THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
DEC 18 2018
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-3891

Appellate Case No. 2018-000516

Athan Fokas ..... Respondent/Appellant,

v.

Phillip Ferderigos and Spiros Ferderigos ..... Appellants/Respondents.

RECORD ON APPEAL (VOLUME III)

ANDREW HASELDEN, ESQUIRE
Howser, Newman & Besley, LLC
215 East Bay Street, Suite #103
Charleston, South Carolina 29401
Phone: (843) 216-6940
ATTORNEY FOR ATHAN FOKAS

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
Barnwell, Whaley, Patterson and Helms, LLC
Post Office Drawer H
Charleston, South Carolina 29402
Phone: (843) 577 – 7700
Facsimile: (843) 577 – 7708
ATTORNEYS FOR SPIROS FERDERIGOS

LESLIE S. LENHARDT, ESQUIRE
Lenhardt Law Firm, LLC
738 St. Andrews Boulevard, Suite C
Charleston, South Carolina 29407
Phone: (843) 371-5453
ATTORNEY FOR ATHAN FOKAS

IAN S. FORD, ESQUIRE
Ford Wallace Thomson, LLC
715 King Street
Charleston, South Carolina 29401
Phone: (843) 277-2011
ATTORNEY FOR PHILLIP FERDERIGOS

JOSEPH R. WESTON, ESQUIRE
STEPHANIE ANTHONY, ESQUIRE
Weston Craig Anthony, LLC
761 Johnnie Dodds Boulevard, Suite #100
Mount Pleasant, South Carolina 29464
Phone: (843) 881-4995
ATTORNEYS FOR SPIROS FERDERIGOS

LAURA W. ROBINSON, ESQUIRE
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite #655
Columbia, South Carolina 294201
Phone: (803) 234-5416
ATTORNEYS FOR PHILLIP FERDERIGOS

INDEX

Page

ORDERS, JUDGMENTS, DECREES, AND DECISIONS

Order Granting Summary Judgment to Defendants, filed February 20, 2018 1

Order Granting Plaintiff Partial Summary Judgment, filed February 22, 2018 14

Order Granting Plaintiff's Motion to Amend Complaint, filed November 9, 2016 25

PLEADINGS

Summons and Complaint, filed on July 14, 2015 26

Spiros Ferderigos Answer and Counterclaims, filed October 1, 2015 32

Exhibit 1: Fanouris Ferderigos Letter Dated August 21, 2015 41

Phillip Ferderigos Answer and Counterclaims, filed October 1, 2015 43

Exhibit 1: Fanouris Ferderigos Letter Dated August 21, 2015 52

Plaintiff's Reply to Spiros Ferderigos Counterclaims, filed May 31, 2016 54

Plaintiff's Reply to Phillip Ferderigos Counterclaims, filed May 31, 2016 57

Amended Complaint, filed February 24, 2017 60

Exhibit A: Affidavit of Stanley E. Barnett Dated September 10, 2015 66
Exhibit B: Deposition Excerpts from Irene Fokas 78
Exhibit C: Deposition Excerpts from Irene Fokas 80
Exhibit D: Deposition Excerpts from Irene Fokas 82
Exhibit E: Deposition Excerpts from Irene Fokas 83
Exhibit F: Deposition Excerpts from Irene Fokas 85

Spiros Ferderigos Amended Answer and Counterclaims, filed March 16, 2017 87

Exhibit A: Affidavit of Rania Nikatos Dated November 20, 2015 102
Exhibit B: Deposition Excerpts from Irene Fokas 104

Phillip Ferderigos Amended Answer and Counterclaims, filed March 20, 2017 108

Exhibit A: Affidavit of Rania Nikatos Dated November 20, 2015 123
Exhibit B: Deposition Excerpts from Irene Fokas 125

Plaintiff's Reply to Spiros Ferderigos Amended Counterclaims, filed April 26, 2017 ... 128

Exhibit A: Order on Defendants First MSJ Filed April 21, 2016 132
Exhibit B: Affidavit of Emma Ruth Brittain Dated March 28, 2016 133

Plaintiff's Reply to Phillip Ferderigos Amended Counterclaims, filed April 26, 2017 .. 145

Exhibit A: Order on Defendants First MSJ Filed April 21, 2016 149
Exhibit B: Affidavit of Emma Ruth Brittain Dated 150

TRANSCRIPTS

Motions Hearing Transcript, held December 11, 2017 162

OTHER MATERIALS AND DOCUMENTS

Plaintiff's Motion to Amend Complaint, filed December 29, 2015 196

Spiros Ferderigos First Motion for Summary Judgment, filed February 5, 2016 204

Phillip Ferderigos First Motion for Summary Judgment, filed February 12, 2016 210

Exhibit A: Fanouris Ferderigos Letter Dated August 21, 2015 217
Exhibit B: Barnett E-mails Dated October 27, 2015 218
Exhibit C: Affidavit of Irene Fokas Dated October 28, 2015 220
Exhibit D: Deposition Excerpts from Irene Fokas 221
Exhibit E: Affidavit of Rania Nikatos Dated November 20, 2015 230
Exhibit F: Affidavit of Gerasimos Nikatos Dated December 2, 2015 232
Exhibit G: Affidavit of Nathan M. Crystal Dated February 11, 2016 234

Spiros Ferderigos Memo in Support of First MSJ, filed March 28, 2016 266

Exhibit 1: Fanouris Ferderigos Letter Dated August 21, 2015 284
Exhibit 2: Affidavits of Irene Fokas Dated October 28, 2015 285
Exhibit 3: Deposition Excerpts from Irene Fokas 287
Exhibit 4: Affidavit of Rania Nikatos Dated November 20, 2015 297
Exhibit 5: Affidavit of Gerasimos Nikatos Dated December 2, 2015 299

Exhibit 6: Barnett E-mail Dated October 30, 2015.....301

Phillip Ferderigos Memo in Opposition to Motion to Amend, filed June 13, 2016.....303

Spiros Ferderigos Memo in Opposition to Motion to Amend, filed June 14, 2016 309

Exhibit 1: Fanouris Ferderigos Letter Dated August 21, 2015.....333
Exhibit 2: Affidavits of Irene Fokas Dated October 28, 2015.....334
Exhibit 3: Deposition Excerpts from Irene Fokas.....336
Exhibit 4: Affidavit of Rania Nikatos Dated November 20, 2015 346
Exhibit 5: Affidavit of Gerasimos Nikatos Dated December 2, 2015 348
Exhibit 6: Barnett E-mail Dated October 30, 2015.....350
Exhibit 7: Barnett Letter Dated January 26, 2015 351
Exhibit 8: Spiros Ferderigos E-mail Dated February 3, 2015 354

Plaintiff's Partial MSJ as to Phillip Ferderigos, filed August 25, 2017.....356

Exhibit A: Phillip Ferderigos Answer Filed October 1, 2015 (Case -3919).....360
Exhibit B: Supplemental Affidavit of Athan Fokas Dated February 22, 2017....397
Exhibit C: Phillip Ferderigos Answers to Interrogatories Dated June 21, 2016..400
Exhibit D: Deposition Excerpts from Phillip Ferderigos.....425
Exhibit E: Deposition Excerpts from Irene Fokas 442
Exhibit F: Deposition Excerpts from Athan Fokas.....453

Plaintiff's Partial MSJ as to Spiros Ferderigos, filed August 25, 2017 460

Exhibit A: Phillip Ferderigos Answer Filed October 1, 2015 (Case -3919).....464
Exhibit B: Supplemental Affidavit of Athan Fokas Dated February 22, 2017....500
Exhibit C: Spiros Ferderigos Answers to Interrogatories Dated 503
Exhibit D: Deposition Excerpts from Spiros Ferderigos 522
Exhibit E: Deposition Excerpts from Irene Fokas 527
Exhibit F: Deposition Excerpts from Athan Fokas.....536

Spiros Ferderigos Second Motion for Summary Judgment, filed September 14, 2017 ..543

Phillip Ferderigos Second Motion for Summary Judgment, filed September 28, 2017..551

Supplemental Affidavit of Stanley E. Barnett, filed December 4, 2017.....558

Phillip Ferderigos Memo in Opposition to Partial MSJ, filed December 6, 2017.....563

Exhibit 1: Text Messages Dated December 2014.....582
Exhibit 2: Excerpts of Answers and Counterclaims 583
Exhibit 3: Phillip Ferderigos First MSJ 597
Exhibit 4: Fokas E-mail Dated December 17, 2014 603
Exhibit 5: Deposition Excerpts from Irene Fokas.....604

Exhibit 6: Text Messages Dated March 2016 605
Exhibit 7: Fokas E-mails Dated November 24, 2014 608
Exhibit 8: Fokas E-mail Dated November 24, 2014 614
Exhibit 9: Text Messages Dated December 2014 615
Exhibit 10: Text Messages 616
Exhibit 11: Fokas E-mail Dated January 6, 2015 617
Exhibit 12: E-mails Dated November 21, 2014 618
Exhibit 13: Text Messages Dated December 2014 619
Exhibit 14: Deposition Excerpts from Irene Fokas 620
Exhibit 15: Deposition Excerpts from Irene Fokas 623
Exhibit 16: Deposition Excerpts from Irene Fokas 626

Spiros Ferderigos Memo in Opposition to Partial MSJ, filed December 7, 2017 629

Exhibit 1: Fokas E-mail Dated December 17, 2014 647
Exhibit 2: Deposition Excerpts from Irene Fokas 648
Exhibit 3: Text Messages Dated February 2017 649
Exhibit 4: Text Messages 650
Exhibit 5: Fokas E-mails Dated November 24, 2014 651
Exhibit 6: Text Messages Dated December 2014 652
Exhibit 7: Text Messages Dated December 2014 653
Exhibit 8: Text Messages 654
Exhibit 9: Fokas E-mail Dated January 6, 2015 655
Exhibit 10: Deposition Excerpts from Irene Fokas 656
Exhibit 11: Deposition Excerpts from Irene Fokas 659
Exhibit 12: Deposition Excerpts from Irene Fokas 662

Notice of Filing of Rania Nikatos Deposition Transcript, filed December 7, 2017 664

Exhibit A: Transcript 666
Exhibit 1: Affidavit of Rania Nikatos Dated November 20, 2015 734
Exhibit 2: Rania Nikatos Text Message Dated October 28 736
Exhibit 3: Plaintiff's Memo in Opposition to MSJ, filed March 28, 2016 737
Exhibit 4: Supplemental Affidavit of Stanley E. Barnett 753
Exhibit 5: Fokas and Odom E-mails Dated January 2013 758

Fokas E-mail Dated December 5, 2017 760

Affidavit of Irene Fokas, filed January 16, 2018 761

Plaintiff's Summons and Complaint (Action 3919), filed July 15, 2015 765

Spiros Ferderigos Answer and Counterclaims (Action 3919), filed October 1, 2015 774

Exhibit A: Tucker July 21, 2015, E-mail 809
Exhibit B: Tucker December 11, 2012 E-mail 811

Exhibit C: Fokas December 19, 2012, E-mail 812
Exhibit D: Spiros Ferderigos December 19, 2012, E-mail 814
Exhibit E: Odom January 11, 2013, E-mail 815
Exhibit F: June 17 and 18, 2014, E-mails 816
Exhibit G: February 5, 2013, Southcoast Loan Commitment Letter 817
Exhibit H: Fokas September 9, 2014, E-mail 821
Exhibit I: September 19, 2014, Text Messages 822
Exhibit J: September 24 and 25, 2014, E-mails 823
Exhibit K: October 10, 2014, Text Message 826
Exhibit L: November 21, 2014, Text Messages 827
Exhibit M: November 24 and 26, 2014, E-mails 829
Exhibit N: Closing Documents 835
Exhibit O: November 21, 2014, E-mails 889
Exhibit P: Phillip Ferderigos November 21, 2014, E-mail 891
Exhibit Q: Fokas November 21, 2014, E-mail 892
Exhibit R: November 21, 2014, E-mails 893
Exhibit S: Fokas November 24, 2014, E-mail 899
Exhibit T: December 16 and 17, 2014, Text Messages 900
Exhibit U: November 24, 2014, E-mails 901
Exhibit V: Release Communications 903
Exhibit W: Communications RE Jacob Ferderigos 910
Exhibit X: April 2015 Text Messages 912
Exhibit Y: Standard Agreement Between Owner and Contractor 913
Exhibit Z: Fanouris Ferderigos August 21, 2015, Letter 919
Exhibit AA: Fokas December 17, 2014, E-mail 920

Phillip Ferderigos Answer and Counterclaims (Action 3919), filed October 1, 2015 922

Exhibit A: Tucker July 21, 2015, E-mail 958
Exhibit B: Tucker December 11, 2012 E-mail 960
Exhibit C: Fokas December 19, 2012, E-mail 961
Exhibit D: Spiros Ferderigos December 19, 2012, E-mail 963
Exhibit E: Odom January 11, 2013, E-mail 964
Exhibit F: June 17 and 18, 2014, E-mails 965
Exhibit G: February 5, 2013, Southcoast Loan Commitment Letter 966
Exhibit H: Fokas September 9, 2014, E-mail 970
Exhibit I: September 19, 2014, Text Messages 971
Exhibit J: September 24 and 25, 2014, E-mails 972
Exhibit K: October 10, 2014, Text Message 975
Exhibit L: November 21, 2014, Text Messages 976
Exhibit M: November 24 and 26, 2014, E-mails 978
Exhibit N: Closing Documents 984
Exhibit O: November 21, 2014, E-mails 1036
Exhibit P: Phillip Ferderigos November 21, 2014, E-mail 1038
Exhibit Q: Fokas November 21, 2014, E-mail 1039
Exhibit R: November 21, 2014, E-mails 1040

Exhibit S: Fokas November 24, 2014, E-mail 1048
Exhibit T: December 16 and 17, 2014, Text Messages 1049
Exhibit U: November 24, 2014, E-mails 1050
Exhibit V: Release Communications 1052
Exhibit W: Communications RE Jacob Ferderigos 1059
Exhibit X: April 2015 Text Messages 1061
Exhibit Y: Standard Agreement Between Owner and Contractor 1062
Exhibit Z: Fanouris Ferderigos August 21, 2015, Letter 1068
Exhibit AA: Fokas December 17, 2014, E-mail 1069

Fokas Reply to Spiros Ferderigos (Action 3919), filed March 31, 2016 1070

Fokas Reply to Phillip Ferderigos (Action 3919), filed March 31, 2016 1076

Fokas Partial MSJ to Phillip Ferderigos (Action 3919), filed February 28, 2017 1082

Exhibit A: Affidavit of Athan Fokas 1085
Exhibit B: Phillip Ferderigos Answers to Interrogatories 1088
Exhibit C: Portions of Phillip Ferderigos Deposition Transcript 1113
Exhibit D: Portions of Irene Fokas Deposition Transcript 1130
Exhibit E: Portions of Athan Fokas Deposition Transcript Volume II 1140

Fokas Partial MSJ to Spiros Ferderigos (Action 3919), filed February 28, 2017 1147

Exhibit A: Affidavit of Athan Fokas 1150
Exhibit B: Phillip Ferderigos Answers to Interrogatories 1153
Exhibit C: Portions of Spiros Ferderigos Deposition Transcript 1171
Exhibit D: Portions of Irene Fokas Deposition Transcript 1176
Exhibit E: Portions of Athan Fokas Deposition Transcript Volume II 1186

Motion Hearing Transcript (Action 3919), dated June 8, 2017 1193

Order Granting Plaintiff Partial MSJ (Action 3919), dated August 31, 2017 1266

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2015-CP-10-3919
	)	
Athan Fokas,	)	
	)	
Plaintiff,	)	
v.	)	
	)	**PHILLIP FERDERIGOS' ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**
Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos,	)	
	)	
Defendants.	)	*Jury Trial Demanded*
	)	

FILED
2015 OCT -1 PM 4:44
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant Phillip Ferderigos through his undersigned counsel, respectfully submits the following Answer, Affirmative Defenses and Counterclaims to Plaintiff Athan Fokas' Complaint. Phillip Ferderigos denies each and every allegation not specifically admitted herein. Further, Phillip Ferderigos' Answers are limited to those allegations asserted against him. Phillip Ferderigos is not required to, and does not, respond to any allegations directed toward another defendant.

(1) Paragraph 1 does not contain allegations against Phillip Ferderigos. To the extent a response is required, Phillip Ferderigos admits Paragraph 1 upon information and belief.

(2) Phillip Ferderigos admits Paragraph 2.

(3) Paragraph 3 does not contain allegations against Phillip Ferderigos. To the extent a response is required, Phillip Ferderigos admits Paragraph 3.

(4) Paragraph 4 does not contain allegations against Phillip Ferderigos. To the extent a response is required, Phillip Ferderigos admits Paragraph 4.

(5) Phillip Ferderigos admits only that Athan Fokas and Defendants are members of Old Towne Suites, LLC (hereinafter "LLC"). Phillip Ferderigos denies the remainder of Paragraph 5.

(6) Phillip Ferderigos admits Paragraph 6.

(7) Phillip Ferderigos admits Paragraph 7 only to the extent that the currently existing rental business began after the upper two stories of 229 King Street were converted to rental units from restaurant seating. Phillip Ferderigos denies the remainder of Paragraph 7.

(8) Phillip Ferderigos admits Paragraph 8 only to the extent that in 2012, the parties began to investigate the possibility of, feasibility of, and their interest in constructing a new building above 229 King Street to be used for rental units. Phillip Ferderigos denies the remainder of Paragraph 8 and further denies the existence of any agreement to construct said building.

(9) Phillip Ferderigos denies Paragraph 9.

(10) Phillip Ferderigos admits Paragraph 10 only to the extent that, beginning no later than mid-2012, Athan Fokas and Jacob Ferderigos coordinated with an engineer(s), architect(s), and a contractor to develop plans to submit to the City of Charleston for possible approval to determine the cost, details, scope, feasibility and whether the City of Charleston would even allow the proposed project being considered by the parties. All activities at all times were for the consideration of a possible proposed project in the future; the parties entered into no agreements whatsoever, and all parties understood that any party could decide not to participate at any time. Phillip Ferderigos denies the remainder of Paragraph 10.

(11) Phillip Ferderigos admits Paragraph 11 only to the extent that Athan Fokas secured pre-approval of a loan for himself and for Jacob Ferderigos, the terms of which were never discussed with and/or agreed upon by Phillip and Spiros Ferderigos. Phillip Ferderigos denies the remainder of Paragraph 11. Athan Fokas and Jacob Ferderigos were supposed to get a personal loan for themselves which did not involve and/or affect Phillip and Spiros Ferderigos in any way whatsoever. Athan Fokas failed to secure such a loan.

(12) Phillip Ferderigos denies Paragraph 12.

(13) Phillip Ferderigos denies Paragraph 13.

(14) Phillip Ferderigos admits Paragraph 14 only to the extent that the parties expended expense and effort toward investigating the possibility of, feasibility of, and their interest in constructing the proposed project. Phillip Ferderigos denies the remainder of Paragraph 14 and denies that there was ever an agreement to construct the building between Athan Fokas and Phillip Ferderigos at any time whatsoever.

(15) Phillip Ferderigos denies Paragraph 15 as characterized.

(16) Paragraph 16 does not contain allegations against Phillip Ferderigos. To the extent a response is required, Phillip Ferderigos denies Paragraph 16 as characterized.

(17) Phillip Ferderigos admits Paragraph 17.

(18) Phillip Ferderigos admits Paragraph 18 only to the extent that, if Athan Fokas would have signed the proposed written side/ancillary agreement prepared by Phillip and Spiros Ferderigos prior to the closing, Phillip and Spiros Ferderigos would have provided

a mortgage of their portion of 229 King Street, assuming that the additional loan closing documents were also correct in all material aspects. Phillip Ferderigos denies the remainder of Paragraph 18.

(19) Phillip Ferderigos admits Paragraph 19 only to the extent that Athan Fokas refused to sign the side/ancillary agreement. Phillip Ferderigos denies the remainder of Paragraph 19. Specifically, Phillip Ferderigos denies that there was an agreement between the parties at any time.

(20) Phillip Ferderigos denies Paragraph 20.

(21) Phillip Ferderigos denies Paragraph 21 as characterized.

(22) Phillip Ferderigos denies Paragraph 22 as characterized and further denies that there was ever any agreement whatsoever between the parties at any time.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract – Specific Performance)

(23) Responding to Paragraph 23, Phillip Ferderigos hereby incorporates by reference his responses to the allegations in the preceding paragraphs as fully as if repeated verbatim herein.

(24) Phillip Ferderigos denies Paragraph 24.

(25) Phillip Ferderigos admits Paragraph 25 only to the extent that the parties were each responsible for their respective share of costs for considering the possibility of, feasibility of, and their interest in the proposed project being considered. Phillip Ferderigos denies the remainder of Paragraph 25.

(26) Phillip Ferderigos denies Paragraph 26.

(27) Phillip Ferderigos denies Paragraph 27.

(28) Phillip Ferderigos admits Paragraph 28 only to the extent that the parties paid expenses directly toward and directly for work to investigate the possibility of, feasibility of, and their interest in the proposed project being considered. Phillip Ferderigos denies the remainder of Paragraph 28 and denies that there was ever an agreement between the parties at any time.

(29) Phillip Ferderigos denies Paragraph 29.

(30) Phillip Ferderigos denies Paragraph 30.

(31) Phillip Ferderigos denies Paragraph 31.

(32) Phillip Ferderigos denies Paragraph 32.

(33) Phillip Ferderigos denies Paragraph 33.

(34) Phillip Ferderigos denies Paragraph 34.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Breach of Contract -- Damages)

(35) Responding to Paragraph 35, Phillip Ferderigos hereby incorporates by reference his responses to the allegations in the preceding paragraphs as fully as if repeated verbatim herein.

(36) Phillip Ferderigos denies Paragraph 36.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Violation of the Duty of Care -- S.C. Code Ann. § 33-44-409)

(37) Responding to Paragraph 37, Phillip Ferderigos hereby incorporates by reference his responses to the allegations in the preceding paragraphs as fully as if repeated verbatim herein.

(38) Paragraph 38 contains legal conclusions to which no response is required. To the extent a response is required, Phillip Ferderigos craves reference to the statutes cited in Paragraph 38 and, to the extent they are applicable, denies anything inconsistent therewith.

(39) Paragraph 39 contains legal conclusions to which no response is required. To the extent a response is required, Phillip Ferderigos craves reference to the statutes cited in Paragraph 39 and, to the extent they are applicable, denies anything inconsistent therewith. Phillip Ferderigos further denies that he owed any duty of care pursuant to S.C. Code Ann. Section 33-44-409 to Athan Fokas relating to Phillip Ferderigos' real property interest in 229 King Street and/or the proposed project being considered. Phillip Ferderigos denies that the LLC statutes apply in this matter to impose any duty upon him, but, in the event the Court holds such duties do apply to him, Phillip Ferderigos denies that he breached any such duties.

(40) Phillip Ferderigos denies Paragraph 40.

(41) Phillip Ferderigos denies Paragraph 41.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

(42) Athan Fokas' claims fail to state facts sufficient to constitute a cause of action upon which relief can be granted. Therefore, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Complaint should be dismissed.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

(43) Athan Fokas' claims are barred, in whole or in part, by the doctrines of estoppel, ratification, waiver, laches, and/or unclean hands.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION
(Statute of Frauds and/or Statute of Limitations)

(44) Athan Fokas' Complaint states claims that are barred, in whole or in part, by the Statute of Frauds and/or statute of limitations.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

(45) Athan Fokas has failed to mitigate his injuries and/or damages, if any.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

(46) Phillip Ferderigos relies upon any other defenses that may become available or appear during discovery in the case and hereby reserves the right to amend this Answer to assert any such defenses. He also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence/Assumption of Risk)

(47) Any damage suffered by Athan Fokas is a direct and proximate result of his own comparative and contributory negligence and/or assumption of risk, and Athan Fokas' recovery should be barred, or alternatively, reduced proportionately to Athan Fokas' comparative negligence/assumption.

FOR AN EIGHTH DEFENSE
AND BY WAYOF AN AFFIRMATIVE DEFENSE THERETO
(Release)

(48) The Plaintiff's claims are barred by release as the Plaintiff released Defendants from any alleged agreement on multiple occasions.

FOR AN NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Punitive Damages)

(49) The Defendant would show that the claim of Athan Fokas for punitive damages cannot be had because any award of punitive damages under South Carolina law without

bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of the action have been found would violate Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law and public policy of the State of South Carolina.

The Defendant would show that the claim of Athan Fokas for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a pre-determined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by the United States Constitution and The South Carolina Constitution and would violate the common law of the State of South Carolina.

The Defendant alleges that the Complaint of Athan Fokas for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not: a) provided with sufficiently clear standards for determining the appropriateness of the punitive damages award or size of such award; b) provided with accurate instructions as to the limits of punitive damages awards as determined by the principals underlying such an award; c) instructed that awarding punitive damages on invidiously discriminatory characteristics of the Defendant is improper; d) instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary nor capricious and that defines with reasonable clarity the actions of the Defendant upon which an award of punitive damages may be based; e) subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness; and f) instructed that an award of punitive damages based on anything other than Defendant's conduct in connection with this alleged incident that is the subject of this lawsuit is forbidden; would violate the Defendant's equal protection and due process rights as guaranteed by the United Stated Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

The Defendant alleges and says that the imposition of punitive damages on the basis of Athan Fokas' claims giving rise to this lawsuit would represent the deprivation of liberty and property without due process of law, the imposition of cruel and unusual punishment and excessive fines and deny the equal protection of the laws and violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to The Constitution of the United States and the comparable provisions of the State of South Carolina.

FOR A TENTH AFFIRMATIVE DEFENSE
(No Meeting of the Minds)

(50) Athan Fokas' claims are barred as there was no "meeting of the minds" and no binding agreement between the parties as to numerous material terms of the alleged agreement. Athan Fokas admits that Phillip Ferderigos did not agree to subject himself to personal liability on Fokas' personal loan involving the rental suite construction being considered at 229 King Street. A mortgage is a material term. It constitutes possible

personal liability for Phillip Ferderigos by subjecting his most important and valuable asset known at the time, 229 King Street, to possible foreclosure in the event Fokas defaulted on his personal loan, Phillip Ferderigos told Athan Fokas that he would not mortgage or guarantee "anything" for Athan Fokas or anyone else. Spiros Ferderigos further informed Athan Fokas in writing on December 19, 2012, that he would not be willing to accumulate debt for the proposed project. A mortgage is a debt. In addition, Phillip Ferderigos signing his name as an individual (direct personal liability) and/or signing his interest as a member of the LLC (personal liability if the cooperate veil is pierced) for Athan Fokas' incorrect and non-agreed upon closing documents further constitutes exposure for a personal guarantee that Phillip Ferderigos never agreed to.

Athan Fokas' incorrect and non-agreed upon closing documents required Phillip Ferderigos to sign *as an individual* (1) a mortgage for Phillip Ferderigos' interest in 229 King Street, (2) an assignment of rents, (3) a hypothecation agreement, (4) a HUD Statement, (5) an agreement to provide insurance, and (6) a UCC Financing Statement/Addendum.

Athan Fokas' incorrect and non-agreed upon closing documents also required Phillip Ferderigos to assign his interests *as a member of the LLC* for (1) the Note as the Borrower for Athan Fokas' loan, (2) an assignment of rents for a construction loan agreement, (3) a guaranty of completion and performance agreement, (4) a commercial security agreement, (5) a hazardous substances certificate and indemnity agreement, (6) an agreement to provide insurance, and (7) a UCC Financing Statement/Addendum.

There were further numerous unknown material terms at the time Athan Fokas alleges the parties entered into an agreement that would make a meeting of the minds between the parties impossible, as the parties cannot and did not agree to material terms that were still unknown at the time. As such, the parties never reached a meeting of the minds as to the essential terms of a mortgage agreement, of a side agreement, and/or any material terms.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(No Agreement to Agree)

(51) Athan Fokas' claims are barred as there was never even an "agreement to agree" between the parties. The cost of the proposed project, the scope of the proposed project, the financing details of the proposed project, the loan documentation details of the proposed project, and other material terms of the proposed project were simply unknown at the time Athan Fokas alleges an agreement was made. This is evidenced by the written documentation between the parties which have been attached as exhibits to Defendant(s) counterclaim(s).

FOR A TWELFTH AFFIRMATIVE DEFENSE
(No Consideration)

(52) Athan Fokas' claims fail for lack of consideration.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIMS

(Facts)

(53) Athan Fokas is a citizen and resident of Charleston County, South Carolina. The text messages identified as (843) 813-5612 in the attached exhibits are text messages from Athan Fokas.

(54) Phillip Ferderigos is a citizen and resident of Charleston County, South Carolina.

(55) Spiros Ferderigos is a citizen and resident of Charleston County, South Carolina.

(56) Jacob Ferderigos is a citizen and resident of Charleston County, South Carolina.

(57) The father of Jacob Ferderigos, Phillip Ferderigos, and Spiros Ferderigos (hereinafter Ferderigos Brothers) established Old Towne Restaurant in 1972. Old Towne Restaurant is located at 229 King Street. The Parcel ID number for 229 King Street is 4570801063.

(58) Athan Fokas' father joined Ferderigos Brothers' father as a partner resulting in both Ferderigos Brothers' father and Athan Fokas' father each owning a respective fifty (50) percent interest in Old Towne Restaurant. Ferderigos Brothers' father and Athan Fokas' father purchased the real property located at 229 King Street with each receiving a fifty (50) percent respective interest in the real property.

(59) Ferderigos Brothers' father transferred his respective fifty (50) percent interest in the real property located at 229 King Street in equal shares to Ferderigos Brothers. Ferderigos Brothers' father further transferred his fifty (50) percent interest in Old Towne Restaurant to Jacob Ferderigos.

(60) Upon information and belief, Athan Fokas' father transferred his respective fifty (50) percent interest in Old Towne Restaurant and 229 King Street to Athan Fokas.

(61) Accordingly, Jacob Ferderigos and Athan Fokas each own a respective fifty (50) percent interest in Old Towne Restaurant. The Ferderigos Brothers own a combined fifty (50) percent interest in 229 King Street and Athan Fokas owns the remaining fifty (50) percent interest in 229 King Street.

(62) Old Towne Restaurant leases the first floor of 229 King Street from Ferderigos Brothers and Athan Fokas.

(63) In 2009, 229 King Street was burned in a fire. During the restoration period, Ferderigos Brothers and Athan Fokas converted the top two floors (second and third floor) into short term rental units (hereinafter "original rental units").

(64) Ferderigos Brothers and Athan Fokas paid their respective fifty (50) percent of all expenses for the original rental units in cash.

(65) Ferderigos Brothers and Athan Fokas did not mortgage 229 King Street for the original rental units.

(66) Ferderigos Brothers and Athan Fokas did not personally guarantee any asset and/or interest(s) for the original rental units (including but not limited to a mortgage).

(67) Ferderigos Brothers did not encumber any of their assets for Athan Fokas and Athan Fokas did not encumber any of his assets for Ferderigos Brothers for the original rental units.

(68) Ferderigos Brothers and Athan Fokas created Old Towne Suites, LLC (hereinafter the LLC) to distribute profits for the original rental units. Ferderigos Brothers own a combined fifty (50) percent interest of the LLC and Athan Fokas owns the remaining fifty (50) percent interest in the LLC. The LLC has no assets.

(69) After the LLC was created and the original rental units constructed, but no later than 2012, Athan Fokas informed one or more of the Ferderigos Brothers that he wanted to explore potentially adding new construction over the existing building at 229 King Street for additional short terms rental units (hereinafter "proposed project").

(70) Athan Fokas approached Phillip Ferderigos and told him that the parties should mortgage 229 King Street for the proposed project. Phillip Ferderigos informed Athan Fokas that he would not mortgage his interest in 229 King Street for the proposed project. Phillip Ferderigos has not had any substantive verbal communication(s) with Athan Fokas regarding the proposed project being explored since Phillip Ferderigos had the aforementioned communication wherein Phillip Ferderigos rejected Athan Fokas' request to encumber his asset(s).

(71) Specifically, the first and last substantive conversation Phillip Ferderigos had with Athan Fokas about the proposed project was when Athan Fokas accosted Phillip Ferderigos at the Hellenic Center trying to convince Phillip Ferderigos that the parties should build a new building. Phillip Ferderigos specifically told Athan Fokas that he would not mortgage or guarantee "anything" for any proposed project and that he intended to pay cash for his portion of the proposed project. Athan Fokas proceeded to call Phillip Ferderigos a "pussy," "ignorant" and a "moron" and stated it was "ridiculous" that Phillip Ferderigos would not mortgage Old Towne for the proposed project. Phillip Ferderigos told Athan Fokas that he did not care what Athan Fokas thought and that he would not mortgage or guarantee "anything." Phillip Ferderigos explained that he was very debt averse and did not want to mortgage 229 King Street because he did not want to accumulate debt for the proposed project. Athan Fokas again said Phillip Ferderigos was being "ridiculous" and then Athan Fokas asked Phillip Ferderigos to sell him his rights to allow Athan Fokas to build the building himself. Phillip Ferderigos rejected Athan Fokas' ridiculous offer and again told Athan Fokas that he would not mortgage 229 King Street but instead would only consider doing a proposed project if he had the cash to do so. After such an unpleasant discussion with Athan Fokas, Phillip Ferderigos

has purposely avoided substantively discussing the proposed project with Athan Fokas and any substantive communications concerning the proposed project thereafter were in writing.

(72) The Ferderigos Brothers were each individually comfortable exploring the possibility of, feasibility of, and exploring their interest in the proposed project; out of a matter of convenience, the Ferderigos Brothers and Athan Fokas paid their respective share of exploration expenses for the proposed project from their respective LLC profits.

(73) Ferderigos Brothers and Athan Fokas began exploring the proposed project in 2012 and by July 2012 were already accruing expenses for the exploration of the proposed project. *See Exhibit A and B.*

a. 08/06/12: First invoice from Tucker Architectural for concept drawings.
b. 12/11/12: Email from Tucker Architectural indicating that the concept drawings for the proposed project were approximately 80 percent complete.
c. 12/20/12: Final invoice from Tucker Architectural for concept drawings.

(74) By December 11, 2012, the architect hired by the parties was approximately eighty (80) percent complete with his concept drawings regarding the proposed project. *See Exhibit B.*

(75) Initially, Athan Fokas informed the Ferderigos Brothers the total cost of the proposed project would be approximately $900,000. *See Exhibit C.*

a. 12/19/12: Email from Athan Fokas stating "the total cost for the project to build will be somewhere between $800,000 and $900,000 with spending about 25,000 per unit to furnish and make them luxury units. I hope we can keep this project somewhere around $900,000."

(76) Athan Fokas and Jacob Ferderigos began searching for a personal loan/loan commitment(s) for themselves in the event the City of Charleston would approve the construction of the proposed project being explored, assuming that the parties could reach an agreement for all material terms to build the proposed project.

(77) On December 19, 2012, Athan Fokas sent an email informing the Ferderigos Brothers that he is attempting to get an approximate $900,000 loan for the proposed project and that he believes all parties should personally guarantee and mortgage their interests in 229 King Street for the attempted loan. *See Exhibit C.*

a. 12/19/12: Email from Athan Fokas stating "I hope we can keep this project somewhere around $900,000." "Our equity in Old Towne is somewhere between 5 and 10 million dollars. Many banks these days won't touch anything in the hospitality industry so it is no guaranteed that they will lend us the money. The note on the property should be somewhere in the neighborhood of $4000.00 a

month if they let us carry the note for 30 years. If it is a 15 to 20 year note then the payments will be between $6000.00 and $8000.00 a month." "I'm only going to send information to banks that are very interested in doing the deal. I plan to give them Old Towne tax returns, Old Towne Suites income, and our personal financial statements. Phillip asked if he would be personally guaranteeing the loan. Of course every loan out there wants the people taking out the loan to personally guarantee it. The loan is less than 20 percent of our total value and we have the income from our current suites that could easily pay the note so it's a no brainer. Let me know your thoughts."

(78) Spiros Ferderigos immediately responded, in writing, to Athan Fokas that he would not personally guarantee anyone else's loan or incur additional debts to accomplish the proposed project. Spiros Ferderigos stated that, if the proposed project moved forward, it would need to be in the same manner as the original rental units without Spiros Ferderigos accumulating debt, that Spiros Ferderigos anticipated paying cash for his share of the proposed project if the parties could reach an agreement, and that the cost of construction needed to be addressed. *See Exhibit D.*

a. 12/19/12: Spiros Ferderigos email response to Athan Fokas stating "Assuming all that pans out, there will be a continuing issue on how we finance. If the bank is looking for me (and I assume this goes for Phillip as well but I will let him speak for himself) to personally guarantee a loan I am not going to do it. There is to much that can go wrong with a personal guarantee. I am confident that Phillip, Jacob and I will be able to come up with our end of the amount needed and we can move forward without accumulating debt as we did for the first round of units." "The question is how do we get there, will it be by personally guaranteeing loans that could be catastrophic to our individual families or each individual raising the necessary funds and doing it without a million dollars in debt so we can greatly limit liability. I for one already have plenty of money sitting in a bank account for my share of the additional units." (Emphasis added).

(79) Upon information and belief, Spiros Ferderigos has never spoken verbally with Athan Fokas about the proposed project being explored. All communications between Spiros Ferderigos and Athan Fokas regarding the proposed project have been in writing.

(80) Athan Fokas and Jacob Ferderigos attempted several times to receive a personal loan/loan commitment(s) for the proposed project from numerous banks to no avail. *See Exhibit C.*

a. 12/19/12: Email from Athan Fokas stating "With that said I don't even know if the bank will lend us the money. First Citizens said they are not allowed to touch the hospitality industry. BB&T is 50/50 and will let me know if they are interested in a couple of days. South Carolina Bank and Trust seems very interested according to their President but will have to see our current income to make sure the numbers work. I'm meeting with Suntrust tomorrow but I think they will be a long shot."

(81) In January 2013, Athan Fokas made initial contact with his South Coast Bank loan officer seeking a loan/loan commitment. *See Exhibit E.* South Coast Bank is the lending bank Athan Fokas refers to in his Complaint.

a. 01/11/13: Email from Jeffrey Odom (South Coast Bank loan officer) to Athan Fokas stating "It was a pleasure meeting you yesterday afternoon. I just received your fax so it looks like it went through. I have also received your emails with the attached financial information. Thank you for getting everything to us so quickly. We will get to work and will be in touch shortly."

(82) Phillip Ferderigos and Spiros Ferderigos were not involved in Athan Fokas' and Jacob Ferderigos' attempts to get a personal loan/loan commitment(s) and did not provide any financial information or make any assurances to the bank(s) for the loan Athan Fokas and Jacob Ferderigos were seeking. Furthermore, any prior loan/loan commitment(s) obtained by Athan Fokas and Jacob Ferderigos was for a personal loan between them only and to be personally guaranteed by Athan Fokas and Jacob Ferderigos only. *See Exhibit F.*

a. 06/17/14: Email correspondence between Spiros Ferderigos and Athan Ferderigos wherein Spiros Ferderigos asks Athan Fokas and Jacob Ferderigos "The loan pre-approval that you guys have for the suites...are ya'll going to have to personally guarantee the loan?" Athan Fokas responds "We are pre approved, and since we personally asked for the loan yes we are personally guaranteeing it."

(83) Unknown to Phillip and Spiros Ferderigos at the time, Athan Fokas and Jacob Ferderigos secured a personal loan commitment for themselves from South Coast Bank on February 5, 2013. The loan commitment was for a one million dollar personal loan to Athan Fokas and Jacob Ferderigos in which Athan Fokas and Jacob Ferderigos would provide a mortgage for their interest(s) in 229 King Street, their interest(s) in the LLC, and an assignment of their rents and leases, in addition to other interest(s) of Athan Fokas and Jacob Ferderigos. The loan commitment expired February 15, 2013. *See Exhibit G.*

(84) The February 5, 2013, loan commitment secured by Athan Fokas and Jacob Ferderigos for their personal loan (which was unknown to Phillip and Spiros Ferderigos at the time) was not sufficient for the proposed project being explored as the costs of the proposed project continued to increase as a result of the proposed plans being repeatedly rejected by the relevant governmental agency.

(85) Accordingly, Athan Fokas had to keep seeking approval for a new personal loan/loan commitment(s) from South Coast Bank that would be sufficient for the ever growing costs of the proposed project being explored.

(86) Athan Fokas did not inform Phillip and Spiros Ferderigos that the approximate cost for the proposed project being explored increased from approximately $900,000 to approximately $2,000,000 until September 9, 2014. *See Exhibit H.*

a. 09/09/14: Email from Athan Fokas to Ferderigos Brothers stating "It looks like our new project of six more units will cost us around two million to build."

(87) Accordingly, based upon information provided by Athan Fokas, Phillip and Spiros Ferderigos were paying expenses toward exploring the potential proposed project from as early as December 2012 through September 9, 2014, under the incorrect information provided by Athan Fokas that the approximate cost of the proposed project was $900,000, not double that amount of approximately $2,000,000.

a. 12/19/12: Email from Athan Fokas stated "the total cost for the project to build will be somewhere between $800,000 and $900,000 with spending about 25,000 per unit to furnish and make them luxury units. I hope we can keep this project somewhere around $900,000." *See Exhibit C.*
b. 09/09/14: Email from Athan Fokas to Ferderigos Brothers stating "It looks like our new project of six more units will cost us around two million to build." *See Exhibit H.*

(88) Athan Fokas did not receive approval of his $1,800,000 personal loan and did not receive the details for his personal loan for the proposed project from his banker until September 2014. *See Exhibit I.*

a. 09/19/14: Text from Athan Fokas to Ferderigos Brothers stating "Good news! We are approved for 1.8 million." Spiros Ferderigos responds "can you email us the details of the loan sometime this weekend if you have a chance?" Athan Fokas responds "The banker just called me. I won't have the details till next week." (Emphasis added).

(89) On September 24, 2014, Athan Fokas, either intentionally and/or negligently, incorrectly informed the Ferderigos Brothers that his loan terms were for a fixed 5% interest rate for 20 years, the life of the alleged loan. When Athan Fokas subsequently became aware that he was incorrect about his loan terms, Athan Fokas attempted to get his banker to change the terms to what Athan Fokas believed he had. Athan Fokas' attempts to change his loan terms were rejected by his banker. Athan Fokas response to Phillip Ferderigos when he was unable to get his banker to change his loan terms to what Athan Fokas believed he had was "Well at least I tried." *See Exhibit J.*

a. 09/24/14: Athan Fokas email to Ferderigos Brothers stating " Well I don't know how I managed to sweet talk our banker into getting rid of the five year balloons and fixing it at 5% for the life of the loan which is unheard of in the current banking industry."
b. 09/25/14: Athan Fokas email to Jeffery Odom (South Coast Bank loan officer) asking his loan officer in regards to his loan terms "Can it say: 12 monthly payments of interest only followed by 239 consecutive monthly payments...so that it is truly a 20 years note. Just want to make sure that the note continues after 5 years."

c. 09/25/14: Jeffery Odom's response to Athan Fokas that "the note will be 12 months of interest only followed by 5 years of principal, interest, and escrow payments and then a balloon maturity, with monthly payments based on a 20 year schedule. That is what you wanted and that is the same thing we are doing on your North Towne deal."
d. 09/25/14: Athan Fokas forwards Jeff Odom's email to Phillip Ferderigos and in response tells Phillip Ferderigos "Well at least I tried."

(90) The City of Charleston did not approve the proposed plans for the proposed project being explored until October 2014 and Athan Fokas informed the Ferderigos Brothers on October 10, 2014, that the permit for the proposed project being explored was approved. *See Exhibit K.*

(91) From 2012 to October 2014, the estimated costs of the proposed project increased from less than a million dollars to over two million dollars.

(92) When the city approved the proposed plans for the proposed project, Athan Fokas unilaterally scheduled a closing for what was to be Athan Fokas' and Jacob Ferderigos' personal loan. Jacob, Phillip, and Spiros Ferderigos were not informed nor involved in the scheduling of the closing date and were not informed of the closing date until after it had been scheduled by Athan Fokas.

(93) Upon information and belief, a few days prior to the closing for Athan Fokas' and Jacob Ferderigos' personal loan, Athan Fokas contacted Jacob Ferderigos and informed him that Phillip and Spiros Ferderigos would need to be present at the closing to mortgage their interests in 229 King Street for the loan. Jacob Ferderigos informed Athan Fokas that Phillip and Spiros Ferderigos never agreed to personally mortgage their interests in 229 King Street and that such a mortgage was outright rejected and never considered for the proposed project. Jacob Ferderigos further informed Athan Fokas that he did not believe Phillip and Spiros Ferderigos would agree to Athan Fokas' new material demand that they mortgage their interests in 229 King Street.

(94) Jacob Ferderigos informed Phillip and Spiros Ferderigos that Athan Fokas had scheduled a closing to be held in a few days and that Athan Fokas was demanding that Phillip and Spiros Ferderigos mortgage their interests in 229 King Street for Athan Fokas' and Jacob Ferderigos' personal loan.

(95) Upon being informed of this new demand, Spiros Ferderigos communicated with all parties in writing that he never agreed to mortgage his interest in 229 King Street for Athan Fokas' and Jacob Ferderigos' personal loan, however, he would consider mortgaging his interest in 229 King Street for Athan Fokas' and Jacob Ferderigos' personal loan so long as Athan Fokas signed a side/ancillary agreement that Spiros Ferderigos believed was sufficient to protect his financial asset, assuming that all closing documents were correct.

(96) Phillip Ferderigos also informed Athan Fokas that, although he never agreed to mortgage his interest in 229 King Street, he would consider doing so if Athan Fokas, Jacob Ferderigos, and Spiros Ferderigos signed a side agreement that Phillip Ferderigos believed was sufficient to protect his financial asset, assuming that all closing documents were correct.

(97) Spiros Ferderigos further informed Athan Fokas, Jacob Ferderigos, and Phillip Ferderigos that the closing date scheduled by Athan Fokas without Spiros Ferderigos' input was not convenient for Spiros Ferderigos and that the closing would have to be scheduled for a later date.

(98) Athan Fokas scheduled a second closing date for November 21, 2014. The Ferderigos Brothers were prepared to attend the closing with Phillip and Spiros Ferderigos willing to mortgage their interests in 229 King Street so long as Athan Fokas agreed to and signed the side agreement prepared by Phillip and Spiros Ferderigos, assuming that all closing documents were correct. *See Exhibit L.*

a. 11/21/14: Text chain correspondence between Athan Fokas and Phillip/Spiros Ferderigos the date of the second scheduled closing – Phillip: "if the closing is going to happen today, I need to have it as late in the day as possible...If there any issues, let's just kick it the next week." Athan: "They scheduled if for 3:00 pm today. Will that work?" Phillip: "Should work for me, ask the lawyer to email me the HUD/settlement statement and all paperwork beforehand and I can review it and we can go through the closing more quickly..." Spiros: "From my end, we need to have the agreement signed and a copy of the closing docs to review beforehand. I want to make sure I know what I am signing. So agreement needs to be done and hud/settlement statement like Phillip said. I will block off 3 pm. Where is the closing?" "Once we get the green light on the agreement and the closing docs are reviewed/accurate (which I don't see a reason why they wouldn't be) then we can move forward this afternoon. If there are any issues with the agreement, ect then we will need to revisit everything at a later time."

(99) Athan Fokas, however, refused to agree to and never agreed to or signed the written side agreement necessary for Phillip and Spiros Ferderigos to mortgage their interests in 229 King Street. *See Exhibit M.*

a. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "I'm not interested in you trying to bully me into signing any type of side agreement that is unnecessary. My attorney, as I said earlier, strongly was against it."
b. 11/24/14: Email response from Phillip Ferderigos to Athan Fokas stating "You are asking me to mortgage my part of Old Towne and you are unwilling to sign an Agreement to say that you will make your payments timely. I believe you have mortgaged your other properties and now you want to mortgage Old Towne. I am not your piggy bank. I will not mortgage my share of Old Towne for you unless you agree to make your payments timely. Unless you change your decision, there is no point in moving forward."

c. 11/24/14: Email response from Athan Fokas to Phillip Ferderigos stating "If you want me to sign a side agreement that guarantees I will pay the note then you will sign one saying that you will come up with the money needed for construction or you shall suffer similar consequences."
d. 11/24/14: Email response from Phillip Ferderigos to Athan Fokas stating "I do not care what your bank is requiring of you to get your loan...that has nothing to do with me. I will not sign off on any mortgage of my share unless you sign an agreement that you will make your payments timely. If you are an intelligent person you will see that I can not and will not agree to mortgage my share of Old Towne if you do not agree to make your payments on time."
e. 11/24/14: Email response from Athan Fokas to Phillip Ferderigos stating "Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with Ferderigos Family."

(100) Furthermore, when the Ferderigos Brothers and Athan Fokas received the proposed closing documents to review just a few hours prior to the second closing, the closing documents included requirements that were never discussed and never agreed upon by Phillip and Spiros Ferderigos. *Exhibit N (closing documents).*

(101) The closing documents were incorrect in many ways by including provisions never agreed to or even discussed by the parties. Despite Athan Fokas' Complaint admitting that Phillip and Spiros Ferderigos never agreed to personally guarantee Athan Fokas' and Jacob Ferderigos' loan, the closing documents included terms that would expose Phillip and Spiros Ferderigos to personal liability such as (1) Phillip and Spiros Ferderigos signing their interests in the LLC as the borrower of the note (Athan Fokas' closing attorney admitted in writing that this could make Phillip and Spiros Ferderigos personally liable if the corporate veil were to be pierced and Athan Fokas admitted in an email that only Athan Fokas and Jacob Ferderigos were supposed to sign their individual memberships interests for the loan), (2) Phillip and Spiros Ferderigos signing a hypothecation agreement, (3) Phillip and Spiros Ferderigos assigning their rent profits for the benefit of the lending bank, (4) Phillip and Spiros Ferderigos personally signing the HUD Statement in their individual capacities, (5) Phillip and Spiros Ferderigos mortgaging their interests in 229 King Street, (6) Phillip and Spiros Ferderigos signing an agreement to provide insurance in their individual capacities, (7) Phillip and Spiros Ferderigos signing a UCC Financing Statement/Addendum in their individual capacities, and (8) Phillip and Spiros signing their interests in the LLC for a construction loan agreement, guaranty of completion and performance agreement, commercial security agreement, hazardous substances certificate and indemnity agreement, agreement to provide insurance; and UCC Financing Statement/Addendum, amongst other provisions. *See Exhibit N and O.*

a. 11/21/14: Email of Amy Haines (closing attorney) stating "Nothing in the documents I have makes you personally liable for the debt ... assuming the llc corporate veil could not be pierced for some reason." *See Exhibit O.*

b. 11/21/14: Email from Athan Fokas to Ferderigos Brothers stating "The bottom line is that the Old Towne Suites LLC on the note, that only Jacob and I are signing on as members, ..." *See Exhibit O.*

(102) Accordingly, the closing was canceled as Athan Fokas refused to agree to the terms of the side agreement and the closing documents included requirements never agreed to. *See Exhibit P.*

a. 11/21/14: Email from Phillip Ferderigos stating "it is clear that the bank has not been advised how to do the particulars correctly and this can not be rushed. Closing is off for today. If the docs can be fixed and all side agreements agreed to, then we can re-visit at that time."

(103) Later in the afternoon on the same date the second closing was cancelled, Athan Fokas informed the Ferderigos Brothers *for the first time* that he will be receiving approximately 2.7 million dollars on April 1, 2014, and that he intends to pay off his mortgage obligations at that time if Phillip and Spiros Ferderigos mortgage their interests in 229 King Street for his loan. *See Exhibit Q.*

a. 11/21/14: Email from Athan Fokas to Ferderigos Brothers stating "On April 1, I'm getting paid 3.5 million for a transaction I created long ago in which I have less then $800,000 invested in. I then plan to pay off my debt in full."

(104) Given this new material information, Phillip and Spiros Ferderigos communicated to Athan Fokas that they would like to consider Athan Fokas, Phillip Ferderigos, and Spiros Ferderigos paying cash for their portion of the proposed project. Athan Fokas refused to move forward unless Phillip and Spiros Ferderigos agreed to mortgage 229 King Street and sign the incorrect closing documents. *See Exhibit R.*

a. 11/21/14: Email correspondence between Athan Fokas and Phillip/Spiros Ferderigos Brothers – Phillip: "If you're coming into all the money, why don't we just move forward in April and we don't even need this loan at all." Spiros: "That's a great idea." Athan: "I'm not interested on funding anything more than my percentage as I have big plans for the rest. The bank will not just hang around for 8 months." Phillip: "Forget your bank, I have my bank...I think we should be fine, I like the idea...Athan, what do you say?" Spiros: "Sounds like a win for everyone. You would not be on any loan at all. Just paying your percentage. I think we should explore this before moving forward on a huge loan." Phillip: "I agree this is certainly something we should explore." Spiros: "Why risk that huge loan if we don't have to?" Phillip: "Spiro, you are making a lot of sense, Athan, what do you think?" Athan: "I'm at a swanky dinner now and half drunk but by then I will be n the money and not interested in an ventures but my own. I'm also working on a deal where I get 25% of $100,000,000.00 for just being an expert consultant. I hang out with the ultra wealthy now and play their games."

(105) Athan Fokas rejected moving forward without the parties incurring millions of dollars in debt despite Phillip and Spiros Ferderigos maintaining since 2012 that they were unwilling to accumulate debt for the proposed project being explored and despite Athan Fokas' new revelation confirming that accumulating debt in the form of a multi-million dollar mortgage was unnecessary since Athan Fokas will be receiving 2.7 million dollars in cash (this is nearly three times Athan Fokas' portion of costs for the proposed project).

(106) On November 24, 2014, after the parties yet again reached an impasse on negotiations for the proposed project being explored, Athan Fokas emailed the Ferderigos Brothers that the thirty (30) plus year custom of the Ferderigos and Fokas families eating at Old Towne Restaurant for free was to cease immediately. *See Exhibit S.*

a. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "Oh it has been a pleasure to say the least. I'm also done with paying your half of the food you so dearly like to eat at Old Towne weekly on my dime. If you don't pay your portion to me then Jacob will have to. All management will be put on notice."

(107) This is despite the fact that it has been the custom for the Ferderigos and Fokas families to eat for free at Old Towne Restaurant since the 1970's when Athan Fokas' and the Ferderigos Brothers' parents became partners in the restaurant. Upon information and belief, Athan Fokas changed the aforementioned custom for the purpose of harassing, humiliating, and attempting to coerce and gain an upper hand in negotiations against Ferderigos Brothers.

(108) Athan Fokas then took things even a step further and texted Phillip Ferderigos that he can't wait to spread malicious rumors/defame him around the community by stating that a multimillion dollar project couldn't get done because Phillip Ferderigos couldn't eat for free at Old Towne Restaurant and that he is sure everyone will find it "hilarious." He further went on to insult Phillip Ferderigos' weight, made an inappropriate comment about Phillip Ferderigos as a father and called Phillip Ferderigos "palabo" which means "stupid" in Greek. *See Exhibit T.*

a. 12/15/14: Text message from Athan Fokas to Ferderigos Brothers referring to Phillip Ferderigos stating "I can't wait to spread the word that the suites multimillion dollar project couldn't get done cause Phillip can't eat for free. I'm sure everyone will find it hilarious. I'm probably doing you a favor. Smaller waist line. I bet your kids will be real proud of you in the future too. Your dad was right for calling you palabo [stupid] Philipa."

(109) Athan Fokas is the individual who terminated negotiations with Ferderigos Brothers and said he was no longer willing to move forward with exploring the proposed project. *See Exhibit U.*

a. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "I am interested in doing this deal now and will not do it later."

b. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with the Ferderigos Family.".

(110) Athan Fokas has also repeatedly released, in writing, the Ferderigos Brothers from any alleged agreement he claims the parties reached regarding the proposed project being explored. *See Exhibit V.*

a. 10/21/14: Text from Athan Fokas to Ferderigos Brothers stating "I would rather leave it in your hands now and keep me in the loop if and when you all are ready." "It's in your court now. I could care less. My Zeus deal is bringing in plenty to keep my family happy."
b. 11/21/14: Email from Athan Fokas to Ferderigos Brothers stating "Think about the big picture talk to the bank yourselves and get things done if you like."
c. 11/21/14: Email from Athan Fokas to Ferderigos Brothers stating "I think it's best to think of the big picture of this new project which will put us in a boutique hotel category and forget about stupid details that carry no wait in the big picture." "In the end the building is what the bank wants and none of these side agreements really matter. I suggest you forget your agreement and I will forget mine and we move forward on a very profitable venture and get it done the way the bank allows."
d. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "Are ya'll contacting the bank, my attorney, and the closing attorney or are we just forgetting about it?"
e. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "If you are intelligent you will already know that the money will be there with the original suites income to pay for the loan. Cut your pompous attitude and either get it done or not."
f. 11/24/14: Email from Athan Fokas to Ferderigos Brothers stating "Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with the Ferderigos Family."
g. 12/15/14: Text from Athan Fokas to Ferderigos Brothers stating "We can discuss all options when we meet and hopefully come to a mutual agreement."

(111) Athan has further repeatedly exonerated Jacob Ferderigos from any liability, alleged agreement, or any wrongdoing regarding this lawsuit by declaring that Jacob Ferderigos is the only "innocent person" in all of this and that he will keep Jacob Ferderigos out of the lawsuit. *See Exhibit W.*

a. 11/26/14: Email from Athan Fokas to Ferderigos Brothers stating "Actually this entire deal has put such a bad taste that I dislike seeing you guys in public. Except Jacob of course. He is the only innocent one in this."
b. 04/24/15: Text from Athan Fokas to Jacob Ferderigos stating "We figured out a way to keep you out the law suit."

(112) After the second closing was cancelled, Phillip Ferderigos and Spiros Ferderigos were made aware that the final costs for the proposed project were still unknown at the time of the second closing. *See Exhibit X* (the parties did not know the costs for the windows and/or sprinkler costs for windows).

a. 04/24/15: Text from Athan Fokas to Jacob Ferderigos stating "This number does not include windows over allowance. The allowance was 55k and we still need to determine if glass is fire rated or if sprinklers can cover."

(113) In addition, after the second closing was cancelled, the Ferderigos Brothers became aware for the first time that Athan Fokas entered into a written agreement with the contractor to build the proposed project being explored on October 15, 2014, without their knowledge or consent. *See Exhibit Y.*

(114) Athan Fokas entered into this agreement with the contractor (Kevin Carroll) without the prior consent or knowledge of the Ferderigos Brothers to enter into an agreement with the contractor, did not provide a copy of the agreement and/or its terms to the Ferderigos Brothers before or after signing the agreement, and signed on behalf of Jacob Ferderigos without his consent.

(115) Upon information and belief, Athan Fokas has further defamed Phillip and Spiros Ferderigos by informing a third party that the proposed project being explored was terminated because Phillip and Spiros Ferderigos were not willing to provide a mortgage for Jacob Ferderigos' portion of the proposed project and that Athan Fokas was not seeking Phillip and Spiros Ferderigos to mortgage Athan Fokas' portion of the proposed project.

(116) Upon information and belief, Athan Fokas for months continued to contact and tell the contractor (Kevin Carroll) that the proposed project was moving forward as planned despite being told by the Ferderigos Brothers that the proposed project being explored would not move forward.

(117) Although Phillip and Spiros Ferderigos have continued to ask Athan Fokas to stop harassing them with his ongoing emails, Athan Fokas has continued to send numerous emails to Phillip and/or Spiros Ferderigos in an effort to coerce them into agreeing to mortgage their interest(s) in 229 King Street and sign the incorrect closing documents, including sending emails threatening litigation in an effort to coerce Phillip and Spiros Ferderigos to give into his demands. This includes one email in which he specifically mentions that his lawsuits are not costing him anything because his attorney has taken on his case as a contingency fee. Upon information and belief, all of these emails have been sent to Phillip and Spiros Ferderigos in an effort to obtain an upper hand in negotiations and to wrongfully coerce Phillip and Spiros Ferderigos to succumb to Athan Fokas' rejected and/or non-agreed upon demands.

