THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

RECEIVED
NOV 26 2018
SC Court of Appeals

Case No. 2015-CP-10-3919

Appellate Case No. 2017-002032

Athan Fokas..... Respondent/Appellant,

v.

Philip Ferderigos, Spiros Ferderigos,
and Jacob Ferderigos..... Defendants,

of Whom

Spiros Ferderigos and Philip Ferderigos are..... Appellants/Respondents,

And

Jacob Ferderigos is ..... Respondent.

RECORD ON APPEAL (VOLUME III)

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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

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

P.O. Box 1561 Mt. Pleasant, SC 29465 843-884-0504 Fax 843-884-28

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 JWO 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
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 Fenderigos

Expenses to build the new suites

Date	Check #	To whom	Amount	Notes
Feb-13	25862	South Coast Bank	$2,500.00	
2/1/2013	25867	Old Town Suites	$2,090.02	Reimburse for expense paid for Suites
Mar-13	25901	Kevin Carroll Contractor	$1,000.00	
Apr-13	25946	Kevin Carroll Contractor	$2,000.00	
	25957	David Reconding	$900.00	Tree Removal
4/12/2013	25963	Tucker Architect	$2,600.00	
4/12/2013	25964	Curry Engineer	$2,500.00	
4/17/2013	25980	Coastal Engineer	$1,680.00	
4/24/2013	25990	Curry Engineer	$3,500.00	
4/27/2013	25992	David Reconding	$500.00	Tree Stump Removal
Apr-13	25993	City of Charleston	$200.00	Application Fee for Board of Architectural Review
Apr-13	25994	Charleston Water System	$200.00	Water Flow Test
4/30/2013	25995	Tucker Architect	$2,600.00	
	26007	City of Charleston	$320.00	Permit for Variance
	26008		$270.00	Suites exp
	26015	Kevin Carroll Contractor	$2,500.00	
	26016	City of Charleston	$100.00	Board of Architectural Review
	26020		$2,000.00	Suites exp
Oct-13	26186	Tucker Architect	$1,400.00	
10/10/2014	credit card	Carter's City Self Storage	$370.00	Storage fee
10/10/2014	credit card	Carter's City Self Storage	$7.00	Lock for storage
11/10/2014	credit card	Carter's City Self Storage		Storage fee
12/10/2014	credit card	Carter's City Self Storage		Storage fee
1/10/2015	credit card	Carter's City Self Storage		
12/31/2013		General Journal	$600.00	Loan from Old Towne building improvements
1/16/2014	Draft	First Insurance	$438.50	
3/5/2015	Draft	First Insurance	$438.50	

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EXHIBIT
C.F. Fokas
2-9-17 AG

3/13/2014	Draft	First Insurance	$438.50	
4/14/2014	Draft	First Insurance	$438.50	
5/13/2014	Draft	First Insurance	$438.50	
6/13/2014	Draft	First Insurance	$438.50	
7/14/2014	Draft	First Insurance	$438.50	
9/15/2014	Draft	First Insurance	$438.50	
12/18/2014	Draft	First Insurance	$438.50	
1/14/2015	Draft	First Insurance	$438.50	
5/22/2013	1147	Tucker Architect	$4,000.00	
5/22/2013	1150	Curry Engineer	$2,000.00	
7/10/2013	1159	Tucker Architect	$2,850.00	
10/1/2013		Tucker Architect	$1,400.00	General Journal
10/9/2013	1184	Tucker Architect	$1,400.00	
10/30/2013	1191	Tucker Architect	$1,600.00	
12/13/2014	1198	Tucker Architect	$2,284.00	
2/7/2014	1201	Tucker Architect	$2,500.00	
2/18/2014	1202	Tucker Architect	$1,300.00	
6/5/2014	1222	Tucker Architect	$5,500.00	
6/17/2014	1225	Tucker Architect	$3,800.00	
7/24/2014	1230	Kevin Carroll Contractor	$5,000.00	
8/21/2014	1231	Curry Engineer	$6,000.00	
10/10/2014	1242	Kevin Carroll Contractor	$6,000.00	
11/4/2014	1243	Curry Engineer	$3,000.00	
11/5/2014	1244	Tucker Architect	$3,000.00	
11/5/2014	1246	Tucker Architect	$2,800.00	
3/31/2015	1260	Curry Engineer	$3,000.00	engineer
		Amy Haines	$350.00	
			$2,500.00	appraisal
			$89,916.00	

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A. It means that it's our part of Old Towne Suites.

Q. Okay. All right.

A. You done with this? (Indicating.)

Q. Yes. Put it right --

A. Right here. (Indicating.)

Q. Yeah. Just put it back in the stack. We'll get it back in order for her.

A. Okay. (Complies with request.)

Q. Now, do you remember how much money you all spent for these architects -- the architect, the engineer, and the other design professionals?

A. Athan told me it was around 80,000, I believe.

Q. Okay. How did y'all split that up?

A. How did we split it up? It was paid through our profits of Old Towne Suites. When the profits came in, we wrote checks out to people.

Q. Okay. Out of the profits.

A. Out of the profits.

Q. Okay. So your part of that would have been what? 1/6th of that cost?

A. Yeah. A third of a half, whatever that number comes out to be.

Q. Okay. All right. All right. Okay Okay. And this -- these costs were paid out over what period of time?

A. I couldn't tell you.

Q. Well, based on the first documents that we looked at there, the email in 2012, were you already paying somebody to do stuff for you in 2012?

A. I don't know.

Q. Okay. All right. The invoices would show what you paid?

A. Yeah, yeah. Invoices would show.

Q. All right. Okay. Do you remember that there was a closing scheduled for the loan --

A. I do.

Q. -- with Southcoast Bank?

A. I do.

Q. Did you know the date of the closing?

A. I don't remember dates.

Q. No, no, no. I mean, did -- did -- that's a bad question.

When -- when were you told the date --

A. Athan called me.

Q. -- of the closing?

A. Athan called me and said there's a

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Fwd: Old Towne Suites, LLC

1 message

Jacob Ferderigos <iakovosstavros@gmail.com> Tue, Apr 16, 2013 at 9:51 AM
To: Spiros Ferderigos <spirosferderigos@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: "ZEUS GRILL & SEAFOOD" <zeusseafood@bellsouth.net>
Date: April 16, 2013, 9:21:00 AM EDT
To: "'Jeffrey W. Odom'" <jodom@southcoastbank.com>
Cc: "'Jacob Ferderigos'" <iakovosstavros@gmail.com>
Subject: RE: Old Towne Suites, LLC

The Ferderigos' each share 50% which would put them at 16.666% each. We will re-fix the document and get it back to you asap.

From: Jeffrey W. Odom [mailto:jodom@southcoastbank.com]
Sent: Monday, April 15, 2013 2:27 PM
To: 'ZEUS GRILL & SEAFOOD'
Subject: RE: Old Towne Suites, LLC

Athan,

On this operating agreement you sent me it does not state what the percentage of ownership that each of the Ferderigos brothers have individually. It just says they have 50%. I need to know what each of the shares is in Old Towne Suites, LLC.

Jeffrey W. Odom
Vice President / Loan Officer
NMLS ID# 500313
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

EXHIBIT 2 ODOM 2-10-17 M

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Re: Old Towne Suites Operating agreement

2 messages

spiros ferderigos <spirosferderigos@gmail.com> Tue, Apr 16, 2013 at 10:29 AM
To: jodom@southcoastbank.com
Cc: Jacob Ferderigos <lakovosstavros@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>, Athan Fokas <fokasa@bellsouth.net>

Hey Jeff,

Please take a second look at the operating agreement previously submitted . It states "Iakovos Ferderigos, Phillip Ferderigos and Spiros Ferderigos are members and have an ***equally combined fifty (50) percent Interest*** in Old Towne Suites, LLC." (emphasis added). By definition that means that each one of the Ferderigos' has 16.666666 (going on in perpetuity). For legal purposes, the clearest way to reach a round number of fifty percent is to keep it the way it is written. Let me know if this clarifies your question and the document is fine the way it is submitted. I need to make sure to cover both what is needed by the bank and what is necessary under the law. Writting 16.666666- for each Ferderigos' member would result in Athan having more than 50 percent interest in the LLC which is not accurate. Thank you and I look forward to hearing from you.

Spiro

From: Jeffrey W. Odom[mailto:jodom@southcoastbank.com]
Sent: Monday, April 15, 2013 2:27 PM
To: 'ZEUS GRILL & SEAFOOD'
Subject: RE: Old Towne Suites, LLC

Athan,

On this operating agreement you sent me it does not state what the percentage of ownership that each of the Ferderigos brothers have individually. It just says they have 50%. I need to know what each of the shares is in Old Towne Suites, LLC.

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Jeffrey W. Odom <jodom@southcoastbank.com> Tue, Apr 16, 2013 at 2:27 PM
To: spiros ferderigos <spirosferderigos@gmail.com>
Cc: Jacob Ferderigos <lakovosstavros@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>, Athan Fokas <fokasa@bellsouth.net>

Spiro:

Ok. We are good with that. I did not read it correctly the first time. Thank you for the quick and thorough response.

Jeffrey W. Odom
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NMLS ID# 500313
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Mt. Pleasant, SC 29464
(Office) - 843.216.3087
(Fax) - 843.884.2886
(Cell) - 843.729.8224

From: spiros ferderigos [mailto:spirosferderigos@gmail.com]
Sent: Tuesday, April 16, 2013 10:29 AM
To: Jeffrey W. Odom
Cc: Jacob Ferderigos; Phillip Ferderigos; Athan Fokas
Subject: Re: Old Towne Suites Operating agreement

[Quoted text hidden]

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is over, she'll type it all up and she'll send it to you and then you've got a period of time, usually 30 days, to make any corrections or changes to it that you need to make.

And if you don't do that, then it just becomes final as written. But if it does make changes, she'll note those changes. So do you have a preference on whether you do that or not?

And you don't have to decide that right now either. You can wait until we're done.

A. I'll wait until we're done.

Q. Okay. And she'll probably ask you that question again.

Are you under any disability or impairment that keeps you from answering the questions today?

A. No.

Q. What is your job title?

A. It's commercial relationship manager.

Q. For what entity?

A. BNC Bank.

Q. And was BNC formerly a different bank?

A. On June the 17th of 2016, BNC Bank, Bank of North Carolina, bought Southcoast Community Bank, and that's where I worked.

Q. How long did you work at Southcoast?

A. About 18 years, about, I mean, since it was started.

Q. Were you commercial relationship manager for Southcoast Community Bank?

A. No, I was the senior loan officer.

Q. So did you switch to being the commercial relationship manager when the bank was taken over by BNC?

A. Yes, I got a demotion.

Q. All right. I didn't want to ask that directly. I'm sure that happens to a lot of people when their banks are acquired by other banks, correct?

A. That's right.

Q. Where on the pecking order are you in relation to Jeff Odom, whose deposition we just took?

A. Today or then?

Q. Well, then.

A. Well, I guess he worked for me, although I don't -- I think he -- he was assigned to me, let's put it that way. And, you know, initially he was assigned to me and he sort of helped me and was training, that sort of thing. And then we -- after a while we worked together. He was a commercial

loan officer. Is that good enough?

Q. That's pretty much what he said.

A. I could go on.

Q. He said his title was loan officer, but in 2013 he was pretty much helping you and working the numbers and so forth.

A. He was, yes.

Q. Well, how did you come to know Athan Fokas?

A. Well, I received a telephone call one day from a fellow named Kevin High, and Kevin said that he knew Athan and that Athan wanted to add on to his building and I should contact him. So I did, and we set up an appointment for the next day or so and I took Jeff with me and we went down and met with Athan at his -- at the place of business on King Street.

Q. And you did go with Jeff?

A. Yes, Jeff and I went together.

Q. In his deposition we identified an email from him to Zeus Grill & Seafood, which is Athan, copying you, and the date of the email was January 11, 2013, and he says, Athan, it was a pleasure meeting you yesterday afternoon. I just received your fax, so it looks like it went through.

So would that tend to corroborate that you met on or about Thursday, January 10th, 2013?

A. That's right.

Q. Was Mr. High in that meeting?

A. No.

Q. How did you know Mr. High?

A. I don't know. I'd been introduced to him. He had a business that sort of placed people in short stays and he just -- he recommended me, so that was nice.

Q. Had you made loans for him before?

A. No, I hadn't.

Q. Have you had any business dealings with him since then?

A. Well, our bank did make one loan to he and a partner on a building on Rutledge, I think, and it's since paid off and that's about it.

Q. Was there anything about Southcoast that made you a more likely lender for this kind of project than other banks?

A. I don't know.

Q. We've heard, for example, that some banks don't like -- back then weren't lending to the hospitality industry or, you know, only liked certain types of projects. Did you have a

particular area of interest?

A. No, I like to say that the smaller banks, you know, pick up the scraps that the bigger banks didn't want and, I mean, maybe we look at things that others didn't fit. I mean, some banks are looking for bigger loans and some banks like this and some banks like that.

I think that Athan had maybe talked with another bank and he didn't -- for some reason he didn't -- he wasn't satisfied with that so he must have been talking with Mr. High. I don't know.

And anyway, I got the call. I called him and we talked and the purpose of that meeting was to find out, you know, what he wanted to do and what it was going to cost and how much he needed to borrow and what kind of cash flow he had and those kind of things and seemed like, you know, a good deal, so we agreed to receive some more financial information and we'd see what we could do.

Q. Have you done any other business with Athan since that meeting?

A. The bank did. I wasn't specifically in on it, so, I mean, I'd sort of be guessing at what all it was.

Q. Do you know what the project was?

A. I think we did -- we did a loan on the restaurant out at -- across from Northwoods that the restaurant had closed and I think Lumber Liquidators wanted to go in and we did that. I'm not sure what else. We might have refinanced a house. I don't keep up with it, you know.

Q. Understood. Seated here at the table down at the end is Jacob Ferderigos.

A. Jacob, how are you?

Q. Have you met him before?

A. No.

Q. And then Phillip Ferderigos.

A. Phillip.

Q. Have you ever met him?

A. No.

Q. And Spiros Ferderigos right here (indicating).

A. Spiros, how are you?

SPIROS FERDERIGOS: Good. How are you?

Q. The big guy in the middle is not related to any of them. So you haven't met any of them before?

A. No.

Q. Have you ever spoken to Spiros Ferderigos before today?

A. Not that I know of.

Q. Have you ever communicated with him by email or mail or fax or any other means that you're aware of?

A. Not that I'm aware of.

Q. Did you ever have any discussion with him or with Phillip about the bank's requirements for security for this loan at the Old Towne Suites?

A. The only one that I talked to was Athan.

Q. On how many occasions did you talk to him?

A. Well, I talked to him that initial time, and then really he and Jeff started working together, so other than just seeing him in the lobby or in the parking lot or something like that, I don't think I ever had a real sit-down with him after that. Jeff sort of took it and went with it.

Q. We know that there were two commitment letters issued. One of them was in February 2013; the other was in September 2014. Did you okay either of those commitment letters?

A. I don't remember writing them. I remember that we approved some loans for that project. We might have approved one and maybe that was preliminary because it hadn't been approved by the board of architectural review and then some more

work was done.

It seems like there was an initial plan of maybe doing so many units and then there was another plan to do more units or something. And so I remember that, I mean, I thought the deal was a good deal and the money would be paid back, so I signed off on them.

Q. And your signature's actually on the -- Robert A. Daniel, Jr. is on the --

A. I mean, Jeff may have written the letter and asked me to sign it because he didn't feel, you know, like he had the authority or something.

Q. Do you think he actually negotiated the details of this and wrote it up and dealt with Mr. Ferderigos on it -- I mean, Mr. Fokas on it?

A. Yes, I mean, he took the loan and went with it. Now, he had to bring it to the loan committee and present it to the loan committee and they would have signed off on it.

Q. That was actually going to be my next question: Did you have the authority by yourself to approve the loan?

A. No.

Q. And is it correct that a loan commitment expires after a period of time, right?

September 2014 when the new commitment letter was issued? And actually, just so I don't blindside you, what I think Jeff did was hand change and initial some of the terms of the previous commitment letter. Do you remember that being done?

A. I mean, I don't remember it, but I might have initialed it. I don't remember. But I do remember that there was another -- a revised deal and I don't remember whether it was more money or the same money or just what, but seems like it was something to do with he could get more units in or something.

Q. Do you remember what the terms were, terms of the loan?

A. Not really.

Q. Do you remember there being any discussion of Phillip and Spiros Ferderigos not being willing to sign a personal guarantee?

A. Well, that came up in the initial discussion and so, I mean, we went through the numbers in the program and what he was wanting to do and that sort of thing and we sort of got to the end and I said, Athan, is there anything you want to ask us?

And he said, well, we've got an ownership

communicating to him that he would have to sign a mortgage, and you said I don't know of anyone when Mr. Cooke was asking you. I need to ask you the same question about my client, Phillip.

So same question, you're not aware of anyone from the bank who communicated to Phillip that he would have to sign a mortgage, are you?

A. No.

MR. FARRIER: Okay. Thank you.

BY MR. BARNETT:

Q. I just wanted to ask you about Exhibit 5. There's been all this talk about whether anybody from the bank gave this document to Phillip Ferderigos or to his brothers, Jacob or Spiros. It has been, I think, agreed upon that Athan transmitted this document the same day that it was modified by Jeff, 9/24/14, to all of his cousins by email.

So I want to ask you this: Does this document tell anyone who receives it that a mortgage has got to be executed on 229 King Street?

MR. COOKE: Object to form of the question. You can still answer. We just have to object for the record.

MR. FARRIER: Same objection.

I'm going to show them to you and see if that is the sum total of your contacts with Spiros.

A. Okay.

(Exhibit No. 02 marked for identification.)

Q. So this is a series of emails that we've sort of gotten used to how to read these things, but as you can see, they're dated up at the top. The first one on that page is April 16, 2013, at 9:51 a.m., and the one below that is the 15th at 2:27. Do you see that? And on the following page there's another one at -- back on the 16th at 10:29 a.m. and then there's one at 2:27 p.m. Do you see those?

A. Yes.

Q. And what it looks like is you've got two different people responding to a question that you asked. Can you take a second to look at that and let me know what it was in reference to?

A. Sure.

It looks like it's just clarifying something about an operating agreement that was sent over to me.

Q. Right. If I'm reading it right, it looks like you sent a question to Athan asking, on this

operating agreement you sent me it does not state what the percentage of ownership that each of the Ferderigos brothers have individually. It just says they have 50 percent. I need to know what each of the shares is in Old Towne Suites, LLC.

You asked that on Monday, April 15th. And it looks like you got separate response from Spiros and from Jacob. Is that what you see there?

A. That looks correct.

Q. Did those responses clarify your question?

A. It looks like they clarified my question.

Q. Okay. And in Spiros's he explains the breakdown and then says, for legal purposes the clearest way to reach a round number of 50 percent is to keep it the way it's written. Let me know if this clarifies your question and the document is fine the way it's submitted. I believe you said it was fine.

A. Yes.

Q. On the third page right at the top there seems to be your response. It says, okay, we're good with that. I did not read it correctly the first time. Thank you for the quick and thorough response.

A. Okay.

Q. Do you remember having any other correspondence with Spiros on that subject?

A. If you hadn't showed me this, I wouldn't have remembered this correspondence, but no, my answer to that would be I don't recall any other correspondence.

(Exhibit No. 03 marked for identification.)

Q. Take a second to look through those, if you would.

A. Okay.

Q. Do you remember that correspondence?

A. I didn't remember it, but I'm familiar with it now.

Q. Okay. And this -- just for point of reference, this comes between what we've come to call the first closing and the second closing in 2014. Do you remember that there was originally a closing scheduled in October, then that didn't happen, and then there was another closing scheduled in November?

A. I remembered that there was a holdup in the fall, which must have been September or October. I didn't remember that it even got that far to a closing. I just knew something -- there was an

A. Well, the only time -- I don't remember why Spiros called me, but Spiros only called me -- I never talked to Phillip, but Spiros, I believe it was Spiros, called me one time and it was late in 2014. I had never talked to him during the 2013 hiatus when we were working on -- supposedly thought the holdup was getting the approvals and everything from the city.

I couldn't remember why Spiros called me to have a phone conversation, but it was a quick conversation. It seemed like he was really polite and he just asked me a few things. I don't remember what that was.

Q. This was sometime in late 2014?

A. I believe so.

Q. So leading up to let's just say October of 2014, did you have any conversations with Spiros or Phillip about the terms of the loan that was being proposed?

A. I'm pretty sure I never talked to Phillip and I can't remember what Spiros and I discussed. I don't recall.

Q. And I'm actually talking about a time frame earlier than what you sound like you're talking about. You're talking about something late in

2014.

A. Mm-hmm.

Q. And I'm talking about something no later than October when this first closing was supposed to occur. In other words, did you have any conversations with Spiros prior to the first closing, which was to be in October?

A. No, I don't believe I did.

Q. Some of these questions are going to sound repetitive, but for legal reasons, we have to make sure we ask it the right way. Did you have any written correspondence or email or text correspondence with Phillip or Spiros prior to October 2014?

A. I don't believe -- other than this email that you showed me originally, I don't think there was any correspondence between this.

Q. Did you have any discussion with them, that is Phillip or Spiros, about the necessity for a personal guarantee?

A. It was my understanding from the very beginning that we would not require their personal guarantees. That was made clear up front and was consistent throughout the whole thing. They were not personally guaranteeing.

Q. But you got that information from Athan?
A. That's correct.
Q. Not from them personally?
A. Not from them.
Q. And did you have any discussion with Spiros and/or Phillip about the mortgage requirements? That is, what, if any, property would have to be or property interest would have to be mortgaged?
A. I don't recall.
Q. Okay. Did you have any discussion with Spiros and/or Phillip about the terms of the loan, that is, how many years it would be, what the interest rate would be, what the payments would be?
A. Not unless it was the one phone conversation that Spiros and I had, which was just one phone call. I can't remember what that was in regard -- what the questions were, but I don't recall, no.
Q. Okay. And by extension, you don't recall any prior to October of 2014?
A. Prior to that I really don't think so.
Q. Okay. What discussions did you have with Athan about the requirements for a mortgage on the property?
A. I really don't remember. I just remember that it was clear there would be no personal

guarantees required for the -- for Spiros or Phillip and that we would require a mortgage on the property. I don't remember discussion of any details of how the -- that would -- you know, the intricacies of it. We just provided a commitment letter and if that -- all that isn't met, then the closing never happens, and that's what happened.

Q. Okay. Did you have any discussions with Athan about who would have to sign off on a mortgage?

A. The only time I remember was when it was really clear that there was -- it was late in the process. I remember at that point it was really clear that there was a miscommunication somewhere to somebody.

Q. All right. And we'll cover that in a few minutes.

(Exhibit No. 04 marked for identification.)

Q. Take a moment and look at that if you will.

A. Okay.

Q. This is an email dated September 25, 2014, from -- at the very top it's from Zeus Grill & Seafood, which would be Athan, to you. It says, I need to get Jacob to initial it and will see him

tomorrow at Old Towne at 2:30 and will bring after that.

And then it goes through the emails leading up to that beginning on page -- well, the next page, email from you to Athan dated Tuesday, September 23rd, 5:19 p.m. Athan, please see the attached original commitment letter. I have marked and initialed the increase in loan amount, increase in number of units to be constructed and months of interest only required to complete the project. I have also edited the expiration date and initialed. Please review the letter and initial each place where I have initialed and send back at your convenience. I need Jacob to initial also.

Do you see that?

A. Yes.

Q. And it seems obvious, but I'll ask you anyway, you did not send -- is it true that you did not send that to Spiros or Phillip Ferderigos?

A. It appears that I did not.

Q. Okay. And it does not call for their signatures either; is that correct?

A. That is correct.

Q. Turn to the commitment letter itself.

A. Okay.

Q. And we see that there was originally a letter dated February 5, 2013, and as a lawyer, we appreciate that you initialed each change. We actually have another version where there's a date of that as well showing that it was revised evidently on September 24, 2014. Do you recall that being the case?

A. That should have very well been the case.

Q. 23rd, 24th, something like that?

A. Something like that.

Q. So let's ignore the handwriting for a few minutes and talk about the February 5, 2013 letter. If we just look at the typed portion of that, is that the letter that you sent to Mr. Fokas and Jacob on or about February 5, 2013?

A. I believe so, unless there was some kind of clerical error.

Q. Do you remember whether you would have sent that letter to either Spiros or to Phillip Ferderigos?

A. No, I probably sent it to the main person. Many times I'll send it to the main person I've been talking to or the guarantor, so I probably just sent that.

Q. Okay. I'm going to show you another

exhibit. For everyone else who's following along, this would be Exhibit 11 from yesterday's deposition.

(Exhibit No. 105 marked for identification.)

Q. This is a commitment letter that appears similar to the other, but it's got some more writing on it. Do you see that?

A. Yes.

Q. Do you remember what brought that about?

A. I don't recall, but just looking at this, it looked like the first thing I see is that someone may have said -- requested the interest rate to be fixed, so I made that change.

Q. And it looks like you've initialed those changes as well?

A. Yes.

Q. So does it appear like those would have been some changes that were made within a day or two of September 23rd and September 24th, 2014?

A. Yes.

Q. Did you have any discussion with Jacob about what the terms of the loan would be?

A. I don't recall.

Q. But you did send -- you're sure that you

sent him this typed letter in February of 2013, to Athan?

A. I'm sure that I should have sent it to him and that's what I normally would have done is sent it.

Q. Okay. So can you describe for me what were the terms of the loan that was agreed to?

A. The original?

Q. Well, let's go with what you did in 2014.

A. Well, it looks like the terms we agreed to were that the borrower would be -- we'd have three borrowers: Old Towne Suites, LLC, Athan Fokas and Jacob Ferderigos. And it looks like the loan amount would have been $1.8 million.

Q. Originally it was $1 million, correct?

A. That's correct.

Q. And then why was it increased to 1.8 million?

A. You know, I had to jog my memory on what that was this week because I thought that question -- I couldn't remember. It was because there was originally going to be four units above, and then according to my memory, once this process looked like it was going to be so long to get the approvals, I think Athan and -- realized he could

get up to six units. And so if you're going to go through that long of a process, why not try to get the maximum amount you can approve. That's how I remember it.

Q. So I interrupted you. Go ahead and tell me in your own words the terms of this loan.

A. $1.8 million and it would be 12 months of interest-only payments during the construction period for the draw up. And then assuming it completes in 12 months, as they should, it would convert to the fully amortizing payments of principal, interest and in this case including an escrow of taxes and insurance.

Q. What was the term of the loan?

A. 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.

Q. Explain the difference between -- first of all, 60 months is five years, right?

A. Yes.

Q. So it would have been five years plus the 12 months construction loan?

A. Yes, so six years essentially of a fixed payment is what you get and then it would have a balloon.

Q. So where it says the monthly payments will be based on a 240-month amortization schedule, does that mean that it's a 20-year loan?

A. No.

Q. So when is the -- when is the balance of the $1.8 million due under this proposal?

A. It would have been six years from the closing date.

Q. Okay. And then what would happen at that point? Could they come back and reapply?

A. Normally what I tell people is if everything's in good standing, your financial condition hasn't changed and you're making money, the bank is in business to make interest, we would probably look to renew the loan. In a worst-case scenario, you would go find another bank.

Q. But you would have to apply; you weren't offering any guarantee that they'd be able to renew it.

A. You can't guarantee that.

Q. When you wrote in guaranteed 5 percent for the life of the loan, you're talking about for the six years, not for 20 years?

A. For the life of this agreement (indicating).

Q. This agreement. So if they came back in six

years and interest rates had gone way up, might they have to negotiate for a higher interest rate as well?

A. You'd have to negotiate for the rate at that time.

Q. Because they would have no loan at that point. It would be basically a blank slate at that point?

A. Yes.

Q. And if they weren't doing as well as they had hoped to do, is it possible that they could be turned down for that loan?

A. It's possible.

(Exhibit No. 06 marked for identification.)

Q. Here are a couple of emails dated September 25, 2014, with an email to you. Do you infer from this that this came after you sent Athan the commitment letter in September?

A. It certainly appears to be.

Q. So he says, 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-year note? Just wanted to make sure that the note continues after five years. Thanks, Athan.

Do you remember getting that email?

A. I didn't remember this, no.

Q. Do you remember it now?

A. I remember it now.

Q. Okay. Do you remember whether you were surprised to get a question like that on the eve of a supposed closing of a $1.8 million loan?

A. Probably on the eve. I mean, we get questions like that all the time, but on the eve, yes, I would be surprised.

Q. What would go through your mind? Would you think, holy cow, this deal is blowing up on me, or would you just say that's a usual-type question. Do you remember what went through your head when you saw that question?

A. I don't remember what went through my head, no.

Q. Is it fair to say that there's a -- it would be a pretty big deal from an underwriting standpoint to suddenly change this from a six-year loan to a 20-year loan guaranteed at 5 percent?

A. Yes, that would be -- that would be not doable.

Q. Okay.

A. We wouldn't have done that.

Q. Why wouldn't you do that?

A. We wouldn't have wanted -- the bank wouldn't want to take the interest rate risk, among other -- other reasons. The bank reserves the right to reevaluate every so often, normally on commercial loans.

Q. Okay. The next page has your response. Take a look at that. I'll read it out loud while you're reading it. It says, the note will be 12 months of interest only followed by five 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 six-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 five-year period, technically in six years, and we can apply for a simple renewal. You won't

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.

Do you remember responding that way?

A. I don't remember it, but I do now.

Q. Do you remember having any conversation with Athan about this?

A. No.

Q. Okay. In this response, were you in any way, shape or form guaranteeing him that this loan could be renewed on the same terms at the end of five years?

A. No.

Q. Or six years?

A. No.

Q. You wouldn't have the authority to even do that, would you?

A. Absolutely no.

Q. Okay. Did you discuss it with Mr. Daniel?

A. I don't recall.

Q. Okay. It may have been so obvious that it wouldn't have even gone to that level?

A. It could have been, but normally on the -- especially back then, I'm the type that would ask a

lot of questions.

Q. All right. In this response are you in any way saying that there will be an automatic renewal at 5 percent at the end of 6 years?

A. No.

Q. Are you in any way saying that they will have 20 years to pay off this loan?

A. No.

Q. They would have five years plus one year to pay off the loan?

A. Right.

Q. When you say amortized on a schedule of 240 months, does that simply mean that the payments are calculated as though it were a 20-year loan?

A. That's right.

Q. But then there's a balloon, so that's what makes up the balance of the loan is that balloon payment; is that right?

A. At the maturity date, yes.

Q. So when you say a balloon payment, generally you mean the balance of the loan is due at that point?

A. Right.

Q. That's what the term balloon suggests?

A. Yes.

Q. Is that the same deal that Athan negotiated for the North Towne deal?

A. According to my memory, and I said it in there, it must be the same deal.

Q. Was the North Towne deal already done by then or were you still working on it?

A. I can't remember. North Towne I believe was in 2014, but I can't remember.

Q. So if he misunderstood the terms of this loan, is it possible that he was also misunderstanding the terms of his North Towne loan as well?

MR. BARNETT: Object to the form, but you can answer. It's a technical thing.

THE WITNESS: I don't know. I guess it's possible.

(Exhibit No. 07 marked for identification.)

Q. Before I go to this new exhibit, does this email exchange indicate to you that Athan did not understand the terms of the loan that was about to be closed?

MR. BARNETT: Object to the form.

THE WITNESS: Can you repeat the question?

EXHIBIT I

Stan Barnett

.om: Athan Fokas <fokasa@bellsouth.net>
Sent: Tuesday, February 03, 2015 1:04 PM
To: Stan Barnett
Subject: Fwd: Suites Loan

April 2013

Sent from my iPhone

Begin forwarded message:

From: Athan Fokas <fokasa@bellsouth.net>
Date: April 9, 2013 at 9:11:35 AM EDT
To: spiros ferderigos <spirosferderigos@gmail.com>
Subject: Re: Suites Loan

5% balloon at 5 years

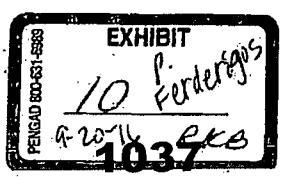
Sent from my iPhone

On Apr 9, 2013, at 9:08 AM, spiros ferderigos <spirosferderigos@gmail.com> wrote:

Hey Athan,

You previously sent a text with the loan details. Do you mind shooting that out again in an email. I don't remember what the intial rate was and the balloon details. Would be very helpful. Thanks.

Spiro



Stan Barnett

From: Athan Fokas <fokasa@bellsouth.net>
Sent: Tuesday, February 03, 2015 1:04 PM
To: Stan Barnett
Subject: Fwd: Suites Loan

This is one dated April 2013 where Spiro is aware of the loan details.

Sent from my iPhone

Begin forwarded message:

> **From:** Athan Fokas <fokasa@bellsouth.net>
> **Date:** April 9, 2013 at 9:11:35 AM EDT
> **To:** spiros ferderigos <spirosferderigos@gmail.com>
> **Subject: Re: Suites Loan**
>
> 5% balloon at 5 years
>
> Sent from my iPhone
>
> On Apr 9, 2013, at 9:08 AM, spiros ferderigos <spirosferderigos@gmail.com> wrote:
>
> > Hey Athan,
> >
> > You previously sent a text with the loan details. Do you mind shooting that out again in an email. I don't remember what the intial rate was and the balloon details. Would be very helpful. Thanks.
> >
> > Spiro

Stan Barnett

From:	Zeus Grill and Seafood <zeusseafood@bellsouth.net>
Sent:	Tuesday, February 03, 2015 1:47 PM
To:	Stan Barnett
Subject:	FW: 229 King St Addition Invoice - Have a great day
Attachments:	Inv_7954_from_Coastal_Engineering__Testing_Co_Inc_1760.pdf; ATT00041.htm; W-9.pdf; ATT00044.htm

From: Zeus Grill and Seafood [mailto:zeusseafood@bellsouth.net]
Sent: Tuesday, February 03, 2015 1:37 PM
To: 'stanleyb@3blaw.com'
Subject: FW: 229 King St Addition Invoice - Have a great day

This is our contractor asking for a check for work done on April 2013

From: Kevin [mailto:kiawahwork@yahoo.com]
Sent: Wednesday, April 17, 2013 12:50 PM
To: Athan Fokas; Jacob Federico
Subject: Fwd: 229 King St Addition Invoice - Have a great day

Athan, Jacob
Please make check available.
Thanks,

Kevin W. Carroll
kiawahwork@yahoo.com
843-830-3307

Begin forwarded message:

> **From:** "Coastal Accounting" <accting@coastalengineering.net>
> **Date:** April 17, 2013, 11:41:04 AM EDT
> **To:** <kiawahwork@yahoo.com>
> **Subject: 229 King St Addition Invoice - Have a great day**
>
> Dear Customer :
>
> Thank you for the opportunity to serve you recently. We trust you have received everything we agreed to provide for your project and it was found to be in compliance with our proposal. If not, please contact us right away so we can remedy any deficiencies.
>
> Your invoice, for services rendered, is attached for your convenience. In keeping with our agreement, payment is due upon receipt. We would greatly appreciate payment.
>
> Thanks again and we look forward to the opportunity to assist you on future projects.
>
> Sincerely,

Libby Lyles
Accounts Manager
Coastal Engineering & Testing Co Inc
acctng@coastalengineering.net
O-843/566-1264
F-843/566-1499

CETCO ENGINEERING & TESTING
1279 Remount Rd
N Charleston, SC 29406-3439
843/566-1264 Fax 566-1499

INVOICE

DATE	INVOICE NO.
4/15/2013	7954

BILL TO
MR KEVIN CARROLL

PROJECT INFORMATION
Stairwell/Elevator Tower Addition 229 King St Charleston, SC

PO NO.	TERMS	CETCO JOB NO.	FED ID #
Kevin Carroll	Due on Receipt	132037-229 King St	57-0781883

DATE	HRS/QTY	DESCRIPTION	RATE	AMOUNT
	1	Subsurface investigation per proposal	1,680.00	1,680.00

We accept credit cards. Thank you for your business.

Total $1,680.00

Balance Due $1,680.00

Past due accounts over 30 days are subject to accured interest of 1.5% per month on unpaid balance or annual percentage rate of 18.0%.

Geotechnical / Environmental / Construction Materials Testing / Special Inspections

1041

Form **W-9**
(Rev. January 2011)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above
Coastal Engineering & Testing Co., Inc.

Check appropriate box for federal tax classification (required): ☐ Individual/sole proprietor ☑ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶

☐ Other (see instructions) ▶

☑ Exempt payee

Address (number, street, and apt. or suite no.)
1279 Remount Rd

Requester's name and address (optional)

City, state, and ZIP code
N Charleston, SC 29406

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
			–			–				

Employer identification number
5	7	–	0	7	8	1	8	8	3

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here | Signature of U.S. person ▶ Olivia H [illegible] Bookkeeper for C=TC | Date ▶ 4-1-2013

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

Stan Barnett

From: Zeus Grill and Seafood <zeusseafood@bellsouth.net>
Sent: Tuesday, February 03, 2015 1:47 PM
To: Stan Barnett
Subject: FW: Old town suites kitchens

From: Zeus Grill and Seafood [mailto:zeusseafood@bellsouth.net]
Sent: Tuesday, February 03, 2015 1:38 PM
To: 'stanleyb@3blaw.com'
Subject: RE: Old town suites kitchens

This is a statement on kitchen design sent to me and Jacob

From: Kevin [mailto:kiawahwork@yahoo.com]
Sent: Friday, April 26, 2013 8:18 PM
To: Athan Fokas; Jacob Federico
Cc: Interior designer Elizabeth Goff
Subject: Fwd: Old town suites kitchens

Here is the kitchen design.
Your thoughts ?

Kevin W. Carroll
kiawahwork@yahoo.com
843-830-3307

Begin forwarded message:

From: Kevin <kiawahwork@yahoo.com>
Date: April 26, 2013, 1:33:03 PM EDT
To: "Kevin W. Carroll" <kiawahwork@yahoo.com>
Subject: Old town suites kitchens

1043

Stan Barnett

From: Zeus Grill and Seafood <zeusseafood@bellsouth.net>
Sent: Tuesday, February 03, 2015 1:47 PM
To: Stan Barnett
Subject: FW: 229 King Street

From: Zeus Grill and Seafood [mailto:zeusseafood@bellsouth.net]
Sent: Tuesday, February 03, 2015 1:42 PM
To: 'stanleyb@3blaw.com'
Subject: FW: 229 King Street

From: Zeus Grill and Seafood [mailto:zeusseafood@bellsouth.net]
Sent: Tuesday, February 03, 2015 1:38 PM
To: 'Kevin Carroll'
Subject: RE: 229 King Street

This is an invoice from the architect in May 2013

From: Kevin Carroll [mailto:kiawahwork@yahoo.com]
nt: Wednesday, May 15, 2013 11:23 AM
.o: Athan Fokas
Cc: jacobspita@yahoo.com
Subject: Fw: 229 King Street

Athen, jacob
here is an invoice from joe.
please review and make sure all is correct with payments to date and make check available.

thanks, kevin

----- Forwarded Message -----
From: Joe Tucker <tuckeraia@gmail.com>
To: 'Kevin' <kiawahwork@yahoo.com>
Sent: Monday, May 13, 2013 3:06 PM
Subject: RE: 229 King Street

Kevin,

We revised the contract when structural engineering was moved to a separate contract.
This revised contract includes architecture, mechanical, plumbing and electrical engineering

Revised payment schedule:

p...d	3,050.00	concept drawings
paid	2,600.00	preliminary design one
paid	2,600.00	preliminary design two
	2,000.00	design development one

2,000.00	design development two
2,600.00	working drawings one
3,100.00	working drawing two
$ 17,950.00	

Our current statement is attached for design development phase one and two
Thanks,
Joe

From: Kevin [mailto:kiawahwork@yahoo.com]
Sent: Monday, May 13, 2013 1:45 PM
To: Joe Tucker
Subject: Re: 229 King Street

Give me payments and balance to date.
Should be fine

Kevin W. Carroll
kiawahwork@yahoo.com
843-830-3307

On May 13, 2013, at 1:31 PM, "Joe Tucker" <tuckeraia@gmail.com> wrote:

> Kevin,
>
> We will have a statement for $4,000.00 later this week
>
> Thanks,
> Joe
>
> TUCKER ARCHITECTURAL ASSOCIATES
> 843.881.6426 phone
> 843.881.2559 fax
> http://www.tuckerarchitectural.com/

Stan Barnett

From: Athan Fokas <fokasa@bellsouth.net>
Sent: Tuesday, February 03, 2015 1:03 PM
To: Stan Barnett
Subject: Fwd: Log in site for OT Suites

More suites talk

Sent from my iPhone

Begin forwarded message:

> **From:** Athan Fokas <fokasa@bellsouth.net>
> **Date:** May 30, 2013 at 4:23:54 PM EDT
> **To:** spiros ferderigos <spirosferderigos@gmail.com>
> **Cc:** Jacob Ferderigos <Iakovosstavros@gmail.com>
> **Subject: Re: Log in site for OT Suites**
>
> The email is zeusseafood@bellsouth.net. I can fax you the monthly calendars with the amounts booked for the entire year if you like.
>
> Sent from my iPhone
>
> On May 30, 2013, at 10:50 AM, spiros ferderigos <spirosferderigos@gmail.com> wrote:
>
> > Hey guys,
> >
> > I am trying to check out the remote site they gave us where we can check the bookings ect and lodgix. I think I can make out the handwritten password Jacob gave me but it is also asking for an email to log in. What email do I use?

Stan Barnett

From: Zeus Grill and Seafood <zeusseafood@bellsouth.net>
Sent: Tuesday, February 03, 2015 1:47 PM
To: Stan Barnett
Subject: FW: 229 King

From: Zeus Grill and Seafood [mailto:zeusseafood@bellsouth.net]
Sent: Tuesday, February 03, 2015 1:40 PM
To: 'stanleyb@3blaw.com'
Subject: RE: 229 King

This is Jacob responding to a stucco question on Dec 2013

From: Iakovos Ferderigos [mailto:iakovosstavros@gmail.com]
Sent: Tuesday, December 10, 2013 2:56 PM
To: Zeus
Subject: Re: 229 King

Ok, that's fine.

Sent from my iPhone

On Dec 10, 2013, at 2:51 PM, Zeus <zeusseafood@bellsouth.net> wrote:

We have to defer till January

Sent from my iPhone

Begin forwarded message:

From: Kevin <kiawahwork@yahoo.com>
Date: December 10, 2013, 2:44:43 PM EST
To: Joe Tucker <tuckeraia@gmail.com>
Cc: Athen Fokas <FOKASA@BELLSOUTH.NET>, Jacob Federico <Jacobspita@yahoo.com>, Athan Fokas <zeusseafood@bellsouth.net>
Subject: Re: 229 King

I can not have stucco sample by tomorrow. I am slammed with getting obligations done for Christmas. . I thought you had a sample board
Looks as if he suggesting defer till jan. also they never discussed brick at king street tower. I would suggest defer and make sure all is good with him. He is our best ally down there and we need him to present to board as all items where addressed and ok with him so he can recommend approval. Athan, Jacob do you want to chance another denial or wait till jan and have dennis 100% satisfied with us and be our first recommend of approval ?
I think going in with him doubting we are presenting everything he wants at his time frame is a possible bad move. Please advise joe on how to proceed.

Thanks,

Kevin W. Carroll
kiawahwork@yahoo.com
843-830-3307

On Dec 10, 2013, at 2:34 PM, "Joe Tucker" <tuckeraia@gmail.com> wrote:

Athan,

Below is a note from Mr. Dowd. Also attached is a rough draft of a response.

Kevin – can you get a sample of basic sand finish stucco before the meeting tomorrow night? If we get it early enough we will paint it.

Like your comments before we send to Mr. Dowd

Joe

From: Dowd, Dennis [mailto:DOWDD@charleston-sc.gov]
Sent: Tuesday, December 10, 2013 9:08 AM
To: 'Joe Tucker'
Cc: Stubblefield, Erin; Hopkins, Debbi Rhoad; Turner, Bill - Planning
Subject: 229 King

Joe,
In reviewing the drawings for 229 King I noticed that several things that were mentioned by the Board to be addressed have not been. Specifically the following:

- Both towers should be brick on all sides.
- Windows need to be simulated divided light.
- The color scheme and texture of the stucco needs to be re-studied.
- Stucco over insulation is not appropriate.

Coming back to the Board without addressing these issues is not a good idea and I recommend you defer, address these issues, and re-submit in January.

Please let me know what you will do.
Dennis

Dennis J. Dowd, AIA | City Architect & Preservation Officer
e: dowdd@charleston-sc.gov
o: 843.724.3783 | f: 843.724.3772

City of Charleston | **Planning, Preservation & Sustainability**
75 Calhoun Street | Charleston, South Carolina 29401

NOTICE: This correspondence may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to review, print, retain, copy or disseminate this message including any attachments. If you have received this transmission in error, please delete this message from your system and notify the sender immediately.

<arblet1210.doc>

Stan Barnett

rom: Zeus Grill and Seafood <zeusseafood@bellsouth.net>
Sent: Tuesday, February 03, 2015 1:47 PM
To: Stan Barnett
Subject: FW: Submittal

From: Zeus Grill and Seafood [mailto:zeusseafood@bellsouth.net]
Sent: Tuesday, February 03, 2015 1:40 PM
To: 'stanleyb@3blaw.com'
Subject: FW: Submittal

More communication about the project.

From: Athan Fokas [mailto:fokasa@bellsouth.net]
Sent: Wednesday, December 11, 2013 9:22 AM
To: zeusseafood@bellsouth.net
Subject: Fwd: Submittal

Sent from my iPhone

Begin forwarded message:

From: Kevin <kiawahwork@yahoo.com>
Date: December 3, 2013, 10:43:11 PM EST
To: Joe Tucker <tuckeraia@gmail.com>
Cc: Athen Fokas <Fokasa@bellsouth.net>, Jacob Federico <Jacobspita@yahoo.com>
Subject: Re: Submittal

Joe, this looks good and appears to address all areas questioned by the board. One thing I think we need is an elevation of the king street view. We should have 5 copies ready and in hand for meeting. This was requested and I feel it will be questioned during meeting. If we have with us we can hand them out and avoid any possibility of deferral.
Also we should be prepared to answer what the metal roof is
(snap lock) and the color.
Would be nice to have a sample in hand to show if requested.
Also bring the sample board back for them to see again.
Anything we can think of they certainly will.
Looks good.

Thanks,
Kevin W. Carroll
kiawahwork@yahoo.com
843-830-3307

On Dec 2, 2013, at 11:18 AM, "Joe Tucker" <tuckeraia@gmail.com> wrote:

1050

Athan,

We have the five sets from the printer (see attached) and are on the way downtown to turn them in to the BAR
Joe

TUCKER ARCHITECTURAL ASSOCIATES
772 Gypsy Lane
Mt. Pleasant, SC 29464
843.881.6426 phone
www.tuckerarchitectural.com
tuckeraia@gmail.com

<a01_1240_SITE.PDF>
<a02_1240_SITE.PDF>
<a03_1240_PLN.PDF>
<a04_1240_PLN.PDF>
<a05_1240_PLN.PDF>
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<a13_1240_WSEC.PDF>
<p06.jpg>
<p07.jpg>
<p08.jpg>
<p09.jpg>
<p10.jpg>
<p11.jpg>

Phillip Ferderigos

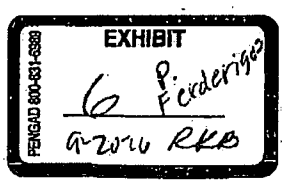
From: Athan Fokas [fokasa@bellsouth.net]
Sent: Wednesday, June 18, 2014 9:20 AM
To: spiros ferderigos
Cc: Phillip Ferderigos; Jacob Ferderigos
Subject: Re: Suites loan question

Moving quickly now that we are out of the BAR. I had to personally beg the city architect to keep us at L over 360 which is code instead of L over 600 which they demanded which would have cost us 200 grand more. I got lucky and he signed off on it. We have a meeting Friday to finalize plans to get permits to break ground hopefully less than a month.

Sent from my iPhone

On Jun 18, 2014, at 9:11 AM, spiros ferderigos <spirosferderigos@gmail.com> wrote:

> I've been keeping up with the calender and it is great to see that we are booking some weekdays as well as booked nearly all weekends through I think it was October. Good job guys.
>
> On Wed, Jun 18, 2014 at 8:34 AM, Phillip Ferderigos <pferderigos@barnwell-whaley.com> wrote:
> When do we expect to move forward? I know we had to appeal something else again... I won't hold you to the date, I just want to get our best guess...
>
> Sent from my iPhone
>
> > On Jun 18, 2014, at 7:05 AM, "Athan Fokas" <fokasa@bellsouth.net> wrote:
> >
> > 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
> >
> >> On Jun 17, 2014, at 11:59 PM, Spiros Ferderigos <spirosferderigos@gmail.com> wrote:
> >>
> >> 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



Phillip Ferderigos

From: Athan Fokas [athanfokas@gmail.com]
Sent: Wednesday, September 24, 2014 10:07 AM
To: iakovosstavros@gmail.com; Phillip Ferderigos; spiros ferderigos
Subject: Fwd: Old Towne suits
Attachments: doc26026220140924075734.pdf; ATT823753.htm

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

EXHIBIT 9 Ferderigos 9-20-16 RCS
PENGAD 800-631-6989

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

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

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 27, 2014 DNO 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
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 Ferdinigos

Phillip Ferderigos

From: Athan Fokas [athanfokas@gmail.com]
Sent: Wednesday, September 24, 2014 8:18 PM
To: Phillip Ferderigos
Subject: Re: Old Towne suits

Typical banker mumbo jumbo I presume! They all sing the same song till it comes down to income and financials and then the song changes.

Sent from my iPhone

On Sep 24, 2014, at 6:27 PM, "Phillip Ferderigos" <pferderigos@barnwell-whaley.com> wrote:

Ned, it's been a hectic day, what time will you be in tomorrow?

Thanks, Phillip.

Sent from my iPhone

On Sep 24, 2014, at 3:10 PM, "Ned Jervey" <NJERVEY@haveanicebank.com> wrote:

Phillip
Everything else being equal, we have made some similar type loans with better pricing than this appears to be.
I would like to discuss some of the details to make sure we are all on the same page.
I am here this afternoon and can be in the morning if that is more convenient.
Thanks

Harold E. "Ned" Jervey III
Executive Vice President | Commercial Banking
CresCom Bank
288 Meeting Street, Charleston, SC 29401
O 843.534.5109 | C 843.452.7917 | F 843.723.5446

From: Phillip Ferderigos [mailto:pferderigos@barnwell-whaley.com]
Sent: Wednesday, September 24, 2014 10:13 AM
To: Ned Jervey
Subject: FW: Old Towne suits

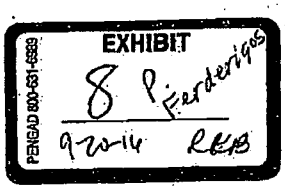
Ned, see attached docs concerning the proposed loan. It is from South Coast. I have not reviewed it yet, but I will sometime today.

Once you review, let me know if you can you beat it. I will be out of the office some today, but will be here late afternoon and tomorrow.

Thanks, Phillip.

Phillip S. Ferderigos, Esq.
Member

<image001.jpg>



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

CresCom Bank
Have a nice bank

Member FDIC

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Phillip Ferderigos

From: Athan Fokas [athanfokas@gmail.com]
Sent: Wednesday, September 24, 2014 8:45 PM
To: Phillip Ferderigos
Subject: Re: Old Towne suits

I'm assuming his underwriters are out of town. With Southcoast we go through two people. Most Everybody else has to send it out of town for review.

Sent from my iPhone

On Sep 24, 2014, at 8:22 PM, "Phillip Ferderigos" <pferderigos@barnwell-whaley.com> wrote:

> Yea, I'll see what he says tomorrow...it's very easy, can he beat the offer or not...numbers are numbers...
>
> Sent from my iPhone
>
> On Sep 24, 2014, at 8:18 PM, "Athan Fokas" <athanfokas@gmail.com> wrote:
>
> > Typical banker mumbo jumbo I presume! They all sing the same song till it comes down to income and financials and then the song changes.
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> > > Thanks, Phillip.
> > >
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> > >
> > > On Sep 24, 2014, at 3:10 PM, "Ned Jervey" <NJERVEY@haveanicebank.com> wrote:
> > >
> > > > Phillip
> > > > Everything else being equal, we have made some similar type loans with better pricing than this appears to be.
> > > > I would like to discuss some of the details to make sure we are all on the same page.
> > > > I am here this afternoon and can be in the morning if that is more convenient.
> > > > Thanks
> > > >
> > > > **Harold E. "Ned" Jervey III**
> > > > **Executive Vice President | Commercial Banking**
> > > > CresCom Bank

288 Meeting Street, Charleston, SC 29401
O 843.534.5109 | C 843.452.7917 | F 843.723.5446

From: Phillip Ferderigos [mailto:pferderigos@barnwell-whaley.com]
Sent: Wednesday, September 24, 2014 10:13 AM
To: Ned Jervey
Subject: FW: Old Towne suits

Ned, see attached docs concerning the proposed loan. It is from South Coast. I have not reviewed it yet, but I will sometime today.

Once you review, let me know if you can you beat it. I will be out of the office some today, but will be here late afternoon and tomorrow.

Thanks, Phillip.

Phillip S. Ferderigos, Esq.
Member

<image001.jpg>

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

CresCom Bank
Have a nice bank

Member FDIC

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EXHIBIT M

Phillip Ferderigos

From: Athan Fokas [athanfokas@gmail.com]
Sent: Thursday, January 09, 2014 2:12 PM
To: Phillip Ferderigos
Cc: spiros ferderigos; Jacob Ferderigos
Subject: Re: RE:

The new ones should be seperate.

Sent from my iPhone

On Jan 9, 2014, at 2:09 PM, "Phillip Ferderigos" <pferderigos@barnwell-whaley.com> wrote:

> also, trust me on this, here's the lawyer in me protecting us:
>
> we need to make sure that (1) the builder has at least a million dollar cgl or "builder's risk" insurance policy 2) a performance bond 3) a payment bond (to protect us against unpaid subcontractor liens) and 4) our architect has "contract administration/supervisory responsibilities" and a million dollar E&O policy...
>
> These items are necessary to protect our investment and, if we can't get them, we need to talk about it...
>
> Phillip S. Ferderigos
> Member
>
> Email: pferderigos@barnwell-whaley.com
> Phone: 843-577-7700
> Fax: 843-577-7708
>
> <BWPH logo.jpg>
>
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> This message from the law firm of Barnwell Whaley Patterson & Helms, LLC is intended exclusively for the individual or entity to which it is addressed. If you are not the named addressee, please notify the sender immediately either by phone (843-577-7700) or reply to this e-mail and please delete all copies of this message

---

From: spiros ferderigos [mailto:spirosferderigos@gmail.com]
Sent: Thursday, January 09, 2014 1:25 PM
To: Athan Fokas; Jacob Ferderigos; Phillip Ferderigos
Subject:

For electric and water, is it possible to separate the Suites from Old Towne Restaurant so we have it completely separate instead of guessing how much the Suites vs OT restaurant is using? I figure this would be the time to separate them if possible before the building process begins.

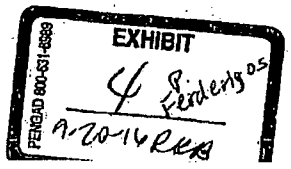


EXHIBIT N

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 osiled 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

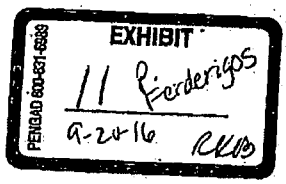
Wednesday, September 24, 2014

Me

Athan, when you get it, can you email me the papenwork for the loan with all the details. I have a banker who is going to look over it to see if he can beat the deal we have. I doubt he will, but at least he will be able to point out potential problem areas with our loan that we may not of thought of 8:51 AM

Me

Thanks, got it and sent it to my banker and will let you know what he says. if he says he can't beat it, then we know we got a great deal 11:20 AM



Thursday, September 25, 2014

Me

I talked with my guy, looking over the commitment letter, your banker has written this up where he has agreed to a 5% for the life of the loan, but the life of the loan is for five years after the one-year construction. Thus, in year six, we would have to pay everything remaining (the remaining 15 year amortization) to them or have to renew/ renegotiate another loan... In other words, the commitment letter does not allow for a renewal of the loan at 5% for the remaining 15 years... if your bank says that they will renew the loan for the remainder of the 15 years at 5%, then my banker says to jump all over that shit... because that's crazy... so, can your bank add in language that will allow us to renew the loan through out the 20 years and still keep it at 5%?

10:29 AM

(843) 813-5612

It says 240 month which is 20 years

10:32 AM

Me

Right, that's the trick... it is amortized over 20 years, and the payments are based on a 240 month schedule, which is 20 years, but the loan is 59 months, not 240 months. See what I mean... After 59 months, this loan would be over and we would still owe 15 years worth of payments... so we would have to pay it off or renew... If they add to this proposal that they will renew the loan for 5% throughout the 240 month. Then it would say what you think it says...

10:36 AM

Tuesday, September 30, 2014

(843) 813-5612

Keep this confidential from our current contractor. I had another bid for our project come in at $3,552,000.00 and he was supposed to be the less expensive guy.

10:04 AM

Me

Jeez

10:07 AM

Spiro Cell

Wow

10:47 AM

Spiro Cell

When we starting?

10:47 AM

(643) 813-5612

I hope soon

10:49 AM

Me

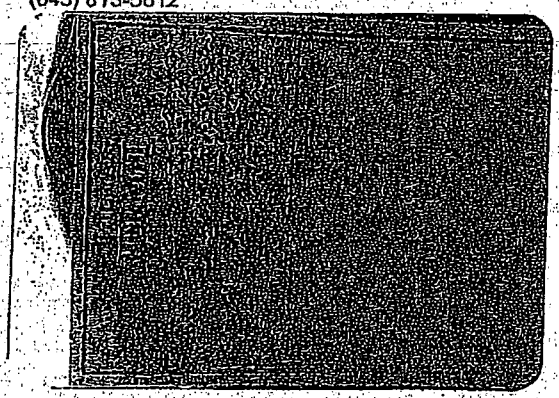
Okay, unless it fucks y'all up, let me know when I need my money by... and how much... as much as I would like to join in with y'all on a 20 year obligation, I will just pay up my money upfront. 12:00 PM

(843) 813-5612

I'll take a million tomorrow:) 12:02 PM

Friday, October 10, 2014

(843) 813-5612



3:54 PM

We got our permit. Can start building immediately 3:54 PM

Jacob

Awesome!! 3:54 PM

Sunday, October 19, 2014

Spiro Cell

I need to hold off signing anything for old Towne until I am done with the judgeship process. Should be mid-November. Will create too much of a headache to amend everything I have filed. That will also give Phillip time to do what he needs to do and also any ancillary contracts we need to do to go along with the loan. 7:20 PM

(843) 813-5612

That's crazy! Your are not even on the note. The bank wants to close and our builder is ready to build. Call me that makes no sense whatsoever! 7:24 PM

Spiro Cell

You don't understand. Nothing to discuss. Putting kids to bed. I can't sign anything until hopefully mid-November. That is when I should know if I am selected to move forward. Can sign before that. If you don't need m signature then you can do it before then. Otherwise, you need to wait for my signature u tip I get through the process I am working on. 7:32 PM

(843) 813-5612

I have been busting my ass to get this done without you even on the note, I talked to Jacob and he though that you are signing over the collateral on the note but they are two seperate forms . Once again you are not on the note listed as signing over the collateral so there is no way it affects you. Put your kids to bed and then call me! 7:40 PM

Spiro Cell

I am not fighting with you. Sorry it upsets you, but my signature goes on once I am done with what I have to do. If it was done a month ago it wouldnt be an issue. Now that I am weeks away from being considered, I am not affecting my P&L. Move forward without my signature if you want. We have been waiting years for this and now I need you to wait a few more weeks. It is important or I wouldn't be saying I need to wait. Not screwing myself over waiting a few weeks. You don't understand the process I am going through and the sensitivities involved 7:45 PM

Me

Athan, this is Phillip. I do not like your tone. Shut up or I kill the deal now. Do You Understand? 7:45 PM

(843) 813-5612

Funny that busting my ass is a bad tone. People try to make sense of all situations. Just saying there should be a little discussion before someone desides to put a stop on our progress. Coming back and saying nothing to discuss is not very family like. 7:50 PM

Spiro Cell

Family understands when someone says they have to wait. I know what we are signing and it means I will have to do something that is not in my best interest at this very moment. You don't need to understand why, only that I can't. The timing is not right until I am done doing what I need to do with this other endeavor. I appreciate your busting your ass..but I am not "cutting" my ass over a temporary wait. Cool your jets and it will be done. I have no problem moving forward but need to get trough this first. 7:59 PM

Me

I am losing interest in being in business with you. Spiro says you need to wait a week, then you need to wait a week. It is not an unreasonable request on his part and we don't need back and forth drama. 7:59 PM

(843) 813-5612

It's the bank that will be confused. It's not wait a weak it's wait a month now and then it may be longer. I'll relay the info to the bank and see what they want to do. Just saying that discussion is nice to have before getting a text saying I'm out. Phillip to rebutle what you said doing business with me usually means hard work from me and great profit. I'll keep you posted on the bank discussions. 8:06 PM

Me

If we are going to be in business together on this matter, I also expect common courtesy and kindness. 8:10 PM

(843) 813-5612

We are already on business together and common courtesy and kindness works hand in hand with discussion. All is well! Just another hurdle in life among the many. I'll keep you posted . 8:12 PM

Monday, October 20, 2014

Spiro Cell

From Athan (copied on this text):Our attorney Amy Haynes can explain to you that there is no way anything to do with your judgeship has anything to you signing the paper allowing the bank to sell the property if payments aren't made. If you have time give her a call (843)884-1593. The bank will not close our note otherwise . 4:34 PM

Spiro Cell

Athan - you God damn idiot! When the hell did I ever give you permission to share my private business with another attorney. I am so fucking pissed off right now. I will not sign a god damn thing until I am fucking ready to do so! I am about to say screw everything! I don't need you spreading my personal shit around the legal community! You are so stupid you have no idea what the hell you may have just created! Never fucking say anything about me or my business to anyone ever again, DO YOU UNDERSTAND! 4:40 PM

Spiro Cell

I am not playing your bullshit! Got me??? 4:41 PM

Spiro Cell

You know what! Fuck the deal! I'm out! 4:41 PM

Spiro Cell

And you better not repeat a word with "our attorney" on any of this shit! I am an attorney and I know exactly what I am doing! 4:48 PM

(843) 813-5612

Well no one said to not say anything. I honestly have no clue what is going on just the fact that you said you couldn't be on the note. Maybe a sit down and discussing the details would be a little help. Just saying you're out when last week you were in is a bit confusing. I'm sure everything is fine. Amy is a very nice attorney who would not wish ill will on anyone. 4:54 PM

(843) 813-5612

By the way you're dad has told everyone in Greece you're going for judgeship. 4:56 PM

Spiro Cell

You just don't get it. I don't care about people knowing I'm running, but when I say I need to hold off on something regarding my job I don't expect you to go blab it to my peers! You have created a big problem for me! Back off and don't discuss my business with anyone! Including these conversations! 5:26 PM

(843) 813-5612

Roger that cuz. Next time lets have face to face discussions since the matter is important. 5:32 PM

Tuesday, October 21, 2014

(843) 813-5612

Some hard numbers to ponder: Going into closing today we incurred about $15000.00 worth of expenses. Title insurance had to be written from scratch, we had to buy flood insurance, builders risk insurance, building permits, put all our excess items in storage, and I have no clue the attorney fees. Out of the money received we were supposed to pay our architect $8600.00 and our engineer $6000.00. To date we have already spent a little over $46000.00 to get to this point not including the amounts due above. We will need to pull the money owed from somewhere and if it's Old Towne Restaurant money and suites income it will suck two to three months profit. I was wondering if a power of attorney was the same thing as signing off on the mortgage? 6:38 AM

Me

Athan. I do closings, my firm sells title insurance(it's not a big deal). I can/could save on closing costs(those attorney costs you are talking about). your persistence in doing what you want to do, the way you want to do it, without regard to anything we want is simply off putting. Jacob will not sign anything unless I review EVERYTHING and I don't have time to do anything today.

7:05 AM

(843) 813-5612

This has always been planned and was not a surprise to anyone that closing was coming up. It's not the way I want to do it but the way we all agreed on doing it. I think the title insurance expires in 30 days and it has already been written.

7:09 AM

Me

I have no idea what the hell you are talking about, let me be clear, and I want this in writing, you have never had and have no authority to do anything on behalf of me, Jacob or Spiro...anything you sign, it's on you, not us...you have no authority to sign any contracts on our behalf (whether it's closing, bank, builders, or anything, etc) and you have no authority or permission to start building anything at 229 king street unless we say you can... Spiro already told you the deal is dead, so I don't know why you are borrowing money for a project we already told you is not going forward... give me the name of the closing attorney and his/her number

7:25 AM

(843) 813-5612

Everyone agreed to do this project because of the great passing income coming in from the previous project. Jacob sat with me at every board of architectural review meeting and architect meetings. You and Spiro have asked me numerous times how is the project going and I have always answered we are close to getting it complete. I don't speak in behalf of anyone and all parties have been aware of the process. We started this project on February of 2013 when the bank said they would give us the money.

7:31 AM

Me

Athan, read my prior email again. Give me the name and number of the closing attorney. If you think our willingness to explore building a building together means you can run around and do whatever you want, and pretend you have authority to build a building on our property, you are mistaken. yes, we have plans, and we can go forward if we want to, but you do not have authority to go forward in the manner you are trying to force us to do so. we have never given you permission to move forward with building anything, and the way you are acting, this project is not going to happen. I don't do business like that.

