment itself.

8 We've had enough memos, I would say, in this case to
9 wallpaper my dining room. And I don't think the Court
10 needs to be burdened with any more paperwork. Our
11 argument though is that the loan modifications in June of
12 2009 and November of 2009 nowhere indicated and
13 implicated the basic contract from November 2007. To the
14 contrary, we draw attention in our memo to the fact that
15 in our answer, we explicitly alleged that the
16 negotiations on those modifications June and November of
17 2009 at no time touched upon the basic commitment letter
18 from November 2007. It was never discussed.

19 And interestingly enough, the Plaintiff, in
20 answering those allegations, admits to the extent that
21 the documents support that interpretation -- that might
22 be thought of as a bit of a circular argument. We didn't
23 talk about performance under the basic contract. But if
24 we did and the document doesn't reflect it, then we did
25 it. What we would like the Court to help us with is to

1 point out in an amended order where that November 2009
2 modification makes expressed reference to the commitment
3 letter, what we call the basic contract, of November
4 2007.

5 So as I say, in view of the time pressure and
6 finding places to hold this hearing, our presentation on
7 59(e) is very short. Just there are three requests we're
8 making, and we made the requests.

9 THE COURT: Mr. Childress, if I may, I
10 appreciate your patience with the Court and also your --
11 what is it -- willingness to make things simple. Is
12 there anywhere -- well, first of all, let me be sure that
13 I understand. And there is the loan commitment letter of
14 November the 6th, 2007, that you say is the breach?

15 MR. CHILDRESS: That's what we call the breach
16 of contract.

17 THE COURT: Well, now, that's the next thing.
18 Is there anywhere in that loan commitment letter or any
19 other memoranda supporting it where the term, quote,
20 basic contract, close quote, exists?

21 MR. CHILDRESS: No, sir. That's ---

22 THE COURT: So that is just your shorthand
23 referring to ---

24 MR. CHILDRESS: Yes, sir.

25 THE COURT: That's referring to ---

1 MR. CHILDRESS: This ---

2 THE COURT: Your way of referring to a --
3 something -- now, is it called a loan commitment letter?

4 MR. CHILDRESS: That is what it's called.

5 THE COURT: All right. So I mean, it would
6 actually be fair if I referred to it in my notes as basic
7 -- excuse me -- loan commitment letter slash basic
8 contract?

9 MR. CHILDRESS: That would be fine, sir.

10 THE COURT: All right. I didn't want to do any
11 damage or prejudice to your concessions. All right. You
12 may proceed.

13 All right. Mr. Smith?

14 MR. SMITH: Thank you, Your Honor. I, too,
15 will try to be brief and will direct the Court's
16 attention to the loan modification agreement in paragraph
17 three which we have focused on before. And this is a
18 very broad release. And like very broad releases, it has
19 lots of words in it. And I want to focus on those that
20 respond to the quotes Mr. Childress made.

21 The borrower and grantor hereby fully, finally and
22 completely release and forever discharge original
23 lenders, successors and assigns of and from any and all
24 obligations. In this document, the Defendants ---

25 THE COURT: You didn't include the, from time

1 immemorial.

2 MR. SMITH: I beg your pardon?

3 THE COURT: You didn't include the phrase, from
4 time immemorial.

5 MR. SMITH: One weakness, maybe, Your Honor.

6 THE COURT: Well, after all these agreements,
7 or at least these papers with releases, even in an
8 automobile accident or whatever when you get into a
9 release ---

10 MR. SMITH: Yes, sir.

11 THE COURT: --- you usually want to tie it down
12 in the Garden of Eden or anywhere else.

13 MR. SMITH: Yes, sir.

14 THE COURT: All right.

15 MR. SMITH: It's interesting, too, as an aside,
16 there's the language that I just read. And then about
17 six or seven lines up, there's an 'and' where the
18 borrower and grantor also waive and release defenses,
19 rights and counterclaims, et cetera. But I want to focus
20 the Court's attention on the borrower and grantor's
21 discharge of obligations, or discharging L.N.V. and from
22 any and all obligations. The Plaintiff's contention --
23 excuse me. The Defendant's contention is that L.N.V. is
24 obligated by the terms of the loan commitment letter to
25 issue a permanent loan and to secure S.D.A. financing.

1 That is their case. And the question, of course, on the
2 motion to dismiss and now on motion to reconsider, is
3 whether there's any theory under which you can state
4 facts to constitute a cause of action. And Your Honor,
5 with this release language, they cannot because the loan
6 commitment letter is dated November 6, 2007, a full two
7 years before the loan modification. The obligation on
8 which ---

9 THE COURT: Again, when you say loan
10 modification, I understand there were three?

11 MR. SMITH: Yes, sir. And I ---

12 THE COURT: Right. And again, it's been a
13 while since I've looked at the file.

14 MR. SMITH: Yes, sir.

15 THE COURT: But as I understand, that Haven
16 Bank had some -- what is it -- difficulty.

17 MR. SMITH: Yes, sir. Haven bank went into
18 receivership, and F.D.I.C. took it over.

19 THE COURT: All right. So that was prior to
20 the first loan modification?

21 MR. SMITH: The first loan modification was
22 with the F.D.I.C.

23 THE COURT: Well, that's what I'm saying.

24 MR. SMITH: Yes, sir. The second loan
25 modification was with L.N.V.

1 THE COURT: But the F.D.I.C. by that time was
2 the receiver of the ---

3 MR. SMITH: Yes, sir. Yes, sir.

4 THE COURT: Okay. All right.

5 MR. SMITH: And the allegation is that -- the
6 counterclaim is -- also, the allegation by our complaint.
7 But to focus in on the allegation and counterclaim, it is
8 that L.N.V. purchased certain assets and interests of the
9 -- of Haven Trust Bank through the F.D.I.C. Certain
10 assets and interests.

11 THE COURT: Mr. Childress, let me ask you ...
12 And again, I'm not trying to cut anybody off.

13 MR. SMITH: Yes, sir.

14 THE COURT: As I say, to bring my appreciation,
15 if any, I would ask -- I would, up-to-date.
16 Hypothetically, could the loan agreement be enforced
17 against F.D.I.C. as the receiver?

18 MR. CHILDRESS: No, sir. I mean, that's
19 hypothetical.

20 THE COURT: Well, I'm just saying -- I say
21 hypothetical because obviously no effort was made.

22 MR. CHILDRESS: Permit me to admit I'm not that
23 fluent in F.D.I.C. law. In fact, these two cases ---

24 THE COURT: Well, the reason I ask is because
25 y'all are familiar with general contract law and

1 agreements. If we have terms in an agreement, you hope
2 that those terms will never have to be specifically
3 performed, that everybody agreed to do whatever they
4 agreed to do. But if it does come to a specific
5 performance, then the terms have to be enforceable.

6 MR. CHILDRESS: That would be -- that is
7 precisely the ---

8 THE COURT: I mean, that's the agreement.
9 That's the law of contracts.

10 MR. CHILDRESS: And that said ---

11 THE COURT: And I'm just asking, once -- even
12 let's accept that -- what is it -- the Defendants were in
13 the -- oh, excuse me. The Defendants were in the idea
14 that they would be able to enforce permanent financing.
15 Where would they find authority to do that in the
16 agreement, the loan, basically the contract or the loan
17 commitment letter?

18 MR. CHILDRESS: Let me withdraw my answer
19 regarding F.D.I.C.

20 THE COURT: Well, you don't have to. I mean,
21 obviously, it's for my -- and it's something to think
22 about when we come back to you.

23 MR. CHILDRESS: I really can't speak to that.
24 To get away from the hypotheticals, our ---

25 THE COURT: Well, it's not a hypothetical, but

1 -- what is it -- F.D.I.C. would not be able to, not
2 without an act of Congress.

3 MR. CHILDRESS: I'm trying to comprehend the
4 hypothetical. And my understanding of it is if F.D.I.C.
5 was holding on to that contract, that asset of Haven
6 Trust that was closed in December 2008, if I understand
7 the hypothetical, if F.D.I.C. was unable to sell those to
8 L.N.V. or some other party and just sat on that contract,
9 what would the rights of the Defendants be with respect
10 to the F.D.I.C. with respect to the continuation of the
11 contract?

12 THE COURT: And the first modification
13 agreement was with F.D.I.C.

14 MR. CHILDRESS: It was indeed.

15 THE COURT: And I would imagine that if
16 F.D.I.C. wanted to sell, as we've said, these assets,
17 they would probably want to put them in a -- I don't know
18 of a situation where they would not be -- where they
19 would be more -- what is it -- attractive. And the last
20 thing you want to do is, you know, sell a Trojan horse
21 ...

22 MR. CHILDRESS: Well ---

23 THE COURT: ... or buy a Trojan horse.

24 MR. CHILDRESS: As we've pointed out in our ---

25 THE COURT: And that's what the contract law's

1 all about is that if there was a way -- if the agreement
2 had said binding, you know, on all -- what is it --
3 successors, assigns and, you know, if you do other, you
4 know, instruments that -- what is it -- are a little more
5 complete. Otherwise, if you're not complete -- and I'm
6 thinking about, you know, a title to real estate, for
7 example. If you don't have the magic words of
8 inheritance, then -- what is it -- the best you've got is
9 life estate. And that's only good to the person who owns
10 it as long as he lives. So I'm just -- I'm using all
11 these analogies trying to -- what is it -- to understand
12 how -- because otherwise it sounds like F.D.I.C. was
13 stuck with the -- this, quote, asset.

14 MR. CHILDRESS: Well, actually ---

15 THE COURT: And they wanted to be sure that
16 they could sell it to -- what is it -- L.N.V. or someone?

17 MR. CHILDRESS: Well, there are two responses.

18 THE COURT: Yes, sir.

19 MR. CHILDRESS: First of all, the record shows
20 that the -- I believe the first exhibits -- I think --
21 was it the loan or whatever paperwork -- that when L.N.V.
22 acquired the loan, the package, from F.D.I.C., there's a
23 whole series of papers there, which I'll be glad to go
24 back through ---

25 THE COURT: Well, just tell me what's in it.

1 MR. CHILDRESS: --- if I see where F.D.I.C.
2 stripped out the basic contract. But more importantly,
3 this was a very ---

4 THE COURT: Well, they did that in essence by
5 getting a modification agreement that says they were all
6 stripped out.

7 MR. CHILDRESS: Well, Your Honor, that is the
8 Court's view that this was a prospective and a
9 retrospective. The interesting thing is the modification
10 agreement doesn't describe claims arising since the
11 beginning of time, to be sure, nor does it describe
12 claims arising in time eternal, in ages to come. It
13 doesn't do either one of those.

14 THE COURT: Very good.

15 MR. CHILDRESS: I think that's a fair
16 statement. The record shows ---

17 THE COURT: That's a fair statement.

18 MR. CHILDRESS: If you'll permit me, the record
19 shows in our supplemental memorandum back a year -- back
20 in April of 2012, opposing the 12(b)(6) in the
21 supplemental memo, we point out and we have an official
22 government document which doesn't amount to evidence.
23 It's just something to be noticed by the Court. We've
24 got the F.D.I.C. record of their purchase of sixty -- was
25 it sixty loan packages from -- whatever the number was.

1 Although which this was one. At thirty-two cents on the
2 dollar, it's a very attractive purchase.

3 I think at the risk of being politically incorrect,
4 the old story from Uncle Remus about the tar baby is
5 quite applicable here. They bought sixty-one loans, and
6 then they discovered there were obligations with this
7 particular one. I don't know about the rest of them. So
8 the hypothetical about F.D.I.C being unable to sell this
9 package, I don't think is particularly helpful for us in
10 this case. The ---

11 THE COURT: Well, the thing is, is it helpful
12 in understanding why they wanted to be sure that it was
13 not -- I think -- and it not -- and it's not
14 inappropriate. And you've heard the word toxic used in
15 loan agreements and mortgages and other, you know,
16 transactions in this period of time. And so maybe they
17 were, you know, just being cautious. If there was
18 anything, they were going to give a complete absolute
19 final -- what is it ---

20 MR. CHILDRESS: The problem is, Your Honor,
21 we've gone way beyond the pleadings at this point.

22 THE COURT: I haven't heard -- I mean, because
23 -- I haven't heard anything that you suggest would go
24 beyond the pleadings and talk about the prospective
25 potential -- what is it -- liabilities.