(118) Upon information and belief, Athan Fokas informed Jacob Ferderigos that he is going to file a lawsuit against Phillip and Spiros Ferderigos only if it does not cost him

anything, and that he is going to take Phillip and Spiros' homes from them and they will be out on the street. Upon information and belief, Athan Fokas sent such communications to be relayed to Phillip and Spiros Ferderigos in bad faith and in an effort to obtain an upper hand in negotiations and to wrongfully coerce Phillip and Spiros Ferderigos to succumb to Athan Fokas' rejected and/or non-agreed upon demands.

(119) On July 14, 2015, Athan Fokas filed a defamation lawsuit against Phillip and Spiros Ferderigos based upon information Athan Fokas alleges he received from his mother (Irene Fokas). Specifically, Athan Fokas' defamation lawsuit alleges that Phillip and Spiros Ferderigos told their father (Stavros Ferderigos), who repeated to Athan Fokas' mother (Irene Fokas), that Athan Fokas hired someone to set fire to 229 King Street and that Athan Fokas has filed a false insurance claim(s). Irene Fokas allegedly confronted Athan Fokas about these allegations.

(120) Athan Fokas knowingly and willfully filed the defamation lawsuit knowing that there was absolutely no basis for the lawsuit and knowing that his mother (Irene Fokas) never told Athan Fokas the information he alleges in the Complaint.

(121) On August 18, 2015, Athan Fokas' mother (Irene Fokas) admitted that she never discussed the topics of Athan Fokas being involved in the 229 King Street fire and/or false insurance claim(s) with Defendants' father. *See Exhibit Z.*

a. August 21, 2015 email from Fanouris Ferderigos (Irene Fokas' brother) to Stan Barnett (Athan Fokas' attorney): "This letter is to make you aware that on August 18, 2015 my sister, Irene Fokas, adamantly denied to me in person that Stavros Ferderigos ever told her anything about the allegations set forth above from your Complaint and that she has never even discussed with Stavros Ferderigos the topics of Athan Fokas being involved, directly or indirectly, with the fire at 229 King Street and/or anything to do with any of Athan Fokas' insurance claims. Irene Fokas further told me that she would testify under oath that she never was told about these allegations by Stavros Ferderigos in any way whatsoever."

(122) Upon information and belief, Irene Fokas never told Athan Fokas that Phillip and/or Spiros Ferderigos were the source of the information alleged in Athan Fokas' defamation lawsuit against Phillip and Spiros Ferderigos.

(123) Upon information and belief, Athan Fokas has, without approval/permission of Jacob, Phillip, and/or Spiros Ferderigos, used 229 King Street for his own personal catering business and to store inventory for his own personal catering business and/or other side projects. Athan Fokas has done so for his own pecuniary gain and to the detriment of Jacob, Phillip, and/or Spiros Ferderigos, who have not received notice of these activities and/or any rent or other payments for Athan Fokas' unauthorized use of 229 King Street.

(124) That with the exception of highlighting for emphasis, the Exhibits attached to Defendants' Counterclaims have not been altered or amended and are true and accurate copies of the written documentation.

FOR A FOURTEENTH AFFIRMTAIVE DEFENSE
AND BY WAY OF COUNTERCLAIM
(Violation of Duty of Care – S.C. Code Ann. § 33-44-409 and LLC Statutes)

(125) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(126) Athan Fokas violated his duty of care to Phillip Ferderigos as set forth in the LLC statutes in numerous instances. While Phillip Ferderigos denies that the LLC statutes apply in this matter to impose any duties from Phillip Ferderigos to Athan Fokas, based on Athan Fokas' representations, conduct, and/or actions concerning the LLC, Athan Fokas breached his duty of care as further described below.

(127) Among other items, Athan Fokas violated his duty of care to Phillip Ferderigos by:

a. From December 19, 2012, until a few days before Athan Fokas' unilaterally scheduled closing, Athan Fokas never disclosed that he required Phillip and Spiros Ferderigos to mortgage their interest(s) in 229 King Street, personally guarantee their interests, and/or encumber their financial interests while Jacob, Phillip and Spiros Ferderigos continued to incur expenses for the proposed project under the belief that Athan Fokas was getting a personal loan with no assurances and/or encumbrances from Phillip and Spiros Ferderigos whatsoever;

b. Athan Fokas intentionally and improperly attempting to force Jacob, Phillip, and/or Spiros Ferderigos to do things that Jacob, Phillip and/or Spiros Ferderigos never agreed to do;

c. While Jacob, Phillip, and/or Spiros Ferderigos continued to accrue significant expenses for the exploration of the proposed project under the belief from Athan Fokas that he and Jacob Ferderigos were getting their own personal loan, Athan Fokas purposefully, intentionally and/or negligently, did not

i. disclose he would be requiring Phillip and Spiros Ferderigos to mortgage their interests in 229 King Street for his benefit.

ii. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interests in the LLC as borrower for Athan Fokas' loan for his benefit.

iii. disclose he would be requiring Phillip and Spiros Ferderigos to sign an assignment of rents for Athan Fokas' loan for his benefit.

iv. disclose he would be requiring Phillip and Spiros Ferderigos to sign a hypothecation agreement for Athan Fokas' loan for his benefit.

v. disclose he would be requiring Phillip and Spiros Ferderigos to sign a HUD Statement for Athan Fokas' loan for his benefit.

vi. disclose he would be requiring Phillip and Spiros Ferderigos to sign an agreement to provide insurance for Athan Fokas' loan for his benefit.

vii. disclose he would be requiring Phillip and Spiros Ferderigos to sign a UCC Financing Statement/Addendum for Athan Fokas' loan for his benefit.

viii. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC on the Note and/or authorize their interest(s) in the LLC to be signed on the Note.

ix. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a construction loan agreement for Athan Fokas' loan for his benefit.

x. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a guaranty of completion and performance agreement for Athan Fokas' loan for his benefit.

xi. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a commercial security agreement for Athan Fokas' loan for his benefit.

xii. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a hazardous substances certificate and indemnity agreement for Athan Fokas' loan for his benefit.

xiii. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for an agreement to provide insurance for Athan Fokas' loan for his benefit.

xiv. disclose he would be requiring Phillip and Spiros Ferderigos to sign their interest(s) in the LLC and/or authorize their interest(s) in the LLC to be signed for a UCC Financing Statement/Addendum for Athan Fokas' loan for his benefit.

d. Athan Fokas signing a loan commitment letter with his bank without the knowledge, consent, and/or approval of Phillip and Spiros Ferderigos, while now apparently claiming that the terms of that commitment letter somehow obligate Phillip and Spiros Ferderigos to provide certain financial guarantees and/or encumbrances, which Phillip and Spiros Ferderigos had previously rejected.

e. Athan Fokas failing to obtain a personal loan to fund his portion of the proposed project.

f. Athan Fokas apparently having the funds to pay for his portion of the proposed project, but choosing not to use his funds, but instead demanding Phillip and Spiros Ferderigos succumb to his demands which were outright rejected and never agreed upon.

g. Athan Fokas purposefully, intentionally, and/or negligently hiding from Jacob, Phillip, and/or Spiros Ferderigos the fact that Athan Fokas did not obtain a personal loan. Athan Fokas purposefully waited until a few days prior to Athan Fokas' unilaterally scheduled closing and after Jacob, Phillip and Spiros Ferderigos had already paid the vast majority of exploration costs before informing them that he did not have a personal loan. Athan Fokas willfully waited to disclose this material information in order to coerce Phillip and Spiros Ferderigos, who had by that time invested significant funds to explore the project, to give into his demands, which Phillip and Spiros Ferderigos had outright rejected and/or never agreed upon.

h. Athan Fokas purposefully waiting a few days before his first unilaterally scheduled closing to advise Jacob, Phillip, and Spiros Ferderigos that he needed Phillip and Spiros Ferderigos to underwrite his loan by providing him with a mortgage over their portion of 229 King Street, when Athan Fokas knew Phillip and Spiros Ferderigos had rejected such terms.

i. Athan Fokas demanding that Phillip and Spiros Ferderigos mortgage 229 King Street when Athan Fokas knew that Phillip and Spiros Ferderigos had outright rejected such material term.

j. Athan Fokas purposefully, willfully, and/or negligently unilaterally and continuously setting a closing date for his loan based on incorrect loan closing documents which would purport to require Phillip and Spiros Ferderigos to sign documents in Athan Fokas' favor, which Phillip and Spiros Ferderigos outright rejected and/or never agreed to sign.

k. Athan Fokas purposefully, willfully, and/or negligently and improperly adding new material terms in his loan documents that Phillip and Spiros Ferderigos had previously outright rejected and/or never agreed upon.

l. Athan Fokas negligently withholding and/or misrepresenting material terms of the proposed project.

m. Athan Fokas intentionally and negligently stating that Phillip and Spiros Ferderigos had made an oral agreement with him to mortgage their interests for his benefit in 229 King Street and to sign their respective interests in the LLC as a borrower for Athan Fokas' loan, when Athan Fokas knows that such statements are outright lies.

n. Athan Fokas purposefully, willfully, and/or negligently misrepresenting the requirements of his loan package and/or loan documents to Jacob, Phillip and/or Spiros Ferderigos.

o. Athan Fokas writing numerous communications to Defendants where Athan Fokas admitted to outrageous behavior, stating, he was "playing games," withholding material information, misrepresenting material information, introducing new material terms as a means to harass and annoy the Defendants, and threatening to spread malicious rumors and to defame the Defendant(s), all in an effort to improperly extort concessions out of the Ferderigos Brothers and to improperly coerce/force Phillip and Spiros Ferderigos to give Athan Fokas a mortgage over their portion of 229 King Street and to sign incorrect and improper loan closing documents.

p. Athan Fokas purposefully, intentionally, and/or negligently and falsely informing Jacob, Phillip, and/or Spiros Ferderigos that he needed a loan to fund his percentage of the project being explored. Athan Fokas purposefully, intentionally, and/or negligently hid the fact that he would be receiving 2.7 million dollars (nearly three times the amount necessary for his portion of the proposed project) within the building permit period in an effort to deceive and coerce Jacob, Phillip, and/or Spiros Ferderigos into believing it was necessary for them to mortgage their interests in 229 King Street for Athan Fokas' benefit and to deceive and to coerce them into signing incorrect closing documents for Athan Fokas' benefit. Athan Fokas hid such material information to try and force Phillip and Spiros Ferderigos into unnecessarily mortgaging their interest(s) in 229 King Street, and signing loan documents which Phillip and Spiros Ferderigos outright rejected and/or never agreed to sign.

q. Athan Fokas purposefully, intentionally, and/or negligently misrepresenting to Jacob, Phillip, and/or Spiros Ferderigos that he intended to pay off his portion of the loan when he received 2.7 million dollars on April 1, 2015, in order to wrongfully persuade and deceive Phillip and Spiros Ferderigos into mortgaging

their interests in 229 King Street and sign incorrect closing documents for Athan Fokas' benefit. Such representation was an intentional lie when made. Phillip and Spiros Ferderigos stated to wait a few months for when Athan Fokas had his cash and Athan Fokas, Phillip Ferderigos and Spiros Ferderigos could pay cash for the proposed project. A few days later, Athan Fokas reversed course and stated that, when he did receive his cash on April 1, 2015, he may instead decide to purchase another building downtown instead of paying off the loan. Athan Fokas intentionally gave false information to attempt to coerce Jacob, Phillip, and/or Spiros Ferderigos to provide Athan Fokas with a mortgage of 229 King Street and to sign incorrect closing documents for his benefit.

r. Athan Fokas purposefully, intentionally, and/or negligently misrepresenting to Jacob, Phillip and/or Spiros Ferderigos that he would not be willing to wait until April 1, 2015 (when he received his millions) to do the proposed project. Such representation was a lie when made. Athan Fokas misrepresented the fact that he would not wait until he received his millions on April 1, 2015, in an effort to deceive and coerce Jacob, Phillip, and/or Spiros Ferderigos into mortgaging their interests in 229 King Street for Athan Fokas' benefit and to deceive and to coerce Jacob, Phillip, and/or Spiros Ferderigos into signing the incorrect closing documents for Athan Fokas' benefit.

s. Athan Fokas refusing to wait until he received his millions of dollars on April 1, 2015, to consider moving forward with the proposed project.

t. Athan Fokas purposefully, intentionally, and/or negligently misrepresenting to Jacob, Phillip, and Spiros Ferderigos that his bank would not wait until April 1, 2015, when Athan Fokas informed Jacob, Phillip, and Spiros Ferderigos that Athan Fokas would receive his millions of dollars, while now alleging in his Complaint that his bank is still willing to offer a loan package to Athan Fokas.

u. Athan Fokas refusing to sign a side agreement protecting Phillip and Spiros Ferderigos' collateral, while at the same time demanding Phillip and Spiros Ferderigos give him a mortgage over their portion of 229 King Street.

v. Athan Fokas purposefully, willfully, and/or negligently and falsely claiming in his pleadings that he agreed to sign the side agreement when Athan Fokas rejected and never agreed to sign any such side agreement, but rather made additional demands of material terms on behalf of Phillip Ferderigos as a condition to Athan Fokas possible approval for executing the side agreement.

w. Athan Fokas knowing that his refusal to sign the side agreement resulted in the proposed project being terminated; however, Athan Fokas telling third parties that Phillip and Spiros Ferderigos terminated the proposed project for other reasons which Athan Fokas knew where false.

x. Athan Fokas harassing, threatening, mocking and attempting to coerce Jacob, Phillip, and Spiros Ferderigos by representing he was going to make twenty five million dollars ($25,000,000.00) as a consultant and by telling Jacob, Phillip, and Spiros Ferderigos "I hang out with the ultra wealthy now and play their games."

y. Athan Fokas interjecting new terms into the negotiations with ill will and actual malice by demanding that the parties change the thirty (30) plus year customary practice regarding food at Old Towne Restaurant for family members (both Ferderigos and Fokas family members) solely to be vindictive and to harass Phillip and Spiros Ferderigos, and to otherwise coerce Phillip and Spiros Ferderigos to give into Athan Fokas' demands which had been rejected.

z. On two separate occasions, Athan Fokas threatening to build the proposed project, without Phillip Ferderigos' consent and against Phillip Ferderigos' will, and purportedly with the scheme to own the new building to the exclusion of Phillip Ferderigos (which is something that Athan Fokas cannot legally do), all with the fraudulent intent of forcing Phillip Ferderigos to provide Athan Fokas a mortgage Phillip Ferderigos never agreed to, as well as signing improper and incorrect closing documents Phillip Ferderigos never agreed to sign.

aa. Athan Fokas defaming Phillip and/or Spiros Ferderigos because they would not give into Athan Fokas' demands, by telling third parties that Phillip and/or Spiros Ferderigos have no business sense and that the proposed projected fell apart because Phillip could not eat for free at Old Towne Restaurant and by calling Phillip Ferderigos stupid.

bb. Athan Fokas attempting to use the customary food practice at Old Towne Restaurant as a negotiating tactic to attempt to force Phillip and/or Spiros Ferderigos to give into Athan Fokas' demands which were rejected by Phillip and/or Spiros Ferderigos.

cc. Athan Fokas threatening to publish malicious rumors/defamatory statement(s) by telling Phillip Ferderigos that Athan Fokas can not wait to spread the word in the community that that a "multimillion dollar project" couldn't get done because Phillip Ferderigos couldn't eat for free at Old Towne Restaurant, a malicious threat of defamation that Athan Fokas knew was false and made with actual malice and ill will to attempt to improperly coerce Phillip Ferderigos into giving Athan Fokas a mortgage Phillip Ferderigos never agreed to give him, as well as coerce Phillip Ferderigos into signing improper and incorrect closing documents he never agreed to sign.

dd. Athan Fokas continuing to tell the contractor Kevin Carroll for months that the proposed project was moving forward despite Athan Fokas being repeatedly told by Jacob, Phillip and/or Spiros Ferderigos that the proposed project was not moving forward.

ee. Athan Fokas repeatedly releasing Jacob, Phillip and Spiros Ferderigos from any alleged agreement, liability and/or responsibility regarding the proposed project and then filing lawsuit(s) to attempt to coerce Jacob, Phillip, and/or Spiros Ferderigos to do the very things that were released.

ff. Athan Fokas threatening to take Phillip and Spiros Ferderigos' homes and throw their children out on the street if Phillip and Spiros Ferderigos did not give Athan Fokas a mortgage, personally guarantee, and/or encumber their interests in Athan Fokas' favor and/or give into his demands, which Phillip and Spiros Ferderigos had rejected and/or were never agreed upon.

gg. Athan Fokas unilaterally and improperly executing a written contract with contractor Kevin Carroll to build the proposed project without the knowledge, consent and/or providing details of the contract to Jacob, Phillip, and/or Spiros Ferderigos. Athan Fokas purposefully and intentionally withheld such information from Jacob, Phillip, and/or Spiros Ferderigos.

hh. Athan Fokas unilaterally and improperly executing a written contract with the contractor Kevin Carroll purportedly on behalf of the LLC, without the knowledge, consent, and/or the authorization of Jacob, Phillip, and/or Spiros Ferderigos. Athan Fokas purposefully and intentionally withheld such information from Jacob, Phillip, and/or Spiros Ferderigos.

ii. Athan Fokas signing a written contract with contractor Kevin Carroll to build the proposed project on behalf of Jacob Ferderigos, by signing a signature line that included Jacob Ferderigos' name, without the knowledge, consent and/or providing details of the contract to Jacob Ferderigos. Athan Fokas purposefully and intentionally withheld such information from Jacob, Phillip, and/or Spiros Ferderigos.

jj. Athan Fokas publishing malicious rumors/defamatory statement(s) to third parties that Phillip and Spiros Ferderigos have no business sense and that it is very sad. This is in reference to Phillip and Spiros Ferderigos not giving into Athan Fokas' wrongful and outright rejected and/or non-agreed upon demands for the proposed project being explored.

kk. Athan Fokas publishing malicious rumors/defamatory statement(s) concerning Phillip and Spiros Ferderigos by inquiring third parties about Phillip and/or Spiros Ferderigos alleged statements concerning Athan Fokas' involvement in the fire of 229 King Street.

ll. Athan Fokas publishing malicious rumors/defamatory statement(s) to third parties that the proposed project was terminated because Phillip and/or Spiros Ferderigos could not eat for free at Old Towne.

mm. Athan Fokas publishing malicious rumors/defamatory statement(s) by telling third parties that the proposed project has been terminated because Phillip and Spiros Ferderigos were not doing what they agreed to do.

nn. Athan Fokas publishing malicious rumors/defamatory statement(s) by telling third parties that Athan Fokas was not/is not seeking a mortgage from Phillip and/or Spiros Ferderigos for the proposed project.

oo. Athan Fokas telling third parties that Phillip and/or Spiros Ferderigos refused to give Jacob Ferderigos a mortgage for Jacob Ferderigos' portion of the loan and that Athan Fokas was not seeking a mortgage from Phillip and/or Spiros Ferderigos.

pp. Athan Fokas continuing to contact Jacob, Phillip, and/or Spiros Ferderigos despite threatening his lawsuits and being told by Phillip and Spiros Ferderigos to stop communicating with them. Athan Fokas continued to send obnoxious emails to Jacob, Phillip, and/or Spiros Ferderigos about how profitable the current suites project is and how profitable it would have been had the parties built the proposed project as Athan Fokas had demanded. Athan Fokas continues to harass Jacob, Phillip, and/or Spiros Ferderigos and continues to try to intimidate Jacob, Phillip, and/or Spiros Ferderigos into doing the proposed project, as well as trying to scare Jacob, Phillip, and/or Spiros Ferderigos concerning the high legal costs to defend against his frivolous lawsuits.

qq. Athan Fokas harassing, threatening, and mocking Jacob, Phillip, and/or Spiros Ferderigos by writing to them that "my attorney is working on a flat 20 percent contingency so he is not costing me anything until this case is settled," while threatening to file a multi-million dollar lawsuit against Jacob, Phillip, and/or Spiros Ferderigos. This written information was sent by Athan Fokas to Jacob, Phillip, and/or Spiros Ferderigos in an attempt to harass and to coerce them to give into Athan Fokas' rejected and non-agreed upon demands by threatening that a lawsuit will cost Jacob, Phillip, and/or Spiros Ferderigos money, but will not cost Athan Fokas anything to proceed with his frivolous lawsuit strategy.

rr. Athan Fokas conducting unauthorized business and/or storing unauthorized inventory within 229 King Street for his own pecuniary gain without the knowledge and/or consent, and to the detriment, of Jacob, Phillip and/or Spiros Ferderigos.

ss. Athan Fokas knowingly and intentionally filing a frivolous defamation lawsuit against Phillip and Spiros Ferderigos knowing that the allegations therein were false.

(128) As a direct and proximate result of Athan Fokas' actions, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to actual, consequential, and punitive damages as determined by a jury.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF COUNTERCLAIM
(Negligent Misrepresentation)

(129) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(130) Athan Fokas made false representations to Phillip Ferderigos as set forth in Paragraph 127 and its subsections (Phillip Ferderigos' violation of duty of care claim).

(131) Athan Fokas had a pecuniary interest in making these representations/statements.

(132) Athan Fokas owed a duty of care to see that Athan Fokas communicated truthful information to Phillip Ferderigos.

(133) Athan Fokas breached that duty by failing to exercise due care,

(134) Phillip Ferderigos justifiably relied on said representations.

(135) Phillip Ferderigos suffered pecuniary loss as a proximate result of his reliance on the representations of Athan Fokas and Athan Fokas acted willfully, wantonly, carelessly, and recklessly, and as a direct and proximate result, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to actual, consequential, and punitive damages as determined by a jury.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF COUNTERCLAIM
(Fraud, Constructive Fraud)
(Concealment with Duty to Disclose)

(136) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(137) Athan Fokas further intentionally and purposely misrepresented facts set forth in Paragraph 127 and its subsections (Phillip Ferderigos' violation of duty of care claim).

(138) Athan Fokas had a duty to disclose material information to Phillip Ferderigos and Athan Fokas failed to disclose such information.

(139) Prior to and/or during the negotiations with Athan Fokas, Athan Fokas implied and/or expressly represented to Phillip Ferderigos as set forth previously.

(140) Said representations were false.

(141) Said representations were material.

(142) Athan Fokas knew said representations were false when same were made. Alternatively, Athan Fokas knew his representations to Phillip Ferderigos were false and/or Athan Fokas' representations were made with reckless disregard as to their truth or falsity. Athan Fokas' failure to inform Phillip Ferderigos of his true intentions was intentional and/or negligent with reckless disregard to the truth upon which Phillip Ferderigos was relying.

(143) Athan Fokas intended Phillip Ferderigos to rely and act upon said representations. Phillip Ferderigos did not know said representations were false.

(144) Phillip Ferderigos had the right to rely upon, and in fact did rely upon, the truth of said representations. In the event that the element or scienter is not found, alternatively, that Phillip Ferderigos alleges and avers that Athan Fokas committed constructive fraud in that Athan Fokas breached legal, equitable, and fiduciary duty owed to Phillip Ferderigos.

(145) Athan Fokas acted willfully, wantonly, carelessly, and recklessly, and as a direct and proximate result, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to actual, consequential, and punitive damages as may be determined by a jury.

FOR SEVENTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF COUNTERCLAIM
(Defamation – Slander - Libel)

(146) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(147) Athan Fokas threatened to publish false and defamatory statements by informing Phillip Ferderigos in writing that he cannot wait to tell everyone in the community [the false statement] that a multi-million dollar project did not move forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant and that he found it hilarious.

(148) Upon information and belief, Athan Fokas publishing false and defamatory statements that the proposed project did not move forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant.

(149) Athan Fokas published false and defamatory statements to Jacob Ferderigos in writing that Phillip and Spiros Ferderigos "have no business sense and I'm sure we will be butting heads with Greek properties in the future. Very sad!!!". *See Exhibit AA.*

(150) Upon information and belief, Athan Fokas published false and defamatory statements to other third parties that Phillip and/or Spiros Ferderigos are bad business people and/or do not have any business sense.

(151) Athan Fokas published false and defamatory statements to other third parties that Phillip and/or Spiros Ferderigos are accusing him of setting fire to 229 King Street.

(152) Athan Fokas published false and defamatory statements to other third parties that the proposed project was not moving forward because Phillip and/or Spiros Ferderigos were not doing what they agreed to do.

(153) Upon information and belief, Athan Fokas published false and defamatory statements to other third parties that he was not seeking a mortgage and/or other financial assurances from Phillip and/or Spiros Ferderigos for the proposed project; while at the same time, filing a lawsuit demanding that Phillip and Spiros Ferderigos mortgage and/or provide financial assurances of their interests for Athan Fokas' benefit for the proposed project.

(154) Upon information and belief, Athan Fokas verbally (slander) and in writing/conduct (libel) threatened to publish and/or has published, with premeditation, false malicious rumors and defamatory statements to third parties about Phillip Ferderigos.

(155) Athan Fokas' slander and libel is actionable per se where Athan Fokas has alleged defamatory statements charging Phillip Ferderigos with commission of a crime of moral turpitude and/or unfitness in his business or profession. Athan Fokas has also published slander and libel that is not actionable per se.

(156) Athan Fokas has made false and defamatory statements concerning Phillip Ferderigos.

(157) Athan Fokas has acted with common law malice.

(158) Athan Fokas has made such statements via an unprivileged publication to third parties.

(159) Athan Fokas is at fault in publishing the statements.

(160) Athan Fokas has harmed Phillip Ferderigos via his defamatory statements and caused harm and/or special harm to Phillip Ferderigos caused by the publication.

(161) As a direct and proximate result of Athan Fokas' defamatory statements, which were made with common law actual malice, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to general damages, special damages, actual damages, consequential damages, and punitive damages as determined by a jury.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIM
(Abuse of Process)

(162) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(163) Athan Fokas has employed the legal process for some purpose other than that for which it was intended by the law to effect – the improper use of a regularly issued process.

(164) Athan Fokas has commenced an action and caused process to issue without justification and is also misusing or misapplying the legal process for an end other than that which it was designed to accomplish.

(165) Athan Fokas is using the process for improper reasons with (1) an ulterior purpose; and (2) has done willful acts in the use of the process not proper in the regular conduct of the proceeding, to attempt to force Phillip Ferderigos to give Athan Fokas a mortgage and to sign incorrect loan documents by filing what Phillip Ferderigos believes to be frivolous lawsuits (where the exhibits attached to this pleading and the written documents of Athan Fokas himself prove Athan Fokas' lawsuits to be frivolous).

(166) As a direct and proximate result of Athan Fokas' actions, Phillip Ferderigos has been injured. Accordingly, Phillip Ferderigos is entitled to actual, consequential, and punitive damages as determined by a jury.

FOR AN NINETEENTH AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIMS
(Promissory Estoppel)

(167) Phillip Ferderigos incorporates all of the above paragraphs as fully as if reinstated verbatim herein.

(168) Jacob, Phillip, and/or Spiros Ferderigos acted in reasonable reliance on Athan Fokas' representations, promises, and other acts constituting inducements to continue moving forward with exploring the proposed project with Phillip and Spiros Ferderigos not being involved in and/or granting any assurances/encumbrances of any kind whatsoever for a loan. Jacob, Phillip, and/or Spiros Ferderigos continued to expend money towards receiving governmental approval for the new building being explored in reasonable reliance of Athan Fokas' representations, promises, and other acts.

(169) As a direct and proximate result of Athan Fokas' actions and Jacob, Phillip and/or Spiros Ferderigos' reasonable reliance thereon, Jacob, Phillip and/or Spiros Ferderigos suffered damages in an amount to be determined by a jury.

FOR A TWENTIETH DEFENSE AND BY WAY OF COUNTERCLAIM
(Initiation of Frivolous Proceedings, S.C. Code Ann. § 15-36-10)

(170) Phillip Ferderigos repeats and realleges all of the above paragraphs as if set forth verbatim herein.

(171) The Complaint filed in this current action constitutes a frivolous pleading under the South Carolina Frivolous Civil Proceedings Sanction Act, S.C. Code Ann. § 15-36-10 (2005), in the following particulars to wit:

a. A reasonable attorney in the same circumstances would believe that the Plaintiff's claim "was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law"; and

b. A reasonable attorney presented with the same circumstances would believe that the initiation of this civil cause "was intended merely to harass or injure the other party."

c. A reasonable attorney presented with the same circumstances would believe the pleading is frivolous and was brought for a purpose other than proper adjudication of the claim.

d. The pleading makes frivolous arguments not supported by the facts.

(172) Phillip Ferderigos respectfully asks this Honorable Court to sanction the Plaintiff for this frivolous pleading pursuant to S.C. Code Ann. § 15-36-10(G)—(2005), and specifically, Phillip Ferderigos prays for the following relief:

a. That the Plaintiff pay reasonable costs and attorney's fees to defend this action and for punitive damages; and

b. That the Plaintiff pay a reasonable fine to the Court.

WHEREFORE, having fully answered Plaintiffs' Complaint, Phillip Ferderigos prays that the Court:

a) Dismiss Plaintiff's Complaint with prejudice;

b) That Plaintiff take nothing by reason of his suit;

c) That Phillip Ferderigos recover costs and reasonable attorney's fees in defending this action;

d) That the Plaintiff be sanctioned for the initiation of this frivolous proceeding by being fined by this Honorable Court;

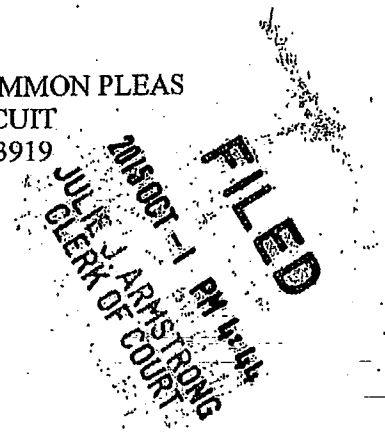
e) Enter judgment for Phillip Ferderigos on his counterclaims and award him damages for his actual, consequential, incidental, and punitive damages, and pre and post judgment interest; and

f) Award such other relief as the Court may deem just and proper.

Respectfully submitted,

Richard A. Farrier (S.C. ID No 1962)
Email: richard.farrier@klgates.com
Jennifer H. Thiem (S.C. ID No. 73739)
Email: jennifer.thiem@klgates.com
K&L Gates LLP
134 Meeting Street, Suite 200
Charleston, SC 29401
Phone: (843) 579-5600
Fax: (843) 579-5601
ATTORNEYS FOR DEFENDANT/COUNTERCLAIMANT,
PHILLIP FERDERIGOS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2015-CP-10-3919
	)	
Plaintiff Fokas,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
Philip Ferderigos, Jacob Ferderigos, and Spiro Ferderigos,	)	
	)	
Defendants.	)	



I hereby certify that this 1ST day of October 2015, I forwarded a copy of the foregoing Answer and Counterclaims of the Defendant, Phillip Ferderigos, via U.S. Mail with sufficient postage affixed thereto, properly addressed as follows:

Counsel Served:

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, SC 29465-1542
Attorneys for Plaintiff

M. Dawes Cooke, Jr.
Jeremy E. Bowers
BARNWELL WHALEY PATTERSON & HELMS LLC
PO Drawer H
Charleston, SC 29402

John Massalon
WILLS MASSALON & ALLEN LLC
P.O. Box 859
Charleston, SC 29402

Enita B. Martin

~~Gwyn L. Martin~~
Legal Assistant

Charleston, South Carolina
OCT. 1, 2015

From: "Joe Tucker" <tuckerala@gmail.com>
Date: July 21, 2015 at 11:59:58 AM EDT
To: "'Jacob Federico'" <Jacobspita@yahoo.com>
Subject: Old Towne Suites 2

Jacob,

As we recently discussed by phone, we have attached an account of all payments for this project.

Let us know if you have other questions.

Regards,

Joe

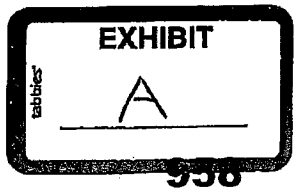
TUCKER ARCHITECTURAL ASSOCIATES

772 Gypsy Lane, Mt. Pleasant SC 29464

TuckerAIA@Gmail.com

(843) 881 - 6426

payrec715.docx
13K



Old Towne 2

Design prior to first BAR submittal

1,800.00	concept drawings	8/6/12
1,250.00	concept drawings	12/20/12
2,600.00	preliminary design one	4/12/13
2,600.00	preliminary design one	5/1/12
4,000.00	preliminary design two	5/23/13
$12,250.00		

Contract suspended

1,600.00	For additional services for BAR	7/9/13
1,250.00	For additional services for Artist	7/9/13
$ 2,850.00		

Old Towne 2 Revised

Design after second BAR submittal

No charge	Architecture	concept review with owner		
1,400.00	Architecture	concept review with agencies	1,400.00	10/7/13
800.00	Architecture	concept review with BAR	800.00	10/20/13
800.00	Artist	concept review with BAR	800.00	10/20/13
1,800.00	Architecture	preliminary with BAR	1,800.00	12/10/13
2,800.00	Architecture	final review with BAR	2,500.00	2/7/14
4,800.00	Architecture	preliminary drawings	1,300.00	2/14/14
			3,800.00	6/17/14
2,500.00	Engineering	preliminary drawings	5,500.00	6/3/14
2,500.00	Engineering	final drawings		
5,800.00	Architecture	final drawings	3,000.00	11/4/14
			2,800.00	11/4/14
500.00	additional mech engineering			6/3/14
$23,700.00			23,700.00	

Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile Try Netscape on Firefox

Search Search Mail Search Web Home Jacob

Compose

Inbox (1)
Drafts
Sent
Spam (5)
Trash
Smart Views
Unread
Starred
People
Social
Travel
Shopping
Finance
Folders
Recent

Search results Delete Move More

People

Fwd: Old Towne

Begin forwarded message:

From: "Joe Tucker" <tuckerala@gmail.com>
Date: December 11, 2012, 3:56:47 PM EST
To: "'Athen Fokas'" <Fokasa@bellsouth.net>, "Jacob Federico" <Jacobspita@yahoo.com>
Cc: <klawahwork@yahoo.com>
Subject: Old Towne

Athen / Jacob

Attached are the drawings which we have prepared for the pricing set. They are about 60% complete. We propose a payment of $2,500.00 which is the next portion of our fee, although this represents a substantial portion of our work. Also we propose $500.00 drafting fee for the structural drawings

We are sending these drawings to Russell Rosen so he can give a proposal for his portion, since structural engineering is outside our contract.

Not included (in the pricing set) are mechanical, plumbing and electrical engineering. We understand that Kevin's subs will do the best they can pricing from our drawings.

We met with the building inspector this morning and did not find any significant issues.

We also spoke with the zoning staff and we will discuss building height, parking requirement, and BAR review at our next meeting

Joe

TUCKER ARCHITECTURAL ASSOCIATES
843.881.8426 phone
843.881.2559 fax
www.tuckerarchitectural.com

8 Attachments View all Download all

A1_1240_SITE.pdf	View Download
A2_1240_SITE.pdf	View Download
A3_1240_PLN.pdf	View Download
A4_1240_PLN.pdf	View Download
A5_1240_SECT.pdf	View Download
A6_1240_WSEC.pdf	View Download
A7_1240_FND.pdf	View Download
A8_1240_FRM.pdf	View Download

Reply, Reply All or Forward | More

EXHIBIT
tabbies
B

Gmail

Jacob Ferderigos <iakovosstavros@gmail.com>

Fw: iakovosferderigos@gmail.com

6 messages

Athan Fokas <athanfokas@gmail.com> Wed, Dec 19, 2012 at 11:22 PM
To: Jacob Ferderigos <iakovosstavros@gmail.com>

It has come to my attention that there has been some questions about phase two of the Old Towne Suites project. I am going to try my best to enlighten you on the gold mine that has been stumbled upon. Each rental has to be a minimum stay of 3 days with exception to very slow months in which we will take two days. Very slow months seem to be November, December, January, and February.

The Old Towne suites started in late November 2011 and that month they had two rentals for a total income of $1943.00. Of the total our rental service keeps 15% and $81.00 to clean the rooms every time a tenant checks out.

In December 2011 we brought in $3228.44 with two rentals.
In January 2012 we brought in $3685..18 with four rentals.
In February 2012 we brought in $5118.75 with six rentals.
In March 2012 $17436.46
April 2012 $14290.50
May 2012 $15330.02
June 2012 $14172.37
July 2012 $13602.62
August 2012 $12529.98
September 2012 $12500.60
October 2012 $12747.27
November 2012 $13094.76
December 2012 $10571.16

Now we have hit the slow months and we are still seeing over $10000.00 because are properties have been around for a year and through word of mouth and repeat business we should continue to see the numbers grow and the prices of the units to grow. We were getting on average about $399.00 a night but now we are getting over $600.00 a night in busy months.

We have had many bookings for 2013 in which we did not see these bookings booked so far in advance in 2012 because we were brand new.

So far in January 2013 we have pre-booked $4752.94
February 2013 $7067.02
March 2013 $6167.00
April 2013 $13714.04
May 2013 $8032.98
And one booking in June so far for $1996.00.

The demand is definitely there and the bookings will only get better. We tend to only book three day booking and some longer than that but the biggest complaint is that we do not have kitchens for the tenants who want to stay for the weekly rentals.

Phase two is going to have 2 three bed room units with kitchens and 2 two bedroom units with kitchens. One of each on each floor with a rooftop garden above the top floor. An elevator will access all floors including the roof top.

The total cost for the project to build will be somewhere between $800,000.00 and $900,000.00 with spending about 25,000.00 per unit to furnish and make them luxury units. I hope that we can keep this project somewhere around $900,000.00.

I am currently talking to a few banks to see if anyone is interested in giving us a note. The banking industry has changed dramatically in the last couple of years and they will not lend on equity alone. Our equity in Old Towne is somewhere between 5 and 10 million dollars. Many banks these days won't touch anything in the hospitality industry so it is no guaranteed that they will lend us the money. The note on the property should be somewhere in the neighborhood of $4000.00 a month if they let us carry the note for 30 years. If it is a 15 to 20 year note then the payments will be between $6000.00 and $8000.00 a month.

Our current units paid us $117629.84 in 2012. Those are checks given to us after all the expenses tal which you will see in a register in my next emails that I will be forwarding you. Of that money the rente

EXHIBIT
tabbies
C
961

has taken out their 15%, around 3% for credit card fees for people booking their rooms with credit cards, cleaning and laundry fees of $81.00 which just went up to $97.00, and other expenses such as coded locks, $100.00 for Spiro parking in a tenants space, and coffee machines.
Weekly booking are extremely lucrative for example in the last month of December 2012 we had two weekly booking for $6626.18 and that was one week worth of business in Unit A and B.
Just think of the value if we could maximize that one week three times which would be around $20000.00 a week.
If phase 2 is successful we have room to put three more three bedroom units above the back parking lot with keeping the parking on the bottom floor.
Hotels downtown can have up to 80% occupancy rate and us being across from Charleston Place has made us a mini hotel with great returns.
In conclusion the reason for us not to wait another six months or a year for this project to start is that we are guaranteed returns and its money lost. If we get into some money later on we can always pay the note off early. I will be responsible for 50% of it and you three the remainder. I do not think this project would be a risk based on our future bookings that have already taken place.
With that said I don't even know if the bank will lend us the money. First Citizens said they are not allowed to touch the hospitality industry. BB&T is 50/50 and will let me know if they are interested in a couple of days. South Carolina Bank and Trust seems very interested according to their President but will have to see our current income to make sure the numbers work. I'm meeting with Suntrust tomorrow but I think they will be a long shot. I'm only going to send information to banks that are very interested in doing the deal. I plan to give them Old Towne tax returns, Old Towne Suites income, and our personal financial statements. Phillip asked if he would be personally guaranteeing the loan. Of course every loan out there wants the people taking out the loan to personally guarantee it. The loan is less than 20 percent of our total value and we have the income from our current suites that could easily pay the note so its a no brainer.
Let me know your thoughts.

---

spiros ferderigos <spirosferderigos@gmail.com> Wed, Dec 19, 2012 at 11:49 PM
To: Athan Fokas <athanfokas@gmail.com>
Cc: pferderigos@barnwell-whaley.com, Jacob Ferderigos <lakovosstavros@gmail.com>

Hey Athan,

Thanks for sending the detailed emails. I am sure it will answer a lot of the questions that we have. I will take a look at it in detail as soon as I can and let you know what other questions I have. Of course the issue of what we are currently making on the units and the cost to construct new ones are obvious questions which you appear to go into detail below(given the hour have only quickly glimpsed over your email).

Assuming all that pans out, there will be a continuing issue on how we finance. If the bank is looking for me (and I assume this goes for Phillip as well but I will let him speak for himself) to personally guarantee a loan I am not going to do it. There is to much that can go wrong with a personal gaurantee. I am confident that Phillip, Jacob and I will be able to come up with our end of amount needed and we can move forward without accumulating debt as we did for the first round of units. I completely agree that adding more units above Old Towne is a gold mine and the way to move forward. The question is how do we get there, will it be by personally guarunteeing loans that could be chatostrophic to our individual families or each individual raising the necessary funds and doing it without a million dollars in debt so we can greatly limit liability. I for one already have plenty of money sitting in a bank account for my share of the additional units. I am more than happy to have all of us sit down and discuss in more detail after the holidays. That will give everyone plenty of time to look over what you sent and determine the best way to move forward. Thanks to both you and Jacob for all the heard and great work you guys have been doing on these units.

Spiro
[Quoted text hidden]

Athan Fokas <athanfokas@gmail.com> Thu, Dec 20, 2012 at 6:49 AM
To: spiros ferderigos <spirosferderigos@gmail.com>
Cc: pferderigos@barnwell-whaley.com, Jacob Ferderigos <lakovosstavros@gmail.com>

Personally I don't think it is a risk and if so it is a very low low risk because we show future incomes and the demand is there and we have the current income's third cash flow that could easily pay for it.
With that said, lets start collecting money and see what kind of money we can come up with to get this baby started.

spiros ferderigos <spirosferderigos@gmail.com> Wed, Dec 19, 2012 at 11:49 PM
To: Athan Fokas <athanfokas@gmail.com>
Cc: pferderigos@barnwell-whaley.com, Jacob Ferderigos <lakovosstavros@gmail.com>

Hey Athan,

Thanks for sending the detailed emails. I am sure it will answer a lot of the questions that we have. I will take a look at it in detail as soon as I can and let you know what other questions I have. Of course the issue of what we are currently making on the units and the cost to construct new ones are obvious questions which you appear to go into detail below(given the hour have only quickly glimpsed over your email).

Assuming all that pans out, there will be a continuing issue on how we finance. If the bank is looking for me (and I assume this goes for Phillip as well but I will let him speak for himself) to personally guarantee a loan I am not going to do it. There is to much that can go wrong with a personal gaurantee. I am confident that Phillip, Jacob and I will be able to come up with our end of amount needed and we can move forward without accumulating debt as we did for the first round of units. I completely agree that adding more units above Old Towne is a gold mine and the way to move forward. The question is how do we get there, will it be by personally guarunteeing loans that could be chatostrophic to our individual families or each individual raising the necessary funds and doing it without a million dollars in debt so we can greatly limit liability. I for one already have plenty of money sitting in a bank account for my share of the additional units. I am more than happy to have all of us sit down and discuss in more detail after the holidays. That will give everyone plenty of time to look over what you sent and determine the best way to move forward. Thanks to both you and Jacob for all the heard and great work you guys have been doing on these units.

Spiro
[Quoted text hidden]

EXHIBIT
tabbies
D
983

From: Jeffrey W. Odom [mailto:jodom@southcoastbank.com]
Sent: Friday, January 11, 2013 10:08 AM
To: 'ZEUS GRILL & SEAFOOD'
Cc: Tony Daniel
Subject: RE: Old Towne Suites 229 King St.

Athan,
It was a pleasure meeting you yesterday afternoon. I just received your fax so it looks like it went through. I have also received your emails with the attached financial information. Thank you for getting everything to us so quickly. We will get to work and will be in touch shortly.

Thanks,

Jeffrey W. Odom
Vice President / Loan Officer
Southcoast Community Bank
530 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(Office) - 843.216.3087
(Fax) - 843.884.2886
(Cell) - 843.729.8224

EXHIBIT
E

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Re: Suites loan question

8 messages

Spiros Ferderigos <spirosferderigos@gmail.com> Tue, Jun 17, 2014 at 11:59 PM
To: Athan Fokas <fokasa@bellsouth.net>, Jacob Ferderigos <iakovosstavros@gmail.com>
Cc: Phillip Ferderigos <pferderigos@barnwell-whaley.com>

The loan pre-approval that you guys have for the suites...are ya'll going to have to personally guarantee the loan?

Sent from my iPhone

Athan Fokas <fokasa@bellsouth.net> Wed, Jun 18, 2014 at 7:04 AM
To: Spiros Ferderigos <spirosferderigos@gmail.com>
Cc: Jacob Ferderigos <iakovosstavros@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>

We are pre approved, and since we personally asked for the loan yes we are personally guaranteeing it. On another note we are hitting record sales and we are booking many weekday's which we didn't last year and with no cleaning fee we are laughing all the way under our mattresses. We have bookings through March of 2015 so we are in very high demand. After we build these and fill them we will look at building over the parking lot.

Sent from my iPhone.
[Quoted text hidden]

EXHIBIT
tabbies
F

SOUTHCOAST COMMUNITY BANK

February 5, 2013

Athanasios Fokas
Iakovos Ferderigos
Old Towne Suites, LLC
229 King Street
Charleston, SC 29401

Dear Messrs. Fokas and Ferderigos:

Southcoast Community Bank (hereinafter referred to as "Bank") is pleased to provide a loan commitment to Old Towne Suites, LLC, Athanasios Fokas, and Iakovos Ferderigos (hereinafter referred to as "Borrower") based on representations contained in the financial statements and other financial information made available to the Bank. Our loan is subject to the following terms and conditions:

Borrower(s): Old Towne Suites, LLC, Athanasios Fokas, and Iakovos Ferderigos JWO 9/24/14

Amount: ~~$1,000,000.00~~ $1,800,000.00 JWO 9/24/14

Purpose: The purpose of the loan is to provide a construction to permanent loan to build 6 rental units above Old Towne Grill & Seafood at 229 King Street, Charleston, SC 29401. The loan will also include the purchase of furnishings for the units.

Terms and Conditions: 12 JWO 9/24/14 monthly payments of interest only followed by 59 consecutive monthly payments of principal, interest, and escrow with one final payment of the remaining principal balance plus any accrued interest. The monthly payments will be based on a 240 month amortization schedule. ~~The interest rate will be based on the current Wall Street Journal Prime Rate plus one percentage point (1.00%) on the day of adjustment and will continue to adjust annually with a minimum floor Rate of 5.00%.~~ The interest rate will be fixed at 5.00% for the life of the loan. JWO 9/24/14

Bank Fees:
1. Non-Refundable Commitment Fee of ½ of 1% of Loan Amount, of which, ½ is due upon the acceptance of this Commitment Letter with the remaining ½ due at Loan Closing. If the loan is not closed, the remaining fee will be due and payable upon receipt of Bank's invoice for same.
2. Underwriting Fee of $500.00
3. Mortgage Satisfaction Fee; $10.00
4. County UCC Satisfaction Fee: $10.00
5. Inspection Fee of $250.00 per visit (commercial structures)

Collateral:
1. First mortgage security interest on 229 King Street, Charleston, SC 29401 and an assignment of rents and leases.
2. All accounts receivables, inventory, and furniture fixtures and equipment now owned or hereinafter acquired.

Property Insurance: During construction, Builder's Risk and General Liability Insurance Policies will be required with Southcoast Community Bank named as mortgagee.

Title Insurance: A standard ALTA title insurance commitment insuring the Bank's first lien position, together with copies of all exceptions to the title will be required. After closing, a title insurance policy is to be issued in accordance with the title insurance commitment in a form and substance satisfactory to the Bank.

EXHIBIT G

Escrow: The Bank will require Property Taxes and Hazard /Flood Insurance to be escrowed.

Survey: A current survey prepared and certified by a registered land surveyor showing the location of any and all setbacks, side lines, existing buildings, streets, roads, rights-of-way, easements, encroachments, etc. will be required in the event that the title insurance company takes exception to title for reason of survey. The survey shall include a certification as to the location of the property within any flood hazard area. On Construction Loans, the Foundation Survey will be required before the first draw, and a Final Survey will be required before final disbursement.

Appraisal: The loan is subject to the Bank receiving an appraisal addressed to Southcoast Community Bank in form, content and value acceptable to the Bank. The Bank will order the appraisal from a qualified appraiser acceptable to the Bank. The cost of the appraisal will be the full responsibility of the borrower. The Bank reserves the right to inspect the property prior to closing.

Disclosure of Right to Receive a Copy of an Appraisal: You are hereby notified that you have the right to a copy of the appraisal report used in connection with your application for credit. If you wish to have a copy, please write to the Bank at Southcoast Community Bank, Loan Servicing Department, PO Box 1561, Mt. Pleasant, SC 29465. We must hear from you no later than ninety (90) days after we notify you about the action taken on your credit application or no later than ninety (90) days after you withdraw your application. In your letter, give us the following information: Your name, your loan number (if applicable) and the property address of the appraisal you are requesting. Upon your request, the appraisal report will be sent to your address on file with the Bank.

Waiver of Appraisal Rights: You are hereby notified that a Waiver of Appraisal Rights will be required from you in connection with the above referenced transaction. As part of that transaction, you will be required to execute one or more documents containing the following language:

> The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

Environmental: In the event that there is notice of any environmental problems, evidence of the nature of the problem and its remedy will be required and such information may include opinions and certification from appropriate governmental authority, your counsel, and/or environmental specialist acceptable to us. Borrower agrees to complete the Environmental Risk Assessment form included with this commitment. Should the property contain hazardous material of any quantity or material unacceptable to us, the Bank reserves the right to void this commitment or require environmental studies if necessary.

Construction Loans:

The Bank will make Disbursements at regular intervals during the course of construction in accordance with the loan documents. Said disbursements shall be made under the procedures and title safeguards acceptable to the Bank. The Bank reserves the right at all times to retain funds in the undisbursed loan balance sufficient to fully complete the project. The Borrower must submit to the Bank the signed architect's certification for payment (AIA form) for each draw request. The Bank will inspect at each draw request the work completed and will base the draw on such inspection. Your draw request must be made by Tuesday for a Friday Disbursement.

Items required prior to loan closing:

1. Plans and Specification: Complete plans and specifications reflecting the certification of the architect and appropriate engineers are to be submitted to and approved by the Bank, the supervising architect and the Borrower.
2. Resume from the Contractor must be received by the Bank.
3. Copy of signed Contract(s).
4. Cost Estimate Sheet detailing cost for the project in satisfactory form showing that the loan proceeds will be sufficient to complete construction of the project in a timely manner in accordance with approved plans and specifications (may use AIA forms).
5. Assignment of construction contract with builder.
6. All permits and approvals from all government authorities needed to proceed immediately with the commencement of construction are to be submitted to the Bank's Attorney prior to the first draw request.
7. Operating Agreement for Old Towne Suites, LLC must be received by the Bank.
8. Detailed list of furniture, fixtures, and equipment to be purchased via loan proceeds must be received by the Bank.

Items required prior to 1st draw:

1. Current General Liability Insurance Policy (from contractor).

Items required before final draw:

1. Certificate of Completion of Appraised Value from appraiser.
2. Final Survey.
3. Title update.

Change Orders: All requests for changes in the Plans and Specifications, other than minor changes involving no extra cost, must be in writing, signed by Borrower and the architect, and delivered to Lender for its approval. Borrower will not permit the performance of any work pursuant to any change order or modification of the Construction Contract or any subcontract without the written approval of Lender. Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order.

Loan Documentation: The Borrower will enter into any and all documentation necessary to close this transaction in a form and substance acceptable to the Bank.

Closing Cost: All costs incurred in this transaction including, but not limited to, attorney fees will be the responsibility of the Borrower. This would include both the Borrower's and the Bank's closing attorney.

Prepayment: The Borrower shall have the right to prepay the principal and accrued interest in full or in part at anytime without premium or penalty.

Banking Relationship: The Borrower agrees to maintain a depository relationship with the Bank.

Financial Information: Before closing, the Bank must have current financial statements and signed copies of the last two years tax returns on the borrowing entity(s) if applicable, and all guarantors. Borrower and all guarantors agree to provide the Bank with the name of their accountant/tax preparer and by acceptance of this commitment authorize the Bank to request on an annual basis, and their accountant/tax preparer to provide, copies of all tax returns, extensions, and financial statements of the Borrower and guarantors.

Financial Condition: The Borrower and guarantors are at all times to maintain a satisfactory financial condition and are to submit at a minimum, annual financial statements, Tax Returns, and any other documentation as the Bank may request from time to time.

The commitment is for the sole and exclusive benefit of the Borrower and may not be assigned by the Borrower. No third party is intended to be benefited in any respect by this commitment.

This Commitment will also survive the Loan Closing.

We appreciate the opportunity to make this financing available to you. If you are in agreement with the above terms and conditions, please acknowledge by signing the enclosed copy and returning it to Southcoast Community Bank.

September 29, 2014 DMO 9/24/14

This Commitment to lend expires on ~~February 15, 2013~~. If not accepted by then, it becomes null and void. If accepted, closing must occur within 45 days of acceptance. Failure to close within the period set forth herein shall give the Bank the option to void this commitment.

Again, it is certainly a pleasure to extend this commitment. I look forward to hearing from you soon.

Sincerely,

Robert A. Daniel, Jr.
Executive Vice President

The terms and conditions of this commitment letter are hereby accepted this 7 day of February, 2013.

Borrower(s):

By: _____
Old Towne Suites, LLC

By: _____
Athanasios Fokas

By: _____
Iakovos Ferderigos

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

2 messages

Zeus Grill and Seafood <zeusseafood@bellsouth.net> Tue, Sep 9, 2014 at 1:45 PM
To: iakovosstavros@gmail.com, spirosferderigos@gmail.com, pferderigos@bamwell-whaley.com

Gentlemen,

I have enclosed info on checks received and booking info for the suites. We are currently up over $10,000.00 for the year and I expect that that number will grow closer to $15,000.00 by the end of the year. We have paid $2574.00 in cleaning fees this year that we won't have next year.

The rental company charges us 15% on our units now but that number goes to 12% once we have then new one's built which will give us a savings of around $4000.00 on our current units.

It looks like our new project of six more units will cost us around two million to build. The bank has agreed to one million so I am going to try to convince them to give us 1.8 million which will cover us for everything except furnishing and kitchen equipment. The reason I'm asking for 1.8 million is that we can justify that amount through the money that we already receive from the suites. Furnishing and kitchen equipment will be roughly $225,000.00. We should get permitting to start building this month and I do have two other bids coming in but I suspect that both will be higher.

Sincerely,

Athan

O T S.xlsx
20K

EXHIBIT
tabbies
H

Friday, September 19, 2014

(843) 813-5612

Good news! We are approved for 1.8 million. 3:22 PM

Spiro Cell

Sweet..good job...can you email us the details of the loan sometime this weekend if you have a chance? That is great news! 3:22 PM

Jacob

That's great news.. 3:22 PM

(843) 813-5612

The banker just called me. I won't have the details till next week. 3:24 PM

(843) 813-5612

I'm sure it's 5% for 20 years. 3:24 PM

Spiro Cell

You da man 3:40 PM

EXHIBIT

tabbies

I

371

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Fwd: Old Towne suits

3 messages

Athan Fokas <athanfokas@gmail.com> Wed, Sep 24, 2014 at 10:07 AM
To: "lakovosstavros@gmail.com" <lakovosstavros@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>, spiros ferderigos <spirosferderigos@gmail.com>

Well I don't know how I managed to sweet talk our banker into getting rid of the five year balloons and fixing it at 5% for the life of the loan which is unheard of in the current banking industry. Phillip show it to your banker quickly but they want to close this month and I don't see anybody beating this note in a timely manner.

Sent from my iPhone

Begin forwarded message:

From: "Zeus Grill and Seafood" <zeusseafood@bellsouth.net>
Date: September 24, 2014, 9:57:50 AM EDT
To: "'Athan Fokas'" <athanfokas@gmail.com>
Subject: FW: Old Towne suits

From: "Jeffrey W. Odom" <jodom@southcoastbank.com>
Date: September 24, 2014, 9:02:37 AM EDT
To: 'Athan Fokas' <fokasa@bellsouth.net>
Subject: RE: Old Towne suits

Athan,
Ok. See the changes. We are ok with that. Please also date beside your initials like I have done on this copy.

Jeffrey W. Odom NMLS ID #500313
Vice President | Commercial Lending
Main Branch Manager

Southcoast Community Bank
NMLS ID# 477257
530 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(Office) - 843.216.3087
(Fax) - 843.884.2886
(Cell) - 843.729.8224

doc26026220140924075734.pdf
334K

EXHIBIT
tabbies
J
972

From: Zeus Grill and Seafood [mailto:zeusseafood@bellsouth.net]
Sent: Thursday, September 25, 2014 10:53 AM
To: Jeffrey W. Odom
Subject: FW: Old Towne suits

Hey Jeff,

My cousin noticed that on terms and conditions it says 12 monthly payments of interest only followed by 59 consecutive monthly payments ... Then it says a 240 month amortization schedule. Can it say: 12 monthly payments of interest only followed by 239 consecutive monthly payments... so that it is truly a 20 years note. Just want to make sure that the note continues after 5 years.

Thanks,

Athan

Sent from my iPhone

From: Zeus Grill and Seafood [mailto:zeusseafood@bellsouth.net]
Sent: Thursday, September 25, 2014 11:15 AM
To: Phillip Ferderigos
Subject: FW: Old Towne suits

Well at least I tried.

From: Jeffrey W. Odom [mailto:jodom@southcoastbank.com]
Sent: Thursday, September 25, 2014 11:07 AM
To: 'Zeus Grill and Seafood'
Subject: RE: Old Towne suits

The note will be 12 months of interest only followed by 5 years of principal, interest, and escrow payments and then a balloon maturity, with monthly payments based on a 20 year schedule. That is what you wanted and that is the same thing we are doing on your North Towne deal. That is pretty standard on commercial loans...and I think a 6 year fixed rate (12 months plus the following 60 months) on a construction project with speculative income is a very good deal for you guys. We will revisit the deal at the end of the 5 year period (technically in 6 years) and we can apply for a simple renewal. You wont have to hire a closing attorney and pay all of the closing fees and all of that. The bank will just draw up a simple renewal form which we can sign in my office.

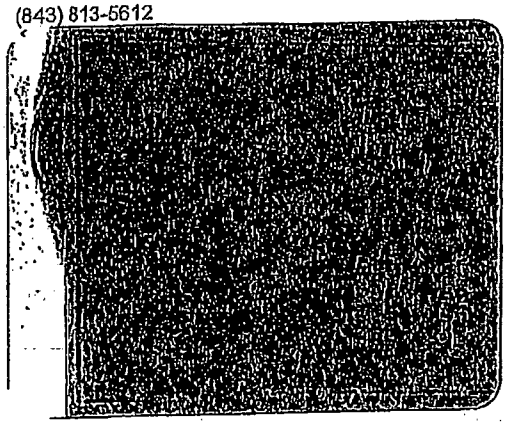
Jeffrey W. Odom NMLS ID #500313

Vice President | Commercial Lending

https://mail.google.com/mail/u/0/?ui=2&ik=0ce9b52fc7&view=pt&q=athan&as=true&search=query&th=148a7fcf3527b7d0&siml=148a7fcf3527b7d0&sim=148a 4/9

Friday, October 10, 2014

(843) 813-5612



3:54 PM

We got our permit. Can start building immediately

3:54 PM

EXHIBIT

K

Friday, November 21, 2014

Me

Lauren has been in Iowa and I missed a day at work because Nathan was sick. I have a very busy day today so, if the closing is going to happen today, I need to have it as late in the day as possible. If there any issues, let's just kick it the next week. 8:48 AM

(843) 813-5612

They scheduled it for 3:00 today. Will that work? 8:49 AM

Me

Should work for me, ask the lawyer to email me the HUD/ settlement statement and all paperwork beforehand and I can review it and we can go through the closing more quickly. 8:52 AM

(843) 813-5612

Ok 8:53 AM

Spiro Cell

From my end, we need to have the agreement signed and a copy of the closing docs to review beforehand. I want to make sure I know what I am signing 8:53 AM

Spiro Cell

So agreement needs to be done and hud/settlement statement like Phillip said 8:54 AM

Spiro Cell

I will block off 3 pm. Where is the closing? 8:54 AM

(843) 813-5612

Sure. I sent the agreement to my attorney this morning. I did ask a few questions to you by email. The closing is at Amy Haines office in Mt. Pleasant 800 Johnnie Dodds Boulevard. 8:56 AM

Spiro Cell

I am in court until about 2 today so Phillip will need to respond to any questions 8:58 AM

EXHIBIT

L

976

Me

Your questions have been answered. I could tell you went to an attorney and I'm glad you did. I want everyone to have full disclosure and completely understand what they're agreeing to. Everybody has to pay on time or there will be consequences.

