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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No.: 2022-000031

Royal Garden Resort Regime Homeowners Association, Inc. Respondent

v.

Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson;
and Phoenix of the Strand, Inc. Appellants,

RECORD ON APPEAL

Counsel of Record:

Douglas M. Zayicek, Esquire
Holly M. Lusk, Esquire
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
Post Office Box 357
Myrtle Beach, SC 29578-0357
Attorneys for Appellants

Gene M. Connell, Jr
Kelaher, Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, SC 29587-4547

Kirby Darr Shealy, III
Adams and Reese LLP
Post Office Box 2285
Columbia, SC 29202

Luke M. Allen
Adams and Reese LLP
Post Office Box 2285
Columbia, SC 29202
Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime Homeowners Association, Inc.,

Plaintiff,

vs.

Sea Breeze Property Management & Contract Services, Inc. and Calvin Donaldson,

Defendants.

ORDER

This matter is before the Court based on Plaintiff's Order and Rule to Show Cause requiring Defendants to produce all records, documents, papers, computer files, electronic files, ledgers, checking account balances, bank records and tax returns for Royal Garden Resort Regime Homeowners Association. The Defendants' counsel, Jay Anderson, has advised the Court that his client had to leave town to go to a funeral on an emergency and that he was unable to attend this hearing. Anderson further advised the Court that some of the documents had been turned over to the Plaintiff. Plaintiff's counsel advised the Court that he needs additional documents and that the Defendants Sea Breeze Property Management & Contract Services, Inc. and Calvin Donaldson had been the property managers for Royal Garden Resort for over twenty years and that there are numerous other documents that need to be provided to the Homeowners' Association.

Accordingly, the Defendants are restrained and enjoined from destroying, deleting, hiding, secreting or doing any act which would damage or lose any of the documents and/or property of the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants shall turn over all documents, records, computer files, electronic records, tax returns, bank account records, maintenance records and any other records in Defendants' possession which are property of the Royal Garden Resort Regime Homeowners Association. Further, the Court sets a hearing for January 14, 2019 at 9:30 a.m. at the Horry County Government and Justice Center, 1301 Second Avenue, Conway, SC 29526 to revisit this matter. At that time, Defendants shall appear and answer questions about what documents it has turned over to the Plaintiff.

AND IT IS SO ORDERED.

The Honorable William H. Seals Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

_____, 2018.

_____, South Carolina



Horry Common Pleas

Case Caption: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc , defendant, et al
Case Number: 2018CP2606033
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2018-CP-26-06033
Royal Garden Resort Regime Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phoenix of the Strand, Inc.,	)	
	)	
Defendants.	)	
_____	)	

ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter was before the Court on Tuesday, August 13, 2019, at 1:00 p.m., pursuant to Defendants' Motion for Partial Summary Judgment, filed on May 28, 2019. Said Motion concerned Defendant Phoenix of the Strand, Inc.'s ownership of Commercial Unit II ("C-II"), within the Royal Garden Resort. Present were: Gene Connell, attorney for Plaintiff; and Douglas M. Zayicek, attorney for Defendants. The Court reporter was Grace Hurley.

Defendant Phoenix of the Strand has been the record fee simple owner of C-II since 1990. Plaintiff has billed HOA dues for C-II to Defendant Phoenix since that time. However, in Plaintiff's Third and Fourth causes of action, Plaintiff asserts that it is the owner of C-II. In Plaintiff's Prayer for Relief, it specifically asks "for an Order that Commercial Unit II is lawfully and legally owned by Plaintiff and always has been in the past." For the reasons stated below, Defendants' Motion is GRANTED.

A. THE FIRST FORECLOSURE-1985-CP-26-1747

In 1985, Defendant Phoenix of the Strand's predecessor in interest, Preferred Savings & Loan Association, Inc. ("Preferred"), filed a foreclosure action against Plaintiff and others, to foreclose a mortgage from the developer of the Royal Garden Resort, Royal Garden Resort, Inc. ("First Foreclosure"). In First Foreclosure, Plaintiff was represented by an attorney, Edward J. Insley, who filed an Answer & Counterclaims against Preferred.

On January 15, 1986, Judge William B. Traxler issued an Order on the underlying issues in First Foreclosure.¹ Judge Traxler ruled the defendants therein (including Plaintiff herein), were properly served, and appeared in the First Foreclosure. Judge Traxler then granted Preferred's Motion for Summary Judgment, dismissed Plaintiff's counterclaims with prejudice, and referred the matter to the Horry County Master-in-Equity, Judge John L. Breeden, Jr. Judge Traxler also held C-II (along with units C-I, C-III, and others) should be sold by Judge Breeden, and that all right, title and interests of Plaintiff as to the units being foreclosed (including C-II) "be barred and forever foreclosed."

On February 10, 1986, Judge Breeden filed a Notice of Sale in First Foreclosure, expressly stating C-II and other units, would be sold at the March 3, 1986 foreclosure sale.² On June 20, 1986, Judge Breeden filed a Master's Report in First Foreclosure, reincorporating all of the previous findings and conclusions, and ruled the foreclosure sale was proper.³ At the sale, Preferred was the high bidder, and as such became the fee simple owner of C-II, and the other units sold at the March 1986 foreclosure sale. On June 27, 1986, Judge Breeden's Master's Deed

¹ Judge Traxler's Order filed on January 15, 1986, is attached as Exhibit 1.

² Judge Breeden's Notice of Sale filed on February 10, 1986, is attached as Exhibit 2.

³ Judge Breeden's Master's Report filed on June 20, 1986, is attached as Exhibit 3.

was filed, expressly listing the units sold and conveyed to Preferred, among them units C-I, C-II, and C-III.⁴

Plaintiff did not appeal any of the Orders in First Foreclosure regarding ownership of C-II. It is axiomatic that unappealed orders, right or wrong, are the law of the case. Wachesaw Plantation E. Cmty. Serv. Ass'n v. Alexander, 802 S.E.2d 635 (S.C. Ct. App. 2017). After First Foreclosure, ironically, Plaintiff bought C-I from Preferred, and has been the owner of C-I ever since. Plaintiff has not filed any action alleging that its purchase of C-I was in any way improper.

On February 19, 1988, a Deed was filed in Horry County, wherein Preferred deeded C-II and C-III to Tamarijn Corporation.⁵

B. THE SECOND FORECLOSURE-1989-CP-26-619

Sometime after the First Foreclosure, Tamarijn Corporation stopped making payments to Preferred. Tamarijn also appears to have stopping paying HOA dues to Plaintiff. On November 18, 1988, Plaintiff filed two HOA liens against Tamarijn, for the non-payment of HOA dues on C-II and C-III.⁶ By filing said Liens, Plaintiff clearly and expressly acknowledged Tamarijn, and not Plaintiff, was the owner of C-II and C-III.

Around the same period of time, Tamarijn stopped paying Preferred for the purchase of C-II and C-III, and Preferred filed a foreclosure action in 1989-CP-26-619 ("Second Foreclosure"), again naming Plaintiff herein, a defendant. Plaintiff, represented by attorney George Cox, filed a cross-claim against Tamarijn, to foreclose Plaintiff's HOA liens.⁷ Plaintiff admitted all of the allegation in Preferred's Complaint as to Tamarijn's ownership of C-II and C-III. Specifically, in

⁴ Master's Deed filed on June 27, 1986, is attached as Exhibit 4.

⁵ Deed from Preferred to Tamarijn is attached as Exhibit 5.

⁶ Plaintiff's Liens filed in Lien Book 15 at Pages 49 and 50 are attached as Exhibit 6.

⁷ Plaintiff's Summons, Answer and Cross-Complaint is attached as Exhibit 7.

Paragraph 4, Plaintiff expressly admitted Tamarijn owned the property referred to in Preferred's Complaint.

On May 12, 1989, Judge Breeden issued an Order of Judgment for Foreclosure and Sale, and Master's Sale, ordering that C-II and C-III be sold at the June 5, 1989, foreclosure sale.⁸ Those units were sold by the Court, and again Preferred was the high bidder. On October 11, 1989, a Master's Deed was filed, transferring ownership of C-II and C-III to Preferred.⁹ Again, Plaintiff did not appeal any Order in Second Foreclosure.

Thereafter, on September 28, 1990, Preferred deeded C-II and C-III to Defendant Phoenix of the Strand, Inc., said Deed being recorded in Deed Book 1424, Page 593.¹⁰ Defendant Phoenix has owned C-II ever since, and it is undisputed Plaintiff has billed HOA dues to Defendant Phoenix ever since.

C. LAW

After two foreclosures, filed 33 and 30 years ago, respectively, Plaintiff claims in this action that it is the owner of C-II. Plaintiff cannot collaterally attack the First or Second Foreclosures, and is barred by judicial estoppel, collateral estoppel, res judicata, the applicable statute of limitations, and laches, from challenging Defendant Phoenix of the Strand's ownership of C-II.

1. Judicial Estoppel

Judicial estoppel prevents a party from taking conflicting positions in related litigation. *Fed. Credit Union v. Bailey*, 489 S.E.2d 472 (S.C. 1997). Here, with regard to the related litigation involving the ownership of C-II, Plaintiff has, in both First Foreclosure and Second Foreclosure,

⁸ Order of Judgment For Foreclosure And Sale, and Master's Sale, both filed on May 12, 1989, are attached as Exhibit 8.

⁹ Master's Deed filed on October 11, 1989, is attached as Exhibit 9.

¹⁰ Deed from Preferred to Defendant Phoenix, filed on September 28, 1990, is attached as Exhibit 10.

admitted that Defendant Phoenix's predecessors in interest owned C-II. Plaintiff may not, therefore, take an entirely contradictory position in this action. Plaintiff is bound by its admissions in both First and Second Foreclosures, and its failure to appeal any Orders in either action.

2. Collateral Estoppel

Collateral estoppel, also known as issue preclusion, prevents a party from relitigating issues decided in previous litigation. *Brown v. Sojourner*, 818 S.E.2d 770 (Sc. Ct. App. 2018). The rights, title, and interests in C-II were decided in the First and Second Foreclosures, in which Plaintiff was a party, and represented by an attorney. Specifically, all of Plaintiff's right, title, and interest in C-II were foreclosed and forever barred in both foreclosures. Thus, collateral estoppel bars Plaintiff from trying to re-open or set aside litigation that occurred decades ago.

3. Res Judicata

Res Judicata bars subsequent litigation by the same parties, or their privies, when the claims arise out of the same subject matter that was the subject of previous litigation. *Plum Creek Dev. Co. v. City of Conway*, 512 S.E.2d 106 (S.C. 1999). As such, res judicata bars a litigant from raising any issue that was decided, or could have been decided in the previous litigation. *Id.* As stated above, Plaintiff participated in two foreclosure actions that directly involved the ownership of C-II. If Plaintiff believed it was the owner of C-II, it had two opportunities to make such claim in the previous foreclosures, before all of its interests were foreclosed and forever barred by those very foreclosures. Both foreclosures barred all of Plaintiff's rights, title, and interests in C-II, and Plaintiff cannot now seek to claim any such rights, more than 30 years later.

a. S.C. CODE ANN. 15-39-870

In addition to res judicata common law, S.C. Code Ann. 15-39-870 specifically states that a judicial sale is res judicata as to a bona fide purchaser for value. Plaintiff does not allege, and has not shown, that Preferred Savings and Loan was not a bone fide purchaser at both foreclosure

sales involving C-II. As such, all subsequent owners who took from Preferred (including Plaintiff and Defendant Phoenix), are bone fide purchasers for value.

Our Courts have stated on numerous occasions that judicial foreclosures are to be upheld if at all possible. Public interest and precedent dictate the fostering of the stability of judicial sales. *Wachesaw Plantation E. Cmty. Serv. Ass'n v. Alexander*, 802 S.E.2d 635 (S.C. Ct. App. 2017). The policy is to sustain judicial sales. *Id.* The rationale for S.C. Code Ann. 15-39-870 is the well-established public policy of protecting good faith purchasers and upholding the finality of a judicial sale. *Id.* To allow Plaintiff, after 30+ years, to collaterally attack two foreclosures in which it was a party, would obliterate the will of the General Assembly, and ignore legend of common law on this very issue.

b. S.C. CODE ANN. 15-67-90

Finally, Plaintiff's claim of ownership is barred by the statute of limitations, and laches. S.C. Code Ann. 15-67-90 states a foreclosure judgment, sale, and Master's Deed, shall not be set aside unless an action to do so is brought within three years after the filing of the foreclosure judgment. Under no scenario can Plaintiff bring an action 30+ years after the two foreclosures, in which it was a party. Plaintiff's claims are time barred under the statute of limitations, and laches.

CONCLUSION

Defendant Phoenix of the Strand obtained ownership of C-II in 1990, after two foreclosures. Plaintiff was a party to both foreclosures, and for the reasons stated above, Defendant Phoenix of the Strand's ownership of C-II is beyond dispute. Defendants' Motion for Partial Summary Judgment is GRANTED.

IT IS SO ORDERED!



Horry Common Pleas

Case Caption: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc , defendant, et al
Case Number: 2018CP2606033
Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

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EXHIBIT 1

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

85-CP-26-1747

Preferred Savings and Loan
Association, Inc.,

Plaintiff,

vs.

Royal Garden Resort, Inc.;
Royal Garden Regime Homeowners
Association a/k/a Royal Garden
Resort Condominium Homeowners
Association, Inc.; Cianbro
Corporation; Carolina Furniture
Sales; Commercial Communications,
Inc.; General Electric Company;
George S. Hirsch; Ward Hulbert,
as Trustee for Hulbert, Inc.,
Profit-Sharing Trust, and Hulbert,
Inc. Pension Plan; Kenneth R.
Sanders; Robert H. Quattlebaum;
Shirley Treadway d/b/a S. & M.
Lawn Services; Darlene M. Appel;
Keith K. Appel; Patricia T. Burk;
William J. Burk; Rebecca S. Howard;
Whitfield M. Howard; Daniel B. Jordan;
Marian M. Jordan; Etta M. Near;
Jerome A. Near; Phyllis A. Stickney;
Roland F. Stickney; Diana V. Stone;
Gregory G. Stone; William H. Cooper;
Jesse C. Atchley, Ralph Tom White, II,
individually and as General Partners
of Pintail Properties, a North Carolina
General Partnership; and Robert Foster;

Defendants.

ORDER
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HORRY COUNTY
CLERK OF COURT
BILLY G. RICHARDSON

A TRUE COPY, ATTACHED

B. Richardson
CLERK OF COURT, HORRY COUNTY
Linda G. Owen

This matter came on to be heard before me on December 20, 1985, at 9:30 A.M. in Conway. The plaintiff was represented by Haigh Porter and David Stanton, along with Bryan Harwell and Michael Ballenger, all of Florence. Edward J. Insley represented the following defendants: Royal Garden Resort, Inc., Royal Garden Regime Homeowners Association a/k/a Royal Garden Resort Condominium

Homeowners Association, Inc., Darlene M. Appel, Keith K. Appel, Patricia T. Burk, William J. Burk, Rebecca S. Howard, Whitfield M. Howard, Daniel B. Jordan, Marian M. Jordan, Etta M. Near, Jerome A. Near, Phyllis A. Stickney, Roland F. Stickney, Diana V. Stone, and Gregory G. Stone.

The plaintiff has made two (2) Motions: one for Summary Judgment and the other for an Order of Reference.

By way of background, the plaintiff filed a Lis Pendens and then served a Summons and Complaint on the various defendants. Later, a Summons and Amended Complaint were filed and served upon all of the defendants. The Amended Complaint contained two (2) causes of action: (1) For foreclosure of a mortgage on a condominium project at Garden City owned by Royal Garden Resort, Inc. and (2) For Judgment under a loan guaranty agreement against Darlene M. Appel, Keith K. Appel, Patricia T. Burk, William J. Burk, Rebecca S. Howard, Whitfield M. Howard, Daniel B. Jordan, Marian M. Jordan, Etta M. Near, Jerome A. Near, Phyllis A. Stickney, Roland F. Stickney, Diana V. Stone, and Gregory G. Stone, the individual guarantors, hereinafter referred to as the guarantors.

The defendants, Royal Garden Resort, Inc., hereinafter referred to as RGR, Inc., Royal Garden Regime Homeowners Association a/k/a Royal Garden Resort Condominium Homeowners Association, Inc., hereinafter referred to as Homeowners Association, and the guarantors, through Edward J. Insley, attorney, filed an Answer and Counterclaim. The Answer is basically in the form of a general denial and the Counterclaim asserts a claim against the plaintiff in the amount of Four Hundred Fifty Thousand (\$450,000.00) Dollars.

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The plaintiff timely filed a Reply to the Counterclaim. On October 15, 1985, Edward J. Insley's office received a set of Request for Admissions from the plaintiff's attorneys. The Request for Admissions were propounded under Rule 36 and were mailed to Mr. Insley's office by certified mail, return receipt requested. It appears that Lynn Negley received the Request for Admissions and signed the receipt for such. It further appears from the statements of Mr. Insley that Lynn Negley is a secretary, employee in his office. The Request for Admissions were not ambiguous or confusing and appear to comply with all of the requirements of Rule 36. No objection was made to the Request for Admissions, no Answers were made to the Request for Admissions, and plaintiff's attorneys never received any request for an extension of time to Answer or object.

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It further appears that on December 9, 1985, the plaintiff's attorney caused to be served on Mr. Insley, as attorney for RGR, Inc., the Homeowners Association, and the guarantors, two (2) Motions: one for Summary Judgment based on failure to answer Request for Admissions and the other Motion for an Order of Reference. These two (2) Motions are the subject of this Order.

