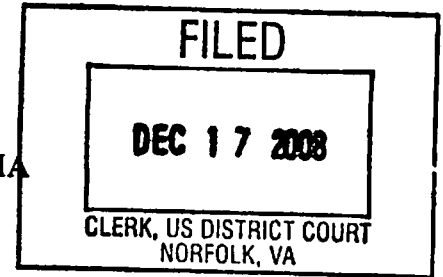


**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**



**VICTORY CONFERENCE CENTER, LLC. A Virginia Limited Liability Company,**

**AND**

**VICTORY CONFERENCE CENTER HOTEL, LLC. A Virginia Limited Liability Company,**

**Plaintiffs,**

**V.**

**WILLIAM E. MOODY, JR. in his official and individual capacity,**

**AND**

**ELIZABETH M. PSIMAS, in her official and individual capacity,**

**AND**

**DOUGLAS L. SMITH, in his official and individual capacity,**

**AND**

**G. TIMOTHY OKSMAN, in his official and individual capacity,**

**AND**

**THE CITY OF PORTSMOUTH, VIRGINIA**

**AND**

**BARCELO CRESTLINE CORPORATION,**

*2:08cv 598*

**AND**

**J.E. ROBERT COMPANY, INC.**

**AND**

**DAVE DURBIN, President and Chief Executive Officer of  
CRESTLINE HOTEL & RESORTS,**

**AND**

**CRESTLINE HOTELS & RESORTS,**

**Defendants.**

**COMPLAINT**

The plaintiffs, Victory Conference Center, LLC, a Virginia Limited Liability Company and Victory Conference Center Hotel, LLC., a Virginia Limited Liability Company, move the Court for entry of judgment in their favor against William E. Moody, Jr., Elizabeth M. Psimas, Douglas L. Smith, G. Timothy Oksman, in their official and individual capacities, the City of Portsmouth, Virginia, Barcelo Crestline Corporation, J. E. Robert Company, Inc., Dave Durbin and Crestline Hotels & Resorts, and in support of such Complaint avers as follows:

**NATURE OF ACTION**

1. This is a civil action seeking damages against Defendants for committing acts, under color of law, with the intent and for the purpose of depriving Plaintiffs of rights secured under the Constitution and laws of the United States; for conspiring for the purpose of depriving Plaintiffs of equal protection of the laws; and for refusing or neglecting to prevent such deprivations and denials to Plaintiffs. Defendants have unlawfully maintained a monopoly in the hotel and conference center business, (“the

Market”) by denying Plaintiffs tax-exempt and taxable bonds. Defendants have also conspired in restraint of trade or commerce and monopolization in the Market.

2. This action seeks other common law relief for tortiously interfering with a business expectancy using improper methods and conspiring to interfere with an expected business relationship using improper means.

3. This action seeks declaratory relief, injunctive relief and damages and is brought pursuant to the Civil Rights Act of 1871, U.S.C. Section 1983, as amended and 42 U.S.C. Section 1981, Section 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2 and Section 4 of the Clayton Act, 15 U.S.C. Section 15.

4. Plaintiffs bring this action for both compensatory and punitive damages from Defendants’ acts and conduct in violating Plaintiffs’ rights and equal protection as guaranteed under 42 U.S.C. Section 1981 and the Fourteenth Amendments of the United States Constitution and Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1, 2 and Section 4 of the Clayton Act, 15 U.S.C. Section 15.

5. This action for declaratory relief, injunctive relief and damages is brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. Sections 1981, 1983 and 1988, as amended and Section 16 of the Clayton Act, 15 U.S.C. Section 26. The declaratory and injunctive relief sought is authorized by 28 U.S.C. Sections 2201 and 2202, 42 U.S.C. Sections 1981, 1983 and Rule 57 of the Federal Rules of Civil Procedure.

### **JURISDICTION**

6. This Court has subject matter jurisdiction pursuant to (a) 28 U.S.C. Sections 1331 and 1337 because the case arises under the Constitution and laws of the United States, as

this action arises under Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2; Section 4 of the Clayton Act, 15 U.S.C. Section 15; (b) 28 U.S.C. Section 1343, because this action seeks redress and damages for violation of 42 U.S.C. Sections 1983 and 1981, and in particular the due process and equal protection provisions of the United States Constitution, including the rights protected in the Fourteenth Amendment. This Court has supplemental subject matter jurisdiction of the pendent state claims under 28 U.S.C. Section 1367.

#### **VENUE**

7. Venue is appropriate in this judicial district under 28 U.S.C. Section 1391(b) and (c) because Defendants and Plaintiffs reside here, and a substantial part of the events giving rise to this Complaint occurred here.

#### **PARTIES**

8. Plaintiff, Victory Conference Center, LLC, is a Virginia Limited Liability Company (“VCC”), and is authorized to do business in the Commonwealth of Virginia.

9. Plaintiff, Victory Conference Center Hotel, LLC, is a Virginia Limited Liability Company (“VCCH”), and is authorized to do business in the Commonwealth of Virginia.

10. Defendant William E. Moody, Jr. (“Moody”) is a member of City Council of the City of Portsmouth and was at all relevant times a member of City Council of the City of Portsmouth. He is sued in his official and personal capacity for declaratory relief and injunctive relief and for monetary relief. Moody is a resident and citizen of the City of Portsmouth, in the Commonwealth of Virginia.

11. Defendant Elizabeth M. Psimas (“Psimas”) is a member of City Council of the City of Portsmouth and was at all relevant times a member of City Council of the City of Portsmouth. She is sued in her official and individual capacity for declaratory relief and injunctive relief and for monetary relief. Psimas is a resident and a citizen of the City of Portsmouth in the Commonwealth of Virginia.

