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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

15 EAGLE SPE NV I, INC., a North Carolina  
16 corporation,

**Case No. 3:10-cv-00692-RCJ-RAM**

17 Plaintiff,

18 v.

19 SOMERSETT DEVELOPMENT  
20 COMPANY, LTD., a Nevada limited  
21 liability company; SOMERSETT, LLC,  
22 a Nevada limited liability company; SMITH  
23 REALTY FINANCE, a Nevada corporation;  
24 G. BLAKE SMITH, an individual; TIMOTHY  
25 CASHMAN, an individual;

**RESPONSE, ANSWER AND  
COUNTERCLAIMS**  
**(JURY DEMAND)**

26 Defendants.

27  
28 SOMERSETT DEVELOPMENT  
COMPANY, LTD., a Nevada limited  
liability company; SOMERSETT, LLC,  
a Nevada limited liability company; SMITH  
REALTY FINANCE, a Nevada corporation;  
G. BLAKE SMITH, an individual; TIMOTHY  
CASHMAN, an individual;

Counterclaimants,

1 v.  
2 EAGLE SPE NV I, INC., a North Carolina  
3 corporation,

4 Counterdefendants.  
5 \_\_\_\_\_/

6 Somersett Development Company, Ltd., Somersett, LLC, Smith Realty Finance, G. Blake  
7 Smith and Timothy Cashman respond to the Plaintiff's Application for Deficiency Judgment and  
8 Complaint for Breach of Contract as follows:

9 **ANSWER**

10 These Answering Defendants aver as follows:

11 1. These Defendants admit the allegations set forth in Paragraphs 3, 5, 13, 38, and 42  
12 of the Plaintiff's "Application" and Complaint.

13 2. In response to Paragraph 6, it is admitted that Defendant Smith is a Nevada  
14 resident, that he signed a Guarantee, but he is no longer obligated or liable on the Guarantee.

15 3. In response to Paragraph 7, it is admitted that Defendant Cashman is a Nevada  
16 resident, that he signed a Guarantee, but he is no longer obligated or liable on the Guarantee.

17 4. These Answering Defendants lack sufficient information upon which to form a  
18 belief as to the truth or falsity of the allegations set forth in Paragraphs 2, 14, 18, and 24, and  
19 therefore deny the same.

20 5. These Answering Defendants deny the allegations set forth in Paragraphs 1, 11,  
21 15, 16, 17, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 39, 40, 41, 43, 44, and  
22 45 of Plaintiff's "Application" and Complaint.

23 6. In response to Paragraph 4, these Defendants admit that as Manager of Somersett  
24 Development Company, Ltd., Smith Realty Finance signed the Promissory Note, but it is denied  
25 that that imputes any legal liability on the Manager, Smith Realty Finance, for obligations under  
26  
27  
28

1 the Note.

2 7. In response to Paragraph 8, these Defendants admit that the Note is attached as  
3 Exhibit 1, but deny that Defendants are responsible to or obligated for payment on the Note.  
4

5 8. In response to Paragraph 9, these Defendants admit that the Note was for  
6 construction of commercial buildings, but deny responsibility for the Note and deny that the  
7 Construction Loan Agreement has been breached.

8 9. In response to Paragraph 10, these Defendants admit that a Deed of Trust was  
9 recorded on the real property, but further deny that Plaintiff is entitled to recover as a result  
10 thereof.  
11

12 10. In response to Paragraph 12, the Loan was not conditioned on the Guarantees and  
13 the Guarantees provided a mechanism by which the Personal Guarantees were extinguished or  
14 eliminated.

15 11. In response to Paragraph 35, these Defendants admit that Hutchinson performed  
16 an appraisal, but deny that it is accurate and further deny that the fair market value of the subject  
17 property had declined to \$4,040,000 as of July 13, 2010.  
18

19 12. In response to Paragraph 45, it is denied that the Guarantors have responded in  
20 writing to the Plaintiff concerning their alleged liability, and it is further denied that each  
21 Guarantor is in breach of their contractual obligation.  
22

23 **AFFIRMATIVE DEFENSES**

24 As and for Affirmative Defenses the Defendants, and each of them, aver and allege as  
25 follows:

26 1. Failure to State a Claim. The Plaintiff's "Application" and Complaint fails to  
27 properly state a claim upon which relief can be granted.

28 2. Void Trustee's Sale. The Trustee's Sale is void. The Trustee's Sale was

1 orchestrated and processed by the Plaintiff's predecessor in interest. The foreclosure sale  
2 occurred while Plaintiff was beneficial owner of the Deed of Trust and Note and the Plaintiff  
3 was, therefore, the only party that could process the foreclosure sale.  
4

5 3. Lack of Endorsement. Eagle has not pled or alleged that it is in possession of the  
6 original Promissory Note properly endorsed by Colonial Bank and, therefore, has not pled a  
7 necessary element to a deficiency action and breach of contract claim.

8 4. Act of Third-Parties. All leases were interfered with by agents of Plaintiff's  
9 predecessors and said interference is binding upon the Plaintiff as a successor in interest to the  
10 activities and obstruction performed by BB&T and its agent.  
11

12 5. Interference. Plaintiff has interfered by and through its agents and predecessors  
13 with the Guarantors' right to extinguish liability on the Guarantees.

14 6. Estoppel. Plaintiff is estopped from proceeding with this action based upon the  
15 acts, performances, interference, conduct and omissions of the Plaintiff, Plaintiff's predecessors  
16 and agents.  
17

18 7. Laches. Because of the delays that occurred for which the Plaintiff and its  
19 predecessors and agents are responsible, Plaintiff's claims are barred by the Doctrine of Laches.

20 8. Lack of Standing. This action cannot be brought in the name of the Plaintiff, as it  
21 is not the lawful owner or holder of the Note and it did not process the foreclosure.  
22

23 9. Breach of Contract. The Plaintiff, by and through the action, conducts, acts and  
24 omissions of its predecessors and agents is in violation of the Promissory Note and Deed of Trust  
25 Loan Agreement, and has breached all contracts pertinent to or associated therewith.

26 10. Conditions Precedent. Conditions precedent to the obligations set forth in  
27 Plaintiff's Complaint have not occurred, and Plaintiff has failed to fulfill its agreement with the  
28 Defendants and, therefore, is estopped by and through the acts, omissions, conduct of its

1 predecessors and agents from recovery.

2 11. Plaintiff's Negligence. The negligence of the Plaintiff, its predecessors and  
3 agents, is the proximate cause of all damages, if any, being claimed by the Plaintiff.  
4

5 12. Real Party in Interest. The Plaintiff is not the real party in interest.