8:59 AM

(843) 813-5612

I have not spoken to an attorney yet but have become familiar with legal documents over the years.

9:00 AM

Me

That's up to you. Its best to have lawyer review it for you to make sure you understand everything, but it's your decision, you are a big boy and you can decide what's best for you.

9:04 AM

(843) 813-5612

As I stated above I didn't receive the agreement until last night and I forwarded to my attorney this morning. I'm not a big boy any more after running the bridge three days a week and working out with an aggressive F3 group three days a week. I'm now a lean boy!

9:12 AM

Spiro Cell

Hey. I don't want my phone going crazy while I am in court. Shoot a text out when you decide if you are good with the agreement or not. Feeling my phone vibrate while I am making arguments is distracting and I have to have my phone in in case my wife has an emergency. Once we get the green light on the agreement and the closing docs are reviewed/accurate (which I don't see a reason why they wouldn't be) then we can move forward this afternoon. If there are any issues with the agreement, ect then we will need to revisit everything g at a later time.

9:12 AM

Spiro Cell

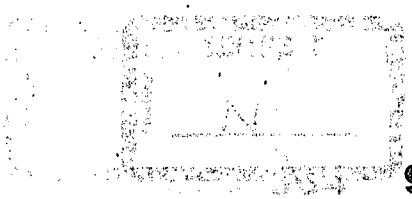
Still don't know why the email didn't go through to you yesterday at 3. I have the email and you got it the second time I sent it when you said you didn't have anything. If you need more time we can postpone today. Not a problem.

9:13 AM

(843) 813-5612

I'm good with 3:00 today. I just got the elevation certificate for the flood policy needed so I don't currently foresee any setbacks.

9:15 AM



Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 12:13 PM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>

I do what I will with whatever money I have and you can't dictate otherwise. I told you my intent but six months from now my intent may change. Regardless of that fact the bank wants to close this month if in fact we proceed. I'm not interested in you trying to bully me into signing any type of side agreement that is unnecessary. My attorney, as I said earlier, strongly was against it.

Sent from my iPhone
[Quoted text hidden]

EXHIBIT
tabbies
M

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Phillip Ferderigos <pferderigos@barnwell-whaley.com> Mon, Nov 24, 2014 at 1:00 PM
To: Athan Fokas <fokasa@bellsouth.net>
Cc: iakovosstavros@gmail.com, spiros ferderigos <spirosferderigos@gmail.com>

Athan, once again, you can not even answer a simple question directly.

You are asking me to mortgage my part of Old Towne and you are unwilling to sign an Agreement to say that you will make your payments timely.

I believe you have mortgaged your other properties and now you want to mortgage Old Towne. I am not your piggie bank. I will not mortgage my share of Old Towne for you unless you agree to make your payments timely.

Unless you change your decision, there is no point in moving forward.

Phillip S. Ferderigos, Esq.
Member

288 Meeting St., Ste 200 (29401)
PO Drawer H
Charleston, SC 29402
Phone: (843) 577-7700
Facsimile: (843) 577-7708

Email: pferderigos@barnwell-whaley.com

----Original Message----
From: Athan Fokas [mailto:fokasa@bellsouth.net]
[Quoted text hidden]

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 1:31 PM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>

I am not asking you to do anything. The bank is requiring that all parties sign off on the mortgage. I did secure that you didn't have to personally guarantee the note. Quit trying to put yourself on a pedestal. If you want me to sign a side agreement that guarantees I will pay the note then you will sign one saying that you will come up with the money needed for construction or you shall suffer similar consequences. If you are intelligent you will already know that the money will be there with the original suites income to pay for the loan. Cut your pompous attitude and either get it done or not. We are currently paying for an expensive business risk policy, paid for a flood policy we don't need if not constructing, have been paying two months on a storage container, and prepaid our over $20,000.00 property taxes two months early in order to close. Not to mention we have over $50,000.00 already invested in this deal.

Sent from my iPhone
[Quoted text hidden]

Gmail

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Phillip Ferderigos <pferderigos@barnwell-whaley.com> Mon, Nov 24, 2014 at 1:43 PM
To: Athan Fokas <fokasa@bellsouth.net>
Cc: iakovosstavros@gmail.com, spiros ferderigos <spirosferderigos@gmail.com>

I do not care what your bank is requiring of you to get your loan...that has nothing to do with me.

I will not sign off on any mortgage of my share unless you sign an agreement that you will make your payments timely. If you are an intelligent person, you will see that I can not and will not agree to mortgage my share of Old Towne if you do not agree to make your payments on time.

Phillip S. Ferderigos, Esq.
Member

288 Meeting St., Ste 200 (29401)
PO Drawer H
Charleston, SC 29402
Phone: (843) 577-7700
Facsimille: (843) 577-7708

Email: pferderigos@barnwell-whaley.com
----Original Message----
From: Athan Fokas [mailto:fokasa@bellsouth.net]
[Quoted text hidden]

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 1:46 PM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: "<lakovosstavros@gmail.com>" <lakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>

Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with the Ferderigos Family..

Sent from my iPhone
[Quoted text hidden]

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Wed, Nov 26, 2014 at 11:46 AM
To: Spiros Ferderigos <spirosferderigos@gmail.com>
Cc: Phillip Ferderigos <pferderigos@barnwell-whaley.com>, "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>

The irony in all this is that the son's want extra assurances that money will be paid back when the way our fathers always did it is with a hand shake. Ask your dad how many times my father loaned him money (his grocery store off America St, to buy Old Towne in 72, and to build our first apartment building in Greece) and there was no paperwork and all was paid back. In this case nobody is loaning anyone money but just a couple of hard headed kids who don't understand how family works. I don't think anybody owes anybody any money do they? I don't think anyone has any history of any money not being paid back do they?
We are all older now and our families have grown and we don't have to spend Thanksgiving together. Actually this entire deal has put such a bad taste that I dislike seeing you guys in public. Except Jacob of course. He is the only innocent one in this. Later on down the line when I'm in the money I may consider loaning Jacob the money and having a 25/75 split on the new building because I know that Jacob will pay me back and I won't need any side agreements trying to take more of his ownership if he doesn't pay. Bottom line is payments come out of profits and I know he is good for it.

Sent from my iPhone

> On Nov 24, 2014, at 2:17 PM, Spiros Ferderigos <spirosferderigos@gmail.com> wrote:
>
[Quoted text hidden]

Resolution of Old Towne Suites, LLC

Whereas Old Towne Suites, LLC, (the "Company") is a limited liability company organized and operating under the laws of the State of South Carolina; and,

Whereas the Articles of Organization and the Operating Agreement are attached hereto; and,

Whereas the undersigned are the only members of the Company;

Now therefore, the undersigned do resolve as follows:

RESOLVED, that the Company, is authorized to borrow the sum of $1,800,000.00 in the form of a construction loan from Southcoast Community Bank (the "Lender") in order to make improvements to the property located at 229 King Street, Charleston, South Carolina and is authorized to pledge assets of the Company as security for the debt through security agreements and financing statements.

RESOLVED, that Athan Fokas a/k/a Athanasios Fokas and Iakavos Ferderigos are authorized to execute the necessary documents on behalf of the Company to obtain the above referenced loan and are directed to do all other things and acts, to execute and deliver all other instruments, documents and certificates, and to pay all costs, fees and expenses as may be, in their judgment, necessary, proper or advisable in order to carry out and comply with the purposes and intent of these resolutions, and that all acts and deeds Athan Fokas and Iakavos Ferderigos that are consistent with the purposes and intent of these resolutions, be and hereby are ratified, approved and adopted as the acts and deeds of the Company.

RESOLVED, that Athan Fokas and Iakavos Ferderigo are authorized to disclose any information and provide any documentation necessary, proper or advisable in order to carry out and comply with the purposes and intent of these resolutions.

RESOLVED, that the Lender shall be entitled to rely upon a certified copy of this Resolution until written notice of rescission thereof has been received, and the receipt of such notice shall not affect any actions taken by the purchaser prior thereto.

I certify that the following signatures represent the true and complete listing of members of the Company, that all representations made herein are true and correct, and that I have read all of the provisions of this Resolution.

Athan Fokas a/k/a Athanasios Fokas date

Iakovos S. Ferderigos date

Phillip S. Ferderigos date

Spiros S. Ferderigos date

EXHIBIT
tabbies
N
364

0955

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$1,800,000.00	11-21-2014	12-01-2020	03400007519		34000	***	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "***" has been omitted due to text length limitations.

Borrower: Old TowneSuites, LLC
229 King Street
Charleston, SC 29401

Lender: SOUTHCOAST COMMUNITY BANK
Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464
(843) 884-0504

Principal Amount: $1,800,000.00 **Date of Note:** _____

PROMISE TO PAY. Old TowneSuites, LLC ("Borrower") promises to pay to SOUTHCOAST COMMUNITY BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million Eight Hundred Thousand & 00/100 Dollars ($1,800,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in accordance with the following payment schedule, which calculates interest on the unpaid principal balances as described in the "INTEREST CALCULATION METHOD" paragraph using the interest rates described in this paragraph: 12 monthly consecutive interest payments, beginning January 1, 2015, with interest calculated on the unpaid principal balances using an interest rate of 5.000% per annum based on a year of 360 days; 59 monthly consecutive principal and interest payments of $11,952.24 each, beginning January 1, 2016, with interest calculated on the unpaid principal balances using an interest rate of 5.000% per annum based on a year of 360 days; and one principal and interest payment of $1,516,249.38 on December 1, 2020, with interest calculated on the unpaid principal balances using an interest rate of 5.000% per annum based on a year of 360 days. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Note. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any late charges; and then to any unpaid collection costs. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

PREPAYMENT; MINIMUM INTEREST CHARGE. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of $50.00. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Southcoast Community Bank, Loan Servicing Department, P.O. Box 1561 Mt. Pleasant, SC 29465.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased to 18.000% per annum based on a year of 360 days. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the Indebtedness evidenced by this Note.

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for

bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

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.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of South Carolina.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of $25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instruments listed herein:

(A) a Construction Mortgage to Lender on real property located in Charleston County, State of South Carolina.

(B) an Assignment of All Rents to Lender on real property located in Charleston County, State of South Carolina.

(C) Inventory, chattel paper, accounts, equipment, general intangibles, fixtures, standing timber and mineral, oil and gas described in a Commercial Security Agreement dated _____.

LINE OF CREDIT. This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

NOTICE CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVE(S) AND RELINQUISH(ES) THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

BORROWER:

OLD TOWNESUITES, LLC

By: _____
Athanasios Fokas, Manager of Old TowneSuites, LLC

By: _____
Iakovos S Federigos, Manager of Old TowneSuites, LLC

LENDER:

SOUTHCOAST COMMUNITY BANK

X _____
Authorized Signer

LaserPro, Ver. 14.4.0.010 Copr. D+H USA Corporation 1997, 2015. All Rights Reserved. - SC C:\CFIWIN\CFI\LPL\G201.FC TR-7512 PR-13

HYPOTHECATION AGREEMENT

TO: SOUTHCOAST COMMUNITY BANK DATE: November ___, 2014

IN CONSIDERATION of your making, renewing or extending a loan or loans to the Borrower, the undersigned hereby authorizes Old Towne Suites, LLC (herein called the "Borrower") to hypothecate and pledge to Southcoast Community Bank (herein called "the Bank") as collateral for any loans or advances (including all liabilities relating thereto) made by your Bank to the Borrower and for any present or future indebtedness or other obligation of the Borrower to you and for any renewal, extension, or modification of any or all thereof, the following securities, instruments, or other property belonging to the undersigned namely:

The real estate and improvements known as 229 King Street, Charleston, SC 29401 (TMS# 457-08-01-063) more fully described in attached Exhibit A.

The undersigned further agrees that said collateral shall be subject to disposition in accordance with the terms and conditions of the instruments evidencing such indebtedness, obligation, and liabilities. The undersigned also authorizes you in your discretion from time to time to deliver to the Bank said collateral or any proceeds therefrom, the Borrower's receipt being sufficient acquittance to you therefor; and in general, authorize you to deal with said collateral and proceeds in the same way and with the same force and effect as if the Borrower was the absolute owner thereof. It is further agreed that any or all of the foregoing may be without notice to or further consent of the undersigned.

This agreement shall be binding upon the undersigned and its successors and assigns, and shall inure to the benefit of you and your successors and assigns.

IN WITNESS WHEREOF, the undersigned execute this agreement the date and year written above.

IN THE PRESENCE OF:

_____ By:_____
Spiros S. Ferderigos

HYPOTHECATION AGREEMENT

TO: SOUTHCOAST COMMUNITY BANK DATE: November ___, 2014

IN CONSIDERATION of your making, renewing or extending a loan or loans to the Borrower, the undersigned hereby authorizes Old Towne Suites, LLC (herein called the "Borrower") to hypothecate and pledge to Southcoast Community Bank (herein called "the Bank") as collateral for any loans or advances (including all liabilities relating thereto) made by your Bank to the Borrower and for any present or future indebtedness or other obligation of the Borrower to you and for any renewal, extension, or modification of any or all thereof, the following securities, instruments, or other property belonging to the undersigned namely:

The real estate and improvements known as 229 King Street, Charleston, SC 29401 (TMS# 457-08-01-063) more fully described in attached Exhibit A.

The undersigned further agrees that said collateral shall be subject to disposition in accordance with the terms and conditions of the instruments evidencing such indebtedness, obligation, and liabilities. The undersigned also authorizes you in your discretion from time to time to deliver to the Bank said collateral or any proceeds therefrom, the Borrower's receipt being sufficient acquittance to you therefor; and in general, authorize you to deal with said collateral and proceeds in the same way and with the same force and effect as if the Borrower was the absolute owner thereof. It is further agreed that any or all of the foregoing may be without notice to or further consent of the undersigned.

This agreement shall be binding upon the undersigned and its successors and assigns, and shall inure to the benefit of you and your successors and assigns.

IN WITNESS WHEREOF, the undersigned execute this agreement the date and year written above.

IN THE PRESENCE OF:

_____ By:_____
Phillip S. Ferderigos

WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

0115

ASSIGNMENT OF RENTS

THIS ASSIGNMENT OF RENTS dated November 21, 2014, is made and executed between Athanasios Fokas, whose address is 229 King Street, Charleston, SC 29401; Iakovos S Ferderigos, whose address is 8 River Reach Way, Charleston, SC 29407; Spiros S Ferderigos, whose address is 229 King Street, Charleston, SC 29401 and Phillip S Ferderigos, whose address is 229 King Street, Charleston, SC 29401 (referred to below as "Grantor") and SOUTHCOAST COMMUNITY BANK, whose address is 530 Johnnie Dodds, Mt. Pleasant, SC 29464 (referred to below as "Lender").

ASSIGNMENT. For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Charleston County, State of South Carolina:

See Exhibit A, which is attached to this Assignment and made a part of this Assignment as if fully set forth herein.

The Property or its address is commonly known as 229 King Street, Charleston, SC 29401. The Property tax identification number is 457-08-01-063.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF BORROWER AND GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

BORROWER'S WAIVERS AND RESPONSIBILITIES. Lender need not tell Borrower about any action or inaction Lender takes in connection with this Assignment. Borrower assumes the responsibility for being and keeping informed about the Property. Borrower waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the Property, or any delay by Lender in realizing upon the Property. Borrower agrees to remain liable under the Note with Lender no matter what action Lender takes or fails to take under this Assignment.

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that:

Ownership. Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Assign. Grantor has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Lender.

No Prior Assignment. Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

No Further Transfer. Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS. Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

Maintain the Property. Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

Compliance with Laws. Lender may do any and all things to execute and comply with the laws of the State of South Carolina and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

Lease the Property. Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

Other Acts. Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

No Requirement to Act. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

APPLICATION OF RENTS. All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

FULL PERFORMANCE. If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Assignment, the Note, and the Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable law.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Assignment or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Assignment or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Rents or the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Assignment also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Assignment:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Assignment or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor.

Default on Other Payments. Failure of Grantor within the time required by this Assignment to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Borrower, any guarantor or Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's, any guarantor's or Grantor's property or ability to perform their respective obligations under this Assignment or any of the Related Documents.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Assignment or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Assignment or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Borrower's or Grantor's existence as a going business or the death of any member, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency against the Rents or any property securing the Indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower or Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Property Damage or Loss. The Property is lost, stolen, substantially damaged, sold, or borrowed against.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Assignment within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Borrower or Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Borrower would be required to pay.

Collect Rents. Lender shall have the right, without notice to Borrower or Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the Indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Assignment:

Amendments. This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Caption Headings. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

Governing Law. This Assignment will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Assignment has been accepted by Lender in the State of South Carolina.

Joint and Several Liability. All obligations of Borrower and Grantor under this Assignment shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Grantor signing below is responsible for all obligations in this Assignment.

Merger. There shall be no merger of the interest or estate created by this assignment with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Interpretation. (1) In all cases where there is more than one Borrower or Grantor, then all words used in this Assignment in the singular shall be deemed to have been used in the plural where the context and construction so require. (2) If more than one person signs this Assignment as "Grantor," the obligations of each Grantor are joint and several. This means that if Lender brings a lawsuit, Lender may sue any one or more of the Grantors. If Borrower and Grantor are not the same person, Lender need not sue Borrower first, and that Borrower need not be joined in any lawsuit. (3) The names given to paragraphs or sections in this Assignment are for convenience purposes only. They are not to be used to interpret or define the provisions of this Assignment.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Assignment shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Assignment shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Powers of Attorney. The various agencies and powers of attorney conveyed on Lender under this Assignment are granted for purposes of security and may not be revoked by Grantor until such time as the same are renounced by Lender.

Severability. If a court of competent jurisdiction finds any provision of this Assignment to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Assignment. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Assignment shall not affect the legality, validity or enforceability of any other provision of this Assignment.

Successors and Assigns. Subject to any limitations stated in this Assignment on transfer of Grantor's interest, this Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Assignment and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Assignment.

Waive Jury. All parties to this Assignment hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all Indebtedness secured by this Assignment.

Waiver of Right of Redemption. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS ASSIGNMENT, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS ASSIGNMENT.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Assignment. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code:

Assignment. The word "Assignment" means this ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedules attached to this ASSIGNMENT OF RENTS from time to time.

Borrower. The word "Borrower" means Old Towne Suites, LLC.

Default. The word "Default" means the Default set forth in this Assignment in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Assignment in the default section of this Assignment.

Grantor. The word "Grantor" means Athanasios Fokas, Iefovos S Ferderigos, Spiros S Ferderigos and Phillip S Ferderigos.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment.

Lender. The word "Lender" means SOUTHCOAST COMMUNITY BANK, its successors and assigns.

Note. The word "Note" means the promissory note dated November 21, 2014, in the original principal amount of $1,800,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT. THIS DOCUMENT IS EXECUTED ON NOVEMBER 21, 2014.

GRANTOR:

X _____ X _____
Athanastos Fokas Iakovos S Ferderigos

X _____ X _____
Spiros S Ferderigos Phillip S Ferderigos

Signed, acknowledged and delivered in the presence of:

X _____
Witness

X _____
Witness

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Assignment for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

_____
(Witness)

SWORN to before me this _____

day of _____, A.D. 20_____.

_____ (Seal)
Notary Public

My Commission expires: _____

LaserPro, Ver. 14.4.0.024 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - SC C:\PROSUITE\CFI\LPL\G14.FC TR-7519
PR-13

OMB NO. 2502-0265

A.	B. TYPE OF LOAN:
U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT **SETTLEMENT STATEMENT**	1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS. 6. FILE NUMBER: 14,140OLDTOWNE 7. LOAN NUMBER: 03400007519 8. MORTGAGE INS CASE NUMBER:

C. NOTE: *This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(POC)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.*

1.0 3/98 (14,140OLDTOWNE.PFD/14,140OLDTOWNE38)

D. NAME AND ADDRESS OF BORROWER:	E. NAME AND ADDRESS OF SELLER:	F. NAME AND ADDRESS OF LENDER:
Old Towne Suites, LLC 229 King Street Charleston, SC 29401		SouthCoast Community Bank P.O. Box 1561 Mount Pleasant, SC 29465

G. PROPERTY LOCATION:	H. SETTLEMENT AGENT: 27-4025801 Haines Law Firm, LLC PLACE OF SETTLEMENT 800 Johnnie Dodds Blvd. Mount Pleasant, South Carolina 29464	I. SETTLEMENT DATE:
229 King Street Charleston, SC 29401 Charleston County, South Carolina		November 21, 2014

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		**400. GROSS AMOUNT DUE TO SELLER:**	
101. Contract Sales Price		401. Contract Sales Price	
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400)	21,848.17	403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller In advance		*Adjustments For Items Paid By Seller In advance*	
106. Homeowners Assoc to		406. Homeowners Assoc to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	21,848.17	*420. GROSS AMOUNT DUE TO SELLER*	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		**500. REDUCTIONS IN AMOUNT DUE TO SELLER:**	
201. Deposit or earnest money		501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s)	[1,800,000.00]	502. Settlement Charges to Seller (Line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage	
205.		505. Payoff of second Mortgage	
206.		506.	
207. Construction Draw	171,848.17	507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller		*Adjustments For Items Unpaid By Seller*	
210. Homeowners Assoc to		510. Homeowners Assoc to	
211. County Taxes to		511. County Taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	171,848.17	*520. TOTAL REDUCTION AMOUNT DUE SELLER*	
300. CASH AT SETTLEMENT FROM/TO BORROWER:		**600. CASH AT SETTLEMENT TO/FROM SELLER:**	
301. Gross Amount Due From Borrower (Line 120)	21,848.17	601. Gross Amount Due To Seller (Line 420)	
302. Less Amount Paid By/For Borrower (Line 220)	(171,848.17)	602. Less Reductions Due Seller (Line 520)	( )
303. CASH (FROM) (X TO) BORROWER	150,000.00	*603. CASH (TO) (FROM) SELLER*	0.00

HUD-1 (3-86) RESPA, HB4305.2

L. SETTLEMENT CHARGES			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price	$	@ %		
Division of Commission (line 700) as Follows:				
701. $ to				
702. $ to				
703. Commission Paid at Settlement				
704. to				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN				
801. Loan Origination Fee % to				
802. Loan Discount % to				
803. Appraisal Fee to SouthCoast Community Bank			2,800.00	
804. Credit Report to				
805. Flood Hazard Determination Fee to SouthCoast Community Bank			13.50	
806. Mtg/Asmt of Rents Sat Fee to SouthCoast Community Bank			10.00	
807. Underwriting Fee to SouthCoast Community Bank			500.00	
808. Commitment Fee to SouthCoast Community Bank		POC: $2500.00b	9,000.00	
809. Secretary of State UCC Sat Fee to SouthCoast Community Bank			32.00	
810. County UCC Sat. Fee to SouthCoast Community Bank			8.00	
811.				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901. Interest From 11/21/14 to 12/01/14 @ $	23.834700/day	(10 days %)	238.35	
902. Mortgage Insurance Premium for months to				
903. Hazard Insurance Premium for 1.0 years to				
904.				
905.				
1000. RESERVES DEPOSITED WITH LENDER				
1001. Hazard Insurance	2.000 months @ $	517.33 per month	1,034.66	
1002. Mortgage Insurance	months @ $	per month		
1003. Homeowners Assoc	months @ $	per month		
1004. County Taxes	2.000 months @ $	1,735.00 per month	3,470.00	
1005. Assessments	months @ $	per month		
1006.	months @ $	per month		
1007. Flood Insurance	2.000 months @ $	186.33 per month	372.66	
1008.	months @ $	per month		
1100. TITLE CHARGES				
1101. Settlement or Closing Fee to				
1102. Abstract or Title Search to Deborah Z. Ferris			305.00	
1103. Title Examination to				
1104. Title Insurance Binder to The Haines Law Firm, LLC			100.00	
1105. Document Preparation to				
1106. Misc Fax/Copy/Courier Charges to The Haines Law Firm, LLC			35.00	
1107. Attorney's Fees to The Haines Law Firm, LLC			350.00	
(includes above item numbers:)				
1108. Title Insurance to First American Title Insurance Company			3,510.00	
(includes above item numbers:)				
1109. Lender's Coverage $	1,800,000.00	3,510.00		
1110. Owner's Coverage $				
1111. Insured Closing Letter Fee to First American Title Insurance Company			20.00	
1112.				
1113.				
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording Fees: Deed $	; Mortgage $ 14.00;	Releases $	14.00	
1202. City/County Tax/Stamps: Deed	; Mortgage			
1203. State Tax/Stamps:	; Mortgage			
1204. Record UCCs to Charleston County Register of Deeds		$8 each x 3	24.00	
1205. Record Assignment of Rents to Charleston County Register of Deeds			11.00	
1300. ADDITIONAL SETTLEMENT CHARGES				
1301. Survey to				
1302. Pest Inspection to				
1303. Overnight Delivery Pkg/Payoff Haines FE Account				
1304.				
1305.				
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)			21,848.17	

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

Certified to be a true copy.

Haines Law Firm, LLC
Settlement Agent

(14.140OLDTOWNE/14.140OLDTOWNE/38)

ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: Old Towne Suites, LLC
Lender: SouthCoast Community Bank
Settlement Agent: Haines Law Firm, LLC
(843)884-1593
Place of Settlement: 800 Johnnie Dodds Blvd.
Mount Pleasant, South Carolina 29464
Settlement Date: November 21, 2014
Property Location: 229 King Street
Charleston, SC 29401
Charleston County, South Carolina

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Old Towne Suites, LLC

By: Athanasios Fokas

By: Iakovos S. Ferderigos

By: Phillip S. Ferderigos

By: Spiros S. Ferderigos

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

Haines Law Firm, LLC
Settlement Agent

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

0745

CONSTRUCTION MORTGAGE

MAXIMUM LIEN. The amount of Indebtedness secured by this Mortgage, including the outstanding amount of the Note and all future advances shall at no time exceed the principal amount of $2,700,000.00, plus interest, reasonable attorneys' fees, court costs and the expenses to preserve and protect the Property. Interest under the Note will be deferred, accrued or capitalized, but Lender shall not be required to defer, accrue or capitalize any interest except as provided in the Note.

THIS MORTGAGE dated _____, is made and executed between Athanasios Fokas, whose address is 229 King Street, Charleston, SC 29401; Iakovos S Ferderigos, whose address is 8 River Reach Way, Charleston, SC 29407; Spiros S Ferderigos, whose address is 229 King Street, Charleston, SC 29401 and Phillip S Ferderigos, whose address is 229 King Street, Charleston, SC 29401 (referred to below as "Grantor") and SOUTHCOAST COMMUNITY BANK, whose address is 530 Johnnie Dodds, Mt. Pleasant, SC 29464 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Charleston County, State of South Carolina:

See Exhibit A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as 229 King Street, Charleston, SC 29401. The Real Property tax identification number is 457-08-01-063.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

FUTURE ADVANCES. In addition to the Note, this Mortgage secures all future advances made by Lender to Borrower whether or not the advances are made pursuant to a commitment. Specifically, without limitation, this Mortgage secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Borrower, together with all interest thereon; however, in no event shall such future advances (excluding interest) exceed in the aggregate $2,700,000.00. This Mortgage shall remain an open mortgage of record to secure future advances in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina (1976) even in the event all sums secured by this Mortgage may be fully paid at any one time; however, upon request of Grantor, Lender will cause this Mortgage to be released and cancelled of record upon full payment of all Indebtedness then owing, and upon such cancellation of this Mortgage of record, this Mortgage shall become null and void. Such release shall be without charge to Grantor; however, Grantor shall pay all costs of recordation, if any, and all documentary stamps due on the Note evidencing future advances secured by this Mortgage.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THIS MORTGAGE. THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF BORROWER'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN BORROWER AND LENDER OF EVEN DATE HEREWITH. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (a) this Mortgage is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Mortgage and to hypothecate the Property; (c) the provisions of this Mortgage do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Borrower shall pay to Lender all Indebtedness secured by this Mortgage as it becomes due, and Borrower and Grantor shall strictly perform all Borrower's and Grantor's obligations under this Mortgage.

CONSTRUCTION MORTGAGE. This Mortgage is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of South Carolina.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has

been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender 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 Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

CONSTRUCTION LOAN. If some or all of the proceeds of the loan creating the Indebtedness are to be used to construct or complete construction of any Improvements on the Property, the Improvements shall be completed no later than the maturity date of the Note (or such earlier date as Lender may reasonably establish) and Grantor shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by this Mortgage shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipted bills, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by South Carolina law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds $10,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. The Real Property is or will be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area. Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds $5,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether

or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

TAX AND INSURANCE RESERVES. Subject to any limitations and consistent with any requirements set by applicable law, Lender may require Grantor to maintain with Lender reserves for payment of annual taxes, assessments, and insurance premiums, which reserves shall be created by an initial deposit and subsequent monthly payments, or payments at such other interval as payments under the Note may be due, of a sum estimated by Lender to be sufficient to pay the total annual taxes, assessments, and insurance premiums Lender reasonably anticipates to be paid from these reserves. The reserve funds shall be held by Lender as a general deposit from Grantor, which Lender may satisfy by payment of the taxes, assessments, and insurance premiums required to be paid by Grantor as they become due. Lender shall have the right to draw upon the reserve funds to pay such items, and Lender shall not be required to determine the validity or accuracy of any item before paying it. Nothing in the Mortgage shall be construed as requiring Lender to advance other monies for such purposes, and Lender shall not incur any liability for anything it may do or omit to do with respect to the reserve account. Subject to any limitations set by applicable law, if the reserve funds disclose a shortage or deficiency, Grantor shall pay such shortage or deficiency as required by Lender. All amounts in the reserve account are hereby pledged to further secure the Indebtedness, and Lender is hereby authorized to withdraw and apply such amounts on the Indebtedness upon the occurrence of an Event of Default. Lender shall not be required to pay any interest or earnings on the reserve funds unless required by law or agreed to by Lender in writing. Lender does not hold the reserve funds in trust for Grantor, and Lender is not Grantor's agent for payment of the taxes and assessments required to be paid by Grantor.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Borrower's and Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Borrower and Grantor pay all the Indebtedness, including without limitation all future advances, when due, and Grantor otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor.

Default in Favor of Third Parties. Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's ability to repay the Indebtedness or Borrower's or Grantor's ability to perform their respective obligations under this Mortgage or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Borrower's or Grantor's existence as a going business or the death of any member, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower or Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Borrower or Grantor under the terms of any other agreement between Borrower or Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Borrower or Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Borrower or Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Borrower would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Borrower or Grantor, to take possession of the Property and, as mortgagee-in-possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Borrower or Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Borrower and Grantor hereby waive any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or Borrower and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the Indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Mortgage has been accepted by Lender in the State of South Carolina.

Joint and Several Liability. All obligations of Borrower and Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Grantor signing below is responsible for all obligations in this Mortgage.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waive Jury. All parties to this Mortgage hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all Indebtedness secured by this Mortgage.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means Old Towne Suites, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Default. The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation 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 and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Grantor. The word "Grantor" means Athanasios Fokas, Iakovos S Ferderigos, Spiros S Ferderigos and Philip S Ferderigos.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, named interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision of this Mortgage, together with all interest thereon.

Lender. The word "Lender" means SOUTHCOAST COMMUNITY BANK, its successors and assigns.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means the promissory note dated November 21, 2014, in the original principal amount of **$1,800,000.00** from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Mortgage is December 1, 2020.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND EACH GRANTOR AGREES TO ITS TERMS.

GRANTOR:

X _____ X _____
Athanasios Fokas Iakovos S Ferderigos

X _____ X _____
Spiros S Ferderigos Philip S Ferderigos

Signed, acknowledged and delivered in the presence of:

X _____
Witness

X _____
Witness

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Mortgage for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

_____ (Witness)

SWORN to before me this _____

day of _____, A.D. 20_____.

_____ (Seal)
Notary Public

My Commission expires: _____

LaserPro, Ver. 14.4.0.024 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - SC C:\PROSUITE\CFI\LPL\G03.FC TR-7619
PR-13

0035

AGREEMENT TO PROVIDE INSURANCE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$1,800,000.00	11-21-2014	12-01-2020	03400007519		34000		

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "*****" has been omitted due to text length limitations.

Borrower: Old Towne Suites, LLC
229 King Street
Charleston, SC 29401

Lender: SOUTHCOAST COMMUNITY BANK
Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464
(843) 884-0504

Grantor: Athanasios Fokas, Iakovos S Ferderigos, Spiros S Ferderigos and Phillip S Ferderigos
229 King Street
Charleston, SC 29401

INSURANCE REQUIREMENTS. Grantor, Athanasios Fokas, Iakovos S Ferderigos, Spiros S Ferderigos and Phillip S Ferderigos ("Grantor"), understands that insurance coverage is required in connection with the extending of a loan or the providing of other financial accommodations to Old Towne Suites, LLC ("Borrower") by Lender. These requirements are set forth in the security documents for the loan. The following minimum insurance coverages must be provided on the following described collateral (the "Collateral"):

Collateral: 229 King Street, Charleston, SC 29401.
Type: Fire and extended coverage.
Amount: Loan Amount.
Basis: Replacement value.
Endorsements: Standard mortgagee's clause with stipulation that coverage will not be cancelled or diminished without a minimum of 30 days prior written notice to Lender, and without disclaimer of the insurer's liability for failure to give such notice.
Deductibles: $1,000.00.
Latest Delivery Date: By the loan closing date.

INSURANCE COMPANY. Grantor may obtain insurance from any insurance company Grantor may choose that is reasonably acceptable to Lender. Grantor understands that credit may not be denied solely because insurance was not purchased through Lender.

FLOOD INSURANCE. Flood insurance for the Collateral securing this loan is described as follows:

Real Estate at 229 King Street, Charleston, SC 29401.
The Collateral securing this loan is or will be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area. Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan. Flood insurance may be purchased under the National Flood Insurance Program or from private insurers.

INSURANCE MAILING ADDRESS. All documents and other materials relating to insurance for this loan should be mailed, delivered or directed to the following address:

Southcoast Communtity Bank
P.O. Box 1561
Mt. Pleasant, SC 29465

FAILURE TO PROVIDE INSURANCE. Grantor agrees to deliver to Lender, on the latest delivery date stated above, evidence of the required insurance as provided above, with an effective date of November 21, 2014, or earlier. Grantor acknowledges and agrees that if Grantor fails to provide any required insurance or fails to continue such insurance in force, Lender may do so at Grantor's expense as provided in the applicable security document. The cost of any such insurance, at the option of Lender, shall be added to the indebtedness as provided in the security document. GRANTOR ACKNOWLEDGES THAT IF LENDER SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE WILL PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO AN AMOUNT EQUAL TO THE LESSER OF (1) THE UNPAID BALANCE OF THE DEBT, EXCLUDING ANY UNEARNED FINANCE CHARGES, OR (2) THE VALUE OF THE COLLATERAL; HOWEVER, GRANTOR'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

AUTHORIZATION. For purposes of insurance coverage on the Collateral, Grantor authorizes Lender to provide to any person (including any insurance agent or company) all information Lender deems appropriate, whether regarding the Collateral, the loan or other financial accommodations, or both.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT TO PROVIDE INSURANCE AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED NOVEMBER 21, 2014.

GRANTOR:

X _____
Athanasios Fokas

X _____
Iakovos S Ferderigos

X _____
Spiros S Ferderigos

X _____
Phillip S Ferderigos

FOR LENDER USE ONLY

INSURANCE VERIFICATION

DATE: _____ PHONE _____

AGENT'S NAME: _____

AGENCY: _____

ADDRESS: _____

INSURANCE COMPANY: _____

POLICY NUMBER: _____

EFFECTIVE DATES: _____

COMMENTS: _____

LaserPro, Ver. 14.4.0.024 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - SD C:\PROSUITE\CFI\LPL110.FC TR-7918 PR-12

0825

NOTICE OF INSURANCE REQUIREMENTS

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
	11-21-2014		03400007519		34000	****	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: Old Towne Suites, LLC
229 King Street
Charleston, SC 29401

Lender: SOUTHCOAST COMMUNITY BANK
Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464
(843) 884-0504

Grantor: Athanasios Fokas, Iakovos S Ferderigos, Spiros S Ferderigos and Phillip S Ferderigos
229 King Street
Charleston, SC 29401

TO: ATTN: Insurance Agent

DATE: November 21, 2014

RE: Policy Number(s):
Insurance Companies/Company:

Dear Insurance Agent:

Old Towne Suites, LLC ("Borrower"), is obtaining a loan from SOUTHCOAST COMMUNITY BANK. Please send appropriate evidence of insurance to SOUTHCOAST COMMUNITY BANK, together with the requested endorsements, on the following property, which Grantor, Athanasios Fokas, Iakovos S Ferderigos, Spiros S Ferderigos and Phillip S Ferderigos ("Grantor") is giving as security for the loan.

Collateral: 229 King Street, Charleston, SC 29401.
Type: Fire and extended coverage.
Amount: Loan Amount.
Basis: Replacement value.
Endorsements: Standard mortgagee's clause with stipulation that coverage will not be cancelled or diminished without a minimum of 30 days prior written notice to Lender, and without disclaimer of the insurer's liability for failure to give such notice.
Deductibles: $1,000.00.
Latest Delivery Date: By the loan closing date.

FLOOD INSURANCE. Collateral securing this loan is or will be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area. Grantor must obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

GRANTOR:

X _____
Athanasios Fokas

X _____
Iakovos S Ferderigos

X _____
Spiros S Ferderigos

X _____
Phillip S Ferderigos

RETURN TO:

Southcoast Community Bank
P.O. Box 1561
Mt. Pleasant, SC 29465

LaserPro, Ver. 14.4.0.024 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - SC
C:\PROSUITE\CFI\LPL\I1.FC TR-7518 PR-13

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME: Fokas

FIRST PERSONAL NAME: Athanasios

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME: Ferderigos

INDIVIDUAL'S FIRST PERSONAL NAME: Spiros

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S): S

SUFFIX

10c. MAILING ADDRESS: 229 King Street | CITY: Charleston | STATE: SC | POSTAL CODE: 29401 | COUNTRY: USA

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT: ☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate: Exhibit A.

17. MISCELLANEOUS:

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME: Fokas

FIRST PERSONAL NAME: Athanasios

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME: Ferderigos

INDIVIDUAL'S FIRST PERSONAL NAME: Phillip

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S): S | SUFFIX

10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
229 King Street	Charleston	SC	29401	USA

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☒ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT: ☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

0245

CONSTRUCTION LOAN AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$1,800,000.00	11-21-2014	12-01-2020	03400007519		34000	***	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "***" has been omitted due to text length limitations.

Borrower: Old Towne Suites, LLC
229 King Street
Charleston, SC 29401

Lender: SOUTHCOAST COMMUNITY BANK
Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464
(843) 884-0504

THIS CONSTRUCTION LOAN AGREEMENT dated November 21, 2014, is made and executed between Old Towne Suites, LLC ("Borrower") and SOUTHCOAST COMMUNITY BANK ("Lender") on the following terms and conditions. Borrower has applied to Lender for one or more loans for purposes of constructing the Improvements on the Real Property described below. Lender is willing to lend the loan amount to Borrower solely under the terms and conditions specified in this Agreement and in the Related Documents, to each of which Borrower agrees. Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; and (B) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

TERM. This Agreement shall be effective as of November 21, 2014, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until December 1, 2020.

LOAN. The Loan shall be in an amount not to exceed the principal sum of U.S. $1,800,000.00 and shall bear interest on so much of the principal sum as shall be advanced pursuant to the terms of this Agreement and the Related Documents. The Loan shall bear interest on each Advance from the date of the Advance in accordance with the terms of the Note. Borrower shall use the Loan Funds solely for the following specific purposes: for construction purposes only as described in plans and specifications submitted. The Loan amount shall be subject at all times to all maximum limits and conditions set forth in this Agreement or in any of the Related Documents, including without limitation, any limits relating to loan to value ratios and acquisition and Project costs.

PROJECT DESCRIPTION. The word "Project" as used in this Agreement means the construction and completion of all Improvements contemplated by this Agreement, including without limitation the erection of the building or structure on the Real Property identified to this Agreement by Borrower and Lender, installation of equipment and fixtures, landscaping, and all other work necessary to make the Project usable and complete for the intended purposes.

The word "Property" as used in this Agreement means the Real Property together with all Improvements, all equipment, fixtures, and other articles of personal property now or subsequently attached or affixed to the Real Property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for any of such property, and all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition of such property. The real estate described below constitutes the Real Property as used in this Agreement.

The real estate or its address is commonly known as:
Real Property located at 229 King Street, Charleston, SC 29401.

FEES AND EXPENSES. Whether or not the Project shall be consummated, Borrower shall assume and pay upon demand all out-of-pocket expenses incurred by Lender in connection with the preparation of loan documents and the making of the Loan, including without limitation the following: (A) all closing costs, loan fees, and disbursements; (B) all expenses of Lender's legal counsel; and (C) all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

NO CONSTRUCTION PRIOR TO RECORDING OF SECURITY DOCUMENT. Borrower will not permit any work or materials to be furnished in connection with the Project until (A) Borrower has signed the Related Documents; (B) Lender's mortgage or deed of trust and other Security Interests in the Property have been duly recorded and perfected; (C) Lender has been provided evidence, satisfactory to Lender, that Borrower has obtained all insurance required under this Agreement or any Related Documents and that Lender's liens on the Property and Improvements are valid perfected first liens, subject only to such exceptions, if any, acceptable to Lender.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

Organization. Borrower is a limited liability company which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of South Carolina. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign limited liability company in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 229 King Street, Charleston, SC 29401. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of (a) Borrower's articles of organization or membership agreements, or (b) any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and

ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

Taxes. To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

Binding Effect. This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

Title to Property. Borrower has, or on the date of first disbursement of Loan proceeds will have, good and marketable title to the Collateral free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessments, or governmental charges or levies not yet delinquent or payable without penalty or interest, and such liens and encumbrances as may be approved in writing by the Lender. The Collateral is contiguous to publicly dedicated streets, roads, or highways providing access to the Collateral.

Project Costs. The Project costs are true and accurate estimates of the costs necessary to complete the Improvements in a good and workmanlike manner according to the Plans and Specifications presented by Borrower to Lender, and Borrower shall take all steps necessary to prevent the actual cost of the Improvements from exceeding the Project costs.

Utility Services. All utility services appropriate to the use of the Project after completion of construction are available at the boundaries of the Collateral.

Assessment of Property. The Collateral is and will continue to be assessed and taxed as an independent parcel by all governmental authorities.

Compliance with Governing Authorities. Borrower has examined and is familiar with all the easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements affecting the Project. The Project will at all times and in all respects conform to and comply with the requirements of such easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements.

Survival of Representations and Warranties. Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the making of the Loan and delivery to Lender of the Related Documents, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Approval of Contractors, Subcontractors, and Materialmen. Lender shall have approved a list of all contractors employed in connection with the construction of the Improvements, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialman. Lender shall have the right to communicate with any person to verify the facts disclosed by the list or by any application for any Advance, or for any other purpose.

Plans, Specifications, and Permits. Lender shall have received and accepted a complete set of written Plans and Specifications setting forth all Improvements for the Project, and Borrower shall have furnished to Lender copies of all permits and requisite approvals of any governmental body necessary for the construction and use of the Project.

Architect's and Construction Contracts. Borrower shall have furnished in form and substance satisfactory to Lender an executed copy of the Architect's Contract and an executed copy of the Construction Contract.

Related and Support Documents. Borrower shall provide to Lender in form satisfactory to Lender the following support documents for the Loan: Architect's Certificate and Completion Guaranty.

Budget and Schedule of Estimated Advances. Lender shall have approved detailed budget and cash flow projections of total Project costs and a schedule of the estimated amount and time of disbursements of each Advance.

Borrower's Authorization. Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the consummation of the Project and duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, in their sole discretion, may require.

Bond. If requested by Lender, Borrower shall have furnished a performance and payment bond in an amount equal to 100% of the amount of the Construction Contract, as well as a materialmen's and mechanics' payment bond, with such riders and supplements as Lender may require, each in form and substance satisfactory to Lender, naming the General Contractor as principal and Lender as an additional obligee.

Appraisal. If required by Lender, an appraisal shall be prepared for the Property, at Borrower's expense, which in form and substance shall be satisfactory to Lender, in Lender's sole discretion, including applicable regulatory requirements.

Plans and Specifications. If requested by Lender, Borrower shall have assigned to Lender on Lender's forms the Plans and Specifications for the Project.

Environmental Report. If requested by Lender, Borrower shall have furnished to Lender, at Borrower's expense, an environmental report and certificate on the Property in form and substance satisfactory to Lender, prepared by an engineer or other expert satisfactory to Lender stating that the Property complies with all applicable provisions and requirements of the "Hazardous Substances" paragraph set forth in this Agreement.

Soil Report. If requested by Lender, Borrower shall have furnished to Lender, at Borrower's expense, a soil report for the Property in form and substance satisfactory to Lender, prepared by a registered engineer satisfactory to Lender stating that the Property is free from soil or other geological conditions that would preclude its use or development as contemplated without extra expense for precautionary, corrective or remedial measures.

Survey. If requested by Lender, Borrower shall have furnished to Lender a survey of recent date, prepared and certified by a qualified surveyor and providing that the Improvements, if constructed in accordance with the Plans and Specifications, shall be wholly within the boundaries of the Collateral without encroachment or violation of any zoning ordinances, building codes or regulations, or setback requirements, together with such other information as Lender in its sole discretion may require.

Zoning. Borrower shall have furnished evidence satisfactory to Lender that the Collateral is duly and validly zoned for the construction, maintenance, and operation of the Project.

Title Insurance. Borrower shall have provided to Lender an ALTA Lender's extended coverage policy of title insurance with such endorsements as Lender may require, issued by a title insurance company acceptable to Lender and in a form, amount, and content satisfactory to Lender, insuring or agreeing to insure that Lender's security agreement or other security document on the Property is or will be upon recordation a valid first lien on the Property free and clear of all defects, liens, encumbrances, and exceptions except those as specifically accepted by Lender in writing. If requested by Lender, Borrower shall provide to Lender, at Borrower's expense, a foundation endorsement to the title policy upon the completion of each foundation for the Improvements, showing no encroachments, and upon completion an endorsement which insures the lien-free completion of the Improvements.

Insurance. Unless waived by Lender in writing, Borrower shall have delivered to Lender the following insurance policies or evidence thereof: (a) an all risks course of construction insurance policy (builder's risk), with extended coverage covering the Improvements issued in an amount and by a company acceptable to Lender, containing a loss payable or other endorsement satisfactory to Lender insuring Lender as mortgagee, together with such other endorsements as may be required by Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender; (b) owners and General Contractor general liability insurance, public liability and workmen's compensation insurance; (c) flood insurance if required by Lender or applicable law; and (d) all other insurance required by this Agreement or by the Related Documents.

Workers' Compensation Coverage. Provide to Lender proof of the General Contractor's compliance with all applicable workers' compensation laws and regulations with regard to all work performed on the Project.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

Satisfactory Construction. All work usually done at the stage of construction for which disbursement is requested shall have been done in a good and workmanlike manner and all materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in compliance with the Plans and Specifications. Borrower shall also have furnished to Lender such proofs as Lender may require to establish the progress of the work, compliance with applicable laws, freedom of the Property from liens, and the basis for the requested disbursement.

Certification. Borrower shall have furnished to Lender a certification by an engineer, architect, or other qualified inspector acceptable to Lender that the construction of the Improvements has complied and will continue to comply with all applicable statutes, ordinances, codes, regulations, and similar requirements.

Lien Waivers. Borrower shall have obtained and attached to each application for an Advance, including the Advance to cover final payment to the General Contractor, executed acknowledgments of payments of all sums due and releases of mechanic's and materialmen's liens; satisfactory to Lender, from any party having lien rights, which acknowledgments of payment and releases of liens shall cover all work, labor, equipment, materials done, supplied, performed, or furnished prior to such application for an Advance.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

DISBURSEMENT OF LOAN FUNDS. The following provisions relate to the disbursement of funds from the Loan Fund.

Application for Advances. Each application shall be stated on a standard AIA payment request form or other form approved by Lender, executed by Borrower, and supported by such evidence as Lender shall reasonably require. Borrower shall apply only for disbursement with respect to work actually done by the General Contractor and for materials and equipment actually incorporated into the Project. Each application for an Advance shall be deemed a certification of Borrower that as of the date of such application, all representations and warranties contained in the Agreement are true and correct, and that Borrower is in compliance with all of the provisions of this Agreement.

Payments. At the sole option of Lender, Advances may be paid in the joint names of Borrower and the General Contractor, subcontractor(s), or supplier(s) in payment of sums due under the Construction Contract. At its sole option, Lender may directly pay the General Contractor and any subcontractors or other parties the sums due under the Construction Contract. Borrower appoints Lender as its attorney-in-fact to make such payments. This power shall be deemed coupled with an interest, shall be irrevocable, and shall survive an Event of Default under this Agreement.

Projected Cost Overruns. If Lender at any time determines in its sole discretion that the amount in the Loan Fund is insufficient, or will be insufficient, to complete fully and to pay for the Project, then within ten (10) days after receipt of a written request from Lender, Borrower shall deposit in the Loan Fund an amount equal to the deficiency as determined by Lender. The judgment and determination of Lender under this section shall be final and conclusive. Any such amounts deposited by Borrower shall be disbursed prior to any Loan proceeds.

Final Payment to General Contractor. Upon completion of the Project and fulfillment of the Construction Contract to the satisfaction of Lender and provided sufficient Loan Funds are available, Lender shall make an Advance to cover the final payment due to the General Contractor upon delivery to Lender of endorsements to the ALTA title insurance policy following the posting of the completion notice, as provided under applicable law. Construction shall not be deemed complete for purposes of final disbursement unless and until Lender shall have received all of the following:

(1) Evidence satisfactory to Lender that all work under the Construction Contract requiring inspection by any governmental authority with jurisdiction has been duly inspected and approved by such authority, that a certificate of occupancy has been issued, and that all parties performing work have been paid, or will be paid, for such work;

(2) A certification by an engineer, architect, or other qualified inspector acceptable to Lender that the Improvements have been completed substantially in accordance with the Plans and Specifications and the Construction Contract, that direct connection has been made to all utilities set forth in the Plans and Specifications, and that the Project is ready for occupancy; and

(3) Acceptance of the completed Improvements by Lender and Borrower.

Construction Default. If Borrower fails in any respect to comply with the provisions of this Agreement or if construction ceases before completion regardless of the reason, Lender, at its option, may refuse to make further Advances, may accelerate the Indebtedness under the terms of the Note, and without thereby impairing any of its rights, powers, or privileges, may enter into possession of the construction site and perform or cause to be performed any and all work and labor necessary to complete the Improvements, substantially in accordance with the Plans and Specifications.

Damage or Destruction. If any of the Collateral or Improvements is damaged or destroyed by casualty of any nature, within sixty (60) days thereafter Borrower shall restore the Collateral and Improvements to the condition in which they were before such damage or destruction with funds other than those in the Loan Fund. Lender shall not be obligated to make disbursements under this Agreement until such restoration has been accomplished.

Adequate Security. When any event occurs that Lender determines may endanger completion of the Project or the fulfillment of any condition or covenant in this Agreement, Lender may require Borrower to furnish, within ten (10) days after delivery of a written request, adequate security to eliminate, reduce, or indemnify Lender against, such danger. In addition, upon such occurrence, Lender in its sole discretion may advance funds or agree to undertake to advance funds to any party to eliminate, reduce, or indemnify Lender against, such danger or to complete the Project. All sums paid by Lender pursuant to such agreements or undertakings shall be for Borrower's account and shall be without prejudice to Borrower's rights, if any, to receive such funds from the party to whom paid. All sums expended by Lender in the exercise of its option to complete the Project or protect Lender's interests shall be payable to Lender on demand together with interest from the date of the Advance at the rate applicable to the Loan. In addition, any Advance of funds under this Agreement, including without limitation direct disbursements to the General Contractor or other parties in payment of sums due under the Construction Contract, shall be deemed to have been expended by or on behalf of Borrower and to have been secured by Lender's Mortgage, if any, on the Collateral.

CESSATION OF ADVANCES. If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

LIMITATION OF RESPONSIBILITY. The making of any Advance by Lender shall not constitute or be interpreted as either (A) an approval or acceptance by Lender of the work done through the date of the Advance, or (B) a representation or indemnity by Lender to any party against any deficiency or defect in the work or against any breach of any contract. Inspections and approvals of the Plans and Specifications, the Improvements, the workmanship and materials used in the Improvements, and the exercise of any other right of inspection, approval, or inquiry

1010

granted to Lender in this Agreement are acknowledged to be solely for the protection of Lender's interests, and under no circumstances shall they be construed to impose any responsibility or liability of any nature whatsoever on Lender to any party. Neither Borrower nor any contractor, subcontractor, materialman, laborer, or any other person shall rely, or have any right to rely, upon Lender's determination of the appropriateness of any Advance. No disbursement or approval by Lender shall constitute a representation by Lender as to the nature of the Project, its construction, or its intended use for Borrower or for any other person, nor shall it constitute an indemnity by Lender to Borrower or to any other person against any deficiency or defects in the Project or against any breach of any contract.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Notices of Claims and Litigation. Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with the following:

- **Annual Statements.** As soon as available, but in no event later than 45 days after the end of each fiscal year, Borrower's balance sheet and income statement for the year ended, reviewed by a certified public accountant satisfactory to Lender.
- **Tax Returns.** As soon as available, but in no event later than 45 days after the applicable filing date for the tax reporting period ended, Borrower's Federal and other governmental tax returns, prepared by a tax professional satisfactory to Lender.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

Additional Information. Furnish such additional information and statements, lists of assets and liabilities, agings of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations as Lender may request from time to time.

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

Insurance. Maintain fire and other risk insurance, hail, federal crop insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Insurance Reports. Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

Guarantees. Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, executed by the guarantors named below, on Lender's forms, and in the amounts and under the conditions set forth in those guaranties.

Names of Guarantors	Amounts
Athanasios Fokas	Unlimited
Iakovos S Ferderigos	Unlimited

Loan Fees, Charges and Expenses. In addition to all other agreed upon fees, charges, and expenses, pay the following: Commercial Construction Loan Inspection Fee of $250.00 per visit. Whether or not the Project is completed, Borrower also shall pay upon demand all out-of-pocket expenses incurred by Lender in connection with the preparation of loan documents and the making of the Loan, including, without limitation, all closing costs, fees, and disbursements, all expenses of Lender's legal counsel, and all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

Loan Proceeds. Use all Loan proceeds solely for the following specific purposes: for construction purposes only as described in plans and specifications submitted.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits. Provided however, Borrower will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim so long as (1) the legality of the same shall be contested in good faith by appropriate proceedings, and (2) Borrower shall have established on Borrower's books adequate reserves with respect to such contested assessment, tax, charge, levy, lien, or claim in accordance with GAAP.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Compliance Certificates. Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Construction of the Project. Commence construction of the Project no later than November 21, 2014, and cause the Improvements to be constructed and equipped in a diligent and orderly manner and in strict accordance with the Plans and Specifications approved by Lender, the Construction Contract, and all applicable laws, ordinances, codes, regulations, and rights of adjoining or concurrent property owners. Borrower agrees to complete the Project for purposes of final payment to the General Contractor on or before November 21, 2015, regardless of the reason for any delay.

Defects. Upon demand of Lender, promptly correct any defect in the Improvements or any departure from the Plans and Specifications not approved by Lender in writing before further work shall be done upon the portion of the Improvements affected.

Project Claims and Litigation. Promptly inform Lender of (1) all material adverse changes in the financial condition of the General Contractor; (2) any litigation and claims, actual or threatened, affecting the Project or the General Contractor, which could materially affect the successful completion of the Project or the ability of the General Contractor to complete the Project as agreed; and (3) any condition or event which constitutes a breach or default under any of the Related Documents or any contract related to the Project.

Payment of Claims and Removal of Liens. (1) Cause all claims for labor done and materials and services furnished in connection with the Improvements to be fully paid and discharged in a timely manner, (2) diligently file or procure the filing of a valid notice of completion of the Improvements, or such comparable document as may be permitted under applicable lien laws, (3) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on the Improvements for a continuous period of thirty (30) days or more, and (4) take all reasonable steps necessary to remove all claims of liens against the Collateral, the Improvements or any part of the Collateral or Improvements, or any rights or interests appurtenant to the Collateral or Improvements. Upon Lender's request, Borrower shall make such demands or claims upon or against laborers, materialmen, subcontractors, or other persons who have furnished or claim to have furnished labor, services, or materials in connection with the Improvements, which demands or claims shall under the laws of the State of South Carolina require diligent assertions of lien

claims upon penalty of loss or waiver thereof. Borrower shall, within ten (10) days after the filing of any claim of lien that is disputed or contested by Borrower, provide Lender with a surety bond issued by a surety acceptable to Lender sufficient to release the claim of lien or deposit with Lender an amount satisfactory to Lender for the possibility that the contest will be unsuccessful. If Borrower fails to remove any lien on the Collateral or Improvements or provide a bond or deposit pursuant to this provision, Lender may pay such lien, or may contest the validity of the lien, and Borrower shall pay all costs and expenses of such contest, including Lender's reasonable attorneys' fees.

Taxes and Claims. Pay and discharge when due all of Borrower's indebtedness, obligations, and claims that, if unpaid, might become a lien or charge upon the Collateral or Improvements; provided, however, that Borrower shall not be required to pay and discharge any such indebtedness, obligation, or claim so long as (1) its legality shall be contested in good faith by appropriate proceedings, (2) the indebtedness, obligation, or claim does not become a lien or charge upon the Collateral or Improvements, and (3) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with GAAP. If the indebtedness, obligation, or claim does become a lien or charge upon the Collateral or Improvements, Borrower shall remove the lien or charge as provided in the preceding paragraph.

Environmental Studies. Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

Additional Assurances. Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests in the Collateral and Improvements.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

NEGATIVE COVENANTS. Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

Indebtedness and Liens. (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Lender.

Continuity of Operations. (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) make any distribution with respect to any capital account, whether by reduction of capital or otherwise.

Loans, Acquisitions and Guaranties. (1) Loan, invest in or advance money or assets to any other person, enterprise or entity, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

Modification of Contract. Make or permit to be made any modification of the Construction Contract.

Liens. Create or allow to be created any lien or charge upon the Collateral or the Improvements.

Agreements. Enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith.

GENERAL PROJECT PROVISIONS. The following provisions relate to the construction and completion of the Project:

Change Orders. All requests for changes in the Plans and Specifications, other than minor changes involving no extra cost, must be in writing, signed by Borrower and the architect, and delivered to Lender for its approval. Borrower will not permit the performance of any work pursuant to any change order or modification of the Construction Contract or any subcontract without the written approval of Lender. Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order.

Purchase of Materials; Conditional Sales Contracts. No materials, equipment, fixtures, or articles of personal property placed in or incorporated into the Project shall be purchased or installed under any Security Agreement or other agreement whereby the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider such items as personal property after their incorporation into the Project, unless otherwise authorized by Lender in writing.