12. Defendant Douglas L. Smith (“Smith”) is a member of City Council of the City of Portsmouth and was at all relevant times a member of City Council of the City of Portsmouth. Prior to serving on council, Smith worked as the economic development director of Portsmouth for three years. He was also a former Deputy City Manager for the City of Portsmouth. Smith was the project coordinator on some of the city’s most significant developments, including the Renaissance Portsmouth Hotel and Waterfront Conference Center. He is sued in his official and individual capacity for declaratory relief and injunctive relief and for monetary relief. Councilman Smith is the brother to James L. Smith II, who has a financial interest in development projects voted on by Councilman Douglas Smith. Councilman Douglas Smith is currently Vice President and Director of Public Private Development Services for Kaufman & Canoes Consulting. Defendant Smith is a resident and citizen of the City of Portsmouth in the Commonwealth of Virginia.

13. Defendant G. Timothy Oksman (“Oksman”) is the City Attorney for the City of Portsmouth and was at all relevant times City Attorney for the City of Portsmouth. He represents the Portsmouth city council. He does not represent individual council members. He is sued in his official and individual capacity for declaratory relief and

injunctive relief and for monetary relief. He is a resident and citizen of the City of Portsmouth in the Commonwealth of Virginia.

14. The City of Portsmouth, Virginia (“City of Portsmouth”) is a political subdivision of the Commonwealth of Virginia under the authority of Title 15.2 of Virginia Code and a “person” subject to suit within the meaning of 42 U.S.C. Section 1983 and 15 U.S.C. Sections 7 and 15g. It may be served by serving its City Attorney, Timothy Oksman, Esquire, at the Office of the City Attorney, Portsmouth, Virginia.

15. Defendant Barcelo Crestline Corporation has a subsidiary called Barcelo Hotels & Resorts. Barcelo Hotels & Resorts, a company based in Palma de Mallorca, Spain, merged with Crestline Capital Corporation in 2002. Crestline Hotels & Resorts was a wholly-owned subsidiary of Crestline Capital Corporation. As a result of the merger Barcelo Crestline Corporation has an ownership interest and oversees the management company, Crestline Hotels & Resorts. Barcelo Crestline Corporation also has an interest in the leasehold of the Renaissance Portsmouth Hotel & Conference Center.

16. Defendant J. E. Robert Company, Inc. acquired Highland Hospitality, L.P. in July 2007. Highland Hospitality, L.P., is a Delaware limited partnership. On August 6, 2003 Highland Hospitality, L.P. acquired 33.33% interest in the leasehold interest in the 250-room hotel and adjacent conference center known as the Renaissance Portsmouth Hotel & Conference Center from Portsmouth Hotel Developers, LLC (“the Stormont member”). On September 4, 2003, Highland Hospitality, L.P. and Barcelo Crestline Corporation acquired the 66.67% interest in the leasehold from CCC Chesapeake, LLC.

17. Defendant Dave Durbin is the president and chief executive officer of Crestline Hotels & Resorts. Dave Durbin on behalf of Crestline Hotels & Resorts, Highland

Hospitality, L.P., now J. E. Robert Company, Inc. and Barcelo Crestline Corporation manages the Renaissance Portsmouth Hotel & Waterfront Conference Center.

18. Defendant Crestline Hotel & Resorts was a wholly-owned subsidiary of Crestline Capital Corporation prior to its merger with Barcelo Hotels & Resorts. Crestline Hotel & Resorts is licensed to do business in the Commonwealth of Virginia and manages the Renaissance Portsmouth Hotel & Waterfront Conference Center.

### **FACTS**

#### **Renaissance Portsmouth Hotel & Waterfront Conference Center**

19. In the later 1990's, the City of Portsmouth began a redevelopment of its downtown and waterfront to stimulate the local economy with additional tourism and convention spending. The Renaissance Portsmouth Hotel & Waterfront Conference Center was part of this effort.

20. The Renaissance complex is located downtown Portsmouth on the Elizabeth River waterfront. It is near Olde Towne and an assortment of shops, restaurants and museums primarily along High Street.

21. The Renaissance Portsmouth Hotel & Waterfront Conference Center is a \$46 million hotel and conference center. It offers 250 rooms and suites, 24,000 square feet of meeting and function space, an Executive Learning Center and case study amphitheater; restaurant and lounge; concierge lounge; business center; indoor pool with sun deck; health club; gift shop and a 458- space parking garage.

22. The Renaissance Portsmouth Hotel & Waterfront Conference Center project is a public-private partnership between Barcelo Crestline Corporation, Highland Hospitality, L.P., now J. E.

Robert Company, Inc., the City of Portsmouth and the Portsmouth Economic Development Authority.

23. Portsmouth Economic Development Authority is the agent of the City of Portsmouth in the development of the Renaissance Portsmouth Hotel & Waterfront Conference Center project. In the early 1990's the City of Portsmouth had an agreement with Portsmouth Economic Development Authority by which the city committed to provide sufficient financial and other resources for Portsmouth Economic Development Authority to meet the financial obligations with regard to the Renaissance Portsmouth Hotel & Waterfront Conference Center project.

24. The legal structure is that of a condominium with separate ownership each of the hotel, conference center and parking facilities. The space above and adjacent to the conference center is the hotel condominium unit, which is owned by the City via Portsmouth Economic Development Authority and long-term leased to a private venture, Barcelo Crestline Corporation and Highland Hospitality, L.P., now J. E. Robert Company, Inc.. The hotel and conference center is owned by the City via the Portsmouth Economic Development Authority and leased to Barcelo Crestline Corporation and Highland Hospitality, L.P., now J. E. Robert Company, Inc. The garage is owned by the City via the Portsmouth Economic Development Authority and managed by the hotel manager, Crestline Hotels & Resorts.

25. In addition to funding the conference center in the amount of \$12.2 million and parking garage in the amount of \$7.5 million, the City funded an \$11.95 million grant for construction of the hotel. In addition to base rent on the condominium unit, the City receives a participation in hotel profits.

