

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

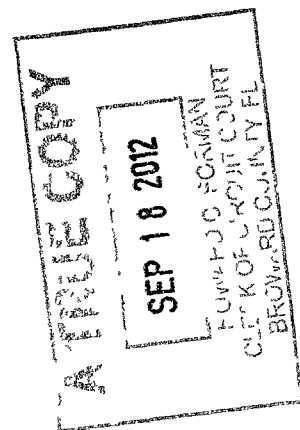
COMERICA BANK,
a Texas banking association,

Plaintiff,

v.

OCEAN 4660, LLC, a Florida limited liability
company, OCEANSIDE LAUDERDALE, INC.,
a Florida corporation, KENNETH A FRANK,
individually, ANGELA DIPILATO, individually,
TOWN OF LAUDERDALE-BY-THE-SEA, a
political subdivision of the State of Florida, WASTE
MANAGEMENT INC. OF FLORIDA d/b/a SOUTHERN
SANITATION SERVICE, a Florida corporation,
AFFINITY MECHANICAL INC., a Florida corporation,
and BROWARD COUNTY, a political subdivision of the
State of Florida,

Defendants.



**DEFENDANT KENNETH A. FRANK'S ANSWER WITH
AFFIRMATIVE DEFENSES**

Defendant, KENNETH A. FRANK (hereinafter referred to as "Frank", *Pro Se*, files his
answer, affirmative defenses to the complaint filed herein by Plaintiff COMERICA BANK, and
states as follows:

GENERAL AND JURISDICTIONAL ALLEGATIONS

1. Defendant admits the allegation in paragraph number 1 of the Complaint.
2. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 2 of the Complaint.
3. Defendant admits the allegation in paragraph number 3 of the Complaint.
4. Defendant admits the allegation in paragraph number 4 of the Complaint.
5. Defendant admits the allegation in paragraph number 5 of the Complaint.
6. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 6 of the Complaint.
7. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 7 of the Complaint.
8. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 8 of the Complaint.
9. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 9 of the Complaint.
10. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 10 of the Complaint.
11. Defendant denies the allegations of paragraph 11 of the Complaint.
12. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 12 of the Complaint.

COMMON BACKGROUND FACTUAL ALLEGATIONS

13. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 13 of the Complaint.

14. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 14 of the Complaint.

15. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 15 of the Complaint.

16. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 16 of the Complaint.

17. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 17 of the Complaint.

18. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 18 of the Complaint.

19. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 19 of the Complaint.

20. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 20 of the Complaint.

21. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 21 of the Complaint.

22. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 22 of the Complaint.

23. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 23 of the Complaint.

24. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 24 of the Complaint.

25. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 25 of the Complaint.

26. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 26 of the Complaint.

27. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 27 of the Complaint.

28. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 28 of the Complaint.

29. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 29 of the Complaint.

30. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 30 of the Complaint.

31. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 31 of the Complaint.

32. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 32 of the Complaint.

33. Defendant is without sufficient information to either admit or deny, and accordingly denies

the allegation set forth in paragraph 33 of the Complaint. The legal description is a written document that speaks for itself, and Defendant denies all allegations of paragraph 33 of the Complaint that are inconsistent with its terms.

34. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 34 of the Complaint.

35. Defendant admits the allegation in paragraph number 35 of the Complaint.

36. Defendant admits the allegation in paragraph number 36 of the Complaint.

37. Defendant admits the allegation in paragraph number 37 of the Complaint.

38. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 38 of the Complaint.

39. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 39 of the Complaint.

40. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 40 of the Complaint.

41. Defendant is without sufficient information to either admit or deny, and accordingly denies the allegation set forth in paragraph 41 of the Complaint.

42. Defendant denies the allegations of paragraph 42 of the Complaint.

COUNT I

~~-----~~ACTION TO FORECLOSE MORTGAGE ON REAL PROPERTY SECURING NOTES

43. Answering paragraph number 43 of the Complaint, Defendant incorporates by reference his answers to paragraphs 1 through 42 as if fully set forth herein.

44. Answering the “Wherefore” clause of Count I of the Complaint, Defendant denies that Plaintiff is entitled to any of the relief requested therein, and that Plaintiff should take nothing by way of the Complaint.

COUNT II

ACTION TO FORECLOSE MORTGAGE ON PERSONAL PROPERTY SECURED BY THE NOTES

45. Answering paragraph number 44 of the Complaint, Defendant incorporates by reference his answers to paragraphs 1 through 42 as if fully set forth herein.

46. Answering the “Wherefore” clause of Count II of the Complaint, Defendant denies that Plaintiff is entitled to any of the relief requested therein, and that Plaintiff should take nothing by way of the Complaint.

DEFENDANT KENNETH A. FRANK’S AFFIRMATIVE DEFENSES

Defendant KENNETH A. FRANK sets forth the following affirmative defenses to advise the parties and the Court of certain applicable defenses. By listing any matter as an affirmative defense, Defendant does not assume the burden of proving any matter as to which Plaintiff bears the burden of proof under applicable law. Accordingly, Defendant KENNETH A. FRANK avers the following defenses:

Particular Facts and Common to Affirmative Defenses

1. Attached to Plaintiff’s Complaint as Exhibit “A” is an installment Note dated January 03,

2008 in the amount of \$ 10,850,000.00. The “Note” appears to be executed by Michael D.

Malaga, Vice President of Comerica bank and Ocean 4660, LLC, by Hanna Karcho-Polselli as its managing member.

2. On page number 6 of the “Note” it sets forth that the Note was made in the State of Michigan and shall be governed and construed by the laws of the State of Michigan. Therefore, jurisdiction is not proper in the State of Florida.

3. Attached to the “Note” is a Confirmation of Swap Transaction (Ref: SW 1558) between entered into between Plaintiff COMERICA BANK and Defendant OCEAN 4660 which confirms a trade date of the “note” of January 25, 2008.

4. Black’s Law Dictionary defines a “swap” as follows:

swap, *n.* *Commercial law.* 1. An exchange of one security for another.

5. Plaintiff admits that it has swapped the “note” for another security. To proceed with a foreclosure action the party seeking foreclosure must present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action. Verizzo v. Bank of N.Y., 28 So. 3d 976, 978 (Fla. 2d DCA 2010); Philogene v. ABN Amro Mortgage Group Inc., 948 So. 2d 45, 46 (Fla. 4th DCA 2006). Where a Defendant denies that the party seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue that plaintiff must prove. Carapezza v. Pate, 143 So. 2d 346, 347 9Fla. 3d DCA 1962). Plaintiff admits that it swapped the note for another security and does not own and hold the note and mortgage in question. Plaintiff further admits, that it separated the debt and the security. The holder of the mortgage unaccompanied by the debt has no enforceable right against the subject real property. See, The American Bank of the South v. Rothenberg, 598 So. 2d 289. Plaintiff cannot prove its

ownership.

6. Attached to Plaintiff's Complaint as Exhibit "B", is a Draw-to-Note in the amount of \$ 1,000,000.00. A Draw-to-Note is not a true Purchase Money Mortgage (PMM). Only a true purchase money mortgage may qualify as a superior lien.

7. The Plaintiff did not exchange "money or money's worth " solely in consideration of the alleged security. Accordingly, the deed does not qualify as security.

8. Attached to Plaintiff's complaint as Exhibit "C", is a Master Swap Agreement where the Plaintiff COMERICA BANK and Defendant OCEAN 4660, LLC, agree to enter into multiple "swaps" of the security. In paragraph number 13, of the Mater Swap Agreement, Plaintiff waives its right to bring a lawsuit in the State of Florida. Plaintiff agrees that any suit, action or proceeding is governed by English law, and the United States District court for the Southern District of New York. As a result, this Court does not have jurisdiction.

9. Attached to Plaintiff's Complaint as Exhibit "D", is a Continuing Collateral Mortgage in which Plaintiff has violated its terms and otherwise prohibits a foreclosure.

Affirmative Defenses

FIRST AFFIRMATIVE DEFENSE **(Failure to State a Claim)**

10. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

11. Only those parties with standing may maintain an action to foreclose upon real property.

12. Only a real party in interest may proceed in a foreclosure action.

13. The Plaintiff admits that it has separated the debt and the security. Therefore, the Plaintiff has no enforceable rights.

14. Plaintiff has swapped the 'instrument' and does not have valid assignments.

15. Plaintiff does not own, hold or possess the instrument.

16. The holder of the debt alone has no security upon which he can depend for satisfaction thereof.

17. Plaintiff has failed to attach any assignments or other documents to the complaint indicating to whom the 'note' was swapped, (ii) the dates of these numerous swaps, (iii) any document evidencing that plaintiff owned, held and possessed the 'note' when this action was commenced, (iv) other documents necessary to evidence plaintiff's standing to foreclose pursuant to these swaps, (v) to document that plaintiff is in fact a real party in interest, and (vi) to evidence that they are entitled to bring an action and upon which defenses could be made, *inter alia*.

18. Rule 1.130 states in pertinent part:

RULE 1.130. ATTACHING COPY OF CAUSE OF ACTION AND EXHIBITS

(a) Instruments Attached. *All* bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading. No papers shall be unnecessary recitals of deeds, documents, contracts, or other instruments.

(b) Part for All Purposes. Any exhibit attached to a pleading shall be considered a part thereof for all purposes. Statements in a pleading may be adopted by reference in a different part of the same pleading, in another pleading, or in any motion. (*Emphasis Added*).

19. In violation of Fla. R. Civ. P. 1.130, plaintiff has failed to annex an assignment(s) of mortgage, (ii) assignments, (iii) documentation of swaps, and other relevant swap documents to determine who the real party in interest would be, (iv) credit default swap insurance documents, (v) satisfactions, and otherwise relevant documents to the Complaint which would be necessarily included and attached to the complaint to demonstrate and assert plaintiff's standing to bring this action.

20. Rule 1.130 does not permit a Complaint without all the assignments and relevant documents being attached.

21. Plaintiff must attach and incorporate the documents that it asserts gives rise to its standing to bring this Action.

22. Plaintiff has not demonstrated any valid chain of custody of the mortgage note through an assignment which would indicate they are the owners of the note.

23. As required by Fla. R. Civ. P. 1.130(a), Plaintiff must attach and incorporate all the documents giving rise to its standing into the Complaint. Plaintiff lacks the ability to even assert that it has standing to bring this Action. Therefore, the Plaintiff has failed to state a cause of action.

24. As a result, Plaintiff has failed to demonstrate its standing to bring this lawsuit.

25. Plaintiff does not have standing to bring and maintain this action and/or is not the real party in interest.

26. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Waiver)

27. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

28. Plaintiff, knew, had reason to know, or should have known that it forfeited its security interest in the subject real property when it “swapped” the note (“instrument”) on the international market for other securities.

29. Plaintiff COMERICA BANK waived any right to foreclose upon the subject real property.

THIRD AFFIRMATIVE DEFENSE
(Action Barred by prior Action-Defendant’s Superior Claim)

30. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

31. This action is barred by a prior pending action and Lis Pendens which involves the same property which is the subject of this foreclosure complaint. The other Action is for an Equitable Lien, Foreclosure of Equitable Lien, Imposition of a Constructive Trust upon the subject real property, *fraud* involving the mortgagor and the subject real property, and other claims relevant and involving the subject real property, timely filed by Defendant(s) Oceanside and Frank.

~~Defendant Frank requests that the Court take judicial notice of the other action and affirm superior~~
claim of Defendants upon the subject property. The Complaint in the prior action is annexed
hereto as Exhibit “A”, and incorporated herein by reference.

FOURTH AFFIRMATIVE DEFENSE

(Plaintiff Comerica Bank's Mortgage is Not a Purchase Money Mortgage and, therefore, Does Not Have Priority Over Defendants Claims upon the Subject Real Property)

32. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

33. The Plaintiff did not exchange "money or money's worth " solely in consideration of the alleged security. Accordingly, the deed does not qualify as security.

34. Plaintiff Comerica Bank's mortgage is not a true Purchase Money Mortgage which cannot be accorded priority over the Defendant(s) Frank's claims, liens, and Federal Common Law Lien and Writ of Attachment.

35. Plaintiff does not designate its mortgage to be a purchase money mortgage.

36. The Draw to Note was not money paid to the Seller as required to be accorded a priority lien. Comerica's mortgage is inferior to Defendant Frank's equitable liens, and Federal Common Law Lien and Writ of Attachment to wit;

a. To have priority over Oceanside and Frank's equitable lien the mortgage must be a purchase money mortgage. To render a mortgage a purchase money mortgage, the whole of the principal must have been applied towards the payment of the purchase price. See, Citibank Mortgage Corporation v. Carteret Savings Bank, F.A., 612 So. 2d 599 (4th DCA 1993). When a mortgage secures purchase money and additional sums, its status as a priority is unclear. Citibank, supra.

b. As such, a security interest exists for priority only where there is an exchange of " money's worth " in consideration for the security. See, United States v. 3809 Crain Ltd. Partnership, 844 F. 2d 138 (4th Cir. 1989).

c. Plaintiff did not exchange money or moneys worth solely for the security in the property. This is evidenced by the issuance and entering into a swap agreement.

37. Plaintiff has no security interest or otherwise that is superior to the defendants claim.

FIFTH AFFIRMATIVE DEFENSE
(Estoppel)

38. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

39. Plaintiff Comerica Bank asserts its right to foreclose based upon an alleged “note” and “mortgage” upon the subject real property.

40. Plaintiff Comerica Bank knew, had reason to know, or should have known that the “swapping” of the “note” prevents them from asserting a claim of foreclosure.

41. The Plaintiffs claims are barred pursuant to the *doctrine of Equitable Estoppel*.

42. The Plaintiff is estopped from enforcing its alleged security interest.

43. Defendant Frank states that Plaintiff is equitably estopped from bringing this suit as a result of Plaintiff’s conduct preceding this action.

44. Plaintiff is estopped from pursuing the remedy of foreclosure because: (i) it entered into a Swap Agreement where it exchanged the security for another; (ii) plaintiff has unclean hands; (iii) upon information and belief, plaintiff’s alleged mortgage has been satisfied through Credit Default Swap Insurance, and (iv) upon information and belief, the plaintiff’s fraud.

45. Because Plaintiff Comerica Bankswapped the instrument for another security, the alleged mortgage was satisfied through credit default swap insurance, they are estopped by virtue

of their inequitable conduct, waiver, lack of standing, satisfaction of the alleged debt, fraud and the fact that they are not a real party in interest among other things.

SIXTH AFFIRMATIVE DEFENSE
(Equity-Unclean Hands and *In Pari Delicato*)

46. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

47. The Plaintiffs claims are barred by the *Unclean Hands* Doctrine and *In Pari Delicato*.

48. The Plaintiff Comerica Bank has unclean hands.

49. The Plaintiff (mortgagee) has participated with Defendant Ocean 4660, LLC (mortgagor) in illegal, inequitable and fraudulent conduct.

50. Plaintiff Comerica Bank commenced this foreclosure action strictly for the purposes of assisting the Defendant Ocean, 4660, LLC in extinguishing the Defendants Oceanside and Frank's liens, notice of pendency and related claims so that; the real property which is the subject of the alleged mortgages, and Defendants Oceanside and Frank's liens can be sold to an interested purchaser, i.e., Songy Partners and the Plaintiffs alleged mortgages can be satisfied in full from the proceeds of said sale.

51. The " swap agreement " and securities fraud.

A. The Bank knew it has forfeited its right to enforce the security agreement when it swapped the mortgage loan on the international market in favor of interest rates not otherwise attainable under the UCC and the terms of a mortgage loan.

52. Plaintiff Comerica Bank is unlawfully participating in the contract of sale of the subject real property with Defendant Ocean 4660, LLC, and to assist Ocean 4660, LLC in the fraud of

Defendant Oceanside and Frank and extinguish Oceanside and Frank's claims.

53. Plaintiff Comerica Bank or any other party to the swap purchased credit default swap insurance and the loan has been satisfied.

54. Unclean hand is a viable defense to, and is sufficient to be able to prevent, a foreclosure. *See, Quality Roof Services, Inc. v. Intervest Nat. Bank*, 21 So. 3d 884 (Fla. 4th DCA 2009). “ Florida Courts have recognized at least the possibility that the doctrine of unclean hands might block foreclosure in cases involving diverse factual scenarios. “ *See, Flagstar Bank, FSB v. A.M. Hochstadt*, Case No. 08-80795, United States District Court for the Southern District of Florida.

55. The *in pari delicto* is a corollary of the doctrine of unclean hands which requires “ that no one shall be permitted to profit from his own *fraud* or wrongdoing (here the securities fraud and the fraud in filing the foreclosure solely to extinguish Oceanside and Frank's claims), and that one who seeks the aid of equity must do so with clean hands. *See, O'Halloran v. Pricewaterhouse Coopers, LLP.*, 969 So. 2d 1039, 1044 (Fla. 2d DCA 2007) quoting *Yost v. Riev Enters., Inc.*, 461 So. 2d 178, 184 (Fla. 1st DCA 1984). *In pari delicto*, which means “ in equal fault “, provides a defendant an affirmative defense based upon the legal maxim that if both parties are at fault equally, the affirmative defense of *in pari delicto* prevents a plaintiff from recovering from their own wrongdoing. *See id.*

56. Comerica Bank has forfeited its right to enforce its alleged security interest. (“Swap “).
Comerica Bank collected interest rates in excess of those permitted under a mortgage.

57. Once the “ Swap “ was executed the “ note “ was required to be destroyed and the swap, the instrument and this action is governed by securities laws.

58. The action was initiated by Plaintiff Comerica Bank solely to assist the mortgagee,

Defendant Ocean 4660, LLC in extinguishing Oceanside and Frank's claims against the subject real property and to facilitate a sale of the property to a potential purchaser who has a contract to purchase the property. The pending litigation between the current owner, Defendant Ocean 4660, LLC and Oceanside Lauderdale, Inc, Frank and DiPilato resulted in the imposition of an equitable lien and lis pendens upon the subject property. Defendant Ocean 4660, LLC cannot sell the property and satisfy the Plaintiff's mortgage unless Defendant Oceanside, Frank and DiPilato's liens are extinguished. This is clearly stipulated in the purchase agreement between Ocean 4660 and Songy Partners and set forth in Affidavits before the United States District Court for the Southern District of Florida. Plaintiff initiated this foreclosure solely to assist Defendant Ocean 4660, LLC in extinguishing Oceanside, Frank and DiPilato's claims upon the real property through this foreclosure. This is clearly evidenced by the fact that the Plaintiff does not seek a receiver or to enforce the personal guarantees associated with the loan. If this were a true foreclosure the Plaintiff Comerica Bank would not forego these remedies. As such, Plaintiff Comerica Bank has unclean hands.

59. Because Plaintiff COMERICA BANK is seeking to benefit from its unclean hands, inequitable conduct, fraud, and otherwise improper acts and actions, their Complaint and the relief sought in their favor is governed by and barred by maxims of equity, including, but not limited to:

- a. Equity regards as done that which ought to be done;
- ~~b. One who seeks equity must do equity, and~~
- c. One who comes into equity must come with clean hands.

SEVENTH AFFIRMATIVE DEFENSE
(Plaintiff's Inequitable Conduct)

60. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

61. Through its inequitable conduct in attempting to usurp the rights of the Defendants Oceanside and Frank in interacting with Defendant Ocean 4660, LLC and prospective purchasers, and thereby commencing a foreclosure proceeding when Plaintiff has knowingly waived its rights, alleged lien and security interest in the subject premises. Plaintiff has waived, and is estopped to receive any equitable relief in the form of a priority lien, contract right, or otherwise, if any existed because it chose to swap the mortgage note on the international market to obtain interest rates and tax advantages not otherwise obtainable under the mortgage note, therefore, the note was subject to being destroyed.

Plaintiff Did Not Own and Hold the Note When this Foreclosure Was Commenced,
therefore, Plaintiff Is Not the Real Party In Interest and Cannot Obtain Equitable Relief
through a Foreclosure

62. Plaintiff Comerica Bank has admitted entering into a Swap Agreement. Said Swap Agreement is annexed to the Complaint. A swap is an agreement between two parties to exchange securities.

63. As is the plain meaning of the word “ swap “.

“ Swap “ is defined in Black’s law dictionary as:

“ the exchange of one security for another “

64. The period of a swap is typically for five (5) years. Swaps are contracts that are traded over the counter (OTC). The Plaintiff has “ swapped “ the note to another party in an over the counter trade. As a result, of the “ swap “, the Plaintiff Comerica Bank did not own and hold the note at the time the foreclosure was commenced since it was swapped with another party in a trade. Since Plaintiff Comerica Bank is not the real party in interest it cannot enforce an equitable remedy such as a foreclosure. At this time, pursuant to the “ swap “ Plaintiff Comerica Bank has no interest in the mortgage being foreclosed. Said “ swap “ is a structural defect that precludes a foreclosure.