1 MR. CHILDRESS: No. What I'm trying to say is
2 that the Court's interpretation of the modification
3 agreement, our argument has been -- and the Court doesn't
4 want to hear it anymore, I'm sure.

5 THE COURT: No. I want to hear anything that
6 will help the Court. It's just that -- what is it -- the
7 best way to do that -- no. I was looking at, I think --
8 what is it -- one of your counterclaim causes for
9 tortuous interference with future contracts.

10 MR. CHILDRESS: Yes, sir.

11 THE COURT: Now, that's with respect to the
12 Plaintiff.

13 MR. CHILDRESS: Well, the ---

14 THE COURT: I mean, just by its definition. Or
15 is it not?

16 MR. CHILDRESS: I think we may be using the
17 term prospective claims in two different ways. We might
18 be like ships passing in the night. My use of the phrase
19 prospective claims has to do with our amended pleading
20 that alleges conduct after November 2009 right up to the
21 commencement of this action, during the course of which
22 our claims arose. That's the purpose of ---

23 THE COURT: And again, all I'm just saying that
24 when you talk about prospective, you're not talking about
25 something in contemplation of the minds at the time the

1 agreement was reached.

2 MR. CHILDRESS: I'm not sure how to respond to
3 that, sir.

4 THE COURT: Well, tortuous interference with
5 respective contractual relations ...

6 MR. CHILDRESS: Oh, yes.

7 THE COURT: ... by definition would be that you
8 didn't have a contract at the time and you were trying to
9 interfere or these people were trying to interfere with
10 your future respective ---

11 MR. CHILDRESS: Okay. I know what you're
12 talking about in our counterclaim. And the argument
13 theory is this. By dragging out negotiations and
14 stringing the Defendants along until early 2011, by doing
15 that, the Defendants did not have the opportunity to
16 pursue other financing. That's what we're alleging. And
17 therefore, prospective possible alternative financing to
18 L.N.V. ---

19 THE COURT: Well, let me ask you. Did you at
20 any time hope to have permanent financing from L.N.V.?

21 MR. CHILDRESS: Well, Your Honor, you're asking
22 me to testify about our discovery.

23 THE COURT: I'm not asking you to testify. I'm
24 just asking about the -- when you draw these agreements
25 -- and I have done some myself. And usually it's

1 construction. I guess that's what this was. That's
2 temporary. It comes from usually not a permanent
3 financing. In other words, if it's a residential
4 construction, I'm talking about country law here in this
5 subject.

6 MR. CHILDRESS: Commercial construction's
7 different though.

8 THE COURT: What?

9 MR. CHILDRESS: Commercial construction would
10 be different.

11 THE COURT: Well, I'm just giving you -- thank
12 you. I knew that too.

13 MR. CHILDRESS: Well, I just want to be clear.

14 THE COURT: But the thing is, I'm using that as
15 an analogy that you do have separate financing. In other
16 words, even a contractor on a speculative house will get
17 temporary financing for construction with the idea that
18 the purchaser will get -- what is it -- permanent
19 financing from a savings and loan or some other, you
20 know, source which is a little more -- I mean. And
21 that's why I know that -- what is it -- you don't -- they
22 don't always ride together.

23 Now, you say commercial has never been a commercial
24 construction with separate financing. I don't know. I
25 can imagine that -- what is it -- what's good in one area

1 could be good in another area. Why somebody would want
2 to tie themselves down to a particular situation that
3 might not be the same later, do that without specifically
4 providing for it. In other words, prospective. Whatever
5 potential things might happen.

6 MR. CHILDRESS: Well, I think all of those
7 questions are ---

8 THE COURT: That is a compounded question.
9 You're right. I'm sorry.

10 MR. CHILDRESS: But I think they can be
11 resolved by resorting to the record because the
12 commitment loan, when one steps back for a moment, you
13 ask yourselves, what prudent borrower would commit
14 himself or herself to a four-million-dollar construction
15 loan that had to be paid in full upon completion of
16 construction when the business hasn't even opened and
17 doesn't have a cash flow? Alternatively, what reasonably
18 prudent lender would lend money with the expectation that
19 somebody who hasn't even started business is to pay it in
20 full at the end of nine months. That's why the
21 commitment loan contemplated the construction loan
22 converted to permanent financing and S.B.A. 504 taking
23 some of the pressure off the lender and the borrower by
24 selling a debenture for a percentage of the loan
25 principle. That's how these S.B.A. 504 things go along.

1 And by the way, S.B.A. was on board in December
2 2007. We've put into the record that official government
3 document saying, this looks like a good deal. Haven
4 Trust is going to be the primary lender; S.B.A.'s going
5 to come in when the construction is done. These people
6 look like they're going to do a good job. We're
7 convinced it's a good risk. Let's go for it. And
8 suddenly Haven Trust goes away. And then there's a time
9 when the tap is closed but the construction continued.
10 And at a time, certain point in time, F.D.I.C. agreed to
11 release some of Haven Trust's money so that construction
12 can be completed. And at that point, L.N.V. comes in the
13 picture and buys sixty-odd assets of Haven Trust from
14 F.D.I.C. This one had some obligations attached. That's
15 in a nutshell ---

16 THE COURT: Not when they bought it from -- if
17 we take the position of the Defendant -- the Plaintiff
18 rather, they had ---

19 MR. CHILDRESS: Your Honor ---

20 THE COURT: Excuse me. Because F.D.I.C. for
21 some reason entered into -- had a modification agreement
22 with the predecessor.

23 MR. CHILDRESS: At the present time, we have --
24 to my knowledge ---

25 THE COURT: So maybe that's why they were able

1 to take it in.

2 MR. CHILDRESS: To my knowledge, there's
3 nothing in the record that gives us that kind of insight
4 into what F.D.I.C. did. I ---

5 THE COURT: Well, who was the parties to the
6 first modification agreement in April 20 of 2009?

7 MR. CHILDRESS: Well, that was between F.D.I.C.
8 and the Defendants. L.N.V. was yet to show up.

9 THE COURT: Well, I know that because L.N.V.
10 probably wouldn't have shown up if it hadn't had a
11 modification agreement. At least that's their position.

12 MR. CHILDRESS: I can't speculate on that.

13 THE COURT: Well, it's not speculation. That's
14 their position. I mean, you don't speculate that that's
15 not their position?

16 MR. CHILDRESS: I don't read that in their
17 pleading. But that's my ---

18 THE COURT: Well, maybe I'm not as familiar
19 with all the pleadings, but I did read the ---

20 MR. CHILDRESS: Your Honor, I don't want -- I'm
21 quite sure the Court is not interested in any further
22 briefing. It's been a long time since I looked at it.
23 But I, off-the-top-of-my-head -- and I can't cite
24 authority for it -- I'm not aware of anything in the
25 F.D.I.C. legislation or in case law that sets the

1 F.D.I.C. up to absolve all purchasers of any
2 responsibility. I believe the best place to look is the
3 various documents, the loans and whatever else that went
4 into the purchase. We would look at those documents.
5 I'll be glad to look at it for the Court. I'm sure that
6 counsel for the Plaintiff would be happy to go back and
7 let this Court know if we see anything in those documents
8 that absolves a purchaser of the Haven Trust package for
9 thirty cents a dollar from carrying out any contractual
10 responsibility. I -- this morning ---

11 THE COURT: In other words, the F.D.I.C. just
12 does things that have no effect, a nullity?

13 MR. CHILDRESS: I don't believe that's what I
14 said.

15 THE COURT: Well, I mean, that's the way you
16 said it. It has no ability to absolve -- what is it --
17 responsibilities or liabilities.

18 MR. CHILDRESS: I'm just saying ---

19 THE COURT: And so they go through all of this
20 language, whatever ---

21 MR. CHILDRESS: No, sir.

22 THE COURT: Listen, we talked about being
23 politically correct and everything else. I'm afraid that
24 I'm a little -- what is it -- my own thoughts about the
25 brilliance of bureaucrats. So -- what is it -- I don't

1 know what is in the mind of a bureaucrat when they do
2 these things. But anyway ...

3 All right.

4 MR. CHILDRESS: I would second that emotion,
5 Your Honor.

6 THE COURT: All right. Okay.

7 All right. Is there anything else, Mr. Smith, on
8 the question of -- what is it -- that the F.D.I.C. did
9 enter into one -- I don't know -- even if we accept that.
10 But let's say that they did enter into one modification
11 agreement with the Defendants.

12 MR. SMITH: They did, Your Honor. F.D.I.C.
13 entered into the one loan modification agreement. And
14 after that, our client bought the note, mortgage,
15 construction loan. It bought the loan. There's not any
16 allegation that we bought the loan commitment letter.

17 THE COURT: Pardon?

18 MR. SMITH: There is no allegation that we
19 bought the loan commitment letter. We didn't. And the
20 allegation of ---

21 THE COURT: In other words, you're saying the
22 loan commitment letter was not the final agreement that
23 would be enforced between the parties?

24 MR. SMITH: Yes, sir. I break down the
25 argument this way in my head, Your Honor, for what it's

1 worth. First, assuming that L.N.V. did secede [sic] to
2 the obligations in the loan commitment letter -- let's
3 just suppose that for the sake of argument. Then this
4 release -- in this release, the Defendants fully, finally
5 and completely released and forever discharged L.N.V. of
6 and from its obligations. No limitation on that.
7 Obligations of and from any nature whatsoever, including
8 without limitation, any thereof relating to the loan.
9 That means the loan -- that language covers the loan
10 commitment letter. So even if, for the sake of argument,
11 we assume that L.N.V. did take the loan subject to that
12 November 2007 loan commitment letter, then in June --
13 July of 2009, the parties signed the June 2009 loan
14 modification agreement. And again, in November 2009 when
15 they signed the loan modification agreement with that
16 release language in it, the Defendants have discharged
17 L.N.V. their obligation contained in that loan commitment
18 letter.

19 Second, let's examine the assumption that I just
20 made, that L.N.V. did secede to the loan commitment
21 letter. Now, one point before we get there, Your Honor.

22 THE COURT: Did you say secede or -- what is it
23 -- assumed?

24 MR. SMITH: I beg your pardon?

25 THE COURT: Would you say they seceded to the

1 ---

2 Mr. SMITH: No, sir.

3 THE COURT: -- or did they assume it?

4 MR. SMITH: For the sake of argument ...

5 THE COURT: I'm just saying, I'm playing a
6 little semantical.

7 MR. SMITH: Yes, sir.

8 THE COURT: But they really -- the position of
9 the Defendants is that they assumed the loan commitment
10 letter, isn't it? Isn't that their position?

11 MR. CHILDRESS: Yes, sir.

12 THE COURT: Well, that's what I'm asking.

13 MR. SMITH: Yes, sir.

14 THE COURT: So they didn't secede to it.
15 You're saying that they ---

16 MR. SMITH: That they accepted it.

17 THE COURT: So address that.

18 MR. SMITH: Well, the counterclaim tells us
19 about that. In paragraph two hundred and thirty-two --
20 you hate, in pleadings as long as this, to focus so much
21 on one.

22 THE COURT: Now, you perhaps understand why I'm
23 not as familiar with the pleadings as some would like me
24 to be.

25 MR. SMITH: Oh, yes. There's the Haven Trust

1 Bank commitment letter. Then L.N.V. buys the loan. And
2 then in August of 2009, it's alleged that L.N.V. offered
3 a draft commitment letter, a draft commitment letter
4 saying that it continued performance promised by H.T.B.,
5 by Haven Trust Bank. That's a telling allegation. And
6 what it tells us is that L.N.V. was not obligated on
7 Haven Trust Bank's promises. And the only thing -- the
8 only fact that ---

9 THE COURT: Is there a further allegation that
10 that commitment letter was accepted?

11 MR. SMITH: No, sir.

12 THE COURT: Okay.

13 MR. SMITH: A draft commitment letter. Now,
14 there are other allegations -- there's an allegation that
15 we should have -- that L.N.V. knew or should have known
16 as successor to Haven Trust Bank under the basic contract
17 that it was obligated to make a premium -- a permanent
18 loan and assist with the S.B.A. loan. But that's a legal
19 conclusion. There's no factual or legal support for the
20 conclusion that L.N.V. was obligated under that letter.