26. On March 11, 1999, Portsmouth Economic Development Authority issued \$39,270,000 Revenue Bonds, Series 1999(Hotel, Conference Center & Parking Garage Project)

(“the Hotel Bonds”) for the purposes of constructing what would be the Renaissance Hotel & Waterfront Conference Center. The Hotel Bonds were limited obligations of the Portsmouth Economic and Development Authority payable solely from and secured by a pledge of payments made by the City of Portsmouth to the Portsmouth Economic Development Authority under a Cooperation Agreement. Under the Cooperation Agreement, the City of Portsmouth also agreed to pay the debt service due on the Hotel Bonds.

27. In 2006, the City of Portsmouth issued \$63,445,000 General Obligation and Refunding Bonds, Series 2006A, \$8,245,000 Taxable General Obligation Refunding Bonds, Series B, and \$6,850,000 General Obligation Notes, Series 2006C. The City of Portsmouth paid off the \$39,270,000 Hotel Bonds that were issued by Portsmouth Economic Development Authority. Upon information and belief the City of Portsmouth is directly financially involved in the Renaissance Portsmouth Hotel & Conference Center.

28. Of the total project cost of \$46.3 million, public investment via the City of Portsmouth, amounted to about 70%.

**Market-Geographic Component**

29. The Market Geographic Component of the hotel and conference center (“Market”) as defined in this Complaint includes the geographic area of the City of Portsmouth. The City of Portsmouth is located in the center of the Hampton Roads region, bordered by the cities of Suffolk and Chesapeake respectively to the West and South, and Norfolk lies across the Elizabeth River. The City’s land area of approximately 30 square miles is mostly developed, with 2005 population estimated at 100,169.

30. The Renaissance Portsmouth Hotel & Waterfront Conference Center is the only one of its kind located in the City of Portsmouth. It includes a 250 room hotel and a conference center.

31. There are no other reasonable substitutes for the hotel and conference center in the geographic area.

32. For consumers of this service, there are no other hotel and conference centers other than the Renaissance Portsmouth Hotel & Conference Center.

#### **City of Portsmouth's Master Plan for Victory Village**

33. The City of Portsmouth produced a Master Plan for Victory Village in 2007.

34. The Master Plan included two hotels to be located in Victory Village. This is consistent with the plans of Victory Conference Center Hotel, LLC.

#### **Victory Conference Center and Headquarters Hotel**

35. The proposed Victory Conference Center and Headquarters Hotel will be developed by established companies. They are certified as Minority Business Enterprise (MBE) with SWAM certification, Small Woman and Minority Owned Business, within the Commonwealth of Virginia. Both facilities will be located in a Virginia enterprise Zone and Federal Empowerment Zone. As such, they are eligible for certain government assistance.

#### **Victory Conference Center, LLC**

36. Victory Conference Center, LLC, a Virginia Limited Liability Company ("VCC"), was established for the purpose of developing a conference center. VCC has been planned as a

facility to accommodate a market demand comprised of public, private, civic, family, religious, ethnic, social, educational, entertainment and other groups.

37. To meet this need, VCC seeks funding for the construction and start up of a 50,000-square-foot facility (the “Center”) in Portsmouth’s mid-city business district, in the re-developing Victory Village. If built, the Center expects to be an anchor in the Victory Crossing Business Park, with plans currently to include an upscale hotel, an exercise facility, commercial office space and the planned state-of-the-art Tidewater Community College (“TCC”), Portsmouth Campus. The mixed-use park is also expected to house high-end retail and dining facilities.

38. The Center plans to offer small and large meeting rooms, a grand ballroom, and exhibition space. As many as 1,500 people would be able to dine together in the grand ballroom. This same space would be able to accommodate as many as 2,200 people in a theater-style seating arrangement. Additionally, the Center would be able to simultaneously host smaller gatherings, from a handful of participants to a meeting of 120 people in break-out rooms designed for the size of the group.

39. VCC signed a letter of intent to purchase the land needed for the Center. If VCC is unable to negotiate and close a purchase agreement for the Center, it may be impossible to construct the Center.

#### **Victory Conference Center Hotel, LLC**

40. Victory Conference Center Hotel, LLC, a Virginia Limited Liability Company (“VCCH”), is a separate legal entity from VCC, and an investment in VCC does not constitute an investment in VCCH or give any right to invest in VCCH.

**Empowerment Zone Bonds**

41. Twenty economically distressed communities were named in 1999 as eligible to share \$3.8 billion in proposed federal grants and tax- exempt bonding authority to finance sweeping revitalization and job creation programs over the next ten years.

42. Empowerment Zones create a successful partnership among all levels of government, private businesses, community groups and local residents to bring new life to inner cities and rural communities suffering from hard economic times. These Zones were designed to empower people willing to work hard to improve their communities, improve their lives, and build better futures for their children. They help connect the communities that need it most to create new opportunities.

43. Portsmouth/Norfolk was designated as an Empowerment Zone in 1999. It was named "Empowerment 2010". This federal initiative was designed to create jobs and business opportunities by offering tax credits in economically distressed areas.

44. The mission of Empowerment 2010 is to create an environment that enhances the quality of life for individuals, families, and communities within the empowerment zone through comprehensive education, social and economic opportunities. Empowerment 2010, Inc. has four areas of focus: business development, workforce development, neighborhood development and empowerment centers.

45. One Hundred Thirty Million (\$130,000,000.00) Dollars in Enterprise Zone Facility Bonds were awarded to the Norfolk/Portsmouth Empowerment Zone; Norfolk received seventy-eight million (\$78,000,000.00) dollars and Portsmouth received fifty-two million (\$52,000,000.00) dollars. To date, ninety-two million (\$92,000,000.00) dollars in Enterprise

Zone Facility Bonds have been awarded. Portsmouth businesses receiving Enterprise Zone Bonds include: the Ocean Marine Yacht Center, \$8 million, August 2001 and Olde Towne Hospitality, LLC, \$12 million, June, 2007. Portsmouth officials have long questioned whether the hiring requirements were met by Portsmouth's Ocean Marine Yacht Center. The two entities are owned by Caucasians. Portsmouth has \$32 million in available bonds.

46. Until July 22, 2008, the city council for the City of Portsmouth had never denied a developer or an applicant's request for Enterprise Zone Facility Bonds.