EIGHTH AFFIRMATIVE DEFENSE
(Waiver of Right, Privilege, Advantage or Benefit)

65. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

66. Plaintiff waived and/or forfeited any right to enforce its alleged security interest in the real property when it entered into a “ swap agreement “ and traded the note on the open international market. Plaintiff knowingly relinquished its right to seek equitable relief when it swapped..traded the “note “.

67. Under the circumstances, SEC law required the “ note “ be destroyed.

68. Comerica Bank is no longer the real party in interest and has no standing to foreclose.

69. Under the law in order to foreclose Comerica must first buy the note back and, thereafter, it is an unsecured note.

70. The Plaintiff Comerica has knowingly and intentionally relinquished its right to foreclose

and enforce the security interest when it entered into the “ swap agreement “

71. Upon information and belief, the note-loan has been satisfied through credit default swap insurance.

NINTH AFFIRMATIVE DEFENSE

(Defendant Frank is a Third Party Beneficiaries to the Mortgage Contract)

72. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

73. Defendant(s) Oceanside Lauderdale, Inc. and Defendant Frank are Third Party Beneficiaries to the mortgage contract.

74. Florida law recognizes a third part beneficiary’s right to sue for breach of contract. *See, Intercoastal Realty, Inc. v. Tracy*, 706 F. Supp. 2d 1325, 1329 (S.D. Fla. 2010). “ Florida courts have long recognized that a third party beneficiary need not be named in the contract, but that its status may be established by pre-contract and post-contract actions of the parties. *See, Florida Power & Light Co. v. Mid-Valley, Inc.*, 763 F. 2d 1316, 1321 (11th Cir. 1985) *citing, Goodell v. K.T. Enters., Ltd.*, 394 So. 2d 1087, 1089 (Fla. 1st DCA 1981).

Post-Contract Actions:

- a. Fraud by Defendant Ocean 4660, LLC creating the equitable lien and constructive trust, and “ Fraud “ is recognized as a basis to accord priority of a lien;
- b. Ocean 4660, LLC allowed Defendant(s) to make substantial improvements to the real property, correct code violations and otherwise, thus, forming the requisite post contract intent;
- c. The Management Agreement creates the post contract intent;

75. Defendant Frank incorporates by reference, the Complaint in Oceanside Lauderdale, Inc. v. Ocean 4660, LLC, as well as, the contracts annexed thereto and, said complaint and contracts are annexed hereto as Exhibit “A”.

TENTH AFFIRMATIVE DEFENSE
(The Court does not have Subject Matter Jurisdiction)

76. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

77. The Complaint is fatally defective and procedurally flawed as it fails to state how the Court has jurisdiction over the matter.

78. Pursuant to the Mater Agreement and Swap Agreement the parties consented that any breach of the Agreement must be enforced under Federal and English laws with jurisdiction vested in the United States District Court for the Southern District of New York.

79. Pursuant to the Agreements Plaintiff Comerica forfeited its right to pursue an equitable remedy of foreclosure in the Circuit Court for the State of Florida.

80. Lack of Jurisdiction.

ELEVENTH AFFIRMATIVE DEFENSE
(Securities Fraud - Double Dipping)

81. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

82. Fraud is a valid defense to enforcement of a mortgage. *See, Meyerson v. Boyce*, 97 So. 2d 488 (Fla. 3d DCA 1957).

83. Once the “Note “ (negotiable instrument) was swapped, the state of the loan changed. As such, the Plaintiff Comerica Bank forever lost its security interest and ability to foreclose on the mortgage.

84. The UCC requires specifically that the Plaintiff-Bank be a real party in interest to enforce a mortgage foreclosure.

85. Since the loan has been swapped on the open international market it is no longer an enforceable security interest. Attempting to enforce the terms of the mortgage is known as “ double dipping “ a form of securities fraud. The loan can only be in one of two states when it undergoes securitization.

Swap:

- a. Is designed to create types of investment asset not otherwise obtainable under the governing authorities of a mortgage;
- b. To take speculative positions in relation to future movements in interest rates (a mortgage by its terms does not allow this)
- c. Swapping allows issuers to revise their debt profile;
- d. A SWAP SPECIFICALLY CREATES A NEW INVESTMENT ASSET

86. Plaintiff Comerica Bank has swapped one investment for another and no longer has a secured interest in the real property. *See*, FAS 140 created to govern negotiable instruments.

87. A “swap “ is *analogous* to the sale of a security on the open market a conversion to stock of a sort.

88. The Gramm-Leach-Bliley Act governs securitization of loans on the open market and regulates the FDIC and Banking practices with regard to this type “ swap “ of a mortgage.... and mortgaged backed securities and enforcement of a negotiable instrument. Under the Act the swap

caused the “ debt “ to become “ unsecured debt “. Thus, the Plaintiff Comerica Bank’s claim is not prior to the claims of the Defendant.

89. Plaintiff Comerica Bank chose to have a distributed party of interest scheme to secure higher interest and avoid paying taxes twice.

90. Upon information and belief, Plaintiff Comerica Bank or one of the other parties to the swap took credit default swap insurance and the entire debt has been satisfied.

91. Because of the Plaintiff Comerica bank’s fraud the plaintiff is barred from enforcing the mortgage.

TWELFTH AFFIRMATIVE
(*Fraud*)

92. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

93. Fraud is a valid defense to enforcement of a mortgage. *See, Meyerson v. Boyce*. 97 So. 2d 488 (Fla. 3d DCA 1957).

94. The mortgage foreclosure is a *placibo*, designed solely to extinguish Defendant(s) Oceanside and Frank’s claims. This is evidenced, among other things, the fact that the lawsuit does not name Hanna Karcho or Remo Polselli (the guarantors) individually. Nor is there any mention of their personal guarantees and Plaintiff Comerica Bank has not sought a receiver.

95. Upon information and belief, Loan has been satisfied and paid in full already through credit default swap insurance.

96. Because of the Plaintiff Comerica Bank’s participation in a complex fraud with the Defendant Ocean 4660, LLC the plaintiff is barred from enforcing the mortgage.

THIRTEENTH AFFIRMATIVE DEFENSE
(Insufficiency of Plaintiff's Pleading)

97. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

98. Plaintiff's Complaint is insufficiently plead and fails to meet the elements of Florida's heightened pleading laws for a foreclosure action. [Fla. Civ. P. Form 1.944].

FOURTEENTH AFFIRMATIVE DEFENSE
(Plaintiff Is No Longer A Real Party In Interest Pursuant to the Swap)

99. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

100. The Plaintiff in this action is not a party who has standing to bring this action.

101. Plaintiff Comerica Bank is no longer the "real party in interest". A prerequisite to a mortgage foreclosure. An action must be prosecuted by a "real party in interest". Once swapped..... Plaintiff Comerica can no longer claim that it is the real party in interest. *See, In re Jacanson*, 402 B.R. 359-66 (Bankr. W.D. Wash. 2009), *also, In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. 2008). [F.R.C.P. 17(a)(1)] which requires that " [a]n action must be prosecuted in the name of the real party in interest. "

102. Comerica terminated its standing as a real party in interest when it swapped the " note " on the international open market for other securities with more favorable interest rates which could otherwise not be obtained pursuant to the mortgage note.."

103. Plaintiff Comerica Bank cannot maintain this mortgage foreclosure because it is not a real party in interest.

FIFTEENTH AFFIRMATIVE DEFENSE
(The Mortgage Note)

104. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

105. Any proper party bringing such an action must produce the original promissory note evidencing any such debt obligation.

106. The rights of the parties to bring and maintain a foreclosure must be determined by the character of the promissory note. [Fla. Stat. 673.104].

107. Plaintiff must produce an original mortgage note evidencing a valid chain of custody with the SEC tracking card, CUSIP numbers and bar codes evidencing the “swaps” and chain of custody. Plaintiff has failed to do so.

108. Plaintiff’s “swapping the note “ is violative of the Uniform Commercial Code, SEC laws, and applicable Federal Laws.

109. The party seeking foreclosure must present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action. Lizio v. McCullom, 36 So. 3d 927. Plaintiff does not own the note it swapped said note, nor has plaintiff produced the note.

SIXTEENTH AFFIRMATIVE DEFENSE
(Statute of Frauds)

————— 110. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein. —————

111. The Plaintiff is barred from bringing this action by the applicable Statute of Frauds.

SEVENTEENTH AFFIRMATIVE DEFENSE

112. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

113. The Plaintiff is barred from bringing this action by the State of Florida's Real Property Laws.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Jurisdiction)

114. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

115. The Swap Agreement and mortgage specifically state that any action related to the mortgage is governed under Federal Law and in the Southern District of New York.

NINETEENTH AFFIRMATIVE DEFENSE
(Lack of Standing)

116. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

117. Plaintiff lacks standing to bring and maintain the lawsuit.

TWENTIETH AFFIRMATIVE DEFENSE
(Proper Chain of Custody of Note)

----- 118. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

119. Plaintiff has failed to show proper chain of title and/or custody of the mortgage note.

TWENTY- FIRST AFFIRMATIVE DEFENSE
(Forfeiture of Security Interest)

120. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

121. Plaintiff is bound by the terms of a swap agreement as more fully referenced in Plaintiffs Complaint of which forfeited plaintiffs alleged security interest in the subject real property and alleged lien. Under applicable law plaintiff's entering into a swap agreement required the mortgage note to be destroyed

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Credit Default Swap Insurance - Satisfied The Loan)

122. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

123. Plaintiff Comerica Bank has entered into a swap agreement related to the underlying mortgage and note. Plaintiff admits this and has attached the swap agreement to the complaint in this action. Upon information and belief, Plaintiff Comerica Bank has Credit Default Swap Insurance to insure the loan against default. Upon information and belief, Plaintiff Comerica Bank has been paid the full value of the loan. As a result, no debt is due Plaintiff Comerica Bank.

124. There is no debt due plaintiff.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Doctrine of Waiver)

125. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

126. Plaintiff's claims are barred by the doctrine of waiver .

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Plaintiff's Fraudulent Practices)

127. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

128. Plaintiff is barred from pursuing its claim due to its fraudulent practices.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Equitable Lien)

129. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

130. Justice requires a first priority equitable lien securing Defendant(s) Oceanside and Frank and preventing Plaintiff Comerica bank from benefitting from its fraud.

131. The Defendant Oceanside and Frank's *equitable lien* is superior to the Plaintiff's lien and claim. An *equitable lien* or mortgage will arise from a written contract which shows an intention to charge or mortgage some particular property with a debt or obligation. See, Blumin v. Ellis, 186 So. 2d 286, 294 (Fla. 2d DCA 1966).

132. There are sufficient facts to constitute a basis for granting the equitable lien priority over the recorded mortgages. See, Jamnadas v. Singh, 731 So. 2d 69 (5th DCA 1999), to wit;

- a. Plaintiff Comerica Bank and Defendant Ocean 4660, LLC's fraud(s);
- b. The security interest was extinguished when the Plaintiff Comerica Bank entered into the swap agreement;

c. Defendant Frank's Federal Common Law Lien and Writ of Attachment, and

d. Plaintiff Comerica Bank's inequitable conduct, among other things.

133. Because the entire proceeds of the loan were not paid to the seller the mortgage is not a PMM to be accorded priority, and the Plaintiff has forfeited its security interest in the subject real property, justice requires a first priority equitable lien securing Oceanside and Frank.

TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Unjust Enrichment)

134. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

135. If Plaintiff Comerica bank is allowed to foreclose upon the subject real property it would be allow to benefit from its fraud and receive an improper priority security interest.

136. It would be inequitable for Plaintiff Comerica Bank to retain those benefits in light of its fraud, lack of standing and, satisfaction of debt, among other things.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE AND CROSS CLAIM

137. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

138. Defendant(s) Federal Common Law Lien and Writ of Attachment is superior to Plaintiffs' alleged mortgage lien.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Applicability of Federal Laws)

139. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

140. In every mortgage, it states specifically that the instrument is subject to applicable State and Federal Laws. In Defendant Ocean 4660's Master Agreement & Swap Agreement - Mortgage with Comerica Bank, it specifically sets forth that the " Agreement " will be governed by Federal Law (*Id.* Swap Agreement and Master Agreement) that " Applicable Law " means all controlling applicable federal, state and local statutes, regulations, ordinances, and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

TWENTY-NINTH AFFIRMATIVE DEFENSE
(Set Off)

141. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

142. Defendant Frank states that to the extent that Plaintiff is entitled to any damages. Defendant Frank is entitled to setoff any damages incurred as a result of Plaintiff's wrongdoing.

THIRTIETH AFFIRMATIVE DEFENSE
(Declaratory Judgment)

143. Defendant incorporates paragraphs 1 through 42 of his answer and paragraphs 1 through 9 of his Affirmative Defenses as if specifically set forth herein.

144. Plaintiffs inequitable conduct in wrongfully pursuing foreclosure to assist Defendant Ocean 4660, LLC in extinguishing Defendant Oceanside's priority lien and participating with Defendant Ocean 4660 in the sale of the real property.

145. Declaring Plaintiff's alleged lien and security interest invalid.

AFFIRMATIVE DEFENSE
(Additional Defenses)

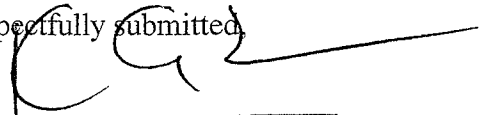
146. The Complaint contains insufficient information to permit Defendant to raise all appropriate defenses and, therefore, Defendant reserves the right to amend and/or supplement this Answer and these Affirmative Defenses to assert additional defenses.

147. Defendants specifically reserve the right to assert further affirmative defenses as are appropriate as further discovery and inspection reveals.

148. By reason of the foregoing, plaintiff is not entitled to a judgment of foreclosure and sale or any determination granting plaintiff priority over the defendants interests in the subject real property.

WHEREFORE, Defendant KENNETH A. FRANK respectfully requests that Plaintiff COMERICA BANK take nothing by way of their Complaint, that the Court enter judgment in favor of Defendant, and that the Court award all other just and proper relief, including costs of this action.

Respectfully submitted,



Kenneth A. Frank
- Defendant, Pro Se -

c/o 2310 East Atlantic Blvd., Suite 206
Pompano Beach, Florida 33062
Tel: (914) 563-4510
Fax: (954) 786-2785

-CERTIFICATE OF SERVICE-

I HEREBY CERTIFY that a copy of the foregoing motion has been mailed first-class U.S. Mail to HOLLAND & KNIGHT, LLP, c/o BRIAN K. HOLE, ESQ., Florida Bar No.: 0019968, 515

East Las Olas Boulevard, 12th Floor, Fort Lauderdale, Florida 33302-4070, Attorney's for

Plaintiff Comerica Bank on this 18th day of September, 2012.

By: 

Kenneth A. Frank, *Pro Se*

EXHIBIT A

1/10/11 we want to sue + there other business West for
Brent's complaint and 10% of profits...

* - See Agreement C par. 6 115 - Venue - court of competent jurisdiction
* substantial investment, agreement par. 4.3 1 -
* No self help action, agreement par. 6 1 -
* consent to jurisdiction, e par. 6 11.3 - of agreement.

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL
CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA

* - Agreement allows offsets of payments to Def.'s
for P's expended ~~money~~ money correcting fire code
violations, etc and improvements, repair fire alarm
KENNETH A. FRANK, and ANGELA DIPILATO gas, alarm system, Roof, A/C, etc.

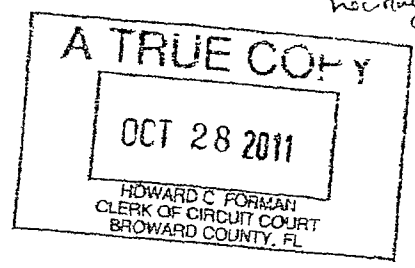
Plaintiffs

vs.

CASE NO.: CACE 10-22268 (13)

OCEAN 4660, LLC., SHUTTERS ON THE OCEAN,
LLC., BOUTIQUE HOTELS AMERICA, LLC.,
HANNA KARCHO, and REMO POLSELLI,

* - need to amend again before
hearing -



Defendants

SECOND AMENDED COMPLAINT

PLAINTIFFS, OCEANSIDE LAUDERDALE, INC. (hereinafter "Oceanside"); KENNETH
A. FRANK (hereinafter "Frank"), and ANGELA DIPILATO (hereinafter "DiPilato") by and through the
undersigned counsel, sue Defendants OCEAN 4660, LLC (hereinafter "4660"); SHUTTERS ON THE
OCEAN, LLC (hereinafter "Shutters"); BOUTIQUE HOTELS AMERICA, LLC (hereinafter
"Boutique"); HANNA KARCHO (hereinafter "Karcho"); and REMO POLSELLI (hereinafter "PolSELLI");
and allege:

Plaintiff does sue Karcho + Polsell

GENERAL ALLEGATIONS

1. This is an action for damages that exceed the sum of Fifteen Thousand Dollars (\$15,000.00)
exclusive of attorneys' fees, costs and interest, and for other relief.

* - How does this complaint establish damages against Karcho + Polsell? if
4660 sells the building or has no Page 1 of 60 assets, (1) how do we pierce corporate veil,
need to add Polsell's background and counts for (a) civil conspiracy + (b) to pierce
corporate veil.

2. Plaintiff Oceanside is a Florida corporation having its principal place of business in Broward County, Florida.
3. Plaintiffs Frank and DiPilato are residents of Broward County, Florida and are otherwise sui juris
4. Plaintiffs Frank and DiPilato at all times material hereto were stockholders and officers of Plaintiff Oceanside.
5. Defendant 4660 is a Florida limited liability company doing business in Broward County, Florida.
6. Defendant Shuttters is a Florida limited liability company doing business in Broward County, Florida.
7. Defendant Boutique is a Michigan limited liability company doing business in Broward County, Florida.
8. Defendants Polselli and Karcho upon information and belief are residents of Michigan doing business in Broward County, Florida.
9. The events and transactions and occurrences giving rise to the causes of action set forth herein occurred in Broward County, Florida.
10. The Agreement referred to hereinbelow, states that venue shall be in a court of competent jurisdiction in Broward County, Florida.
11. All conditions precedent to the filing of this action have occurred or have been waived.
12. Defendant 4660 holds and at all times material hereto has held, legal title to the property located at 4660 N. Ocean Drive, Lauderdale by the Sea, Florida 33308 (hereinafter the "Hotel Premises"); the property located at 4658 N. Ocean Drive, Lauderdale by the Sea, Florida 33308 (hereinafter the "Restaurant Premises"); the property located at 4660 El Mar Drive, Lauderdale

by the Sea, Florida 33308 (hereinafter the "Tiki Bar Premises"). The Hotel Premises, the Restaurant Premises, and the Tiki Bar Premises are hereinafter sometimes collectively referred to as the "Premises")

13. Defendants Shutters and/or 4660 at all time material hereto were listed as the licensee(s) with respect to the alcoholic beverage licenses issued by the state of Florida, applicable to the Hotel Premises, the Restaurant Premises, and the Tiki Bar Premises, as referred to below.

14. Defendants Shutters and Boutique at various times material hereto, have been represented as management companies for the Hotel Premises, and the Tiki Bar Premises.

* 15. Defendants Polselli and/or Karcho own and/or control Defendants 4660, Shutters, and Boutique.

FACTUAL ALLEGATIONS

16. On June 06, 2009, Defendant(s) Karcho and Polselli posted an internet advertisement - advertising a restaurant for sale. Said ad stated that there was a restaurant was for sale, and that the "restaurant " did millions of dollars in sales.

17. On June 13, 2009, Defendant(s) Karcho and Polselli posted a similar internet advertisement - advertising said restaurant for lease.

18. On June 30, 2009, Defendant(s) Karcho and Polselli posted a third internet advertisement advertising the restaurant for lease and stating "that the restaurant came with the liquor license".

19. On or about, July 01, 2009, Plaintiff Frank responded to an Internet posting on Craigslist (Posting ID 1247456988). Said posting advertised a restaurant for lease and stated to "call Hanna at 248-568-3077".

20. Plaintiff Frank subsequently spoke with Defendant Polselli who stated that he was the owner of the

hotel and restaurant and Defendant Karcho was his wife.