I heard arguments presented by the plaintiff's attorney, Mr. Insley on behalf of his clients, and also from other attorneys representing various defendants, who are lienholders or interested parties. All of the attorneys for other interested parties, other than Mr. Insley, joined in the plaintiff's Motions.

I have carefully considered the record and the applicable Rules. Rule 36 makes it clear that unless the Request for Admissions are answered within thirty (30) days, or unless some objection is made, the matters contained are deemed admitted.

After the Request for Admissions were received, and even after the Motion for Summary Judgment was served, no action was taken to object to the Request or oppose the Motions. Mr. Insley, on behalf of his clients, advised the Court that he thought a settlement was forthcoming. Due to this perception on his part, Mr. Insley indicated that he had been "led down the garden path". Mr. Insley, however, did admit that the Request for Admissions and Motion for Summary Judgment did come after any meetings between the plaintiff's representative and himself. In light of the fact that no settlement negotiations took place between the attorneys for the plaintiff and the attorney for the defendants at any time prior to the service of Request for Admissions or afterward, I am simply not persuaded that the defendants' attorney was misled, or "lulled to sleep". In Citibank Master Charge v. McRae, 320 S.E. 2d 503 (S.C. App. 1984), the plaintiff answered Requests for Admissions under Circuit Court Rule No. 89 by stating that she did not possess knowledge or information sufficient to form a belief as to whether a debt was owed as alleged. The Circuit Court granted Summary Judgment, ordering the matters deemed admitted because the plaintiff did not comply with the Rule and the South Carolina Court of Appeals affirmed that judgment. The plaintiff argued that her failure to timely answer the Requests to Admit was excusable because she was "Lulled into believing" a settlement would be consummated. In response to that, the Court of Appeals said that "We caution that the Rule may not allow for parties or their attorneys to extend time to an Answer to a Request For Admissions." *Id.* at 504, Footnote 1.

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I, therefore, find that the matters contained in the Request for Admissions, propounded by the plaintiff to the defendants' attorney, Edward J. Insley, are admitted, and that the grant of plaintiff's Motion for Summary Judgment would be proper.

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JBT/j

The plaintiff has requested exhaustive relief in his Motion for Summary Judgment. Rule 56 provides that Summary Judgment will be granted if there is no genuine issue of material fact. The Rule goes on to provide that a party opposing the Motion for Summary Judgment may rely on Affidavits, depositions, or other material which is properly in the record. The Rule does require that any Affidavits must be served prior to the day of hearing. This record is absolutely devoid of any depositions, Affidavits, or other material that would give any comfort to the defendants' position. Rule 56 is clear that the party opposing Summary Judgment may not rely solely on his pleadings to avoid the grant of Summary Judgment. The only thing, on behalf of the defendants, is the Answer and Counterclaim. This, by itself, is not sufficient for the defendants to avoid Summary Judgment in light of all of the matters which are admitted.

For this Court to do anything other than grant the plaintiff's Motion for Summary Judgment would amount to a revocation of both of the applicable Rules, Rule 36 and Rule 56. Additionally, the plaintiff's attorneys have argued that they have relied on the Rules meaning what they say and have foregone the implementation of other procedures. The plaintiff's contention has merit. The plaintiff has sought an expeditious

and inexpensive method to resolve the controversies and is entitled to rely on the Rules. Be that as it may, the record simply does not contain any proper material that would allow me to deny the plaintiff's Motion for Summary Judgment.

In regard to the plaintiff's Motion for an Order of reference, all of the defendants, including those represented by Edward J. Insley, do not contest the plaintiff's request that the matter be referred to the Master in Equity. It appears that such reference is proper and would be in the best interests of all parties. Accordingly, from the Request for Admissions and the Affidavit submitted by the plaintiff, I find that: the Loan Agreement (Exhibit A, as attached to the Request for Admissions) is a true and correct copy of such Loan Agreement and was signed on behalf of RGR, Inc. by its President and Secretary; I further find that the Promissory Note, in the original amount of Thirteen Million Five Hundred Thousand (\$13,500,000.00) Dollars, dated January 1, 1983, (Exhibit B, as attached to the Request for Admissions) is a true and correct copy of such Promissory Note and was signed on behalf of RGR, Inc. by its President and Secretary; I further find that the Mortgage of Real Estate, dated March 1, 1983, (Exhibit C, as attached to the Request for Admissions) is a true and correct copy of the Mortgage and Security Agreement given to the plaintiff by RGR, Inc. and was signed by its President and Secretary; I further find that the Financing Statement (Exhibit D, as attached to the Request for Admissions) is a true and correct copy of the Financing Statement given to the plaintiff by RGR, Inc. and was signed by its President and Secretary; I further find that the Guaranty of

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Note and Deed of Trust (Exhibit E, as attached to the Request for Admissions) is a true and correct copy of the Guaranty of Note and Deed of Trust given to the plaintiff and signed by the guarantors; I further find that the document (Exhibit F, as attached to the Request for Admissions) sets out the terms and conditions under which the loan was made and was signed on behalf of RGR, Inc. by its President and Secretary; I further find that the Notice of Default (Exhibit G, as attached to the Request for Admissions) was received by the President of RGR, Inc.; I further find that under the terms of the Note, Mortgage, and Guaranty Agreement, the defendants, RGR, Inc. and the guarantors, were justly and truly indebted to the plaintiff in the sum of Five Million Eight Hundred Fifty Thousand Thirty Two and .82/100 (\$5,850,032.82) Dollars as of June 30, 1985; I further find that under the terms of the Note, Mortgage, and Guaranty Agreement, the defendants, RGR, Inc. and the guarantors, are justly and truly indebted to the plaintiff for interest on Five Million Eight Hundred Fifty Thousand Thirty Two and .82/100 (\$5,850,032.82) Dollars which accrues interest at the rate of eighteen (18%) percent per annum after June 30, 1985; I further find that the defendants, RGR, Inc. and the guarantors, are indebted to the plaintiff for such interest; I further find that the real property which is the subject of the foreclosure action is in Horry County and is subject to the jurisdiction of this Court; I further find that the defendants, RGR, Inc. and the guarantors, are subject to the jurisdiction of this Court; I further find that RGR, Inc. and the guarantors have made no payments since June 30, 1985 to principal, interest or otherwise; I further find that in regard

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to the Letter of Credit, referred to in the defendants' Counterclaim, the plaintiff had no duty to procure or provide such Letter of Credit; I further find that if any deficiency existed in such Letter of Credit or the attendant documents, such deficiency did not result from or arise out of anything the plaintiff did or failed to do; I further find that RGR, Inc., the Homeowners Association, and the guarantors were not damaged because of anything the plaintiff did or failed to do in regard to the Letter of Credit; I further find that the Counterclaim of RGR, Inc., the Homeowners Association, and the guarantors should be dismissed with prejudice.

I further find, based on the representations of all of the attorneys, that the matter should be referred to the Master in Equity for Horry County to take the testimony and other evidence and to report same, together with his findings of fact and conclusions of law, to this Court with leave to report any special matter. The findings that I have made, and will make, in this Order have already established liability on a number of issues and will, therefore, make it unnecessary for the Master in Equity to rule upon those matters and issues. Obviously, the priorities of the junior lien holders will have to be determined by the Master in Equity but can be done subsequent to the sale of the subject property. It is the specific intent of this Order that the sale of the subject property should not be delayed while a determination of priorities is made. The proceeds of sale, if any, shall be held in escrow, pending the determination of priorities and thereafter shall be disbursed in accordance with this Order and any necessary further Orders.

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I specifically find that the subject property should be sold according to the laws and customs of this Court and that the proceeds of sale be applied first to the cost, disbursements and expenses of sale of this action, including attorneys fees, and second to the indebtedness due the plaintiff, and third, the surplus, if any, be held subject to the further Order of this Court; I further find that the equity of redemption of the defendant, RGR, Inc., and all others claiming any right, title or interest in or lien upon the premises, through or under it in the real property described in the plaintiff's Complaint and Amended Complaint, be barred and forever foreclosed.

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WST

The plaintiff has furnished an Affidavit along with its Motion for Summary Judgment which sets the amount of indebtedness at Five Million Eight Hundred Fifty Thousand Thirty Two and .82/100 (\$5,850,032.82) Dollars as of June 30, 1985, and then goes on to compute interest and various costs which have been incurred by the plaintiff. The Affidavit goes on to give the defendants various credits and then sets the total indebtedness, as of December 4, 1985, including principal, interest, late charges, and costs, after giving all necessary credits, at the sum of Six Million Two Hundred Seventy Seven Thousand Sixty Five and .92/100 (\$6,277,065.92) Dollars. The per diem rate of interest is reflected in that Affidavit at Two Thousand Six Hundred Twenty Seven and .69/100 (\$2,627.69) Dollars. Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Counterclaim of the defendants, RGR, Inc., the Homeowners Association, and the guarantors, is dismissed with prejudice, and

IT IS FURTHER ORDERED that the plaintiff is granted judgment against Royal Garden Resort, Inc., and the guarantors, the amount of Six Million Two Hundred Seventy Seven Thousand Six Five and .92/100 (\$6,277,065.92) Dollars as of December 4, 1985 with a per diem interest rate thereafter at the rate of Two Thousand Six Hundred Twenty Seven and .69/100 (\$2,627.69) Dollars, and

IT IS FURTHER ORDERED that this matter shall be referred to the Master in Equity for Horry County to take the testimony and other evidence and to report same, together with his findings of fact and conclusions of law, to this Court with leave to report any special matter, and

IT IS FURTHER ORDERED that the subject property shall be sold in accordance with the laws and customs of this Court and that the proceeds of sale be applied first to the costs, disbursements and expenses of sale of this action, including attorneys fees, and second to the indebtedness due the plaintiff, and third the surplus, if any, be held subject to further Order of this Court, and

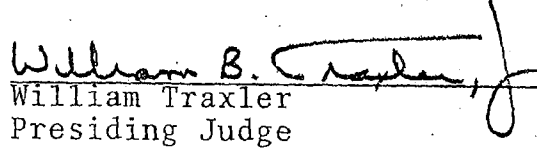
IT IS FURTHER ORDERED that the equity of redemption of the defendants, Royal Garden Resort, Inc., and all others claiming any right, title or interest in or lien upon the premises, through or under it in the real property, described in the plaintiff's Complaint and Amended Complaint, be barred and forever foreclosed, and

IT IS FURTHER ORDERED that the sale of the subject property not be delayed by any necessary determination of the priorities of the junior lien holders, but in accordance with the above, any surplus proceeds of sale may be held in escrow until further Order of this Court, and

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WST

IT IS SO ORDERED!

#11


William B. Traxler
Presiding Judge

Dated: 1/10/86

EXHIBIT 2

85-1747
64791
FILED
Horry County

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NOTICE OF SALE BILLIE G. RICHARDSON
CLERK OF COURT

PURSUANT to the Order of the Court of Common Pleas in the case of Preferred Savings and Loan Association, Inc., plaintiff, against Royal Garden, Resort, Inc.; Royal Garden Regime Homeowners Association a/k/a Royal Garden Resort Condominium Homeowners Association, Inc.; Cianbro Corporation; Carolina Furniture Sales; Commercial Communications, Inc.; General Electric Company; George S. Hirsch; Ward Hulbert, as Trustee for Hulbert, Inc., Profit-Sharing Trust, and Hulbert, Inc. Pension Plan; Kenneth R. Sanders; Robert H. Quattlebaum; Shirley Treadway d/b/a S. & M. Lawn Services; Darlene M. Appel; Keith K. Appel; Patricia T. Burk; William J. Burk; Rebecca S. Howard; Whitfield M. Howard; Daniel B. Jordan; Marion M. Jordan; Etta M. Near; Jerome A. Near; Phyllis A. Stickney; Roland F. Stickney; Diana V. Stone; Gregory G. Stone; William H. Cooper, Jesse C. Atchley, Ralph Tom White, II, individually and as General Partners of Pintail Properties, a North Carolina General Partnership; and Robert Foster, defendants, I will sell at public auction in front of the Courthouse in Conway, South Carolina, on March 3, 1986, at 12:00 Noon, to the highest bidder for cash, the following described property:

Unit Nos. 102, 103, 106, 109, 110, 114, 205, 209, 210, 211, 212, 301, 302, 303, 305, 306, 314, 405, 409, 410, 411, 414, 415, 501, 503, 509, 601, 602, 603, 604, 608, 702, 703, 704, 711, 712, 715, 801, 804, 805, 806, 807, 808, 815, 904, 907, 911, 914, 1001, 1006, 1014, 1015, 1106, 1107, 1108, 1211, 1215, 1401, 1404, 1405, 1409, 1411, 1412, 1414, 1501, 1507, 1508, 1509, 1510, Commercial 1, Commercial 2, Commercial 3 of the Royal Garden Resort Horizontal Property Regime, a Horizontal Property Regime created pursuant to the South Carolina Horizontal Property Regime Act, Sections 27-31-10, et. seq., South Carolina Code of Laws 1976, as amended, and submitted by Master

Deed, recorded June 12, 1984, in Deed Book 875 at Page 638, Office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, and certified by Kenneth R. Sanders, AIA, dated October 26, 1983, and filed in the office of the Clerk of Court for Horry County, South Carolina in Condominium Plat Book 4 at page 1.

TOGETHER with any other portions of the mortgaged properties not validly released by the plaintiff, said properties being a portion of that property described in the mortgage as follows:

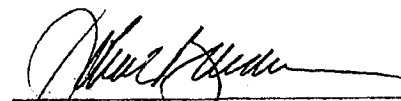
ALL AND SINGULAR those certain pieces, parcels or lots of land situate, lying and being in Socastee Township, County of Horry, State of South Carolina, being more particularly described as Lots 1, 2, 3, and 4 of Block 1 of the Myrtle Dunes Section of Garden City, Horry County, South Carolina, as shown on a map recorded September 30, 1949, in Deed Book 9 at page 70, office of the Clerk of Court for Horry County, South Carolina, reference to which is craved as forming a part and parcel hereof.

Lots 1, 2 and 3 of Block 1 were conveyed to Royal Garden Resort, Inc. by J. S. Frazier, Inc., by deed dated July 1, 1982, and recorded July 1, 1982, in Deed Book 753 at page 49, office of the Clerk of Court for Horry County, South Carolina.

Lot 4 of Block 1 was conveyed to Royal Garden Resort, Inc. by J. S. Frazier, Inc., by deed dated and recorded July 1, 1982, in Deed Book 753 at page 46, office of the Clerk of Court for Horry County, South Carolina.

NOTICE IS FURTHER GIVEN that the successful bidder at said sale, other than the plaintiff, will be required to deposit with the Clerk of Court as earnest money and evidence of good faith an amount equal to five (5%) percent of its bid in cash, certified or cashier's check to be applied on the purchase price, and should the successful bidder fail to make such deposit at the time of the acceptance of his bid, the Clerk of Court shall resell said property on the same Sales Day or at such subsequent Sales Day as may be convenient and advantageous. Should the successful bidder fail to comply with his bid without legal excuse within twenty (20) days after the acceptance of his bid, his deposit shall be forfeited and the property resold on some subsequent Sales Day without further Order of the Court.

A deficiency judgment is being sought by the plaintiffs herein, therefore the bidding will not be closed at the sale but shall remain open for a period of thirty (30) days, during which time additional bids may be taken.



JOHN L. BREEDON
Master in Equity for Horry County,
South Carolina

Conway, South Carolina

February 10, 1986

EXHIBIT 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 85-CP-26-1747

Preferred Savings and Loan
Association, Inc.,

Plaintiff,)

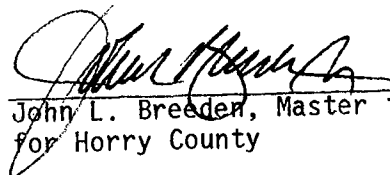
vs.)

Royal Garden Resort, Inc.; Royal)
Garden Regime Homeowners Associa-)
tion a/k/a Royal Garden Resort)
Condominium Homeowners Association,)
Inc.; Cianbro Corporation; Carolina)
Furniture Sales; Commercial)
Communications, Inc.; General)
Electric Company; George S. Hirsch;)
Ward Hulbert, as Trustee for)
Hulbert, Inc., Profit-Sharing)
Trust, and Hulbert, Inc. Pension)
Plan; Kenneth R. Sanders; Robert H.)
Quattlebaum; Shirley Treadway d/b/a)
S. & M. Lawn Services; Darlene M.)
Appel, Keith K. Appel; Patricia T.)
Burk; William J. Burk; Rebecca S.)
Howard; Whitfield M. Howard; Daniel)
B. Jordan; Marian M. Jordan; Etta)
M. Near; Jerome A. Near; Phyllis A.)
Stickney; Roland F. Stickney; Diana)
V. Stone; Gregory G. Stone;)
William H. Cooper, Jesse C.)
Atchley, Ralph Tom White, II,)
individually and as General)
Partners of Pintail Properties, a)
North Carolina General Partnership;)
and Robert Foster,)

Defendants.)

MASTER'S REPORT

Notice: The original of this
Report was filed in the Office
of the Clerk of Court for Horry
County, S.C., and copies hereof
were forwarded to the below named
parties on the 10 day of June,
1986.