### **New Market Tax Credit Bonds**

47. Hampton Roads Ventures is a community development investment fund specializing in attracting private-sector investment into innovative community development projects in lower-income communities. Hampton Roads Ventures is a wholly owned subsidiary of Norfolk Redevelopment and Housing Authority (NRHA). Organized as a limited liability company, Hampton Roads Ventures has been certified by the U.S. Department of the Treasury as a Community Development Entity (CDE), making it eligible to participate in the Treasury Department's New Markets Tax Credits (NMTC) program. At the request of numerous public- and private-sector organizations across Virginia, Hampton Roads Ventures has expanded its service area to include the entire state of Virginia.

48. Congress established the New Market Tax Credit program in December 2000, as a component of the Community Reinvestment Act of 2000. New Market Tax Credits are allocated annually by the Treasury Department to CDEs such as Hampton Roads Ventures, under a competitive application process. These CDEs then sell the credits to taxable investors in exchange for stock or a capital interest in the CDE.

49. The New Market Tax Credit program permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designed CDEs. The credit provided to the investor totals 39 percent of the cost of the investment claimed over a seven-year credit allowance period. In each of the first three years, the New Market Tax Credits investor receives a credit equal to 5 percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is 6 percent annually. Investors may not redeem their investments in a CDE prior to the conclusion period. “New Market Tax Credits are frequently the critical piece of financing needed to complete real estate developments and fund businesses in rural and urban low-income communities,” Deputy Treasury Secretary Robert M. Kimmitt said in a news release. This program is intended to spur approximately \$15 billion in investments into businesses in underserved areas. The federal government certifies Community Development Entities (CDE) and grants them allocations of New Market Tax Credits.

50. Hampton Roads Ventures had committed \$10 million in New Market Tax Credits to Victory Conference Center, LLC and Victory Conference Center Hotel, LLC. The New Market Tax Credits were required to be used by October of 2008.

**Kaufman & Canoes Consulting LLC**

51. Kaufman & Canoes Consulting LLC (“KCC”) was created by, and is closely affiliated with, the law firm of Kaufman & Canoes, P.C. (“K&C”). KCC has a continuing financial and business relationship with the attorneys of K&C, who made a substantial contribution in time, effort, and financial resources toward its success. KCC and K&C are closely affiliated. Defendant Smith is vice president and director of public-private development services for KCC.

52. The team of leaders is comprised of three interrelated management and service teams. The KCC Board of Managers, the KCC Consultants, and the KCC Board of Advisors. The following lawyers are on the KCC Advisory Board: Charlesa V. McPhillips, William R. Van Buren, III, and Vince Mastracco.

53. Anthony W. Basch, Esquire and Bradley A. Haneberg, Esquire are members of the law firm, Kaufman & Canoes. They have represented Victory Conference Center, LLC and Victory Conference Hotel, LLC before the Securities and Exchange Commission and the State Corporation Commission. They have been paid more than \$10,000.00 per year by VCC and VCCH.

**Victory Conference Center, LLC and Victory Conference Center Hotel, LLC Request for New Empowerment Zone Bonds**

54. The Economic Development Authority of the City of Portsmouth was required to vote on the request for New Empowerment Zone Bonds before City Council could consider such request by an applicant.

55. Victory Conference Center, LLC requested approval, by the Economic Development Authority of the City of Portsmouth, of \$20,000,000 of the Authority's new Empowerment Zone Facility Revenue Bonds to finance a portion of (1) the cost of a 50,000- square- foot conference center including a 16,000- square- foot ballroom, (2) a debt service reserve fund, (3) capitalized interest, and (4) the costs of issuing such bonds, and designating a portion of such bonds as new Empowerment Zone Facility Center Hotel.

56. Victory Conference Center Hotel, LLC requested approval, by the Economic Development Authority of the City of Portsmouth, of \$50,000,000.00 of the Authority New Empowerment Zone Facility Revenue Bonds for Victory Conference Center Hotel, LLC.

57. Almost \$2 million had been collected from 600 investors, the majority of whom are African Americans, for the Victory Conference Center, LLC. One investor was Councilwoman Marlene Randall's husband. He invested \$2,000. Councilman Charles Whitehurst had invested \$2,500.

58. The Victory Conference Center Hotel, LLC is separate and only has one investor. That investor is African American.

59. Portsmouth's Economic Development Authority unanimously approved issuing up to \$70 million in tax-free and taxable bonds for the two entities.

60. Steve Lynch, director of the Economic Development Authority for the City of Portsmouth, was quoted in the local newspaper as saying that Victory Conference Center, LLC and Victory Conference Center Hotel, LLC would compete with other hotel and conference centers including Renaissance Portsmouth Hotel & Waterfront Conference Center.

61. Victory Conference Center, LLC and Victory Conference Center Hotel, LLC thereafter requested Portsmouth City Council to approve the issuance of up to \$70 million in tax-free and taxable bonds which were approved by the city's economic development authority.

62. Prior to being placed on city council's agenda, Dave Durbin, president and chief officer of Crestline Hotels & Resorts, manager of the Renaissance Portsmouth Hotel &

Conference Center and agent of Barcelo Crestline Corporation and Highland Hospitality, L.P., now J. E. Robert Company, Inc. sent a letter to Portsmouth city council members urging them to deny the request, because the Victory Project would compete with the Renaissance Portsmouth Hotel & Waterfront Conference Center. The letter was written at the request of Councilman Douglas Smith. Durbin wrote that Renaissance “required a significant subsidy to become reality prior to its opening in 2001.” “Since that time, very little has changed within the City of Portsmouth, despite promises of further economic development and a continued effort to develop the waterfront area adjacent to the property into a first-class office, residential and retail center,” the letter said.