6 13. Mitigation of Damages. The Plaintiff, by and through its actions and the actions,  
7 omissions, and conduct of its predecessors and agents have failed to mitigate damages.

8 14. Set Off. Defendants are entitled to set off.

9 15. Absence of Privity. There is an absence of privity between the Plaintiff and its  
10 predecessors in interest and between the Defendants and the Plaintiff.  
11

12 16. Deficient Notice. The Notice of Default and Election to Sell is invalid, void and  
13 unenforceable.

14 17. No Meeting of the Minds. Because of the contradictory interpretations of the  
15 limiting language of the Guarantees and the Plaintiff's refusal to acknowledge the plain meaning  
16 of the document, there was no meeting of the minds and Guarantors should, therefore, not be  
17 liable.  
18

19 18. No Consideration. Because the Guarantors did not receive any loan proceeds  
20 directly, there is a failure of consideration for the Guarantees.

21 19. Conditions Precedent to Liability. Conditions precedent existed to trigger the  
22 enforceability and validity of the Guarantees and the conditions precedent did not occur.

23 20. Express Limits on Scope of Guarantee. The Guarantees by their terms limit the  
24 scope, nature, and extent of the Guarantors' responsibility and liability.  
25

26 21. Modification of Loan Documents. The modifications of the loan documents  
27 extinguished the Guarantors' obligations and responsibilities under the Guarantees.

28 22. Failure to Give Notice. The Plaintiff failed to give Guarantors sufficient notice of

1 when the underlying debt was in default. The Plaintiff, by and through its predecessors and  
2 agents, failed to give proper notification concerning the new debt.

3 23. Failure to Convey Adverse Information. Plaintiff, by and through its predecessors  
4 and agents, failed to honor Section 124 of the Restatement of Security, which requires the  
5 creditor to notify the Guarantors at the outset of any adverse facts that would materially increase  
6 the Guarantors' risk beyond what was reasonably assumed. Plaintiff failed to give proper notice  
7 and information to Guarantors.

8 24. Alteration of Underlying Debt. Because of alterations to the underlying debt, the  
9 Guarantors did not assume the specific risks associated with material alterations in the original  
10 debt.

11 25. Impairment of Collateral. Because of the acts, conduct, omissions and  
12 interference by Plaintiff and Plaintiff's predecessors and agents, the Plaintiff permitted an  
13 impairment of the collateral, thereby negating or diminishing the Guarantors' obligations on the  
14 Guarantees.

15 26. Failure to Notify Guarantors of Article 9 Foreclosure Sale. Plaintiff failed to give  
16 the Guarantors notification pursuant NRS 104.9611 of the Nevada Uniform Commercial Code,  
17 which requires creditor to provide notice of an impending foreclosure sale.

18 27. Failure to Hold Commercially Reasonable Foreclosure Sale. Plaintiff, through a  
19 series of misstatements, misrepresentations, improper notices and other acts and conduct, failed  
20 to conduct a commercially reasonable foreclosure sale.

21 28. NRS 40.451. Plaintiff's recovery is limited by NRS 40.451 to the amount of the  
22 consideration paid by Plaintiff for the debt which upon information and belief was nothing.

23 29. Discovery is continuing and these Defendants reserve the right to amend.  
24

25 ///  
26

**JURY DEMAND**

These Defendants, and each of them, hereby demand trial by jury.

WHEREFORE, these Defendants, and each of them, pray judgment against the Plaintiff and request that the Plaintiff's Complaint be dismissed with prejudice as to each Defendant, and that each Defendant recover attorney's fees and costs incurred in defending Plaintiff's Application and Complaint, and for such other relief as the Court determines to be appropriate under the circumstances.

**COUNTERCLAIMS**

Somerset Development Company, Ltd., Somerset, LLC, Smith Realty Finance ("SRF"), G. Blake Smith and Timothy Cashman counterclaim against the Plaintiff, as follows:

1. Somerset Development Company, Ltd. ("Somerset") is a Nevada limited liability company doing business in Washoe County, State of Nevada, and developed and constructed the property commonly referred to as Somerset Town Center.

2. Smith Realty Finance ("SRF") is a Nevada corporation that, pursuant to the laws of the State of Nevada, served as the Manager of Somerset. At all material times, SRF was doing business in the County of Washoe, State of Nevada.

3. Somerset, LLC, is a Nevada limited liability company that at all material times mentioned herein was a Guarantor of the debt previously owed to Colonial Bank which was later assigned to Branch Banking & Trust Company ("BB&T") and later assigned to Plaintiff, Eagle SPE NV I, Inc.

4. Blake Smith ("Smith") is a resident of the State of Nevada and was a personal Guarantor of the debt, the subject of Plaintiff's action. Smith's obligation has been satisfied.

5. Timothy Cashman ("Cashman") is an individual residing in the State of Nevada and was a personal Guarantor of the debt the subject of the Plaintiff's Complaint and Application

1 for Deficiency. Cashman's obligation has been satisfied.

2 6. Colonial Bank and Somerset entered into a loan transaction in December 2006.  
3 As part of the loan transaction, Somerset executed a Promissory Note for \$8,775,000 secured by  
4 a Deed of Trust on Somerset Town Center. The debt was conditionally guaranteed by Smith and  
5 Cashman. The debt was guaranteed by Somerset, LLC.  
6

7 7. SRF has no liability or responsibility under any Promissory Note, Construction  
8 Loan Agreement, Deed of Trust or other document relevant to or associated with the loan  
9 transaction mentioned herein.  
10

11 8. As a result of modifications, the maturity date of the subject loan was September  
12 28, 2010. See Paragraph 14 of Plaintiff's Complaint.

13 9. The loan guarantee documents executed by Smith and Cashman have a formula by  
14 which the maximum liability of Smith and the maximum liability of Cashman was extinguished  
15 as a result of Somerset's leasing and pre-leasing the subject property.  
16

17 10. Plaintiff's predecessors and agents have in bad faith refused to accept pre-leases  
18 and leases that Somerset negotiated and procured on June 25, 2010. Dennis Harms, on behalf of  
19 Plaintiff's agents and predecessors, expressly stated that BB&T "will not approve any leases."  
20 (Emphasis added.) Despite BB&T's refusal to accept reasonable leases and pre-leases, BB&T  
21 has continued to accept the benefit of all leases it allegedly rejected or refused to accept by  
22 collecting all rents from all leases. Any refusal by BB&T to accept leases for which it is  
23 receiving and depositing in its account the rents from those leases is unreasonable and renders the  
24 rejection of said lease as a bad faith effort to defeat the contractual rights of the  
25 Counterclaimants.  
26

27 11. The guarantee documents executed by Smith and Cashman required Colonial  
28 Bank and its successors in interest, including BB&T and Plaintiff, to act at all times in good faith



1 and not deprive the Guarantors of the benefit of their bargain.