John L. Breeden, Master in Equity
for Horry County

Conway, South Carolina - June _____, 1986

TO: THE PRESIDING OR RESIDENT JUDGE OF THE COURT OF COMMON PLEAS FOR HORRY
COUNTY, SOUTH CAROLINA:

I, the undersigned Master in Equity for Horry County, report that

pursuant to the Order granted in the above entitled cause by the Honorable William B. Traxler, Jr., Presiding Judge in the Court of Common Pleas for Horry County on January 10, 1986, a reference was held, attended by the attorneys of record, the testimony was taken, which is herewith reported, and from the testimony and evidence I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed on June 8, 1985, and the Summons and Complaint were filed on July 3, 1985.
2. An Amended Lis Pendens was filed on July 10, 1985, and the Amended Summons and Complaint were filed on July 10, 1985.
3. Service was made upon the Defendants as is shown by the Proofs of Service filed with the record.
4. All of the Defendants made appearances through attorneys of record with the exception of the Defendants, Carolina Furniture Sales and Commercial Communications, Inc., who failed to make appearances or otherwise plead.
5. The Defendant, Cianbro Corporation, duly filed its Answer in this action and the Court notes that Civil Case Number 85-CP-26-888 entitled Cianbro Corporation, Petitioner vs. Royal Garden Resort, Inc., et al, had been previously filed to foreclose an alleged Mechanic's Lien and was consolidated by Order of the Court of Common Pleas for hearing and final disposition with the instant case. In its Answer in the instant action, Cianbro Corporation "requests that its interest in the subject property be protected and that the priority of this Defendant's lien be determined in this action." Cianbro Corporation is represented by the law firm of

Jeffcoat and Martin. At the hearing in this case on May 26, 1986, Michael Meeker, a North Carolina attorney was admitted to practice in South Carolina for the purpose of this case for Cianbro Corporation and was the principal trial attorney.

6. The following Defendants also filed responsive pleadings:

(a) Royal Garden Resort, Inc., Royal Garden Regime Homeowners Association, a/k/a Royal Garden Resort Condominium Homeowners Association, Inc., Darlene M. Appel, Keith K. Appel, Patricia T. Burke, William J. Burke, Rebecca S. Howard, Whitfield M. Howard, Daniel B. Jordan, Maryann M. Jordan, Etta M. Near, Jerome A. Near, Phyllis A. Stickney, Roland S. Stickney, Diana B. Stone and Gregory G. Stone filed an Answer in the form of a general denial together with a separate Counterclaim. These pleadings were filed on behalf of said Defendants by Edward J. Insley.

(b) An additional Answer was filed on behalf of Royal Garden Resort Homeowners Association, Inc., by Mary J. Ryan.

(c) The Defendant, George S. Hirsch, filed his Answer by his attorney, Robert H. Gwin, III.

(d) The Defendant, Ward Hulbert, filed an Answer by his attorney, J. Jackson Thomas.

(e) The Defendant, Kenneth R. Saunders, filed an Answer by his attorney, Robert S. Haight, Jr.

(f) The Defendant, Robert H. Quattlebaum, filed an Answer by his attorney, Frederick C. Parsons, III.

(g) The Defendants, William H. Cooper, Jesse C. Atchley, Ralph Tom White, II, individually and as general partners of Pintail Properties, duly

filed an Answer by their attorney, Daniel T. Brailsford.

(h) The Defendant, Robert Foster, filed an Answer by his attorney, Eben H. Cockley.

(i) The Defendant, General Electric, appeared through its attorney, Richard M. Lovelace.

(j) The Defendant, Shirley Treadway, was represented by Robert L. Barnett.

7. I find that upon Notice of Motion and Motion for Summary Judgment pursuant to Rule 56 together with a Notice of Motion and Motion for Order of Reference this matter came on to be heard before the Honorable William B. Traxler, Jr., presiding Judge in the Court of Common Pleas for Horry County on December 20, 1985. Pursuant to said hearing an Order was issued by Judge Traxler on January 10, 1986. I find that Judge Traxler found that the Loan Agreement, the promissory note, the mortgage, financing statement, the guaranty of note and deed of trust were true and correct copies of said documents; that Judge Traxler further found that "the findings that I have made, and will make, in this Order have already established liability on a number of issues and will, therefore, make it unnecessary for the Master in Equity to rule upon those matters and issues."

I further find that Judge Traxler's Order, in granting the Motion for Summary Judgment, dismissed the Counterclaim of the Defendants, Royal Garden Resort, Inc., the Homeowners Association, and the guarantors with prejudice and further ordered that the Plaintiff was granted judgment against Royal Garden Resort, Inc., and the guarantors in the sum of Six Million Two Hundred Seventy-seven Thousand Sixty-five and 92/100

(6,277,065.92) Dollars as of December 4, 1985 with a per diem interest rate thereafter at the rate of Two Thousand Six Hundred Twenty-seven and 69/100 (\$2,627.69) Dollars. Judge Traxler ordered that the property was to be sold and the equity of redemption of the Defendants, Royal Garden Resort, Inc., and all other persons claiming any right, title or interest in or lien upon the premises through or under it in the real property described in the Plaintiff's Complaint and Amended Complaint be barred and forever foreclosed and ordered that the sale of the subject property not be delayed by any unnecessary determination of the priorities of the junior lien holders.

I further find that a Supplemental Order was granted regarding the issue of priority and the holding of funds in escrow pending a determination of the priorities and that said Supplemental Order provides that the priorities of the liens of Cianbro Corporation and Preferred Savings and Loan Association, Inc., be determined at a hearing before this Court.

8. That pursuant to the Order of the Court of Common Pleas granted by Judge Traxler, a Notice of Sale was issued and a sale of the property was held at public auction in front of the Horry County Courthouse in Conway, South Carolina, on March 3, 1986, with the high bidder being Preferred Savings and Loan Association, Inc., in the sum of Five Million Three Hundred Seventy-five Thousand and NO/100 (\$5,375,000.00) Dollars and there was no subsequent bid on the upset bid day held thirty (30) days subsequent thereto.

9. That upon hearing of testimony and evidence over a period of two

days with hearings on Monday, May 26, 1986, (Memorial Day) and on Friday, June 13, 1986, I found that the issues were narrowed down to whether Cianbro Corporation had a Mechanic's Lien and if the Mechanic's Lien was valid, whether it took priority over the mortgage debt of the Plaintiff.

10. That at the first hearing in this matter the Defendant, Cianbro Corporation, moved to amend its pleadings and assert an affirmative defense alleging that a conveyance of certain of the units operated as a payment reducing the amount due the Plaintiff and to further assert an affirmative defense alleging modification of the terms and conditions of the loan documents entered into between the Plaintiff and the Defendant, Royal Garden Resort, Inc. The Motion for the amendment to assert the aforementioned defenses was denied as being untimely and prejudicial to the Plaintiff.

11. I find that the Plaintiff again proved the debt it was owed by its witness, Carol Coble, who reiterated the loan documents and the debt which had been previously found due under the Order of Judge Traxler. I find that upon completion of the Plaintiff's case the Defendant, Cianbro Corporation, moved for a directed verdict on two grounds. First, Cianbro Corporation asserted a directed verdict based on the failure of Preferred to prove its debt as to Cianbro Corporation. I denied that Motion based on Judge Traxler's Order and the aforementioned testimony of Carol Coble. Second, Cianbro Corporation (hereinafter Cianbro) made a Motion for a directed verdict that as to Four Hundred Eighty-two Thousand and NO/100 (\$482,000.00) Dollars which were allegedly disbursed improperly by the Plaintiff, Cianbro's Mechanic's Lien should take priority. That Motion was

based upon the claim by Cianbro that it had an equity interest in the project and, as a result of an alleged modification of the Construction Loan Agreement combined with alleged negligent disbursements of construction funds by the Plaintiff, Cianbro's lien should take priority over the Plaintiff's mortgage to that amount. I denied that Motion on several grounds. First, I denied it because Cianbro had not timely pled modification. Second, I denied it because I found that Cianbro had no standing to assert a claim under the Construction Loan Agreement because it was not a party to that contract. Finally, I denied it because I found the Plaintiff owed no duty to Cianbro in the disbursement of the funds pursuant to that Construction Loan Agreement.

12. I find that the Plaintiff under proper notice moved for Summary Judgment in respect to those matters raised in Cianbro's Petition to foreclose a Mechanic's Lien filed on April 2, 1985. The grounds for said Motion were that Cianbro caused to be filed in the office of the Clerk of Court for Horry County a Notice of Mechanic's Lien on August 15, 1984, alleging an indebtedness of Seven Hundred Seventy-seven Thousand Seven Hundred Ninety-four and 74/100 (\$777,794.74) Dollars on account of labor performed or furnished and/or materials furnished and actually used, said Notice being filed in Records Book 38 at page 2; that Cianbro caused to be filed a restated Notice of Mechanic's Lien on September 18, 1984, in Mechanic's Lien Volume 38 at page 2 alleging an indebtedness of Six Hundred Thirty-nine Thousand Two Hundred Fifty and 39/100 (\$639,250.39) Dollars as of August 13, 1984, on account of labor performed or furnished and/or materials furnished and actually used and further stated that said labor.

and/or materials have been performed and/or furnished (emphasis added); that Cianbro filed a Notice of Pendency of Action (Lis Pendens) on April 2, 1985, together with a Summons and Petition to Foreclose Mechanic's Lien.

I find that Section 29-5-10 of the Code of Laws of South Carolina 1976 provides that "any person to whom a debt is due for labor performed or furnished or for materials furnished and actually used . . . shall have a lien upon such building or structure and upon the interest of the owner thereof in the lot of land upon which it is situated to secure the payment of the debt so due to him. . . ."

I further find that Section 29-5-70 of the Code of Laws of South Carolina 1976 provides that "such a lien shall not avail or be a force against any mortgage actually existing and duly recorded prior to the date of the contract under which the lien is claim."

I further find that Section 29-5-90 of the Code of Laws of South Carolina 1976 as amended provides that "such a lien shall be dissolved unless the person desiring to avail himself thereof, within ninety (90) days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner, or in the event the owner cannot be found, upon the person in possession and files in the office of the register of mesne conveyances or clerk of court of the county in which the building or structures situated a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien sufficiently accurate for identification, with the name of the owner of the property, if known, which certificate shall be subscribed and sworn to by the person

claiming the lien or by someone in his behalf and shall be recorded in a book kept for the purpose by the register or clerk who shall be entitled to the same fees therefore as for recording mortgages of equal length."

I further find that Section 29-5-120 of the Code of Laws of South Carolina 1976 provides that "unless a suit for enforcing the lien is commenced and Notice of Pendency of the action is filed, within six months after the person desiring to avail himself thereof ceases to labor on or furnish labor or material for such building or structure, the lien shall be dissolved."

The South Carolina Court of Appeals in the case of Clo-Car-Trucking Co., Inc., v. Cliffure Estates of South Carolina, Inc., et al, 320 S.E. 2d 51, filed on August 30, 1984, stated that "because a Mechanic's Lien exists only by virtue of statute one's right to a Mechanic's Lien is wholly dependent upon the language of the statute creating it. . .we must take each Mechanic's Lien statute as we find it. . .for we are not at liberty to depart from the plain meaning of its language." The Court further stated in Williamson v. Hotel Melrose 96 S.E. 407, that "he who sets up such a lien must bring himself fairly within the expressed intention of the lawmakers."

The South Carolina Court of Appeals in the case of Shelley Construction Company, Inc. v. Sea Garden Homes, Inc., 336 S.E. 2d 448 quoting from Williamson v. Hotel Melrose 96 S.E. 407 states that "the lien arises, inchoate, when the labor is performed or the materials furnished. In order to perfect and enforce the lien against the property the person claiming it must: (1) serve and record a certificate of lien within ninety

(90) days after he ceases to furnish labor or materials. Code Section 29-5-90; (2) bring suit to foreclose the lien within six months after he ceases to furnish labor or materials. Code Section 29-5-120; and (3) file Notice of Pendency of the action within six months after he ceases to furnish labor or material. Code Section 29-5-120. If these steps are taken the persons claiming the lien may foreclose against the property to satisfy the debt. On the other hand, if he fails to take any one of these steps, the lien against the property is dissolved. Code Section 29-5-90 and 29-5-120. This does not, however, preclude him from maintaining an action on the debt. Code Section 29-5-420."

It is noted that the statutes and cases all refer to labor and/or materials already performed or furnished, or, in other words, are in the past tense. Were this not the case, a party could drive one nail in a structure and then without performing any further labor or furnishing of materials proceed with filing a Mechanic's Lien for his entire contract. I do not find the statutes and cases supportive of that theory.

The Shelley case further provides "we are not at liberty under the guise of construction, to alter the plain language of the statute by adding words which the legislature saw fit not to include." Id. at 491. The Court also said that "[t]he purpose of a Notice of Pendency of an action is to inform a purchaser or encumbrancer that a particular piece of real property is subject to litigation. The filing of a Lis Pendens places a cloud on title which prevents the owner from freely disposing of the property before the litigation is resolved. . . If the claimant seeks to enforce a Mechanic's Lien against the property, it makes perfect sense to require a

Lis Pendens, since the property may be affected by the outcome of the litigation." Id. at 491-92 (citations omitted).

The statutes appear to clearly state that a Notice of Mechanic's Lien must be filed and within the proper time an action brought to foreclose the Mechanic's Lien or otherwise a third party or title examiner cannot rely on the statutes in examining the public records to determine if there are in fact any liens on the property.

I find that Cianbro Corporation did not file any further Notice of Mechanic's Lien subsequent to September 18, 1986. I note from the testimony of Cianbro Corporation that the labor and materials had been "substantially furnished" by mid-June 1984.

I therefore find that the Mechanic's Lien of Cianbro is dissolved for failure to comply with the requirements of the aforestated statutes.

13. I find that pursuant to Rule 56 SCRCP, Preferred Savings and Loan Association, Inc., has shown there is no genuine issue as to any material fact concerning the Mechanic's Lien claimed by Cianbro. I therefore grant the Motion for Summary Judgment of Preferred Savings and Loan Association, Inc., and find and hold that Cianbro has no Mechanic's Lien.

14. I find that pursuant to the findings of the Honorable William B. Traxler, Jr., contained in the Order dated January 10, 1986, that there is due and owing the Plaintiff the sum of Six Million Two Hundred Seventy-seven Thousand Sixty-five and 92/100 (\$6,277,065.92) Dollars as of December 4, 1985, with interest accruing thereafter at the rate of Two Thousand Six Hundred Twenty-seven and 69/100 (\$2,627.69) Dollars per day.

15. The promissory note of Royal Garden Resort, Inc., payable to

Preferred Savings and Loan Association, Inc., provides that "upon default, the holder of this note may employ an attorney to enforce the holder's rights and remedies and the borrower, principal, surety, guarantor and endorsers of this note hereby agree to pay the holder the sum of ten (10%) percent of the outstanding balance owing on said note for reasonable attorney's fees, plus all other reasonable expenses incurred by the Holder and exercising any of the Holder's rights and remedies upon default." A review of the record reveals that this is a multi-party complex action which has required extensive pleadings, Motions and services to the dates of hearing together with further work to be performed to the conclusion of the foreclosure. Decisions in this state have generally sustained and enforced stipulations as to attorney's fees in accordance with a contract where it is not clearly unreasonable and oppressive. Matheson v. Rogers, et al, 84 S.C. 458 at 65 S.C. 1054 and Superior Automobile Insurance Company v. Harvey W. Manners et al, 261 S.C. 257, 199 S.C. 2d 719. In the present case the documents signed by the makers of the note and mortgage call for ten (10%) percent which does not appear unreasonable in light of the complexity and volume of litigation, amount of indebtedness, responsibility and effort to conclude the litigation. The sum of

 \$ 313,853.30 dollars which represents approximately 5% percent of the outstanding principal and interest as of December 4, 1985, is a reasonable fee to allow the Plaintiff's attorneys for services performed and anticipated to be performed until final adjudication of the within action under the terms of the notes, mortgage and security agreement.

16. I find that the mortgage and security agreement of personal property given by Royal Garden Resort, Inc., to the Plaintiff, was duly filed and recorded in the office of the Clerk of Court for Horry County on March 2, 1983, in Mortgage Book 818, page 550, et. seq. I further find that the remaining Defendants are junior and subordinate to the claim of the Plaintiff and in view of the sale which has been held pursuant to Judge Traxler's Order the question of priorities between the junior claimants is now moot as there are no surplus funds for disbursement.

CONCLUSIONS OF LAW

I, therefore, conclude and recommend as follows:

1. The Plaintiff should have judgment of foreclosure of the mortgage as provided under the Order of Judge William B. Traxler, Jr., dated January 10, 1986.

2. The claim of a Mechanic's Lien by Cianbro is denied.

3. That the mortgage of real estate and security agreement of personal property given by Royal Garden Resort, Inc., to the Plaintiff, Preferred Savings and Loan Asociation, Inc., was duly recorded in the office of the Clerk of Court for Horry County on March 2, 1983, in Mortgage Book 818 page 580, et. seq. and that said mortgage is the first lien on the subject premises; that the remaining Defendants are all junior and subordinate to the lien of the Plaintiff.

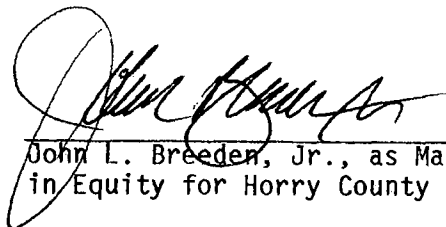
4. That because there will be no surplus of funds from the sale held under the Order of Judge William B. Traxler, Jr., a determination of any priorities between the junior lienholders is not necessary.

5. The proceeds arising from the sale held under the Order of Judge

William B. Traxler, Jr., should be applied first to the costs, disbursements and expenses of sale of this action, including attorneys fees, and then to the indebtedness due the Plaintiff, or so much thereof as the proceeds will pay.

6. That upon compliance by the successful bidder and the final accounting the Sheriff of Horry County be ordered and directed to put the successful bidder or its assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successfull bidder or its assigns in such possession.