63. The Renaissance’s occupancy rate is down 7.6 percent, the letter said. Net cash flow from operations from January to May is down 14 percent from a year ago, Durbin wrote. Meanwhile, 1,563 new hotel rooms have been added to the market area in the past year, Durbin wrote. Some of those rooms are in the northern Suffolk area, adjacent to companies that had provided business to the Renaissance in the past, Durbin wrote. “With no new ‘demand generators’ within our market, this trend will continue,” Durbin wrote. “The presence of another full service hotel property, with even remotely comparable meeting facilities, would be a devastating blow to the Renaissances’ future prospects,” wrote Durbin.

64. The City of Portsmouth did carry out its promise to develop property next to the Renaissance. Early this year, city council approved a deal with the Dallas-based Lincoln Property Co. to raze the Holiday Inn on city-owned property downtown and replace it with a \$158 million showcase project featuring about 450 residential units, a mix of commercial space and two parking garages. The City of Portsmouth committed \$14

million worth of grants and infrastructure improvements to the project. Councilman Douglas Smith's brother, James L. Smith II, is a consultant with Lincoln Property Co. and is financially involved with this project. The project is designed to assist and complement the Renaissance Portsmouth Hotel & Waterfront Conference Center. Smith voted to approve the city's financial support of this project knowing that his brother had a financial interest in it. Councilman Douglas Smith and his brother, James L. Smith II, live in the same household.

65. On July 22, 2008 the Portsmouth City Council voted 3- to- 2 to deny the request by Victory Conference Center, LLC and Victory Conference Center Hotel, LLC for tax-exempt and taxable bonds. Councilman Smith, Councilman Moody and Councilwoman Psimas voted to deny approval. Mayor Holley and Councilman Heretick voted to approve the requests. Councilwoman Marlene Randall was handed a written statement prepared by Oksman minutes before the council meeting. The statement as read by Councilwoman Randall indicated that she decided to recuse herself from the discussions and refrain from the vote on the taxable and tax-exempt bonds. She subsequently indicated that she was advised by the city attorney to abstain from the vote because she had a conflict. Councilman Charles B. Whitehurst was also advised by Oksman that he should abstain from the vote because he had a conflict. In fact neither Randall, nor Whitehurst had a conflict of interest. An opinion was subsequently obtained from the Portsmouth Commonwealth Attorney advising Randall she had no conflict of interest. Oksman has served as a city attorney for the City of Portsmouth and the City of Richmond. He has served in that capacity for over a decade and knew that the two council members, both of whom are African Americans, did not have conflicts and were

entitled to vote. Oksman also knew that Councilman Smith did have a conflict of interest and should have abstained from voting on the issuance of the taxable and tax-exempt bonds.

66. Councilwoman Elizabeth Psimas said she would not support the project unless Victory Conference Center, LLC and Victory Conference Center Hotel, LLC provided her with a letter of intent from a lending institution guaranteeing funding and a written assurance that the City of Portsmouth would not be called upon in the future for financial assistance. This has never been a requirement for any other developers before granting a request for new empowerment Zone bonds.

67. Councilman William Moody, Jr. voted against the issuance of the bonds and stated “[w]ithout that assurance that no taxpayer money will be used, I just cannot vote for this project.” He also indicated that the issues raised in Dave Durbin’s letter to Portsmouth City Council are legitimate.

68. Councilman Steve Heretick stated that “I do not understand why this council is requiring this developer to do things that no other developers have been required to do”. He also stated “[i]f this is how we treat developers who want to bring business to Portsmouth, God help us all.”

69. Councilman Douglas Smith voted against the issuance of the bonds and said at the council meeting that he was concerned the project would compete with the city-subsidized Portsmouth Renaissance Hotel & Waterfront Conference Center. Smith’s business affiliates, attorneys Basch and Haneberg, were paid more than \$10,000.00 in legal fees by VCC and VCCH, yet Smith voted. Smith had a conflict of interest and should have abstained from the vote.

70. Smith was quoted in a local newspaper as saying that the Renaissance Portsmouth Hotel & Waterfront Conference Center was never envisioned as a “break even” project but as a place where people could host large civic and social events without leaving town. “It brings a level of visitor and guest to Portsmouth that you didn’t have before,” Douglas Smith said.

71. At a meeting with several citizens of Portsmouth after the council meeting Smith said he voted against the issuance of the bonds because “I know the type of clientele that would attend the Renaissance Portsmouth Hotel & Waterfront Conference Center. I do not know what type of clientele that would attend the Victory Conference Center and the Victory Conference Hotel.” He also said “I am just a sheltered white boy.” He indicated that Psimas and Moody followed his lead in voting against the issuance of the bonds.

72. More than 50% of the City of Portsmouth’s population is African American.

73. Dr. Holley, the mayor, voted for the issuance of the bonds. He stated that the Renaissance hotel and the other project would attract two different groups of people. He said the city needs a hotel that targets blacks. “It’s got my black picture in the lobby, but it’s a white hotel”, Holley said of the Renaissance.

**COUNT I**  
**Constitutional and Civil Rights and Conspiracy Pursuant to**  
**42 U.S.C. Sections 1981, 1983, 1988**  
**Violation of 42 U.S.C. Section 1981, Fifth and Fourteenth**  
**Amendment Rights of Equal Protection**  
**(Against The City of Portsmouth)**

74. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 73 of this Complaint as if fully set forth herein.

75. 42 U.S.C. Section 1983 provides that if a public entity acting under the color of state law by policy or practice subjects or causes to be subjected any person to a deprivation of rights, privileges, or immunities secured by the United States Constitution it shall be liable to that person for proper redress, including damages and attorney fees under 42 U.S.C. Section 1988.

76. Victory Conference Center, LLC and Victory Conference Center Hotel, LLC are persons entitled to due process and equal protection under the Fifth and Fourteenth Amendments to the United States Constitution.

77. Defendant, the City of Portsmouth, by actions of its city council on July 22, 2008, in voting to deny Victory Conference Center, LLC and Victory Conference Center Hotel, LLC their request for the authorization for issuance of tax – exempt and taxable bonds was motivated based upon the fact that the majority of the investors were African American.