21. Plaintiff Frank requested an income and expense statement for the restaurant and an appointment to view the premises and was told that the "restaurant" did \$1,200,000.00 in sales the previous year and Defendant Polselli provided an income and expense statement represented by Defendant Polselli to be the actual income and expense statement for the subject restaurant for the year 2008, which represented that the restaurant located upon the Restaurant Premises earned One Million One Hundred Eighty Three Thousand - Nine Hundred Seventy Eight (\$1,183,978.00) Dollars during that year.
22. Defendant Polselli advised that he was not in the State of Florida, but to go to the site and either "Katrina" or "Bryan" of his hotel staff could show the Plaintiff Frank the restaurant. Plaintiff Frank thereupon conducted a site inspection of the Premises.
23. Based on the representations made by Defendant Polselli, including but not limited to: the condition of the restaurant; Defendant Polselli's agreement to make certain improvements; the acquisition of the "tiki bar" located upon the Tiki Bar Premises; and the restaurant's past income and expenses the Plaintiff Frank on behalf of Plaintiff Oceanside, and Defendant Polselli, on behalf of Defendant 4660, began negotiating an agreement in connection with the said restaurant.
24. Plaintiff Frank and Defendant Polselli exchanged numerous emails and telephone calls, resulting in agreed upon terms for the agreement, including, but not limited to, the following:
 - (A) there was to be a payment to an entity controlled by Defendants Polselli and/or Karcho of \$12,000.00 per month, waived for a two (2) month period allowing the Plaintiff time to renovate the premises;

- (B) agreement term to be for 5 years with four five year options to renew;
- (C) that Defendants Polselli and/or Karcho or an entity controlled by them would pay $\frac{1}{2}$ the expense for the fabrication and installation of a new pole and/or ground sign (illuminated with moving message capability);
- (D) that Defendants Polselli and/or Karcho or an entity controlled by them would bear the cost and expense to install new floor to ceiling "Nano" doors (i.e., "operating doors") thereby creating an open air room, patio bar and patio effect;
- (E) Plaintiffs would be allowed use of the adjacent parking lot for free parking for its customers; and
- (F) the that Defendants Polselli and/or Karcho or an entity controlled by them would pay all tax liabilities.

25. On or about July 18, 2009, Plaintiff Frank caused Defendants Polselli and /or Karcho, as directed by them to receive a check for the sum of Thirty Six Thousand (\$36,000.00) Dollars.
26. Defendants Polselli and /or Karcho stalled in signing the Agreement. Plaintiff Frank was forced to telephone and email the Defendants numerous times in attempting to get the Defendants Polselli and /or Karcho to execute the Agreement. Plaintiff Frank emailed the proposed written agreement on numerous occasions at the request of Defendant Polselli who claimed that it had been lost, or that he was traveling and that he would sign the proposed written agreement if it were resent.
27. On or about September 19, 2009, Plaintiff Oceanside and Defendant 4660 entered into a written agreement based upon the aforesaid negotiations between Plaintiff Frank on behalf of Plaintiff Oceanside and Defendant Polselli on behalf of Defendant 4660, of which a true and correct copy

is attached hereto as Exhibit "A", and is referred to hereinafter as the "Agreement".

28. A copy of the Agreement is recorded as Exhibit "A" to the Notice of Filing and Recording of Affidavit in Support of Notice of Plaintiff Frank, recorded in Official Records Book 47162, at Page 1971, of the Public records of Broward County, Florida. A true and correct copy of said Notice of Filing and Recording of Affidavit in Support of Notice is attached hereto as Exhibit "B",
is incorporated herein by this reference, and is referred to hereinafter as the "Notice and Recorded Agreement".
29. Prior to the entering into of the Agreement, beginning in July 2009, and with Defendants' knowledge, approval and consent, Plaintiffs expended substantial funds for repairs, improvements
and renovations at the Restaurant Premises, including, but not limited to, renovating the kitchen,
new stove, new lighting throughout, painting, new tables and chairs, interior decorating, new flooring, new signs, painting exterior awnings, repairing air conditioning, repairing roof, cleaning, plumbing repairs, electrical repairs, lighting, new televisions, repairing ventilation and fire systems in kitchen, constructed a new bar and shelving, repairs to some existing tables, restoring drop ceilings, new appliances and kitchen equipment, new coffee machines, new sound system, demolition and waste removal..
30. The aforesaid renovations were completed on or about August 27, 2009.
31. The aforesaid repairs and improvements to the Restaurant Premises, had the effect of increasing visitors and patrons to the Premises.
32. Plaintiffs incurred all of the expenses relative to the repairs and improvements, including, but not limited to, paying contractors, purchasing materials, supplies and laborers.

33. Beginning on or about August 27, 2009 and continuing through April 06, 2010, Plaintiffs operated the business, maintained the premises, met payroll obligations, and paid any monies due pursuant to the Agreement.
34. At all times material hereto, Defendants Polselli and/or Karcho represented and warranted to Plaintiffs that they would timely make any and all necessary repairs and the agreed upon improvements pursuant to the Agreement.
35. At all times material hereto, it was Plaintiffs Frank and/or DiPilato, who met, negotiated and followed up with applicable governmental agencies and instrumentalities.
36. At all times material hereto, Defendants Polselli and/or Karcho represented to Plaintiffs that the hotel located on the Premises (referred to herein as the "Hotel") consisting of One Hundred Fifty (150) rooms was enjoying an occupancy ratio of in excess of Eighty (80 %) percent and due to this substantial occupancy that; Plaintiffs' restaurant would derive a vast income from hotel guests in addition to the public.
37. Upon information and belief, Defendants Hotel occupancy was, is and has in fact been under Twenty (20%) percent. Plaintiffs have derived little to no income from Defendants' hotel guests.
38. At all material hereto, Plaintiff relied on Defendants' representations and warranties pertaining to relates to Hotel occupancy to their detriment. Plaintiffs anticipated that a substantial income would be derived by the restaurant from Hotel guests as stated by Defendants Polselli and/or Karcho.
39. Defendants Polselli and/or Karcho represented and warranted to Plaintiffs that Plaintiffs would provid continental breakfast for all Hotel guests at the cost and expense of Defendants Polselli and/or Karcho or an entity controlled by them, for a fee starting at Three Dollars and Fifty cents

(\$3.50) per person. to be deducted from the payments due to Defendants pursuant to the Agreement and that Defendants would pay to Plaintiffs on a monthly basis any excess owed to Plaintiffs for continental breakfast for Hotel guests.

40. On or about December 01, 2009 without cause or notice, the Defendants breached their Agreement with Plaintiffs and discontinued the breakfast service.
41. Plaintiffs have suffered great losses on the continental breakfast due to the fact the price per breakfast was negotiated based upon Hotel occupancy in excess of Eighty (80%) percent as represented by Defendants Polselli and Karcho.
42. Plaintiffs relied to their detriment on Defendants Polselli and/or Karcho's representations and warranties as related to the Hotel's occupancy and the income from the breakfast service when negotiating and agreeing to the payments to be made by Plaintiffs to Defendants.
43. The income and expense statement provided to Plaintiffs was false, in that the statement is the income and expenses for the restaurant referred to in the Agreement and another outdoor patio restaurant (leased to a separate party).
44. The restaurant referred to in the Agreement actually earned less than half of what Defendants Polselli and/or Karcho claimed and led Plaintiffs to believe. Plaintiffs substantially structured the offer resulting in the Agreement based upon said earnings. Had said Defendants *not* provided this false document the Plaintiffs would not have agreed to a Twelve Thousand (\$ 12,000.00) Dollars per month payment under the Agreement.
45. Defendants Polselli and/or Karcho and 4660 have unjustifiably withheld executing the building permit applications for the renovations which Defendants are obligated to perform as per the

Agreement.

46. Defendant Polselli advised Plaintiffs that Defendants would not pay for the improvements to the premises to be performed by Defendants pursuant to the Agreement, despite the terms of the Agreement.

47. Defendant Polselli has stated to Plaintiffs that he did not care what Agreement was signed, what emails were sent agreeing to the payment for agreed upon improvements, and that Defendants were not paying for said improvements.

✈ 48. Defendants Polselli, Karcho and 4660 only agreed to make the improvements in an effort to induce Plaintiffs to enter into the Agreement.

49. Upon information and belief, the installation of the "Nano Doors" would have doubled the income of the business conducted upon the Restaurant Premises.

50. Had Defendants Polselli, Karcho and 4660 never agreed to making the said improvements the Plaintiffs would not have entered into the Agreement.

51. Plaintiffs entered into the Agreement in reliance, among other agreements contained therein, upon the provisions of the Agreement wherein Defendants agreed to make said improvements; upon the substantial additional income that would be derived from the improvements to the premises. Plaintiffs relied on Defendants' said provisions of the Agreement to their detriment.

52. Defendants failure to make the agreed upon improvements in the Agreement constitutes a substantial breach of the Agreement.

53. Defendants Polselli, Karcho and 4660 represented and warranted in Section 4.3.5 of the Agreement that there were no Fire Code violations encumbering the Premises that would impact

Plaintiffs' operation of the restaurant on the Restaurant Premises.

54. Defendants Polselli, Karcho and 4660 agreed in section 3.5 of the Agreement that the Owner named therein would maintain all air conditioning, mechanical, fire prevention, telephone, internet, gas, plumbing and other systems at said Owners' own cost and expense.
55. Plaintiffs relied on said section 3.5 of the Agreement to their detriment.
56. On or about December 10, 2009 the Restaurant Premises were caused to be inspected by the Lauderdale-by-the-Sea Fire Department. Said inspection resulted in issuance of four (4) pages of violations. Among other things, these violations are substantially related to the sprinklers and other fire prevention systems, as well as, faulty electrical wiring. During the inspection the fire Inspector and Fire Chief advised Plaintiffs that the Defendants knew about these violations from a previous inspection and that Defendants did not correct the violations. The Fire Department further advised Plaintiffs that it would shut down the business being conducted by Plaintiffs on the restaurant Premises on or about January 10, 2010 if said violations were not cured.
57. Plaintiff Frank advised Defendant Polselli of the afore-mentioned Fire Inspection and violations. Defendant Polselli responded by stating "That he would close the Hotel before he spent another dollar fixing the violations".
58. Despite Plaintiffs' numerous oral and written requests the Defendants have refused to correct and remedy the Fire Code violations.
59. Despite Plaintiffs' numerous requests the Defendants have refused to make necessary repairs, to the roof, bathrooms, television systems, telephone systems, gas, electrical, mechanical systems, and air conditioning systems serving the Restaurant Premises.

60. Beginning on August 28, 2009, the plumbing to the bathrooms serving the Restaurant Premises experienced blockages, wherein, the bathrooms' floors and walls would become covered with human feces. These blockages occurred at least twice weekly. Defendants refused and continue to refuse to properly repair the plumbing systems serving the bathrooms serving the Restaurant Premises, which are actually located adjacent to the Restaurant Premises in the Premises, in the hotel lobby.
61. On numerous occasions when the plumbing blockages and floods to the bathrooms occurred the past Hotel Manager, Bryan Aghostino would allow the bathrooms to remain closed and covered in human feces for days at a time. As a result, on all these occasions the Plaintiffs would not have restroom facilities for its customers. The Plaintiffs suffered damages of loss of income as a result thereof and upon inquiring of management employees of Defendants 4660, Shutters, and/or Boutique, Plaintiffs were advised that such conduct occurred at the behest of Defendant Polselli.
62. Plaintiffs advised Defendants 4660, Shutters, and/or Boutique and Polselli in writing as to the unavailability of the restrooms, who ignored such communication.
63. Additionally, continually from the inception of the term of the Agreement there has been a failure by Defendants to stock the bathrooms with sanitary supplies, to wit: continuous failure to provide toilet paper, paper towels, soap and other sanitary supplies in the bathrooms in the evening when the Plaintiffs restaurant business experiences most of its business.
64. Further, on numerous and frequent occasions, Plaintiffs were approached by his patrons of the Restaurant Premises who stated that the Restaurant Premises have no restrooms because they are "Out of Order ". Upon investigation by Plaintiff Frank he would a note on the restroom doors

stating: "RESTROOM OUT OF ORDER Thank you, Management". On each and every of these occasions, Plaintiff would find no trouble with the bathrooms and remove the signs. When these incidents were discussed with Mr. Aghostino, the then Hotel Manager by Plaintiff Frank, Plaintiff Frank was advised that the restrooms were broken earlier and "we forgot" to take down the signs.

65. Pursuant to the Agreement the Restaurant Premises customers were to be allowed to use the parking lot adjacent to the Restaurant Premises at no charge. Defendants refused to permit such use by said customers, and charged a Ten (\$10.00) Dollar parking fee to customers of the Restaurant Premises, contrary to the terms of the Agreement.
66. The Agreement further sets forth that Plaintiffs shall have right to operate valet parking in said parking lot at the Plaintiffs' sole discretion.
67. Defendants refused to allow Plaintiffs to operate valet parking in said parking lot at the Plaintiffs' sole discretion.
68. Defendants have obstructed, interfered with, and otherwise improperly blocked Plaintiffs' customers and Plaintiffs' use of the parking lot, and caused Plaintiffs' customers cars.
69. Additionally, Defendants have refused and continue to refuse to allow Plaintiffs to use the parking lot for promotional events as agreed to by and between the parties.
70. Defendants or their agents contacted AT & T and caused the telephone bills for the entire hotel to be transferred into the name of Plaintiffs' business. This caused the Plaintiffs' telephones to be disconnected for a period of time and the Plaintiff to have to tender in excess of \$2,800.00 in payments, as well as, in excess of 20 hours of Plaintiff Frank's time to correct the condition. Thereafter, Defendants refused to pay the telephone bills thereafter, resulting in a period of loss of

telephone service and the necessity to make new arrangements for telephone service to service the Restaurant Premises.

71. In Section 3.4 of the Agreement, Defendant agreed to pay taxes and licensing fees. Defendants have refused and continue to refuse to pay sales tax and other taxes that were due and owing prior to entering into of the Agreement and thereafter with respect to both the Hotel Premises and the Restaurant Premises.
72. Defendants have refused and continue to refuse to pay licensing fees that have become due and owing, forcing Plaintiffs were to pay certain sales taxes and all licensing fees. Said conduct breaches the Agreement and is an additional element of the scheme to defraud Plaintiffs.
73. In Section 3.3 of the Agreement, Defendant agreed to pay for cable and satellite systems serving the Restaurant Premises. Defendants refused to pay for DirecTV service to the Restaurant Premises forcing Plaintiffs to pay for same..
74. In Section 3.3 of the Agreement, Defendant agreed to pay for gas serving the Restaurant Premises. Defendants refused to pay for gas service to the Restaurant Premises forcing Plaintiffs to pay for same.
75. When Plaintiff commenced the operation of the Restaurant Premises, their was an existing Point of Sale computer system (POS). Said computer system is used for processing food and beverage orders, processing credit card sales and sending the orders to the kitchen, among other things. Said computer system is operated by a certain specialty chip costing at in excess of \$10,000.00. This chip went missing during the few days between the Plaintiffs' inspection of the Restaurant Premises and the commencement of operation of the Restaurant Premises by Plaintiffs. When plaintiffs

complained to the then Hotel Manager, Bryan Aghostino that Plaintiffs were going to call the Police and file an insurance claim the said specialty computer chip reappeared.

76. Plaintiffs spent in excess of \$5,000.00 repairing the POS system in getting it to function correctly.

In early November, 2009, on a busy Friday evening the then Hotel Manager, Bryan Aghostino disconnected the Plaintiffs POS system from the internet system at the server serving the Premises in a locked rear room within the Hotel Premises. This sabotage caused turmoil within the Plaintiffs' business and caused the Plaintiff to suffer a great loss of income.

77. When Plaintiff Frank confronted Mr. Aghostino the then manager of the Hotel Premises as to why he disconnected the POS system serving the Restaurant Premises. Plaintiff Frank was told to talk to Defendant Polselli. Plaintiff Frank thereupon immediately telephoned Defendant Polselli who stated that the internet was down in the entire area; this was untrue, as Plaintiff Frank checked surrounding businesses at that time and all had functioning internet service at that time.

78. Said POS system could only operate through an ethernet cable and through the computer server serving the entire Premises. Plaintiffs were left with no choice but to have a new POS system installed which could run via alternative methods not accessible to the Defendants. The purchase and installation of this system took three weeks in total and caused the Plaintiffs to loss of business and income; time and expense to retrain all the employees on the new system; in excess of \$10,0000 to purchase the system.

79. The then manager of the Hotel Premises, Bryan Aghostino, at the instruction of Defendant Polselli, caused to be filed a false fictitious name registration with the State of Florida, Department of State, Division of Corporations indicating that he was the owner of the "Beachside Grill" fictitious name

operated at the Premises.

80. Immediately after verbally negotiating the Agreement in July, 2009, Plaintiffs immediately thereafter contacted an Architect and obtained a proposal for the necessary plans and filing of the improvement project for the patio bar improvement to the Restaurant Premises.
81. Plaintiff Frank telephoned and emailed Defendant Polselli for weeks regarding retention of the Architect, all without a response. Plaintiffs retained the Architect and had the plans drawn. Plaintiffs repeatedly requested that Defendants execute the building permit application for the improvement project to the Restaurant Premises both orally and in writing. The Defendants refused.
82. Plaintiff was relying on Defendants' agreement to construct the patio bar improvements to the Restaurant Premises, i.e., to garner substantial additional income. The Defendants refused to cooperate in any respect in the construction of the patio bar improvements.
83. In September, 2009 while the Plaintiffs were conducting business at the Restaurant Premises, and specifically during the dinner hours, Plaintiff Frank was approached by Bryan Aghostino, the then Hotel Manager, who stated that the dinner music that Plaintiff was playing, consisting of entertainment specifically allowed by the Agreement, disturbed numerous guests on the second floor and that he had to relocate them and refund money. Mr. Aghostino also stated that Defendants Polselli and Karcho were extremely upset and that Plaintiffs would have to pay \$3,000.00 to Defendants Polselli and Karcho. Plaintiff Frank thereupon went to the second floor of the Hotel Premises and discovered that the music could not be heard on the second floor, that the entire second floor was undergoing construction and that there were no hotel guests occupying the second floor because of the ongoing construction. Plaintiffs thereupon refused to pay said

\$3,000.00.

84. On or about October 23, 2009, at the instruction of Defendant Karcho, the then Assistant Hotel Manager, one "Yvonne" entered the Restaurant Premises and told all the employees and patrons to leave and that the "restaurant" was being shut down, whereupon all the patrons left and the employees waited outside for Plaintiff Frank's arrival, upon which Plaintiff Frank told the employees to resume business.
85. During late November and early December, 2009, Plaintiffs became aware of the imminent closing of their business by the Fire Department for serious violations existing prior to the entering into of the Agreement and Defendants' refusal to correct same. Plaintiff thereupon, with notice to Defendants, withheld a portion of the December 2009 Agreement payment to pay for the violations to be corrected, resulting in Plaintiffs being advised that that notwithstanding the preexisting Fire Code violations, if Plaintiffs did not immediately pay the balance of the December 2009 Agreement payment, to defendants, Defendants or agents thereof would enter upon the Restaurant Premises and change the locks, precluding Plaintiffs' access to the Restaurant Premises. Specifically, Defendant Polselli advised Plaintiff Frank and threatened Plaintiff, stating that Defendant Polselli did not care about any of his acts and actions in breaching the Agreement, failure to pay taxes or "the "f*****" fire code violations", and that if the balance of the December, 2009 Agreement payment was not forwarded to Defendant Polselli immediately that Plaintiff Frank would "get hurt and meet people that he did not want to know".
86. In order to preserve the continued operation of the Restaurant Premises, Plaintiff Frank spoke with the Fire Chief in this regard who stated to Plaintiff Frank that if the Plaintiffs were not a separate

small business with no relation to Defendants Polselli and Karcho that the fire chief would have closed the Restaurant Premises immediately because of Defendants Polselli and Karcho's past failures to remedy the fire code violations and pay for fire protection. Upon information and belief, Defendants Polselli, Karcho and/or Defendants 4660, Shutters, and Boutique have refused to pay the Lauderdale by the Sea Fire Department for an amount in excess of \$ 18,000.00 in the past for fire protection service to avoid closing of the Premises.

87. A Fire Department inspection and issuance of code violations occurred on December 10, 2009. The Fire Chief stated that if Defendants Polselli and Karcho did not correct the code violations by January 10, 2009, the Restaurant Premises would have to be shut down.
88. Plaintiffs made numerous oral and written requests to Defendants Polselli and Karcho for Defendants to cure the code violations, to act in good faith towards all the tax obligations, and to honor the terms of the Agreement, which requests were responded to by Defendant Polselli by stating that Defendant Polselli was not paying the taxes or fixing the code violations or doing anything else; that the "season" was here, Plaintiffs would make money and Plaintiffs should forget about the Agreement and pay for the taxes and for the correction of the code violations and improvements to the Restaurant Premises. In response thereto, Plaintiff Frank advised Defendant Polselli that Plaintiff Frank intended to hold Defendants to the Agreement.
89. On or about December 22, 2009, Defendant Polselli telephoned Plaintiff Frank frantically stating that the electric company was at the Hotel and going to shut down the entire hotel if the electric bill was not paid that day, demanding the balance of the December, 2009, Agreement payment to do so. Defendant Polselli also sent this demand to Plaintiff Frank by email. Plaintiff Frank responded

by stating that under the circumstances, and in good faith, Plaintiffs would pay the balance of the December, 2009, Agreement payment directly to Florida Power and Light Co., but wanted written receipt and confirmation from Defendant Polselli for credit on the December, 2009, Agreement payment, who refused to issue any receipt or written confirmation thereof.