7:46 AM

(843) 813-5612

Didn't you just a few weeks ago go to your banker to see if you can get a better deal. If I remember correctly you said we had a good deal with Southcoast and to go ahead with them. I have all those texts. Selective amnesia has been going around I hear. You have the closing attorney's info in this thread.

7:50 AM

Me

You are unbelievable. you do not remember correctly, even now. I'm telling you you do not have authority to build anything at OT, but you act like you do. well, you don't. so hear it one more time before your closing. we are not moving forward with the deal. you have no authority to build anything unless we tell you you can, and you do not have that authority.

8:02 AM

Spiro Cell

Good news. I have decided I am out because I can not trust our business partner. He is being a bully and I do not do business with bullies. All I asked for was for a few weeks after a closing date was sprung on me. Athan can go re-read his texts. Neither Phillip nor I ever agreed to encumber our interest in old Towne. I found out about that this past Saturday. What I was told was being considered was that Athan and Jacob would personally guarantee and that was all that was needed for the possible loan we were working on. Also, go re-read your texts, no one ever gave you authority to do anything on anyone else's behalf. All you were doing was getting information about loan options. I was, before I realized how difficult Athan is to work with, going to allow my interest in old Towne to be encumbered in a few weeks even though this was sprung on me a few days ago. I don't have time for drama or over dramatic bully partners. Good job Athan, you screwed the deal because you had to try to bully everyone instead of being a team player and waiting a few more weeks.

8:26 AM

(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. 8:52 AM

Wednesday, November 19, 2014

Me

I understand that the closing for the southcoast loan is tentatively set for Friday. As I am being asked to sign a mortgage over my portion of the property, in large part for Athan to get $1 million loan he otherwise could not get on his own, I certainly want assurances from everyone that they will make timely payments as I do not want to end up floating anyone else's share. To that end, I am preparing an agreement to be signed by y'all indicating that each of you will make timely payments and if you fail to make timely payments, then there will be serious consequences. Athan, I expect to have it to you by tomorrow for your review. If this email chain proves anything, it's that I am not providing you with any legal advice and I'm not your attorney so, if you want to look it over with your attorney, then please do. I encourage you to look over it with an attorney so that you can protect your own interests. If everyone makes their payments on time, then this agreement doesn't do anything. If anybody fails to make their payments on time, well, they'll be sorry. If anyone cannot make their payments on time, then we should not do this deal.

3:04 PM

(843) 813-5612

The bank would like the payments drafted out of the suites bank account in order to make sure there are no late payments. The suites checks received will be direct deposited in the account. I'm sure since Phillip is putting his own loaned money in then I'm sure the Ferderigos 50% can be figured out amongst themselves. I too plan to pay off my 50 percentage of the loaned money as quickly as possible as more funds become available.

3:14 PM

Spiro Cell

We will need to set up a separate bank account if there is going to be an automatic draft and everyone deposit the amount they owe for the month into that account. That way everyone can keep track of the percentage they need to pay, it will be traceable from everyone's individual check going in and the funds will not be commingled. We need to receive our profits and then make the monthly payments into that separate account so we can appropriately keep track.

3:24 PM

Me

As I have my own loan obligations, I will receive my 1/6 of the profit on a monthly basis. My share of the profits will not be kept in old town suites LLC account just to float ya'lls loan.

3:25 PM

Spiro Cell

Exactly. We receive profits and then each individual can decide how to make payment into the separate bank account that can only be used to pay the loan amount

3:26 PM

(843) 813-5612

The bank draft expense payment coupon will go out around the 15th and the payments will be drafted on the 1st of each month so we should make it mandatory that the money is in there by the 20th so that we have time to find out if someone didn't put in their share.

3:37 PM

Me

Just to be clear. I know that we have not had our monthly disbursement because we have been paying a lot fees to architects and engineers and God knows who. All of that now comes to an end, and I will receive my monthly disbursements on time based on my share of the profits. also, as I am not on the southcoast loan, how yall pay for it has got nothing to do with me. I want my share of the profits I am due every month and yall can manage whatever process yall want to ensure your payments are made on time

3:42 PM

Spiro Cell

That is fine by me. Just text out a picture of the payment coupon when it comes on the 15th and we can deposit by the 20th. I plan on having it in the bank account within a few days of getting the payment amount., five days notice is plenty. This of course does not affect Phillip who is getting a separate loan.

3:42 PM

Spiro Cell

Are caught up with our expenses to archetics, ect

3:43 PM

Spiro Cell

Also, I see that we are pretty empty for December...that is unfortunate. Hopefully will pick back up

3:44 PM

(843) 813-5612

December and January are predominately last minute bookings.

4:00 PM

(843) 813-5612

The first draw needs to be $150,000.00 to Kevin Carol's (the contractor's) company Local Building Partners Inc. He would like it right away so he can buy the steel and get all the prep done to start construction.

5:11 PM

Spiro Cell

Do we have an estimate on how long he thinks the construction will take? 5:13 PM

(843) 813-5612

12 months is worst case hopefully 10 months if everything goes as planned. 5:15 PM

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

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

Friday, December 12, 2014

(843) 813-5612

What do you guys say we pick a date next week for a friendly discussion on our options on the suites? PM might be easier so no-one is rushed. I'm free all week. 10:10 AM

Me

Thanks for your text. I will be in touch with my thoughts via email in the near future. 7:37 PM

(843) 813-5612

I think it's best to have a face to face conversation instead of an impersonal email. We are cousins after all. 7:38 PM

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

Thanks for your email. I am extremely busy until Thursday as I have a big hearing in Darlington. However, I do want to meet and discuss the possible options with you.

Before we go there, however, I'm going to require that we go back to the status quo as far as this whole old town and whether our families can eat there for free thing. This is nonnegotiable and the first step if you want to discuss options with me. You cannot ask for my help to allow you to get a mortgage on my part of old town with your right hand, while, at the same time, you try to insult/slap me with your left hand. If you are unwilling to agree to this first step, that is fine, but I would have no interest in building a building with you.

Please take time to think about your response before you respond. I do not require an immediate response. I'm not exaggerating when I tell you I am strongly leaning towards not moving forward at all. 1:22 PM

(843) 813-5612

We can discuss all options when we meet and hopefully come to a mutual agreement. 1:22 PM

Me

No, that is not what I said. I will not meet with you to discuss any options until we go back to the status quo first. If that is a problem, then that is fine.. 1:26 PM

(843) 813-5612

I do not understand what the status quo interpretation was but am sure if we meet we can figure that out. 1:28 PM

Me

Athan, I do not have time for the games that you are playing today. If you want clarification, I will prepare a contract for you and Jacob to sign that says our respective families can eat at old towne for free. Just like it has been for decades. I'll have it for your consideration sometime next week, assuming I have a time to get to it. 1:39 PM

If you do not like that requirement on the front end, that's fine. I am not interested in moving forward with options. Thanks, Phillip

(843) 813-5612

I'm not playing games but if all families get to eat for free and Jacob and I are paying for the food cost then do we get free legal advise in return? 1:41 PM

Me

Athan, I am not interested in moving forward with you. Please do not email or text me anymore. Have a nice day sir. Phillip 1:42 PM

(843) 813-5612

Why can't you have a business discussion and come to an agreement t 1:43 PM

(843) 813-5612

that make sense 1:43 PM

(843) 813-5612

Phillip I expressed your thoughts to uncle Fanouri and for what it's worth he thinks nobody should eat for free and he says it has become childish at this point. He also asked what happened to the escrow money you said you would put up. Maybe you should call him. 3:11 PM

(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 O

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

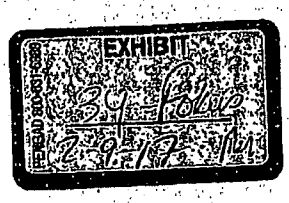
made as of the 15th day of October in the year of Two Thousand and Fourteen.

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.

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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 asscolates.Project to be completed with interior items consistant with existing suites., substitutions 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 Profection, 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 within industry standards are allowed without written notice as long as the finished product is consistant with existing suites and allowed by code. Contractor may comfir 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)

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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 peyment 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.)

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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

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

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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

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EXHIBIT P

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

On Nov 21, 2014, at 3:17 PM, spiros ferderigos <spirosferderigos@gmail.com> wrote:

Athan, there are too many email chains going on with a bunch of accusations from you that are not accurate so I wanted to send this one email out, with no response, so you are clear about my position. I have no intention of arguing.

(1) When we were originally considering getting a loan to build additional units, you stated that you would be able to get a loan with only you and Jacob personally guaranteeing the loan. I have always refused to personally guarantee anything from the very beginning. Two days before our original closing date (for which I had something like 3 days notice), I found out for the first time that I would need to put up my physical property interest in 229 King Street as collateral for the loan. That shocked me because it was the first time I heard of that, but to assist with everything moving forward, I agreed to move forward with allowing my physical property interest in 229 King Street to be used despite never agreeing to the same before (or having any knowledge that it was necessary) as long as I was satisfied with assurances to protect my property interests.

(2) Today for the first time I was asked to have OT Suites LLC (for which I am a personal member) sign as borrower on the note. That has never been discussed and definitely never been agreed to. Again, I was always told that only you and Jacob would have to sign the note and Phillip and I only having to mortgage our physical property interests in 229 King. Today, I was also asked to sign the Note in my name as well. Of course, this is in direct contradiction to what I agreed to do. I never agreed to directly sign the note (in my name) or indirectly sign the note (as a member of OT Suites, LLC or someone in my place as a member of OT Suites, LLC).

(3) Lastly, Phillip has been crystal clear from the beginning that he had no interest in being part of any loan or loan requirement. He would come up with his own money completely separate. The only thing he was

willing to do was allow his personal physical property interest in 229 King Street to be collateralize to help you get a loan. He further has been clear from the beginning that he would only be willing to do that if you agreed to the provisions he felt were necessary so his property interests would be protected. Phillip has never needed any assistance from anyone to come up with his funds, and he has been very gracious to even consider mortgaging his interest in 229 King Street for you to be able to get a loan. Now out of nowhere you are demanding he sign over assurances to you about his loan, proof of his loan and its details and to sign on to the note through the OT Suites, LLC. This is inappropriate and has absolutely never been agreed to. I understand you want more now then what was agreed to before, but that is simply inappropriate. I am not sure what you told the bank, but what they are asking us to sign is not what we to agreed to.

The only way for the project to move forward is to do what has been previously agreed upon. I do not know what you told the bank, but their documents are not reflective of what we have agreed upon. I am willing to move forward with the written agreement I emailed. I would make my portion of the payments based upon that agreement, not personally signing a note. The only people that should be on that note are you and Jacob (the personal guarantors). I am also still willing (despite being told late in the game) to mortgage my physical interest in 229 King Street as collateral for your and Jacob's note (assuming the agreement I sent out is signed). Lastly, I am not comfortable with you attempting to bully Phillip to sign or do anything as the agreement has always been that Phillip would not have to do anything at all for the loan or provide any documentation whatsoever (with the exception of his generosity in agreeing to mortgage his physical interest in 229 King Street with the assurances he wants to protect his interests).

Spiro

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 1091

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 Fenderigos, Manager of Old TowneSuites, LLC

LENDER:

SOUTHCOAST COMMUNITY BANK

X _____
Authorized Signer

Laserpro, Ver. 14.4.0.021 Copr. D+H USA Corporation 1997, 2014. All Rights Reserved - SC C:\PROGRAMS\CFI\LP\G201.FC TR-1513 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, Iakovos 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 _____
Athanasios 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: _____

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OMB NO. 2502-0265

A.	B. TYPE OF LOAN:	
U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT	1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS.	
SETTLEMENT STATEMENT	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/14.140OLDTOWNE/3a)

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: 27-4026801	I. SETTLEMENT DATE:
229 King Street Charleston, SC 29401 Charleston County, South Carolina	Haines Law Firm, LLC PLACE OF SETTLEMENT 800 Johnnie Dodds Blvd. Mount Pleasant, South Carolina 29464	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

700. TOTAL COMMISSION Based on Price		$	@	%		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
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				600.00	
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				$0 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

(14.1400LDTOWNE / 14.1400LDTOWNE /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 nonjudicial 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 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.

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, 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 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 _____
Athanasios Fokas

X _____
Iakovos S Ferderigos

X _____
Spiros S Ferderigos

X _____
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 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: _____

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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 Community 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: _____

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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

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CFPROSUITEC\FILPL\11.FC TR-7519 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: 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:

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

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 lie 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

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.

Guaranties. 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

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 Lhetie 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, 2016.

Construction Contract. The words "Construction Contract" mean the contract between Borrowr 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 "Property 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 Ferderigos, Authorized Member of Old Towne Suites, LLC

LENDER:

SOUTHCOAST COMMUNITY BANK

By: _____
Authorized Signer

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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 L

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,

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

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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 effect 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

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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.

SWORN to before me this _____ (Witness) _____

day of _____, A.D. 20_____

_____ Notary Public _____ (Seal)

My Commission expires: _____

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TAX RECORD

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

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.

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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: _____

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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

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CPROSUITECFILPL\11.FC TR-7833 PR-13

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Cindy Gleaton (843) 216-3016

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

SOUTHCOAST COMMUNITY BANK
530 Johnnie Dodds
Mt. Pleasant, SC 29464

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
Old Towne Suites, LLC

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
229 King Street	Charleston	SC	29401	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
SOUTHCOAST COMMUNITY BANK

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
530 Johnnie Dodds	Mt. Pleasant	SC	29464	USA

4. COLLATERAL: This financing statement covers the following collateral:

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.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, Item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

FILED

2017 JUN -5 PM 12: 34

JULIE J. ARMSTRONG
CLERK OF COURT

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, SPIROS FERDERIGOS, and JACOB FERDERIGOS Defendants.	**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON BEHALF OF DEFENDANT PHILLIP FERDERIGOS**

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

Defendant, PHILLIP FERDERIGOS, by and through his undersigned counsel, hereby submits his Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment as to Counterclaims of Phillip Ferderigos (hereinafter "Phillip").

INTRODUCTION

This matter involves Plaintiff Athan Fokas' repeated and malicious libel and slander of Phillip by Mr. Fokas' use of outright threats and intimidation tactics in order to force Phillip to agree to terms of an alleged "agreement" that Phillip never agreed to. With what can only be described as ill will, vitriol, and actual malice,[1] Mr. Fokas announced that he would repeatedly slander Phillip unless Phillip "gave in" to Mr. Fokas' demands:

> **Athan Fokas: "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 am probably doing you a favor. Smaller waistline. I bet your kids will be real proud of you in the future too. Your dad was right for calling you palabo [means "stupid' in Greek] Philipa."**

[1] Mr. Fokas' improper, bully-type antics are consistent with his prior actions necessitating two (2) restraining Orders, two (2) Motions to Amend Tax Returns, and one Order of Contempt of Court which have already been issued against Mr. Fokas in this and in other litigation involving Mr. Fokas.

See Exhibit T of Defendant's Answer and Counterclaims, also attached hereto as **Exhibit 1**.

Then, in pre-meditated fashion and in an effort to gain advantage during on-going negotiations (for a proposed project that was being negotiated), Mr. Fokas proceeded to libel and slander Phillip to (1) his father Stavros Ferderigos, (2) his uncle Fanouris Ferderigos, (3) his aunt (Plaintiff's mother) Irene Fokas, (4) Plaintiff's wife Antonia Fokas, (5) Defendant's brother Spiro Ferderigos, (6) Defendant's brother Jacob Ferderigos and, upon information and belief, (7) other individual third parties as well. All of Mr. Fokas' libel and slander were published to third parties with the express purpose to harm Phillip and to intimidate/force him to agree to an alleged "agreement" Phillip rejected and never agreed to throughout the on-going negotiations.

ALLEGATIONS & PROCEDURAL HISTORY

The parties are presently involved in two lawsuits initiated by Mr. Fokas. One lawsuit (Civil Action No. 2015-CP-10-3919) involves a dispute about the parties (Phillip, his brothers Spiro and Jacob, and his cousin Plaintiff Athan Fokas) investigating the possibility of building an entirely new, separate, and free-floating building above 229 King Street to be used for rental units. In his Complaint, based on the parties exploring and negotiating the possibility of building a new building, Mr. Fokas alleges that Phillip and his brothers (the other Defendants) entered into a binding "oral" contract with Mr. Fokas, and that "Defendants breached the contract by refusing to carry out their obligations to execute the mortgage on the building and other parts of the loan documentation." Complaint ¶ 31 (C/A No. 2015-CP-10-3919). As to Phillip, Mr. Fokas specifically alleges Phillip refused to execute a mortgage and loan documents because "Defendant Philip Ferderigos demanded that Plaintiff execute an agreement whereby specified

penalties would be paid in the event payments were not made on the note to the lending bank."[2] (Complaint ¶ 19, C/A No. 2015-CP-10-3919). However, Mr. Fokas' lawsuit is meritless as he alleges Phillip failed to execute a mortgage and loan documents for an approximate Two Million Dollar loan based on material terms Phillip never agreed to.[3] The details of Mr. Fokas' unbelievable actions and defamatory/libelous statements against Phillip are set forth in Defendant's Answer and Counterclaims paragraphs 53 through 123, a copy of which is attached as **Exhibit 2** for the Court's ease of reference. Moreover, Defendant's Motion for Summary Judgment in the 2015-CP-10-3919 case (Mr. Fokas' breach of contract case) outlining the lack of merit of Mr. Fokas' allegations is also attached as **Exhibit 3** for the Court's ease of reference. It is in this context that Mr. Fokas viciously lashed out, threatened, and repeatedly libeled and slandered Phillip.

In addition, Mr. Fokas also filed another meritless action in another lawsuit (Civil Action No. 2015-CP-10-3891) which involves unfounded allegations that Phillip allegedly published defamatory statements about Mr. Fokas, particularly with regard to setting fire to Old Towne Restaurant and filing false insurance claims.[4] Phillip filed an Answer and Counterclaim denying these false allegations. Phillip has also asserted a cause of action for the initiation of frivolous proceedings in both pending actions based on the lack of any evidence to support Mr. Fokas'

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[2] Significantly, Mr. Fokas' Complaint does not allege that Phillip breached any "alleged contract" because Phillip could not eat for free at the restaurant located on the first floor of 229 King Street (Old Towne Restaurant), or that Phillip breached any "alleged contract" because Phillip was jealous of Mr. Fokas and/or because of Phillip's stubbornness. Yet, Mr. Fokas published such statements repeatedly to third parties. As set forth below, Mr. Fokas libeled, slandered and defamed Phillip with ill will and malice by spreading these and other malicious and defamatory statements to third parties in an effort to try to force and coerce Phillip to sign a mortgage and closing documents that Phillip never agreed to.

[3] Indeed, the statute of frauds outright bars Mr. Fokas' claims.

[4] Mr. Fokas' defamation lawsuit is premised on his mother's speculation arising from hearsay.

breach of contract and defamation claims, as both lawsuits were intended to force Phillip to agree to an alleged oral agreement he never agreed to.[5]

STANDARD OF REVIEW

"Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. If triable issues exist, those issues must go to the jury." Miller v. Blumenthal Mills, Inc., 356 S.C. 204, 616 S.E.2d 722 (Ct. App. 2005). "Summary Judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions of 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 judgment as a matter of law. On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." Id. at 219. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. 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, when plain, palpable, and indisputable facts exist on which no reasonable minds cannot differ, summary judgment should be granted." Id. at 220.

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the

[5] Mr. Fokas also filed a third meritless lawsuit (Civil Action No.2016-CP-10-3282) against Phillip which was summarily dismissed by an Order of the Court in another matter (Civil Action No. 2015-CP-10-5610).

opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 220. (Emphasis added). "In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Lanham v. Blue Cross & Blue Shield of S.C., 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E. 2d 650, 655 (2006). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." Id. 220 (Emphasis added).

DEFAMATION JURISPRUDENCE

Under South Carolina law, "[t]he tort of defamation permits a plaintiff to recover for an injury to his reputation caused by the false statements of 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 and 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 (2d ed. 1997).

Further, the affirmative defense of conditional or qualified privilege only exists where a party who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed. The question whether the privilege has been abused is one for the jury. Common law actual malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, meaning with conscious indifference towards the plaintiff's rights.[6] Murray v. Holnam, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001).

"Defamatory communications take two forms: libel and slander." Erickson, 368 S.C. at 466, 629 S.E.2d at 664. "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." Id. "[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 the 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 of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession.

[6] Here, even a cursory review of Plaintiff's own repeated written libelous statements about Phillip set forth in this Memorandum reflect the ill will and malice Mr. Fokas spewed forth to violate Phillip's rights.

Holtzscheiter v. Thomson 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, 629 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.

ARGUMENT

I. MR. FOKAS PUBLISHED DEFAMATORY STATEMENTS TO MULTIPLE THIRD PARTIES CONCERNING PHILLIP.

Phillip has set forth Mr. Fokas' own written communications to third parties and deposition testimony of Mr. Fokas' own mother that clearly set forth that Mr. Fokas did indeed defame Defendant in both unprivileged defamatory statements that are *actionable per se* and in unprivileged defamatory statements that are not *actionable per se*, with ill will and common law malice.

A. Mr. Fokas' *Actionable Per Se* Defamatory Statements

Mr. Fokas made numerous written unprivileged defamatory statements that are *actionable per se* as Mr. Fokas' defamatory statements charged Phillip with an act or characteristic "of unfitness in one's business or profession" and/or "commission of a crime of moral turpitude."

(1) As set forth in Defendant's Exhibit AA of his Counterclaim, and attached hereto as **Exhibit 4**, Mr. Fokas made unprivileged defamatory *actionable per se* statements to third party Jacob (Iakovos) Ferderigos in writing that Phillip is unfit in his business or

profession: **"your brothers [Phillip and Spiros Ferderigos] <u>have no business sense and I'm sure we will be butting heads with Greek properties</u> in the future. Very sad!!!"** (Emphasis added).

In addition to being a licensed attorney, Phillip also owns several real estate investment (both residential and commercial) properties in Greece and in South Carolina. To understand the context of the above statement, Phillip, his brothers, and Mr. Fokas own property that provides rental income in Greece. Indeed, Phillip's business involves commercial and residential real estate investments in Greece that he and his brothers inherited from his father, which Mr. Fokas also inherited from his father. It is in this context wherein Mr. Fokas attacks Phillip's "business sense," defaming Phillip's fitness for such business to his brother/business partner Jacob Ferderigos. As such, Mr. Fokas' libel to Jacob Ferderigos, defaming Phillip's fitness for his business, is actionable per se.

(2) Mr. Fokas further made unprivileged defamatory *actionable per se* statements to third party (Irene Fokas, Defendant's aunt) by informing said third party that Phillip is unfit in his business or profession, <u>See</u> Deposition of Irene Fokas, Page 74, lines 3 – 8, attached hereto as **Exhibit 5**:

> **Q. Okay. So then as a result of what your son Athan told you, do you think that Phillip and Spiros are bad business people?**
>
> **A. Yeah. I tell you this for the second time. I answered this already. We're going to talk about the same things over and over again?**

(3) Plaintiff further made unprivileged defamatory *actionable per se* statements to third party (Jacob Ferderigos) in writing by informing him that Phillip was manipulating him and trying to keep him and his other brother from having more income so that Phillip can keep his brothers (i.e., and his business partners) beneath him:

"There were no demands but we all know this is Phillip talking and exaggerating words as usual." ... "So enough with your ridiculous rhetoric and let Jacob and I take care of business as we always have for the last ten plus years!" ... "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. Just like your dad said that Phillip is the King of the family. (Emphasis Added).

See **Exhibit 6**, Text from Mr. Fokas to Jacob Ferderigos.

(4) Plaintiff further made unprivileged defamatory *actionable per se* statements to third party (Irene Fokas) that Phillip accused Mr. Fokas of arson and insurance fraud, [See Section E. of this Memorandum]

B. Plaintiff's Defamatory Statements That Are Not *Actionable Per Se*

In addition to the above *actionable per se* defamatory statements, Mr. Fokas also made numerous unprivileged written and verbal defamatory statements that are not *actionable per se* against Phillip. This includes:

(1) publishing to third parties the false statements that the proposed project being considered was not moving forward because Phillip was not doing what he agreed to do, including (a) Mr. Fokas telling third parties that Mr. Fokas did nothing to delay the proposed project, but that the reason the proposed project did not move forward was because Phillip could not eat for free at the restaurant located on the first floor of 229 King Street, Old Towne Restaurant[7] and (b) telling third parties that the reason the proposed project was not moving forward was because Phillip was jealous that Mr. Fokas had a greater ownership interest in 229 King Street than Phillip and/or Phillip's stubbornness; and

(2) publishing to third parties that Phillip accused Mr. Fokas of willfully setting fire to 229 King Street for insurance proceeds and other insurance fraud.

[7] In contrast, the "real" reason the negotiations ceased was Mr. Fokas' "fault," based on his own improper actions and demands.

C. Mr. Fokas' Defamatory Statements That The Reason The Proposed Project Did Not Move Forward Was Because Defendant Could Not Eat For Free at Old Towne Restaurant and Phillip Was To Blame For The Proposed Project Failing

In his Complaint, Mr. Fokas alleges that Phillip breached an alleged contract by (1) "refusing to carry out their obligations to execute the mortgage on the building" and (2) "other parts of the loan documentation." See Complaint ¶ 31 (C/A No. 2015-CP-10-3919). Mr. Fokas Complaint details one alleged reason that this Defendant refused to execute a mortgage, "Defendant Philip Ferderigos demanded that Plaintiff execute an agreement whereby specified penalties would be paid in the event payments were not made on the note to the lending bank." Mr. Fokas does not allege, nor even make mention, in his Complaint that the proposed project being explored failed to move forward because Phillip could not eat for free at a restaurant located on the first floor of 229 King Street (Old Towne Restaurant).

Despite this fact, Mr. Fokas threatened to defame Phillip in the community (if he did not execute a mortgage and other loan documents Mr. Fokas had his bank prepare, but which Phillip had rejected and never agreed to) by threatening Phillip, in writing, that Mr. Fokas would publish to the community that a "multimillion dollar deal" did not move forward because Phillip could not "eat for free," adding that he believed everyone would find it "hilarious" and referencing that Phillip was "stupid":

> **Athan Fokas: "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 am 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 [means "stupid' in Greek] Philipa."**
>
> See Exhibit T of Defendant's Answer and Counterclaims, also attached hereto as **Exhibit 1**.

Thereafter, Mr. Fokas made true on his threat to defame Phillip in the community as set forth herein:

1. Mr. Fokas terminated the on-going negotiations, not Phillip.

Initially, it is undisputable that, among other reasons, *Mr. Fokas* terminated the second set of negotiations after the parties reached an impasse concerning a side agreement requirement (to protect Phillip's collateral), a mortgage and incorrect loan closing documents Mr. Fokas prepared, which Phillip never agreed to:

> **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."**
>
> **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."**
>
> **11/24/14: Email response from Athan Fokas to Phillip Ferderigos stating "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. Quite [sic] 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..."**
>
> **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."**

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." (Emphasis added).

See Defendant's Answer and Counterclaim, Exhibit M, attached as **Exhibit 6**.

2. Mr. Fokas introduced the "eat for free" at Old Towne Restaurant threat into negotiations, not Phillip.

By 11/24/2014, Mr. Fokas ended negotiations by stating "Well, then it's done. I'll reverse as much as I can and just right [sic] it off as a stupid transaction dealing with Ferderigos Family." Thereafter, angry that Phillip would not mortgage his property for Mr. Fokas' benefit, for the first time, it was *Mr. Fokas* himself who interjected that the thirty (30) plus year custom of the Ferderigos and Fokas families eating at Old Towne Restaurant for free was to cease immediately.[8]

Athan Fokas: "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."

See Exhibit S of Defendant's Answer and Counterclaims, also attached hereto as **Exhibit 8**.

This was done in an effort to harass, attempt to coerce and to gain an upper hand in negotiations, and "get back" at Phillip for not giving into Mr. Fokas' inappropriate demands. In other words, Mr. Fokas took such action out of ill will and malice.

[8] Comparable to the scenes of the movie "Big Fat Greek Wedding," both Ferderigos and Fokas family members had been eating "for free" for decades as they all grew up working in the family business. Mr. Fokas' ill will and contempt were on full display when he then attempted to use such long standing tradition as a bargaining chip in his negotiations. Failing to have its desired effect, it was shortly thereafter that Mr. Fokas concocted the fabrication that the negotiations come to an end when Phillip could not eat "for free" at Old Towne Restaurant. Mr. Fokas' rumor was intended to "defame" Phillip into complying with Mr. Fokas' demands.

3. Mr. Fokas threatened to defame Phillip with his false reason for the negotiations falling apart, said fabrication being designed to pressure Phillip into complying with Mr. Fokas' demands or to harm Phillip's reputation.

When his attempt failed to inappropriately coerce Phillip into giving a mortgage for Mr. Fokas' benefit or signing incorrect loan documents, something Phillip never agreed to do, Mr. Fokas took matters to the next level and viciously threatened to defame and spread defamatory statements to the community that the proposed project being considered failed because Phillip could not eat for free:

> **Athan Fokas: "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 am 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 [means "stupid' in Greek] Philipa." (Emphasis Added).**
>
> See Exhibit T of Defendant's Answer and Counterclaims, also attached hereto as **Exhibit 1**.

Mr. Fokas threat was clearly intended to put pressure on Phillip to comply with Mr. Fokas' demands, otherwise Mr. Fokas threatened to spread his false rumor that the negotiations failed because Phillip could not eat for free at Old Towne Restaurant. Mr. Fokas knew such allegation was false and would injure Phillip's reputation, which is exactly why he threatened Phillip that he would take such action.

4. Mr. Fokas proceeded to defame Phillip.

Thereafter, Mr. Fokas made true on his threat to defame Phillip in the community and defamed Phillip by telling third parties Stavros Ferderigos (Defendants' father), Dr. Fanouris Ferderigos (Defendants' uncle), and Antonia Fokas (Plaintiff's spouse) that the proposed project being considered did not move forward because Phillip could not eat "for free" at Old Towne Restaurant:

Athan: "I just spoke to your dad and he doesn't think everyone should eat at Old Towne for free either." See Exhibit T of Defendant's Answer and Counterclaims, also attached hereto as **Exhibit 9.**

Athan: "Phillip I expressed your thoughts to uncle Fanouri and for what it's worth he thinks nobody should eat for free and he says it has become childish at this point." See **Exhibit 10**, attached hereto.

Athan email to Spiros, Phillip, Jacob Ferderigos and copying third party Antonia Fokas: "If this deal is dead and you guys will not go forward unless you get to eat for free at Old Towne then I would like my expenses paid back to me because I have not delayed this project and we have had two closing's cancelled due to you guys reluctance to move forward ... I also feel that I can receive my attorney fees back due to a breach of contract and there may be ethics violations for Spiro admitting to threatening me by text. I have had trouble sleeping since I have received that text which could be breach or of bad faith dealing between partners. The eating at Old Towne for free was never an agreement between us going forward with the new suites and cannot be brought up now to delay the project ... I have cc'd my wife on this email so that she will be informed of all my conversations because we are life partners." (Emphasis added) See **Exhibit 11**, attached hereto.

The rumor based on Mr. Fokas' outright lie, that the multi-million dollar deal fell apart because Phillip could not eat for free, was thus "born" by Plaintiff. Although it was Mr. Fokas who abruptly ceased on-going negotiations by insulting Phillip and his family on 11/24/14, Mr. Fokas proceeded to viciously spread his defamatory lie (that the negotiations ceased because Phillip could not eat for free) in order to try to force Phillip to agree to material terms he never agreed to.[9]

5. Thereafter, Mr. Fokas attempted to negotiate with the "eat for free" term as leverage in his on-going negotiation attempts.

After threatening to defame Phillip and then defaming Phillip by spreading rumors that Phillip failed to move forward with the proposed project negotiations because Phillip could not

[9] To further prove Mr. Fokas' ill will and malice, Mr. Fokas proceeded to threaten threatened to build the new building on Phillip's property without his consent and he threatened that he would take ownership of that new building without Phillip's consent. See Email/Text to Ami Haynes and others attached as **Exhibit 12**, stating "To all parties. Let it be know [sic] that I will be more than happy to acquire an extra 1/6 percentage of this new project to that Phillip Ferderigos does not have to worry about signing as long as I own an extra 1/6th percent of the new project."

eat for free at Old Towne, Mr. Fokas then attempted to negotiate with the "eat for free" issue as leverage in his on-going negotiation attempts:

> **12/16/14: "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."**
>
> See **Exhibit 13**, attached hereto.

Based on the above, the entire "eat for free" debacle was a negotiating tactic of Mr. Fokas, which he employed to threaten, and then to defame, and ultimately to negotiate, with Phillip. Further, Mr. Fokas' initial reference to "the community" finding Mr. Fokas' defamation to be "hilarious" reflects his ill will and malice to have Mr. Fokas' defamation negatively impact Phillip's reputation if Phillip failed to comply with Mr. Fokas' demands.

D. Mr. Fokas' Defamatory Statements That The Proposed Project Did Not Move Forward Because Phillip Was Jealous Of Him and/or Phillip's Stubbornness

Thereafter, Mr. Fokas further defamed Phillip by publishing defamatory statements to third party Irene Fokas that the reason the proposed project did not move forward was because Phillip was jealous that Mr. Fokas has a larger ownership interest in 229 King Street than Phillip and/or because of Phillip's stubbornness.

Irene Fokas admitted in her deposition that everything she knows about the proposed project being considered at 229 King Street she learned directly from Mr. Fokas, See **Exhibit 14** attached hereto:

> Deposition of Irene Fokas, Page, 64, lines 4-7:
>
> **Q. And Athan is the one that has told you everything you know about the project at 229 King Street; correct?**
>
> **A. Of course.**
>
> Deposition of Irene Fokas, Page 57, lines 12-15:
>
> **Q. But you never spoke with Phillip, Jacob, or Spiros about the proposed building?**

A. No. I did not speak to them because I knew what was happening

Irene Fokas admitted in her deposition that Mr. Fokas told her that Phillip was not being asked/required to mortgage his interest in 229 King Street for Mr. Fokas to receive a loan for the proposed project being considered (despite the basis of Mr. Fokas' lawsuit alleging that Phillip did agree to provide such a mortgage), and that the reason the proposed project did not go forward was because Phillip was jealous that Mr. Fokas has a fifty percent ownership interest in 229 King Street, while Phillip only owned a one-third interest in 229 King Street. She also stated Plaintiff told her that the proposed project being considered at 229 King Street did not move forward because of Phillip's stubbornness. See **Exhibit 15** attached hereto:

Deposition of Irene Fokas, Page 51, lines 6 – Page 52, line 11:

Q. And did you know that in order for your son to get that loan, Phillip and Spiros would have to mortgage their interest in 229 King Street for Athan Fokas' loan?

A. I don't believe these things…[t]hey are not starting because the boys have – it's like – stubborn. They're stubborn … [o]r because the – Athan has half of the – half. They have half. They only have one-third.

Deposition of Irene Fokas, Page 53, lines 20-24:

Q. How did you come to know that Phillip and Spiros said these things?

A. He [Athan] said the stubbornness or the jealousy …

Again, Mr. Fokas spread false rumors to injure Phillip's reputation and to attempt to "shame" Phillip into compliance of Mr. Fokas' demands.

E. Mr. Fokas' Defamatory Statements to Third Parties That Phillip Accused Mr. Fokas of Willfully Setting Fire to 229 King Street For Insurance Proceeds and Other Insurance Fraud

Irene Fokas admitted in her deposition that Mr. Fokas told her that Phillip was going to accuse Mr. Fokas of filing false insurance claims and setting fire to 229 King Street for insurance proceeds. Irene Fokas admitted in her deposition that Mr. Fokas made these unprivileged

defamatory statements to her about Phillip, and that they were either made directly by Mr. Fokas to her or through Mr. Fokas' agent, Stanley Barnett, to her. See **Exhibit 16**, attached hereto:

Deposition of Irene Fokas, Page 46, line 3 – Page 47, line 7:

Q. Okay. Are you aware of any statements that Phillip or Spiros have made to Athan's lawyer?

A. I heard that the guys had told the attorney.

A. That Phillip and Spiros, they're going to accuse Athan for this and this and that.

Q. Does she – do you know what the specifics of the accusations are?

A. For fire, insurance, things like that ...

Q. Who told you these things?

A. Either the attorney or my son.

Accordingly, Plaintiff or his attorney told Irene Fokas that Phillip would accuse Mr. Fokas of arson or insurance fraud and Mr. Fokas sued Phillip for defamation based on his mother's speculation, or rather her repeating to Plaintiff what Plaintiff told her (that Phillip would accuse Mr. Fokas of such things).[10]

F. Further Inquiry is Required of Mr. Fokas' Written Communications to Kevin High, the Property Manager for Old Towne Suites, LLC, where Mr. Fokas (and presumably Mr. High) Have Refused to Comply with Discovery Requests/ Subpoena.

In addition, further inquiry is required from additional third parties, including discovery from Kevin High, the property manager for Old Towne Suites, LLC. It is expected further

[10] Ironically, had Mr. Fokas not defamed Phillip first, then Irene Fokas would not have "speculated" that Phillip would defame her son, Mr. Fokas. Then, Mr. Fokas seized on his mother's speculation to assert a frivolous lawsuit against Phillip for defamation.

inquiry into written communications between Plaintiff and Mr. High may reveal additional libelous and defamatory statements of Mr. Fokas concerning Phillip. Kevin High is the property manager of Old Towne Suites, LLC and Defendants have requested a copy of all written communications (texts/emails) between Mr. High and Mr. Fokas concerning Old Towne Suites, LLC and/or concerning the Defendants via requests to produce and a subpoena directly to Mr. High. However, Mr. Fokas has refused to respond to discovery requests and Mr. High has not responded to his subpoena, apparently objecting to providing such documentation via a motion for protective order filed by Mr. Fokas which is currently pending before the Court.

Phillip believes that the written communications between Mr. Fokas and Mr. High may reveal additional libelous statements from Mr. Fokas to Mr. High concerning Phillip. However, based on the objections which have been filed, Phillip has been prevented from obtaining such documentation. Moreover, Mr. Fokas' objections are meritless as Kevin High is a property manager of Old Towne Suites, LLC and, as a member of the LLC, Phillip is entitled to any and all communications between Mr. High and Mr. Fokas.[11] Accordingly, the objections lodged and the refusal of Mr. Fokas to respond to discovery are in bad faith and additional evidence is expected if Mr. Fokas and Mr. High fully comply with the discovery request and the subpoena.

CONCLUSION

In order to prevail in his Motion for Summary Judgment, Mr. Fokas has the burden of clearly establishing the absence of a genuine issue of material fact and that he is entitled to

[11] It appears that Mr. Fokas' counsel has offered to provide selected documents responsive to the request/subpoena that he deems are relevant. Indeed, he seeks to shield any documents that he views as being personal from discovery. Discovery, however, does not work that way and Mr. Fokas is not the arbiter of what he feels is personal and what he feels is business. Rather, Defendants are entitled to all documents responsive to the request/subpoena and for Plaintiff to provide a privilege log concerning any documents where a privilege may exist; thereafter, it is the Court which is the arbiter concerning the validity of any claimed privilege. Plaintiff has not provided any documents or a privilege log in such regard. Also, Phillip has already agreed to a confidentiality order concerning the production of such documents. Accordingly, Mr. Fokas' feigned rationale for failing to respond to discovery is merely a pre-text to avoid producing such documentation.

judgment as a matter of law. In determining whether any triable issue of fact exists, the evidence and all inferences must be viewed in the light most favorable to Phillip. Furthermore, because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. As set forth above, Mr. Fokas has failed to meet his burden of proof to clearly establish an absence of a genuine issue of material fact. To the contrary, Phillip has proved Mr. Fokas defamed him by Mr. Fokas' own admissions and writings to third parties. Phillip has specifically set forth Mr. Fokas' own written communications to third parties and deposition testimony of Mr. Fokas' own mother which clearly sets forth that Mr. Fokas did indeed defame Phillip with both defamatory statements to third parties that are *actionable per se*, as well as defamatory statements that not *actionable per se*.

Based upon the evidence discussed above, Defendant Phillip Ferderigos respectfully asks this Honorable Court to deny Mr. Fokas' Motion For Partial Summary Judgment.

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BY: _____

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ATTORNEYS FOR DEFENDANT PHILLIP FERDERIGOS

June 5, 2017
Charleston, South Carolina

(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 Phillipa. 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

/

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.

EXHIBIT

(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 cslled 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.

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.

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT PHILLIP FERDERIGOS

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, PHILLIP FERDERIGOS (hereinafter referred to as "Phillip"), by and through his undersigned counsel, will hereby move before this Honorable Court, in the Charleston County Courthouse on the tenth (10th) day after service hereof, or at such other time and location as determined by the Court, for an Order granting summary judgment as to all causes of action in his favor.

This Honorable Court should grant summary judgment because no genuine issue of material fact exists and Phillip moves for summary judgment for the following reasons: there is no genuine issue of material fact that (1) the material terms Plaintiff alleges were not known at the time the Plaintiff alleges the parties entered into any "agreement"; (2) the material terms Plaintiff alleges were not agreed upon by Phillip; (3) there was no "meeting of the minds" necessary to form a binding agreement and/or no "meeting of the minds" of what constituted the material terms of any alleged agreement; (4) there is no signed written agreement between the Plaintiff and Phillip concerning the material terms of any alleged agreement the Plaintiff alleges; (5) the Plaintiff's claims are barred by the Statute of Frauds; (6) South Carolina does not

EXHIBIT 3

recognize "agreements to agree," and Phillip did not agree to an agreement to agree; and (7) there was no binding agreement as Plaintiff repeatedly released Defendants in writing from any alleged agreement and informed Defendants that he himself [Plaintiff] could abandon any alleged agreement.

Here, essentially, all parties agree that Plaintiff and Defendants were exploring the possibility of building a new building at 229 King Street. All parties agree that the parties spent money investigating the proposed project, including paying their respective share of fees for engineering, architectural work, planning and zoning approval, and design work for the proposed project. However, when negotiations of material terms came to an impasse (concerning material terms of the proposed project itself, as well as terms of financing the proposed project), Plaintiff threatened and subsequently filed this present lawsuit, which Phillip asserts is simply a meritless action[1] designed to force him to agree to material terms he had, has, and continues to resoundingly reject.

Specifically, from 2012 to October 17, 2014, the parties were exploring the possibility of building a new building at 229 King Street (a property which the Plaintiff and Defendants own as tenants in common). Plaintiff and Defendant Jacob Ferderigos were supposed to get a personal loan for the proposed project, but Defendant Spiros Ferderigos and Phillip would bring their own cash to the transaction if it were to occur. Importantly, during this time period, Defendant Spiros Ferderigos and Phillip never agreed and specifically rejected providing any guarantees, mortgages, encumbering their interests, or incurring any debt in regard to the proposed project.

After the issuance of a permit, on or about October 17, 2014, Plaintiff told Defendant Jacob Ferderigos that his brothers (Phillip and Spiros) had to sign a mortgage concerning their

[1] For example, Plaintiff himself subsequently sent written emails/texts advising that his attorney is not costing him anything and Defendants need to agree to his terms or he would continue to force Defendants to spend money on attorneys' fees defending the case.

interests in 229 King Street for the proposed project. As such, Plaintiff demanded that Defendants Spiros Ferderigos and Phillip encumber their interest in 229 King Street for the proposed project. This demand had been previously rejected by Defendant Spiros Ferderigos and Phillip.

Although both Defendants Spiros and Phillip Ferderigos had outright rejected such demand previously, from October 17, 2014 until the filing of Plaintiff's Complaint, Defendants Spiros Ferderigos and Phillip attempted to negotiate material terms to potentially move forward with the proposed project, including a Side Agreement/Ancillary Contract which would protect their respective collateral if Plaintiff were to default on any loan obligations, IF Phillip were to sign a mortgage for Plaintiff to get his loan. As to Phillip, Plaintiff refused to agree to the Side Agreement terms and placed even more terms upon Phillip, which Phillip summarily rejected. Further, aside from Phillip negotiating the possibility of signing a mortgage for the proposed project, Plaintiff subsequently demanded that Phillip sign, in his individual capacity, additional documents with material terms which Phillip never agreed to, including, but not limited to: (1) a mortgage for Phillip's 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. Plaintiff's incorrect and non-agreed upon closing documents also required Phillip to assign his interests *as a member of the LLC* for (1) the Note as the Borrower for Plaintiff's 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. See Par. 101 of Phillip's Answer & Counterclaim.

Finally, thereafter, Plaintiff threatened to build the building on Defendant's property, without Defendant's permission. Moreover, Plaintiff subsequently introduced even more terms to try to force Phillip to mortgage his property for Plaintiff's benefit, this time unilaterally decreeing that the 20 plus year custom of the parties and their families eating for free at the family restaurant was to immediately cease, and, when such tactic failed, by then threatening to defame Phillip by spreading false rumors as to why the proposed project fell apart if Phillip did not give Plaintiff what he wanted. See Phillip's Answer & Counterclaim Par. 108, Email from Plaintiff dated 12/15/14, 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."

Phillip hereby incorporates his detailed Answer and Counterclaim and the accompanying Exhibits which set forth and prove that Plaintiff's pleadings and allegations lack merit. There were further numerous unknown material terms at the time Plaintiff 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, a side agreement, and/or any other material terms set forth in Plaintiff's bank closing documents, or other additional material terms. Plaintiff's 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 and/or rejected by Phillip at the time Plaintiff alleges an agreement was made. This is

evidenced by the written documentation between the parties which have been attached as exhibits to Phillip's Answer and Counterclaims.

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

Phillip bases this Motion for Summary Judgment upon the pleadings, deposition testimony and accompanying exhibits, Affidavits, any documents filed with this motion and subsequent memorandum and with the court, the applicable law, and any memorandum of law to be submitted to the Court. Phillip reserves the right to supplement this Motion with additional memoranda, Affidavits, and other documents in support of the arguments contained herein.

K & L GATES, LLP

Richard A. Farrier
Jennifer H. Thiem
134 Meeting Street, Suite 500
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ATTORNEYS FOR DEFENDANT PHILLIP FERDERIGOS

February 28, 2017
Charleston, South Carolina

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
4

Fanouris is saying -- (Greek.)
A. My brother Fanouris said, "This is crazy. I've never heard of things like this." So we did not have a problem after that.
Q. Do you know anything about a request for a mortgage related to building the project at 229 King Street?
A. No. I never got involved in things like this.
Q. Do you know if your son Athan made any money from the sale -- from the sale of his restaurant Zeus?

00073

A. He sold the store. Yes. He did donate it. They pay for it.
Q. Do you know the details of that?
A. I do not get involved with things like that.
Q. Did your son Athan tell you that it was stupid for Phillip and Spiros not to build the building?
A. He did say that it is stupid or superior to have such a chance to build the apartments and not to take this opportunity to do it.
Q. Did Athan tell you that it was Phillip an Spiros' fault that the building was not being built?
A. Of course. And afterwards it was not as formal as at the beginning. He told us he did not agree with the things, but later --
Q. So as a result of what Athan told you about this, do you believe it is Phillip and Spiros' fault that the building is not being built?
A. Of course. I told Athan -- two-and-a-half years later everything was ready to be done, and they didn't want to do it but -- and they didn't have to wait for Spiros to become a judge.

00074

They could have started, and you wouldn't -- they would have been finished by now.
Q. Okay. So then as a result of what your son Athan told you, do you think that Phillip and Spiros are bad business people?
A. Yeah. I tell you this for the second time. I answered this already. We're going to talk about the same things over and over again?
Q. No. The -- the question -- the question was different.
A. We answered this question. It was exactly the same thing.
Q. No. The first question that you answered was: Do you believe it is Phillip and Spiros' fault that the building was not built?

EXHIBIT 5

Friday, March 18, 2016

athanfokas@gmail.com

My dad was a little upset that you wouldn't speak with him about giving Justin a $10.00 a shift raise and then threatened to call the police if he doesn't leave your public restaurant. 1:51 PM
He said that you were born in his house and that's the thank you you've given him.

Monday, March 21, 2016

athanfokas@gmail.com

Did you drop off the suites check? 2:56 PM

athanfokas@gmail.com

Jason just text me this: "We had another chair break while a customer was eating lunch today."
Do you want to go in there with me one morning so we can fix the rest of the chairs. Except for the 27 I fixed the rest need two holes drilled in each leg and then screwed to the frame to prevent those legs from coming apart. Let me know when you are available. 4:05 PM

Jacob Ferderigos

Athan, I am not discussing Old Towne business decisions with you or agreeing to you being an intermediary between me and your father. Stop texting me. Again, if the chairs are not safe then they need be thrown out immediately. To this day we are continuing to seat customers in those chairs. I find it very suspicious that all of the sudden you are texting me that chairs are breaking after you demanded that the corporation purchase your personal chairs, tables, and other inventory, and after you made "repairs," without my knowledge or consent, to chairs that never should have been put back in to circulation for customers to use. In the rare instances a chair breaks, it is supposed to be removed - not "repaired" by you and put back to use. You are not a chair expert. You are not a safety expert. You are not an engineer. It is unbelievably dangerous for you to have done that. 6:07 PM

athanfokas@gmail.com

There were no demands but we all know this is Phillip talking and exaggerating words as usual. You may not be aware of this Phillip but Old Towne Restaurant pays Jacob and I $500.00 twice a month to make sure Old Towne business is taken care of. So enough with your ridiculous rhetoric and let Jacob and I take care of business as we always have for the last ten plus years! 6:22 PM

EXHIBIT
6

Jacob Ferderigos

Athan, I am tired of you insulting me. You consistently ignore my thoughts and treat me like I am stupid by saying that what I tell you must be coming from Philip. You treat me like a dumb person and I am tired of it. I am a fifty percent co-owner in the corporation and you cannot talk to me like that, especially if you are now claiming that you are an employee. Stop texting me or trying to talk to me about Old Towne. Those are things that need to be taken care of between the two equal co-owners of the corporation.

You know very well that we began drawing a small salary from the corporation because the bookkeeper told us that it was required by the IRS because we are a profitable owner operator corporation. Because we were both co-owners of the corporation, we began drawing the salary. This was done when you were representing that you were my fifty percent equal co-owner and I believed you. Given your latest filings with the Court, that is something that needs to be changed immediately because you are no longer claiming to being my equal fifty percent co-owner in the corporation, but just an employee. Stop making stuff up that you know is not true. Also, for the last time, do not text me anymore. Do not send me harassing texts. I will not respond to any more of your texts.

7:56 PM

athanfokas@gmail.com

You don't have to respond but in the last ten years Jacob has never written me one paragraph much less these novels that Phillip likes to write. Your writing style is seen in all the paperwork of all three lawsuits Phillip. Jacob did tell me after you decided you weren't going to build the new suites Phillip that (Jacob's quote) "my brothers (Phillip & Spiro) think I'm stupid cause they are attorneys and I'm not"

I don't think Jacob is stupid at all. He is the one who realized what a great profitable deal these new suites would be given our track record. 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. Just like your dad said that Phillip is the King of the family.

And the checks that Jacob and I receive is because we are overseeing the managers and making sure the restaurant runs smoothly. I continue to make sure the restaurant runs well and continue to fix any issues that we have with Old Towne because that's what I get paid to do. On another note: Justin has expressed that he would like a raise. Apparently that was discussed at Starbucks when he signed the affidavit you guys wrote for him and then realized that it was incorrect information. Justin is a reliable employee and he is asking a $10.00 a shift raise which is not unreasonable at all. My father has spoken to Justin and agreed with the raise but would like confirmation from Jacob. If Justin quits then I will have to pick up his shifts until we find another manager or I will split those shifts with Jacob but he has already said that he doesn't have extra time to work extra shifts. I and my father would like to know if Jacob agree's with this raise that he had already discussed with Justin when he was tricked into signing an affidavit that was false but forgot to mention it to me or my father.

8:27 PM

Tuesday, March 22, 2016

athanfokas@gmail.com

Good news! The city extended the building permit to build the new suites through August 24, 2017. We have plenty of time now to negotiate. .

11:05 AM

Gmail

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
7

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@bamwell-whaley.com>
Cc: "<lakovosstavros@gmail.com>" <lakovosstavros@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

Phillip Ferderigos <pferderigos@barnwell-whaley.com> Mon, Nov 24, 2014 at 1:43 PM
To: Athan Fokas <fokasa@bellsouth.net>
Cc: lakovosstavros@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
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 1:46 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>, "<lakovosstavros@gmail.com>" <lakovosstavros@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]

Gmail

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: "<lakovosstavros@gmail.com>" <lakovosstavros@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
8

(843) 813-5612

I can't walt 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 walst 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

9

Me

No, that is not what I said... I will not meet with you to discuss any options until we go back to the status quo first...if that is a problem, then that is fine... 1:26 PM

(843) 813-5612

I do not understand what the status quo interpretation was but am sure if we meet we can figure that out. 1:28 PM

Me

Athan, I do not have time for the games that you are playing today.... If you want clarification, I will prepare a contract for you and Jacob to sign that says our respective families can eat at old towne for free... Just like it has been for decades... I'll have it for your consideration sometime next week, assuming I have a time to get to it. 1:39 PM

If you do not like that requirement on the front end, that's fine. I am not interested in moving forward with options. Thanks, Phillip

(843) 813-5612

I'm not playing games but if all families get to eat for free and Jacob and I are paying for the food cost then do we get free legal advise in return? 1:41 PM

Me

Athan, I am not interested in moving forward with you. Please do not email or text me anymore. Have a nice day sir, Phillip. 1:42 PM

(843) 813-5612

Why can't you have a business discussion and come to an agreement t 1:43 PM

(843) 813-5612

that make sense 1:43 PM

(843) 813-5612

Phillip I expressed your thoughts to uncle Fanouri and for what it's worth he thinks nobody should eat for free and he says it has become childish at this point. He also asked what happened to the escrow money you said you would put up. Maybe you should call him. 3:11 PM

EXHIBIT

10

Gmail spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites Addition:

1 message

Athan Fokas <athanfokas@gmail.com> Tue, Jan 6, 2015 at 12:20 PM
To: "lakovosstavros@gmail.com" <lakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: Antonia Fokas <antoniafokas@hotmail.com>, "zeusseafood@bellsouth.net" <zeusseafood@bellsouth.net>

Gentlemen,
I hope you are having a good New Year so far and hope it is prosperous for you.
I spoke with Jacob today and asked him where we are on the suites. He said that he hasn't spoken to Phillip or Spiro. Jacob did ask me to put a hold on it until after the holidays and that is why I am writing you now. I have tallied up our expenses thus far on the new suites project and came up with $79727.99. We still owe $3000.00 to our engineer and we owe $2500.00 for our original appraisal to the bank and we owe $350.00 to Amy Haines for the title search. I plan to have those bill paid once we receive our end of the year suites check this week. All in all the project so far has cost $85577.99 which puts us at $42789.00 each for the Fokas half and the Ferderigos half. If this deal is dead and you guys will not go forward unless you get to eat for free at Old Towne then I would like my expenses paid back to me because I have not delayed this project and we have had two closing's cancelled due to you guys reluctance to move forward. The contractor did express that prices are increasing and he would not be able to honor our original contract because of the delay. I'm not sure what that increase will be and if we move forward I do think that the Fokas 50% is not responsible for the increase.
I would like to know where you guys stand on this because next week I plan to hand over all the emails and texts of our conversations to my attorney so we can file a Specific Performance Lawsuit asking you to either finish the deal or pay me my expenses to get out of it. I also feel that I can receive my attorney fees back due to a breach of contract and there may be ethics violations for Spiro admitting to threatening me by text. I have had trouble sleeping since I have received that text which could be breach or of bad faith dealing between partners.
The eating at Old Towne for free was never an agreement between us going forward with the new suites and cannot be brought up now to delay the project.
I would like to have your answer my this Friday January 9.
Sincerely,
Athan Fokas
PS: I have cc'd my wife on this email so that she will be informed of all my conversations because we are life partners.

EXHIBIT
11

1197

Phillip Ferderigos

From: Athan Fokas [fokasa@bellsouth.net]
Sent: Friday, November 21, 2014 2:47 PM
To: Phillip Ferderigos
Cc: Amy Haines; Spiros Ferderigos; Athan Fokas; <iakovosstavros@gmail.com>
Subject: Re: Old Town

This is all humorous to me. I do all the work and line your pockets with money and you complain and wine in the process. I have many other projects that I am working on that are better appreciated.

Sent from my iPhone

On Nov 21, 2014, at 2:29 PM, Phillip Ferderigos <pferderigos@barnwell-whaley.com> wrote:

> Athan,
>
> Jacob, Spiro and I own ½ of 229 King Street and ½ of Old Towne Suits, LCC. Although we attempted and are attempting to build a new building on that property, to the benefit of all, it is clear that there is no agreement between you and us on the details of how the note is to be structured or personally guaranteed, as well as other details.
>
> Until these particulars are resolved, we regretfully can not move forward with the project. I recommend we re-set the closing for next week to see if we can work through these issues.
>
> If not, then we can not move forward. Thanks, Phillip.
>
> Phillip S. Ferderigos, Esq.
> Member
>
> <image001.jpg>
>
> 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
>
> **From:** Athan Fokas [mailto:fokasa@bellsouth.net]
> **Sent:** Friday, November 21, 2014 2:10 PM
> **To:** Phillip Ferderigos
> **Cc:** Amy Haines; Spiros Ferderigos; Athan Fokas; <iakovosstavros@gmail.com>
> **Subject:** Re: Old Town
>
> To all parties. Let it be know that I will be more than happy to acquire an extra 1/6 percentage of this new project so that Phillip Ferderigos does not have to worry about signing as long as I own an extra 1/6 th percent of the new project.
> Sincerely,
> Athan Fokas

EXHIBIT
18

Athan to Phillip 0082

(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

13

Thanksgiving 2014?
A. If he said something bad about them?
Q. Not necessarily anything bad. Just does he remember -- or does she -- do you remember your son Athan talking about Phillip and Spiros during the family Thanksgiving last year?
A. Yes. I don't remember.
Q. Do you remember if your son Athan told everyone that the reason why the building was not being built was because of Phillip and Spiros?
A. Jacob did not say anything, but then he became -- he -- before Iakovos did not take their side, but now he takes their side.
Q. Okay. My question is: Do you remember at last Thanksgiving your son Athan telling everyone at the dinner table that the reason the building was not being built was because of Phillip and Spiros?
A. I cannot -- you're asking me such a question. Is it better on a holiday like Thanksgiving we will be discussing things like that?

00063

Q. So is your response that, no, that was not discussed?
A. No. But I was very upset inside because I could not be with my entire family, and then I kept it to myself. I did not complain. I --
Q. Who all was present at that Thanksgiving?
A. My family.
THE WITNESS: My family.
Q. Can you provide the names of those individuals? As many as you can.
A. My children, my grandchildren.
THE WITNESS: That's all. Me and my husband.
A. And me and my husband. That's all.
Q. Did your son Athan tell you that Phillip and Spiros broke a promise to him regarding building the building at 229 King Street?
A. I knew this from before, but we did not discuss it at Thanksgiving.
Q. Right. Not at Thanksgiving. At any time did your son Athan tell you that Phillip and Spiros broke a promise to him regarding building the building?
A. They do not want to build the

00064

apartments.
Q. And did Athan tell you that?
A. Who else? Of course.
Q. And Athan is the one that has told you everything you know about the project at 229 King

EXHIBIT 14

Street; correct?
A. Of course.
Q. Was the first time that you spoke to Mr. Barnett when you returned from Greece in October of 2015?
A. Yes.
Q. Had you ever spoken with him before that time?
A. No.
Q. And where did you all meet?
A. My house.
Q. Are you aware of whether or not Mr. Barnett ever tried to contact you before you came back to America from Greece?
A. No.
Q. When you met with Mr. Barnett, were your daughter Rania and your son Athan present for that meeting?
A. Yes.
Q. Was anyone else present?

00065

A. No.
Q. And during that meeting did Mr. Barnett tell you that you would not need to appear for your deposition?
A. No. He didn't tell me such a thing.
Q. Okay.
A. What do you mean not to go? Where?
Q. That you would not need to appear for your deposition on October 28.
A. No. He did not say such a thing.
Q. Did you discuss with Mr. Barnett the fire that happened at 229 King Street?
A. We said something. We talked about the fact that his cousins are trying to accuse him of these things.
Q. And so Mr. Barnett told you that Phillip and Spiros were telling people that Athan started the fire at 229 King Street?
A. I don't know if he said it that day.
Q. Do you know what you all discussed, then, in regards to 229 King Street?
A. We said that they are accusing Athan for the fire and for insurance.
Q. So Mr. Barnett told you that Spiros and Phillip were accusing Athan of starting the fire

00066

and filing false claims?
A. Yes. Maybe. I think he told me. He must have told me. I don't remember well.
Q. Did Mr. Barnett tell you any of the details about the lawsuits that Athan filed or started?
A. He said that they accusing Athan for

THE WITNESS: The problems.
A. -- the problems.

00056

Q. Did you ever speak with Phillip or Spiros Ferderigos about the project of building a building?
A. I didn't speak to them because I knew what -- what they would tell me. They would tell me that it's our fault. It is your son's fault.
Q. Did you ever speak with Jacob Ferderigos about building the proposed building?
A. I know that he did not agree. Iakovos did not agree with his brothers, but he's on their side now; and now the three of them are going after Athan.
Q. But you never spoke with Jacob about the plans to build the building?
A. No. He -- but I knew he was in good terms with him at this, but now things change. He's with his brothers, and they are accusing Athan.
Q. And the only people involved in this proposed building were your son Athan, Phillip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos; correct?
A. Yes.
Q. And you have not spoken with Phillip, Spiros, or Jacob Ferderigos about the proposed

00057

building; correct?
A. I remembered that they were saying that why isn't he doing it faster? For my son, why this is not happening? What is he doing?
Q. But you did not speak with Phillip, Jacob, or Spiros about the proposed building; correct?
A. No. She said -- she said my brother said that when these apartments are built, we're not going to have any problems. We're going to have plenty of money.
Q. But you never spoke with Phillip, Jacob, or Spiros about the proposed building?
A. No. I did not speak to them because I knew what was happening.
Q. And the reason you knew what was happening was because your son, Athan Fokas, told you what was happening?
A. Everything was good for two-and-a-half years. All together -- all together the family, we celebrated holidays.
Q. I understand that.
But I'm trying to understand how you came to know this information as to what happened with the building. Is the source of your -- is

everything is ready; and they say they don't want to do it. That is the problem.

And they bring out all these other things, and they accusing Athan. The main problem is that they can start building, and everything can go away. They can throw out all the papers, and they can start.

He -- all that Athan wants -- he doesn't

00050

want any money. He only wants to start this building. He's been waiting for two-and-a-half years. He's been working towards this for two-and-a-half years, and I don't understand why they don't want to start. This is good for everyone.

Q. And is Athan Fokas the source of your information on that?

A. Who else?

Q. Are you aware that your son, Athan Fokas, was asking Phillip and Spiros to mortgage their interest in 229 King Street to build that building?

A. I don't know about these things. To get a loan on the building?

Q. Yes. In Phillip and Spiros' name for -- for --

A. He's been told that they had to get a loan on the building? For two-and-a-half years, that's now we find this out?

Q. Do you understand that Phillip and Spiros were going to pay cash for this building?

MR. BARNETT: Object to the form.

A. I don't -- I don't think he did, but they never -- they put the money down. When it was time to start the building, they did not put

00051

the money down. But they haven't -- two-and-a-half years, they knew there had to be a loan.

Q. Do you understand that your son needed a loan for that project?

A. I knew that, and they knew that.

Q. And did you know that in order for your son to get that loan, Phillip and Spiros would have to mortgage their interest in 229 King Street for Athan Fokas' loan?

A. I don't believe these things. They knew this for two-and-a-half years, and the youngest said I had to become -- wants to get the position, the highest position, and -- because --

THE INTERPRETER: Judge?

THE WITNESS: Yes. (Greek.) What we say before?

THE INTERPRETER: The judge?

THE WITNESS: The judge, yes. (Greek.) Building, the apartments. And I don't understand

EXHIBIT 15

why. The evidence is already -- everything that -- to start it, where to Spiros and three months, stop to start. And after Spiros all ready to start, Phillip will say, I know what, no. No start the building. After two-and-a-half years no how -- (Greek.) With Athan everything,

00052

you know. So I know -- that's all of that stuff.

MR. HASTIE: Did either the court reporter or the --

THE WITNESS: (Greek.)

A. They are not starting because the boys have -- it's like -- stubborn. They're stubborn.

THE WITNESS: Yeah. I think so. (Greek.)

A. Or because the -- Athan has half of the -- half. They have half. They only have one-third.

THE WITNESS: I don't know. I will no understand why no start and all about the copy that's coming now for nothing.

Q. Is that the reason that you believe the buildings or the rental units were not built?

A. If there was a problem, they would have told us two-and-a-half years ago.

THE WITNESS: Yeah.

A. If Spiros did not wait to become -- whatever he wants to become, then he would have started.

THE WITNESS: Yeah. And he waited three months to Spiros, if he go there. Stop. No go. So it's ready to start; and after that, say no, I

00053

not going to start after two-and-a-half years.

Q. And are all those things what your son, Athan Fokas, told you?

A. I listened because my brother would say, "Did they start building yet? Those apartments? What is Athan doing?"

Q. But is it Athan Fokas that told you the reasons why you're saying here today Phillip and Spiros are not building the building?

A. No, no, no. I -- it's stubbornness.

THE WITNESS: Yeah.

A. That's -- because there's no other reason.

Q. Okay. So there's no other reason, but how did you come to understand that this was the reason?

A. Because they said it's not going to be done. It's not going to be done.

THE WITNESS: He say, no, no.