21 Furthermore, by its terms, the letter is not capable
22 of enforcement. And certainly the draft commitment
23 letter that was offered by L.N.V. is not enforceable.

24 So regardless of when the negotiations for the
25 permanent loan and S.B.A. loan financing occurred,

1 whether it's before or after November 2009, this is based
2 on an obligation that's fully and finally and forever
3 released. L.N.V. is not subject to it.

4 Furthermore, because from the allegations in the
5 complaint, it's clear we only bought the assets, i.e. the
6 obligation of the borrowers to pay and not the
7 liabilities. We bought only that obligation and we're
8 not obligated on the loan commitment letter.

9 THE COURT: Mr. Childress, anything else on the
10 motion 59?

11 MR. CHILDRESS: Well, actually, it seems that
12 counsel for the Plaintiff shares our uncertainty about
13 the basic contract, the loan commitment. Was it null and
14 unenforceable from the get-go? Was it enforceable from
15 the get-go but not enforceable against L.N.V.? Was it
16 enforceable all the way through but the obligations were
17 waived by the modification agreement? So that's what
18 we're asking. To the extent the Plaintiff's still seem
19 to be arguing alternatively, we would really like to know
20 where we stand. I'm not going to belabor the
21 modification agreement. We've heard that. I would
22 simply point out once again that the terms of those loan
23 modifications in the preamble made expressed reference to
24 the construction loan, promissory note and mortgage and
25 nowhere mentioned the loan commitment in 2007.

1 THE COURT: Well, I think that you have
2 presented a very well organized argument. And as I
3 understand, it's for clarification initially as to the
4 Court's prior order, understanding whether or not it
5 bears scrutiny or muster, I guess you would say. And
6 obviously, that's one of the purposes for the 59. And
7 the reason I did vacate it initially, I understood that
8 somebody had a scheduling problem, that -- of course, you
9 only had a certain time to appeal -- so that we could
10 have this hearing on the matters to be considered. And I
11 am going to inconvenience at least one of you.

12 But to answer your questions, Mr. Childress, I
13 think, as you put it, is the loan commitment letter,
14 which I now -- what is it -- identified as the, quote,
15 basic contract -- or the, quote, basic contract, close
16 quote. Whether or not it's null and void without -- what
17 is it -- effect. Not voidable, but void. And it is
18 basic contract law that the terms of the contract have to
19 be such that it can be enforced. And that means that the
20 meeting of the minds has to be clear and has to be -- is
21 it something that if it's not, the agreement has not been
22 performed, then the Court doesn't have to think about
23 what -- I mean, if there's going to be a decision by the
24 Court as a matter of law, that it does not have to have
25 questions as to the where, why, how much is it, what's

1 expected of the parties.

2 And to answer the Defendants' first question, I do
3 find that the loan commitment letter slash basic contract
4 does not meet the requirements of such an enforceable
5 contract or agreement; and therefore, it would be void.
6 Null and void.

7 MR. CHILDRESS: In aid of the Court, Your
8 Honor, I might point out ---

9 THE COURT: But I just -- what is it -- denied
10 your motion for reconsideration.

11 MR. CHILDRESS: Yes, sir. Will we be getting a
12 writing or ---

13 THE COURT: Well, that's just it. That's what
14 I'm asking. No. You'll get a writing, but I'm treating
15 your 59 as I would -- what is it -- a summary judgment,
16 that I'm denying your motion based on that I find that my
17 original verdict -- contract. Everything else is
18 appropriate.

19 MR. CHILDRESS: Okay. So if I understand
20 correctly then ---

21 THE COURT: I'm going to just have an order
22 that will -- and since these motions have been
23 consolidated, as I understand, the motions as to all
24 three Defendants but also motions one to amend or
25 reconsider my prior ruling or my order whenever it was.

1 Was it June?

2 MR. CHILDRESS: That's November, Judge.

3 THE COURT: No. The order I'm talking about.

4 MR. SMITH: The order vacating?

5 THE COURT: Yeah, the one that I vacated.

6 MR. SMITH: Your Honor, that was ---

7 MR. CHILDRESS: July 1.

8 MR. SMITH: --- July 1st, 2013.

9 THE COURT: All right. July 1st, 2013. The
10 motion to reconsider, that motion I had vacated at that
11 time. And then the motions to, if I did vacate it and
12 permit you, then I would consider the motion to amend
13 your answer to include counterclaims. And so, therefore,
14 I am going to deny both motions.

15 MR. CHILDRESS: All right, sir. If I
16 understand correctly then, the final dismissal is going
17 to be based on the ground that the basic contract, as we
18 call it, was unenforceable ab initio, from the get-go.
19 The only point I would make in aid of the Court is that
20 under paragraph twenty of the loan commitment letter
21 itself is covered by Georgia law. So the South Carolina
22 precedent of *McWarren* (phonic) might not be replaced by a
23 Georgia cite. We've got folders full of them.

24 THE COURT: Well, the only thing is I'm not --
25 the terms of the agreement or whatever it was, I wasn't

1 familiar with that or aware of that. But as far as this
2 Court's concerned, I find that my original order stands
3 and will be -- what is it ---

4 MR. CHILDRESS: In terms of future timetables
5 then ---

6 THE COURT: Well, you'll get a sufficient -- a
7 written order. Of course, now, that's another thing that
8 -- I can change my mind, you know, I think, under Rule
9 43. And that's happened on occasion. I think it was --
10 there's a case from Greenville where the judge ruled from
11 the bench one way without -- what is it -- any sort of
12 equivocation. And then he decided that he didn't agree
13 with what he had ruled. And his written order was
14 entirely opposite. But there was a case of somebody
15 versus something. But it is Rule -- I think it's Rule
16 53. But anyway. So in other words, no order is final
17 until the written order is enrolled and noticed.

18 All right. Gentlemen, I do appreciate your patience
19 with the Court and all, but this hearing is concluded.

20 (WHEREUPON, the hearing ended at approximately 11:53
21 a.m.)

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

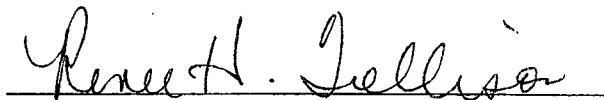
1 Certificate of Reporter

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of a
6 portion of the proceedings had and evidence introduced in
7 the trial of the captioned case, relative to appeal, in
8 the Circuit Court for Anderson County, South Carolina, on
9 the 12th day of September 2013.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 October 16, 2013

15 
16 _____

17 Circuit Court Reporter

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

LNV Corporation,) Civil Action No.: 2011-CP-04-2728
)

Plaintiff,)
)

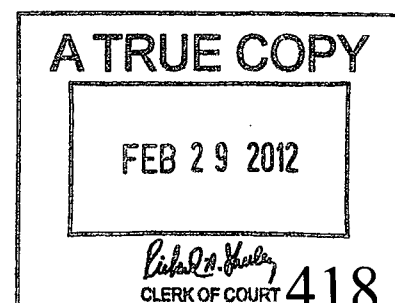
vs.)

Affordable Hospitality Group-Anderson,) MEMORANDUM IN OPPOSITION TO
LNV Diversified Capital Investment) PLAINTIFF LNV'S MOTION TO DISMISS
Group, LLC; Jay Berlye; Anderson) THE COUNTERCLAIM OF AFFORDABLE
County, South Carolina; and the State of) HOSPITALITY GROUP—ANDERSON, LLC,
South Carolina,) DIVERSIFIED CAPITAL INVESTMENT
) GROUP, LLC, AND JAY BERLYE
)

Defendants.)
)

Defendants Affordable Hospitality Group—Anderson, LLC, Diversified Capital Investment Group, LLC, and Jay Berlye (referred to hereinafter collectively as “Defendants”), by and through their undersigned counsel, respectfully submit this Memorandum in Opposition to the Motion to Dismiss filed by Plaintiff LNV Corporation (“LNV”).

LNV wrongly contends that Defendants’ counterclaim must be dismissed because it is “based upon an alleged failure [of Defendants] to obtain small business administration financing.” However, LNV’s wrongful conduct was the direct and proximate cause of Defendants’ inability to obtain such financing, even though LNV had a contractual duty to assist Defendants in obtaining that financing. Consequently, Defendants incurred substantial harm to their financial interests. LNV is seeking to foreclose on Defendants’ hotel, which is already in receivership, and to seek a deficiency judgment. Consistent with the foregoing summary, the following discussion, and the allegations set out in the counterclaim, LNV’s motion to dismiss must be denied. S.C. R. Civ. P. 12(b)(6).



I. STATEMENT OF MATERIAL FACTS

On November 6, 2007, Defendants received a loan commitment letter to finance the construction and operation of a hotel in Anderson County, South Carolina.¹ (¶ 214)² The letter had been issued by Haven Trust Bank, which was based in Georgia. (Id.) The stated purpose of the letter was “[t]o provide [Defendants with] construction and permanent mortgage financing” for their hotel project. (¶ 215) The letter contemplated three transactions: (1) an initial construction loan of \$3,384,000, which would have a 9-month term; (2) a conventional permanent loan of \$2,115,000, which would partially replace the construction loan and have a ~~20-year~~ term; and (3) a loan issued by the government of \$1,269,000, which would replace the remainder of the construction loan and have a 3-month term. (¶¶ 216–17) The government-issued loan was backed specifically by the United States Small Business Administration (“SBA”). (¶ 214) Defendants accepted the loan commitment letter, which came to establish the Basic Contract among the parties. (¶ 218)

Soon thereafter, both Haven Trust Bank and Defendants began performing under the Basic Contract. On May 15, 2008, Defendants executed documents specific to the construction-loan phase of the agreement with Haven Trust Bank.³ (¶ 219) Upon the execution of these documents, Haven Trust Bank disbursed funds to Defendants under the Basic Contract and construction of the hotel began. (¶ 221)

¹ A copy of the letter is attached hereto as Exhibit A, and is also incorporated into Defendants’ counterclaim as Exhibit A. Notably, to date, LNV has never mentioned the loan commitment letter in any paper or pleading submitted to the Court, including the foreclosure Complaint.

² All paragraph references pertain to the allegations of Defendants’ Answer to the Complaint & Counterclaim.

³ LNV’s Complaint mischaracterizes this event as the origin of all contemplated loan transactions.

On or about December 12, 2008, Haven Trust Bank was closed by the Georgia Department of Banking and Finance. (§ 222) The Federal Deposit Insurance Corporation became the Bank's receiver. (*Id.*) During the Bank's receivership, Defendants continued their construction efforts, and in May 2009, Defendants' hotel opened for business. (§§ 223–25). At about the same time, LNV purchased Haven Trust Bank's portfolio of assets.⁴

Initially, LNV appeared to be performing in good faith under the Basic Contract. Between May and November 2009, LNV entered into two modifications of the construction loan agreement with Defendants. (§§ 230–33) Under the first modification, LNV advanced \$250,000 to Defendants. (§ 230) Under the second modification, LNV extended the maturity date for the construction loan by almost four months. (§ 233) At no time during the negotiation of the first or second loan modification agreements did LNV propose any changes to the Basic Contract, much less any changes to the terms calling for permanent loan financing or assistance in obtaining the SBA-backed loan. (§ 234)

However, in late 2009, LNV starting showing signs of its intention to suspend performance. LNV was becoming non-responsive to communications from Defendants and Defendants' consultants. (§ 242) For long periods of time, LNV would cease all communications with Defendants. (*Id.*) Importantly, LNV never made the permanent loan contemplated by the Basic Contract, and did not cooperate with Defendants in obtaining SBA-backed financing.

⁴ According to Defendants' best estimates, the purchase price was approximately thirty percent of the portfolio's face value. The true purchase price is not known, as LNV has refused to respond substantively to Defendants' discovery requests regarding this matter.