Lender's Right of Entry and Inspection. Lender and its agents shall have at all times the right of entry and free access to the Property and the right to inspect all work done, labor performed, and materials furnished with respect to the Project. Lender shall have unrestricted access to and the right to copy all records, accounting books, contracts, subcontracts, bills, statements, vouchers, and supporting documents of Borrower relating in any way to the Project.

Lender's Right to Stop Work. If Lender in good faith determines that any work or materials do not conform to the approved Plans and Specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement, Lender may require the work to be stopped and withhold disbursements until the matter is corrected. In such event, Borrower will promptly correct the work to Lender's satisfaction. No such action by Lender will affect Borrower's obligation to complete the Improvements on or before the Completion Date. Lender is under no duty to supervise or inspect the construction or examine any books and records. Any inspection or examination by Lender is for the sole purpose of protecting Lender's security and preserving Lender's rights under this Agreement. No default of Borrower will be waived by any inspection by Lender. In no event will any inspection by Lender be a representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or workmanship.

Indemnity. Borrower shall indemnify, defend, and hold Lender harmless from any and all claims asserted against Lender or the Property by any person, entity, or governmental body, or arising out of or in connection with the Property, Improvements, or Project. Lender shall be entitled to appear in any proceedings to defend itself against such claims, and all costs and expenses reasonable attorneys' fees incurred by Lender in connection with such defense shall be paid by Borrower to Lender. Lender shall, in its sole discretion, be entitled to settle or compromise any asserted claims against it, and such settlement shall be binding upon Borrower for purposes of this indemnification. All amounts paid by Lender under this paragraph shall be secured by Lender's security agreement or Mortgage, if any, on the Property, shall be deemed an additional principal Advance under the Loan, payable upon demand, and shall bear interest at the rate applicable to the Loan.

Publicity. Lender may display a sign at the construction site informing the public that Lender is the construction lender for the Project. Lender may obtain other publicity in connection with the Project through press releases and participation in ground-breaking and opening ceremonies and similar events.

Actions. Lender shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties to this Agreement, or the disbursement of funds from the Loan Fund. In connection with this right, Lender may incur and pay reasonable costs, expenses and reasonable attorneys' fees. Borrower covenants to pay to Lender on demand all such expenses, together with interest from the date Lender incurs the expense at the rate specified in the Note, and Lender is authorized to disburse funds from the Loan Fund for such purposes.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Loan.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any Loan.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Construction Contract. The Improvements are not constructed in accordance with the Plans and Specifications or in accordance with the terms of the Construction Contract.

Cessation of Construction. Prior to the completion of construction of the Improvements and equipping of the Project, the construction of the Improvements or the equipping of the Project is abandoned or work thereon ceases for a period of more than ten (10) days for any reason, or the Improvements are not completed for purposes of final payment to the General Contractor prior to November 21, 2015, regardless of the reason for the delay.

Transfer of Property. Sale, transfer, hypothecation, assignment, or conveyance of the Property or the Improvements or any portion thereof or interest therein by Borrower or any Borrower without Lender's prior written consent.

Condemnation. All or any material portion of the Collateral is condemned, seized, or appropriated without compensation, and Borrower does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default on Indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, after Lender sends written notice to Borrower or Grantor, as the case may be, demanding cure of such default: (1) cure the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

EFFECT OF AN EVENT OF DEFAULT; REMEDIES. Upon the occurrence of any Event of Default and at any time thereafter, Lender may, at its option, but without any obligation to do so, and in addition to any other right Lender without notice to Borrower may have, do any one or more of the following without notice to Borrower: (a) Cancel this Agreement; (b) Institute appropriate proceedings to enforce the performance of this Agreement; (c) Withhold further disbursement of Loan Funds; (d) Expend funds necessary to remedy the default; (e) Take possession of the Property and continue construction of the Project; (f) Accelerate maturity of the Note and/or Indebtedness and demand payment of all sums due under the Note and/or Indebtedness; (g) Bring an action on the Note and/or Indebtedness; (h) Foreclose Lender's security agreement or Mortgage, if any, on the Property in any manner available under law; and (i) Exercise any other right or remedy which it has under the Note or Related Documents, or which is otherwise available at law or in equity or by statute.

COMPLETION OF IMPROVEMENTS BY LENDER. If Lender takes possession of the Collateral, it may take any and all actions necessary in its judgment to complete construction of the Improvements, including but not limited to making changes in the Plans and Specifications, work, or materials and entering into, modifying, or terminating any contractual arrangements, subject to Lender's right at any time to discontinue any work without liability. If Lender elects to complete the Improvements, it will not assume any liability to Borrower or to any other person for completing the Improvements or for the manner or quality of construction of the Improvements, and Borrower expressly waives any such liability. Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to complete the Improvements, at Lender's option, either in Borrower's name or in its own name. In any event, all sums expended by Lender in completing the construction of the Improvements will be considered to have been disbursed to Borrower and will be secured by the Collateral for the Loan. Any such sums that cause the principal amount of the Loan to exceed the face amount of the Note will be considered to be an additional Loan to Borrower, bearing interest at the Note rate and being secured by the Collateral. For these purposes, Borrower assigns to Lender all of its right, title and interest in and to the Project Documents; however Lender will not have any obligation under the Project Documents unless Lender expressly hereafter agrees to assume such obligations in writing. Lender will have the right to exercise any rights of Borrower under the Project Documents upon the occurrence of an Event of Default. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently.

ADDITIONAL DOCUMENTS. Borrower shall provide Lender with the following additional documents:

Articles of Organization and Company Resolutions. Borrower has provided or will provide Lender with a certified copy of Borrower's Articles of Organization, together with a certified copy of resolutions properly adopted by the members of the company, under which the members authorized one or more designated members or employees to execute this Agreement, the Note and any and all Security Agreements directly or indirectly securing repayment of the same, and to consummate the borrowings and other transactions as contemplated under this Agreement, and to consent to the remedies following any default by Borrower as provided in this Agreement and in any Security Agreements.

Opinion of Counsel. When required by Lender, Borrower has provided or will provide Lender with an opinion of Borrower's counsel certifying to and that: (1) Borrower's Note, any Security Agreements and this Agreement constitute valid and binding obligations on Borrower's part that are enforceable in accordance with their respective terms; (2) Borrower is validly existing and in good standing; (3) Borrower has authority to enter into this Agreement and to consummate the transactions contemplated under this Agreement; and (4) such other matters as may have been requested by Lender or by Lender's counsel.

FIRST DRAW REQUIREMENTS. The following items are required prior to the first construction draw (1) Current General Liability Insurance policy, (2) Builder's Risk Insurance policy on the subject property, (3) Foundation Survey, (4) Soil Treatment Certification, (5) Flood Insurance policy and Elevation Certificate; (6) Permanent Steet Address. Forward these documents to our office as soon as they are available to facilitate the processing and disbursement of the first draw. Contact Linette R. Mower at (843) 216-3051 or lmower@southcoastbank.com with any questions concerning the construction process.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

Authority to File Notices. Borrower appoints and designates Lender as its attorney-in-fact to file for the record any notice that Lender deems necessary to protect its interest under this Agreement. This power shall be deemed coupled with an interest and shall be irrevocable while any sum or performance remains due and owing under any of the Related Documents.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of South Carolina.

Indemnification of Lender. Borrower agrees to indemnify, to defend and to save and hold Lender harmless from any and all claims, suits, obligations, damages, losses, costs and expenses (including, without limitation, Lender's reasonable attorneys' fees, as well as Lender's architect's and engineering fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever that may be asserted against or incurred by Lender, its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by this Agreement and the exercise of the rights and remedies granted Lender under this. The foregoing indemnity provisions shall survive the cancellation of this Agreement as to all matters arising or accruing prior to such cancellation and the foregoing indemnity shall survive in the event that Lender elects to exercise any of the remedies as provided under this Agreement following default hereunder.

Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

Survival of Representations and Warranties. Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the making of the Loan and delivery to Lender of the Related Documents, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

Agreement. The word "Agreement" means this Construction Loan Agreement, as this Construction Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Construction Loan Agreement from time to time.

Architect's Contract. The words "Architect's Contract" mean the architect's contract between Borrower and Tucker & Associates, the architect for the Project.

Borrower. The word "Borrower" means Old Towne Suites, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Completion Date. The words "Completion Date" mean November 21, 2015.

Construction Contract. The words "Construction Contract" mean the contract between Borrower and Kevin W Carroll, the general contractor for the Project, and any subcontracts with subcontractors, materialmen, laborers, or any other person or entity for performance of work on the Project or the delivery of materials to the Project.

Contractor. The word "Contractor" means Kevin W Carroll, the general contractor for the Project.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation 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 and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this

Agreement.

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan and any guarantor under a completion guaranty agreement.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future buildings, structures, facilities, fixtures, additions, and similar construction on the Collateral.

Indebtedness. The word "Indebtedness" means the Indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means SOUTHCOAST COMMUNITY BANK, its successors and assigns.

Loan. The word "Loan" means the loan or loans made to Borrower under this Agreement and the Related Documents as described .

Loan Fund. The words "Loan Fund" mean the undisbursed proceeds of the Loan under this Agreement together with any equity funds or other deposits required from Borrower under this Agreement.

Note. The word "Note" means the promissory note dated November 21, 2014, in the original principal amount of $1,800,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Permitted Liens. The words "Permitted Liens" mean (1) liens and security interests securing Indebtedness owed by Borrower to Lender; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure Indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

Plans and Specifications. The words "Plans and Specifications" mean the plans and specifications for the Project which have been submitted to and initialed by Lender, together with such changes and additions as may be approved by Lender in writing.

Project. The word "Project" means the construction project as described in the "Project Description" section of this Agreement.

Project Documents. The words "Project Documents" mean the Plans and Specifications, all studies, data and drawings relating to the Project, whether prepared by or for Borrower, the Construction Contract, the Architect's Contract, and all other contracts and agreements relating to the Project or the construction of the Improvements.

Property. The word "Property" means the property as described in the "Project Description" section of this Agreement.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in the "Project Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS CONSTRUCTION LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS CONSTRUCTION LOAN AGREEMENT IS DATED NOVEMBER 21, 2014.

BORROWER:

OLD TOWNE SUITES, LLC

By: _____
Athanasios Fokas, Authorized Member of Old Towne Suites, LLC

By: _____
Iakovos S Fardengos, Authorized Member of Old Towne Suites, LLC

LENDER:

SOUTHCOAST COMMUNITY BANK

By: _____
Authorized Signer

CFI ProServices, Ver. 14.0.0.024 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - MA C:\PROSERVICES\APPS\CFILPL\TR-2319.FC TR-2319 PR-14

0455

GUARANTY OF COMPLETION AND PERFORMANCE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$1,800,000.00	11-21-2014	12-01-2020	03400007519		34000	****	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Guarantor: Old Towne Suites, LLC
229 King Street
Charleston, SC 29401

Lender: SOUTHCOAST COMMUNITY BANK
Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464
(843) 884-0504

THIS GUARANTY OF COMPLETION AND PERFORMANCE ("Guaranty") is made as of November 21, 2014, by Old Towne Suites, LLC ("Guarantor") to and for the benefit of SOUTHCOAST COMMUNITY BANK ("Lender").

THE LOAN. Guarantor proposes to borrow from Lender the principal amount of One Million Eight Hundred Thousand & 00/100 Dollars ($1,800,000.00) pursuant to the terms and conditions of the Construction Loan Agreement. As a condition and inducement to making the Loan, Guarantor has requested that Guarantor duly execute and deliver this Guaranty guaranteeing the lien-free completion of the construction of the Project and the performance of other covenants, which are all considered by Lender to be material regarding Lender's decision to make the Loan.

GUARANTY. Guarantor hereby unconditionally and absolutely warrants and guarantees to Lender that: (a) construction of the Project shall be commenced and shall be substantially completed within the time limits set forth in the Construction Loan Agreement; (b) the Project shall be constructed and completed in accordance with the Loan Documents and the Plans and Specifications, without substantial deviation therefrom unless approved by Lender in writing; (c) except for Lender's security agreements, the Project will be constructed and completed free and clear of all liens and encumbrances, including without limitation all mechanics' liens, materialmen's liens, and equitable liens; and (d) all costs of constructing the Project will be paid when due, and no stop notices shall be served on Lender.

OBLIGATIONS OF GUARANTOR UPON EVENT OF DEFAULT. Should an Event of Default (as defined in any Construction Loan Agreement) occur or if the Project shall not be constructed and completed as provided above, Guarantor shall: (a) diligently proceed to cure such default and procure completion of the Project at Guarantor's sole cost and expense; (b) fully pay and discharge all claims for labor performed and material and services furnished in connection with the construction of the Project; and (c) pay such amounts as may be necessary to release and discharge all claims of stop notices, mechanics' liens, materialmen's liens, and equitable liens, if any, that may come into existence in connection with the construction of the Project.

NATURE OF GUARANTY. This Guaranty is an original and independent obligation of Guarantor, separate and distinct from Guarantor's obligations to Lender under the Loan Documents. The obligations of Guarantor to Lender under this Guaranty are direct and primary, regardless of the validity or enforceability of the Loan Documents. This Guaranty is for the benefit of Lender, and is not for the benefit of any third party. This Guaranty shall continue until (A) the Project has been completed, free and clear of all liens and encumbrances as provided above, and (B) all obligations of Guarantor to Lender under this Guaranty have been performed in full.

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (a) to make or approve changes to the Plans and Specifications; (b) to make modifications to the Construction Loan Agreement and the other Loan Documents; (c) to make one or more additional secured or unsecured loans to Guarantor; (d) to repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Loan or any part of the Loan, including increases and decreases of the rate of interest on the Loan; extensions may be repeated and may be for longer than the original loan term; (e) to take and hold security for the payment of the Loan or this Guaranty, and exchange, enforce, waive, and release any such security, with or without the substitution of new collateral; (f) to release, substitute, agree not to sue, or deal with any one or more of Guarantor's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (g) to determine how, when, and what application of payments and credits shall be made on the Loan; (h) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in Lender's discretion may determine; (i) to sell, transfer, assign or grant participations in all or any part of the Loan; and (j) to assign or transfer this Guaranty in whole or in part.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that: (a) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (b) this Guaranty is executed at Guarantor's request and not at the request of Lender to induce Lender to disburse the Loan to Guarantor pursuant to the terms of the Loan Documents and that Lender would not make and disburse the Loan to Guarantor pursuant to the Loan Documents were it not for the execution and delivery of this Guaranty; (c) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (d) neither the execution nor the delivery of this Guaranty nor compliance with the terms hereof will conflict with or result in the breach of any law or statute, will constitute a breach or default under any agreement or instrument to which Guarantor may be a party, or will result in the creation or imposition of any charge or lien upon any property or assets of Guarantor; (e) Lender has made no representation to Guarantor as to the creditworthiness of Guarantor; (f) the most recent financial statements of Guarantor heretofore delivered to Lender are true and correct in all material respects and fairly present the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent financial statements; and (g) Guarantor has established adequate means of obtaining from Guarantor on a continuing basis information regarding Guarantor's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Guarantor.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender: (A) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Loan or of any nonpayment related to any security agreement, or notice of any action or nonaction on the part of Guarantor, Lender, any surety, endorser, or other guarantor in connection with the Loan or in connection with the creation of new or additional loans or obligations; (B) to resort for payment or to proceed directly or at once against any person, including Guarantor or any other guarantor; (C) to proceed directly against or exhaust any collateral held by Lender

from Guarantor, any other guarantor, or any other person (D) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Guarantor or to comply with any other applicable provisions of the Uniform Commercial Code; (E) to pursue any other remedy within Lender's power; or (F) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses arising by reason of: (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Guarantor for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging any Loan Indebtedness; (C) any disability or other defense of Guarantor, of any other guarantor, or of any other person, or by reason of the cessation of Guarantor's liability from any cause whatsoever, other than payment in full in legal tender, of any Loan Indebtedness; (D) any failure or invalidity of, or any defect in, the Construction Loan Agreement or any other Loan Document; (E) any right to claim discharge of any Loan Indebtedness on the basis of unjustified impairment of any collateral for any Loan Indebtedness; or (F) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced there is outstanding Loan Indebtedness of Guarantor to Lender which is not barred by any applicable statute of limitations. If payment is made by Guarantor, whether voluntarily or otherwise, or by any third party, on any Loan and thereafter Lender is forced to remit the amount of that payment to Guarantor's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the Loan shall be considered unpaid for the purpose of enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment, or similar right, whether such claim, demand, or right may be asserted by the Guarantor, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of Guarantor's significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

RIGHTS AND REMEDIES. If Guarantor shall fail to perform promptly as provided in this Guaranty, Lender shall have the following rights and remedies:

Perform Work. Lender, at its option, but without any obligation to do so, may proceed to perform on behalf of Guarantor any and all work on the Project and to pay any costs incurred in connection with the work. Guarantor, upon Lender's demand, shall promptly pay to Lender all such sums expended together with interest thereon at the interest rate set forth in the Note.

Cure Defaults. Lender, at its option, but without any obligation to do so, may cure any defaults, including without limitation, paying any unpaid bills and liens, including without limitation those for construction, labor, and materials. Guarantor, upon Lender's demand, shall promptly pay to Lender all such sums expended together with interest thereon at the interest rate set forth in the Note.

Specific Performance. From time to time and without first requiring performance on the part of Guarantor and without being required to exhaust any security held by Lender for the Loan, to require Guarantor specifically to perform Guarantor's obligations under this Guaranty, by action at law or in equity or both, and further, to collect in any such action, compensation for all loss, cost, damage, injury and expense sustained or incurred by Lender as a direct or indirect consequence of Guarantor's failure to perform, with interest thereon at the interest rate set forth in the Note.

Other Rights and Remedies. In addition, Lender shall have and may exercise any or all of the rights and remedies it may have available at law, in equity, or otherwise.

SUBORDINATION OF GUARANTOR'S DEBTS TO GUARANTOR. Guarantor agrees that the Loan, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Guarantor, whether or not Guarantor becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Guarantor, upon any account whatsoever, to any claim that Lender may now or hereafter have against Guarantor. In the event of insolvency and consequent liquidation of the assets of Guarantor, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Guarantor applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the Loan. Guarantor does hereby assign to Lender all claims which it may have or acquire against Guarantor or against any assignee or trustee in bankruptcy of Guarantor; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the Loan. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Guarantor to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the

laws of the State of South Carolina without regard to its conflicts of law provisions.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Guaranty shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Unless otherwise provided or required by law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

Interpretation. In all cases where there is more than one Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Guarantor named in this Guaranty or when this Guaranty is executed by more than one , the words "Guarantor" shall mean all and any one or more of them. Reference to the phrase "Guarantor" includes the heirs, successors, assigns, and transferees of each of them.

Severability. If a court of competent jurisdiction finds any provision of this Guaranty to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Guaranty. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Guaranty shall not affect the legality, validity or enforceability of any other provision of this Guaranty.

Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Guarantor, Lender, without notice to Guarantor, may deal with Guarantor's successors with reference to this Guaranty and the Loan by way of forbearance or extension without releasing Guarantor from the obligations of this Guaranty or liability under the Loan.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means Old Towne Suites, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Guarantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Guaranty.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation Old Towne Suites, LLC, and in each case, any signer's successors and assigns.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Lender. The word "Lender" means SOUTHCOAST COMMUNITY BANK, its successors and assigns.

Loan. The word "Loan" means the loan made to Guarantor under the Construction Loan Agreement and the Loan Documents as described below.

Note. The word "Note" means the Note dated November 21, 2014 and executed by Old Towne Suites, LLC in the principal amount of $1,800,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Plans and Specifications. The words "Plans and Specifications" mean the plans and specifications for the Project which have been submitted to and initialed by Lender, together with such changes and additions as may be approved by Lender in writing.

Project. The word "Project" means the construction, renovation, or other work on the Improvements as set forth in the Plans and Specifications.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED NOVEMBER 21, 2014.

NOTICE CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVE(S) AND RELINQUISH(ES) THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

GUARANTOR:

OLD TOWNE SUITES, LLC

By: _____
Athanasios Fokas, Authorized Member of Old Towne Suites, LLC

By: _____
Iakovos S Ferderigos, Authorized Member of Old Towne Suites, LLC

LENDER:

SOUTHCOAST COMMUNITY BANK

X _____
Authorized Signer

Laser Pro, Ver. 14.4.0.021 Copr. CH USA Corporation 1997, 2014. All Rights Reserved. - SC C:\PROSUITE\CFI\LPL\G14.FC TR-7518 PR-13

0235

COMMERCIAL SECURITY AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$1,800,000.00	11-21-2014	12-01-2020	03400007519		34000	***	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "***" has been omitted due to text length limitations.

Grantor: Old Towne Suites, LLC
229 King Street
Charleston, SC 29401

Lender: SOUTHCOAST COMMUNITY BANK
Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464
(843) 884-0504

THIS COMMERCIAL SECURITY AGREEMENT dated November 21, 2014, is made and executed between Old Towne Suites, LLC ("Grantor") and SOUTHCOAST COMMUNITY BANK ("Lender").

GRANT OF SECURITY INTEREST. For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the payment of the Indebtedness and performance of all other obligations under the Note and this Agreement:

All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

(A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later.

(B) All products and produce of any of the property described in this Collateral section.

(C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.

(D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.

(E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Perfection of Security Interest. Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender.

Notices to Lender. Grantor will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the management or in the members or managers of the limited liability company Grantor; (4) change in the authorized signer(s); (5) change in Grantor's principal office address; (6) change in Grantor's state of organization; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name or state of organization will take effect until after Lender has received notice.

No Violation. The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its membership agreement does not prohibit any term or condition of this Agreement.

Enforceability of Collateral. To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Lender, the account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor, for merchandise held subject to delivery instructions or previously shipped or delivered pursuant to a contract of sale, or for services previously performed by Grantor with or for the account debtor. So long as this Agreement remains in effect, Grantor shall not, without Lender's prior written consent, compromise, settle, adjust, or extend payment under or with regard to any such Accounts. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

Location of the Collateral. Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

Removal of the Collateral. Except in the ordinary course of Grantor's business, including the sales of inventory, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. To the extent that the Collateral consists of vehicles, or other titled property, Grantor shall not take or permit any action which would require application for certificates of title for the vehicles outside the State of South Carolina, without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

Transactions Involving Collateral. Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as

otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While Grantor is not in default under this Agreement, Grantor may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Grantor's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

Title. Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

Repairs and Maintenance. Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

Inspection of Collateral. Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

Taxes, Assessments and Liens. Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the Indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, reasonable attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

Compliance with Governmental Requirements. Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, including without limitation all environmental laws, ordinances, rules and regulations, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

Hazardous Substances. Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the Indebtedness and the satisfaction of this Agreement.

Maintenance of Casualty Insurance. Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

Application of Insurance Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Collateral if the estimated cost of repair or replacement exceeds $5,000.00, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

Insurance Reserves. Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

Insurance Reports. Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. This includes making sure Lender is shown as the first and only security interest holder on the title covering the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. Grantor will promptly notify Lender of any change to Grantor's name or the name of any individual Grantor, any individual who is a partner for a Grantor, and any individual who is a trustee or settlor or trustor for a Grantor under this Agreement. Grantor will also promptly notify Lender of any change to the name that appears on the most recently issued, unexpired driver's license or state-issued identification card, any expiration of the most recently issued driver's license or state-issued identification card for Grantor or any individual for whom Grantor is required to provide notice regarding name changes.

GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS. Until default and except as otherwise provided below with respect to accounts, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified by Lender, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for

application to the Indebtedness. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Indebtedness.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default in Favor of Third Parties. Any guarantor or Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of any guarantor's or Grantor's property or ability to perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution of Grantor (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or Guarantor dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Grantor demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the South Carolina Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

Accelerate Indebtedness. Lender may declare the entire Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

Assemble Collateral. Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

Sell the Collateral. Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Collect Revenues, Apply Accounts. Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

Obtain Deficiency. If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

Other Rights and Remedies. Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court. This Agreement also secures all of these amounts.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of South Carolina.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

Borrower. The word "Borrower" means Old Towne Suites, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation 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 and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word "Grantor" means Old Towne Suites, LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the Indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means SOUTHCOAST COMMUNITY BANK, its successors and assigns.

Note. The word "Note" means the Note dated November 21, 2014 and executed by Old Towne Suites, LLC in the principal amount of $1,800,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED NOVEMBER 21, 2014.

GRANTOR:

OLD TOWNE SUITES, LLC

By: _____
Athanasios Fokas, Authorized Member of Old Towne Suites, LLC

By: _____
Iakovos S. Ferderigos, Authorized Member of Old Towne Suites, LLC

LaserPro, Ver. 15.1.0.010 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - CO C:\WINNCO\CFI\LPL\G14.FC TR-5115 PR-13

WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

0460

HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT

THIS HAZARDOUS SUBSTANCES AGREEMENT dated November 21, 2014, is made and executed among Old Towne Suites, LLC, whose address is 229 King Street, Charleston, SC 29401 (sometimes referred to below as "Borrower" and sometimes as "Indemnitor"); Athanasios Fokas, whose address is 229 King Street, Charleston, SC 29401 and Iakovos S Ferderigos, whose address is 229 King Street, Charleston, SC 29401 (sometimes referred to below as "Guarantor" and sometimes as "Indemnitor"); and SOUTHCOAST COMMUNITY BANK, Commercial Lending, 530 Johnnie Dodds, Mt. Pleasant, SC 29464 (referred to below as "Lender"). For good and valuable consideration and to induce Lender to make a loan to Borrower, each party executing this Agreement hereby represents and agrees with Lender as follows:

PROPERTY DESCRIPTION. The word "Property" as used in this Agreement means the following Real Property located in Charleston County, State of South Carolina:

See Exhibit A, which is attached to this Agreement and made a part of this Agreement as if fully set forth herein.

The Real Property or its address is commonly known as 229 King Street, Charleston, SC 29401. The Real Property tax identification number is 457-08-01-063.

REPRESENTATIONS. The following representations are made to Lender, subject to disclosures made and accepted by Lender in writing:

Use of Property. After due inquiry and investigation, Indemnitor has no knowledge, or reason to believe, that there has been any use, generation, manufacture, storage, treatment, refinement, transportation, disposal, release, or threatened release of any Hazardous Substances by any person on, under, or about the Property.

Hazardous Substances. After due inquiry and investigation, Indemnitor has no knowledge, or reason to believe, that the Property, whenever and whether owned by previous Occupants, has ever contained asbestos, PCBs, lead paints or other Hazardous Substances, whether used in construction or stored on the Property.

No Notices. Indemnitor has received no summons, citation, directive, letter or other communication, written or oral, from any agency or department of any county or state or the U.S. Government concerning any intentional or unintentional action or omission on, under, or about the Property which has resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into any waters, ambient air or onto any lands or where damage may have resulted to the lands, waters, fish, shellfish, wildlife, biota, air or other natural resources.

AFFIRMATIVE COVENANTS. Indemnitor covenants with Lender as follows:

Use of Property. Indemnitor will not use and does not intend to use the Property to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances, PCBs, lead paint or asbestos.

Compliance with Environmental Laws. Indemnitor shall cause the Property and the operations conducted on it to comply with any and all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws and shall obtain, keep in effect and comply with all governmental permits and authorizations required by Environmental Laws with respect to such Property or operations. Indemnitor shall furnish Lender with copies of all such permits and authorizations and any amendments or renewals of them and shall notify Lender of any expiration or revocation of such permits or authorizations.

Preventive, Investigatory and Remedial Action. Indemnitor shall exercise extreme care in handling Hazardous Substances if Indemnitor uses or encounters any. Indemnitor, at Indemnitor's expense, shall undertake any and all preventive, investigatory or remedial action (including emergency response, removal, containment and other remedial action) (a) required by any applicable Environmental Laws or orders by any governmental authority having jurisdiction under Environmental Laws, or (b) necessary to prevent or minimize property damage (including damage to Occupant's own property), personal injury or damage to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or operations of any Occupant on the Property. In the

event Indemnitor fails to perform any of Indemnitor's obligations under this section of the Agreement, Lender may (but shall not be required to) perform such obligations at Indemnitor's expense. All such costs and expenses incurred by Lender under this section and otherwise under this Agreement shall be reimbursed by Indemnitor to Lender upon demand with interest at the Note default rate, or in the absence of a default rate, at the Note interest rate. Lender and Indemnitor intend that Lender shall have full recourse to Indemnitor for any sum at any time due to Lender under this Agreement. In performing any such obligations of Indemnitor, Lender shall at all times be deemed to be the agent of Indemnitor and shall not by reason of such performance be deemed to be assuming any responsibility of Indemnitor under any Environmental Law or to any third party. Indemnitor hereby irrevocably appoints Lender as Indemnitor's attorney-in-fact with full power to perform such of Indemnitor's obligations under this section of the Agreement as Lender deems necessary and appropriate.

Notices. Indemnitor shall immediately notify Lender upon becoming aware of any of the following:

(1) Any spill, release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations if such spill, release or disposal must be reported to any governmental authority under applicable Environmental Laws.

(2) Any contamination, or imminent threat of contamination, of the Property by Hazardous Substances, or any violation of Environmental Laws in connection with the Property or the operations conducted on the Property.

(3) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted on the Property.

(4) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations conducted on the Property.

(5) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent Lender cause to be concerned that the value of Lender's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Indemnitor's ability to perform any of its obligations under this Agreement when such performance is due.

Access to Records. Indemnitor shall deliver to Lender, at Lender's request, copies of any and all documents in Indemnitor's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property and the operations conducted on the Property, including without limitation results of laboratory analyses, site assessments or studies, environmental audit reports and other consultants' studies and reports.

Inspections. Lender reserves the right to inspect and investigate the Property and operations on it at any time and from time to time, and Indemnitor shall cooperate fully with Lender in such inspection and investigations. If Lender at any time has reason to believe that Indemnitor or any Occupants of the Property are not complying with all applicable Environmental Laws or with the requirements of this Agreement or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, Lender may require Indemnitor to furnish Lender at Indemnitor's expense an environmental audit or a site assessment with respect to the matters of concern to Lender. Such audit or assessment shall be performed by a qualified consultant approved by Lender. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to any Indemnitor or to any other person.

INDEMNITOR'S WAIVER AND INDEMNIFICATION. Indemnitor hereby agrees to and shall indemnify, defend, and hold harmless Lender and Lender's officers, directors, employees and agents, and Lender's successors and assigns and their officers, directors, employees and agents from and against any and all claims, demands, losses, liabilities, costs, fines, penalties and expenses (including without limitation attorneys' fees at trial and on any appeal or petition for review, consultants' fees, remedial action costs, natural resource damages and diminution in value) incurred by such person (a) arising out of or relating to any investigatory or remedial action involving the Property, the operations conducted on the Property, or any other operations of Indemnitor or any Occupant and required by Environmental Laws or by orders of any governmental authority having jurisdiction under any Environmental Laws, including without limitation any natural resource damages, or (b) arising out of or related to any noncompliance with or violation of Environmental Laws or any applicable permits or approvals, or (c) on account of injury to Lender or any person whatsoever or damage to any property arising out of, in connection with, or in any way relating to (i) the breach of any covenant, representation or warranty contained in this Agreement, (ii) the violation of any Environmental Laws, permits, authorizations or approvals, (iii) the use, treatment, storage, generation, manufacture, transport, release, spill, disposal or other handling of Hazardous Substances on the Property, or (iv) the contamination of any of the Property by, or the presence, release or threatened release of, Hazardous Substances by any means whatsoever (explicitly including without limitation any presently existing contamination of the Property, whether or not previously disclosed to Lender), or (d) pursuant to this Agreement. Indemnitor's obligations under this section shall survive the termination of this Agreement and as set forth below in the Survival section. In addition to this indemnity, Indemnitor hereby releases and waives all present and future claims against Lender for indemnity or contribution in the event Indemnitor becomes liable for cleanup or other costs under any Environmental Laws.

PAYMENT; FULL RECOURSE TO INDEMNITOR. Indemnitor intends that Lender shall have full recourse to Indemnitor for Indemnitor's obligations under this Agreement as they become due to Lender. Such liabilities, losses, claims, damages and expenses shall be reimbursable to Lender as Lender's obligations to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Indemnitor shall pay such liability, losses, claims, damages and expenses to Lender as so incurred within thirty (30) days after written notice from Lender. Lender's notice shall contain a brief itemization of the amounts incurred to the date of such notice. In addition to any remedy available for failure to pay periodically such amounts, such amounts shall thereafter bear interest at the Note default rate, or in the absence of a default rate, at the Note interest rate.

SURVIVAL. The covenants contained in this Agreement shall survive (A) the repayment of the Indebtedness, (B) any foreclosure, whether judicial or nonjudicial, of the Property, and (C) any delivery of a deed in lieu of foreclosure to Lender or any successor of Lender. The covenants contained in this Agreement shall be for the benefit of Lender and any successor to Lender, as holder of any security interest in the Property or the Indebtedness secured thereby, or as owner of the Property following foreclosure or the delivery of a deed in lieu of foreclosure.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time

for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the Indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Indemnitor also will pay any court costs, in addition to all other sums provided by law.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of South Carolina.

Joint and Several Liability. All obligations of Indemnitor under this Agreement shall be joint and several, and all references to Indemnitor shall mean each and every Indemnitor. This means that each Indemnitor signing below is responsible for all obligations in this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Indemnitor, shall constitute a waiver of any of Lender's rights or of any of Indemnitor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender. Indemnitor hereby waives notice of acceptance of this Agreement by Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Indemnitor agrees to keep Lender informed at all times of Indemnitor's current address. Unless otherwise provided or required by law, if there is more than one Indemnitor, any notice given by Lender to any Indemnitor is deemed to be notice given to all Indemnitors.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Indemnitor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Indemnitor, Lender, without notice to Indemnitor, may deal with Indemnitor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Indemnitor from the obligations of this Agreement or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Hazardous Substances Agreement, as this Hazardous Substances Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Hazardous Substances Agreement from time to time.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation 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 and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Indemnitor's obligations or expenses incurred by Lender to enforce Indemnitor's obligations under this Agreement, together with interest on such amounts as provided in this Agreement.

Lender. The word "Lender" means SOUTHCOAST COMMUNITY BANK, its successors and assigns.

Note. The word "Note" means the Note dated November 21, 2014 and executed by Old Towne Suites, LLC in the principal amount of $1,800,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Occupant. The word "Occupant" means individually and collectively all persons or entities occupying or utilizing the Property, whether as owner, tenant, operator or other occupant.

Property. The word "Property" means all of Indemnitor's right, title and interest in and to all the Property as described in the "Property Description" section of this Agreement.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH AGREES TO ITS TERMS. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS AGREEMENT EFFECTIVE. THIS AGREEMENT IS DATED NOVEMBER 21, 2014.

BORROWER:

OLD TOWNE SUITES, LLC

By: _____
Athanasios Fokas, Authorized Member of Old Towne Suites, LLC

By: _____
Iakovos S Ferderigos, Authorized Member of Old Towne Suites, LLC

Signed, acknowledged and delivered in the presence of:

X _____
Witness

X _____
Witness

GUARANTOR:

X _____
Athanasios Fokas, Individually

X _____
Iakovos S Ferderigos, Individually

Signed, acknowledged and delivered in the presence of:

X _____
Witness

X _____
Witness

LENDER:

SOUTHCOAST COMMUNITY BANK

X _____
Authorized Signer

Signed, acknowledged and delivered in the presence of:

X _____
Witness

X _____
Witness

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Agreement for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

_____ (Witness)

SWORN to before me this _____

day of _____, A.D. 20_____.

_____ (Seal)
Notary Public

My Commission expires: _____

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Agreement for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

_____ (Witness)

SWORN to before me this _____

day of _____, A.D. 20_____.

_____ (Seal)
Notary Public

My Commission expires: _____

LENDER ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

PERSONALLY appeared before me and made oath that he or she saw the within-named authorized agent for SOUTHCOAST COMMUNITY BANK , sign, seal, and, as his or her act and deed, deliver the within-written Agreement for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

_____ (Witness)

SWORN to before me this _____

day of _____, A.D. 20_____.

_____ (Seal)
Notary Public

My Commission expires: _____

LaserPro, Ver. 14.4.0.024 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - SC C:\PROSUITE\CFI\LPL\G210.FC TR-7519 PR-13

TAX RECORD

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$1,800,000.00	11-21-2014	12-01-2020	03400007819		34000	***	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "***" has been omitted due to text length limitations.

Borrower: Old Towne Suites, LLC
229 King Street
Charleston, SC 29401

Lender: SOUTHCOAST COMMUNITY BANK
Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464
(843) 884-8504

Loan #: _____
Taxes Listed in the name of: _____
Borrower's Name(s): _____
Property Address: _____
Mailing Address: _____

TAXING AUTHORITY

County: _____ Next Due Date: _____ Date Paid Through: _____
Amount Due: $_____ Amount of Taxes for Following Year: $_____

Taxes are Payable:
( ) Annually ( ) Semi-Annually ( ) Quarterly

Taxes for the Current Year are based on:
( ) Acreage ( ) Vacant Lot ( ) Partial Construction ( ) Complete Construction

TAX DESCRIPTION

Parcel ID / TMS #: _____ Township: _____
Lot: _____ Block: _____ Subdivision: _____

SPECIAL ASSESSMENTS - NO ESCROW TO BE SET UP FOR PAYMENT OF ASSESSMENTS WITHOUT PRIOR APPROVAL OF LENDER

Public Service District: _____ Amount: _____
Sewer: _____ Amount: _____
Street Paving: _____ Amount: _____
Other Assessment: _____ Amount: _____

Assessments due: ( ) Annually ( ) Semi-Annually ( ) Quarterly

This Information is Certified By: _____
Signature of Closing Attorney: _____
Date Loan Closed: _____

INSTRUCTION FOR COMPLETION OF TAX RECORD

1. Tax Description must be exactly as shown on tax records
2. Assessments should be shown only if to be paid from escrow.
3. City taxing authority to be shown only if city taxes are to be paid.
4. Tax bills are obtained from information on this form. All information must be completed in full.

LaserPro, Ver. 15.4.0.014 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - SC C:\CFI\LPL\G201.FC TR-510 PR-13

EXHIBIT

0035

AGREEMENT TO PROVIDE INSURANCE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$1,800,000.00	11-21-2014	12-01-2020	03400007519		34000	***	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "***" has been omitted due to text length limitations.

Grantor: Old Towne Suites, LLC
229 King Street
Charleston, SC 29401

Lender: SOUTHCOAST COMMUNITY BANK
Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464
(843)-884-0504

INSURANCE REQUIREMENTS. Grantor, Old Towne Suites, LLC ("Grantor"), understands that insurance coverage is required in connection with the extending of a loan or the providing of other financial accommodations to Grantor by Lender. These requirements are set forth in the security documents for the loan. The following minimum insurance coverages must be provided on the following described collateral (the "Collateral"):

Collateral: All Inventory, Equipment, Fixtures, Timber and Minerals, Oil and Gas.
Type: All risks, including fire, theft and liability.
Amount: Full Insurable Value.
Basis: Replacement value.
Endorsements: Lender loss payable clause with stipulation that coverage will not be cancelled or diminished without a minimum of 30 days prior written notice to Lender.
Deductibles: $1,000.00.
Latest Delivery Date: By the loan closing date.

INSURANCE COMPANY. Grantor may obtain insurance from any insurance company Grantor may choose that is reasonably acceptable to Lender. Grantor understands that credit may not be denied solely because insurance was not purchased through Lender.

FAILURE TO PROVIDE INSURANCE. Grantor agrees to deliver to Lender, on the latest delivery date stated above, proof of the required insurance as provided above, with an effective date of November 21, 2014, or earlier. Grantor acknowledges and agrees that if Grantor fails to provide any required insurance or fails to continue such insurance in force, Lender may do so at Grantor's expense as provided in the applicable security document. The cost of any such insurance, at the option of Lender, shall be added to the indebtedness as provided in the security document. GRANTOR ACKNOWLEDGES THAT IF LENDER SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE WILL PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO AN AMOUNT EQUAL TO THE LESSER OF (1) THE UNPAID BALANCE OF THE DEBT, EXCLUDING ANY UNEARNED FINANCE CHARGES, OR (2) THE VALUE OF THE COLLATERAL; HOWEVER, GRANTOR'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

AUTHORIZATION. For purposes of insurance coverage on the Collateral, Grantor authorizes Lender to provide to any person (including any insurance agent or company) all information Lender deems appropriate, whether regarding the Collateral, the loan or other financial accommodations, or both.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT TO PROVIDE INSURANCE AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED NOVEMBER 21, 2014.

GRANTOR:

OLD TOWNE SUITES, LLC

By: _____
Athanasios Fokas, Authorized Member of Old Towne Suites, LLC

By: _____
Iakovos S Ferderigos, Authorized Member of Old Towne Suites, LLC

FOR LENDER USE ONLY
INSURANCE VERIFICATION

DATE: _____ PHONE _____

AGENT'S NAME: _____

AGENCY: _____

ADDRESS: _____

INSURANCE COMPANY: _____

POLICY NUMBER: _____

EFFECTIVE DATES: _____

COMMENTS: _____

LaserPro, Ver. 14.4.0.025 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - SC C:\PROSUITE\CFILPL\G10.FC TR-7518 PR-12

0825

NOTICE OF INSURANCE REQUIREMENTS

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
	11-21-2014		03400007519		34000		

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Grantor: Old Towne Suites, LLC
229 King Street
Charleston, SC 29401

Lender: SOUTHCOAST COMMUNITY BANK
Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464
(843) 884-0504

TO: ATTN: Insurance Agent

DATE: November 21, 2014

RE: Policy Number(s):
Insurance Companies/Company:

Dear Insurance Agent:

Grantor, Old Towne Suites, LLC ("Grantor") is obtaining a loan from SOUTHCOAST COMMUNITY BANK. Please send appropriate evidence of insurance to SOUTHCOAST COMMUNITY BANK, together with the requested endorsements, on the following property, which Grantor is giving as security for the loan.

Collateral: All Inventory, Equipment, Fixtures, Timber and Minerals, Oil and Gas.
Type: All risks, including fire, theft and liability.
Amount: Full Insurable Value.
Basis: Replacement value.
Endorsements: Lender loss payable clause with stipulation that coverage will not be cancelled or diminished without a minimum of 30 days prior written notice to Lender.
Deductibles: $1,000.00.
Latest Delivery Date: By the loan closing date.

GRANTOR:

OLD TOWNE SUITES, LLC

By: _____
Athanasios Fokas, Authorized Member of Old Towne Suites, LLC

By: _____
Iakovos S Ferderigos, Authorized Member of Old Towne Suites, LLC

RETURN TO:

Commercial Lending
530 Johnnie Dodds
Mt. Pleasant, SC 29464

LaserPro, Ver. 14.10.021 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved. - SC
C:\PROSUITE\CFI\LPL\I1.FC TR-7419 PR-13

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME
Old Towne Suites, LLC

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:
☒ covers timber to be cut ☒ covers as-extracted collateral ☒ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

RE: Old Town

Amy Haines <amy.haineslawfirm@gmail.com> Fri, Nov 21, 2014 at 2:10 PM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>, Spiros Ferderigos <spirosferderigos@gmail.com>
Cc: Athan Fokas <fokasa@bellsouth.net>, Athan Fokas <athanfokas@gmail.com>, iakovosstavros@gmail.com

Nothing in the documents I have makes you personally liable for the debt. The note is in the llc's name. Only the LLC assets and the property by virtue of the mortgage are at risk, assuming the llc corporate veil could not be pierced for some reason.

That said, I understand you do not agree to the LLC being the borrower or I would assume the guarantor.

Other than the resolution and the settlement statement, Southcoast generates the documents sent, so Southcoast will need to be the one to work with on this.

Thanks,

Amy

HAINES LAW FIRM

800 Johnnie Dodds Blvd.

Mt. Pleasant, SC 29464

Phone: (843) 884-1593 x203

Fax: (843) 284-0417

Please be aware that funds brought to a real estate closing in excess of $1000 should be in the form of a wire. If you cannot wire funds, please contact us in advance so alternate arrangements can be made. PLEASE CALL TO CONFIRM WIRING INSTRUCTIONS WITH OUR OFFICE BEFORE WIRING.

CONFIDENTIALITY NOTICE: This e-mail and any files attached to it are confidential and may contain information which is privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message from your computer. Any other use, retention, dissemination, forwarding, [illegible] this e-mail is strictly prohibited.

IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended

EXHIBIT tabbies O

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

RE: Old Town

Athan Fokas <fokasa@bellsouth.net>. Fri, Nov 21, 2014 at 3:07 PM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: Spiros Ferderigos <spirosferderigos@gmail.com>, Athan Fokas <athanfokas@gmail.com>, "<lakovosstavros@gmail.com>" <lakovosstavros@gmail.com>

The bottom line is that the Old Towne Suites LLC on the note, that only Jacob and I are signing on as members, has nothing to do with the payment of the loan. If payments aren't paid then the bank goes after the building regardless if the Old Towne Suites LLC is on the note. Maybe a hard headed Greek wouldn't get that but it's common sense otherwise.
And if you are requiring me to sign a document saying that I will give up interest if payments are not made, common sense says that all parties should do the same.
Maybe we can talk about the specifics over Thanksgiving while playing a game of chess. Ha! Ha!

Sent from my IPhone

On Nov 21, 2014, at 2:48 PM, Phillip Ferderigos <pferderigos@barnwell-whaley.com> wrote:

> This is not humorous to me. I take this very seriously. I wish you would to...
>
> Phillip S. Ferderigos, Esq.
>
> Member
>
> <image001.jpg>
>
> [Quoted text hidden]
> [Quoted text hidden]

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

RE: Old Town

Phillip Ferderigos <pferderigos@barnwell-whaley.com> Fri, Nov 21, 2014 at 1:54 PM
To: Amy Haines <amy.haineslawfirm@gmail.com>
Cc: Teri Baker <teri.haineslawfirm@gmail.com>, Athan Fokas <fokasa@bellsouth.net>, Athan Fokas <athanfokas@gmail.com>, lakovosstavros@gmail.com, Spiros Ferderigos <spirosferderigos@gmail.com>

I have been in a meeting, after looking at all of the email from everyone, it is clear that the bank has not been advised how to do the particulars correctly and this can not be rushed. Closing is off for today. If the docs can be fixed and all side agreements agreed to, then we can re-visit at that time.

Please call if you would like to discuss. Thanks, Phillip.

Phillip S. Ferderigos, Esq.

Member

BARNWELL WHALEY PATTERSON & HELMS LLC 75 YEARS

288 Meeting St., Ste 200 (29401)

PO Drawer H

Charleston, SC 29402

Phone: (843) 577-7700

Facsimile: (843) 577-7708

Email: pferderigos@barnwell-whaley.com

EXHIBIT P

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Current Suites report

Athan Fokas <athanfokas@gmail.com> Fri, Nov 21, 2014 at 5:57 PM
To: Athan Fokas <fokasa@bellsouth.net>
Cc: Phillip Ferderigos <pferderigos@barnwell-whaley.com>, Spiros Ferderigos <spirosferderigos@gmail.com>, "<lakovosstavros@gmail.com>" <lakovosstavros@gmail.com>

I did some checking since Spiro said the suites are not doing that good in December. Quite the contrary December is a last minute booking month and this year so far we have booked 21 days of units compared to 22 days of units booked total last year. We still have 41 days of unbooked booked units so I project that we will definitely exceed last years December numbers. In August we were up 43% over last year, September 18% over last year, October was even bringing in $13441.00, and November is up 11% over last year. We have already had some crazy expensive bookings for next year that peak at $624.60 per night and one family booked 15 days straight in May for a whopping $7580.00 reservation. All in all we are continuing great growth and demand as we have repeat's and word of mouth spreads.

I think it's best to think of the big picture of this new project which will put us in a boutique hotel category and forget about stupid details that carry no wait in the big picture. Comments like when I asked what side agreement and Phillip responds "it's going to cost you big if you don't pay" is just ego's blowing smoke. You guys recommended that I show it to my attorney and you didn't like his response. At first he told me "I would never tell my clients to ever sign anything like this". I convinced him it's ok because I love the chance to own more percentage if possible. Do you imagine the imbalance of power that I would have owning more than 50%? I could make every decision and not tell any of you what I did. Not really an ideal situation for a family that started out 50/50. It's ego's trying to get an upper hand on the other. Currently we all need loans to get this deal done. On April 1, I'm getting paid 3.5 million for a transaction I created long ago in which I have less then $800,000.00 invested in. I then plan to pay off my debt in full.

In the end the building is what the bank wants and none of these side agreements really matter. I suggest you forget your agreement and I will forget mine and we move forward on a very profitable venture and get it done the way the bank allows. I am the one who has the most to loose but I don't think with my equity in three restaurant buildings and two houses in Ion that I am going to let any equity just slip away.

Sent from my iPhone

EXHIBIT
Q
1039

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Current Suites report

Phillip Ferderigos <pferderigos@barnwell-whaley.com> Fri, Nov 21, 2014 at 6:52 PM
To: Athan Fokas <athanfokas@gmail.com>
Cc: Athan Fokas <fokasa@bellsouth.net>, Spiros Ferderigos <spirosferderigos@gmail.com>, Iakovosstavros@gmail.com

Your quote of what I said is not accurate, but that's besides the point... here's a thought that we could kick around... Not an offer...If you're coming into all this money, why don't we just move forward in April and we don't even need this loan at all...at that point, it will just be Jacob that needs to get a loan, and then I'm sure that you will agree to mortgage Oldtown so he can get it...these are just thoughts, thinking out loud...

Sent from my IPhone

On Nov 21, 2014, at 5:57 PM, Athan Fokas <athanfokas@gmail.com> wrote:

I did some checking since Spiro said the suites are not doing that good in December. Quite the contrary December is a last minute booking month and this year so far we have booked 21 days of units compared to 22 days of units booked total last year. We still have 41 days of unbooked booked units so I project that we will definitely exceed last years December numbers. In August we were up 43% over last year, September 18% over last year, October was even bringing in $13441.00, and November is up 11% over last year. We have already had some crazy expensive bookings for next year that peak at $624.60 per night and one family booked 15 days straight in May for a whopping $7580.00 reservation. All in all we are continuing great growth and demand as we have repeat's and word of mouth spreads.
I think it's best to think of the big picture of this new project which will put us in a boutique hotel category and forget about stupid details that carry no wait in the big picture. Comments like when I asked what side agreement and Phillip responds "it's going to cost you big if you don't pay" is just ego's blowing smoke. You guys recommended that I show it to my attorney and you didn't like his response. At first he told me "I would never tell my clients to ever sign anything like this". I convinced him it's ok because I love the chance to own more percentage if possible. Do you imagine the imbalance of power that I would have owning more than 50%? I could make every decision and not tell any of you what I did. Not really an ideal situation for a family that started out 50/50. It's ego's trying to get an upper hand on the other. Currently we all need loans to get this deal done. On April 1, I'm getting paid 3.5 million for a transaction I created long ago in which I have less then $800,000.00 invested in. I then plan to pay off my debt in full.
In the end the building is what the bank wants and none of these side agreements really matter. I suggest you forget your agreement and I will forget mine and we move forward on a very profitable venture and get it done the way the bank allows. I am the one who has the most to loose but I don't think with my equity in three restaurant buildings and two houses in Jon that I am going to let any equity just slip away.

Sent from my IPhone

EXHIBIT
R
1040

Gmail by Google

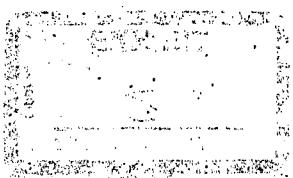
spiros ferderigos <spirosferderigos@gmail.com>

Current Suites report

Spiros Ferderigos <spirosferderigos@gmail.com> Fri, Nov 21, 2014 at 6:57 PM
To: Phillip Ferderigos <pferderigos@bamwell-whaley.com>
Cc: Athan Fokas <athanfokas@gmail.com>, Athan Fokas <fokasa@bellsouth.net>, "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>

That's a great idea. I should have no problem getting my own loan. We will all have our money ready to go and then collateral OT for Jacobs 350k and knock it out if all goes as planned.

Sent from my iPhone



1041

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Current Suites report

Phillip Ferderigos <pferderigos@barnwell-whaley.com> Fri, Nov 21, 2014 at 7:00 PM
To: Athan Fokas <athanfokas@gmail.com>
Cc: Athan Fokas <fokasa@bellsouth.net>, Spiros Ferderigos <spirosferderigos@gmail.com>, iakovosstavros@gmail.com

Forget your bank, I have my bank...I think we should be fine, I like the idea...Athan, what do you say? You just bring to the table the cash that you need to bring...and agree to use old town as collateral for Jacob...Again, not an offer, just feeling out the situation to see if something like that is possible...

Sent from my iPhone

On Nov 21, 2014, at 6:57 PM, Athan Fokas <athanfokas@gmail.com> wrote:

> I'm not interested on funding anything more than my percentage as I have big plans for the rest. The bank will not just hang around for 8 months.
>
> Sent from my iPhone

Current Suites report

Spiros Ferderigos <spirosferderigos@gmail.com> Fri, Nov 21, 2014 at 7:02 PM
To: Athan Fokas <athanfokas@gmail.com>
Cc: Phillip Ferderigos <pferderigos@bamwell-whaley.com>, Athan Fokas <fokasa@bellsouth.net>, "<lakovosstavros@gmail.com>" <lakovosstavros@gmail.com>

Just fund your percentage. You aren't giving anything other than collateralizing your interest in old Towne for Jacob which doesn't cost anything. Only loan hanging out there would be Jacobs for 350. Much better than a 2 million dollar loan. Sounds like a win for everyone. You would not be on any loan at all. Just paying your percentage. I think we should explore this before moving forward on a huge loan.

Sent from my IPhone

On Nov 21, 2014, at 6:57 PM, Athan Fokas <athanfokas@gmail.com> wrote:

> I'm not interested on funding anything more than my percentage as I have big plans for the rest. The bank will not just hang around for 8 months.
>
> Sent from my IPhone

Gmail

spiros ferderigos <spirosferderigos@gmail.com>

Current Suites report

Phillip Ferderigos <pferderigos@barnwell-whaley.com>
To: Spiros Ferderigos <spirosferderigos@gmail.com>
Cc: Athan Fokas <athanfokas@gmail.com>, Athan Fokas <fokasa@bellsouth.net>, lakovosalavros@gmail.com

Fri, Nov 21, 2014 at 7:03 PM

I agree, this is certainly something we should explore...

Sent from my iPhone

On Nov 21,, 2014, at 7:02 PM, Spiros Ferderigos <spirosferderigos@gmail.com> wrote:

> Just fund your percentage. You aren't giving anything other than collateralizing your interest in old Towne for Jacob which doesn't cost anything. Only loan hanging out there would be Jacobs for 350. Much better than a 2 million dollar loan. Sounds like a win for everyone. You would not be on any loan at all. Just paying your percentage. I think we should explore this before moving forward on a huge loan.
>
> Sent from my iPhone

Gmail

spiros ferderigos <spirosferderigos@gmail.com>

Current Suites report

Spiros Ferderigos <spirosferderigos@gmail.com>
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: Athan Fokas <athanfokas@gmail.com>, Athan Fokas <fokasa@bellsouth.net>, "<lakovosstavros@gmail.com>" <lakovosstavros@gmail.com>

Fri, Nov 21, 2014 at

It just protects everyone's property interest in 229 king if we have a 350 k loan instead of 1.8 million loan. Why risk that huge loan if we don't have to?

Sent from my IPhone

Gmail

spiros ferderigos <spirosferderigos@gmail.com>

Current Suites report

Philip Ferderigos <pferderigos@banwell-whaley.com>
To: Spiros Ferderigos <spirosferderigos@gmail.com>
Cc: Athan Fokas <athanfokas@gmail.com>, Athan Fokas <fokasa@bellsouth.net>, lakovosstavros@gmail.com

Fri, M

Spiro, you are making a lot of sense, Athan, what do you think?

Current Suites report

spiros ferderigos <spirosferderigos@gmail.com>

Phillip Ferderigos <pferderigos@barnwell-whaley.com>
To: Athan Fokas <fokasa@bellsouth.net>
Cc: Spiros Ferderigos <spirosferderigos@gmail.com>, iakovosstavros@gmail.com

Fri, Nov 21, 2014 at 8:25 PM

Not much I can say to that. I am honored to be in the presence of such wealthy royalty... Once you're done drinking and you sober up, if you want to talk like an adult, then maybe we can chat tomorrow... Have a fun time tonight...

Sent from my iPhone

On Nov 21, 2014, at 7:24 PM, Athan Fokas <fokasa@bellsouth.net> wrote:

> I'm at a swanky dinner now and half drunk but by then I will be n the money and not interested in an ventures but my own. I'm also working on a deal where I get 25% of $100,000,000.00 for just being an expert consultant. I hang out with the ultra wealthy now and play their games.
>
> Sent from my iPhone
>
> On Nov 21, 2014, at 7:19 PM, Phillip Ferderigos <pferderigos@barnwell-whaley.com> wrote:
>
> > Spiro, you are making a lot of sense, Athan, what do you think?
> >
> > Sent from my iPhone

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 1:55 PM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>

Oh it has been a pleasure to say the least. I'm also done with paying your half of the food you so dearly like to eat at Old Towne weekly on my dime. If you don't pay your portion to me then Jacob will have to. All management will be put on notice.

Sent from my iPhone
[Quoted text hidden]

EXHIBIT
tabbies
S

(843) 813-5612

I can't wait to spread the word that the suites multimillion dollar project couldn't get done cause Phillip can't eat for free. I'm sure everyone will find it hilarious. I'm probably doing you a favor. Smaller waist line. I bet your kids will be real proud of you in the future too. Your dad was right for calling you palabo Philipa. 4:52 PM

Tuesday, December 16, 2014

(843) 813-5612

As I was running this morning I came up with a proposal. I will agree to let you eat for free if you are out of the note and you put your 350 g's in escrow. This is because you will sign off on the mortgage without needing to. And this will take place as long as my portion of the mortgage is not paid off. If we go the other rout where we split everything 50/50 on the loan then you are signing for your own 16% interest and therefore we are even. 7:18 AM

Wednesday, December 17, 2014

(843) 813-5612

I just spoke to your dad and he doesn't think everyone should eat at Old Towne for free either. 1:45 PM

EXHIBIT

T

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 11:55 AM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>

My intent is always to pay off debt as I have extra funds available. I am interested in doing this deal now and will not do it later. When I do have my money in April I may decide to buy another building downtown but will make that decision then.

Sent from my iPhone
[Quoted text hidden]

EXHIBIT
tables
U

Gmail by Google

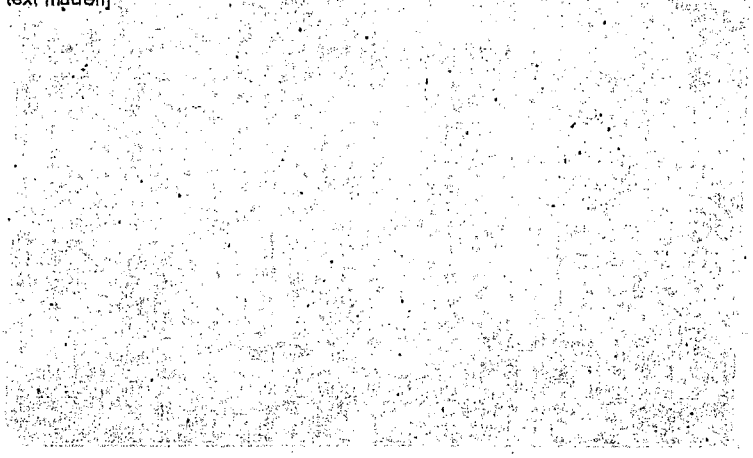
spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 1:46 PM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>

Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with the Ferderigos Family..