Q. How did you come to know that Phillip and Spiros said these things?

A. He said the stubbornness or the jealousy that they're not getting -- they're also not getting tests.

THE WITNESS: (Greek.) Before it's

00054

finished to start. Two-years-and-a-half, and Athan's worked to -- to everything be okay to start the building. Why no say before? But I'm saying everything is okay to start.

Q. Is everything you know about this proposed project, did that come from Athan Fokas, your son?

A. Everything was good. My brother was asking me. "Why is Athan not doing this? Why is he not starting it? Why aren't they finishing?"

Q. I understand that, Mrs. Fokas; but can you tell me: Is Athan Fokas the person that told you everything you know about this proposed project?

A. All I know is that he tried to and worked very hard, and he suffered for two-and-a-half years to start building this apartment.

We would have not waited for Spiros to become a Judge. We had to wait for three months, then we would have started.

THE WITNESS: Yeah. After three months, we waited for Spiros -- (Greek.)

A. We waited three months for Spiros to become a Judge, and then three months later Spiros said, "I don't want to do it." We fell

00055

off the -- the cloud. It was like a mountain for us. We waited and waited for this to start.

Q. Are you just guessing that these are the reasons why the building was not completed or started, or is this what Athan Fokas told you?

A. They said we waited for two-and-a-half years. Everything was ready. Athan said, "We're ready"; and then we had to wait for Spiros to become a judge.

THE WITNESS: After three months, Spiros -- (Greek.) No be the judge. So now all ready. So go to start. He say no. I not going to start.

Q. I understand that that's what you believe happened, but how is it that you know that that's what happened? Is that what your son, Athan Fokas, told you; or are you guessing?

A. We lived this things every day.

Q. I understand that you lived these things every day, but were you involved in the building of the building?

A. No. But I -- I would always see the -- I could always see --

or Spiros ever said anything to Mr. Barnett?
A. No.
Q. Is everything that you know about what was told to Mr. Barnett, did that come from your son, Athan Fokas, or Mr. Barnett himself?
MR. BOWERS: And that might have been worded very poorly; and if it is, please ask me to rephrase it, Madam Interpreter.
THE INTERPRETER: Yes. Please rephrase it, yes.
Q. Everything that you know about what Stanley Barnett has been told came from either

00046

Athan Fokas or Mr. Barnett; correct?
A. Don't understand.
Q. Okay. Are you aware of any statements that Phillip or Spiros have made to Athan's lawyer?
A. I heard --
THE INTERPRETER: The interpreter wants to hear her answer again. I don't understand what she's saying.
MR. BOWERS: Okay.
A. I heard that the guys had told the attorney.
MR. BOWERS: I'm sorry. Could you get her to rephrase that answer 'cause I'm not sure that I understand.
THE INTERPRETER: I know.
I heard from where.
A. That Phillip and Spiros, they're going to accuse Athan for this and this and that.
Q. And what is "this, this, and that"?
A. Whatever my daughter told me. The things she was afraid for her brother.
Q. But you're not aware of what those things are?
A. Accusations against Athan.

00047

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

EXHIBIT
16

CERTIFICATE OF SERVICE 15-CP-1023919

I hereby certify that the foregoing **MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON BEHALF OF DEFENDANT PHILLIP FERDERIGOS** was served upon the parties to this action by U.S. mail, sufficient postage attached thereto, to the following counsel of record:

Stanley E. Barnett, Esquire
305 North Civitas Street
Mount Pleasant, SC 29464

Leslie S. Lenhardt, Esquire
Lenhardt Law Firm, LLC
1876 Wallenberg Blvd.
Charleston, SC 29407

M. Dawes Cooke, Jr., Esquire
Jeremy M. Bowers, Esquire
288 Meeting Street, Suite 200
Charleston, SC 29401

John Massalon, Esquire
Wills Massalon & Allen, LLC
P.O. Box 859
Charleston, SC 29402

FILED
2017 JUN -5 PM 12:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This the 5th day of June 2017

Legal Assistant

K&L GATES

June 5, 2017

Jennifer H. Thiem
T +1 843 579 5638

Jenniferjthiem@klgates.com

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: **Athan Fokas v. Philip Ferderigos, Spiros Ferderigos and Jacob Ferderigos**
Case No. 2015-CP-10-3919

Dear Ms. Armstrong:

Enclosed herewith please find the original and one copy of Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment on Behalf of Defendant Phillip Ferderigos in connection with the above-referenced matter.

Please file the original and return the filed-stamped copy to me *via* our courier.

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any questions. By copy of this letter, we are serving same on all counsel of record.

With kind regards, I remain.

Sincerely,

Jennifer H. Thiem

JHT/glm
Enclosures
cc: Stanley E. Barnett, Esq.
Leslie S. Lenhardt, Esq.
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John A. Massalon, Esq.
(via email and U.S. mail, w/encl.)

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, SPIROS FERDERIGOS, and JACOB FERDERIGOS

Defendants.

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON BEHALF OF DEFENDANT SPIROS FERDERIGOS

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT

TO: STANLEY E. BARNETT, ESQUIRE, and LESLIE LENHARDT, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF

Defendant, SPIROS FERDERIGOS, by and through his undersigned counsel, hereby submits this Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment as to Counterclaims of Spiros Ferderigos. Plaintiff seeks summary judgment only as to Defendant's counterclaim for defamation. Because Defendant has put forth evidence to show Plaintiff published defamatory statements impugning Defendant's honesty and integrity to third-parties, including statements about his unfitness to serve as an attorney and assistant solicitor, this Honorable Court must deny Plaintiff's Motion for Partial Summary Judgment.

PLAINTIFF'S ALLEGATIONS & PROCEDURAL HISTORY

The parties are involved in two lawsuits. One lawsuit (Civil Action No. 2015-CP-10-3919) involves a dispute about their underlying investigation into the possibility of, feasibility of, and their interest in constructing an entirely new, separate, and free-floating building above 229 King Street to be used for rental units. Plaintiff (hereinafter Mr. Fokas) alleges Defendant entered into an oral contract with Mr. Fokas related to the construction of these new rental units above 229 King Street. Complaint ¶ 24 (C/A No. 2015-CP-10-3919). Further, Plaintiff alleges

"Defendants breached the contract by refusing to carry out their obligations to execute the mortgage on the building and other parts of the loan documentation." Complaint ¶ 31 (C/A No. 2015-CP-10-3919). Mr. Fokas' Complaint details two alleged reasons Defendants refused to execute a mortgage: (1) "Defendant Spiros Ferderigos refused to sign the mortgage for the closing as he was in contention for a seat on the South Carolina Circuit Court and informed Plaintiff the mortgage might affect his consideration" (Complaint ¶ 16, C/A No. 2015-CP-10-3919); and (2) "Defendant Philip Ferderigos demanded that Plaintiff execute an agreement whereby specified penalties would be paid in the event payments were not made on the note to the lending bank. If this agreement were executed, said Defendant agreed he would execute the mortgage" (Complaint ¶ 19, C/A No. 2015-CP-10-3919).

Mr. Fokas' Complaint does not allege Defendant breached any "alleged contract" because Defendant could not eat for free at the restaurant located on the first floor of 229 King Street (Old Towne Restaurant). Plaintiff's Complaint also does not allege Defendant breached any "alleged contract" because Defendant was jealous of Mr. Fokas and/or because of Defendant's stubbornness. As set forth below, Mr. Fokas defamed Defendant by spreading these and other malicious and defamatory statements to third parties in an effort to coerce Defendant to sign a mortgage and closing documents he never agreed to sign.

Mr. Fokas also filed another lawsuit against Defendant (Civil Action No. 2015-CP-10-3891) which alleges Defendant published defamatory statements about Mr. Fokas, particularly with regard to setting fire to Old Towne Restaurant and filing false insurance claims. Defendant filed an Answer and Counterclaim denying these allegations. Defendant also asserted a cause of action for the initiation of frivolous proceedings in both pending actions based on the lack of any evidence to support Mr. Fokas' breach of contract and defamation claims.

STANDARD OF REVIEW

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 219, 616 S.E.2d 722, 729 (Ct. App. 2005). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Id. at 220, 616 S.E.2d at 729. "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." Id. "However, when plain, palpable, and indisputable facts exist on which no reasonable minds cannot differ, summary judgment should be granted." Id. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id. at 219, 616 S.E.2d at 729. "If triable issues exist, those issues must go to the jury." Id.

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Id. at 220, 616 S.E.2d at 730 (emphasis added). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Id. "Rather the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. (emphasis added).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Id. Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." Id. (emphasis added). "In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of

evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

DEFAMATION JURISPRUDENCE

Under South Carolina law, "[t]he tort of defamation permits a plaintiff to recover for an injury to his reputation caused by the false statements of 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 prove the following elements: "(1) a false and 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 (2d ed. 1997).

"Defamatory communications take two forms: libel and slander." Erickson, 368 S.C. at 466, 629 S.E.2d at 664. "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." Id. "[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 the 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 of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. Holtzscheiter v. Thomson 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, 629 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.

"In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege." Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). "Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused." Id. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. Murray v. Holnam, 344 S.C. 129, 140, 542 S.E.2d. 743, 749 (Ct. App. 2001). The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed. Id. The question whether the privilege has been abused is one for the jury. Id. A qualified privilege does not prevent liability for defamation where the statement is made with actual malice. Id. Common law actual malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, meaning with conscious indifference towards the plaintiff's rights. Id.

ARGUMENT

This Honorable Court must deny Plaintiff's Motion for Partial Summary judgment because, as set forth herein, Defendant has set forth Mr. Fokas' written communications to third

parties and deposition testimony of Mr. Fokas' own mother showing Mr. Fokas did indeed defame Defendant in both unprivileged defamatory statements that are actionable *per se* and in unprivileged defamatory statements that are not actionable *per se*.

I. Plaintiff's published defamatory statements that are actionable *per se* for which malice and damages are presumed.

Mr. Fokas published numerous written unprivileged defamatory statements to third-parties that are actionable *per se*. In these defamatory statements, Mr. Fokas charged Defendant with an act or characteristic "of unfitness in one's business or profession" and/or "commission of a crime of moral turpitude." As shown in the exhibits referenced below, Mr. Fokas published at least four defamatory statements about Defendant that were actionable *per se*.

First, as set forth in Defendant's Exhibit AA of his Counterclaim, and attached hereto as Exhibit 1, Plaintiff made unprivileged defamatory actionable *per se* statements to Iakovos Ferderigos in writing that Defendant is unfit in his business or profession. In particular, Plaintiff published to Iakovos Ferderigos the statement **"your brothers [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 1, attached hereto (emphasis added). Defendant owns several rental properties, including the existing rental units at 229 King Street with Mr. Fokas. These defamatory statements published by Mr. Fokas impugn Defendant's ability to manage or oversee these businesses.

Second, Plaintiff further made unprivileged defamatory actionable *per se* statements to Irene Fokas, Defendant's aunt, by informing her Defendant is unfit in his business or profession. See Deposition of Irene Fokas, Page 74, lines 3 – 8, attached hereto as Exhibit 2. In pertinent part, Mrs. Fokas testified she believes Defendant is a bad business person based upon statements made to her by Plaintiff:

Q. Okay. So then as a result of what your son Athan told you, do you think that Phillip and Spiros are bad business people?

A. Yeah. I tell you this for the second time. I answered this already. We're going to talk about the same things over and over again?

See Deposition of Irene Fokas, Page 74, lines 3 – 8, attached hereto as Exhibit 2 (emphasis added). Again, these defamatory statements published by Mr. Fokas impugn Defendant's ability to manage or oversee his rental businesses.

Third, Plaintiff further made unprivileged defamatory actionable *per se* statements to Iakovos Ferderigos and Phillip Ferderigos in writing that Defendant is unfit in his profession as an attorney and accused Defendant of committing the crime of perjury in these communications. In a communication published to Iakovos Ferderigos and Phillip Ferderigos, Plaintiff wrote **"Spiro, you have already been proven to have lie'd in your deposition. I think that may be grounds for disbarment. Continue to lie and see where that gets you."** See Exhibit 3, attached hereto (emphasis added). This time, Mr. Fokas directly impugns Defendant's honesty, integrity, and reputation with regard to his work as an attorney. Mr. Fokas even goes so far as to threaten Defendant's law license.

Fourth, Mr. Fokas further made unprivileged defamatory actionable *per se* statements to Iakovos Ferderigos and Phillip Ferderigos in writing by informing them Defendant is unfit in his profession as an assistant solicitor. In a communication published to Iakovos Ferderigos and Phillip Ferderigos, Plaintiff wrote as follows:

> **"Speaking of fiduciary duty, I was a little shocked when I read in Stan Barnett's affidavit that you Spiro Ferderigos told him 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?"**

See Exhibit 4, attached hereto (emphasis added). Again, Mr. Fokas directly impugns Defendant's honesty, integrity, and reputation with regard to his work as an assistant solicitor.

These four defamatory statements published by Plaintiff to third-parties constitute actionable *per se* defamation. Because these statements impeach Defendant's honesty, integrity, virtue, and reputation, they are defamatory. These statements are false, as demonstrated by the testimony of Defendant. Plaintiff does not allege any privilege protects these communications from a defamation claim. Plaintiff published these defamatory statements to third-parties, including Irene Fokas, Iakovos Ferderigos, and/or Phillip Ferderigos. These statements either charge Defendant with the commission of a crime or impugn his fitness to serve as a businessman, attorney, or assistant solicitor, and as a result, they are actionable *per se*. For these defamatory statements which are actionable *per se*, the Court must presume Plaintiff acted with common law malice and presume Defendant suffered actual damages. For these reasons, Defendant has set forth evidence showing Plaintiff published defamatory statements about him to third-parties and has suffered damages as a result, and therefore, this Honorable Court must deny Plaintiff's Motion for Partial Summary Judgment.

II. Plaintiff published additional defamatory statements about Defendant to third-parties that are not actionable *per se*.

In addition to the above actionable *per se* defamatory statements, Mr. Fokas also published numerous unprivileged written and verbal defamatory statements about Defendant to third-parties that are not actionable *per se*. First, Mr. Fokas published to third parties false statements alleging the proposed project of new rental units was not moving forward because Defendant was not doing what he agreed to do. For example, Mr. Fokas informed third parties he did nothing to delay the proposed project and the reason the proposed project did not move forward was because Defendant could not eat for free at the restaurant located on the first floor

of 229 King Street, Old Towne Restaurant. Mr. Fokas told Defendant he thought the community would find his defamatory statements "hilarious." Second, Mr. Fokas also told other third parties the reason the proposed project was not moving forward was because Defendant was jealous Mr. Fokas had a greater ownership interest in 229 King Street than Defendant and/or Defendant's stubbornness. Third, Mr. Fokas published defamatory statements to third parties claiming Defendant accused Mr. Fokas of willfully setting fire to 229 King Street for insurance proceeds and other insurance fraud. As more fully set forth below, each of these statements constituted the publication of defamatory statements by Plaintiff about Defendant.

A. Mr. Fokas published defamatory statements blaming Defendant for the proposed project not moving forward and alleging the reason the proposed project did not move forward was because Defendant could not eat at Old Towne Restaurant for free.

In his Complaint, Mr. Fokas alleges Defendants Phillip and Spiros Ferderigos breached the alleged contract by (1) "refusing to carry out their obligations to execute the mortgage on the building" and (2) "other parts of the loan documentation." See Complaint ¶ 31 (C/A No. 2015-CP-10-3919). Mr. Fokas' Complaint details one alleged reason this Defendant refused to execute a mortgage: "Defendant Spiros Ferderigos refused to sign the mortgage for the closing as he was in contention for a seat on the South Carolina Circuit Court and informed Plaintiff the mortgage might affect his consideration." (Complaint ¶ 16, C/A No. 2015-CP-10-3919).

Mr. Fokas does not allege, nor even make mention, in his Complaint that the proposed project being explored failed to move forward because Defendant could not eat for free at a restaurant located on the first floor of 229 King Street (Old Towne Restaurant). Despite this fact, Mr. Fokas threatened to defame Defendant in the community if he did not execute the mortgage and loan documents Defendant never agreed to sign. Mr. Fokas informed Defendant he would publish in the community a "multimillion dollar deal" did not move forward because Defendant

could not eat for free, adding he believed everyone would find it "hilarious." Mr. Fokas made true on his threat to defame Defendant in the community as set forth herein.

It is undisputable that *Mr. Fokas* terminated the second set of negotiations after the parties were unable to reach a resolution regarding execution of a side agreement and loan closing documents for the proposed project being considered. The written documentation from the negotiations cannot be clearer:

> **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."**
>
> **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."**
>
> **11/24/14: Email response from Athan Fokas to Phillip Ferderigos stating "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. Quite [sic] 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..."**
>
> **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. "**

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."

See Defendant's Answer and Counterclaim, Exhibit M.

Angry because Defendants would not mortgage their personal assets for Mr. Fokas' benefit, *Mr. Fokas* interjected for the first time that the thirty (30) plus year custom of the Ferderigos and Fokas families eating at Old Towne Restaurant for free was to cease immediately. This was done in an effort to harass, humiliate, attempt to coerce, and "get back" at Defendants for not giving into his inappropriate demands.

Athan Fokas: "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."

See Exhibit S of Defendant's Answer and Counterclaims, also attached hereto as Exhibit 5.

When this attempt failed to coerce Defendants Phillip and Spiros Ferderigos into giving a mortgage of their personal assets for Mr. Fokas' benefit, something Phillip and Spiros never agreed to do, Mr. Fokas took matters to the next level and threatened to defame and spread defamatory statements to the community that the proposed project being considered failed because Defendants could not eat for free:

Athan Fokas: "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 am 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 [means "stupid' in Greek] Philipa."

See Exhibit T of Defendant's Answer and Counterclaims, also attached hereto as Exhibit 6.

Mr. Fokas made true on his threat to defame Defendants in the community and defamed Defendants by telling Stavros Ferderigos (Defendants' father), Dr. Fanouris Ferderigos (Defendants' uncle), and Antonia Fokas (Plaintiff's spouse) that the proposed project being

considered did not move forward because Defendants could not eat for free at Old Towne Restaurant:

> **Athan: "I just spoke to your dad and he doesn't think everyone should eat at Old Towne for free either."** See Exhibit T of Defendant's Answer and Counterclaims, also attached hereto as Exhibit 7 (emphasis added).
>
> **Athan: "Phillip I expressed your thoughts to uncle Fanouri and for what it's worth he thinks nobody should eat for free and he says it has become childish at this point."** See Exhibit 8, attached hereto (emphasis added).
>
> **Athan email to Spiros, Phillip, Jacob Ferderigos and copying third party Antonia Fokas: "If this deal is dead and you guys will not go forward unless you get to eat for free at Old Towne then I would like my expenses paid back to me because I have not delayed this project and we have had two closing's cancelled due to you guys reluctance to move forward ... I also feel that I can receive my attorney fees back due to a breach of contract and there may be ethics violations for Spiro admitting to threatening me by text. I have had trouble sleeping since I have received that text which could be breach or of bad faith dealing between partners. The eating at Old Towne for free was never an agreement between us going forward with the new suites and cannot be brought up now to delay the project ... I have cc'd my wife on this email so that she will be informed of all my conversations because we are life partners."** See Exhibit 9, attached hereto (emphasis added).

These statements published by Plaintiff to third-parties constitute defamation because these statements impeach Defendant's honesty, integrity, virtue, and reputation. These statements are false, as demonstrated by the e-mails and text messages from Plaintiff himself. Plaintiff does not allege any privilege protects these communications from a defamation claim. Plaintiff published these defamatory statements to third-parties, including Stavros Ferderigos, Fanouri Ferderigos, and Antonia Fokas. Plaintiff acted with common law malice because he published these defamatory statements in an effort to coerce Defendant into building the new construction at 229 King Street. For these reasons, Defendant has set forth evidence showing Plaintiff published defamatory statements about him to third-parties and has suffered damages as

a result, and therefore, this Honorable Court must deny Plaintiff's Motion for Partial Summary Judgment.

B. Mr. Fokas published defamatory statements alleging the proposed project did not move forward because Defendant was jealous of him or blaming Defendant's stubbornness.

As set forth below, Mr. Fokas further defamed Defendant by publishing defamatory statements to Irene Fokas the reason the proposed project did not move forward was because Defendant was jealous Mr. Fokas has a larger ownership interest in 229 King Street than Defendant and/or because of Defendant's stubbornness.

Irene Fokas admitted in her deposition everything she knows about the proposed project being considered at 229 King Street she learned directly from Mr. Fokas. See Exhibit 10 attached hereto. In particular, Mrs. Fokas testified as follows:

> Deposition of Irene Fokas, Page, 64, lines 4-7:
>
> **Q. And Athan is the one that has told you everything you know about the project at 229 King Street; correct?**
>
> **A. Of course.**
>
> Deposition of Irene Fokas, Page 57, lines 12-15:
>
> **Q. But you never spoke with Phillip, Jacob, or Spiros about the proposed building?**
>
> **A. No. I did not speak to them because I knew what was happening.**

Irene Fokas admitted in her deposition Mr. Fokas defamed Defendant by telling her Defendants Phillip and Spiros Ferderigos were not being required to mortgage their interest in 229 King Street in order for Mr. Fokas to receive a loan for the proposed project being considered (despite the basis of Mr. Fokas' lawsuit alleging that they did agree to provide such a mortgage). Irene Fokas also testified Plaintiff told her the proposed project did not move

forward because Defendants were jealous Mr. Fokas has a fifty percent ownership interest in 229 King Street, while they only each have one-third (sic) interest in 229 King Street or that proposed project being considered at 229 King street did not move forward because of Defendants' stubbornness:

Deposition of Irene Fokas, Page 51, lines 6 – Page 52, line 11:

Q. And did you know that in order for your son to get that loan, Phillip and Spiros would have to mortgage their interest in 229 King Street for Athan Fokas' loan?

A. I don't believe these things...[t]hey are not starting because the boys have – it's like – stubborn. They're stubborn ... [o]r because the – Athan has half of the – half. They have half. They only have one-third.

Deposition of Irene Fokas, Page 53, lines 20-24:

Q. How did you come to know that Phillip and Spiros said these things?

A. He [Athan] said the stubbornness or the jealousy ...

See Exhibit 11 attached hereto (emphasis added).

These statements published by Plaintiff to Irene Fokas constitute defamation because these statements impeach Defendant's honesty, integrity, virtue, and reputation. These statements are false, as demonstrated by the e-mails and text messages from Plaintiff himself set forth above and Defendant's deposition testimony. Plaintiff does not allege any privilege protects these communications from a defamation claim. Plaintiff published these defamatory statements to third-parties, Irene Fokas. Plaintiff acted with common law malice because he published these defamatory statements in an effort to coerce Defendant into building the new construction at 229 King Street. For these reasons, Defendant has set forth evidence showing Plaintiff published defamatory statements about him to third-parties and has suffered damages as a result, and therefore, this Honorable Court must deny Plaintiff's Motion for Partial Summary Judgment.

C. Mr. Fokas published defamatory statements alleging Defendant accused Mr. Fokas of willfully setting fire to 229 King Street for insurance proceeds and other insurance fraud.

Irene Fokas admitted in her deposition Mr. Fokas told her Defendant is going to accuse Mr. Fokas of setting fire to 229 King Street for insurance proceeds and filing false insurance claims. Irene Fokas admitted in her deposition Mr. Fokas made these unprivileged defamatory statements to her about Defendant. These statements were either made directly by Mr. Fokas or through Mr. Fokas' agent, Stanley Barnett.

Deposition of Irene Fokas, Page 46, line 3 – Page 47, line 7:

Q. Okay. Are you aware of any statements that Phillip or Spiros have made to Athan's lawyer?

A. I heard that the guys had told the attorney.

A. That Phillip and Spiros, they're going to accuse Athan for this and this and that.

Q. Does she – do you know what the specifics of the accusations are?

A. For fire, insurance, things like that ...

Q. Who told you these things?

A. Either the attorney or my son.

See Exhibit 12, attached hereto (emphasis added).

These statements published by Plaintiff to Irene Fokas constitute defamation because these statements impeach Defendant's honesty, integrity, virtue, and reputation. These statements are false, as demonstrated by Defendant's deposition testimony and the deposition testimony from Civil Action No. 2015-CP-10-3891. Plaintiff does not allege any privilege protects these communications from a defamation claim. Plaintiff published these defamatory statements to third-parties, Irene Fokas. Plaintiff acted with common law malice because he published these defamatory statements in an effort to coerce Defendant into building the new

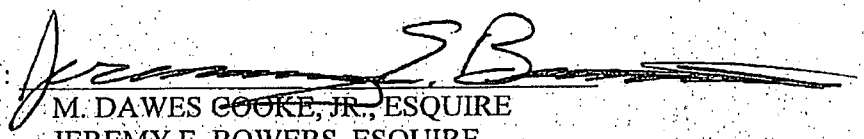
construction at 229 King Street. For these reasons, Defendant has set forth evidence showing Plaintiff published defamatory statements about him to third-parties and has suffered damages as a result, and therefore, this Honorable Court must deny Plaintiff's Motion for Partial Summary Judgment.

CONCLUSION

As set forth above, Mr. Fokas has failed to meet his burden of proof to clearly establish an absence of a genuine issue of material fact. To the contrary, Defendant has put forth evidence showing Mr. Fokas' defamatory written and oral communications to third-parties about Defendant. Mr. Fokas published defamatory statements about Defendant to third-parties in statements that are actionable *per se*, for which Mr. Fokas' malice in publishing the statements and Defendant's damages are presumed. Further, Defendant has put forth evidence Mr. Fokas published defamatory statements that not actionable *per se* but for which Mr. Fokas' purpose of publishing was to coerce Defendant to build the new construction at 229 King Street. As a result of the publication of these defamatory statements by Mr. Fokas, Defendant suffered damages to his reputation in the community and even within his family.

Based upon these arguments and any arguments raised at the hearing on this motion, Defendant respectfully asks this Honorable Court to deny Mr. Fokas' Motion for Partial Summary Judgment.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

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June 5, 2017
Charleston, South Carolina

2015-CP-10-3919

Certificate of Service

I hereby certify that the foregoing **MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON BEHALF OF DEFENDANT SPIROS FERDERIGOS** was served upon the parties to this action by U.S. mail, sufficient postage attached thereto, to the following counsel of record:

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FILED
2017 JUN -6 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This the 5th day of June 2017.

Cheryl O. Lessard
Legal Secretary

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
tabbies
1

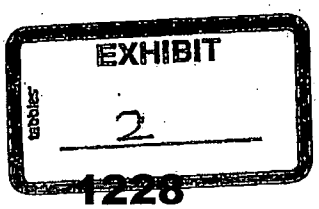
Fanouris is saying -- (Greek.)
A. My brother Fanouris said, "This is crazy. I've never heard of things like this." So we did not have a problem after that.
Q. Do you know anything about a request for a mortgage related to building the project at 229 King Street?
A. No. I never got involved in things like this.
Q. Do you know if your son Athan made any money from the sale -- from the sale of his restaurant Zeus?

00073

A. He sold the store. Yes. He did donate it. They pay for it.
Q. Do you know the details of that?
A. I do not get involved with things like that.
Q. Did your son Athan tell you that it was stupid for Phillip and Spiros not to build the building?
A. He did say that it is stupid or superior to have such a chance to build the apartments and not to take this opportunity to do it.
Q. Did Athan tell you that it was Phillip an Spiros' fault that the building was not being built?
A. Of course. And afterwards it was not as formal as at the beginning. He told us he did not agree with the things, but later --
Q. So as a result of what Athan told you about this, do you believe it is Phillip and Spiros' fault that the building is not being built?
A. Of course. I told Athan -- two-and-a-half years later everything was ready to be done, and they didn't want to do it but -- and they didn't have to wait for Spiros to become a judge.

00074

They could have started, and you wouldn't -- they would have been finished by now.
Q. Okay. So then as a result of what your son Athan told you, do you think that Phillip and Spiros are bad business people?
A. Yeah. I tell you this for the second time. I answered this already. We're going to talk about the same things over and over again?
Q. No. The -- the question -- the question was different.
A. We answered this question. It was exactly the same thing.
Q. No. The first question that you answered was: Do you believe it is Phillip and Spiros' fault that the building was not built?



Athan Fokas

By other side business do you mean Old Towne Payroll Account and Old Towne Restaurant account that your brother Jacob own's 50% of? You were all were in cahoots when Jacob and I opened the Old Towne Suites account back in 2011. Or else you would've mentioned something within the last five plus years that it has been in operation. I'm sure judge Nicholson will love to hear you explain that one. Spiro, you have already been proven to have lie'd in your deposition. I think that may be grounds for disbarment. Continue to lie and see where that gets you. 4:17 PM

Spiros Ferderigos

Athan, I have absolutely no idea what you are talking about. You are again wrong and stating things you know are wrong. Trying to threaten me with fabrications does not absolve you of your requirements under the LLC statute. As we have said repeatedly before, as soon as Phillip, Jacob and I were made aware that you opened the LLC account to our exclusion, you were immediately notified. All of that is documented in writing.

In your text, you apparently overlooked answering my question of the $120. Is my cursory review correct? 4:36 PM

Wednesday, February 15, 2017

Spiros Ferderigos

Gentlemen, please see the email I just sent in regards to the LLC with the subject line "Re: Old Towne Suites, LLC Bank Vote/Resolution" 9:43 AM

Athan Fokas

I emailed you my response. Thanks, Athan 10:55 AM

EXHIBIT
tabbies
3

Athan Fokas

I am 50% owner and you guys are all 16%. If you start pulling your weight and checking on things that would be great but if a light bulb is out and you want approval to change it then maybe you need to take a 101 business course to enlighten yourself. 4:28 PM

I think it is your fiduciary duty as owner to check on things?

Spiros Ferderigos

Athan, check the LLC statute. You can not do anything without the prior knowledge and approval as set forth above. Neither can I. You are on notice again that everything needs the prior knowledge of all members and the prior approval of the majority of the membership interest / 50 percent does not get there. Again, I look forward to your text and the texts of the other members about what needs to be voted on for the Suites. I will do the same. I am not going to engage in conversation about how you feel the LLC obligations should be vs what they are by law. I expect the next text to be about a Suites decision that needs to be voted on. Thank you 4:34 PM

Athan Fokas

Speaking of fiduciary duty, I was a little shocked when I read in Stan Barnetts affidavit that you Spiro Ferderigos told him 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? 4:36 PM

Spiros Ferderigos

Athan, do you have a question to ask about a decision that needs to be made regarding the Suites? Otherwise stop abusing this text chain 4:50 PM

Athan Fokas

This chain was started by you on October 19, 2014 saying that you had to hold off signing the paperwork for the new suites cause you were trying to become a judge. How did that work out for you? 5:01 PM

Spiros Ferderigos

Athan, do you have a question to ask about a decision that needs to be made regarding the Suites? Otherwise stop abusing this text chain 5:09 PM

EXHIBIT

4

1230

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@bamwell-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
5

(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 tabbies 6

(843) 813-5612

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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

tabbies

7

Me

No, that is not what I said. I will not meet with you to discuss any options until we go back to the status quo first. If that is a problem, then that is fine. 1:26 PM

(843) 813-5612

I do not understand what the status quo interpretation was but am sure if we meet we can figure that out. 1:28 PM

Me

Athan, I do not have time for the games that you are playing today. If you want clarification, I will prepare a contract for you and Jacob to sign that says our respective families can eat at old towne for free. Just like it has been for decades. I'll have it for your consideration sometime next week, assuming I have a time to get to it.

If you do not like that requirement on the front end, that's fine. I am not interested in moving forward with options. Thanks, Phillip. 1:39 PM

(843) 813-5612

I'm not playing games but if all familles get to eat for free and Jacob and I are paying for the food cost then do we get free legal advise in return? 1:41 PM

Me

Athan, I am not interested in moving forward with you. Please do not email or text me anymore. Have a nice day sir. Phillip. 1:42 PM

(843) 813-5612

Why can't you have a business discussion and come to an agreement t 1:43 PM

(843) 813-5612

that make sense 1:43 PM

(843) 813-5612

Phillip I expressed your thoughts to uncle Fanouri and for what it's worth he thinks nobody should eat for free and he says it has become childish at this point. He also asked what happened to the escrow money you said you would put up. Maybe you should call him. 3:11 PM

EXHIBIT

tabbies

8

SF RTP 000260

Gmail spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites Addition:

1 message

Athan Fokas <athanfokas@gmail.com> Tue, Jan 6, 2015 at 12:20 PM
To: "iakovosstavros@gmail.com" <iakovosstavros@gmail.com>, spiros ferderigos <spirosferderigos@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: Antonia Fokas <antoniafokas@hotmail.com>, "zeusseafood@bellsouth.net" <zeusseafood@bellsouth.net>

Gentlemen,
I hope you are having a good New Year so far and hope it is prosperous for you.
I spoke with Jacob today and asked him where we are on the suites. He said that he hasn't spoken to Phillip or Spiro. Jacob did ask me to put a hold on it until after the holidays and that is why I am writing you now. I have tallied up our expenses thus far on the new suites project and came up with $79727.99. We still owe $3000.00 to our engineer and we owe $2500.00 for our original appraisal to the bank and we owe $350.00 to Amy Haines for the title search. I plan to have those bill paid once we receive our end of the year suites check this week. All in all the project so far has cost $85577.99 which puts us at $42789.00 each for the Fokas half and the Ferderigos half. If this deal is dead and you guys will not go forward unless you get to eat for free at Old Towne then I would like my expenses paid back to me because I have not delayed this project and we have had two closing's cancelled due to you guys reluctance to move forward.
The contractor did express that prices are increasing and he would not be able to honor our original contract because of the delay. I'm not sure what that increase will be and if we move forward I do think that the Fokas 50% is not responsible for the increase.
I would like to know where you guys stand on this because next week I plan to hand over all the emails and texts of our conversations to my attorney so we can file a Specific Performance Lawsuit asking you to either finish the deal or pay me my expenses to get out of it. I also feel that I can receive my attorney fees back due to a breach of contract and there may be ethics violations for Spiro admitting to threatening me by text. I have had trouble sleeping since I have received that text which could be breach or of bad faith dealing between partners.
The eating at Old Towne for free was never an agreement between us going forward with the new suites and cannot be brought up now to delay the project.
I would like to have your answer my this Friday January 9.
Sincerely,
Athan Fokas
PS: I have cc'd my wife on this email so that she will be informed of all my conversations because we are life partners.

EXHIBIT
tabbies 9

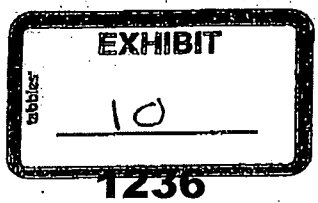
Thanksgiving 2014?
A. If he said something bad about them?
Q. Not necessarily anything bad. Just does he remember -- or does she -- do you remember your son Athan talking about Phillip and Spiros during the family Thanksgiving last year?
A. Yes. I don't remember.
Q. Do you remember if your son Athan told everyone that the reason why the building was not being built was because of Phillip and Spiros?
A. Jacob did not say anything, but then he became -- he -- before Iakovos did not take their side, but now he takes their side.
Q. Okay. My question is: Do you remember at last Thanksgiving your son Athan telling everyone at the dinner table that the reason the building was not being built was because of Phillip and Spiros?
A. I cannot -- you're asking me such a question. Is it better on a holiday like Thanksgiving we will be discussing things like that?

00063

Q. So is your response that, no, that was not discussed?
A. No. But I was very upset inside because I could not be with my entire family, and then I kept it to myself. I did not complain. I --
Q. Who all was present at that Thanksgiving?
A. My family.
THE WITNESS: My family.
Q. Can you provide the names of those individuals? As many as you can.
A. My children, my grandchildren.
THE WITNESS: That's all. Me and my husband.
A. And me and my husband. That's all.
Q. Did your son Athan tell you that Phillip and Spiros broke a promise to him regarding building the building at 229 King Street?
A. I knew this from before, but we did not discuss it at Thanksgiving.
Q. Right. Not at Thanksgiving. At any time did your son Athan tell you that Phillip and Spiros broke a promise to him regarding building the building?
A. They do not want to build the

00064

apartments.
Q. And did Athan tell you that?
A. Who else? Of course.
Q. And Athan is the one that has told you everything you know about the project at 229 King



Street; correct?
A. Of course.
Q. Was the first time that you spoke to Mr. Barnett when you returned from Greece in October of 2015?
A. Yes.
Q. Had you ever spoken with him before that time?
A. No.
Q. And where did you all meet?
A. My house.
Q. Are you aware of whether or not Mr. Barnett ever tried to contact you before you came back to America from Greece?
A. No.
Q. When you met with Mr. Barnett, were your daughter Rania and your son Athan present for that meeting?
A. Yes.
Q. Was anyone else present?

00065

A. No.
Q. And during that meeting did Mr. Barnett tell you that you would not need to appear for your deposition?
A. No. He didn't tell me such a thing.
Q. Okay.
A. What do you mean not to go? Where?
Q. That you would not need to appear for your deposition on October 28.
A. No. He did not say such a thing.
Q. Did you discuss with Mr. Barnett the fire that happened at 229 King Street?
A. We said something. We talked about the fact that his cousins are trying to accuse him of these things.
Q. And so Mr. Barnett told you that Phillip and Spiros were telling people that Athan started the fire at 229 King Street?
A. I don't know if he said it that day.
Q. Do you know what you all discussed, then, in regards to 229 King Street?
A. We said that they are accusing Athan for the fire and for insurance.
Q. So Mr. Barnett told you that Spiros and Phillip were accusing Athan of starting the fire

00066

and filing false claims?
A. Yes. Maybe. I think he told me. He must have told me. I don't remember well.
Q. Did Mr. Barnett tell you any of the details about the lawsuits that Athan filed or started?
A. He said that they accusing Athan for

THE WITNESS: The problems.
A. -- the problems.

00056

Q. Did you ever speak with Phillip or Spiros Ferderigos about the project of building a building?
A. I didn't speak to them because I knew what -- what they would tell me. They would tell me that it's our fault. It is your son's fault.
Q. Did you ever speak with Jacob Ferderigos about building the proposed building?
A. I know that he did not agree. Iakovos did not agree with his brothers, but he's on their side now; and now the three of them are going after Athan.
Q. But you never spoke with Jacob about the plans to build the building?
A. No. He -- but I knew he was in good terms with him at this, but now things change. He's with his brothers, and they are accusing Athan.
Q. And the only people involved in this proposed building were your son Athan, Phillip Ferderigos, Jacob Ferderigos, and Spiros Ferderigos; correct?
A. Yes.
Q. And you have not spoken with Phillip, Spiros, or Jacob Ferderigos about the proposed

00057

building; correct?
A. I remembered that they were saying that why isn't he doing it faster? For my son, why this is not happening? What is he doing?
Q. But you did not speak with Phillip, Jacob, or Spiros about the proposed building; correct?
A. No. She said -- she said my brother said that when these apartments are built, we're not going to have any problems. We're going to have plenty of money.
Q. But you never spoke with Phillip, Jacob, or Spiros about the proposed building?
A. No. I did not speak to them because I knew what was happening.
Q. And the reason you knew what was happening was because your son, Athan Fokas, told you what was happening?
A. Everything was good for two-and-a-half years. All together -- all together the family, we celebrated holidays.
Q. I understand that.
But I'm trying to understand how you came to know this information as to what happened with the building. Is the source of your -- is

everything is ready; and they say they don't want to do it. That is the problem.

And they bring out all these other things, and they accusing Athan. The main problem is that they can start building, and everything can go away. They can throw out all the papers, and they can start.

He -- all that Athan wants -- he doesn't

00050

want any money. He only wants to start this building. He's been waiting for two-and-a-half years. He's been working towards this for two-and-a-half years, and I don't understand why they don't want to start. This is good for everyone.

Q. And is Athan Fokas the source of your information on that?

A. Who else?

Q. Are you aware that your son, Athan Fokas, was asking Phillip and Spiros to mortgage their interest in 229 King Street to build that building?

A. I don't know about these things. To get a loan on the building?

Q. Yes. In Phillip and Spiros' name for -- for --

A. He's been told that they had to get a loan on the building? For two-and-a-half years, that's now we find this out?

Q. Do you understand that Phillip and Spiros were going to pay cash for this building?

MR. BARNETT: Object to the form.

A. I don't -- I don't think he did, but they never -- they put the money down. When it was time to start the building, they did not put

00051

the money down. But they haven't -- two-and-a-half years, they knew there had to be a loan.

Q. Do you understand that your son needed a loan for that project?

A. I knew that, and they knew that.

Q. And did you know that in order for your son to get that loan, Phillip and Spiros would have to mortgage their interest in 229 King Street for Athan Fokas' loan?

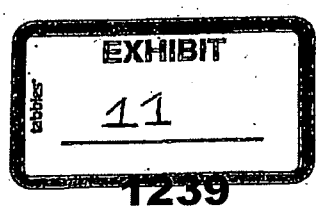
A. I don't believe these things. They knew this for two-and-a-half years, and the youngest said I had to become -- wants to get the position, the highest position, and -- because --

THE INTERPRETER: Judge?

THE WITNESS: Yes. (Greek.) What we say before?

THE INTERPRETER: The judge?

THE WITNESS: The judge, yes. (Greek.) Building, the apartments. And I don't understand



why. The evidence is already -- everything that -- to start it, where to Spiros and three months, stop to start. And after Spiros all ready to start, Phillip will say, I know what, no. No start the building. After two-and-a-half years no how -- (Greek.) With Athan everything,

you know. So I know -- that's all of that stuff.

MR. HASTIE: Did either the court reporter or the --

THE WITNESS: (Greek.)

A. They are not starting because the boys have -- it's like -- stubborn. They're stubborn.

THE WITNESS: Yeah. I think so. (Greek.)

A. Or because the -- Athan has half of the -- half. They have half. They only have one-third.

THE WITNESS: I don't know. I will no understand why no start and all about the copy that's coming now for nothing.

Q. Is that the reason that you believe the buildings or the rental units were not built?

A. If there was a problem, they would have told us two-and-a-half years ago.

THE WITNESS: Yeah.

A. If Spiros did not wait to become -- whatever he wants to become, then he would have started.

THE WITNESS: Yeah. And he waited three months to Spiros, if he go there. Stop. No go. So it's ready to start; and after that, say no, I

not going to start after two-and-a-half years.

Q. And are all those things what your son, Athan Fokas, told you?

A. I listened because my brother would say, "Did they start building yet? Those apartments? What is Athan doing?"

Q. But is it Athan Fokas that told you the reasons why you're saying here today Phillip and Spiros are not building the building?

A. No, no, no. I -- it's stubbornness.

THE WITNESS: Yeah.

A. That's -- because there's no other reason.

Q. Okay. So there's no other reason, but how did you come to understand that this was the reason?

A. Because they said it's not going to be done. It's not going to be done.

THE WITNESS: He say, no, no.

Q. How did you come to know that Phillip and Spiros said these things?

A. He said the stubbornness or the jealousy that they're not getting -- they're also not getting tests.

THE WITNESS: (Greek.) Before it's

finished to start. Two-years-and-a-half, and Athan's worked to -- to everything be okay to start the building. Why no say before? But I'm saying everything is okay to start.

Q. Is everything you know about this proposed project, did that come from Athan Fokas, your son?

A. Everything was good. My brother was asking me. "Why is Athan not doing this? Why is he not starting it? Why aren't they finishing?"

Q. I understand that, Mrs. Fokas; but can you tell me: Is Athan Fokas the person that told you everything you know about this proposed project?

A. All I know is that he tried to and worked very hard, and he suffered for two-and-a-half years to start building this apartment.

We would have not waited for Spiros to become a Judge. We had to wait for three months, then we would have started.

THE WITNESS: Yeah. After three months, we waited for Spiros -- (Greek.)

A. We waited three months for Spiros to become a Judge; and then three months later Spiros said, "I don't want to do it." We fell

off the -- the cloud. It was like a mountain for us. We waited and waited for this to start.

Q. Are you just guessing that these are the reasons why the building was not completed or started, or is this what Athan Fokas told you?

A. They said we waited for two-and-a-half years. Everything was ready. Athan said, "We're ready"; and then we had to wait for Spiros to become a judge.

THE WITNESS: After three months, Spiros -- (Greek.) No be the judge. So now all ready. So go to start. He say no. I not going to start.

Q. I understand that that's what you believe happened, but how is it that you know that that's what happened? Is that what your son, Athan Fokas, told you; or are you guessing?

A. We lived this things every day.

Q. I understand that you lived these things every day, but were you involved in the building of the building?

A. No. But I -- I would always see the -- I could always see --

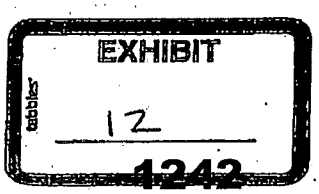
or Spiros ever said anything to Mr. Barnett?
A. No.
Q. Is everything that you know about what was told to Mr. Barnett, did that come from your son, Athan Fokas, or Mr. Barnett himself?
MR. BOWERS: And that might have been worded very poorly; and if it is, please ask me to rephrase it, Madam Interpreter.
THE INTERPRETER: Yes. Please rephrase it, yes.
Q. Everything that you know about what Stanley Barnett has been told came from either

00046

Athan Fokas or Mr. Barnett; correct?
A. Don't understand.
Q. Okay. Are you aware of any statements that Phillip or Spiros have made to Athan's lawyer?
A. I heard --
THE INTERPRETER: The interpreter wants to hear her answer again. I don't understand what she's saying.
MR. BOWERS: Okay.
A. I heard that the guys had told the attorney.
MR. BOWERS: I'm sorry. Could you get her to rephrase that answer 'cause I'm not sure that I understand.
THE INTERPRETER: I know.
I heard from where.
A. That Phillip and Spiros, they're going to accuse Athan for this and this and that.
Q. And what is "this, this, and that"?
A. Whatever my daughter told me. The things she was afraid for her brother.
Q. But you're not aware of what those things are?
A. Accusations against Athan.

00047

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



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Jeremy E. Bowers, Associate
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June 5, 2017
VIA HAND DELIVERY

5033.001
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas v. Ferderigos, et al.
Case No.: 2015-CP-10-3919

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment filed on behalf of the Defendant, Spiros Ferderigos, in the above-referenced matter. Please file the original Memorandum and return the filed stamped copy to me via our courier.

By copy of this letter, I am informing all counsel of record of this communication with the Court and serving them with a copy of the Memorandum. Additionally, pursuant to Judge Nicholson's request, I am providing him with a courtesy paper copy of the Memorandum. If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl.: The Honorable J.C. Nicholson, Jr. (Hand Delivery)
Stanley E. Barnett, Esquire (via U.S. Mail)
Leslie S. Lenhardt, Esquire (via U.S. Mail)
Jennifer H. Thiem, Esquire (via U.S. Mail)
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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.

PHILLIP FERDERIGOS, JACOB FERDERIGOS, and SPIROS FERDERIGOS,

Defendants.

FILED
2017 JUN 16 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

SUPPLEMENTAL CASE LAW AND EVIDENCE IN THE RECORD

TO: STAN BARNETT, ATTORNEY FOR THE PLAINTIFF:

Pursuant to the Court's request, I have enclosed the case law which establishes that a tenant in common may mortgage his interest of the property only. Specifically, in South Carolina, "a cotenant has the authority to mortgage his undivided interest in the property, and a mortgage may be foreclosed on this interest." See 6 S.C. Juris. §41; Ex parte Johnson, 147 S.C. 259, 145 S.E. 113 (1928); Z. V. Pate, Inc. v. Kollock, 202 S.C. 522, 25 S.E.2d 728 (1943).[1] Further, "it is equally clear that one cotenant cannot mortgage the entire common property without the consent of the other cotentants. The effect of a mortgage that purports to convey the entire interest and which is executed by fewer than all cotenants results in a lien on the interest of the mortgaging cotenants only." See 6 S.C. Juris. §41; 20 Am. Jur. 2d Cotenancy and Joint Ownership § 102 (1965).

With Your Honor's indulgence, I would also offer the following brief comments on the arguments of counsel at the hearing that were directly contradicted by Plaintiff's own sworn

[1] See Ex parte Johnson at 121, stating: "That tenants in common may mortgage their undivided interests is too clear to require citation of authority." (Emphasis added). 6 S.C. Juris §41, Ex parte Johnson, Z. V. Pate, Inc. v. Kollock, and 20 Am. Jur. 2d Cotenancy and Joint Ownership § 102 (1965) are attached as Exhibits 1, 2, 3, and 4 respectively, for the Court's ease of reference.

testimony in his deposition. If the Court will permit, I have attached copies of the deposition testimony of the Plaintiff which sets forth that the arguments presented to the Court are completely refuted by Plaintiff's own sworn testimony:

1. Statute of Frauds and Part Performance.

Contrary to Plaintiff's arguments, the statute of frauds applies to a 5 year or a 20 year mortgage. Further, the statute of frauds applies to the contract to build the new building (that Plaintiff unilaterally signed himself) as the Standard Agreement Between Owner and Contractor Plaintiff signed sets forth a commencement date of 1/3/2014 and substantial completion date of 12/31/2015, a time period in excess of a year. Moreover, none of the Defendants signed the contract to build the new building. Importantly, Plaintiff concedes all expenditures and expenses for the proposed project went to exploring/investigating the possibility of building the new building; therefore, the part performance exception does not take the alleged "oral" contract out of the statute of frauds; See Plaintiff's Complaint, Par. 28, stating:

> "The parties entered into part performance in furtherance of their agreement in 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 a final loan package was offered by the bank, all designs and plans and all zoning approvals for the project were complete."

Plaintiff confirmed this in his deposition when he testified as follows:

> Q. Before I get to Exhibit 2, a couple 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?
> A. Build the new building, yes.
> Q. Build the new building.

Deposition of Plaintiff, pp. 65 line 21 – 66 line 2, attached as Exhibit 5.

The alleged agreement that the Plaintiff seeks to enforce is one *both* to build the suites and to mortgage 229 King Street to pay for it. Clearly, such agreement could never be completed

in less than one year. Accordingly, the statute of frauds applies and bars Plaintiff's "oral contract" claims as a matter of law.

2. The interest rate for Plaintiff's loan.

Respectfully, the Court need not even reach the Statute of Frauds question, because it is clear that there was never a meeting of the minds on the essential elements of the supposed agreement to build the suites and mortgage 229 King Street to pay for them. On September 19, 2014 – long after Plaintiff received the bank commitment letter that counsel handed up to Your Honor -- and again on September 24, 2014, he enthusiastically informed the Defendants that he had a 20 year, 5% fixed rate loan:

> 9/19/2014: [Spiros cell] … can you email us the details of the loan sometime this weekend if you have a chance?
>
> Athan: The banker just called me. I won't have the details till next week. I'm sure it's 5% for 20 years. Attached as Exhibit 6.
>
> 9/24/2014: [Athan-gmail] 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. Attached as Exhibit 7.

Plaintiff's representation, however, is refuted by the loan commitment letter itself, as well as the testimony of Plaintiff's banker. Although to this day Plaintiff believes that he had a 20 year, 5% fixed loan from his bank, he actually had a six-year loan with a balloon payment and the hope of being able to refinance it then. Plaintiff testified that the parties had an "oral" contract where the parties had agreed to a 5% fixed rate for a 20 year term for the proposed project; however, this is something that Plaintiff never achieved.

3. No personal guarantee by Phillip or Spiros.

Plaintiff concedes that Phillip and Spiros never agreed to personally guarantee anything for the proposed project:

> Q. Okay. Any other - any conversation that you had in which they agreed to sign anything other than a mortgage.

A. Other than a mortgage, hmm, the only stipulation that they have was that they don't want to be personal guarantors on the note. They never said that they wouldn't sign over whatever the other things the bank needed.
Q. Yes, I'm asking you that question in the affirmative. **Neither Spiros nor Phillip ever agreed to sign anything other than, as you claim, a mortgage.**
A. **The only thing I remember is Spiros and Phillip Agreeing that they would not personally guarantee the note.**
Q. I'm going to ask you one more time, and you can say yes or no and then you can explain. **There was no circumstance in any conversation related to Old Towne Suites in which either Spiros or Phillip agreed to sign anything other than the mortgage you claim they were willing to sign.**
A. **I don't remember.**

Deposition of Plaintiff, p. 412, lines 13 – 25; p. 413, lines 1 – 9, attached as Exhibit 8.

Q. **Right, so Phillip and Spiros never agreed to sign anything that exposed them to personal liability, correct?**
A. **Personally guaranteeing, yes, their deal was they didn't want to personally guarantee the note.**

Deposition of Plaintiff, p. 413, lines 17 – 21, attached as Exhibit 8.

Q. **Other than the mortgage, neither Phillip nor Spiros ever agreed to sign anything that exposed them to personal liability.**
A. **I don't know what that other thing would have been that they would have to agree that it would expose them to personal liability, but they said from the beginning, before we even started the note or before we even moved forward to spend money, big money on the project, that they would not personally guarantee the note.**
Q. Okay. I understand that.
A. Okay.
Q. **They never agreed to sign anything that exposed them to personal liability other than to the extent that we're talking about the mortgage.**
A. Is that the same thing as them not personally guaranteeing the note?
Q. No, it's more expansive.
A. **More expansive, then I don't know.**
Q. **Okay. You don't know of anything that you can testify to that they –**
A. **Nothing I can testify today.**

Deposition of Plaintiff, p. 414, lines 14 – 25; p. 415, lines 1 – 10, attached as Exhibit 8.

Plaintiff further concedes this was a material term that was important for all parties:

Q. And the ability to obtain a mortgage under this agreement would be an important or material term, correct?
A. The ability to obtain a mortgage?
Q. Yes.

A. A bank would have to agree.
Q. How about a personal guarantee, would that be an important or material term?
A. It's not important to me, but it was important to Phillip to not be a personal guarantor.
Q. Okay. So it's fair at least as to Phillip that's an important or material term.
A. For Phillip, yes.
Q. How about the exposure of risk, would that be an important or material term to the people that were going to participate in a deal?
A. Risk.
Q. Mm-hmm.
A. I'm sure that's important for everybody.

Deposition of Plaintiff, p. 245, line 24 – p. 246, line 18, attached as Exhibit 9.

However, having the LLC as a borrower on the note (or signing the HUD statement personally) exposes Phillip and/or Spiros to personal liability on that note, which is something Plaintiff agrees was never part of the alleged "oral" agreement. Phillip repeatedly attempted to explain this to Plaintiff while they were trying to negotiate. See Email from Phillip to Plaintiff of November 21, 2014, attached as Exhibit 10:

"As for all the other stuff, I hope we can get there, I really do, but I want it to be done right and everyone knows what they are agreeing to. Putting the LLC on the note is not necessary and in this fine State makes me indirectly liable for payment on the note. All the bank needs to do is revise the HUD and the note, putting you and Jacob on both, which y'all are personally guaranteeing. As I have indicated, if the side agreement that we forwarded is agreed to and signed, I am happy to sign a mortgage, even though I do not have to. This is a tremendous leap of faith on my end because, if you do not make the payments on time, I could lose Old Towne.

On the flip side, I have not asked you to sign anything for me. If I don't make my payments for my loan I am getting, it does not affect you in the least. You cannot conflate the two issues … it is not you are making me sign something, so you need to sign something… You have asked me to do you a favor and, thus far, I have been willing to do it, but you are making it difficult."

Thus, as a matter of law, there was no meeting of the minds on this material term. Even his closing attorney conceded this point when she said personal exposure existed for the note if LLC's corporate veil were pierced:[2]

> 11/24/14: 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." Attached as Exhibit 11.

4. The LLC being on the note.

Old Towne Suites, LLC does not own the real property (229 King Street); rather, the individual parties own the real property as tenants in common. Accordingly, the loan commitment letter executed by Plaintiff and Jacob (and not executed by Phillip and Spiros) does not bind the LLC, Phillip or Spiros. Originally, Defendants believed that Plaintiff was seeking a loan where Plaintiff and Jacob were to obtain a mortgage over their own portion of the real property (as well as their own interest of the LLC). (This is consistent with South Carolina law cited above). At the hearing, Plaintiff's counsel argued that the LLC was always supposed to be on the note. However, this is refuted by Plaintiff's own testimony. Indeed, Plaintiff himself testified the LLC did not approve, vote for, or take any formal action concerning the proposed project or any loan commitment letter:

> Q. Okay. Very good. And are you aware of any formal action within the LLC, a referendum, a vote, minutes of any meeting, that would confirm that?
> A. If the - we discussed this as owners of the building. The owners of the building don't have this LLC. We discussed as owners of the building that we would add property on top of our existing building.
> Q. Well, the LLC -
> A. I don't think it has to go through the LLC. There's no documents that it go through the LLC. I make 50 percent of the

[2] Also, please note the HUD Statement required Phillip/Spiros to personally sign the HUD statement individually, not in his capacity as an LLC member, also exposing Phillip/Spiros to personal liability for the note. Further, the bank would require Phillip and Spiros to execute an LLC Resolution which would also expose Phillip/Spiros to personal liability for the note. No evidence in the Record exists that Phillip or Spiros agreed to any such material terms.

decisions. The Ferderigos brothers make 50 percent of the decisions. If we both agree, then we continue.

Q. I want you to explain what you just said. You said there's no documents that say - I got confused. There's no documents that say what?

A. You're trying to pin this and say, well, Old Towne, LLC didn't have a meeting that made this. We had the meeting amongst the owners of the building. We don't have an LLC for the building. We, as owners of the building, decided to build another part of the building.

Deposition of Plaintiff, p. 170, lines 7 – 25; p. 171, lines 1 – 4, attached as Exhibit 12.

Plaintiff's counsel further conceded that the loan commitment letter did not bind the LLC in any way in the following deposition exchange between Plaintiff's counsel and Phillip during Phillip's deposition:

Q. And there's attached to this a February 5, 2013, letter from Southcoast, Tony Daniel?

A. Okay. Is this the - the Southcoast Community Bank?

Q. That's what I was about to ask you. Is this the commitment letter you're talking about?

A. Yeah. That's the only commitment letter I've ever seen.

Q. Okay. All right.

A. A commitment from Athan and Jacob's bank to them.

Q. Okay.

A. And when I got this, this is what I forward to Ned, and that's when he told me the rate didn't say that.

Q. Okay. And this letter seems to be signed by both Athan and your brother Jacob.

A. The commitment letter?

Q. Yeah.

A. Well, it is signed by Athan and Jacob.

Q. All right. And it's signed -- it says "Old Towne Suites, LLC," is the first signature line; and that looks like Athan's signature there.

A. Yeah. And that's another breach of your client -

Q. Breach of what?

A. 'Cause apparently he - he purported to sign for Old Towne Suites, LLC, when we never had a meeting, a vote, agreement, or anything. So to the extent I - I interpret that as Athan Fokas signing for his membership interest in Old Towne Suites, LLC. To the extent it's anything beyond that, that would be a breach of him to me.

Q. Does this letter commit the suites to anything?

A. I don't know. It shouldn't. It didn't. This letter commits the bank to Athan and Jacob.

Q. Right.

A. But if you - if you're - if you - if it purports to commit Old Towne Suites to anything, it would be a breach of his duty.

Q. Well, I was just asking if you, perhaps, saw something that I didn't see because you said it was a breach of duty.

A. Well, I see a signature of Old Towne Suites, LLC, that he wasn't authorized to make. Now, I presume what he means is that this commitment letter is for his and Jacob's loan of their LLC interests. Right. In Old Towne Suites, LLC, and their mortgage - that their property ownership as tenants in common in 229 because this certainly doesn't bind me or Spiros; and I didn't get this until that date, September 24, 2014.
Q. Until this date. Okay.
A. I mean, whenever it was sent to me. There might - it's whenever the prior exhibit that you had as well.
Q. Uh-huh.
A. Okay. So go ahead.
Q. No, no. I'm letting you finish your answer.
A. I'm done.
Mr. Barnett: All right. But I don't see anything in here [the Southcoast loan commitment letter] committing the LLC to the bank for anything.
Phillip: I agree with you. I totally agree with you. You're correct. You're right.
Mr. Barnett: All right.

Deposition of Phillip, p. 76, lines 5-25, pp. 77 – 78, attached as Exhibit 13.

However, at the hearing, Plaintiff's counsel represented the opposite as arguments of counsel, contradicting Plaintiff's own sworn testimony.

5. No agreement as to Hypothecation Agreement.

Plaintiff concedes he and Defendants did not receive the Hypothecation Agreement until the day of or the day before closing. Indeed, Plaintiff's bank's counsel did not even know if the parties were being asked to sign a hypothecation agreement on November 21, 2014 when Plaintiff's bank's counsel stated "There will also be hypothecation agreements, **I believe.**" However, Phillip never agreed and had rejected executing any such agreements before. See Email from Phillip to Plaintiff dated November 20, 2014, attached as Exhibit 14:

> I am not on your loan … my 1/6 monthly profit will be distributed to me timely and you can not float or make your payments out of my portion of the profit … if there is any misunderstanding about that, let's not move forward….

In fact, Plaintiff was not even aware that his bank documents would require the parties to sign a Hypothecation Agreement until the parties received the closing documents:

Q. When did you first learn that there would be a hypothecation agreement required?
A. Phillip was the first one that told me that. I didn't know what it was. He said, and this thing's asking for a Hypothecation Agreement.

Deposition of Plaintiff, p. 292, lines 7 – 11, attached as Exhibit 15.

6. No agreement as to assignment of rents.

Similarly, Plaintiff testified that he and Defendants agreed that the first floor rent was not part of any assignment of rents for the proposed project:

Q. **And you agree that neither Phillip nor Spiros nor Jacob nor you agreed to assign rent that the owners of 229 King received from S&S Old Town for this project.**
A. That's lengthy. I can't put my head around it. Will you say that again?
Q. Yes, I'll break it down. There was an assignment of rents that was tendered in the closing package, right?
A. Assignment of rents, oh, with the bank, yes.
Q. But leading up to the closing none of the owners of 229 King had discussed or agreed to assign rents that S&S Old Town pays to the owners as part of that assignment of rents.
A. **S&S Old Town. Do you mean Old Town's rent, that Old Town's rent would have anything to do with Old Towne Suites?**
Q. **Yes.**
A. **No, I don't think so.**
Q. **Okay. And it wasn't part of the deal.**
A. **Old Town's rent and Old Towne Suites, no, I don't think that was part of the deal.**

Deposition of Plaintiff, p. 415 line 19 – p. 416 line 15, attached as Exhibit 16.

Q. **The rent that S&S Old Town pays to 229 King, to the owners of 229 King, had nothing to do with the Old Towne Suites project.**
A. **I think that's correct.**

Deposition of Plaintiff, p. 416 line 21 – 25, attached as Exhibit 16.

However, the bank's Assignment of Rent and Hypothecation Agreement applied to all rent from 229 King Street, including the first floor restaurant (S&S Old Town). No one ever agreed to such material terms.

7. The final cost of the proposed project.

The loan commitment letter and the contract to build the new building (which Plaintiff unilaterally signed himself) prove that there was no meeting of the minds and no agreement as to

the material terms as far as final cost. The Southcoast loan commitment as of 9/24/2014 set forth that the new building, including the furnishings for the units, would be $1,800,000; whereas the contract to build the new building (executed unilaterally by Plaintiff) as of 10/15/2014 would be $1,728,900.00; whereas Plaintiff conceded that, up to the present, the sprinkler system price had not yet been determined (much less negotiated or price agreed upon) and could cost anywhere between $10,000 and $100,000, and the furnishings would cost an additional $225,000. See Spiros' Appendix Item J. Please note that Plaintiff did not even purport to sign the contract to build a new building on behalf of the LLC (and that Jacob, Phillip or Spiros did not sign the contract to build the new building); rather, Plaintiff signed this contract himself. This is because Plaintiff signed the contract to build without Defendants' knowledge. See Item No. 9 in this Memorandum. In addition, Plaintiff also admits to additional hundreds of thousands of costs that had not yet been determined or negotiated. See Spiros' Appendix Item J.

8. Contract to build the new building signed by Plaintiff only.

Importantly, Plaintiff conceded he did not know if he ever even showed the contract to build the new building before Plaintiff unilaterally signed it:

> Q. The contract with Kevin Carroll.
> A. Yes.
> Q. You never showed that to the Ferderigos brothers before you executed it, did you?
> A. I probably have. I can't remember.

Deposition of Plaintiff, p. 430, lines 21 – 25, attached as Exhibit 17.

> Q. Do you recall when you or if you sent a copy of the contract signed with a contractor to any of the three brothers?
> A. No. I don't recall when it was.

Deposition of Plaintiff, p. 197, lines 12 – 15, attached as Exhibit 18.

Clearly, Defendants never agreed to the contract to build the new building as is evidenced by the fact that they never signed the contract. Again, this is why the statute of frauds exists.

9. "Stupid" details.

Plaintiff concedes that Defendants' material terms are "stupid details" that were never agreed to:

> 11/24/14: 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 [sic] 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."**

See Email from Plaintiff to Defendants, dated 11/24/14, attached as Exhibit 19.

Plaintiff acknowledges in the same email that these "stupid details" were never agreed to and he was still negotiating the terms of financing for the proposed project: **"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."** Ultimately, these "stupid details," which are material terms of the alleged oral contract, resulted in a deal never being agreed to. See Phillip's Email to Plaintiff, dated November 21, 2014, attached as Exhibit 20:

> Athan,
>
> **Jacob, Spiro and I own one-half of 229 King Street and one-half of Old Towne Suites, LLC. Although we attempted and are attempting to build a new building on that property, to the benefit of all, it is clear that there is no agreement between you and us on the details of how the note is to be structured or personally guaranteed, as well as other details.**
>
> **Until these particulars are resolved, we regretfully can not move forward with the project.** I recommend we reset the closing for next week to see if we can work through these issues.
>
> If not, then we can not move forward.
>
> Thanks, Phillip.