90. On December 23, 2009, Plaintiff was greeted by one Nate Brown who stated he was a consultant hired by Defendants Karcho and Polselli to oversee the business. Upon information and belief, Nate Brown is a party associated with Defendant Polselli and hired by Defendants to oust Plaintiffs from the Restaurant Premises. Plaintiff Frank advised said Nate Brown that his consulting services were not needed. However, Nate Brown refused to leave and stated he was employed by Defendants Karcho and Polselli.
91. Plaintiff Frank attempted to explain to said Nate Brown that Defendants were not the owners of the business conducted on the Restaurant Premises and that Plaintiffs were the owner and wished for said Nate Brown to leave the premises, who refused to do so.
92. On December 25, 2009, Plaintiff Frank arrived at the Restaurant Premises to find said Nate Brown removing business records from the Restaurant Premises. When Plaintiff Frank attempted to stop said Nate Brown, said Nate Brown attacked, punched, kicked and strangled Plaintiff Frank. When Plaintiff Frank called the police, said Nate Brown took the money from the cash register, and fled the premises. Plaintiff Frank thereupon advised Defendant Polselli of this occurrence via telephone message.
93. On December 28, 2009 Plaintiff Frank mailed Defendant Polselli and questioned why Defendant Polselli never sent the written confirmation and accepted the tender of the balance of the

December, 2009, Agreement payment. Plaintiff Frank implored Defendant Polselli to let Plaintiffs correct the Fire Code violations and deduct the amount so expended from the Agreement payments, which Defendant Polselli refused.

94. On or about December 28, 2009 at approximately 9:00 a.m., Plaintiff Frank received a threatening telephone message from Defendant Polselli stating if he did not receive the balance of the December, 2009, Agreement payment on December 28, 2009 (that day) Plaintiff Frank “would meet people he did not want to meet“ and that the matter would be out of the hands of Defendant Polselli.
95. In response, and on or about December 28, 2009, Plaintiff Frank sent Defendant Polselli an email confirming Defendant Polselli’s threatening message and, again requested the fire code violations be corrected. Plaintiffs stated they would pay the balance of the Agreement payments with certain written caveats, if the fire code violations were corrected. Defendant Polselli refused.
96. On December 31, 2009 at approximately 10:00 a.m. Plaintiff met with Defendant Polselli’s General Manager, Domean Tax, and then on site Hotel Manager, Michael Asan. Plaintiff Frank advised them that he had obtained a restraining order to prevent the aforesaid Nate Brown from being within 500 feet of Plaintiff Frank.
97. On December 31, 2009 at approximately 6:00 p.m., said Nate Brown arrived at the Restaurant Premises. Plaintiff Frank asked him to accompany him to the Hotel Manager’s office. Plaintiff and Hotel manager, Michael Asan, stood by for the arrival of the Police to serve the aforesaid restraining order.
98. On December 31, 2009 at approximately 7:00 p.m., Plaintiff Frank was standing in the bar area

of the Restaurant Premises whereupon an unknown man approached Plaintiff Frank and without warning viciously punched Plaintiff Frank in the face several times. When Plaintiff Frank fell to the ground he was struck with a chair numerous times, and punched and kicked repeatedly. During the attack the unknown attacker stated that "Nate" and "Remo" (meaning the aforesaid Nate Brown and Defendant Polselli) said Plaintiff Frank was "leaving this business one way or the other."

99. Plaintiff Frank was left on the floor bloody and incoherent with blurred vision and unaware of his surroundings.
100. The Restaurant Premises at the time of the aforesaid attack was full of patrons; at the time of the vicious attack on Plaintiff Frank, all the patrons fled.
101. The police responded to the scene and based upon a telephone conference with Defendant Polselli between officers Joseph, Williams, Pickell, and Artega wherein Defendant Polselli advised the officers that he was the owner of the premises and did not sign any agreement with Plaintiffs and that Defendant Polselli wanted Plaintiff Frank removed from the premises, and despite Plaintiff Frank showing said officers a copy of the Agreement, Officer Pickell issued Plaintiff Frank a trespass warning and ordered Plaintiff Frank from the Restaurant Premises, resulting in Plaintiff Frank being ousted from the business conducted on the Restaurant Premises without due process and without court order.
102. On or about March 03, 2010, Defendants Karcho and Polselli personally and through the agents Defendants 4660, Shutters and/or Boutique caused the locks to be changed on the doors of the Restaurant Premises in the middle of the night.
103. On or about March 04, 2010, when Plaintiff DiPilato went to open the Restaurant Premises for

business she found that Plaintiffs had been locked out of the Restaurant Premises. Plaintiff DiPilato immediately telephoned the Broward County Sheriff's office, produced a copy of the Agreement and requested to enter upon the Restaurant Premises. The deputies responding authorized Plaintiff DiPilato to enter the premises. Plaintiff DiPilato thereupon contacted a locksmith and reentered the Restaurant Premises. Within a half hour thereafter, Defendants became aware of Plaintiffs' reentry, caused the Broward County Sheriff's office to return to the premises and requested that the deputies so responding remove Plaintiff DiPilato and the employees of Plaintiffs' business from the Restaurant Premises, which the responding deputies did do. After being so removed, Plaintiff DiPilato caused a copy of the Agreement and copies of checks paid to Defendants pursuant thereto to be shown to the deputies, who thereupon restored Plaintiff DiPilato and the employees to possession of the Restaurant Premises.

104. Following March 04, 2010, and in response to the events of March 3, 2010, and March 4, 2010, Defendants Karcho and Polselli, again in the middle of the night, caused Plaintiffs' "Beachside Grill" sign to be removed from the front wall of the building housing the Restaurant Premises. Said sign cost in excess of Ten Thousand (\$10,000.00) Dollars. Plaintiffs had to immediately purchase new temporary signage, install same and purchase a new permanent sign for in excess of Ten Thousand (\$10,000.00) Dollars.

105. By April 06, 2010 the Plaintiffs had cured all the of aforesaid the fire code violations, at Plaintiffs expense, except for a new "crash bar" lock on the lobby door leading from the restaurant Premises into the Hotel Premises, and substantial repairs to the building's fire sprinkler system.

106. On April 6, 2010, the Fire Marshal re-inspected the Premises and closed the Plaintiff(s) restaurant

due to the remaining violations. As a result, Plaintiffs' business was closed.

107. On April 6, 2010, Defendant Karcho was also at the Premises. Defendant Karcho, during or immediately following the closure of the Restaurant Premises by the Fire Marshal, while acting in ripped the alcoholic beverage license applicable to the restaurant Premises from the wall and assaulted and battered Plaintiffs' employee. Defendant Karcho's actions were of such a violent and disruptive nature that the Fire Marshal felt it necessary to call the Broward County Sheriff to control Defendant Karcho.

108. On April 6, 2010, after the Fire Marshal's inspection and closure of the Restaurant Premises for the violation(s) Defendant Karcho unlawfully ordered Plaintiffs' employees from the premises and conducted another unlawful withholding of possession from Plaintiffs by chaining the doors to the restaurant Premises and denying the Plaintiffs' access to the Restaurant Premises.

109. On April 6, 2010, Defendant Karcho failed to properly shut down the gas systems in the kitchen. As a result, the next day, an odor of gas emanated from the restaurant. This caused a substantial emergency response from the Fire Department. The investigation took hours and caused the evacuation of the entire Premises.

110. The aforesaid failure of Defendant Karcho to properly shut down the gas systems in the kitchen, caused the gas lines to the Restaurant Premises be shut down by the gas company, resulting in significant cost to Plaintiffs to have the gas lines tested, repaired as necessary, and gas service restored to the premises.

111. As a result of the aforesaid events beginning on April 6, 2010, Plaintiffs' entire perishable food inventory spoiled.

112. Plaintiffs thereafter caused repairs to be made to the Restaurant Premises with respect to the fire code violations sufficient to permit the reopening of the Restaurant Premises
113. When Plaintiffs finished correcting the said fire code violations, the Plaintiffs attempted to re-open the Restaurant Premises for business. This resulted in Defendant Karcho initiating a complaint to the Florida Division of Alcohol Beverages and Tobacco that she was the licensee and that she no longer wished for Plaintiffs to conduct business under her Alcoholic Beverage license, notwithstanding the provisions of the Agreement. Defendant Karcho's complaint resulted in the Restaurant Premises being closed again.
114. Prior to the Plaintiffs being able to initially open the Restaurant Premises, the Plaintiffs had to satisfy Defendants' delinquent alcoholic beverage supplier bills in excess of \$3,000.00.
115. Defendants misrepresented the status of said alcoholic beverage license with governmental and controlling agencies.
116. Defendants caused violations to attach to said alcoholic beverage license.
117. Defendants interfered with plaintiffs use of said alcoholic beverage license by, including, but not limited to contacting numerous vendors and stating to them that Plaintiffs did not have permission to conduct business or sell alcoholic beverages at the Restaurant Premises and that Defendants wished to block deliveries to Plaintiffs.
118. Defendants otherwise improperly interfered with Plaintiffs conduct of business on the Restaurant Premises pursuant to the aforesaid alcoholic beverage license, intending to close the Plaintiffs business, and deprive Plaintiffs of their livelihood.
119. On or about April 12, 2010, Plaintiffs received a message from the "Hotel Staff" that Defendant(s)

5/6/2010
Improvement

Karcho and Polselli would unlock the premises in exchange for a payment of \$50,000.00.

120. These statements prompted further meetings with the Fire Department and the Broward County Sheriffs Office. Plaintiffs tendered copies of the Agreement to both agencies and requested that they refrain from blocking Plaintiffs' reentry onto the Restaurant Premises

121. On or about April 16, 2010 both the Fire Department and the Broward County Sheriffs Office agreed that the dispute between Plaintiffs and Defendants was a civil matter; and that Plaintiffs were lawfully entitled to possession of the Restaurant Premises.

122. On or about April 16, 2010 the Plaintiffs reentered the Restaurant Premises. Upon reentry, Plaintiffs realized that Defendants had caused the looting from the Restaurant Premises of Plaintiffs' entire inventory of thousands of dollars worth of food, and alcoholic beverages, and tampered with the electrical systems, air conditioning systems and computers.

123. On Sunday, April 18, 2010, Plaintiffs Frank and DiPilato went to the Restaurant Premises to check for possible flooding, due to massive rains on that date. Plaintiffs discovered that sometime between April 16, 2010 when the Plaintiff's re-secured the premises, and Sunday April 18 2010, the Defendants and/or the Defendants agents used their keys to enter the restaurant, and further looted the Restaurant Premises, taking the POS Computer system valued at approximately \$10,000.00) and the Projection Televisions, valued at approximately \$5,000.00 each, as, as well as totally disabling the Air-Conditioning systems.

124. Shortly thereafter, Defendants' employee Mike Lange approached Plaintiff Frank and stated that Defendants Karcho and Polselli would sell Plaintiffs back the POS Computer system and projection televisions for \$10,000.00.

125. Since the Plaintiffs' restaurant has been closed, the Restaurant Premises have been exposed to numerous thefts and acts of vandalism, including, but not limited to; front glass doors being broken; rear door being broken; and numerous thefts of plants, outdoor furniture and a trailer, all belonging to Plaintiffs.
126. On or about March 08, 2010 the Broward County Revenue Collection Division posted a WARNING NOTICE (Final Notice) upon the Restaurant Premises that "there was a 30 day deadline" for the Defendants to pay their Tangible Personal Property taxes for the year 2008
127. Plaintiffs notified Defendants in writing, attached a copy of the WARNING NOTICE and plead with Defendant(s) to pay their taxes due, who refused to do so. As a result thereof, on or about April 4, 2010, the Broward County Revenue Collection Division posted a Notice upon the Restaurant Premises that said premises could not be opened for business.
128. Since the Defendants acquired ownership and operation of the Premises, Defendants refused to pay Sales Taxes.
129. Said refusal and failure to pay Sales Taxes has caused the State of Florida Department of Revenue to issue in excess of \$200,000.00 of Sales Tax Warrants.
130. Pursuant to the terms and conditions of the Agreement the Defendants are obligated to pay all past, current and future Sales Taxes that may accrue.
131. The Defendants have refused to pay all employee Withholding Taxes, Social Security Taxes and Medicare taxes that may accrue during the term of the Agreement, despite the provisions of the Agreement.

COUNT I - PLAINTIFF OCEANSIDE'S CLAIM FOR BREACH OF CONTRACT

AGAINST DEFENDANT 4660

Plaintiff Oceanside sues Defendant 4660, and alleges:

132. This is an action for breach of contract.
133. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in paragraphs 1. through 35., 45. through 89., and 102. through 131., hereinabove, with the same force and effect as if hereinafter set forth at length.
134. Plaintiff Oceanside and Defendant 4660 entered into the Agreement.
135. The Agreement is a valid contract between Plaintiff Oceanside and Defendant 4660.
136. Defendant 4660 materially breached the Agreement in numerous ways, including, but not limited to, the following:
 - (A) Failing to maintain the restrooms in a sanitary and healthy condition;
 - (B) Failure to properly clean and maintain the restrooms and to timely clean blockages and human feces from the restrooms;
 - (C) failure to provide supplies in restrooms;
 - (D) failing to cure and correct fire code violations;
 - (E) failing to cure and correct health code violations;
 - (F) failing to cure and correct violations with respect to the alcoholic beverage license applicable to the Restaurant Premises;
 - (G) interfering with, obstructing and denying Plaintiffs use of the alcoholic beverage license applicable to the Restaurant Premises;
 - (H) refusing to turn over and/or assign the alcoholic beverage license applicable to the

Restaurant Premises to Plaintiffs;

- (I) interfering with, obstructing and denying Plaintiffs' use of the parking lot;
- (J) failure to consent to and sign building permit applications and other relevant documents;
- (K) failure to make agreed upon improvements;
- (L) failure to pay taxes and licensing fees;
- (M) failure to pay utilities;
- (N) failure to pay for and maintain cable, cable television and satellite systems;
- (O) failure to comply corrective action required by governmental agencies and inspections conducted by governmental agencies;
- (P) failure to repair and maintain electrical, mechanical, air-conditioning, fire prevention and ventilation systems;
- (Q) failure to repair electrical code violations, including, but not limited to, failure to correct faulty electrical wiring throughout the Restaurant Premises;
- (R) failure to make repairs to the Restaurant Premises;
- (S) charging the Restaurant Premises patrons for parking;
- (T) opening utility accounts in Plaintiff's business name;
- (U) filing false documents with municipal agencies in Plaintiff's business name;
- (V) Interfering with and disconnecting Plaintiffs' Point of Sale (POS) system (credit card processing); thereby, causing plaintiff to expend substantial sums for a new Point of Sale (POS) system;
- (W) rendering the Restaurant Premises untenable;

- (X) causing the removal of Plaintiff's business sign;
- (Y) causing the loss, destruction and/or removal of Plaintiff's inventory;
- (Z) disabling the Air-Conditioning systems serving the Restaurant Premises; failure to comply with the terms of the Agreement concerning Plaintiff's right of first refusal for the "tiki bar" located in the rear of the Premises (on beach) to Plaintiffs.

137. Plaintiff Oceanside has suffered damages as a proximate result of the aforesaid material breaches of the Agreement in the loss of its entire investment in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).
138. Plaintiff Oceanside has suffered damages as a proximate result of the aforesaid material breaches of the Agreement consisting of lost profits in excess of One Million Dollars (\$1,000,000.00).
139. Pursuant to Section 6.11.4 of the Agreement, the prevailing party is entitled to an award of reasonable attorneys fees from the non-prevailing party.

WHEREFORE, Plaintiff Oceanside demands judgment for damages consisting of the loss of its investment in the Restaurant Premises, lost profits, the costs of this action, and reasonable attorneys fees, together with such other and further relief as this Court may deem proper against Defendant 4660.

COUNT II - PLAINTIFF OCEANSIDE'S FRAUD CLAIM AGAINST DEFENDANTS 4660 AND POLSELLI

Plaintiff Oceanside sues Defendants 4660 and Polselli, and alleges:

140. This is an action for fraud.
141. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in paragraphs 1. through 74., 79 through 89., 105. through 118., and 126. through 121.,

hereinabove, with the same force and effect as if hereinafter set forth at length.

142. Defendant Polselli, on behalf of Plaintiff Oceanside, made several false statements of material fact to Plaintiff Frank, on behalf of Plaintiff Oceanside, including, but not limited to, the following:

- Says by whom?*
- (A) that the earned income for the Restaurant Premises in 2008 was in excess of One Million Dollars;
 - (B) misrepresenting the income Plaintiff would derive from the premises;
 - x (C) that Defendants would pay for certain substantial renovations and improvements to the restaurant without any intention on the part of Defendants to perform same;
 - (D) that there were no pre-existing health, fire and building code violations;
 - (E) that Defendants would pay taxes with respect to the Restaurant Premises and business operations conducted on the Restaurant Premises without any intention on the part of Defendants to pay same;
 - (F) that Defendants would pay all applicable licensing fees without any intention on the part of Defendants to pay same;
 - (G) that Plaintiff's customers would have free parking without any intention on the part of Defendants to provide same;
 - (H) that Plaintiff's would have unfettered use of the parking lot at the Premises without any intention on the part of Defendants to provide same;
 - (I) that Plaintiff's could provide valet parking at plaintiff's discretion without any intention on the part of Defendants to permit same;
 - (J) falsely representing the hotel's rate of occupancy.

(K) that Defendants would not interfere with Plaintiff's use of the Restaurant Premises alcoholic beverage license without any intention on the part of Defendants to permit such use;

(L) That the Restaurant Premises were in compliance with Federal, State and Local laws and ordinances

143. Defendant Polselli knew at the time of utterance of such false statements that such statements were false.

144. Defendant Polselli made the aforesaid false statements for the purpose of inducing Plaintiff Oceanside and/or Frank to act in reliance thereon.

145. Plaintiff Oceanside, in reliance upon the aforesaid false statements entered into the Agreement.

146. Plaintiff Oceanside, in reliance upon the afore said false statements invested funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

147. Plaintiff Oceanside as a result of the aforesaid false statements has suffered damage in the loss of its entire investment in the restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

148. Plaintiff Oceanside as a result of the aforesaid false statements has suffered damage consisting of lost profits in excess of One Million Dollars (\$1,000,000.00).

WHEREFORE, Plaintiff Oceanside demands judgment for damages consisting of the loss of its investment in the Restaurant Premises, lost profits, punitive damages, interest, and the costs of this action,

together with such other and further relief as this Court may deem proper against Defendants 4660 and Polselli.

COUNT III - PLAINTIFF OCEANSIDE'S CLAIM FOR FRAUD

*How is Karcher
not her partner
able...
now do we collect
against Karcher?*

IN THE INDUCEMENT AGAINST DEFENDANTS 4660 AND POLSELLI

Plaintiff Oceanside sues Defendants 4660 and Polselli, and alleges:

149. This is an action for fraud in the inducement.
150. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in paragraphs 1. through 51., 53. through 74., 80 through 83., 85. through 88., 105 through 106., 112. through 118., and 126. through 131., and paragraph 142., including subdivisions a. through l. thereof, hereinabove, with the same force and effect as if hereinafter set forth at length.
151. The aforesaid false statements were misrepresentations of material facts.
152. Defendant Polselli knew or should have known of the falsity of the aforesaid false statements at the time of utterance of such false statements.
153. Defendant Polselli intended that the aforesaid false representations and statements of material fact would induce Plaintiff Oceanside and/or Frank to rely on the aforesaid false representations and statements of material fact and act thereon.
154. Plaintiff Oceanside, in reliance upon the aforesaid false statements entered into the Agreement.
155. Plaintiff Oceanside, in reliance upon the afore said false statements invested funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).
156. Plaintiff Oceanside as a result of the aforesaid false statements has suffered damage in the loss of its entire investment in the restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).
157. Plaintiff Oceanside as a result of the aforesaid false statements has suffered damage consisting of lost profits in excess of One Million Dollars (\$1,000,000.00).

WHEREFORE, Plaintiff Oceanside demands judgment for damages consisting of the loss of its investment in the Restaurant Premises, lost profits, punitive damages, interest, and the costs of this action, together with such other and further relief as this Court may deem proper against Defendants 4660 and Polselli.

**COUNT IV - PLAINTIFF OCEANSIDE'S CLAIM FOR
FRAUDULENT MISREPRESENTATION AGAINST
DEFENDANTS 4660 AND POLSELLI**

Plaintiff Oceanside sues Defendants 4660 and Polselli, and alleges:

158. This is an action for fraudulent misrepresentation.
159. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in paragraphs 1. through 51., 53. through 74., 80 through 83., 85. through 88., 105 through 106., 112. through 118., and 126. through 131., and paragraph 142., including subdivisions a. through l. thereof, hereinabove, with the same force and effect as if hereinafter set forth at length.
160. The aforesaid false statements were false representations of material facts.
161. Defendant Polselli knew at the time of utterance of such false statements that such statements were false.
162. Defendant Polselli intended that the aforesaid false representations and statements of material fact would induce Plaintiff Oceanside and/or Frank to rely on the aforesaid false representations and statements of material fact and act thereon.
163. Plaintiff Oceanside, in reliance upon the aforesaid false statements entered into the Agreement.
164. Plaintiff Oceanside, in reliance upon the afore said false statements invested funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

165. Plaintiff Oceanside as a result of the aforesaid false statements has suffered damage in the loss of its entire investment in the restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000 00).