Sent from my iPhone
[Quoted text hidden]



(843) 813-5612

I realize that I don't have authorize to close by myself. And I don't think I ever gave that impression and everyone has been in the loop from the beginning. Jacob know's of every expenditure and he wrote most of the checks to the contractor, architects, and engineers. Once again selective amnesia and your texts to me say two different things. I would rather leave it in your hands now and keep me in the loop if and when you all are ready. We do have expenses incurred that need to be paid and we will pay they as money becomes available. 8:28 AM

(843) 813-5612

Spiro there is no bullying going on here. Just giving information of actual expenses. If you read that text above where you were cursing and told me "DO YOU UNDERSTAND" that might come across as threatening me which is defiantly un- businesslike. 8:39 AM

Spiro Cell

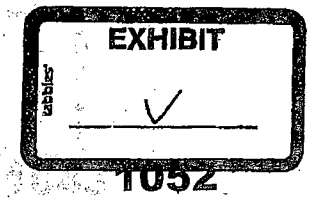
I was threatening you....that I don't do business with bullies. You couldn't just let it go. 8:47 AM

(843) 813-5612

Label as you like but everything we have done till now was agreed upon. It's in your court now. I could care less. My Zeus deal is bringing in plenty to keep my family happy. 8:50 AM

Spiro Cell

Good. I'm glad your deals are working out for you. 8:62 AM



Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Re: Final email from me regarding the closing.

Athan Fokas <fokasa@bellsouth.net> Fri, Nov 21, 2014 at 3:31 PM
To: spiros ferderigos <spirosferderigos@gmail.com>
Cc: Athan Fokas <athanfokas@gmail.com>, Jacob Ferderigos <lakovosstavros@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>

That was funny! I just found out last night what you guys wanted me to sign and my attorney instructed me what to do and you saw his letter. I like how you portray Phillip as Mother Theresa. Think about the big picture talk to the bank yourselves and get things done if you like. I have no problem signing the agreement but of course, as any business partner should, would like assurances that every party puts in what they are supposed to. If you are sending an email and asking for no reply, then I suggested that no content is put in there. Bullying is a word you like to use but the bottom line is to be fair to all parties involved and the fact that you and Phillip are not personally guaranteeing anything puts you way ahead of the rest of us in this deal.

Sent from my iPhone
[Quoted text hidden]

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Current Suites report

Athan Fokas <athanfokas@gmail.com> Fri, Nov 21, 2014 at 5:57 PM
To: Athan Fokas <fokasa@bellsouth.net>
Cc: Phillip Ferderigos <pferderigos@barnwell-whaley.com>, Spiros Ferderigos <spirosferderigos@gmail.com>, "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>

I did some checking since Spiro said the suites are not doing that good in December. Quite the contrary December is a last minute booking month and this year so far we have booked 21 days of units compared to 22 days of units booked total last year. We still have 41 days of unbooked booked units so I project that we will definitely exceed last years December numbers. In August we were up 43% over last year, September 18% over last year, October was even bringing in $13441.00, and November is up 11% over last year. We have already had some crazy expensive bookings for next year that peak at $624.60 per night and one family booked 15 days straight in May for a whopping $7580.00 reservation. All in all we are continuing great growth and demand as we have repeat's and word of mouth spreads.

I think it's best to think of the big picture of this new project which will put us in a boutique hotel category and forget about stupid details that carry no wait in the big picture. Comments like when I asked what side agreement and Phillip responds "it's going to cost you big if you don't pay" is just ego's blowing smoke. You guys recommended that I show it to my attorney and you didn't like his response. At first he told me "I would never tell my clients to ever sign anything like this". I convinced him it's ok because I love the chance to own more percentage if possible. Do you imagine the imbalance of power that I would have owning more than 50%? I could make every decision and not tell any of you what I did. Not really an ideal situation for a family that started out 50/50. It's ego's trying to get an upper hand on the other. Currently we all need loans to get this deal done. On April 1, I'm getting paid 3.5 million for a transaction I created long ago in which I have less then $800,000.00 invested in. I then plan to pay off my debt in full.

In the end the building is what the bank wants and none of these side agreements really matter. I suggest you forget your agreement and I will forget mine and we move forward on a very profitable venture and get it done the way the bank allows. I am the one who has the most to loose but I don't think with my equity in three restaurant buildings and two houses in Ion that I am going to let any equity just slip away.

Sent from my iPhone

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 10:18 AM
To: "Iakovosstavros@gmail.com" <iakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>, Phillip Ferderigos <pferderigos@bamwell-whaley.com>

I'm wondering if there is a next Ferderigos plan of action. Are ya'll contacting the bank, my attorney, and the closing attorney or are we just forgetting about it?

Sent from my iPhone

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 1:31 PM
To: Phillip Ferderigos <pferderigos@bamwell-whaley.com>
Cc: "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>

I am not asking you to do anything. The bank is requiring that all parties sign off on the mortgage. I did secure that you didn't have to personally guarantee the note. Quit trying to put yourself on a pedestal. If you want me to sign a side agreement that guarantees I will pay the note then you will sign one saying that you will come up with the money needed for construction or you shall suffer similar consequences. If you are intelligent you will already know that the money will be there with the original suites income to pay for the loan. Cut your pompous attitude and either get it done or not. We are currently paying for an expensive business risk policy, paid for a flood policy we don't need if not constructing, have been paying two months on a storage container, and prepaid our over $20,000.00 property taxes two months early in order to close. Not to mention we have over $50,000.00 already invested in this deal.

Sent from my iPhone
[Quoted text hidden]

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 1:46 PM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>

Well then it's done. I'll reverse as much as I can and just right it off as a stupid transaction dealing with the Ferderigos Family..

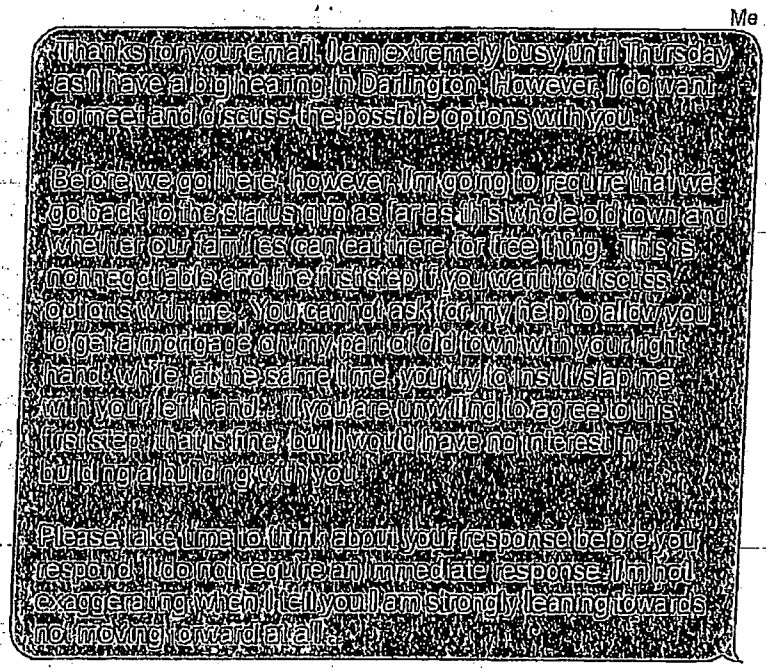
Sent from my iPhone
[Quoted text hidden]

Monday, December 15, 2014

(843) 813-5612

Cousins, we have recurring expenses that are cutting into all of our bottom lines monthly that we either need to stop spending or come to some kind of mutual agreement. A sit down sometime this week would be much appreciated. We can't continue to spend money on a business risk policy, flood policy, and storage unit if all are not necessary. 10:27 AM

Me



1:22 PM

(843) 813-5612

We can discuss all options when we meet and hopefully come to a mutual agreement. 1:22 PM

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Wed, Nov 26, 2014 at 11:46 AM
To: Spiros Ferderigos <spirosferderigos@gmail.com>
Cc: Phillip Ferderigos <pferderigos@barnwell-whaley.com>, "<iakovosstavros@gmail.com>" <iakovosstavros@gmail.com>

The irony in all this is that the son's want extra assurances that money will be paid back when the way our fathers always did it is with a hand shake. Ask your dad how many times my father loaned him money (his grocery store off America St, to buy Old Towne in 72, and to build our first apartment building in Greece) and there was no paperwork and all was paid back. In this case nobody is loaning anyone money but just a couple of hard headed kids who don't understand how family works. I don't think anybody owes anybody any money do they? I don't think anyone has any history of any money not being paid back do they?
We are all older now and our families have grown and we don't have to spend Thanksgiving together. Actually this entire deal has put such a bad taste that I dislike seeing you guys in public. Except Jacob of course. He is the only innocent one in this. Later on down the line when I'm in the money I may consider loaning Jacob the money and having a 25/75 split on the new building because I know that Jacob will pay me back and I won't need any side agreements trying to take more of his ownership if he doesn't pay. Bottom line is payments come out of profits and I know he is good for it.

Sent from my iPhone

> On Nov 24, 2014, at 2:17 PM, Spiros Ferderigos <spirosferderigos@gmail.com> wrote:
>
[Quoted text hidden]

EXHIBIT
tabbies
W

Friday, April 24, 2015

Athan Fokas

My attorney asked me to find out how much the project would have increased if it was started in a month and after a week and a half of crunching numbers this is what Kevin sent me:

Keep in mind I have good me tuning to do when you says its a go. But looks like 12.5% will be difference. This number does not include windows over allowance. The allowance was 55k and we still need to determine if glass is fire rated or if sprinklers can cover. The quote I got on fire rated was 145k so add 90k for worse case. But that is not extra due to delay. It has always been an allowance item. 10:22 AM

So 1,946,250.00 plus windows over allowance and then any / all owner items.

Athan Fokas

We figured out a way to keep you out the law suit. 1:48 PM

Friday, April 24, 2015

Athan Fokas

My attorney asked me to find out how much the project would have increased if it was started in a month and after a week and a half of crunching numbers this is what Kevin sent me:

Keep in mind I have good me tuning to do when you says its a go. But looks like 12.5% will be difference. This number does not include windows over allowance. The allowance was 55k and we still need to determine if glass is fire rated or if sprinklers can cover. The quote I got on fire rated was 145k so add 90k for worse case. But that is not extra due to delay. It has always been an allowance item. 10:22 AM

So 1,946,250.00 plus windows over allowance and then any / all owner items.

Athan Fokas

We figured out a way to keep you out the law suit. 1:48 PM

Monday, April 27, 2015

Athan Fokas

I've already applied that beer check on the owe sheet for the stuff Maki and I brought back after family cup. 6:34 PM

Jacob Ferderigos

Ok let's get it cleared up and not leave it for long periods of time. Maybe every time we exchange the books. 6:37 PM

Athan Fokas

I was going to wait after We do the food booths for the hospitals the week after Greek fest cause then we are done till September. 6:38 PM

Jacob Ferderigos

Ok 6:46 PM

Tuesday, April 28, 2015

Athan Fokas

I bought a case of hummus but only needed two tubs so I left the other two at old Towne and put on owe sheet. I also brought in 12 large throw away pans and lids for the rep deliveries I booked through Old Towne today. That's four this week that booked through Zeus. 7:55 AM

Athan Fokas

Go ahead and transfer 57000 miles out of the credit card. 8:37 AM

EXHIBIT

tabbies

X

1061

Standard Agreement
Between Owner and Contractor
A 107

For CONSTRUCTION PROJECTS OF LIMITED SCOPE where
the Basis of Payment is a STIPULATED SUM

This document includes General Conditions, A201-L, and should not be used with other general conditions.

AGREEMENT

made as of the 15th day of October in the year of Two Thousand and Fourteen.

BETWEEN the Owner: Athan Fokas, Iakovos Ferderigos
Old Town Suites
229 king street
Charleston, sc. 29401

and the Contractor: Kevin W. Carroll 1079 Harts Bluff Rd. Wadmalaw Island SC 29487

The Project is: Old Town Suites
229 King Street
Charleston, SC 29401

The Architect is: Joe Tucker
Tucker & associates
772 Gypsy Lane
Mount Pleasant, SC 29464

The Owner and Contractor agree as set forth below.

TORGO SOFTWARE www.TorgoSoftware.com ©1996-2013 ALL RIGHTS RESERVED

EXHIBIT
tabbies
Y

ARTICLE 1

THE WORK OF THIS CONTRACT

1.1 The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows.

Scope of Work: Erection of 3 story hotel suites as per drawings provided by Tucker and asscotates.Project to be completed with interior items consistant with existing suites., subsititions allowed per agreement with owner.Work Not included; Engineering,Architectural services, utilities, impact fees and/ or cost to supply. Builders Risk coverage, furnishings, Appliances, Fire protection services. Any and all Fire Protection, monitoring,alarms, sprinkler systems or life safety items. Contractor to work closely with architect, engineer, Owner to provide proper size water and sewer service as required to perform project. Including any and all impact fees and any associated cost with service.Owner / Contractor agree to an allowance on windows and window installation of $55000.00 any and all cost accosiated with window package,delivery and installation above allowance to be additional cost. Owner / Contractor agree that any substitution of material or labor withinin industry standards are allowed without written notice as long as the finished product is consistant with existing suites and allowed by code. Contractor may confir with architect and engineers for changes to ensure substitution is acceptable by the codes. Owner may request changes /aditional items to be added to contract with verbal communication, approved via email.

ARTICLE 2

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

2.1 The date of commencement is the date from which the Contract Time of Paragraph 2.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is state below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

11-3-2014

2.2 The Contractor shall achieve Substantial Completion of the entire Work no later than

Completion: 12-31-2015

Bonus for early completion: ZERO (no compensation for early delivery)

The completion date is subject to adjustments of this Contract Time as provided in the Contract Documents.

Penalty: ZERO (owner and contractor agree to no penalties for delayed completion)

ARTICLE 3

CONTRACT SUM

3.1 Subject to additions and deductions as provided in the Contract Documents, the Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract Sum of One Million, Seven Hundred Twenty Eight Thousand, Nine Hundred & no/100 Dollars ($ 1,728,900.00).

3.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

Contract is fixed price agreement, (with exclusions) Any
And all work required to meet any government, fire marshall, building official and or owner not shown in plans will be considered an additional item. If additional item is required, a meeting with contractor / owner shall be called to find agreed solution and cost to perform needed work. additional items can be agreed by verbal communication and confirmed via email.

3.3 Unit prices, if any, are as follows:

None

ARTICLE 4

PROGRESS PAYMENTS AND PAYMENT SCHEDULE

4.1 Based upon Applications for Payment submitted to the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents:

Mobilization Fee of $ 150,000.00 (one hundred fifty thousand dollars and zero cents)
Draw request will be made on or before Mondays for payment to be made on or before the following Monday. If payment is to be with-held or partially paid, owner is to notify contractor by the prior friday.

4.2 Documentation Required For Payment:

Written draw request in form of invoice due. (weekly billing as requested)

4.3. Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

None (contractor and owner agree there will be no late fee or interest on delayed payment)
If payment is with-held contractor or owner may stop work untill resolved.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

TORGO SOFTWARE www.TorgoSoftware.com ©1996-2013 ALL RIGHTS RESERVED

ARTICLE 5

FINAL PAYMENT

5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the Work has been completed and the Contract fully performed, subject to the provisions listed under OTHER CONDITIONS OR PROVISIONS on page 6.

ARTICLE 6

ENUMERATION OF CONTRACT DOCUMENTS

6.1 The Contract Documents consist of this Agreement, Conditions of the Contract, Drawings, Addenda issued prior to the execution of this Agreement, and other documents listed here. Except for Modifications issued after execution of this Agreement, the documents are as follows:

6.1.1 The Agreement is this executed Abbreviated Agreement Between Owner and Contractor, A107-L.

6.1.2 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Pages	Title
NONE	None	None

6.1.3 The Specifications are those contained in the Project Manual dated as in Subparagraph 6.1.2 and are as follows:

Section	Pages	Title
None	None	None

TORGO SOFTWARE www.TorgoSoftware.com ©1998-2013 ALL RIGHTS RESERVED

6.1.4 The Drawings are as follows, and are dated July 21, 2014 unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Pages	Title
N/A	54	229 KING STREET

6.1.5 The Addenda, if any, are as follows:

Number	Pages	Title
NONE	None	None

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 6.

6.1.6 Other documents, if any, forming part of the Contract Documents are as follows:

None

ARTICLE 7

LICENSES AND INSURANCE REQUIREMENTS

7.1 Licenses, permits and bonds to be supplied and paid by as follows:

Contractor to acquire and pay for permits related to the work to be performed.

7.2 Insurance Requirements:

Contractor to Supply: Certificate of Insurance.

ARTICLE 8

GENERAL PROVISIONS

Contractor is to include all labor and approved materials, appliances and services of every kind necessary for proper execution of work. Contractor shall re-execute any work that fails to conform to the requirements of the contract. Contractor will remove all of his construction debris from the site and leave premises in broom-clean condition. All work shall be completed in a workmanship like manner and in compliance with all codes and other applicable laws. To the extent required by law, all work shall be performed by individuals duly licensed and authorized by law to perform said work. Contractor has the right to let other contracts in connection with the work contracted for. Contractor shall adequately protect the work, adjacent property and the public and shall be responsible for any damage or injury due to his act or neglect. Change Orders shall be in writing and signed by both parties to this Agreement.

To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the Owner and their Agent(s) from and against any and all claims, damages, losses, expenses and fees arising out of or resulting from performance of the Contractor's Work, including hazardous materials, Worker's Compensation claims and subrogation.

OTHER CONDITIONS OR PROVISIONS

Not responsible for delays caused by the site developer. The contract start date will be modified as stated herein. Start date will be 30 days after site developer has delivered the project site ready for foundation excavation.

Warranty: one year labor on all trades, any and all material or manufacturer warranties to convey

See attachment(s): ☐ Yes ☒ No

General Conditions A201-L Included: ☐ Yes ☒ No

This Agreement entered into as of the day and year first written above.

OWNER

Signature

Athan Fokas, Iakovos ferderigos

Name and title

CONTRACTOR

Signature

kevin w carroll

Name and title

TORGO SOFTWARE www.TorgoSoftware.com ©1996-2013 ALL RIGHTS RESERVED

August 21, 2015

Stan Barnett
Smith, Bundy, Byebee & Barnett, P.C.
1037 Chuck Dawley Boulevard
Suite 100, Building F
Mount Pleasant, SC 29464

Dear Mr. Barnett,

My name is Dr. Fanouris Ferderigos and I am the uncle of the Plaintiff and Defendants in case number 15-CP-10-3891 that you have filed in Charleston County, South Carolina. Your lawsuit alleges that my sister, Irene Fokas (which is Plaintiff Athan Fokas' mother), confronted Athan Fokas about "(a) Hiring someone to set fire to the second floor of the building at 229 King Street for the purpose of collecting insurance proceeds. (b) Falsely claiming in an insurance claim that he had been injured working in the restaurant business operated on the first floor of said building when he had, in fact, been injured in ways not related to the business, all for the purpose of collecting insurance proceeds." Your lawsuit alleges that Irene Fokas confronted Athan Fokas about these allegations, and Irene Fokas informed Athan Fokas that my brother, Stavros Ferderigos (which is Defendants' father), told her about the allegations stated above and set forth in your Complaint. Your lawsuit further alleges Irene Fokas informed Athan Fokas that Stavros Ferderigos identified Defendants (Phillip and Spiros Ferderigos) as the source of those statements.

This letter is to make you aware that on August 18, 2015 my sister, Irene Fokas, adamantly denied to me in person that Stavros Ferderigos ever told her anything about the allegations set forth above from your Complaint and that she has never even discussed with Stavros Ferderigos the topics of Athan Fokas being involved, directly or indirectly, with the fire at 229 King Street and/or anything to do with any of Athan Fokas' insurance claims. Irene Fokas further told me that she would testify under oath that she never was told about these allegations by Stavros Ferderigos in any way whatsoever.

With Kindest Regards, I am

Dr. Fanouris Ferderigos

Cc: Dawes M. Cook (288 Meeting Street, Suite 200, Charleston, SC 29401)

Richard Farrier (134 Meeting Street, Charleston, SC 29401)

EXHIBIT
Z

1068

Jacob Ferderigos <iakovosstavros@gmail.com>

Fwd: Flood Policy - Cancellation

1 message

Iakovos Ferderigos <iakovosstavros@gmail.com> Sun, Jan 11, 2015 at 7:28 PM
To: Spiros Ferderigos <spirosferderigos@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>

Sent from my IPhone

Begin forwarded message:

From: Athan Fokas <fokasa@bellsouth.net>
Date: December 17, 2014 at 9:48:07 AM EST
To: "iakovosstavros@gmail.com" <iakovosstavros@gmail.com>
Subject: Fwd: Flood Policy - Cancellation

I cancelled the flood insurance below so we can get our money back. The storage unit date was just missed so we are paid thru Jan 12. I don't think we are going to recover any money from Kevin because he is going to say that was work to get us here. We still owe the structural engineer $3000.00 and we owe the bank for the appraisal which is about $2000.00. Your brother's have no business sense and I'm sure we will be butting heads with Greek properties in the future. Very sad!!!

Sent from my IPhone

EXHIBIT
A A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919 PLAINTIFF'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT SPIROS FERDERIGOS

FILED
2016 MAR 31 PM 1:21
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiff who for his Reply to the Counterclaims of Defendant, Philip Ferderigos, alleges as follows:

1. All allegations in the Counterclaims of the Defendant not specifically admitted or denied are hereby denied.

2. Paragraphs 1-52, to the extent that they are merely responsive, require no answer, but to the extent there are substantive allegations of fact or law set forth in said paragraphs, they are specifically denied.

3. Paragraph 53 is admitted as to the citizenship and residence of Plaintiff and is otherwise denied.

4. Paragraphs 54-56 are admitted.

5. Paragraph 57is admitted to the extent that it alleges the address and Parcel ID number of the property and is otherwise denied.

6. Paragraph 58 is admitted to the extent that it alleges a partnership was formed and that the property was purchased on a 50/50 basis and is otherwise denied.

7. Paragraph 59 is admitted.

1070

8. Paragraph 60 is denied.

9. The first sentence of paragraph 61 is denied and the remainder is admitted.

10. Paragraphs 62-69 are admitted.

11. Paragraphs 70-74 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

12. Paragraph 75 is admitted.

13. Paragraphs 76-123 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

14. Paragraphs 124, 135, 145, 159, 164, and 167 do not require a response.

15. Paragraphs, 125-127, 129-134, 136-144, 146-158,160-163,165-166, and 168-169 are denied.

FOR A FIRST AFFIRMATIVE DEFENSE

16. Paragraphs 1-15 are realleged herein.

17. The counterclaims set forth by this Defendant fail to state facts sufficient to establish the respective causes of action claimed and should be dismissed pursuant to Rule 12(b)(6) of the SC Rules of Civil Procedure.

18. Specifically, as to the First Counterclaim, there is no allegation of violations of the duties specified in the referenced statutes consistent with the standards for conduct set forth in said statutes.

19. Specifically, as to the Second and Third Counterclaims, there is no allegation of any specific reliance by this Defendant on any specific misrepresentation by Plaintiff resulting in any loss or damage suffered by this Defendant.

20. Specifically, as to the Fourth Counterclaim, the instances of alleged defamatory statements are not classified in South Carolina law as defamation and, furthermore, Defendant has alleged no communication of any "crime of moral turpitude" as alleged in paragraph 155.

21. Specifically, as to the Fifth Counterclaim, there is no allegation of any demand for a collateral advantage as a condition for not pursuing the action forming the basis of said counterclaim.

22. Specifically, as to the Sixth Counterclaim, there is no allegation of specific alleged misrepresentations on which this Defendant relied to his detriment.

23. Specifically, as to the Seventh Counterclaim, there are no allegations of what facts are plead in the Plaintiff's Complaint which this Defendant alleges were without factual support sufficient to justify commencing Plaintiff's suit.

FOR A SECOND AFFIRMATIVE DEFENSE

24. Paragraphs 1-23 are reallged herein.

25. As to the Fourth Counterclaim for Defamation, the statements Defendant falsely alleges Plaintiff published to their persons are true, except the extent that paragraph 152 of said counterclaim alleges publication of allegations of commission of a crime of moral turpitude as no such allegation is alleged and as Plaintiff made no such allegation about this Defendant.

FOR A THIRD AFFIRMATIVE DEFENSE

25. Paragraphs 1-25 are realleged herein.

26. As to the Fifth Counterclaim, the process commenced by Plaintiff is directed at proper goals and is commenced by proper methods to achieve those goals.

27. Plaintiff has made no request or demand of a collateral advantage as a condition of not filing or pursuing said legal process but has only asked for the relief set forth in said legal process, the Complaints, and such relief is proper for each cause of action stated therein.

FOR A FOURTH AFFIRMATIVE DEFENSE

28. Paragraphs 1-27 are realleged herein.

29. As to the First, Second, Third and Sixth Counterclaim, Defendant and his brothers all knew all of the facts related to the planned project, its design, its planning, its cost, its regulatory approval and its financing at every step of the process, all of which were explored and implemented by Plaintiff and Defendant's brother, Jacob, and, thus, Defendant could not be and was not misled in any way as to any particular of the project.

30. Alternatively, Defendant had every opportunity to be briefed on any and all details of the project about which he now claims to have been misled.

31. Specifically, both Defendant Philip Ferderigos and Defendant Spiros Ferderigos agreed and represented this agreement to Plaintiff to mortgage their interest in 229 King Street in order to secure financing for the project, such agreement having been so communicated after all the facts related to the project and its financing were known to both Defendants.

NOW THEREFORE, having responded to Defendant's Counterclaims, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and dismiss each of said Counterclaims.

Respectfully submitted,

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

Mount Pleasant, South Carolina
March 31, 2016

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2016 MAR 31 PM 1:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Replies to the Counterclaims of Philip and Spiros Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this day of , 2016, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

John A. Massalon, Esquire
Wills, Massalon and Allen, LLC
97 Broad Street
Charleston, SC 29401

Cindy Grooms

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919 PLAINTIFF'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT PHILIP FERDERIGOS

FILED
2016 MAR 31 PM 1:20
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiff who for his Reply to the Counterclaims of Defendant, Philip Ferderigos, alleges as follows:

1. All allegations in the Counterclaims of the Defendant not specifically admitted or denied are hereby denied.

2. Paragraphs 1-52, to the extent that they are merely responsive, require no answer, but to the extent there are substantive allegations of fact or law set forth in said paragraphs, they are specifically denied.

3. Paragraph 53 is admitted as to the citizenship and residence of Plaintiff and is otherwise denied.

4. Paragraphs 54-56 are admitted.

5. Paragraph 57is admitted to the extent that it alleges the address and Parcel ID number of the property and is otherwise denied.

6. Paragraph 58 is admitted to the extent that it alleges a partnership was formed and that the property was purchased on a 50/50 basis and is otherwise denied.

7. Paragraph 59 is admitted.

8. Paragraph 60 is denied.

9. The first sentence of paragraph 61 is denied and the remainder is admitted.

10. Paragraphs 62-69 are admitted.

11. Paragraphs 70-75 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

12. Paragraph 76 is admitted.

13. Paragraphs 77-124 are denied, except to the extent that properly authenticated and accurately reproduced documents are summarized or quoted from, Plaintiff craves reference to the substance of the entire document and the entire context and chain of any communications referred to.

14. Paragraphs 125.136, 146, 162, 167, and 170 do not require a response.

15. Paragraphs, 126-128, 130-135, 137-145, 147-161,163-166,168-169, and 171-172 are denied.

FOR A FIRST AFFIRMATIVE DEFENSE

16. Paragraphs 1-15 are realleged herein.

17. The counterclaims set forth by this Defendant fail to state facts sufficient to establish the respective causes of action claimed and should be dismissed pursuant to Rule 12(b)(6) of the SC Rules of Civil Procedure.

18. Specifically, as to the First Counterclaim, there is no allegation of violations of the duties specified in the referenced statutes consistent with the standards for conduct set forth in said statutes.

19. Specifically, as to the Second Counterclaim, there is no allegation of any specific reliance by this Defendant on any specific misrepresentation by Plaintiff resulting in any loss or damage suffered by this Defendant.

20. Specifically, as to the Fourth Counterclaim, the instances of alleged defamatory statements are not classified in South Carolina law as defamation and, furthermore, Defendant has alleged no communication of any "crime of moral turpitude" as alleged in paragraph 155.

21. Specifically, as to the Fifth Counterclaim, there is no allegation of any demand for a collateral advantage as a condition for not pursuing the action forming the basis of said counterclaim.

22. Specifically, as to the Sixth Counterclaim, there is no allegation of specific alleged misrepresentations on which this Defendant relied to his detriment.

23. Specifically, as to the Seventh Counterclaim, there are no allegations of what facts are plead in the Plaintiff's Complaint which this Defendant alleges were without factual support sufficient to justify commencing Plaintiff's suit.

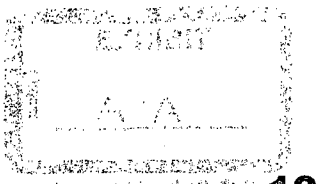
FOR A SECOND AFFIRMATIVE DEFENSE

24. Paragraphs 1-23 are reallged herein.

25. As to the Fourth Counterclaim for Defamation, the statements Defendant falsely alleges Plaintiff published to their persons are true, except the extent that paragraph 155 of said counterclaim alleges publication of allegations of commission of a crime of moral turpitude as no such allegation is alleged and as Plaintiff made no such allegation about this Defendant.

FOR A THIRD AFFIRMATIVE DEFENSE

25. Paragraphs 1-25 are realleged herein.



26. As to the Fifth Counterclaim, the process commenced by Plaintiff is directed at proper goals and is commenced by proper methods to achieve those goals.

27. Plaintiff has made no request or demand of a collateral advantage as a condition of not filing or pursuing said legal process but has only asked for the relief set forth in said legal process, the Complaints, and such relief is proper for each cause of action stated therein.

FOR A FOURTH AFFIRMATIVE DEFENSE

28. Paragraphs 1-27 are realleged herein.

29. As to the First, Second, Third and Sixth Counterclaim, Defendant and his brothers all knew all of the facts related to the planned project, its design, its planning, its cost, its regulatory approval and its financing at every step of the process, all of which were explored and implemented by Plaintiff and Defendant's brother, Jacob, and, thus, Defendant could not be and was not misled in any way as to any particular of the project.

30. Alternatively, Defendant had every opportunity to be briefed on any and all details of the project about which he now claims to have been misled.

31. Specifically, both Defendant Philip Ferderigos and Defendant Spiros Ferderigos agreed and represented this agreement to Plaintiff to mortgage their interest in 229 King Street in order to secure financing for the project, such agreement having been so communicated after all the facts related to the project and its financing were known to both Defendants.

NOW THEREFORE, having responded to Defendant's Counterclaims, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and dismiss each of said Counterclaims.

Respectfully submitted,

Stan Barnett
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiff

Mount Pleasant, South Carolina
March 31, 2016

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2016 MAR 31 PM 1:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Cindy Grooms, an employee of Smith, Bundy, Bybee, & Barnett hereby certify that true and correct copies of Plaintiff's Replies to the Counterclaims of Philip and Spiros Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this day of , 2016, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

John A. Massalon, Esquire
Wills, Massalon and Allen, LLC
97 Broad Street
Charleston, SC 29401

M. Dawes Cook, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

Cindy Grooms
Cindy Grooms

Mt. Pleasant, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ATHAN FOKAS Plaintiff, vs. PHILLIP FERDERIGOS, SPIROS FERDERIGOS, and JACOB FERDERIGOS Defendant.	))))))))))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-3919 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Stan Barnett, Bar No. 533 Address: 305 North Civitas St., Mt Pleasant, SC 29464 Phone: 843-708-4887Fax _____ E-mail: stan.barnett@yahoo.com Other: _____	Richard Farrier, Jr., Bar No._____ Address: 134 Meeting St.,Suite 200, Charleston, SC 29401 Phone: 843-579-5619 Fax_____ E-mail: _____Other: _____

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

SECTION I: Hearing Information

Nature of Motion: Motion for Partial Summary Judgment
Estimated Time Needed: 30 min Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒Written motion attached
☐Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff /☐ Defendant 2/27/17 Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, Phillip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos. Defendant(s).	Case No.: 2015-CP-10-3919 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNTERCLAIMS OF PHILLIP FERDERIGOS**

FILED
2017 FEB 28 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: Richard A. Farrier, Jr., Esquire, Attorney for Defendant:

Pursuant to Rule 56 of the SCRCP, the Plaintiff hereby moves for summary judgment as to the counterclaim by Defendant Phillip Ferderigos for Defamation set forth in his Answer filed in the above captioned case. The basis for this motion is that there are no genuine issues of material fact as to the allegations of the counterclaim, specifically that Plaintiff published to any third party the alleged defamatory statements set forth in the counterclaim.

This motion is supported by the attached exhibits:

Exhibit A: Supplemental Affidavit of Plaintiff, Athan Fokas

Exhibit B: Answers to Interrogatories by Phillip Ferderigos

Exhibit C: Deposition excerpt of Phillip Ferderigos

Exhibit D: Deposition excerpt of Irene Fokas

Exhibit E: Deposition excerpt of Athan Fokas

Respectfully submitted,

Stan Barnett
305 North Civitas Street
Mount Pleasant, S.C. 29464
(843) 884-1031/(843) 708-4887
stan.barnett@yahoo.com
Attorney for Plaintiff

February 28, 2017
Mount Pleasant, S.C.

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos, Defendant(s).	Case No.: 2015-CP-10-3919

FILED
FEB 28 2017
JULIE J. ARMSTRONG
CLERK, C.P & G.S.

AFFIDAVIT OF ATHAN FOKAS

After being sworn, Affiant testified as follows:

1. I am Athan Fokas, a resident of Mount Pleasant, South Carolina and the Plaintiff in this case.

2. At no time, have I ever told anyone that the Defendants, Phillip and Spiros Ferderigos, had published defamatory remarks about me as they allege in their counterclaim in this case. When I learned that they had done this, I commenced a lawsuit against them for damages arising from these defamatory statements. That case is Case No. 2015-CP-10-3819.

2. Sometime in March or April of 2015, my mother told me in several different conversations that Spiros and Phillip Ferderigos were making defamatory statements accusing me of causing the fire at Old Towne Restaurant and of instances of insurance fraud. She commenced the conversation with me. I did not ask her about such statements or tell her I thought they were doing this before she engaged me in conversation. The statements concerning the allegations by Spiros and Phillip Ferderigos about me in this regard are false.

FURTHER AFFIANT SAYETH NOT.

ATHAN FOKAS

SWORN TO before me
this 23rd day of February 2017.

Notary Public for South Carolina
My Commission Expires on: 7/18/26

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2015-CP-10-3919
ATHAN FOKAS, Plaintiff, v. PHILIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS, Defendants.	**PHILLIP FERDERIGOS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF:

NOW COMES Defendant Phillip S. Ferderigos, by and through counsel, and answers Plaintiff's First Set of Interrogatories as follows:

Defendant states that these answers are complete and responsive in accordance with his understanding of the Interrogatories, as drafted, and are based upon records or other information in his possession, or reasonably available to him at the time they were made, and that if additional or different information is subsequently discovered or brought to his attention during the pendency of this cause which renders any initial Answer incomplete, incorrect or otherwise subject to supplementation, he will do so as required by the South Carolina Rules of Civil Procedure.

Defendant further states that in preparing and making these answers, he has not accepted or acquiesced in the purported directions, conditions or definitions imposed at the time the Interrogatories were propounded by Plaintiff, except and to the extent that the same may have been consistent or in conformity with his understanding of the applicable discovery rules.

GENERAL OBJECTIONS

Defendant hereby incorporates by reference the General Objections attached hereto as Exhibit A. All of these General Objections shall be deemed continuing throughout the responses to the specific Interrogatories that follow even when not further referred to in said responses. Defendant also reserves the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein, as discovery in this case is ongoing.

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the defendant or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Answer:

1) Phillip Ferderigos – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

2) Jacob Ferderigos – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

3) Spiros Ferderigos – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

4) Athan Fokas – See Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

5) Jeffrey Odom – Plaintiff should have contact information for Mr. Odom as Mr. Odom was Plaintiff's loan representative from Southcoast Community Bank.

6) Irene Fokas – See Irene Fokas Deposition and Affidavit(s) for written or recorded statements, in the possession of Plaintiff.

7) Spiro Fokas – No Statement taken.

8) Gerasimos Nikatos – See Affidavit of Gerasimos Nikatos for written or recorded statements, in the possession of Plaintiff.

9) Rania Nikatos – See Affidavit of Rania Nikatos for written or recorded statements, in the possession of Plaintiff.

10) Kevin Carroll – No Statement taken.

11) Justin Hansen – No Statement taken.

These individuals will testify regarding any knowledge they may have concerning the allegations in the pleadings in this case. Defendant reserves the right to call any witness named by any other party.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the defendant that relate to the claim or defense in the case.

Answer: See Defendants Answers/Counterclaims and Answers to Plaintiff's Request for Production and accompanying documentation. See Defendants Response to Request No. 1 and attached Bates stamped documentation.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Answer: To be supplemented.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the defendant as alleged in defendant's counterclaims in this case.

Answer: Any and all damages to be determined by a jury. This includes, but is not limited to, any expenses paid toward the proposed project being considered, any potential loss of income had the proposed project being considered been built (had it not been for Plaintiff's wrongful actions), any damages that may be awarded by a jury for Plaintiff's defamatory statements, and actual and punitive damages to be determined by the jury for Plaintiff's conduct. See also Defendants Answers/Counterclaims and Answers to Plaintiff's Requests to Produce.

5. List the names and addresses of any expert witnesses whom the defendant proposes to use as a witness at the trial of this case.

Answer: To be supplemented in accordance with the Rules of Civil Procedure. Defendant reserves the right to call a testifying expert at trial.

6. For each person known to the defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Answer: See Answer No. 1, Answer No. 7, and Defendants Answer and Counterclaims.

7. List every person to whom the defendant claims plaintiff published defamatory statements concerning this defendant and for each describe the date, place, time and manner of such publication and the substance of such defamatory statements defendant alleges plaintiff made to each such person.

Answer: Plaintiff published libel and slander per se, which are actionable per se, and defamatory, to the following individuals:

1) Jacob Ferderigos – See Defendants Answer/Counterclaims and Answers to Plaintiff's Requests for Production.

2) Justin Hansen – Upon information and belief, Plaintiff has inquired of Mr. Hansen if Defendant has accused him of inappropriate involvement regarding a fire at 229 King Street and/or has informed Mr. Hanson that Defendant is accusing Plaintiff of inappropriate involvement regarding the fire at 229 King Street. The exact date, place and time of the statement is not known to Defendant at this time.

3) Kevin Carroll – See Defendants' Answer/Counterclaims and Answer to Plaintiff's Requests for Production. In addition, upon information and belief, Plaintiff informed Mr. Carroll that the proposed project being considered was not moving forward because Defendant was not willing to give his brother a mortgage and that Plaintiff was not seeking a mortgage from Defendant. Plaintiff defamed Defendant by advising Mr. Carroll that Defendant had made promises to him and the Defendant was breaching those promises to him and, further, that the proposed project was not being built because it was the Defendants' fault. Plaintiff's statements to Mr. Carroll are defamatory per se and depicted Defendant as an unfit and stupid business person (i.e., that Defendant was unfit in his business or profession). Plaintiff also continuously informed Mr. Carroll that the proposed project was going to be built long after Plaintiff knew that the proposed project was not moving forward because of the Plaintiff's own misrepresentations, while, at the same time, Plaintiff defamed this Defendant, blaming him for the Plaintiff's own failures to obtain the necessary funds to move forward with the proposed project. Plaintiff further misrepresented the circumstances of the proposed project falling apart and purposely and intentionally attempted to cast this Defendant in a bad light and in a defamatory manner.

4) Irene Fokas – See Deposition and Affidavit(s) of Irene Fokas, in Plaintiff's possession. In addition, upon information and belief, Plaintiff defamed this Defendant to numerous individuals, including to Defendant's brother, Jacob Ferderigos, Plaintiff's mother Irene Fokas, his father Spiro Fokas, his sister Rania Nikatos, and Old Towne's Manager Justin Hanson by telling these individuals that the proposed project fell apart because Defendant Phillip Ferderigos could not eat for free at Old Towne, because Defendant is a stupid business person/that he has no business sense, because Defendant is jealous of him, because Defendant does not want his

brothers to be successful, because Defendant wants to be wealthier than his brothers (i.e., to keep his brothers "below" him), because Defendant is a stupid and unwise business person, and his telling said witnesses that Defendant made a promise to him to mortgage 229 King Street for Plaintiff's benefit (and that Defendant broke such promise to him), all with actual malice and ill will and intent to harm Defendant in an effort to extort and force Defendant to give him a mortgage over 229 King Street (when Plaintiff knows Defendant made no such promise) and to make other concessions to Plaintiff, when Defendant never agreed to do any of those things. Plaintiff libeled this Defendant by stating Defendants (Phillip Ferderigos and Spiro Ferderigos) "have no business sense." Plaintiff further libeled this Defendant on March 21, 2016 by stating: "Now you have turned your brother Jacob into a puppet getting him to send your words on his phone. I actually now think that you didn't go along with building the new suites so that your brothers would not be able to have more income so that you can keep them below you." Defendant further incorporates his Answer and Counterclaims, Defendants Answers to Requests for Production, and the libelous emails forwarded from Plaintiff to third parties concerning this Defendant.

8. For each of the instances of alleged publication of defamatory statements described by this defendant in Answer to interrogatory number 7, describe the exact manner in which this defendant learned of such publication and include the date when defendant so learned of each alleged publication.

Answer: See Answer No. 7.

9. For each instance in which defendant alleges plaintiff made misleading or untrue statements to this defendant as alleged in this defendant's counterclaims, describe the date,

EXHIBIT A

manner, extent and nature of any actions taken by this defendant in reliance on each of said alleged misrepresentations.

Answer: See Answer No. 7, Answer to No. 10, and Defendants Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

10. List all damages this defendant claims to have suffered as the proximate cause of any act of the plaintiff identified in defendant's answer and counterclaims and for each alleged damage identify the nature of the loss, the date of the loss, the value defendant claims it represents in terms of money, the action of plaintiff the defendant claims caused the loss and way in which said alleged loss resulted from the alleged action of plaintiff.

Answer: See Defendants Answers and Counterclaims and Answer No. 4. In addition, the Defendant expended personal funds as a result of the Plaintiff's misrepresentations to the detriment of Defendant. Defendant has also lost money and profit based on Plaintiff's wrongful actions. Plaintiff has intentionally caused and continues to try to cause intentional and malicious harm to Defendant's business and reputation, which directly impacts his livelihood. Plaintiff has also filed frivolous lawsuits against this Defendant and caused harm to Defendant as set forth in Defendants Answer and Counterclaims. Plaintiff is liable for actual and punitive damages to be determined by a jury.

11. With respect to the counterclaim by defendant for abuse of process, identify any demand for a collateral advantage made by plaintiff associated with any legal process defendant claims was improperly brought and list the date, the way such demand was communicated and describe the substance of said demand for collateral advantage. For each such communication, list all proof defendant claims proves the communication was made.

Answer: See Defendants Answer/Counterclaims and Answers to Plaintiff's Request to Produce. In addition, Plaintiff has filed frivolous lawsuits against this Defendant in an effort to force Defendant to give him a mortgage and agree to other terms this Defendant never agreed to. The

Plaintiff boasted that his lawyer was working on a contingency and his filing a frivolous lawsuit would not cost him any money, whereas it would cost Defendant large sums of money to defend against Plaintiff's frivolous claims. Plaintiff followed through with his threat and abuse of process and the existence of these two lawsuits prove Defendant's abuse of process claim against Plaintiff. Plaintiff is demanding that this Defendant share in his risk of the project and underwrite his portion of the proposed project. This is a risk that Defendant never agreed to bear and Defendant does not agree to bear. Plaintiff has always been responsible for his portion of the proposed project and the Plaintiff cannot use this Defendant's property in order to secure a loan for his benefit. Plaintiff has defamed Defendant and filed frivolous lawsuits against Defendant to try to force Defendant to give Plaintiff a mortgage (for Plaintiff's benefit) and to try to force Defendant to agree to other terms Defendant never agreed to. Plaintiff is improperly using the legal process to try to extort concessions from this Defendant by knowingly filing frivolous lawsuits against this Defendant.

12. Identify the date and circumstances in which defendant became aware of the terms for financing the project to expand the building at 229 King Street as identified by South Coast Bank. If there were separate times and circumstances for the elements of those terms set forth below, identify when and how defendant became aware of the terms related to:

a. A requirement that defendants mortgage their interest in 229 King Street;

b. A requirement that the LLC which operates the suites rental business be obligated to pay the bank on the note;

c. A requirement for a hypothecation agreement.

Answer: Defendant objects to Plaintiff's terminology in this Interrogatory. There were no "terms for financing the project to expand the building at 229 King Street" applicable to this

Defendant. See Defendants Answer and Counterclaims. Defendant incorporates and craves reference to his texts/emails.

Defendant objects to this Interrogatory as there was never a "requirement" as this Defendant never agreed to mortgage his interest in 229 King Street for the benefit of the Plaintiff or anyone else; likewise, there was never a "requirement" as this Defendant never agreed that the LLC be obligated to pay any note, and there was never a "requirement" as this Defendant never agreed to sign a hypothecation agreement. This Defendant never agreed to provide Plaintiff with a mortgage for the proposed project, nor did he agree to the other terms as set forth in this Defendant's pleadings. Initially, this Defendant rejected getting a mortgage for the proposed project, but decided to pay for his portion of the proposed project with cash. After October 17, 2014, this Defendant attempted to negotiate terms where he would be willing to execute a mortgage, so long as Plaintiff would execute a side agreement which would protect this Defendant's collateral, but the negotiations fell apart due to Plaintiff's actions as set forth in the pleadings. Thereafter, Plaintiff made even more additional demands and new terms were sprung on Defendant on the day of the second closing as well.

Generally, there are three distinct time periods applicable to this case: (1) from the inception of the exploring of the proposed project until October 17, 2014, (2) from October 17, 2014 to November 24, 2014, and finally (3) from November 24, 2014 to the present.

(1) First time period: from the inception of the explanation of the proposed project until October 17, 2014.

During this time period, the parties explored the possibility of the proposed project. Early on, Plaintiff told Jacob Ferderigos that the parties should mortgage 229 King Street for the proposed project. Phillip Ferderigos and Spiro Ferderigos rejected such request and told Jacob

Ferderigos to tell Plaintiff they would not mortgage 229 King Street for the proposed project. From the beginning, Plaintiff knew Phillip and Spiro Ferderigos would not mortgage 229 King Street for the proposed project. Plaintiff then accosted Phillip Ferderigos at the Hellenic Center as set forth in paragraphs 70 and 71 of his Answer and Counterclaims. Again, Plaintiff knew that Phillip Ferderigos would not mortgage 229 King Street or guarantee anything for the proposed project being considered and he would self-fund his portion of the proposed project by bringing cash to the transaction if Defendant decided to move forward with the proposed project being considered.

Further, on December 19, 2012, via text, Plaintiff also texted Defendants implying that they should personally guarantee a loan for the proposed project to get a loan for the proposed project. In his written Answer, Spiro Ferderigos immediately responded he would not guarantee anyone else's loan or incur additional debt for the proposed project and, if the proposed project were to move forward, it would be in the same manner as the original units (i.e., with no mortgage or guarantee for anything). See paragraphs 77 and 78 of Defendant's Answer and Counterclaims.

Plaintiff apparently did not even contact South Coast until 1/12/13. On September 9, 2014, Plaintiff advised Defendants that the proposed project cost had drastically increased to about Two Million Dollars. Also, pursuant to Paragraph 89 of Defendant's Answer and Counterclaims, on September 24, 2014, Plaintiff represented that his South Coast loan was a fixed 5% interest 20-year loan. Plaintiff was in error, his South Coast loan was not a fixed 5% interest 20-year loan.

At all times during this time period, Plaintiff knew Phillip Ferderigos and Spiro Ferderigos would not mortgage or guarantee anything for the proposed project being considered.

However, Plaintiff deceptively allowed Defendants to expend funds to explore the possibility of the proposed project as Plaintiff hoped that he could force Defendants to ultimately give him a mortgage for the proposed project (otherwise they would have wasted all of their investment). Plaintiff's scheme was intentional and in bad faith.

(2) From October 17, 2014 to November 24, 2014.

As set forth in paragraphs 92-106, and subsections (a), (b) and (c) below, and Answer No. 14, on or about October 17, 2014, Plaintiff contacted Jacob Ferderigos to inform him that Plaintiff had unilaterally scheduled a closing for the following week and informed Jacob Ferderigos for the first time since 2012 (when Defendants had outright rejected providing a mortgage or any other encumbrance of any kind for the proposed project) that Plaintiff demanded this Defendant (along with his brother) mortgage his interest in 229 King Street for Plaintiff's benefit. This message was relayed to Defendant by Jacob Ferderigos. When Jacob Ferderigos informed Defendant of this demand, Defendant immediately told Jacob Ferderigos that he would not mortgage or guarantee his interest in 229 King Street for the proposed project.

However, after some additional thought, this Defendant attempted to work with Plaintiff in response to his new demand (which had previously been rejected) in order to determine if Plaintiff would agree to very specific terms that allowed Defendant to be comfortable with mortgaging his interest in 229 King Street for the proposed project if, and only if, this Defendant had assurances, to his satisfaction, that his property would be protected from Plaintiff defaulting on his obligations. In an effort to respond to the new demands of the Plaintiff (which had previously been rejected), Phillip Ferderigos and Spiro Ferderigos decided to see if the proposed project could move forward and attempted to negotiate an ancillary agreement/side agreement which they believed would protect their interest in 229 King Street if they were to provide

Plaintiff and Jacob Ferderigos with a mortgage for the proposed project being considered. Negotiations fell apart, however, when Plaintiff placed additional demands on Phillip Ferderigos for the side agreement and when Plaintiff's bank closing documents were also incorrect in several material terms as set forth more particularly in Defendant's Answer and Counterclaims. Further, with the scheduling of the second closing, Plaintiff made additional demands on this Defendant which this Defendant never agreed to.

(3) From November 24, 2014 to the present.

After negotiations fell apart, Plaintiff proceeded in bad faith and ill will to threaten and harass Defendants as set forth with more particularity in Defendant's Answer and Counterclaims.

---

a. Initially, Plaintiff contacted Jacob Ferderigos to tell him that the parties should consider building an additional new building behind Old Towne. At some point, Plaintiff and Jacob Ferderigos apparently decided that they would need to obtain a mortgage of 229 King Street for the proposed project. Plaintiff requested that this Defendant also guarantee and/or mortgage 229 King Street for the proposed project. This Defendant told Plaintiff in no uncertain terms that he would not mortgage Old Towne, that he would not guarantee anything, and that he would pay cash to fund his share of the proposed project if the proposed project were to happen. Similarly, but separately, via written correspondence, Defendant Spiro Ferderigos advised Plaintiff of the same. From that time forward, having expressly told Plaintiff that this Defendant would not mortgage, guarantee, or encumber any of his assets for the proposed project, Plaintiff knew that, if the proposed project being considered were to go forward, he would have to be responsible for his share of the costs of the proposed project and Plaintiff knew this Defendant

would not mortgage or guarantee or in any way risk or encumber his share of the 229 King Street property for the proposed project. As such, this Defendant believed Plaintiff and Jacob Ferderigos were attempting to get a loan by mortgaging their portion of 229 King Street.

Subsequently, this Defendant started paying his share of the costs (through his ongoing profits of Old Towne Suites, LLC) for determining the possibility, feasibility and desirability of the proposed project and Plaintiff knew that this Defendant would not mortgage, guarantee, or in any way encumber his 229 King Street property for the proposed project; yet, Plaintiff apparently knew his bank would require Defendants to provide a mortgage for Plaintiff's benefit in order for Plaintiff to get a loan for the project, yet, Plaintiff did not disclose this information to any of the Defendants, and Plaintiff allowed this Defendant to spend funds during this time period. Plaintiff and Jacob Ferderigos were supposed to get a loan/mortgage for their own respective share of the proposed project over their portion of 229 King Street, and this Defendant never agreed to mortgage, guarantee, or otherwise encumber his portion of 229 King Street for the proposed project. Plaintiff knew the same, but intentionally or negligently enticed this Defendant to spend monies for the proposed project's planning, while apparently scheming to force this Defendant to give him a mortgage for his benefit.

Further, on or about September, 2014, Plaintiff advised Defendant that his bank was going to give him a 5% fixed rate 20-year mortgage for the proposed project. Plaintiff forwarded a loan document from South Coast and, after only looking at the rate and time period for this loan, Defendant determined that Plaintiff was wrong and that Plaintiff's bank did not provide him with a 5% fixed rate 20-year mortgage, but, rather, the mortgage rate was variable and would change/balloon after five years. Defendant advised Plaintiff that Plaintiff was wrong about what Plaintiff thought the terms of Plaintiff's loan were. [At this time, this Defendant still

believed that Plaintiff was obtaining a mortgage for Plaintiff's and Jacob Ferderigos' portion of 229 King Street, and Defendant did not look at the rest of the South Coast document until sometime in 2015]. On September 30, 2014, this Defendant reiterated that he was going to pay cash for his share of the project. Defendant did not become aware that Plaintiff's bank or the Plaintiff wanted this Defendant to sign a mortgage until approximately October 17, 2014 when Plaintiff advised Jacob Ferderigos, who then relayed it to this Defendant.

On or about October 17, 2014, Plaintiff contacted Jacob Ferderigos to inform him that Plaintiff had unilaterally scheduled a closing for the following week and informed Jacob Ferderigos for the first time since 2012 (when this Defendant and Spiro Ferderigos had outright rejected providing a mortgage or any other encumbrance of any kind for the proposed project) that Plaintiff demanded this Defendant (along with his brother Spiro) mortgage his interest in 229 King Street for Plaintiff's benefit. This message was relayed to Defendant by Jacob Ferderigos. When Jacob Ferderigos informed Defendant of this demand, Defendant immediately told Jacob Ferderigos that he would not mortgage or guarantee his interest in 229 King Street for the proposed project.

b.) Not until on or about November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing documents were sent to Defendant to be reviewed for the first time. See also Defendants Answer and Counterclaims to Plaintiff's Request to Produce.

c.) Not until November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing attorney for Plaintiff sent an email that "[t]here will also be hypothecation agreements, I believe." See also Defendants Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

13. If this defendant claims that he informed plaintiff he would refuse to mortgage his interest in 229 King Street as part of the financing of the project to expand the building, identify the date and circumstances and means by which this was communicated to plaintiff.

Answer: See Defendants Answers/Counterclaims and Answers to Plaintiff's Request to Produce, Answer Nos. 12 and 14.

14. Does this defendant claim that he never agreed to mortgage his interest in 229 King Street as part of the financing of the project to expand the building?

Answer: Yes, see Answer Nos. 11 and 12; this Defendant never agreed to mortgage his interest in 229 King Street for the proposed project. There was never an agreement to mortgage Defendant's interest in 229 King Street as part of the financing for the proposed project being considered/explored for new construction above 229 King Street at any time, as further explained below.

In the initial stages of the parties considering/exploring new construction above 229 King Street, this Defendant told Plaintiff he would not mortgage or guarantee anything for the proposed project. See Interrogatory Answer Nos. 11 and 12 and see paragraphs 70 & 71 of this Defendant's Answer and Counterclaims. Plaintiff sent written correspondence on December 19, 2012 implying that he wanted Defendants to personally guarantee the loan. Defendant Spiro Ferderigos immediately responded the same day via written correspondence, that he outright refused to guarantee, mortgage his interest in 229 King Street, and/or accumulate any debt for the proposed project being considered. Also, this Defendant was clear with Plaintiff he would not mortgage or guarantee or encumber his interest in 229 King Street for the proposed project.. (See Defendants' Answers/Counterclaims for additional details).

With this clear understanding, the parties continued to consider and explore the possibility of the proposed project from 2012 forward. It was not until a few days prior to Plaintiff unilaterally scheduling a closing for the proposed project that Plaintiff, on or about October 17, 2014, for the first time, informed Defendant (through Jacob Ferderigos) that Plaintiff demanded Defendant provide him with a mortgage in his interest in 229 King Street so Plaintiff could get Plaintiff's loan. For the first time ever, shortly thereafter, Phillip and Spiro Ferderigos, on or about October 19, 2014, informed Plaintiff that they would consider providing a mortgage of their interests in 229 King Street for the proposed project on the condition that Plaintiff would sign a side/ancillary agreement that Defendants felt was necessary to protect their financial interests. Plaintiff eventually refused to sign the side/ancillary agreement Defendant required in order to consider mortgaging his interests in 229 King Street and also placed even more demands on this Defendant, which the Defendant rejected. (See Defendants Answers/Counterclaims for additional details).

It was only after Plaintiff demanded on or about October 17, 2014 that this Defendant provide a mortgage over his portion of 229 King Street for the proposed project to move forward, did this Defendant attempt to work with Plaintiff in order to determine if Plaintiff would agree to very specific terms that allowed Defendant to be comfortable with mortgaging his interest in 229 King Street for the proposed project if, and only if, this Defendant had assurances, to his satisfaction, that his property would be protected from Plaintiff defaulting on his obligations. In an effort to respond to the new demands of the Plaintiff (which had previously been rejected), Defendant considered mortgaging his interest of 229 King Street for the proposed project if Plaintiff signed a side agreement that Defendant believed protected his interest; however, via his texts/emails referenced in the pleadings, Plaintiff refused to sign the side

agreement without preconditions and made additional demands of this Defendant, demands which this Defendant never agreed to, and the negotiations fell apart. Further, with the scheduling of the second closing, Plaintiff made additional demands on this Defendant which this Defendant never agreed to.

15. If you take the position that the LLC which operates the suites rental business being obligated to make payment on the note to South Coast Bank would have a material effect on you, explain that effect why you allege this is true.

Answer: This Interrogatory is irrelevant. Defendant never agreed to mortgage or guarantee or in any way encumber his interest in 229 King Street for the benefit of the Plaintiff or for anyone else. This Defendant was bringing cash to fund his portion of the proposed project outright and this Defendant was looking forward to enjoying the profit that would come from the investment once the proposed project was built. This Defendant never agreed to encumber his interest in the LLC or any income stream that the proposed project would bring. Per the Plaintiff's bank closing documents, the income and/or assets that would potentially be used to pay the Note would include Defendant's own profits from the rental income. Defendant never agreed to such arrangement. Defendant further never agreed to have the LLC pay a Note or to use his rental profits in such a manner. Further, based on the incorrect closing documents, which were never agreed to, having the LLC obligated to make payment on the note potentially exposes this Defendant to personal liability and further potentially interferes with this Defendant's cash flow/profit from the LLC.

Defendant also objects to this Interrogatory as it is confusing. Subject to this objection, Defendant is unable to answer this Interrogatory as the final cost of the proposed project was never established or agreed to by the parties, and, as a result, Defendant cannot state what the

income from the rental suites business would be. Defendant further objects because he never agreed that any payment was to be made by the LLC and never agreed to/was under no obligation to have a payment for a loan required by Plaintiff to be potentially paid out of Defendant's share of the rental suites business.

16. Identify the date and circumstances under which you became aware that the project to expand the building would be for an additional floor over and above what was originally investigated by you, the other defendants and plaintiff.

Answer: See Defendants Answer/Counterclaims and Defendants Answers to Requests for Production. This Defendant craves reference to the texts and emails produced in discovery. Plaintiff represented that the total cost of the project would be less than One Million Dollars and, based on that figure, this Defendant would have been responsible for one-sixth of that amount, something that this Defendant had in cash and was willing to invest at the time for the proposed project. Defendant recalls that he was notified that the costs of the proposed project had ballooned from an estimated $900,000 to well over Two Million Dollars, on or about September 9, 2014.

17. If you disagree that the rental income from the suites rental business would be sufficient to cover the payments on the loan financing the expansion of the building at 229 King Street, explain why that is true and include what you think the shortfall in funds to cover said payments would likely be.

Answer: As the final cost of the proposed project was never established, Defendant does not know at this time if income from the rental suites would have been sufficient to cover payments on any loan obtained by Plaintiff to cover his fifty percent (50%) portion of the construction

costs. Furthermore, this Interrogatory is irrelevant to this Defendant. Defendant never agreed to have his share of profits from the rental suites to be used to pay a loan.