10. Side Agreement.

Initially, Plaintiff's Complaint alleges he agreed to sign Phillip's Side Agreement (See Complaint Par. 20, stating **"Plaintiff agreed to sign the agreement presented to him by Defendant Phillip Ferderigos in early 2015"**). In key parts of his testimony, Plaintiff admitted the same:

> Q. . . . **Did you agree to sign the Side Agreement, yes or no?**
> A. **I did.**

Deposition of Plaintiff, p. 417, lines 4 – 6, attached as Exhibit 21.

However, Plaintiff also testified to the opposite, that he never agreed to sign the Side Agreement:

> Q. Well, do you agree that the side agreement that was being negotiated between you and Phillip was material to these negotiations?
> A. **No, that was something that was sprung on me, and we never agreed to any side agreement.** He just brought that up all of a sudden out of the blue.

Deposition of Plaintiff, p. 242, lines 9 – 10, attached as Exhibit 22.

However, Plaintiff also testified he was not sure if he agreed or did not agree to sign the Side Agreement:

> Q. You and Phillip, **did you ever agree to every term in a proposed Side Agreement?**
> A. **I'm not sure.**

Deposition of Plaintiff, p. 428, lines 4 – 6, attached as Exhibit 23.

At the hearing, contrary to Plaintiff's pleadings, Plaintiff's counsel argued that Plaintiff had not agreed to the Side Agreement. Accordingly, based on Plaintiff's inconsistent pleadings, testimony and arguments, Plaintiff apparently has no idea whether or not he ever agreed to such material term (again, evidencing no meeting of the minds as to material terms).

11. No binding agreement.

Finally, Plaintiff has also repeatedly released, in writing, the Ferderigos Brothers from any alleged "oral" agreement he claims the parties reached regarding the proposed project being explored. See Exhibit V to Phillip's Answer and Counterclaim.

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 [sic] 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 [sic] 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 [sic] 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."**

The above texts/emails from Plaintiff himself prove that there was never a binding agreement between the parties and Plaintiff himself or Defendants could walk away from the negotiations at any time and that negotiations were on-going.

12. **Plaintiff admits there was no agreement or even negotiations as to numerous material terms.**

Initially, Plaintiff concedes that he never told Phillip or Spiros (much less negotiated, or reached an agreement on) about the numerous agreements his bank would expect Phillip or Spiros to execute (such as an Hypothecation Agreement, an Assignment of Rents, a HUD Statement, a Construction Mortgage, an Agreement to Provide Insurance, a Construction Loan/Agreement, a Guarantee of Completion and Performance Agreement, a Commercial Security Agreement, a Hazardous Substance Certificate and Indemnity Agreement, a UCC Financing Agreement and other agreements as well):

Q. The question was is it true that you had not seen this hypothecation agreement prior to the day of closing.
A. I'm not sure when I saw it. It's whenever the attorney sent me the documents. Whenever the attorney sent me the documents, I gave it to them. I don't know if it was the day before the closing or the day of the closing.
Q. Do you remember ever having told Spiros that he would be signing an assignment of rents document prior to the day of the closing?
A. To me this is a standard closing document. I didn't go through and say, okay, this is an assignment of rent. I'm not sure. It's a standard closing document.
Q. Is the same true for the settlement statement, the HUD statement?
A. Yes, it's all part of what the bank requires.
Q. And so you did not see it, and therefore Spiros probably didn't see it until the attorney sent them to you.
A. Until the attorney sent them to us, that's correct.
Q. Would the same be true for the next document, the construction mortgage?
A. If it was all in the same closing document. Is this all the same closing document?
Q. Yes.
A. Yes, then that's when we got it from the attorney.
Q. What about the agreement to provide insurance, when did you first learn that you were going to have to sign an agreement to provide insurance?
A. I'm not sure. I think the attorney had it listed. It was in an email, what would be signed that day; and maybe he sent that out and I sent it to Phillip and he said - he might have said he's not signing this before he even received it. I don't remember.
Q. Is the same true for the construction loan agreement, that is, that you did not see that agreement until the lawyer sent it to you?
A. Correct.

Q. Was that sent with the rest of the closing package?
A. Yes. I didn't receive the closing packet until the lawyer sent it to me and I forwarded it to the cousins.
Q. And what about the **guarantee of completion and performance document**, was that the same thing?
A. If it was all part of the closing document, when the attorney sent it to me, that's when I saw it.
Q. Same for the **commercial security agreement**?
A. I would think so if it was in the same closing document.
Q. Same for the **hazardous substances certificate and indemnity agreement**?
A. Yes, if it was in the closing documents.
Q. Same for the agreement to provide insurance?
A. Yes, if it was in the closing documents.
Q. And for the **UCC financing statement**?
A. If it was in the closing documents, yes.

Deposition of Plaintiff, p. 293, lines 8 – 25; p. 294 - 296, line 1, attached as Exhibit 24.

Q. Okay. Any other – any conversation that you had in which they agreed to sign anything other than a mortgage.
A. Other than a mortgage, hmm, the only stipulation that they have was that they don't want to be personal guarantors on the note. They never said that they wouldn't sign over whatever the other things the bank needed.
Q. Yes, I'm asking you that question in the affirmative. **Neither Spiros nor Phillip ever agreed to sign anything other than, as you claim, a mortgage.**
A. **The only thing I remember is Spiros and Phillip Agreeing that they would not personally guarantee the note.**
Q. I'm going to ask you one more time, and you can say yes or no and then you can explain. **There was no circumstance in any conversation related to Old Towne Suites in which either Spiros or Phillip agreed to sign anything other than the mortgage you claim they were willing to sign.**
A. **I don't remember.**

Deposition of Plaintiff, p. 412, line 13 – p. 413 line 9, attached as Exhibit 25.

Conclusion

In conclusion, this case is a perfect example of why the law requires that contracts involving large, complex transactions be reduced to writing. Every detail is potentially critical, and there is too much opportunity for misunderstanding if all the details are not finalized and written out, and the final agreement is not signed before it becomes binding.

Plaintiff's claim fails as a matter of law not only pursuant to the statute of frauds, but also because the multiple documents/contracts that Plaintiff is asking the Defendants to sign reflect

material terms that are different than what Plaintiff himself alleges was the "oral" agreement that the parties agreed to. Further, both (1) the multiple documents/contracts Plaintiff is asking Defendants to sign, and (2) Plaintiff's alleged "oral" contract are different than what Plaintiff's actual written emails/texts reflect was the on-going negotiations at the time negotiations ceased. As such, Plaintiff's claims collapse where Plaintiff's own bank's written documents/contracts (mortgage, note, hypothecation agreement, assignment of rents, UCC Financing, etc.) are refuted by and contradict Plaintiff's own sworn testimony, which contradict the on-going negotiations reflected in Plaintiff's own texts/emails. This result, however, is not surprising when the parties were still in the middle of negotiating the material terms/details of a possible deal when negotiations fell apart.

Plaintiff's case amounts to an allegation that Defendants "orally" agreed to build a new building with him and finance it with a mortgage on their property, irrespective of any details or agreement on any material terms. As the parties explored these possibilities of a proposed project, every single material term was not agreed to and, when the parties negotiations came to an end, without any final binding agreement being agreed to by all parties, Plaintiff decided to sue Defendants to enforce an alleged "oral" agreement that was never made. There is a reason South Carolina law does not recognize agreements to agree; likewise, there is a reason South Carolina law has the statute of frauds.[3] Here, South Carolina bars Plaintiff's attempt to assert his claims against Defendants.

[3] In other words, in South Carolina, a Plaintiff can sue a Defendant if there is a breach of a contract but a Plaintiff can not sue a Defendant to force them to make a contract . . . that is what Plaintiff is attempting to do in this case.

Respectfully submitted,

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D. MORTGAGES

§ 41 Generally

A mortgage is a conventional instrument between the parties and is a specific lien on property covered by it.[1] At common law, a mortgage was a conveyance of realty subject to a condition of defeasance upon repayment of the debt.[2] The common law was changed by statute in South Carolina in 1791.[3] Under current South Carolina law, a mortgage of real estate gives the mortgagee a lien only and does not operate as a conveyance.[4]

A cotenant has the authority to mortgage his undivided interest in the property,[5] and a mortgage may be foreclosed on this interest.[6] The court may order either a partition of the land and attachment of the lien to the portion of land allotted to the mortgaging cotenant or a sale of the entire property and division of the proceeds among the cotenants.[7] Likewise, if one cotenant gives a mortgage on a specific portion of common property, that portion will be allotted to the mortgagor when the property is partitioned in order to save the lien of the mortgage, if such division can be made without prejudice to the other cotenants.[8]

It is equally clear that one cotenant cannot mortgage the entire common property without the consent of the other cotenants.[9] The effect of a mortgage that purports to convey the entire interest and which is executed by fewer than all the cotenants results in a lien on the interest of the mortgaging cotenants only.[10]

In jurisdictions outside South Carolina which hold that a mortgage is a conveyance passing title, the giving of a mortgage by a joint tenant may sever the tenancy.[11] In

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contrast, in lien theory jurisdictions such as South Carolina, a mortgage by a joint tenant does not sever the cotenancy.[13]

1. Ex parte Johnson, 147 S. C. 259, 145 S. E. 113 (1928).

2. State v. Laval, 15 S. C. L. (4 McCord) 336 (1827); Reeder & Davis v. Dargan, 15 S. C. 175 (1881).

3. Reeder & Davis v. Dargan, 15 S. C. 175 (1881).

4. Ex parte Johnson, 147 S. C. 259, 145 S. E. 113 (1928); Bartles v. Livingston, 282 S. C. 448, 319 S. E. 2d 707 (Ct. App. 1984); Citizens' & Southern Bank of S. C. v. Pine Forest Inn Co., 31 F. 2d 301 (1929); Burkett v. Whittemore, 36 S. C. 428, 15 S. E. 616 (1892); S. C. Code Ann. § 29-3-10 (Law. Co-op. 1976).

5. Ex parte Johnson, 147 S. C. 259, 145 S. E. 113 (1928); Z. V. Pate, Inc. v. Kollock, 202 S. C. 522, 25 S. E. 2d 728 (1943).

6. Z. V. Pate, Inc. v. Kollock, 202 S. C. 522, 25 S. E. 2d 728 (1943).

7. Z. V. Pate, Inc. v. Kollock, 202 S. C. 522, 25 S. E. 2d 728 (1943); 20 Am. Jur. 2d, Cotenancy and Joint Ownership § 102 (1965).

8. Kennedy v. Boykin, 35 S. C. 61, 14 S. E. 809 (1892).

9. 20 Am. Jur. 2d Cotenancy and Joint Ownership § 102 (1965).

10. Id.

11. Id. § 17.

12. Id.

E. OTHER TRANSACTIONS

§ 42 Generally

One cotenant cannot without the consent of his cotenants grant an easement or right-of-way that affects the right of other cotenants over commonly-owned property.[1] Such an easement or grant binds the granting cotenant's interest only.[2] The grant may give the grantee the right to require

WESTLAW

Original Image of 145 S.E. 113 (PDF)

147 S.C. 259
Supreme Court of South Carolina.

Ex parte Johnson
Supreme Court of South Carolina. October 10, 1928 Ex parte JOHNSON. (Approx. 25 pages)

SWYGERT
v.
KEEL et al.

No. 12508.
Oct. 10, 1928.

Cothran, J., dissenting.

Appeal from Common Pleas Circuit Court of Aiken County; J. E. Harley, Special Judge.

Action by Mary A. Swygert against Bradford Keel and others to foreclose a mortgage, in which J. C. Johnson intervened. From the judgment, intervener appeals. Reversed and remanded.

West Headnotes (15)

Change View

1 Equitable Conversion ⚿ Directions in Will
Will directing division of land among remaindermen held not to effect equitable conversion.

2 Equitable Conversion ⚿ Sale for purpose of distribution
To effect "equitable conversion," will must clearly express intent that proceeds from sale of land, not land itself, are to be divided.

1 Case that cites this headnote

3 Judgment ⚿ Nature of property
Judgment is general lien on all debtor's real estate except homestead exemption.

4 Tenancy in Common ⚿ Nature and incidents of cotenancy
Tenants in common may hold land jointly as long as they wish.

5 Tenancy in Common ⚿ Sales and conveyances to third persons
Tenants in common in realty may mortgage their undivided interest.

6 Mortgages and Deeds of Trust ⚿ Nature and Requisites
Mortgage is conventional instrument constituting specific lien on property covered.

7 Mortgages and Deeds of Trust ⚿ Nature of interest conveyed or created; title or lien
Mortgagee has equitable interest. Civ.Code 1922, §§ 5223, 5292 (See Code 1942, §§ 8701, 8826).

1 Case that cites this headnote

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8 Mortgages and Deeds of Trust ☞ Particular liens and claims
Purchase-money mortgage would not be prior to previously recorded mortgage of which holder of purchase-money mortgage had actual and constructive notice.

2 Cases that cite this headnote

9 Mortgages and Deeds of Trust ☞ Failure to record, effect on nonparties in general
Mortgages not recorded within ten days after execution took effect as of date recorded.

10 Partition ☞ Cotenancy or other common interest of parties
Tenants in common have right to partition at any time, or may hold land jointly as long as they wish.

11 Partition ☞ Necessary parties
Mortgagee's equitable interest should be protected in partition suit by making him party thereto. Civ.Code 1922, §§ 5223, 5292 (See Code 1942, §§ 8701, 8828).

1 Case that cites this headnote

12 Partition ☞ Necessary parties
Better practice is to make all incumbrancers parties to partition proceedings. Civ.Code 1922, § 5292 (See Code 1942, § 8828).

13 Partition ☞ Liens and charges
On partition sale of land, prior lien against cotenants' undivided interest attaches to such cotenants' share of proceeds, though incumbrancer is not party. Civ.Code 1922, § 5292 (See Code 1942, § 8828).

1 Case that cites this headnote

14 Trusts ☞ Judicial sale
Where remaindermen purchasing at partition sale paid only sufficient to pay off cotenants, remainderman who had mortgaged his undivided interest became trustee for mortgagee to extent of such interest.

1 Case that cites this headnote

15 Wills ☞ Directions to pay or convey to or divide among devisees or legatees
Title vested in remaindermen on testator's death, under will providing for equal division among them on life tenant's death.

*114 Following is the decree mentioned in opinion:

This matter was heard by me at the spring term of the court of common pleas for Aiken county. The cause was fully argued by counsel orally. Both sides have also filed written arguments of considerable length, and the matter has had my very earnest consideration, and I am herein endeavoring to discuss the exceedingly interesting questions involved in detail, regarding the questions involved as being more important than the comparatively small amount of money in dispute.

The controversy herein is a sequel to the foreclosure of a mortgage executed by W. H., S. A., and Bradford Keel in favor of Bank of Western Carolina, and by it transferred to the plaintiff Mrs. Mary A. Swygert. This mortgage secured the payment of a debt of $15,000, which with unpaid interest amounted at the time of the foreclosure to more than $20,000. The real estate covered by the mortgage, known as the C. A. Keel home place, brought at the foreclosure sale but $6,200, leaving an unpaid deficit still due the plaintiff of approximately $14,000, even had the plaintiff received the whole of the $6,200 which the property brought at the sale.

The present controversy is between J. C. Johnson (hereinafter designated as "the claimant"), who upon his own petition was made party defendant herein shortly before the

sale. Johnson, the claimant, claims to have a mortgage prior in rank to the plaintiff's mortgage, covering a one-sixth interest in the property. His mortgage was originally for $750, and would now amount to approximately $1,000. All parties consented to allow the sale in the foreclosure action to proceed, but the master of Aiken county was directed in the order of sale to withhold $1,000 subject to the determination by this court as to whether the plaintiff or the claimant is entitled to receive said fund. The matter argued before me was the question of the disposal of the $1,000 which is now held by said master.

The questions involved are interesting, and the law complex.

Testimony was taken by the master, both of an oral and a documentary nature. After a full consideration of the same the following are my findings of fact:

C. A. Keel died in 1892, seized of the land in question. His will was admitted to probate, and devised the property to his wife for life. She died in March, 1919. The will further provides: "At the death of my beloved wife I will that *there shall be an equal division* of what may be left of my estate *** among my beloved children, J. H. Keel, Hattie Bates, P. H. Keel, E. F. Keel, W. H. Keel, E. M. Keel and S. A. Keel. *** If any of the above children die *before a division of my estate is made*, leaving a bodily heir, then that heir or heirs, as the case may be, will *have their parent's share of my estate*."

In September, 1919, a partition proceeding, in which the children of C. A. Keel, and his grandchildren who represented predeceased children, were made parties, was commenced in the court of common pleas of Aiken county. This proceeding constituted judgment roll No. 4724 in the clerk's office of said county, which said roll was offered in evidence herein. The proceeding is an ordinary partition proceeding between said parties, in which the sale of the property in accordance with the terms of the will was sought, and a division of the proceeds of the sale was asked for. The proceeding will hereinafter be more fully referred to.

Bradford Keel, the only child of one of C. A. Keel's seven children, on October 22, 1919, executed a mortgage in favor of P. K. Livingston covering his (Bradford's) "undivided right, title, interest and estate" in the tract of land in question. This mortgage was not recorded until January 22, 1920. Livingston assigned this mortgage to Johnson, the present claimant, in July, 1922. The Johnson claim arises out of this mortgage.

The partition proceeding resulted in the court's first ordering the executor of C. A. Keel's will to sell the property publicly. At this sale the highest bid was $28,000. Later, an offer was made to the executor of $30,000, by W. H. Keel, S. A. Keel, and Bradford Keel. This bid was accepted by the executor, confirmed by the court, and under order of court an executor's deed was made to the three purchasers on the 14th of January, 1920, said deed, however, not being recorded until the 17th day of February, 1920. This deed recites the payment to the executor of the sum of $30,000. W. H. and S. A. Keel were sons of C. A. Keel, and the final decree in the partition proceeding ordered that out of the $30,000 received by the executor for the land, after paying many items of cost and an executor's commission of $1,500, and an attorney's fee of $1,250 to Mr. Searson, plaintiff's attorney, that the executor pay "to J. H. Keel, Bradford Keel, Mrs. W. D. Nelson, W. H. Keel, and S. A. Keel, each the sum of $3,075" as their share of the proceeds. Neither Livingston nor Johnson were parties to these proceedings.

The purchasers borrowed $15,000 of the money they paid to the executor from the Bank of Western Carolina, and executed a mortgage now owned by Mrs. Swygert covering the property which they bought from the executor. This mortgage is dated January 21, 1920, and was recorded February 17, 1920, which is the same day upon which the deed was recorded. It is evident, while there is a slight difference in the dates of the two papers, that the transaction of purchasing and the transaction of borrowing from the bank all constitute one transaction. Any question arising out of this proposition is set at rest by a stipulation of counsel embodied in the testimony, reading as follows, which is adopted as the court's finding of fact on that subject, to wit: "It is stipulated that it stands as admitted that the $15,000 borrowed from the Bank of Western Carolina, and secured by the mortgage which was later assigned to the plaintiff, was borrowed by S. A., W. H., and Bradford Keel, for the purpose of paying the same to J. H. Keel as executor, as the purchase money of the 400 acres conveyed by him to said purchasers, and that the deeding of the property by J. H. Keel, executor, to S. A., W. H., and Bradford Keel, and their mortgaging the same to the bank for $15,000, and the payment of the said sum directly by the bank to the executor, were all part and parcel of the same transaction."

*115 Oral testimony was offered by the claimant to the effect that Mr. H. M. Dibble (now deceased), president of the Bank of Western Carolina, was notified of the existence of a mortgage to Livingston before he made the loan. On account of Mr. Dibble's death, his version of the proposition is not before the court. However this may be, he and the bank were affected with constructive notice of the existence of the Livingston mortgage, as the mortgage to the bank was not recorded within ten days.

Upon this point of the case, however, if a finding of fact is pertinent, coupling the testimony of Bradford Keel to the effect that what Mr. Dibble was told was that Bradford had given a mortgage *on his share of the estate*, with the recital in the mortgage to the bank which Mr. Dibble later took at the end of the partition proceedings, which read, "This is the only mortgage over the above described property," and adding thereto the admitted fact that Mr. Livingston knew that the property upon which he claimed to hold a mortgage was being sold for partition, and that he imparted this knowledge to Mr. Dibble--considering all these facts together I find that Mr. Dibble, as president of the bank, was fully justified in the belief, and probably did believe, that Livingston had collected, or was about to collect, his money secured by the aforesaid mortgage out of Bradford Keel's share in the proceeds of sale, when the Keels signed a mortgage in favor of the bank reciting that the same was the first mortgage upon the property in question.

It was suggested by counsel for the claimant that Mr. Dibble either agreed with Livingston or led Livingston to suppose, and thereby lulled him into security and into the belief that Mr. Dibble would see to it that his mortgage was paid, or that it would be recognized as a prior claim upon the property. I find no basis for such a contention, and my finding of fact thereupon is entirely to the contrary.

Hence, we have presented a case of a prior mortgage in point of time, and of recording--the mortgage given by Bradford Keel to Livingston and later assigned to Johnson, upon his "interest and estate" in C. A. Keel's estate, whatever that turned out to be, a mortgage later given to the bank after the partition sale, by the purchasers thereat, Bradford Keel being one of them, in which the mortgagor recited that said mortgage constitutes a first mortgage upon the property--these two balanced against each other. Both cannot be paid, as the funds held by the master are not sufficient; the question to be decided by the court is which is superior.

After an exhaustive study of the law applicable to the facts, it is clear to me that under the well-settled law of the state of South Carolina that a tenant in common (even in the ordinary case and without considering the terms of the will of C. A. Keel for the present) has no vested estate in the tract of land held in common with others, but that it is held subject to the paramount right of partition amongst the parties, and that when said partition is had, the right of any lienholder against one of the tenants in common is transferred to what that tenant in common gets out of the partition. If he gets a specific parcel of land less than the original whole, which is assigned to him as his aliquot share, then the lienholder's lien vests as a lien upon that parcel of land so assigned; but if in the partition such tenant in common is assigned a sum of money, the lienholder must follow that sum of money and see to it that the tenant in common actually receives it, and must collect his debt out of said fund or sum of money.

It is to be specifically noted that in the decree of court in the partition proceeding it was ordered that each of the children of C. A. Keel, or the children's children in the case of a predeceased child, should receive a one-sixth portion of the $30,000, after the payment of the expenses incident to the proceeding. In other words, it was ordered in this proceeding, which the Bank of Western Carolina had the right to rely on, whether its president knew of the existence of the Livingston-Johnson mortgage or not, that Bradford Keel received as his share of the C. A. Keel property the sum of $3,075.00. The authorities establish the fact that no matter what the bank's knowledge through Mr. Dibble, its president, may have been as to the existence of the Livingston-Johnson mortgage, that it was the duty of the holders of that mortgage to follow the fund and to collect out of this fund the amount of the mortgage, and that Mr. Dibble had a right to presume that this had been done. The authorities further hold that the fact that Mr. Livingston, the then holder of the mortgage, was not made party defendant to said proceeding cuts no figure in the question.

The following cases, in my opinion, establish the holdings just stated: Rabb v. Aiken, 2 McCord, Eq. (7 S. C. Eq.) 118. In this case Wm. Rabb died intestate prior to 1814. In 1814 Andrew Wicker secured a judgment against Robert Rabb, one of the three children of Wm. Rabb. In 1822 an execution was issued upon said judgment on the supposed interest of Robert Rabb in the tract of land which Wm. Rabb died seized of, which was sold and bought in by the plaintiffs. Proceedings were then taken to test the validity of the sheriff's title to the

plaintiffs, they claiming to be the owners of Robert Rabb's share in the property. The defense was interposed that in 1818 a partition proceeding had been brought in the court of common pleas of Fairfield district, by virtue of which the defendant had gained title to the property, and Robert Rabb's interest had been transferred to the fund arising out of the sale of the property. That Robert Rabb had received his share of the property, *and although the owner of the judgment was not made party to this proceeding,* the court held not only that the owner of the judgment was not a necessary party to the proceeding, but that it was incumbent upon him to follow the fund arising from the partition at his peril, and that the purchaser at the partition sale got a perfect title to the property. The court referred particularly to the statute of distribution of the state of South Carolina passed in 1791, which is still in existence in this state. The court said: "The object of the act of 1791 is to declare the manner in which lands of persons dying intestate shall descend and be distributed. But it does not vest any immediate right. The right must necessarily be only inchoate and contingent. If the ancestor be in debt at the time of his death beyond the amount of the personal estate, the lands are assets for the payment of the debts. If it cannot be divided without manifest **116* injury to the parties, or some of them, it may be sold, and the proceeds of the sale divided. Or it may be assigned to one or more who are required to pay the distributive share of the others in money. So that no one can be said to have a distinct and vested right in the land itself until distribution is made. And he then may not be entitled to any part of the land, but to a distributive share of the proceeds of the sale. But let us suppose the interest to be such as to be subject to an execution. The execution creditor could only come in under the distributee whose interest he claimed. He could not disturb the order of distribution. He could not prevent the sale or assignment of the land, according to the provisions of the act. All that he could claim would be a distributive share of the money. *** The land now in question was the subject-matter of the suit for partition, and those proceedings must be conclusive upon all who were either parties or privies to it. They may not affect a person holding under a distinct, unconnected paramount title, but must conclude all persons claiming in the same right. Public expediency, the quiet and peace of families, the final settlement and adjustment of estates, require that it should be so."

This is the beginning point of a long line of authorities in South Carolina which follow this case, and which thoroughly establish the doctrine that as between tenants in common the right of partition is paramount. That a lienholder, whether he be a judgment lienholder or a mortgage lienholder, because both are lienholders simply, does not take a complete lien but only a lien which is equitable in its nature--a lien which binds only what his creditor finally gets under the partition. If his creditor gets only money his lien is transferred to that money or the fund in question. These cases further absolutely establish the doctrine that the lienholder need not be made party in the partition proceedings. These cases are:

Keckeley v. Moore, 2 Strob. Eq. (21 S. C. Eq.) 21: "The only question is, whether the title of a purchaser at such a sale can be affected by a prior judgment against one of the children. It is quite manifest that, until partition made, it is impossible to determine whether the child will be entitled to any, or to what portion, of the estate. The right, whatever it be, is the creature of the act of 1791, and must be held in subordination to the provisions of that law. If a sale for partition be ordered, the title of the purchaser is just as complete as if the land had been sold to satisfy a debt of the intestate. To require the judgment or other lien creditors of all the distributees to be made parties to a suit for the partition of the estate of an intestate, would introduce a novelty in the practice of the court, and would incumber the proceedings with a delay and expense not calculated to promote the final settlement and adjustment of estates between the parties in interest, which is a leading object of the act of 1791."

Burris v. Gooch, 6 Rich. (39 S. C. L.) 1: "But Burris claims a lien under Potts' judgment, on the distributive share of Klingle's wife, paramount to the sale for partition. It might be a sufficient answer to this claim, that the house and lot were partitioned before the judgment was recovered. It is, however, settled that while the distributee has a legal title to his distributive share of real property, which is subject to the lien of judgments against him, and may be sold under execution, yet the title is qualified and limited by the right of his co-distributees to have partition made of the property. If the land be sold under a judgment against the distributee, before any proceeding is had for partition, the purchaser acquires the title and stands in the place of the distributee. If the judgment is not enforced by a sale of the defendant's distributive share, before partition, the lien is divested. The purchaser, or distributee in whom the land becomes vested, under a judgment for partition, takes it discharged of the lien of the judgment. The judgment creditor may, by timely application to the court, have his lien protected by an order for the payment to him of the defendant's distributive share of the price of the land. Rabb v. Aiken (2 McCord, Eq. 119); Johnson v.

Payne (1 Hill [Law] 111); McQueen v. Fletcher [4 Rich. Eq. 152] (MS. Eq. Cases, Decr. 1851)."

Riley v. Gaines, 14 S. C. 458:"Thus, while it is true that the judgment of the appellant was a lien upon the undivided interest of Marshall B. Gaines in the real estate of his deceased father, yet that lien was subordinate to the right of the other heirs to have partition made; and if, upon such partition, the whole of the land had been sold, or if it had been assigned to one or more of the other heirs, the lien of the judgment upon the land would have been divested and transferred to the interest of Marshall B. Gaines in the proceeds of the sale, or in the amount which those to whom the land had been assigned were decreed to pay for equality of partition. Rabb v. Aiken, 2 McCord, Eq. 118; Keckeley v. Moore, 2 Strob. Eq. 21; Burris v. Gooch, 5 Rich. 8; Garvin v. Garvin, 1 S. C. 82."

Ketchin v. Patrick, 32 S. C. 452, 11 S. E. 303:"But inasmuch as there was a judgment obtained prior to the partition by the Charlotte bank against three of the parties entitled to an undivided interest in the 570 acres, of which the 121 acres now in dispute was a part, it is necessary to inquire what was the effect of that judgment and the sale thereunder after the partition was effected. It is quite clear, that as neither the Charlotte bank nor the plaintiff herein were parties to the case of Mellichamp v. Mellichamp, supra [28 S. C. 125, 5 S. E. 333], they could not be affected by any proceedings therein, except as will be stated presently. It is also well settled that while a judgment against one of several tenants in common in a tract of land, is a lien on the undivided interest of the judgment debtor, which may be enforced by a sale of such undivided interest, the effect of which is to put the purchaser in the position of assignee of such interest; yet the lien of the judgment is subordinate to the right of the other tenants in common to demand partition, which, when made, transfers the lien to the share of the judgment debtor, when ascertained by a partition in kind, or to his share of the proceeds of the sale, when a sale is ordered for partition; and this is so, whether the judgment creditor is a party to the proceedings for partition or not. Riley v. Gaines (14 S. C. 454), and the cases therein cited."

Coming down to much more modern times, I find the case of Marion County Lumber Co. v. Lumber Co., 84 S. C. 506, 66 S. E. 124, 677, rendered in 1910, in which the court says: "It is also a familiar principle that, in order for the process of the court to convey lands free from incumbrances, the incumbrancers must be *117 parties to the proceedings; otherwise the purchaser takes subject to the right of the incumbrances. DeSaussure v. Bollmann, 7 S. C. 329; Warren W. & Co. v. Burton, 9 S. C. 197. The action of partition is an exception to this rule. In case of judgments against the interest of cotenants it is not necessary, as a rule, to make such lienholders parties, because, after partition in kind is made, the judgment by operation of law attaches to the allotted share of the judgment debtor as of its original lien, or, in case of sale, is transferred to his share in the fund. Ketchin v. Patrick, 32 S. C. 443, 11 S. E. 301; Ex parte Mfg. Co., 81 S. C. 270, 62 S. E. 259 [128 Am. St. Rep. 908]."

In the foregoing cases the lien referred to has been the lien of a judgment and not the lien of a mortgage. In principal this can make no difference, because each is a lien. I find, however, in Ex parte Union Mfg. & Power Co., 81 S. C. 270, 62 S. E. 260, 128 Am. St. Rep. 908, the rule is stated as follows, showing that there is no distinction between the two kinds of liens: "In the case of incumbrances, such as judgments or mortgages against the interest of a cotenant, it may not be necessary, as a rule, to make such lienholders parties, because, after partition in kind, the lien will merely be transferred to the tenant's share in severalty, or, in case of sale, the tenant's share in the fund, and thus complete justice be effected."

Hence I conclude on this branch of this proposition, that it is definitely settled in South Carolina that where one holds a lien against the interest of a tenant in common that he holds the same subject to the paramount right of partition, and that without the necessity of making him a party in said partition, if a partition is had, and the court in the proceeding transfers the interest of his debtor to a fund or sum of money, that the lien passes to this sum of money, and that said lienholder, be he a judgment holder or a mortgage holder, must at his peril follow this fund.

Hence I hold as matter of law and fact, that the lien of the Livingston-Johnson mortgage was automatically transferred to the $3,075.00 in money which the court ordered paid to Bradford Keel, and that the holders of said mortgage had no further lien on the land or any share therein, after the partition proceedings, and that the lien of the mortgage held by Mrs. Swygert must be enforced by the court.

The provision of C. A. Keel's will in this particular case materially fortifies the conclusion as reached. In this will no direct interest in the land is vested in the children or grandchildren of

the testator. He provides that a division of his property take place, and the plain import of the will is that the children and grandchildren should take only what should be given to them as a result of the division that was made. The division which was made herein did not give Bradford Keel any interest in the land, but gave him the sum of $3,075.00 in money.

Claimant's counsel cited the syllabus of the case of Bannister v. Bull, 16 S. C. 220, to the effect that Bradford Keel took, under the will, an interest in the estate of his father, and largely base their argument before me on this contention. An examination of the opinion itself therein, however, reveals the fact that "after the death of the testator his residuary estate was divided and the land in dispute was allotted to Jeanel." In other words, in the Bannister Case it was not until after the division contemplated in the will had actually taken place that his children were treated as holding an estate in his property. This case confirms the view that I have reached and is in no manner in conflict with it.

Closely akin to the questions arising herein is the doctrine of equitable conversion which has so frequently been applied in South Carolina. There are many cases upon this subject in our reports. Several of them are cases in which a beneficiary under a will has given a mortgage upon his supposed interest in the land which the testator owned. But the will of the testator provided for a sale of the land and a division of the estate, and the effect of the beneficiary giving a mortgage upon his supposed share in the land has been discussed by the courts.

It was first held in Wood v. Reeves, 23 S. C. 382, that a beneficiary's mortgage under such circumstances was an absolute nullity, because the testator by his will converted the land into personalty. Later, however, in Walker v. Killian, 62 S. C. 482, 40 S. E. 887, this doctrine was slightly modified, and the conclusion which I have reached is established by the court, namely, that the mortgage amounts to an equitable assignment of the interest of the beneficiary in the fund arising out of the sale of the land.

In Walker v. Killian, the court said: "The circuit judge committed no error as is referred to in the second exception. Certainly, if a testator orders certain of his lands to be sold and the proceeds of the sale divided, the fee to said lands does not vest by operation of law in the persons to whom the proceeds of sale when made is given. It becomes a personal estate or a legacy in such persons. Any attempt to mortgage the land by the two sons, Joseph and Millon, cannot operate as a mortgage; it is only an assignment of such shares which will be enforced as an equity in the alleged mortgagee."

In Earle v. Maxwell, 86 S. C. 6, 67 S. E. 964, 138 Am. St. Rep. 1012, in which there was a similar will as in Walker v. Killian, the court said: "The interest of the bankrupt in this case not being an interest in the land, but in personal property—the money to be realized from the sale of the land—it might have been doubtful under the authority of Wood v. Reeves, supra, whether it could be assigned or mortgaged; for in that case the view is indicated that such a possible future interest in personal property could not be mortgaged. But in the later case of Walker v. Killian, supra, it is expressly held that while a paper in the form of a mortgage of such a possible future interest in personal property cannot operate as a mortgage, it is good in equity as an assignment."

In 6 R. C. L., under the head of "Conversion," we learn that there may be conversion of realty into personalty by will, by contract, or by judicial action. In the present case, we have a combination of these conversions. The will herein provided for a division between the beneficiaries of C. A. Keel. It did not give any of his children or grandchildren an interest in his estate until after a division was had. The court came in and made a judicial conversion by ordering a sale of the realty and its conversion into personalty and a division of the personalty.

*118 Hence the authorities just cited, while based upon a somewhat different principle, confirm my conclusion, namely, that what Mr. Livingston got by his mortgage was merely an equitable assignment of Bradford Keel's portion of the fund.

It remains, however, to consider the contention of claimant's counsel to the effect that what actually happened was that Bradford Keel did not actually draw his $3,075 (his share of the proceeds of the sale), and that the claimant's mortgage actually attaches to the land to this extent, and ranks prior to the plaintiff's mortgage. I cannot sustain this position for the following reasons:

(1) I have definitely held, and reiterate the holding, that Bradford Keel's share in the Keel estate was converted by the partition proceeding into cash ($3,075), and that under the will of C. A. Keel he had no claim to anything but this sum of money, and that the Livingston mortgage, at most, created merely a claim upon this sum of money. I further hold that when

the bank took the mortgage, after the partition proceeding, which mortgage recited that it was a first mortgage on the property, the bank had a right to and did assume that the scheme provided for in the partition proceeding was being carried out in full, namely, that S. A. Keel, W. H. Keel and Bradford Keel were paying into the executor the $30,000 in cash, $15,000 of which the bank was advancing; and that Bradford was drawing his share in cash as the decree provides. The bank had a right to presume that the court's decree was complied with, and is not now chargeable with any responsibility for the fact that Bradford did not draw his money in cash, and that Livingston did not collect his claim against Bradford in cash at that time. I see no basis for the claim that the fact that Bradford Keel did not draw his money in cash continues the validity of the Livingston mortgage as a lien upon the land beyond the partition proceeding, which effectively transferred it to be a fund of money.

(2) If Bradford Keel's share, which the partition proceeding and the Keel will converted into cash, was not drawn by him but was left in the executor's hands, it was a contribution by him of a portion of the cash part of $30,000, which the purchaser had to raise, and even if the Livingston–Johnson mortgage mysteriously adhered as a lien to this fund of money, which fact I deny, its fortunes must depend upon the status of the $3,075 contributed by Bradford Keel to the purchase of the property. The credit portion of $15,000 was borrowed from the bank, and the mortgage securing it ranks first: (a) Because it was a purchase–money mortgage; and (b) because a purchase–money mortgage ranks prior to any other claim created by a purchaser, even though the claim be recorded before the date of the purchase –money mortgage.

In order to establish the two positions just laid down, I will take the same up seriatim.

(a) It has been definitely decided in South Carolina in the case of Groce v. Ponder, 63 S. C. 166, 41 S. E. 83, that money advanced by a third party as part of a transaction of purchase of a tract of land, and secured by a mortgage on the land, ranks as a purchase–money mortgage. Counsel for the claimant cited to the contrary the syllabus of the decision of the Supreme Court of this state in the case of McNair v. Moore, 64 S. C. 82, 41 S. E. 829. An examination of this case, however, shows that there was no mortgage therein, and that the court distinctly held that the money which was advanced was not advanced for the purpose of the purchase of land. Hence, the authority of Groce v. Ponder remains unshaken in this state.

The doctrine of the effect of a purchase–money mortgage is well stated in 19 R. C. L. 416, as follows: "It is a general rule, to which there is little dissent, that a mortgage on land executed by the purchaser of the land contemporaneously with the acquirement of the legal title thereto, or afterwards, but as a part of the same transaction, is a purchase–money mortgage and entitled to preference as such over all other claims or liens arising thru the mortgagor, tho they are prior in point of time; and that is true without reference to whether the mortgage was executed to the vendor or to a third person."

(b) As a purchase–money mortgage, the mortgage to the bank ranks higher than any claim that Bradford Keel could make before he actually got title to the land by the executor's deed. 23 Enc. 467: "The distinctive and important characteristic of a purchase–money mortgage is the precedence allowed it at common law over other mortgages, judgments, mechanics' liens, and other claims, to which ordinary mortgages would usually be postponed." At page 468: "A mortgage given for the purchase money of land and executed at the same time when the deed is executed to the mortgagor, takes precedence of a prior judgment against the mortgagor."19 R. C. L. 420:"A purchase–money mortgage is entitled to priority over previous judgments against the purchaser, and the same equitable considerations which demand this rule also require that a third person who advances the purchase–money and takes a mortgage from the purchaser contemporaneously with the conveyance to him shall be protected to the same extent."

The same doctrine applies to a deed given to a third party by a purchaser covering the property purchased, even though said deed be recorded before the purchase–money mortgage is given. Ann. Cas. 1916C, p. 946. "It is generally held that the lien of a purchase –money mortgage is not defeated by the previous execution of a deed to the property by the mortgagor to a third person at a time when he had no legal title. McRae v. Newman, 58 Ala. 528; Warren Mortgage Co. v. Winters [94 Kan. 615, 146 P. 1012] *** Ann. Cas. 1916C, 958; Chew v. Barnet, 11 Serg. & R. [Pa.] 389."

An examination of these cases cited shows that in the cases referred to the deeds over which the purchase–money mortgages took precedence were duly recorded before the date of the purchase–money mortgage.

The same doctrine has been definitely established in South Carolina as affecting mortgages given to cover after-acquired property. See Hand v. Railroad, 12 S. C. 364. In this important litigation, a general mortgage had been given to a trustee to secure a bond issue upon the property of the railroad. This mortgage covered not only the property then owned by the railroad but all property that the railroad in the future might acquire. After its date the railroad acquired more land, upon which it built its track, and when it acquired this additional land it gave a purchase-money mortgage. A *119 controversy arose in the action in question as to whether the bond issue mortgage, which was duly recorded long before the purchase-money mortgage, took precedence over the purchase-money mortgage or not. The court held in favor of the purchase-money mortgage.

The court said: "It cannot be doubted that a railroad corporation may mortgage after to be acquired property. *** But to hold that a railroad company may make a mortgage of land to be acquired so as to defeat a purchase-money mortgage of land subsequently acquired, stands on an entirely different footing and cannot be admitted. *** The *** railroad company having given a purchase-money mortgage for the land, no obligation or lien affecting that company or its property can be interposed prior to such purchase-money mortgage. The mortgage of Trenholm *** was properly upheld by the decree as a first lien as to such mortgaged property."

Hence I hold that the Livingston mortgage is on all fours with each of the classes of liens or deeds referred to in the authorities just cited. Bradford had no title to the property when he gave this mortgage. Hence, just as a prior judgment against him which was duly recorded, or a prior deed duly recorded, or a prior mortgage on after-acquired property duly recorded, could not outrank a purchase-money mortgage, so a premature mortgage given by him which amounted to only an equitable assignment of his share in the property, could not outrank a purchase-money mortgage given by him when he acquired a real title.

Finally, I cite the case of Turk v. Funk, 68 Mo. 18, 30 Am. Rep. 772, which holds squarely that a mortgage given by a purchaser and duly recorded before he obtained title to a tract of land, to secure the cash portion of the purchase price, ranks inferior to a purchase-money mortgage. In this case Funk bought a piece of property from Turk, and gave Turk a purchase-money mortgage. Prior to the sale by Turk to Funk, Funk had borrowed from one Myers the cash portion of the purchase price which he was to pay to Turk. He gave Myers a mortgage upon the land which he was buying from Turk before the deed from Turk to himself was executed. The mortgage to Myers was recorded before the deed from Turk to Funk was executed. The court held that Turk's purchase-money mortgage outranked the mortgage to Myers, which represented the cash portion of the money paid to Turk. The court said: "It is unnecessary to add that upon these facts Myers' mortgage could convey only Funk's then interest, which was a right to a deed when the purchase-money was secured. In other words, it was subject to the mortgage of Turk."

The bank's mortgage ranks as a purchase-money mortgage, because it was created as part and parcel of the purchase of the land from the executor, and the bank's money went to the executor. The Livingston mortgage does not rank as a purchase-money mortgage (1) because it was created not as part and parcel of a purchase, but was created many months before, and was in no manner connected with the purchase of the land; and (2) because Bradford owned no interest in the land but only in the fund to arise out of its sale.

Hence, upon this branch of the matter, I hold that Bradford Keel's interest being not in the land but in the proceeds of the sale, that the only possible effect that his mortgage to Livingston could possibly have had was to create a claim which could not rank ahead of a purchase-money mortgage.

I might add that the consideration of the purchase-money question raised is not at all necessary to the decision of the issue in favor of the plaintiff, because entirely independent of this question, and leaving this question to a side, it follows that as Bradford Keel's share was in money alone, that Livingston's mortgage as against the bank could not possibly be held to have followed the money back into the land, but in so far as the bank's rights are concerned, the status is settled by the decree in the case of Keel v. Keel, and the lien of the Livingston mortgage goes no further than to attach to the fund ordered to be paid to Bradford Keel. If Livingston stood by and allowed this fund to go elsewhere he cannot trace his lien further than to the fund itself as against the interest of intervening third parties, such as the bank herein.

Claimant's counsel adverted in his argument to the fact that there was no lis pendens filed in the partition proceeding. An examination of the section of the Code of Laws of 1922 upon

the subject of a lis pendens (section 388), however, reveals that it is provided therein that the lies pendens "must be filed" only in foreclosure proceeding. In all other cases it is provided that the plaintiff "may file" a lis pendens. The section further reveals the fact that the office of the lis pendens is solely to give notice to subsequent purchasers and subsequent incumbrancers. Neither Mr. Livingston nor Mr. Johnson come within this category. Hence, it was unnecessary, as to them, in the partition proceeding referred to, to file a lis pendens, and the fact that this was not done is immaterial. A lis pendens was filed in the foreclosure proceeding of Swygert v. Keel.

Wherefore it is ordered, adjudged, and decreed that the master of Aiken county be and he is hereby required to pay to the attorneys of the plaintiff Mary A. Swygert the sum of one $1,000 held by him herein, which is the subject-matter of this controversy. It is also ordered that the clerk of court of Aiken county tax against the claimant, J. C. Johnson, the costs of this controversy, and that execution issue against the said J. C. Johnson therefor.

The exceptions referred to in the opinion follow:

Within due time thereafter the appellant J. C. Johnson gave notice of his intention to appeal and brought the matter to the Supreme Court on the following exceptions:

1. That the court erred, it is respectfully submitted, in holding that as a matter of law the mortgagee or assignee should not be made a party to the action to partition or sell the land by the executors, on approval of the court; whereas, the court should have held that the nature of the action required the plaintiffs to make the mortgagee or assignee of the Bradford Keel mortgage a party to the suit to sell the land.

2. The court erred, it is respectfully submitted, in holding as a matter of law that the Livingston-Johnson mortgage did not bind the land, whereas the court should have held that said mortgage did constitute a lien on Bradford Keel's interest in the land, and subsequent purchasers and mortgagees were bound thereby.

3. The court erred, it is respectfully submitted, in holding that the money loaned by the Bank of Western Carolina to the three Keel *120 heirs, buying out their cotenants, was purchase money; whereas the court should have held that money loaned to another to purchase with is not purchase money preferring the claim.

4. The court erred, it is respectfully submitted, in holding that there was a partition sale, all the evidence showing that the three heirs who bought the tract of land simply mortgaged to the Bank of Western Carolina their shares along with the shares purchased to get money to buy out the three selling cotenants; and the court erred in not so holding, and in not holding as a matter of fact and law that there was never any compliance with the partition statute, so as to place the proceeds of sale where Johnson could follow the funds and collect his mortgage.

5. The court erred, it is respectfully submitted, in holding that Bradford Keel was paid anything from the proceeds, whereas the evidence was conclusive that Bradford Keel mortgaged to the Bank of Western Carolina (the assignor of the plaintiff) his share in the land to buy another share in the land, the evidence showing that by the taking of that mortgage the Bank of Western Carolina (which had notice not only by the record but also personally of the lien of the Johnson-Livingston mortgage) obstructed any possible way of following the funds, arising from the sale, to collect under the Livingston-Johnson mortgage; whereas the court should have held that the proceeds of sale were in the land, and that Johnson had followed them there and should have been paid therefrom.

6. The court erred, it is respectfully submitted, in holding that under the terms of the will there was any restraint placed upon the interest of Bradford Keel; whereas the court should have held that Bradford Keel took the fee under the provisions of the will of his grandfather.

7. The court erred, it is respectfully submitted, in not holding the mortgage lien of Johnson to be a valid and prior lien upon the real estate in question.

Attorneys and Law Firms

Williams, Croft & Busbee, of Aiken, for appellant.

Hendersons & Salley, of Aiken, for respondent.

Opinion

BLEASE, J.

The facts giving rise to this action are briefly these. Some time in 1892, C. A. Keel died seized and possessed of a tract of land situate in Aiken county, this state, containing some 400 acres, which tract of land is the land in question herein. By his will, which was duly probated, he gave all of his property, real and personal, to his wife for life or widowhood, and at her death to be equally divided among his seven children, naming them, except one, namely, Hattie Bates, who was to account for 41 acres before receiving anything more out of testator's estate. The wife of testator died in March, 1919. In September of the same year, a partition proceeding was instituted in the court of common pleas for Aiken county, in which the children of the testator and his grandchildren, who represented deceased children, were made parties. Thereafter Bradford Keel, the only child of a deceased son of testator, executed a mortgage covering his undivided interest in said tract of land to P. K. Livingston, which mortgage was afterwards assigned to J. C. Johnson, but which assignment was not recorded. The partition proceeding resulted in a sale of the land to Bradford Keel and two of testator's sons, S. A. Keel and W. H. Keel, for the sum of $30,000. Said purchasers, at the time a deed was made to them and as part of the same transaction, executed a mortgage covering the entire tract of land to the Bank of Western Carolina for $15,000 which mortgage was thereafter transferred to Mary A. Swygert, the plaintiff in this action. The Livingston–Johnson mortgage was dated October 22, 1919, and the Bank–Swygert mortgage was executed January 21, 1920, and recorded February 17, 1920. This action was instituted for the foreclosure of the last–mentioned mortgage without making either P. K. Livingston or J. C. Johnson a party thereto. Johnson made application to become a party so that he could set up his rights in the mortgage held by him, which was granted. The foreclosure proceeded to termination upon an agreement between the attorneys for the respective parties that $1,000 should be held by the master until a decision of the Johnson–Swygert issues. The circuit judge held that Johnson was not entitled to have his mortgage paid out of the $1,000 so held by the master, but that said proceeds belonged to the plaintiff. Whereupon, he appeals to this court upon seven exceptions, which will be reported. The decree of the circuit judge, in which the facts are more fully stated, should also be incorporated in the report of this case.

It is deemed unnecessary to consider separately the several exceptions. The first question presented for our consideration is whether a partition proceeding, to which a mortgagee of one of the tenants in common, whose mortgage is duly recorded, is not made a party, will divest the lien of said mortgage on said land, and the purchaser thereof take it free from said mortgage.

The circuit judge decided this question in the affirmative, and relies directly or indirectly upon the following cases in this jurisdiction: Rabb v. Aiken, 2 McCord, Eq. (7 S. C. Eq.) 118; Keckeley v. Moore, 2 Strob. Eq. (21 S. C. Eq.) 21; Johnson v. Payne, 1 Hill, Law, 111; McQueen v. Fletcher, 4 Rich. Eq. (25 S. C. Eq.) 152; Burris v. Gooch, 5 Rich. (39 S. C. L.) 6; Garvin v. Garvin, 1 S. C. 62; Riley v. Gaines, 14 S. C. 458; Ketchin v. Patrick, 32 S. C. 452, 11 S. E. 301; Marion County Lumber Co. v. Lumber Co., 84 S. C. 505, 66 S. E. 124, 877; Ex parte Union Mfg. Co., 81 S. C. 270, 62 S. E. 259, 128 Am. St. Rep. 908. An examination of these cases will show that in each case it was held that the lien of a judgment upon the share of a joint tenant or tenant in common is subordinate to the right of his cotenants to have partition made, *121 and in none of said cases was there a mortgage covering the undivided interest of a joint tenant.

In Marion County Lumber Co. v. Lumber Co., supra, it is said:

"It is also a familiar principle that, in order for the process of the court to convey lands free from incumbrances, the incumbrancers must be parties to the proceedings; otherwise the purchaser takes subject to the right of the incumbrancers. De Saussure v. Bollmann, 7 S. C. 328; Warren W. & Co. v. Burton, 9 S. C. 197.

The action of partition is an exception to this rule. In case of judgments against the interest of cotenants it is not necessary, as a rule, to make such lienholders parties, because, after partition in kind is made, the judgment by operation of law attaches to the allotted share of the judgment debtor as of its original lien, or, in case of sale, is transferred to his share in the fund. Ketchin v. Patrick, 32 S. C. 443, 11 S. E. 301; Ex parte Mfg. Co., 81 S. C. 270, 62 S. E. 259 [128 Am. St. Rep. 908]."

In Marion County Lumber Co. v. Lumber Co., supra, it was decided that in a suit other than for partition judgment creditors are necessary parties in order to divest the lien of their judgments.

In Ex parte Union Mfg. Co., 81 S. C. 265, 62 S. E. 259, 128 Am. St. Rep. 908, it was held that the grantee of one cotenant of an easement to overflow a portion of the common property is a necessary party to partition proceedings.

In the last-mentioned case is this language:

> "In the case of incumbrances, such as judgments or mortgages against the interest of a cotenant, it may not be necessary, as a rule, to make such lienholders parties, because, after partition in kind, the lien will merely be transferred to the tenant's share in severalty, or, in case of sale, the tenant's share in the fund, and thus complete justice be effected."

It will be observed that no authority is cited for this statement, and as it was not a question before the court for determination it is obiter dictum. No case has been cited, and we know of none in this jurisdiction, which holds that in case of mortgages over the interest of cotenants it is necessary to make such mortgagees parties to partition suits.

In Kennedy v. Boykin, 35 S. C. 81, 14 S. E. 809, 28 Am. St. Rep. 838, it was held that, where a tenant in common gave a mortgage on a specific part of the common property, the mortgagee had an equity to require partition, if practicable, without prejudice to other cotenants, so as to allot the specific portion covered by the mortgage as the share of the mortgagor, and thereby save the lien of the mortgage.—

12 A judgment is a general lien upon all debtor's real estate, except homestead exemption (originally they were not liens upon real estate, but were made so by legislative enactment); while a mortgage is a conventional instrument between the parties, and is a specific lien on the property covered by it. Weatherly v. Medlin, 141 S. C. 290, 139 S. E. 633; Dorn v. Stidham, 139 S. C. 66, 137 S. E. 331, and cases therein cited.

Section 5292, vol. 3, Code 1922, provides that no severance or partition shall be prejudicial or hurtful to any person or persons, their heirs or successors, other than such as are parties unto the partition suit, their executors, and assigns.

3 It is true that since the Act of 1791, 5 Statutes 170 (section 5223, vol. 3, Code 1922) a mortgage does not convey any legal estate to the mortgagee, yet such mortgagee has an equitable interest which should be protected, and the only way such interest adequately can be protected is to bring him into the partition suit, and unless he is made a party to such suit, his lien is not prejudiced thereby, unless partition be an exception in the case of mortgages covering the undivided interest of cotenants just as in case of judgments against cotenants.

45 While under section 5262, vol. 3, Code 1922, joint tenants and tenants in common may be compelled to make partition, yet we know of no law that requires that such partition be made unless they, or some of them, so desire. It is true that distributees and devisees take estates which are liable to be defeated by sale to pay debts of the intestate or testator, yet, with this exception, they are not unlike tenants in common under a deed. That tenants in common may mortgage their undivided interests is too clear to require the citation of authority. To hold that a mortgagee of a tenant in common may have the lien of his mortgage divested by a partition proceeding to which he is not a party, and that he "must at his peril follow" the proceeds arising from the sale of the common property, would be to open wide the door for fraud upon the one hand and to render property held by tenants in common practically worthless as security on the other. To take a simple illustration, suppose A and B are tenants in common of Black Acre. A mortgages his undivided interest to C. Thereafter A and B, under partition, sell Black Acre without making C a party, and one-half of the proceeds of the sale are paid to A before C learns of the proceeding. To hold that C is not a necessary party in such a case to a full and complete adjudication of the rights of all parties in interest, and that his mortgage may thus be divested and his security dissipated by the mortgagor would be a dangerous doctrine. Whatever may be the holding of courts of last resort in other jurisdictions, we are not inclined to sanction such a doctrine. It is true that the mortgagee, in such a case, holds subject to the paramount right of partition, yet it does not follow, for that reason, that he is not a necessary party to such a proceeding. Certainly, *122 we think, the better and safer practice is to make all incumbrancers parties to partition proceedings. Such practice will not only prevent a multiplicity of suits, but will protect the rights of all such incumbrancers and preserve the value of undivided interests as securily.

However, we do not deem it necessary to decide this point at this time, for from the statement of facts in the "case" we learn that the partition was commenced in September, 1919. No lis pendens was filed. Section 388, vol. 1, Code 1922, does not make the filing of the lis pendens an indispensable prerequisite to a judgment in partition as it does for a

judgment in foreclosure. The mortgage of the petitioner Johnson not having been executed until October 22, 1919, and not recorded until the 22d of January, 1920, he could not have been made a party at the time the action was commenced. He had the privilege of intervening by petition and setting up his mortgage. This he did not do.

67 The cases cited by the circuit judge conclusively show that upon the sale of land under partition proceeding, any prior lien against the undivided interest of any cotenant is transferred to the share of the proceeds of such tenant, as of its original lien, whether such incumbrancer is a party to the proceeding or not. It is clear, therefore, that upon the sale of the tract of land to the three Keels, the lien of the Johnson mortgage attached to the share of the proceeds belonging to Bradford Keel. It appears, however, that Bradford Keel and the other two purchasers of the land did not pay in to the executor the amount adjudged to be due them, but took the deed for their respective shares, and only paid in sufficient funds to pay off the other cotenants. The situation amounts to just this. Had Bradford Keel and the other two purchasers paid in the entire $30,000, the amount of the purchase of the land, they each would have been entitled to something over $3,000 under the order of the decree in partition. Had they paid in this amount, the Johnson mortgage would have attached to Bradford Keel's share. Such share, therefore, would have been a trust fund in the hands of the executor. Had the executor paid this fund over to Bradford Keel and he had invested the same in the purchase of this tract of land and taken title in himself, there can be no question but that there would have been a resulting trust in favor of Livingston, or his assignee, Johnson, for where trust funds are used in the purchase of property and title is taken in the name of the fiduciary, or in the name of a third person, a resulting trust immediately arises in that property in favor of the person or persons entitled to the funds with which the property is purchased. Kirton v. Howard, 137 S. C. 11, 134 S. E. 859, and cases therein cited. The case cannot be different where no money was actually paid in by Bradford Keel and received back by him in payment of his undivided interest in the tract of land.

8 The moment that Bradford Keel was divested of his undivided one-seventh interest in the tract of land, under the sale in partition, he was revested with a one-third undivided interest in the entire tract of land. At the moment he became seized in this one-third undivided interest, he became a trustee for the benefit of Johnson to the extent of his original undivided interest in said tract of land. Since neither the Johnson mortgage nor the bank mortgage was recorded within ten days after the execution thereof, each took effect as of the date of recordation thereof. King v. Fraser, 23 S. C. 543; Mowry v. Crocker, 33 S. C. 440, 12 S. E. 3; Turpin v. Sudduth, 53 S. C. 295, 31 S. E. 245, 306; Armstrong v. Carwile, 56 S. C. 483, 35 S. E. 198; Brown v. Sartor, 67 S. C. 116, 69 S. E. 88. The Johnson mortgage had priority over the bank mortgage by virtue of the prior recordation thereof and was constructive notice to the bank at the time the bank's mortgage was recorded. In addition to this, Mr. Dibble, the president of the bank, who made the $15,000 loan and took the mortgage for the bank, had actual notice of the existence of the Johnson mortgage, and that the Johnson mortgage was not being paid, since he promised to take up that mortgage and never did it. Bradford Keel held one-seventh of the legal title to the entire tract of land in trust for Johnson and as security for the amount due on his mortgage, which necessarily was prior to the lien of the mortgage held by the bank.

910 Nor can we agree with the circuit judge that Bradford Keel had no legal title in the tract of land, prior to the partition thereof, which he could mortgage. The will of C. A. Keel did not effect a conversion. It merely directed that the tract of land should be divided among his children. Had this direction been carried out, the tract of land would have been divided in kind, and the Johnson mortgage would have attached to the portion allotted to Bradford Keel. There is in the will not a word about selling the land and dividing proceeds. The direction that the land be divided was not an equitable conversion. In order to effect such a conversion there must be a clearly expressed intention that the land itself is not to be divided but the proceeds arising from the sale thereof are to be divided. 13 C. J. p. 852 et seq.; North v. Valk, Dud. Eq. 212; Cagle v. Schaefer, 115 S. C. 35, 104 S. E. 321.

111213 Upon the death of C. A. Keel, therefore, the legal title to the tract of land in question vested in his seven children as tenants in common. It matters not how title is derived, whether by descent, under will or deed, tenants in common owning the legal title have the right to partition the land at *123 such time as they may desire, or if they do not choose to partition the same, they may hold it jointly during such time as it suits their pleasure. It is not reasonable to suppose that it would for a moment seriously be contended that, pending partition, such tenants in common have not the right to incumber their undivided interest in the common property. This case is clearly distinguishable from the cases cited by the circuit judge, for the reason that at the time the Livingston-Johnson mortgage was executed

Bradford Keel was in point of fact seized in fee of something more than a one-seventh undivided interest in the tract of land. Even if it should be held that the bank's mortgage was a purchase-money mortgage, which we do not think it was, under the authorities of this state, it cannot be held to have priority over the Johnson mortgage, for the reason, as above stated, the bank had both constructive and actual notice of its existence.

We think that the Johnson mortgage has priority over the bank mortgage, and that Johnson should receive out of the purchase money, to wit, $6,200, a sum equal to that which the $3,075 of Bradford Keel bore to the purchase price of $30,000.

It is the judgment of this court that the decree of the circuit court be reversed, and the case remanded to the circuit court to carry out the views herein expressed.

WATTS, C. J., and STABLER and CARTER, JJ., concur.

COTHRAN, J. (dissenting).

The main action is for the foreclosure of a mortgage given by Bradford Keel, S. A. Keel, and W. H. Keel, to the Bank of Western Carolina, to secure the payment of their note for $15,000, dated January 21, 1920. The mortgage covered a tract of 400 acres which had belonged to C. A. Keel, the grandfather of Bradford Keel and the father of the other two mortgagors; it was recorded February 21, 1920, and later was assigned to the plaintiff Mary A. Swygert. The mortgaged premises had been purchased by the three mortgagors at a private sale by the executor of C. A. Keel for partition, and the mortgage to the bank had been given to raise the necessary funds to settle with the other heirs at law of C. A. Keel. The action resulted in a decree of foreclosure and sale. The sale was had and the plaintiff became the purchaser at $8,020. The decree provided that $1,000 of the proceeds should be held by the master to abide the result of controversy between the plaintiff and the appellant J. C. Johnson, which will be explained.

The controversy now before the court is subsidiary to the main action for foreclosure, as to the decree in which there is no contest; it is between the plaintiff Mrs. Swygert, assignee of the bank mortgage, and the appellant J. C. Johnson, the assignee of a mortgage given by Bradford Keel, to one Livingston, upon his undivided interest in certain land which passed to him under the will of his grandfather, C. A. Keel; each claiming the fund of $1,000 reserved as stated.

A detailed statement of the facts appears to be necessary. The land covered by the bank mortgage formerly belonged to C. A. Keel, the grandfather of Bradford Keel and the father of the other two mortgagors, S. A. Keel and W. H. Keel. He died in 1892, leaving a will appointing his son, J. H. Keel, executor, in which the land, about 400 acres, was devised to his wife for life or widowhood. The will made provision for the contingency of the remarriage of the widow, which did not occur and may be passed over. The disposition of the property upon the death of the widow, is thus provided for:

"Item 4th. At the death of my beloved wife I will that there be an equal division of what may be left of my estate after supporting my wife and children, among my beloved children, viz., J. H. Keel, Hattie Bates, P. H. Keel, E. F. Keel, W. H. Keel, E. M. Keel, and S. A. Keel, except Hattie Bates. She has had 41 acres of land of about equal value of my other land, and will not get any more until the other heirs get that much in value, then she is to have an equal share with the others.

Item 5th. If any of the above named children die before a division of my estate is made and leave a bodily heir, then that heir or heirs as the case may be, will have their parent's part of my estate."

The widow died in 1919, and at that time the heirs at law of C. A. Keel were: (1) J. H. Keel, a son of the testator. (2) Ethel Tinsley, Pearl Bates and Jane Bates, children of Hattie Bates, a deceased daughter of testator. (3) Bradford Keel, a son of P. H. Keel, a deceased son of testator. (4) Mrs. W. D. Nelson, a daughter of the testator. (5) W. H. Keel, a son of the testator. (6) Myrtle Keel and Irene Keel, daughters of E. M. Keel, a deceased son of testator. (7) S. A. Keel, a son of testator.

(Note.—I assume that Mrs. W. D. Nelson is the same person named in the will as E. F. Keel.)

In September, 1919, J. H. Keel as executor of the will of C. A. Keel, and in his own right, brought an action against the other heirs at law named above, for partition, declaring that the interest of the parties would be best subserved by a sale in bulk of the premises by public or private sale. During the pendency of this partition proceeding, on October 22, 1919, Bradford

Keel, one of the defendants, a son of P. H. Keel, a deceased son of the testator, as stated above, gave a mortgage to one Livingston, upon "my undivided right, title, interest and estate in and to that certain piece parcel or tract of land" (describing the 400-acre tract referred to), to secure a note for $750. The mortgage was recorded on January *124 22, 1920. This note and mortgage were assigned to the appellant J. C. Johnson on July 1, 1922. Livingston was not made a party to the partition proceeding; in fact it was instituted before the Bradford Keel mortgage was executed. Livingston made no effort to become a party, and no effort was made to have him a party, by the plaintiff or other parties to the suit. Notice of lis pendens was not filed in connection with the partition proceeding.

On November 20, 1919, two months before the Bradford Keel mortgage to Livingston was recorded, his honor, Judge Wilson, signed an order as follows:

"Ordered, that the plaintiff executor, J. H. Keel, be and he is hereby authorized and directed to sell, the premises described in the complaint at public or private sale in his discretion, for the sum of not less than twenty thousand dollars; provided, that in the event the said executor cannot sell the said property at private sale for the sum of twenty thousand dollars, then the said executor is hereby authorized and directed to sell the said premises at public outcry in front of the courthouse door at Aiken, S. C., after three weeks' advertisement in a newspaper published and in general circulation in the county of Aiken.

Ordered, further, that the proceeds of the said sale be held by the said executor for distribution under the order of this court, and the within cause is hereby referred to the master of Aiken county to take the testimony and report the same together with his conclusions of law and fact, to this court with all convenient speed."