Respectfully submitted,


John L. Breeden, Jr., as Master
in Equity for Horry County

Conway, South Carolina

June 20, 1986

EXHIBIT 4

ELECTRONICALLY FILED - 2019 Sep 07 9:05 AM - HORRY - COMMON PLEAS - CASE#2018CP2606033
ELECTRONICALLY FILED - 2019 Nov 08 1:13 PM - HORRY - COMMON PLEAS - CASE#2018CP2606033

STATE OF SOUTH CAROLINA,

COUNTY OF Horry

MASTER'S DEED

WHEREAS, Preferred Savings and Loan Association, Inc., on or about the 1st day of July in the year of our Lord one thousand, nine hundred Eighty-five, amended did file Complaint in the Court of Common Pleas for the County of Horry July 9, 1985 State of South Carolina, against Royal Garden Resort, Inc., et al.
AND WHEREAS, the action being at issue, was heard by the Honorable the said Court on the 10th day of January in the year of our Lord one thousand, nine hundred Eighty-Six whereupon the Judge of said Court, after full hearing thereof and mature deliberation in the premises, did ORDER, ADJUDGE, AND DECREE that the premises particularly set forth and described hereinafter, should be sold by John L. Breeden, Jr., as Master, hereinafter called

ed party of the first part, on the terms and for the purposes mentioned in said Decretal Final Order, all of which will more fully appear by reference to the registry of the said Court, Judgment Roll No. 64791; and the party of the first part after having duly advertised the said premises for sale at public outcry on the 3rd day of March in the year of our Lord one thousand, nine hundred Eighty-Six, did openly and publicly, and after the manner of auction, offer the said premises for sale, and John L. Breeden, Jr., as Master, as provided by law, did then sell the same unto Preferred Savings and Bank, Inc., P.O. Box 5768, High Point, N.C. 27262 of the County of State aforesaid, hereinafter called parties of the second part, whether one or more, for the sum of Five Million Three Hundred Seventy-Five Thousand \$3,375,000.00 dollars, being at that price the highest bidder for the same, and No/100-----

NOW KNOW ALL MEN BY THESE PRESENTS That the said party of the first part, in consideration of the premises and the sum of Five (\$5.00) Dollars paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell, and release, unto the said parties of the second part

Preferred Savings Bank, Inc., its successors and assigns:

Unit Nos. 102, 103, 106, 109, 110, 114, 205, 209, 210, 211, 212, 301, 302, 303, 305, 306, 314, 405, 409, 410, 411, 414, 415, 501, 503, 509, 601, 602, 603, 604, 608, 702, 703, 704, 712, 713, 715, 801, 804, 805, 806, 807, 808, 815, 904, 907, 911, 914, 1001, 1006, 1014, 1015, 1106, 1107, 1108, 1211, 1215, 1401, 1404, 1405, 1409, 1411, 1412, 1414, 1501, 1507, 1508, 1509, 1510, Commercial 1, Commercial 2, Commercial 3 of the Royal Garden Resort Horizontal Property Regime, a Horizontal Property Regime created pursuant to the South Carolina Horizontal Property Regime Act, Sections 27-31-10, et. seq., South Carolina Code of Laws 1976, as amended, and submitted by Master Deed, recorded June 12, 1984, in Deed Book 375 at Page 638, Office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders AIA, and certified by Kenneth R. Sanders, AIA, dated October 26, 1983, and filed in the Office of the Clerk of Court for Horry County, South Carolina in Condominium Plat Book 4 at Page 1.

TOGETHER with any other portions of the mortgaged properties not validly released by the Plaintiff, said properties being a portion of of that property described in the mortgage as follows:

ALY, AND SINGULAR, those certain pieces, parcels or lots of land situate, lying and being in Socastee Township, County of Horry, State of South Carolina, being more particularly described as Lots 1, 2, 3, and 4 of Block 1 of the Myrtle Dunes Section of Garden City, Horry County, South Carolina, as shown on a map recorded September 30, 1949, in Deed Book 9 at Page 70, Office of the Clerk of Court for Horry County, South Carolina, reference to which is craved as forming a part and parcel hereof.

Lots 1, 2 and 3 of Block 1 were conveyed to Royal Garden Resort, Inc. by J. S. Frazier, Inc., by deed dated July 1, 1982, and Recorded July 1, 1982, in Deed Book 753 at Page 49, Office of the Clerk of Court for Horry County, South Carolina.

Lot 4 of Block 1 was conveyed to Royal Garden Resort, Inc. by J. S. Frazier, Inc., by deed dated and recorded July 1, 1982, in Deed Book 753 at page 46, Office of the Clerk of Court for Horry County, South Carolina.

BOOK 1063 PAGE 505

505

HORRY COUNTY ASSESSOR
195-10-51-067-068-071-074-075-078-084-088-089-090-091-094-095-096-098-099-106-113-117-118-119-123-125-131-137-138-139-140-144-152-153-154-162-164-165-168-169-170-171-172-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000

BOOK 1035 PAGE 103

Together with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also the estate, right, title, interest, power, possession, property, benefit, claim and demand whatsoever of all the parties to the said suit, as well as of all other persons rightfully claiming or to claim the same or any part thereof by, from, or under them or through either of them.

TO HAVE AND TO HOLD the said premises, with its hereditaments, privileges, and appurtenances, unto the said parties of the second part, its successors, heirs, and assigns, forever.

IN WITNESS WHEREOF, I, the said John L. Breeden, Jr. as Master, under and by virtue of the said Decretal Final Order, have hereunto set my Hand and Seal, this the 27th day of June in the year of our Lord one thousand nine hundred Eighty-Six, and in the two hundred and Tenth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of
Kathy D. Ward
Mary Alice Cox

[Signature] (L. S.)
Master for Horry County.

THE STATE OF SOUTH CAROLINA

by John L. Breeden, Jr. Master,

TO
Preferred Savings Bank, Inc

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA,

County of

I hereby certify that the within Deed was
filed for record in my office at 3:29 PM.

o'clock on the 27 day of June

1986 and immediately entered on the prop-

er indexes and duly recited in Deed Book

1456 at Page 500

[Signature]

Clerk of Court, Common Pleas and General
Sessions, Register of Meane Conveyances.

Recorded this _____ day of _____

19____, in Book _____, Page _____

Fee \$ _____

Auditor _____ County _____

THE STATE OF SOUTH CAROLINA,

County of Horry

PROBATE

PERSONALLY appeared Kathy D. Ward
deponent saw John L. Breeden, Jr. as Master, sign, seal and as his act deliver the within deed;
and that deponent, together with Mary Alice Cox
thereof and signed their names as witnesses thereto.

and made oath that the de-
witnessed the due execution

SWORN to before me, this 27th

day of June, 19 86
Mary Alice Cox (L. S.)
Notary Public for South Carolina.

Kathy D. Ward

My Commission Expires: 11-15-89

500

ELECTRONICALLY FILED - 2019 SEP 04 9:55 AM - Horry - COMMON PLEAS CASE#2018CP2606033
ELECTRONICALLY FILED - 2019 Nov 08 1:13 PM - Horry - COMMON PLEAS CASE#2018CP2606033

EXHIBIT 5

Leah BA. 1200 pg. 55 0720

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that PREFERRED SAVINGS BANK, INC., in the State aforesaid, hereinafter referred to as GRANTOR(S), which expression shall include their heirs and assigns, and/or its successors and assigns, where the context so requires, or admits, of the one part, and TAMARLIN CORPORATION, a South Carolina Corporation, hereinafter referred to as GRANTEE(S), which expression shall include their heirs and assigns, and/or its successors and assigns, where the context so requires, or admits, of the other part; and in this agreement, the singular shall include the plural, and the gender shall include all genders.

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained the sum of Two Hundred, Ten Thousand (\$210,000.00) Dollars, paid to the Grantor by said Grantee(s), the Grantor has granted, bargained sold and released unto the said Grantee(s), its, his, her, or their heirs, successors and assigns the real property situate in Horry County, South Carolina, described as follows:

COMMERCIAL UNITS Two (2) and Three (3) of ROYAL GARDEN RESORT Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as amended, and submitted by a Master Deed recorded June 13, 1984, in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 875 at Page 638, with the first amendment to Master Deed being recorded June 29, 1984 in Deed Book 880 at Page 85, Office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, and certified by Kenneth R. Sanders, AIA, dated October 20, 1981 and filed in the Office of the Clerk of Court for Horry County, South Carolina, in Condominium Plat Book 4 at Page 1.

GRANTEE'S ADDRESS: 116 N. WACCAWALL DR.

Charleston City, SC

HORRY COUNTY ASSESSOR

BOOK 1200 PAGE 055

195-10-3-274 + 275

Map

Blk

Parcel

2-22810

55

FILED
HORRY COUNTY, S.C.

88 FEB 19 PM 1:45

R.M.C.

SUBJECT to all the provisions of the aforesaid Master Deed.

SUBJECT to that certain Lease from Grantor to Royal Garden Resort Condominium Homeowner's Association, Inc. of even date herewith and reservation of possession thereunder, recorded in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at Page 45.

SUBJECT to that certain Cross Easement Agreement between Grantor and Royal Garden Resort Condominium Homeowner's Association, Inc. and all rights of each party thereunder, recorded in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at Page 51.

TOGETHER with all the appurtenances thereto according to said Master Deed and the GRANTEE(S) assume and agree to observe and perform all obligations under said Master Deed and Exhibits and the South Carolina Horizontal Property Act including, but not limited to, the payment of assessments for the maintenance, and operation of the dwelling and of the Regime. AND SUBJECT to the provisions of the By-Laws of Royal Garden Resort Homeowners Inc. and to all other reservations and restrictions of record, easements, zoning ordinances and rights of way of record, including, but not limited to, those set out in the Master Deed and Exhibits thereto.

This being the identical property conveyed to the Grantor(s) by deed of John L. Breeden, Jr. as Master of Horry County dated and recorded June 27, 1987 in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1056 at Page 505.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee(s), its, his, her, or their successors, heirs, and assigns.

And the Grantor(s) hereby binds itself, his, hers or their heirs and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee(s), its, his, her or their heirs, successors and assigns forever against itself and its successors and all other persons whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, THE GRANTOR(S), has caused these presents to be signed this 12th day of February in the year of our Lord one thousand nine hundred and eighty-eight (1988) and in the two hundred twelfth (212th) year of the Sovereignty and Independence of the United States of America.

BOOK 1200 PAGE 056

56

EXHIBIT 6

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Condominium Lien Book _____
Page _____

Royal Garden Resort Homeowners)
Association a/k/a Royal Garden)
Resort Condominium Homeowners)
Association, Inc.,)

Plaintiff,)

vs.)

Tamarijn Restaurant Corporation,)
Defendant.)

NOTICE OF CLAIM OF LIEN AND

NOTICE OF PENDENCY OF ACTION

NOTICE IS HEREBY GIVEN that the Plaintiff above named, pursuant to the Master Deed of Royal Garden Resort Horizontal Property Regime, a Horizontal Property Regime, recorded in the office of the Clerk of Court for Horry County on June 13, 1984 in Deed Book 875, at page 638, with the first amendment to Master Deed being recorded June 29, 1984 in Deed Book 880, at page 85, and pursuant to the provisions of S. C. Code Ann. §27-31-210 (1976), hereby claims a lien for certain unpaid assessments and common expenses upon the real and personal property in Royal Garden Resort Horizontal Property Regime, a Horizontal Property Regime described below, the amount of which presently stands at \$987.14 as of the date inscribed below, and continues to accrue monthly at the rate of \$244.04.

NOTICE IS FURTHER GIVEN that the Plaintiff will commence an action against the Defendant for the foreclosure of such lien pursuant

to said Master Deed, the By-Laws of Royal Garden Resort Homeowners Association, Inc., recorded in the aforesaid Master Deed, and pursuant to the provisions of S. C. Code Ann. §27-31-210 (1976).

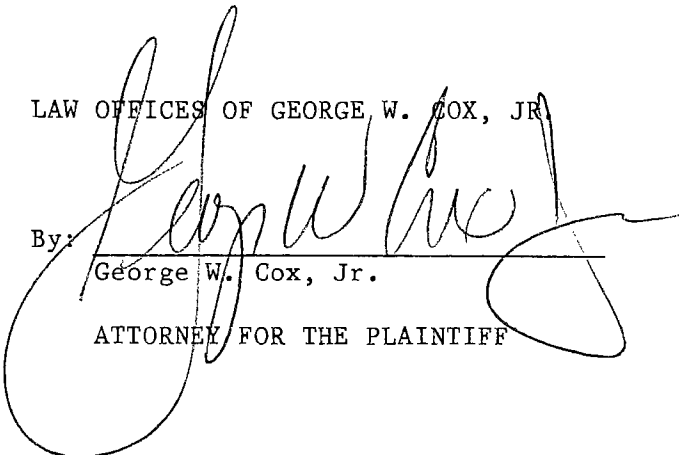
For a description of the real and personal property affected by said lien and this Notice, see Exhibit "A" attached hereto and made a part hereof by reference.

Myrtle Beach, South Carolina

November 17, 1988

LAW OFFICES OF GEORGE W. COX, JR.

By:


George W. Cox, Jr.

ATTORNEY FOR THE PLAINTIFF

EXHIBIT "A"

Unit No. C-2 of the Royal Garden Resort Horizontal Property Regime, a Horizontal Property Regime created by the Grantor pursuant to the South Carolina Horizontal Property Regime Act, Sections 27-31-10 et seq., South Carolina Code of Laws 1976, as amended, and submitted by Master Deed recorded June 13, 1984, in Deed Book 875, at page 638, with the first amendment to Master Deed being recorded June 29, 1984, in Deed Book 880, at page 85, office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, dated October 20, 1981, and filed in the office of the Clerk of Court for Horry County, South Carolina in Condominium Plat Book 4, at page 1.

Subject to all of the provisions of the aforesaid Master Deed.

Together with all of the appurtenances thereto according to said Master Deed, and the Grantee(s) assume and agree to observe and perform his obligations under said Master Deed including, but not limited to, the payment of assessments for the maintenance and operation of the unit and condominium. And Subject to the provisions of the By-Laws of Royal Garden Resort Homeowners Association, Inc., and to all other reservations and restrictions of record, easements, zoning ordinances, and rights-of-way of record, including those as set out on the aforesaid map.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Royal Garden Resort Homeowners
Association a/k/a Royal Garden
Resort Condominium Homeowners
Association, Inc.,

Plaintiff,

vs.

Tamarijn Restaurant Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

Condominium Lien Book _____, at
Page _____

NOTICE OF CLAIM OF LIEN AND
NOTICE OF PENDENCY OF ACTION

NOTICE IS HEREBY GIVEN that the Plaintiff above named, pursuant to the Master Deed of Royal Garden Resort Horizontal Property Regime, a Horizontal Property Regime, recorded in the office of the Clerk of Court for Horry County on June 13, 1984 in Deed Book 875, at page 638, with the first amendment to Master Deed being recorded June 29, 1984 in Deed Book 880, at page 85, and pursuant to the provisions of S. C. Code Ann. §27-31-210 (1976), hereby claims a lien for certain unpaid assessments and common expenses upon the real and personal property in Royal Garden Resort Horizontal Property Regime, a Horizontal Property Regime described below, the amount of which presently stands at \$226.56 as of the date inscribed below, and continues to accrue monthly at the rate of \$56.01.

NOTICE IS FURTHER GIVEN that the Plaintiff will commence an action against the Defendant for the foreclosure of such lien pursuant

to said Master Deed, the By-Laws of Royal Garden Resort Homeowners Association, Inc., recorded in the aforesaid Master Deed, and pursuant to the provisions of S. C. Code Ann. §27-31-210 (1976).

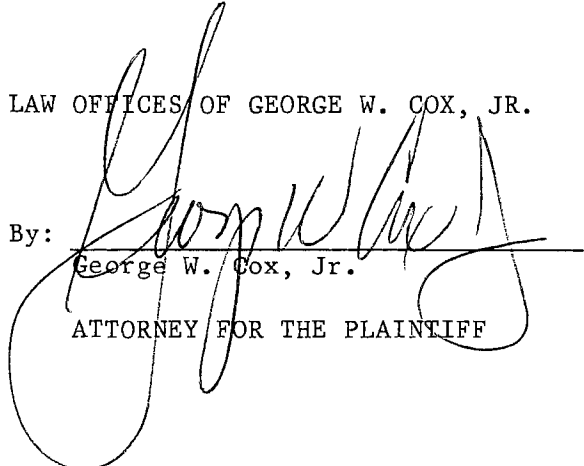
For a description of the real and personal property affected by said lien and this Notice, see Exhibit "A" attached hereto and made a part hereof by reference.

Myrtle Beach, South Carolina

November 17, 1988

LAW OFFICES OF GEORGE W. COX, JR.

By:


George W. Cox, Jr.

ATTORNEY FOR THE PLAINTIFF

EXHIBIT "A"

Unit No. C-3 of the Royal Garden Resort Horizontal Property Regime, a Horizontal Property Regime created by the Grantor pursuant to the South Carolina Horizontal Property Regime Act, Sections 27-31-10 et seq., South Carolina Code of Laws 1976, as amended, and submitted by Master Deed recorded June 13, 1984, in Deed Book 875, at page 638, with the first amendment to Master Deed being recorded June 29, 1984, in Deed Book 880, at page 85, office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, dated October 20, 1981, and filed in the office of the Clerk of Court for Horry County, South Carolina in Condominium Plat Book 4, at page 1.

Subject to all of the provisions of the aforesaid Master Deed.

Together with all of the appurtenances thereto according to said Master Deed, and the Grantee(s) assume and agree to observe and perform his obligations under said Master Deed including, but not limited to, the payment of assessments for the maintenance and operation of the unit and condominium. And Subject to the provisions of the By-Laws of Royal Garden Resort Homeowners Association, Inc., and to all other reservations and restrictions of record, easements, zoning ordinances, and rights-of-way of record, including those as set out on the aforesaid map.