18. Do you agree that by the date of the first scheduled closing for the loan from South Coast Bank to finance the expansion of the building at 229 King Street all necessary design and regulatory approvals had been secured to allow the expansion to proceed? If you do not agree, explain why.

Answer: Defendant objects to the terminology of this Interrogatory; there was no expansion of the building, the proposed project was to build a new building. Further, Defendant is not aware if all necessary design and regulatory approvals had been secured to build a new building above 229 King Street by the time Plaintiff unilaterally scheduled a closing. However, Defendant knows that the final cost of the proposed project was never known. Decisions still needed to be made and the full cost of the proposed project was still unknown, including decisions/costs for windows and sprinkler systems, both material matters potentially increasing costs significantly. See also Defendant's Answer/Counterclaims and Answers to Request to Produce. Defendant craves reference to the texts/emails between the parties.

K&L Gates LLP

By: _____
Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
134 Meeting Street, Suite #200
Charleston, SC 29401
Phone: 843-579-5619
Fax: 843-579-8819
Richard.Farrier@klgates.com
Jennifer.Thiem@klgates.com

EXHIBIT A

GENERAL OBJECTIONS

1. Defendant objects to the Requests to the extent that they seek to impose any obligations beyond those provided for by the South Carolina Rules of Civil Procedure ("Rules") or any other applicable laws or rules.

2. Defendant objects to the Requests to the extent that they seek information contained in documents that were prepared for or in anticipation of litigation, constitute attorney work-product, contain or divulge attorney-client communications, contain confidential or proprietary business information, or are otherwise protected from disclosure under applicable privileges, laws or rules. Defendant does not intend to disclose information that is privileged or otherwise immune from discovery. Disclosure of any protected or privileged information in response to the Requests shall be deemed inadvertent and shall not constitute a waiver or prejudice of any privilege or any other ground for objecting to discovery with respect to any such documents, nor shall such inadvertent disclosure waive or prejudice Defendant's right to object to the use of any such information or documents during this or any subsequent proceeding.

3. Defendant objects to the Rquests to the extent that they seek information and documents that are a matter of public record, that are within the knowledge or possession of Plaintiff, or to which Plaintiff's access is equal to that of Defendant, on the grounds that providing such information and documents would impose an unreasonable burden and expense upon Defendant.

4. Defendant objects to the Requests to the extent that they seek information that is overly broad and unduly burdensome for Defendant to locate and will result in an unreasonable

expenditure of costs that exceeds the value and relevancy of finding any such information and is disproportionate to the amounts in controversy in this case.

5. Defendant objects to the Requests to the extent that they seek information prior to or beyond the scope of the subject dispute.

6. Defendant objects to the Requests to the extent that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. Defendant's answers and objections to the Requests are made without waiving, or intending to waive, but on the contrary preserving, and intending to preserve: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, confidentiality, authenticity, admissibility, or any other proper grounds, as evidence for any purpose, in whole or in part, the use of the responses provided by Defendant, in any subsequent proceeding, or in any trial in this or any other action; (b) the right to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of the Requests to which Defendant has responded herein; and (c) the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein.

8. No objection or limitation, or lack thereof, made in these answers and objections shall be deemed an admission by Defendant as to the existence or nonexistence of information.

9. Defendant's answers to the Requests are made to the best of his personal knowledge, information and belief. Defendant's discovery and investigation of the facts relevant to this case are ongoing.

11. All of these general objections shall be deemed continuing throughout the responses to the specific items of the Requests that follow even when not further referred to in said responses. The failure to note the application of the general objections is not a waiver of

these general objections with respect to any Request. Defendant also reserves the right to assert additional general and specific objections arising from matters discovered during this litigation.

_____ 12. Defendant reserves the right to introduce and rely upon any documents or materials listed and information provided in any other party's discovery Answers, or any materials introduced or information obtained at any deposition of any party or witness. In addition, Defendant reserves the right to introduce any documents or materials as rebuttal, if necessary.

Clark and Associates Inc.

Certificate of Service

I hereby certify that on the 1st day of June, 2016, I served the foregoing Answers to Plaintiff's First Set of Interrogatories to Defendant Phillip Ferderigos upon the parties to this action by U.S. mail, sufficient postage attached thereto, correctly addressed as follows:

Stanley E. Barnett, Esquire
Smith Bundy Bybee & Barnett, P.C.
1037 Chuck Dawley Blvd.
Building F, Suite #100
Mt. Pleasant, SC 29464

John A. Massalon
Wills Massalon & Allen, LLC
Post Office Box 859
Charleston, South Carolina 29402

M. Dawes Cooke, Esquire
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

Legal Assistant

EXHIBIT C

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF PHILLIP FERDERIGOS

ATHAN FOKAS,

Plaintiff,

vs. CASE NO. 2015-CP-10-3919

PHILLIP FERDERIGOS, SPIROS FERDERIGOS, and JACOB FERDERIGOS,

Defendants.

ORIGINAL

ATHAN FOKAS,

Plaintiff,

vs. CASE NO. 2015-CP-10-3891

PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,

Defendants.

DEPONENT: PHILLIP FERDERIGOS
DATE: SEPTEMBER 21, 2016
TIME: 11:08 A.M.
LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

A. I don't -- I don't know what you mean by "collateral demand." I -- I -- let me just say this, and maybe we can cut through. I mean, he's trying to force me to do what I didn't agree to do with the lawsuits that he's filed.

Does that make -- is that what you're getting? 'Cause I'll tell you that.

Q. That's the answer. That that's all he's asked for. I want to be clear about this. I don't want to hear about something later. That's all he's asked for.

A. As I'm sitting here today, I can't think of anything.

Q. Okay. All right. Now, let me ask you about your defamation claim, which begins on page 31 of your answer.

A. I thought that was a separate -- okay. No. Go ahead.

Q. Well, you have a counterclaim. You have a counterclaim for a defamation/slander/liable.

A. My counterclaims. Go ahead.

Q. Starts on page 31.

A. No. I understand. Go ahead.

Q. There are a number of -- some of them are somewhat related; and I'm going to ask you,

as you can imagine, similar questions about all of these.

A. Okay.

Q. 147 you say that "Athan Fokas threatened to publish false and defamatory statements by informing Phillip in writing that he cannot wait to tell everyone in the community that a million dollar project did not move forward because Phillip could not eat for free at Old Towne Restaurant."

Okay. Now, you say he threatened to you that he was going to say this; right?

A. Yeah.

Q. Of course, that's not defamation, is it?

A. Well, if he tells a third party.

Q. Did he tell a third party?

A. Well, discovery's ongoing. Let's find out.

Q. Who do you think he told?

A. Discovery's ongoing. I don't know.

Q. No, that's not -- I'm asking you --

A. Oh, sitting here today?

Q. I'm asking what you know.

A. Sitting here today? I don't know sitting here today.

Q. Okay. All right. Has anybody come back to you and said that he made such a statement? They heard he made such a statement?

A. Well, he threatened to make it.

Q. But has anybody told you that they heard that he did make the statement?

A. Well, I mean, I believe once we depose some people that, yes, such as the individual that I listed in the discovery responses are probably going to verify that. And I -- I don't know. Anyone from the contractor to the manager to several other people. We haven't deposed them yet.

Q. You say you believe that, but you're not --

A. 'Cause he threatened me, Stan.

Q. You're not telling me that --

A. Yeah. Sitting here today -- let's just do it like this. Sitting here today, I don't know.

Q. That is all we can get. So you don't -- you haven't talked to Mr. Hanson about this?

A. No.

Q. All right. Okay. You haven't talked to Kevin Carroll about this?

A. No.

Q. You haven't talked to Irene Fokas about this? Your aunt?

A. No. I mean, it's her deposition, whatever, you know. I don't talk to -- to her about stuff.

Q. Okay. All right. Okay. What harm have you suffered from this?

A. This defamation?

Q. If -- if this particular thing has been communicated, how have you been harmed?

A. My reputation is harmed.

Q. Reputation is harmed how?

A. It's not true, and it casts me in a negative light.

Q. Okay. Is everything that casts everything in a negative light defamation?

A. I don't know. You're asking me a legal question; but in this circumstance, it makes -- I believe it's defamatory, per se, if he did it.

Q. How is it defamatory, per se? Is it damaging you in your profession?

A. Defamation could -- if he's -- if he's spreading rumors that aren't true about me, yeah, I'd say he could. Like when he says -- we're

going to go on to it about being a businessman and not having any sense. I believe it's the fifth prong of the defamation --

Q. We're not there yet.

A. Let me finish. Let me finish. I'm answering.

I believe it's the fifth prong of defamation, per se, that he violated with all these emails that I'm referencing to.

Q. How have you been -- how has your reputation as a lawyer, we'll put it that way, been damaged if somebody has said that you pulled out of this multi-million dollar project because you couldn't eat for free at Old Towne?

A. It damages me as a lawyer, and it damages me as a businessperson.

Q. How does it damage you as a lawyer?

A. What are you -- are you kidding me?

Q. No. I'm asking a serious question.

A. If -- if Athan goes around saying this to everybody like he threatened, then people are going to think I'm an idiot. That's not why the project fell apart, Stan. We already covered why the project -- why the proposed project fell apart.

Q. Okay.
A. And this -- I'll stop.
Q. Your testimony is that this damages you as a lawyer because people would think you were an idiot if you -- if that were true.
A. Yeah. And it's not -- it's not true. It's defamatory as a lawyer and as a businessperson is my testimony.
Q. Well, of course, the not being true part is just part of the inquiry about defamation. It's also got to damage you in some way that the law recognizes.
A. Oh, I think the law recognizes that damage, Stan.
Q. That --
A. Harm to my reputation. I think that's what defamation is.
Q. You think this is harm to your reputation as a lawyer? That's what I'm getting at.
A. As a lawyer and as a businessperson.
Q. Now, your business activities, other than being a lawyer, are that you own some rental properties; right?
A. Yes.

Q. How does it damage you as somebody who owns rental property?

A. Same reason. Somebody's going to hear that false statement and think like, "Well, oh, Phillip's stupid. He's not a good businessman."

Q. Has anybody told you or have you heard by rank hearsay that somebody has said, "I think Phillip Ferderigos is stupid because he got out of a deal because he couldn't eat for free at the restaurant"? Has anybody told you that?

A. Well, you combined two things. I think I have emails from Athan that say I'm a stupid businessperson.

Q. But that's not defamation, is it?

A. Well, it copied Jacob and Spiros.

Q. Okay. Because it was communicated to your brothers?

A. Yeah.

Q. Okay. How have you been damaged by that?

A. It's not true.

Q. Have they denied you business? Have they caused you to lose business in some way?

A. I think you and I have a different understanding of what "defamation" means as far

as damages.

Q. We might. But I'm asking you questions about the facts.

A. Yeah. No. My -- my brothers Spiros and Jacob don't think any less of me because of his threats.

Q. Okay.

A. And his defamation.

Q. And you don't know of any business you've lost either as a lawyer or as a -- an owner of rental property because of this; is that correct?

A. Well, I mean, I don't know; but, as I said, sitting here today, discovery is ongoing. If -- if, you know, if we discover that he did tell third parties, I mean, we'll see when we get there.

Q. Okay. Okay. Number 48 seems to repeat. It says that you believe that he did carry out these threats. So we won't beat that horse anymore.

Number 149 says that because he wrote you and Spiros have no business sense, and I'm sure we will be butting heads with Greek properties in the future. Very sad.

How, first of all, is that defamation to you; and then how have you been damaged by that?

A. If somebody does not have business sense, it means they're not a good businessperson; and, again, I don't know if he's told any third party that. We will find out.

Q. Okay. So you -- and, again, you don't know that you've lost any business or lost anything as a result of this?

A. Sitting here today, I don't know how much harm his defamation has caused me. I agree.

Q. Okay. Well, sitting here today, you don't know if there's been defamation. You don't know if he told anybody other than you.

A. I disagree. He sent texts to my brothers about it. That in and of itself, plus I don't know about third parties; but we'll find out.

Q. And no business sense, isn't that an opinion?

A. Whoa, Stanley. I don't know if it's an opinion or a fact. That's a jury issue.

Q. Okay. All right. Let's see. Publish -- publish statements are bad business people and/or do not have any business sense.

That seems to be repetitive so we'll move on to 151.

Did he -- he -- he defamed you to third parties by saying that you and Spiros are accusing him of setting fire to 229 King Street. Okay. How -- who is it that you claim he communicated this to?

A. Same answer. Discovery is ongoing, and he clearly put it in his pleadings as well. That's what he alleged.

Q. Okay. Well, never mind what's in his pleadings but what -- in other words, communicating to third parties outside of the pleadings of the lawsuit, do you have any knowledge that he did that?

A. Discovery's ongoing. Not sitting here today.

Q. So you don't know today. All right.

You say it's defamation that he said to third parties the project wasn't going forward because you and Spiros were not doing what you agreed to do.

Okay. Who do you believe he communicated that to?

A. We'll find out, but I suspect -- and let

me incorporate my interrogatory responses, but that's what I suspect we will determine via deposition testimony. I believe he told several individuals that: Kevin Carroll, potentially the manager. I don't know. We're going to find out when we depose these folks.

Q. But you don't have any evidence that he told them that sitting here today.

A. Well, I have -- sitting here today, I don't have any direct evidence, no.

Q. Do you have any indirect evidence?

A. No.

Q. All right. So no one has told you that these statements were made to any particular person.

A. Well, actually that's -- it's attorney-client privileged and work product privileged after anticipation of litigation. So I'm not going to open the door and testify about it. That's why I answered no.

Q. I'm going to -- I'm not sure I'm -- if either you know -- either you have some information that somebody has -- that Mr. Fokas here has communicated this thing to a third party or you don't.

A. Right.

Q. I'm asking you what that is and who that person was?

A. I believe that I have a good faith basis that that sort of information was communicated to Kevin Carroll.

Q. To Kevin Carroll.

A. But I'm not going to tell you who because it's attorney-client/work product privilege, and it was after the anticipation of the lawsuit.

Q. Because your lawyer told you this? Is that what you're telling me?

MR. FARRIER: You know, Stanley, this is sort of new territory to me. I'd like to consult with him on this so I can understand whether or not to instruct him not to answer.

MR. BARNETT: Okay. All right. Why don't we -- why don't we keep going. We'll set that aside. Let me make a big note 'cause I'll forget. Attorney-client privilege.

Q. But it's Mr. Carroll is the guy. That's the person that you were speculating this was communicated to?

A. You use the word "speculating." I

believe it's -- I believe -- I believe things were said to him.

Q. I beg your pardon?

A. You're the one that used the word "speculating." I believe that things were said to him, and I'm looking forward to taking his deposition to find out.

Q. Okay. You believe it. All right. Okay. So he's the guy. All right. But you've not spoken --

A. He's one of them, yes.

Q. All right. And you haven't spoken to Justin Hanson about this.

A. No.

Q. And you said you don't speak to your aunt. So it's not her.

A. Right.

Q. Okay. I really don't understand paragraph 153. You're going to have to explain that to me, if you can.

"Athan Fokas published false defamatory statements to third parties that he was not seeking a mortgage and/or other financial assurances from Phillip and/or Spiros Ferderigos for the proposed project."

What do you mean by that?

A. Well, you got to read the second part of that sentence.

Q. Well, no. It's a standalone -- it's a standalone statement. You're saying he published to third parties that he -- by Athan, that's him; right? Athan Fokas is the "he," was not seeking a mortgage and/or other financial assurances from Phillip and/ or Spiros Ferderigos for the proposed project.

A. "While at the same time filing a lawsuit demanding that we mortgage and plus or provide financial assurances of their interests for Athan Fokas' benefit for the proposed project."

So, in other words, he's making me look like I'm a stupid businessperson and a stupid lawyer by saying that the project isn't happening because of something I failed to do. I think it's pretty clear.

Q. Well, that's not quite what it says; but he's filed -- he's filed a lawsuit. That's a standalone statement. So who did he communicate to? What -- who are these third parties --

A. Well, the --

Q. -- that he was not seeking a mortgage

and/or other financial assurances from Phillip and/or Spiros Ferderigos for the proposed project? Who did he communicate that to do you say?

A. Well, discovery will hopefully reveal that.

Q. Same answer. You don't know right now.

A. Sitting here today, no, no evidence.

Q. All right. Direct or indirect; right?

A. Sitting here today, no evidence.

Q. And what harm have you suffered if this has been communicated to third parties --

A. That same --

Q. -- that you are aware of?

A. The same answer as far as reputation. Damage to reputation.

Q. It would damage your reputation?

A. As a lawyer and as a businessman, yes.

Q. Okay. So every time somebody says to you if you're out there in the rental business. All right. Every time somebody says to you, "You didn't -- you're not complying with our agreement for our short-term rental. That agreement says that you were supposed to provide fresh towels every day, and you didn't do it. You're not --

EXHIBIT D

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF IRENE FOKAS

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: IRENE FOKAS

DATE: NOVEMBER 19, 2015

TIME: 9:37 A.M.

LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

A. The other day --

THE WITNESS: The other day I had to come here to the office, to Phillip and Spiros.

THE INTERPRETER: The interpreter did not hear what you said or understand.

A. I came late, around 12; and the next day I received a paper saying that I had to go to the office where Spiros -- Spiros is. I asked them to cancel it or to reschedule because I came from a very long trip, but they did not do it.

Q. And the day of the week that you returned, was it a Friday?

A. I don't remember exactly.

Q. Okay. Okay. All right. Mrs. Fokas, did you -- before you went to Greece, did you discuss with your son Athan --

A. Yes.

Q. -- some allegations that you heard had been made about him?

A. Yes.

Q. And what were those allegations?

A. He was playing Tavli with his father. I told my -- my son to be very careful. I heard that they're going to come after you, and they're going to -- they're going to say things against

you.

They're going to say things about you about the insurance. They're going to say that you caused the fire, about a bicycle, and that you received money from insurance; or that he went skiing with his children. He got hurt. He pointed insurance. Things like that.

Q. You said a fire. Was there a specific place that he was accused of starting a fire?

MS. THIEM: Objection.

A. Yes. The whole town. They're going to accuse you of starting the fire -- fire there.

Q. And who was -- who were the people that you thought might accuse your son of these things?

MR. BOWERS: Object to the form.

A. His cousin. They were accusing him. They were going to destroy him.

Q. What are their names?

A. Spiros and Phillip Ferderigos.

MR. BARNETT: Do you want to chat with me?

MR. HASTIE: Just for purposes -- I meant to bring it up ahead of time, and I didn't; and I just want to set things out. This is

technicalities.

A. Okay.

Q. You didn't seem bothered by it.

Okay. All right. Let's go forward.

A. Okay.

Q. This discussion you had with your son, do you remember what month this was?

A. I don't remember exactly. Could have been April or May.

Q. Okay. It was in the spring.

THE WITNESS: Uh-huh, in the spring.

A. Yes.

Q. And where did you learn that these allegations might be made?

MR. BOWERS: Object to the form.

A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.

It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"

Q. You referred -- you said "them." "She worked with them," I think you said.

A. Yes.

THE INTERPRETER: I'm telling her to please state in sentences so that I can translate.

A. Yes. She has -- she does work with her cousins. They have a store together or stores. They have businesses together.

Q. And, again, the cousin's names are?

A. Spiros Ferderigos, Phillip Ferderigos, and Iakovos Ferderigos.

Q. When your daughter said that these things might be -- these allegations might be made against your son and that it would destroy him --

A. She was very afraid, and I was very afraid.

Q. Yes. Did your daughter say that it was one person or multiple people that would do these things?

MS. PHILLIPS: Objection.

A. She said her cousins will do it. Her cousins.

Q. Okay. Thank you. And those are the same people you just named; right?

MR. BARNETT: Ma'am, are you there? Madam interpreter?

(Pause in proceedings.)

MR. BARNETT: You there?

THE INTERPRETER: Yes. I could hear everything you said. You could not hear me.

MR. BARNETT: Yes. There was a little blip there.

THE INTERPRETER: I don't know what happened, but I never left. What was the last question?

MR. BARNETT: You know, Madam Court Reporter, do you mind reading it?

(The pending question was read back by the reporter.)

MR. BARNETT: And I think we had an answer.

THE REPORTER: That was the answer we couldn't hear.

A. Yes. It was -- it was her cousin.

Q. Okay. All right.

Q. Does she -- do you know what the specifics of the accusations are?

A. For fire, insurance, things like that.

Q. But Rania did not tell you these things.

A. Not for the attorney.

Q. Who told you these things?

A. Either the attorney or my son.

Q. Okay. Before today had you ever told anyone that Rania was the source of the information that you had about destroying Athan Fokas?

A. No. I said I was -- I was forced to say this to my son when he came here.

Q. Today?

A. Not today. When I came back -- when I came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan.

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

false insurance claims?

A. Yes. He told me that these -- the -- the accusations against Athan.

Q. And had your son Athan previously told you that Phillip and Spiros were accusing him of setting the fire at 229 King Street and filing false insurance claims?

A. I said that because my daughter told me. Are we going to repeat the same thing?

Q. No. But I want to know did your son Athan ever tell you that Phillip and Spiros were accusing him of those things?

A. Athan said that they are looking for things to accuse me.

Q. And --

A. And I -- and I -- and I heard them -- I heard the things from my daughter; and I told him, "They're accusing you of insurance."

Q. So no one other than Rania told you that Phillip and Spiros were accusing Athan of these things?

A. Nobody else.

Q. And then you heard those same things, though, from Mr. Barnett; correct?

A. I heard those things, as I said before,

EXHIBIT E

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ATHAN FOKAS
VOLUME II

ATHAN FOKAS,

Plaintiff,

vs. CASE NO. 2015-CP-10-3919

PHILLIP FERDERIGOS, JACOB FERDERIGOS AND SPIROS FERDERIGOS,

Defendants.

DEPONENT: ATHAN FOKAS

DATE: FEBRUARY 10, 2017

TIME: 2:10 P.M.

LOCATION: BARNWELL WHALEY PATTERSON & HELMS
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Ruth@clark-associates.com

APPEARANCES

ON BEHALF OF PLAINTIFF:
LAW OFFICE OF STANLEY E. BARNETT
BY: STANLEY E. BARNETT
305 North Civitas Street
Mount Pleasant, SC 29464

ON BEHALF OF PHILLIP FERDERIGOS:
K&L GATES
BY: RICHARD A. FARRIER, JR.
134 Meeting Street, Suite 500
Charleston, SC 29401

ON BEHALF OF JACOB FERDERIGOS:
WILLS MASSALON & ALLEN
BY: JOHN MASSALON
97 Broad Street
Charleston, SC 29401

ON BEHALF OF SPIROS FERDERIGOS:
BARNWELL WHALEY PATTERSON & HELMS
BY: M. DAWES COOKE, JR.
288 Meeting Street, Suite 200
Charleston, SC 29401

ALSO PRESENT:
LESLIE LENHARDT
PHILLIP FERDERIGOS
JACOB FERDERIGOS
SPIROS FERDERIGOS

INDEX

WITNESS PAGE
ATHAN FOKAS
BY MR. COOKE 323
BY MR. FARRIER 400
BY MR. MASSALON 444
BY MR. BARNETT 454
BY MR. COOKE 458
CERTIFICATE OF REPORTER 470

EXHIBITS

EXHIBIT DESCRIPTION PAGE
EXHIBIT NO. 36 EMAIL WITH ATTACHED ACCOUNTING 323
EXHIBIT NO. 37 EMAIL WITH ATTACHED DRAWINGS 326
EXHIBIT NO. 38 WEBSITE SCREENSHOT 337
EXHIBIT NO. 39 EMAIL WITH ATTACHED PERSONAL TAX RETURNS 342
EXHIBIT NO. 40 EMAIL AND ZEUS TAX RETURNS 347
EXHIBIT NO. 41 NORTH TOWNE TAX RETURNS 349
EXHIBIT NO. 42 FOREIGN DOCUMENT 351
EXHIBIT NO. 43 FOREIGN DOCUMENT 352
EXHIBIT NO. 44 FOREIGN DOCUMENT 356
EXHIBIT NO. 45 FOREIGN DOCUMENT 356
EXHIBIT NO. 46 FOREIGN DOCUMENT 361
EXHIBIT NO. 47 CONTRACT OF SALE 375
EXHIBIT NO. 48 CORRESPONDENCE 381
EXHIBIT NO. 49 EMAIL STRING 433
EXHIBIT NO. 50 BANK ACCOUNT DETAIL SCREENSHOT 449
EXHIBIT NO. 51 EMAIL WITH ATTACHED COMMITMENT LETTER 454
EXHIBIT NO. 52 EMAIL STRING 455
EXHIBIT NO. 53 TEXT MESSAGES 466

ATHAN FOKAS,
being previously duly sworn, testified as follows:

MR. COOKE: We're back on the record. Just to make sure we're clear on what we're doing here, we had had scheduled for this afternoon a deposition of Justin Hansen. By agreement we're going to postpone that, and we'll work with you on a time. And we had also intended to depose Kevin Carroll at some point. Is it all right if we just agree that we'll work with you on a time?

MR. BARNETT: Definitely, yes, right.

EXAMINATION

BY MR. COOKE:

Q. Okay. I'm going to backtrack only as little as I can possibly do and cover things that were already covered before, but here is an accounting that you have previously provided.

(Exhibit No. 36 marked for identification.)

Q. Who prepared this accounting?

A. I think Joe Tucker.

Q. So this is an accounting of just the account of the architectural fees that were paid?

A. And some engineering.

Q. Do these dates on the right, is that the

Page 436

for the notes in the first page.
Q. Yes or no?
A. I'm not sure. I'm not sure how that works. But the LLC was the reason they had the stream of money that would pay for the note in the first place.
Q. If you don't know, you don't know.
A. Okay.
Q. Did you tell your sister Rania that Phillip and Spiros promised to give you a mortgage and that they broke that promise?
A. I don't know.
Q. I'm going to ask you that same question as to several people. Did you ever tell that to Maki Nikatos?
A. I don't know.
Q. Did you ever tell that to Irene Fokas?
A. I don't think so.
Q. Did you ever tell Justin, the manager?
A. Can you repeat that question?
Q. Yes, that Phillip and Spiros promised to give you a mortgage and they broke the promise.
A. That was the original agreement that we had with Southcoast. We all agreed to sign on the mortgage.

Page 437

Q. Did you ever tell Justin, the manager at Old Towne, that Phillip and Spiros made an original promise to give you a mortgage and that they broke that promise?
A. I don't think so.
Q. Okay. Same question as to Kevin High.
A. I don't think so.
Q. I'm going to ask you that as to Spiro Fokas.
A. My father?
Q. Yes.
A. I don't think so.
Q. All right. Now, I'm going to ask you a question that is like that pertaining to those same individuals. Did you ever tell your sister Rania that Phillip and Spiros are stupid?
A. I don't think so.
Q. Did you ever tell that to Maki Nikatos?
A. I don't think so.
Q. Did you ever tell that to Irene Fokas?
A. Ditto.
Q. You did not tell that to Irene Fokas?
A. I don't think so.
Q. How about Kevin High?
A. I don't think so.
Q. How about Spiros Fokas?

Page 438

A. I don't think so.
Q. How about Justin, the manager?
A. I don't think so.
Q. All right. Next question, same program, did you ever tell your sister Rania that Phillip and Spiros are liars?
A. I don't think so.
Q. Same question is to say Maki Nikatos.
A. I don't think so.
Q. I'm going to read these names, and at the end you can just say, I don't think I told any of those people that, okay? It's quicker.
A. That would be quicker.
Q. Yes. I don't know if I said Maki Nikatos.
A. You did.
Q. Irene Fokas?
A. You did.
Q. Justin, the manager?
A. You did.
Q. Kevin High?
A. Yes.
Q. Spiros Fokas?
A. All those, I don't think I said any of those things about Phillip.
Q. Okay. Or how about Spiros?

Page 439

A. Or Spiros.
Q. All right. Did you and Kevin High ever talk or communicate about preferred advertising on your website?
A. No.
Q. I remember Dawes identifying this, and so I apologize if I'm asking a question related to Kevin High and his buying the property.
A. Your apology is accepted.
Q. I was apologizing to these guys, not to you.
A. Okay.
Q. What happened with Kevin High and his buying the property?
A. His buying what property?
Q. 493 King.
A. He did not buy 493 King.
Q. I know. But originally he was on the contract for sale, and then in a modification he was taken out as a purchaser.
A. Yes, we talked about originally he showed me the property and he would like to be a partner in the property.
Q. Okay.
A. But that didn't happen.
Q. Okay. Going to show you a paragraph out of

Page 440

our answer and counterclaim in this suit.
A. Okay.
Q. It is paragraph 71 out of our answer and counterclaim. Have you got a copy?
MR. BARNETT: I do, yes.
THE WITNESS: Could I ask you a question? How long do you think you will be deposing me because my wife wants to know.
Q. I think this is my last question, but it depends on your answer.
A. Okay. Tell me what answer you would like to hear.
Q. Look at paragraph 71 and read it to yourself, please.
A. I see it. I read it.
Q. Have you read both pages?
A. Yes.
Q. Do you agree in full or disagree in full with the allegations of that paragraph?
A. I disagree in full with the allegations of this paragraph.
Q. Is there anything in this paragraph which you would agree with?
A. We were sitting -- our kids were at dance practice one time at the church hall, and Phillip I

Page 441

think came and sat at the table where I was sitting; and I think we were drinking tea that day, so we had tea, and I don't remember anybody saying pussy or ignorant or moron. This may be how -- this may be what Phillip said happened, but this is not what happened. He said I accosted him, and I remember just sitting down at the table, drinking tea. And there were a lot of people at the table as well. It wasn't just the two of us.
Q. Do you agree that this is the only -- I'm sorry. You've already testified that there were many, many conversations about the Old Towne Suites project and about the mortgage. You've already testified about that, right?
Is that a yes?
A. That we've already testified about the --
Q. You already testified that there were --
A. Many conversations.
Q. -- many conversations concerning the mortgage.
A. Right.
Q. In this conversation what is being alleged is that Phillip and you had a conversation in which he said, I am not going to mortgage the property.
A. I don't remember that conversation.

Page 442

Q. You don't recall that conversation occurring at church at some point?
A. No.
Q. Okay. You don't recall a conversation that occurred at church during which Phillip said he was not going to guarantee the property?
A. No.
Q. Did you have a conversation with Phillip, I mean a verbal conversation with Phillip, not writings because we've got these writings here; but did you ever have a verbal conversation with Phillip during which he said, I am not going to mortgage the property and I am not going to guarantee anything related to this project?
A. No.
Q. Do you recall anyone else that was at the table that day?
A. I think it was -- it might have been Tony Forsberg, he was -- his kids were at dance as well. It might have been -- what is his name? There were a few people there, like Stephanie Moskos might have been at the table. She usually sat there. And there's a guy named Thanasi Tsimidilis, his wife is usually at that table as well.
Q. All right.

Page 443

A. And I think Tula Zecopoulos was there as well.
Q. Okay. Why don't you go ahead and spell those last two names now.
A. Zecopoulos is Z-E-C-O-P-O-U-L-O-S.
Q. Okay.
A. Tsimidilis -- I have to write it down.
THE REPORTER: Write it on here for me, that would be perfect (indicating).
THE WITNESS: I think that's how you spell his last name. I don't know his wife's name, but that's -- his name is Thanasi Tsimidilis. Thanasi is T-H-A-N-A-S-I.
Q. I just want to make sure I understand your testimony. There's a difference between a recollection and an educated guess or probability.
A. Right.
Q. Are you saying you actually remember these people being there or that these are the typical people that were there for this event.
A. Well, usually they have the -- the families whose kids do dance, we all sit at one table, and it's typical the people that always sit there. And Stephanie Moskos is always there. Tula is usually there. I think she was sitting to my -- no, I

Page 460

Q. So do you have an email like this where you sent that commitment letter to Phillip and Spiros?
A. I haven't seen it. I don't know. Maybe I gave that to them in person, I copied it and gave that to them in person, but I don't remember.
Q. Or might you not have given it to them at all?
A. No, they would definitely have known that we received the million dollars or we would have not gone forward.
Q. I thought you said yesterday that you may have relied on Jacob to inform his side of the family.
A. To give it to them. If I did, I made a copy of it, gave it to Jacob, Jacob might have given it to his brothers; but we all knew about it because we were excited that we got the new loan, and we talked about it at our church gatherings as well.
Q. I noticed that you, in this email where you are introducing the letter, you do refer to the term of it, that is, you say that you talked the banker into getting rid of the five-year balloons and fixing it at 5 percent for the life of the loan. Is there any other email or other communication where you called Spiros's attention

Page 461

to the collateral required in this commitment?
A. I'm sure we talked about it, but I don't know if there are other emails out there. I would have shown all the emails.
Q. And how soon after this email did Ms. Haines issue the closing papers?
A. I'm not sure.
Q. Okay. You were shown Exhibit 52 which is an email from Pete Paulatos to Spiros, correct; and this was evidently sent to him around November 19, 2014.
A. Correct.
Q. Now, when did you first see this email?
A. I guess maybe last -- I don't know, couple days ago.
Q. So you've never seen that before?
A. No.
Q. Okay. Do you remember this morning seeing Exhibit 3 to the deposition of Mr. Odom?
A. Okay.
Q. Look at the page that's numbered 3 at the bottom.
A. Okay.
Q. There's an email from you to Jeff Odom dated November 20, 2014. Do you see that?

Page 462

A. Yes.
Q. It says, hey, Jeff, check out the email below. It seems that we only need $1,750,000 now. Look at the math below and let me know if it makes sense. Did you send that email?
A. Yes.
Q. And the forwarded message was a message from Spiros to you and Jacob and -- well, to you and Jacob with a copy to, evidently, himself and to Phillip; do you see that?
A. Yes.
Q. And it's regarding payments on loan, and you see it begins on the next page, Phillip is working on the agreement and anticipates, and so forth?
A. Yes.
Q. And then do you see about a third of the way down he says, here is the email from my accountant.
A. Correct.
Q. Do you see that?
A. Yes.
Q. All right. Now, compare the email that he quotes with the email that you're now saying you saw for the first time this week.
A. The email that I saw for the first time this week was the email from Pete Paulatos to Spiros.

Page 463

Q. Right.
A. The content was the accountant that we had no clue who the accountant was until Pete showed us the email.
Q. Yes. So do you agree that what Spiros forwarded to you in this email back on November 20, 2014, is essentially the same email that Pete Paulatos sent him on November 19?
A. Well, it's not the same email because he had other words up here, ha, yes, typo, 1.75 million, you are awesome, glad to know I was close, we are just going to do 7 point -- might have been 1.75 million.
I don't know how many other emails there are about Pete Paulatos talking about the project with Spiros or how many times they talked about the project with Spiros, but this is the first time that I knew that Pete Paulatos was involved in this case.
Q. But maybe I misunderstood the thrust of your being shown this exhibit. I thought that maybe it was to try to show somehow that Spiros had hidden this information from you, but I just want to make sure that we agree that he forwarded the substance of Mr. Paulatos's email to you on November 19,

Page 456

Q. Do you know whether your cousin Spiros is a close friend with Mr. Paulatos?
A. They're childhood friends and we go to church together and we often see each other.
Q. All right. Now, John Massalon asked you some questions about your complaint and your allegations against Jacob. I'm not going to re-ask you those. Before this lawsuit was filed, when Phillip and Spiros were telling you they did not want to go forward with the deal, did you discuss with Jacob the possibility that you might file the lawsuit?
A. Yes.
Q. Did you tell Jacob that you did not want to join him in the lawsuit?
A. Yes.
Q. Did you ask Jacob to enter into some sort of an agreement that if his cousins agreed or were required to go forward with the project that he would go forward with the project?
MR. MASSALON: I object. That's settlement discussions.
THE WITNESS: I think so. I think I did.
Q. What did he say?

Page 457

MR. MASSALON: Same objection.
THE WITNESS: He agreed to go forward with the project.
Q. Did he refuse to enter into an agreement?
MR. MASSALON: Same objection.
THE WITNESS: He would have to have the agreement from his brothers to have an agreement.
Q. Okay. So he wouldn't enter into an agreement unless his brothers said it was okay.
A. Yes.
Q. All right. Have you ever told anyone, I won't borrow Richard's list of people, but anyone other than your cousins -- I'm not asking you what you told your cousins.
A. Okay.
Q. Did you ever tell anyone else other than your cousins that Phillip was a bad businessman, and by that I mean a bad businessman or a really, really bad business -- any language at all disparaging his skill as a businessman?
A. No.
Q. Did you ever say that kind of thing in any words about your cousin Spiros?
A. No.
Q. Did you ever say that thing by whatever

Page 458

words about your cousin Jacob?
A. No.
Q. Have you ever accused your cousins -- well, take them one at a time. Have you ever said to any person other than your cousins that Phillip is dishonest in any way?
A. No.
Q. By whatever words.
A. No.
Q. Spiros, did you ever tell anybody that you thought Spiros was dishonest?
A. No.
Q. Did you ever tell anybody that you thought Jacob was dishonest?
A. No.
Q. Did you ever tell anybody that this project to expand the suites at 229 King Street was not going forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant?
A. No.
MR. BARNETT: That's all I have.
MR. COOKE: I've got a few follow-up.
BY MR. COOKE:
Q. This is Exhibit 51. Take a look at that. This is dated September 24, 2014. Says, well, I

Page 459

don't know how I managed to sweet talk our banker into getting rid of the five year balloons and fixing it at 5 percent for the life of the loan, which is unheard in the current banking industry.
Do you now agree that you did not, in fact, talk your banker into getting rid of the five year balloons?
A. Yes. I misunderstood. So I always knew it was a 20-year loan for five year balloons, but then when I went back and reread something, maybe the commitment letter, maybe I -- for a second I interpreted it that way, I shot him out an email -- I don't know if this was around the time when I was at Zero George with all those guys and we were drinking, but definitely it was the original loan that I thought it was, which was a 20-year with five balloon payments.
Q. Okay. And then you did attach a copy of the amended or the new, I guess, commitment letter.
A. Okay.
Q. So my question is, as we've discussed many times, there was another commitment letter that was issued on or about February 5, 2013, for a $1 million loan, correct?
A. Correct, yes.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Phillip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2017 FEB 28 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Stan Barnett, hereby certify that true and correct copies of Plaintiff's Motions for Partial Summary Judgment as to the Counterclaims by Spiros Ferderigos and Phillip Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 28th day of February, 2017, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

John A. Massalon, Esquire
Wills, Massalon and Allen, LLC
97 Broad Street
Charleston, SC 29401

Stan Barnett

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ATHAN FOKAS Plaintiff, vs. PHILLIP FERDERIGOS, SPIROS FERDERIGOS, and JACOB FERDERIGOS Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-3919 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Stan Barnett, Bar No. 533 Address: 305 North Civitas St., Mt Pleasant, SC 29464 Phone: 843-708-4887Fax ____ E-mail: stan.barnett@yahoo.com Other: ____	M. Dawes Cooke,Jr., Bar No. ____ Address: 288 Meeting St., Charleston, SC 29401 Phone: 843-577-7700 Fax____ E-mail: ____Other: ____

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

SECTION I: Hearing Information

Nature of Motion: Motion for Partial Summary Judgment
Estimated Time Needed: 30 min Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

Stan Barnett 2/28/17
Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by:____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, Phillip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos. Defendant(s).	Case No.: 2015-CP-10-3919 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNTERCLAIMS OF SPIROS FERDERIGOS**

FILED
2017 FEB 28 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: M. Dawes Cooke, Jr., Esquire, Attorney for Defendant:

Pursuant to Rule 56 of the SCRCP, the Plaintiff hereby moves for summary judgment as to the counterclaim by Defendant Spiros Ferderigos for Defamation set forth in his Answer filed in the above captioned case. The basis for this motion is that there are no genuine issues of material fact as to the allegations of the counterclaim, specifically that Plaintiff published to any third party the alleged defamatory statements set forth in the counterclaim.

This motion is supported by the attached exhibits:

Exhibit A: Supplemental Affidavit of Plaintiff, Athan Fokas

Exhibit B: Answers to Interrogatories by Spiros Ferderigos

Exhibit C: Deposition excerpt of Spiros Ferderigos

Exhibit D: Deposition excerpt of Irene Fokas

Exhibit E: Deposition excerpt of Athan Fokas

Clerk of Common Pleas

Respectfully submitted,

Stan Barnett
305 North Civitas Street
Mount Pleasant, S.C. 29464
(843) 884-1031/(843) 708-4887
stan.barnett@yahoo.com
Attorney for Plaintiff

February 28, 2017
Mount Pleasant, S.C.

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Philip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919

AFFIDAVIT OF ATHAN FOKAS

After being sworn, Affiant testified as follows:

1. I am Athan Fokas, a resident of Mount Pleasant, South Carolina and the Plaintiff in this case.

2. At no time, have I ever told anyone that the Defendants, Phillip and Spiros Ferderigos, had published defamatory remarks about me as they allege in their counterclaim in this case. When I learned that they had done this, I commenced a lawsuit against them for damages arising from these defamatory statements. That case is Case No. 2015-CP-10-3819.

2. Sometime in March or April of 2015, my mother told me in several different conversations that Spiros and Phillip Ferderigos were making defamatory statements accusing me of causing the fire at Old Towne Restaurant and of instances of insurance fraud. She commenced the conversation with me. I did not ask her about such statements or tell her I thought they were doing this before she engaged me in conversation. The statements concerning the allegations by Spiros and Phillip Ferderigos about me in this regard are false.

FURTHER AFFIANT SAYETH NOT.

ATHAN FOKAS

SWORN TO before me
this 23rd day of February 2017.

Notary Public for South Carolina
My Commission Expires on: 7/18/26

Page 151

A. Yes.

Q. Do you agree that this is the only -- [illegible] --

A. Well, I'm not sure. I'm not sure. I'm not sure.

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2015-CP-10-3919
ATHAN FOKAS, Plaintiff, v. PHILIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS, Defendants.	**SPIROS FERDERIGOS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

NOW COMES Defendant Spiros S. Ferderigos, by and through counsel, and answers Plaintiff's First Set of Interrogatories as follows:

Defendant states that these answers are complete and responsive in accordance with his understanding of the Interrogatories, as drafted, and are based upon records or other information in his possession, or reasonably available to him at the time they were made, and that if additional or different information is subsequently discovered or brought to his attention during the pendency of this cause which renders any initial Answer incomplete, incorrect or otherwise subject to supplementation, he will do so as required by the South Carolina Rules of Civil Procedure.

Defendant further states that in preparing and making these answers, he has not accepted or acquiesced in the purported directions, conditions or definitions imposed at the time the Interrogatories were propounded by Plaintiff, except and to the extent that the same may have been consistent or in conformity with his understanding of the applicable discovery rules.

GENERAL OBJECTIONS

Defendant hereby incorporates by reference the General Objections attached hereto as Exhibit A. All of these General Objections shall be deemed continuing throughout the responses to the specific Interrogatories that follow even when not further referred to in said responses. Defendant also reserves the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein, as discovery in this case is ongoing.

1. Defendant objects to each interrogatory to the extent it seeks information that constitutes evidence or reflects confidential communications between Defendant and Defendants' attorneys.

Clark and Associates Inc.

2. Defendant objects to each interrogatory to the extent it seeks information that constitutes evidence or reflects trial preparation materials or work product of Defendant or Defendants' representatives, agents, or attorneys. Defendant objects to each interrogatory to the extent it seeks information already available to or equally available to Defendant.

3. The following answers are based upon information presently available to Defendant and are made without prejudice to the rights of Defendant to utilize subsequently discovered information.

4. By making a Answer to any interrogatory or document request, Defendant does not intend or mean to waive the attorney-client privilege, the work-product rule or any other privilege, objection or other limitation upon discovery as to that interrogatory or as to any other present or future request for discovery.

5. All Answers to the interrogatories and Answers to the requests for production of documents are made without the waiver of these general objections, or the specific objections which are hereinafter set forth.

6. The foregoing objections are general ones applicable to all categories of information to be produced. The following Answers to any particular item of information should be deemed to include these objections and categories.

7. As to all discovery Answers: Defendant reserves the right to introduce and rely upon any documents or materials listed and information provided in any other party's discovery Answers, or any materials introduced or information obtained at any deposition of any party or witness. In addition, Defendant reserves the right to introduce any documents or materials as rebuttal, if necessary.

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the defendant or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

1) Phillip Ferderigos – See Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

2) Jacob Ferderigos – See Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

3) Spiros Ferderigos – See Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

4) Athan Fokas – See Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce for written or recorded statements.

5) Jeffrey Odom – Plaintiff should have contact information for Mr. Odom as Mr. Odom was Plaintiff's loan representative from Southcoast Community Bank.

6) Irene Fokas – See Irene Fokas Deposition and Affidavit(s) for written or recorded statements, which Defendant believes are already in the possession of Plaintiff.

7) Spiros Fokas – No Statement taken.

8) Gerasimos Nikatos – See Affidavit of Gerasimos Nikatos for written or recorded statements which Defendant believes are already in the possession of Plaintiff.

9) Rania Nikatos – See Affidavit of Rania Nikatos for written or recorded statements, which Defendant believes are already in the possession of Plaintiff.

10) Kevin Carroll – No Statement taken.

11) Justin Hansen – No Statement taken.

These individuals will testify regarding any knowledge they may have concerning the allegations in the pleadings in this case. Defendant reserves the right to call at trial any witness identified by any other party.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the defendant that relate to the claim or defense in the case.

ANSWER: See Defendants' Answers/Counterclaims and Answers to Plaintiff's Request for Production and accompanying documentation. See Defendants' Response to Request No. 1 and attached Bates stamped documentation.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: To be supplemented.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the defendant as alleged in Defendants' counterclaims in this case.

ANSWER: Any and all damages to be determined by a jury. This includes, but is not limited to, any expenses paid toward the proposed project being considered, any potential loss of income had the proposed project being considered been built (had it not been for Plaintiff's wrongful actions), any damages that may be awarded by a jury for Plaintiff's defamatory statements, and actual and punitive damages to be determined by the jury for Plaintiff's conduct. See also Defendants' Answers/Counterclaims and Answers to Plaintiff's Requests to Produce.

5. List the names and addresses of any expert witnesses whom the defendant proposes to use as a witness at the trial of this case.

ANSWER: To be supplemented in accordance with the Rules of Civil Procedure. Defendant reserves the right to call a testifying expert at trial.

6. For each person known to the defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important

facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer No. 1, Answer No.7, and Defendants' Answer and Counterclaims.

7. List every person to whom the defendant claims plaintiff published defamatory statements concerning this defendant and for each describe the date, place, time and manner of such publication and the substance of such defamatory statements defendant alleges plaintiff made to each such person.

ANSWER: Plaintiff published libel and slander per se, which are actionable per se and defamatory, to the following individuals:

1) Jacob Ferderigos – See Defendants' Answer/Counterclaims and Answers to Plaintiff's Requests for Production.

2) Justin Hansen – Upon information and belief, Plaintiff has inquired of Mr. Hansen if Defendant has accused him of inappropriate involvement regarding a fire at 229 King Street and/or has informed Mr. Hanson that Defendant is accusing Plaintiff of inappropriate involvement regarding the fire at 229 King Street. The exact date, place, and time of the statement is not known to Defendant at this time.

3) Kevin Carroll – See Defendants' Answer/Counterclaims and Answer to Plaintiff's Requests for Production. In addition, upon information and belief, Plaintiff informed Mr. Carroll that the proposed project being considered was not moving forward because Defendant was not willing to give his brother a mortgage and that Plaintiff was not seeking a mortgage from Defendant. Plaintiff defamed Defendant by advising Mr. Carroll that Defendant had made promises to him and that Defendant was breaching those promises to him and, further, that the proposed project was not being built because it was the

Defendants' fault. Plaintiff's statements to Mr. Carroll are defamatory per se and depicted Defendant as an unfit and stupid business person (i.e., that Defendant was unfit in his business or profession). Plaintiff also continuously informed Mr. Carroll that the proposed project was going to be built long after Plaintiff knew that the proposed project was not moving forward because of Plaintiff's own misrepresentations, while, at the same time, Plaintiff defamed this Defendant, blaming him for the Plaintiff's own failures to obtain the necessary funds to move forward with the proposed project. Plaintiff further misrepresented the circumstances of the proposed project falling apart and purposely and intentionally attempted to cast this Defendant in a bad light and in a defamatory manner.

4) Irene Fokas – See Deposition and Affidavit(s) of Irene Fokas, which Defendant believes are already in Plaintiff's possession.

In addition, upon information and belief, Plaintiff defamed this Defendant to numerous individuals, including to Defendants' brother, Jacob Ferderigos, Plaintiff's mother Irene Fokas, his father Spiros Fokas, his sister Rania Nikatos, and Old Towne Restaurant's Manager, Justin Hanson, by telling these individuals that the proposed project fell apart because Defendant Phillip Ferderigos could not eat for free at Old Towne, because Defendant is a stupid business person/that he has no business sense, because Defendant is jealous of him, because Defendant is a stupid and unwise business person. Plaintiff has also told these witnesses that Defendant made a promise to him to mortgage 229 King Street for Plaintiff's benefit and that Defendant broke such promise to him. Plaintiff published all of these statements with actual malice and ill will and intent to harm Defendant in an effort to extort and force Defendant to give him a mortgage over 229 King Street (when Plaintiff knows Defendant made no such promise) and to make other

concessions to Plaintiff, when Defendant never agreed to do any of those things. Plaintiff libeled this Defendant by stating Defendants (Phillip Ferderigos and Spiros Ferderigos) "have no business sense." Defendant further incorporates his Answer and Counterclaims, Defendants' Answers to Request for Production, and the libelous emails forwarded from Plaintiff to third parties concerning this Defendant.

8. For each of the instances of alleged publication of defamatory statements described by this defendant in Answer to interrogatory number 7, describe the exact manner in which this defendant learned of such publication and include the date when defendant so learned of each alleged publication.

ANSWER: See Answer No. 7.

9. For each instance in which defendant alleges plaintiff made misleading or untrue statements to this defendant as alleged in this Defendants' counterclaims, describe the date, manner, extent and nature of any actions taken by this defendant in reliance on each of said alleged misrepresentations.

ANSWER: See Answer No. 7, Answer No. 10, and Defendants' Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

10. List all damages this defendant claims to have suffered as the proximate cause of any act of the plaintiff identified in Defendants' answer and counterclaims and for each alleged damage identify the nature of the loss, the date of the loss, the value defendant claims it represents in terms of money, the action of plaintiff the defendant claims caused the loss and way in which said alleged loss resulted from the alleged action of plaintiff.

ANSWER: See Defendants' Answers and Counterclaims. In addition, Defendant expended personal funds as a result of the Plaintiff's misrepresentations to the detriment of

Defendant. Defendant has also lost money and profit based on Plaintiff's wrongful actions. For the value it represents in terms of money, that is a determination to be made by the jury. Defendant further refers Plaintiff to Answer No. 4. Plaintiff has intentionally caused and continues to try to cause intentional and malicious harm to Defendants' business and reputation, which directly impacts his livelihood. Plaintiff has also filed frivolous lawsuits against this Defendant and caused harm to Defendant as set forth in Defendants' Answer and Counterclaims. Plaintiff is liable for actual and punitive damages to be determined by a jury.

11. With respect to the counterclaim by defendant for abuse of process, identify any demand for a collateral advantage made by plaintiff associated with any legal process defendant claims was improperly brought and list the date, the way such demand was communicated and describe the substance of said demand for collateral advantage. For each such communication, list all proof defendant claims proves the communication was made.

ANSWER: See Defendants' Answer/Counterclaims and Answers to Plaintiff's Request to Produce. In addition, Plaintiff has filed frivolous lawsuits against this Defendant in an effort to force Defendant to give him a mortgage and agree to other terms this Defendant never agreed to. The Plaintiff boasted that his lawyer was working on a contingency and his filing a frivolous lawsuit would not cost him any money, whereas it would cost Defendant large sums of money to defend against Plaintiff's frivolous claims. Plaintiff followed through with his threat and abuse of process, and the existence of these two lawsuits prove Defendants' abuse of process claim against Plaintiff. Plaintiff is demanding that this Defendant share in his risk of the project and underwrite his portion of the proposed project. This is a risk that Defendant never agreed to bear and Defendant does

not agree to bear. Plaintiff has always been responsible for his portion of the proposed project and the Plaintiff cannot use this Defendants' property in order to secure a loan for his benefit. Plaintiff has defamed Defendant and filed frivolous lawsuits against Defendant to try to force Defendant to give Plaintiff a mortgage (for Plaintiff's benefit) and to try to force Defendant to agree to other terms Defendant never agreed to. Plaintiff is improperly using the legal process to try to extort concessions from this Defendant by knowingly filing frivolous lawsuits against this Defendant.

12. Identify the date and circumstances in which defendant became aware of the terms for financing the project to expand the building at 229 King Street as identified by South Coast Bank. If there were separate times and circumstances for the elements of those terms set forth below, identify when and how defendant became aware of the terms related to:

a. A requirement that defendants mortgage their interest in 229 King Street;

b. A requirement that the LLC which operates the suites rental business be obligated to pay the bank on the note;

c. A requirement for a hypothecation agreement.

ANSWER: Defendant objects to Plaintiff's terminology in this Interrogatory. There were no "terms for financing the project to expand the building at 229 King Street" applicable to this Defendant. See Defendants' Answer and Counterclaims. Defendant incorporates and craves reference to his texts/emails.

Defendant objects to this Interrogatory as there was never a "requirement" as this Defendant never agreed to mortgage his interest in 229 King Street for the benefit of the Plaintiff or anyone else; likewise, there was never a "requirement" as this Defendant never agreed that the LLC be obligated to pay any note, and there was never a "requirement" as

EXHIBIT P

this Defendant never agreed to sign a hypothecation agreement. This Defendant never agreed to provide Plaintiff with a mortgage for the proposed project, nor did he agree to the other terms as set forth in this Defendants' pleadings.

a. On or about October 17, 2014, Plaintiff contacted Jacob Ferderigos to inform him that Plaintiff had unilaterally scheduled a closing for the following week and informed Jacob Ferderigos for the first time Plaintiff demanded Defendant mortgage his interest in 229 King Street. This message was immediately repeated to Defendant by Jacob Ferderigos. When Jacob Ferderigos informed Defendant of this demand, Defendant immediately told Jacob Ferderigos that he would not mortgage his interest in 229 King Street. See also Defendants' Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

b. Not until on or about November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing documents were sent to Defendant to be reviewed for the first time.

c. Not until November 21, 2014, the day of the second closing Plaintiff unilaterally scheduled, when the closing attorney for Plaintiff sent an email that "[t]here will also be hypothecation agreements, I believe." See also Defendants' Answer/Counterclaims and Answers to Plaintiff's Request to Produce.

13. If this defendant claims that he informed plaintiff he would refuse to mortgage his interest in 229 King Street as part of the financing of the project to expand the building, identify the date and circumstances and means by which this was communicated to plaintiff.

ANSWER: See Defendants' Answers/Counterclaims and Answers to Plaintiff's Request to Produce.

14. Does this defendant claim that he never agreed to mortgage his interest in 229 King Street as part of the financing of the project to expand the building?

ANSWER: Yes, see Answer No. 11 and 12; this Defendant never agreed to mortgage his interest in 229 King Street for the proposed project. There was never an agreement to mortgage Defendants' interest in 229 King Street as part of the financing for the proposed project being considered/explored for new construction above 229 King Street at any time, as further explained below.

In the initial stages of the parties considering/exploring new construction above 229 King Street, Plaintiff sent written correspondence on December 19, 2012, stating that he wanted Defendant to mortgage his interest in 229 King Street. Defendant immediately responded the same day via written correspondence, outright rejecting that he would mortgage his interests in 229 King Street and/or accumulate any debt for the proposed project being considered. (See Defendants Answers/Counterclaims and Answers to Plaintiff's Request to Produce).

With this clear understanding, the parties continued to consider and explore the possibility of the proposed project. It was not until on or about October 17, 2014, a few days prior to Plaintiff unilaterally scheduled a closing for the proposed project still being considered, that Plaintiff, for the first time, informed Defendant (through Jacob Ferderigos) that Plaintiff demanded Defendant provide him with a mortgage against his interest in 229 King Street so Plaintiff can get a loan for his share of the construction costs. For the first time ever, Defendant, on or about October 19, 2014, informed Plaintiff that he would consider providing a mortgage in his interest in 229 King Street on the condition and so long as the Plaintiff signed a side/ancillary agreement that Defendant felt was necessary

to protect his financial interests. Plaintiff refused to sign the side/ancillary agreement Defendant demanded in order to consider mortgaging his interests in 229 King Street. (See Defendants' Answers/Counterclaims and Answers to Plaintiff's Request to Produce).

15. If you take the position that the LLC which operates the suites rental business being obligated to make payment on the note to South Coast Bank would have a material effect on you, explain that effect why you allege this is true.

ANSWER: This Interrogatory is irrelevant. Defendant never agreed to mortgage or guarantee or in any way encumber his interest in 229 King Street for the benefit of Plaintiff or for anyone else. This Defendant was bringing cash to fund his portion of the proposed project outright and this Defendant was looking forward to enjoying the profit that would come from the investment once the proposed project was built. This Defendant never agreed to encumber his interest in the LLC or any income stream that the proposed project would bring. Per the Plaintiff's bank closing documents, the income and/or assets that would be used to pay the Note would include Defendants' own profits from the rental income. Defendant never agreed to such arrangement. Defendant further never agreed to have the LLC pay a Note or to use his rental profits in such a manner. Further, based on the incorrect closing documents, which were never agreed to, having the LLC obligated to make payment on the note potentially exposes this Defendant to personal liability and further potentially interferes with this Defendants' cash flow/profit from the LLC.

Defendant also objects to this Interrogatory as it is confusing. Subject to this objection, Defendant is unable to answer this Interrogatory as the final cost of the proposed project was never established or agreed to by the parties, and, as a result, Defendant cannot state what the income from the rental suites business would be. Defendant further

Clerk of Superior Court

objects because he never agreed that any payment was to be made by the LLC and never agreed to/was under no obligation to have a payment for a loan required by Plaintiff to be paid out of Defendants' share of the rental suites business.

16. Identify the date and circumstances under which you became aware that the project to expand the building would be for an additional floor over and above what was originally investigated by you, the other defendants and plaintiff.

ANSWER: See Defendants' Answer/Counterclaims and Defendants Answers to Requests for Production. This Defendant craves reference to the texts and emails produced in discovery. Plaintiff represented that the total cost of the project would be less than One Million Dollars and, based on that figure, this Defendant would have been responsible for one-sixth of that amount, something that this Defendant had in cash and was willing to invest at the time for the proposed project. Defendant recalls that he was notified that the costs of the proposed project had ballooned from an estimated $900,000 to well over Two Million Dollars, on or about September 9, 2014.

17. If you disagree that the rental income from the suites rental business would be sufficient to cover the payments on the loan financing the expansion of the building at 229 King Street, explain why that is true and include what you think the shortfall in funds to cover said payments would likely be.

ANSWER: As the final cost of the proposed project was never established, Defendant does not know at this time if income from the rental suites would have been sufficient to cover payments on any loan obtained by Plaintiff to cover his fifty percent (50%) portion of the construction costs. Furthermore, this Interrogatory is irrelevant to this Defendant.

Defendant never agreed to have his share of profits from the rental suites to be used to pay a loan.

18. Do you agree that by the date of the first scheduled closing for the loan from South Coast Bank to finance the expansion of the building at 229 King Street all necessary design and regulatory approvals had been secured to allow the expansion to proceed? If you do not agree, explain why.

ANSWER: Defendant objects to the terminology of this Interrogatory. There was no expansion of the building as the proposed project was for building a new building. Further, Defendant is not aware if all necessary design and regulatory approvals had been secured to build a new building above 229 King Street by the time Plaintiff unilaterally scheduled a closing. However, Defendant knows that the final cost of the proposed project was never known. Decisions still needed to be made and the full cost of the proposed project was still unknown, including decisions/costs for windows and sprinkler systems, both material matters potentially increasing costs significantly. See also Defendants' Answer/Counterclaims and Answers to Request to Produce. Defendant craves reference to the texts/emails between the parties.