The master held a reference on January 14, 1920, and took the testimony. At this reference the executor testified:

> "We offered it in parcels and we offered it as a whole at auction, reserving the right to sell it at private sale if the land did not bring a satisfactory price. The bids at auction were less than $30,000 so I sold it at private sale for $30,000 to the parties above named, to wit: S. A. Keel, W. H. Keel and Bradford Keel."

The master reported:

> "The executor, J. H. Keel, in accordance with the order of this court above referred to, has sold the real estate described in the complaint for the sum of thirty thousand ($30,000.00) dollars at private sale."

In reference to the provisions in item 4 of the will, affecting the interest of the children of Hattie Bates, deceased daughter, the master reported:

"I find that the agreed acreage is four hundred acres, that the same was sold for seventy-five ($75.00) dollars per acre. I find that the valuation of the forty-one acres received by Mrs. Hattie Bates was by intention of the testator fixed in the will as of equal value with his remaining lands, and that it was his intention that in deducting this amount from the legacy of Mrs. Hattie Bates, the lands should all be considered as of equal value. It therefore follows that Mrs. Hattie Bates must be held to have received forty-one acres of the value of seventy-five ($75.00) dollars per acre, which amounts to three thousand and seventy-five ($3,075) dollars;" and that "six interests must therefore receive three thousand and seventy-five dollars each, before the children of Mrs. Hattie Bates, deceased, can share in the division of the proceeds of sale."

He accordingly recommended that the expenses of the sale paid by the executor, amounting to $117.50 should be first paid out of the $30,000 purchase money; that the executor should be allowed 2 ½ per cent. on receipts and the same on disbursements--amounting (my calculation) to $1,481.25--and that the attorney should receive a fee of $1,250--total disbursements $2,848.75--leaving for distribution $27,151.25.

As the children of Mrs. Bates were chargeable with $3,075, each of the other heads of families should first receive the same amount, $3,075. There were six of them, so that six times $3,075, $18,450.00, should be deducted from the amount for distribution $27,151.25, leaving $8,701.25 for distribution among all seven, giving to each $1,243.35.

Bradford Keel, with each of the other heads of families, except the Bates family, became entitled to $3,075 plus $1,243.03--$4,318.03; the Bates family to $1,243.03. For these several distributive shares Bradford Keel, S. A. Keel, and W. H. Keel, purchasers of the land at private sale, became responsible.

On January 14, 1920, eight days before the Bradford Keel mortgage to Livingston was recorded, the executor J. H. Keel executed and delivered to Bradford Keel, S. A. Keel, and W. H. Keel a deed conveying the 400-acre tract to them. It was recorded on February 17, 1920. The deed recites that it is made "in consideration of $30,000 to me in hand paid by W. H. Keel, S. A. Keel and Bradford Keel." The deed further recites that it is made in accordance with an order of court in Re, C. A. Keel v. S. A. Keel et al.

Evidently, in conformity with the usual custom under such circumstances, the executor charged himself with the full $30,000; credited himself with the approved disbursements above referred to, of $2,848.75, and with the shares of the purchasers, $4,318.03 each; and paid out of the money supplied by them the shares of the other four.

On February 3, 1920, his honor, Judge Bowman, signed an order confirming the master's report and confirming the private sale made by the executors to Bradford Keel, S. A. Keel, and W. H. Keel, and the distribution of the proceeds of sale in conformity with the recommendations of the master.

In order to pay off the other four heads of families and the approved disbursements, which amounted to:

Approved disbursements	$ 2,848 75
Share of J. H. Keel	4,318 03
Share of Mrs. Nelson	4,318 03
Shares of E. M. Keel's children	4,318 03
Share of Mrs. Bates' children	1,243 03
Total	$17,045 87

*125 -the purchasers borrowed from the Bank of Western Carolina (supplemented, I assume, with cash otherwise obtained or had) $15,000, upon their note secured by a mortgage upon the 400 acres.

This stipulation appears in the transcript:

> "It is stipulated that it stands as admitted that the $15,000.00 borrowed from Bank of Western Carolina, and secured by the mortgage which was later assigned to plaintiff, was borrowed by S. A., W. H. and Bradford Keel for the purpose of paying the same to J. H. Keel as executor as the purchase money of the 400 acres conveyed by him to said purchasers and that the deeding of said property by J. H. Keel, executor, to S. A., W. H. and Bradford Keel, and their mortgaging same to the Bank for $15,000.00, and the payment of the said sum directly by the Bank to the executor, were all part and parcel of the same transaction."

Now recurring, after this perhaps tedious recital, to the immediate controversy in connection with the bank mortgage and the mortgage which Bradford Keel gave to Livingston, later assigned to the appellant Johnson in 1922.

At some time in 1922, the exact date does not appear in the transcript, Mrs. Swygert instituted this action to foreclose the bank mortgage of $15,000, which had been assigned to her. Neither Livingston nor Johnson, the mortgagee and the assignee of the $750 mortgage given by Bradford Keel to Livingston upon his undivided interest in the land, were made parties originally. The appellant Johnson, however, pending the action, made application to become a party so that he could set up his rights in the Livingston mortgage; his application was granted. His answer, if he filed one, does not appear in the transcript. I assume that his contention sufficiently appears from the following statement which appears in the transcript:

"The foreclosure proceeded to termination upon an agreement between the attorneys for the respective parties that $1,000.00 should be held by the Master until a decision of the Johnson-Swygert issues. The land was sold for $6,200.00 and bought in by the plaintiff. Plaintiff's judgment amounted to more than $20,000.00.

The issue presented herein to the Court is as to the disposal of the said fund of $1,000.00, which depends upon the determination of the question whose rights are paramount, viz., those of J. C. Johnson, the claimant; or of Mrs. M. A. Swygert."

As his honor, the special judge, observes:

"Johnson the claimant, claims to have a mortgage prior in rank to the plaintiff's mortgage, covering one-sixth interest in the property;" (in reality, a little less than one-sixth; the

distributable amount was $27,151.25; Bradford Keel's share was $3,075.00 plus $1,243.03 —$4,318.03; one-sixth of $27,151.25 would be $4,525.20).

In other words, Johnson claims that the lien of his mortgage upon the undivided interest of Bradford Keel, in the land, has been transferred to the interest of Bradford Keel in the proceeds of sale; a contention which I think is entirely correct; but it amounts to a concession that the sale constituted an extinguishment of the lien of the mortgage upon the land, transferring it to the proceeds of sale, to which alone Johnson had recourse, the purchasers acquiring a clear title.

It should be stated that both Livingston and Johnson (who had not at that time acquired the Bradford Keel mortgage to Livingston) were present at the public sale by the executor, and of course knew of the partition suit. Livingston had made financial arrangements with the bank to purchase the property if it did not bring more than $20,000; at the sale he gave notice of the Bradford Keel mortgage which he then held and was told by W. H. Keel who was managing the sale:

> "I don't care, we are going to sell the property and he (Bradford Keel) can settle up. *** I asked Mr. Keel about it; I asked him about my money, and he said they were going to sell the property and he (Bradford) would pay it."

It should also be stated that Dibble, president of the bank, was notified before the $15,000 loan was made that Livingston held the Bradford Keel mortgage.

The property, as stated, brought at the foreclosure sale only $8,020, being bid in by Mrs. Swygert. Under the decree of foreclosure $1,000 was ordered held by the master until the controversy between Mrs. Swygert and Johnson, as to the priority of their claims thereto should be determined. It will be observed, in passing, that this $1,000 is no part of the interest of Bradford Keel in the proceeds of the sale in partition, but is a part of the proceeds of the sale in foreclosure, supplied by Mrs. Swygert, assignee of the bank mortgage.

The matter was referred to the master, who took the testimony. The transcript does not contain a report from the master, and from that fact I assume that the reference was for the purpose only of taking the testimony.

The matter then came on for hearing, at a time not stated, before Hon. J. E. Harley, a special judge at Aiken. On September 24, 1924, he filed an elaborate decree in favor of Mrs. Swygert, from which J. C. Johnson has appealed.

I think that the decree should be affirmed for the following reasons:

It is by no means certain that under the will Bradford Keel was vested with such a *126 legal title as would support a mortgage, as will be hereinafter discussed; but assuming for the present that he was a tenant in common of the land, I think that the law is well settled that where the interest of a tenant in common is subject to the lien of a judgment *or a mortgage*, the right of partition is paramount; that the incumbrance upon the tenant in common's interest is extinguished by the partition and the lien is transferred to the allotment of the tenant in common, whether it accrues by partition in kind or by sale.

Judge Freeman, in his work on Cotenancy and Partition (Edition of 1874), at page 582, § 478, and following, has an exceedingly clear exposition of the subject in review. He declares that:

> "When a partition is made, the interest of a *lienholder* (a general term, I interpolate, not limited to *judgments*) like the inchoate right of a wife to dower is removed from the undivided moiety of the whole, and attached to the whole of the purparty assigned to the tenant in common against whose moiety the lien was a charge. *** An incumbrancer (likewise a general term), unless the statute so directs, therefore is not a necessary party defendant, because no relief can be decreed against him."

In section 479 it is said:

> "When the subject matter of a suit for partition is divided among the various cotenants thereof (I interpolate, a partition in kind), the interests of each *lienholder* are sufficiently protected, because by operation of law, his lien is attached to the whole of the property assigned to the tenant against whose moiety it was charged. *** Even where a sale is sought, lienholders are not, in the absence of statutory provisions to the contrary, necessary parties

> defendant; because they cannot be affected by such sale. *** When a *lien* (of any kind) became attached to the interest of one of the cotenants pendente lite, the purchaser took the premises discharged of the lien; and the lien became a charge of the cotenants' share of the proceeds of the sale."

This does not mean, as Judge Freeman distinctly recognizes that the interest of a lienee, holding a lien upon the undivided interest of a tenant in common, is at the mercy of the tenants in common, beyond the protection of of the court. While not a necessary party to the partition suit, he is a proper party, and may be made so by the plaintiff, or the court of its own motion may so require; or upon the application of the lienee, he may intervene for the protection of his lien; or even if not a party, and the proceedings have eventuated in either a partition in kind or in a sale, he may come in to show that the partition has been unfairly or collusively conducted. As is said in section 478:

> "But we understand that a judgment in partition, or even a voluntary partition, is so far binding upon *mortgagees* and other incumbrancers as to cast upon them the *onus* of showing that the allotments thereby made were unequal; and that until such a showing is made the partition cannot be disturbed. To permit a mortgagee or other incumbrancer, either before foreclosure or afterwards, to wantonly assail and destroy a prior partition, and to disturb possession taken and held thereunder would certainly be a maladministration of the law. But if such mortgagee has a right to partition which cannot be denied without disregarding any well established rule of law, courts may still prevent a malicious and inequitable exercise of that right by allotting to him the purparty already set off to his mortgagor in all cases where the previous allotment has not (?) been unjust. *** If no means were provided by which the existence of liens against a cotenant's moiety could be brought to the attention of the court great injustice would be done."

It is conceivable that by a partition in kind, either voluntary or by order of court, the interest of the mortgagor cotenant, might by collusion, be allotted in a portion of grossly inadequate value compared with the portions allotted to the other cotenants, to the great prejudice of his mortgagee. I apprehend that the court would not hesitate to give the mortgagee relief by ordering a *new* allotment. Or in the event of a *sale*, like collusion might result in the sacrifice of the property at a grossly inadequate price. A limitation of the mortgagee to his lien in the one case upon the allotted portion, and in the other to the share of the mortgagor, would not be countenanced.

The mortgagee had every means at hand to protect his interest. Livingston, under whom Johnson claims, was present at the sale, as has been shown; he was necessarily informed of the partition proceedings; he could have intervened and obtained an order requiring the executor to pay his mortgage out of the interest of Bradford Keel; he did not do so; he gave notice of his mortgage at the sale, and apparently relied upon W. H. Keel's assurance that Bradford would pay it out of the proceeds of sale; he stood by and allowed the executor, in crediting Bradford Keel with his interest, practically to allow him to receive the whole of it, $4,300; he makes no complaint of the price at which the property sold at private sale, or of the regularity of that proceeding; in fact he confirms it by his application here. Should the purchaser at the foreclosure sale not be protected against the consequence of such negligence? She stands in the position of an outside purchaser whose title unquestionably would be protected against the claim of Johnson; the fact that she was the assignee of the bank mortgage does not alter her position.

I think that the authorities are overwhelmingly in support of the proposition above announced.

"The existence of an incumbrance against the moiety of a cotenant does not affect the right to partition. Theoretically a mortgagee or other incumbrancer has no interest in the partition, because his incumbrance on partition fastens *127 upon the allotment of his mortgagor, hence the many decisions maintaining that the lienholder need not be made a party to a suit for partition." 30 Cyc. 208.

"In a suit for partition, it is not necessary, under the statute requiring the titles of the parties to be ascertained, that incumbrancers upon the separate shares of the parties, should be joined as parties." Sebring v. Mesereau, 9 Cow. (N. Y.) 344.

"A mortgagee of an interest in an undivided estate is not entitled to be made a party to a proceeding in partition, and cannot do any act affecting the title or estate of his mortgagor." Appeal of Long, 77 Pa. 151.

"Nor does the fact that there are attachments upon the shares of some of the petitioners in suits now pending affect the rights of the petitioners to a partition." McCarty v. Patterson, 186 Mass. 1, 71 N. E. 112.

"Partition does not affect mortgagees and judgment creditors, and some of the authorities go so far as to say that when they are made parties to a suit for that purpose, and in the capacity of mortgagees or creditors, the bill will be dismissed as to them. 4 Minor, Inst. p. 1213; Bart. Ch. Prac. 290." Martin v. Martin, 95 Va. 26, 27 S. E. 810.

"But it is held generally by the courts that partition never affects the interest of third persons, and that creditors have no concern with it, and that, if they are made parties to the suit, it will be dismissed as to them. Stevens v. McCormick [90 Va. 735] 19 S. E. 742; 2 Rob. Pr. (old) 14; Wollen v. Copeland, 7 Johns. Ch. [N. Y.] 140; Agar v. Fairfax, 17 Ves. 533; 2 Jones, Real Prop. § 1998; Espalla v. Touart [96 Ala. 137] 11 So. 219; Shivers v. Hand [50 N. J. Eq. 231] 24 A. 911; 17 Am. & Eng. Enc. Law, 783; 15 Enc. Pl. & Prac. 796. But actual partition does not disturb the liens of creditors. Upon actual partition the lien of a creditor upon an undivided interest is transferred by the partition from the undivided portion of the whole premises to the whole of the part set off to the tenant against whose portion the lien was charged. 17 Am. & Eng. Enc. Law, 783; Wright v. Strother, 76 Va. 857; 2 Jones, Real Prop. § 1998." Childers v. Loudin, 51 W. Va. 559, 42 S. E. 637.

"When the property is partitioned by a proper decree of the court, the mortgage attaches as a lien upon that portion set off to the mortgagor and his grantees, and the owner or owners of the other portion of the land take it divested of the mortgage lien." Jolliffe v. Maxwell, 3 Neb. Unof. 244, 91 N. W. 563.

"Such lien creditors, if any exist, were not parties to this suit, nor were they necessary parties. When the sale is made and the share ascertained, any creditor having a claim against one of the tenants in common can intervene, and ask that the money allotted to his debtor be subjected to his claim." East Coast Cedar Co. v. Bank (C. C. A.) 111 F. 446 (Simonton, Judge).

"A mortgagee of an undivided interest in a parcel of land is not entitled to be made a party to partition proceedings. His lien extends to the owelty which takes the place of his debtor's interest, when the debtor's share of the land is set off to another of the cotenants subject to owelty of partition." Stewart v. Bank, 101 Pa. 342.

"Mortgagees of the interest of a tenant in common, pending a proceeding for partition, are limited to the portion set off to their mortgagor, though they are not parties to the decree." Loomis v. Riley, 24 Ill. 307.

"Where pending proceedings for partition, a tenant in common mortgages his undivided share in the premises and there is an actual partition in the land, the mortgage will attach to the portion set off to the mortgagor." Westervelt v. Haff, 2 Sandf. Ch. (N. Y.) 98.

The case of Westervelt v. Haff, 2 Sandf. Ch. (N. Y.) 98, is strikingly parallel with the situation which confronts the court in the case at bar. The defendant Haff was entitled as an heir at law to one-ninth undivided interest in five houses and lots in the city of New York; prior to September, 1841, a partition suit had been instituted by and between the defendant Haff and the other tenants in common; while that suit was pending, in September, 1841, the defendant Haff gave the plaintiff Westervelt a mortgage upon his undivided interest; Westervelt, the mortgagee of Haff, was not at that time or thereafter made a party to the partition suit; though notice of his pendens had been filed and Westervelt had actual notice of the pendency of the suit; the partition suit proceeded to a decree for the sale of the whole five lots, entered in October 1841; the sale was had in November 1841, at which the defendant Haff became the purchaser of two of the lots at $4,975. The interest of Haff in the net proceeds of the sale amounted to $1,574.44, which he was entitled to use in complying with his bid, leaving a balance due by him of $3,401.44 to the other heirs; this balance he provided for by mortgaging one of the lots purchased by him to the clerk of court, for certain infant heirs, for $1,901.44, and to another of the heirs, one Speck, for $1,500, and received from the master who made the sale under the decree a conveyance of the two lots; thereafter the defendant Haff mortgaged both lots to his mother to secure an antecedent debt; the plaintiff Westervelt, mortgagee of Haff's undivided interest, did not present his

mortgage to the master after the sale or make any claim upon the fund until after the master had closed the sale and made his report.

The mortgagee Westervelt then brought suit to foreclose the mortgage which Haff had given to him upon his undivided interest, contending that by force of the sale and purchase of the two lots, his mortgage continued to be a lien and was prior on both lots to Mrs. Haff's mortgage and that she had actual notice of his lien; he admitted that the mortgages to Speck and the clerk of court were prior in right to his own, being in effect given for the purchase money pro tanto.

"A judgment against a tenant in common does not prevent partition. The tenant against whom the judgment is, or any other of the tenants in common, may sue out a writ of partition, and proceed to have the share of each set *128 out in severally. The judgment in such case binds the part set out for the one against whom it is entered, and it binds no more. So, also, in case of a mortgage on an undivided share: Jackson v. Pierce, 10 Johns. [N. Y.] 414, 417." Bavington v. Clarke, 2 Pen. & W. (Pa.) 115, 21 Am. Dec. 432.

The effect of partition upon the lien of a judgment against one of the cotenants has frequently been discussed by this court. It has been invariably held, as expressed by that master mind, Chief Justice McIver, in the case of Holley v. Glover, 38 S. C. 404, 15 S. E. 605, 18 L. R. A. 776, 31 Am. St. Rep. 883.

"The rule is well settled that while a judgment against one of several tenants in common is a lien upon the undivided interest of such tenant in common, under which such undivided interest may be levied on and sold, yet such incumbrance is subordinate to the paramount right of the other tenants in common to demand partition, and if a sale of the undivided property is made for that purpose, the purchaser takes his title freed and discharged from such subordinate incumbrance on the share of the judgment debtor, and the creditor is remitted to his debtor's share of the proceeds of the sale, even though the judgment creditor is not a party to the proceedings for partition." Rabb v. Aiken, 2 McCord, Eq. 118; Keckeley v. Moore, 2 Strob. Eq. 21; Johnson v. Payne, 1 Hill, Law, 111; McQueen v. Fletcher, 4 Rich. Eq. 152; Burris v. Gooch, 5 Rich. 1; Garvin v. Garvin, 1 S. C. 62; Riley v. Gaines, 14 S. C. 454; Ketchin v. Patrick, 32 S. C. 443, 11 S. E. 301; Marion County Lumber Co. v. Lumber Co., 84 S. C. 505, 66 S. E. 124, 877; De Saussure v. Bollmann, 7 S. C. 329; Ex parte Union Mfg. Co., 81 S. C. 285, 62 S. E. 259, 128 Am. St. Rep. 908.

All of which are cited and quoted from in the decree of his honor, the special judge.

In addition to these authorities, the following South Carolina decisions also sustain the proposition:

In Stern v. Epstin, 14 Rich. Eq. 5, it is said:

"A prior judgment, without sale thereunder, might not in this case, perhaps, any more than in cases of the partition of intestate's estates, affect the title of a purchaser, at the sale for partition"—citing Keckeley v. Moore and Burris v. Gooch.

In Pendergrass v. Pendergrass, 26 S. C. 19, 1 S. E. 45, the court said:

> "While it is true that a distributee has (subject to the payment of all debts of the intestate) legal title to his share of land descended, which may be bound by the lien of a judgment and sold under execution, yet that title is qualified and limited by the right of the codistributees to have partition of the property. If the judgment is not enforced by a sale before partition, the lien is dissolved, and in the proceeding to partition judgment creditors of distributees need not be made parties, but they may apply to have their respective rights in the proceeds."

In Garvin v. Garvin, 1 S. C. 55, the court said:

> "The sale of the real estate merely transferred the legal liens affecting it, and did not change their relative priorities. In equity, the fund arising from the sale stands in lieu of the land itself, and all liens on the land attach to the fund and are enforced with due regard to all the legal priorities."

In Shaw v. Barksdale, 25 S. C. 204, his honor, Circuit Judge Fraser, whose decree was affirmed, stated:

"In actions for partition judgment creditors of the several tenants in common are not necessary parties, and the purchaser of the land sold under proceedings for partition takes

title free from any lien or incumbrance created by such judgment"—citing Simmons v. Simmons, Harp. Eq. 256, and other South Carolina cases.

In Barron v. English, 128 S. C. 332, 121 S. E. 782, it is said:

> "The legal estate owned by a tenant in common in real estate is subject to levy and sale, provided the limitations of the homestead law and the right of partition are not invaded."

It is held in the cases above cited that the lien creditor of the tenant in common is not a necessary party to the partition suit, a conclusion that naturally follows from the principle that his lien is subordinate to the right of partition; for why make him a party to a proceeding which he cannot obstruct? His remedy is to petition in that cause for the application of his debtor's interest to his lien.

In Ex parte Crawford, 27 S. C. 159, 3 S. E. 75, the court said:

> "It is true that this lien, if not enforced before partition, would not have been allowed to interfere with the rights of the parties to partition and divide the same among themselves. But by timely application to the court, the judgment or record creditors could have had their liens protected by an order for the payment to them of the defendant's share of the price of the lands divided or sold for division."

It has been suggested that these South Carolina cases involve the application of the principle to *judgments* and not to *mortgages*. This is true; but while there is a distinction in the characteristics of the two liens, one being general and the other specific, it is difficult to perceive how the distinction can make a difference in the application of the principle which is derived, not from the characteristics of the liens, *but from the incidents of the right of partition.*

That this is true I think is abundantly shown by the decided cases.

In Keckeley v. Moore, 2 Strob. Eq. 21, the court said:

> "If a sale for partition be ordered, the title of the purchaser is just as complete as if the land had been sold to satisfy a debt of the intestate. To require the judgment or other lien creditors of all the distributees to be made parties to a suit for the partition of the estate of *129 an intestate, would introduce a novelty in the practice of the court, and would incumber the proceedings with a delay and expense not calculated to promote the final settlement and adjustment of estates. ****

In Stern v. Epstin, 14 Rich. Eq. 5, it was held, perhaps obiter:

> "But a *sale*, by either Philip Epstin (the tenant in common) or the sheriff, post litem motam, could not have affected the partition."

In Burris v. Gooch, 5 Rich. 1, the court said:

> "If the judgment is not enforced by a sale of the defendant's distributive share, before partition, the lien is divested. The purchaser, or distributee in whom the land becomes vested, under a judgment for partition, takes it discharged of the lien of the judgment."

In Burris v. Gooch, 5 Rich., after holding that a sale in partition divests the lien of a judgment against one of the tenants in common, the court adds:

> "The judgment creditor may, by timely application to the court, have his lien protected by an order for the payment to him of the defendant's distributive share of the price of the land."

In Garvin v. Garvin, 1 S. C. 55, the court held that the remedy of either a judgment or a mortgage creditor, who claimed a lien upon the undivided interest of a tenant in common was to file a petition in the partition suit for the protection of his lien, which he could not do at any time before the actual partition or sale or at any time after sale and before distribution of the proceeds.

In Riley v. Gaines, 14 S. C. 454, the court said:

> "Thus, while it is true that the judgment of the appellant was a lien upon the undivided interest of Marshall B. Gaines in the real estate of his deceased father, yet that lien was subordinate to the right of the other heirs to have partition made; and if, upon such partition, the whole of the land had been sold, or if it had been assigned to one or more of the other heirs, the lien of the judgment upon the land would have been divested and transferred to the interest of Marshall B. Gaines in the proceeds of the sale, or in the amount which those to whom the land had been assigned were decreed to pay for equality of partition."

In Pendergrass v. Pendergrass, 26 S. C. 19, 1 S. E. 45, the court said:

"While it is true that a distributee has (subject to the payment of all debts of the intestate) legal title to his share of land descended, which may be bound by the lien of a judgment and sold under execution, yet that title is qualified and limited by the right of the codistributees to have partition of the property. If the judgment is not enforced by a sale before partition, the lien is dissolved, and in the proceeding to partition judgment creditors of distributees need not be made parties, but they may apply to have their respective rights in the proceeds."

"Every kind of interest in real estate may be mortgaged, if it be subject to sale and assignment." 1 Jones Mtg. (6th Ed.) § 136.

In Ketchin v. Patrick, 32 S. C. 443, 11 S. E. 301, the court said:

> "It is also well settled that while a judgment against one of several tenants in common in a tract of land, is a lien on the undivided interest of the judgment debtor, which may be enforced by a sale of such undivided interest, the effect of which is to put the purchaser in the position of assignee of such interest; yet the lien of the judgment is subordinate to the right of the other tenants in common to demand partition, which when made, transfers the lien to the share of the judgment debtor, when ascertained by a partition in kind, or to his share of the proceeds of the sale, when a sale is ordered for partition; and this is so, whether the judgment creditor is a party to the proceedings for partition or not."

The case of Holley v. Glover, 36 S. C. 404, 15 S. E. 605, 16 L. R. A. 776, 31 Am. St. Rep. 883, is an exceedingly instructive one. The widow of Alfred Holley brought 18 seperate suits for dower against as many purchasers of subdivisions of a tract which belonged to Alfred Holley and another, Carey, as tenants in common and which had been sold under order of court in a partition proceeding instituted by the heirs at law of Carey against Alfred Holley. The defendant in the title of the cause above stated, Mrs. Glover, and the other 15 defendants claimed title under John Holley the purchaser of the land at the partition sale. The sale was had during the lifetime of Alfred Holley when Mrs. Holley's interest was an inchoate right of dower. She was not made a party to the partition proceeding and contended that she was not bound by it.

In an opinion by Chief Justice McIver, the court held:

> "*** While the wife of one of several tenants in common has an inchoate right of dower in her husband's portion of the real estate held in common, yet such right is subordinate to the paramount right of the other tenants in common to have partition of the common property in any of the modes by which such partition may be lawfully made. Hence if a sale for partition becomes necessary, the wife's inchoate right of dower in the land is barred, even though she is not a party to the proceedings for partition; and the purchaser at such sale takes his title disincumbered of such subordinate right of dower."

The court continues:

> "Again, the rule is well settled that while a judgment against one of several tenants in common is a lien upon the undivided interest of such tenant in common, under which such undivided interest may be levied on and sold, yet such incumbrance is subordinate to the paramount right of the other tenants in common to demand partition, and if a sale of the undivided property is made for that purpose, the purchaser takes his title freed and discharged from such subordinate incumbrance on the share of the judgment debtor, and the creditor is remitted to his *130 debtor's share of the proceeds of the sale, even though the judgment creditor is not a party to the proceedings for partition."

The right of the demandant to dower is specifically denied upon the existence of the paramount right of partition, as the following extract from the opinion clearly demonstrates (referring to the cases of Keckeley v. Moore and others cited):

> "Now, while these are cases of liens or charges upon the common property, or rather upon the interests of one or more of the tenants in common, and while the inchoate right of dower may not, properly speaking, be a lien, yet the principle upon which they rest is applicable here, to wit, that the enforcement of a paramount right must not be interfered with or abridged by persons holding subordinate rights, *whatever be their character.* Hence, as the inchoate right of dower arises out of, and is dependent upon, the nature of the husband's seizin, such inchoate right must necessarily be affected with any infirmities of such seizin, and be qualified by any paramount right, subject to which it has been acquired; and where, as in this case, the husband's seizin was qualified by and subject to the paramount right of the other cotenants to demand partition, the plaintiff's inchoate right of dower, growing out of and dependent upon such seizin, was subject to the same qualification. When, therefore, the seizin of the husband was divested by the exercise of the paramount right of the other cotenants to demand partition, the inchoate right of dower was likewise destroyed so far at least as the land was concerned, and the plaintiff was no more a necessary party for that purpose than is a judgment creditor of one of several tenants in common, in case of a sale of the common property for partition. *** When, therefore, such seizin was divested by the sale for partition, the effect, so far as any subordinate right dependent upon such seizin was concerned, was the same as if the title and such seizin had remained in Alfred Holley. When the basis upon which the subordinate right of dower rested, was destroyed by the exercise of a right paramount to the inchoate right of dower, such right necessarily fell with it, and could not be asserted against one claiming under a right paramount to it. *** *Indeed, it would be anomalous to hold that the purchaser at a sale made under the exercise of a paramount right, should take his title subject to one claiming under a subordinate right.*"

In Gaffney v. Jefferies, 59 S. C. 565, 38 S. E. 216, 53 L. R. A. 918, 82 Am. St. Rep. 860, the court said:

> "The case of Holley v. Glover *** is grounded upon the principle, that the inchoate right of dower is subject to the paramount right of the cotenants to partition."

In the case of Ex parte Union Mfg. Co., 81 S. C. 265, 62 S. E. 259, 128 Am. St. Rep. 908, the company held a conveyance from two tenants in common, of an easement to overflow a portion of the land held in common with a third tenant. In an action for partition among the tenants in common, the company asked to intervene in order to force an allotment to the granting tenants of the portion covered by the easement. The court allowed the intervention, and in the course of the opinion by Justice Jones, later Chief Justice, it was said:

> "In the case of incumbrances, such as judgments *or mortgages* against the interest of a cotenant, it may not be necessary, as a rule, to make such lienholders parties, because, after partition in kind, the lien will merely be transferred to the tenant's share in severalty, or, in case of sale, the tenant's share in the fund, and thus complete justice be effected. ****

It is true that this declaration was not essential to the decision as such condition was not under review. Strictly, it may be considered obiter dictum; it, however, comports with my conception of the law and in addition has the imprimatur of one of the great judges of this court.

In Marion County Lumber co. v. Lumber Co., 84 S. C. 505, 66 S. E. 124, 877, the court said:

"It is also a familiar principle that, in order for the process of the court to convey lands free from incumbrances, the incumbrancers must be parties to the proceedings; otherwise the purchaser takes subject to the right of the incumbrances. *** The action of partition is an exception to this rule. In case of judgments against the interest of cotenants it is not necessary, as a rule, to make such lienholders parties, because, after partition in kind is made, the judgment by operation of law attaches to the allotted share of the judgment debtor as of its original lien, or, in case of sale, is transferred to his share in the fund."

"A mortgage executed by a tenant in common upon his interest pending a suit for partition, is subordinate to the rights of the other cotenants and to the decree rendered in such suit." 1 Jones Mtg. (6th Ed.) § 706; United Co. v. Dock Co., 42 N. J. Eq. 647, 9 A. 586; Austin v. Bean, 101 Ala. 133, 16 So. 41.

In the case of Simmons v. Simmons, Harp. Eq. 256, land was sold under partition proceedings. The proceeds were distributed among the heirs at law as the decree directed. It appeared that previously to the institution of the partition proceedings, judgments had been entered up against one of the heirs at law. After the sale and actual distribution of the proceeds the judgment creditors ruled the commissioner in equity to pay the amount of the judgment debtor's allotment to them. The commissioner made return that he had already paid to the debtor the amount of his allotment, according to the decree and without notice of the judgments. The court held, quoting syllabus:

> "Land was sold by the commissioner, for partition among parties against whom there were unsatisfied judgments. The commissioner having paid the money to the parties, under the order of the court, was held not liable, on a rule, to the judgment creditors."

**131* The court very clearly shows that if application had been made in season by the judgment creditors, an order would have been passed directing the commissioner to apply the allotment ascertained to be due to the judgment debtor, to the judgments, legal liens.

In Ex parte Crawford, 27 S. C. 159, 3 S. E. 75, the court said:

"We do not consider that the appeal involves the merits of the case as to whether the petitioners, judgment creditors of James H. Adams, are entitled to have their judgment paid out of the share, about to be ascertained, of their debtor, James H. Adams, in the estate of his father; but simply whether they have an equity to be heard in the main cause before the division of the estate and a final decree is made in relation to the said share. *If the creditors of James H. Adams have the right to be heard upon the subject, it must be at this time, for it will be too late after the court has made final disposition of his share.* Simmons v. Simmons, Harp. Eq. 256." (Italics added.)

The court adds:

> "It is true that this lien, if not enforced before partition, would not have been allowed to interfere with the rights of the parties to partition and divide the same among themselves. But by timely application to the court, the judgment or record creditors could have had their liens protected by an order for the payment to them of the defendant's share of the price of the lands divided or sold for division."

In Gatewood v. Toomer, 14 Rich. Eq. 144, the court said:

> "In proceedings for the partition of the real estate of a deceased person among his heirs or devisees, it is the practice of the Court, upon the suggestion of the personal representative, or of other persons interested as creditors, to take care that their rights are protected and an order made for calling in creditors. And so, if a claim exists to the distributive portion of one of the heirs or devisees, it is not infrequent to entertain a petition, in behalf of such claimant, entitled in the cause, and a copy of such petition is required to be served upon the adverse party."

In Rabb v. Aiken, 2 McCord, Eq. 118, the court said:

> "Whether the complainants [judgment creditors], by a timely application could have arrested the money in the hands of the defendants before it was paid over, may perhaps be a question worthy of consideration. *But he has [they have?] no claim upon the land.*"

In Stern v. Epstin, 14 Rich. Eq. 6, the court said:

"A prior judgment, without sale thereunder, might not in this case, perhaps, any more than in cases of the partition of intestate's estates, affect the title of a purchaser, at the sale for partition"—citing Keckeley v. Moore, 2 Strob. Eq. 21, and Burris v. Gooch, 5 Rich. 1.

In Pendergrass v. Pendergrass, 26 S. C. 19, 1 S. E. 45, the court recognizes the right of a judgment creditor after a sale for partition to intervene before the proceeds are distributed for

the protection of his lien. In Stern v. Epstin, 14 Rich. Eq. 5, the court quotes with approval the following from Winchester v. Paine, 11 Ves. 197:

> "Ordinarily, it is true, that the decree of the Court binds only the parties to the suit. But he who purchases during the pending of the suit, is bound by the decree that may be made against the person from whom he derived his title. The litigating parties are exempted from the necessity of taking any notice of a title so acquired. As to them, it is as if no such title existed. Otherwise, suits would be indeterminable, or which would be the same in effect, it would be in the pleasure of one party at what period the suit should be determined."

And adds:

> "A purchaser pending proceedings in partition is like one who enters, pending an action of trespass to try titles; as the latter would be turned out by the writ of habere facias possessionem, after judgment for the plaintiff, so the former is subject to the decree, as if he had been an original party in the proceedings."

In the case at bar, Livingston's mortgage was executed *after* the partition proceeding had been commenced; he was bound therefore by the resulting decree, notwithstanding the fact that he had not been made a party. The decree directed a sale and a most specific and detailed scheme of distribution, which was carried out to the letter. It has been suggested that the bank had notice of the Livingston mortgage before the sale for partition and that Mrs. Swygert cannot be considered therefore a purchaser for value. I do not think that this fact cuts any figure in the case, for if so, the bank had the right to assume that, as the law provides, the partition would transfer the lien of that mortgage to the allotment, either in land or cash, which might be made to Bradford Keel.

It is suggested that as notice of lis pendens was not filed in the partition proceeding, Livingston was not bound by the decree. It is specifically provided in the Code, § 388, that the filing of the notice shall be *constructive* notice of the pendency of the suit; it does not purport to avoid the effect of *actual* notice, any more than the recording act avoids the effect of actual notice of an instrument required for purposes of notice to be recorded. In this case, as has been shown, Livingston had actual notice of the partition proceedings; he was present at the sale; prepared to buy the property and gave notice of his mortgage. Johnson, who claims as assignee of Livingston was also present; and if he had not been, he would be bound by what bound his assignor.

In 1 Jones, Mtg. (6th Ed.) § 585, it is said:

> "On the other hand, one who purchases with actual notice of the pendency of a suit affecting the land, cannot object that the attorney notice of the pendency of the suit was not filed."

*132 A very nice question in the case arises in connection with these considerations. When Bradford Keel and the other two purchasers at $30,000 were ready to comply with their bid, each was entitled to $4,318.03 of the proceeds of sale; this amounted to $12,954.09, leaving the difference, $17,045.91, to be raised by them. They raised $15,000, less the discount, I assume, from the bank, and $2,000 and odd dollars from some other source. It would have been a needless form to have raised the $12,954.09 and had the executor to immediately refund to them their shares, $4,318.03 each; hence it may be assumed that the executor accepted their receipts for these shares and used them as credits. In legal effect it is the same as if the actual cash had been paid in and then paid out. The result is that the whole of the share of Bradford Keel was invested by him in his one-third interest in the land.

There is no question, under the authorities cited above, but that the lien of the Livingston mortgage was extinguished so far as the land was concerned, and was transferred to the $4,318.03, representing the share of Bradford Keel. He should have recognized the existence of this lien and should have paid the mortgage. This would have reduced the credit which he actually availed himself of, by the amount due upon the mortgage, and would have required him to raise that much more cash. He did not do this, but used the entire share as a credit upon his obligation for the purchase price. The question is whether the fact that Bradford Keel in acquiring a one-third interest in the land, used a fund upon which Livingston's mortgage was a lien by transference, created a resulting trust in favor of Livingston to the extent of the amount due upon his mortgage.

I do not think that it is a matter of any consequence that with the fund Bradford Keel acquired an interest in this particular property; the same question of resulting trust would arise if he had invested his share of the estate in an entirely different piece of property.

There is no doubt as to the correctness of the principle announced in Kirton v. Howard, 137 S. C. 11, 134 S. E. 859:

> "Where *trust funds* are used in the purchase of property and title is taken in name of the fiduciary, or in the name of a third person, or the vendor fails to make title, a resulting trust immediately arisen in that property in favor of the person or persons entitled to the funds with which the property is purchased."

While this is true, the question is insistent: Does the fact that the holder of the Livingston mortgage had a lien upon the $4,318.03 interest of Bradford Keel in the proceeds of the partition sale, constitute a resulting trust, so that the holder of the mortgage could follow it into the one-third interest in the land of Bradford Keel? In other words, was that fund in the hands of Bradford Keel a trust fund? I think that there can be no doubt but that Bradford Keel invested that fund in the land, and the disputable question is, were they *trust funds?*

In 1 Perry, Trusts (3d Ed.) at page 144, it is said:

"But if one who stands in no fiduciary relation to another appropriates the other's money, and invests it in real estate or other property, no trust results to the owner of the money"—citing Hawthorne v. Brown, 3 Sneed (Tenn.) 482; Ensley v. Balentine, 4 Humph. (Tenn.) 233.

I do not think that the circumstances of this case bring it within the rule announced in Kirton v. Howard. The money belonged to Bradford Keel, not to Livingston the mortgagee. The fact that Livingston was entitled to a lien upon it is conclusive that it belonged to Bradford Keel and not to Livingston; for the latter could have no lien upon what belonged to him. While the right of a mortgagee of a single tenant in common's interest after partition is spoken of as a lien transferred to the allotment, it is really an equitable right which he has the right to apply to the court to enforce provided he does so seasonably.

As the court says in Ex parte Crawford, 27 S. C. 159, 3 S. E. 75:

> "If the creditors *** have the right to be heard upon the subject, it must be at this time, *for it will be too late* after the court has made final disposition of his share."

There was no fiduciary relation between Bradford Keel and Livingston; they were at arms' length; Livingston had the right after the sale to come in and have his mortgage paid out of Bradford Keel's interest, and adversary proceeding; Bradford Keel had the right under the order of court to receive his share unless Livingston intervened; and when he received it and spent it, Livingston's right was ended, except to make Bradford Keel account therefor, which did not involve the imposition of a lien upon the land. "There must be an actual payment from a man's own money, or what is equivalent to payment from his own money, to create a resulting trust." 1 Perry, Trusts (3d Ed.) 149. "A trust fund does not arise merely from the relation of debtor and creditor, but the person seeking to establish a resulting trust must be able to identify the specific fund, or their investment, and the specific property in which they have been invested." Moore v. Taylor, 251 Ill. 468, 96 N. E. 229.

Mr. Perry, in his work on Trusts, divides them into four classes: (1) Express trusts; (2) implied trusts; (3) resulting trusts; and (4) constructive trusts. We may pass over the first and second, as there is no evidence of either. The fourth is based upon fraud or misrepresentation; it may be passed over for the same reason. Certainly Bradford Keel *133 cannot be said to have been guilty of fraud or misrepresentation when he did what the order of court permitted him to do, accept his share.

So that if it be any kind of a trust it must be one of the third class—a resulting trust. It cannot be this for two reasons: (1) A resulting trust springs out of a fiduciary relation between the parties. The relation here between Bradford Keel and Livingston was that of debtor and creditor, an adversary relation. (2) The money belonged to Bradford Keel and not to Livingston, although subject to a lien in favor of Livingston, which he might have enforced but did not, before it was actually paid into the hands of Bradford Keel.

"But the doctrine is strictly limited to cases where the purchase has been made in the name of one person and the purchase-money has been paid by another." 3 Story Eq. (14th Ed.) § 1698.

"The rule is that in order to establish a resulting trust of this class, it is necessary that the person paying the purchase money *should have actually paid it as his own.*" 26 R. C. L. 1220.

"After a judgment in partition has been entered directing a distribution of the proceeds, the court cannot make an order directing the distributees to pay back the money to the referee, and directing the referee to retain the money, and take proof of claims, and make payment thereon." Fannon v. McNally, 33 App. Div. 609, 53 N. Y. S. 1032.

"It is indispensable to the existence of a resulting trust in land on the ground that the money of the complainant has been used without his consent to acquire the title to the land in another that the complainant should have been the owner of the money when it was used." Martin v. New York & S. L. Min. & Mfg. Co. (C. C. A.) 166 F. 398.

The question cannot be determined by the relative priority of the Livingston mortgage over that of the bank, for the reason that Livingston's mortgage was extinguished by the partition sale, and what was left to him, was a transferred lien upon the allotment of Bradford Keel, an equity to have that applied to his mortgage debt.

Even if the application of the interest of Bradford Keel to the purchase price of the land constituted a resulting trust, the transaction would fall under the rule announced in Cohen v. Goldberg, 144 S. C. 70, 142 S. E. 38:

> "For a trustee to apply money then impressed with a trust in part payment for land, and to give mortgage for balance due, would be a breach of trust. *** Not so, however, when the trust is created by the deed executed contemporaneously with the mortgage."

A mortgage of the interest of a tenant in common, under a mortgage executed during the pendency of an action for partition, is bound by the decree made against the party from or through whom he claims. I do not think that it is essential to the case at all, but it seems clear from the authorities that the will does not confer upon Bradford Keel a vested interest in the land; his interest does not become vested until the division provided for shall have been made.

In Kales, Estates (2d Ed.) § 500, it is said that, where the only gift is to be found in the direction to pay or divide at a future time, the "context justifies the prima facie inference that the legacy is contingent upon the legatee surviving the date of payment. It has been applied where the time of distribution is sure to arrive and is unconnected with the legatee, such as the expiration of a given number of years."

"In the case of a gift to a person in trust for another, if there are specific and effectual directions that the trust shall continue for a specified time and that the trust res of principal shall not be turned over to the beneficiary or beneficiaries until a certain time named, the cestui que trust cannot be considered as having a vested interest therein until the arrival of the time named; and consequently it would seem, if the time named is more remote than the period allowed by the rule, the gift would be void." 1 Tiff. R. P. (1st Ed.) 355.

"Where there is no gift but in a direction to pay or transfer or divide among several persons at a future period, though the future period is annexed to the payments, possession or enjoyment, yet it is also annexed to the devise or bequest itself. For in this case the direction to pay or transfer or divide constitutes the devise or bequest itself; *and therefore the vesting in interest is postponed and not merely the vesting in possession or enjoyment.*" Smith, Executory Interest, § 314.

"The first question that arises is, when the children were, by the terms of the will, to take the shares allotted in slaves by name? The language of the will bearing on the answer to this question is 'on the division and partition of the same' (meaning the residue of the estate, real and personal, after the specific devise to James R.). 'I allow the negroes to be laid off, allotted and vested as follows.' Then follows the specific allotment of the negroes as already stated. It is clear that this provision is to take effect upon the partition of the estate, and that in the meantime the slaves are to remain part of the testatrix's undivided estate." Jones v. Massey, 9 S. C. 370.

A testator directed that his negroes should be hired out by his executors for five years, "and at the expiration of 5 years *** that my executors divide said negroes *** equally among all my children, and in case any of my children" should die before said time "leaving lawful children, said *** children, shall take the shares of their parents." Held that this was a

bequest to a class answering a certain description at the end of five years and no interest vested until that time. Fulkerson v. Bullard, 3 Sneed (35 Tenn.) 260.

"As a general rule, where there are no words importing a gift other than a direction to the *134 executors or trustees to divide or pay at a future time, the legacy is contingent and does not vest until that time arrives." 30 A. & E. Enc. L. 771.

"Where a gift in a will is implied from the direction to divide or pay at a future time, it necessarily is inseparable from that direction, and must partake of its quality, and, one being contingent, the other must be; the conditional element being incorporated into the description of or into the gift to the remainderman." Lingo v. Smith, 174 Iowa, 461, 156 N. W. 402.

"The general rule for determining whether a bequest is vested or contingent is that when the time of division is of the substance of the gift the legacy is contingent, but when the time is mentioned only as a qualifying clause of payment or division the legacy is vested." Crawford v. Engram, 153 Ala. 420, 45 So. 584.

"Where there is no gift but by direction to executors or trustees to pay or divide the subject of the gift at a future time, the vesting is postponed until that time arrives." Wessborg v. Merrill, 195 Mich. 556, 162 N. W. 102, L. R. A. 1918E, 1074.

"Where there is no gift, but a direction to executors or trustees to pay or divide, and to pay at a future time, the vesting will not take place until that time arrives." Palms v. Palms, 68 Mich. 355, 36 N. W. 419.

In Taveau v. Ball, 1 McCord, Eq. 8, it was held:

> "Where the time of the division is not connected with the substance of the gift, the vesting is not postponed to the period for division."

In Bryson v. Nickols, 2 Hill, Eq. 113, the bequest was of a slave for life; at the death of the life tenant the slave was directed to be sold and the proceeds divided among the testator's five oldest children. The question arose whether the remaindermen took a vested interest in the slave. The court, citing Taveau v. Ball, said:

"'If the time of division be not the substance of the gift, it is only matter of regulation.' That applies to cases where there has been a gift to several, and a future time appointed for division—then, if the time of division be not the substance of the gift, it only operates to regulate the division to be made. But in this case, the rights of the elder children are not to the thing itself, but that the proceeds of the slave, when sold, should be divided among them. The division is hence of the substance of the gift; and they can take no interest, until by law, or rather by the will, that division is to be made."

"Where there are no words of direct and immediate gift, but simply a direction that the trustees shall convey at a future time on a certain contingency, futurity is annexed to the substance of the gift, and survivorship at the time of distribution is an essential condition to the acquisition of the interest of the subject-matter. *** Besides, the general rule is that where the devisees compose a class and there are no words of devise, except a simple direction to divide the property at a specified time, the gift will not vest until the time of division." Lemmon v. McElroy, 113 S. C. 532, 101 S. E. 852.

In McGregor v. Toomer, 2 Strob. Eq. 51, the court said:

> "The general rule which has been drawn from the host of cases of this kind, with which the books abound, is that if futurity be annexed to the substance of the gift, the vesting is suspended, but if it appears to relate to the time of payment only, the legacy vests instantly. *** When the testator has any ulterior object in deferring the vesting of the legacy to the time appointed for the legatee to take possession, then there would be some ground to consider it contingent."

See, also, Wessborg v. Merrill, 195 Mich. 556, 162 N. W. 102, L. R. A. 1918E, 1074; Quinlan v. Wickman, 233 Ill. 39, 84 N. E. 38, 17 L. R. A. (N. S.) 216; McComb v. Morford, 283 Ill. 584, 119 N. E. 601.

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202 S.C. 522
Supreme Court of South Carolina.

Z. V. Pate, Inc. v. Kollock
Supreme Court of South Carolina. May 29, 1943 202 S.C. 522 Z. V. PATE, Inc., (Approx. 4 pages)

v.

KOLLOCK et al.

No. 15541.
May 29, 1943.

Appeal from Common Pleas Court of Marlboro County; E. C. Dennis, Judge.

Suit by Z. V. Pate, Inc., against Lucy Jane Kollock and others for the foreclosure of a mortgage. Certain of the defendants defaulted. Judgment and decree for plaintiff, and the remaining defendants, except G. W. Coggins, holder of a prior mortgage on a part of the realty involved, appeal. There was no contest between plaintiff and defendant Coggins, and defendant Coggins, together with plaintiff, was made a respondent.

Exceptions overruled and cause remanded.

West Headnotes (4)

Change View

1 **Pleading** Necessity for filing or service
Where suit was brought to foreclose mortgage on deceased mortgagor's interest in land inherited from his father with other children, and answering defendants denied that mortgagor owned an interest in such land, but answer was not served on heirs at law of mortgagor's deceased sister who also owned an interest in such land, court properly decreed foreclosure without determining what the precise extent of mortgagor's interest in the land was.

2 **Tenancy in Common** Foreclosure of mortgage or lien
Where suit was brought to foreclose mortgage on deceased mortgagor's interest as a cotenant in certain land, it was not error to order the sale of the entire tract and a division of the proceeds of the sale, without first partitioning and setting aside such interest.

3 **Mortgages and Deeds of Trust** Rights of and relief to defendants in general
In suit to foreclose mortgage on deceased mortgagor's interest in certain land, where decree did not purport to sell such interest free from right of dower, it was not error to order sale of the interest without determining which of two women was mortgagor's widow.

4 **Mortgages and Deeds of Trust** Preservation or presentation of error in lower court; plain or fundamental error
Where defendants against whom decree in mortgage foreclosure suit was entered did not move trial court to correct statement of fact in court's supplemental order, which statement defendants claimed was erroneous, and there was nothing in the record, save as contained in the exception, tending to show that the statement of fact was erroneous, exception to the statement would be overruled.

SELECTED TOPICS

Amended and Supplemental Pleadings and Repleader

Service of Supplemental Amended Summons and Complaint

Tenancy in Common

Foreclosure of Mortgage or Lien
Foreclosure Sale of the Undivided Interest of Tenant

Usury

Usurious Contracts and Transactions
Mortgage and Foreclosure Sale

Secondary Sources

§ 15.08. ENFORCING THE MINERAL LIEN.

12 E. Min. L. Found. § 15.08

...Since liens are in rem creatures, they are usually enforced through foreclosure actions. Because lien foreclosure actions are proceedings in equity, there is generally no right to trial by jury, althou...

§ 16.03. TYPES OF RESTRAINTS TYPICALLY FOUND IN COAL LEASES.

33 E. Min. L. Found § 16.03

...When restraints on alienation are present in coal leases they typically include restrictions on five categories of transfers: assignment of the lease, sublease, encumbrance, transfers by operation of l...

APPENDIX III - JUDICIAL OPINIONS

FDA Enforcement Man. Appendix III

...No. 74-215 Supreme Court of the United States 421 U.S. 658; 95 S. Ct. 1903 2d 489 Argued March 18-19, 1975 June 9, 1975 Mr. Chief Justice Burger delivered the opinion of the Court. We granted certiorar...

See More Secondary Sources

Briefs

Brief for the Petitioner

1991 WL 11007922
In re Gerald J. SANDERFOOT, Debtor.
Jeanne FARREY, f/k/a Jeanne Sanderfoot, Petitioner, v. Gerald J. SANDERFOOT, Respondent.
Supreme Court of the United States
Jan. 11, 1991

...FN* Counsel of Record The 2-1 opinion of the U.S. Court of Appeals for the Seventh Circuit is reported at 899 F.2d 588. It is reprinted in the appendix to the petition for a writ of certiorari, Appendi...

Brief of Pioneer American Insurance Company and The Development Company, Inc.

1983 WL 105988
UNITED STATES OF AMERICA, Petitioner, v. PIONEER AMERICAN INSURANCE COMPANY, THE DEVELOPMENT COMPANY, INC.
Supreme Court of the United States
Mar. 11, 1983

EXHIBIT

*728 The agreed statement of facts directed to be reported follows:

The testimony of the plaintiff shows that the mortgage referred to in the plaintiff's complaint was executed and delivered as alleged in the complaint of the plaintiff, and that the same has not been paid.

The testimony further shows that the mortgage to C. W. Coggins was duly executed and delivered and the referee has found correctly the amount due thereon.

The testimony of the Kollock defendants, represented by Mr. Owens, shows that Nicholas Kollock died in October, 1910, and he left a will dated March 16, 1904, and he left surviving him his widow and eleven children. Since the death of the father three children died, to wit: Bessie Welch, James Kollock and C. N. Kollock. Only Bessie Welch left any children. It is agreed for the purposes of this appeal that C. N. Kollock left a widow, either Elvira Kollock or Mary Ardella McRae Kollock, not yet determined by the court.

The following is a copy of the provisions of the will of Nicholas Kollock:

"Item III.

"I hereby will and devise all my property of whatsoever nature or kind or wherever situate or located to my beloved wife Lucy Jane Kollock, for and during the natural term of her life, the said property consisting of such personal property as horses, mules, and farming implements as I have on my real estate, and also the real estate hereinafter referred to, and it is my intention and desire that the provisions of this item and the terms and conditions of this last will shall extend to and embrace any and all other property which I may hereafter acquire or become possessed of. It is my desire that my said wife shall have the use free of charge of all my real estate and personal property during her life, but that she shall have no power or authority to dispose of any of my said property except that she may trade, swap, or exchange any of the said mules and horses, provided the animals exchanged or swapped for shall take the place of the ones so traded by her. It is my desire that the yearly crops such as cotton, corn, fodder, etc., *729 shall be her absolute property during her life.

"Item V.

"I further will and direct that after the death of my said wife my executors hereinafter named shall divide all my property, both real and personal among my children share and share alike, the child or children of one dead to represent his or her parent, and that any children born to me subsequent to this date shall take equally with my children now living. The names of my children are Cornelius Kollock, Annie Jane Kollock, John Calvin Kollock, Nicholas Kollock, Jr., Bessie Kollock, David Kollock, Fred Kollock, Benjamin Harrison Kollock, and my baby at present unnamed."

Some time between the execution of the will and death, Nicholas Kollock had entered into certain agreements with the Drakes whereby he had agreed to buy certain lands in the Sand Hills where is located the lands that Coggins holds a mortgage of C. N. Kollock, and plaintiff's mortgage includes this Sand Hill place as well as the property near and in Bennettsville.

C. N. Kollock died July 1, 1938. Some time before his death Lucy Jane Kollock, the widow of Nicholas Kollock, made a deed of the Sand Hill land to the children and grandchildren, named as follows: "Cornelius Kollock, Annie J. Lawson, John C. Kollock, Nicholas Kollock, King David Kollock, Fred D. Kollock, Juanita Kollock, Benjamin H. Kollock, Alexander Kollock, and the children of my deceased daughter Bessie M. Welch, Ernest Welch, Jr., Eula May Welch, Jonathan Welch, Braxton Welch and Nicholas Welch," conveying the property in the following language: "All my right, title and interest in the property below described, the grantees herein taking same, share and share alike; that is to say, to each one of them one-tenth thereof, except the five children of my said daughter, Bessie M. Welch, who, among them, are to take a one-tenth part, the portion which their mother would have taken had she been living."

C. N. Kollock farmed a part of this land during his lifetime but neither the widow or any of the other children received any rent from that land.

For convenience the tract of land that the defendant Coggins holds a mortgage on and that the plaintiff also holds a mortgage on and located in the upper part of the county, is hereinafter referred to as the "Sand Hill Lands." All of the other property mentioned in the will

Joint Appendix

2014 WL 4467843
United States of America, Petitioner, v. Kwai Fun Wong:
Supreme Court of the United States
Sep. 09, 2014

...Claimant is a citizen of Hong Kong. She is the Matriach of the Tao Heritage and the leader of the Wu-Wei Tien Tao association. She entered the United States in 1985 as a Tao Minister and applied with t...

See More Briefs

Trial Court Documents

In re Forum Health

2009 WL 8169418
In re: FORUM HEALTH, et al., Debtors.
United States Bankruptcy Court, N.D. Ohio.
Mar. 16, 2009

...FN1. The Debtors include: Forum Health (31-1560189), Forum Health Diagnostics Co. (34-1773872), Forum Health Enterprises Co. (34-1368151), Forum Health Outreach Laboratories, Inc. (34-1437294), Forum H...

In re Kiebler Slippery Rock, L.L.C.

2009 WL 8169409
In re KIEBLER SLIPPERY ROCK, L.L.C., Debtor.
United States Bankruptcy Court, N.D. Ohio.
Sep. 25, 2009

...Chapter 11 Upon the motion of Kiebler Slippery Rock, L.L.C. (the "Debtor"), debtor and debtor-in-possession in the above-captioned chapter 11 case, for the entry of interim and final orders authorizing...

Jeffries v. Emerson Indus. Automation

2015 WL 5783088
Henry JEFFRIES, and his Wife, Deborah Jeffries, Plaintiffs, v. EMERSON INDUSTRIAL AUTOMATION; Appleton Group LLC; Emerson Power Transmission Corporation; and EGS Electrical Group, LLC, Defendants.
United States District Court, W.D. Tennessee, Western Division.
Aug. 31, 2015

...Pursuant to the Court's August 19, 2014 Notice of Setting and the Court's instructions at the August 19, 2015 Pretrial Conference, Plaintiffs Henry Jeffries ("Mr. Jeffries") and Deborah Jeffries ("Mrs....

See More Trial Court Documents

that is located in Bennettsville and the farm on the Blenheim road is hereinafter referred to as the "Bennettsville Lands." The "Sand Hill Land" contains approximately 456 acres. It has no houses on it. At the time the mother executed a deed to the children nine of whom were living and all named as grantees and also the Welch children, the children of a deceased daughter, and these children are also named as grantees.

Neither the widow nor the children knew anything about the mortgage that C. N. Kollock had given. The testimony also shows that the "Sand Hill Land" could be divided in kind.

The question as to title does not affect the "Sand Hill Lands," it being admitted that remainder thereto was accelerated by deed from life tenant, nor is there any question as to the validity of mortgage to C. W. Coggins.

Attorneys and Law Firms

J. K. Owens, of Bennettsville, for appellants.

Stevenson & Lindsay and Tison & Miller, all of Bennettsville, for respondent.

Opinion

BAKER, Justice.

The respondent, Z. V. Pate, Inc., instituted its action for the foreclosure of a mortgage given it covering the right, title and interest of one, C. N. Kollock, in and to certain lands known as the "Sand Hill Lands" and the "Bennettsville Lands" of Nicholas Kollock (deceased), the father of C. N. Kollock, also deceased at the time of the commencement of the foreclosure action.

Those originally made parties-defendants were the mother, and the brothers and sisters of the said mortgagor; the husband and children of a deceased sister; one, Elvira "Kollock," the "widow" of the mortgagor and who signed the dower on the mortgage; and G. W. Coggins, who held a mortgage over the "Sand Hill Lands" covering the interest of C. N. Kollock, which mortgage is a prior lien to that of respondent.

In the mortgage to respondent, the interest of C. N. Kollock is described as "My interest in said lands now being the one-tenth part thereof as an heir at law of my father and it is my purpose to mortgage the same, and any other interest that I may hereafter become entitled to."

Paragraph 7 of the complaint is as follows. "Plaintiff is further informed that *730 the foregoing interest came to the said C. N. Kollock through will of his father, Nicholas Kollock, as to all the aforesaid property except as to the 456 acres ("Sand Hill Lands"), which were, pursuant to an order of court in the case of D. D. McColl, as Executor of Nicholas Kollock, v. Lucy Jane Kollock et al., in the Court of Common Pleas of said county, conveyed by J. N. Drake and others by deed above recited, and the entire property was burdened with the life estate in Lucy Jane Kollock, but that the said Lucy Jane Kollock by her proper deed surrendered to the remaindermen, including the said C. N. Kollock the said 456 acre tract and the same is unencumbered with her life estate. In addition to the interest taken directly by the said C. N. Kollock from the will of his father, Nicholas Kollock, and the deed of Drake et al., he also inherited his part of the interest in the said property left by his brother, James B. Kollock, who died intestate and unmarried about the year 1927."

Paragraph 9 of the complaint alleges that the plaintiff (respondent) does not seek a deficiency judgment; and the prayer of the complaint is in the usual form in an action in foreclosure.

There is no contest here between the respondent, Z. V. Pate, Inc., and G. W. Coggins, also a respondent, and when we refer to the respondent herein, such reference is to Z. V. Pate, Inc.

The appellants (the mother and the brothers and sisters; and Elvira "Kollock," the "widow" of C. N. Kollock) answered denying that C. N. Kollock had any interest whatsoever in the "Bennettsville Lands"; and alleged that the interest of C. N. Kollock in the "Sand Hill Lands" could be set aside in kind, and that commission in partition should be issued by the court with instructions to set apart a one-tenth interest; and that only this said interest should be sold.

At some stage of the case, and on motion, by order dated December 10, 1942, one, Mary Ardella McRae Kollock was made a party defendant, and filed an answer which was served upon the respondent, and upon G. W. Coggins, in which she claimed to be the lawful widow of C. N. Kollock, and as such, entitled to dower in any lands of which the said C. N. Kollock died seized and possessed.

At page 21 of the Transcript of Record appears: "The following is the Testimony and Agreed Statement of Facts:" Let this Testimony and Agreed Statement of Facts be reported.

On December 11, 1942, Honorable E. C. Dennis, Judge of the Fourth Judicial Circuit, issued his certain judgment and decree in foreclosure in the usual form, ordering the sale of the interest of C. N. Kollock in the "Sand Hill Lands" first, and next his interest in the "Bennettsville Lands."

After signing the judgment and decree of foreclosure, Judge Dennis wrote and signed the following statement as supplemental to his decree: "This matter came before me about a year ago at Darlington, and it then appeared that the defendant had not served his answer in which he brought up the construction of the Will of Nicholas Kollock upon the defendants not represented by him, and that a judgment as to the construction of the Will by me would therefore not be binding. Accordingly I adjourned the hearing and gave him time to serve these parties. This has not been done and the situation is as it was then, and the mortgages (mortgagees?) should not longer be delayed. This question is indeed not necessarily—if indeed property—before the Court for determination. The action is to foreclose mortgages given by C. N. Kollock and they have been duly proved and established and certainly the mortgages (mortgagees?) have a right to judgment for the sale of whatever interest their mortgage covers, and the construction of the Kollock will is as to their cause of action irrelevant and no defense to the foreclosure, and I so adjudge."

There has been no attempt by appellants to comply with the rule of this court requiring that the questions involved be stated in the printed brief. Notwithstanding this, the court will briefly dispose of the appeal.

1 It would appear from Exception I that it was intended to question the sale of the interest of C. N. Kollock in the "Bennettsville Lands" until there had been an adjudication of the interest, if any, of the said C. N. Kollock in these lands.

The complaint was one in foreclosure and to sell the interest of C. N. Kollock in said lands. The answering defendants denied that C. N. Kollock owned an interest in this land, but their answer was not served upon the heirs at law of Bessie Kollock Welch, a deceased sister of C.N. *731 Kollock, and therefore any decree of the court in this action would not be binding upon these defendants.

If the appellants desired an adjudication of the interest of C. N. Kollock in the "Bennettsville Lands," it was encumbent upon them, and not upon the respondent, to place the court in a position to make a binding order. It was not necessary to respondent's cause of action that it be determined if in fact C. N. Kollock had an interest in these lands, nor the precise interest that he owned, unless the decree of sale provided for the sale of a definite interest.

2 Exception II alleges error in ordering the sale of the entire tract of the "Sand Hill Lands," and a division of the proceeds of the sale when the said lands could be equitably divided in kind amongst the cotenants.

The decree of foreclosure and sale provides that the interest of C. N. Kollock in said land be sold. We know of no requirement of the law that in a foreclosure suit against the interest of a mortgagor where admittedly his interest is that of a cotenant, that such interest must be first partitioned and set aside; and we have been cited no holding of this court to such effect. The cases cited are not apposite to this issue.

3 Exception III alleges error in ordering the sale of the interest of C. N. Kollock in either or both properties until the court has determined who is the widow of C. N. Kollock; that if Elvira Kollock is the widow, then the renunciation of dower on the respondent's mortgage is good, but if Mary Ardella McRae Kollock is the widow, then this dower in the mortgaged land, or interest therein, is outstanding.

We do not know how this issue will be tried since the same counsel is counsel of record for both of these women. But, aside from this, the decree of foreclosure does not purport to sell the interest of C. N. Kollock, free from the right of dower.

Exception IV alleges error in the statement of fact by the trial judge contained in the first sentence of his supplemental order hereinbefore set out.

4 If the learned Circuit Judge made an erroneous statement of fact, it was the duty of the appellants to first make a motion before him to correct such statement. There is nothing in the record other than that contained in the exception tending to show that the statement of fact was erroneous.

Exception V is encompassed by the exceptions already passed upon, and it is, therefore, overruled.