II. STANDARD OF REVIEW

Consistent with Rule 12(b)(6), a pleading under attack must be construed liberally, granting to the pleader the truth of all allegations and legal sufficiency of inferences drawn therefrom. As stated in Rydde v. Morris, the Court must determine if “the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) (quoting Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001)). The Court's inquiry must be based solely upon the allegations set out on the face of the complaint. Charleston County Sch. Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011) (citing Doe v. Greenville County Sch. Dist., 375 S.C. 63, 66-67, 651 S.E.2d 305, 307 (2007)). If the facts alleged and inferences deducible from the face of the complaint would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Grimsley v. South Carolina Law Enforcement Div., No. 27085, ___ S.C. ___, ___ S.E.2d ___, 2012 WL 11588 (Jan. 3, 2012) (quoting Sloan Constr. Co. v. Southco Grassing, Inc., 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008)). Pleadings should be construed liberally, and all well pleaded facts must be presumed true “so that substantial justice is done between the parties.” Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (citing Stroud v. Riddle, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973)).

III. DISCUSSION OF LAW

LNV is asking the Court to dismiss Defendants’ counterclaims as a matter of law because “Plaintiff cannot be held liable for the funding determination of the Federal SBA.” This assertion presumes that LNV, in good faith, assisted Defendants in seeking SBA financing, as LNV was contractually obligated to do. LNV did not render such assistance, and as a direct and

proximate consequence, Defendants did not qualify for SBA-backed financing.

This is not a case of first impression in South Carolina. The state's appellate courts have previously held that claims like those against LNV are legally sufficient. In Champion v. Whaley, 280 S.C. 116, 311 S.E.2d 404 (Ct. App. 1984), plaintiff was a realtor who entered into an exclusive agency contract to sell defendants' home. Under the contract, plaintiff would be paid upon sale. Plaintiff procured a willing buyer for the home, and buyer executed an agreement which made her obligation to purchase contingent on whether she could acquire financing. As a condition precedent to obtaining financing, buyer's bank needed an appraisal of the home, which required bank's appraiser to inspect the home's interior. However, defendants secretly sold their home to a third party, who promptly changed the locks. When bank's appraiser showed up for the home inspection, he could not get inside. Consequently, the appraisal was never completed and financing was never approved.

Critically, the bank refused buyer's financing application because of defendants' wrongful conduct, not because of buyer's ability to obtain financing. The bank was never put in a position to evaluate buyer's application on its merits, and therefore, denied buyer's financing application simply because it was incomplete. The incompleteness was caused by defendants' own actions.

Initially, the trial court granted a non-suit in favor of defendants, holding that plaintiff had failed to state facts sufficient to constitute a cause of action. But the court of appeals reversed. Its analysis began by observing that "[a] plaintiff suing on a conditional precedent contract has the burden of proving that all conditions precedent to his right of performance have occurred." 280 S.C. at 120, 311 S.E.2d at 406 (citing Griffith v. Newell, 69 S.C. 300, 48 S.E. 259 (1904)).

However, “if the [other party to the contract] prevents a condition from occurring, then the condition is excused and [the preventing party’s] obligation to pay becomes unconditional.” 280 S.C. at 120, 311 S.E.2d at 406 (citing Shear v. Nat’l Rifle Ass’n of Am., 606 F.2d 1251 (D.C. Cir. 1979)). “This is simply an instance of the general rule that one who prevents a condition of a contract cannot rely on the other party’s resulting nonperformance in an action on the contract.” 280 S.C. at 120, 311 S.E.2d at 406 (citations omitted). Accordingly, a plaintiff suing on a contract precedent contract may discharge his burden by showing that, but for the defendant’s wrongful conduct, all conditions precedent to plaintiff’s right of performance would have occurred.

Notably, in this context, the idea of “but for” causation is not subject to strict construction. “It is sufficient for the plaintiff to present evidence that the defendant’s prevention ‘substantially contributed’ to the nonoccurrence of the condition.” 280 S.C. at 122, 311 S.E.2d at 407 (citing Shear, 606 F.2d 1251). The court acknowledged that this analysis invites some amount of speculation. However, in the court’s estimation, if the rule were otherwise, “then it would be virtually impossible for a plaintiff to prove a case of prevention.” 280 S.C. at 122, 311 S.E.2d at 407. “The defendant cannot take advantage of the uncertainty created by his own wrongdoing.” 280 S.C. at 121–22, 311 S.E.2d at 407.

Procedurally, Champion was much further along in litigation than the present case is. The trial court’s dismissal in Champion did not occur until the case was on the cusp of being submitted to the jury. As a consequence of Champion, the trial court’s dismissal was reversed and the jury was allowed to decide the case on its merits.

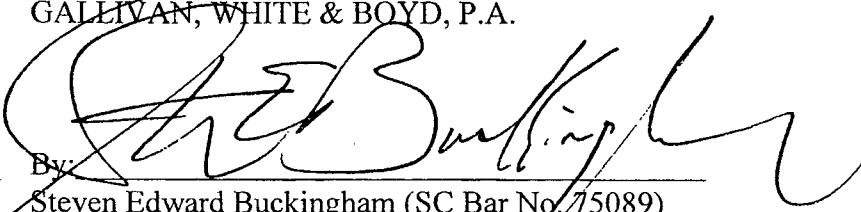
By contrast, at this early procedural stage, Defendants' allegations are sufficient to survive LNV's motion to dismiss. Defendants have alleged the existence of contractual obligations with LNV; that LNV failed to perform its contractual obligations, specifically by withholding the conventional permanent loan and by refusing to cooperate in obtaining SBA-backed financing, all as contemplated by the Basic Contract; and that consequently, Defendants have sustained damages. By the greater force of logic of the rule in Champion, Defendants' claim must survive Rule 12(b)(6).

IV. CONCLUSION

Ultimately, LNV's motion to dismiss challenges Defendants' ability to prove their case, not the sufficiency of Defendants' allegations. For the foregoing reasons, and because the allegations set out in Defendants' counterclaim satisfy the applicable pleading standards, LNV's motion to dismiss must be denied.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

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February 28, 2012

Greenville, South Carolina

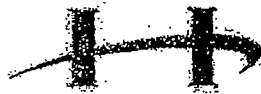
Attorneys for Defendants,

Affordable Hospitality Group—Anderson, LLC,

Diversified Capital Investment Group, LLC, and

Jay Berlye

EXHIBIT A



HAVEN TRUST BANK

November 6, 2007

Mr. Jay Berlye
Affordable Hospitality Group -- Anderson, LLC d/b/a
Microtel Inn & Suites
3904 N. Druid Hills Rd. #221
Decatur, GA 30033

Re: Loan Commitment

Dear Mr. Berlye:

Subject to the facts presented by you and further subject to the terms and conditions hereafter set forth, Haven Trust Bank (Bank) commits to Affordable Hospitality Group -- Anderson, LLC d/b/a Microtel Inn & Suites to place a loan in conjunction with a 504 loan from the U. S. Small Business Administration (SBA), with the provisions as described in this letter. This commitment is subject to satisfactory completion of credit investigation and analysis, satisfactory documentation and such other terms and conditions as are determined by Bank and SBA.

1. **Borrower:** Affordable Hospitality Group -- Anderson, LLC d/b/a Microtel Inn & Suites

2. **Purpose:** To provide construction and permanent first mortgage financing associated with Microtel Inn & Suites to be located on Electric City Boulevard in Anderson, South Carolina.

USES:

Land	\$650,000	15%
Construction	\$2,619,628	62%
Construction Contingency (5%)	\$130,981	3%
Construction Management	\$25,000	1%
Landscaping	\$34,000	1%
F,F,E	\$542,394	13%
Interest Carry	\$163,159	4%
Soft Costs	\$74,838	2%
Total project costs	\$4,230,000	100%

SOURCES:

Haven Trust Bank	\$2,115,000	50%
SBA 504	\$1,269,000	30%
Borrower Equity	\$846,000	20%
	\$4,230,000	

(See the attached for the Project Cost Worksheet which outlines the costs and equity requirement.)
4.2.61

2175 LAWRENCEVILLE HIGHWAY • DECATUR, GEORGIA 30033 • TEL: 404.638.6940 • FAX: 404.638.6941

Member
FDIC

A Preferred SBA Lender

3. Loan Amount:

- a. Construction Loan of \$3,384,000
- b. Conventional Permanent Loan of \$2,115,000
- c. SBA 504 Interim Loan of \$1,269,000

4. Term:

- a. Construction loan shall be for a period of nine (9) months from the date of closing. Interest will be accrued during the construction period and interest payments will be paid from permanent loan proceeds.
- b. Proposed permanent loan will be for a period of twenty (20) years from the date of closing payable in two hundred and forty (240) installments of principal and interest.
- c. SBA 504 Interim Loan will be for a period of three (3) months.

5. Interest Rate:

- a. The interest rate shall be a variable rate based on the Wall Street Journal Prime plus 1.50% adjusting daily. Interest shall be calculated on the accrual basis of 365/360. The initial interest rate today would be 9.0%.
- b. The interest rate shall be a variable rate based on the Wall Street Journal Prime plus 1.50% adjusting daily. Interest shall be calculated on the accrual basis of 365/360. The initial interest rate today would be 9.0%. Or a 5-year fixed rate adjustable every 5-years based on the five-year swap rate plus 400 basis points (currently 8.86%). This rate will be fixed at the time the loan converts to the term loan. Interest shall be calculated on the accrual basis of 365/360.
- c. The interest rate shall be a variable rate based on the Wall Street Journal Prime plus 1.50% adjusting daily. Interest shall be calculated on the accrual basis of 365/360. The initial interest rate today would be 9.0%.

6. Collateral:

- a-b. The loan will be secured by a First Deed to Secure Debt conveying first security title to the real property and improvements, including a general collateral assignment of all rents and leases. The said property will be located at Electric City Boulevard, Anderson, South Carolina.

The loan will be further secured by a first lien position on all assets of the Borrower including, but not limited to, furniture, fixtures and equipment of the Borrower.

In addition, the loan will be secured by an assignment of \$100,000 certificate of deposit to be held at the Bank. The certificate of deposit will be released once the interim SBA 504 loan is paid off by the SBA 504 debenture.

- c. The loan will be secured by a Second Deed to Secure Debt conveying second security title to the real property and improvements located at Electric City Boulevard, Anderson, South Carolina.

7. Guarantors: Jay Berlye

8. Prepayment Penalty: There will be a five (5) year prepayment penalty at a 5% decreasing rate per year, i.e., 5,4,3,2,1 as it relates to the permanent loan first mortgage. The pre-payment penalty will be calculated on the entire principal balance at the time of payoff.

9. Loan Fees:

a-b. There is an Interim Loan Fee of 1.311% on the construction loan which will be deemed earned by the Bank upon issuance of this Commitment. Lender will pay the SBA fee of 1/4% of the first mortgage loan from these funds.

There is an Expense Deferment Fee in the amount of \$10,000 due and payable on acceptance of this proposal.

c. The SBA fees which will be added to the debenture total approximately \$30,000 as shown on the attached Project Cost Worksheet.

10. Borrower's Costs: Borrower shall otherwise be responsible for all costs associated with the proposed Loan including, but not limited to, recording costs, state of South Carolina intangible taxes, costs to obtain credit reports, Lender's and Borrower's attorney fees and expenses, property inspection, environmental assessment and appraisal. Borrower is required to pay such costs incurred whether or not closing occurs.

11. Title Insurance: The Bank shall be furnished with a mortgagee title insurance policy in an amount and form and substance written by a title insurance company that is satisfactory to the Bank, insuring the title conveyed by the security instrument as a valid first lien upon and security title in and to the collateral property.

12. Collateral Restrictions: So long as this Loan commitment or any part of the Loan is outstanding, the collateral property and any additional property, if any, shall remain free and clear of all encumbrances, liens, mortgages, security interests and secondary financing, except those approved in writing by the Bank. The Borrower shall not, without the prior written consent of the Bank, sell, transfer or convey all or part of its interest in the property or the business or any portion thereof. The occurrence of any of the foregoing shall, at the option of the Bank, constitute grounds for terminating this Commitment and for accelerating any and assumes unpaid under this anticipated Loan or under any Loan with the Bank.