78. Defendant, the City of Portsmouth by actions of its city council, required Victory Conference Center, LLC and Victory Conference Center Hotel, LLC to produce a letter of intent from a lending institution guaranteeing funding for the project. The city asked for a written guarantee and statement in the Bond Resolutions that Victory would not require any financial support from the city. The City of Portsmouth has never required any other developers to provide such before granting a request for new Empowerment Zone Bonds. All other developers who requested and received new Empowerment Zone Bonds were Caucasians. Other than race, the other developers were similarly situated as VCC and VCCH. The federal empowerment zone program was supposed to generate economic development in some of Portsmouth's most troubled neighborhoods. Instead,

the city council advanced the program to help development projects that met their racial and dubious relationships.

79. Defendant City of Portsmouth, acting by and through the individual Defendants, a majority of its policy making body, have engaged in a pattern, practice or custom of actions designed to deprive Plaintiffs' of their constitutional rights when the city council voted to deny the issuance of the bonds because of race; when city council members conspired to deprive Plaintiffs of their constitutional rights by requiring Plaintiffs to do things never required of other developers and by denying the issuance of the taxable and tax exempt bonds.

80. Defendant Douglas Smith made public statements that he voted against the issuance of the bonds because he knew the kind of clientele that would attend the Renaissance Portsmouth Hotel & Waterfront Conference Center. He said he did not know what type of clientele would attend the Victory Conference Center. He also said, "I am just a sheltered white boy."

81. Since the statements were public outside the legislative body on which he serves, Douglas Smith is not entitled to immunity from 42 U.S.C. Section 1983.

82. Defendant Douglas Smith's actions and comments were motivated by improper conclusions. He engaged in a continuing course of race-based conduct against Victory Conference Center, LLC and Victory Conference Center Hotel.

83. Defendants, Smith and the City of Portsmouth have individually and/or collectively violated Plaintiffs' rights to equal protection of the law, in violation of the United States Constitution, as made actionable by 42 U.S.C. 1981 and 1983.

84. As a direct result of the actions, statements and/or policies of the Defendants, Victory Conference Center, LLC and Victory Conference Center Hotel, LLC suffered an unconstitutional deprivation of their rights under 42 U.S.C. Section 1981 and the Fifth and Fourteenth Amendments to the United States Constitution.

85. Defendants acted intentionally and with callous disregard for Plaintiffs' known statutory and constitutional rights.

86. As a direct and proximate result of the Defendants' violations of Plaintiff's statutory and constitutional rights as described herein, Plaintiffs have suffered substantial damages. They lost the New Market Tax Credits previously committed by Hampton Roads Ventures because they were required to be deployed by October, 2008. Due to city council's actions, investors in VCC rescinded and received refunds, including interest and \$600,000 has been spent on behalf of VCC and VCCH. VCC and VCCH have suffered and continue to suffer damages in an amount of not less than \$12,000,000.00.

**COUNT II**  
**Constitutional and Civil Rights and Conspiracy Pursuant to**  
**42 U.S.C. Sections 1981, 1983, 1988**  
**Violation of 42 U.S.C. Section 1981, Fifth and Fourteenth**  
**Amendment Rights of Equal Protection**  
**(Against Douglas Smith)**

87. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 86 of this Complaint as if fully set forth herein.

88. 42 U.S.C. Section 1983 provides that if a public entity acting under the color of state law by policy or practice subjects or causes to be subjected any person to a deprivation of rights, privileges, or immunities secured by the United States Constitution

it shall be liable to that person for proper redress, including damages and attorney fees under 42 U.S.C. Section 1988.

89. Victory Conference Center, LLC and Victory Conference Center Hotel, LLC are persons entitled to due process and equal protection under the Fifth and Fourteenth Amendments to the United States Constitution.

90. Defendant, in conjunction with actions of other council members on July 22, 2008, in voting to deny Victory Conference Center, LLC and Victory Conference Center Hotel, LLC was motivated based upon the fact that the majority of the investors are African American.

91. Defendant, in conjunction with actions of other council members required Victory Conference Center, LLC and Victory Conference Center Hotel, LLC to produce a letter of intent from a lending institution guaranteeing funding for the project and a written guarantee and statement in the Bond Resolutions that they would not require any financial support from the city. The City of Portsmouth has never required any other developers to provide such before granting a request for new Empowerment Zone Bonds. All other developers who requested and received new Empowerment Zone Bonds were Caucasians. Other than race, the other developers were similarly situated as VCC and VCCH. The federal empowerment zone program was supposed to generate economic development in some of Portsmouth's most troubled neighborhoods. Instead, the city council advanced the program to help development projects that met their racial and dubious relationships.

92. Defendant, acting in conjunction with other council members, a majority of its policy making body, has engaged in a pattern, practice or custom of actions designed to

deprive Plaintiffs' of their constitutional rights when the city council voted to deny the issuance of the bonds because of race. When Smith solicited Dave Durbin, agent and representative for Crestline Hotels & Resorts, Barcelo Crestline Corporation and Highland Hospitality, L.P., now J.E. Robert Company, Inc. to submit a letter to city council, it was designed to deprive Plaintiffs of their constitutional rights by requiring Plaintiffs to do things never required of other developers and by denying the issuance of the taxable and tax exempt bonds.

93. Defendant Douglas Smith made public statements that he voted against the issuance of the bonds because he knew the kind of clientele that would attend the Renaissance Portsmouth Hotel & Waterfront Conference Center. He said he did not know what type of clientele would attend the Victory Conference Center. He also said, "I am just a sheltered white boy."

94. Since the statements were public outside the legislative body and council meeting, Douglas Smith is not entitled to immunity from 42 U.S.C. Section 1983.

95. Defendant Douglas Smith's actions and comments were motivated by improper conclusions. He engaged in a continuing course of race-based conduct against Victory Conference Center, LLC and Victory Conference Center Hotel, LLC.

96. Defendant Smith violated Plaintiffs' rights to equal protection of the law, in violation of the United States Constitution, as made actionable by 42 U.S.C. 1981 and 1983.