All exceptions are overruled, and the case is remanded for such further order or orders as respondent may be advised is necessary to carry into effect the order appealed from.

Affirmed.

FISHBURNE and STUKES, JJ., and PHILIP H. STOLL, A. A. J., concur.

All Citations

202 S.C. 522, 25 S.E.2d 720

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Cotenancy and Joint Ownership

VI. Alienation, Leases, and Encumbrances by Cotenants

B. To Third Persons

2. Particular Types of Transfers or Transactions

§ 98. Sales and conveyances

§ 97. --Specific portion of common property

§ 102. Easements, servitudes, and dedications

Topic Summary | Correlation Table | References

West's Key Number Digest

- West's Key Number Digest, Joint Tenancy ⇨11 to 14
- West's Key Number Digest, Tenancy In Common ⇨41

One cotenant cannot, without the consent or authorization of the other cotenants, convey a specific easement in the common property in such manner as to affect their rights, [1] or create a right of way over it. [2] When an undivided owner grants a servitude, the grantee has no right to immediate use but must wait for the consent of the remaining co-owners. [3] One tenant in common cannot dedicate any part of the land without the assent of all cotenants. [4]

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Footnotes

1 King v. Oakmore Homes Assn., 195 Cal. App. 3d 770, 241 Cal. Rptr. 140 (1st Dist. 1987); Parkison v. McCue, 831 N.E.2d 118 (Ind. Ct. App. 2005); Race v. Meyer, 219 A.D.2d 67, 640 N.Y.S.2d 664 (3d Dep't 1996).

2 Silverman v. Belli, 222 Mass. 142, 109 N.E. 847 (1915).

3 Roy v. South Cent. Bell Telephone Co., 752 F. Supp. 211 (W.D. La. 1990) (applying Louisiana law).

4 Am. Jur. 2d, Dedication § 12.

End of Document

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EXHIBIT
tabbies
4

SELECTED TOPICS

Tenancy in Common

Nature and incidents of Cotenancy Tenant of Common Property

Secondary Sources

Effect of cotenant's attempt to devise or bequeath specific portion of property held in common

97 A.L.R.2d 739 (Originally published in 1964)

...This annotation collects cases which deal with the effect of a cotenant's attempt to devise or bequeath a specific portion of property held by him in common with other persons. The annotation is direct...

§ 401. Conveyance of joint estates

2 Patton and Palomar on Land Titles § 401 (3d ed.)

...To determine the effect of a conveyance of property which the grantor or grantors held in a joint estate, a title attorney must first consider whether they held a tenancy by the entirety, joint tenancy...

What acts by one or more of joint tenants will sever or terminate the tenancy

84 A.L.R.2d 918 (Originally published in 1962)

...This annotation supersedes 120 A.L.R. 813. The questions covered are those of severance or termination of joint tenancies in either real or personal property by act of the joint tenants, or one or some...

See More Secondary Sources

Briefs

Brief for the Petitioner.

1935 WL 32042
Bertram J. CAHN, Executor of the Will of Jonas Kuppenheimer, Deceased, Petitioner, v. The United States.
Supreme Court of the United States
Dec 1935

...The special findings of fact and opinion of the Court of Claims are reported in 10 F. Supp. 577. The judgment of the Court of Claims was entered April 8, 1935 (R. 27). The petition for a writ of certio...

Brief of Amicus Curiae National Association of Criminal Defense Lawyers Supporting Respondent

2005 WL 2147326
STATE OF GEORGIA, Petitioner, v. Scott Fitz RANDOLPH, Respondent.
Supreme Court of the United States
Sep. 01, 2005

...National Association of Criminal Defense Lawyers (NACDL) is a nonprofit national bar association working in the interest of criminal defense attorneys and their clients. NACDL was founded to ensure jus...

Brief for Respondent.

1936 WL 39469
The United States Of America, Petitioner, v. Elizabeth C. JACOBS, Executrix of the Last Will and Testament of W. Francis Jacobs, Deceased, Respondent.
Supreme Court of the United States
1936

...The memorandum opinion of the District Court (R. 70-75) is unreported. The opinion of the Circuit Court of Appeals (R. 88-92), is reported in 97 F. (2d) 764. The judgment of the Circuit Court of Appea...

See More Briefs

Trial Court Documents

In re MSR Resort Golf Course LLC

2011 WL 2752202
In re MSR RESORT GOLF COURSE LLC, et al., Debtors.
United States Bankruptcy Court, S.D. New York.
Feb. 01, 2011

...FN1. The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: MSR Resort Golf Course LLC (7388); MSR Biltmore Resort, LP (5736)...

In re Msr Resort Golf Course LLC

2011 WL 2752200
In re: MSR RESORT GOLF COURSE LLC, et al, Debtors.
United States Bankruptcy Court, S.D. New York.
Feb. 01, 2011

...FN1. The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: MSR Resort Golf Course LLC (7388); MSR Biltmore Resort, LP (5736)...

In re Nevada Star, LLC

2011 WL 2760691
In re NEVADA STAR, LLC, Debtor.
In re Claudia Raffone, Debtor.
United States Bankruptcy Court, C.D. California.
May 03, 2011

...Chapter 11 Plan Confirmation Hearing: Date: May 4, 2011 Time: 1:00 p.m. Ctrm: 1539 U.S. Bankruptcy Court 22 255 E. Temple Street, 15th Floor Los Angeles, CA 90012 I. On March 30, 2011, Madison Realty C...

See More Trial Court Documents

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engineering, architectural work, planning and zoning approval and design work so that by the time a final loan package was offered by the bank all designs and plans and all zoning approvals for the project were complete.

That 86,000, is that the expenses that you explained earlier that Old Towne Suites, LLC, paid?

A. That's correct, and I think it was more than -- it was around 92,000 because there was insurance that wasn't in that figure and most -- a lot of that payment was paid by the -- out of the Old Towne Restaurant account.

Q. But it was paid on behalf of Old Towne Suites, LLC.

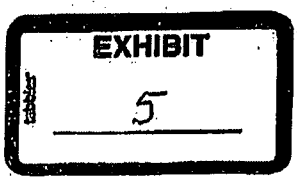
A. Correct.

Q. Let me show you another Exhibit. We'll mark this as 2.

(Exhibit No. 02 marked for identification.)

(Recess held.)

Q. Before I get to Exhibit 2, a couple 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?



A. Build the new building, yes.
Q. Build the new building. Okay. And when you said that you agreed in early 2015 to sign the side agreement, was that agreement in the email chain?
A. Yes.
Q. Was there any oral agreement in addition to that?
A. I'm not -- I don't think so.
Q. All right. So let me let you look at Exhibit 2. These are answers to interrogatories. I just want to ask you about some of the witnesses that you've identified. I think I know what Jacob Ferderigos, Spiros Ferderigos, Phillip Ferderigos might say. But No. D is Justin Hansen, Old Towne Restaurant. What does he know or what do you expect he's going to testify that would be relevant to this case?
A. I don't know what he'll testify, but he was the general -- he's the general manager, so he knows everything that's going on with the restaurant, and he knew that we took the stuff out of storage to start the project. He knew that we cut the trees down to start the project. I mean, he might have been the one that actually cut the check to the guy for cutting trees. I'm not sure.

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 osiled 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

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

EXHIBIT 2

doc26026220140924075734.pdf
934K

Spiros or Phillip relative to Old Towne Suites in which they agreed to sign anything other than a mortgage?

A. Other than a mortgage? I guess when they -- I sent them the email of the contract that the bank had or the -- what do you call it, the -- when they said they would give us the $1 million and the $1.8 million, they all received that, and on there it spelled out exactly what the bank wanted.

Q. And that would have been on September 24, I believe -- is that right, Stan -- of 2014?

MR. BARNETT: Yes.

Q. Okay. Any other -- any conversation that you had in which they agreed to sign anything other than a mortgage.

A. Other than a mortgage, hmm, the only stipulation that they have was that they don't want to be personal guarantors on the note. They never said that they wouldn't sign over whatever the other things the bank needed.

Q. Yes, I'm asking you that question in the affirmative. Neither Spiros nor Phillip ever agreed to sign anything other than, as you claim, a mortgage.

A. The only thing I remember is Spiros and

EXHIBIT 8 1303

Phillip agreeing that they would not personally guarantee the note.

Q. I'm going to ask you one more time, and you can say yes or no and then you can explain. There was no circumstance in any conversation related to Old Towne Suites in which either Spiros or Phillip agreed to sign anything other than the mortgage you claim they were willing to sign.

A. I don't remember.

Q. Okay. You don't remember any such conversation.

A. We might have had conversations about the mortgage and what the banks requirements were and we discussed the loan in depth and the main thing that they wanted to make sure was that they are not personal guarantors on the loan.

Q. Right, so Phillip and Spiros never agreed to sign anything that exposed them to personal liability, correct?

A. Personally guaranteeing, yes, their deal was they didn't want to personally guarantee the note.

Q. You're answering a slightly different question.

A. I thought I was answering the same question.

Q. No. I didn't use the term guarantee. I'll

re-ask it.

A. Okay.

Q. You agree that neither Phillip nor Spiros ever agreed to sign anything that exposed them to personal liability in the Old Towne Suites deal.

A. Spiros and Phillip Ferderigos agreed that they would sign the mortgage and the note -- what the bank wanted, as long as they did not have to personally guarantee the note.

Q. Other than the mortgage, which you claim they agreed that they would sign -- take the mortgage and put it off to the side.

A. Okay.

Q. Other than the mortgage, neither Phillip nor Spiros ever agreed to sign anything that exposed them to personal liability.

A. I don't know what that other thing would have been that they would have to agree that it would expose them to personal liability, but they said from the beginning, before we even started the note or before we even moved forward to spend money, big money on the project, that they would not personally guarantee the note.

Q. Okay. I understand that.

A. Okay.

Q. They never agreed to sign anything that exposed them to personal liability other than to the extent that we're talking about the mortgage.

A. Is that the same thing as them not personally guaranteeing the note?

Q. No, it's more expansive.

A. More expansive, then I don't know.

Q. Okay. You don't know of anything that you can testify to that they --

A. Nothing I can testify today. We've had many conversations about the note, and the one stipulation was that they would not personally guarantee it.

Q. So S&S Old Town is separate than this proposed project, is it not?

A. S&S Old Town is separate from what project?

Q. Old Towne Suites?

A. Yes, they are two different entities.

Q. And you agree that neither Phillip nor Spiros nor Jacob nor you agreed to assign rent that the owners of 229 King received from S&S Old Town for this proposed project.

A. That's lengthy. I can't put my head around it. Will you say that again?

Q. Yes, I'll break it down. There was an

Q. Right. It would have to be a different deal, have to be a cash deal, correct?

A. Could be some other deal, I guess; a land swap deal, who knows. There are many deals out there.

Q. And so a full and final price would also be an important or material term to the agreement, correct?

A. A pretty close number, I would think.

Q. Because if it wound up costing five times more than your original estimates, that might be a no-go for the deal, correct?

A. Probably wouldn't make as much money, profitable, if you spent $10 million on this project.

Q. And we could keep going with an exponent, but at some point the cost of construction is going to make it very difficult to make a profit, correct?

A. If it gets too high, at some point you've got to figure out how much income you can make from the property to make payments and actually put money in your pocket.

Q. And the ability to obtain a mortgage under this agreement would be an important or material

term, correct?

A. The ability to obtain a mortgage?

Q. Yes.

A. A bank would have to agree.

Q. How about a personal guarantee, would that be an important or material term?

A. It's not important to me, but it was important to Phillip to not be a personal guarantor.

Q. Okay. So it's fair at least as to Phillip that's an important or material term.

A. For Phillip, yes.

Q. How about the exposure of risk, would that be an important or material term to the people that were going to participate in a deal?

A. Risk.

Q. Mm-hmm.

A. I'm sure that's important for everybody.

Q. Let me ask you a few more, how about assignment of rents, is that an important or material term?

A. It depends on the rent.

Q. Okay. It could be, though, correct?

A. And it could not be.

Q. How about a UCC security agreement, is that

Phillip Ferderigos

From: Phillip Ferderigos
Sent: Friday, November 21, 2014 3:19 PM
To: 'Athan Fokas'
Cc: Spiros Ferderigos; Athan Fokas; <lakovosstavros@gmail.com>
Subject: RE; Old Town

Well, a chess game would not be fair, it has been a while and you are much better at it than me.

As for all the other stuff, I hope we can get there. I really do, but I want it to be done right and everyone knows what they are agreeing to. Putting the LLC on the note is not necessary and in this fine State makes me indirectly liable for payment on the note. All the bank needs to do is revise the HUD and the note, putting you and Jacob on both, which ya'll are personally guaranteeing. As I have indicated, if the side agreement that we forwarded are agreed to & signed, I am happy to sign a mortgage, even though I do not have to. This is a tremendous leap of faith on my end because, if you do not make the payments on time, I could lose Old Towne.

On the flip side, I have not asked you to sign anything for me. If I don't make my payments for my loan I am getting, it does not affect you in the least. You can not conflate the two issues... it is not you are making me sign something, so you need to sign something...You have asked me to do you a favor and, thus far, I have been willing to do it, but you are making it very difficult.

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

From: Athan Fokas [mailto:fokasa@bellsouth.net]
Sent: Friday, November 21, 2014 3:08 PM
To: Phillip Ferderigos
Cc: Spiros Ferderigos; Athan Fokas; <lakovosstavros@gmail.com>
Subject: Re: Old Town

EXHIBIT 10

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!

Phillip to Athan 0081

Gmail

spiros ferderigos <spirosferderigos@gmail.com>

RE: Old Town

Amy Haines <amy.haineslawfirm@gmail.com> Fri, Nov 21, 2014 at 12:01 PM
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Cc: Athan Fokas <fokasa@bellsouth.net>, Athan Fokas <athanfokas@gmail.com>, Spiros Ferderigos <spirosferderigos@gmail.com>, Iakovosstavros@gmail.com

They wouldn't need to personally guarantee anything if they were borrowers as they would already be liable personally on the note. There will also be hypothecation agreements, I believe. I will send when I have.

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.

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EXHIBIT 11

agreed on it, then that would be the LLC taking on the debt.

Q. Well, let's break that down. I asked you in writing. I have looked at all the documents. I see nothing in writing --

A. Yes, it was done all orally.

Q. Okay. Very good. And are you aware of any formal action within the LLC, a referendum, a vote, minutes of any meeting, that would confirm that?

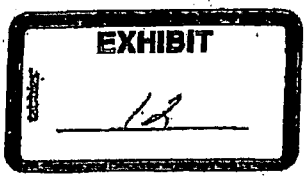
A. If the -- we discussed this as owners of the building. The owners of the building don't have this LLC. We discussed as owners of the building that we would add property on top of our existing building.

Q. Well, the LLC --

A. I don't think it has to go through the LLC. There's no documents that it go through the LLC. I make 50 percent of the decisions. The Ferderigos brothers make 50 percent of the decisions. If we both agree, then we continue.

Q. I want you to explain what you just said. You said there's no documents that say -- I got confused. There's no documents that say what?

A. You're trying to pin this and say, well, Old Towne, LLC didn't have a meeting that made this.



We had the meeting amongst the owners of the building. We don't have an LLC for the building. We, as owners of the building, decided to build another part of the building.

Q. A lot of these questions are pretty simple. I just am trying to confirm, I'd like you to confirm, that there is no written documentation of any formal action within the LLC by its members.

A. No. It was done all orally by its members.

Q. Okay. And there's no written agreement within Old Towne, LLC, by the members by which they agreed to respond to any capital calls, correct?

A. Any capital calls.

Q. Yes.

A. Explain that term.

Q. Do you understand what a capital call is?

A. Not so sure.

Q. Okay. If you are in a partnership or an LLC and your profits don't exceed your -- there's a lot of reasons you can make a capital call, but you can be running short one year. For instance, your lawyer and I might be partners, and we're having a bad year. We've got a bunch of contingency cases out there, and we've got to pay our staff.

A. Yup.

banker is getting rid of the five-year balloon payments?

A. That's when he represented he had a 5 percent fixed for 20 years; correct.

Q. And there's attached to this a February 5, 2013, letter from Southcoast, Tony Daniel?

A. Okay. Is this the -- the Southcoast Community Bank?

Q. That's what I was about to ask you. Is this the commitment letter you're talking about?

A. Yeah. That's the only commitment letter I've ever seen.

Q. Okay. All right.

A. A commitment from Athan and Jacob's bank to them.

Q. Okay.

A. And when I got this, this is what I forwarded to Ned; and that's when he told me the rate didn't say that.

Q. Okay. And this letter seems to be signed by both Athan and your brother Jacob.

A. The commitment letter?

Q. Yeah.

EXHIBIT 12

1313

A. Well, it is signed by Athan and Jacob.

Q. All right. And it's signed -- it says "Old Towne Suites, LLC," is the first signature line; and that looks like Athan's signature there.

A. Yeah. And that's another breach of your client --

Q. Breach of what?

A. 'Cause apparently he -- he purported to sign for Old Towne Suites, LLC, when we never had a meeting, a vote, agreement, or anything. So to the extent I -- I interpret that as Athan Fokas signing for his membership interest in Old Towne Suites, LLC. To the extent it's anything beyond that, that would be a breach of him to me.

Q. Does this letter commit the suites to anything?

A. I don't know. It shouldn't. It didn't. This letter commits the bank to Athan and Jacob.

Q. Right.

A. But if you -- if you're -- if you -- if it purports to commit Old Towne Suites to anything, it would be a breach of his duty.

Q. Well, I was just asking if you, perhaps, saw something that I didn't see because you said

it was a breach of duty.

A. Well, I see a signature of Old Towne Suites, LLC, that he wasn't authorized to make.

Now, I presume what he means is that this commitment letter is for his and Jacob's loan of their LLC interests. Right. In Old Towne Suites, LLC, and their mortgage -- that their property ownership as tenants in common in 229 because this certainly doesn't bind me or Spiros; and I didn't get this until that date, September 24, 2014.

Q. Until this date. Okay.

A. I mean, whenever it was sent to me. There might -- it's whenever the prior exhibit that you had as well.

Q. Uh-huh.

A. Okay. So go ahead.

Q. No, no. I'm letting you finish your answer.

A. I'm done.

Q. All right. But I don't see anything in here committing the LLC to the bank for anything.

A. I agree with you. I totally agree with you. You're correct. You're right.

MR. BARNETT: All right. Mark this,

Phillip Ferderigos

From: Phillip Ferderigos
Sent: Thursday, November 20, 2014 3:31 PM
To: Athan Fokas
Subject: Re: Payments on loan

I presume this is directed to Jacob and Spiro. I am not on your loan...my 1/6 monthly profit will be distributed to me timely and you can not float or make your payments out of my portion of the profit...if there is any misunderstanding about that, let's not move forward...

Sent from my iPhone

On Nov 20, 2014, at 3:12 PM, Athan Fokas <athanfokas@gmail.com> wrote:

> Ok let's say for example one of us gets amnesia and forgets there is a loan. What happens then? Can we then take it out of their portion of suites profits?
>
> Sent from my iPhone
>
> On Nov 20, 2014, at 3:06 PM, spiros ferderigos <spirosferderigos@gmail.com> wrote:
>
> > I think the only question in your email is whether down the line will Jacob and I guarantee to cover Phillip's portion. The answer is no, Jacob and I will not guarantee to cover Phillip's portion.
> >
> > On Thu, Nov 20, 2014 at 2:28 PM, Athan Fokas <athanfokas@gmail.com> wrote:
> >
> > > I just spoke to our banker and he was able to change the loan amount to $1,750,000.00.
> > > I would like to see that document that everyone is supposed to sign guaranteeing payment soon. Since Phillip is getting his own loan, how will we make sure that money is available for time of disbursement. If there is a problem down the line will Jacob and Spiro guarantee that they will cover his portion? How do we make sure that money is married to this loan and for example Phillip can't decide to buy a sports car with the funds instead of fund this project.
> > >
> > > Sent from my iPhone
> > >
> > > On Nov 20, 2014, at 9:50 AM, spiros ferderigos <spirosferderigos@gmail.com> wrote:
> > >
> > > > Phillip is working on the agreement and anticipates having that done earlier today. I wanted to send out this email to show the breakdown of the payment obligations (will be in the agreement). This is for illustration purposes. I had an accountant help me out to make sure my math was correct. Given that Phillip is getting a separate loan for his obligation,

EXHIBIT

A. I think so.

Q. Why was the note made in the name of the Old Towne Suites, LLC, rather than individuals?

A. Because the LLC had the money income stream that the bank wanted that was able to pay for this note.

Q. When did you first learn that there would be a hypothecation agreement required?

A. Phillip was the first one that told me that. I didn't know what it was. He said, and this thing's asking for a hypothecation agreement.

Q. When did he tell you that?

A. I think it was the day of the -- or the day before the closing. I'm not sure. Whenever he saw the documents, he looked at it and he goes, I'm signing a hypothecation agreement, I'm not signing that Old Towne Suites is on it. I was like, those are requirements from the bank.

Q. So you didn't see a hypothecation agreement, therefore Spiros and Phillip probably didn't see a hypothecation agreement before the day of the closing.

A. I've signed hypothecation agreements before, and I know that they're just a guarantee for the note. I can't see that there's anything wrong with

EXHIBIT 15

Q. They never agreed to sign anything that exposed them to personal liability other than to the extent that we're talking about the mortgage.

A. Is that the same thing as them not personally guaranteeing the note?

Q. No, it's more expansive.

A. More expansive, then I don't know.

Q. Okay. You don't know of anything that you can testify to that they --

A. Nothing I can testify today. We've had many conversations about the note, and the one stipulation was that they would not personally guarantee it.

Q. So S&S Old Town is separate than this proposed project, is it not?

A. S&S Old Town is separate from what project?

Q. Old Towne Suites?

A. Yes, they are two different entities.

Q. And you agree that neither Phillip nor Spiros nor Jacob nor you agreed to assign rent that the owners of 229 King received from S&S Old Town for this proposed project.

A. That's lengthy. I can't put my head around it. Will you say that again?

Q. Yes, I'll break it down. There was an

EXHIBIT 16 1318

assignment of rents that was tendered in the closing package, right?

A. Assignment of rents, oh, with the bank, yes.

Q. But leading up to the closing none of the owners of 229 King had discussed or agreed to assign rents that S&S Old Town pays to the owners as part of that assignment of rents.

A. S&S Old Town. Do you mean Old Towne's rent, that Old Towne's rent would have anything to do with Old Towne Suites?

Q. Yes.

A. No, I don't think so.

Q. Okay. And it wasn't part of the deal.

A. Old Towne's rent and Old Towne Suites, no, I don't think that was part of the deal.

Q. Right. I'm sorry. The rent that Old Towne Suites pays to 229 King was never part of the Old Towne Suites deal.

A. Old Towne Suites doesn't pay rent to 229 King.

Q. Let me re-ask the question. The rent that S&S Old Town pays to 229 King, to the owners of 229 King, had nothing to do with the Old Towne Suites project.

A. I think that's correct.

on let's write down what we eat; and I'll be responsible for my family, and your brother can be responsible for his family.

Q. So that was a new term that you injected into the negotiations, correct?

A. It was definitely not in the negotiations. It just happened one day when I was in the restaurant and Phillip had been eating for free and a light bulb went off in my head, thinking why am I paying for Phillip's lunch.

Q. Didn't you try to negotiate with that condition?

A. I think at one point Phillip said, we have to go back to the status quo. There was an email that he said, we have to go back to the status quo. And I said, can you elaborate on the status quo? And he said that he would like to continue eating for free at Old Towne to go forward with our project and I told him that that had nothing to do with our project and that will not happen.

Q. The contract with Kevin Carroll.

A. Yes.

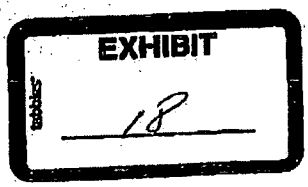
Q. You never showed that to the Ferderigos brothers before you executed it, did you?

A. I probably have. I can't remember.

EXHIBIT 12

1320

Q. And did you in fact threaten to do that?
A. To build something without the brothers?
Q. Yes.
A. I think in one email I said I would buy out one of the brothers.
Q. Did you in fact not threaten to build on the property without my client's consent?
A. No. Unless we had more -- a majority, I think. It would have to be done legally.
Q. But you don't recall ever doing that?
A. No.
Q. Do you recall when you or if you sent a copy of the contract signed with a contractor to any of the three brothers?
A. No. I don't recall when it was.
(Exhibit No. 16 marked for identification.)
Q. Let me show you what I have marked as Exhibit No. 16. You would agree that as of September 5, 2014, at least from this email, that my client did not know the details of your loan.
A. It was our loan and he was asking questions about the loan.
Q. And you don't have any reason to believe that the things he was asking about he actually



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
19

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

RE: Old Town

Phillip Ferderigos <pferderigos@barnwell-whaley.com> Fri, Nov 21, 2014 at 2:29 PM
To: Athan Fokas <fokasa@bellsouth.net>
Cc: Amy Haines <amy.haineslawfirm@gmail.com>, Spiros Ferderigos <spirosferderigos@gmail.com>, Athan Fokas <athanfokas@gmail.com>, lakovosstavros@gmail.com

Athan,

Jacob, Spiro and I own ½ of 229 King Street and ½ of Old Towne Suits, LCC. Although we attempted and are attempting to build a new building on that property, to the benefit of all, it is clear that there is no agreement between you and us on the details of how the note is to be structured or personally guaranteed, as well as other details.

Until these particulars are resolved, we regretfully can not move forward with the project. I recommend we re-set the closing for next week to see if we can work through these issues.

If not, then we can not move forward. Thanks, Phillip.

Phillip S. Ferderigos, Esq.
Member

BARNWELL WHALEY 75

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

EXHIBIT 80

SF RTP 000188

Q. I'm confused because I think I heard different answers to this. We talked about the side agreement, and we looked at emails about the side agreement. Did you agree to sign the side agreement, yes or no?

A. I did.

Q. Okay.

A. If you're talking about that piece of paper that Phillip came up with, the one percent change, if you're referring to that as the side agreement.

Q. So you did agree to sign that.

A. I did agree to sign that.

Q. All right. The key source of advertising for Old Towne Suites and Zeus Investments are the websites such as Airbnb, VRBO, Walk Away Stays and like that, correct?

A. Bookings.com, Travelocity.

Q. Yes.

A. Trivago. There's many sites, yes.

Q. Right, but --

A. Facebook's another one.

Q. Right. But it's a web based advertising primarily.

A. No, they have magazines that they subscribe -- Walk Away Stays subscribes into

EXHIBIT 21

1324

give a mortgage was on January 26th of 2015 through a letter drafted through your counsel, by your counsel; is that correct?

A. I don't know. I guess I'd have to see that letter. I'm not so sure that's a true comment.

Q. Well, do you agree that the side agreement that was being negotiated between you and Phillip was material to these negotiations?

A. No, that was something that was sprung on me, and we never agreed to any side agreement. He just brought that up all of a sudden out of the blue.

Q. And you never signed it in any form, did you?

A. I don't remember.

Q. You're not aware of any signed copy of the side agreement, are you?

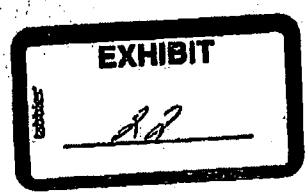
A. I'm not sure.

Q. You would have produced it to your lawyer, wouldn't you?

A. I would think I had if I had it, if I had signed it. I can't even remember if I'd signed it.

Q. Did you agree to sign it or did you not?

A. I did through an email, I think in a text message, there was one on there that said I agreed



Q. I'm going to ask you a question that is a yes or no question.

A. Okay. Make it simple.

Q. You and Phillip, did you ever agree to every term in a proposed side agreement?

A. I'm not sure.

Q. Okay. Do you have anything in writing signed by Phillip that says he would not receive profits from the new building and that his profits would go to pay the loan obligations of Old Towne Suites either directly or indirectly?

A. I think the original -- the original agreement that we all agreed to from Southcoast Bank had the rent assignments on there.

Q. Do you have any agreement that's signed by Phillip?

A. No, but Phillip got the emails. He agreed to it. We talked about it many times outside of church while our kids were in Sunday school.

Q. Okay. That's the way -- we can speed up if you can answer a question like that because you answered it no, and then you can give an explanation, so that doesn't bother me.

A. Okay good. I like that it doesn't bother you.

EXHIBIT 23

signing a hypothecation agreement. It's the same thing as the HUD.

Q. What did I just ask you?

A. I don't know, I'm just trying to tell you.

Q. I suspected as much. Let's try to do it a different way. I'll ask you a specific question, and you try to answer it if you can.

The question was is it true that you had not seen this hypothecation agreement prior to the day of closing.

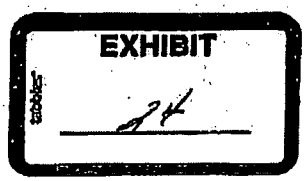
A. I'm not sure when I saw it. It's whenever the attorney sent me the documents. Whenever the attorney sent me the documents, I gave it to them. I don't know if it was the day before the closing or the day of the closing.

Q. And the assignment of rents, I'll ask you the same question, when did you first see this assignment of rents document?

A. When the attorney sent it to me.

Q. Do you remember ever having told Spiros that he would be signing an assignment of rents document prior to the day of the closing?

A. To me this is a standard closing document. I didn't go through and say, okay, this is an assignment of rent. I'm not sure. It's a standard



closing document.

Q. Is the same true for the settlement statement, the HUD statement?

A. Yes. It's all part of what the bank requires.

Q. And so you did not see it, and therefore Spiros probably didn't see it until the attorney sent them to you.

A. Until the attorney sent them to us, that's correct.

Q. Would the same be true for the next document, the construction mortgage?

A. If it was all in the same closing document. Is this all the same closing document?

Q. Yes.

A. Yes, then that's when we got it from the attorney.

Q. What about the agreement to provide insurance, when did you first learn that you were going to have to sign an agreement to provide insurance?

A. I'm not sure. I think the attorney had it listed. It was in an email, what would be signed that day; and maybe he sent that out and I sent it to Phillip and he said -- he might have said he's

not signing this before he even received it. I don't remember.

Q. Is the same true for the construction loan agreement, that is, that you did not see that agreement until the lawyer sent it to you?

A. Correct.

Q. Was that sent with the rest of the closing package?

A. Yes. I didn't receive the closing packet until the lawyer sent it to me and I forwarded it to the cousins.

Q. And what about the guarantee of completion and performance document, was that the same thing?

A. If it was all part of the closing document, when the attorney sent it to me, that's when I saw it.

Q. Same for the commercial security agreement?

A. I would think so if it was in the same closing document.

Q. Same for the hazardous substances certificate and indemnity agreement?

A. Yes, if it was in the closing documents.

Q. Same for the agreement to provide insurance?

A. Yes, if it was in the closing documents.

Q. And for the UCC financing statement?

A. If it was in the closing documents, yes.

(Exhibit No. 31 marked for identification.)

Q. This looks like an email dated November 21, 2014, from you to Phillip and Spiros and Jacob, and it starts out with your talking about some of the productivity of the existing suites. Then at the middle you say, 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 weight in the big picture. Comments like, when I asked what side agreement; and Phillip responds, quote, it's going to cost you big if you don't pay, closed quote, is just egos blowing smoke. You guys recommended that I show it to my attorney, and you didn't like his response.

So what did Phillip tell you specifically about what that agreement meant?

A. I saw that, I think, the night before the closing, or maybe the day of the closing. No, it was the night before the closing, I think. And it was a side agreement that if each partner didn't pay their rent on time, then they can lose one percent or they would lose one percent of the

Spiros or Phillip relative to Old Towne Suites in which they agreed to sign anything other than a mortgage?

A. Other than a mortgage? I guess when they -- I sent them the email of the contract that the bank had or the -- what do you call it, the -- when they said they would give us the $1 million and the $1.8 million, they all received that, and on there it spelled out exactly what the bank wanted.

Q. And that would have been on September 24, I believe -- is that right, Stan -- of 2014?

MR. BARNETT: Yes.

Q. Okay. Any other -- any conversation that you had in which they agreed to sign anything other than a mortgage.

A. Other than a mortgage, hmm, the only stipulation that they have was that they don't want to be personal guarantors on the note. They never said that they wouldn't sign over whatever the other things the bank needed.

Q. Yes, I'm asking you that question in the affirmative. Neither Spiros nor Phillip ever agreed to sign anything other than, as you claim, a mortgage.

A. The only thing I remember is Spiros and

EXHIBIT 15

Phillip agreeing that they would not personally guarantee the note.

Q. I'm going to ask you one more time, and you can say yes or no and then you can explain. There was no circumstance in any conversation related to Old Towne Suites in which either Spiros or Phillip agreed to sign anything other than the mortgage you claim they were willing to sign.

A. I don't remember.

Q. Okay. You don't remember any such conversation.

A. We might have had conversations about the mortgage and what the banks requirements were and we discussed the loan in depth and the main thing that they wanted to make sure was that they are not personal guarantors on the loan.

Q. Right, so Phillip and Spiros never agreed to sign anything that exposed them to personal liability, correct?

A. Personally guaranteeing, yes, their deal was they didn't want to personally guarantee the note.

Q. You're answering a slightly different question.

A. I thought I was answering the same question.

Q. No. I didn't use the term guarantee. I'll

2015-CP-10-3919

Certificate of Service

I hereby certify that the foregoing Supplemental Case Law and Evidence in the Record was served upon the parties to this action by U.S. mail, sufficient postage attached thereto, to the following counsel of Record:

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This the 16th day of June, 2017.

Legal Assistant

FILED
2017 JUN 16 AM 11:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

K&L GATES

June 16, 2017

Jennifer H. Thiem
T +1 843 579 5638

Jenniferjthiem@klgates.com

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: **Athan Fokas v. Phillp Ferderigos, Spiros Ferderigos and Jacob Ferderigos**
Case No. 2015-CP-10-3919

Dear Ms. Armstrong:

Enclosed herewith please find the original and one copy of Defendant Phillip Ferderigos' Supplemental Case Law and Evidence in the Record in connection with the above-referenced matter.

Please file the original and return the filed-stamped copy to me *via* our courier.

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any questions. By copy of this letter, we are serving same on all counsel of record.

With kind regards, I remain.

Sincerely,

Jennifer H. Thiem

JHT/glm
Enclosures
cc: Stanley E. Barnett, Esq.
Leslie S. Lenhardt, Esq.
M. Dawes Cooke, Jr., Esq.
Jeremy E. Bowers, Esq.
John A. Massalon, Esq.
(via email and U.S. mail, w/encl.)

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Attorneys for businesses & professionals since 1938

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FILED
2017 JUN 21 PM 1:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY ____

June 20, 2017
VIA U.S. MAIL

5033.001
Charleston County Clerk of Court
100 Broad Street, Suite #106
Charleston, South Carolina 29401-2258

RE: Fokas v. Ferderigos, et al.
Case No.: 2015-CP-10-3919

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Appendix and associated documents filed on behalf of the Defendant, Spiros Ferderigos, in the above-referenced matter. Please file the original Appendix and return the filed stamped copy to me via the self-addressed stamped envelope.

By copy of this letter, I am informing all counsel of record of this communication with the Court and serving them with a copy of the Appendix, which has been previously provided to them. If you have any questions, please do not hesitate to contact me at (843) 577-7700. Again, thank you for your cooperation in this matter. With kind regards, I am

Sincerely,

Jeremy E. Bowers

Encl.
cc w/encl.: Stanley E. Barnett, Esquire
Leslie S. Lenhardt, Esquire
Jennifer H. Thiem, Esquire
John A. Massalon, Esquire

Appendix

A. Plaintiff's testimony that alleged agreement to mortgage is oral, not in writing.

B. Plaintiff's testimony that that all expenses were pursuant to trying to build the new building (not exclusive to any alleged oral agreement for Phillip/Spiro to provide a mortgage).

See Carter v. McCall, 193 S.C. 456 (1940), "the term interest in land as used in the statute of frauds, means some portion of the title or right of possession, and does not include agreements which may affect land but which do not contemplate the transfer of any title, ownership or possession." [In the present case before the Court where Plaintiff alleges Defendants agreed to a mortgage, that agreement certainly contemplates the transfer of title, ownership, or possession. If payments are not timely made, possession transfers to the bank]. Also, the alleged agreement is one that is not to be performed in the space of one year from the making thereof, it is an alleged loan for a set term beyond one year.

See Player v. Chandler, 299 S.C. 101 (1989), "[t]he appellants must establish acts which relate clearly and unequivocally to the agreement, exclusive of any other relation between parties touching such agreement" for part performance exception to Statute of Frauds. [In the present case before the Court, Plaintiff admits that the expenses were towards building and approvals to build the new building (which Defendants agree with). Not an alleged agreement for Defendants Phillip/Spiro to mortgage their interests in their personal property. Plaintiff has admitted in writing since 2012 that Plaintiff would have to get a loan for his portion of the proposed project. Defendant stated in writing as early as 2012 he would not do a loan, but would consider moving forward paying cash.]

C. Payment of expenses from before Plaintiff's loan commitment letters.

D. Plaintiff's testimony that Defendants allegedly orally agreed to mortgage their interests in 229 King Street for a 20-year loan at 5% for life on the loan, and that this alleged agreement was entered into in 2012. Also written correspondence to Defendants publishing that he acquired a 20-year loan at 5% for the life of the loan.

E. Banker's testimony that the loan offered was not a 20-year loan at 5% for the life of the loan.

F. Correspondence between parties (2012) and between Plaintiff/his banker (2014) that Spiros Ferderigos did not agree to mortgage his interests in 229 King Street from 2012 through October 18, 2014.

G. Correspondence that beginning October 19, 2014, Defendants Spiros/Phillip would agree to sign a mortgage so long as the closing documents were correct and Plaintiff signed an ancillary/side agreement regarding the loan.

H. Plaintiff's testimony that he would not sign the required ancillary/side agreement required by Phillip/Spiros to mortgage their interests in 229 King Street.

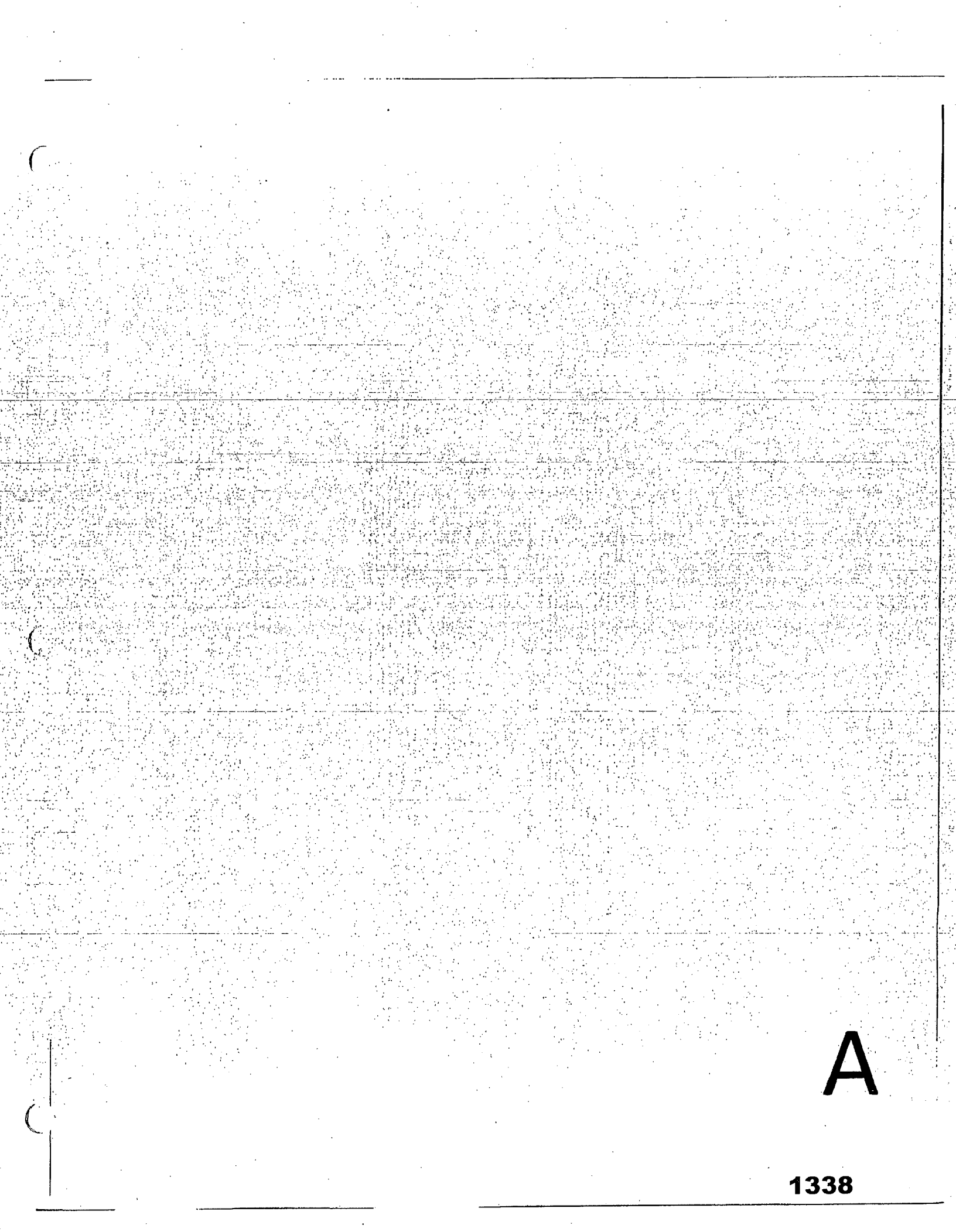
I. Plaintiff's complaint where he takes the opposite position he took in Court and his written admissions, stating in his Complaint that he did agree to sign the required ancillary/side agreement.

J. Plaintiff's testimony that cost of the required (and material) sprinkler system is still not known. Plaintiff's testimony that the $1.8 million loan commitment letter (not signed by or addressed to Phillip or Spiros) was to include total costs, including furnishings ($225,000) and sprinkler system (between $10,000 - $100,000). Contract with builder signed only by Plaintiff indicating construction alone would be $1,728,900. Accordingly, the terms of Plaintiff's loan commitment letter have not been satisfied.

K. Material terms were still not known when Plaintiff signed the loan commitment letter in September 2014, in which Plaintiff believed he was offered a 20-year loan at 5% for the life of the loan (includes financing terms, cost of construction, and scope of project) (detailed in Defendants counterclaims with exhibits).

See Stevens v. City of Columbia, 409 S.C. 568 (2014), "Although the existence of a contract is ordinarily a question of fact for the jury, where the undisputed facts do not establish a contract, the question becomes a matter of law. A valid enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. Thus, for a contract to be binding material terms cannot be left for future agreement. In contract for services two essential terms are the scope of the work to be performed and the amount of compensation ...However, regardless of intent, an agreement which leaves open material terms is unenforceable."

L. Plaintiff's testimony that the parties allegedly entered into the agreement individually as tenants in common for 229 King Street, and that the LLC was not part of the agreement (contradictory to assertions testimony in Court).


A

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Q. Southcoast.
A. Yes, Southcoast was the one. They immediately said yes, and they seemed friendly, so that's who we went with.
Q. Who actually met with them?
A. I met with them and Jacob, I think, met with them.
Q. Did Spiros ever meet with them?
A. I don't know. I don't think so. I think Spiros communicated through emails with them.
Q. So I want to drill down a little bit more on your statement here that it was explained to the defendants who were aware that they would be required to execute a mortgage for the building, and you said that was part of the package, but in what way was that explained to them, and who did it, and when?
A. Well, we discussed it. I mean, it might have been at church or one of our functions, but, you know, we mortgage the building, the bank gives us the money, we have the income stream from the original suites to show that it's a successful project, and that's how they gave us the loan.
Q. So your testimony is that you told them that orally?

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A. Yes.
Q. Not in writing.
A. No.
Q. Have you looked to see if you have any emails or texts or letters or anything that confirms that you told them, let's just say prior to the first closing, that they were going to be mortgaging the building?
A. It might be in emails. There's so many emails and texts that went back and forth. It might be. I'm sure you already have them.
Q. Right. Well, that would have been pretty important for the case, right? So I'm asking you, in your going back and looking through your records and emails, have you found any in which you informed Spiros that he was going to be signing a mortgage for the building?
A. I'm not sure. We discussed that the building was going to be mortgaged, that's the only way the bank would give the loan; and it was all agreed that we were going to mortgage the building, and we were all going to be on the note.
Q. Suppose Spiros were to say that he was not aware until the Saturday before the closing that he was going to have to sign a mortgage for the building. Would you agree with that or disagree with that?
A. I would definitely disagree with that.
Q. You're absolutely sure that he knew before the Saturday before the first closing that he was going to be signing a mortgage for the property?
A. Yes, 100 percent sure.
Q. Okay. And, again, I want you to remember as carefully as you can, and when I asked you earlier how it was explained, you said it might have been at a family gathering or church or wherever. I want you to think back now, and I'm not talking about when did you tell him it was a 5 percent loan for 20 years. I'm talking about when did you tell him specifically that he was going to be signing a mortgage for his interest in the building.
A. We discussed it probably before I went to look for banks as well. I mean, they know the only way to get the money would be to mortgage the building. The banks not going to just loan you money.
Q. Was there ever any discussion about mortgaging just yours and Jacob's interests in the building.
A. Never.

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Q. Could that be done?
A. No, I don't think so. I think a bank needs to have all properties that own the building in order to give the loan.
Q. How do you know that?
A. I'm assuming.
Q. Okay. All right. And then the last part of this says it was also explained to them or that they were aware that the LLC would be a signatory on the note to the lending bank and they consented to these things being done. In what way did they consent to that being done?
A. Can you repeat that? Which one are you at?
Q. Paragraph 12?
A. Okay.
Q. It basically says three things. It says the details of the loan package was explained to the defendants.
A. Mm-hmm.
Q. And you explained that, that that was the 5 percent for 20 years.
A. Right.
Q. Were aware that they would be required to execute a mortgage for the building. We've talked about that.

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told me that unless it's in some document that is yet to appear in the discovery, you're not aware of any, correct?

A. He talked about the mortgage when he was talking about it with Amy Haines, I think he mentioned the mortgage.

Q. Okay. Other than that document.

A. Yes, and then it was all oral.

Q. Allright. From October 2014 to the present do you have anything in writing whereby my client agreed to a hypothecation agreement?

A. No.

Q. From 2014 to present do you have anything in writing signed by my client where he agreed to an assignment of rents?

A. Assignment of rents, yes, he always knew -- we agreed from the beginning that the Old Towne Suites had the revenue to pay for this new -- had the revenue to pay for the project and that the -- I guess if they would pay the note on the new mortgage.

Q. Let me ask that question again. Do you have anything from October of 2014 to present day in writing and signed by my client whereby my client has agreed to an assignment of rents.

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A. In writing, no.

Q. Do you have anything from October 2014 to present whereby my client in writing agreed to sign a HUD statement?

A. HUD I think is part of the mortgage, right?

Q. Do you want me to ask the question again?

A. A HUD statement is part of the mortgage, isn't it?

Q. It is part of the mortgage but that's --

A. So he agreed that he would sign the mortgage and that would make it an agreement to sign the HUD.

Q. I'm asking you --

A. From my understanding, the hypothecation agreement is the same thing as signing the HUD, I think.

Q. Do you have anything in writing from 2014, October 2014 to present, whereby my client has committed to sign a HUD statement?

A. It was all done orally, verbal.

Q. So the answer is no.

A. Yes, no.

Q. Do you have anything in writing from October 2014 to present, signed by my client, whereby he agreed that Old Towne Suites, LLC, would be a

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borrower?

A. Not in writing but he agreed to orally.

Q. I'm going to ask you a similar question, and I've been using October of 2014 forward, and I want to go backwards in time, you know, from the beginning of time up until October of 2014, and I'm just going to state this for you because I think I know the answer. You're not aware of anything in writing signed by my client whereby he agreed to enter a hypothecation agreement, an assignment of rents, to execute a HUD statement, or for Old Towne Suites to be a borrower, correct?

A. Not in writing.

Q. Okay. Thank you. How about for a mortgage? From the beginning of time until the present do you have anything in writing, signed by Phillip, that he ever agreed to sign a mortgage, and the answer would be no?

A. That was done all orally.

Q. Yes. And you do agree that neither Phillip nor Spiros were going to sign a guarantee for the proposed project, correct?

A. Personal guarantee is what they asked to be taken off of.

Q. Now, you acknowledge that none of the owners

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can build a building at 229 King Street without the other owners' consent?

A. For us to get a loan we would all have to consent to sign on the mortgage. To build the building it's a 50/50, so I think -- I don't know. I don't know how it happens. It would have to be figured out between the lawyers. Like if I wanted to do something and Jacob wanted to do something and we have more than 50 percent interest, I would assume that we could go forward with it because we have more stock in the company.

Q. How about if the three brothers -- who own 50 percent, correct?

A. That's correct.

Q. -- decided they wanted to build a hookah bar on top of the restaurant and you came -- they didn't tell you about it. You came in one day, and there was all this construction, and you said what's going on?

A. You have to be more than 50 percent to make that decision.

Q. Right. And you alone could not build on that properly as a 50 percent owner without the consent of some or all of the brothers, correct?

A. That's correct.

B

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of the money. He had to come up with 350,000. So he was still one-sixth partner in the deal. I mean, I later found out that the 300,000 -- he had guaranteed 300,000 from maybe his bank. He was talking to a bank called CresCom that was in his building, so maybe CresCom told him, we'll give you 300,000. I have no clue. I never saw that paperwork.

Q. But you were told, if there was a CresCom loan or wherever that loan was coming from, that it would, A, be secured by the mortgage on the building, or that it would be secured by an assignment of rents from Old Towne Suites, or that Old Towne Suites would be a signatory to that loan.

A. I had no clue how his loan was done because I never saw it.

Q. And you never agreed to sign a mortgage for his note, right, for his loan?

A. Me sign the mortgage?

Q. Yes. You never agreed to sign a mortgage to secure Phillip's loan.

A. No. I never saw it, yes.

Q. You never agreed to sign any document that would assign the rents from Old Towne Suites to secure his loan, did you?

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A. He never asked me.

Q. And you never agreed to sign on behalf of Old Towne Suites as a borrower or guarantor of that loan, did you?

A. No, he never asked me. I don't know what the details were. He might have come to me later and said, I'm guaranteeing the building. I have no clue what that deal was with that loan.

Q. Paragraph 20 says, Plaintiff agreed to sign the agreement presented to him by Defendant Phillip Ferderigos in early 2015.

A. Mm-hmm.

Q. Would you tell me about that? I haven't seen anything where you said you would agree to it.

A. Oh, I think there's an email chain that said I would be more than happy to go ahead and sign the side agreement because I like the idea of getting more percentage in the building. If I'm over 50 percent owner, then I can make decisions.

Q. What would make you more than 50 percent owner?

A. If one of them defaulted and didn't pay their monthly payment, then I would be paying their monthly payment for them, and then I would get one percent of the building, according to Phillip's

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document.

Q. I thought Phillip's document said that you would be penalized if you didn't pay.

A. Oh, everybody. It was everybody. It wasn't just me. It was the document for everybody that we would -- we had to come up with -- they had to come up with one sixth of the payment, and I would have come up with half the payment, so if anybody didn't -- and I had asked him to change the document at one point. I was like, can we put on there, if the person who is paying the late payment -- in other words, if Phillip didn't pay his one-sixth and I paid the one-sixth for him, then I would be the one that would receive the one percent extra interest in the building.

Q. That's the way you interpreted the agreement that Phillip wanted you to sign.

A. He agreed to that. He agreed to put it that way.

Q. Why didn't you agree to that in November of 2014?

A. I was -- at that point it was sprung on me the day before the closing, I think, and I took it to John O'Neill, I think that's his name, and he said he would never let his client sign something

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like this. He goes, you're already guaranteeing the note for the building and you're personally guaranteeing it. What is this side agreement about? That's something Phillip concocted, I think, Phillip and Spiros, and just sprung on me. That was never a part of our agreement from the beginning. We never discussed it. I saw that the day before the closing, I think, or the night before the closing.

Q. Then paragraph 21 said, despite plaintiff's agreement to sign the above agreement, defendants refused to sign the mortgage and notified plaintiff they would not go forward with the planned expansion of the building.

Did they explain to you why they wouldn't go forward after you agreed to sign the side agreement?

A. They didn't explain, I think Phillip's feelings got hurt and he didn't want to go through with the deal.

Q. I'm going to skip some of the paragraphs, but there's one paragraph, it's 28, it says the parties entered into part performance in furtherance of their agreement in the form of payment of a total of $86,000 in fees for

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engineering, architectural work, planning and zoning approval and design work so that by the time a final loan package was offered by the bank all designs and plans and all zoning approvals for the project were complete.

That 86,000, is that the expenses that you explained earlier that Old Towne Suites, LLC, paid?

A. That's correct, and I think it was more than -- it was around 92,000 because there was insurance that wasn't in that figure and most -- a lot of that payment was paid by the -- out of the Old Towne Restaurant account.

Q. But it was paid on behalf of Old Towne Suites, LLC.

A. Correct.

Q. Let me show you another Exhibit. We'll mark this as 2.

(Exhibit No. 02 marked for identification.)

(Recess held.)

Q. Before I get to Exhibit 2, a couple 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?

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A. Build the new building, yes.

Q. Build the new building. Okay. And when you said that you agreed in early 2015 to sign the side agreement, was that agreement in the email chain?

A. Yes.

Q. Was there any oral agreement in addition to that?

A. I'm not -- I don't think so.

Q. All right. So let me let you look at Exhibit 2. These are answers to interrogatories. I just want to ask you about some of the witnesses that you've identified. I think I know what Jacob Ferderigos, Spiros Ferderigos, Phillip Ferderigos might say. But No. D is Justin Hausen, Old Towne Restaurant. What does he know or what do you expect he's going to testify that would be relevant to this case?

A. I don't know what he'll testify, but he was the general -- he's the general manager, so he knows everything that's going on with the restaurant, and he knew that we took the stuff out of storage to start the project. He knew that we cut the trees down to start the project. I mean, he might have been the one that actually cut the check to the guy for cutting trees. I'm not sure.

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Q. Was he present for any conversations that you had with Spiros about agreeing to borrow money or mortgage the building?

A. I don't think so.

Q. And Robert Daniel, I think you've explained, that's one of the bank officers?

A. It says here Soulhcoast. Oh, Tony -- that's probably Tony Daniel. Maybe he goes -- Robert is his formal name.

Q. So what does Robert Daniel, BNC Bank, what is his role?

A. I think he's the president of the bank. Is that right, BNC? Soulhcoast. He was the president of Southcoast, and they changed to BNC.

Q. Okay. And it says he's knowledgeable about the offer to finance the project and the dealings with plaintiff and defendants and the agreement to go forward with the project. So what does he know about that?

A. He's the one that did the loan for Soulhcoast.

Q. What dealings did he have with Spiros Ferderigos?

A. I'm not sure. I think they emailed. I'm not sure if he emailed or Jeff Odom emailed.

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Q. You say in your answer that he's knowledgeable about the offer to finance the project and the dealings with plaintiff and defendants.

A. Mm-hmm.

Q. And the agreement to go forward with the project.

A. The dealings might be that the deal didn't go through and tell him that the brothers or the cousins aren't ready to sign now, there's a little dispute over a side agreement.

Q. Do you know whether he had any communication directly with either Spiros or Phillip Ferderigos?

A. I'm not sure.

Q. So you're not aware of any.

A. I'm not aware of any.

Q. What about Jeffrey Odom. That's the person you dealt with primarily at the bank?

A. He's the banker, mm-hmm.

Q. Do you know whether he ever had any dealings directly with Spiros or Phillip?

A. I think I saw an email chain that they were emailing back and forth, so Spiros would have emailed him.

Q. When was that?

Pl's Complaint

22. Defendants have continued to refuse to go forward with the agreement to expand the building and suites rental business despite repeated requests by Plaintiff to do so and despite the continued offer of the lending bank to complete the loan.

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

23. Paragraphs 1 -21 are realleged herein.

24. A verbal contract was formed between the parties to expand the building at 229 King Street for the purpose of expanding the number of rental suites for their ongoing business.

25. The parties agreed to share the expense of the expansion planning in shares equal to their ownership of the building and of the LLC.

26. The parties agreed that they would all mortgage the building as part of a loan to finance the building expansion.

27. The parties agreed that only the LLC, Plaintiff and Jacob Ferderigos would sign the note as guarantors of the loan.

28. The parties entered into part performance in furtherance of their agreement in 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 a final loan package was offered by the bank, all designs and plans and all zoning approvals for the project were complete.

29. The sole contingency in said contract was securing of financing for the project.

30. Offer of a loan package by the lending bank, South Coast Bank, fulfilled the contingency so that all parties were bound to carry out their agreements making up the contract.

§ 32-3-10. Agreements required to be in writing and signed.

Currentness

No action shall be brought whereby:

(1) To charge any executor or administrator upon any special promise to answer damages out of his own estate;

(2) To charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person;

(3) To charge any person upon any agreement made upon consideration of marriage;

(4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or

(5) To charge any person upon any agreement that is not to be performed within the space of one year from the making thereof;

Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

Credits

HISTORY: 1962 Code § 11-101; 1952 Code § 11-101; 1942 Code § 7044; 1932 Code § 7044; Civ. C. '22 § 5516; Civ. C. '12 § 3737; Civ. C. '02 § 2652; G. S. 2019; R. S. 2151; 1712 (2) 545.

193 S.C. 456
Supreme Court of South Carolina.

CARTER

v.

McCALL.

No. 15063.
April 10, 1940.

Appeal from County Court of Florence County; R. W. Sharkey, Judge.

Action by T. J. Carter against Irene French McCall to recover compensation as a real estate broker wherein the defendant filed a counterclaim. Judgment for plaintiff, and defendant appeals.

Affirmed.

West Headnotes (9)

Change View

2 **Frauds, Statute Of** ☞ Creation of Estates or Interests in General
The word "concerning" as used in statute of frauds, providing that no action shall be brought whereby to charge the defendant upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them unless the agreement or some memorandum or note thereof shall be in writing and signed by parties to be charged, cannot be interpreted and applied in its literal sense without relation to the idea of sale or transfer of title. Code 1942, § 7044.

3 Cases that cite this headnote

3 **Brokers** ☞ Under Statute of Frauds in General
Under statute of frauds a contract under which a real estate broker is employed for purchase or sale of land need not be in writing so far as the recovery of compensation is concerned. Code 1932, § 7044.

3 Cases that cite this headnote

3 **Brokers** ☞ Revocation of Agency
A real estate broker is an "agent of limited authority" and his employment can be terminated by his employer at any time except where it is coupled with an interest.

4 **Brokers** ☞ Under Statute of Frauds in General
Contract of employment under which broker agreed with owner to negotiate sale of owner's land and to receive for his services commission on sales made, one-half of net profit and one-half of value of any lot remaining unsold after price at which owner purchased land had been received, was not within statute of frauds since it did not contemplate the transfer to broker on any "interest in land." Code 1932, § 7044.

Brokers ☞ Under Statute of Frauds in General

5 Where, by contract of employment, broker agreed with owner to negotiate sale of owner's land and to receive for services 10 per cent. commission on actual sales, one-half of net profits and one-half of value of lots remaining unsold after price paid by owner had been received, broker's claim to one-half of value of lots was not claim to "title to land" within statute of frauds since the "value" of an article is one of the attributes of the article and is intangible whereas the "article" itself is tangible and while the one necessarily relates to the other they are both in law and logic separate conceptions. Code 1932, § 7044.

1 Case that cites this headnote

6 **Brokers** ☞ Under Statute of Frauds in General
Where broker orally agreed with owner to negotiate sale of owner's land and to receive for his services commission of 10 per cent. on actual sales, one-half of net profits and one-half of value of any lots remaining unsold after price at which owner purchased lots had been received, even if contract had in its origin been within statute of frauds where broker had rendered services and sold 31 of 40 lots so that owner had been reimbursed for purchase price, the broker had fully performed and was entitled to one-half of value of lots remaining unsold. Code 1932, § 7044.

2 Cases that cite this headnote

7 **Brokers** ☞ Revocation of Authority
Where by contract of employment broker agreed with owner to negotiate sale of owner's land and to receive for his services 10 per cent. commission on actual sales, one-half of net profits and one-half of value of lots remaining unsold after price at which owner purchased lots had been received, broker who had fully performed obligation at time his authority was revoked was entitled to recover compensation for services which he rendered after the agreement was made and before its repudiation.

8 **Frauds, Statute Of** ☞ Creation of Estates or Interests in General
The term "interest in land" as used in the statute of frauds means some portion of title or right of possession and does not include agreements which may affect land but which do not contemplate transfer of any title, ownership or possession. Code 1942, § 7044.

2 Cases that cite this headnote

9 **Frauds, Statute Of** ☞ Creation of Estates or Interests in General
The statute of frauds can only be applied to contracts which have in view the transfer of an interest "in or concerning" lands, the word "concerning" being simply synonymous with the word "in". Code 1942, § 7044.

1 Case that cites this headnote

*845 The order of Judge Sharkey requested to be reported follows:

The plaintiff is a real estate broker. He brings this action to recover what he alleges to be compensation due him pursuant to an oral agreement entered into with defendant concerning certain real estate owned by defendant. The terms of the agreement and the services rendered by plaintiff pursuant thereto, as alleged in the complaint and as shown by the testimony, may be summarized as follows:

Pursuant to negotiations conducted by plaintiff, defendant purchased from the County of Florence a tract of land adjacent to the City of Florence, for the sum of $5,000, making a cash payment of $1,000 and giving to the county

a purchase money mortgage for $4,000 to secure the balance of the purchase price. Under the agreement which she then made with plaintiff the land was subdivided into forty lots and was listed with plaintiff for sale, as her agent. The compensation provided for was to consist of three elements: first, a commission of 10 per cent on each sale made; second, 50 per cent of the profit remaining after payment from the sale proceeds of the $5,000 purchase price, together with all expenses including the broker's commission of 10 per cent; and finally a cash settlement upon the basis of one-half the value of any lots which remained unsold after the purchase price of $5,000 had been paid from the sale proceeds. Plaintiff further alleges that pursuant to this agreement he undertook to sell the lots and did sell thirty-one of the forty lots, as shown by the itemized schedule attached to the complaint. From the proceeds of these sales the defendant was reimbursed for the initial payment of $1,000, and her purchase money mortgage to the county in the sum of $4,000 was paid in full. There then remained from said proceeds, after deducting all expenses, including plaintiff's commissions as broker, a balance of profit due plaintiff of the sum of $541.12, which plaintiff claimed under the agreement. The 10 per cent commissions accruing to plaintiff on actual sales made were, with the exception of three items, collected and retained by him. He alleges full performance of all his obligations under the contract, demand on defendant for the remaining portion of his compensation, and the breach by defendant of the contract, by her refusal to pay the balance due.

Plaintiff's prayer is for judgment of $541.12-being one-half of the alleged balance of net profit; and for the further sum of $1,887.50-being one-half of the value of the nine unsold lots.

All the foregoing allegations of fact were supported by relevant evidence offered by plaintiff at the trial of the cause at the September, 1939, term of Court. At the conclusion of plaintiff's evidence defendant moved for a nonsuit upon these grounds:

1. That the suit is brought on an alleged contract concerning land which is not in writing as required by the statute of frauds, and hence there can be no recovery thereon.

2. That the part performance of the alleged parol contract which might sustain an action for specific performance in equity affords no relief in this action at law for damages resulting from the breach of such alleged parol contract.

3. That there is no evidence in the case of such a note or memorandum in writing of the alleged contract as will relieve the bar of the statute of frauds.

4. That the alleged parol contract was not one coupled with an interest insofar as *846 the plaintiff was concerned, and the defendant not only had the right to terminate it but did actually terminate it not later than January, 1938, and by reason of such termination, the plaintiff has no claim whatever respecting the nine unsold lots described in paragraph 3 of the complaint.

5. That the admitted facts, as well as the proof, conclusively show that the plaintiff has collected 10 per cent commission on all lots he has actually sold, and in addition is withholding $675 belonging to defendant and which he has no right to withhold.

This motion having been overruled, defendant announced she had no testimony to offer, but would rely entirely upon her legal grounds. She then moved for a direction of verdict upon the same grounds. This motion was also overruled. Without waiving any of her legal positions, defendant agreed to accept plaintiff's evidence as to the value of the nine unsold lots, and there being no other possible question of fact, under the evidence, to submit to the jury, a direction of verdict in plaintiff's favor was ordered upon his motion.

The cause is now before me on defendant's motion for a new trial, the grounds of this motion being identical with those upon which the nonsuit was based.

The matter is thus reduced to a single legal issue, raised by the defendant, to wit: Does the oral agreement entered into between plaintiff and defendant come within the provisions of the statute of frauds, because of plaintiff's claim to one-half of the value of the said lots? The defendant vigorously asserts that it does. She embraces within that assertion certain other subsidiary contentions, all of which will be hereafter considered. The legal question involved must be determined in the light of the facts. No dispute exists concerning the facts, and these factual conclusions necessarily follow.

The oral agreement, as alleged by plaintiff, was entered into by defendant. Included in the terms of the contract was a provision under which defendant agreed to pay plaintiff as a part of his compensation for services rendered pursuant thereto, in addition to his commissions on sales made, one-half of the value of any lots remaining unsold after the $5,000 purchase price had been paid; as well as a further provision entitling plaintiff as a portion of his compensation, to one-half of the net profits. The contract was fully performed by plaintiff.

The pertinent section of our statute of frauds (Section 7044, 1932 Code) is as follows: "No action shall be brought whereby to charge *** the defendant *** upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them *** unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith."