2 12. BB&T, as successor to Colonial Bank, and Plaintiff have in bad faith refused to  
3 accept lease agreements, pre-lease agreements and other commitments by tenants to lease space  
4 at Somerset Town Center, thereby violating the covenant of good faith and fair dealing, by  
5 acting in bad faith for not accepting reasonable leases and pre-leases as required by Paragraph 1  
6 of the Guarantee Agreements executed by Smith and Cashman.  
7

8 13. Upon information and belief, Colonial Bank was seized and put into a  
9 receivership by the Federal Deposit Insurance Corporation ("FDIC").  
10

11 14. By and through the terms and conditions of a Purchase and Assumption  
12 Agreement dated August 14, 2009, BB&T acquired Colonial Bank's loan to Somerset for a  
13 nominal amount, believed to be \$3,232,000.

14 15. BB&T unlawfully and improperly provided Somerset with an invalid Notice of  
15 Default and Election to Sell on or about January 19, 2010.  
16

17 16. Thereafter, BB&T continued to proceed with an improper and illegal Notice of  
18 Default and Election to Sell by filing and recording a Notice of Default and Election to Sell  
19 recorded on or about March 19, 2010.

20 17. All foreclosure proceedings that emanate from these defective Notices of Default  
21 and Election to Sell are improper, invalid and void.  
22

23 18. On or about January 29, 2010, BB&T provided Somerset with notice that it was  
24 in default under the Deed of Trust. In its January 29, 2010 "Notice," BB&T notified Somerset  
25 and all tenants and lessees at Somerset Town Center that Utter Real Estate Consultants ("Utter")  
26 was the "Property Manager."

27 19. Utter assumed control of the subject property as Interim Property Manager  
28 through the use of an illegal, improper and void Notice of Default and Election to Sell.

1           20.     As Interim Property Manager and as agent of BB&T, Utter disrupted the  
2 tranquility and economic relationships between existing tenants and Somerset. Utter refused to  
3 negotiate with prospective tenants so that the premises could be fully leased out. Utter scheduled  
4 and then refused to attend meetings to accommodate the needs and interests of existing tenants.  
5 Utter was causing this interference, injury and damage to Counterclaimants in light of and  
6 pursuant to a Notice of Default and Election to Sell that violates the provisions and requirements  
7 of NRS 107.080. The Notice of Default incorrectly stated the contents of the Loan Modification  
8 Agreement, the Promissory Note and the nature and extent of the alleged default.  
9

10           21.     Utter, acting as an agent of BB&T and Plaintiff, or in the alternative, outside the  
11 scope and course of its relationship with BB&T, refused to maintain the buildings at a level that  
12 replicated or replicates Somerset's maintenance. The failure to engage in said maintenance was  
13 harmful to ongoing lease negotiations.  
14

15           22.     Utter scheduled meetings but refused to meet with Roundabout Bistro, a  
16 prospective tenant and existing tenant then in negotiations with Somerset.  
17

18           23.     Utter refused to honor existing contracts and told all tenants that BB&T was not  
19 bound by the Lease Agreement for the Roundabout Bistro tenancy.

20           24.     Utter refused to engage in any maintenance, notwithstanding a one-foot snowfall  
21 that hampered existing tenants' ability to do business.

22           25.     After taking control of the property, Utter failed to continue to pursue negotiations  
23 with prospective tenants, and treated prospective tenants with animosity and hostility, thereby  
24 interfering with Somerset's ability to successfully lease out the entire premises.  
25

26           26.     Utter interfered with existing Dickson Realty negotiations, which were of  
27 considerable value to Somerset and would have negated all liability of the Guarantors. Utter  
28 interfered with the Dickson Realty negotiations for the sole purpose of preventing the Guarantors

1 from obtaining the benefit of the limiting language set forth in the Guarantees. Utter, acting as  
2 agent or, in the alternative, outside the scope of its agency, took control of the property, took  
3 possession of rents and refused to pay Devcon Construction, Inc. (“Devcon”).  
4

5 27. Utter continued to interfere with prospective negotiations by communicating  
6 directly with tenants through letters that were hostile and acrimonious, telling tenants and  
7 prospective tenants not to deal with Somerset. The resulting damage and harm is in excess of  
8 \$10,000 in damages and materially interfered with Smith’s and Cashman’s right to extinguish  
9 their liability on the Guarantees.  
10

11 28. Utter’s refusal and bad faith rejection of potential leases constitutes a material  
12 breach of BB&T’s implied covenant of good faith and fair dealing set forth in the Guarantees and  
13 pertinent loan documents.  
14

15 29. On March 1, 2010, BB&T promised to take all appropriate steps to minimize  
16 prospective damages being incurred by Somerset. Thereafter, however, BB&T refused to do so.  
17

18 30. BB&T, through its conduct and actions, particularly by and through those actions  
19 of Utter, became a mortgagee in possession having taken actual possession of the mortgaged  
20 property and in conducting managerial services and duties. In so doing, BB&T is liable for all  
21 acts, commissions, omissions and conduct imposed upon a mortgagee in possession, and Plaintiff  
22 is vicariously liable for the acts of BB&T.  
23

24 31. On February 2, 2010, BB&T continued to harass tenants. Utter met with  
25 representatives of Somerset and directly instructed and informed Somerset’s officers to have no  
26 contact with existing tenants because Utter, according to representations, was managing the  
27 property. Utter informed Somerset that he was in “complete control of the property” and was  
28 assuming “full responsibility for all managerial duties.” Despite assuming all managerial duties  
and taking complete control of the property, Utter failed to act in good faith and did so by

1 mistreating tenants, abandoning tenants' interests, and interfering with ongoing tenant and  
2 tenancy negotiations.

3  
4 32. Utter and BB&T were aware of tenant improvements being constructed by  
5 Devcon. Devcon's company performed approximately \$122,000 worth of construction work and  
6 tenant improvements on Somersett Town Center. BB&T was the beneficiary of these  
7 improvements, to which Plaintiff, Eagle SPE NV I, Inc. ("Eagle"), became entitled as a result of  
8 its ownership of the subject property through an invalid foreclosure. Eagle has been unjustly  
9 enriched by the construction services performed by Devcon.