EXHIBIT 7

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
Preferred Savings Bank, Inc.,)
)
Plaintiff,)
vs.)
)
Tamarijn Restaurant Corpora-)
tion, Liberty Savings & Loan)
Association, Royal Garden)
Resort Homeowners Association)
a/k/a Royal Garden Resort)
Condominium Owners Associa-)
tion, Inc.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 89-CP-26-619

SUMMONS

TO THE DEFENDANT TAMARIJN RESTAURANT CORPORATION ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Cross-Complaint herein, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Cross-Complaint upon subscriber at 48th Executive Court, Suite 123, Post Office Box 398, Myrtle Beach, South Carolina 29578, within thirty (30) days after service hereof, exclusive of the date of such service; and if you fail to answer the Cross-Complaint within that time, the Defendant Royal Garden Resort Homeowners Association a/k/a Royal Garden Resort Condominium Owners Association, Inc. will apply to the Court for the relief sought in the Cross-Complaint.

LAW OFFICES OF GEORGE W. COX, JR.

Myrtle Beach, South Carolina

March 8, 1989

By:

George W. Cox, Jr.

48th Executive Court, Suite 123
Post Office Box 398
Myrtle Beach, South Carolina 29578

ATTORNEY FOR THE DEFENDANT ROYAL
GARDEN RESORT HOMEOWNERS ASSOCIATION
A/K/A ROYAL GARDEN RESORT CONDOMINIUM
OWNERS ASSOCIATION, INC.

ROA-0056

89 MAR 13 PM 4:10

BILLIE G. HARRIS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Preferred Savings Bank, Inc.,)
Plaintiff,)
vs.)
Tamarijn Restaurant Corpora-)
tion, Liberty Savings & Loan)
Association, Royal Garden)
Resort Homeowners Association)
a/k/a Royal Garden Resort)
Condominium Owners Associa-)
tion, Inc.,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 89-CP-26-619

ANSWER AND CROSS-COMPLAINT
OF THE DEFENDANT ROYAL GARDEN
RESORT HOMEOWNERS ASSOCIATION
A/K/A ROYAL GARDEN RESORT
CONDOMINIUM OWNERS ASSOCIATION, INC.

1084
GUCR

The Defendant Royal Garden Resort Homeowners Association
a/k/a Royal Garden Resort Condominium Owners Association, Inc.
(hereinafter referred to as Royal Garden Resort), answering the
Complaint and by way of Cross-Complaint against the Defendant Tamarijn
Restaurant Corporation, would show:

FOR A FIRST DEFENSE

1. Each allegation of the Complaint which is not
specifically admitted is expressly denied.

2. On information and belief, Paragraphs 1 through 15 of
the Complaint are admitted by this Defendant.

FOR A SECOND DEFENSE AND BY WAY OF CROSS-COMPLAINT AGAINST
THE DEFENDANT TAMARIJN RESTAURANT CORPORATION

3. The allegations of the First Defense are re-alleged
herein as if set forth verbatim.

4. The Defendant Tamarijn Restaurant is the owner of certain real property located in Garden City Beach, Horry County, South Carolina, which is the gist of this foreclosure action. A description of the units in question is found attached to Plaintiff's Complaint as Exhibit "A".

5. Certain covenants, terms and conditions were imposed upon the property by Master Deed of Royal Garden Resort, Inc. Horizontal Property Regime, and By-Laws being recorded in the office of the Clerk of Court for Horry County in Deed Book 875, at page 638 et seq (the provisions of which are incorporated herein and by reference made a part hereof) and all the declarations, rules and regulations thereunder, including, but not limited to, the obligation to make payment for all assessments and fees and other charges provided for therein.

6. Since imposition of the covenants, terms and conditions of said Master Deed and By-Laws, the property has become subject to special and regular assessments and charges, only part of which have been paid by the Defendant Tamarijn Restaurant Corporation by discount or otherwise.

7. The Master Deed and By-Laws provide, among other things, that:

(a) The Defendant Royal Garden Resort herein shall have a lien upon the property for unpaid assessments and other charges provided by the said Master Deed and By-Laws;

(b) The Defendant Tamarijn Restaurant Corporation shall pay interest at the legal rate from the date when each installment or all of any assessment became due to the date of payment thereof, said interest being deemed an additional assessment thereunder;

(c) Defendant Royal Garden Resort may take such action as it deems necessary to collect any and

2 of 4
GUCF

all assessments by a personal action against the Defendant Tamarijn Restaurant Corporation;

(d) Defendant Royal Garden Resort may recover from the Defendant Tamarijn Restaurant Corporation any and all costs, together with actual attorney's fees incurred by this answering Defendant in any legal action to collect assessments or other charges or to enforce the aforesaid lien.

8. Although partial payments have been made on the accounts, Tamarijn Restaurant Corporation has neglected and failed to pay the remaining balance due and the sum of Two Thousand Four Hundred Thirty-Six and 40/100 (\$2,436.40) Dollars is now past due and unpaid as of March 11, 1989, and said amount continues to accrue monthly at the rate of \$244.04, as to Commercial Unit 2, and \$56.01, as to Commercial Unit 3, commencing with April 1, 1989, plus interest on the unpaid balance at the legal rate from March 11, 1989.

9. This answering Defendant demands deficiency judgment against the Defendant Tamarijn Restaurant Corporation.

WHEREFORE, having fully answered, the Defendant Royal Garden Resort prays that this Court inquire into the matters enumerated herein, and joins in the Plaintiff's request that:

(a) The amount of the assessments and other charges due this answering Defendant be ascertained and determined under the direction of this Court, together with allowable interest, reasonable attorney's fees, and the costs of this action;

(b) This Defendant's assessment liens be declared liens, and further, have judgment against the Defendant Tamarijn Restaurant Corporation for the amount so found to be due and owing thereon, together with allowable interest, reasonable attorney's fees, and the costs of this action;

(c) The existence and priority of any other liens affecting title to the property, including

those of the aforesaid Defendants, if any, be ascertained and determined;

(d) The property be sold according to law and the practice of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale;

Second, to the payment and discharge of other superior liens affecting the title to the property, if any;

Third, to the payment and discharge of the amount of assessments and other charges due to this Defendant, together with allowable interest, reasonable attorney's fees, and the costs of this action;

Fourth, the surplus, if any, be distributed according to the law; and

Fifth, this answering Defendant be granted a deficiency judgment against the Defendant Tamarijn Restaurant Corporation for any sums left due and owing after application of the sale proceeds.

(e) Such other and further relief be granted as may be deemed necessary, just and proper by this Court.

LAW OFFICES OF GEORGE W. COX, JR.

By:

George W. Cox, Jr.

ATTORNEY FOR THE DEFENDANT ROYAL
GARDEN RESORT HOMEOWNERS ASSOCIATION
A/K/A ROYAL GARDEN RESORT CONDOMINIUM
OWNERS ASSOCIATION, INC.

Myrtle Beach, South Carolina

March 8, 1989

4 of 4
GUCF

EXHIBIT 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	89-CP-26-619
COUNTY OF HORRY	)	
Preferred Savings Bank,	)	
Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER OF JUDGMENT
	)	FOR FORECLOSURE AND SALE
	)	
Tamarijn Restaurant	)	
Corporation, Liberty	)	
Savings & Loan	)	
Association, Royal Garden	)	
Resort Homeowners	)	
Association a/k/a Royal	)	
Garden Resort Condominium	)	
Owners Association,	)	
	)	
Defendants.	)	

On May 9, 1989, the Plaintiff represented by Linda Weeks Gwin of Thompson, Henry & Gwin, P.A. came before this Court for a final hearing in the above captioned matter. The Defendant, Tamarijn Restaurant Corporation, is represented by Fred B. Newby, the Defendant, Liberty Savings & loan Association, is represented by Eric P. Nelson, and the Defendant, Royal Garden Resort Homeowners Association a/k/a Royal Garden Resort Condominium Owners Association, is represented by George C. Cox. This matter was referred to this Court to enter a final judgment of foreclosure and sale with all appeals being directly to the South Carolina Supreme Court by Order of the Honorable Sidney T. Floyd by Order of Reference dated May 9, 1989.

FINDINGS OF FACT:

1. The Plaintiff is the owner and holder of that certain Note dated February 17, 1988 in the original

principal sum of One Hundred Eighty-nine Thousand and No/100 (\$189,000.00) Dollars from Tamarijn Restaurant to Preferred Savings Bank, Inc. Said Note is secured by that certain Mortgage of real estate dated February 17, 1988 and recorded February 19, 1988 in Real Estate Mortgage Book 1335 at page 223 in the office of the R.M.C. for Horry County, South Carolina. Further, the Defendant, Tamarijn Restaurant Corporation, executed a Security Agreement and UCC-1 covering all furnishings, fixtures and equipment located in Commercial Units II and III of Royal Garden Resort Horizontal Property Regime as is more accurately reflected by UCC filed in file 104145. The Plaintiff is entitled to foreclosure of its mortgage of real estate more particularly described below and its interest in all of the improvements, fixtures, machinery, appliances, restaurant equipment, heating and cooling systems, furnishings, furniture, napery, silverware and other personal property of every nature located in Commercial Units II and III.

2. The Defendant, Tamarijn Restaurant Corporation, is in default in payment of the above referenced Note and Mortgage and Security Agreement in that it has failed to make the monthly payments called for thereunder. The Plaintiff has made demand upon the Defendant, Tamarijn Restaurant Corporation, for payment of same; however, the Defendant has failed and refused to pay same. There is a balance due and owing on the Note dated February 17, 1988 in the sum of One Hundred Sixty-six Thousand Four Hundred

Thirty-one and 49/100 (\$166,431.49) Dollars as of May 9, 1989 with per diem interest thereafter of Forty-six and No/100 (\$46.00) Dollars.

3. Said Mortgage from Tamarijn Restaurant Corporation to Preferred Savings Bank, Inc. dated February 17, 1988 and recorded February 19, 1988 in Mortgage Book 1335 at page 223 in the office of the R.M.C. for Horry County, South Carolina constitutes a first lien and encumbrance upon the below described premises and the Plaintiff is entitled to foreclosure of same. The property sought to be foreclosed is described as follows:

See Exhibit A attached hereto and made a part and parcel hereof.

4. The Note and Mortgage provide that if same is placed in the hands of an attorney for collection, the Defendant, Tamarijn Restaurant Corporation, shall be responsible for all costs of collection including a reasonable attorney's fee for the Plaintiff's attorney. This Court finds that a reasonable attorney's fee for the Plaintiff's attorney in this matter is the sum of Five Thousand and No/100 (\$5,000.00) Dollars.

5. The Plaintiff specifically waives deficiency judgment against the Defendant, Tamarijn Restaurant Corporation.

6. The Defendant, Liberty Savings & Loan Association, is made a party to this action as it has a second mortgage upon the premises sought to be foreclosed by reason of that certain mortgage dated December 15, 1988 and recorded

December 19, 1988 in Mortgage Book 1416 at page 215 in the office of the R.M.C. for Horry County, South Carolina.

7. The Defendant, Royal Garden Homeowners Association a/k/a Royal Garden Resort Condominium Owners Association, is made a party to this action because it has a third lien and encumbrance upon the premises sought to be foreclosed as a result of that certain Condominium Lien dated November 17, 1988 and recorded November 18, 1988 in Condominium Lien Book 15 at page 49 and that certain Condominium Lien dated November 17, 1988 and recorded November 18, 1988 in Condominium Lien Book 15 at page 50 in the office of the R.M.C. for Horry County, South Carolina.

CONCLUSIONS OF LAW:

1. I find that this Court has jurisdiction over this matter and the parties hereto.

2. I find that the Plaintiff is entitled to a judgment against the Defendant, Tamarijn Restaurant Corporation, in the sum of One Hundred Sixty-six Thousand Four Hundred Thirty-one and 49/100 (\$166,431.49) Dollars as of May 9, 1989 with per diem interest thereafter of Forty-six and No/100 (\$46.00) Dollars together with all costs of collection including a reasonable attorney's fee for the Plaintiff's attorney in the amount of Five Thousand and No/100 (\$5,000.00) Dollars.

3. I find that the Plaintiff is entitled to foreclosure of its Mortgage dated February 17, 1988 and recorded February 19, 1988 in Mortgage Book 1335 at page 223

in the office of the R.M.C. for Horry County, South Carolina. I find that said Mortgage is a first lien and encumbrance upon the premises described on attached Exhibit A.

4. I further find that the Plaintiff is entitled to foreclosure of its security interest and UCC-1 on all personal property, fixtures and equipment as delineated above. I find that the Plaintiff's UCC-1 constitutes a first lien and encumbrance upon said property.

5. I find that the Plaintiff is entitled to have the below described property and the personal property described above sold at public auction with the proceeds from said sale being applied first to the costs found due and second to the Plaintiff's judgment.

6. Deficiency judgment having been waived, bidding shall be closed upon sales date. It is

ORDERED, ADJUDGED AND DECREED that judgment be granted to the Plaintiff against the Defendant, Tamarijn Restaurant Corporation, in the sum of One Hundred Sixty-six Thousand Four Hundred Thirty-one and 49/100 (\$166,431.49) Dollars as of May 9, 1989 with per diem interest thereafter of Forty-six and No/100 (\$46.00) Dollars together with all costs of collection including a reasonable attorney's fee for the Plaintiff's attorney in the amount of Five Thousand and No/100 (\$5,000.00) Dollars. It is

ORDERED, ADJUDGED AND DECREED that the mortgaged premises described in the Complaint or so much as may be sufficient to pay what is due with interest and costs, be

sold at public auction at the Horry County Courthouse in Conway, South Carolina on the next convenient sales date upon the following terms, to wit: For cash with five (5%) percent of the bid being deposited upon acceptance of the bid in cash or certified check and the balance within ten (10) days on sales date in June, 1989 or some convenient sales date thereafter; with the highest bid being accepted; and should the bidder or bidders fail or refuse to comply with any bid, that the premises be resold on the same or any subsequent convenient sales date at the risk of the defaulting bidder or bidders and without further order of this Court; that twenty-one (21) day public notice of the time and place of such sale be given and there be executed and delivered to the purchaser or purchasers a deed for the premises sold; that out of the proceeds of sale, that after deducting the lawful fees, expenses and any liens for ad valorem taxes or assessments and any advances made by the Plaintiff for the protection of the property, that there be paid to the Plaintiff or its attorney the aforesaid aggregate sum of fees and taxed costs in this action, with interest from the date hereof and also the amount or amounts so reported to be due as aforesaid with interest accruing at the daily accrual as shown above, or so much thereof as the purchase money of the mortgaged premises will pay of same; take receipts therefore and file with the Report on Sale; that the surplus proceeds, if any, shall be paid to the Clerk of Court to be drawn or transferred only upon order of

this Court, signed by the Clerk of Court or the Judge of the Court within three (3) months of said sale; and that the report of such sale be made and filed with the Clerk; and that the purchaser or purchasers at such sale be let into possession upon production of the Deed or Deeds of the Master-in-Equity and a certified copy of the Order confirming the Report on Sale or otherwise as now provided by law. It is further,

ORDERED, ADJUDGED AND DECREED that the Defendants and all persons whomsoever lawfully claiming under, by or through them or either of them be forever barred or foreclosed of all right, title, interest, claim and equity of redemption in and to the said mortgaged premises so ordered sold or any part thereof.

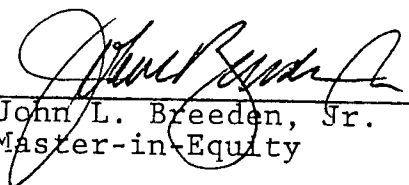
Deficiency Judgment having been waived, bidding shall be closed on sales date.

The following is a description of the mortgaged premises hereinabove mentioned and ordered sold:

See Exhibit A attached hereto and made a part and parcel hereof.

AND IT IS SO ORDERED this the 11th day of May, 1989.

Conway, South Carolina



John L. Breeden, Jr.
Master-in-Equity

EXHIBIT "A"

COMMERCIAL UNITS Two (2) and Three (3) of ROYAL GARDEN RESORT Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as amended, and submitted by a Master Deed recorded June 13, 1984, in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 875 at Page 638, with the first amendment to Master Deed being recorded June 29, 1984 in Deed Book 880 at Page 85, Office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, and certified by Kenneth R. Sanders, AIA, dated October 20, 1981 and filed in the Office of the Clerk of Court for Horry County, South Carolina, in Condominium Plat Book 4 at Page 1.

SUBJECT to all the provisions of the aforesaid Master Deed.

SUBJECT to that certain Lease from Grantor to Royal Garden Resort Condominium Homeowner's Association, Inc. of even date herewith and reservation of possession thereunder, recorded in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at Page 45.

SUBJECT to that certain Cross Easement Agreement between Grantor and Royal Garden Resort Condominium Homeowner's Association, Inc. and all rights of each party thereunder, recorded in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at Page 51.

TOGETHER with all the appurtenances thereto according to said Master Deed and the GRANTEE(S) assume and agree to observe and perform all obligations under said Master Deed and Exhibits and the South Carolina Horizontal Property Act including, but not limited to, the payment of assessments for the maintenance, and operation of the dwelling and of the Regime. AND SUBJECT to the provisions of the By-Laws of Royal Garden Resort Homeowners Inc. and to all other reservations and restrictions of record, easements, zoning ordinances and rights of way of record, including, but not limited to, those set out in the Master Deed and Exhibits thereto.