1 This section is patterned after and is practically identical in phraseology with the fourth section of the English statute. The meaning of the term "interest in land" and the extent of its application under the provisions of the statute is clearly and concisely stated by a highly respectable authority in the following language: "The term 'interest' in land as used in the statute of frauds 'means some portion of the title or right of possession, *and does not include agreements which may affect land but which do not contemplate the transfer of any title, ownership or possession.*' (Italics added.) 20 R.C.L., p. 535.

The very words of the statute "any contract or sale of lands, *** or any interest in or concerning them" contemplate the *sale or transfer* of some title or interest therein, so as to confer upon the transferee some right of possession or ownership. The plaintiff here claims no interest in or title to the land referred to, and it isn't possible to construe the provisions of his oral agreement with defendant as a contract which contemplated the transfer to him of any interest in the land itself. Its value is merely made the measure of his compensation for services rendered as a real estate broker. Upon an analysis of the language of the statute and of the provisions of the agreement, the distinction between the two proves to be substantial and vital.

2 3 But the defendant insists that the word "concerning" as used in the statute, must resolve the point in her favor. She claims that the statute in effect, says that no action shall be brought upon any contract "concerning" real estate, unless it be in writing, and that the term "concerning real estate" must be interpreted and applied in its literal sense without relation to the idea of a sale or transfer of title. The effect of this construction would be to render the statute of frauds applicable to every oral agreement which in any manner relates to real property, even though no transfer of any interest whatsoever might be contemplated thereby. I am unable to adopt such a rule of construction. To do so would, for one thing, be directly contrary to the settled rule which has long been established in this as well as other jurisdictions, holding that a contract under which a real estate broker is employed for the purchase or sale of lands need not be in writing, so far as the recovery of compensation is concerned. Innumerable authorities might be cited on this point. One from our own jurisdiction will suffice.

"A complaint by a broker against a lumber company to recover for timber land purchased for defendant at the rate of 50 cents per thousand feet of timber on the land does not present a contract within the statute of frauds, and need not specify that the contract was partly in writing and partly in parol." (Syllabus) Jumper v. Dorchester Lumber Co., 119 S.C. 171, 111 S.E. 881.

4 The statute can only be applied to contracts which have in view the *transfer* of an interest "in or concerning" lands, the word "concerning" being simply synonymous with the word "in".

5 The defendant relies very strongly, in this connection, upon the case of Johnston v. La Motte, 6 Rich.Eq. 347, and particularly upon the following language used by Chancellor Johnston, taken from the report of that case: "All contracts or agreements relating to lands must be in writing." An examination of the case cited shows that the question before the Court was whether an oral agreement for the *conveyance* of a tract of land could be enforced, and the Court held that such an agreement was void. The contract with which the Court is dealing here is a contract of employment, under which plaintiff, as broker, agreed with defendant to negotiate sales of defendant's land, and to receive for his services a stipulated compensation. To such a contract the Statute of Frauds can have no application, even though, of necessity, it may "relate to" or "concern" the land to which it refers.

By timely motions, as well as by objections to the admissibility of evidence, defendant has at various stages of the trial further contended that the title to real estate being in question, this Court has no jurisdiction of the subject matter of the action. What has already been said is no doubt decisive of this as well as of other specific points raised by her, and the entire matter might well rest at this point. I prefer, however, even at the risk of unduly prolonging the discussion, to consider and pass specifically upon the several additional phases of the question as they have been raised by the defendant.

6 Defendant insists that plaintiff's claim to one-half of the *value* of the lands involved is tantamount in law to claiming *title* to a one-half interest therein, and that consequently the only matter in controversy is an interest in the land itself. The contention she makes amounts to saying that the value of a thing, and the thing itself, are one and the same. The value of an article is one of the attributes of the article, and is intangible. The article itself is tangible, and while the one necessarily relates to the other, they are, both in law and logic, separate conceptions. To repeat-in this case the value of the lots represents nothing more than the measure by which one of the

elements of plaintiff's compensation for services rendered under the contract is to be determined. Defendant cites, as conclusive authority on this point, the case of Wells v. Savannah, 181 U.S. 531, 21 S.Ct. 697, 702, 45 L.Ed. 986. There appears to be no similarity in point of fact, or in the legal issues involved, between the Wells case and the case at bar. The Wells case was a suit to enjoin the collection of taxes on real estate which was held by plaintiffs under written conveyances. The controversy arose over the right of the City of Savannah to levy taxes on the lots involved, against those claiming ownership under the written instruments. The Court in the course of its opinion made use of this observation (which is the language relied on by defendant as conclusive authority for her position): "The value of property consists in its use, and he who owns the use forever, though it be on condition subsequent, is the true owner of the property for the time being. This holds equally of a city lot or of all the land in the world." This language amounts to no more than a statement of one of the recognized meanings of value-that is, utility. The matter of the value of the lots was being considered by *848 the Court in connection with the power of taxation. None of the issues, either of law or fact, before the Court in the Wells case could have any bearing on the question involved here.

A case very similar to this in point of fact is that of Eaton v. Simcovitz, 239 Mass. 569, 132 N.E. 355. The plaintiff in that case was a real estate broker. He had an oral agreement with the defendant whereby, as compensation for his services in negotiating an exchange of lots between defendant and another, the defendant was to convey to plaintiff three parcels of real estate, or pay him the value thereof. The three lots passed out of defendant's possession, one by voluntary conveyance and the others by foreclosure sale. Plaintiff sued for their value as the measure of his compensation. The statute of frauds was invoked by defendant. The Court, in upholding the right of plaintiff to recover his compensation under the oral contract, said: "In our opinion the proper interpretation of the contract, as testified to by the plaintiff, is that it was an alternative one, containing two separate promises, one of which is not within the statute of frauds. The defendant had the option to give the plaintiff a deed of the three parcels of real estate, or to pay him a certain sum of money. This payment of money was not a penalty, or liquidated damages for failure to convey the real estate. *** And it could be found that he elected to be bound by the alternative to pay the money, as he voluntarily disposed of one of the lots and allowed his title to the others to be lost by the foreclosure of the mortgages on them. This alternative is not within the statute of frauds, and can be enforced. Smith v. Bergengren [153 Mass. 236, 26 N.E. 690, 10 L.R.A. 768], supra; Standard Button Fastening Co. v. Breed, 163 Mass. 10, 39 N.E. 346; Glynn v. Moran, 174 Mass. 233, 236, 54 N.E. 535; Couch v. Meeker, 2 Conn. 302, 7 Am.Dec. 274; Deverill v. Burnell, L.R. 8 C.P. 475; Mercier v. Campbell, 14 Ont.L.R. 639; Steel v. Peoples Oil & Gas Co., 147 Ill.App. 133; Missouri Edison Electric Co. v. Steinberg Hat & Fur Co., 94 Mo.App. 543, 68 S.W. 383. See Zwicker v. Gardner, 213 Mass. 95, 99 N.E. 949, 42 L.R.A. (N.S.) 1160."

78 The further contention is made that a real estate broker is an agent of limited authority, and that his employment can be terminated by his employer at any time, except where it is coupled with an interest. Defendant cites authorities to this effect, relying particularly upon the case of Hunt v. Rousmanier, 8 Wheat. 174, 5 L.Ed. 589. The legal principle invoked is sound, and it is supported by the authorities cited, but the principle is not applicable to the established facts of this case. The issue here is not whether the defendant had a right to terminate the agency contract. The question is whether plaintiff is entitled to recover compensation for services which he rendered after the agreement was made with defendant, and before its repudiation by her. As a matter of undisputed fact, plaintiff's obligations under the agreement had been fully performed at the time his authority was revoked.

9 One further legal position is advanced by defendant. She contends that plaintiff may not, in an action of law, invoke the doctrine of part performance in order to enforce the alleged contract. Plaintiff, however, does not rely upon the part performance doctrine. So far as plaintiff's obligations under the agreement are concerned, the contract has been *wholly* performed. There is nothing left for him to do, and even if the agreement had in its origin been within the statute of frauds, the matter of part performance would now be foreign to the issue. The following authorities, among many others, uphold this view:

"The great weight of authority supports the rule that the statute of frauds has no application where there has been a full and complete performance of the contract by one of the contracting parties, and the party so performing may sue upon the contract in a Court of law; he is not compelled to abandon the contract and sue in equity or upon a quantum meruit." 27 C. J., p. 350.

To the same effect see the case of McLellan v. McLellan, 131 S.C. 245, 126 S.E. 749, 750. In that case the Court, citing the case of Walker v. Wilmington, C. & A. R. Co., 26 S.C. 80, 90, 1 S.E. 366, 372, and quoting therefrom, said: "But even if the contract, when originally made, was obnoxious to the statute, yet, after it had been fully performed by the plaintiff, the defendant could not then avail itself of the statute."

An analogous case, bearing directly upon the point now being discussed, as well as upon the question of whether a contract *849 of this nature is within the statute, is that of Garrett v. Wall, 29 Ga.App. 642, 116 S.E. 331. In that case there was involved an oral contract for services rendered by a real estate broker. The transaction concerned certain saw mill timber. The defendant demurred upon the ground (among others) that the contract sued on was not in writing, and therefore unenforceable under the statute of frauds. The Court in passing on that issue held: "A contract for the performance of services such as are above set forth does not come within the provisions of the statute of frauds *** as constituting a 'contract for the sale of lands, or any interest in, or *concerning* them'; but even if it did, the rule would not be applicable 'where there has been performance on one side, accepted by the other in accordance with the contract.'" (Italics added.)

Reference has not as yet been made to defendant's counterclaim. At the time the controversy arose, plaintiff had in his possession the sum of $675 from the proceeds of sale of certain lots, and for this amount defendant interposed a counterclaim. The conclusion which has been reached on the several other issues necessarily disposes of the counterclaim against the contentions of defendant; however full credit for this amount was allowed the defendant when the verdict was directed.

The several questions raised by the defendant in this case have been so earnestly and vigorously pressed in her behalf that I have given painstaking consideration to the entire matter.

The facts being undisputed and the applicable principles of law being well settled, I find it impossible to reach any other conclusion than that set forth herein.

It is, therefore, ordered that the motion for a new trial be and it is hereby, refused.

Attorneys and Law Firms

Henry E. Davis, of Florence, for appellant.

McEachin & Townsend, of Florence, for respondent.

Opinion

E. C. DENNIS, Acting Associate Justice.

This is an appeal from the Civil Court of Florence. A careful study of the testimony and the law shows that R. W. Sharkey, Judge of the Civil Court of Florence, has covered the facts and the law applicable thereto in an order refusing a new trial.

That order is affirmed and made the opinion of this Court. Let the order of Judge Sharkey refusing a new trial be reported.

BONHAM, C. J., FISHBURNE, J., and WM. H. GRIMBALL, A. A. J., concur.

All Citations

193 S.C. 456, 8 S.E.2d 844, 151 A.L.R. 641

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299 S.C. 101
Supreme Court of South Carolina.

William D. PLAYER and Robert I. Player, Appellants,
v.
William A. CHANDLER and Anne W. Chandler, Respondents.

No. 23050.

Heard Jan. 11, 1989.

Decided July 31, 1989.

Lessees, who constructed restaurant on leased premises, brought action for specific performance of alleged oral modifications to lease or, in the alternative, for monetary relief on restitution and quantum meruit theories. The Common Pleas Court, Georgetown County, Kaye G. Hearn, Special Circuit Judge, denied relief. Lessees appealed. The Supreme Court, Finney, J., held that: (1) conversation wherein lessor indicated that he might be interested in extending the lease, did not create enforceable oral agreement for extension of the lease; (2) lessees were not entitled to relief from operation of the statute of frauds on theory of part performance; (3) record did not reveal substantive detrimental change in position sufficient to estop enforcement of the requirements of the statute of frauds; and (4) lessees could not recover on restitution or quantum meruit theory.

Affirmed.

West Headnotes (16)

[1] **Landlord and Tenant**
⇐Requisites and sufficiency

Contract for extension or renewal of lease must specify conditions of renewal with certainty.

Cases that cite this headnote

[2] **Contracts**
⇐Contracts subject to modification

Any modification of written contract must satisfy all requisites of valid contract.

5 Cases that cite this headnote

[3] **Contracts**
⇐Necessity of assent

In order to have valid and enforceable contract, there must be meeting of the minds between the parties with regard to all essential and material terms of the agreement.

43 Cases that cite this headnote

[4] **Landlord and Tenant**
⇐Form and Contents of Lease and Validity in General
Landlord and Tenant
⇐Property
Landlord and Tenant
⇐Meeting of minds; mistake

Essential terms and conditions of lease agreement, for purposes of determining on what terms there must be meeting of the minds in order for lease to be enforceable, include definite agreement as to the extent and boundary of the property to be leased, term of the lease, the rental as well as the time and manner of payment.

12 Cases that cite this headnote

[5] **Contracts**
⇐Necessity of assent

The "meeting of the minds" required to make contract is not based on secret purpose or

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intention on part of one party, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.

12 Cases that cite this headnote

[6] **Landlord and Tenant**
⇐Requisites and sufficiency

Telephone conversation wherein landlord indicated that he might be interested in extending lease did not provide the "meeting of the minds" required to establish enforceable oral agreement to extend lease; there was no indication that essential terms were discussed, and the mere referral to the original lease was not sufficient.

3 Cases that cite this headnote

[7] **Frauds, Statute Of**
⇐Statutory provisions
Frauds, Statute Of
⇐Statutory provisions
Frauds, Statute Of
⇐Contracts treated as void or voidable

Any contract for interest in land or any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced; failure to put such contract in writing renders it void. Code 1976, §§ 27–35–20, 32–3–10(4).

4 Cases that cite this headnote

[8] **Frauds, Statute Of**
⇐Modification of Contract

Contract required to be in writing by the statute of frauds cannot be orally modified. Code 1976, §§ 27–35–20, 32–3–10(4).

4 Cases that cite this headnote

[9] **Frauds, Statute Of**
⇐Part Performance in General

In order for part performance of oral agreement to remove agreement from operation of statute of frauds and permit specific performance, party seeking specific performance must establish acts which relate clearly and unequivocally to the agreement, exclusive of any other relation between parties touching such agreement. Code 1976, §§ 27–35–20, 32–3–10(4).

4 Cases that cite this headnote

[10] **Frauds, Statute Of**
⇐Agreements relating to real property in general

Construction of restaurant on leased premises did not relate clearly to alleged oral lease extension agreement exclusive of the original lease agreement; therefore, alleged oral agreement was not removed from the statute of frauds on grounds of part performance. Code 1976, §§ 27–35–20, 32–3–10(4).

1 Cases that cite this headnote

[11] **Frauds, Statute Of**
⇐Waiver of bar of statute; estoppel

In order to overcome statutory requirements that agreement be in writing, party asserting estoppel must show that he suffered definite, substantial, detrimental change of position in reliance on the agreement and that no remedy except enforcement of the bargain is adequate to restore his former position. Code 1976, §§ 27–35–20, 32–3–10(4).

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2 Cases that cite this headnote

[12] **Frauds, Statute Of**
⇐Waiver of bar of statute; estoppel

Lessees, who constructed restaurant on leased premises, failed to show substantive detrimental change in position sufficient to estop enforcement of requirements of the statute of frauds, in action to enforce alleged oral agreement for lease extension; exercise of the full extension options under original lease would allow lessees to have benefit of any improvements for additional 15 years beyond initial lease term. Code 1976, §§ 27–35–20, 32–3–10(4).

3 Cases that cite this headnote

[13] **Frauds, Statute Of**
⇐Contents of Memorandum

Writing prepared by party to contract or by his agent may constitute memorandum sufficient to satisfy the statute of frauds, although it was not delivered to the other contracting party and was not intended for or known to him, provided it is intended to evidence the contract of the parties and its contents are disclosed for that purpose; writing must reasonably identify the subject matter of the contract, sufficiently indicate contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement. Code 1976, §§ 27–35–20, 32–3–10(4).

9 Cases that cite this headnote

[14] **Frauds, Statute Of**
⇐Agreements relating to land

Letter discussing proposed amendments to lease and letter stating that terms of proposed amendments were not acceptable were insufficient to constitute written memorandum of agreement under the statute of frauds, in action to enforce alleged oral agreement for lease extension. Code 1976, §§ 27–35–20, 32–3–10(4).

Cases that cite this headnote

[15] **Implied and Constructive Contracts**
⇐Work and labor in general; quantum meruit

In order to recover on restitution or quantum meruit theories, it must be shown that party was enriched by the unjust retention of benefit to the loss of another.

3 Cases that cite this headnote

[16] **Landlord and Tenant**
⇐Remedies

Lessees, who constructed restaurant on leased premises, were not entitled to recover on restitution or quantum meruit theory, in action to enforce alleged oral agreement for lease extension; improvements to leased premises were contemplated by original lease, and exercise of full extension options under original lease would allow lessees to have benefit of any improvements for additional 15 years beyond initial lease term.

2 Cases that cite this headnote

Attorneys and Law Firms

**893 *103 John Pyatt Grimes, Charles Owen Nation, II of McNair Law Firm, P.A., Georgetown, and Stephen A. Spitz, Columbia, for appellants.

Howell V. Bellamy, Jr., Preston B. Haines, III, and Kathryn M. Cook of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., Myrtle Beach, for

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respondents.

Opinion

FINNEY, Justice:

This is an appeal from a circuit court order declining to modify a written lease agreement. The lessees, appellants *104 William Player and Robert Player, brought an action against the lessors, respondents William A. Chandler and Anne W. Chandler, seeking specific performance of alleged oral modifications or, in the alternative, the remedies of restitution or quantum meruit. The trial court found that the lessees were not entitled to any recovery. We affirm.

In 1980 the appellants and the respondents entered into a written lease agreement on real property for an initial term of ten years, with an option for three five-year extensions. Thereafter, the appellants constructed the Ghost Ship I Restaurant on the property. On February 5, 1985, Appellant J.H. "Cotton" Player contacted respondent William A. Chandler by telephone attempting to purchase the property. Chandler declined to sell but indicated he might be interested in extending the lease. Shortly afterward appellants began construction on a second restaurant, the Ghost Ship II. On February 27, 1985, respondents informed the appellants that the lease would not be extended unless additional terms and conditions were accepted.

Subsequently, appellants commenced an action in equity for specific performance of an oral agreement, assumpsit on quantum meruit, restitution and breach of an implied contract. The trial court ruled that no oral agreement existed; that even if an agreement did exist, it was not enforceable, and the appellants were not entitled to restitution nor any recovery under the theory of quantum meruit. The appellants appeal on the grounds that there was an enforceable oral agreement; that even if there was no agreement, they are still entitled to monetary relief. The respondents assert that no agreement was reached, and that the appellants are not entitled to any recovery.

It is the substance of the February 5th telephone conversation and the events of the ensuing days which form the basis of the following questions presented to this Court. 1) Was there an oral agreement; and if there was such an agreement, is it enforceable; and 2) If there was no agreement, are the appellants still entitled to monetary relief.

[1] [2] [3] [4] [5] [6] Contract for extension or renewal of lease must specify conditions of renewal with certainty. *Anderson v. Hall,* 155 S.C. 320, 152 S.E. 521 (1930). Any modification of written contract must satisfy all requisites of valid contract. *105 *Bishop Realty and Rentals, Inc., v. Perk, Inc.,* 292 S.C. 182, 355 S.E.2d 298 (S.C.App.1987), *cert. denied,* 293 S.C. 538, 362 S.E.2d 26 (1987). South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. *Hughes v. Edwards,* 265 S.C. 529, 220 S.E.2d 231 (1975). The *essential terms* **894 *and conditions of a lease agreement include a definite agreement as to the extent and boundary of the property to be leased, the term of the lease, the rental as well as the time and manner of payment.* The "meeting of minds" required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known. *McClintock v. Skelly Oil Co.,* 232 Mo.App. 1204, 114 S.W.2d 181 (Mo.App.1938). The record before us evinces no meeting of the minds between William A. Chandler and William D. Player during their February 5, 1985, telephone conversation. There is no indication that essential terms were discussed, and the mere referral to the original lease is not sufficient.

[7] [8] Assuming that an agreement had been reached during the February 5th telephone conversation, such a lease modification would be outside the Statute of Frauds. Any contract for an interest in land or any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced. South Carolina Code Ann. § 32–3–10(4). Failure to put such a contract in writing renders it void. South Carolina Code Ann. § 27–35–20 (1976). Moreover, a contract required to be in writing by the South Carolina Statute of Frauds cannot be orally modified. *Windham v. Honeycutt,* 279 S.C. 109, 302 S.E.2d 856 (1983) (court held evidence of oral modification of the real estate contract as violative of the Statute of Frauds).

[9] [10] Appellants assert three exceptions to the Statute of Frauds. First, appellants assert part performance as an exception. In order for part performance of an oral agreement to remove the agreement from operation of the Statute of Frauds and permit specific performance, the appellants must establish acts which relate clearly and unequivocally *106 to the agreement, exclusive of any other relation between parties touching such agreement. *Ausl v. Beard,* 230 S.C. 515, 96 S.E.2d 558 (1957); *Gibson v. Hrysikos,* 293 S.C. 8, 358 S.E.2d 173 (S.C.App.1987). According to the terms of the 1980 lease,

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appellants were entitled to make improvements to the leased property as they desired. Thus, the construction of the Ghost Ship II does not relate clearly to the oral agreement exclusive of the original lease agreement.

[11] Second, appellants assert that equitable estoppel takes the oral agreement out of the operation of the Statute of Frauds. In order to overcome statutory requirements that an agreement be in writing, the party asserting estoppel must show that he suffered a definite, substantial, detrimental change of position in reliance on such agreement and that no remedy except enforcement of the bargain is adequate to restore his former position.

[12] The appellants fail to show any definite, substantial and detrimental change of position in reliance upon any oral agreement. Exercise of the full extension options under the lease would allow appellants to have the benefit of any improvements for an additional fifteen years beyond the initial lease term. The record reveals no substantive detrimental change in appellants' position sufficient to estop enforcement of the requirements of the Statute of Frauds. *Atlantic Wholesale Co., Inc. v. Solondz*, 283 S.C. 36, 320 S.E.2d 720 (S.C.App.1984); 73 Am.Jur.2d, *Statute of Frauds*, § 278 (1974).

[13] [14] Third, appellants assert that Exhibits Numbers 3 and 4 satisfy the memorandum requirement of the Statute of Frauds. A writing prepared by a party to a contract or by his agent may constitute a memorandum sufficient to satisfy the Statute of Frauds, although not delivered to the other contracting party and was neither intended for nor known to him, provided it is intended to evidence the contract of the **895 parties and its contents are disclosed for that purpose. *Smith v. McClam*, 289 S.C. 452, 346 S.E.2d 720 (1986). The writing must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement. Restatement (Second) of Contracts, § 131 (1981). Exhibit *107 No. 3 is a letter to the respondents, written by Attorney C.C. Grimes, discussing the proposed amendments which he enclosed. Exhibit No. 3 does not indicate that an agreement had been reached and supports respondents' contention that negotiations were not complete.

Exhibit No. 4 is a letter written by respondent William A. Chandler to Mr. Grimes wherein he states that the terms of the proposed amendments were not acceptable. We hold that these exhibits are insufficient to constitute a written memorandum of agreement under the Statute of Frauds.

[15] [16] Finally, appellants contend that if they cannot recover under contract, they are due monetary relief for restitution or under the theory of quantum meruit. In order to recover under these causes of action, it must be shown that a party was enriched by the unjust retention of a benefit to the loss of another. 66 Am.Jur.2d, *Restitution and Implied Contracts*, § 3 (1973). In this case, improvements to the premises were contemplated by the original lease. Furthermore, the appellants hold the right to benefit from any improvements during the term and under the provisions of the lease. According to the record, construction of the second restaurant was commenced one day after the February 5, 1985, telephone conversation and while the original lease was still in effect. The appellants were notified within three weeks of the February 5th telephone conversation that the lease would not be extended unless an agreement was reached on certain additional terms and conditions. This Court concludes that the record fails to establish the unjust enrichment of the respondents to the exclusion of appellants' benefit and that the retention of any benefit by the respondents is a result of the initial lease.

We hold that the record in this case does not support the existence of an enforceable oral agreement which would compel specific performance by the respondents. We further find that the record falls short of showing the appellants' entitlement to monetary damages under the theories of restitution or quantum meruit. Therefore, the decision of the trial court is affirmed.

AFFIRMED.

GREGORY, C.J., and HARWELL, CHANDLER and TOAL, JJ., concur.

All Citations

299 S.C. 101, 382 S.E.2d 891

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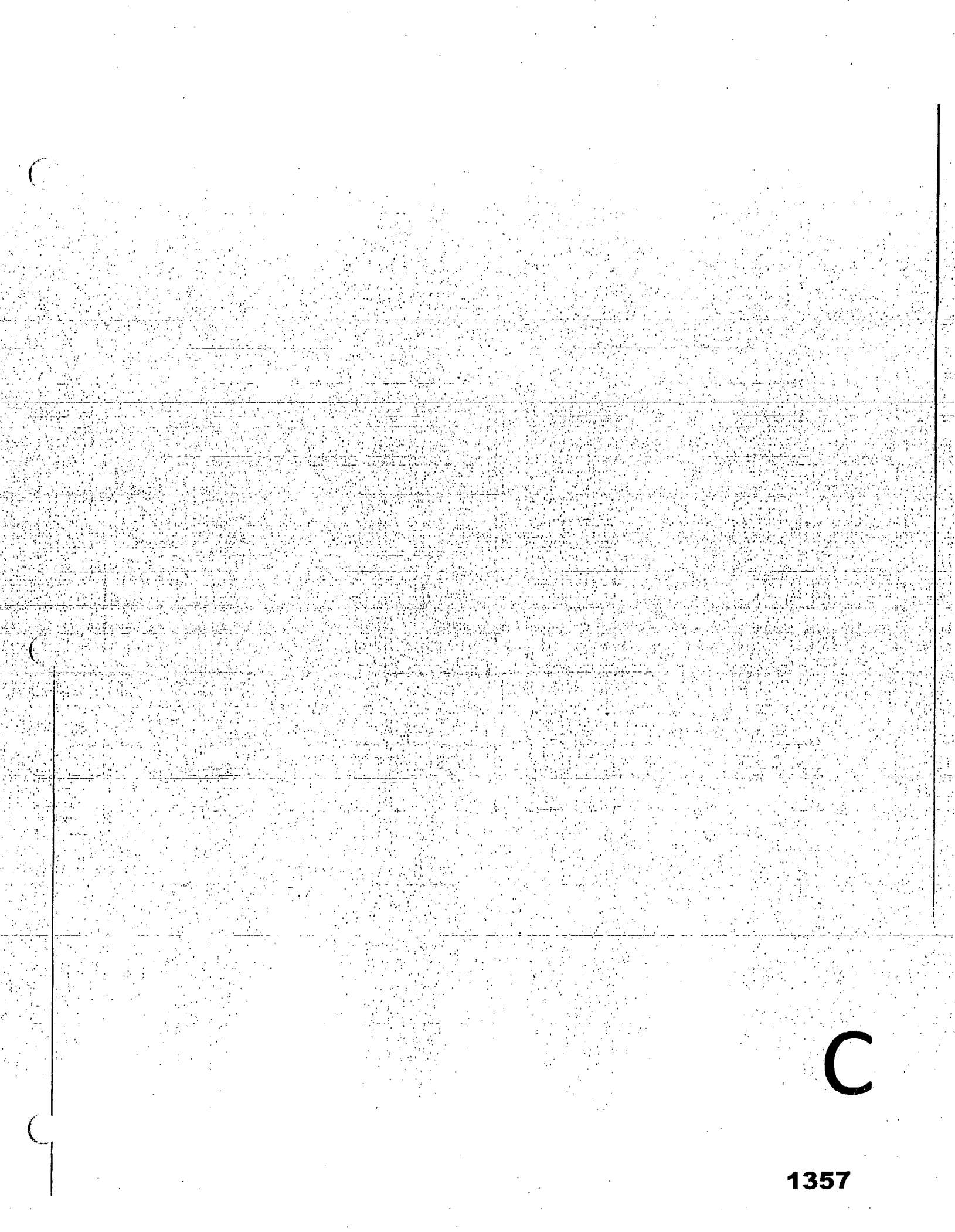
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Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile Try Mail on Firefox

Search Search Web Home Jacob

Compose Search results Delete Move More

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

Fwd: Old Towne

People

Begin forwarded message:

From: "Joe Tucker" <tuckerale@gmail.com>
Date: December 11, 2012, 3:56:47 PM EST
To: "Athen Fokas" <FokasA@bellsouth.net>, "Jacob Federico" <jacobsolis@yahoo.com>
Cc: <kiawehwork@yahoo.com>
Subject: Old Towne

Athen / Jacob

Attached are the drawings which we have prepared for the pricing set. They are about 80% 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
843.881.6429 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

From: "Joe Tucker" <tuckeraia@gmail.com>
Date: July 21, 2015 at 11:59:58 AM EDT
To: "'Jacob Federico'" <Jacobsplta@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	

D

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that the details of the loan package was explained to defendants. Who did that, when was that done, and in what form was that done?

A. I think we discussed that -- I mean, we discussed it at church all the time. We discussed it maybe when we had our family gatherings. We had Thanksgiving together and Christmas together, so we would -- but we discussed that we had a 5 percent note and that it was a 20-year -- 5 percent, 20-year loan.

Q. All right. When did you have that discussion?

A. Sometime prior to the -- well, when we got the agreement, what we were looking for. I think it was always -- we were all trying to get around 5 percent.

Q. All right. I don't want to get ahead of ourselves, but the first commitment letter that you provided to us is dated February 5, 2013, so would it be sometime after that that you had that discussion?

A. Well, I'm sure once I got -- once we got a commitment letter, then that was our deal, and I'd just say we got the deal that we wanted, 5 percent with a 20-year note.

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Q. And according to your paragraph 12 here, the agreement was that they would be required to execute a mortgage for the building and that the LLC would be a signatory on the note to the lending bank, and the defendants consented to those things being done. So what you just told me was that you discussed with them that it was a 5 percent, 20-year loan.

A. Mm-hmm, yes.

Q. So when did you discuss with them that they would be required to execute a mortgage for the building?

A. Well, that's part of the loan, the mortgage -- it was always the deal that the Old Towne Restaurant would be the mortgage -- the building would be the mortgage for this loan and that the suites, the Old Towne Suites were making enough income to justify the payments on the loan. That's how the bank lent the money. They saw the record of the volume that we were doing through the original suites, and it was so successful that they said that this new venture would be no problem; it should be a success as well. But there was enough income coming in -- income stream to pay for the actual note just from the original suites that we had there.

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Q. Who did you deal with primarily at the bank, was it Mr. Daniel or Mr. Odom?

A. Jeff Odom was the main guy, but Tony is his boss, so he was always -- he was involved in a lot of meetings as well, I think.

Q. How did you get hooked up with them?

A. Maybe a realtor told me about them. I'm not sure.

Q. Had you ever done business with them before?

A. No.

Q. Do you remember who the realtor was that told you about them?

A. Little short guy, can't think of his name -- Brent Case. He worked for Coldwell Banker. That might have been him. He might have thrown out a bunch of names. He wasn't the first banker so -- but we would bring the banker to Old Towne Suites, show them the property, saying this is what we have and we want to extend this. It's doing so well. We want to put it behind -- you know, behind these suites we want to build more.

Q. How many banks did you talk to?

A. I think three or four.

Q. Which other ones did you talk to besides Southcoast?

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A. There was one on Broad Street, I remember a guy. I can't tell you what his name is. And then First Citizens was our bank, and they weren't ready to do big -- they were in commercial lending at that time, and so that was three. It might have been just been three. Or, no, I think there was another one on Broad Street too.

Q. Do you remember the names of either of the ones on Broad Street?

A. No.

Q. Do you remember who you talked to there?

A. I remember the one guy from Broad Street, he's a chubby guy, came by and saw the suites, and he loved them. He had a funny character. He would tell jokes, so I remember him.

Q. Well, that narrows it down. Did they offer to loan you the money?

A. No. They wanted to see more -- most of them, I think, just wanted to see two years history, and we only had one year history of the suites at the time.

Q. So was First Citizens the only bank that agreed to loan you money for this project?

A. It was Southcoast.

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Q. Soulticoast.
A. Yes, Soulticoast was the one. They immediately said yes, and they seemed friendly, so that's who we went with.
Q. Who actually met with them?
A. I met with them and Jacob, I think, met with them.
Q. Did Spiros ever meet with them?
A. I don't know. I don't think so. I think Spiros communicated through emails with them.
Q. So I want to drill down a little bit more on your statement here that it was explained to the defendants who were aware that they would be required to execute a mortgage for the building, and you said that was part of the package, but in what way was that explained to them, and who did it, and where?
A. Well, we discussed it. I mean, it might have been at church or one of our functions; but, you know, we mortgage the building, the bank gives us the money, we have the income stream from the original suites to show that it's a successful project, and that's how they gave us the loan.
Q. So your testimony is that you told them that orally?

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A. Yes.
Q. Not in writing.
A. No.
Q. Have you looked to see if you have any emails or texts or letters or anything that confirms that you told them, let's just say prior to the first closing, that they were going to be mortgaging the building?
A. It might be in emails. There's so many emails and texts that went back and forth. It might be. I'm sure you already have them.
Q. Right. Well, that would have been pretty important for the case, right? So I'm asking you, in your going back and looking through your records and emails, have you found any in which you informed Spiros that he was going to be signing a mortgage for the building?
A. I'm not sure. We discussed that the building was going to be mortgaged, that's the only way the bank would give the loan; and it was all agreed that we were going to mortgage the building, and we were all going to be on the note.
Q. Suppose Spiros were to say that he was not aware until the Saturday before the closing that he was going to have to sign a mortgage for the

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building. Would you agree with that or disagree with that?
A. I would definitely disagree with that.
Q. You're absolutely sure that he knew before the Saturday before the first closing that he was going to be signing a mortgage for the property?
A. Yes, 100 percent sure.
Q. Okay. And, again, I want you to remember as carefully as you can, and when I asked you earlier how it was explained, you said it might have been at a family gathering or church or wherever. I want you to think back now, and I'm not talking about when did you tell him it was a 5 percent loan for 20 years. I'm talking about when did you tell him specifically that he was going to be signing a mortgage for his interest in the building.
A. We discussed it probably before I went to look for banks as well. I mean, they know the only way to get the money would be to mortgage the building. The bank's not going to just loan you money.
Q. Was there ever any discussion about mortgaging just yours and Jacob's interests in the building.
A. Never.

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Q. Could that be done?
A. No, I don't think so. I think a bank needs to have all properties that own the building in order to give the loan.
Q. How do you know that?
A. I'm assuming.
Q. Okay. All right. And then the last part of this says it was also explained to them or that they were aware that the LLC would be a signatory on the note to the lending bank and they consented to these things being done. In what way did they consent to that being done?
A. Can you repeat that? Which one are you at?
Q. Paragraph 12?
A. Okay.
Q. It basically says three things. It says the details of the loan package was explained to the defendants.
A. Mm-hmm.
Q. And you explained that, that that was the 5 percent for 20 years.
A. Right.
Q. Were aware that they would be required to execute a mortgage for the building. We've talked about that.

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Q. Did you provide a personal financial statement to the bank?
A. I'm sure I did.
Q. Did you provide one for Spiros?
A. No, I don't think so.
Q. Or Phillip?
A. I guess, since they were personally -- not personally guaranteeing the loan, the banks didn't require that, and the only thing the bank wanted was that the building be signed off so that they can have the equity if something goes wrong, and that the Old Towne Suites signs off as the income stream to pay for these payments.
Q. Did you sign off on this commitment letter on February 7, 2013?
A. Yes.
Q. Did you sign it again after it was changed in September of 2014?
A. I'm not sure if at that point the -- what the stipulation for the bank, I think they just marked it out, at $1.8 million, he initialed it, and he said this is still good, so I guess it's the new and revised, it's just them scratching it out, putting $1.8 million, and I guess Jeff Odom signed it or Tony Daniels signed it, initialed it, and

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that's all they needed to do.
Q. Spiros never signed it, though, right?
A. No.
Q. And Phillip never signed it?
A. No. I guess they didn't need to.
Q. The terms and conditions, was it your understanding that this was a 20-year mortgage at -- 20-year loan at 5-percent?
A. Yes.
Q. But that's not actually what it is, right?
A. Well, it's a 20-year loan, 5 percent, with balloon every five years, which means that if the interest rate changes in between the -- at that five year point, then it can go up or down.
Q. Let's read what it says. We'll read it as it's modified. Terms and conditions, 12 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.
Doesn't say an annual balloon payment. It says one final payment.
A. Right.
Q. So that's not a 20-year loan, is it?
A. No. I think they based it on 20 years. I'm

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pretty sure it was a 20-year loan.
Q. It says --
A. We'd have to ask Jeff Odom that because I haven't seen the bank document. This is just the commitment letter where they're saying they will loan us the money, and then we changed it from six monthly payments, I guess, and went to 12 monthly payments, each month instead of every other month.
Q. The next sentence says, the monthly payments will be based on a 240-month amortization schedule; do you see that?
A. Yes.
Q. And then it says, the interest rate will be fixed at 5 percent for the life of the loan.
A. So let me figure out the calculation. Okay.
Q. Is it your understanding that this loan would have to be paid off in five years or six years or 20 years?
A. 20 years.
Q. We'll go to the next document.
(Exhibit No. 12 marked for identification.)
Q. This was previously marked as Exhibit H to the answer and counterclaim. It's an email from Athan to gentlemen, meaning Jacob, Spiros and

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Phillip, dated September 9, 2014. I'm going to skip the first couple of paragraphs. The third paragraph says, it looks like our new project of six more units will cost us around 2 million to build. The bank has agreed to 1 million, so I'm 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 these suites. Furnishing and kitchen equipment will be roughly 225,000. We should be -- we should get permitting to start building this month, and I do have two other bids coming in, but I suspect that they will both be higher.
Who were you getting the other two bids from?
A. Other contractors.
Q. So was it your understanding that the furnishings would be $225,000 in addition to the $1.8 million?
A. And kitchen equipment because we were putting full kitchens in these units.
Q. So the total --
A. That was just an estimate.

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Q. And it was previously marked as Exhibit I to the answer and counterclaim. These appear to be dated September 19, 2014, do you see that?
A. Yes.
Q. Which would be after the September 9 emails that we just looked at and before the September 24 amendment to the commitment letter.
A. Yes.
Q. So it starts out -- is that your number up at the top (843) 813-5612?
A. Yes.
Q. By the way, let me just pause for a second, are there any other phones from which you sent any texts or received any texts?
A. I don't think so.
Q. Do you have any other email accounts other than the ZeusSeafood@bellsouth email account?
A. I do.
Q. What are those?
A. I have AthanFokas@gmail.com.
Q. We've seen that one.
A. And I have FokasA@bellsouth.net.
Q. Is there a difference in how you use those or what you use them for?
A. I think the FokasA@bellsouth.net was before

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my gmail account, and the Zeus one was for my emails for Zeus.
Q. That Fokas one, are there any emails relating to this project on that account?
A. I don't know. I mean, I don't think so. I think I would have supplied them all.
Q. So you searched that one as well?
A. Yes, oh, I did.
Q. Beg your pardon?
A. I did.
Q. Okay. You start out, good news, we are approved for 1.8 million. Down at the bottom it says, the banker just called me. I won't have the details until next week. Then you say, I'm sure it's 5 percent for 20 years.
A. Mm-hmm.
Q. Was that your understanding, that it was going to be 5 percent for 20 years?
A. It was a 20-year note, 5 percent for the 20 years, yes, I think so. And here Spiros's excited that we got the loan, so apparently he knew all about it.
(Exhibit No. 14 marked for identification.)
Q. This one is dated September 24, 2014, 10:07.

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It was previously marked as Exhibit J to the answer and counterclaim. It's from you, this is your AthanFokas@gmail.com account, to Jacob, looks like a couple of them to Jacob and then Phillip and Spiros. Says, 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 percent 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.
A. Yes.
Q. At that point who did you understand was going to be signatory, a borrower under that loan?
A. They're mortgaging the building so all of us.
Q. So Phillip was going to sign the loan, the note?
A. Yes.
Q. Spiros was going to sign the note?
A. Yes.
Q. Jacob was going to sign it?
A. Yes.
Q. And you were going to?

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A. Well, they were going to sign off on the mortgage. Phillip and Spiros do not want to personally guarantee it.
Q. But were they going to sign off on the note?
A. For the mortgage of the building, yes. They were on the closing, so they were on the closing documents.
Q. Okay. So you're telling them, as of September 24th, that the loan is fixed at 5 percent for the life of the loan which is unheard of.
A. Yes. I was surprised. But I misread it, I think.
Q. You thought it was a 20-year loan?
A. It was a 20-year loan because he came back and fixed it, I think. On the next page it says, hey, Jeff, my cousins noticed that on the terms and conditions it says 12 monthly payments of interest only followed by 59 consecutive monthly payments, then it says 240 month amortization schedule. Can it say 12 monthly payments of interest only for -- followed by 239 consecutive monthly payments so that it is truly a 20-year note. Just want to make sure that the note continues after five years.
Q. Was it your understanding that Phillip had taken that commitment letter and shown it to Ned

mortgage your interest in the building to cover your percentage of the loan. We also discussed the loan in depth back in 2012 where you agreed 5 percent was a good deal in your emails.

So are you now saying in this email that his emails with Amy Haines is where he agreed to mortgage his interest in the property?

A. I think I said what you just read. In 2012 he agreed to the loan and the mortgage that -- because our deal from the beginning was to try to get a 5 percent loan for 20 years, mortgage our building, show the income stream for the original suites to prove that our new project was going to be a successful one. So this is all untrue that he's saying. Spiros's just backpedaling is what he's doing.

Q. But your reference to the emails with Amy Haines, is there where --

A. That was one of them where he had -- he specifically talked about the loan that he was not supposed -- he was not personally guaranteeing it, he was only signing off on the mortgage. I think that was what that email was with Amy Haines.

Q. But his communication with Amy Haines was after the first closing date, wasn't it?

A. I think she was doing the original closing too.

Q. What communication did Spiros have with her prior to the first closing?

A. I'm not sure. They're in the email threads of Amy Haines.

Q. Did he have any communication with her before I'll just say a week prior to the first closing?

A. I don't know. I don't even know if he knew Amy.

Q. Okay.

(Discussion off the record.)

(Deposition adjourned at 5:52 p.m.)

- - -

CERTIFICATE OF REPORTER

I, Ruth L. Mott, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same. Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on February 15, 2017 at Charleston, Charleston County, South Carolina.

Ruth L. Mott,
Registered Professional Reporter
Certified Realtime Reporter
and Notary Public
My Commission expires
February 23, 2025

From: Athan Fokas <athanfokas@gmail.com>
Date: September 5, 2014 at 7:36:25 PM EDT
To: Phillip Ferderigos <pferderigos@barnwell-whaley.com>
Subject: Re: RE:

5% interest only as we draw until project complete. 5% plus principal on a 20 year note.

Sent from my iPhone

On Sep 5, 2014, at 5:26 PM, "Phillip Ferderigos" <pferderigos@barnwell-whaley.com> wrote:

> sorry, I want to make sure I understand . . Interest only (at what rate?) until completion and then 5% interest on a 20 year note/mortgage (so payments would include interest and principal)... is that what you are saying?
>
> Sent from my iPhone
>
> On Sep 5, 2014, at 5:21 PM, "Athan Fokas" <athanfokas@gmail.com> wrote:
>
> > Interest only for till completion of the build then 5% interest after that.
> >
> > Sent from my iPhone
> >
> > On Sep 5, 2014, at 4:17 PM, "Phillip Ferderigos" <pferderigos@barnwell-whaley.com> wrote:
> >
> > > Interest only, right, and we pay the back the amount borrowed at the end?
> > >
> > > Also, which bank is it?
> > >
> > > Thanks, Phillip.
> > >
> > > Phillip S. Ferderigos, Esq.
> > > Member
> > >
> > > <image001.jpg>
> > >
> > > 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

From: Athan Fokas [mailto:athanfokas@gmail.com]
Sent: Friday, September 05, 2014 4:08 PM
To: Phillip Ferderigos
Cc: Jacob Ferderigos; Spiros Ferderigos
Subject: Re:

20 years note 5% interest, originally was for a million but now have to ask for more.

Sent from my iPhone

On Sep 5, 2014, at 3:28 PM, "Phillip Ferderigos" <pferderigos@barnwell-whaley.com> wrote:

> Athan, can you tell me the key points of the loan for the building:
>
> What bank making the offer? How much money will they give? What are the terms (interest rate, how long, ballon payments, etc).
>
> I have a bank president in my building and I want to make sure that whatever offer you have been given is something this guy can not beat.
>
> No rush, thanks, Phillip.
>
> Phillip S. Ferderigos, Esq.
> Member
>
> <image001.jpg>
>
> 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

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

Gmail

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: "iakovosstavros@gmail.com" <iakovosstavros@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

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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

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

P.O. Box 1561 Mt. Pleasant, SC 29465 843-884-0504 Fax 843-884-2886

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 DWO 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 Ferentigos

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MR. EARRIER: I'll re-ask it. We're going to be here for two days, Stan.

THE WITNESS: This is the agreement that we all agreed to sign. The bank gave us this agreement. This was the deal. All of a sudden Phillip made up a side deal. Side deal doesn't make sense. It's a problem. This is the deal we agreed to go along with (indicating).

Q. But you, Athan, and Jacob and the LLC, those are the only people that signed Exhibit No. 11, correct?

A. Right, mm-hmm.

Q. And so if Phillip makes some proposal after you committed yourself to Exhibit No. 11, you would not have closed on the loan.

A. I'm not saying I wouldn't have closed on the loan because I agreed to sign his side agreement too. I mean, whatever Phillip -- I mean, it sounded good to me. It's not like I agreed -- that's all hypothetical, what you're saying now. You have to see the agreement that you're talking about. I can't say that. I mean, Phillip wouldn't come up with the money to show that he had it. He didn't put it in escrow or anything, so it was all a confusing state at that point. This is the deal

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that we all agreed to do (indicating).

Q. So if Phillip in his mind was going to put in cash, that was acceptable to you as long as he proved he had the cash, correct?

A. Yes.

Q. Okay. But you still wanted him to get a mortgage on the property.

A. It was always the bank would not give us this loan without mortgaging the property. Jacob did not have 350,000. Spiros did not have 350,000. I might have been able to pull together 350,000 at the point, but this loan would not happen unless everybody that owned the building signed off on the mortgage, and that was the original agreement.

Q. Mr. Fokas, let me say one thing. It is not helpful to this process for you to keep giving the same talking point to every question I ask. I know your testimony is that my client and the other three defendants committed to mortgage their portion of the property, okay? You don't have to keep telling me that.

A. Okay.

Q. I'm asking you questions that are not asking for that answer again.

A. Okay.

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Q. My question has to do with what happens after Exhibit No. 11 is signed. Phillip proposes to come in with $350,000.

A. It's not after. We would have never -- the deal -- we would have made the deal before this was signed, I guess. I mean, if Phillip was going to alter this agreement, it would be before this agreement was signed, right? You're saying after the agreement.

Q. I'm assuming that because I'm assuming that your testimony is that sometime in 2012 you and your cousins agreed to build some suites, to borrow the money to build the suites and to mortgage the property in which you were tenants in common.

A. That's right.

Q. Okay. And I also assume your testimony is sometime thereafter Phillip says, I do not want to mortgage my interest in the property, I want to put in cash.

A. He did that right before the second closing.

Q. Okay. And that would have been acceptable to you had he demonstrated proof that he had the cash, correct?

A. And he was going to still sign off on the mortgage.

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Q. Okay.

A. Yes.

Q. Well, if Phillip was going to put in cash, why would he sign off on the mortgage?

A. Because we would not get this note. Jacob didn't have the 350,000, Spiros did not have the 350,000.

Q. Well, why would he agree to risk his property to get you a loan?

A. He's not doing it for me. It's for the whole project. In order to get a mortgage for the building the building has to be signed off for it. All of us needed to come up with that money. I don't even know if he even had the 350,000. Later on we found out that he had a possible loan for 300,000. He never gave us any information. This was all done after the second closing -- right before the second -- right before the second closing. Nothing was confirmed.

Q. Did you either offer or convey anything of value to my client in exchange for his agreeing to take on the risk of a mortgage?

A. I don't think so.

Q. We've talked about anything in writing about a mortgage between you and my client, and you've

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My question to you is if you know what that means.
A. Corporate veil being pierced, I guess, is some attorney taking pieces of it.
Q. Okay. Would you agree with me that this is a statement that likely my client was not at risk but he could be at risk if there is a veil piercing?
A. I think -- I don't know what percentage that would be. Is it a one percent chance? I have no clue.
Q. Well, you would agree with me that there is a chance at least noted by your lawyer.
A. Well, he said unless it's pierced. I have no clue how to pierce a veil.
(Exhibit No. 22 marked for identification.)
Q. Let me show you what I have marked as Exhibit No. 22. Have you had a chance to look at this?
A. Seems like this is Phillip venting.
Q. Let's start with the first email, which is the one at the bottom. And in the second paragraph he says, I will not sign off on any mortgage of my share unless you sign an agreement that you will

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make your payments timely.
A. If you are an intelligent person, you will see that I cannot and will not agree to mortgage my share of Old Towne if you do not --
THE REPORTER: I'm sorry, I'm having a hard time --
THE WITNESS: I'm just reading this thing. So he continues to say, if you are an intelligent person, you will see that I cannot and will not agree to mortgage my share of Old Towne if you do not agree to make your payments. That's the deal with the bank, though. The bank makes sure you make the payments. That's what the mortgage is about.
Q. So I just want to get the sequence right, and this is what you're testifying is that your claim is that my client and his brother Spiros agreed to mortgage the property sometime in 2012?
A. Yes.
Q. And that that was their position until close to the second closing when my client says, I am not going to mortgage my property and Spiros takes the same position, correct?
A. I don't think Spiros ever took that position. It was just Phillip that took the

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position.
Q. I'll stick with my client then.
A. Yes.
Q. My client says, I'm not going to mortgage the property under any condition, right? That's what he first says. And then we move forward in time to November, and Phillip now has said, okay, I will do this under one condition, and that is you sign the side agreement, correct; that's consistent with this email here, correct?
A. Right, yes.
Q. And then above that you say, well, it's done. I'll reverse as much as I can and just write it off as a stupid transaction dealing with the Ferderigos family.
A. I don't know if that's -- if they're in the same sequence. Are they in the same sequence?
Q. I believe they are.
A. 1:46 p.m., November 24th, I guess so. When it's, well, it's done, I'll reverse it as much as I can, this is way into the dealings, and Phillip said that he's not doing the deal. I know at that point that he's not doing the deal, I think.
Q. Okay.
A. I think. I'm not sure.

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Q. And what was your intent in this response to him?
A. I'm not sure, and I don't even know where I was. I remember one night I was at Zero George drinking or with a bunch of my friends, and he was texting me, and it could have been then. I have no clue.
Q. Okay. At this point had you abandoned the deal?
A. No. I want to do the deal today. I've never abandoned the deal.
Q. But you're only willing to do the deal today if my client executes a mortgage, correct?
A. That was our original agreement. That was always the agreement.
Q. Is that a yes?
A. Yes, because that was always our agreement.
Q. All right. If you'll pull out Exhibit No. 1, I'm going to ask you some questions about these exhibits in order.
A. All right. Okay.
Q. And if you'll turn to paragraph 13. This is your complaint, okay?
A. Okay.
Q. And this question was asked to you of Spiros

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in June of 2015.
A. Okay.
Q. So you write to them, hey, guys, this is a friendly email that I am sending to all of you so that you might understand the full exposure of the lawsuit that my attorney is preparing to file. And you go through and talk about what your damages are. You said, my attorney is working on a flat 20 percent contingency, so he's not costing me anything until this case is settled.
Is that true, by the way, is that your agreement?
A. We altered it a little bit.
Q. To what?
MR. BARNETT: I object.
THE WITNESS: Yes.
MR. COOKE: You not only object but you instruct him not to answer, is that right?
MR. BARNETT: If you force me to.
MR. COOKE: Okay.
Q. Spiros on the next page says, I do not believe you are aware of the repercussions of filing a frivolous lawsuit. Tell me when and where I ever told you I would cosign my interest in 229 King Street for your loan. You know that never

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happened.
A. But it did.
Q. All right. Let's keep reading the conversation. It looks like you responded on the next page, you are cosigning only your interest in the building; and if you remember correctly, you said from the beginning that you did not want to personally guarantee the loan and the bank approved that. This lawsuit is very far from frivolous, and if you think otherwise I would seek better counsel.
Did you say in this email where he had -- when and where he ever told you he would cosign his interest in 229 King Street?
A. I prefaced it that it was done in the beginning. The beginning means before we even, when we got the bank note, when we were out looking for banks, we agreed that we would mortgage the building and have the income stream from the Old Towne Suites, we'd show one year because that's all we had at that point is one year, show how much money they're making to try to hopefully convince a bank to do this deal, and Southcoast was that bank.
Q. Yes, but with all due respect, what you actually said was that, if you remember correctly, you said from the beginning that you did not want

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to personally guarantee the loan and the bank approved that.
A. That was his only stipulation. It was originally the bank said that they wanted the Old Towne Suites, LLC, the income stream for that suites which had the money in it to pay for this note, they wanted to mortgage the building, and then we would all sign as personal guarantees. And then Phillip and Spiros said they did not want to sign as personal guarantees. And I went back to Jeff Odom and I said, you know, I've never heard of this but they say they're attorneys and they don't sign as personal guarantees. They own 16 percent interest apiece. Do you guys allow a note where you don't sign personal guarantees. And they said that we would do it in this case because you own 50 percent and Jacob owns 16 percent, and that's enough of a personal guarantee for us.
Q. Is it fair to say that you interpret Spiros saying that he would not personally guarantee the loan as his agreeing by inference that he would mortgage his interest in the property?
A. No. I'm not interpreting at all. The deal was from the beginning that we would mortgage our building to get the bank note. That's the only way

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we'd get a bank to give us a note. The building is worth $5 million. They would mortgage the building. And showed the income stream of the original suites to prove that our project would be successful.
Q. He then writes back and says, when and where did I ever tell you I would cosign my interest in 229 King Street for your loan. You are evading my question.
Before you answered that he added, and by the way, I never had a discussion with your bank for it to, quote, accept, closed quote. I have no idea what you are talking about. I never agreed to personally guarantee anything. This includes never agreeing to personally guarantee my interest in 229 King Street for your loan and/or benefit.
Then you answer, your emails to all of us speak a different story. Playing the naive lawyer is not going to help you with all of the documentation we have.
Then he says, your inability to answer my question is exactly what I expected. Then he goes on with some more argument.
And then you answered, check your emails with Amy Haines and you will see that you agreed to

mortgage your interest in the building to cover your percentage of the loan. We also discussed the loan in depth back in 2012 where you agreed 5 percent was a good deal in your emails.

So are you now saying in this email that his emails with Amy Haines is where he agreed to mortgage his interest in the property?

A. I think I said what you just read. In 2012 he agreed to the loan and the mortgage that -- because our deal from the beginning was to try to get a 5 percent loan for 20 years, mortgage our building, show the income stream for the original suites to prove that our new project was going to be a successful one. So this is all untrue that he's saying. Spiros's just backpedaling is what he's doing.

Q. But your reference to the emails with Amy Haines, is there where --

A. That was one of them where he had -- he specifically talked about the loan that he was not supposed -- he was not personally guaranteeing it, he was only signing off on the mortgage. I think that was what that email was with Amy Haines.

Q. But his communication with Amy Haines was after the first closing date, wasn't it?

A. I think she was doing the original closing too.

Q. What communication did Spiros have with her prior to the first closing?

A. I'm not sure. They're in the email threads of Amy Haines.

Q. Did he have any communication with her before I'll just say a week prior to the first closing?

A. I don't know. I don't even know if he knew Amy.

Q. Okay.

(Discussion off the record.)

(Deposition adjourned at 5:52 p.m.)

CERTIFICATE OF REPORTER

I, Ruth L. Mott, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify in the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on February 15, 2017 at Charleston, Charleston County, South Carolina.

Ruth L. Mott
Registered Professional Reporter
Certified Realtime Reporter
and Notary Public
My Commission expires
February 23, 2025

E

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF JEFFREY ODOM

ATHAN FOKAS,

Plaintiff,

vs. CASE NO. 2015-CP-10-3919

PHILLIP FERDERIGOS, JACOB FERDERIGOS AND SPIROS FERDERIGOS,

Defendants.

DEPONENT: JEFFREY ODOM

DATE: FEBRUARY 10, 2017

TIME: 9:39 A.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
843-762-0294
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 SPIROS FERDERIGOS:

BARNWELL WHALEY PATTERSON & HELMS
BY: M. DAWES COOKE, JR.
288 Meeting Street, Suite 200
Charleston, SC 29401

ALSO PRESENT:

ATHAN FOKAS
PHILLIP FERDERIGOS
JACOB FERDERIGOS
SPIROS FERDERIGOS

- - -

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JEFFREY ODOM,
being first duly sworn, testified as follows:

EXAMINATION

BY MR. COOKE:

Q. Good morning. Would you state your full name for the record, please.

A. Jeffrey Wynn Odom.

Q. All right. My name is Dawes Cooke. I represent Spiros Ferderigos in a lawsuit that you've been, I guess, subpoenaed or asked to be here to give testimony in, and this has to do with the expansion or proposed expansion of the building at 229 King Street --

A. Okay.

Q. -- where the Old Towne Restaurant is. You're familiar with that, of course?

A. Yes, sir.

Q. Okay. So under the rules, I'm supposed to tell you that if you have any -- if there's something that you don't understand about a question, you should direct your questions to me.

A. Okay.

Q. Do you have an attorney here?

A. No.

Q. Okay. So normally I'm supposed to say if

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sent him this typed letter in February of 2013, to Athan?
A. I'm sure that I should have sent it to him and that's what I normally would have done is sent it.
Q. Okay. So can you describe for me what were the terms of the loan that was agreed to?
A. The original?
Q. Well, let's go with what you did in 2014.
A. Well, it looks like the terms we agreed to were that the borrower would be -- we'd have three borrowers: Old Towne Suites, LLC, Athan Folos and Jacob Ferderigos. And it looks like the loan amount would have been $1.8 million.
Q. Originally it was $1 million, correct?
A. That's correct.
Q. And then why was it increased to 1.8 million?
A. You know, I had to jog my memory on what that was this week because I thought that question -- I couldn't remember. It was because there was originally going to be four units above, and then according to my memory, once this process looked like it was going to be so long to get the approvals, I think Athan and -- realized he could

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get up to six units. And so if you're going to go through that long of a process, why not try to get the maximum amount you can approve. That's how I remember it.
Q. So I interrupted you. Go ahead and tell me in your own words the terms of this loan.
A. $1.8 million and it would be 12 months of interest-only payments during the construction period for the draw up. And then assuming it completes in 12 months, as they should, it would convert to the fully amortizing payments of principal, interest and in this case including an escrow of taxes and insurance.
Q. What was the term of the loan?
A. 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.
Q. Explain the difference between -- first of all, 60 months is five years, right?
A. Yes.
Q. So it would have been five years plus the 12 months construction loan?
A. Yes, so six years essentially of a fixed payment is what you get and then it would have a balloon.

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Q. So where it says the monthly payments will be based on a 240-month amortization schedule, does that mean that it's a 20-year loan?
A. No.
Q. So when is the -- when is the balance of the $1.8 million due under this proposal?
A. It would have been six years from the closing date.
Q. Okay. And then what would happen at that point? Could they come back and reapply?
A. Normally what I tell people is if everything's in good standing, your financial condition hasn't changed and you're making money, the bank is in business to make interest, we would probably look to renew the loan. In a worst-case scenario, you would go find another bank.
Q. But you would have to apply, you weren't offering any guarantee that they'd be able to renew it.
A. You can't guarantee that.
Q. When you wrote in guaranteed 5 percent for the life of the loan, you're talking about for the six years, not for 20 years?
A. For the life of this agreement (indicating).
Q. This agreement. So if they came back in six

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years and interest rates had gone way up, might they have to negotiate for a higher interest rate as well?
A. You'd have to negotiate for the rate at that time.
Q. Because they would have no loan at that point. It would be basically a blank slate at that point?
A. Yes.
Q. And if they weren't doing as well as they had hoped to do, is it possible that they could be turned down for that loan?
A. It's possible.
(Exhibit No. 06 marked for identification.)
Q. Here are a couple of emails dated September 25, 2014, with an email to you. Do you infer from this that this came after you sent Athan the commitment letter in September?
A. It certainly appears to be.
Q. So he says, 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

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monthly payments of interest only followed by 239 consecutive monthly payments so that it is truly a 20-year note? Just wanted to make sure that the note continues after five years. Thanks, Athan.

Do you remember getting that email?

A. I didn't remember this, no.

Q. Do you remember it now?

A. I remember it now.

Q. Okay. Do you remember whether you were surprised to get a question like that on the eve of a supposed closing of a $1.8 million loan?

A. Probably on the eve. I mean, we get questions like that all the time, but on the eve, yes, I would be surprised.

Q. What would go through your mind? Would you think, holy cow, this deal is blowing up on me, or would you just say that's a usual-type question. Do you remember what went through your head when you saw that question?

A. I don't remember what went through my head, no.

Q. Is it fair to say that there's a -- it would be a pretty big deal from an underwriting standpoint to suddenly change this from a six-year loan to a 20-year loan guaranteed at 5 percent?

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A. Yes, that would be -- that would be not doable.

Q. Okay.

A. We wouldn't have done that.

Q. Why wouldn't you do that?

A. We wouldn't have wanted -- the bank wouldn't want to take the interest rate risk, among other -- other reasons. The bank reserves the right to reevaluate every so often, normally on commercial loans.

Q. Okay. The next page has your response. Take a look at that. I'll read it out loud while you're reading it. It says, the note will be 12 months of interest only followed by five 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 six-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 five-year period, technically in six years, and we can apply for a simple renewal. You won't

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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.

Do you remember responding that way?

A. I don't remember it, but I do now.

Q. Do you remember having any conversation with Athan about this?

A. No.

Q. Okay. In this response, were you in any way, shape or form guaranteeing him that this loan could be renewed on the same terms at the end of five years?

A. No.

Q. Or six years?

A. No.

Q. You wouldn't have the authority to even do that, would you?

A. Absolutely no.

Q. Okay. Did you discuss it with Mr. Daniel?

A. I don't recall.

Q. Okay. It may have been so obvious that it wouldn't have even gone to that level?

A. It could have been, but normally on the -- especially back then, I'm the type that would ask a

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lot of questions.

Q. All right. In this response are you in any way saying that there will be an automatic renewal at 5 percent at the end of 6 years?

A. No.

Q. Are you in any way saying that they will have 20 years to pay off this loan?

A. No.

Q. They would have five years plus one year to pay off the loan?

A. Right.

Q. When you say amortized on a schedule of 240 months, does that simply mean that the payments are calculated as though it were a 20-year loan?

A. That's right.

Q. But then there's a balloon, so that's what makes up the balance of the loan is that balloon payment, is that right?

A. At the maturity date, yes.

Q. So when you say a balloon payment, generally you mean the balance of the loan is due at that point?

A. Right.

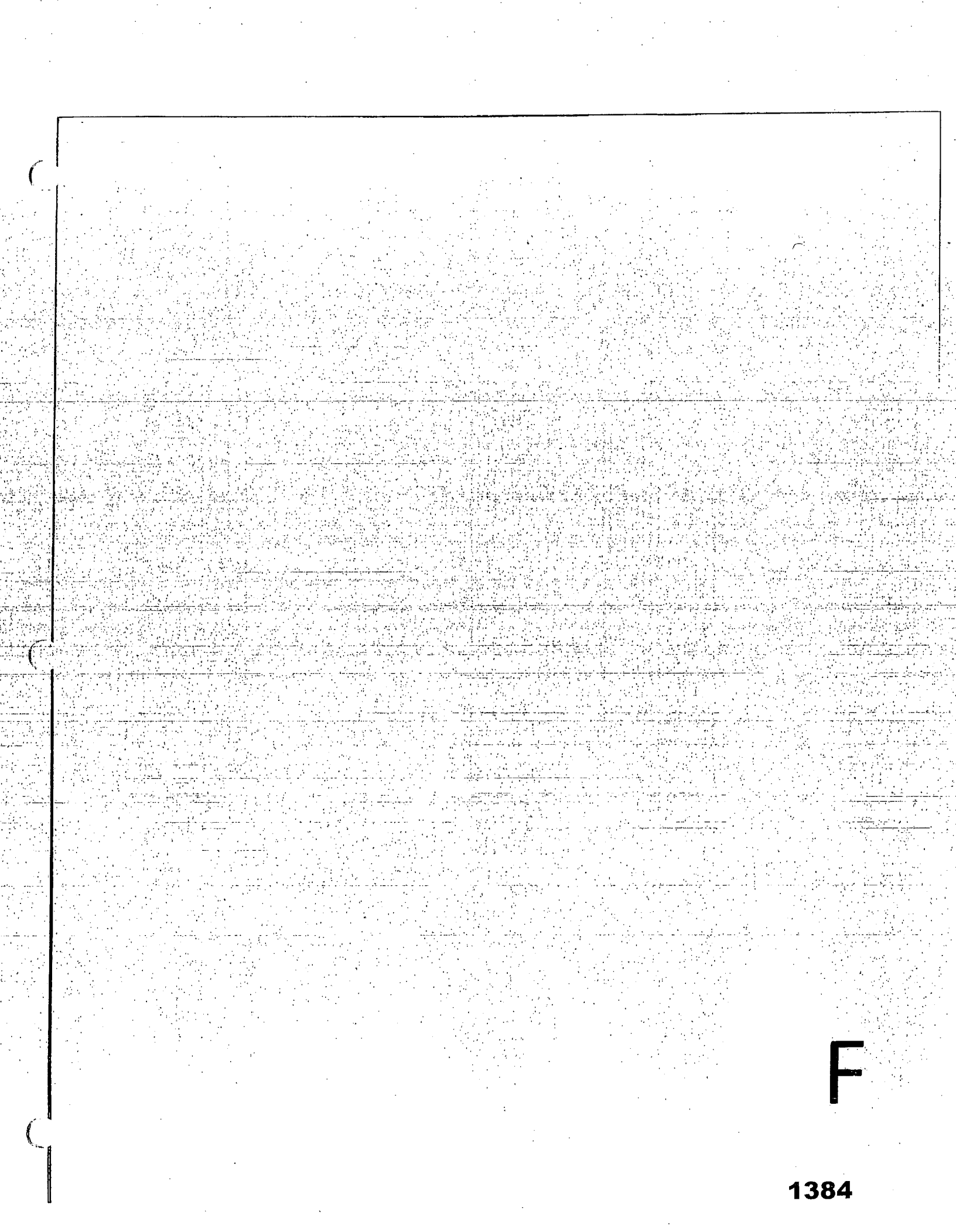
Q. That's what the term balloon suggests?