10  
11 33. Eagle, through the assignment of BB&T's Note and Deed of Trust and as a result  
12 of an invalid and illegal foreclosure thereon, now purportedly owns Somersett Town Center. It is  
13 the beneficiary of all of Devcon's work, services and improvements. Despite being enriched by  
14 Devcon's construction of tenant improvements, BB&T and its successor Eagle refuse to pay for  
15 the benefit of Devcon's services and improvements. BB&T and/or Eagle have been, therefore,  
16 unjustly enriched.

17  
18 34. Upon information and belief, BB&T appraised the subject property in  
19 approximately February 2010, which established an appraised value of over \$5,000,000.

20 35. For reasons that constitute bad faith breaches of BB&T's covenant of good faith  
21 and fair dealing, BB&T did not pursue actual foreclosure on the property until September 14,  
22 2010, causing and negligently allowing a diminution in value of over \$1,000,000 according to  
23 the Summary Appraisal of Hutchinson Valuation, Inc. The delay is an unconscionable bad faith  
24 breach of the covenant of good faith and fair dealing.

25  
26 36. On or about July 22, 2010, BB&T assigned its Note and Deed of Trust to Eagle.  
27 Eagle, however, did not, upon information and belief, obtain possession of a fully and properly  
28 endorsed original Note. Eagle abused processes by suing Counterclaimants in Federal Court

1 falsely representing that it had standing to obtain relief against Defendants.

2 37. The maker of a negotiable note secured by a deed of trust cannot discharge its  
3 liability by payment to one (Plaintiff) who is not the holder in due course. Plaintiff is not in  
4 possession of the endorsed negotiable instrument and it therefore has no standing to collect on  
5 the Note and Guarantees.  
6

7 38. Notwithstanding the assignment of the Note and Deed of Trust to Eagle, on  
8 September 14, 2010, BB&T orchestrated, processed and completed a foreclosure sale, at a time  
9 when in fact BB&T had no beneficial or legal ownership rights on which to foreclose, because it  
10 had previously assigned those rights to Eagle two months earlier. The foreclosure is, therefore,  
11 invalid, illegal and improper and should be declared void and the Trustee's Deed expunged.  
12

13 39. At the Trustee's Sale BB&T bid \$3,232,000. Eagle did not bid and was not  
14 mentioned at the foreclosure sale. BB&T and Eagle conspired to conduct an illegal and voidable  
15 Trustee's Sale, thereby rendering the Trustee's Deed invalid. Eagle is not the holder of a  
16 properly endorsed original Note and therefore has no standing to pursue foreclosure proceedings.  
17

18 40. BB&T has presented a false diminished value of the subject property, thereby  
19 trying to intentionally create an excessive deficiency to which the borrowers and Guarantors may  
20 be subjected.

21 **SOMERSETT DEVELOPMENT COMPANY, LTD.'S COUNTERCLAIMS**

22 **FIRST CLAIM FOR RELIEF**  
23 **(Breach of Contract)**

24 41. All prior paragraphs and the allegations therein are incorporated herein as though  
25 fully set forth.

26 42. Somerset and Plaintiff's predecessor entered into contracts. The contracts  
27 include a Promissory Note secured by Deed of Trust, a Construction Loan Agreement, and a  
28

1 Deed of Trust and Security Agreement and Fixture Filing with Assignment of Rents.

2 43. The contracts were entered into by and between Somerset Development  
3 Company, Ltd., and Colonial Bank, N.A.  
4

5 44. As a result of a seizure by the Alabama State Banking Department and  
6 receivership imposed by FDIC on Colonial Bank, Branch Banking and Trust Company  
7 (“BB&T”) acquired Colonial Bank’s assets including the loans and obligations referenced in the  
8 subject loan documents.

9 45. On or about July 22, 2010, BB&T assigned the Note and Deed of Trust to  
10 Plaintiff.  
11

12 46. As Assignee of the contracts entered into between Somerset and Colonial,  
13 Plaintiff has assumed all obligations, duties and responsibilities set forth in the subject contracts.

14 47. Plaintiff, by and through the acts, conducts, omissions of itself, BB&T and Utter,  
15 breached the terms and conditions set forth in the Promissory Note, Construction Loan  
16 Agreement and Deed of Trust.  
17

18 48. As a proximate result and foreseeable consequence of the breaches of the subject  
19 contracts, Counterclaimant has sustained damages in excess of \$10,000 and Plaintiff is  
20 vicariously responsible for the breaches of contracts as more particularly specified herein.

21 49. Counterclaimant has been required to retain the services of counsel to prosecute  
22 and represent them with respect to the breaches of contract specified herein and are therefore  
23 entitled to reasonable attorneys’ fees and costs of court.  
24

25 **SECOND CLAIM FOR RELIEF**  
26 **(Breach of the Covenant of Good Faith and Fair Dealing)**

27 50. Counterclaimant incorporates herein as though fully set forth all prior paragraphs  
28 and allegations.

1           51.     In the State of Nevada there exists in every contract implied covenants of good  
2 faith and fair dealing.

3           52.     The implied covenants of good faith and fair dealing that apply to the Promissory  
4 Note, Construction Loan Agreement and Deed of Trust obligate and require the Plaintiff and its  
5 predecessors to refrain from any improper, illegal or actionable conduct intended to deprive  
6 Counterclaimant the benefit of their bargain.

7           53.     The Plaintiff, itself and by and through the actions, omissions and conduct of its  
8 predecessors in interest and agents have breached the covenant of good faith and fair dealing by  
9 intentionally trying to deprive the Counterclaimant the benefit of its contractual agreements.  
10

11           54.     By and through the actions, omissions and conduct of the Plaintiff and the  
12 Plaintiff's predecessors and agents, the Counterdefendant has breached the implied covenant of  
13 good faith and fair dealing in the Guarantee documents by trying to purposefully, unreasonably  
14 and in violation of the covenant of good faith and fair dealing reject leases at Somerset Town  
15 Center which would have diminished, eliminated or limited the liability of Smith and Cashman  
16 on their executed Guarantees.  
17

18           55.     The Counterdefendant and its predecessors and agents have intentionally violated  
19 the implied covenants of good faith and fair dealing by trying to inhibit and prevent Somerset  
20 from entering into leases with prospective tenants which would have increased Somerset's net  
21 operating income so as to establish a debt service ratio sufficient to extinguish the Guarantors'  
22 obligations pursuant to Paragraph 1 of the Guarantees.  
23

24           56.     As a proximate and foreseeable consequence of the Counterdefendant's breaches  
25 of the covenants of good faith and fair dealing, the Counterclaimant, and each of them, have  
26 sustained damages in excess of \$10,000 and are entitled to an award of reasonable attorneys' fees  
27 and court costs.  
28

**THIRD CLAIM FOR RELIEF**  
**(Conspiracy)**

1  
2  
3       57. Counterclaimant incorporates herein as though fully set forth all prior paragraphs  
4 and allegations.