166. Plaintiff Oceanside as a result of the aforesaid false statements has suffered damage consisting of lost profits in excess of One Million Dollars (\$1,000,000.00).

WHEREFORE, Plaintiff Oceanside demands judgment for damages consisting of the loss of its investment in the Restaurant Premises, lost profits, punitive damages, interest, and the costs of this action, together with such other and further relief as this Court may deem proper against Defendants 4660 and Polselli.

**COUNT V -
PLAINTIFF OCEANSIDE'S CLAIM FOR NEGLIGENT
MISREPRESENTATION AGAINST DEFENDANTS 4660
AND POLSELLI**

Plaintiff Oceanside sues Defendants 4660, and Polselli, and alleges:

167. This is an action for fraudulent misrepresentation.

168. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in paragraphs 1. through 51., 53. through 74., 80 through 83., 85. through 88., 105 through 106., 112. through 118., and 126. through 131., and paragraph 142., including subdivisions a. through l. thereof, hereinabove, with the same force and effect as if hereinafter set forth at length.

169. The aforesaid false statements were misrepresentations of material facts.

170. Defendant Polselli either knew at the time of utterance of such misrepresentations, made the misrepresentations without knowledge of the truth or falsity thereof, or should have known the

representations were false.

→ (he do we called
against Karcho.

171. Defendant Polselli intended to induce Plaintiffs Oceanside and Frank to act on the misrepresentations.

172. Plaintiff Oceanside, in justifiable reliance upon the aforesaid misrepresentations entered into the Agreement.

173. Plaintiff Oceanside, in justifiable reliance upon the afore said misrepresentations invested funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

174. Plaintiff Oceanside as a result of the aforesaid misrepresentations has suffered damage in the loss of its entire investment in the restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

175. Plaintiff Oceanside as a result of the aforesaid misrepresentations has suffered damage consisting of lost profits in excess of One Million Dollars (\$1,000,000.00).

WHEREFORE, Plaintiff Oceanside demands judgment for damages consisting of the loss of its investment in the Restaurant Premises, lost profits, punitive damages, interest, and the costs of this action, together with such other and further relief as this Court may deem proper against Defendants 4660 and Polselli.

**COUNT VI -
PLAINTIFF OCEANSIDE'S CLAIM FOR WRONGFUL EVICTION
AGAINST 4660, SHUTTERS, BOUTIQUE, KARCHO, AND POLSELLI**

----- Plaintiff Oceanside sues Defendants 4660, Shuttters, Boutique, Karcho, and Polselli, and alleges: - - -

176. This is an action for wrongful eviction.

177. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in

paragraphs 1. through 131., hereinabove, with the same force and effect as if hereinafter set forth at length.

178. The aforesaid actions of the Defendants 4660, Shuttters, Boutique, Karcho, and Polselli resulted in the closure of the business operated by Plaintiff Oceanside on the Restaurant Premises without due process of law.

179. The aforesaid actions of the Defendants 4660, Shuttters, Boutique, Karcho, and Polselli constitute self-help eviction without complying with the statutory requirements provided for in Chapter 83, Florida Statutes.

180. Plaintiff Oceanside invested funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

181. Plaintiff Oceanside, as a result of the unlawful and self-help eviction tactics of said defendants has suffered damage in the loss of its entire investment in the restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

182. Plaintiff Oceanside, as a result of the unlawful and self-help eviction tactics of said defendants has suffered damage consisting of lost profits in excess of One Million Dollars (\$1,000,000.00).

WHEREFORE, Plaintiff Oceanside demands judgment for damages consisting of the loss of its investment in the Restaurant Premises, lost profits, interest, and the costs of this action, together with such other and further relief as this Court may deem proper against Defendants 4660, Shuttters, Karcho and Polselli.

proceed Euchen so as to

**COUNT VII - CONSTRUCTIVE EVICTION
PLAINTIFF OCEANSIDE'S CLAIM FOR CONSTRUCTIVE EVICTION AGAINST
4660, SHUTTERS, BOUTIQUE, KARCHO, AND POLSELLI**

Plaintiff Oceanside sues Defendants 4660, Shutters, Boutique, Karcho, and Polselli, and alleges:

183. This is an action for constructive eviction.
184. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in paragraphs 1. through 131., hereinabove, with the same force and effect as if hereinafter set forth at length.
185. Due to the aforesaid actions of the Defendants 4660, Shutters, Boutique, Karcho, and Polselli which have caused the Restaurant Premises to be untenable, Plaintiff Oceanside was forced to abandon the Restaurant Premises.
186. Plaintiff Oceanside invested funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).
187. Plaintiff Oceanside, as a result of the aforesaid actions of the Defendants 4660, Shutters, Boutique, Karcho, and Polselli which have caused the Restaurant Premises to be untenable, has suffered damage in the loss of its entire investment in the restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).
188. Plaintiff Oceanside, as a result of the aforesaid actions of the Defendants 4660, Shutters, Boutique, Karcho, and Polselli which have caused the Restaurant Premises to be untenable, has suffered damage consisting of lost profits in excess of One Million Dollars (\$1,000,000.00)

WHEREFORE, Plaintiff Oceanside demands judgment for damages consisting of the loss of its investment in the Restaurant Premises, lost profits, interest, and the costs of this action, together with such other and further relief as this Court may deem proper against Defendants 4660, Shutters, Karcho and

Polselli.

COUNT VIII - FORCIBLE ENTRY AND UNLAWFUL DETAINER
PLAINTIFF OCEANSIDE'S CLAIM FOR POSSESSION AND DAMAGES AGAINST
4660, SHUTTERS, BOUTIQUE, KARCHO, AND POLSELLI

Plaintiff Oceanside sues Defendants 4660, Shuttters, Boutique, Karcho, and Polselli, and alleges:

189. This is an action to recover possession of real property forcibly detained in Broward County, Florida, and for damages in excess of the sum of \$15,000.00 as a result thereof.
190. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in paragraphs 1. through 131., hereinabove, with the same force and effect as if hereinafter set forth at length.
191. On September 17, 2009, Plaintiff Oceanside lawfully entered into possession of the Restaurant Premises pursuant to the Agreement.
192. Plaintiff Oceanside is entitled to possession of the Restaurant Premises.
193. Defendants 4660, Shuttters, Boutique, Karcho, and Polselli have forcibly turned Plaintiff Oceanside out of and withhold possession of the Restaurant Premises from Plaintiff Oceanside.

WHEREFORE, Plaintiff Oceanside demands judgment for possession of the Restaurant Premises and damages and the costs of this action, together with such other and further relief as this Court may deem proper against Defendants 4660, Shuttters, Boutique, Karcho and Polselli.

COUNT - IX SPECIFIC PERFORMANCE
PLAINTIFF OCEANSIDE'S CLAIM FOR SPECIFIC PERFORMANCE AGAINST

4660

Plaintiff Oceanside sues Defendant 4660, and alleges:

194. This is an action for specific performance of the Agreement.

195. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in paragraphs 1. through 131., hereinabove, hereinabove, with the same force and effect as if hereinafter set forth at length.
196. Plaintiff Oceanside, up until Plaintiff Oceanside was prevented from doing so by the actions of Defendant 4660, and Defendants Karcho and Polselli on behalf of Defendant 4660, performed all of its obligations pursuant to the Agreement.
197. Plaintiff Oceanside is ready, willing and able to continue performing its obligations under the Agreement.
198. Notwithstanding the performance by Plaintiff Oceanside pursuant to the Agreement, Defendant 4660 has failed and refused, and still fails and refuses, to perform its obligations pursuant to the Agreement, including, but not limited to those obligations of Defendant 4660 contained in sections 3.16, 3.2, 3.3, 3.4, 3.6, 4.3.2, 4.3.3, 4.3.5, 4.3.7 6.1, and 6.11.2, of the Agreement.
199. Defendant 4660's obligations pursuant to the Agreement are definite and certain in all of the essential elements thereof.
200. Plaintiff Oceanside offers to resume the performance of its obligations pursuant to the Agreement.
201. Pursuant to Section 6.11.4 of the Agreement, the prevailing party is entitled to an award of reasonable attorneys fees from the non-prevailing party.
202. Plaintiff Oceanside has no adequate remedy at law because the location of the Restaurant Premises adjacent to beach areas and the Agreement and the terms thereof constitute a unique business opportunity.

WHEREFORE, Plaintiff Oceanside demands judgment that Defendant 4660 be required to

perform its obligations pursuant to the Agreement, together with judgment for the costs of this action, and reasonable attorneys fees, together with such other and further relief as this Court may deem proper.

**COUNT - X UNJUST ENRICHMENT
PLAINTIFF OCEANSIDE'S CLAIM FOR
UNJUST ENRICHMENT AGAINST
DEFENDANTS 4660, POLSELLI AND KARCHO**

Plaintiff Oceanside sues Defendant 4660, and alleges:

203. This is an action for unjust enrichment.
204. This Count is pled in the alternative to Plaintiff Oceanside's claims for Breach of Contract (Count I herein) and Specific Performance (Count IX).
205. Plaintiff Oceanside realleges and incorporates herein each and every allegation contained in paragraphs 1. through 131., hereinabove, hereinabove, with the same force and effect as if hereinafter set forth at length.
206. Plaintiff Oceanside invested funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00) as a result of the representations made by Defendant Polselli on behalf of Defendants 4660, Polselli and Karcho.
207. Plaintiff Oceanside has conferred the benefits of its investment in the Restaurant Premises upon Defendants 4660, Polselli and Karcho.
208. Defendants 4660, Polselli and Karcho have knowledge of the investment made by Plaintiff Oceanside and the benefits to the restaurant Premises as a result thereof.
-
209. Defendants 4660, Polselli and Karcho have accepted or retained the benefits so conferred by Plaintiff Oceanside.

210. The circumstances are such that it would be inequitable for Defendants 4660, Polselli and Karcho to retain the benefits so conferred by Plaintiff Oceanside without paying fair value therefor.

WHEREFORE, Plaintiff Oceanside demands judgment against Defendants 4660, Polselli and Karcho in an amount within the jurisdictional limits of this Court, together with the costs of this action, and such other and further relief as this Court may deem proper.

**COUNT XI - EQUITABLE ESTOPPEL
CLAIM OF PLAINTIFFS OCEANSIDE, FRANK AND DiPilato
FOR EQUITABLE ESTOPPEL
AGAINST DEFENDANTS 4660 AND POLSELLI**

Plaintiffs Oceanside, Frank and DiPilato sue Defendants 4660 and Polselli and allege:

211. This is an action for equitable estoppel.

212. This Count is pled in the alternative to Plaintiff Oceanside's claims for Breach of Contract (Count I herein) and Specific Performance (Count IX).

213. Plaintiffs Oceanside, Frank and DiPilato reallege and incorporates herein each and every allegation contained in paragraphs 1. through 51., 53. through 74., 80 through 83., 85. through 88., 105 through 106., 112. through 118., and 126. through 131., and paragraph 142., including subdivisions a. through l. thereof, hereinabove, with the same force and effect as if hereinafter set forth at length.

214. Defendant Polselli on behalf of himself and Defendant 4660 made several representations of material fact to Plaintiff Frank, on behalf of himself, and Plaintiffs Oceanside and DiPilato, including, but not limited to, the following:

(A) that the earned income for the Restaurant Premises in 2008 was in excess of One Million

Dollars;

- (B) misrepresenting the income Plaintiff would derive from the Restaurant Premises;
- (C) that Defendants would pay for certain substantial renovations and improvements to the Restaurant Premises;
- (D) that there were no pre-existing health, fire and building code violations;
- (E) that Defendants would pay taxes with respect to the Restaurant Premises and business operations conducted on the Restaurant Premises;
- (F) that Defendants would pay all applicable licensing fees;
- (G) that the customers of the Restaurant Premises would have free parking;
- (H) that the customers of the Restaurant Premises would have unfettered use of the parking lot at the Premises;
- (I) that Plaintiffs could provide valet parking at Plaintiffs' discretion on the Premises;
- (J) that Defendants would not interfere with Plaintiffs' use of the Restaurant Premises alcoholic beverage license;
- (K) That the Restaurant Premises were in compliance with Federal, State and Local laws and ordinances.

215. The aforesaid representations made by Defendant Polselli were contrary to the position later asserted by Defendant Polselli, on behalf of himself and Defendant 4660, in that Defendants Polselli and 4660 later failed and refused to:

- (A) permit the operation of Plaintiff Oceanside's business on the Restaurant Premises free from interference of Defendants Polselli, Shutters, Boutique, Karcho and Polselli;

- (B) allow Plaintiff Oceanside to derive income from the Restaurant Premises;
- (C) correct pre-existing health, fire and building code violations;
- (D) pay for certain substantial renovations and improvements to the Restaurant Premises;
- (E) pay taxes with respect to the Restaurant Premises and business operations conducted on the Restaurant Premises;
- (F) pay all applicable licensing fees;
- (G) Allow the patrons of the Restaurant Premises to have free parking on the Premises;
- (H) Allow Plaintiff Oceanside unfettered use of the parking lot at the Premises;
- (I) interfering with Plaintiff Oceanside's use of the Restaurant Premises alcoholic beverage license;
- (J) ensure that, and cooperate with Plaintiff Oceanside's efforts to ensure, that the Restaurant Premises were in compliance with Federal, State and Local laws and ordinances.

216. Plaintiffs Oceanside, Frank and DiPilato relied on the aforesaid representations of Defendant Polselli, on behalf of himself and Defendant 4660 in investing funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

217. Plaintiffs Oceanside, Frank and DiPilato changed their position to their detriment based on the aforesaid representations and their reliance upon the aforesaid representations by investing funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

WHEREFORE, Plaintiffs Oceanside, Frank and DiPilato demand judgment against Defendants 4660 and Polselli in an amount within the jurisdictional limits of this Court, together with the costs of this action, and such other and further relief as this Court may deem proper.

COUNT XII - PROMISSORY ESTOPPEL
CLAIM OF PLAINTIFFS OCEANSIDE, FRANK AND DiPilato
FOR PROMISSORY ESTOPPEL
AGAINST DEFENDANTS 4660 AND POLSELLI

Plaintiffs Oceanside, Frank and DiPilato sue Defendants 4660 and Polselli and allege:

218. This is an action for promissory estoppel.
219. This Count is pled in the alternative to Plaintiff Oceanside's claims for Breach of Contract (Count I herein) and Specific Performance (Count IX).
220. Plaintiffs Oceanside, Frank and DiPilato reallege and incorporates herein each and every allegation contained in paragraphs 1. through 51., 53. through 74., 80 through 83., 85. through 88., 105 through 106., 112. through 118., and 126. through 131., and paragraph 142., including subdivisions a. through l. thereof, hereinabove, with the same force and effect as if hereinafter set forth at length.
221. Defendant Polselli on behalf of himself and Defendant 4660 made several promises and representations of material fact to Plaintiff Frank, on behalf of himself and Plaintiffs Oceanside and DiPilato, including, but not limited to, the following:
- (A) that the earned income for the Restaurant Premises in 2008 was in excess of One Million Dollars;
 - (B) That Plaintiffs Oceanside and Frank would derive income from the Restaurant Premises;
 - (C) that Defendants would pay for certain substantial renovations and improvements to the Restaurant Premises;
 - (D) that there were no pre-existing health, fire and building code violations;

- (E) that Defendants would pay taxes with respect to the Restaurant Premises and business operations conducted on the Restaurant Premises;
- (F) that Defendants would pay all applicable licensing fees;
- (G) that the customers of the Restaurant Premises would have free parking;
- (H) that the customers of the Restaurant Premises would have unfettered use of the parking lot at the Premises;
- (I) that Plaintiffs could provide valet parking at Plaintiffs' discretion on the Premises;
- (J) that Defendants would not interfere with Plaintiffs' use of the Restaurant Premises alcoholic beverage license;
- (K) That the Restaurant Premises were in compliance with Federal, State and Local laws and ordinances.

222. The aforesaid promises and representations of material fact made by Defendant Polselli were contrary to the position later asserted by Defendant Polselli, on behalf of himself and Defendant 4660, in that Defendants Polselli and 4660 later failed and refused to:

- (A) permit the operation of Plaintiff Oceanside's business on the Restaurant Premises free from interference of Defendants Polselli, Shutters, Boutique, Karcho and Polselli;
- (B) allow Plaintiff Oceanside to derive income from the Restaurant Premises;
- (C) correct pre-existing health, fire and building code violations;
- (D) pay for certain substantial renovations and improvements to the Restaurant Premises;
- (E) pay taxes with respect to the Restaurant Premises and business operations conducted on the Restaurant Premises;

- (F) pay all applicable licensing fees;
- (G) Allow the patrons of the Restaurant Premises to have free parking on the Premises;
- (H) Allow Plaintiff Oceanside unfettered use of the parking lot at the Premises;
- (I) interfering with Plaintiff Oceanside's use of the Restaurant Premises alcoholic beverage license;
- (J) ensure that, and cooperate with Plaintiff Oceanside's efforts to ensure, that the Restaurant Premises were in compliance with Federal, State and Local laws and ordinances.

223. Plaintiffs Oceanside, Frank and DiPilato relied on the aforesaid promises and representations of material fact made by Defendant Polselli.

224. The aforesaid promises and representations of material fact made by Defendant Polselli were made to induce, and in fact did induce, Plaintiffs Oceanside, Frank and DiPilato, to invest funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

225. Defendant Polselli reasonably should have expected the aforesaid promises and representations of material fact made by him to induce action on the part of Plaintiffs Oceanside, Frank and DiPilato.

226. As a result of the aforesaid promises and representations of material fact made by Defendant Polselli, Plaintiffs Oceanside, Frank and DiPilato changed their position to their detriment by investing funds in the Restaurant Premises in excess of Six Hundred Thousand Dollars (\$600,000.00).

WHEREFORE, Plaintiffs Oceanside, Frank and DiPilato demand judgment against Defendants 4660 and Polselli in an amount within the jurisdictional limits of this Court, together with the costs of this

action, and such other and further relief as this Court may deem proper.

**COUNT XIII - EQUITABLE LIEN
CLAIM OF PLAINTIFFS OCEANSIDE, FRANK AND DiPilato
FOR ESTABLISHMENT AND FORECLOSURE OF EQUITABLE LIEN AGAINST
DEFENDANT 4660**

Plaintiffs Oceanside, Frank and DiPilato sue Defendant 4660 and allege:

227. This is an action to establish and foreclose an equitable lien on the Restaurant Premises, which is a part of the real property located on the Premises, situate, lying and being in Broward County,

Florida, described as follows:

Lots 11, 12, 13, 14, 15, 16, 17, 18 and 19, in Block 10, and Lots 14, 15, 16 and 17, in Block 9, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida; ALSO all of that parcel of land, if any, bounded on the West by the Easterly line of said Lots 14, 15, 16 and 17, of said Block 9, bounded on the East by the Atlantic Ocean, bounded on the North by the North line of Lot 17 of said Block 9, extended Easterly to the Atlantic Ocean and bounded on the South by the South line of Lot 14 of said Block 9, extended Easterly to the Atlantic Ocean, said land fronting the Atlantic Ocean.

hereinafter referred to as the "Real Property".

228. Plaintiffs Oceanside, Frank and DiPilato reallege and incorporate herein each and every allegation contained in paragraphs 1. through 51., 53. through 74., 80 through 83., 85. through 88., 105 through 106., 112. through 118., and 126. through 131., and paragraph 142., including subdivisions a. through l. thereof, hereinabove, with the same force and effect as if hereinafter set forth at length.

229. Notwithstanding the obligations of 4660 pursuant to the Agreement, Plaintiffs Oceanside, Frank and DiPilato have caused improvements to be made to the Real Property to perform the obligations that Defendant 4660 was to perform to the Real Property pursuant to the Agreement, with the

knowledge and consent of Defendants 4660, Polselli and Karcho, to-wit:

- (A) to cure the aforesaid fire code violations;
- (B) to correct pre-existing health code violations; and
- (C) to correct preexisting building code violations

Plaintiffs Oceanside, Frank and DiPilato have additionally caused improvements to be made to the Real Property and have invested sums in excess of Six Hundred Thousand Dollars (\$600,000.00) in the Restaurant Premises, a substantial portion of which has been incorporated into the Real Property.