13. Financial Reports: The Borrower and Guarantors shall furnish to the Bank the following information: () *Initials*.

- a. Quarterly financial statements on Borrower to include, but not limited to, Balance Sheet and Income Statement;
- b. Annual Financial Statement on Borrower to include, but not limited to, Balance Sheet and Income Statement;

- c. Copy of Borrower and Guarantors' Tax Returns for previous year, within 30 days after said returns have been completed; and
 - d. Annual Personal Financial Statement for each Guarantor, in its original format, signed and dated by Guarantor.
14. **Power of Attorney:** Bank shall not accept a power of attorney. All persons needed to finalize the closing must be present.
15. **Additional Provisions:**
- a. This Commitment is subject to receipt and review of an Appraisal satisfactory to the Bank, reporting a minimum appraisal value of the real state and business value located at Electric City Boulevard, Anderson, South Carolina. This appraisal will be ordered by the Bank and must show a minimum current value of \$4,230,000 or maximum 80% loan to value.
 - b. A current A.L.T.A. survey of the land to be mortgaged (no older than 60 days) prepared and certified by a duly registered land surveyor or engineer showing the location of all improvements, encroachments, easements and rights-of-way must be received and approved by Bank. The survey must bear the name(s) of the intended Borrower(s) and must also show Bank as Mortgagee. In addition, a Surveyor's Inspection Report, as required by the title company, must accompany the survey. The survey must contain an acceptable surveyor's certification.
 - c. A mortgagee's title insurance policy in an amount, in form and substance, and written by a title insurance company, satisfactory to the Bank, insuring the title conveyed by the security instrument as a valid first lien upon and security interest in and to the Property. Said policy shall contain affirmative insurance against liens of mechanics and materialmen and shall contain no exceptions other than approved by Bank. Said policy shall be updated by endorsement, from time to time, as required by Bank. Bank's legal counsel will be the agent for this policy. **TO INSURE THE BEST PREMIUM, PLEASE PROVIDE A COMPLETE COPY OF ANY EXISTING TITLE INSURANCE POLICY.**
 - d. A true and correct copy of the Articles of Incorporation, By-Laws, Certificate of Good Standing and borrowing resolution or the appropriate partnership agreements, if applicable, must be received by Bank.
 - e. Proof of insurance for the Property in an amount not less than the loan amount, in the name of the Borrower with an insurer satisfactory to Bank and policy (ies) satisfactory to Bank in both form and content, showing Bank as both mortgagee and additional insured. In addition, Bank must receive proof of general public liability insurance of not less than \$1,000,000.
 - f. Evidence in a form satisfactory to Bank that final zoning approval consistent with the intended use has been rendered to the Property by the appropriate governmental authorities.

- g. Borrower shall certify to Bank in writing that the Property is in compliance with all applicable government laws and government regulation, including but not limited, to the National Environmental Policy Act, Clean Air Act, National Flood Insurance Program and the Americans with Disabilities Act.
- h. The Bank will require evidence that the real property submitted as collateral by Borrower complies with all applicable laws and regulations (both federal and state) pertaining to the protection and preservation of the environment. In the Bank's sole discretion, this evidence will include (but not limited to) a Phase I Environmental Site Assessment report prepared by a consultant acceptable to the Bank attesting to the satisfactory environmental condition of the real property and certifying that you and prior occupants of the real property have complied with and are complying with all federal, state, and local environmental statutes, laws and regulations. Following a review of such report, the Bank may require additional testing at your expense. The Bank will not be required to fund the loan if the property to be taken as collateral is subject to any existing or threatened contamination.
- i. A detailed estimate of all site development and/or direct construction costs, executed by the Borrower and the Borrower's engineer, certifying that such cost estimates are fair and reasonable and sufficient to complete the proposed development, must be submitted to Bank. A front-end analysis of the proposed improvements and cost budget by Bank's designated inspector will be required.
- j. All fully executed contracts and their counterparts for site planning, development, and construction of the improvements must be submitted to Bank.
- k. Letter from the appropriate utility companies and governmental agencies stating that all utilities, including but not limited to, electricity, gas, water, sanitary sewer, storm water retention and telephone services are available to the Property.
- l. Two (2) complete sets of final plans and specifications as certified by the Borrower's architects and appropriate engineers, and with the seals of such architects and engineers affixed, are to be submitted to and approved by Bank. Any deviation from the approved plans and specifications must be submitted to and approved by Bank, in writing. Borrower's architect shall certify to Bank, in writing, that the Project, as shown in said plan and specifications, is in compliance with all applicable government laws and government regulations including, but not limited to, the National Environmental Policy Act, Clean Air Act, Americans with Disabilities Act, and National Flood Insurance Program.
- m. Builder's risk insurance is required.
- n. Haven Trust Bank reserves the right to request and review the resume and financial information from the contractor. Said review may determine Bank's willingness to approve the contractor for the project.

- d. Haven Trust Bank will require the Borrower to use a Hotel Management Company that is acceptable to the Bank at its sole discretion.
 - p. Haven Trust Bank will require an assignment of key man life insurance in the amount of \$1.25MM for Jay Berlye during construction.
- 16. **Construction Requirements:** Prior to the Bank's disbursement of each draw request, the following conditions must be met by Borrower.
 - a. The first draw will cover the acquisition of the property. No other draws will be processed until all the requirements have been met in accordance to the loan agreement.
 - b. There will be 10% retainage on all construction draws.
 - c. Requests for disbursement must be made in writing on AIA Form with appropriate lien waivers. Bank shall allocate and disburse funds based upon a complete construction cost breakdown to be attached to the Construction Loan Agreement after Bank's inspector completes the front-end analysis ("Approved Budget"). Soft Costs paid by Borrower must be supported by paid invoices and/or invoices due. Bank shall disburse funds for direct construction based on line-item draw schedule not to exceed the total amount allocated in Approved Budget. Any changes in loan allocations are subject to Bank's approval.
 - d. Inspections will be performed by an independent inspector satisfactory to Bank. Borrower shall pay costs of all such inspections.
 - e. Requests for funding shall be received no later than the 20th of each month and disbursement made on the first.
 - f. The loan must be current in all respects and no event of default may exist.
 - g. If requested by Bank, Borrower shall deliver to Lender an endorsement of Bank's title insurance policy, indicating that there has been no change in the condition of title to the secured property from that previously reported and containing no exceptions not previously approved by Bank. The endorsement shall, expressly or by virtue of a proper "pending disbursement" clause in the policy, increase the coverage of the policy to aggregate amount of all loan proceed advances on or before the effective date thereof.
 - h. Borrower shall deliver waivers or subordinations of lien rights, in form satisfactory to Bank, executed by all contractors in connection with direct costs applicable to the preceding disbursements of the loan.

- i. In the event that Bank's total disbursement for any category in Approved Budget is less than the amount scheduled, said amount shall be re-allocated to increase the Contingency category.
- j. Borrower must provide a slab survey to ALTA specifications prior to any draw request, including the foundation/slab.
- k. Borrower must provide an "as built" survey to ALTA specifications before the loan converts to permanent term.
- l. Borrower must provide a copy of building's Certificate of Occupancy before the loan converts to permanent term.

17. Borrower's Representation: Issuance of this letter, converting the application into a commitment on the part of Bank is based upon the accuracy of Borrower's representations and statements, loan application and all additional information, representations, exhibits, and other matters submitted to Bank in connection with the loan request. Bank shall have the right to declare the Commitment to be breached if there shall have been any material misrepresentation nor misstatement or any material error in the factual data previously submitted to Bank, or if prior to the initial loan disbursement, there shall have been any material or adverse change in the state of facts regarding the Borrower, Guarantors, Property or any other matter associated with the closing of the loan.

18. Non-Assignability: This Commitment is made exclusively to the Borrower and is non-transferable and non-assignable by operation or law or otherwise without the prior written consent of Bank.

19. Voiding of Commitments: This Commitment shall become voided at the option of the Bank if any of the following events occur:

- a. The borrower fails to meet for any reason any of the requirements or conditions of this Commitment letter within the specified time frame.
- b. An act of bankruptcy or insolvency with voluntary or involuntary is filed by or asserted against the Borrower, any Guarantors, any entity related to the Borrower or any Guarantors or any tenant of the Property.
- c. The expiration date of this Commitment passes without a written extension from Bank.
- d. Any other material event, occurrence or change in circumstances which in the opinion of Bank adversely affects any of the collateral or the Property or the financial condition of the Borrower or any Guarantor.

20. Modifications and Amendments: No change, amendment or modification the provisions of this Commitment shall be binding unless it is changed in writing and executed in the name of and by an officer of the Bank and in the name of and by Borrower and each Guarantor.

21. Laws Governing: This commitment shall be construed according to and governed by the laws of the state of Georgia. However, this shall not limit the applicability of federal law to the transaction. This commitment may be executed in any number of counterparts and each counterpart will be considered an original and constitute one and the same instrument.

22. Waivers: Waivers of any of the terms or conditions of the commitment shall not constitute a continuing waiver or waivers of strict performance of any other provision in this Commitment by Bank.

23. Pre-closing Property Inspection: Bank's obligation to close and fund the loan is subject to Bank's completion of a satisfactory property inspection immediately prior to closing by Bank and/or Bank's designated inspector. If this inspection reveals any material adverse change in the occupancy or condition of the property, at Bank's option, the closing may be delayed until the property is restored to its original condition or the cost to cure any discrepancies found during such inspection shall be deducted from the loan proceeds and placed into escrow until such time as the discrepancies have been corrected to the satisfaction of Bank. Bank will have no obligation to extend the expiration date of this commitment in order to accommodate any delay created by the above.

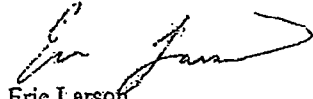
24. Loan Closing: The closing of this loan shall be arranged by the Bank. All documents and proceeds relating to the completion of the loan shall be satisfactory to Bank and the Bank's counsel.

25. Acceptance: If the provisions contained in this letter are in accordance with Borrower's and Guarantors' understanding, please indicate your acceptance by executing and returning this Commitment Letter, together with the required Expense Deferment Fee in the amount of \$10,000 to Bank on or before November 16, 2007. Should Bank not receive this Commitment Letter executed by Borrower and Guarantors and the required fee on or before such date, this Commitment Letter shall become null and void. Furthermore if this loan is not closed with ninety (90) days from the date of acceptance, this Commitment will expire.

The Expense Deferment Fee of \$10,000 will be due and payable upon acceptance of this Commitment. This Expense Deferment Fee will be refunded to the Borrower if/when all outstanding fees associated the loan have been paid in full. In the event the above-mentioned loan does not close for any reason other than a failure or default by the Borrower, Lender will return the Expense Deferment Fee less any expenses incurred to the borrower and this agreement shall be null and void. Lender will have no further responsibility or liability to the Borrower. Should the Borrower for any reason not close the loan as approved by SBA with Bank, the Bank shall keep the Expense Deferment Fee as compensation for services rendered.

Haven Trust Bank is pleased to have the opportunity to offer this Loan Commitment to you. We look forward to working with you on this transaction and any future proposals.

Sincerely yours,



Eric Larson
Assistant Vice President

Attachment: Project Cost Worksheet

**THIS COMMITMENT IN NO WAY IS TO BE CONSTRUED AS FINAL
APPROVAL BY HAVEN TRUST BANK OR ITS ASSIGNS.**

ACCEPTANCE OF COMMITMENT:

The undersigned hereby accepts this Commitment and agrees to the terms and conditions contained herein, the ___ day of _____ 2007.

**AFFORDABLE HOSPITALITY GROUP, ANDERSON, LLC
D/B/A MICROTTEL INN & SUITES**

By: _____
Jay Berlye, Managing Member

GUARANTORS:

Jay Berlye, Individually

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
LNV Corporation,	)	Civil Action No. 2011-CP-04-2728
	)	
Plaintiff,	)	
vs.	)	
	)	
Affordable Hospitality Group-Anderson,	)	<u>MEMORANDUM IN SUPPORT OF</u>
LLC; Diversified Capital Investment	)	<u>MOTION TO DISMISS</u>
Group, LLC; Jay Berlye; Anderson County,	)	
South Carolina; and the State of South	)	
Carolina,	)	
	)	
Defendants.	)	
	)	

The Plaintiff, LNV Corporation (hereinafter, "LNV"), hereby respectfully submits this Memorandum in Support of Its Motion to Dismiss the Counterclaims of the Defendants, Affordable Hospitality Group-Anderson, LLC; Diversified Capital Investment Group, LLC; Jay Berlye (collectively, hereinafter, "AHG"). AHG's counterclaims are nothing more than tactics to delay the foreclosure sought by LNV. The claims asserted by AHG are barred as a matter of law and cannot be asserted pursuant to Rule 12(b)(6), SCRCP. These claims fail because (1) they are based on the false presumption that LNV had some ability to control whether AHG obtained an United States Small Business Administration ("SBA") 504 permanent loan; (2) they overlook the admitted facts that AHG could not qualify for an SBA 504 loan under SBA regulations due to their prior breaches of the loan agreements; and (3) they ignore AHG's previous release of these claims. Accordingly, the Court should dismiss the counterclaims, with prejudice.