5       58. Plaintiff (Counterdefendant) by acting in concert with BB&T, Utter and others  
6 entered into an agreement and intended to accomplish an unlawful objective for the purpose of  
7 harming the Counterclaimant and preventing it from reaping the benefit of its business  
8 relationships with tenants and preventing it from receiving the benefit of its bargain with  
9 Colonial Bank.  
10

11       59. The conspiracy included the Plaintiff's agreement with predecessors and agents to  
12 defeat, compromise, impair or eliminate the opportunity the Guarantors had to minimize or  
13 extinguish their exposure under the guarantee documents.  
14

15       60. The agreement was followed by overt actions by the Plaintiff, its predecessors and  
16 agents to intentionally and purposely interfere with the relationship between lessees and potential  
17 lessees and Somerset.

18       61. The civil conspiracy was further activated and accomplished as a result of the  
19 overt actions by Plaintiff, its predecessors and agents, to pursue a wrongful foreclosure by BB&T  
20 when, in fact, BB&T had not rights, authorities, ownership or power to conduct and process the  
21 foreclosure sale.  
22

23       62. The Counterdefendant's participation in the conspiracy was further accomplished  
24 by the Counterdefendant's unlawful objectives of preventing Somerset, Smith and Cashman  
25 from being able to successfully rent space at Somerset Town Center for such rental amounts as  
26 to extinguish the liability of Guarantors Smith and Cashman by interfering with prospective  
27 tenant negotiations with Somerset and by failing and refusing to properly maintain, operate and  
28



1 administer the property while Plaintiff, Plaintiff's predecessors were in possession of said  
2 property as the manager in control.

3  
4 63. As a proximate and foreseeable consequence of the conspiracy entered into by the  
5 Plaintiff with its predecessors and agents, the Counterclaimants, and each of them, have been  
6 damaged in excess of \$10,000 and are entitled to an award of punitive damages, attorneys' fees  
7 and costs of court.

8  
9 **FOURTH CLAIM FOR RELIEF**  
**(Negligence)**

10 64. Counterclaimant incorporates herein as though fully set forth all prior paragraphs  
11 and allegations.

12 65. The Plaintiff in seizing the property owned and operated by Somersett, negligently  
13 breached duties of care owed to Somersett and the Guarantors, Somersett LLC, Smith and  
14 Cashman, in the manner in which it dealt with tenants, providers of tenant improvements,  
15 prospective tenants, real estate brokers, and others whose purpose and intent was to maximize the  
16 tenant occupancy and rental rates obtained at Somersett Town Square.

17 66. As a proximate result of the Counterdefendant's breaches of its duties of care, the  
18 Counterclaimants, and each of them, have been damaged in excess of \$10,000 and are entitled to  
19 an award of attorneys' fees.  
20  
21

22 **FIFTH CLAIM FOR RELIEF**  
23 **(Unjust Enrichment)**

24 67. Counterclaimant incorporates herein as though fully set forth all prior paragraphs  
25 and allegations.

26 68. Somersett is in the process of paying a claim failed against it by Devcon. Devcon  
27 contracted with Somersett to construct, install and implement \$122,000 of tenant improvements  
28 at Somersett Town Center.

1           69.     Counterdefendant, as the present owner of record (albeit improper and illegal) and  
2 operator of the Somerset Town Center, has been unjustly enriched by the services, construction,  
3 materials and benefit conferred upon the property by Devcon and has, notwithstanding repeated  
4 demands, refused to compensate Somerset and/or Devcon for the improvements  
5  
6 Counterdefendant has unjustly received, possesses and enjoys.

7           70.     As a result of Counterdefendant unjustly receiving the benefit and enrichment of  
8 the tenant improvements constructed by Devcon, Counterdefendant should be required to  
9 disgorge the \$122,000 or in the alternative to compensate Devcon for the reasonable value of the  
10 tenant improvements provided by Devcon.  
11

12           71.     Somerset has standing to implement, prosecute and process this claim for unjust  
13 enrichment in that it has committed itself to pay Devcon for the tenant improvements despite and  
14 notwithstanding Counterdefendant's refusal to pay for the benefit of the tenant improvements it  
15 now possesses and operates.

16           72.     As a result of the need to prosecute this unjust enrichment claim, Somerset is  
17 entitled to reasonable attorneys' fees and costs of court.  
18

19                           **SOMERSETT, LLC,'S, COUNTERCLAIMS**

20   **SIXTH CLAIM FOR RELIEF**  
21   **(Breach of Contract)**

22           73.     Somerset, LLC, incorporates herein as though fully set forth all prior paragraphs  
23 and allegations.

24           74.     Somerset, LLC, entered into a contract with Counterdefendant's predecessor,  
25 Colonial Bank, N.A., the contract is a Guarantee dated December 26, 2006.

26           75.     Pursuant to the FDIC seizure of the assets of Colonial Bank and subsequent  
27 transfer of said assets to BB&T, Counterdefendant's predecessor in interest, the terms and  
28

1 conditions of the Guarantee contract are binding on Counterdefendant.

2 76. Counterdefendant breached the terms and conditions of the Guarantee by and  
3 through the acts, omissions and conduct of Counterdefendant's predecessors and agents.  
4

5 77. By permitting and unlawful and improper interference with Somersett LLC's  
6 rights and entitlements under the Guarantee, the Counterdefendant has breached the terms and  
7 conditions of the Guarantee.

8 78. As a proximate and foreseeable consequence of the Counterdefendant's breach of  
9 contract, Somersett, LLC, has been damaged in an amount in excess of \$10,000 and is entitled to  
10 reasonable attorney's fees and costs of court.  
11

12 **SEVENTH CLAIM FOR RELIEF**  
13 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

14 79. Somersett, LLC, incorporates herein as though fully set forth all prior paragraphs  
15 and allegations.

16 80. In each and every contract in the State of Nevada there exists implied covenants of  
17 good faith and fair dealing.

18 81. The implied covenants of good faith and fair dealing prohibit a part to a contract  
19 from intentionally and improperly denying or depriving the other party to the contract the benefit  
20 of its bargain.  
21

22 82. As specified in detail herein, Counterdefendant has interfered with and breached  
23 the implied covenant of good faith and fair dealing set forth in the December 26, 2006,  
24 Guarantee entered into by and between Counterdefendant's predecessor and Somersett, LLC.  
25

26 83. As a proximate result of the breaches of the implied covenant of good faith and  
27 fair dealing, Counterdefendant is responsible for Somersett, LLC's, damages in excess of  
28 \$10,000 and is obligated to pay Somersett, LLC, reasonable attorneys's fees and costs of court.