230. The remedies at law of Plaintiffs Oceanside, Frank and DiPilato are inadequate because
- (A) said Plaintiffs cannot recover the funds so expended which have been used for improvements which have been incorporated with the knowledge and consent of Defendants 4660, Polselli and Karcho, into the Real Property, and
 - (B) Defendant 4660 has been unjustly enriched by retaining the benefits of the improvements made by Plaintiffs Oceanside, Frank and DiPilato to the Restaurant Premises without compensating said Plaintiffs therefor.
231. The actions of Defendant Polselli on behalf of Defendant 4660 were designed to induce Plaintiffs Oceanside, Frank and DiPilato to improve the Restaurant Premises located upon the Real Property when in reality, Defendants Polselli, Karcho, and 4660 had no intention of honoring their commitments pursuant to the Agreement.

WHEREFORE, Plaintiffs Oceanside, Frank and DiPilato request judgment against Defendant 4660

- (A) Establishing an equitable lien against the Real Property in an amount in excess of Six

Hundred Thousand Dollars (\$600,000.00) or such other sum as this Court shall determine;

- (B) That the equitable lien so established be adjudicated superior to any right, title, claim or interests of the Defendants of any of them;
- (C) Foreclosing the equitable lien so established, and that the real Property be sold pursuant to Judgment of this Court;
- (D) For the costs of this action, and;
- (E) For such other and further relief as this Court may deem just and proper.

**COUNT XIV - CONSTRUCTIVE TRUST
CLAIM OF PLAINTIFFS OCEANSIDE, FRANK AND DiPilato
FOR ESTABLISHMENT OF CONSTRUCTIVE TRUST
AGAINST DEFENDANTS 4660, POLSELLI AND KARCHO**

Plaintiffs Oceanside, Frank and DiPilato sue Defendants 4660, Polselli and Karcho and allege:

232. This is an action to establish a constructive trust for the benefit of Plaintiffs Oceanside, Frank and DiPilato against Defendants 4660, Polselli, and Karcho, upon the Real Property, and any proceeds of the sale thereof, and distribution of the proceeds of any sale thereof.

233. Plaintiffs Oceanside, Frank and DiPilato reallege and incorporate herein each and every allegation contained in paragraphs 1. through 51., 53. through 74., 80 through 83., 85. through 88., 105 through 106., 112. through 118., and 126. through 131., and paragraph 142., including subdivisions a. through l. thereof, hereinabove, with the same force and effect as if hereinafter set forth at length.

234. Defendant Polselli on behalf of himself and Defendant 4660 made promises to Plaintiff Frank, on behalf of himself and Plaintiffs Oceanside and DiPilato, including, but not limited to, the following:

(A) That Defendants would pay for certain substantial renovations and improvements to the Restaurant Premises as represented by Defendant Polselli;

(B) That there were no pre-existing health, fire and building code violations;

(C) That the Restaurant Premises were in compliance with Federal, State and Local laws and ordinances.

235. Based upon the promises made by Defendant Polselli, Plaintiffs Oceanside, Frank and DiPilato entered into a confidential relationship with Defendants 4660, Polselli and Karcho to manage the business conducted at the Restaurant Premises.

236. In reliance on said promises, Plaintiffs Oceanside, Frank and DiPilato have caused improvements to be made to the Real Property and have invested sums in excess of Six Hundred Thousand Dollars (\$600,000.00) in the Restaurant Premises, a substantial portion of which has been incorporated into the Real Property.

237. Defendants 4660, Polselli and Karcho breached the promises made by

(A) Failing to pay for certain substantial renovations and improvements to the Restaurant Premises as represented by Defendant Polselli;

(B) Failing to cure pre-existing health, fire and building code violations; and

(C) Failing to ensure that the Restaurant Premises and the Premises were in compliance with Federal, State and Local laws and ordinances.

238. The remedies at law of Plaintiffs Oceanside, Frank and DiPilato are inadequate because

(A) said Plaintiffs cannot recover the funds so expended which have been used for improvements which have been incorporated with the knowledge and consent of

Defendants 4660, Polselli and Karcho, into the Real Property, and

- (B) Defendant 4660, Polselli and Karcho have been unjustly enriched by retaining the benefits of the improvements made by Plaintiffs Oceanside, Frank and DiPilato to the Restaurant Premises without compensating said Plaintiffs therefor.

WHEREFORE, Plaintiffs Oceanside, Frank and DiPilato request judgment against Defendants 4660, Polselli, and Karcho establishing a constructive trust for the benefit of Plaintiffs Oceanside, Frank and DiPilato upon the Real Property, and any proceeds of the sale thereof, and distribution of the proceeds of any sale thereof in an amount in excess of Six Hundred Thousand Dollars (\$600,000.00) or such other sum as this Court shall determine, together with the costs of this action, and such other and further relief as this Court may deem just and proper.

**COUNT XV - TORTIOUS INTERFERENCE WITH
ADVANTAGEOUS BUSINESS RELATIONSHIP
CLAIM OF PLAINTIFFS OCEANSIDE, FRANK AND DIPILATO
FOR TORTIOUS INTERFERENCE WITH ADVANTAGEOUS BUSINESS
RELATIONSHIP
AGAINST DEFENDANTS 4660, BOUTIQUE, POLSELLI, AND KARCHO**

Plaintiffs Oceanside, Frank and DiPilato sue Defendants 4660, Boutique, Polselli and Karcho and allege:

239. This is an action for tortious interference by Defendants 4660, Boutique, Polselli and Karcho with an advantageous business relationship between Plaintiffs Oceanside and Frank and DiPilato.
240. Plaintiffs Oceanside, Frank and DiPilato reallege and incorporate herein each and every allegation contained in paragraphs 1 through 32., 45. through 51., and 60. through 125. hereinabove, with the same force and effect as if hereinafter set forth at length.

241. During the month of December, 2009, Defendants Polselli and Karcho communicated with Plaintiff DiPilato for the purpose of attempting to convince Plaintiff DiPilato to disassociate herself with Plaintiffs Oceanside and Frank.

242. Defendants Karcho and Polselli made these communications on behalf of themselves and Defendants 4660 and Boutique.

243. Defendants 4660, Boutique, Polselli and Karcho had knowledge of the business relationship between Plaintiffs Oceanside, Frank and DiPilato.

244. Defendants 4660, Boutique, Polselli and Karcho had knowledge of the Agreement.

245. Defendants 4660, Boutique, Polselli and Karcho induced Plaintiff DiPilato, as a result of those communications, to take actions to enter into an oral agreement with Defendants 4660, Boutique, Polselli and Karcho to operate the business located upon the Restaurant Premises independently of Plaintiffs Oceanside and Frank.

246. Defendants 4660, Boutique, Polselli and Karcho thereafter, by and through themselves and their agents, additionally took actions during the month of December, 2009, to prevent Plaintiffs Oceanside and Frank from having access to the business located upon the Restaurant Premises and the Restaurant Premises and enjoying the benefits of the business relationship between Plaintiffs Oceanside, Frank and DiPilato by:

- (A) inducing Plaintiff DiPilato to change the accounting software used by Plaintiff Oceanside to record sales of the business located upon the Restaurant Premises to record such sales under a name other than Plaintiff Oceanside;
- (B) causing the aforesaid Nate Brown to remove business records and assets of Plaintiff

Oceanside from the Restaurant Premises;

- (C) causing Plaintiff Frank to be assaulted and battered while on the Restaurant Premises.
- (D) using unlawful and self-help eviction tactics to prevent the operation of the business upon the Restaurant Premises;
- (E) otherwise using “divide and conquer” tactics to attempt to oust Plaintiffs from the Restaurant Premises.

247. Said interference with the business relationship between Plaintiffs Oceanside, Frank and DiPilato by Defendants 4660, Boutique, Polselli and Karcho was intentional and unjustified.

248. Plaintiffs Oceanside, Frank and DiPilato have been damaged by as a result of said tortious interference with their relationship by Defendants 4660, Boutique, Polselli and Karcho.

249. The actions of Defendants 4660, Boutique, Polselli and Karcho in so tortiously interfering with the business relationship of Plaintiffs Oceanside, Frank and DiPilato have resulted in the inability of Plaintiff Oceanside to conduct its business in accordance with the terms of the Agreement, and has caused the loss to Plaintiffs of their investment in the business located upon the Restaurant Premises, and the profits of said business.

WHEREFORE, Plaintiffs Oceanside, Frank and DiPilato request judgment against Defendants 4660, Boutique, Polselli, and Karcho for damages within the jurisdictional limits of this Court, the costs of this action, and such other and further relief as this Court may deem just and proper.

COUNT XVI - CONVERSION
CLAIM OF PLAINTIFFS OCEANSIDE, FRANK AND DIPILATO
FOR CONVERSION
AGAINST DEFENDANTS 4660, BOUTIQUE, POLSELLI, AND KARCHO

Plaintiffs Oceanside, Frank and DiPilato sue Defendants 4660, Boutique, Polselli and Karcho and allege:

250. This is an action for damages for conversion of personal property owned by Plaintiffs Oceanside, Frank and DiPilato by Defendants 4660, Boutique, Polselli and Karcho.
251. Plaintiffs Oceanside, Frank and DiPilato reallege and incorporate herein each and every allegation contained in paragraphs 1 through 32., 75. through 78., and 102. through 125., hereinabove, with the same force and effect as if hereinafter set forth at length.
252. Plaintiffs Oceanside, Frank and DiPilato are the owners of personal property located upon the Restaurant Premises, including, but not limited to stove, lighting tables and chairs, interior decorations, televisions, computers and computer equipment, bar, shelving, appliances, kitchen equipment, coffee machines and sound system.
253. Plaintiffs Oceanside, Frank and DiPilato are entitled to the possession of said personal property located upon the Restaurant Premises.
254. Defendants 4660, Boutique, Polselli and Karcho have taken said personal property located upon the Restaurant Premises with intent to exercise ownership thereof inconsistent with the ownership of Plaintiffs Oceanside, Frank and DiPilato.
255. Plaintiffs Oceanside and Frank have made demand for the return of said personal property, but Defendants have refused to return said personal property to Plaintiffs.

~~256. Further demands for the return of said personal property by Plaintiffs would be futile.~~

WHEREFORE, Plaintiffs Oceanside, Frank and DiPilato request judgment against Defendants 4660, Boutique, Polselli, and Karcho for damages within the jurisdictional limits of this Court, the costs

of this action, and such other and further relief as this Court may deem just and proper.

COUNT XVII- CONSPIRACY TO COMMIT ASSAULT
CLAIM OF PLAINTIFF FRANK FOR CONSPIRACY TO COMMIT ASSAULT
AGAINST DEFENDANTS 4660, SHUTTERS, BOUTIQUE, AND POLSELLI

Plaintiff Frank sues Defendants 4660, Shuttters, Boutique, and Polselli, and alleges:

257. This is an action for damages for conspiracy to commit assault upon Plaintiff Frank against Defendants Shuttters, 4660, Boutique, and Polselli.
258. Plaintiff Frank realleges and incorporates herein each and every allegation contained in paragraphs 1. through 15., and 90. through 99., hereinabove, with the same force and effect as if hereinafter set forth at length.
259. On numerous occasions Defendant Polselli threatened intentional and unjustifiable corporeal injury to Plaintiff Frank by force.
260. On numerous occasions *one* Nate Brown, as agent of 4660, Shuttters, Boutique, or Polselli, or all of them, threatened intentional and unjustifiable corporeal injury to Plaintiff Frank by force.
261. Such threatened intentional and unjustifiable corporeal injury to Plaintiff Frank was made under circumstances as to create a well founded fear of imminent peril to Plaintiff Frank.
262. Such threatened intentional and unjustifiable corporeal injury to Plaintiff Frank created in Plaintiff Frank the apprehension of immediate harmful contacts with Plaintiff Frank's person, caused by acts intended to result in such contacts, directed at Plaintiff Frank.
263. Defendants 4660; Shuttters, Boutique, or Polselli possessed the apparent present ability to effectuate such intentional and unjustifiable corporeal injury to Plaintiff Frank by force.
264. Agents of Defendants Shuttters, 4660, and Boutique and Defendant Polselli agreed to unlawfully

cause intentional and unjustifiable corporeal injury to Plaintiff Frank on December 31, 2009.

265. Agents of Defendants Shuttters, 4660, and Boutique and Defendant Polselli did unlawfully cause intentional and unjustifiable corporeal injury to Plaintiff Frank on December 31, 2009, as a result of which Plaintiff Frank has suffered bodily injury, physical suffering, physical inconvenience, and discomfort, loss of time, and expense incurred due to the assault and battery, as well as mental suffering.

WHEREFORE, Plaintiff Frank demands judgment against Defendants Shuttters, Boutique, 4660, and Polselli, for damages in an amount within the jurisdictional limits of this court; and for such other and further relief as this Court deems just and proper.

**COUNT XVIII- CONSPIRACY TO COMMIT BATTERY
CLAIM OF PLAINTIFF FRANK FOR CONSPIRACY TO COMMIT BATTERY
AGAINST DEFENDANTS 4660, SHUTTERS, BOUTIQUE, AND POLSELLI**

Plaintiff Frank sues Defendants 4660, Shuttters, Boutique, and Polselli, and alleges:

266. This is an action for damages for conspiracy to commit battery upon Plaintiff Frank against Defendants Shuttters, 4660, Boutique, and Polselli.
267. Plaintiff Frank realleges and incorporates herein each and every allegation contained in paragraphs 4. through 15., and 90. through 99., hereinabove, with the same force and effect as if hereinafter set forth at length.
268. On numerous occasions Defendant Polselli threatened the intentional infliction of harmful or
offensive contact upon the person of Plaintiff Frank by force.-----
269. On numerous occasions *one* Nate Brown, as agent of 4660, Shuttters, Boutique, or Polselli, or all of them, threatened the intentional infliction of harmful or offensive contact upon the person of

Plaintiff Frank by force.

270. Agents of Defendants Shutters, 4660, and Boutique and Defendant Polselli agreed to intentionally infliction of harmful or offensive contact upon the person of Plaintiff Frank by force on December 31, 2009, as a result of which Plaintiff Frank has suffered bodily injury, physical suffering, physical inconvenience, and discomfort, loss of time, and expense incurred due to the assault and battery, as well as mental suffering..

WHEREFORE, Plaintiff Frank demands judgment against Defendants Shutters, Boutique, 4660, and Polselli, for damages in an amount within the jurisdictional limits of this court; and for such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs respectfully demand a trial by jury of all issues so triable in this action.

Respectfully submitted this 28 day of October, 2011.

WILLIAM WATSON TRICK, JR., P.A.

Attorneys for Plaintiffs

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By: 

William Watson Trick, Jr., Esq

FBN: 267104

VERIFICATION

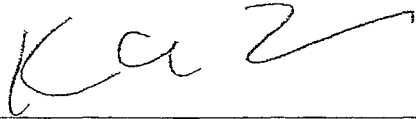
Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.

OCEANSIDE LAUDERDALE, INC., a Florida corporation

BY: 
ANGELA DIPILATO, Vice President

VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'K A Frank', written over a horizontal line.

KENNETH A. FRANK

VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein
are true and correct to the best of my knowledge and belief


ANGELA DIPILATO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by US mail to LLOYD H. FALK, ESQ., attorney for Defendants at 600 SW 6th Street, Ft. Lauderdale, FL 33315, and to ALEJANDRO VILARELLO, ESQ., attorney for Defendants, at 16400 NW 59th Ave., Fl 2, Miami Lakes, FL 33014, and to ROBERT E. PARADELA, Esq. and PATRICK K. DAHL, Esq., Wicker, Smith, O'Hara, McCoy & Ford, P.A., at 515 E. Las Olas Boulevard, SunTrust Center, Suite 1400, P.O. Box 14460, Ft. Lauderdale, FL 33302, this 28 day of October, 2011.

WILLIAM WATSON TRICK, JR., P.A.

Attorneys for Plaintiffs

1216 E. Atlantic Boulevard, Suite 7

Pompano Beach, Florida 33060

Telephone: (954) 942-9774

Facsimile: (954) 942-9223

By: 

William Watson Trick, Jr., Esq.

FBN: 267104

RESTAURANT MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (hereinafter referred to as the " Agreement ") entered into this 18 day of July, 2009 by and between OCEAN 4660, LLC , a Florida corporation (hereinafter referred to as OWNER) and OCEANSIDE LAUDERDALE, INC , a Florida corporation (hereinafter referred to as " MANAGER ")

RECITALS

WHEREAS, OCEAN 4660, LLC. is the record owner of that certain parcel of real property (hereinafter referred to as the " Subject Premises "), located at 4658 and 4660 North Ocean Boulevard, Lauderdale-by-the Sea, Florida 33308 (the " Premises ") of which a portion of said premises is a " Restaurant " and more particularly described in Exhibit " A ", attached hereto and made a part hereof, and

WHEREAS, the record owner has the authority to enter into this " Agreement ", and

WHEREAS, the parties desire to enter into this " Agreement " for the purpose of management of the " Restaurant ".

NOW, THEREFORE, in consideration of the terms, provisions, conditions mutual promises, mutual benefits and covenants set forth in this " Agreement ", and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

ADDENDUM AND TERM OF MANAGEMENT

1.1-Recitations - The above recitations are true and correct.

1.2 Addendum- The parties consent to the appendix of the "Addendum". Where there are any conflicts between this "Agreement" and the "Addendum", the terms of the "Addendum" shall control.

1.3 Term- The term of this "Agreement" shall be Five (5) years commencing as of its date of execution (' Commencement Date ') and continuing through the last day of the twelfth month of the fifth (5th) Year thereafter (' Termination Date '), subject to the terms and conditions set forth herein.

1.4 Renewal Option(s)- The OWNER hereby grants to the MANAGER the option(s) to renew this "Agreement" for four (4) , five (5) year terms. The option(s) period shall commence the day following the termination date of the initial term. Except as provided herein, the renewal of this "Agreement" shall be at the same terms and conditions set forth herein.

To exercise such option(s), the MANAGER shall deliver notice in writing to the OWNER, on or before the ninety (90) days prior to the expiration of the initial term of the "Agreement".

1.5 Assignments- Included shall be an assignment and transfer of all of Owner's materials, equipment, furniture, inventory and supplies at the Restaurant (collectively referred to as the "Assets").

~~1.5.1 OWNER represents that the Assets transferred to MANAGER are free of any liens or encumbrances. MANAGER will maintain such assets in good and proper working order, free of liens and encumbrances.~~

1.5.2 The parties represent that they shall not take any acts, or cause any omissions, so as to remove or permit the removal of any of the Assets from the Premises.

1.6 Liquor License- The parties acknowledge that the State of Florida Liquor License for the Restaurant and Outdoor Patio Bar is currently in the name of Shuttters, LLC.

_____. The MANAGER shall be allowed to use said license. OWNER agrees to bear the cost and responsibility for payment of all required taxes, surtaxes and surcharges due to the State of Florida for the use of said liquor license. There shall be no extra fee for the use of the Liquor License paid to the OWNER by MANAGER.

1.6.1 The parties acknowledge that the " Outdoor Patio Bar " located in the rear of the premises is operated by a different manager who is also using the liquor license. In the event that the " Outdoor Patio Bar's " managers make any payments to vendors that are un-honored, and shall effect the " Restaurants " use of the Liquor License the " Owner " shall at it's cost and expense make good and sufficient payment of said debts.

1.7.1 OWNER represents to MANAGER that they will not allow, in any way, the acts and actions of the MANAGER'S of the Outdoor Patio Bar (located in the rear of premises) to effect the Restaurant's use of the Liquor License, or otherwise.

1.7.2 The violation of any federal, state or local law, rule or regulation concerning the sale and consumption of alcohol beverages must be corrected within the time period provided by the applicable governmental agency.

1.8 Operation- The OWNER hereby engages and contracts with MANAGER (Oceanside Lauderdale, Inc.) for the management and operation of the Restaurant located at premises.

1.8.1 MANAGER shall operate a restaurant providing a varied menu to serve breakfast, lunch and dinner and a " lounge ", seven nights a week.

1.8.2 The restaurant-lounge shall be permitted to provide entertainment which shall include,
----- but not limited to, music groups or acts.

ARTICLE II

FEES, RENT AND BUILD-OUT ALLOWANCE

2.1 MANAGER shall pay to the OWNER the following amounts as fees for the use, occupancy, management and operation of the restaurant as follows (" Management Fee "):

2.1.1 Year 1 and 2: One Hundred Forty-Four Thousand (\$ 144,000.00) Dollars, payable in twelve (12) equal monthly installments of Twelve Thousand (\$ 12,000.00) Dollars per month. Florida sales tax shall be paid by the OWNER if same is required to be collected

2.1.2 Year 3 through 5: One Hundred Forty-Four Thousand (\$ 144,000.00) Dollars, payable in twelve (12) equal monthly installments of Twelve Thousand (\$ 12,000.00) Dollars per month, but increased each year by one half of the percentage increase reflected in the annual Consumer Price Index. Florida sales tax shall be paid by the OWNER if same is required to be collected.

2.1.3 The payment of the Management Fees described herein shall be due on or before the 1st. Day of each month of the term of the Agreement.