[SIGNATURE BLOCK ON THE NEXT PAGE]

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: _____

M. DAWES COOKE, JR., ESQUIRE
JEREMY E. BOWERS, ESQUIRE
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
PHONE: (843) 577-7700
FACSIMILE: (843) 577-7708
ATTORNEYS FOR SPIROS FERDERIGOS

June 1, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answers to Plaintiff's First Set of Interrogatories on behalf of the Defendant, SPIROS FERDERIGOS, has been served via U.S. Mail, on this 1st day of June 2016, to counsel of record as follows:

Stanley E. Barnett, Esquire
Smith, Bundy, Bybee & Barnett, P.C.
P.O. Box 1542
Mount Pleasant, SC 29465

Richard A. Farrier, Jr., Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite #200
Charleston, SC 29401

John A. Massalon, Esquire
I. Ryan Neville, Esquire
Wills Massalon & Allen, LLC
P.O. Box 859
Charleston, SC 29402

Cheryl Reynard
Legal Secretary

EXHIBIT A

GENERAL OBJECTIONS

1. Defendant objects to the Interrogatories to the extent that they seek to impose any obligations beyond those provided for by the South Carolina Rules of Civil Procedure ("Rules") or any other applicable laws or rules.

2. Defendant objects to the Interrogatories to the extent that they seek information contained in documents that were prepared for or in anticipation of litigation, constitute attorney work-product, contain or divulge attorney-client communications, contain confidential or proprietary business information, or are otherwise protected from disclosure under applicable privileges, laws or rules. Defendant does not intend to disclose information that is privileged or otherwise immune from discovery. Disclosure of any protected or privileged information in response to the Interrogatories shall be deemed inadvertent and shall not constitute a waiver or prejudice of any privilege or any other ground for objecting to discovery with respect to any such documents, nor shall such inadvertent disclosure waive or prejudice Defendant's right to object to the use of any such information or documents during this or any subsequent proceeding.

3. Defendant objects to the Interrogatories to the extent that they seek information and documents that are a matter of public record, that are within the knowledge or possession of Plaintiff, or to which Plaintiff's access is equal to that of Defendant, on the grounds that providing such information and documents would impose an unreasonable burden and expense upon Defendant.

4. Defendant objects to the Interrogatories to the extent that they seek information that is overly broad and unduly burdensome for Plaintiff to locate and will result in an

EXHIBIT D

unreasonable expenditure of costs that exceeds the value and relevancy of finding any such information and is disproportionate to the amounts in controversy in this case.

5. Defendant objects to the Interrogatories to the extent that they seek information prior to or beyond the scope of the subject dispute.

6. Defendant objects to the Interrogatories to the extent that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. Defendant's answers and objections to the Interrogatories are made without waiving, or intending to waive, but on the contrary preserving, and intending to preserve: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, confidentiality, authenticity, admissibility, or any other proper grounds, as evidence for any purpose, in whole or in part, the use of the responses provided by Defendant, in any subsequent proceeding, or in any trial in this or any other action; (b) the right to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of the Interrogatories to which Defendant has responded herein; and (c) the right to amend, revise, correct, supplement, or clarify the answers and objections propounded herein.

8. No objection or limitation, or lack thereof, made in these answers and objections shall be deemed an admission by Defendant as to the existence or nonexistence of information.

9. Defendant's answers to the Interrogatories are made to the best of his personal knowledge, information and belief. Defendant's discovery and investigation of the facts relevant to this case are ongoing.

10. All of these general objections shall be deemed continuing throughout the responses to the specific items of the Interrogatories that follow even when not further referred to in said responses. The failure to note the application of the general objections is not a waiver of

EXHIBIT C

Page 1

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF SPIROS FERDERIGOS

Athan Fokas,
Plaintiff,

vs. CASE NO. 2015-CP-10-3919

Phillip Ferderigos, Spiros Ferderigos,
and Jacob Ferderigos,
Defendants.

DEPONENT: SPIROS FERDERIGOS

DATE: NOVEMBER 11, 2016

TIME: 10:00 AM

LOCATION: BARNWELL WHALEY PATTERSON & HELMS
CHARLESTON, SOUTH CAROLINA

REPORTED BY: ANNE BOULEY MEYER, RPR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Office@clark-associates.com

Page 2

APPEARANCES

ON BEHALF OF PLAINTIFF:

SMITH BUNDY BYBEE & BARNETT
BY: STANLEY E. BARNETT
1037 Chuck Dawley Blvd., Suite 100-F
Mount Pleasant, SC 29464

ON BEHALF OF PLAINTIFF:

LENHARDT LAW FIRM
BY: LESLIE S. LENHARDT
1876 Wallenberg Blvd.
Charleston, SC 29407

ON BEHALF OF DEFENDANT SPIROS FERDERIGOS:

BARNWELL WHALEY PATTERSON & HELMS
BY: DAWES COOK, JR.
288 Meeting Street
Charleston, SC 29401

ON BEHALF OF DEFENDANT SPIROS FERDERIGOS:

WESTON LAW FIRM
BY: STEPHANIE A. PHILLIPS
761 Johnnie Dodds Blvd., Suite 100
Mount Pleasant, SC 29464

ON BEHALF OF DEFENDANT PHILLIP FERDERIGOS:

K&L GATES
BY: RICHARD A. FARRIER, JR.
134 Meeting Street, Suite 200
Charleston, SC 29401

Page 3

ON BEHALF OF DEFENDANT JACOB FERDERIGOS:

WESTON LAW FIRM
BY: STEPHANIE A. PHILLIPS
761 Johnnie Dodds Blvd., Suite 100
Mount Pleasant, SC 29464

ON BEHALF OF DEFENDANT JACOB FERDERIGOS:

WILLS MASSALON & ALLEN
BY: IRISH RYAN NEVILLE
97 Broad Street
Charleston, SC 29401

Page 4

INDEX

EXAMINATION

BY MR. BARNETT 5
BY MS. LENHARDT 112
CERTIFICATE OF REPORTER 147
DEPONENT CORRECTION SHEET 148

EXHIBITS

Exhibit No. 1 - E-mail chain 20
Exhibit No. 2 - E-mail chain 28
Exhibit No. 3 - Texts 38
Exhibit No. 4 - Answer/counter claims 74
Exhibit No. 5 - Phillip's statement 114
Exhibit No. 6 - Texts 120
Exhibit No. 7 - Affidavit 123

Page 89

Mr. Fokas.
Q. So you are seeking one-sixth of the costs that were spent doing the design and the permitting?
A. That's part of it.
Q. Okay. And you're seeking lost profits?
A. Sure.
Q. Okay.
A. Anything that he's seeking from me, I can seek from him. It's everything across the board. And especially with these horrible lies that he put forward to try to bully me into giving him a mortgage. I think that punitive damages comes into that completely.
But again, I'm saying this as a layperson. You'd have to direct that to my attorneys. It's just my personal opinion.
Q. Well, I have sat through an unfortunately large number of depositions in cases where people are suing each other for money, and this is a question, that I have to tell you, comes up at every one of them.
A. Sure.
Q. Whoever is seeking money is usually asked in a deposition, how much?

Page 90

A. I'm not offended by your question. But -- and I - and if I meant to say that I'm offended by it, I'm not. The thing is --
Q. I'm just telling you, this is what we do.
A. Oh, I know. What I'm saying is, again, you're asking my opinion. I have legal counsel for --
Q. No.
A. Well, you just asked me what my opinion was --
Q. I'm asking you what you are seeking.
A. Again, that is a legal question that you have to ask my attorneys. They're the ones who apply the facts of the case to the law, and they're the ones who are going to make the arguments based upon the facts of the case.
I've provided you all the facts in the discoveries, in the pleadings, in everything that's been filed. So I incorporate and refer you to those.
But including to those -- including to those is that I wouldn't have spent a penny on this project if Athan was honest from the beginning. And I also believe he could have done what he wanted.

Page 91

He literally had three times the amount of money a couple of months later. The project could have gone forward. He hid that from me. He lied to me. He said that, once I get my money I'm just going to pay the mortgage off. We all need the mortgage to get this done.
No. I don't need the mortgage. He's the one who said he needed the mortgage, but he didn't. Because he was -- and unless he's lying, he said he was going to make something like 12 percent or 1 percent off of $10 million, and he was coming in with $3 million.
That's after the fact. He tried to goad us into doing what he wanted to after the second closing fell apart. It was all lies.
And I believe that he did all this on purpose to try to get me to mortgage my interest in 229 King Street, which I have always refused to do, and including the current suits that we have right now. And that's just the truth; that's the facts.
Q. Let's move ahead to your claim for defamation damages --
A. Yes, sir.
Q. -- slander.
A. Yes, sir. Which page?

Page 92

Q. It starts on page 30.
A. Yes, sir.
Q. You allege that Athan Fokas published false and defamatory statements to Jacob Ferderigos in writing, that Phillip and Spiros Ferderigos have no business sense, and I'm sure we will be butting heads with Greek properties in the future, very sad, unquote.
How have you been damaged by that statement?
A. Okay. So, when -- you see he refers here to Greek properties. It is my understanding that Athan, as well as I, we have Greek properties in Greece that we pay taxes on in Greece, okay? So that's what he's referring to over there.
He owns some properties in Greece. And he's saying that we're going to butt heads in the management, or whatever it is, of those in the future. That's what he's referring to there is his Greek properties and my Greek properties.
He says I have no business sense. And if you read the full e-mail, you'll see it's a direct -- your brothers -- I think he said, your brothers have no business sense.
I am in the business of being an attorney, and I am also in the business of being an

Page 93

entrepreneur. I own rental properties. I am in that business. My reputation for both of those professions that I have, for both of those businesses, is everything.

So going around saying you have no business sense, he just went and told the contractor -- he implied to him that I lied about how much it would cost to hang some towel holders up saying, Spiros said X. Well, it was a lie. Do you think that guy is going to want to keep doing business with me?

I rely on these people in the community, and he is going around bad-mouthing me about it. So when he says I have no business sense, it affects me in my profession. And I think that's per se.

Q. Is the statement about towel holders in here somewhere? Did I miss it?

A. No. I'm just saying there's another example.

Q. Oh.

A. Yeah, I'm just -- because that's a newer one.

Q. Who's the contractor?

A. Let's see. The guy -- I don't know if contractor is the right word. It's the guy who was doing the work on it was Kevin Carroll.

Page 94

And there's a text from Athan saying, this is too expensive even for Greek terms, something like that. You know, why in the world is it this much? Spiros told me it's not going to be this much.

And then I have the text from Athan where he agrees to it, but he's making me look bad on purpose. He's trying to bully me.

Q. Making you look bad because your estimate of a towel-holder cost was wrong?

A. No. Because I asked Athan and my brothers, I said, Kevin Carroll says he can fix this for X amount.

I don't know who fixed the towel holders before, but they looked horrible, horrible. All this foam, and disgusting. So Kevin said, I can fix it for X amount for each towel holder.

I asked for permission, because in an LLC you have to ask for permission; you have to have a majority consent for those things. Athan said yes. So then Kevin was told yes.

Athan finds out about the bill and he says, Spiros didn't say that's what it is, making me look horrible to the builder, horrible. It's an extension of this stuff, a complete extension,

Page 95

trying to affect my reputation in the community.

Q. Has anyone refused to do business with you as a result of this, so far as you know?

A. So far as I know right now? No, I don't know. But how many people have heard about this stuff, where they're not doing business with me? I don't know. That's something that we have discovery for to bring it out.

Q. Has anyone told you that they have heard that you were a bad business person?

A. He told Jacob.

Q. Your brother, okay. Anyone else?

A. He told Jacob. Well, he strongly implied it by saying that I was wrong with what I was saying to Kevin Carroll. It wouldn't surprise me if Kevin Carroll thinks I have no business sense because of what he said.

Q. I got that down. Has anyone else told you, other than your brother, that they have heard that you're a bad business person?

A. Not to my face, no. Not that I know of, but we have discovery ongoing. But I have to say, again, he followed up in doing this with Kevin Carroll and tried to make me look bad to him.

I don't know what he said to the property

Page 96

manager or anybody else. But I guess we have discovery for that.

Q. You allege in paragraph 152 that Athan Fokas has alleged -- the defamatory statement is charging you with commission of a crime of moral turpitude and/or unfitness in his business.

What are you talking about there?

A. Saying I have no business sense.

Q. The same thing you just went over?

A. Yeah. I mean, whatever -- I incorporate everything that's in this complaint and in my pleadings and in discovery.

Again, all this stuff, this stuff that I'm saying in here, when he goes around and says that I have no business sense, that goes directly towards my reputation in the business that I'm in and affects it per se.

Q. You're not alleging that he's accused you of committing a crime?

A. Not that I know of.

Q. Okay. And other than your brother Jacob, who else are you saying that he has published these statements to?

A. Well, I just gave you an example of Kevin Carroll, on how he's telling him that I have no

Page 97

business sense by saying that I don't know how to do an estimate.
Q. About the towel holders?
A. It was a bunch of stuff. I think it was towel holders and tiles and all this other stuff.
And, yeah, discovery is going to be ongoing. We're going to have to depose a lot of people, and we're going to get to the bottom of it.
But when he's going around telling my brother, just arrogantly in writing that I have no business sense, I would assume he's going around saying it to other people.
Q. As we sit here right now today ——
A. Yes, sir.
Q. — today, do you know of another single, solitary person other than the two people you have mentioned?
A. For business sense?
Q. Yes.
A. No, I do not. Not sitting here today.
Q. All right.
Let's move on to the next counterclaim, use of process, page 32. At any time before this lawsuit was filed, did Athan Fokas make a demand on you for something that he wanted you to do so that

Page 98

he wouldn't file the lawsuit?
A. He's done a lot of things. Let's see here. He has threatened to come after me professionally as an attorney.
Q. I beg your pardon?
A. He has threatened to come after me professionally as an attorney.
Q. Be more specific about that, please.
A. Saying I have ethics — that I violated my ethical duty as a lawyer for not giving him a mortgage on 229 King Street or not doing what he wanted me to do.
Q. When did he say that?
A. It's in the discovery I sent to you. He threatened to try to get me fired from my job as an assistant solicitor. He's done that. That's in text communications in writing that he sent to me.
Q. Okay. So you're saying that that's in these text messages that you're talking about?
A. It's in the communications between us. It's all in writing between him and me.
Q. All right.
A. He's threatened to come after me ethically. He's threatened to come after me for my current business to try to bully me into — this is after

Page 99

the lawsuit is filed.
Q. Oh. After the lawsuit.
A. No. No. For the threat for me as an assistant solicitor. But for the threat for me professionally, it was before. But he's threatened that.
He's filed a frivolous defamation lawsuit for the sole purpose of trying to get an advantage in this action. He's filed some other lawsuit that I, you know, don't even know how to caption that.
Q. The frivolous defamation lawsuit, that was the one for which summary judgment was denied?
A. At that moment because y'all asked for more discovery.
Q. You moved for summary judgment —
A. And y'all asked for more time to do discovery, so he granted you more time to do discovery.
Q. Okay. All right.
So anything else that he made a demand from you about?
A. Okay. So like I said, but again, hundreds and hundreds of documents that I have given you. So I'm going to refer to those, incorporate those in my answer.

Page 100

And I'm going to talk off the top of my head as well, but I'm letting you know because of the hundreds and hundreds of documents that I gave you, I am incorporating those right here, right now.
But you have him threatening me ethically as an attorney. You have him threatening me for my current position that I am in. He's filing frivolous defamation lawsuits where the sole basis of it — to amend the complaint on it to take that person out completely.
Q. Now, the question —
A. Then you have —
Q. I'm sorry. Go ahead.
A. No. I'm sorry.
Q. He hasn't filed an ethical complaint against you?
A. No, he hasn't. But he's threatened it.
Q. No one has filed an ethical complaint —
A. Nobody has threatened it. And it's frivolous, and the mere threat alone is absolutely insane.
Because as you see, the beauty, Mr. Barnett, of all this is that I have all of our communications in writing. Everything is there. This is a meritless, frivolous lawsuit.

EXHIBIT D

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF IRENE FOKAS

ATHAN FOKAS,
Plaintiff,
vs. CASE NO. 2015-CP-10-3891
PHILLIP FERDERIGOS AND SPIROS FERDERIGOS,
Defendants.

DEPONENT: IRENE FOKAS

DATE: NOVEMBER 19, 2015

TIME: 9:37 A.M.

LOCATION: SMITH BUNDY BYBEE & BARNETT
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

A. The other day --

THE WITNESS: The other day I had to come here to the office, to Phillip and Spiros.

THE INTERPRETER: The interpreter did not hear what you said or understand.

A. I came late, around 12; and the next day I received a paper saying that I had to go to the office where Spiros -- Spiros is. I asked them to cancel it or to reschedule because I came from a very long trip, but they did not do it.

Q. And the day of the week that you returned, was it a Friday?

A. I don't remember exactly.

Q. Okay. Okay. All right. Mrs. Fokas, did you -- before you went to Greece, did you discuss with your son Athan --

A. Yes.

Q. -- some allegations that you heard had been made about him?

A. Yes.

Q. And what were those allegations?

A. He was playing Tavli with his father. I told my -- my son to be very careful. I heard that they're going to come after you, and they're going to -- they're going to say things against

you.

They're going to say things about you about the insurance. They're going to say that you caused the fire, about a bicycle, and that you received money from insurance; or that he went skiing with his children. He got hurt. He pointed insurance. Things like that.

Q. You said a fire. Was there a specific place that he was accused of starting a fire?

MS. THIEM: Objection.

A. Yes. The whole town. They're going to accuse you of starting the fire -- fire there.

Q. And who was -- who were the people that you thought might accuse your son of these things?

MR. BOWERS: Object to the form.

A. His cousin. They were accusing him. They were going to destroy him.

Q. What are their names?

A. Spiros and Phillip Ferderigos.

MR. BARNETT: Do you want to chat with me?

MR. HASTIE: Just for purposes -- I meant to bring it up ahead of time, and I didn't; and I just want to set things out. This is

technicalities.

A. Okay.

Q. You didn't seem bothered by it.

Okay. All right. Let's go forward.

A. Okay.

Q. This discussion you had with your son, do you remember what month this was?

A. I don't remember exactly. Could have been April or May.

Q. Okay. It was in the spring.

THE WITNESS: Uh-huh, in the spring.

A. Yes.

Q. And where did you learn that these allegations might be made?

MR. BOWERS: Object to the form.

A. Unfortunately, I learned these things from my daughter. She was afraid for her brother. I would not say anything for a year-and-a-half because my daughter -- my daughter was involved.

It's difficult for your child. You want to say the truth, but you cannot. Because with my daughter, we are more than sisters. We are very, very -- we like each other very much. We're very close.

hearing these things; but I never asked her, "Where did you find this stuff? Where did you hear it?"

Q. You referred -- you said "them." "She worked with them," I think you said.

A. Yes.

THE INTERPRETER: I'm telling her to please state in sentences so that I can translate.

A. Yes. She has -- she does work with her cousins. They have a store together or stores. They have businesses together.

Q. And, again, the cousin's names are?

A. Spiros Ferderigos, Phillip Ferderigos, and Iakovos Ferderigos.

Q. When your daughter said that these things might be -- these allegations might be made against your son and that it would destroy him --

A. She was very afraid, and I was very afraid.

Q. Yes. Did your daughter say that it was one person or multiple people that would do these things?

MS. PHILLIPS: Objection.

A. She said her cousins will do it. Her cousins.

Q. Okay. Thank you. And those are the same people you just named; right?

MR. BARNETT: Ma'am, are you there? Madam interpreter?

(Pause in proceedings.)

MR. BARNETT: You there?

THE INTERPRETER: Yes. I could hear everything you said. You could not hear me.

MR. BARNETT: Yes. There was a little blip there.

THE INTERPRETER: I don't know what happened, but I never left. What was the last question?

MR. BARNETT: You know, Madam Court Reporter, do you mind reading it?

(The pending question was read back by the reporter.)

MR. BARNETT: And I think we had an answer.

THE REPORTER: That was the answer we couldn't hear.

A. Yes. It was -- it was her cousin.

Q. Okay. All right.

Q. Does she -- do you know what the specifics of the accusations are?

A. For fire, insurance, things like that.

Q. But Rania did not tell you these things.

A. Not for the attorney.

Q. Who told you these things?

A. Either the attorney or my son.

Q. Okay. Before today had you ever told anyone that Rania was the source of the information that you had about destroying Athan Fokas?

A. No. I said I was -- I was forced to say this to my son when he came here.

Q. Today?

A. Not today. When I came back -- when I came back from Greece, I was forced to do it, to tell him that it was my daughter who said it. I had no intentions of telling him.

I didn't want my daughter to get involved in this, but it could not be done any other way. I had to say the truth.

Q. Have you had any conversations with your son Athan related to the fire at 229 King Street?

A. I told him that the guys are going to accuse you for the fire.

Q. Who told you that the guys were going to do that?

A. I told you earlier. I learned these things from my daughter.

Q. Have you and your son, Athan Fokas, discussed the pending lawsuits against Phillip and Spiros?

A. If I spoke with -- I discussed it with who?

Q. Athan. Your son Athan.

A. Of course.

Q. Did you discuss with him -- or what did you discuss with him about those lawsuits?

A. That if -- everything. Everything that the cousins are talking about him.

Q. And do you understand that there are two lawsuits against Phillip and Spiros?

A. What's the other one?

Q. Do you understand that one lawsuit is about alleged defamation?

A. Yes.

Q. Do you know that there is a second --

A. This is the one I know.

Q. Do you know that there is a second lawsuit against Phillip and Spiros related to

false insurance claims?

A. Yes. He told me that these -- the -- the accusations against Athan.

Q. And had your son Athan previously told you that Phillip and Spiros were accusing him of setting the fire at 229 King Street and filing false insurance claims?

A. I said that because my daughter told me. Are we going to repeat the same thing?

Q. No. But I want to know did your son Athan ever tell you that Phillip and Spiros were accusing him of those things?

A. Athan said that they are looking for things to accuse me.

Q. And --

A. And I -- and I -- and I heard them -- I heard the things from my daughter; and I told him, "They're accusing you of insurance."

Q. So no one other than Rania told you that Phillip and Spiros were accusing Athan of these things?

A. Nobody else.

Q. And then you heard those same things, though, from Mr. Barnett; correct?

A. I heard those things, as I said before,

EXHIBIT E

Page 320

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ATHAN FOKAS
VOLUME II

ATHAN FOKAS,

Plaintiff,

vs. CASE NO. 2015-CP-10-3919

PHILLIP FERDERIGOS, JACOB FERDERIGOS AND SPIROS FERDERIGOS,

Defendants.

DEPONENT: ATHAN FOKAS

DATE: FEBRUARY 10, 2017

TIME: 2:10 P.M.

LOCATION: BARNWELL WHALEY PATTERSON & HELMS
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Ruth@clark-associates.com

Page 321

APPEARANCES

ON BEHALF OF PLAINTIFF:

LAW OFFICE OF STANLEY E. BARNETT
BY: STANLEY E. BARNETT
305 North Civitas Street
Mount Pleasant, SC 29464

ON BEHALF OF PHILLIP FERDERIGOS:

K&L GATES
BY: RICHARD A. FARRIER, JR.
134 Meeting Street, Suite 500
Charleston, SC 29401

ON BEHALF OF JACOB FERDERIGOS:

WILLS MASSALON & ALLEN
BY: JOHN MASSALON
97 Broad Street
Charleston, SC 29401

ON BEHALF OF SPIROS FERDERIGOS:

BARNWELL WHALEY PATTERSON & HELMS
BY: M. DAWES COOKE, JR.
288 Meeting Street, Suite 200
Charleston, SC 29401

ALSO PRESENT:

LESLIE LENHARDT
PHILLIP FERDERIGOS
JACOB FERDERIGOS
SPIROS FERDERIGOS

Page 322

INDEX

WITNESS	PAGE
ATHAN FOKAS	
BY MR. COOKE	323
BY MR. FARRIER	400
BY MR. MASSALON	444
BY MR. BARNETT	454
BY MR. COOKE	458
CERTIFICATE OF REPORTER	470

EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
EXHIBIT NO. 36	EMAIL WITH ATTACHED ACCOUNTING	323
EXHIBIT NO. 37	EMAIL WITH ATTACHED DRAWINGS	326
EXHIBIT NO. 38	WEBSITE SCREENSHOT	337
EXHIBIT NO. 39	EMAIL WITH ATTACHED PERSONAL TAX RETURNS	342
EXHIBIT NO. 40	EMAIL AND ZEUS TAX RETURNS	347
EXHIBIT NO. 41	NORTH TOWNE TAX RETURNS	349
EXHIBIT NO. 42	FOREIGN DOCUMENT	351
EXHIBIT NO. 43	FOREIGN DOCUMENT	352
EXHIBIT NO. 44	FOREIGN DOCUMENT	356
EXHIBIT NO. 45	FOREIGN DOCUMENT	356
EXHIBIT NO. 46	FOREIGN DOCUMENT	361
EXHIBIT NO. 47	CONTRACT OF SALE	375
EXHIBIT NO. 48	CORRESPONDENCE	381
EXHIBIT NO. 49	EMAIL STRING	433
EXHIBIT NO. 50	BANK ACCOUNT DETAIL SCREENSHOT	449
EXHIBIT NO. 51	EMAIL WITH ATTACHED COMMITMENT LETTER	454
EXHIBIT NO. 52	EMAIL STRING	455
EXHIBIT NO. 53	TEXT MESSAGES	466

Page 323

ATHAN FOKAS,
being previously duly sworn, testified as follows:

MR. COOKE: We're back on the record. Just to make sure we're clear on what we're doing here, we had had scheduled for this afternoon a deposition of Justin Hansen. By agreement we're going to postpone that, and we'll work with you on a time. And we had also intended to depose Kevin Carroll at some point. Is it all right if we just agree that we'll work with you on a time?

MR. BARNETT: Definitely, yes, right.

EXAMINATION

BY MR. COOKE:

Q. Okay. I'm going to backtrack only as little as I can possibly do and cover things that were already covered before, but here is an accounting that you have previously provided.

(Exhibit No. 36 marked for identification.)

Q. Who prepared this accounting?

A. I think Joe Tucker.

Q. So this is an accounting of just the account of the architectural fees that were paid?

A. And some engineering.

Q. Do these dates on the right, is that the

Page 436

for the notes in the first page.
Q. Yes or no?
A. I'm not sure. I'm not sure how that works. But the LLC was the reason they had the stream of money that would pay for the note in the first place.
Q. If you don't know, you don't know.
A. Okay.
Q. Did you tell your sister Rania that Phillip and Spiros promised to give you a mortgage and that they broke that promise?
A. I don't know.
Q. I'm going to ask you that same question as to several people. Did you ever tell that to Maki Nikatos?
A. I don't know.
Q. Did you ever tell that to Irene Fokas?
A. I don't think so.
Q. Did you ever tell Justin, the manager?
A. Can you repeat that question?
Q. Yes, that Phillip and Spiros promised to give you a mortgage and they broke the promise.
A. That was the original agreement that we had with Southcoast. We all agreed to sign on the mortgage.

Page 437

Q. Did you ever tell Justin, the manager at Old Towne, that Phillip and Spiros made an original promise to give you a mortgage and that they broke that promise?
A. I don't think so.
Q. Okay. Same question as to Kevin High.
A. I don't think so.
Q. I'm going to ask you that as to Spiro Fokas.
A. My father?
Q. Yes.
A. I don't think so.
Q. All right. Now, I'm going to ask you a question that is like that pertaining to those same individuals. Did you ever tell your sister Rania that Phillip and Spiros are stupid?
A. I don't think so.
Q. Did you ever tell that to Maki Nikatos?
A. I don't think so.
Q. Did you ever tell that to Irene Fokas?
A. Ditto.
Q. You did not tell that to Irene Fokas?
A. I don't think so.
Q. How about Kevin High?
A. I don't think so.
Q. How about Spiros Fokas?

Page 438

A. I don't think so.
Q. How about Justin, the manager?
A. I don't think so.
Q. All right. Next question, same program, did you ever tell your sister Rania that Phillip and Spiros are liars?
A. I don't think so.
Q. Same question is to say Maki Nikatos.
A. I don't think so.
Q. I'm going to read these names, and at the end you can just say, I don't think I told any of those people that, okay? It's quicker.
A. That would be quicker.
Q. Yes. I don't know if I said Maki Nikatos.
A. You did.
Q. Irene Fokas?
A. You did.
Q. Justin, the manager?
A. You did.
Q. Kevin High?
A. Yes.
Q. Spiros Fokas?
A. All those, I don't think I said any of those things about Phillip.
Q. Okay. Or how about Spiros?

Page 439

A. Or Spiros.
Q. All right. Did you and Kevin High ever talk or communicate about preferred advertising on your website?
A. No.
Q. I remember Dawes identifying this, and so I apologize if I'm asking a question related to Kevin High and his buying the property.
A. Your apology is accepted.
Q. I was apologizing to these guys, not to you.
A. Okay.
Q. What happened with Kevin High and his buying the property?
A. His buying what property?
Q. 493 King.
A. He did not buy 493 King.
Q. I know. But originally he was on the contract for sale, and then in a modification he was taken out as a purchaser.
A. Yes, we talked about originally he showed me the property and he would like to be a partner in the property.
Q. Okay.
A. But that didn't happen.
Q. Okay. Going to show you a paragraph out of

Page 440

our answer and counterclaim in this suit.
A. Okay.
Q. It is paragraph 71 out of our answer and counterclaim. Have you got a copy?
MR. BARNETT: I do, yes.
THE WITNESS: Could I ask you a question? How long do you think you will be deposing me because my wife wants to know.
Q. I think this is my last question, but it depends on your answer.
A. Okay. Tell me what answer you would like to hear.
Q. Look at paragraph 71 and read it to yourself, please.
A. I see it. I read it.
Q. Have you read both pages?
A. Yes.
Q. Do you agree in full or disagree in full with the allegations of that paragraph?
A. I disagree in full with the allegations of this paragraph.
Q. Is there anything in this paragraph which you would agree with?
A. We were sitting -- our kids were at dance practice one time at the church hall, and Phillip I

Page 441

think came and sat at the table where I was sitting; and I think we were drinking tea that day, so we had tea, and I don't remember anybody saying pussy or ignorant or moron. This may be how -- this may be what Phillip said happened, but this is not what happened. He said I accosted him, and I remember just sitting down at the table, drinking tea. And there were a lot of people at the table as well. It wasn't just the two of us.
Q. Do you agree that this is the only -- I'm sorry. You've already testified that there were many, many conversations about the Old Towne Suites project and about the mortgage. You've already testified about that, right?
Is that a yes?
A. That we've already testified about the --
Q. You already testified that there were --
A. Many conversations.
Q. -- many conversations concerning the mortgage.
A. Right.
Q. In this conversation what is being alleged is that Phillip and you had a conversation in which he said, I am not going to mortgage the property.
A. I don't remember that conversation.

Page 442

Q. You don't recall that conversation occurring at church at some point?
A. No.
Q. Okay. You don't recall a conversation that occurred at church during which Phillip said he was not going to guarantee the property?
A. No.
Q. Did you have a conversation with Phillip, I mean a verbal conversation with Phillip, not writings because we've got these writings here; but did you ever have a verbal conversation with Phillip during which he said, I am not going to mortgage the property and I am not going to guarantee anything related to this project?
A. No.
Q. Do you recall anyone else that was at the table that day?
A. I think it was -- it might have been Tony Forsberg, he was -- his kids were at dance as well. It might have been -- what is his name? There were a few people there, like Stephanie Moskos might have been at the table. She usually sat there. And there's a guy named Thanasi Tsimidilis, his wife is usually at that table as well.
Q. All right.

Page 443

A. And I think Tula Zecopoulos was there as well.
Q. Okay. Why don't you go ahead and spell those last two names now.
A. Zecopoulos is Z-E-C-O-P-O-U-L-O-S.
Q. Okay.
A. Tsimidilis -- I have to write it down.
THE REPORTER: Write it on here for me, that would be perfect (indicating).
THE WITNESS: I think that's how you spell his last name. I don't know his wife's name, but that's -- his name is Thanasi Tsimidilis. Thanasi is T-H-A-N-A-S-I.
Q. I just want to make sure I understand your testimony. There's a difference between a recollection and an educated guess or probability.
A. Right.
Q. Are you saying you actually remember these people being there or that these are the typical people that were there for this event.
A. Well, usually they have the -- the families whose kids do dance, we all sit at one table, and it's typical the people that always sit there. And Stephanie Moskos is always there. Tula is usually there. I think she was sitting to my -- no, I

Page 456

Q. Do you know whether your cousin Spiros is a close friend with Mr. Paulatos?
A. They're childhood friends and we go to church together and we often see each other.
Q. All right. Now, John Massalon asked you some questions about your complaint and your allegations against Jacob. I'm not going to re-ask you those. Before this lawsuit was filed, when Phillip and Spiros were telling you they did not want to go forward with the deal, did you discuss with Jacob the possibility that you might file the lawsuit?
A. Yes.
Q. Did you tell Jacob that you did not want to join him in the lawsuit?
A. Yes.
Q. Did you ask Jacob to enter into some sort of an agreement that if his cousins agreed or were required to go forward with the project that he would go forward with the project?
MR. MASSALON: I object. That's settlement discussions.
THE WITNESS: I think so. I think I did.
Q. What did he say?

Page 457

MR. MASSALON: Same objection.
THE WITNESS: He agreed to go forward with the project.
Q. Did he refuse to enter into an agreement?
MR. MASSALON: Same objection.
THE WITNESS: He would have to have the agreement from his brothers to have an agreement.
Q. Okay. So he wouldn't enter into an agreement unless his brothers said it was okay.
A. Yes.
Q. All right. Have you ever told anyone, I won't borrow Richard's list of people, but anyone other than your cousins -- I'm not asking you what you told your cousins.
A. Okay.
Q. Did you ever tell anyone else other than your cousins that Phillip was a bad businessman, and by that I mean a bad businessman or a really, really bad business -- any language at all disparaging his skill as a businessman?
A. No.
Q. Did you ever say that kind of thing in any words about your cousin Spiros?
A. No.
Q. Did you ever say that thing by whatever

Page 458

words about your cousin Jacob?
A. No.
Q. Have you ever accused your cousins -- well, take them one at a time. Have you ever said to any person other than your cousins that Phillip is dishonest in any way?
A. No.
Q. By whatever words.
A. No.
Q. Spiros, did you ever tell anybody that you thought Spiros was dishonest?
A. No.
Q. Did you ever tell anybody that you thought Jacob was dishonest?
A. No.
Q. Did you ever tell anybody that this project to expand the suites at 229 King Street was not going forward because Phillip Ferderigos could not eat for free at Old Towne Restaurant?
A. No.
MR. BARNETT: That's all I have.
MR. COOKE: I've got a few follow-up.
BY MR. COOKE:
Q. This is Exhibit 51. Take a look at that. This is dated September 24, 2014. Says, well, I

Page 459

don't know how I managed to sweet talk our banker into getting rid of the five year balloons and fixing it at 5 percent for the life of the loan, which is unheard in the current banking industry.
Do you now agree that you did not, in fact, talk your banker into getting rid of the five year balloons?
A. Yes. I misunderstood. So I always knew it was a 20-year loan for five year balloons, but then when I went back and reread something, maybe the commitment letter, maybe I -- for a second I interpreted it that way, I shot him out an email -- I don't know if this was around the time when I was at Zero George with all those guys and we were drinking, but definitely it was the original loan that I thought it was, which was a 20-year with five balloon payments.
Q. Okay. And then you did attach a copy of the amended or the new, I guess, commitment letter.
A. Okay.
Q. So my question is, as we've discussed many times, there was another commitment letter that was issued on or about February 5, 2013, for a $1 million loan, correct?
A. Correct, yes.

Page 460

Q. So do you have an email like this where you sent that commitment letter to Phillip and Spiros?
A. I haven't seen it. I don't know. Maybe I gave that to them in person, I copied it and gave that to them in person, but I don't remember.
Q. Or might you not have given it to them at all?
A. No, they would definitely have known that we received the million dollars or we would have not gone forward.
Q. I thought you said yesterday that you may have relied on Jacob to inform his side of the family.
A. To give it to them. If I did, I made a copy of it, gave it to Jacob, Jacob might have given it to his brothers; but we all knew about it because we were excited that we got the new loan, and we talked about it at our church gatherings as well.
Q. I noticed that you, in this email where you are introducing the letter, you do refer to the term of it, that is, you say that you talked the banker into getting rid of the five-year balloons and fixing it at 5 percent for the life of the loan. Is there any other email or other communication where you called Spiros's attention

Page 461

to the collateral required in this commitment?
A. I'm sure we talked about it, but I don't know if there are other emails out there. I would have shown all the emails.
Q. And how soon after this email did Ms. Haines issue the closing papers?
A. I'm not sure.
Q. Okay. You were shown Exhibit 52 which is an email from Pete Paulatos to Spiros, correct; and this was evidently sent to him around November 19, 2014.
A. Correct.
Q. Now, when did you first see this email?
A. I guess maybe last -- I don't know, couple days ago.
Q. So you've never seen that before?
A. No.
Q. Okay. Do you remember this morning seeing Exhibit 3 to the deposition of Mr. Odom?
A. Okay.
Q. Look at the page that's numbered 3 at the bottom.
A. Okay.
Q. There's an email from you to Jeff Odom dated November 20, 2014. Do you see that?

Page 462

A. Yes.
Q. It says, hey, Jeff, check out the email below. It seems that we only need $1,750,000 now. Look at the math below and let me know if it makes sense. Did you send that email?
A. Yes.
Q. And the forwarded message was a message from Spiros to you and Jacob and -- well, to you and Jacob with a copy to, evidently, himself and to Phillip; do you see that?
A. Yes.
Q. And it's regarding payments on loan, and you see it begins on the next page, Phillip is working on the agreement and anticipates, and so forth?
A. Yes.
Q. And then do you see about a third of the way down he says, here is the email from my accountant.
A. Correct.
Q. Do you see that?
A. Yes.
Q. All right. Now, compare the email that he quotes with the email that you're now saying you saw for the first time this week.
A. The email that I saw for the first time this week was the email from Pete Paulatos to Spiros.

Page 463

Q. Right.
A. The content was the accountant that we had no clue who the accountant was until Pete showed us the email.
Q. Yes. So do you agree that what Spiros forwarded to you in this email back on November 20, 2014, is essentially the same email that Pete Paulatos sent him on November 19?
A. Well, it's not the same email because he had other words up here, ha, yes, typo, 1.75 million, you are awesome, glad to know I was close, we are just going to do 7 point -- might have been 1.75 million.
I don't know how many other emails there are about Pete Paulatos talking about the project with Spiros or how many times they talked about the project with Spiros, but this is the first time that I knew that Pete Paulatos was involved in this case.
Q. But maybe I misunderstood the thrust of your being shown this exhibit. I thought that maybe it was to try to show somehow that Spiros had hidden this information from you, but I just want to make sure that we agree that he forwarded the substance of Mr. Paulatos's email to you on November 19,

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Phillip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919 **CERTIFICATE OF SERVICE**

FILED
2017 FEB 28 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Stan Barnett, hereby certify that true and correct copies of Plaintiff's Motions for Partial Summary Judgment as to the Counterclaims by Spiros Ferderigos and Phillip Ferderigos were served on the undersigned parties by depositing copies of same in the United States Mail, postage prepaid, first class, this 28th day of February, 2017, addressed as follows:

Richard A. Farrier, Esquire
Jennifer H. Thiem, Esquire
K&L Gates, LLP
134 Meeting Street, Suite 200
Charleston, SC 29401

M. Dawes Cooke, Jr., Esquire
Jeremy E. Bowers, Esquire
Barnwell Whaley Patterson & Helms
288 Meeting Street
Charleston, SC 29401

John A. Massalon, Esquire
Wills, Massalon and Allen, LLC
97 Broad Street
Charleston, SC 29401

Stan Barnett

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2015-CP-10-03919
)
ATHAN FOKAS,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
PHILIP FERDERIGOS,)
JACOB FERDERIGOS, and)
SPIROS FERDERIGOS,)
)
Defendant.) DATE: June 8, 2017
)

B E F O R E:

THE HONORABLE J.C. NICHOLSON, JR.

A P P E A R A N C E:

STANLEY E. BARNETT and LESLIE S. LENHARDT
Attorneys for the Plaintiff

M. DAWES COOKE, JR.
Attorney for Defendant, Spiros Ferderigos

JOHN A. MASSALON
Attorney for Defendant, Jacob Ferderigos

JENNIFER HESS THIEM
Attorney for Defendant, Philip Ferderigos

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

THE CLERK: 2015-3919, Fokas vs. Ferderigos.

THE COURT: Anybody here on that? Is the whole crowd here on that?

If everybody will stand, and for the record, put on the record your name and who you represent.

MR. MASSALON: I'm John Massalon, and I represent Jacob Ferderigos. You can refer to him as Jacob. That's a lot easier to spell.

MS. THIEM: I'm Jennifer Thiem. And I represent Philip.

MR. COOKE: Dawes Cooke, representing Spiros Ferderigos.

MR. BARNETT: Stan Barnett. I represent Athan Fokas.

MS. LENHARDT Leslie Lenhardt, representing Athan Fokas.

THE COURT: Let me see. We got, what, several motions. One, plaintiff's partial summary judgment; is that right?

MR. BARNETT: Yes, sir.

THE COURT: As to claim and delivery, we have a motion to amend tax returns. And it looks like, what, two summary judgment motions?

MR. MASSALON: Your Honor, I think the motion on the tax returns has already been resolved.

THE COURT: That's been resolved?

MR. MASSALON: So I think what we got is all three of our clients have motions for summary judgment. Mr. Barnett has got a motion for partial summary judgment. And there may be a motion to quash a deposition subpoena that might not have gotten resolved yet.

THE COURT: Motion to quash by plaintiff?

MR. BARNETT: It's actually document subpoena, Your Honor; that's correct.

THE COURT: Has that been settled?

MR. BARNETT: It has not, Your Honor.

THE COURT: What do you want me to hear first?

MR. COOKE: We don't have any preference. Their motion for summary judgment is completely unrelated to our motion for summary judgment. Ours is just to the entire case by the plaintiff. And theirs is just a motion for partial summary judgment to the counterclaims.

THE COURT: Okay. So yours is -- how many causes of action do you have, Mr. Barnett?

MR. BARNETT: I believe three, Your Honor.

THE COURT: You got three? What are they?

MR. BARNETT: Breach of contract -- it's primarily breach of contract case, Your Honor. I have a cause of action for specific performance, although the motions today really on the breach of contract relate to the breach of

contract action for damages.

THE COURT: Okay. And you got specific points? What's the third cause? You said you had three.

MR. BARNETT: I believe it is for --

THE COURT: Second cause of action is breach of contract on the damages?

MR. BARNETT: Yes, sir.

THE COURT: And your first is specific performance. It looks like the third is violation of duty of care.

MR. BARNETT: Yes, the corporate statute.

THE COURT: Pardon?

MR. BARNETT: The duty under the corporation statute.

MR. COOKE: And our motion is directed all three to those causes of action.

THE COURT: Doesn't matter to me which one you want to hear first.

MR. COOKE: We are both too polite, but I'm happy to go first or let Stan go. Doesn't really matter.

THE COURT: Doesn't matter to me. I don't care. I will hear them all. I don't care what order.

MR. BARNETT: I'll dangerously volunteer.

THE COURT: Can you give me a second to read your complaint, because I know y'all have had several lawsuits. I want to see which one we are here on.

THE COURT: This was to renovate some upstairs apartments; is that correct?

MR. BARNETT: That's correct, Your Honor.

THE COURT: And refusal to move forward on the action?

MR. BARNETT: Yes, sir.

THE COURT: Go ahead. Explain it to me.

MR. BARNETT: What my motion is directed to is the counterclaims by two of the defendants, which is Philip and Spiros Ferderigos. Jacob does not have a counterclaim for this for defamation against my client related to communications.

THE COURT: That's about the burning of the building or something?

MR. BARNETT: One of their allegations for defamation claims that my client was running around telling people that they were accusing him of doing that. Their other allegations for defamation are that the defendants -- and, again, this is counterclaim by Philip and Spiros Ferderigos, not by Jacob Ferderigos -- that they did not agree to go forward with the plan to add additional rental suites at the building because Philip and Spiros were not able to eat for free at the Old Towne Restaurant, which is on the first floor of 229 King.

Another allegation is that Philip and Spiros do not

have good business sense.

Another allegation is that Philip and Spiros are bad business people.

And then the allegation, as you mentioned, that my client was telling people that they were accusing him of setting fire to the building to collect insurance proceeds.

We have concluded discovery. Discovery was over, I believe, in the middle of February in this case. And as a result of discovery, I filed these defendants' responses to interrogatories, as well as some parts of deposition testimony, and then an additional affidavit for my client and an affidavit from the manager at Old Towne Restaurant.

One of the problems with their case, I believe, is that there's no evidence of publication. There has to be, of course, publication of the defamation. And they were not able to identify anyone to whom they say my client communicated these statements. They said in their interrogatory responses they thought -- I'm paraphrasing -- that they communicated this to his mother, Irene Fokas; to Justin Hansen, who is a management at the restaurant; to Kevin Carroll, who is a contractor who did the construction of the existing rental suites and who would have been on board to do construction for the additional rental suites.

They noticed Mr. Carroll's deposition, but did not take it. And there is no affidavit from Mr. Carroll. So

Mr. Carroll is silent on this issue.

Mrs. Fokas, I believe her deposition testimony pretty clearly indicates that she did not testify that her son told her any of these things. Mr. Hansen says, without qualification, he was never told any of these things.

Mr. Carroll, of course, is silent.

In their memo that they filed on Monday, they mention an additional person, Kevin High, that they say he might have told these things to. Mr. High is silent. We have no affidavits. We have no deposition. We have nothing related to Mr. High. I will tell the Court that a subpoena to Mr. High and a companion, supplemental discovery request for my client for all communications of any kind between my client and Kevin High since some time in 2011 is what they asked for. And I objected to that. I said it was too broad.

I offered to the defendants that my client would provide whatever communications he had related to this project, to 229 King, to any communications he had, if any, with Mr. High about the defendants. But I have not had any response to that.

So as we sit here today, we have not -- they are correct -- we have not produced all communications since some time in 2011.

Mr. Fokas and Mr. High are friends. Their wives

are friends. They do family activities together. A lot of these e-mails are personal. And my position was this was overly intrusive. It's really not within the scope of discovery.

So just to give you a little more background, in their responsive memo, they say, well, we don't know what the communications are between Mr. Fokas and Mr. High. And the record is, so far, that's true. It's quiet. We don't know anything from Mr. High. They didn't ask to take his deposition. And there is no affidavit from him. So on the record as it stands now, my position is there's no evidence that Mr. Fokas said any of these things to third-parties.

What their position is, if I might take the risk of characterizing, they say, well, you have all these e-mails and some text messages which goes from Mr. Fokas out to all three of the defendants.

At the time when they were arguing about this dispute over whether there was a contract to add the floors to this building, he says: You are acting like you don't have good business sense; you are acting like you don't want to do this job because you can no longer eat for free in the restaurant, things like that.

My position is, I don't think that's publication. They are all defendants. They are all defendants in the same case. These are communications to all together. Seems

to me, that hardly constitutes publication to third-parties. And there's been no indication that any of them thought less of each other because of these communications from Mr. Fokas.

My other argument, which I believe is perhaps more compelling, is that the statements that they say he made simply do not constitute defamation. To say that within the context of this alleged agreement to build these additional floors, that it wasn't good business sense not to do this deal, that hardly constitutes a blanket accusation that the defendants don't have good business sense. It clearly was in the context of this deal. I don't think that constitutes defamation. If that's defamation, then all of us need to up our liability insurance coverage, because no one can live their lives, it seems to me, without committing daily defamation. Anytime you disagree with somebody, it's going to be defamation.

Similarly, to say that they didn't do this deal because they couldn't eat for free, well, I'm not sure -- that may not be a nice thing to say from their standpoint. May make them uncomfortable, but that is hardly defamation. It doesn't slander their honesty or their integrity or anything else. It's a critical comment.

The cases that we cited to the Court about defamation, there are a number of them that make this point,

that many things which are said, which are critical, unflattering, are not defamation.

The one case that stands out in my mind, I'll burden the Court with reading from my memo, is the case where someone says, well, he can't get bonded out. Somebody said he can't get bonded out. And that person sued the person that said that. The courts said, well, there are many people that can't get bonded out, happens every day. May not be flattering, but it's just not defamation.

And I think this is on an even lower scale than that. These people were angry with each other. They were disagreeing about this business deal. There was this arrangement that had been in place for some time where Mr. Fokas and his family could eat in the Old Towne Restaurant on the restaurant's dime. These three defendants, their families and so forth, could eat there on the restaurant's dime.

When this argument came to be, Mr. Fokas said, look, I don't have the restaurant, me and my father own half the restaurant, whatever, we shouldn't do this anymore. And they became enraged. And that's where those comments came from.

So he's saying to them, now you are not going to go through with this deal because you can't eat in the restaurant for free, that isn't an argument. It's about

something that meant something to these people. That may not mean anything to the rest of us in this room, but it meant something to them. But it's hardly defamation.

I don't think there's any evidence of publication to third-parties. And I don't think that these statements constitute defamation.

THE COURT: Are these the only two statements they are alleging?

MR. BARNETT: There are four of them, as I've broken them out from their counterclaims. One is that the defendants did not agree to go forward with the plan because Philip and Spiros could not eat for free at the restaurant; secondly, that Philip and Spiros do not have good business sense; the third one is very similar to that, that Philip and Spiros are bad business people, he is alleged to have told people.

THE COURT: What was the third one?

MR. BARNETT: That Philip and Spiros are bad business people, just not good at business; and the fourth one, that Phillip and Spiros were accusing Athan of setting fire to 229 King Street.

THE COURT: Talk to me about the fourth one.

MR. BARNETT: Fourth one, there doesn't seem to be any proof here of publication to that. Mr. Fokas has sued them for defamation, which I am not representing him. Ms.

Lenhardt is representing him in that case. Your Honor denied summary judgment in that case. So that case goes forward. But aside from the allegations in the litigation, they have not identified any publication by him to third-parties of that allegation. That's publication.

Now, that would be a -- to say that people had made this accusation, if they did so falsely, and obviously for bad purposes, that would be defamation.

THE COURT: Statement itself is defamatory?

MR. BARNETT: I think it would be defamatory. I can't argue. Particularly for lawyers, that would be defamatory. But there's no evidence of publication to that one. The other three, I think, are just angry statements. May be opinion, but they are not really defamation.

THE COURT: Okay. Anything else?

MR. BARNETT: No, sir. Thank you so very much.

MR. COOKE: Thank you, Your Honor. First of all, we did file a memorandum with exhibits. So all the statements that we are claiming are set out in there. And they are in two groups. One is things that are actionable per se. And others are statements that are not actionable per se, but the jury would have to determine the context.

THE COURT: Are there more than the sworn statements we've been talking about?

MR. COOKE: Yes, there are. Those are the four

that are actionable per se. But in our memorandum, we discuss these additional statements that would have to be determined.

THE COURT: Why do you think, "you can't eat free anymore" is actionable per se? I mean, there's a lot of people that can't eat for free. I mean, what's defamatory about that at all?

MR. COOKE: That actually -- I don't think that's the one -- I don't think that's one of the actionable per se ones. I think that's one of the actionable -- can I go through each one of them with you?

THE COURT: Please do.

MR. COOKE: So the reason that these are defamatory -- and they sound like just sort of spats, but you already heard our summary judgment motion on their claims for defamation in the other case, and I won't rehash that. But those are the statements about allegedly burning down the restaurant and committing insurance fraud. We moved for summary judgment on the basis there's literally no evidence that they had made those statements. You permitted them to amend the complaint to be more specific. And that's where that stands now.

But this all kind of centers around this ongoing dispute about building these additional apartments over the Old Towne Restaurant. And the reason that these statements

are so hurtful to the defendants in this case is because they were part of a campaign to bludgeon them into doing this deal when they had decided not to go forward with the deal.

THE COURT: But that happens in every business transaction, doesn't it? When there's a disagreement, people start, for lack of a better word, bad-mouthing each other, trying to get them to agree. What's sort of unusual about that, just because they had a business over whether to proceed or not proceed? Why does that in itself make it defamatory?

MR. COOKE: If it's false, it's defamatory. And the jury would have to listen to the evidence to determine whether this was a false statement. But to go to their family members and their business associates and say that, you know, this deal didn't go forward because you are a bad businessman, this didn't deal go forward because you are being petty because of not being able to eat, when, in fact, the reason it didn't go forward is because they couldn't reach an agreement on the way that the deal was to be financed, which we are going to get to in a few minutes on our summary judgment motion. So they harmed their reputations in the face of their closest associates, which are their family members and their business associates.

I mean, Jacob is a brother, but he's also a

business associate. Philip is a brother, but he's also a business associate. Some of these statements were made to their aunt, who is Athan's mother.

But the one statement in particular, this was in a text message that was communicated both to Spiros but also to Philip and Jacob, and it says: Speaking of fiduciary duty, I was shocked when I read in Stan Barnett's affidavit that you Spiros Ferderigos told them that it may be your fiduciary duty to inform the police, as a current solicitor, that you should tell them that I was involved in the fire at Old Towne without any proof whatsoever. That is a grave error from a solicitor. Does your boss know about that comment you made? Who exactly is your boss?

And that led to Jacob, who is not a lawyer. He's a restaurateur, but he's their brother. So I believe that a jury would be entitled to determine that --

THE COURT: So you think the publication was to the brother?

MR. COOKE: Yes, in that particular instance. Now, the statement about being a bad businessman, that was made directly to Irene. And in her deposition, we included excerpts of that in the record. She said, I heard that from Athan.

The statement about, if this deal is dead and you guys will not go forward unless you get to eat free at Old

Towne, I would like my expenses back, and so forth. And he says, I'm going to enjoy spreading the word. And says, I have cc'd my wife on this e-mail so that she will be informed of all my conversations, because we are life partners.

So that's a publication. She's not a party to this deal. That's a third-party. And a jury may listen to all of this and say, well, these are just cousins in a business dispute. But they may also say it was defamatory for him to use statements that are demonstratively false and publish those to people who are in a position to put pressure on them, specifically their very close family members. And if it's a false statement and it's not privileged, it's defamatory. And that's up to a jury to decide.

The mother testified in her deposition, she says --

THE COURT: Why is it false? They may not be good business people. I don't know.

MR. COOKE: We have to prove that.

THE COURT: You are telling me it's false. How do you know it's false?

MR. COOKE: Well, I don't think you can decide that on summary judgment.

THE COURT: I understand, but I was just asking that question. You keep saying it's false, it's false.

MR. COOKE: We are actually going to explain that

indirectly when we show you our motion for summary judgment. And you will see the reason they didn't go forward is because they couldn't agree on the terms of financing. It wasn't because they couldn't eat free. And it wasn't because they are stupid business people. But all of this --

THE COURT: They didn't use the word "stupid".

MR. COOKE: That's true. That's true. Bad business --

THE COURT: That's a lawyer add-on.

MR. COOKE: Right. Exactly. That was also --

THE COURT: Stupid may have been a different situation. Okay? Stupid is as stupid does.

MR. COOKE: That is true. Bad is as bad does.

Now, the financial point I would like to make on that is that this Kevin High subpoena is an important matter, because Kevin High was the property manager. He's the only one in this whole group that's not related somehow. But he was the property manager for the LLC. And we have a subpoena out to him for all of his communications with Athan, because they are not only close friends, but they were business associates. And so we would like to at least get a response to that subpoena and have that resolved before it's determined whether there's any publication. Because it's very likely that all of these statements were repeated probably in a more assertive form to Mr. High.

So, anyway, those are the statements. And they are all set out specifically in the brief. One of them in particular is that he told his mother, Athan, who was there, Ann, that they were going to go out and defame him by telling everybody that he had burned the restaurant down and had committed insurance fraud. And that's a pretty damaging thing to say to somebody's relative, that you are going to go out and defame them. And we've already argued about why there's no evidence whatsoever that they actually did that, but she said that Athan told her that the boys were going to go out and defame him. So that's another defamatory statement if it's false. And we believe we can prove that it's false.

Here's one. Spiros -- this was in writing: Spiros, you have already been proven to have lied in your deposition. I think that may be grounds for disbarment. Continue to lie and see where that gets you.

Again, that was copied to the brothers as well. And that's an exhibit to the memorandum.

So, anyway, we've probably all heard worse cases of slander. But in the aggregate and the way they were used and the people to whom it was published was particularly harmful to my clients. And we just feel like there's a jury issue as to whether they were false and whether there was any privilege associated with them, and what damages, if

any, they suffered as a result of those statements.

THE COURT: Okay.

MR. COOKE: Thank you.

MS. THIEM: Your Honor, I agree with everything that Dawes said. And I won't belabor and go through these statements individually, but I did want to raise a couple of points.

One of the issues that plaintiff raised was whether it could be defamation if it was published to Jacob and Philip and Spiros, who were all in this potential project together. But at the time that these statements were made, they were not all three defendants in a lawsuit. So this wasn't made in the --

THE COURT: I don't know if he said it was in the lawsuit or they were in a business deal together, or potential business deal together.

MS. THIEM: He referenced defendants. And I just want to be clear that there was no litigation privilege.

THE COURT: All in a business deal together, I think that's what he was referring to.

MS. THIEM: They were trying to --

THE COURT: Is that correct, Mr. Barnett?

MR. BARNETT: That's correct.

THE COURT: I don't think he was referring to the lawsuit. Okay? At least I interpreted it that way. Okay?

MS. THIEM: Okay. Second, in the materials, in Phillip's materials, and I will be happy to hand up a packet for Your Honor to look at it, we included e-mails and texts in which the plaintiff is confirming that he also published these things to my client, Philip and Spiros's father, and that he also published them to their uncle.

THE COURT: Said he did that. He just said he published it to somebody else, right?

MS. THIEM: Yes.

THE COURT: Did those people verify that? Did the people verify it?

MS. THIEM: We do not have an affidavit from those people, but the plaintiff does say, I just spoke to your dad --

THE COURT: I understand the plaintiff said, I'm going to tell so-and-so, but that doesn't mean that he told them.

MS. THIEM: I think that would create an issue --

THE COURT: What kind of issue would that create?

MS. THIEM: -- of there being a publication. If the plaintiff himself is saying that there's a publication, it seems to create an issue that, indeed, there was a publication sufficient to get to a jury on this. Plaintiff himself could have gotten an affidavit or deposed those two individuals to try to knock out this --

THE COURT: Did you all take their deposition?

MS. THIEM: We don't need to. Plaintiff admitted that he said these things. If we wanted to --

THE COURT: He didn't say he said it. He said, I'm going to tell someone --

MS. THIEM: No, he said he told them. He said, I just spoke to your dad and he doesn't think everyone should eat at Old Towne for free either.

And then he said, I expressed your thoughts to Uncle Fanouris, and for what it's worth, he thinks nobody should eat for free and he says it's become childish.

THE COURT: You are saying eating for free is defamatory?

MS. THIEM: I do agree it's defamatory, yes, sir. In the context of this lawsuit, I do. Because what the plaintiff is claiming is that the project did not go forward because they could not eat for free.

THE COURT: It may be an element of your lawsuit, but go ahead.

MS. THIEM: But it's not an element of his lawsuit. In his lawsuit instead, he alleges --

THE COURT: I shouldn't say an element. It should be part of the evidence that you can bring out in the lawsuit of breach of contract or whatever.

MS. THIEM: Yes. Yes. So that the final point

that I did want to add is that these -- the three brothers, the Ferderigos brothers, are not only in this Old Towne business together, but they also own properties in South Carolina and in Greece together. So it's beyond a business partnership that extends to this one deal. So the statements that were made do go deeper than things exchanged in one transaction, because these are things that could affect their relationship as partners in these other transactions.

That's all. Thank you.

THE COURT: Thank you so very much.

Yes, sir, Mr. Massalon.