This being the identical property conveyed to the Mortgagor by deed of Preferred Savings Bank, Inc. of Horry County dated February 12, 1988 and recorded February 19, 1988 in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at Page 55.

EXHIBIT 9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	89-CP-26-619
COUNTY OF HORRY	)	
Preferred Savings Bank,	)	
Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MASTER'S SALE
	)	
Tamarijn Restaurant	)	
Corporation, Liberty	)	
Savings & Loan	)	
Association, Royal Garden	)	
Resort Homeowners	)	
Association a/k/a Royal	)	
Garden Resort Condominium	)	
Owners Association,	)	
	)	
Defendants.	)	

Horry County
 Clerk of Court
 2019 SEP 04 12:00 PM

Under the Judgment of Foreclosure and Sale issued May 11, 1989 on Complaint made February 23, 1989 by Preferred Savings and Loan Association, Inc. vs. Tamarijn Restaurant Corporation, Liberty Savings & Loan Association, Royal Garden Resort Homeowners Association a/k/a Royal Garden Resort Condominium Owners Association, Judgment Roll Number: 89-CP-26-619, Court of Common Pleas, Horry County, South Carolina, the Master will sell at public auction before the Courthouse door at Conway, South Carolina at 11:00 a.m. on sales day June 5, 1989, the property hereinafter described upon the following terms:

(a) The highest bidder, before his bid is accepted, will deposit with the Master on his bid in cash or certified check, the sum of five (5%) percent of the amount of the bid, with a balance in cash within ten (10) days. Should

the bidder or bidders fail or refuse to comply with their bid, the premises shall be resold on the same or any subsequent convenient sales day at the risk of the defaulting bidder or bidders, without further order of this Court. Should the Plaintiff be the successful bidder, it shall not be required to make any deposit.

(b) The proceeds of sale shall be applied to the costs allowed and the debts found due and to the payment of the owners in distribution.

(c) Purchaser will pay for papers and stamps.

(d) Property to be sold is situated in Horry County and is sold as the property of Tamarijn Restaurant Corporation and is described as follows:

See attached Exhibit A.

Deficiency Judgment being waived bidding shall be closed upon sales day.

AND IT IS SO ORDERED this the 11th day of May 1989.

Conway, South Carolina


John L. Breeden, Jr.
Master-in-Equity

THOMPSON, HENRY & GWIN, P.A.

By: 
Linda Weeks Gwin
Attorney for the Plaintiff

EXHIBIT "A"

COMMERCIAL UNITS Two (2) and Three (3) of ROYAL GARDEN RESORT Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as amended, and submitted by a Master Deed recorded June 13, 1984, in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 875 at Page 638, with the first amendment to Master Deed being recorded June 29, 1984 in Deed Book 880 at Page 85, Office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, and certified by Kenneth R. Sanders, AIA, dated October 20, 1981 and filed in the Office of the Clerk of Court for Horry County, South Carolina, in Condominium Plat Book 4 at Page 1.

SUBJECT to all the provisions of the aforesaid Master Deed.

SUBJECT to that certain Lease from Grantor to Royal Garden Resort Condominium Homeowner's Association, Inc. of even date herewith and reservation of possession thereunder, recorded in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at Page 45.

SUBJECT to that certain Cross Easement Agreement between Grantor and Royal Garden Resort Condominium Homeowner's Association, Inc. and all rights of each party thereunder, recorded in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at Page 51.

TOGETHER with all the appurtenances thereto according to said Master Deed and the GRANTEE(S) assume and agree to observe and perform all obligations under said Master Deed and Exhibits and the South Carolina Horizontal Property Act including, but not limited to, the payment of assessments for the maintenance, and operation of the dwelling and of the Regime. AND SUBJECT to the provisions of the By-Laws of Royal Garden Resort Homeowners Inc. and to all other reservations and restrictions of record, easements, zoning ordinances and rights of way of record, including, but not limited to, those set out in the Master Deed and Exhibits thereto.

This being the identical property conveyed to the Mortgagor by deed of Preferred Savings Bank, Inc. of Horry County dated February 12, 1988 and recorded February 19, 1988 in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at Page 55.

EXHIBIT 9

24006

TIMESAVER BLANK NO. 34

Timesaver Pub. Co., Conway, S. C.

STATE OF SOUTH CAROLINA, 89 OCT 11 AM 9:48

COUNTY OF HORRY

R.M.C.

MASTER'S DEED

WHEREAS, Preferred Savings Bank, Inc., on or about the 22nd day of February in the year of our Lord one thousand, nine hundred eighty-nine did file Complaint in the Court of Common Pleas for the County of Horry State of South Carolina, against Tamarijn Restaurant Corporation, et al.

AND WHEREAS, the action being at issue, was heard by the Honorable the said Court on the 9th day of May in the year of our Lord one thousand, nine hundred eighty-nine whereupon the Judge of said Court, after full hearing thereof and mature deliberation in the premises, did ORDER, ADJUDGE, AND DECREE that the premises particularly set forth and described hereinafter, should be sold by John L. Breeden, Jr.,

as Master, hereinafter called party of the first part, on the terms and for the purposes mentioned in said Decretal Final Order, all of which will more fully appear by reference to the registry of the said Court, Judgement Roll No. 89-CP-26-619 ; and the party of the first part after having duly advertised the said premises for sale at public outcry on the 5th day of September the year of our Lord one thousand, nine hundred eighty-nine, did openly and publicly, and after the manner of auction, offer the said premises for sale, and John L. Breeden, Jr., as provided by law, did then sell the same unto Preferred Savings Bank, Inc.

of the County of Guilford, State of North Carolina, hereinafter called parties of the second part, whether one or more, for the sum of One hundred seventy-two thousand five hundred (\$ 172,500.00) Dollars, being at that price the highest bidder for the same,

NOW KNOW ALL MEN BY THESE PRESENTS That the said party of the first part, in consideration of the premises and the sum of Five (\$5.00) Dollars paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell, and release, unto the said parties of the second part

See attached Exhibit A

DB 1345-573

Together with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also the estate, right, title, interest, dower, possession, property, benefit, claim and demand whatsoever of all the parties to the said suit, as well as of all other persons rightfully claiming or to claim the same or any part thereof by, from, or under them or through either of them.

TO HAVE AND TO HOLD the said premises, with its hereditaments, privileges, and appurtenances, unto the said parties of the second part, its heirs and assigns, forever.

IN WITNESS WHEREOF, I, the said John L. Breeden, Jr., as Master, under and by virtue of the said Decretal Final Order, have hereunto set my Hand and Seal, this the 5th day of October in the year of our Lord one thousand nine hundred eighty-nine, and in the two hundred and fourteenth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Ellen Ward
Ellen Ward

John L. Breeden, Jr.
Master for Horry (L. S.)
County.

THE STATE OF SOUTH CAROLINA

by Master,

TO

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA,

County of

I hereby certify that the within Deed was filed for record in my office at M. o'clock on the 11 day of Oct. 1989, and immediately entered on the proper indexes and duly recorded in Deed Book 1345 at Page 573.

Carol A. Higgins
Clerk of Court of Common Pleas and General Sessions, Register of Mesne Conveyances.

Recorded this day of 19 in Book Page

Fee \$

Auditor County.

NO. 34 Timesaver Publishing Co. Conway, S. C.

TIMESAVER
BLANK 13

THE STATE OF SOUTH CAROLINA,

County of Horry

PERSONALLY appeared Henry E. Weathersbee and made oath that the deponent saw John L. Breeden, Jr. as Master, sign, seal and as his act deliver the within deed; and that deponent, together with Ellen Ward witnessed the due execution thereof and signed their names as witnesses thereto.

SWORN to before me, this 5th

day of October, 1989.

Ellen Ward (L. S.)
Notary Public for South Carolina.

My commission expires 10-26-94

BOOK 1345 PAGE 574
PROBATE

1345 574

EXHIBIT A

COMMERCIAL UNITS Two (2) and Three (3) of ROYAL GARDEN RESORT Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as amended, and submitted by a Master Deed recorded June 13, 1984, in the Office of the Clerk of Court for Horry County, South Carolina, in Deed Book 875 at page 638, with the first amendment to Master Deed being recorded June 29, 1984 in Deed Book 880 at page 85, office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, and certified by Kenneth R. Sanders, AIA, dated October 20, 1981 and filed in the office of the Clerk of Court for Horry County, South Carolina, in Condominium Plat Book 4 at page 1.

SUBJECT to all the provisions of the aforesaid Master Deed.

SUBJECT to that certain Lease from Grantor to Royal Garden Resort Condominium Homeowner's Association, Inc. of even date herewith and reservation of possession thereunder, recorded in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at page 45.

SUBJECT to that certain Cross Easement Agreement between Grantor and Royal Garden Resort Condominium Homeowner's Association, Inc. and all rights of each party thereunder, recorded in the office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at page 51.

TOGETHER with all the appurtenances thereto according to said Master Deed and the GRANTEE(S) assume and agree to observe and perform all obligations under said Master Deed and Exhibits and the South Carolina Horizontal Property Act including, but not limited to, the payment of assessments for the maintenance, and operation of the dwelling and of the Regime. AND SUBJECT to the provisions of the By-Laws of Royal Garden Resort Homeowners Inc. and to all other reservations and restrictions of record, easements, zoning ordinances and rights of way of record, including, but not limited to, those set out in the Master Deed and Exhibits thereto.

This being the identical property conveyed to Tamarijn Corporation by deed of Preferred Savings Bank, Inc. of Horry County dated February 12, 1988 and recorded February 19, 1988 in the office of the Clerk of Court for Horry County, South Carolina in Deed Book 1200 at page 55.

BOOK 1345 PAGE 575

EXHIBIT 10

HORRY COUNTY, S.C.

1990 SEP 28 AM 11: 29

Deed BK 1424
Pg. 593

R.M.C.

STATE OF SOUTH CAROLINA)

) DEED TO REAL ESTATE

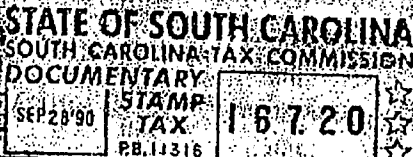
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS, that PREFERRED SAVINGS BANK, INC., in the State aforesaid, hereinafter referred to as GRANTOR(S), which expression shall include their heirs and assigns, and/or its successors and assigns, where the context so requires, or admits, of the one part, and PHOENIX OF THE STRAND, INC., a South Carolina Corporation, of Post Office Box 16130, Surfside Beach, South Carolina 29587, hereinafter referred to as GRANTEE(S), which expression shall include their heirs and assigns, and/or its successors and assigns, where the context so requires, or admits, of the other part; and in this agreement, the singular shall include the plural, and the gender shall include all genders.

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained the sum of Seventy-Six Thousand and No/100 (\$76,000.00) Dollars, paid to the Grantor by said Grantee(s), the Grantor(s) have granted, bargained sold and released unto the said Grantee(s), its, his, her, or their heirs, successors and assigns the real property situate in Horry County, South Carolina, described as follows:

See Exhibit "A" attached hereto and made a part hereof.

This property is located in whole or in part seaward of the setback line. The location of the property in proximity to the setback line, the baseline, the velocity zone, the seaward corners of the habitable structure and the erosion rate is shown on a plat by Culler Land Surveying, dated August 17, 1988, prepared for Royal Garden Resort Horizontal Property Regime and recorded in the RMC Office of Horry County, South Carolina in Plat Book C at page 64.



BOOK 1424 PAGE 593

ROA-0079

593

This conveyance includes all furniture, furnishings and fixtures located in said Commercial areas.

TOGETHER with all of the Rights, Members, Hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee(s), its, his, her, or their successors, heirs, and assigns.

And the Grantor(s) hereby binds itself, his, hers or their heirs and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee(s), its, his, her, or their heirs, successors and assigns forever against itself and its successors and all other persons whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, THE GRANIOR(S), has caused these presents to be signed this 27th day of September in the year of our Lord one thousand nine hundred and ninety (1990) and in the two hundred fifteenth (215th) year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
In the Presence of:

Preferred Savings Bank, Inc.

Donna K. Eason

By: William I. Judy
William I. Judy,
Executive Vice President

Priscilla Cecil

BOOK 1424 PAGE 594

STATE OF NORTH CAROLINA

COUNTY OF Guilford

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Grantor(s) sign, seal, and as its act and deed, deliver the within Deed; and that deponent with the below signed notary public witnessed the execution thereof.

Donna K. Jason

SWORN to before me this
27th day of September, 1990

Robin H. Wilson L.S.
Notary Public for North Carolina

My Commission Expires: 9-29-92

BOOK 1424 PAGE 595

595

HORRY COUNTY ASSESSOR

195-10-31-274 + 275

Map Blk Parcel

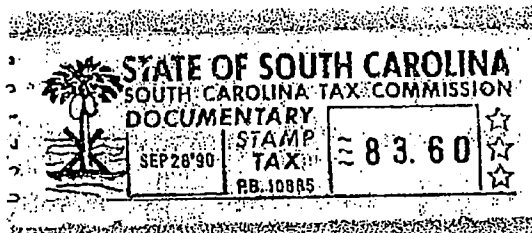
16-1-90A

EXHIBIT "A"

Commercial Units Two (2) and Three (3) of ROYAL GARDEN RESORT Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as amended, and submitted by a Master Deed recorded June 13, 1984, in the RMC Office for Horry County, South Carolina in Deed Book 875 at Page 638, with the first amendment to Master Deed being recorded June 29, 1984 in Deed Book 880 at Page 85, RMC Office for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, and certified by Kenneth R. Sanders, AIA, dated October 20, 1981 and filed in the RMC Office for Horry County, South Carolina, in Condominium Flat Book 4 at Page 1.

SUBJECT to all the provisions of the aforesaid Master Deed, Easements, Leases of record and 1990 taxes.

This being the identical property conveyed to the Grantor by deed of John L. Breeden, Jr. as Master dated October 5, 1989 and recorded October 11, 1989 in the RMC Office of Horry County, South Carolina in Deed Book 1345 at page 573.



BOOK 1424 PAGE 596

596

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime Homeowners
 Association, Inc.,

Plaintiff,

vs.

Sea Breeze Property Management &
 Contract Services, Inc.; Calvin Donaldson;
 and Phoenix of the Strand, Inc.,

Defendants.

ORDER GRANTING PLAINTIFF'S
 MOTION TO ALLOW ENTRY

THIS MATTER IS BEFORE THE COURT based on Plaintiff's Motion to Allow Entry at the Royal Garden Resort Homeowners Association. The Defendants claim that they are owners to certain storage closets on each of the sixteen floors at the Royal Garden Resort. Plaintiff claims that it is entitled to access to those storage closets so that they can provide Horry Telephone Cooperative with access to install certain equipment including television cable, conduit and cable boxes so each of the homeowners would be able to continue to receive a television signal

The Plaintiff in support of its Motion to Allow Entry to those storage closets on each of the sixteen floors cites Article IX, Section 2 of the Master Deed of the Royal Garden HPR which states as follows:

There is hereby granted an easement subject to the regulations and requirements of the Board of Directors of Association upon, across, over and under all of the Property for ingress, egress, installations, replacing, repairing and maintaining a master television antenna system and all utilities including, but not limited to, water, gas, sewers, telephones and electricity. Such easements grant to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain utility wires, circuits, and conduits on, above, across and under the roofs and exterior walls of the Units.

Plaintiff has sought from Defendant access to the storage closets on the sixteen floors of the Royal Garden Resort so that it may continue to provide television service to the unit owners. Defendants have denied such access to Plaintiff. The Court has carefully reviewed the Master Deed and finds that Plaintiff is entitled to access to the storage closets on each of the sixteen floors and the Defendants shall immediately provide Plaintiff with keys to each of the storage closets at the Royal Garden Resort for the purpose of allowing Horry Telephone Cooperative to run conduit, cable line and all other equipment necessary to provide service to each of the unit owners at the Royal Garden Resort. See *Harrington v. Blackston*, 459 S.E.2d 309 (1995) (Court must examine the Horizontal Property Regime Act and the Master Deed to determine the obligations of the condominium owners); *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 363 S.E.2d 891 (1987) (as to voluntary contracts, however restrictive covenants will be enforced according to their terms...).

Accordingly,

IT IS ORDERED that the Defendants, Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phoenix of the Strand, Inc., shall within ten (10) days of the date of this Order provide access to the storage closets on each of the floors (1 – 16) of the Royal Garden Resort, and, further, that Defendants shall provide keys to each of the storage closets on those floors (1 – 16) for the purpose of allowing the Horry Telephone Cooperative to begin the installation process. All keys shall be delivered to Steven Hunt, the Property Manager of the Royal Garden Resort Homeowners Association so that the work can be commenced. All issues regarding any contract claims by Defendants concerning leases of the storage closets are reserved for trial consistent with this Court's Order Denying Summary Judgment on that issue.

AND IT IS SO ORDERED.