FACTUAL BACKGROUND

LNV initiated foreclosure proceedings against AHG by way of a verified complaint on September 13, 2011. The foreclosure action is based on a loan made to AHG for the construction of the Microtel Hotel in Anderson, South Carolina. On May 15, 2008, AHG entered into a loan agreement with Haven Trust Bank (“Haven Trust”) in the original principal sum of \$3,411,782.00. The note was guaranteed by the other defendants and was secured by a mortgage on the property that is the subject of this action (the “Subject Property”). On December 12, 2008, Haven Trust was closed and placed into receivership with the Federal Deposit Insurance Corporation (“FDIC”). LNV subsequently acquired the note from the FDIC, acting as Haven Trust’s receiver. The transfer was completed on April 30, 2009¹ and the Mortgage was conveyed August 26, 2009. (See Assignment Documents, attached to Compl.). AHG breached the terms of the loan documents when they failed to pay the loan as agreed (Compl., ¶ 26) and allowed various tax liens to attach to the property for failure to pay taxes to the State of South Carolina and the County of Anderson (Compl., ¶ 29). As of the date of filing the Complaint, LNV was owed \$4,125,598.66 (with interest accruing at \$834.55 *per diem*).

AHG filed a series of counterclaims in its Amended Answer dated November 28, 2011. AHG alleged claims for: (1) breach of contract, (2) breach of the duty of good faith and fair dealing, (3) breach of contract with fraudulent intent, (4) violation of the South Carolina Unfair Trade Practices Act, and (5) tortious interference. All of AHG’s counterclaims are premised upon their claim that LNV did not abide by a “Loan Commitment” that purportedly obligated AHG to “grant [a] permanent loan and assist Defendants in obtaining [a] SBA 504 Interim Loan.” (Ans., ¶ 227).

¹ See Ans., ¶ 226 (noting that AHG was notified of the transfer on May 1, 2009).

These claims—that LNV was somehow obligated, but failed, to obtain a governmental loan—are legally unsupportable. LNV has no control over whether the United States government issues SBA 504 loans to borrowers. Moreover, AHG was already in breach of the earlier loan commitments issued by the SBA through Haven Trust Bank—the very agreement that AHG now seeks to enforce. Finally, through a series of loan modifications, attached to the counterclaims, AHG released (to the extent they existed) the very claims that they now seek to enforce.

LEGAL ANALYSIS

I. Legal Standard

“In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the [pleading].” Cole Vision Corp. v. Hobbs, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (2011); Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007). If the claimants fail “to state facts sufficient to constitute a cause of action” in their pleading, the circuit court should dismiss the claims. Flateau v. Harrelson, 355 S.C. 197, 201 (Ct. App. 2003). Where documents are “attached and incorporated by reference into the [pleading],” the “trial court [may] consider documents” when deciding a motion to dismiss pursuant to Rule 12(b)(6). Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). When such standards are applied to the case *sub judice*, AHG’s counterclaims warrant immediate dismissal.

II. AHG Released the Claims It Now Seeks to Enforce

LNV and AHG previously entered into a series of loan modifications to extend the term of the subject loan, provide additional liquidity, and assist AHG in completing

construction. These two Loan Modification Agreements are dated June 1, 2009,² and November 10, 2009³, respectively. In each of these documents, in consideration of the lender's modifying the loan agreement, AHG granted a broad release that includes the very claims that they now raise as defenses and counterclaims.

Both of these documents contain similar language:

AS A MATERIAL INDUCEMENT TO LENDER [LNV] TO ENTER INTO THIS AGREEMENT, BORROWER AND GUARANTORS ... HEREBY FULLY, FINALLY AND COMPLETELY RELEASE AND FOREVER DISCHARGE ORIGINAL LENDER [HAVEN TRUST BANK], THE FEDERAL DEPOSIT INSURANCE CORPORATION ... [AND] LENDER [LNV] OF AND FROM ANY AND ALL CLAIMS, CONTROVERSIES, DISPUTES, LIABILITIES, OBLIGATIONS, DEMANDS, DAMAGES, EXPENSES ... DEBTS, LIENS, ACTIONS AND CAUSES OF ACTION OF ANY AND EVERY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY THEREOF RELATING TO THE LOAN, AND WAIVE AND RELEASE ANY DEFENSE, RIGHT OF COUNTERCLAIM, RIGHT OF SET-OFF OR DEDUCTION TO THE PAYMENT OF THE INDEBTEDNESS EVIDENCED BY THE NOTE AND/OR THE MORTGAGE OR ANY OTHER LOAN DOCUMENT WHICH OBLIGORS, ET AL. NOW HAVE OR MAY CLAIM TO HAVE AGAINST LENDER, ET AL., OR ANY THEREOF, ARISING OUT OF, CONNECTED WITH OR RELATING TO ANY AND ALL ACTS, OMISSIONS OR EVENTS OCCURRING PRIOR TO THE EXECUTION OF THIS AGREEMENT.

(6/1/2009 and 11/10/2009 Loan Modification Agreements, ¶ 3).

AHG alleges that the obligation to grant the SBA loan arose in May 2009. (Am. Ans. & Counterclaim, ¶ 225). After this supposed obligation arose, AHG entered into the loan modification agreements with Plaintiff quoted above, on or about June 1, 2009, and November 10, 2009. (*Id.* ¶¶ 230, 233.) Now, despite this release of (a) all claims and causes of action relating to the note, mortgage "or any other loan document which obligors, et al., now have or may claim to have against lender. . . .; (b) all claims and

² Attached to the Answer as Exhibit B.

³ Attached to the Answer as Exhibit C.

causes of action “arising out of any and all acts... occurring prior to the execution” of the loan modification agreement; and (c) all defenses to repayment of the indebtedness, AHG asserts claims and defenses arising from an alleged agreement to secure a loan that predated the execution of the releases. Having entered into the loan modification agreements and having released these claims without reservation, AHG is barred from asserting these claims and defenses now. “A release is a contract and contract principles of law should be used to determine what the parties intended.” Ecclesiastes Production Ministries v. Outparcel Assoc., LLC, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). Where a “[r]elease unambiguously sets forth the contracting parties’ intent, [the court is] bound by that clearly expressed intent.” Bowers v. Dept. of Transp., 360 S.C. 149, 153, 600 S.E.2d 543, 545 (Ct. App. 2004). Releases of this type are regularly recognized under South Carolina law and are enforced accordingly. See Lowery v. Callahan, 210 S.C. 300, 305, 42 S.E.2d 457, 459 (1947); Gardner v. City of Columbia Police Dept., 216 S.C. 219, 225, 57 S.E.2d 308, 310 (1950); Gecy v. Prudential Ins. Co. of America, 273 S.C. 437, 442, 257 S.E.2d 709, 712 (1979); Bowers, 360 S.C. at 156, 600 S.E.2d at 546. AHG’s previously executed releases, given in consideration of LNV’s continued extensions and modification of the loan agreements should be enforced according to their terms. AHG cannot now assert these claims to prolong and delay the foreclosure process.

III. LNV Does Not Control the Issuance of SBA 504 Loans

All of AHG’s claims are based upon a supposed failure of LNV to “obtain” an SBA 504 permanent loan for AHG. According to AHG, “[LNV] was required to grant the permanent loan and assist [AHG] in obtaining the SBA 504 Interim Loan.” (Ans., ¶

227). As noted by the SBA, “The 504 Loan Program provides approved small businesses with long-term, fixed-rate financing used to acquire fixed assets for expansion or modernization. 504 loans are made available through...SBA's community based partners for providing 504 Loans.”⁴ The loans are not made through lenders, like LNV. Rather, the lender provides the financing at SBA’s direction, subject to SBA approval. The SBA, in turn, guaranties a portion of the debt for the lender.

As noted by other courts, the SBA loan approval determination is solely made by the SBA. The application process is wholly within the borrower’s control. [“Borrowers] were responsible for the SBA loan application process, which they never completed.” Regions Bank v. Lost Cove Cabins and Campgrounds, Inc., No. M2009-02389, 2010 WL 4514957 at *1, *6 (Tenn. Ct. App. Nov. 9, 2010)⁵ (dismissing the claims asserted by borrowers that Regions Bank had an obligation to convert loan to permanent SBA 504 financing); Minnwest Bank Central v. Flagship Properties LLC, 689 N.W.2d 295, 298 (Minn. App. 2004) (“The SBA is the final arbiter for Section 504 loans” and may refuse to fund a permanent loan when there is a “material adverse change” in the borrower’s finances); Fifth Third Bank v. McClure Properties, Inc., 724 F. Supp. 2d 598, 605 (S.D.W.Va. 2010) (dismissing claims against bank on theories that bank was required to provide SBA 504 Permanent Loan). The SBA similarly controls all terms of the SBA loan commitment, loan authorization, and permanent lending requirements. (See National 504 Authorization Boilerplate, available at <http://www.sba.gov/content/504->

⁴ See, “What is the 504 Loan Program,” available at <http://www.sba.gov/content/cdc504-loan-program>. This loan was approved through the Georgia Certified Development Corporation (“CDC”), the community partner of the SBA handling this particular loan.

⁵ This unpublished opinion is attached hereto as **Exhibit A**.

boilerplate). LNV has no ability to close an SBA loan without SBA approval, nor can it guarantee that a borrower will receive an SBA 504 loan.

IV. The Loan Commitment Does Not Obligate LNV to Provide an SBA 504 Loan

The document that serves as the basis for AHG's counterclaims is a Loan Commitment Letter dated November 6, 2007. However, the very document that AHG relies upon contains the following language:

This commitment is subject to satisfactory completion of credit investigations and analysis, satisfactory documentation and such other terms and conditions as are determined by Bank and SBA.

(Commitment Letter, p. 1). The Commitment Letter goes on to specifically note that:

THIS COMMITMENT IN NO WAY IS TO BE CONSTRUED AS FINAL APPROVAL BY HAVEN TRUST BANK OR ITS ASSIGNS.

(Commitment Letter, p. 9 (bolding and capitals in original)).

The thrust of AHG's claims is a misunderstanding of the SBA 504 process. The original Haven Trust Bank commitment obligated it to provide non-SBA backed construction financing—which it did. The FDIC and LNV similarly provided this construction financing through their ownership. This Loan Commitment did not require Haven Trust to issue a permanent loan or guarantee an SBA 504 loan.

No agreement between the parties obligated Haven Trust, the FDIC, or LNV to establish a permanent SBA 504 loan. Tellingly, in their pleadings, AHG has provided no basis for its claims that LNV did not do anything that it agreed to do under the Loan Documents.

V. AHG Is Not Legally Entitled to Close a Permanent Loan

One of the requirements for SBA closing is the Interim Lender's Form 2288. In it, LNV is required to certify that "Interim Lender has no knowledge of any unremedied

substantial adverse change in the condition of Borrower.” (SBA Form 2288, ¶ 6).⁶ Further, LNV is required to certify that “Borrower is current on its payments to Interim Lender and not otherwise in default on the Interim Loan.” (*Id.*) Neither party disputes that AHG was defaulting in its payments, had significant cash-flow problems, and was unable to meet its financial obligations as they came due.⁷ LNV cannot certify an inaccurate statement to the United States government. Under the SBA guidelines and certifications, AHG cannot obtain permanent financing because of their previous defaults and their material change in financial condition.

CONCLUSION

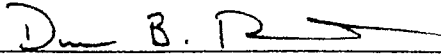
The claims asserted by AHG are barred as a matter of law. They are based on the false presumption that LNV had some ability to control whether AHG obtained an SBA 504 permanent loan; overlooks the admitted facts that AHG could not qualify for an SBA 504 loan under SBA regulations; and ignores AHG’s previous execution of release agreements governing these claims. Accordingly, the Court should dismiss these claims, with prejudice.