MR. MASSALON: I'm going to take a pass on this one.

THE COURT: You are what?

MR. MASSALON: I'm going to take a pass. I don't have anything to add to what these lawyers are...

THE COURT: That's unusual.

MR. MASSALON: It is unusual, but I like to surprise you every once in a while.

THE COURT: You sure did. Thank you very much.

All right, Mr. Barnett.

MR. BARNETT: First of all, the two parties that have alleged this counterclaim, which is not Mr. Massalon's client, but Philip and Spiros, they are lawyers. They do

own property. Even my wife and I own a little property. But they are lawyers. That's where they make their money. They are not business people in the sense of the normal business arrangement. And the --

THE COURT: What about the statement that the lawyer's line, he's going to have him disbarred? Isn't that illegal as a lawyer? Isn't it defamatory on its face?

MR. BARNETT: If he went to his boss and said that, that would be a different matter.

THE COURT: Why do you think the publication to the brothers is not publication? I'm not sure I understand your argument on that.

MR. BARNETT: I did look for -- I can't find any case law.

THE COURT: I mean, it says third-party. So the two brothers are third-parties. Your client is allegedly saying it to one brother, and the other two brothers hear it. Why isn't that publication? I don't follow you there.

MR. BARNETT: It just seems to me that if it's in the context of a dispute between those three people and this guy, and this guy says things to all of them, that doesn't seem to me to be in the realm of publication to third parties. But the point is, he didn't go to Spiros Ferderigos's boss. He didn't go to anybody. It was all

within the context of this group of people who had this business arrangement. That's where I'm coming from.

I couldn't find any law. And maybe I'm just not good enough, but I did look. I didn't find anything about that specific area.

THE COURT: Go ahead.

MR. BARNETT: In terms of the statements about particularly Athan's mother, her deposition transcript just simply does not say what Mr. Cooke said. What she says is, she's asked, okay, so then as a result of what your son Athan told you, do you think that Phillip and Spiros are bad business people? And she says yes. I mean, what he has told her is, you know, we have this deal, we will make a lot of money.

And elsewhere in her deposition, she talks about that: I don't know why they don't go forward with this deal. Everybody will make a lot of money and we don't have to argue.

Well, she's free to make her own conclusion, seems to me, that not going forward with that deal is a bad business judgment. But she never testifies that he said to her, mom, they are bad business people. She just doesn't say that.

And, similarly, there is nothing, absolutely nothing that indicates that Athan Fokas said to his Uncle

Steve, or Stavros, any of the things that are alleged. What he says he said to Stavros is, there's -- what he said Stavros told him: I agree, nobody should eat for free in the restaurant. And then Irene and Stavros's brother Fanouris agreed and said the same thing.

There's nothing that indicates that Athan ever said to any of these people, this deal is not going forward because these guys can't eat for free in the restaurant. The only evidence is he said that in these text messages and I think some e-mails to the defendants. But there's just not any evidence that he said it to anybody else.

THE COURT: Well, if, in fact, you are wrong about the group and the brothers, okay, why wouldn't the fact that he said he's lying and I'm going to have him disbarred affect the lawyer, per se?

MR. BARNETT: That would be --

THE COURT: And same thing about the burning or the arson. I mean, I can't see how both of these statements are not defamatory.

MR. BARNETT: I would agree. I can't with a straight face say they are not.

THE COURT: So if your theory about just the three of them is wrong, then your motion would be denied. And my problem with -- I think eating free, I want to say I think that's just sort of silly to say that's defamatory. But

that's neither here nor there. I understand what their argument is, but I can't say I agree with it.

And some of the other statements about, you are a bad businessman, I mean, that's just --

MR. BARNETT: I can't disagree with you.

THE COURT: But I don't know how you can address what's being said on your partial for trial down the road. Might be better dealt with at trial, if, in fact, your theory is wrong about publication.

MR. BARNETT: Yes, sir. I think that's correct.

THE COURT: Pardon?

MR. BARNETT: I think that is correct.

THE COURT: All right. Anything else?

MR. BARNETT: No, sir, not on that.

THE COURT: What's the next motion? I've got to decide whether his theory is right on publication.

MR. COOKE: I understand.

THE COURT: Do you all have any cases on it at all?

MR. COOKE: All they say is third person. And so if I defame you to you, that's not defamatory.

THE COURT: Right.

MR. COOKE: But if it's to a third person, and in this case, they are not agents or representatives, they are brothers and business associates. So, anyway, no, to answer your question, we don't have a specific case on that.

THE COURT: Okay.

MR. COOKE: Next one is not nearly as interesting, but it's very important.

THE COURT: It's not about eating free, huh?

MR. COOKE: It's not about that. This is a motion for summary judgment as to the entire plaintiff's case. And this is kind of what we've been circling around for a year and a half, or however long this case has been going on now. This lawsuit has to do with -- it's a breach of contract lawsuit that the plaintiff brought against his cousins. And it's to enforce an oral agreement to build these apartments and to mortgage their respective interests in the building that houses the Old Towne Restaurant, which is at 229 King Street.

THE COURT: How many apartments were they going to have?

MR. COOKE: By the time they got down to the end, it was going to be six new apartments. They already had two.

THE COURT: So it was going to be a total of six, build four more?

MR. COOKE: No, six more.

THE COURT: So total of eight?

MR. COOKE: Right. And they were going to build and actually add a new building to the top of their existing

building, kind of right over it, to house these. And so there's -- it's a suit for a breach of an oral agreement to build this building and to mortgage their interest in 229 King Street. To remind the Court --

THE COURT: Excuse me just one second. All right. Go ahead.

MR. COOKE: This is an action to enforce an oral agreement to build this building and to mortgage their interest in 229 King Street. The building was originally owned by their fathers, who were brothers. And they handed them down to their children. So Athan owns one-half of the building. And the three brothers each own a third of the half. So, collectively, they own all of the building. There's no debt on that building. They owned it free and clear.

THE COURT: They already had two apartments?

MR. COOKE: Up on the second floor.

THE COURT: Added the third floor, or was the third floor already there?

MR. COOKE: No, they were going to build a whole new third and fourth floor.

THE COURT: So they were going to build a third and fourth floor? And Mr. Massalon said the architect review board would approve that height or that add-on?

MR. COOKE: Well, they went through -- they got

architects. They got everybody --

THE COURT: Had gone by the architect review board?

MR. COOKE: Yes.

THE COURT: Or never got that far?

MR. COOKE: No, got that far.

THE COURT: It got approved?

MR. COOKE: By the way, this was going to be a fourth and fifth floor.

THE COURT: Fourth and fifth? And they've already been approved?

MR. COOKE: Right.

THE COURT: Okay.

MR. COOKE: So the claim is that they, even though there was never a written agreement, that they orally agreed to build this building as specified and to mortgage their interest in the 229 King Street to help finance it. And so the reason that that claim fails is --

THE COURT: All of this is on an oral contract?

MR. COOKE: Yes. That's what my motion is all about.

THE COURT: I understand. Go ahead. Was there a meeting of the minds on all of this? What happened?

MR. COOKE: No, no. There was certainly a meeting of the minds on this is something we should explore, it would be a great idea for us to do it. But like so many

deals, the devil is in the details. And when it came down to actually signing the deal, they could not agree on the details in the financing.

THE COURT: Was financing it terminated, or part of what they were going to do?

MR. COOKE: No. That was -- the latter may have turned out to be a problem, because they never did come to rest on what the exact cost of all of this was going to be. But they didn't get quite that far because the deal fell apart because they couldn't agree on the financing. That's what I want to talk to Your Honor about.

The case fails because there's no meeting of the minds. And the statute of frauds is going to bar the claim. And the statute of frauds bars the claim because of two things. One is, part of this deal is that they were going to mortgage their property for 20 years to finance it. And also, it would involve an interest in the real estate.

So there are two provisions of the statute of frauds that applies. One says that it applies to any agreement which cannot be performed in less than a year. 20-year mortgage or 5-year mortgage cannot be performed in less than a year. And it does involve an interest in real estate, since a mortgage is an interest in real estate. And, thankfully, I think anybody who does real estate will say, thank goodness we don't have oral mortgages in South

Carolina, because it would make it pretty difficult to do real estate practice.

But before we even get to that, if I could, I'm going to show Your Honor some exhibits and some deposition testimony that's already in the record. The plaintiff has submitted most of the deposition of Athan Fokas. And most of these exhibits were already exhibits to our Answer and Counterclaim. So can I hand them up? And I'm going to try to go through them pretty quickly.

MR. BARNETT: Before he does that, I rarely am this picky, but this is their motion. This is their motion. They filed absolutely nothing in support of this. The Court's order said file three days in advance. I filed, even though there wasn't anything in there --

THE COURT: Let me say this. I understand. Anything they have filed today and you haven't seen, I will give you an opportunity to reply to.

MR. BARNETT: I don't like to be sandbagged.

THE COURT: I understand your objection, and I agree with it, but that's sort of the way the system works sometimes. It would be nice to get it beforehand, but that doesn't happen. And I know we put it in these orders, but nobody pays any attention to it.

MR. BARNETT: I do.

THE COURT: Some people do. And it's nice to get

it beforehand, but I will give you whatever time you need to reply. All right?

MR. BARNETT: Okay.

THE COURT: Go ahead.

MR. COOKE: First thing I'm going to hand up is an excerpt from a deposition of Mr. Fokas.

THE COURT: Can I ask Mr. Barnett a question real quick before we get into all of this?

Tell me why the statute of frauds doesn't apply on the two issues, on the one year and the mortgage? Number one, do you think the statute applies? And number two, is there an exception? How are you going to get it out of the statute of frauds?

MR. BARNETT: Strongest argument is there was strong part performance.

THE COURT: You think it does violate the statute of fraud because of partial performance?

MR. BARNETT: I don't think that it necessarily does, but I'm not sure you need to get there. They spent $89,000 after the evidence shows there was an agreement, evidence from which a jury could conclude --

THE COURT: I don't want to cut you off, but you've answered my question, partial performance.

MR. BARNETT: Part performance is the strongest argument.

THE COURT: All right. Let me hear to you.

MR. COOKE: I'm going to get to the part performance, but not until the end.

THE COURT: Why don't you get to it now while it's on the mind.

MR. COOKE: It's not partial performance because the law is that for partial performance to get you out of the statute of frauds, it has to be performance that is specific to the actual promise that you are trying to enforce. It can't be something that you were going to do anyway or you were doing anyway because of the relationship of the parties.

And there's a case -- let me get my case out here. This is *Aust v. Beard*, 1957 case, and it says: Where a party seeks to secure a parol agreement from the statute by showing possession and improvements put upon the land, he must show "acts of performance or part performance by him which relate clearly and unequivocally to such agreement, exclusive of any other relation between the parties touching said premises.

And the complaint alleges that they spent $89,000 to get all of the approvals, get the architects, engineering, drawings and so forth. In paragraph 28 of the claim, parties entered into part performance in furtherance of their agreement and the form of payment of a total of

$86,000 in fees for engineering, architectural work, planning and zoning approval and design work. So that by the time the final loan package was offered by the bank, all designs and plans and all zoning approvals for the project were complete.

And then Mr. Fokas admits in his deposition that that $89,000 was all spent not because it has anything to do with this agreement to mortgage their interest, but it was to investigate and complete the plans to construct this building. In other words, they would have had to have been done in any event. Whether they ever consummated this deal or not, those were all the things they had to do to get to the point of being able to reach an agreement on mortgaging their property.

It says at page 65 of his deposition, he's asked this question: Before I get to Exhibit 2, a couple of things I want to clarify. One is the 86,000 or 90,000 or 92,000, whatever that was spent, were those all expenditures pursuant to trying to build the project, build the new building?

Yes.

In other words, whether there was ever -- it was completely independent of their having been any agreement to mortgage their interest in the property. So that's why partial performance doesn't apply, because they all paid

their share of the investigatory work and the background work that had to be done to get to the point of trying to make a deal. All of that would have had to have been done whether or not they had an agreement to mortgage the property.

Now, here's what happened to the deal. They all -- my client doesn't deny that they wanted this project to work and that they got right up literally to the -- almost to the bank's steps to do this deal before it fell apart. There's a question of fact as to whether they agreed initially to mortgage their interest in the property. But for summary judgment purposes, I'm going to save you wading through deposition and weighing evidence. Mr. Fokas said they agreed sitting on a bench outside their church back in 2012 that they were going to go out and do this project. And they were going to get a mortgage. It was going to be a 20-year mortgage at 5 percent. That never happened.

So giving him the benefit of the doubt that that was their agreement, and I've got some exhibits that document this, but he says here in the actual note that I just handed up, he says: We discussed that we had a 5 percent note and that it was a 20-year, 5 percent note. Once we got a commitment letter, then that was our deal. And I just say, we got a deal that we wanted, five percent with a 20-year note.

And then it says: So what you told me was that you discussed with them that it was a five percent, 20-year loan?

Yes.

And then he acknowledges that there was never any agreement in writing. On the next page, pages 37, 38, he says: Well, I discussed it. I mean, it might have been at a church or one of our functions, but, you know, we mortgaged the building, the bank gives us the money, we have the income stream from the original suites to show the successful project, and that's how they gave us the loan.

So your testimony is that you told them that orally?

Yes.

Not in writing?

No.

And then what happens is that they go forward. And at some point, he believes that he has gotten this 20-year, 5 percent loan. And he says in an e-mail -- if I can hand that up. Moving forward in time, this is now in September of 2014, this is within a month of when they are supposed to close this deal. And he says --

THE COURT: Did he have a commitment from the bank before this, what you are telling me now? Did he get a letter of commitment from the bank?

MR. COOKE: He did get one.

THE COURT: Before this last one you are going to tell me now? When did the letter of commitment come?

MR. COOKE: He got a commitment letter in February 2013, but they weren't going to be signing the note at that point. All they were going to do --

THE COURT: Had all the $86,000 been spent prior to the commitment letter or after the commitment letter?

MR. COOKE: I would say right up until the closing. It was being spent up until October of 2014, because they had architects, engineers --

THE COURT: So some of the money was spent after the commitment letter?

MR. COOKE: I would say so. I would say so, yes. I think it was being spent --

THE COURT: May not make any difference, but go ahead.

MR. COOKE: So here's the problem. Mr. Fokas believed that he had secured -- and this is within weeks before the closing. He believed that he had secured a 20-year mortgage at five percent, but he didn't. And this is the testimony of the bank officer.

THE COURT: What did he secure?

MR. COOKE: He got a five-year mortgage.

THE COURT: A five-year mortgage?

MR. COOKE: Five-year mortgage.

THE COURT: Was it a rollover?

MR. COOKE: No. It was a five-year with a balloon payment.

THE COURT: Balloon at the end?

MR. COOKE: Yes, balloon at the end.

THE COURT: No provision to roll the balloon into something else at the end?

MR. COOKE: No. They could re-apply for another loan. But what the bank agreed to do was, they said, we are going to amortize it based on a 20-year schedule. In other words, the payments were set up as though it was going to be a 20-year loan, but it was a five-year loan.

THE COURT: Was this rental problem, or they were going to sell these apartments?

MR. COOKE: They were going to rent them, short-term rentals, right.

THE COURT: Short-term rentals?

MR. COOKE: Right. So it would be people coming in for vacation and that type of thing.

So the testimony of the loan officer was, he says: "What was the term of the loan?

"The term was 60 months. So it would have matured in 60 months, but the payments would have been based on a 20-year amortization schedule.

"So where it says the monthly payments will be based on the 240-month amortization schedule, does that mean it's a 20-year loan?

"Answer, no.

"So when is the balance of the $1.8 million due under this proposal?

"It would have been six years from the closing date.

And then he was asked, "Are you in any way saying that they will have 20 years to pay off this loan?

"Answer, no. They would have five years plus one year to pay off the loan in writing.

"If I were to tell you even today Athan thinks that the loan was for a 20-year loan, would that be a misunderstanding of what you were offering?

"Yes.

"And the note that you prepared, note and mortgage and all that did not provide for 20 years, did it?

"No."

So here's an e-mail from December of 2012. Don't need to spend much time on it. But this is talking about the evolution of their financing. And this is an e-mail from Spiros, my client, to Athan. He says, "Assuming all that pans out, there will be a continuing issue of how we finance. If the bank is looking for me -- and I assume this

goes for Philip as well, but I will let him speak for himself -- to personally guarantee a loan, I am not going to do it."

He says, "There's too much that can go wrong with personal guarantee. I'm confident that Philip, Jacob and I will be able to come up with our end of the amount needed. And we can move forward without accumulating debt as we did for the first round of units."

He goes on and said, "I, for one, have plenty of money sitting in a bank account to share the additional units."

In other words, it was originally conceived they were not even going to be parties to the loan, let alone mortgaging their interest in the property. But even giving the plaintiff the benefit of all the doubt, it's clear that even though he says they made that deal back in early 2012, they have never come to terms on the essential elements of the deal. I don't think we even disagree on what the law provides.

I noticed in the plaintiff's memorandum of law on page four, he states the law very well and he says, "The essential elements of a contract for construction are typically described as the price, the method, and schedule of payment, and the scope of the work to be done."

And he also says on page 5 of this memo, and we

agree with this, "For a contract to be valid and enforceable, the parties must have a meeting of the mind as to all essential and material terms of the agreement."

So during the course of this negotiation and investigation over the course of the years, two years leading up to what was to have been the closing, they had not yet settled on the scope of the work. Originally, it was going to be four units. And then it turned into six units. Originally, it was going to be a $1,000,000 and turned into $1.8 million. And even at the time of closing, they weren't sure what the total price was going to be.

And as I probably belabored the point too much, the terms of the financing were never understood or agreed to. There's a memorandum that Athan's sent to the banker after the first aborted closing where he acknowledges, talking about Spiros, "He did not know he had to sign the paperwork on the mortgage until the closing attorney notified him." This is in October of 2000.

THE COURT: What was this? This was an LLC or what?

MR. COOKE: They had an LLC, but they were doing this individually.

THE COURT: Why would anybody think they didn't have to sign the note individually if they were doing it individually? I mean, that's just ridiculous.

MR. COOKE: Because they weren't going to borrow the money.

THE COURT: They weren't going to borrow the money?

MR. COOKE: Originally --

THE COURT: The bank wasn't going to lend the money unless they had a mortgage on all the property, not half of it, at all.

MR. COOKE: This is not even the property that they were building. This is the restaurant that had no mortgage on it.

THE COURT: Okay.

MR. COOKE: When they got up to this October closing and they realized that he needed them to mortgage, they said, okay, that wasn't the deal, but we are willing to do it if you will sign a document that provides for what will happen if you don't pay your share. And, ultimately, Athan would not sign it. And that's why the deal never closed.

THE COURT: Okay.

MR. COOKE: So my point was, this is a quintessential oral agreement to mortgage property and to build a building that was never documented in writing. They never signed one thing to assent to mortgaging their interest in this property. And when it came down to finally sitting down and negotiating the terms of under what

circumstances would you mortgage your interest in this property, Athan wouldn't agree to sign the document that Philip was requiring that he sign.

And I've got some exhibits for that as well. This is just an e-mail that Spiros sent after the fact that summarizes the evolution of their agreement.

THE COURT: Let me understand. If the plaintiff had signed this agreement, your clients were going to still sign -- agree to sign the mortgage and the note?

MR. COOKE: Right. They were willing to change the deal, change the agreement, and mortgage their interest and participate in this financing. And they would have done it if he had agreed to sign that document. But he wouldn't do it.

And you asked the question about was there an LLC. There was LLC that owned the original apartment buildings. And the bank had put them -- even though it wasn't part of the deal, when they got the closing documents, they realized that the bank had put the LLC on the obligation as well.

THE COURT: You know the bank is going to drag in everything they can drag in.

MR. COOKE: That's why we have closings and we put things in writing, so that everybody understands what they are agreeing to.

THE COURT: There's no way they can agree to all

these -- I want to call them "nices" if the bank is going to require you to borrow the money beforehand. I mean, basically, all you can agree to is you are going to obtain reasonable financing. I mean, the bank is going to set the terms.

MR. COOKE: Except that's not what Spiros --

THE COURT: I understand what you are saying. I mean, I just don't think you can sit there and say that there was no agreement because the terms weren't spelled out as far as -- the bank sets the terms on borrowing the money.

MR. COOKE: That's true, except in this particular case, he says that his oral agreement was, we are going to get a 20-year mortgage.

THE COURT: I understand.

MR. COOKE: That's true. There are plenty of written real estate contracts that have a contingency for financing. And you can sign -- I've signed them myself, where I signed it and it's subject to satisfactory financing. This wasn't that situation.

Additional thing I wanted to show you was that the price, I think I said this, the price went from a million dollars, according to what --

THE COURT: To 1.8.

MR. COOKE: -- to 1.8. And even at the end of the 1.8, they didn't know whether that was going to cover

everything because they found out at the last minute that they had to have a sprinkler system that was going to cost somewhere between 10,000 and $100,000. He was asked --

THE COURT: Who was requiring the sprinkler system?

MR. COOKE: The city, fire marshal. Says, "What was the cost of the sprinkler system?"

He said, "I'm not sure. Like, we have to -- I'm not sure if we got a number on that.

"Okay. Can you give me a ballpark?"

He said, "I don't know. I've seen some number, 10,000 to 100,000. I have no clue what the sprinkler -- there are three or four guys out there, to play them against each other and try to figure out the best deal."

That was Athan's testimony on the sprinkler. That's further evidence that they never had a meeting of the mind. That's not to say given the fullness of time, they might have agreed to it later. But they didn't agree to it. And the deal fell apart before they reached agreement on all of these elements.

Here's another document that says -- this is Athan's testimony on page 267, "So you are saying you will sign the side agreement, but you put on that a contingency that you would like assurance from my client, correct?"

This is Mr. Farrier asking Athan. He says, "I wanted to make sure he was coming up with the money. Right.

And he never provided that to you, did he?"

In other words, when it came down to trying to do the deal, what Athan's said was that he will only sign this agreement if Philip would sign the same agreement. This is Exhibit M to the answer and counterclaim.

And this is an e-mail from Athan to the rest of them dated November 2014, after the deal had fallen through. He says, "I am not interested in you trying to bully me into signing any type of side agreement. That is unnecessary. My attorney, as I said earlier, strongly was against it."

So, Your Honor, all of this, I think, is well characterized in the fairly recent case by the Supreme Court called *Stevens & Wilkinson of South Carolina v. The City of Columbia*, decided in 2014. I have copies I can hand up. And this is one where there actually was a written agreement in this one. It was an architectural firm that was retained by the City of Columbia to do a bunch of urban renovation work for them. I think there was a civic center or something involved. And they actually had a memorandum of understanding. And they performed the things that they had to do to get to a final agreement. But the Supreme Court said, you didn't reach a meeting of the minds on the essential elements of your agreement; therefore, you don't have a contract.

And what they said is very significant. Says,

"Frequently, agreements are arrived at piecemeal, with different terms and items being discussed and agreed upon separately. However, as long as the parties know there is an essential term not yet agreed on, there is no contract. The preliminary agreements on specific items are mere preliminary negotiation building up the terms of the final offer that may or may not be made."

And it cites -- says, "From the plain language of the memorandum of understanding, it is clear the parties knew the material terms still remained to be agreed upon."

They were also, undoubtedly, aware that the payment of reimbursement was contingent upon obtaining bond financing, etc. Because the memorandum of understanding is simply comprised of segments to execute further agreements. There was no meeting of the minds on numerous material terms which have not yet been defined.

And that is the sad fact that that happens in many real estate transactions, is the parties are excited about it. They go out. They do their due diligence. They spend a lot of money. They hire professionals. But then when they get down to the details, they can't reach an agreement. But the law recognizes that as a reality. And that's why we have to put these agreements in writing. And more importantly, we have to reach a meeting of the minds on the essential elements, the price, the scope of the agreement,

and the way it's going to be paid for. And none of those were agreed upon.

So it's a shame that the deal didn't go forward, but there's no enforceable contract. For that reason, we move for summary judgment.

THE COURT: Okay.

MS. THIEM: Your Honor, I just want to add, there -- is a case out there -- I'm sorry I don't have it with me, I can't recall the name of it or the cite in South Carolina -- that allows for a tenant in common to mortgage his or her particular interest in property. And I can supplement with that if Your Honor would like me to do so.

THE COURT: Please do so. Anything else?

MS. THIEM: Absolutely. That's it.

THE COURT: Mr. Massalon.

MR. MASSALON: Thank you, Your Honor. I represent Jacob Ferderigos, who you heard a little bit about. And I know we've been in front of you a number of times on several of these cases. But just to give you a quick review, my client and Mr. Fokas own Old Towne Restaurant, along with Mr. Fokas's father. And we had another case that involved that. You probably recall. That's a different corporation, S & S Old Towne. That's not involved in this.

The building, as you've heard, is owned as tenants in common by Mr. Fokas and these three gentlemen. He owns

50 percent and they share 50 percent interest. And then the short-term rentals are managed by this Old Towne Suites, LLC.

THE COURT: Let me ask you this. Were they excluded under that city ordinance on short-term rentals?

MR. MASSALON: I have not looked at that issue, Your Honor.

THE COURT: They might be lucky they didn't go forward. What part of the town was excluded? I didn't mean to be picking at you on ARB, but I had to ask you that question. And you understand why.

MR. MASSALON: I do. And I have to say, I didn't come prepared to address that issue, but I will have to look into that.

But the suites, Old Towne Suites, LLC, just manages these short-term rentals. It doesn't own the building and it doesn't own the restaurant. So with that context, in addition to the arguments you've heard, I really have a couple of additional arguments I would like to make for Mr. Ferderigos.

You mentioned the complaint. And I've got a highlighted copy that I will just pass up. It's the same one that's been filed, but, if I may. And what I would like Your Honor to look at with me are just a couple of paragraphs that I believe are the only two that mention my

client. And that would be on page 3, paragraph 21. It alleges that Jacob here would not agree to go forward with this agreement unless his brothers, Philip and Spiros, agree to it as well. So it says that.

And then near the end of the complaint in paragraph 40, there's an allegation about the defendants. And that includes, I guess, all of them, including Jacob here, refused to execute the mortgage in accordance with their agreement with plaintiff and their brother Jacob. So, again, the additional ground, first additional ground I would argue for Jacob is that all of the evidence shows, and particularly the evidence that was submitted with Mr. Barnett's memorandum, that Jacob here was actually going along with Mr. Fokas and that he signed an agreement to mortgage his interest in the building. And that as the complaint alleges that when his brothers Spiros and Philip decided they would pull out of the deal, he said, I can't do the deal.

Now, I would refer you -- and Mr. Barnett submitted a lot of stuff with his memo, but this is an excerpt from his client's deposition that Mr. Barnett submitted. I'm looking here at page 456. And there's some questions that were asked. And I will just read them briefly. And I will hand this up. The question is, "Did you tell Jacob" -- this is a question of Mr. Fokas -- "that you did not want to join

in the lawsuit?" And the answer is yes.

Then the next question is, "Did you ask Jacob to enter into some sort of agreement that if his cousins agreed or required to go forward with the project" -- and I think that means his brothers, but says cousins -- "that he would go forward with the project?"

And Mr. Fokas says, "I think so. I did."

And the question was, "What did he say?"

And the answer was, "He agreed to go forward with the project."

So I will pass up one more page from the same deposition I got out of here from Mr. Barnett. And it actually just is the questions that I asked. And this is same deposition of Mr. Fokas, page 445 there in the bottom left. The question was, "The only thing you allege in here that I see is that once Philip and Spiros decided not to go forward, Jacob decided not to go forward."

And the answer was yes.

Then I ask him, "And you did the same thing, right? Once Philip and Spiros decided not to go forward, you, Mr. Fokas, decided not to go forward as well?"

And the answer was, "I always wanted to go forward and I'm ready to go forward today."

So then I ask him, "How come you haven't done it then, if you are ready to go forward even though the other

two guys are out?"

And the answer is, "Because we have to sign a mortgage."

And that's the point you made earlier.

And my question was, "And so Jacob is in the same situation, right? If Spiros and Philip aren't willing to go forward with the agreement, Jacob can't do it either, right?"

The answer is, "Yes, but we all agreed to in the beginning."

And my question is, "Jacob can't do the deal as long as Spiros and Philip are not in the deal, right?"

And he says, "That's correct."

So the additional basis for my motion, Your Honor, is there's nothing in the complaint or any evidence that shows that Jacob here did anything that is alleged to be in breach of this agreement. All he's alleged to do is, once two of the people that Mr. Fokas acknowledges are essential to this, said that they would -- were not prepared to go forward, he said that he couldn't do it either. And, again, this is actionable. That's not a cause of action. There's no facts that show he did anything in breach of this alleged agreement or in breach of his fiduciary duties or anything. All he did is just what Mr. Fokas did, which is, if these fellows are out, I'm out too.

So in addition to the reasons that you heard from Mr. Cooke and Ms. Thiem, my client is entitled to summary judgment because there's just no evidence that he did anything wrong. So on that basis, I would also ask that you grant summary judgment.

THE COURT: Thank you so very much.

Mr. Barnett.

MR. BARNETT: Yes, sir. I will take you up on your offer to respond, particularly to the law.

THE COURT: That's fine. I will give you how much time you need.

MR. BARNETT: I'll try to adjust how I would respond here today.

THE COURT: Well --

MR. BARNETT: There are a lot of things wrong, I think, with Mr. Cooke's characterization of what happened here. He glosses over the fact that there was a commitment letter from the bank, which was incredibly detailed, as you can imagine.

THE COURT: Well, did he do the five-year balloon, five years amortized over 20 with a balloon that ended five with one year to pay it?

MR. BARNETT: That is what it says from the very beginning.

THE COURT: Is that what it says from the very

beginning?

MR. BARNETT: From the very beginning. All four of these people had copies of that commitment letter. The commitment letter was updated in September of 2014 --

THE COURT: But there was never a commitment from the bank for five years to 20 years?

MR. BARNETT: No. It's clearly written as to what they were agreeing to do, what the bank was committing to do. Now, the bank officers testified, with commitment letters like that, when they came to the end of that period, they would typically extend it for another five-year period. If no conditions had changed, they would go forward. The fact that my client interpreted that to be a 20-year mortgage, I don't think changes the fact that the commitment letter they had on which they based their reliance in going forward --

THE COURT: Is there a copy of the commitment letter somewhere?

MR. BARNETT: It's in my materials, Your Honor. I think it may be in here twice.

THE COURT: The commitment letter says, we will give you a loan for five years, a balloon at the end of five, with a year to pay the balloon or roll it over or whatever?

MR. BARNETT: It's Exhibit C. And the bank

officers testified they would typically extend it, upon request, if no conditions had changed. It's Exhibit C. There was an original. It's dated February 5th of 2015. And the Exhibit C shows that the letter has been modified to increase the price of $1,8 million -- increase it to 1.8 million. That's when the parties agreed to increase the size of the addition to the building. All of this was done in concert with all four of these people.

This stuff that I have given the Court is the testimony of my client, as well as some documents that tend to verify what he's saying, that all of this was done in concert. These people got this commitment letter February 5th of 2013. Your Honor asked Mr. Cooke appropriately, did they -- when did they spend this $90,000? They spent that 89,000-some-odd dollars after they got this commitment money -- not to investigate whether it was feasible to build the building -- to design it, engineer it, get it permitted.

During the permitting process, in the summer of 2014, they learned that we can go up higher. We can get some more floors. It will cost more money, but we can do that. So Mr. Fokas and Jacob Ferderigos, since Jacob, my client's testimony, was acting on behalf of his brothers, worked with the permitting authorities to get that approval, which came in -- there's a bunch of text messages. That's Exhibit N in my materials that I submitted to the Court.

THE COURT: Did the approval come before the fire system was -- did the fire system come in after?

MR. BARNETT: When they were told they had to get a sprinkler system put in, they were told --

THE COURT: Before the approval?

MR. BARNETT: They had a building permit. They actually had a building permit. The building permit came on October the 10th of 2014. In these text messages that Mr. Fokas sends to his cousins, September the 19th, he said, we've been approved for $1,800,000. And he gets all these congratulations, oh, how wonderful this is, way to go, you the man, sort of stuff.

Then he gets -- the building permit comes in. At that point, nine days later, Spiros Fokas, on October the 19th, says, I need to hold off signing anything. And there's a string of these texts where Spiros and Athan are arguing about this. Spiros says, I'm in consideration for family court judgeship. And he says at one point, I don't want to effect my P and L. -- profit and loss statement, I assume is what that is -- by signing anything. He talks about signing, signing the bank documents, signing the bank documents, over and over again. He says, I will do that, but I've got to get through this judgeship process.

Philip weighs in and says the same thing: Philip will sign the documents, bank documents, when he gets

through the judgeship process. And saying to Athans, you should stop arguing with him about that.

Now, this comes at a time when the defendants have all had the modified commitment letter from the bank, which is what Mr. Massalon was kind enough to hand up. They have had it since September the 24th. My client e-mailed it to all of his cousins when we got it on September 24th.

THE COURT: September 24th of '14?

MR. BARNETT: Yes, sir. So they have known that everything in that document, that commitment letter, was going to have to be executed. The mortgage was going to have to be executed.

THE COURT: Because the commitment letter I'm looking at is dated February the 5th, 2013.

MR. BARNETT: Yes, sir. That's the original one, but then it was notified. You see all these handwritten modifications?

THE COURT: Okay.

MR. BARNETT: Those are dated all September 24th. The reason for that modification is just the -- it's the amount of money, because they were going to go up more floors, it was going to cost more money. The bank was looking for a mortgage, first mortgage, on 229 King Street.

And I submit to you that the text messages show there wasn't any question that Spiros and Philip Ferderigos

knew they were going to have to sign that mortgage. I mean, they are lawyers, first of all. It's incomprehensible to me for lawyers to suggest that they thought a bank was going to take a mortgage without all the signatures of the elders.

Tony Daniel had been in banking for 45 years, testified, no, banks don't take mortgages without all the owners signing it. That's just not how it works.

They also wanted an assignment of rents and leases. They wanted accounts receivable, inventory, furniture fixtures, equipment. They wanted interest on that. And the LLC is a borrower. It's listed on there. All of these points are things that, after this disagreement metastasized, that Philip and Spiros said, no, we never agreed to any of that, we didn't know about any of that.

Well, they did know about it. They had this commitment letter. Spiros Ferderigos had communicated with the bank way back in 2013. He communicated with Jeff Odom to help clarify how the ownership of the LLC should be described. So he certainly had the agreement.

Philip Ferderigos had this agreement in September, the one that was modified, because he went out looking to get a better break, better deal. There's some materials I've submitted in here about that. There wasn't any surprise. There wasn't any question about what they had to do. There was no provision in their agreement, the parties'

agreement for Philip to submit to this side agreement that says, hey, I'm going to bring my money and I want the rest of you to agree to this. This was something that he made up after the agreement was in place.

And the fact that my client wouldn't agree to it, and it is an onerous agreement, which another lawyer, evidence in the record, says his lawyer transaction lawyer, John McNeil, advised him not to sign it because it's that onerous. He wasn't going to do that.

It wasn't that they didn't form an agreement until -- never formed an agreement. They had an agreement all right. They spent almost $100,000 in carrying out that agreement. Now --

THE COURT: All of that was after the commitment letter?

MR. BARNETT: Yes, sir, after the February -- there's Exhibit D, if I remember it correctly, it's a list of the expenses and when they were incurred. $89,000 was incurred after the February 5th, 2013, commitment letter. They had spent some money beforehand.

THE COURT: What was the terms of the original commitment from the bank on February the 5th, 2013? I haven't had a chance to read it.

MR. BARNETT: It's in Exhibit C. It's the same thing. What the bank did is, they just took the original

commitment letter and they modified the amounts. They didn't change --

THE COURT: Modified from 1.8 million?

MR. BARNETT: That's right. They didn't really change any of the terms.

THE COURT: Okay.

MR. BARNETT: Mr. Cooke makes a point that this money that they spent really wasn't part performance. I didn't write down his exact words, that somehow it wasn't in furtherance of the actual agreement. Well, it was. The agreement was, after they got an acceptable financing commitment, they were going to go out and spend the money together to design, engineer, permit the building. They were going to share the costs in the same percentage of their ownership of the building, which was 50 percent by Mr. Fokas, 50 percent shared by his cousins. And that's what they did. That is exactly what they did.

They got to a point where they decided, hey, we can build more of these units. We can make even more money. So they upped the price. But by agreement, they upped the price. And the agreement is manifested in those text messages in Exhibit N, where Mr. Fokas tells him, hey, we are approved for 1.8 million. And they are all excited. They are even more excited when the building permit comes in. They are ready to go.

What went off the rails was, Spiros Fokas, and I don't necessarily fault him for that, I've never been in the process that you have been in, he has been in, to be reviewed by a judge. I don't know how sensitive that is. But he says, look, I've got to wait, I will sign these documents. He says it maybe four or five times in those messages, but I've got to wait, I've got to wait. And Mr. Fokas doesn't like that. They argue.

The first closing doesn't go forward. By the next closing, Philip Ferderigos has come up with this side agreement, which is an entirely new aspect. That would have been a modification of the agreement. I think I cited a Fourth Circuit case to Your Honor that says what I think is the obvious statement of law. Once you have a contract, the fact that somebody suggests modifying it, doesn't mean you no longer have a contract; just they are trying to change the deal. He wouldn't agree to change the deal, at which point they all refused to go forward.

Now, what these documents show is not just testimony from my client, but actions by all the parties, which are consistent with an agreement, an oral agreement and words by the defendant, which are confirming of the terms of that agreement. Is it an oral agreement? Yes. But it's supported by a writing, supported by the loan commitment by the bank. That's how they agreed to finance

the deal.

It's confirmed by the plans, which were approved by the city, which show what they were going to do. And it's confirmed by the construction contract, which is in here, where Kevin Carroll agreed to build the project for slightly under $1.8 million. To me, that's a deal. That's an agreement. Now, is it in the parol evidence rule? I actually don't think so.

Mr. Cooke says, well, a mortgage is going to be carried out over a 20-year term. That's more than a year. But the deal was not -- the agreement between these parties was not a mortgage. Mr. Fokas wasn't giving his cousins the mortgage, or vice-versa. They were all agreeing to sign a mortgage. Once that was done, the deal was consummated. And there's nothing in their agreement that limited -- that says that that deal could not have been accomplished within a year.

And the statute of frauds, the one-year part of the rule, is relatively harsh. I mean, the cases that I've read said it's got to be clear on the face of the contract that performance of the contract cannot be done in a year.

With respect to the part of the statute of frauds that says an agreement to affect an interest in land -- again, I looked for cases for something like this -- I don't think their agreement between themselves was an agreement to

affect an interest in land. It was an agreement to enter into a mortgage. But they weren't selling each other a piece of land. They weren't mortgaging a piece of land from one to the other.

THE COURT: Well, do the cases say that entering into a mortgage itself is part of statute of frauds?

MR. BARNETT: If it's between the mortgagor and mortgagee, that contract is in the statute of frauds. As Dawes correctly pointed out, we wouldn't want to have oral mortgages. They've got to be in writing. But that's not what this was. This was a deal by owners of the building to expand the building and agree to borrow money to do so, and to do that under the terms of the commitment letter that was given to them by First Citizens.

I think there was more than enough evidence to send the question of the existence of the contract to the jury. I do not believe it's subject to the statute of frauds. But I believe if it is, if Your Honor disagrees with me, as you have before, there's --

THE COURT: Not all the time.

MR. BARNETT: No. But there's part performance here. $100,000 is a lot of money. And the cases on part performance are pretty strong too. When people enter into an agreement like this and they spend that much money, one of them spends almost $50,000 of his money to do this, that

locks it in. There's obviously equitable reasons for that too, to prevent people from beginning performance and then saying, oh, well, no, we didn't have a written contract, so too bad for you. But I think the evidence is pretty strong.

THE COURT: Thank you very much. How many days do you need to send me a reply memo? You tell me.

MR. BARNETT: By next Friday.

THE COURT: That would be fine. I will give you until next Friday. And I will take it under advisement until that time.

MR. MASSALON: Your Honor, if I'm brief, can I say one thing?

THE COURT: Yes, sir.

MR. MASSALON: The contract that I passed up to you -- I'm sorry, the commitment letter I passed up to you, I would just like to highlight a couple of things. First, it's addressed to Mr. Fokas and my client as the borrows, not these other gentlemen. So Mr. Barnett does an artful job of conflating agreements with other people as if it's an agreement among these folks, and they are not. And so I would like to highlight that.

And also to note that my client signed this commitment letter. And so, again, I shouldn't be in this lawsuit because he didn't do anything they said he wasn't

supposed to do.

THE COURT: Thank you very much.

MR. COOKE: Judge --

THE COURT: I've heard enough. Okay? Thank you. Thank you for offering. Okay? I've got enough to read and I've heard enough. So thank you all so very much for being prepared and being here.

What else we got?

MR. BARNETT: Only last thing is that motion --

THE COURT: Let me ask one question while I've got all the parties here. It says Old Towne Suites, LLC. And that's signed by who on the commitment letter? I can't read the signature.

MR. BARNETT: You are talking about Exhibit C, Your Honor?

THE COURT: Yeah, the commitment letter.

MR. BARNETT: That's Mr. Massalon's client, Jacob Ferderigos and Athan Fokas. And it looks like Athan Fokas signed for the LLC, Old Towne Suites, LLC.

THE COURT: Okay. Old Towne Suites, LLC was the corporation that owned the building, the Old Towne Restaurant; is that correct?

MR. BARNETT: No, sir. That would be too sensible. That's not what they do. They own the building as tenants in common. They have an LLC, which is owned in the same

shares in which they own the building. So Mr. Fokas owns half of the LLC. His cousins own --

THE COURT: Is the LLC the one that was involved in this transaction?

MR. BARNETT: It was to be a borrow. And what it does is it manages the rental.

THE COURT: So it was going to be the borrow?

MR. BARNETT: That's right. Does not own the building at all.

THE COURT: Thank you very much. What's the next motion now?

MR. BARNETT: It's my motion to quash; perhaps better stated, to limit the subpoena.

THE COURT: How do you want it limited?

MR. BARNETT: I just would like them to be required to produce things that relate to this lawsuit, communication between my client and Mr. High about the defendants or about 229 King and all that, but not about their interactions between their families, which is extensive. I think that's over broad.

THE COURT: What time frame are we talking about?

MR. BARNETT: I would need to ask my client how quickly they could generate those documents? May I do that?

THE COURT: Okay. I was talking about the time frame of the communications, not how fast he could produce

it. Okay?

MR. BARNETT: I'm sorry; too literal.

THE COURT: 10 years, 20 years, or what?

MR. BARNETT: They asked for some time in 2011. I don't remember the exact -- that seems a bit long, but I am not even so particular --

THE COURT: What do you want? Who asked for it?

MR. COOKE: We served the subpoena.

THE COURT: So what time frame do you want it and what do you specifically want?

MR. COOKE: We asked for all communication --

THE COURT: Give me a time frame first.

MR. COOKE: Let's go back to 2012.

THE COURT: All right. 2012, January 2012?

MR. COOKE: Yes.

THE COURT: Why 2012?

MR. COOKE: Because they -- that's when this agreement was allegedly entered into.

THE COURT: Then you want it out until when?

MR. COOKE: We would like it up to the current time.

THE COURT: Why?

MR. COOKE: Well, because he's still the manager of their LLC. So we think that we should be entitled to that just in that capacity, even if it's not relevant to the

contract claim --

THE COURT: When was the contract rejected totally? What's the date, approximate date?

MR. COOKE: February of 2015.

THE COURT: February --

MR. COOKE: Around early 2015.

THE COURT: How about from January 20th, January '12 through 2013 for now? What are you asking for? Give me a time frame. What are you asking for?

MR. COOKE: All communications between --

THE COURT: All communications? I mean, that covers what?

MR. COOKE: Written communications between Mr. --

THE COURT: All you want is written? You don't want e-mails?

MR. COOKE: No, that's included, e-mails, texts and any written correspondences.

THE COURT: You want e-mails, texts? Who saves texts?

MR. COOKE: We've got lots of texts in this case.

THE COURT: Y'all save them?

MR. COOKE: Yes.

THE COURT: I thought you did that so you can delete them.

MR. COOKE: No, that's Snapchat.

THE COURT: So you want the texts, e-mails and written --

MR. COOKE: Yes.

THE COURT: About what now?

MR. COOKE: We want any --

THE COURT: What subject matter?

MR. COOKE: What I would be willing to do --

THE COURT: Let's narrow down what you are looking for. If you write somebody says, I love you, you don't want that, do you?

MR. COOKE: We don't want anything that's purely personal, but anything that mentions our clients or mentions their business relationship.

THE COURT: All right. Mentions the defendant or the business relationship, is that right?

MR. COOKE: Or any business relationship, yes.

THE COURT: Or any? What type of business? Are we talking about this business relationship?

MR. COOKE: Well, there are also -- there's a competing business relationship. We allege as part of our -- part of this case that Mr. Fokas has another set of these suites that Mr. High manages for him. And so we would like anything relating to that too.

THE COURT: What would that have to do with this lawsuit, your defamation defending the breach of contract in

this case?

MR. COOKE: Well, among other things, it could go to damages if they should get a jury. Because we contend that they've been competing with what these suites would have been. And he's claiming damages for the loss of revenue from this suite. So the business that they've done and their competing set of suites would be relevant to that. But what I would be willing to do would be, if there's anything that they object to producing, I would be willing for the attorneys only to review those with Mr. Barnett before the clients look at it. Because I can understand that they are concerned about these folks are related and they've got business relationships with each other and they may even be competitors.

THE COURT: Mr. Barnett, does that narrow it down for you?

MR. BARNETT: It narrows it down.

THE COURT: Four of you sit down and look at them before you produce them to see if there is anything you can weed out that's personal.

MR. BARNETT: Right.

THE COURT: How about this other LLC situation, the one with the suites where they say it's got competitive competition? Somebody needs to find out when the City started barring short-term rentals and whether or not it

applies to this property --

MR. BARNETT: It's quite some distance from 229 King. And if we get into that, maybe we are going to get into Philip Ferderigos has a rental problem that's also managed by Kevin High, which is also in competition.

MR. COOKE: We are only getting up to the beginning of 2015. So there are not going to be any current trade secrets in it. I think Mr. Barnett and I can resolve it.

THE COURT: Do you think you can work that out?

MR. BARNETT: And I don't think that business was in operation in 2015, either Philip's or Athan's. Yes, Your Honor, I think we are clear, January '12 to January '15, anything related to the defendants, anything related to --

THE COURT: I said through March of '13, that's when the contract was breached.

MR. BARNETT: It was beginning of 2015, Your Honor.

THE COURT: I'm sorry. Is that right? I'm sorry. Okay. February '15, okay.

MR. BARNETT: Any objection to anything in those categories, the lawyers will review.

THE COURT: Anything written, e-mail or text, okay, anything that mentions the defendant and the business relationship. Personal stuff comes out. Anything affecting anything business.

The last request about the LLC, I'm going to deny

you on that for now. If you come up with something later, you can request it. I am not going to bar you from requesting it at a later time, but for now, no.

Anything else?

MR. COOKE: No, sir.

MR. BARNETT: I will need to consult how long it takes. I guess if we don't agree, we will have to bother you again, but I will talk about how long it takes.

THE COURT: How fast do you want it?

MR. COOKE: Whenever they can get it.

THE COURT: 30 days?

MR. BARNETT: I think we can make it in two weeks, Your Honor.

THE COURT: I'll give him 30 days to produce it. Okay? 30 days from today, not the order.

Who is going to give me a proposed order on that issue?

MR. COOKE: We can submit one.

THE COURT: Run it by Mr. Barnett before you send it to me, please.

MR. COOKE: We will.

THE COURT: Thank you very much.

(Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Athan Fokas, Plaintiff, v. Phillip Ferderigos, Spiros Ferderigos, and Jacob Ferderigos, Defendant(s).	)	Case No.: 2015-CP-10-3919 ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT

FILED
2017 AUG 31 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before me for hearing on Plaintiff's Motions for Partial Summary Judgment as to the counterclaims by Defendants, Phillip and Spiros Ferderigos, on June 8, 2017. Specifically, Plaintiff moved for summary judgment as to the claims by these Defendants for defamation.

BACKGROUND

In this case, the Plaintiff seeks summary judgment as to the claims by Defendants Spiros Ferderigos and Phillip Ferderigos that Plaintiff published defamatory statements about them. This case was filed by Plaintiff alleging breach of a contract between himself and the Defendants, all brothers and the cousins of Plaintiff, to add floors to a building all of the parties own together as tenants in common at 229 King Street in downtown Charleston. Plaintiff also alleged breach of the duty of care by Defendants required by S.C. Code 33-44-409 for members of an LLC based on the same actions he alleges give rise to a breach of contract. The answers of Defendants in this case incorporated counterclaims by Spiros and Phillip Ferderigos for defamation in which they allege that Plaintiff published false and damaging statements against them. The statements allegedly made to third persons were:

a. That these Defendants did not agree to go forward with the plan to add additional rental suites at 229 King Street because Phillip Ferderigos and/or Spiros Ferderigos could not eat for free at the Old Towne Restaurant;

b. That either Phillip or Spiros Ferderigos do not have good business sense;

c. That either Phillip or Spiros Ferderigos are bad business people; and

d. That either Phillip or Spiros Ferderigos were accusing Athan Fokas of setting fire to 229 King Street.

In their response to Plaintiff's motion, Defendants raised additional statements by Plaintiff, not alleged in their pleadings or discovery responses, which they argue constitute defamation. These are that Plaintiff sent text messages to Defendants after this case was filed saying that Spiros Ferderigos had lied in his deposition and that he had threatened to use his position as an assistant solicitor to convince law enforcement to pursue a charge against Plaintiff for arson unless Plaintiff backed off his claim that Defendants were in breach of contract.

Discovery was completed prior to Plaintiff's motion and included interrogatories and requests to produce to Defendants as well as depositions of both. In their responses to interrogatories, the Defendants addressed their original allegations set forth in their counterclaim and said they had no specific information as to which third parties such statements were made, but that they thought he might have made them to his mother, Irene Fokas, Kevin Carroll and Justin Hansen. (Exh. B to Plaintiff's Motions as to both Defendants). They made similar statements in their deposition testimony. (Exh. C to Motions as to both Defendants). Irene Fokas was deposed in a companion case, Athan Fokas v. Phillip Ferderigos and Spiros Fokas, Civil Action No. 2015-CP-10-3819 and denied any such statements were made to her by Plaintiff. (Exh. D to Plaintiff's Motions). Justin Hansen denied by affidavit ever being told these things by Plaintiff. (Exh. F to

Plaintiff's Motions). Plaintiff denied in his deposition and affidavit testimony making any such statements to third parties. The publication these Defendants claimed "on information and belief" to have been made to third parties who are not parties to this action is not, therefore, supported by the scintilla of proof required to avoid summary judgment.

Defendants argue that Plaintiff's publication of all of the statements they claim to have been defamation to their brother and co-defendant, Jacob Ferderigos, satisfies the element of the cause of action for defamation of publication to a third party. The statements to Jacob Ferderigos were all in the form of text messages sent to all of the Defendants as part of the parties' discussion and disagreement over the project to add floors to the building at 229 King Street which resulted in the filing of this action. Some of these texts were sent after the commencement of this action.

STANDARD FOR SUMMARY JUDGMENT

The standard for summary judgment under South Carolina law is high. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 376-77, 597 S.E.2d 181, 184 (Ct. App. 2004)(quoting Murray v. Holnam, Inc., 344 S.C. 129, 138, 542 S.E.2d 743, 747 (Ct. App. 2001). Furthermore, in determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). If there is a "scintilla of evidence" in the record which gives rise to a genuine issue of material fact, summary judgment should not be granted. Howle v. Woods, 231 S.C. 75, 97 S.E.2d 205 (1957).

A trial court may grant a motion for summary judgment only when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *See also,* Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied."

However, the party opposing summary judgment has the burden of producing proof and not mere allegations in the face of proof submitted by the moving party. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is genuine issue of fact remaining for trial." Sides v. Greenville Hospital System, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or other proof." Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe, 315 S.C. at 516-17, 445 S.E.2d at 655; German v. N.Y. Life Ins. Co., 286 S.C. 34, 331 S.E.2d 385 (Ct. App. 1985).

ELEMENTS OF DEFAMATION

The tort of defamation permits a plaintiff to recover for an injury to his reputation caused by false statements by another. Banks v. St. Matthew Baptist Church, 406 S.C. 156, 161, 750 S.E.2d 605, 607 (2013). To prove defamation, a plaintiff must show: (1) a false defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Erickson v. Jones St. Publishers, LLC, 368

S.C. 444, 464, 629 S.E.2d 653, 664 (2006). "A communication is defamatory if it tends to impeach the honesty, integrity, virtue or reputation..." Hubbard and Felix, The South Carolina Law of Torts, 462 (2nd Ed. 1997).

A statement may be actionable *per se*, in which case the defendant is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages." Id. Under common law, slander is actionable *per se* only when it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime or moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; (5) unfitness in one's business or profession. Holtzscheiter v. Thomsan Newspapers, Inc., 332 S.C. 502, 511 n.5, 506 S.E.2d 497, 502, n. 5 (1998). "Or a statement may be not actionable *per se*, in which case nothing is presumed and the plaintiff must plead and prove both common law malice and special damages." Erickson, 368 S.C. at 465, 620 S.E.2d at 664. Common law malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, i.e. with a conscious disregard of the plaintiff's rights. Padgett v. Sun News, 278 S.C. 26, 32, 292 S.E.2d 30, 34 (1982). "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." Erickson, 368 S.C. at 466, 629 S.E. 2d at 665.

A statement is not necessarily defamatory simply because it is unfavorable or critical. Dauterman v. State Record Co., 249 S.C.512, 154 S.E.2d 919 (1967), "It is true the complaint alleges that the publication tended to impeach the reputation of the plaintiff and to injure his business, but that bald allegation does not make the publication actionable, else a confessedly harmless act may be converted into a harmful act by a mere allegation. The inference of hurt arising out of a statement of facts in order to become actionable, must be such an inference as is established by the general consent of men, and the inference must be judged of by the court in the first instance.

The language complained of by the plaintiff was naturally displeasing to him and was unquestionably of an unfavorable nature. However, it by no means follows that a publication which is unfavorable is also libelous;" Costas v. Florence Printing Co., 237 S.C. 655, 118 S.E.2d 696 (1961), "We point out that there is no allegation that the respondent lost any customers, or had any diminution in trade. There is no allegation of special damages for losses sustained by reason of the publication of the alleged libelous statement. In short, the complaint does not allege special damages."; and Murphy v. News &Courier, 141 S.C. 51, 139 S.E. 18 (1927), "To hold libelous per se the mere statement that one has failed, or even that he was unable, to furnish bond-whether the amount required be large or small-would be carrying the law of libel beyond any precedent that has been called to our attention. Many a good citizen, if suddenly and unexpectedly arrested without reason for forearming himself against the contingency of such arrest, would very likely be unable to give immediate bond, or perhaps might be reluctant to call in friends who would relieve his embarrassment, but enjoy his misadventure."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

There is no genuine issue of material fact on the record in this case as to the elements of defamation. There is no evidence that the plaintiff made defamatory statements to third parties. As to all but two of the statements Defendants allege to have been defamatory, such statements do not constitute defamation under the law. Publication to Jacob Ferderigos of the two statements concerning Sprios Ferderigos recently raised by Defendants does not constitute defamation as these statements were made to a party in this lawsuit and were made during the course of the disagreement between the parties that constitute the issues in this case and were part of that disagreement. As such, these statements were not defamation, but are protected by the litigation privilege.

Neither Phillip Ferderigos nor Spiros Ferderigos identified any person other than their brother and co-defendant, Jacob Ferderigos, to whom statements were made. None of the people they said in discovery to whom they thought Plaintiff "might" have made these statements came forward to say that Plaintiff made such statements. Both Irene Fokas and Justin Hansen specifically testified that he did not. The question thus becomes whether Plaintiff's statements to Jacob Ferderigos constitute publication in the context of a defamation claim. I conclude they do not.

All of the statements Plaintiff made in the form of text messages sent to all three Defendants, including Jacob Ferderigos, related directly to the dispute between the Ferderigos brothers and Plaintiff. The statements about "eating for free" and that Phillip and Sprios Ferderigos were displaying bad business judgment by not going forward with the project to add floors to 229 King Street were made in the disagreement that matured into this lawsuit and are directly related to the issues surrounding Plaintiff's allegations of breach of contract and breach of duty of care. Similarly, the statements concerning Spiros' Ferderigos testifying falsely in his deposition is directly related to the discovery proceedings in this case. The statement that Spiros Ferderigos threatened to use his position as an assistant solicitor to convince law enforcement to pursue a charge against Plaintiff if he pursued a breach of contract action is also directly related to the issues in this case and stem from an affidavit filed in the companion case, Athan Fokas v. Phillip Ferderigos and Spiros Fokas, Civil Action No. 2015-CP-10-3819.

As such, all of the statements alleged to be defamatory by Defendants are covered by the litigation privilege and are absolutely privileged. Any statement made as part of a judicial proceeding, in or out of court, is absolutely privileged under South Carolina law. Crowell v. Herring, 301 S.C. 424, 392 S.E.2d 464 (Ct. App. 1990). The statements Defendants complain of

concerning Plaintiff's allegation that they were accusing him of arson and other insurance fraud actions and the statements related to Sprios Ferderigos' deposition and the Affidavit of Stan Barnett fall squarely within the absolute litigation privilege. Similarly the statements concerning "eating for free" and Defendants' bad business judgment were made either as part of a dispute that matured into litigation or made during the course of that litigation and are also absolutely privileged. Sriberg v. Raymond, 370 Mass. 105, 345 N.E.2d 882 (1976); and Matthis v. Kennedy, 243 Minn. 219, 67 N.W.2d 413 (1954).

South Carolina also recognizes the doctrine of qualified privilege that protects from actions for defamation:

> A communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation...The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits.

Conwell v. Spur Oil Co. of Western South Carolina, 240 S.C. 170, 125 S.E.2d 270, 274-2275 (1962).

As Jacob Ferderigos shared the interests of Plaintiff, albeit with a different position being taken by him, Plaintiff's statements to him about anything related to the project to build additional floors at 229 King Street falls, if not under the protection of absolute litigation privilege, under the protection of qualified privilege. Consequently, Plaintiff's statements to Jacob Ferderigos are not actionable.

The only statements Defendants complain of which actually constitute defamation are those clearly covered by the absolute litigation privilege. These are the statements by Plaintiff by text message accusing Spiros Ferderigos of lying in his deposition taken in this case and the statement by Plaintiff recounting part of an affidavit in a companion litigation describing Spiros

Ferderigos' threat to use his position as assistant solicitor to cause Plaintiff to become the subject of a criminal charge if he pursued a breach of contract action. The other statements claimed to be defamatory are simply not defamation. They may have been statements unwelcome to Phillip and Spiros Ferderigos and critical of them, but they are not defamation.

The statement that Defendants refused to go forward with the agreement to add rental suites to 229 King Street because they could not "eat for free" does not impugn their honesty, integrity or proficiency in their profession, which is the practice of law. Similarly, the statement that they do not have good business sense in the context of the proposed project to add rental suites at 229 King Street is purely an opinion about that proposal and nothing more. Many people have different opinions about the wisdom of development projects, but disagreement does not equate to defamation. These statements may be critical of Defendants, but do not rise to the level of defamation merely because they hurt Defendants' feelings or even criticize a business decision the made. Dauterman v. State Record Co.; Costas v. Florence Printing Co.; and Murphy v. News &Courier.

There is no evidence giving rise to a genuine issue of material fact regarding the counterclaims by Spiros and Phillip Ferderigos for defamation against Plaintiff and they should be, therefore, dismissed on summary judgment. Plaintiff's motion for partial summary judgment as to the counterclaims for defamation asserted by both Spiros Ferderigos and Phillip Ferderigos is hereby granted.

IT IS SO ORDERED.

J. C. Nicholson, Jr., Judge
Ninth Judicial Circuit

8/30, 2017
Charleston, South Carolina