Robert E. Hood, Presiding Judge
Fifteenth Judicial Circuit

September 15, 2021
Columbia, South Carolina



Horry Common Pleas

Case Caption: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc , defendant, et al
Case Number: 2018CP2606033
Type: Order/Other

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2021-09-15 12:50:51 page 4 of 4

ELECTRONICALLY FILED - 2021 Sep 15 2:54 PM - HORRY - COMMON PLEAS - CASE#2018CP2606033

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2606033

Royal Garden Resort Regime Homeowners Association Inc
PLAINTIFF(S)

Sea Breeze Property Management & Contract Services Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter comes before the Court upon the Defendants' Motion to Reconsider, Alter or Amend, filed with the Court on September 21, 2021. After consideration of the record, arguments made by counsel, and the applicable law, the Court finds that Defendants' motion is hereby DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/30/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc , defendant, et al
Case Number: 2018CP2606033
Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2021-12-30 10:38:39 page 3 of 3

ELECTRONICALLY FILED - 2021 Dec 30 10:52 AM - HORRY - COMMON PLEAS - CASE#2018CP2606033

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

FIFTEENTH JUDICIAL CIRCUIT

C/A NO. 2018-CP-26-

Royal Garden Resort Regime Homeowners Association, Inc.,)
)
)

Plaintiff,)
)

vs.)
)

Sea Breeze Property Management & Contract Services, Inc. and Calvin Donaldson,)
)
)

Defendants.)
)

AFFIDAVIT OF
JUDY PARRISH

PERSONALLY APPEARED BEFORE ME, Judy Parrish, who first being duly sworn,
deposes and states as follows:

1. My name is Judy Parrish and I currently live at 1210 N. Waccamaw Drive, Unit 812,
Royal Garden Resort, located in Murrells Inlet, South Carolina.

2. I am the duly appointed Treasurer of the Royal Garden Resort Regime Homeowners
Association based on an election which was held on October 6, 2018.

3. Royal Garden Resort Regime Homeowners Association is a condominium complex
located in Murrells Inlet, South Carolina and its membership voted at the last meeting to accept the
resignation of Sea Breeze Property Management & Contract Services, Inc. and Calvin Donaldson.
Further, Donaldson submitted his resignation as the Association property manager (See Attached
Exhibit #1).

4. Royal Garden Resort Regime Homeowners Association and its officers and/or
agents seek the Court to require Sea Breeze Property Management & Contract Services, Inc. and
Calvin Donaldson to immediately turn over all original documents, records, papers, contracts,

insurance policies, books, accounting records, receipts, leases and any other documentation concerning Royal Garden Resort Regime Homeowners Association to its Board of Directors. This includes any keys and office computers and (3) printers to include hard drives and programs currently being used by Sea Breeze Property Management & Contract Services, Inc. and Calvin Donaldson to manage the affairs of Royal Garden Resort.

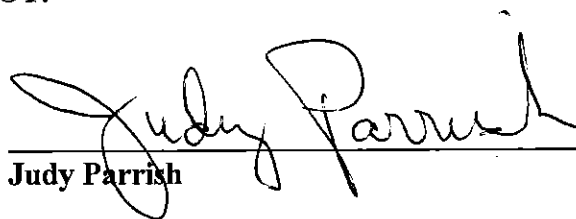
5. As Treasurer of Royal Garden Resort Regime Homeowners Association it is very important that I receive this documentation immediately to operate the Association.

6. That it is vital that these books, records and documents be provided to me so the Association can continue to run in an efficient and businesslike manner. Without this documentation including these books and records, Royal Garden Resort Regime Homeowners Association will be unable to operate and manage its own affairs. There are 206 condominium units in this high rise condominium project and it is important that all the bills be paid and that all bank accounts be operated only by the duly elected and installed Homeowners Association Board and its designated officers or employees.

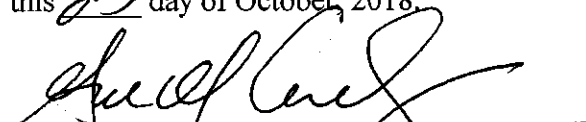
7. That at the recent meeting, the following people were elected as members of the Board of Directors of the Homeowners Association: Penny Canady, President; Harold Outz, Vice-President; Judy Parrish, Treasurer; Sheila Trull, Secretary; and Wayne Longbrake, Board Member. Further, only those Board members may operate the Association.

8. That time is of the essence and that we need the documentation immediately. Accordingly, I request an expedited hearing on the issues raised in this Complaint.

FURTHER AFFIANT SAYETH NOT.


Judy Parrish

SWORN AND SUBSCRIBED before me,
this 25 day of October, 2018.


Notary Public for South Carolina
My Commission Expires: ENR

10/6/2018

TO: RGR Board of Directors

This is to advise the Board of Directors that I am tendering my resignation as Property Manager effective December 31, 2018.



Calvin Donaldson



10-6-2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2018-CP-26-06033
	)	
Royal Garden Resort Regime Homeowners	)	
Association, Inc.,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF OTIS ALLEN JEFFCOAT, III
	)	
Sea Breeze Property Management &	)	
Contract Services, Inc.; Calvin Donaldson;	)	
and Phoenix of the Strand, Inc.,	)	
	)	
	)	
Defendants.	)	
	)	

PERSONALLY APPEARED BEFORE ME, the undersigned, who being duly sworn,
deposes and states:

1. My name is Otis Allen Jeffcoat, III. I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience and training, and expertise in the field of commercial and residential real estate law. I attended Princeton University, in Princeton, NJ from which I received an A.B. degree in Politics, magna cum laude, in 1970. I received a J.D. degree from the University South Carolina Law Center, Columbia, SC in 1973. I am licensed to practice law in the States of South Carolina and North Carolina. A copy of my Curriculum Vitae ("CV") is attached hereto as (Exhibit "B") and incorporated by reference as part of my Affidavit. As mentioned in my CV, I have qualified ten (10) times as an expert witness in real estate matters in state and federal courts.

2. I am not a party to the above entitled action, and I am unrelated to any of the above-captioned members and/or shareholders, officers or directors of the various parties.

3. I am currently the owner of the law firm of JeffcoatLaw, LLC (“JeffcoatLaw”) located in Myrtle Beach, SC. My experience includes over Forty-four (44) years in the practice areas of commercial and residential real estate, business transactions, estate planning, and probate administration, business litigation, probate litigation, elder law, environmental law, and bankruptcy law.

4. This Affidavit is submitted in opposition to the allegations contained in Plaintiff’s Amended Complaint and Motion for Injunction, and in support of the Defendants’ Motion for Summary Judgment.

BRIEF FACTUAL HISTORY

5. By virtue of a Master Deed dated June 12, 1984 recorded in the office of the Horry County Register of Deeds (“the ROD”) on June 13, 1984, in Deed Book 875 at page 638 (“the Master Deed”) Royal Garden Resort, Inc. (“the Developer”) created Royal Garden Horizontal Property Regime (“the Regime”) pursuant to the South Carolina Property Act (“the Act”). The Regime is located on Waccamaw Drive and the Atlantic Ocean in the Murrells Inlet community of Horry County, South Carolina.

6. The Regime consists of three (3) commercial condominium units and 206 residential units in fifteen (15) floors, general common elements and limited common elements assigned to specific condominium units. The Master Deed incorporates a site plan and floor plans (“the Regime Plans”) that graphically show the dimensions and layout of each unit.

7. The Master Deed and Regime Plans describe three (3) commercial units: Commercial

Unit One (I) and Commercial Unit Two (II) on the second floor of the building, and Commercial Unit Three (III) on the ground floor. The Master Deed and Regime Plans also describe the general common elements, as well as the limited common elements assigned to each commercial unit. The Master Deed creates and allows for only three (3) commercial units, and prohibits any commercial activity in the project other than commercial activity conducted by the owner of a commercial unit.

(a) Commercial Unit One (or Commercial Unit I) consists of the area delineated as such on the Regime Plans and includes the lobby, front desk and offices adjacent to the lobby. This unit also includes an undivided ownership interest in fee simple in the general and limited common elements of the Regime.

(b) Commercial Unit Two (or Commercial Unit II) consists of the area delineated as such on the Regime Plans and includes the kitchen, dining area, lounge and restrooms. Limited common elements exclusively assigned to Commercial Unit Two (II) include trash chutes and storage rooms (supply closets) on every floor of the building, and eight (8) “honeycombs” on the ground floor of the building, more fully described below. This unit also includes an undivided ownership interest in fee simple in the general and limited common elements of the Regime.

(c) Commercial Unit Three (or Commercial Unit III) consists of the area delineated as such on the Regime Plans, and includes the area on the ground floor described as “Comm. III”) on the Regime Plans.

(d) Limited common elements exclusively assigned to Commercial Unit Two (II) consist of those areas shown as trash chutes and storage rooms (supply closets) on each floor and eight (8) of the sixteen (16) “honeycombs” on the ground floor. The Regime Plans indicate that

three (3) of the sixteen (16) honeycombs are walk-throughs or hallways, that one of the honeycombs is actually Commercial Unit Three (3), and that the remaining in four (4) honeycombs are general common areas.

8. By a series of mortgage foreclosures, Preferred Savings Bank, Inc., ("Preferred") acquired title from the Developer to Commercial Units Two (2) and Three (3). By deed dated September 27, 1990, recorded in the ROD on September 28, 1990, in Deed Book 1424 at page 593, Preferred conveyed Commercial Units Two (2) and Three (3) to Phoenix of the Strand, Inc. ("Phoenix"), a defendant herein. By deed dated April 21, 1988, recorded in the ROD on April 29, 1988, Preferred conveyed Commercial Unit One (1) to the Association.

9. The present owner of Commercial Units Two (2) and Three (3) is still Phoenix.

10. The rights and interests of the parties in and to Commercial Unit Two and the honeycombs associated with or assigned to Commercial Unit Two are affected by the following recorded documents:

(a) Lease between Preferred (Lessor) and Royal Garden Resort Condominium Homeowner's Association, Inc. [sic] (Lessee) dated February 12, 1988, recorded in the ROD on February 19, 1988 in Deed Book 1200 at page 45; thereafter amended by Lease Modification between Preferred and Royal Garden Resort Condominium Homeowners' Association, Inc. [sic] dated September 27, 1990, recorded in the ROD on April 30, 2010 in Deed Book 3457 at page 1482. The effect of these documents is to Lease to the Association an area containing the swimming pool pump and equipment, being approximately 1/4 of the honeycomb adjacent to Commercial Unit Three, and to lease the northwesternmost honeycomb, all for a 50 year term ending on February 11,

2048.

(b) Lease Agreement between Preferred (Lessor) and Royal Garden Condominium Homeowner's Association, Inc. [sic] (Lessee) dated September 27, 1990, recorded in the ROD on September 28, 1990, in Deed Book 1424 at page 577, re-recorded in the ROD on April 30, 2010, in Deed Book 3457 at page 1478; thereafter amended by Amendment to Lease Agreement between Phoenix and Royal Garden Regime Resort Homeowners' Association, Inc. [sic] dated April 14, 2010, recorded in the ROD on April 30, 2010 in Deed Book 3457 at page 1476. The effect of these documents is to lease honeycombs 4 and 5 to the Association for a term ending on February 11, 2048.

(c) License Agreement ("the License Agreement") granted by Phoenix to the Association dated February 18, 2013, recorded in the ROD on February 21, 2013, in Deed Book 3639 at page 2304. The effect of this document is to grant possession of honeycomb #8 to the Association for a term of 99 years from the date of the agreement.

(d) By Declaration ("the Declaration") signed by Preferred and the Association dated September 27, 1990, in Deed Book 1424 at page 583, Preferred and the Association, in order to clarify which honeycombs Phoenix by the Strand, Inc., has use of, agreed as follows:

"The honey combs as shown on Schedule A hereto, and their numerical designation are binding upon the below-described parties, their successors and assigns. That the honey combs designated as two (2), three (3), six (6), three-quarters (3/4) of seven (7) and twelve (12) are for the sole and exclusive use of the owner of Commercial Unit Two (2); that honey combs designated as one (1), one-quarter (1/4) of seven (7), four (4) and five (5), have been leased to Royal Garden Resort Condominium Homeowners Association, Inc., by Lease recorded in Deed Book 1200 at Page 45, as modified by Instrument recorded in Deed Book 1424 at Page 581, and Lease recorded in Deed Book 1424 at Page 577. Honey combs designated as eight (8), nine (9), ten (10) and eleven (11) are general common elements as designated by the Master Deed for Royal Garden Resort."

Attached to the Declaration was a graphic diagram of the honeycombs, which is attached to this Affidavit as Exhibit "A".

(e) Storage Room Agreement between Phoenix and the Association dated March 6, 1995 (unrecorded) grants to the Association the right to use a storage area located adjacent to the game room of Commercial Unit Two.

(f) Storage Facility Agreement between Phoenix and the Association dated February 1, 2012 (unrecorded) grants to the Association the right to use a portion of the storage units on each floor (part of Commercial Unit Two) for placement of Time Warner Cable switch boxes.

PROFESSIONAL OPINIONS

11. Based upon my understanding of the history of the Regime and review of the documents described above, I have the following professional opinions, which are based upon a reasonable degree of certainty:

(a) As to Honeycomb #8 as described in the License Agreement mentioned in Plaintiff's Fourth Cause of Action (for which License Agreement the Association paid Phoenix the sum of \$118,000.00):

- (i) Honeycomb #8 is the southernmost honeycomb in the Regime;
- (ii) Honeycomb #8 is the same honeycomb designated as twelve (12) in the Declaration recorded in the ROD at Deed Book 1424 at page 588; and
- (iii) Phoenix is (and at all times since September 28, 1990 has been) the owner in fee simple of Commercial Unit Two (II) and Honeycomb #8, subject only to the terms of the Master Deed and the License Agreement described above.

(b) As to Honeycomb #7 as described in Plaintiff's Third Cause of Action:

(i) Phoenix is (and at all times since September 28, 1990 has been) the Owner of Commercial Unit Two (II) and Honeycomb #7, subject only to the terms of the Master Deed and the Lease of a one-fourth (1/4) portion to the Association, as described in paragraph 10 (a) above.

(c) The trash chutes located on each floor of the building, and the storage rooms (supply closets) which contain the trash chutes, are exclusively assigned to Commercial Unit Two (II). Phoenix, as the sole owner of Commercial Unit Two (II), may restrict access to the trash chutes and storage rooms in any way Phoenix chooses, without limitation.

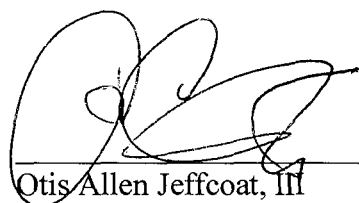
(d) Because Phoenix is the sole owner of Commercial Units Two (II) and Three (III), and Phoenix has the exclusive leasehold interest in Commercial Unit One (I), Phoenix is the sole entity that may conduct commercial activities in the Regime, except that the Association may conduct limited commercial activities in connection with its occupancy of Honeycomb #8 pursuant to the License Agreement.

(e) For convenience I have summarized the facts and my opinions stated above in the following table. The numbering system for the honeycombs as stated in the Declaration is also stated in parentheses, and is shown on the sketch attached hereto as Exhibit "A".

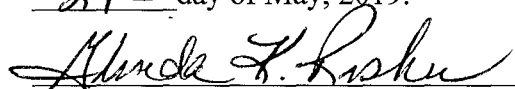
Unit #	Owner	Lessee/Licensee/Manager	Comments
Commercial One (I)	HOA	Phoenix	
Commercial Two (II)	Phoenix	Phoenix	
Commercial Three (III)	Phoenix	Phoenix	
Honeycombs			
HC#1 (1)	Phoenix	HOA	
HC#2 (2)	Phoenix	Phoenix	

HC#3 (3)	Phoenix	Phoenix	
HC#4 (4)	Phoenix	HOA	
HC#5 (5)	Phoenix	HOA	
HC#6 (6)	Phoenix	Phoenix	
HC#7 (7)	Phoenix	Phoenix	HOA (Pool Pump area only)
HC#8 (12)	Phoenix	HOA	License Agreement
— (8)	GCE	HOA	
— (9)	GCE	HOA	
— (10)	GCE	HOA	
— (11)	GCE	HOA	
3 Hallways	GCE	HOA	

12. My above stated opinions are also based upon the above described deeds, agreements, declarations, and other documentation and information provided to or obtained by me in this matter.


Otis Allen Jeffcoat, III

SWORN to and subscribed before me this
24th day of May, 2019.