⁶ SBA Form 2288, available at <http://www.sba.gov/content/interim-lender-certification>.

⁷ See Answer, ¶ 34 (admitting that payments were not made when due); Complaint, ¶ 29 (tax liens levied on property); Answer, ¶17 (admitting to execution of the Construction Loan Agreement describing payment breaches and levying of liens as events of default).

Respectfully submitted,

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Greenville, South Carolina
February 28, 2012

EXHIBIT A

Slip Copy, 2010 WL 4514957 (Tenn.Ct.App.)
(Cite as: 2010 WL 4514957 (Tenn.Ct.App.))



Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.
REGIONS BANK, Successor-in-Interest to Union
Planters Bank

v.

LOST COVE CABINS AND CAMPGROUNDS,
INC. et al.

No. M2009-02389-COA-R3-CV.

Aug. 26, 2010 Session.

Nov. 9, 2010.

West KeySummaryJury 230 ⚡28(5)

230 Jury

230II Right to Trial by Jury

230k27 Waiver of Right

230k28 In Civil Cases

230k28(5) k. Form and Sufficiency of

Waiver. Most Cited Cases

Borrower's signature on three separate loan contracts with lender, all of which contained jury waiver provisions, combined with a lack of evidence demonstrating that borrower did not fully understand the provisions, established that borrower made a knowing, voluntary, and intelligent waiver of his right to a jury trial in dispute arising out of borrower's loan from lender. Therefore, jury waiver provisions in borrower's loan agreements were enforceable. Borrower, who had twenty years of industry experience, chose to sign the three agreements, demonstrating three knowledgeable decisions to waive his right to a jury trial.

Appeal from the Chancery Court for Van Buren County, No. 1199; Larry B. Stanley, Jr., Judge. Granville Sumner R. Bouldin, Jr., Murfreesboro, Tennessee, for the appellants, Lost Cove Cabins and Campgrounds, Inc., J. Darin Lance, and JDL Properties, Inc.

Joseph Robert Prochaska, Nashville, Tennessee, for the appellee, Regions Bank, Successor-in-Interest to Union Planters Bank.

ANDY D. BENNETT, J., delivered the opinion of the Court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

OPINION

ANDY D. BENNETT, J.

*1 The trial court entered judgment against the borrowers and guarantors on two promissory notes. On appeal, the defendants argue that the trial court erred in striking their jury demand and that they are entitled to relief under an alleged written commitment for permanent financing or under various equitable theories. We find the defendants' arguments to be without merit and affirm the decision of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

J. Darin Lance was the president and sole shareholder of JDL Properties, Inc. ("JDL"). Winding Creek, L.P., was a limited partnership, and JDL served as the general partner of Winding Creek. Winding Creek purchased a large tract of property located along Highway 111 in Spencer, Tennessee, with the intent of building a mixed use development, including a campground and cabin rental facility known as Lost Cove.

In early 2000, Lance approached Larry Brown, senior loan officer at Union Planters Bank ("UP"), concerning financing for the Lost Cove project. Early in the process, Lance and Brown discussed seeking the participation of the Small Business Administration ("SBA") in the form of a Section 504 loan. The plan was for UP to make two interim loans to finance construction of Lost Cove. The smaller loan would be paid off through a Section 504 loan, and the larger loan would be refinanced by UP into a permanent loan. Lance, with the as-

Slip Copy, 2010 WL 4514957 (Tenn.Ct.App.)
(Cite as: 2010 WL 4514957 (Tenn.Ct.App.))

sistance of attorney George Burke, worked on gathering the information necessary to apply for a Section 504 loan through the Southeast Local Development Corporation ("SLDC"), the SBA's agent.

On March 5, 2001, Brown sent a letter to David Jones at the SLDC stating, in pertinent part:

Union Planters Bank has committed to loan Winding Creek \$867,000 .00 which includes our permanent loan of \$519,000.00 and the SBA's loan of \$345,000.00. The development will contain RV space, cabins and a campground.

Our commitment is contingent upon SBA making the 504 loan in the amount of \$348,000.00. Due to other commitments to Winding Creek and the size of this loan, we will be unable to provide financing without SBA's participation.

At UP's request, Winding Creek organized a separate entity, Lost Cove Cabins and Campgrounds, Inc., to be the owner and borrower for the Lost Cove project. On March 9, 2001, the SBA issued an authorization for debenture guarantee, a thirteen-page document detailing the project financing and including pages of conditions. In a UP credit memo dated March 22, 2001, Brown described the basic outlines of the proposed loan arrangements.

On April 9, 2001, the parties executed the actual loan documents. Lost Cove executed two promissory notes, one for \$349,466.90 and one for \$519,663.55, with a maturity date of October 9, 2001. Lance and JDL each executed a guaranty; Lost Cove granted UP two deeds of trusts secured by the property to be developed into the campground; and Lost Cove and UP entered into two business loan agreements.

*2 Unfortunately, construction of the Lost Cove campground did not proceed as planned. The following stipulated facts tell the story:

Lost Cove originally planned for the campground to have 20 rental cabins, along with some camp-

sites and RV parking sites. However, the project was plagued by cost overruns and delays, caused in part by the water treatment problems in Spencer, Tennessee and in part by increased costs of grading and cabin construction. The construction was originally scheduled to be completed by October 2001, however, Lost Cove did not declare construction complete until on or before November 14, 2002. At the time Lost Cove declared its construction complete, the campground had only 10 rental cabins, instead of the 20 planned. The cost to "complete" the campground was \$1,334,577.82, instead of \$957,000.

Lost Cove projected its gross revenues to be \$179,850 for 2001, but realized none; projected revenues for 2002 to be \$488,125.00 but realized \$26,583.07. Lost Cove's gross revenues for 2003 and 2004 were \$67,670.58 and \$20,429.00, respectively. Lost Cove lost \$20,123 in 2001, lost \$32,885.41 in 2002, lost \$115,650.68 in 2003, and lost \$92,915.00 in 2004.

UP extended the maturity dates on the promissory notes until April 2002 and then until April 2003. The original SBA authorization for debenture guarantee expired in March 2002, and the SBA extended the expiration date twice.

On November 14, 2002, Burke wrote a letter to Elizabeth Howard at SLDC outlining the revised project costs and requesting an increase in the Section 504 loan to \$460,000.00. Burke stated, "It is our understanding that Union Planters Bank is prepared to increase its Third Party Lender Loan to 45% of project cost in keeping with its former commitment." Howard sent a request to the SBA in March 2003, certifying that there had been no adverse changes noted with respect to Lost Cove's financial information. In April 2003, the SBA approved the increased loan amount and amended its loan authorization accordingly.

There is no dispute that it was the responsibility of Lost Cove to submit its application and the required documentation for the Section 504 loan to

Slip Copy, 2010 WL 4514957 (Tenn.Ct.App.)
(Cite as: 2010 WL 4514957 (Tenn.Ct.App.))

the SLDC. The parties also stipulated that Lost Cove never provided SLDC with a number of required documents, including a title insurance commitment, guarantees of the loan, an environmental review, verified financial information, proof of the working capital, proof of compliance with building standards, and the final inspection report or certificate of occupancy for the project. The Section 504 loan never closed.

Brown, Lance's main contact at UP, left the bank in October 2002. Although Lost Cove had been making interest-only payments on its loans, it made no payments after March 19, 2003. The promissory notes matured in April 2003. The bank called the loans and sold the Lost Cove property at a foreclosure sale in August 2004. The campground sold for \$316,000.00.

Lawsuit

*3 Regions Bank, successor in interest to UP, instituted this action in September 2004 against Lost Cove, Lance, and JDL to collect the deficiency due on the promissory notes, \$680,685.47. The defendants counterclaimed, asserting causes of action for intentional and/or negligent misrepresentation, breach of contract, promissory estoppel, and equitable estoppel. The parties engaged in extensive discovery.

In September 2007, Regions moved for summary judgment; and the court denied the motion on the basis that material facts were in dispute. Regions moved to strike the defendants' jury demand on the ground that the defendants had waived the right to a jury trial in the loan documents. The court granted the motion to strike in February 2009 and set the case for trial.^{FNI}

FNI. Although the trial court granted the defendants' request for permission to seek an interlocutory appeal, this court denied the application.

The case was tried in September 2009, and the court heard testimony from the following wit-

nesses: Darin Lance; Albert Dicus, a CPA who did work for JDL, Winding Creek, and Lost Cove; Larry Brown, former UP banker; David Clinton Wood, a CPA who testified as an expert on behalf of Regions; George Burke, the attorney who helped Lance with the Section 504 loan process; and Elizabeth Howard, the SLDC employee in charge of Lost Cove's Section 504 loan. The court entered judgment in favor of Regions.

On appeal, Lost Cove and its guarantors, Lance and JDL, raise the following issues: (1) whether the trial court erred in striking the defendants' jury demand; (2) whether the loan commitment letter, credit memo, and credit proposal constitute an enforceable written commitment to lend funds; and (3) whether Lost Cove reasonably relied upon the bank's promise to lend the necessary funds, thereby estopping the bank from denying the commitment.

STANDARD OF REVIEW

We review questions of law de novo with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn.1999). The trial court's findings of fact are reviewed de novo with a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. R.App. P. 13(d); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn.1993). We "give great weight to the trial court's assessment of the evidence because the trial court is in a much better position to evaluate the credibility of the witnesses." *Boyer v. Heimermann*, 238 S.W.3d 249, 255 (Tenn.Ct.App.2007).

ANALYSIS

I.

In their answer and counterclaim, both as originally filed and as amended, the defendants included a demand for trial by a jury. The defendants argue that the trial court erred in striking their jury demand.

The issue here is whether the jury waiver provisions included in the loan documents are enforceable. The promissory notes signed by Lance on be-

Slip Copy, 2010 WL 4514957 (Tenn.Ct.App.)
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half of Lost Cove contain the following provision: "JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other." This provision appears on the first page of the promissory notes, which are one and a half pages in length. The promissory notes also contain an acknowledgment provision stating, in all capital letters: "PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE." ^{FN2}

FN2. It appears from the copies of the promissory notes in the record that the jury waiver provisions and the acknowledgment provisions are written in bold type.

*4 The business loan agreements between UP and Lost Cove include a similar jury waiver provision and acknowledgment provision. These documents were signed by Lance on behalf of Lost Cove. Lance also signed two commercial guarantees, one on behalf of himself and the other on behalf of JDL. These two-and-a-half-page documents include a jury waiver provision and an acknowledgment provision. ^{FN3}

FN3. From the copies of the guarantees and the business loan agreements in the record, the jury waiver and acknowledgment provisions appear to be written in bold type.

In order to be enforceable, a jury waiver must be "knowing, voluntary, and intelligent." *Poole v. Union Planters Bank, N.A.*, No. W2009-01507-COA-R3-CV, 2010 WL 1404416, at *7 (Tenn.Ct.App. Apr.8, 2010) (perm. app. denied Sept. 23, 2010). The defendants argue that the bank had the burden of proving that the jury waiver was knowing and voluntary and that there was no proof before the court on this issue. We find the recent case of *Poole v. Union Planters Bank* to be on point and dispositive of these issues. *Id.* at *3. In *Poole*,

the court concluded that pre-dispute contractual waiver of the right to trial by jury in a civil case is not prohibited in Tennessee. ^{FN4} *Id.* Once this issue was decided, the court proceeded to evaluate the enforceability of the particular jury waiver provisions found in the three contracts between Mr. Poole and the bank. *Id.* at *7-9. The court in *Poole* identified the following non-exhaustive list of factors to apply when examining a jury-waiver provision:

FN4. The court in *Poole* noted the distinction between pre-dispute arbitration agreements, which are expressly authorized by statute, and pre-dispute contractual jury waivers. *Id.* at *3, n. 4. Although the loan documents in the present case contain provisions allowing either party to request resolution of disputes by arbitration, those provisions were not invoked by either party.