2.1.4 Fee Increases during Option(s) Periods: For each year of the option(s) period the Management Fee shall increase by one half the annual percentage increase reflected in the annual consumer Price Index.

2.1.5 Default on Payment: In the event of a default in payment the MANAGER shall be given thirty (30) days to cure prior to the OWNER exercising any statutory legal remedies. A service charge of Twenty Five (\$ 25.00) Dollars will be assessed for any check returned un-honored.

2.1.6 Build-Out Allowance: MANAGER shall be relieved of their obligations to pay Management Fees, and any and all fees related to the premises for a period of two (2) months. Said period to commence on August 01, 2009 and continue through September 30, 2009.

2.1.7 OWNER shall bear the costs, expenses and responsibility for the following renovations:

(a) Reconstruct the front room of the restaurant located in the southern most portion of the restaurant by demolishing the front and side walls and windows. Install new floor to ceiling doors (operating). Thereby, creating an open-air room visible to the public from the street.

2.1.7 Garbage- MANAGER shall bear the cost, expense and responsibility for disposal of the trash and cleaning of the rear yard area where garbage containers are housed.

ARTICLE III

OCEANSIDE LAUDERDALE INC.' OPERATION AND AUTHORITY

3.1 General Authority: Subject to the provisions hereof, Oceanside Lauderdale, Inc. (" Manager ") shall have the exclusive authority, right, power and responsibility to manage, operate and maintain the Restaurant, including all such services and actions Oceanside Lauderdale, Inc. shall deem necessary or advisable in order to perform its obligations set forth in this Agreement. Such rights and responsibilities include, but are not limited to the following:

3.1.1 Hire, pay, supervise and terminate employees and independent contractors for the Restaurant, in Oceanside Lauderdale, Inc.s' sole discretion, maintain a payroll service for same, and control the work schedule and assignment of such employees and independent contractors.

3.1.2 Take reasonable precautions against fire, vandalism and burglary.

3.1.3 Set the price, good and services (including food and beverage) and other elements of the Restaurant business, in its sole discretion.

3.1.4 Renovations- In addition to any other rights and allowances provided to Oceanside Lauderdale Inc. shall also have the right to renovate:

3.1.5 To have exterior perimeter seating where accessible;

3.1.6 To have the right to provide room service to patrons throughout the premises, in the rear building, and in the two (2) other motels/hotels owned by owner and located within the vicinity.

3.1.7 To hold (in the adjoining parking lot) two (2) exterior promotional events per month or, if not used, to bank such events to later dates.

3.1.8 To install accent lighting at the front of the Restaurant, including but not limited to lights in the trees, bushes, plantings, poles, signage and walkways.

3.2 Maintenance and Repairs- Oceanside Lauderdale, Inc. Shall maintain the Restaurant in accordance with the terms and conditions herein and applicable law. Oceanside Lauderdale, Inc. Retains the specific authority on behalf of owner to make or cause to be made all ordinary repairs and replacements necessary to preserve the restaurant. Owner shall maintain and repair at it's own cost and expense all utility services, air conditioning, gas, plumbing, telephone, internet, mechanical systems, sprinklers, fire prevention.

3.3 Utilities- Owner shall bear the cost and expense of all utilities, including but not limited to electric, gas, air conditioning, telephone, internet, water, cable and satellite systems.

3.4 Taxes: Owner shall bear the responsibility and cost for the accounting of, and payment of all taxes that may be due and owing. Owner shall bear the cost and responsibility for any and all licensing fees that may become due and owing.

3.5 Valet Parking- The Agreement shall reflect the need for valet parking for the Restaurant. Manager shall have the right at it's own discretion to determine the times valet parking will be needed.

3.6 Compliance with Laws- Oceanside Lauderdale, Inc. shall use reasonable efforts to insure that the Restaurant remains in compliance in all reasonable respects with all present federal, state and local laws, statutes, ordinances, rules, regulations and order (hereinafter collectively referred to as the " Legal Requirements). Owner, their agents, representatives and employees, shall execute all reasonable and necessary writings in conjunction with Oceanside Lauderdale, Inc.'s obligations and shall not undertake any acts, or make any omissions, which shall interfere with Oceanside Lauderdale, Inc.'s obligations. Owner insures that it will use reasonable efforts to insure that owner remains in compliance with all present, federal, state and local laws, statutes, ordinances, rules, regulations and order (hereinafter collectively referred to as " Legal Requirements ").

3.7 Environmental Responsibilities- Owner where applicable by law, statute, regulation, rule, ordinance or agreement hereby agree to be solely responsible and liable for any environmental matters and/or conditions related to or effecting the Restaurant, and comply with

all laws, statutes, rules, ordinances and/or regulations relating thereto, provided such matters or conditions are not the cause of any acts or omissions of Oceanside Lauderdale, Inc. Owner agrees to indemnify and hold Oceanside Lauderdale, Inc. (Manager) harmless and promptly pay any damages, costs, expenses or penalties which Oceanside Lauderdale, Inc. (Manager) shall incur in connection with such environmental matters or conditions, including for any cure undertaken by Oceanside Lauderdale, Inc.

ARTICLE IV

REPRESENTATIONS AND COVENANTS

4.1 Owner's Representations- Owner represents and covenants that (i) it is the exclusive record and lawful owner of the Premises; (ii) has full right and authority to enter into this Agreement and that the person executing the Agreement on behalf of Owner has the full right and authority to execute; (iii) has not engaged in any acts, or caused any omissions, which materially effect the Premises or Oceanside Lauderdale, Inc. (Manager) ability to operate the Restaurant, and (iv) has not entered into any other agreement, oral or in writing, which restrict or negatively impacts its ability to entering into this Agreement or Oceanside Lauderdale, Inc.'s operating and/or management of the Restaurant.

~~4.2 Oceanside Lauderdale, Inc.'s Representations- Oceanside Lauderdale, Inc. represents and covenants that (i) it will be the exclusive manager and operator of the Restaurant pursuant to this Agreement, subject to any further assignment of rights, (ii) has full right and authority to enter into this Agreement and that the person executing the Agreement on behalf of Oceanside Lauderdale, Inc. has the authority to so execute; (iii) has not engaged in any acts, or caused any omissions, which materially affect Owner with respect to the premises, and (iv) has not entered into any other agreement, oral or in writing, which restrict or negatively impacts its ability to enter into this Agreement or operation and management of the Restaurant.~~

4.3 General Representations- In addition to the foregoing, the following representations are herein made:

4.3.1 The parties acknowledge that Oceanside Lauderdale, Inc. has a substantial investment into the Restaurant, including both in the Agreement and in the renovations, management and operation of the Restaurant, and that Oceanside Lauderdale, Inc. (Manager) is

SUBSTANTIAL
Investment

materially and necessarily relying upon the representations of the parties in order to make such investment.

4.3.2 Where oral and/or written consent of any party is required under this or any other Agreement, such consent shall not be unreasonably withheld. The parties shall use their best efforts to work in a cooperative manner as to the management and operation of the Premises, Tiki Bar and Restaurant.

4.3.3 Each party will refrain from harassing, disparaging or affecting the reputation of any other party.

4.3.4 Each party agrees to indemnify and hold harmless all other parties with respect to any acts or omissions of that party.

4.3.5 Owner represents and warrants that there are no State Liquor Authority, Board of Health, Building Code, Fire Code, Zoning Board and/or other violations encumbering the Premises that may affect or impact Oceanside Lauderdale Inc.'s (Managers) operation of the Restaurant.

4.3.6 Owner represents that they have paid all suppliers, vendors and distributors through the date of full execution of this Agreement, and further that they have not placed any orders for same which require cash or delivery payment by Oceanside Lauderdale, Inc. due to non-payment. In the event of non-compliance with this provision, Oceanside Lauderdale, Inc. may offset any payments made for delivery as against obligations due to owner.

4.3.7 Owner represents and warrants that all ventilation, air conditioning, electrical, gas, telephone, internet, mechanical, sprinkler, fire detection systems, windows, doors, walls, roof and foundations are in good condition and working order. Owner represents and warrants that it shall be the sole responsibility and cost of maintaining and repairing these systems, as well as, the monthly utility bills for same. In the event of non-compliance with this provision, Oceanside Lauderdale, Inc. may offset any payments made for repairs or utilities as against obligations due to owner.

4.4 Insurance- MANAGER shall maintain during the term of this Agreement and any extension thereof, public liability insurance covering all aspects of MANAGER'S business operations, including but not limited to coverage for valet parking. It is acknowledged by the

parties that MANAGER may contract with an outside company to provide valet parking services; in which case, said company shall provide insurance for the valet parking described herein.

4.4.1 The limits of liability coverage for said policies shall be \$ 750,000.00 bodily injury or death per person and \$ 750,000.00 per incident or occurrence. Owner to provide insurance for property damage with One Million (\$ 1,000,000) Dollars coverage.

4.4.2 The Manager shall deliver the policy or policies of such insurance or certificate thereof to the Owner or owners' on site representative.

4.4.3 It shall also be the obligation of the owner to maintain and carry fire, hurricane, windstorm and extended coverage insurance on all of the equipment, furnishings and personal property which will be contained within the restaurant. Said policy must be maintained with policy limits of a minimum equal to the actual cash value thereof.

4.4.4 In the event of damage or destruction of any of the contents of the restaurant by fire, wind storm, hurricane or other casualty, it shall be the obligation of the Owner, at its sole cost and expense to rebuild, replace and refurnish, etc., including but not limited to all equipment, structure, furnishings and otherwise within one hundred twenty (120) days.

4.4.5 All policies of insurance as required hereunder shall be carried with insurance companies who maintain no less than an A rating and are authorized to do business and insure such risks in the State of Florida.

ARTICLE V

RIGHT OF FIRST REFUSAL

5.1 Purchase of Tiki Bar- The owner hereby grants Oceanside Lauderdale, Inc. an irrevocable right of first refusal to acquire, manage, purchase, operate or lease the " Tiki Bar " or

"Patio Bar " located adjacent to the Beach at the rear building of the subject premises. Whose street address is _____, Lauderdale-by-the-Sea, Florida.

5.2 Right to Acquire- Upon expiration, early termination, default, or upon the bankruptcy filing of the " Tiki Bar's " current manager, Oceanside Lauderdale, Inc. shall have the first right to acquire the management of the " Tiki Bar " or " Patio Bar " described above herein, either by assignee or by separate Agreement to be made between the parties. Owner shall not make or entertain any offer to sell the " Tiki Bar ", and management of same, without first allowing Oceanside Lauderdale, Inc. a reasonable time to negotiate a purchase.

ARTICLE VI

MISCELLANEOUS

6.1 No Self-Help- In the event owner seeks to evict and remove Oceanside Lauderdale, Inc. from the premises, Owner shall not engage in any self-help methods, as recognized and defined under the laws of the State of Florida.

6.2 Assignment- This Agreement shall not be assigned without the consent of Owner, except that Oceanside Lauderdale, Inc. may assign the Agreement to Angela DiPilato.

6.3 No Third party Beneficiaries- No person not an express party to this Agreement, or any assignee of such party, is intended to be a third party beneficiary hereof nor shall any such person otherwise have the right to enforce any provision hereof.

6.4 No Joint Venture- Nothing contained in this Agreement shall be deemed to create an equitable interest, partnership or joint venture among the parties.

6.5 Amendments- This Agreement may not be changed, terminated or modified orally or in any other manner other than by agreement in writing signed by all parties hereto, and any attempt to do the same shall be null and void.

6.6 Headings- All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation or any provision of this Agreement.

6.7 No Waiver- Neither the failure if any party to exercise any power or right given such party hereunder or to insist upon strict compliance by any other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms of this Agreement, shall constitute a waiver of any party's rights to demand exact compliance with the terms of this Agreement.

6.8 Severance- If any one or more provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth in this Agreement, and this Agreement shall be enforceable to the fullest extent permitted by law.

6.9 Notices- Any and all notices or other communications given under this Agreement shall be deemed to have been properly received (i) on the date of delivery if personally delivered; (ii) three (3) days after the date mailed if sent certified or registered mail, return receipt requested and postage prepaid; (iii) the day of transmission if faxed prior to 5:00 p.m. Eastern Standard time and a confirmation sheet is obtained, or (iv) the first business day after the delivery of same (with payment of shipping costs) to a nationally recognized overnight carrier (e.g. Federal Express) and addressed to the parties at the following addresses:

If to Owner-

40800 Woodward Avenue

Bloomfield Hills, Michigan 48304

If to Oceanside Lauderdale, Inc.-

2310 East Atlantic Boulevard (Suite 206)

Pompano Beach, Florida 33062

Any party may change its address for the giving of notices under this Agreement by delivering to the other party ten (10) days' written notice of the changer of address.

Notwithstanding the foregoing, any party may give notice of emergency situations, orally (personally, by telephone, or otherwise), by telecopy, telex, telegram or other method, provided that the party giving such emergency notice shall confirm the same by written notice in accordance with section 6.9.

6.10 Copies- Copies of this Agreement, so long as fully executed, shall be deemed valid and binding in lieu of an Original.

6.11 The following constitutes default under this Agreement:

6.11.1 Monetary Breach - In the event of a monetary breach of this Agreement, that is a failure on the part of either party to pay any payment due under any provision in a timely manner, the defaulting party shall receive a written demand for payment. The defaulting party shall be given thirty (30) days from the date of the written demand. If any such default is not cured in accordance herewith the non-defaulting party shall than be free to exercise legal remedies to cure such default.

6.11.2 Non-Monetary Breach - in the event of a non-monetary breach of this Agreement, the failure on the part of either party to perform all of its obligations contained herein, other than the payment of money, the defaulting party shall receive written notice of said breach. The defaulting party shall have sixty (60) days from the date of receipt of said notice to cure said breach. If any such default is not cured in accordance herewith the non-defaulting party shall than be free to exercise legal remedies to cure such default.

6.11.3 Terms of Essence- Every term of this Agreement shall be deemed and construed to be of the essence thereof, and any breach shall be deemed and construed to be of the very substance of this Agreement and the parties hereby consent to the issuance of an Order to Show cause, injunction or restraining order by any court of competent jurisdiction restraining any threatened breach or any continuing breach of any covenant imposed upon the parties herein. Said right of injunction shall be cumulative to the other remedies mentioned herein.

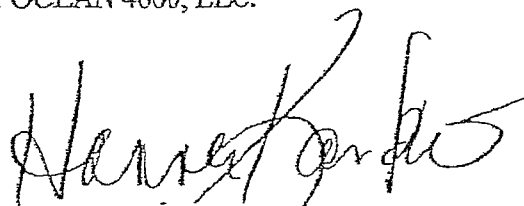
6.11.4 Attorneys Fees- In the event it becomes necessary for either party to enforce the terms contained herein, the prevailing party shall be entitled to an award of all reasonable attorneys fees and costs incurred in the prosecution of any action.

6.11.5 Venue- That in the event it becomes necessary to enforce or construe the provisions contained herein, the appropriate venue for said action shall be a court of competent jurisdiction located in Broward County, Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows, and this Agreement shall be deemed effective as of the latest date of execution.

Dated: 9/12/09

OWNER: OCEAN 4660, LLC.



By: _____

Name: Hannah Karcho

Title: Managing Member

Dated: 9/17/09

OCEANSIDE LAUDERDALE, INC.

By:  _____
Name: Angela DiPilato *by Agent in fact.*
Title: President

By:  _____
Name: Kenneth A. Frank
Title: Registered Agent

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL DISTRICT
IN AND FOR BROWARD COUNTY FLORIDA

_____X

OCEANSIDE LAUDERDALE, INC.,
KENNETH A. FRANK and ANGELA
DIPILATO,

NOTICE OF FILING AND
RECORDING AND
AFFIDAVIT IN SUPPORT
OF NOTICE

Plaintiff(s).
**THIS IS NOT AN
OFFICIAL COPY**
Case No.: 10-CV-22268

- against -

OCEAN 4660, LLC., SHUTTERS ON THE OCEAN
LLC., BOUTIQUE HOTELS AMERICA, LLC.,
HANNA KARCHO, REMO POLSELLI, MIKE
LANGE, MICHELLE LANGE, KEVIN BRYANT,
and "JOHN DOE" being any party having or claiming
a lien or interest in the real property known, situate and
lying as 4658-4660 North Ocean Drive, Lauderdale-
by-the-Sea, Florida 33308 and/or the Restaurant known
as Beachside Grill situated within said premises whose
names are unknown to the Plaintiffs at this time,

Defendants..

_____X

(17)

Exhibit 11 B

STATE OF FLORIDA)
)ss.:
COUNTY OF BROWARD)

KENNETH A. FRANK, being duly sworn depose and say:

1. [He] Kenneth A. Frank, is a natural person, one of the plaintiffs herein, a stockholder in Oceanside Lauderdale, Inc. and is fully familiar with the facts herein and submits this affidavit in support of the Notice of Filing and Recording of "Management Agreement/Lease" by and between Ocean 4660, LLC and Oceanside Lauderdale, Inc.

2. That on or about September 17, 2009 a management agreement/lease was executed by and between Ocean 4660, LLC. and Oceanside Lauderdale, Inc.

3. That annexed hereto as Exhibit " A " is a true and accurate copy of the management agreement/lease.

4. That the Plaintiffs only possess a faxed copy of the document which document specifically sets forth that copies of the Agreement shall be deemed valid in lieu of the original.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Dated Pompano Beach, Florida
June 27, 2010.

By:

K A Z
Kenneth A. Frank, Pro Se
- Plaintiff -

2310 East Atlantic Boulevard, Suite # 206
Pompano Beach, Florida 33062
(914) 563-4510

THIS IS NOT AN

Sworn to before me this

27 day of June, 2010

Notary Public

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 27 DAY OF JUNE 2010, BY
KENNETH ANTHONY FRANK

PRODUCED FLA J.D. CAED

Rosemary Taylor
Notary Public

NOTARY PUBLIC-STATE OF FLORIDA
Rosemary Taylor
Commission # DD846319
Expires JAN. 23, 2013
BORDER KING ATLANTIC BORDERING CO., INC.

THIS IS NOT AN
OFFICIAL COPY

EXHIBIT A

RESTAURANT MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (hereinafter referred to as the "Agreement") entered into this 18 day of July, 2009 by and between OCEAN 4660, LLC., a Florida corporation (hereinafter referred to as OWNER) and OCEANSIDE LAUDERDALE, INC., a Florida corporation (hereinafter referred to as "MANAGER")

RECITALS

WHEREAS, OCEAN 4660, LLC. is the record owner of that certain parcel of real property (hereinafter referred to as the "Subject Premises"), located at 4658 and 4660 North Ocean Boulevard, Lauderdale-by-the-Sea, Florida 33308 (the "Premises") of which a portion of said premises is a "Restaurant" and more particularly described in Exhibit "A", attached hereto and made a part hereof, and

WHEREAS, the record owner has the authority to enter into this "Agreement", and

WHEREAS, the parties desire to enter into this "Agreement" for the purpose of management of the "Restaurant".

NOW, THEREFORE, in consideration of the terms, provisions, conditions mutual promises, mutual benefits and covenants set forth in this "Agreement", and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

ADDENDUM AND TERM OF MANAGEMENT

1.1 Recitations - The above recitations are true and correct.

1.2 Addendum- The parties consent to the appendix of the "Addendum". Where there are any conflicts between this "Agreement" and the "Addendum", the terms of the "Addendum" shall control.

1.3 Term- The term of this "Agreement" shall be Five (5) years commencing as of its date of execution (" Commencement Date ") and continuing through the last day of the twelfth month of the fifth (5th) Year thereafter (" Termination Date "), subject to the terms and conditions set forth herein.

1.4 Renewal Option(s)- The OWNER hereby grants to the MANAGER the option(s) to renew this "Agreement" for four (4) , five (5) year terms. The option(s) period shall commence the day following the termination date of the initial term. Except as provided herein, the renewal of this "Agreement" shall be at the same terms and conditions set forth herein.

To exercise such option(s), the MANAGER shall deliver notice in writing to the OWNER on or before the ninety (90) days prior to the expiration of the initial term of the "Agreement".

1.5 Assignments- Included shall be an assignment and transfer of all of Owner's materials, equipment, furniture, inventory and supplies at the Restaurant (collectively referred to as the "Assets").

1.5.1 OWNER represents that the Assets transferred to MANAGER are free of any liens or encumbrances. MANAGER will maintain such assets in good and proper working order, free of liens and encumbrances.

1.5.2 The parties represent that they shall not take any acts, or cause any omissions, so as to remove or permit the removal of any of the Assets from the Premises.

1.6 Liquor License- The parties acknowledge that the State of Florida Liquor License for the Restaurant and Outdoor Patio Bar is currently in the name of Shutters, LLC.

_____. The MANAGER shall be allowed to use said license. OWNER agrees to bear the cost and responsibility for payment of all required taxes, surtaxes and surcharges due to the State of Florida for the use of said liquor license. There shall be no extra fee for the use of the Liquor License paid to the OWNER by MANAGER.