**EIGHTH CLAIM FOR RELIEF**  
**(Conspiracy)**

1  
2  
3 84. Somersett, LLC, incorporates herein as though fully set forth all prior paragraphs  
4 and allegations.

5 85. Counterdefendant and its predecessors and agents, including but not limited to  
6 BB&T and Utter, have acted in concert and pursuant to an agreement to accomplish an unlawful  
7 objective of depriving Somersett, LLC, of the benefit of its bargain and by unnecessarily and  
8 inappropriately and improperly exposing Somersett, LLC, to sums due on the Guarantee which  
9 would not otherwise be due had it not been for the conspiratorial activities of the  
10 Counterdefendant.  
11

12 86. As a proximate and foreseeable consequence the Counterdefendant's  
13 conspiratorial activities, the Counterclaimants, and each of them, have been damaged in excess  
14 of \$10,000 and are entitled to punitive damages, and are entitled to reasonable attorneys' fees and  
15 costs of suit.  
16

**NINTH CLAIM FOR RELIEF**  
**(Negligence)**

17  
18  
19 87. Counterclaimant incorporates herein as though fully set forth all prior paragraphs  
20 and allegations.

21 88. The Plaintiff/Counterdefendant owed a duty of care to Somersett, LLC, with  
22 regard to its foreclosure process.

23 89. Plaintiff/Counterdefendant negligently prepared, recorded and served an improper  
24 and ineffective Notice of Default and Election to Sell.

25 90. Plaintiff/Counterdefendant owed a duty of care to Somersett, LLC, to not interfere  
26 with Somersett's relationship with its tenants, which would otherwise negligently and carelessly  
27 expose Somersett, LLC, to exposure on its Guarantee.  
28



1 for managers of Nevada limited liability companies.

2 98. The allegations made by Plaintiff/Counterdefendant constitute a willful act in the  
3 use of process that is not proper in the regular conduct of this legal proceeding.  
4

5 99. Plaintiff/Counterdefendant knows that there exists no legal basis for its claim  
6 against SRF and had brought this claim against SRF for ulterior purposes of coercing a nuisance  
7 claim settlement or for the purpose of requiring SRF to incur otherwise unnecessary legal  
8 expenses and costs of court.

9 100. The Plaintiff/Counterdefendant's ulterior purpose is evidenced by the malice and  
10 want of probable cause for filing a claim against SRF. In the alternative, Plaintiff/  
11 Counterdefendant should bear the legal responsibility or maliciously prosecuting SRF for no  
12 valid or legitimate legal reason.  
13

14 101. The conduct of the Plaintiff/Counterdefendant was willful, intentional and done  
15 with reckless disregard of its possible consequences and a direction violation of Nevada statutory  
16 authority.  
17

18 102. There is no provision in the Articles of Organization or Operating Agreement for  
19 Somersett Development Company, Ltd., that obligates its Manager, SRF to bear responsibility  
20 for any debt incurred by the limited liability company. Accordingly, under NRS 86.371 there is  
21 no liability for a member or manager of a Nevada limited liability company for the debts of the  
22 limited liability company.  
23

24 103. Nevada common law is in accord. According to Nevada Supreme Court, NRS  
25 86.371 "makes clear that statutory managers of an LLC cannot be held individually liable for the  
26 debts of the LLC." The complete disregard for fundamental legal principals shown by the  
27 Plaintiff/Counterdefendant warrants an award of substantial punitive damages.

28 104. As a proximate and foreseeable consequence of the Plaintiff/Counterdefendant's

1 abuse of process, SRF is entitled to a judgment in excess of \$10,000, punitive damages and  
2 reasonable attorneys' fees and court costs.

3  
4 **ELEVENTH CLAIM FOR RELIEF**  
5 **(Conspiracy)**

6 105. SRF incorporates herein as though fully set forth all prior allegations and  
7 paragraphs.

8 106. The Plaintiff entered into a conspiratorial agreement with its predecessor and its  
9 agents to cause financial harm to SRF.

10 107. The Plaintiff/Counterdefendant acting in concert with Dennis Harms, BB&T,  
11 Utter, and others intended to accomplish an unlawful objective by forcing SRF to incur legal  
12 expenses and court costs in defending an otherwise abusive claim for the purpose of financially  
13 harming SRF.

14 108. SRF has sustained damage and will continue to sustain damage as a result of the  
15 conspiratorial activities of the Plaintiff/Counterdefendant.

16 109. As a proximate and foreseeable consequence of the Plaintiff/Counterdefendant's  
17 conspiratorial activities, SRF has sustained damages in excess of \$10,000, is entitled to punitive  
18 damages, reasonable attorneys' fees and costs of court.  
19

20  
21 **G. BLAKE SMITH'S COUNTERCLAIMS**

22 **TWELFTH CLAIM FOR RELIEF**  
23 **(Breach of Contract)**

24 110. G. Blake Smith ("Smith") incorporates herein as though fully set forth all prior  
25 allegations and paragraphs.

26 111. Smith entered into a series of contracts with Plaintiff/Counterdefendant's  
27 predecessors in interest.

28 112. Pursuant to the contract entered into on December 26, 2006, between Colonial

1 Bank and Smith, also known as the "Guarantee", Colonial Bank and its successors in interest,  
2 including Plaintiff/Counterdefendant, were obligated to honor the provisions of Paragraph 1 of  
3 the Guarantee.  
4

5 113. Pursuant to and in accordance with Paragraph 1 of the Agreement (Guarantee) the  
6 Lender, whose duties and responsibilities are binding on Plaintiff/Counterdefendant, agreed that  
7 Smith's maximum liability would not exceed an amount equal to the outstanding principal and  
8 interest (and nothing else) under the Note multiplied by the percentage of leaseable square  
9 footage within the improvements which had not been pre-leased to third parties.  
10

11 114. After the construction of the improvements (Somerset Town Center) the  
12 Borrower, Somerset Development Company, Ltd., successfully rented approximately 100% of  
13 the "leaseable square footage within the improvements."  
14

15 115. As a result of the leasing activities pursued by and accomplished by Somerset,  
16 Smith's exposure on the Guarantee was eliminated pursuant to the formula set forth in Paragraph  
17 1 of the contract.  
18

19 116. Despite the formula being included in the Agreement, which obligated Colonial  
20 Bank, BB&T and Plaintiff/Eagle to give Smith credit against his Guarantee for all leaseable  
21 square footage leased or pre-leased at the premises, Plaintiff/Counterdefendant, through the acts  
22 of itself, predecessors and agents, have breached the Guarantee Agreement and have failed and  
23 refused to give Smith the credit for the leased square footage at Somerset Town Square.  
24

25 117. As a result of this breach of contract, Smith has incurred damages and is entitled  
26 to a judgment against the Plaintiff/Counterdefendant for an amount in excess of \$10,000 and for  
27 reasonable attorneys' fees and costs of court.  
28

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1 **THIRTEENTH CLAIM FOR RELIEF**  
2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

3 118. Smith incorporates herein as though fully set forth all prior allegations and  
4 paragraphs.