97. As a direct result of the actions, statements and/or policies of the Defendants, Victory Conference Center, LLC and Victory Conference Center Hotel, LLC suffered an

unconstitutional deprivation of their rights under 42 U.S.C. Section 1981 and the Fifth and Fourteenth Amendments to the United States Constitution.

98. Defendant acted intentionally and with callous disregard for Plaintiffs' known statutory and constitutional rights.

99. As a direct and proximate result of the Defendants' violations of Plaintiff's statutory and constitutional rights as described herein, Plaintiffs have suffered substantial damages. They lost the New Market Tax Credits previously committed by Hampton Roads Ventures because they were required to be deployed by October, 2008. Investors in VCC rescinded and received refunds, including interest and \$600,000 has been spent on behalf of VCC and VCCH. VCC and VCCH have suffered and continue to suffer damages in an amount not less than \$12,000,000.00.

**COUNT III**

**Violation of the Sherman Anti trust Act and Clayton Act  
(Against Moody, Psimas, Smith, City of Portsmouth,  
Barcelo Crestline Corporation**

**Dave Durbin, Crestline Hotels & Resorts and J. E. Robert Company, Inc.)**

100. Plaintiffs incorporate by reference allegations set forth in Paragraphs 1 through 99 of their Complaint as if fully set forth herein.

101. The Sherman Antitrust Act prohibits contracts, combinations or conspiracies in restraint of trade or commerce and monopolization or attempts or conspiracies to monopolize trade or commerce by any "persons." 15 U.S.C. Sections 1, 2 and Sections 4 and 12 of the Clayton Act, 4 and 12, 15 U.S.C. Sections 4, 15 and 22.

102. Defendants are "persons" as defined in Section 7 of the Sherman Act, 15 U.S.C. Section 7 and Section 4G of the Clayton Act, 15 U.S.C. Section 15g.

103. The City of Portsmouth has a contractual agreement with Barcelo Crestline Corporation, Highland Hospitality, L.P., now J. E. Robert Company, Inc., Dave Durbin and Crestline Hotels & Resorts to develop and manage a hotel, conference center and garage. The City of Portsmouth and its local officials are not involved in the project as a regulatory agent. They are “market participants.” Accordingly, the City of Portsmouth and its officials are not immune from the prohibitions of the Sherman Antitrust Act.

104. Defendant Dave Durbin is an agent of Crestline Hotels & Resorts, Barcelo Crestline Corporation and Highland Hospitality, L.P., now J.E. Roberts Company, Inc. and was acting within the scope of his authority and on their behalf.

105. The City of Portsmouth has a financial and ownership interest in the Renaissance Portsmouth Hotel and Conference Center and receives revenues from the project.

106. Defendants Psimas, Moody and Smith on behalf of the City of Portsmouth indicated they were concerned that if they voted to grant the new Empowerment Zone Bonds to VCC and VCCH that their hotel and conference center would compete with the Renaissance Portsmouth Hotel & Waterfront Conference Center. The City of Portsmouth had approximately \$72,000,000.00 invested and wanted to make sure the project was successful. The city wanted no other project to compete.

107. Defendant Smith requested that Dave Durbin, President and Chief Executive Officer of Crestline Hotels & Resorts, the managing company for the Renaissance Portsmouth Hotel & Waterfront Conference Center write a letter to the other city council members to express concerns about the competition that VCC and VCCH would have

with the Renaissance. Dave Durbin wrote the letter pursuant to Councilman Smith's requests.

108. As a result, Smith, Psimas and Moody, in a conspiracy together with Durbin and Crestline Hotels & Resorts, agreed to eliminate competition with Renaissance Portsmouth Hotel & Waterfront Conference Center. The three council members voted against the issuance of new Empowerment Zone Bonds to VCC and VCCH.

109. The City's investment in the "Market" unreasonably restrains trade or commerce in the Market and monopolizes the placement of events in the Market and/or revenues from the events in the Market, in violation, or attempted violation of the Sherman Antitrust Act and the prohibitions of 15 U.S.C. Sections 1,2,15, and 22.

110. Defendants possess actual monopoly power over the Market, they intend to obtain monopoly power over the Market, or there is a dangerous probability that they will succeed in achieving monopoly power over the Market and a substantial part of interstate business commerce.

111. The Renaissance Portsmouth Hotel & Waterfront Conference Center currently is the only participant in the Market and the only hotel that has 250 rooms with an adjoining conference center.

112. Consumers of hotels and conference center services are looking for 250 room hotels and conference center. There is only one in the Market that can accommodate consumers, to wit- Renaissance Portsmouth Hotel & Waterfront Conference Center.

113. Defendants have combined and conspired through contractual agreements to divide up and allocate revenues in the Market and to restrict others from entering the Market.

114. The unlawful actions described above have been, will be or pose a reasonable threat to be injurious to competition and have injured and, unless enjoined, are likely to cause irreparable injury to the public, the Market and to Plaintiffs.

115. Plaintiffs are competitors of the Renaissance Portsmouth Hotel & Waterfront Conference Center and its owners and lessors and have been damaged in a manner that is proximately caused by the anti-competitive, trade- restraining actions of the Defendants as described above.

116. The actions, as set forth above, were the actual and proximate cause of significant harm suffered by Plaintiffs. Plaintiffs are entitled to equitable relief and compensatory damages in an amount not less than \$36,000,000.00, along with reasonable attorney fees and costs. Plaintiffs also request interest from the date Defendants are served with this Complaint.

**COUNT IV**  
**Tortious Interference with Business Expectancy**  
**(Against Moody, Psimas, Smith, City of Portsmouth, Dave Durbin,**  
**Crestline Hotels & Resorts, Barcelo Crestline Corporation and J. E. Robert**  
**Company, Inc.)**

117. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 116 of this Complaint as if fully set forth herein.