1.6.1 The parties acknowledge that the "Outdoor Patio Bar" located in the rear of the premises is operated by a different manager who is also using the liquor license. In the event that the "Outdoor Patio Bar's" managers make any payments to vendors that are un-honored, and shall effect the "Restaurants" use of the Liquor License the "Owner" shall at it's cost and expense make good and sufficient payment of said debts.

1.7.1 OWNER represents to MANAGER that they will not allow, in any way, the acts and actions of the MANAGER'S of the Outdoor Patio Bar (located in the rear of premises) to effect the Restaurant's use of the Liquor License, or otherwise.

1.7.2 The violation of any federal, state or local law, rule or regulation concerning the sale and consumption of alcohol beverages must be corrected within the time period provided by the applicable governmental agency.

1.8 ~~Operation~~ The OWNER hereby engages and contracts with MANAGER (Oceanside Lauderdale, Inc.) for the management and operation of the Restaurant located at premises.

1.8.1 MANAGER shall operate a restaurant providing a varied menu to serve breakfast, lunch and dinner and a " lounge ", seven nights a week.

1.8.2 The restaurant-lounge shall be permitted to provide entertainment which shall include, but not limited to, music groups or acts.

ARTICLE II

FEES, RENT AND BUILD-OUT ALLOWANCE

2.1 MANAGER shall pay to the OWNER the following amounts as fees for the use, occupancy, management and operation of the restaurant as follows (" Management Fee "):

2.1.1 Year 1 and 2. One Hundred Forty-Four Thousand (\$ 144,000.00) Dollars, payable in twelve (12) equal monthly installments of Twelve Thousand (\$ 12,000.00) Dollars per month. Florida sales tax shall be paid by the OWNER if same is required to be collected.

2.1.2 Year 3 through 5: One Hundred Forty-Four Thousand (\$ 144,000.00) Dollars, payable in twelve (12) equal monthly installments of Twelve Thousand (\$ 12,000.00) Dollars per month, but increased each year by one half of the percentage increase reflected in the annual Consumer Price Index. Florida sales tax shall be paid by the OWNER if same is required to be collected.

2.1.3 The payment of the Management Fees described herein shall be due on or before the 1st. Day of each month of the term of the Agreement.

2.1.4 Fee Increases during Option(s) Periods: For each year of the option(s) period the Management Fee shall increase by one half the annual percentage increase reflected in the annual consumer Price Index.

2.1.5 Default on Payment: In the event of a default in payment the MANAGER shall be given thirty (30) days to cure prior to the OWNER exercising any statutory legal remedies. A service charge of Twenty Five (\$ 25.00) Dollars will be assessed for any check returned un-honored.

2.1.6 Build-Out Allowance: MANAGER shall be relieved of their obligations to pay Management Fees, and any and all fees related to the premises for a period of two (2) months. Said period to commence on August 01, 2009 and continue through September 30, 2009.

2.1.7 OWNER shall bear the costs, expenses and responsibility for the following renovations:

(a) Reconstruct the front room of the restaurant located in the southern most portion of the restaurant by demolishing the front and side walls and windows. Install new floor to ceiling doors (operating). Thereby, creating an open-air room visible to the public from the street.

2.1.7 Garbage- MANAGER shall bear the cost, expense and responsibility for disposal of the trash and cleaning of the rear yard area where garbage containers are housed.

ARTICLE III

OCEANSIDE LAUDERDALE INC.' OPERATION AND AUTHORITY

3.1 General Authority Subject to the provisions hereof, Oceanside Lauderdale, Inc. (" Manager ") shall have the exclusive authority, right, power and responsibility to manage, operate and maintain the Restaurant, including all such services and actions Oceanside Lauderdale, Inc. shall deem necessary or advisable in order to perform its obligations set forth in this Agreement. Such rights and responsibilities include, but are not limited to the following

3.1.1 Hire, pay, supervise and terminate employees and independent contractors for the Restaurant, in Oceanside Lauderdale, Inc.'s sole discretion, maintain a payroll service for same, and control the work schedule and assignment of such employees and independent contractors.

3.1.2 Take reasonable precautions against fire, vandalism and burglary.

3.1.3 Set the price, good and services (including food and beverage) and other elements of the Restaurant business, in its sole discretion.

3.1.4 Renovations- In addition to any other rights and allowances provided to Oceanside Lauderdale Inc. shall also have the right to renovate:

3.1.5 To have exterior perimeter seating where accessible;

3.1.6 To have the right to provide room service to patrons throughout the premises, in the rear building, and in the two (2) other motels/hotels owned by owner and located within the vicinity.

3.1.7 To hold (in the adjoining parking lot) two (2) exterior promotional events per month or, if not used, to bank such events to later dates.

3.1.8 To install accent lighting at the front of the Restaurant, including but not limited to lights in the trees, bushes, plantings, poles, signage and walkways.

3.2 Maintenance and Repairs- Oceanside Lauderdale, Inc. Shall maintain the Restaurant in accordance with the terms and conditions herein and applicable law. Oceanside Lauderdale, Inc. Retains the specific authority on behalf of owner to make or cause to be made all ordinary repairs and replacements necessary to preserve the restaurant. Owner shall maintain and repair at it's own cost and expense all utility services, air conditioning, gas, plumbing, telephone, internet, mechanical systems, sprinklers, fire prevention.

3.3 Utilities- Owner shall bear the cost and expense of all utilities, including but not limited to electric, gas, air conditioning, telephone, internet, water, cable and satellite systems.

3.4 Taxes- Owner shall bear the responsibility and cost for the accounting of, and payment of all taxes that may be due and owing. Owner shall bear the cost and responsibility for any and all licensing fees that may become due and owing.

3.5 Valet Parking- The Agreement shall reflect the need for valet parking for the Restaurant. Manager shall have the right at it's own discretion to determine the times valet parking will be needed.

3.6 Compliance with Laws- Oceanside Lauderdale, Inc. shall use reasonable efforts to insure that the Restaurant remains in compliance in all reasonable respects with all present federal, state and local laws, statutes, ordinances, rules, regulations and order (hereinafter collectively referred to as the " Legal Requirements "). Owner, their agents, representatives and employees, shall execute all reasonable and necessary writings in conjunction with Oceanside Lauderdale, Inc.'s obligations and shall not undertake any acts, or make any omissions, which shall interfere with Oceanside Lauderdale, Inc.'s obligations. Owner insures that it will use reasonable efforts to insure that owner remains in compliance with all present, federal, state and local laws, statutes, ordinances, rules, regulations and order (hereinafter collectively referred to as " Legal Requirements ").

3.7 Environmental Responsibilities- Owner where applicable by law, statute, regulation, rule, ordinance or agreement hereby agree to be solely responsible and liable for any environmental matters and/or conditions related to or effecting the Restaurant, and comply with

all laws, statutes, rules, ordinances and/or regulations relating thereto, provided such matters or conditions are not the cause of any acts or omissions of Oceanside Lauderdale, Inc. Owner agrees to indemnify and hold Oceanside Lauderdale, Inc. (Manager) harmless and promptly pay any damages, costs, expenses or penalties which Oceanside Lauderdale, Inc. (Manager) shall incur in connection with such environmental matters or conditions, including for any cure undertaken by Oceanside Lauderdale, Inc.

ARTICLE IV

REPRESENTATIONS AND COVENANTS

4.1 Owner's Representations- Owner represents and covenants that (i) it is the exclusive record and lawful owner of the Premises, (ii) has full right and authority to enter into this Agreement and that the person executing the Agreement on behalf of Owner has the full right and authority to execute; (iii) has not engaged in any acts, or caused any omissions, which materially effect the Premises or Oceanside Lauderdale, Inc. (Manager) ability to operate the Restaurant, and (iv) has not entered into any other agreement, oral or in writing, which restrict or negatively impacts its ability to entering into this Agreement or Oceanside Lauderdale, Inc.'s operating and/or management of the Restaurant.

4.2 Oceanside Lauderdale, Inc.'s Representations- Oceanside Lauderdale, Inc. represents and covenants that (i) it will be the exclusive manager and operator of the Restaurant pursuant to this Agreement, subject to any further assignment of rights; (ii) has full right and authority to enter into this Agreement and that the person executing the Agreement on behalf of Oceanside Lauderdale, Inc. has the authority to so execute; (iii) has not engaged in any acts, or caused any omissions, which materially affect Owner with respect to the premises, and (iv) has not entered into any other agreement, oral or in writing, which restrict or negatively impacts its ability to enter into this Agreement or operation and management of the Restaurant.

4.3 General Representations- In addition to the foregoing, the following representations are herein made:

4.3.1 The parties acknowledge that Oceanside Lauderdale, Inc. has a substantial investment into the Restaurant, including both in the Agreement and in the renovations, management and operation of the Restaurant, and that Oceanside Lauderdale, Inc. (Manager) is

materially and necessarily relying upon the representations of the parties in order to make such investment.

4.3.2 Where oral and/or written consent of any party is required under this or any other Agreement, such consent shall not be unreasonably withheld. The parties shall use their best efforts to work in a cooperative manner as to the management and operation of the Premises, Tiki Bar and Restaurant.

4.3.3 Each party will refrain from harassing, disparaging or affecting the reputation of any other party.

4.3.4 Each party agrees to indemnify and hold harmless all other parties with respect to any acts or omissions of that party.

4.3.5 Owner represents and warrants that there are no State Liquor Authority, Board of Health, Building Code, Fire Code, Zoning Board and/or other violations encumbering the Premises that may affect or impact Oceanside Lauderdale Inc.'s (Managers) operation of the Restaurant.

4.3.6 Owner represents that they have paid all suppliers, vendors and distributors through the date of full execution of this Agreement, and further that they have not placed any orders for same which require cash or delivery payment by Oceanside Lauderdale, Inc. due to non-payment. In the event of non-compliance with this provision, Oceanside Lauderdale, Inc. may offset any payments made for delivery as against obligations due to owner.

4.3.7 Owner represents and warrants that all ventilation, air conditioning, electrical, gas, telephone, internet, mechanical, sprinkler, fire detection systems, windows, doors, walls, roof and foundations are in good condition and working order. Owner represents and warrants that it shall be the sole responsibility and cost of maintaining and repairing these systems, as well as, the monthly utility bills for same. In the event of non-compliance with this provision, Oceanside Lauderdale, Inc. may offset any payments made for repairs or utilities as against obligations due to owner.

4.4 Insurance- MANAGER shall maintain during the term of this Agreement and any extension thereof, public liability insurance covering all aspects of MANAGER'S business operations, including but not limited to coverage for valet parking. It is acknowledged by the

parties that MANAGER may contract with an outside company to provide valet parking services; in which case, said company shall provide insurance for the valet parking described herein.

4.4.1 The limits of liability coverage for said policies shall be \$ 750,000.00 bodily injury or death per person and \$ 750,000.00 per incident or occurrence. Owner to provide insurance for property damage with One Million (\$ 1,000,000) Dollars coverage.

4.4.2 The Manager shall deliver the policy or policies of such insurance or certificate thereof to the Owner or owners' on site representative.

4.4.3 It shall also be the obligation of the owner to maintain and carry fire, hurricane, windstorm and extended coverage insurance on all of the equipment, furnishings and personal property which will be contained within the restaurant. Said policy must be maintained with policy limits of a minimum equal to the actual cash value thereof.

4.4.4 In the event of damage or destruction of any of the contents of the restaurant by fire, wind storm, hurricane or other casualty, it shall be the obligation of the Owner, at its sole cost and expense to rebuild, replace and refurnish, etc., including but not limited to all equipment, structure, furnishings and otherwise within one hundred twenty (120) days.

4.4.5 All policies of insurance as required hereunder shall be carried with insurance companies who maintain no less than an A rating and are authorized to do business and insure such risks in the State of Florida.

ARTICLE V

RIGHT OF FIRST REFUSAL

5.1 Purchase of Tiki Bar- The owner hereby grants Occanside Lauderdale, Inc. an irrevocable right of first refusal to acquire, manage, purchase, operate or lease the " Tiki Bar " or

"Patio Bar" located adjacent to the Beach at the rear building of the subject premises. Whose street address is _____, Lauderdale-by-the-Sea, Florida.

5.2 Right to Acquire- Upon expiration, early termination, default, or upon the bankruptcy filing of the "Tiki Bar's" current manager, Oceanside Lauderdale, Inc. shall have the first right to acquire the management of the "Tiki Bar" or "Patio Bar" described above herein, either by assignee or by separate Agreement to be made between the parties. Owner shall not make or entertain any offer to sell the "Tiki Bar", and management of same, without first allowing Oceanside Lauderdale, Inc. a reasonable time to negotiate a purchase.

ARTICLE VI

THIS IS NOT AN
MISCELLANEOUS

6.1 No Self-Help- In the event owner seeks to evict and remove Oceanside Lauderdale, Inc. from the premises, Owner shall not engage in any self-help methods, as recognized and defined under the laws of the State of Florida.

6.2 Assignment- This Agreement shall not be assigned without the consent of Owner, except that Oceanside Lauderdale, Inc. may assign the Agreement to Angela DiPilato.

6.3 No Third party Beneficiaries- No person not an express party to this Agreement, or any assignee of such party, is intended to be a third party beneficiary hereof nor shall any such person otherwise have the right to enforce any provision hereof.

6.4 No Joint Venture- Nothing contained in this Agreement shall be deemed to create an equitable interest, partnership or joint venture among the parties.

6.5 Amendments- This Agreement may not be changed, terminated or modified orally or in any other manner other than by agreement in writing signed by all parties hereto, and any attempt to do the same shall be null and void.

6.6 Headings- All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation or any provision of this Agreement.

6.7 No Waiver- Neither the failure if any party to exercise any power or right given such party hereunder or to insist upon strict compliance by any other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms of this Agreement, shall constitute a waiver of any party's rights to demand exact compliance with the terms of this Agreement.

6.8 Severance- If any one or more provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth in this Agreement, and this Agreement shall be enforceable to the fullest extent permitted by law.

6.9 Notices- Any and all notices or other communications given under this Agreement shall be deemed to have been properly received (i) on the date of delivery if personally delivered; (ii) three (3) days after the date mailed if sent certified or registered mail, return receipt requested and postage prepaid; (iii) the day of transmission if faxed prior to 5:00 p.m. Eastern Standard time and a confirmation sheet is obtained, or (iv) the first business day after the delivery of same (with payment of shipping costs) to a nationally recognized overnight carrier (e.g. Federal Express) and addressed to the parties at the following addresses:

If to Owner- 40800 Woodward Avenue
Bloomfield Hills, Michigan 48304

If to Oceanside Lauderdale, Inc.-

2310 East Atlantic Boulevard (Suite 206)
Pompano Beach, Florida 33062

Any party may change its address for the giving of notices under this Agreement by delivering to the other party ten (10) days' written notice of the changer of address.

Notwithstanding the foregoing, any party may give notice of emergency situations, orally (personally, by telephone, or otherwise), by telecopy, telex, telegram or other method, provided that the party giving such emergency notice shall confirm the same by written notice in accordance with section 6.9.

6.10 Copies- Copies of this Agreement, so long as fully executed, shall be deemed valid and binding in lieu of an Original.

6.11 The following constitutes default under this Agreement:

6.11.1 Monetary Breach - In the event of a monetary breach of this Agreement, that is a failure on the part of either party to pay any payment due under any provision in a timely manner, the defaulting party shall receive a written demand for payment. The defaulting party shall be given thirty (30) days from the date of the written demand. If any such default is not cured in accordance herewith the non-defaulting party shall than be free to exercise legal remedies to cure such default.

6.11.2 Non-Monetary Breach - in the event of a non-monetary breach of this Agreement, the failure on the part of either party to perform all of its obligations contained herein, other than the payment of money, the defaulting party shall receive written notice of said breach. The defaulting party shall have sixty (60) days from the date of receipt of said notice to cure said breach. If any such default is not cured in accordance herewith the non-defaulting party shall than be free to exercise legal remedies to cure such default.

6.11.3 Terms of Essence- Every term of this Agreement shall be deemed and construed to be of the essence thereof, and any breach shall be deemed and construed to be of the very substance of this Agreement and the parties hereby consent to the issuance of an Order to Show cause, injunction or restraining order by any court of competent jurisdiction restraining any threatened breach or any continuing breach of any covenant imposed upon the parties herein. Said right of injunction shall be cumulative to the other remedies mentioned herein.

6.11.4 Attorneys Fees- In the event it becomes necessary for either party to enforce the terms contained herein, the prevailing party shall be entitled to an award of all reasonable attorneys fees and costs incurred in the prosecution of any action.

611.5 Venue: That in the event it becomes necessary to enforce or construe the provisions contained herein, the appropriate venue for said action shall be a court of competent jurisdiction located in Broward County, Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows, and this Agreement shall be deemed effective as of the latest date of execution.

Dated: 9/12/09

OWNER: OCEAN 4660, LLC

THIS IS NOT AN
OFFICIAL COPY

By: Hannah Karcho
Name: Hannah Karcho
Title: Managing Member

Dated: 9/11/09

OCEANSIDE LAUDERDALE, INC

By: Angela DiPietro
Name: Angela DiPietro
Title: President

By: Kenneth A. Frank
Name: Kenneth A. Frank
Title: Registered Agent

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IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL
CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA

OCEANSIDE LAUDERDALE, INC.,
KENNETH A. FRANK, and ANGELA DIPILATO

Plaintiffs

CFN # 110352462
OR BK 48272 Pages 1346 - 1347
RECORDED 10/28/11 03:48:31 PM
BROWARD COUNTY COMMISSION
DEPUTY CLERK 1012
#1, 2 Pages

vs.

CASE NO.: CACE 10-22268 (13)

OCEAN 4660, LLC., SHUTTERS ON THE OCEAN,
LLC., BOUTIQUE HOTELS AMERICA, LLC.,
HANNA KARCHO, and REMO POLSELLI,

Defendants

NOTICE OF LIS PENDENS

TO DEFENDANTS OCEAN 4660, LLC., SHUTTERS ON THE OCEAN, LLC., BOUTIQUE
HOTELS AMERICA, LLC., HANNA KARCHO, REMO POLSELLI AND ALL OTHERS WHOM
IT MAY CONCERN:

YOU ARE NOTIFIED OF THE FOLLOWING:

(a) The Plaintiffs have instituted this action against you seeking to establish and foreclose an equitable lien, and to establish a constructive trust with respect to the property described below.

(b) The Plaintiffs in this action are:

- (1) OCEANSIDE LAUDERDALE, INC.
- (2) KENNETH A. FRANK
- (3) ANGELA DIPILATO

(c) The case number of this action is as shown in the caption.

(d) The property that is the subject matter of this action is in Broward County, Florida, and is

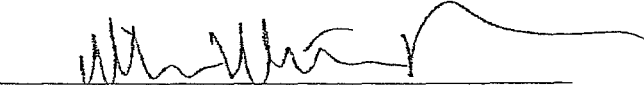
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BROWARD COUNTY, FLORIDA
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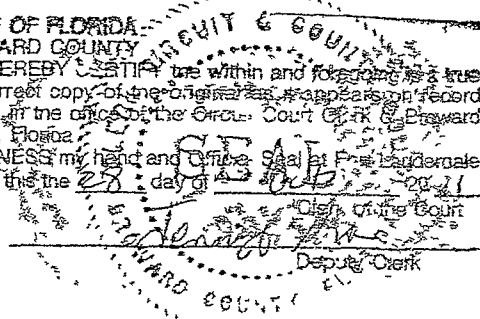
described as follows:

Lots 11, 12, 13, 14, 15, 16, 17, 18 and 19, in Block 10, and Lots 14, 15, 16 and 17, in Block 9, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida; ALSO all of that parcel of land, if any, bounded on the West by the Easterly line of said Lots 14, 15, 16 and 17, of said Block 9, bounded on the East by the Atlantic Ocean, bounded on the North by the North line of Lot 17 of said Block 9, extended Easterly to the Atlantic Ocean and bounded on the South by the South line of Lot 14 of said Block 9, extended Easterly to the Atlantic Ocean, said land fronting the Atlantic Ocean.

Also know as 4658-4660 N. Ocean Drive, Lauderdale by the Sea, Florida 33308.

Dated on 28th day of October, 2011.


WILLIAM WATSON TRICK, JR., Esq
Florida Bar No: 267104
WILLIAM WATSON TRICK, JR., P.A.
Attorney for the Plaintiff
1216 E. Atlantic Boulevard, Suite 7
Pompano Beach, FL 33060
Telephone: 954-942-9774

STATE OF FLORIDA
BROWARD COUNTY
I DO HEREBY CERTIFY the within and foregoing is a true
and correct copy of the original as it appears on record
and file in the office of the Clerk of the Court of Broward
County, Florida.
WITNESS my hand and Office Seal at Ft. Lauderdale
Florida, this the 28 day of October, 2011

Clerk of the Court
Deputy Clerk