5 119. Every contract entered into in the State of Nevada imposes upon the contracting  
6 parties the duty of good faith and fair dealing.

7 120. Plaintiff/Counterdefendant committed wrongful acts during the course of the  
8 contractual relationship that were intended to and did deprive Smith the benefit of his contract.

9 121. The contract to which Smith and Plaintiff/Counterdefendant is the Guarantee  
10 executed by Smith.

11 122. There is included in the contract a formula by which Smith's liability and/or  
12 exposure to pay the underlying debt is extinguished an/or reduced.

13 123. The Plaintiff/Counterdefendant has breached the Guarantee by and through the  
14 actions of itself, its predecessors and agents, of depriving Smith the benefit of the formula by  
15 which is liability or exposure on the underlying debt is diminished or extinguished.

16 124. As a result, the Plaintiff/Counterdefendant has breached the covenant of good  
17 faith and fair dealing and is responsible to Smith for his proximate and consequential damages in  
18 excess of \$10,000.

19 125. Smith is also entitled to recover his attorneys' fees and court costs.

20 126. The Plaintiff/Counterdefendant has unreasonably, unfairly and unconscionably  
21 refused to accept leases negotiated by Somersett, knowing full well that if leases were approved  
22 or accepted, Smith's liability or exposure on the Guarantee would be diminished or extinguished.

23 127. As a result of the Plaintiff/Counterdefendant's refusal to accept leases on the  
24 subject premises, the Plaintiff/Counterdefendant had deprived Smith the benefit of his bargain  
25  
26  
27  
28

1 and the Plaintiff/Counterdefendant has therefore breached the covenant of good faith and fair  
2 dealing.

3  
4 128. As a proximate result of the Plaintiff/Counterdefendant's breach of the implied  
5 covenants of good faith and fair dealing, Smith is entitled to damages in excess of \$10,000,  
6 reasonable attorneys' fees and court costs.

7  
8 **FOURTEENTH CLAIM FOR RELIEF**  
**(Intention Interference with Prospective Economic Advantage)**

9 129. Smith incorporates herein as though fully set forth all prior allegations and  
10 paragraphs.

11 130. Smith has vested and valuable business interests with respect to vitiating,  
12 eliminating or diminishing his exposure or liability on the underlying debt.

13  
14 131. As a result of the interference by the Plaintiff/Counterdefendant, its predecessors  
15 and agents in lease negotiations and in unreasonably and in bad faith rejecting leases negotiated  
16 by Somersett, the Plaintiff/Counterdefendant effectively and injuriously interfered with Smith's  
17 prospective economic advantage and interests.

18 132. The Plaintiff/Counterdefendant was aware of prospective contractual  
19 relationships, which if consummated, would have diminished or extinguished Smith's liability on  
20 the Personal Guarantee.

21  
22 133. Plaintiff/Counterdefendant, its predecessors and agents, were aware that  
23 negotiations between Somersett and prospective tenants and lessees would directly negate or  
24 diminish Smith's exposure or liability on the Guarantee.

25 134. Plaintiff/Counterdefendant knew of Smith's prospective economic relationship  
26 with Somersett regarding its ability to successfully negotiate leases which would have  
27 extinguished Smith's liability on the Guarantee.  
28



1 prior allegations and paragraphs.

2 141. Cashman entered into a series of contracts with Plaintiff/Counterdefendant's  
3 predecessors in interest.

4  
5 142. Pursuant to the contract entered into on December 26, 2006, between Colonial  
6 Bank and Cashman, also known as the "Guarantee", Colonial Bank and its successors in interest,  
7 including Plaintiff/Counterdefendant were obligated to honor the provisions of Paragraph 1 of  
8 the Guarantee.

9  
10 143. Pursuant to and in accordance with Paragraph 1 of the Agreement (Guarantee) the  
11 Lender whose duties and responsibilities are binding on Plaintiff/Counterdefendant agreed that  
12 Cashman's maximum liability would not exceed an amount equal to the outstanding principal  
13 and interest (and nothing else) under the Note multiplied by the percentage of leaseable square  
14 footage within the improvements which had not been pre-leased to third parties.

15 144. After the construction of the improvements (Somerset Town Center) the  
16 Borrower, Somerset, successfully rented approximately 100% of the "leaseable square footage  
17 within the improvements."

18  
19 145. As a result of the leasing activities pursued by and accomplished by Somerset,  
20 Cashman's exposure on the Guarantee was eliminated pursuant to the formula set forth in  
21 Paragraph 1 of the contract.

22 146. Despite the formula being included in the Agreement, which obligated Colonial  
23 Bank, BB&T and Plaintiff/Eagle to give Cashman credit against his Guarantee for all leaseable  
24 square footage leased or pre-leased at the premises, Plaintiff/Counterdefendant through the acts  
25 of itself, predecessors and agents, have breached the Guarantee Agreement and have failed and  
26 refused to give Cashman the credit for the leased square footage at Somerset Town Square.  
27

28 147. As a result of this breach of contract, Cashman has incurred damages and is

1 entitled to a judgment against the Plaintiff/Counterdefendant for an amount in excess of \$10,000  
2 and for reasonable attorneys' fees and costs of court.

3  
4 **SIXTEENTH CLAIM FOR RELIEF**  
5 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

6 148. Cashman incorporates herein as though fully set forth all prior allegations and  
7 paragraphs.

8 149. Every contract entered into in the State of Nevada imposes upon the contracting  
9 parties the duty of good faith and fair dealing.

10 150. Plaintiff/Counterdefendant committed wrongful acts during the course of the  
11 contractual relationship that were intended to and did deprive Cashman the benefit of his  
12 contract.

13 151. The contract to which Cashman and Plaintiff/Counterdefendant is the Guarantee  
14 executed by Cashman.