118. Plaintiffs had business expectancies with BB&T Capital Markets and Hampton Roads Ventures.

119. Defendants were aware of Plaintiffs' business expectancies.

120. Defendants interfered with Plaintiffs' business expectancies by using improper methods.

121. “Improper methods” have been identified by the Virginia Supreme Court as follows: ‘methods of interference considered improper are those means that are illegal or independently tortious, such as violations of statutes, regulations, or recognized common-law rules. Improper methods may include violence, threats or intimidation, bribery, unfounded litigation, fraud, misrepresentation or deceit, defamation, duress, undue influence, misuse of inside or confidential information, or breach of a fiduciary relationship. Methods also may be improper because they violate an established standard of a trade or profession...or involve unethical conduct....Sharp dealing, overreaching, or unfair competition may also constitute improper methods’

122. Defendants violated Plaintiffs’ constitutional rights.

123. Defendants violated antitrust laws.

124. The improper actions of Defendants, described above, caused Plaintiffs to lose their business expectancies and damaged the success of the Victory’s development project.

125. The actions as set forth above were the actual and proximate cause of the significant harm suffered by Plaintiffs. As a result of Defendants’ conduct as set forth in this Complaint, Plaintiffs have suffered damages in an amount not less than \$12,000,000.00.

**COUNT V**  
**Tortious Interference with Business Expectancy**  
**(Against Oksman)**

126. Plaintiffs incorporate by reference allegations set forth in Paragraphs 1 through 125 of their Complaint as if fully set forth herein.

127. Plaintiffs had business expectancies with BB&T Capital Markets and Hampton Roads Ventures.

128. Defendant was aware of Plaintiffs business expectancies.

129. Defendant interfered with the business expectancies by using improper methods.

130. The improper actions of Oksman, described above, caused Plaintiffs to lose their business expectancy and damaged the success of the development project.

131. The actions as set forth above were the actual and proximate cause of the significant harm suffered by Plaintiffs. As a result of Oksman's conduct as set forth in this Complaint, Plaintiffs have suffered damages in an amount not less than \$12,000,000.00.

**COUNT VI**  
**Tortious Interference with Business Expectancy**  
**(Against Smith)**

132. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 131 of this Complaint as if fully set forth herein.

133. Plaintiffs had business expectancies with BB&T Capital Markets and Hampton Roads Ventures.

134. Defendant was aware of the business expectancies.

135. Defendant interfered with the business expectancies by using improper methods.

136. Defendant as a member of KCC had a conflict of interest and should not have voted on the issuance of the New Empowerment Zone Bonds.

137. Defendant's brother, James L. Smith II, who lives in the same household with him, has a financial interest in a competing venture with VCC and VCCH. Defendant never disclosed this fact to the public, but voted to use public financing to support his brother's ventures.

138. The improper actions of Defendant Smith, described above, caused Plaintiffs to lose their business expectancy and damaged the success of the development project.

139. The actions set forth above were the actual and proximate cause of the significant harm suffered by Plaintiffs. As a result of Smith's conduct, Plaintiffs have suffered in an amount not less than \$12,000,000.00.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray for the following relief:

1) Against the City of Portsmouth, under Count I, in the amount of \$12,000,000.00 in compensatory damages and \$350,000.00 in punitive damages for violations of the United States Constitution as made actionable by the Civil Rights Act of 1871, 42 U.S.C. Sections 1981 and 1983. For appropriate declaratory relief regarding the unlawful and unconstitutional acts and practices of Defendants in requiring (1) Plaintiffs to produce a letter of intent to the city from a lending institution that will commit to funding the project; (2) requiring Plaintiffs to include in the bond resolutions that Plaintiffs will require no future funding from the city, in violation of the equal protection laws, 42 U.S.C. Section 1981 and the Fifth and Fourteenth Amendments to the United States Constitution (as made actionable by 42 U.S.C. Sections 1981,1983,1988);

2) Against Douglas Smith under Count II, in the amount of \$12,000,000.00 in compensatory damages and \$350,000.00 in punitive damages for violations of the United States Constitution as made actionable by the Civil Rights Act of 1871, 42 U.S.C. Sections 1981 and 1983. For appropriate declaratory relief regarding the unlawful and unconstitutional acts and practices of Defendants in requiring (1) Plaintiffs to produce a letter of intent to the city from a lending institution that will commit to funding the project; (2) requiring Plaintiffs to include in the bond resolutions that Plaintiffs will require no future funding from the city, in violation of the equal protection laws, 42 U.S.C. Section 1981 and the Fifth and Fourteenth Amendments to the United States Constitution (as made actionable by 42 U.S.C. Sections 1981,1983,1988);

3) Against Moody, Psimas, Smith, City of Portsmouth, Barcelo Crestline Corporation, J. E. Robert Company, Inc., Dave Durbin, and Crestline Hotels & Resorts under Count II, for violation of the Sherman Act and Clayton Act, compensatory damages in an amount not less than \$36,000,000.00, which represents treble damages? For appropriate equitable relief as allowed by the Sherman Act and Clayton Act, including enjoining and permanently restraining Defendants from continued violations, and directing Defendants to take such affirmative action as is necessary to ensure that the effects of the unlawful practices are eliminated and do not continue to affect Plaintiffs or the public.

4) Against Moody, Psimas, Smith, City of Portsmouth, Dave Durbin and Crestline Hotels & Resorts, J. E. Robert Company, Inc., and Barcelo Crestline Corporation, under Count III, for Tortious Interference with Business Expectancy, compensatory damages in

an amount not less than \$12,000,000.00 and punitive damages in an amount not less than \$350,000.00.

5) Against Oksman under Count IV, for Tortious Interference with Business Expectancy, compensatory damages in an amount not less than \$12,000,000.00 and punitive damages in an amount not less than \$350,000.00.

6) Against Smith under Count V, for Tortious Interference with Business Expectancy, compensatory damages in an amount not less than \$12,000,000.00 and punitive damages in an amount not less than \$350,000.00.

Dated: December 17, 2008

**A JURY TRIAL IS DEMANDED**

**Victory Conference Center, LLC  
Victory Conference Center Hotel, LLC**



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