A. Yes.

Q. Is that the same deal that Athan negotiated for the North Towne deal?
A. According to my memory, and I said it in there, it must be the same deal.
Q. Was the North Towne deal already done by then or were you still working on it?
A. I can't remember. North Towne I believe was in 2014, but I can't remember.
Q. So if he misunderstood the terms of this loan, is it possible that he was also misunderstanding the terms of his North Towne loan as well?
MR. BARNETT: Object to the form, but you can answer. It's a technical thing.
THE WITNESS: I don't know. I guess it's possible.
(Exhibit No. 07 marked for identification.)
Q. Before I go to this new exhibit, does this email exchange indicate to you that Athan did not understand the terms of the loan that was about to be closed?
MR. BARNETT: Object to the form.
THE WITNESS: Can you repeat the question?

Q. Does this exchange of emails indicate to you that Athan evidently did not understand the terms of the loan that was being proposed? Looking at, I'm sorry, the previous exhibit.
A. Oh, okay. Here?
Q. Yes.
A. Honestly, the way I would have probably read this is that he was, I thought -- I think I thought he was trying to negotiate a better deal.
Q. Okay. And it was not a deal that you could give.
A. I thought it was -- recalling the -- speaking to Athan, and this deal had gone on and on for almost two years, I think I thought that because it was getting to a closing, I'd worked so hard on this, he was trying to negotiate a better deal on all their behalf.
Q. If I were to tell you that even today Athan thinks that the loan was to be a 20-year loan, would that be a misunderstanding of what you were offering?
A. Yes.
Q. And the note that you prepared, note and mortgage and all that, did not provide for 20 years, did it?
A. No.
Q. All right. Let's go to the next exhibit. Take a look at it.
A. Okay.
Q. This is an email to you from Athan at 8:56 a.m. on October 23rd, 2014, which was Thursday, says, hey, Jeff, all parties are in agreement that closing will happen as soon as Spiros finds out about his judgment, which should be the beginning of November.
Do you know what that sentence means?
A. It says judgment. I thought it was judgeship.
Q. Judgeship, yes, it was.
A. Okay. I remember that now.
Q. Let's keep reading. Unfortunately, he is afraid of signing anything that he did not include in his judgment documents. And that would be judgeship documents.
Then he says, he didn't know he had to sign the paperwork on the mortgage until the closing attorney notified us. I will keep you posted and thanks for your patience.
Do you remember having that conversation about that with Athan?

A. I didn't. I didn't really remember it, but it kind of comes back to me now looking at this.
Q. Tell me what you remember about that.
A. I thought, if I'm remembering it correctly, that there was a judgeship going on with Spiros and that he must have reported his financials a certain way and that this -- he didn't want this closing to interfere with whatever was reported if all that was going on.
Q. The sentence where it says, he didn't know he had to sign the paperwork on the mortgage until the closing attorney notified us, do you remember who the closing attorney was?
A. I thought it was Amy Haines, Haines Law Firm.
Q. When did she prepare the closing documents?
A. Normally they get started a few weeks before closing.
Q. So is it likely that -- I'm trying to see if I can attach a rough time frame to when Athan is telling you that Spiros learned that he had to sign the paperwork on the mortgage. So the closing attorney you say normally would prepare the closing papers within weeks of the closing?
A. Yes, because they have to do the title


F

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 rental

EXHIBIT

and laundry fees of $81.00 which i[illegible]vent up to $97.00, and other expenses su[illegible]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 guaranteeing 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.

Daroid Charpia

From: Zeus Grill and Seafood <zeusseafood@bellsouth.net>
Sent: Thursday, October 23, 2014 8:56 AM
To: Jeffrey W. Odom
Subject: RE: Old Towne

Hey Jeff,
All parties are in agreement that closing will happen as soon as Spiro finds out about his judgement which should be the beginning of November. Unfortunately he is afraid of signing anything that he did not include in his judgement documents. He didn't know he had to sign the paperwork on the mortgage until the closing attorney notified us. I will keep you posted and thanks for you patience.
Athan

From: Jeffrey W. Odom [mailto:jodom@southcoastbank.com]
Sent: Friday, October 17, 2014 2:54 PM
To: Athan Fokas (fokasa@bellsouth.net); ZEUS GRILL & SEAFOOD (zeusseafood@bellsouth.net)
Subject: FW: Old Towne

Athan,
See below. Do you have the Flood Insurance in place on the building?

Jeffrey W. Odom NMLS ID #600313
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

From: Cindy Gleaton
Sent: Friday, October 17, 2014 2:51 PM
To: Jeffrey W. Odom
Subject: Old Towne

Jeff,

I called Brown & Brown Insurance to get the current hazard and flood on 229 King. They do not have insurance on that building. Nationwide/Brown&Brown is the only company name we have. Could you find out where Old Towne placed their insurance?

Thanks,
Cindy

Cynthia H. Gleaton
Vice President
Southcoast Community Bank
530 Johnnie Dodds Blvd.

G

Me

Okay, unless it fucks y'all up, let me know when I need my money by - and how much - as much as I would like to join in with y'all on a 20 year obligation, I will just pay up my money upfront.

12:00 PM

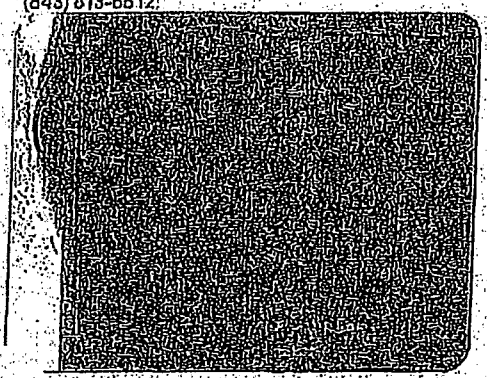
(843) 813-5612

I'll take a million tomorrow:)

12:02 PM

Friday, October 10, 2014

(843) 813-5612



3:54 PM

We got our permit. Can start building immediately

3:54 PM

Jacob

Awesome!!

3:54 PM

Sunday, October 19, 2014

Spiro Cell

I need to hold off signing anything for old Towne until I am done with the judgeship process. Should be mid-November. Will create too much of a headache to amend everything I have filed. That will also give Phillip time to do what he needs to do and also any ancillary contracts we need to do to go along with the loan.

7:20 PM

(843) 813-5612

That's crazy! Your are not even on the note. The bank wants to close and our builder is ready to build. Call me that makes no sense whatsoever!

7:24 PM

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. — 8:46 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

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>

Re: Final email from me regarding the closing.

spiros ferderigos <spirosferderigos@gmail.com> Fri, Nov 21, 2014 at 3:17 PM
To: Athan Fokas <athanfokas@gmail.com>, Athan Fokas <fokasa@bellsouth.net>, Jacob Ferderigos <jakovosstavros@gmail.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>, spiros ferderigos <spirosferderigos@gmail.com>

Athan, there are too many email chains going on with a bunch of accusations from you that are not accurate so I wanted to send this one email out, with no response, so you are clear about my position. I have no intention of arguing.

(1) When we were originally considering getting a loan to build additional units, you stated that you would be able to get a loan with only you and Jacob personally guaranteeing the loan. I have always refused to personally guarantee anything from the very beginning. Two days before our original closing date (for which I had something like 3 days notice), I found out for the first time that I would need to put up my physical property interest in 229 King Street as collateral for the loan. That shocked me because it was the first time I heard of that, but to assist with everything moving forward, I agreed to move forward with allowing my physical property interest in 229 King Street to be used despite never agreeing to the same before (or having any knowledge that it was necessary) as long as I was satisfied with assurances to protect my property interests.

(2) Today for the first time I was asked to have OT Suites LLC (for which I am a personal member) sign as borrower on the note. That has never been discussed and definitely never been agreed to. Again, I was always told that only you and Jacob would have to sign the note and Phillip and I only having to mortgage our physical property interests in 229 King. Today, I was also asked to sign the Note in my name as well. Of course, this is in direct contradiction to what I agreed to do. I never agreed to directly sign the note (in my name) or indirectly sign the note (as a member of OT Suites, LLC or someone in my place as a member of OT Suites, LLC).

(3) Lastly, Phillip has been crystal clear from the beginning that he had no interest in being part of any loan or loan requirement. He would come up with his own money completely separate. The only thing he was willing to do was allow his personal physical property interest in 229 King Street to be collateralize to help you get a loan. He further has been clear from the beginning that he would only be willing to do that if you agreed to the provisions he felt were necessary so his property interests would be protected. Phillip has never needed any assistance from anyone to come up with his funds, and he has been very gracious to even consider mortgaging his interest in 229 King Street for you to be able to get a loan. Now out of nowhere you are demanding he sign over assurances to you about his loan, proof of his loan and its details and to sign on to the note through the OT Suites, LLC. This is inappropriate and has absolutely never been agreed to. I understand you want more now then what was agreed to before, but that is simply inappropriate. I am not sure what you told the bank, but what they are asking us to sign is not what we to agreed to.

The only way for the project to move forward is to do what has been previously agreed upon. I do not know what you told the bank, but their documents are not reflective of what we have agreed upon. I am willing to move forward with the written agreement I emailed. I would make my portion of the payments based upon that agreement, not personally signing a note. The only people that should be on that note are you and Jacob (the personal guarantors). I am also still willing (despite being told late in the game) to mortgage my physical interest in 229 King Street as collateral for your and Jacob's note (assuming the agreement I sent out is signed). Lastly, I am not comfortable with you attempting to bully Phillip to sign or do anything as the agreement has always been that Phillip would not have to do anything at all for the loan or provide any documentation whatsoever (with the exception of his generosity in agreeing to mortgage his physical interest in 229 King Street with the assurances he wants to protect his interests).

Spiro

H

Gmail

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]

Gmail by Google

spiros ferderigos <spirosferderigos@gmail.com>

Old Towne Suites

Phillip Ferderigos <pferderigos@bamwell-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

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

Email: pferderigos@bamwell-whaley.com

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

Gmail spiros ferderigos <spirosferderigos@gmail.com>

Id 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

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: iakovossiavros@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
Facsimile: (843) 577-7708

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

Old Towne Suites

Athan Fokas <fokasa@bellsouth.net> Mon, Nov 24, 2014 at 1:45 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]

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Q. I have shown you Exhibits 25 and 26. They're actually out of order chronologically, so let's talk about 26 first.
A. Is this the same email chain?
Q. No, I don't think so.
A. Okay.
Q. But the first one is your writing to Spiros, copying my client, and you see, I have no -- and this is talking about the side agreement -- I have -- no problem signing the agreement.
A. Is it to Spiros?
Q. It's to Spiros, yes.
A. I think it's to Phillip.
Q. You're looking at the wrong one.
A. Oh, you said 25 or 26?
Q. We're looking at 26 first, and it's dated November 21, and you say, I have no problem signing the agreement, but, of course, as any business partner, would like assurances that every party puts in what they are supposed to. And my client actually refused to give you those assurances, did he not?
A. Let me read it. That was funny. I just found out last night that you guys wanted --
Q. Read it to yourself.

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A. Well, I think it's important to put on record what this says.
Q. It's in the record.
A. I can't read it?
Q. You can read it, but I can tell you, it's costing your client money.
A. It's costing what client money?
Q. Well, it's costing you money.
A. That was funny, about me costing me money. I just found out last night that 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 Teresa. 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 suggest that no content is put 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 the deal.

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Okay. What is your question?
Q. So you are saying you'll sign the side agreement but you put on that a contingency that you would like assurances from my client; correct?
A. I wanted to make sure he was coming up with the money.
Q. Right, and he never provided that to you, did he?
A. He never did.
MR. FARRIER: Okay. That's all the questions I have.
(Recess held.)
(Exhibit No. 27 marked for identification.)
BY MR. COOKE:
Q. Okay. Picking up where we left off earlier, I'm showing you some more text messages, and these, at the top it says Friday, November 21, 2014. This document was previously identified as Exhibit L to the answer and counterclaim. It's now been marked as 27. So does this fairly capture the conversation that you had on the 21st, morning of the 21st, about the side agreement that Spiros and Phillip asked you to sign?
A. So the one that's highlighted up top that

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says me, is that Phillip?
Q. Yes.
A. They're saying that they're ready to close on the property, and at 3:00 today they said that should work. They were all in agreement that we would show up at 3:00.
Q. They had not yet seen the HUD settlement statement, correct, because he's asking you to have the lawyer email that to him, do you see that, at 8:52?
A. Says...
Q. Says should work for me, ask the lawyer to email me the HUD settlement statement and all paperwork beforehand and I can review and we can go through the closing more quickly.
A. Where are you at?
Q. That's at 8:52.
A. 8:52, yes, that's what Phillip said, yes.
Q. Then you said, okay. Then Spiros says, 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'm signing.
Do you agree that they had not seen the closing documents up to this point?
A. Copy of the closing docs to review...

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bank note or how he was getting the money. His uncle told him to put it in escrow, and his uncle called me back and said Phillip was going to put it in escrow. It never happened.

Q. What would have happened? What if he had just reneged and said, I'm not paying my 350,000?

A. Then I would be stuck with 50 percent of the job, probably. I mean, we would have to come up with -- Jacob and I and Spiros would have to come up with it.

Q. And do you think Phillip would seriously claim that he had a right to the profits of the project if he hadn't put any money in?

A. Phillip? Oh, he'll suck blood out of a turnip.

Q. I mean, really. You are already signing a note on behalf of the LLC, you were already personally guaranteeing the entire $1.8 million --

A. Therefore why should there even be a side agreement if I'm personally guaranteeing, I'm having my houses in a project and my buildings, everything I own, why does there have to be a side agreement?

Q. Let me finish the question. How could you possibly be hurt by signing that agreement when you

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had already signed a note, a mortgage and a personal guarantee for the entire $1.8 million? What could have possibly have hurt you just to humor Phillip and sign something that says you're going to do what you already promised you were going to do?

A. Because he wouldn't show where he had the money. I didn't believe him. Phillip could be blowing smoke. He talks that way back and forth, and he acts like he's on a pedestal, and he acts like he's doing me a favor by signing the mortgage. I'm only doing the mortgage for my percentage of the building, half of it. They're responsible for one-sixth of the building. He's not doing me any favors. That was the deal from the beginning.

Q. So the reason you wouldn't sign that agreement to allow this closing to go forward was because you didn't believe he had the $350,000?

A. Well, John McNeill said, let's make sure he has his money, and he wouldn't say -- and then later on I found out that he was getting a loan for 300,000. I had no clue how he was securing that loan. And then when I asked his brothers, I asked Spiros, what happens with the extra 50,000 that he has to come up with if he doesn't come up with it,

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are you and Jacob going to cover it? And they said, no, we're not covering it. Does that mean I'm going to be stuck with it?

Q. So you're actually agreeing with me, the reason this thing did not close on November 21st was because you weren't comfortable that Phillip had the $350,000.

A. No. The reason it didn't close is because he backed out. I can't remember if it was Phillip or Spiros. He said, I'm not going forward -- I don't want to be in -- I don't want to be in business with you is what he said. That's what ended it.

And when I kept going back and forth with Jacob, you know, talk to your brothers. Are they doing it? He said, let's wait until after Thanksgiving, and then he said, let's wait until after Christmas and let's wait until the first of the year. And then, you know, we had stuff in storage. We were paying money on it, and we didn't want to continue paying -- throwing away money for nothing.

Q. I do want to drill down on this a little bit on what you've just explained to me was happening on the 21st of November, that Phillip and Spiros

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both said, we're ready to close at 3:00 this afternoon if you'll sign this agreement.

A. Phillip --

Q. Let me finish the question. The agreement required you to do exactly what you had already promised you would do and you had personally guaranteed it and you had signed a mortgage of your entire interest in all of Old Towne and you were prepared to sign a loan agreement, and the reason you wouldn't do it was because you weren't comfortable that Phillip would come up with his $350,000.

A. No, that wasn't the reason I wouldn't sign it. He wanted out of our original agreement. He wanted to pull himself out of it and have a hypothetical other loan that I had heard about on the side. All I said is, you know, we know this deal with Southcoast. We have the money. We're all in it. We're signing it. This is the deal. All of a sudden Phillip brings in another piece of paper, says I want you to sign this, it gives away one percent, which I said finally I'll sign just to get it done. And then he said he's out of the deal and he's doing me a favor. I'm only signing my 50 percent mortgage on the building. He was there for

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one-sixth.
Q. When did he say he was out of the deal?
A. When he said that I don't want to do business with you, I think whenever that email was.
Q. That was before you ever agreed to sign that paper, right?
A. No, I don't think so. I think that was after the fact.
Q. I've been looking, and I can't find any paper where you said you would sign that.
A. Where I'd sign the deal? It was in an email that said that I -- I like the opportunity of possibly in the future having one percent more interest in the building.
Q. I'm looking at the correspondence on the day that this closing was supposed to happen, and what I'm seeing is Phillip and Spiros telling you that they're ready to close if you'll sign that agreement and you saying you're not going to sign the agreement.
A. That wasn't the deal. At that point Phillip had his side agreement, was pulling himself out of our original note and supposedly coming up with the money on his own, which I found out later was a $300,000 loan that I had no idea how it was being

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secured or if it the money would come or if it even -- was it just a joke; did he really have this loan or did he just go downstairs and see his banker and the banker said, sure, you can have 300,000 once we see the financials. Who knows.
Q. So that was it, you just weren't confident that he was going to come up with this $350,000.
A. No. What we should have done is our original deal that we all agreed before Phillip tried to amend this deal.
Q. Well, we looked at -- I'm trying to see which exhibit it was -- at Exhibit 15 where he texted you in October and said, okay, unless it f's you all up, let me know when I need my money by and how much. As much as I would like to join in you all on a 20-year obligation, I will just pay up my money up front.
I don't see anything from you here where you said, that's not the deal, Phillip, you have to be part of this 20-year mortgage.
A. Right after didn't I say, that's crazy, you're not even on the note. Oh, that was to Spiros. What time is that?
Q. That's at 12:00 p.m., it's right at the top of Exhibit 15. This is when the first closing was

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supposed to happen.
A. Okay. Yes, right.
Q. And so you knew as of at least October 10th that he was not going to be signing the note, that he was going to be putting in his own money.
A. And then I was asking, what is that money, how do we know it's going to come. And then he had conversations with his uncle Fenudi (ph.) and Fenudi called me up and said he was going to put it in escrow, and he never did that either.
Q. So once again, the reason that you wouldn't sign that side agreement was because you weren't confident that Phillip was going to come up with his money.
A. No. Once again, the original deal was the deal that I always wanted to sign. He amended it last minute after the first closing. I had no clue there was a side agreement. I found out the night before that that was happening. So he's the one that altered our original agreement. I never did anything.
(Exhibit No. 29 marked for identification.)
Q. Exhibit 29 looks like emails dated November 21st between you and Spiros. And it starts out, it

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says, regarding final email from me regarding the closing. This is from Spiros to you at 3:17 p.m. He says, Athan, there are too many small chains going on with a bunch of accusations from you that are not accurate, so I wanted to send this one email out with no response so you are clear about my position. I have no intention of arguing.
So he's got essentially three points there. The first one says that when we were originally considering getting a loan to build additional units, you stated that you would be able to get a loan for only you and Jacob personally guaranteeing the loan. I have always refused to personally guarantee anything from the very beginning. Two days before our original closing date, for which I had something like three days notice, I found out for the first time that I would need to put up my physical property interest in 229 King Street as collateral for the loan.
Did you agree or disagree with that?
A. He's lying. That's not true.
Q. Okay. So you responded that he was lying about that?
A. I responded and said -- and we have this in another one in here because I remember this Mother

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 **COMPLAINT** (Breach of Contract, Specific Performance, Breach of Fiduciary Duty) (Jury Trial Demanded)

FILED
2015 JUL 15 PM 2:28
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Plaintiff who for his complaint against the Defendants named above alleges as follows:

COMES NOW the Plaintiff, Athan Fokas, who for his Complaint against Defendants alleges as follows:

1. Plaintiff is a citizen and resident of Charleston County, South Carolina.
2. Defendant Philip Ferderigos is a citizen and resident of Charleston County, South Carolina.
3. Defendant Spiros Ferderigos is a citizen and resident of Charleston County, South Carolina.
4. Defendant Jacob Ferderigos is a citizen and resident of Charleston County, South Carolina.
5. Plaintiff and Defendants ("the Ferderigos brothers") are owners and principals of Old Towne Suites, LLC which operates a business in the building located at 229 King Street which houses the Old Towne Restaurant, said business being rental of luxury suites.

14. Based on this agreement, Plaintiff expended considerable expense and effort toward securing planning and zoning approval for the project and in finalizing design plans.

15. A closing was scheduled by Plaintiff and Jacob Ferderigos with the bank for October 24, 2014.

16. Defendant Spiros Ferderigos refused to sign the mortgage for the closing as he was in contention for a seat on the South Carolina Circuit Court and informed Plaintiff the mortgage might affect his consideration.

17. A second closing was set for late November 2014.

18. Prior to the second closing Defendant Philip Ferderigos demanded that Plaintiff execute an agreement whereby specified penalties would be paid in the event payments were not made on the note to the lending bank. If this agreement were executed, said Defendant agreed he would execute the mortgage.

19. Initially, Plaintiff refused to sign the agreement as it was a change in the agreement of the parties and the scheduled closing was cancelled due to Defendants Philip and Spiros Ferderigos' refusal to sign the mortgage.

20. Plaintiff agreed to sign the agreement presented to him by Defendant Philip Ferderigos in early 2015.

21. Despite Plaintiff's agreement to sign the above agreement, Defendants refused to sign the mortgage and notified Plaintiff they would not go forward with the planned expansion of the building. Defendant Jacob Ferderigos has maintained he would not agree to going forward unless his brothers, Philip and Spiros, agreed to do so.

J

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Q. So the total estimate would be 1.8 million plus 225,000?
A. Yes.
Q. Does that include the sprinklers?
A. No.
Q. So it would be 1.8 million plus 225,000 plus the sprinklers?
A. That's correct, but that's just an estimate on the furnishings, we don't know at that point, and the kitchen equipment. Maybe we based the kitchen equipment at 30,000 or 40,000 per unit, but it might have been 12,000.
Q. Going back to the previous exhibit, it says the purpose of the loan is to provide a construction to permanent loan to build six rental units above Old Towne Grill and Seafood at 229 King Street, Charleston, South Carolina 29401. The loan will also include the purchase of furnishings for the units. So does your email reflect a difference between what the commitment letter said?
A. Yes, I guess the commitment letter thinks that we're putting all -- that it would cost us $1.8 million for the whole project.
Q. Including the furnishings?
A. I don't know how much of the furnishings. I

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would assume -- I'm not sure. I'm not sure at this point, so maybe we thought -- maybe we figured out it would be more than 1.8 million at one point. Let me see this date. September 9th. The commitment letter is February 5th, 2014. September 9th so -- one was September 24, 2014, so a couple of weeks letter.
Yes, it says that it's going to cost us 1.8 million plus 225,000. 1.8 million was for the contractor to build the project with all the engineer fees and everything, and then we were supposed to come up with furnishing the place, putting in the kitchen and paying for the sprinkler system.
Q. Is this the first time you told Spiros that the cost was going to be around $2 million?
A. I don't know. We've talked about the project many times.
Q. Do you have any other written communications prior to this that says -- it looks like our new project of six more units will cost us around 2 million to build. You don't reference having talked about that before here.
A. I probably sent out this email, and we discussed it either afterwards or before. I don't

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know.
Q. Can you remember a specific occasion, prior to September 9, 2014, when you told Spiros that it was going to be closer to 2 million than to 900,000?
A. Oh, 900,000 was just for two stories, so of course we knew it was going to be more than that. And then 900,000 was before we went through the BAR. The BAR made us add all these windows to the building and change the whole structure of it. They gave us the design that they wanted it to look like, and that added all the cost to it.
Q. But was there a meeting or an email or a letter or a document of some kind where Spiros said, I'm agreeing that we're going to go from 900,000 to 1.8 million or $2 million for this project?
A. We probably verbally, and he had an email thread that said what the project would be, and he split it out, and we were going to pay the difference of that. On his email thread all the way to closing he talked about, I think, 1,750,000, and we wanted to -- we were getting 1.8 million, how it was going to be -- how it was going to come out per person at that point.

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Q. You've produced those emails?
A. You just showed me that email.
Q. Where he says how it's going to be broken --
A. Oh, no, no, that's the one -- I think so. I think we saw that. Didn't you show me one from Pete Paulatos or something? No, that was when we were saying we were going to bring Pete Paulatos in. Yes. But there is email thread somewhere in all the emails that he discusses exactly with Amy Haines how much the percentage was, or he was communicating with me as well, and the accountant came in and said that we would need to -- he talked about that extra $50,000, how I probably wouldn't want to eat it.
Q. This is an email that you've produced to us, an email thread that you produced?
A. I think so.
MR. BARNETT: Let's go off the record.
MR. COOKE: All right.
(Discussion off the record.)
(Exhibit No. 13 marked for identification.)
Q. Exhibit 13 appears to be a text chain, is that right?
A. That's right.

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A. I don't think so.
Q. Okay. Paragraph 16 asks for the total construction costs, and you said total construction cost to the contractor was 1.8 million. The parties were responsible for paying the sprinkler system, according to the contractor. And then would the parties also be providing the furnishings as well?
A. That's correct.
Q. What was the cost of the sprinkler system?
A. I'm not sure, like we have to -- I'm not sure if we got a number on that.
Q. Okay. Can you give me a ballpark?
A. I don't know. I've seen some numbers, 10,000 to 100,000. I have no clue what the sprinkler -- there's three or four guys out there so play them against each other and try to figure out the best deal.
Q. Did you ever get any bids or proposals?
A. I think the contractor had a pretty good idea, ballpark, what that sprinkler system would cost.
Q. And what was that ballpark?
A. I'm not sure.
Q. Why wouldn't you want to get that nailed

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down if you had to have a sprinkler system?
A. We might have known. I don't remember. It might have been 20,000, it might have been 10,000. I don't remember that number. At that point we might have known what it was.
Q. We'll go ahead and mark No. 3.
(Exhibit No. 03 marked for identification.)
Q. This is Plaintiff's response to first requests for production by Defendant Spiros Ferderigos, and it's asked you to identify documents. And you say, all documents responsive to the first request for production have been provided to the above-named defendant.
So I just want to confirm, is that still accurate, as far as you know, that all responsive or relevant documents have been produced?
A. I think they have.
Q. Are you aware of any that were lost or -- any relevant documents, that is, documents that pertained in any way to the claims that are being made in this lawsuit, aware of any documents or emails or texts that have been destroyed or deleted or lost?
A. Nothing destroyed, deleted or lost that I

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know of.
Q. Okay. We've got a supplemental answer.
(Exhibit No. 04 marked for identification.)
Q. You've identified Pete Paulatos, Fennell Holdings as a witness.
A. Yes.
Q. What is his knowledge about this case?
A. I think he was the accountant -- he is the accountant that figured out for Spiros the money and that -- the $50,000, if I was going to eat it, I think he was the one that put that in his thread that I wouldn't agree that I lose the $50,000 because the way it was set, somebody had to absorb that extra $50,000, I remember that in the email thread, and I think he was the accountant that did that. And he figured out or Spiros had figured out on that email because he was text -- I think he was emailing back and forth with Spiros, and Spiros would copy that and send it to me.
Q. I'm confused because earlier you said that that was Phillip who was going to have to come up with the $50,000 and you'd heard it from an accountant, but in your answer here you said that Mr. Paulatos consulted with Spiros Ferderigos --

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Spiros Fokas. Who is that?
A. Spiros Fokas is my father.
Q. So it says he consulted with Spiros Fokas on the percentage of loan/interest payments to be borne by the parties with respect to the project at issue.
A. It's probably a typo. It's probably supposed to be Spiros Ferderigos.
MR. BARNETT: I will confirm it is a typo as a result of my incredibly bad proofreading.
MR. COOKE: So is it supposed to be Spiros or Phillip?
MR. BARNETT: Ferderigos, Spiros Ferderigos.
MR. COOKE: Spiros Ferderigos.
MR. BARNETT: Right.
Q. To resolve my confusion, because I thought you'd said earlier that the accountant was communicating with Phillip about his having to come up with $50,000, but you're saying here that Mr. Paulatos consulted with Spiros.
A. It might have been all them on the email thread. I'm not sure. But Spiros's the one that sent me in the email the information that the accountant was talking about, so I don't know who

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.

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 DWO 9/29/14

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
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 Townie Suites, LLC

By: _____
Athanasios Fokas

By: _____
Iakovos Feidongos

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 16th day of October in the year of Two Thousand and Fourteen

BETWEEN the Owner: Athan Fokas, Iakovos Ierdergos
Old Town Suites
229 king street
Charleston, sc. 29401

and the Contractor: Kevin W. Carroll 1079 Haris 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.

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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 withheld contractor or owner may stop work until 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.)

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

Jan Fekas, Jakovos Ierderiges

Name and title

CONTRACTOR

Signature

kevin w carroll

Name and title

K

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) Upon information and belief, 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) 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.

(72) 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.

(73) 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.*

(74) 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."

(75) 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.

(76) 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."

(77) 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).

(78) 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.

(79) 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."

(80) 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."

(81) 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."

(82) 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.*

(83) 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.

(84) 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.

(85) 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."

(86) 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.*

(87) 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).

(88) 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."

(89) 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.*

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

(91) 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.

(92) 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 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.

(93) 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.

(94) 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.

(95) 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.

(96) 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.

(97) 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."

(98) 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 interest 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."

(99) 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).*

(100) 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.*

(101) 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."

(102) 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."

(103) 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."

(104) 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).

(105) 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."

(106) 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.

(107) 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."

(108) 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."

(109) 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."

(110) 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."

(111) 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."

(112) 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.*

(113) 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.

(114) 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.

(115) 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.

(116) 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.

(117) 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.

(118) 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.

(119) 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.

(120) 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."

(121) 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.

(122) 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.

(123) 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)

409 S.C. 568
Supreme Court of South Carolina.

STEVENS AND WILKINSON OF SOUTH CAROLINA, INC., Gary Realty Company, Inc., Garfield Traub Development, LLC, and Turner Construction Company, Plaintiffs,

Of Whom **Stevens** & Wilkinson of South Carolina, Inc., Gary Realty Company, Inc., and Garfield Traub Development, LLC, are Respondents,

v.

CITY OF **COLUMBIA**, Paul C. "Bo" Aughtry III, Windsor/Aughtry Co., Inc., Vista Hotel Partners, LLC, and Hilton Hotels Corporation, Defendants,

Of Whom the **City** of **Columbia**, is Petitioner.

Appellate Case No. 2012-208490.

No. 27434.
Heard Jan. 21, 2014.
Decided Aug. 20, 2014.

Synopsis

Background: Architectural firm and two developers sued city after city abandoned its plan under a memorandum of understanding into which the parties had entered to develop a publicly funded hotel, asserting claims for breach of contract, quantum meruit, and estoppel. The Circuit Court, Richland County, George C. James Jr., J., granted summary judgment in favor of city on all claims. Firm and developers appealed. The Court of Appeals, 396 S.C. 338, 721 S.E.2d 455, affirmed in part, reversed in part, and remanded. The Supreme Court granted certiorari.

Holdings: The Supreme Court, Hearn, J., held that:
1 where the language of a purported contract clearly expresses the intent to be non-binding, the analysis is limited to the four corners of the document;
2 memorandum of understanding was not a binding contract;
3 developers did not provide more than a mere scintilla of evidence that city retained a benefit from their work, such that city was entitled to summary judgment on a quantum meruit claim; and
4 any enrichment by the city from developers' work was not unjust.

Reversed.

Pleicones, J., dissented and filed opinion.

West Headnotes (20)

Change View

1 **Judgment** ☞ Nature of summary judgment
Purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Rules Civ.Proc., Rule 56(c).

1 Case that cites this headnote

2 **Appeal and Error** ☞ Extent of Review Dependent on Nature of Decision
Appealed from

On review from a grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to the rule on summary judgment. Rules Civ.Proc., Rule 56(c).

5 Cases that cite this headnote

3 **Judgment** ☞ Existence or non-existence of fact issue
Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery prove there is no genuine issue of material fact and the movant must prevail as a matter of law. Rules Civ.Proc., Rule 56(c).

4 **Judgment** ☞ Presumptions and burden of proof
In reviewing the evidence when considering a motion for summary judgment, all inferences must be viewed in the light most favorable to the non-moving party. Rules Civ.Proc., Rule 56(c).

4 Cases that cite this headnote

5 **Contracts** ☞ Application to Contracts in General
Contracts ☞ Language of contract
Where an agreement is clear on its face and unambiguous, a court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement.

2 Cases that cite this headnote

6 **Contracts** ☞ Application to Contracts in General
Where contract language is plain and capable of legal construction, that language alone determines the instrument's force and effect.

1 Case that cites this headnote

7 **Evidence** ☞ Completeness of writing and presumption in relation thereto; integration
When a writing, upon its face, imports to be a complete expression of the whole agreement, and contains thereon all that is necessary to constitute a contract, it is presumed that the parties have introduced into it every material item and term, and parol evidence is not admissible to add another term to the agreement, although the writing contains nothing on the particular item to which the parol evidence is directed.

1 Case that cites this headnote

8 **Evidence** ☞ Completeness of writing and presumption in relation thereto; integration
Where the language of a purported contract clearly expresses the intent to be non-binding, the analysis is limited to the four corners of the document.

9 **Evidence** ☞ Contracts in General
Parol evidence rule involves actual contracts, not purported ones.

10 **Evidence** ☞ Contracts in General
Where a written document, by its own terms, unambiguously indicates it is meant to be nonbinding, a court will not allow the introduction of extrinsic

evidence in an attempt to contradict that clear expression.

1 Case that cites this headnote

11 **Municipal Corporations** ☞ Validity and Sufficiency
Public Contracts ☞ Validity and Sufficiency of Contract
Memorandum of understanding into which **city**, architectural firm, and two developers entered to develop a publicly funded hotel showed that no meeting of the minds existed as to all material terms, and thus the memorandum was not a binding contract; the memorandum expressly stated an intention to enter into future definitive agreements, indicating that the parties consciously agreed to finalize binding agreements at some future time, and the memorandum described the intended agreements with a fluidity that rendered it impossible for a court to anticipate the terms.

12 **Contracts** ☞ Questions for jury
Although the existence of a contract is ordinarily a question of fact for the jury, where the undisputed facts do not establish a contract, the question becomes one of law.

1 Case that cites this headnote

13 **Contracts** ☞ Necessity of assent
A valid and enforceable contract requires a meeting of the minds between the parties with regard to all essential and material terms of the agreement.

2 Cases that cite this headnote

14 **Contracts** ☞ Certainty as to Subject-Matter
For a contract to be binding, material terms cannot be left for future agreement.

1 Case that cites this headnote

15 **Contracts** ☞ Services and compensation therefor
In a contract for services, two essential terms are the scope of the work to be performed and the amount of compensation.

16 **Contracts** ☞ Certainty as to Subject-Matter
Regardless of intent of the parties, an agreement that leaves open material terms is unenforceable.

1 Case that cites this headnote

17 **Implied and Constructive Contracts** ☞ Work and labor in general; quantum meruit
"Quantum meruit" is an equitable doctrine that allows recovery for unjust enrichment under a quasi-contract theory.

18 **Implied and Constructive Contracts** ☞ Work and labor in general; quantum meruit
Elements of a quantum meruit claim are (1) a benefit conferred upon the defendant by the plaintiff, (2) realization of that benefit by the defendant, and

(3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.

19 **Judgment** ☞ Evidence and Affidavits in Particular Cases
Two developers did not provide more than a mere scintilla of evidence that **city** retained a benefit from their work by alleging that a building constructed by a third party looked similar to developers' schematics for a hotel and asserting that they imparted some knowledge to **city**, such that **city** was entitled to summary judgment on a claim by developers against it for quantum meruit after **city** choose the third party to develop the hotel; there was no other evidence that the third party used the schematics in any way or, even if it did, how that benefited the **city**.

20 **Municipal Corporations** ☞ Implied contracts
Public Contracts ☞ Subject matter
Any enrichment by the **city** from two developers' schematic work on a project for a publicly funded hotel that was later developed by a third party chosen by **city** was not unjust, and thus developers could not prevail on a claim against **city** for quantum meruit, absent evidence that developers had any reason to expect that **city** would otherwise compensate them for any work in the event that the project was not completed by them, given that developers were aware, as reflected in a memorandum of understanding between them and **city**, that they were proceeding at risk until a certain event occurred.

Attorneys and Law Firms

***698** Michael W. Tighe, D. Reece Williams, III, Richard C. Detwiler, and Kathleen M. McDaniel, all of Callison Tighe & Robinson, LLC, of **Columbia**, for Petitioner.

Richard A. Harpootlian and Graham L. Newman, both of Richard A. Harpootlian, PA, of **Columbia**; Kenneth M. Suggs and Francis M. Hinson, IV, both of Janet Jenner & Suggs, LLC, of **Columbia**, for Respondents.

Opinion

Justice HEARN.

572** The respondents, two developers and an architectural firm, entered into a Memorandum of Understanding (MOU) with the **City** of **Columbia** as part of a larger project team to develop a publicly-funded hotel for the **Columbia** Metropolitan Convention Center. The **City** eventually abandoned its plan under the MOU, and the respondents brought suit on several causes of action including breach of contract and equitable ***573** relief. The **City** moved for summary judgment arguing the MOU was not a contract and therefore the contract claims failed. The circuit court agreed and, rejecting the equitable claims as well, granted summary judgment in favor of the **City**. The respondents appealed and the court of appeals affirmed in part and reversed in part. ***Stevens** & Wilkinson of South Carolina, Inc. v. **City** of **Columbia, 396 S.C. 338, 721 S.E.2d 455 (Ct.App.2011). We reverse.

FACTUAL/PROCEDURAL BACKGROUND

In January of 2001, the **City**, seeking a team to develop a publicly-funded, full-service hotel adjacent to the convention center, issued a request for qualifications. The **City** settled on a project team in December of 2002 that consisted of the architectural firm of **Stevens** & Wilkinson of South Carolina, Inc. (S & W); Turner Construction Company; Hilton Hotels Corporation; the underwriter Salomon Smith Barney, Inc.; and three developers—Edens & Avant Real Estate Services LLC; Garfield Traub Development, LLC; and Gary Realty Company Inc.

In April of 2003, the **City** and the project team members entered into the MOU. The MOU documented "the understandings reached with respect to the financing, development and operation of the Hotel." It contemplated multiple future agreements to fully define the duties of the parties—the Development Management Agreement, the

Design/Build Agreement, the Qualified Management Agreement, and the HQ Hotel Room Block Commitment, a joint use agreement for parking, and a bond financing agreement. At the outset, the MOU provided:

> This MOU reflects the intent to proceed in good faith to execute definitive written agreements with respect to the business terms and conditions herein contained. Notwithstanding anything herein to the contrary, if the City determines that is it not feasible to proceed with the Hotel project ****699** it shall have no liability under this MOU.

Additionally, the MOU illustrated the roles of the signatories. The **City** was to acquire the land and prepare it for construction, establish a non-profit corporation to own the Hotel and issue bonds for financing, and "retain [Salomon] and legal ***574** counsel to structure and issue approximately $60 million in tax exempt hotel revenue bonds." Under the MOU, the "Developer"—Edens, Garfield, and Gary—"will coordinate design, development, construction and delivery of Hotel in accordance with the terms of the Development Management Agreement to be finalized between the **City** or [non-profit corporation]." S & W, the architect, "shall develop and implement a design review process."

The MOU also addressed payment of the project team, stating:

> The Project Team will be responsible for the costs incurred prior to closing the financing.... If Hotel financing fails to close as a result of the **City** not meeting its obligations outlined in the Development Management Agreement, ... the **City** will reimburse the Project Team for actual, documented costs incurred to that point up to an amount to be agreed upon.

Additionally, the MOU clarified any payment to S & W, Turner, or Salomon was contingent upon Salomon successfully closing the bond financing. The MOU also stated: "All studies, tests, plans and the like prepared or obtained by the Project Team will be assigned to and become property of the **City**."

The parties began negotiating the contracts required under the MOU during the course of the next year. S & W completed its initial design thereby allowing Turner to determine the guaranteed maximum price of the project as envisioned under the MOU, and that price was approved by the **City** in July 2003. S & W informed the **City** it would cease design work for the ninety days remaining until the bond financing closed unless the **City** agreed to compensate it for work performed in the interim. S & W submitted an estimate of $650,000 to continue working until the anticipated bond closing and $75,000 per week after that. On July 30, 2003, the **city** council voted to approve "$650,000 for interim architectural design."

Over the course of the negotiations, the bond issuance required to fund the project rose from the $60 million estimated in the MOU to $71 million by February 2004. Nevertheless, the non-profit organization accepted the financing plan ***575** for the $71 million and set the bond closing date as April 1, 2004. However, by mid-March the estimate had climbed to above $72 million. A little over a week after receiving this most recent financial report, the **City** issued a new request for proposals to develop a privately-funded hotel for the convention center. Ultimately Windsor/Aughtry Co., Inc. was chosen as the developer and it successfully constructed the Hilton.

S & W sued the **City** for breach of contract based on the MOU and the July 30 agreement, and on the equitable grounds of quantum meruit and estoppel.[1] Gary and Garfield also sued the **City** for quantum meruit and breach of the duty of good faith, later adding a breach of contract claim. The **City** moved for summary judgment arguing the MOU was not a contract, it retained no benefit from the work of the project team, and the MOU contained no promise to pay S & W.

In a consolidated order, the circuit court granted summary judgment in favor of the **City** on all claims.[2] Specifically, the court found the MOU was not a binding contract, and instead was a nonbinding agreement to agree in the future. It further held that the respondents failed to present any evidence they had conferred a benefit on the **City**, and that S & W failed to prove a promise to pay ****700** existed within the MOU or that reliance on the MOU for payment was reasonable.

S & W appealed the issue of whether the MOU was a contract and the issue of promissory estoppel. Gary and Garfield appealed the issue of whether the MOU was a contract and their claim for quantum meruit. The court of appeals affirmed in part and reversed in part. *Stevens*, 396 S.C. at 340, 721 S.E.2d at 456. The court affirmed the grant of summary judgment on S & W's claim for promissory estoppel. *Id.* It held the circuit court erred in granting ***576** summary judgment on the grounds the MOU is not a contract, finding there was conflicting evidence as to whether the parties intended to create a binding contract, and therefore reversed and remanded on that issue. *Id.* at 344, 721 S.E.2d at 458. The court of appeals also reversed the grant of summary judgment on Gary

and Garfield's quantum meruit claims, stating it could not rule as a matter of law the City retained no benefit. *Id.* at 347, 721 S.E.2d at 460. The Court granted certiorari to review the court of appeals' opinion.

ISSUES PRESENTED

I. Did the court of appeals err in finding a genuine issue of material fact existed as to whether the MOU is a binding contract?

II. Did the court of appeals err in reversing the circuit court's grant of summary judgment in favor of the City on Gary and Garfield's claim for quantum meruit?

STANDARD OF REVIEW

1 2 3 4 "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). On review from a grant of summary judgment, the Court applies the same standard applied by the circuit court pursuant to Rule 56(c), SCRCP. *Knight v. Austin*, 396 S.C. 518, 521–22, 722 S.E.2d 802, 804 (2012). Accordingly, summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery prove there is no genuine issue of material fact and the movant must prevail as a matter of law. *Id.* In reviewing the evidence, all inferences must be viewed in the light most favorable to the non-moving party. *Id.*

LAW/ANALYSIS

I. MEMORANDUM OF UNDERSTANDING

A. Extrinsic Evidence

Initially, the City argues the court of appeals erred in looking outside the four corners of the MOU to determine ***577** whether it constituted a binding contract. Because we find the MOU is unambiguously not an enforceable contract, we agree.

5 6 "Where an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement." *Miles v. Miles*, 393 S.C. 111, 117, 711 S.E.2d 880, 883 (2011) (quotation omitted). Where the contract language is plain and capable of legal construction, that language alone determines the instrument's force and effect. *Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

7 8 9 10 The respondents argue the MOU is a complete contract, lacking no material terms and the MOU itself claims it fully "identifies the understandings of the parties." Although the majority of case law addressing extrinsic evidence pertains to contract *construction* and not the *existence* of a contract, the inquiry in both instances involves giving force and effect to the intent of the parties, and we discern no reason for different rules of analysis.[3] As this Court has stated:

> ***701** When a writing, upon its face, imports to be a complete expression of the whole agreement, and contains thereon all that is necessary to constitute a contract, it is presumed that the parties have introduced into it every material item and term, and parol evidence is not admissible to add ***578** another term to the agreement, although the writing contains nothing on the particular item to which the parol evidence is directed. *Gladden v. Keisler*, 141 S.C. 524, 542, 140 S.E. 161, 167 (1927). We accordingly hold that where the language of a purported contract clearly expresses the intent to be non-binding, the analysis is limited to the four corners of the document.[4]

B. Existence of Enforceable Contract

11 The City also argues the court of appeals erred in holding a genuine issue of material fact exists as to whether the MOU is a contract. We agree.

12 13 14 15 Although the existence of a contract is ordinarily a question of fact for the jury where the undisputed facts do not establish a contract, the question becomes one of law. *Capital City Garage & Tire Co. v. Elec. Storage Battery Co.*, 113 S.C. 352, 362, 101 S.E. 838, 841 (1920). A valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. *Patricia Grand Hotel, LLC v. MacGuire Enters.*, 372 S.C. 634, 638, 643 S.E.2d 692, 694 (Ct.App.2007). Thus, for a contract to be binding, material terms cannot be left for future agreement. *Aperm of S.C. v. Roof*, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct.App.1986). "In a contract for services two essential terms are the scope of the work to be performed and the amount of compensation." *W.E. Gilbert & Assocs. v. S.C. Nat. Bank*, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct.App.1985).

In reversing the circuit court, the court of appeals focused on the intent of the parties, noting that there were 16 mutual promises within the MOU and some boilerplate contractual language that at least create a genuine issue of material fact as to whether the parties intended the MOU to *579 be a contract. However, regardless of intent, an agreement which leaves open material terms is unenforceable. *Aperm*, 290 S.C. at 447, 351 S.E.2d at 173; 1 Corbin on Contracts § 2.8 (Rev. ed. 1993) ("Even if an intention to be bound is manifested by both parties, too much indefiniteness may invalidate the agreement, because of the difficulty of administering the agreement."); 1 Corbin on Contracts § 4.1 ("A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable of being understood.").

Examining the plain language of the document, we find there was no meeting of the minds as to all material terms and the MOU is therefore unenforceable. It is only an agreement to agree in the future outlining the framework under which the parties would proceed to negotiate the development of the hotel. By its own terms, it "reflects the intent to proceed in good faith *to execute definitive written agreements* with respect to the business terms and conditions herein contained." (emphasis added). The MOU expressly **702 states the intention to enter into future "definitive" agreements, such as the Development Management Agreement, the Design/Build Agreement, the Qualified Management Agreement, and the HQ Hotel Room Block Commitment. Thus, the clear language of the MOU indicates the parties consciously agreed to finalize binding agreements at some point in the future.

The respondents counter that the MOU provides clear guidelines for the subsequent agreement and therefore the MOU is enforceable under *Aperm*. In that case, Aperm of South Carolina, the owner of a roof coating composition and application method entered into an option agreement with Roof and granted him exclusive license to research, develop, manufacture and sell its invention. *Aperm*, 290 S.C. at 444, 351 S.E.2d at 172. The agreement allowed Roof to terminate the contract upon written notice by August 1, otherwise the agreement would become fixed. *Id.* Under the agreement, Roof was also required to present Aperm with a comprehensive manufacturing and marketing program which conformed to the agreement's guidelines. *Id.*

> The program was required to include minimum royalty payments of $4,800.00 per month during the period August 1, 1981 to July 31, 1982, and increased monthly royalty *580 payments thereafter. The marketing and manufacturing program was subject to Aperm's approval, but disapproval had to be reasonably related to the guidelines set out. The contract stated specifically that if the program provided for the minimum royalties, then objections to the program by Aperm would be subject to arbitration, but if the program failed to provide for minimum royalties, Aperm could cancel the contract.

Id. at 444–45, 351 S.E.2d at 172. Roof exercised his rights under the agreement to proceed therewith, but almost immediately defaulted for failing to pay the required royalties to Aperm. *Id.* at 445, 351 S.E.2d at 172. Aperm sued Roof for breach of contract and the trial court awarded damages pursuant to the licensing agreement. *Id.* at 446, 351 S.E.2d at 173. Roof appealed, arguing the licensing agreement was merely an agreement to enter into a contract after August 1 and was therefore unenforceable. *Id.* at 446–47, 351 S.E.2d at 173. The court of appeals disagreed, finding sufficient guidelines for drafting a subsequent manufacture and marketing agreement within the licensing agreement to enforce it. *Id.* at 447, 351 S.E.2d at 174. The court stated that the sine qua non of the manufacture and marketing program was the payment of minimum royalties, noting Aperm agreed to arbitrate the other terms. *Id.*

We find this case distinguishable from *Aperm*. In *Aperm*, the licensing agreement clearly set out the specific sum of minimum royalties and clarified that this payment was the salient factor for the program. Additionally, the *Aperm* agreement only contemplated one future document. Here, the MOU envisions the parties entering into multiple agreements and describes the intended agreements with a fluidity that renders it impossible for a court to anticipate the terms. For example, pursuant to the MOU, "The Developer will coordinate design, development, construction and delivery of the Hotel in accordance with the terms of the Development Management Agreement to be finalized between the City or [non-profit corporation] and the Developer." This leaves the scope of work to be performed by the Developer still undefined as it is as yet unclear *how* it will design, develop, and construct the hotel. We cannot see how merely stating a forthcoming document will dictate the terms of the "design, development, construction and delivery" does not plainly leave material *581 terms undecided. The whole project *is* the design, development, construction, and delivery of the hotel.[5]

Nor is the scope of S & W's duties clearly defined. The only description of the work S & W was to perform under the MOU is to "develop and implement a design review process" and contains no specific reference to an **703 actual design. There are no guidelines as to what this process should look like, only that it should "provide the City, neighborhood and professional staff input into the design of the hotel." The MOU lacks any

provisions on actual design duties of S & W and instead plainly envisions a subsequent contract between S & W and Turner. It is pursuant to this contract with Turner that S & W would be paid.

Furthermore, although initially the parties' compensation appears ascertainable with some certainty, calculating the amounts requires unknown numbers. For example, the Developer "is to be paid a development fee of 4.75% of the project budget," which was undetermined. S & W was to be paid by Turner "a fee of 7.25% ... based on hard construction costs together with [Turner's] general expenses and fees." Aside from the fact Turner, and not the **City**, was to pay S & W, that amount was based on a sum—costs and fees determined by Turner—that was yet to be determined. Additionally, the MOU specifically states in reference to Turner and S & W that "[i]f the Underwriter does not close the financing, the **City** will not be responsible for reimbursing any costs incurred [unless the **City** breached its duties in the Development Agreement]." The MOU further clarifies that "[t]he Project Team will be responsible for the costs incurred prior to closing the financing.... If the Hotel financing fails to close as a result of the **City** not meeting its obligations outlined in the Development Agreement, ... the **City** will reimburse the Project Team for actual, documented costs incurred to that point in time up to an amount to be agreed upon." Thus, any possible liability of the **City** for costs incurred prior to closing the financing was to be agreed upon in a future agreement—the ***582** Development Agreement. This document would illustrate the obligations of the **City** and create liability for any breach. Furthermore, the document would contain an agreed upon limitation on liability. It appears the parties all acknowledged the **City's** liability would be predicated on the Development Agreement, a forthcoming contract that was never executed.

Nevertheless, the respondents argue that focusing on the unfilled gaps of the agreement, such as the bond financing, ignores the fact that one of the duties under the MOU was to obtain the bond financing. Essentially, they argue the MOU is comprised of interdependent parts that are all promises to perform certain specified duties to develop a plan for a feasible, publicly-funded hotel. While we agree that the determination of many of the terms within the MOU necessarily depend on the execution of other portions of the MOU, we fail to see how that changes the analysis.

> 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.

1 Corbin on Contracts § 2.8. From the plain language of the MOU, it is clear the parties knew material terms still remained to be agreed upon. They were also undoubtedly aware that payment and reimbursement was contingent upon obtaining bond financing, which never took place. The parties were in the process of negotiating a plan to develop the hotel and the MOU simply memorialized how the parties planned to proceed in those negotiations toward the execution of binding contracts.

Because the MOU is simply comprised of agreements to execute further agreements, there was no meeting of the minds on numerous material terms which had not yet been defined. Accordingly, we reverse the court of appeals and hold the MOU is unenforceable as a matter of law.

II. QUANTUM MERUIT

The **City** also argues the court of appeals erred in reversing the circuit court's grant of summary judgment finding no ***583** evidence of a benefit conferred on the **City** to maintain Gary and Garfield's quantum meruit claim. We agree.

17 18 Quantum meruit is an equitable doctrine which allows recovery for unjust enrichment under a quasi-contract theory. ***Columbia** Wholesale Co. v. Scudder May*****704** *N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). "The elements of a quantum meruit claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225 (2010).

Gary and Garfield point to plans and drawings prepared by the project team, as well as their expertise, to argue the City retained a benefit from their services. At oral argument, they focused on the site location and orientation of the hotel that was eventually used.Additionally, they highlight the deposition of the **City's** Rule 30(b)(6) representative, the assistant **city** manager, who admitted the **City** gave a rendering of the original project team's proposed hotel to Windsor/Aughtry. It is unclear what Windsor/Aughtry then did with the rendering, but the **City** manager noted the rendering "looks much like the building, the hotel that we presently have." Additionally, Raymond Garfield, the founding member of Garfield Traub, stated in his deposition that Gary and Garfield's work

"gave [the **City**] the ability to distinguish the different financing types, different hotel types" and the **City** was "educated significantly by [Gary and Garfield and their] team in all respects."

The circuit court found this was insufficient to create a genuine issue of material fact, noting it was not enough to say the constructed building "looks like" the previous rendering, with no further detail as to specific "striking similarities." Furthermore, there was no evidence Windsor/Aughtry did anything with the plans or how that directly benefitted the **City**. The court also rejected the argument that the **City** benefitted from the project team's expertise, stating any benefit as to how these deals should be structured was conferred upon the other project members, not the **City**. However, the ***584** court of appeals reversed stating, "We do not believe it is possible to rule as a matter of law that the alleged benefit to the **City** had no value. Therefore, we reverse the circuit court's decision to grant summary judgment on this element of the quantum meruit claim." ***Stevens***, 396 S.C. at 347, 721 S.E.2d at 460.

19 We agree with the circuit court's finding there was no genuine issue of material fact as to whether the **City** retained a benefit. An anecdotal visual comparison alleging the building Windsor/Aughtry constructed looks similar to the schematics for Gary and Garfield's proposed hotel and a vague assertion that Gary and Garfield imparted some knowledge to the **City** does not suffice to withstand the mere scintilla standard. There is no other evidence offered that Windsor/Aughtry used the plans in any way or, even if it did, how that benefitted the **City**. Likewise, we are unpersuaded that the **City** retained a benefit by learning from Gary and Garfield's expertise. To some extent any dealing with other professionals is educational, and this is certainly true in the context of business negotiations. We again, however, fail to find any intrinsic value to the **City**.

20 Moreover, even if we were to find the **City** received some benefit, we find no evidence any enrichment was unjust. There is no evidence Gary and Garfield had any reason to expect the **City** would otherwise compensate them for any work they performed in the event the project was not completed. As the MOU makes plain, the parties were aware they were proceeding at risk until the bond financing closed.

CONCLUSION

Accordingly, we reverse the opinion of the court of appeals and reinstate summary judgment in favor of the **City** on the contract claims and on Gary and Garfield's quantum meruit claim.

TOAL, C.J., BEATTY and KITTREDGE, JJ., concur.

PLEICONES, J., dissenting in a separate opinion.

Justice PLEICONES.

I respectfully dissent and would affirm the decision of the Court of Appeals as I agree that the circuit court erred in ***585** granting the **City** summary judgment on S & W's contract claim and on Gary and Garfield's quantum meruit claim. As explained below, I strongly disagree with that portion of the majority's opinion ****705*** that would extend the applicability and scope of the parol evidence rule.

The parol evidence rule is a substantive rule of law that prohibits the introduction of evidence to contradict, add to, alter, explain, or vary the terms of an unambiguous **valid written contract.** *E.g. Garnett v. WRP Enterps., Inc.*, 380 S.C. 206, 669 S.E.2d 591 (2008). The scope of this rule is limited to evidence of understandings and negotiations that preceded the making of the **complete written agreement**, not post-formation conduct or agreements. 6 Peter Linzer, *Corbin on Contracts* § 25.2 (Joseph M. Perillo ed. 2010).

The majority would now expand the reach of the parol evidence rule in two ways. As explained above, the predicate for the application of the parol evidence rule is a valid and complete written contract: the majority now proposes to apply the rule to an **incomplete writing.** The majority would also expand the scope of the rule and hold not only that it bars pre-writing understandings of the parties, but all extrinsic evidence, whether ante- or post-writing. Explaining the effect of this newly expanded rule, the majority holds that when a writing "unambiguously fails to create an enforceable agreement," the determination whether that document is a valid contract is to be made by looking only within the four corners of the [unambiguously unenforceable] document. In other words, if parties place some part of their contract in writing, but that writing is insufficient to stand alone as a contract, then as a matter of law the parties have no contract.

This new rule unintentionally affects the statute of frauds,[6] since, for example, no longer could evidence of part performance satisfy the statute where the written memoranda did not. *E.g. Mims v. Chandler,* 21 S.C. 480(1884) (written receipt insufficient to satisfy statute but part performance allowed court to order specific performance). Moreover this new rule fundamentally alters the law of contracts in this

State. *See* ***586** *e.g. Gladden v. Keistler,* 141 S.C. 524, 140 S.E. 161 (1927) (while holding a receipt was a contract, opinion acknowledges parol evidence rule does not apply to incomplete written agreements). Further, the majority purports to distinguish *Conner v. **City** of Forest Acres,* 363 S.C. 460, 611 S.E.2d 905 (2005), which reiterates and applies the here-to-fore well settled rule that evidence of conduct is admissible to decide an issue of contract formation. In the majority's view, *Conner* asked whether an employee handbook altered the employee's "at-will employment contract." As I understand *Conner,* there was no pre-handbook "at-will employment contract." Instead, the employee's at-will status resulted from South Carolina's continued recognition of the doctrine of at-will employment, that is, "employment at-will is presumed absent the creation of a specific contract of employment." E.g., *Barron v. Labor Finders of S.C.,* 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011). In my opinion, the majority errs when it holds that evidence found outside the four corners of an incomplete writing is no longer admissible to prove the existence of a contract.

I respectfully dissent and would affirm the decision of the Court of Appeals.

All Citations

409 S.C. 568, 762 S.E.2d 696

Footnotes

1 S & W moved for partial summary judgment arguing the July 30 agreement created a contract between it and the **City**. That case is the subject of our opinion in ***Stevens** & Wilkinson of South Carolina, Inc. v. **City** of **Columbia***, Op. No. 27433, 409 S.C. 563, 762 S.E.2d 693, 2014 WL 4087917 (S.C. Sup.Ct. filed August 20, 2014).

2 Turner Construction also filed suit against the **City** for breach of contract, quantum meruit, contract implied by law, and breach of the duty of good faith and fair dealing. Turner's case was consolidated with the respondents' cases and it simply joined the arguments of the respondents at the hearing. It did not file an appeal.

3 The respondents rely heavily on *Conner v. **City** of Forest Acres,* 363 S.C. 460, 611 S.E.2d 905 (2005), for the proposition that "when the existence of a contract is disputed or its terms are ambiguous, evidence that a party complied with the terms of the alleged contract or acted in conformity therewith is relevant and admissible on the issues of the contract's existence, the meaning of its terms, and whether the contract was breached." *Id.* at 473, 611 S.E.2d at 912. The facts of *Conner* are inapposite. *Conner* was a so-called "employee handbook claim" which dealt with the termination of an employee and posed the question of whether evidence of the employer's grievance procedures was admissible in determining whether the employee handbook provisions constituted contractual terms. *Id.* at 473, 611 S.E.2d at 912. The employee contended the handbook *modified* the terms of her existing at-will employment contract, and therefore the Court held evidence that the employer followed the procedures within the handbook was probative of the intent to treat the handbook as contractual. *Id.* at 473, 611 S.E.2d at 911. Therefore, *Conner* addressed contract modification, not whether a single document constituted a contract.

4 The dissent contends our holding in some way does violence to the parol evidence rule as well as the statute of frauds. We disagree. Of course the parol evidence rule involves actual contracts, not purported ones such as the written agreement here. We make only the unremarkable assertion that where a written document, by its own terms, unambiguously indicates it is meant to be nonbinding, we will not allow the introduction of extrinsic evidence in an attempt to contradict that clear expression.

5 The respondents claim the Preliminary Development Management Scope of Services which was an attachment to the MOU, could have been the final Development Management Agreement. We disagree. That document also lacks significant material terms, including any duties of the **City** and caps on financial liability as contemplated in the MOU.

6 S.C.Code Ann. § 32–3–10 (2007). *See also Corbin, supra* at pp. 20–22, "The Statute of Frauds Compared with the Parol Evidence Rule."

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will come from the people who owe me the lost profits, right? It's not going to come from the LLC. If I was going to make the money through the LLC, then the LLC would distribute me half the money.

Q. That's exactly what I'm asking you is, assuming that these suites were built and assuming you could rent the suites and they generated income, the profit from those suite rentals would come into the LLC as a first step, correct?

A. Yes.

Q. And then a check would be written out of the LLC's checkbook.

A. Mm-hmm.

Q. To the members, as agreed by the LLC.

A. Yes.

Q. And that's how you would ultimately get your money, that's the flow of the money, correct?

A. That's how we've been doing it since 2011.

Q. All right. Now, we've looked at a bunch of documents here. We don't have any formal -- you're not aware of any formal documentation within the LLC, written documentation, that the LLC ever approved the undertaking of this debt, are you?

A. That would be us communicating, and since we

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agreed on it, then that would be the LLC taking on the debt.

Q. Well, let's break that down. I asked you in writing. I have looked at all the documents. I see nothing in writing --

A. Yes, it was done all orally.

Q. Okay. Very good. And are you aware of any formal action within the LLC, a referendum, a vote, minutes of any meeting, that would confirm that?

A. If the -- we discussed this as owners of the building. The owners of the building don't have this LLC. We discussed as owners of the building that we would add property on top of our existing building.

Q. Well, the LLC --

A. I don't think it has to go through the LLC. There's no documents that it go through the LLC. I make 50 percent of the decisions. The Ferderigos brothers make 50 percent of the decisions. If we both agree, then we continue.

Q. I want you to explain what you just said. You said there's no documents that say -- I got confused. There's no documents that say what?

A. You're trying to pin this and say, well, Old Towne, LLC didn't have a meeting that made this.

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We had the meeting amongst the owners of the building. We don't have an LLC for the building. We, as owners of the building, decided to build another part of the building.

Q. A lot of these questions are pretty simple. I just am trying to confirm, I'd like you to confirm, that there is no written documentation of any formal action within the LLC by its members.

A. No. It was done all orally by its members.

Q. Okay. And there's no written agreement within Old Towne, LLC, by the members by which they agreed to respond to any capital calls, correct?

A. Any capital calls.

Q. Yes.

A. Explain that term.

Q. Do you understand what a capital call is?

A. Not so sure.

Q. Okay. If you are in a partnership or an LLC and your profits don't exceed your -- there's a lot of reasons you can make a capital call, but you can be running short one year. For instance, your lawyer and I might be partners, and we're having a bad year. We've got a bunch of contingency cases out there, and we've got to pay our staff.

A. Yup.

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Q. What a partnership has to do and what an LLC has to do from time to time is for Stan and I to kick in money so we can make payroll and keep the lights on.

A. Yup.

Q. You understand what I mean by that?

A. Fortunately, that's never happened with us in the LLC.

Q. And you would agree with me that there's no agreement, no written agreement, signed by any member by which they would agree prospectively to respond to any capital call.

A. We've never made a capital call.

Q. That's not my question. This will go -- really, this will go so much faster if you answer the question I'm asking you. I'm asking you to confirm that you're not aware of any agreement signed by the members of the LLC by which they agree to respond to capital calls.

A. Not written. It was all done orally.

Q. You mentioned earlier in responding to questions by Mr. Cooke that there were a number of instances in which you had discussions with Spiros by which he agreed to mortgage the property as security for the loan that you wanted to undertake.