15 152. There is included in the contract a formula by which Cashman's liability and/or  
16 exposure to pay the underlying debt is extinguished an/or reduced.

17 153. The Plaintiff/Counterdefendant has breached the Guarantee by and through the  
18 actions of itself, its predecessors and agents, of depriving Cashman the benefit of the formula by  
19 which is liability or exposure on the underlying debt is diminished or extinguished.  
20

21 154. As a result, the Plaintiff/Counterdefendant has breached the covenant of good  
22 faith and fair dealing and is responsible to Cashman for his proximate and consequential  
23 damages in excess of \$10,000.  
24

25 155. Cashman is also entitled to recover his attorneys' fees and court costs.

26 156. The Plaintiff/Counterdefendant has unreasonably, unfairly and unconscionably  
27 refused to accept leases negotiated by Somersett, knowing full well that if leases were approved  
28

1 or accepted, Cashman's liability or exposure on the Guarantee would be diminished or  
2 extinguished.

3 157. As a result of the Plaintiff/Counterdefendant's refusal to accept leases on the  
4 subject premises, the Plaintiff/Counterdefendant had deprived Cashman the benefit of his bargain  
5 and the Plaintiff/Counterdefendant has therefore breached the covenant of good faith and fair  
6 dealing.

7  
8 158. As a proximate result of the Plaintiff/Counterdefendant's breach of the implied  
9 covenants of good faith and fair dealing, Cashman is entitled to damages in excess of \$10,000,  
10 reasonable attorneys' fees and court costs.

11  
12 **SEVENTEENTH CLAIM FOR RELIEF**  
13 **(Intention Interference with Prospective Economic Advantage)**

14 159. Cashman incorporates herein as though fully set forth all prior allegations and  
15 paragraphs.

16 160. Cashman has vested and valuable business interests with respect to vitiating,  
17 eliminating or diminishing his exposure or liability on the underlying debt.

18 161. As a result of the interference by the Plaintiff/Counterdefendant, its predecessors  
19 and agents, in lease negotiations and in unreasonably and in bad faith rejecting leases negotiated  
20 by Somerset, the Plaintiff/Counterdefendant effectively and injuriously interfered with  
21 Cashman's prospective economic advantage and interests.

22 162. The Plaintiff/Counterdefendant was aware of prospective contractual  
23 relationships, which if consummated, would have diminished or extinguished Cashman's  
24 liability on the Personal Guarantee.

25 163. Plaintiff/Counterdefendant, its predecessors and agents, were aware that  
26 negotiations between Somerset and prospective tenants and lessees would directly negate or  
27  
28

1 diminish Cashman's exposure or liability on the Guarantee.

2 164. Plaintiff/Counterdefendant knew of Cashman's prospective economic relationship  
3 with Somerset regarding its ability to successfully negotiate leases which would have  
4 extinguished Cashman's liability on the Guarantee.  
5

6 165. Plaintiff/Counterdefendant intended to interfere with Somerset and Cashman's  
7 negotiations for leases between third-party lessees and Somerset and did so with the intent to  
8 adversely affect or extinguish Cashman's right to limit or eliminate his exposure under the  
9 Personal Guarantee.  
10

11 166. Through its predecessors and agents and through its own actions, Plaintiff/  
12 Counterdefendant intended to cause Cashman harm by preventing, refusing to accept and  
13 interfering with prospective contractual relationships between Cashman, Somerset and  
14 Somerset's prospective lessees.  
15

16 167. Neither Plaintiff/Counterdefendant nor its predecessors and agents had any  
17 privilege or justification to reject leases negotiated in good faith and had no privilege or  
18 justification for its agent, Utter, to interfere with the operation, administration and negotiation  
19 that occurred between Somerset and prospective third-party lessees.  
20

21 168. Plaintiff/Counterdefendant knew that Utter's conduct was adversely effecting  
22 Cashman's potential exposure or liability on the underlying Note by virtue of the provisions of  
23 the Guarantee.  
24

25 169. Plaintiff/Counterdefendant, by and through its interference with negotiations, by  
26 and through its unreasonable rejection of leases, and by and through its hostile, oppressive and  
27 acrimonious presence on the subject premises and negative influence on prospective lessees and  
28 actual lessees resulted in damages to Cashman in excess of \$10,000 and Cashman is entitled to  
punitive damages, consequential damages, reasonable attorneys' fees and costs of court.

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**JURY DEMAND**

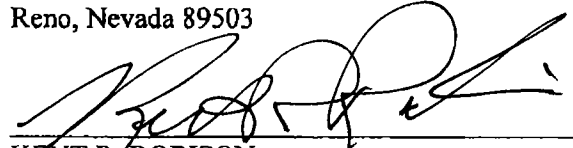
Counterclaimants, and each of them, hereby demand trial by jury.

WHEREFORE, Counterclaimants, and each of them, pray judgment against Plaintiff/  
Counterdefendant as follows:

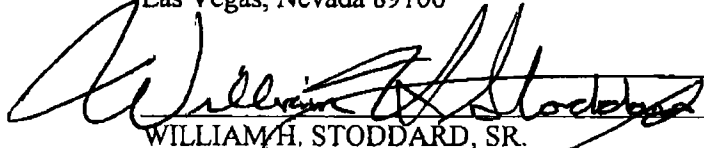
1. For a judgment in favor of each Counterclaimant against Plaintiff/Counterdefendant in an amount in excess of \$75,000, including interest thereon pursuant to Nevada law;
2. For an award of reasonable attorneys' fees and costs of suit;
3. For such other and further relief as the Court determines to be appropriate and warranted under the circumstances.

DATED: This 8<sup>th</sup> day of December, 2010.

ROBISON, BELAUSTEGUI, SHARP & LOW  
A Professional Corporation  
71 Washington Street  
Reno, Nevada 89503

  
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Las Vegas, Nevada 89106

  
WILLIAM H. STODDARD, SR.  
Co-Counsel for Tim Cashman

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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP and LOW, and that on this date a true copy of the attached **RESPONSE, ANSWER AND COUNTERCLAIMS (JURY DEMAND)** was deposited in the United States Mail at Reno, Nevada, postage prepaid, addressed to the following:

Todd R. Alexander  
Douglas R. Brown  
Lemons, Grundy & Eisenberg  
6005 Plumas Street  
Reno, Nevada 89519

William H. Stoddard, Sr.  
Albright, Stoddard, Warnick & Albright  
801 S. Rancho Drive, Suite D-4  
Las Vegas, Nevada 89106

DATED this 10<sup>th</sup> day of December, 2010.

  
V. JAYNE FERRETTO