(1) the conspicuousness of the jury-waiver provision; (2) the parties' business acumen and experience; (3) the representation, or lack thereof, of counsel; (4) the negotiations had concerning the agreement and the waiver provision; (5) the relative bargaining power of the parties; (6) the nature of the contract; and (7) the existence of fraud, overreaching, or unconscionability. *Id.* at * 8.

Declining to determine which party should bear the burden of proof, the *Poole* court concluded that, even if the bank had the burden of proof, the evidence was sufficient to permit enforcement of the jury waiver at issue. *Id.* The evidence in *Poole* consisted mainly of the three contracts themselves, and the court noted that one of the contracts (the security agreement) was only two pages long. *Id.* The court found that the jury waiver provision in the security agreement, which appeared on the second page, was not highly conspicuous in that it was in the same font as the rest of the agreement, was not underlined, fell within a larger paragraph, and did not have a separate signature line. *Id.* at *9. The

court also found, however, that the provision was "fairly straightforward and easy to understand." *Id.* In addition, the contract included a capitalized and bolded acknowledgment provision stating that the signer had read and understood all of the provisions of the agreement. *Id.* The court also assigned significance to the fact that Mr. Poole had signed three separate documents containing a similar jury waiver provision and a capitalized, bolded acknowledgment provision. *Id.* The promissory note, like the security agreement, was only two pages long; and the court found the "relative brevity of two of the agreements" to be significant. *Id.* Stating that "[i]t is axiomatic that a party who signs a contract is presumed to know its contents," the court found "sufficient reason to impute knowledge of the jury-waiver provisions at issue to Mr. Poole," and noted that Mr. Poole had not disputed this point. *Id.*

*5 The court in *Poole* relied on the bank's presentation of "three separate agreements demonstrating three separate knowledgeable decisions to waive the right to trial by jury" and cited the lack of countervailing evidence or arguments. *Id.* There were no allegations of fraud, unconscionability, or overreaching. *Id.* Although Mr. Poole asserted that there was a "gross disparity in bargaining power" between the parties, that he had no opportunity to obtain counsel, and that there was no opportunity to negotiate terms, there was no evidence in the record to support these assertions. *Id.* The court concluded as follows:

Even if the Bank had the initial burden to demonstrate the enforceability of the jury-waiver provisions, we find that the presentation of three separate contracts containing jury-waiver provisions, two of which are only two pages in length, carried that burden. Because Mr. Poole has presented no evidence in rebuttal, we hold that the trial court correctly decided the Bank's motion to strike his jury demand.

Id.

Similarly, in the present case, Lance signed

three separate contracts, one of which was less than two full pages long and another of which was less than three full pages long, all three of which contained a prominent acknowledgment provision. As in *Poole*, the contracts themselves are sufficient to uphold the enforceability of Lance's waiver of trial by jury since he did not present any countervailing evidence. Moreover, unlike Mr. Poole, a truck driver, Lance was an experienced businessman and licensed real estate broker with over 20 years of experience in real estate development.^{FN5}

FN5. Both parties filed briefs on the motion to strike in the trial court. The bank filed a reply brief with excerpts from Lance's deposition in which he testified that he probably had not read the loan documents before signing them and that he assumed that he had to agree with the terms of the loan documents in order to get the loans. The defendants assert that they never had the opportunity to respond to the plaintiff's reply brief because it was not filed until the day of the motion hearing. We do not consider Lance's deposition testimony significant since the law presumes that a party who signs a contract knows its contents. *See Beasley v. Metro. Life Ins. Co.*, 190 Tenn. 227, 229 S.W.2d 146, 148 (Tenn.1950); *Philpot v. Tenn. Health Mgmt., Inc.*, 279 S.W.3d 573, 581 (Tenn.Ct.App.2007). Moreover, there is nothing in the record to indicate that the defendants requested a continuance to allow them to respond to the bank's reply brief.

The defendants' final argument on the jury waiver issue is that the bank waived its right to enforce the jury waiver provisions "by failing to timely object to the demand and allowing the matter to be set for a jury trial on more than one occasion." In support of this argument, the defendants emphasize that the bank did not object to their jury demand until December 2008 when the bank filed a

Slip Copy, 2010 WL 4514957 (Tenn.Ct.App.)
(Cite as: 2010 WL 4514957 (Tenn.Ct.App.))

motion to strike, whereas the jury demand appeared in their original answer and counterclaim filed in November 2004 and in subsequent amended pleadings. The defendants also point out that the case was set on a jury docket for some period of time.

Under Tennessee law, "[t]here can be no waiver where there is no intent to waive, unless a party so acts as to mislead the other, and is estopped thereby." *Faught v. Estate of Faught*, 730 S.W.2d 323, 326 (Tenn.1987). For an effective waiver, "there must be clear, unequivocal and decisive acts of the party or an act which shows determination not to have the benefit intended." *Gitter v. Tenn. Farmers Mut. Ins. Co.*, 60 Tenn.App. 698, 450 S.W.2d 780, 784 (Tenn.Ct.App.1969). We consider the court's analysis in *Poole* instructive regarding the defendants' "waiver of the waiver" argument in the present case. In *Poole*, the court addressed Mr. Poole's argument that the bank had waived its right to enforce the jury waiver provisions by delaying its motion to strike (which was filed almost four years after the commencement of the lawsuit) and by entering into a scheduling order. *Poole*, 2010 WL 1404416, at *7. In rejecting Mr. Poole's argument, the court reasoned:

*6 The better rule, however, permits a party seeking to strike a jury demand to file a motion up to the "eve of trial" to enforce the parties' contract. Under such circumstances, the mere entry of a scheduling order coupled with permissible delay is insufficient to demonstrate waiver of the right to enforce a contractual jury-waiver provision.... [I]t is the opinion of this Court that the entry of a scheduling order does not manifest an intent and purpose to waive a jury-waiver provision where, as here, a party may move to strike a jury demand up to the eve of trial.

Id. (citations omitted). We likewise conclude in this case that the bank did not evidence an intent to waive its right to enforce the contractual jury waiver provisions. Therefore, the trial court did not err in denying the motion to strike.

2.

Under the Tennessee Statute of Frauds, a promise or commitment to lend money must be in writing to be enforceable. Tenn.Code Ann. § 29-2-101 (b). The defendants argue that the bank's March 2001 loan commitment letter, credit memo, credit proposal, and the SBA documents constitute an enforceable written commitment to provide permanent financing for the Lost Cove project, thereby satisfying the statute of frauds. We disagree.

There are a number of problems with the defendants' argument. We are not convinced that the terms of these documents are sufficiently definite to make out an enforceable agreement to provide permanent financing.^{FN6} Rather, the March 2001 letter, credit memo, and credit proposal summarize the bank's intentions with regard to future agreements with Lost Cove. Moreover, even if a written commitment to provide permanent financing did exist, the bank did not breach its contract because Lost Cove never satisfied its obligations. As the trial court specifically found, the bank's commitment as expressed in the March 2001 letter relied upon by the defendants "was contingent upon the SBA making its 504 Loan, the Bank being in first position, and guaranty agreements being given by the partners." The credit memo specifically provides that "the bank will participate with SBA on a 504 program where the bank will loan \$519,000 and have a first lien on the property and improvements." The memo also states that the campground would have 20 rental cabins, whereas only 10 cabins were built. It is undisputed that the defendants were responsible for the SBA loan application process, which they never completed, and that the Section 504 loan never closed. The parties further stipulated that the SBA never approved a closing on Lost Cove's Section 504 loan and that, "[i]f SLDC refused to go forward with the Section 504 Loan, Regions Bank had no obligation to go forward with any additional funding to Lost Cove."

FN6. The bank was not a party to the SBA documents, which contain numerous con-

Slip Copy, 2010 WL 4514957 (Tenn.Ct.App.)
(Cite as: 2010 WL 4514957 (Tenn.Ct.App.))

ditions, so these documents cannot create an obligation on the part of the bank to provide permanent financing.

Under the terms of the interim loan agreements executed in April 2001, Lost Cove was in default and the bank had the right to call the loans. The bank had no contractual obligation to provide permanent financing on a project that was in default on the interim loans.

3.

*7 The defendants rely on several equitable theories to establish an exception to the statute of frauds: equitable estoppel, and intentional or negligent misrepresentation.^{FN7} These arguments, too, must fail.

FN7. The defendants also assert promissory estoppel, but this doctrine has not been recognized as an exception to the statute of frauds. *Seramur v. Life Care Ctrs. of Am., Inc.*, No. E2008-01364-COA-R3-CV, 2009 WL 890885, at *5 (Tenn.Ct.App. Apr.2, 2009); *Nationsbank, N.A. (S.) v. Millington Homes Investors, Ltd.*, No. 02A01-9805-CH-00134, 1999 WL 79204, at *3-4 (Tenn.Ct.App. Feb.19, 1999).

The elements of equitable estoppel are:

- (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert;
- (2) Intention, or at least expectation that such conduct shall be acted upon by the other party;
- (3) Knowledge, actual or constructive of the real facts.

Osborne v. Mountain Life Ins. Co., 130 S.W.3d 769, 774 (Tenn.2004); see also *Nationsbank, N.A.*

(S.) v. *Millington Homes Investors, Ltd.*, No. 02A01-9805-CH-00134, 1999 WL 79204, at *4 (Tenn.Ct.App. Feb.19, 1999). Negligent misrepresentation requires a plaintiff to prove the following elements:

- (1) the defendant is acting in the course of his business, profession or employment, or in a transaction in which he has a pecuniary (as opposed to gratuitous) interest; and
- (2) the defendant supplies faulty information meant to guide others in their business transaction; and
- (3) the defendant fails to exercise reasonable care in obtaining or communicating the information; and
- (4) the plaintiff justifiably relies upon the information.

Ritter v. Custom Chemicides, Inc., 912 S.W.2d 128, 130 (Tenn.1995). The false information supplied must "consist of a statement of a material past or present fact." *McElroy v. Boise Cascade Corp.*, 632 S.W.2d 127, 130 (Tenn.Ct.App.1982); see also *Cummins v. Opryland Prods.*, No. M1998-00934-COA-R3-CV, 2001 WL 219696, at *8 (Tenn.Ct.App. Mar.7, 2001). Statements of intention or representations concerning future events cannot form the basis for a claim of negligent misrepresentation. *Naifeh v. Valley Forge Life Ins. Co.*, No. W2003-02800-COA-R3-CV, 2005 WL 1073647, at *8-9 (Tenn.Ct.App. May 5, 2005); *Gardner v. Anesthesia & Pain Consultants, P. C.*, No. E2003-03027-COA-R3-CV, 2004 WL 2715304, at *6 (Tenn.Ct.App. Nov.30, 2004); *McElroy*, 632 S.W.2d at 130. With intentional misrepresentation, it must be established that the defendant made a misrepresentation with knowledge of its falsity or without regard to its truth or falsity. *Shahrdar v. Global Hous., Inc.*, 983 S.W.2d 230, 237 (Tenn.Ct.App.1998).

The trial court in this case made the following relevant factual findings regarding the proof:

Slip Copy, 2010 WL 4514957 (Tenn.Ct.App.)
(Cite as: 2010 WL 4514957 (Tenn.Ct.App.))

-[Attorney Burke] did not testify that the Bank made any intentional or negligent misrepresentations of any facts or that Lost Cove relied on any promises made by the Bank.

-At no time did Mr. Brown testify that he made an oral promise or representation that the Bank would lend additional funds to Lost Cove, or that he or anyone at the Bank had made any misrepresentations, negligent or otherwise, to the Defendants.

*8 The trial court heard all of the testimony and found no credible evidence of any misrepresentations by the bank. Addressing the claims for negligent or intentional misrepresentation, the court concluded that "[t]here were no misrepresentations made by the Bank to the Defendants," and that "there was no false statement upon which Lost Cove relied to its detriment." The evidence does not preponderate against the court's findings.

Given the trial court's findings, we conclude that the court properly dismissed the defendants' equitable defenses.

CONCLUSION

We affirm the trial court's judgment in all respect. Costs of appeal are assessed against the appellants, for which execution may issue if necessary.

Tenn.Ct.App.,2010.
Regions Bank v. Lost Cove Cabins and Campgrounds, Inc.
Slip Copy, 2010 WL 4514957 (Tenn.Ct.App.)

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