Notary Public for South Carolina
My Commission Expires: 4/21/2025

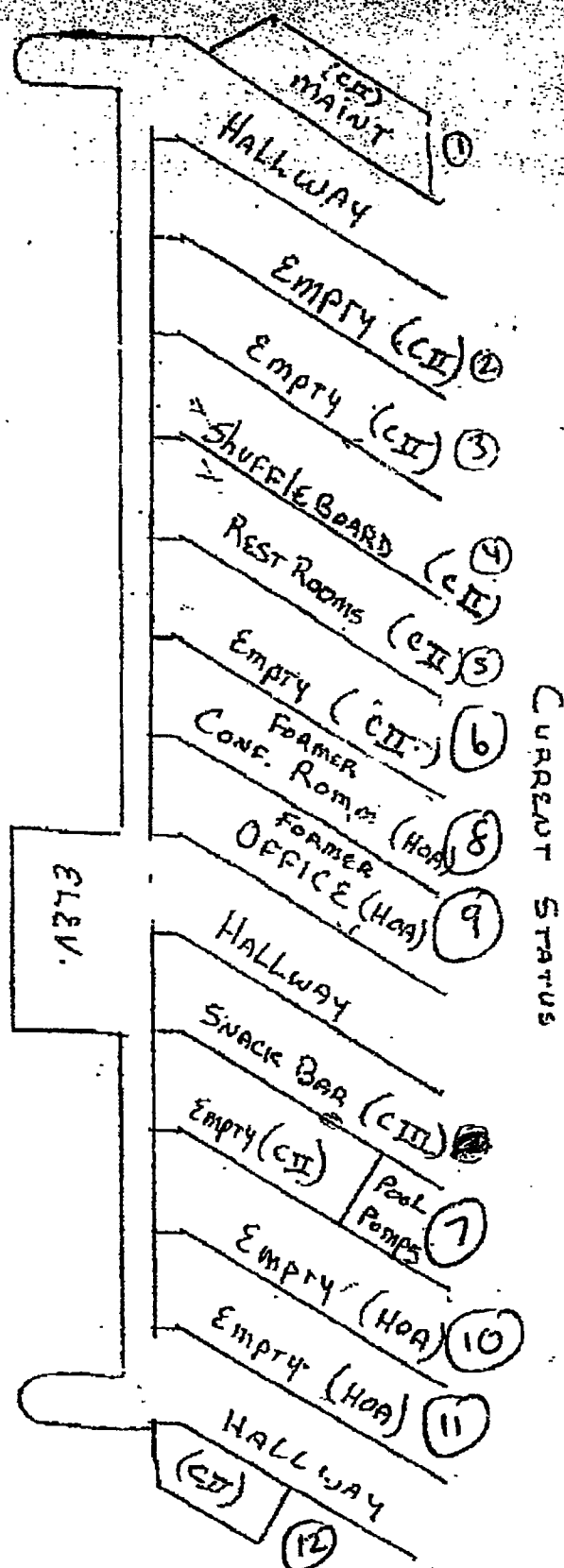


Exhibit "A"

ROA-0102

BOOK 1424 PAGE 587

587

**SUMMARY OF QUALIFICATIONS
OF
OTIS ALLEN JEFFCOAT, III**

**PROFESSIONAL
HISTORY**

2014 - present	Attorney and Owner JeffcoatLaw, LLC Myrtle Beach, South Carolina
2012 - 2014	Special Counsel Turner Padgett Graham & Laney P.A. Myrtle Beach, South Carolina
1994 - 2012	Attorney, Manager and Member/Owner Jeffcoat Law Firm, LLC (formerly Jeffcoat, Pike & Nappier, LLC; and Jeffcoat, Nappier & Risher, LLC) Myrtle Beach, South Carolina
1990 - 1994	Attorney and Owner Jeffcoat & Associates P.C. Myrtle Beach and North Myrtle Beach, South Carolina
1985 - 1990	Attorney and Partner Jeffcoat, Martin & Smith (previously Jeffcoat & Martin) Myrtle Beach and North Myrtle Beach, South Carolina
1978 - 1985	Attorney and Partner Lumpkin & Sherrill (previously Sherrill, Townsend, Moses & Jeffcoat; McKay, Sherrill, Walker & Townsend; McKay Sherrill, Walker, Townsend & Wilkins) Columbia and Myrtle Beach, South Carolina
1973 - 1978	Associate McKay, Sherrill, Walker, Townsend & Wilkins Columbia and Myrtle Beach, South Carolina

PRACTICE AREAS Commercial and residential real estate, business transactions, estate planning and probate administration, business litigation, probate litigation, elder law, environmental law, bankruptcy law

EDUCATION **J. D., University of South Carolina Law Center, Columbia, SC (1973)**

- Survey Editor, SC Law Review
- Editor, Gavel Raps (USC Law School newspaper)
- Elected to Omicron Delta Kappa (honorary fraternity)

A. B. in Politics, magna cum laude, Princeton University, Princeton, NJ (1970)

- Varsity Debate Team; Trask Debates Director
- Orange Key Guide Service

A. C. Flora High School, Columbia, South Carolina (1966)

- Varsity Debate Team, won southeastern states debate championship
- President, National Honor Society Chapter
- President, National Forensic League Chapter
- South Carolina Science Talent Search Winner (SC Academy of Science)
- Outstanding Student of Science (Elected by Faculty)
- Commencement speaker
- National Merit Finalist
- Second Place (statewide) Optimist Oratorical Contest
- Boys State

**PROFESSIONAL
LICENSES**

South Carolina Supreme Court, 1973
 North Carolina Supreme Court, 1993
 U. S. District Court (S.C.), 1974
 U. S. Court of Appeals (4th Circuit 1974)
 South Carolina Department of Insurance, licensed title insurance agent (1978 to date)

**PROFESSIONAL
MEMBERSHIPS**

American Bar Association
 National Academy of Elder Law Attorneys, Inc.
 Horry County Bar Association
 National Association of Consumer Bankruptcy Attorneys
 South Carolina Bankruptcy Law Association

**PROFESSIONAL
ACTIVITIES**

Chairman, Real Estate Practices Section, SC Bar (1992-93)

Chairman, Real Estate Committee, Horry County Bar Association (1989-92; 1995-96)

Member, Governor's Freshwater Wetlands Forum (1989)

Author, "Adverse Possession", S. C. Jurisprudence (1991)

Lecturer: Current Problems in Coastal Development-South Carolina Bar Mid-Winter Meeting, 1987; The Impact of CERCLA and SARA on Real Estate, South Carolina Mid-Year Meeting, 1988; The Impact of CERCLA and SARA on Real Estate, Palmetto Land Title Association Annual Meeting, 1988; The Impact of CERCLA and SARA on Real Estate, South Carolina State Development Board, 1988; Hazardous Wastes and the Real Estate Lawyer, South Carolina Bar Annual Meeting, 1989, "What Every Auctioneer Should Know About Hazardous Waste," Certified Auctioneers Institute, 1990, S. C. Governor's Forum Report - "Will It Meet the Criteria for Establishing a State Wetlands Conservation Plan," Teleconference Proceedings, Protection and Management Issues for South Carolina Wetlands, Clemson University, 1990; "What Do You Mean It's Contaminated? Negotiations with Adjacent, Previous and Current Owners of

Contaminated Property,” S. C. Bar Mid-Year Meeting, 1991; “Commercial Leases: Tricks, Traps & Trends,” S. C. Bar Annual Meeting 1995; “Commercial Leasing,” South Carolina Bar, CLE Seminar, 1999; “Commercial Leasing,” South Carolina Bar, CLE Seminar, 2001; “Sale of Real Estate in Probate Court”, 12th Annual Probate Bench/Bar CLE Seminar, 2004; “Statutes of Limitations, Deadlines and Timeframes in Probate Court”, 2nd Annual Horry County Probate Court CLE Program, 2008; Moderator, “Real Life & Real Estate Transactions,” South Carolina Bar, CLE Seminar, 1994; Lecturer, “SC Probate Code Changes,” 7th Annual Horry County Probate Court CLE program, 2013; Panelist, “Probate Practitioners Discussion,” 3rd Annual Horry County Probate Court CLE Program, 2009; Panelist, “Close Encounters of the Third Kind: Ethical Considerations in Bankruptcy,” 24th Annual Seminar of the South Carolina Bankruptcy Law Association, 2014. Lecturer, “Bankruptcy and Probate Court,” South Carolina Association of Probate Judges Fall Conference, 2014. Lecturer, “Real Estate Development and Construction Law,” and “Legal Ethics,” Real Estate Law Boot Camp, National Business Institute, 2019.

PROFESSIONAL RECOGNITION

Listed in Best Lawyers in America for real estate law (2005-2018) and for real estate litigation (2018)

Listed in Chambers - America’s Leading Lawyers for Business for real estate (2005-2015)

“AV” Martindale-Hubbard rating

SUMMARY OF EXPERT WITNESS ENGAGEMENTS

Stober v. Mincey, et al. (2018), Charleston County Civil Action No. 2018-CP-10-4500. I was retained to act as an expert witness in this case, involving the standard of care applicable to an attorney in a residential real estate transaction. I have not been deposed, nor have I otherwise testified. The case is ongoing.

Tony Blevins Living Trust, et al. v. Sands Ocean Club Homeowners Association, Inc., et al. (2017), Horry County Civil Action No. 2016-CP-26-5379. I have been retained to act as an expert witness in this case, involving the interpretation of a condominium master deed. I have not yet been deposed, nor have I otherwise testified. The case is ongoing.

Condo-World Development, LLC, et al. v. Myrtle Beach Golf & Yacht Club Association, Inc. (2016), Horry County Civil Action No. 2015-CP-26-317. I have been retained to act as an expert witness in this case, involving the state of title to certain real estate and the applicability of certain restrictive covenants to real estate. I was deposed but did not otherwise testify. The case is ongoing.

Fine Housing, Inc. v. William H. Sloan, Jr. (2016), Dorchester County Civil Action No. 201-CP-18-340. I was retained to act as an expert witness in this case, involving the standard of care applicable to an attorney in a commercial real estate transaction. I was deposed but did not otherwise testify. The case is ongoing.

First American Title Insurance Co. et al. v. First Title Abstract Company, Inc., et al. (2016), Charleston County Civil Action No. 2015-CP-10-1556. I was retained to act as an expert witness in this case, involving the standard of care applicable to an attorney in a commercial real estate transaction. I was not deposed, nor did I otherwise testify. The case was settled.

McQuiddy, et al. v. Haar, et al. (2015), Horry County Civil Action No. 2014-CP-26-8281. I was retained to act as an expert witness in this case, involving the standard of care applicable to an attorney in a commercial real estate transaction. I was deposed but did not otherwise testify. The case was settled.

Magnolia Pointe Property Owners Association, Inc. v. Springwood Estates, LLC et al. (2014), Horry County Civil Action No. 2012-CP-26-7448. I was retained to act as an expert witness in this case, involving the interpretation, operation and enforceability of certain provisions of condominium documents. I was not deposed, nor did I otherwise testify. The case was settled.

Branch Banking and Trust Company v. Jones, et al. (2014), Florence County Civil Action No. 2013-CP-21-28. I was retained to act as an expert witness in this case, involving the standard of care applicable to an attorney in a commercial real estate transaction. I was not deposed, nor did I otherwise testify. The case was settled.

JCB Realty, Inc. v. Brown-Phillips, LLC, et al. (2014), Georgetown County Civil Action No. 2013-CP-22-00478. I was retained by counsel to act as an expert witness in this case, involving a claim for a commission in the sale of a business and real estate. I was not deposed, nor did I otherwise testify. The case was tried without my testimony.

Shaw v. The Hoffman Group, Inc., et al. (2014), U.S. District Court for the District of South Carolina (Florence Division) Civil Action No. 4:11-cv-01699-TLW-TER. I was retained by counsel to act as an expert witness in this case, involving the role of realtors and settlement agents in a real estate closing. I was deposed, but I did not otherwise testify. The case was settled.

Sun N Sand Property Owners Association, Inc. v. Newby, et al. (2013), Horry County Civil Action No. 2010-CP-26-11387. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a commercial real estate transaction. I was not deposed, nor did I otherwise testify. The case was settled.

Moore v. Fidelity & Guaranty Life Insurance Company, et al. (2013), Horry County Civil Action No. 2011-CP-26-8459. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a residential real estate transaction. I was not deposed, nor did I otherwise testify. The case was settled.

City of Myrtle Beach v. Burroughs & Chapin Company, Inc., et al. (2013), Horry County Civil Action No.: 2012-CP-26-07763. I was retained by counsel to act

as an expert witness in this case, involving the state of title to certain real estate. I was not deposed, nor did I otherwise testify. The case was settled.

Standish v. City of Myrtle Beach, et al. (2013), Horry County Civil Action No. 2012-CP-26-02431. I was retained by counsel to act as an expert witness in this case, involving the question of the existence of an easement in real property. I was not deposed but testified at trial and qualified as an expert on easements. The jury verdict was in favor of my client, the City of Myrtle Beach.

Fullwood, et al v. South Carolina Public Service Authority (2012), Horry County Civil Action No. 2009-CP-26-7864. I was retained by counsel to act as an expert witness in this case, involving a dispute over an easement. I was not deposed but testified at trial and qualified as an expert witness on easements and the interpretation of deeds. The Court's verdict was in favor of my client, South Carolina Public Service Authority, and relied on my testimony in its decision.

Randall v. Horry County (2012), Horry County Civil Action No. 2010-CP-26-8556. I was retained by counsel to act as an expert witness in this case involving a dispute over dedication of a road. I was not deposed but testified at trial and qualified as an expert on easements. The jury verdict was in favor of my client, Horry County.

Hunter v. Premier Mortgage Funding, Inc., et al (2012), Florence County Civil Action No. 2010-CP-21-0258. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a residential real estate transaction. I was deposed, but did not otherwise testify. The case was settled.

Williams v. Walker, et al. (2011), Marion County Civil Action No. 2010-CP-33-00675. I was retained by counsel to act as an expert witness in this case involving the alleged breach of a title insurance policy by an insurer. I was not deposed, nor did I otherwise testify. The case was settled.

City of North Myrtle Beach v. Cherry Grove Realty, et al. (2010), Horry County Civil Action No. 2009-CP-26-5929. I was retained by counsel to act as an expert witness in this case, involving the interpretation of deeds, the public trust doctrine, dedication, and ownership of the Cherry Grove canals. I was deposed once and testified at trial twice. At trial, I qualified as an expert in these areas. The first trial resulted in a mistrial; the retrial resulted in a jury verdict for my client, the City of North Myrtle Beach.

Hammond v. Cox (2009), Horry County Civil Action No. 2009-CP-26-11240. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a residential real estate transaction. I was deposed but did not otherwise testify. The case was settled.

Enterprise Bank of South Carolina v. Daniel, et al. (2009), Anderson County Civil Action No. 2007-CP-04-1439. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a commercial real estate transaction. I was not deposed, nor did I otherwise

testify.

Fisher v. Rodriguez (2006), Horry County Civil Action No. 2005-CP-26-5212. I was retained by counsel to act as an expert witness in this case, involving standards of marketability of title. I was not deposed, nor did I otherwise testify. The case was settled.

R. E. Goodson Construction Co., Inc. v. International Paper Company, et al. (2006), U. S. District Court for District of South Carolina (Florence Division) Case No. 4:02-4184. I was retained by counsel for the United States of America to act as an expert witness in this case, involving the standard of care applicable to the purchaser of commercial real estate. I testified at trial and qualified as an expert in commercial real estate as it relates to CERCLA. The case resulted in judgment for the United States of America, in which the Court relied upon my testimony.

Black Water of Edisto v. Connolly et al. (2006), Dorchester County Civil Action No. 2004-CP-18-1213. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a commercial real estate transaction. I was not deposed, nor did I otherwise testify.

Clark v. Reeves, et al. (2005), Clarendon County Civil Action No. 2004-CP-14-498. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a residential real estate transaction. I was deposed but did not otherwise testify.

Finkelstein v. Myrtle Beach Farms Company, Inc. (2005), Horry County Civil Action No. 2002-CP-26-1767. I was retained by counsel to act as an expert witness in this case, involving access issues in a commercial real estate transaction. I was not deposed, nor did I otherwise testify. The case was settled.

Busbin v. Hucks (2005), Horry County Civil Action No. 03-CP-26-1953. I was retained by counsel to act as an expert witness in this case, involving the interpretation of a commercial lease. I was deposed, but I did not otherwise testify. The case was settled during mediation.

KCI Management Corporation et al. v. Posternak, Blankstein & Lund, LLP, et al. (2004), Berkeley County Civil Action No. 2003-CP-08-877. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a real estate transaction. I was not deposed, nor did I otherwise testify. The case was resolved on summary judgment.

McCoy v. DeBordieu Colony Association, Inc. (2004), Georgetown County Civil Action No. 2002-CP-22-481. I was retained by counsel to act as an expert witness in this case, involving the interpretation of certain deeds and declarations of restrictive covenants. I was deposed but did not otherwise testify. The case was ended on summary judgment.

Smathers v. Affordable Mortgage of the Carolinas, Inc. (2004), Greenwood

County Civil Action No. 2000-CP-24-783. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a real estate transaction. I was not deposed, nor did I otherwise testify. The case was settled.

Carden v. The Mason Law Firm, P.A. (2003), Charleston County Civil Action No. 02-CP-210-1363. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a commercial real estate transaction. I was deposed but did not otherwise testify. The case was settled during trial.

Dunn vs. Harvey & Battey, P. A. (2003). U. S. District Court for District of South Carolina (Charleston Division) Case No. 9:01-2900-23. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a residential real estate transaction. I was deposed, testified at trial and qualified as an expert on the real estate closing attorney's standard of care and applicable ethical requirements.

Rogers vs. Griffith (2003). Horry County Civil Action No. 2000-CP-26-250. I was retained by counsel to act as an expert witness in this case, involving the standard of care applicable to an attorney in a commercial real estate transaction. I was deposed, testified at trial and qualified as an expert on real estate closings and the closing attorney's standard of care.

Hiott vs. Kelly (2002). Georgetown County Civil Action No. 99-CP-22-465. I was retained by counsel to act as an expert witness in this case, involving a dispute over marketable title. I was deposed, testified at trial and qualified as an expert on marketable title to real estate.

Peoples Federal Savings and Loan Association of South Carolina vs. Resources Planning Corporation, Litchfield Plantation Company, Inc. and Litchfield Plantation Association, Inc. (1999-2000). For appellate case, see 596 SE2d 51(2004). Georgetown County Civil Action No. 98-CP-22-559. I was retained by counsel for Peoples Federal in this case, involving the applicability and enforceability of restrictive covenants. I was deposed and testified at trial and was qualified as an expert on restrictive covenants.

Hyatt Hotel Bankruptcy Litigation (Hilton Head, SC) (1996-1997). I was retained by counsel to testify as an expert witness in a lease dispute in bankruptcy court. I was deposed, testified at trial and qualified as an expert in commercial leases. See Dunes Hotel Associates, 212 B.R. 110 (1997).

McElveen vs. Sandy Shores II (1993-94). Horry County Civil Action No. 91-CP-26-3227. I was retained by defense counsel for two title insurance companies in this action involving a claim of violation of restrictive covenants. I did extensive title research and assisted defense counsel prior to trial. I was not deposed, but testified at the trial. I was qualified as an expert in title examination and restrictive covenants at trial. Based largely on my testimony, the trial judge ruled as a matter of law that (1) there was no common scheme of development in a large residential subdivision and that (2) any purported

restrictions were broken on a wholesale basis.

I have given testimony, either in deposition or at trial, as a party in the following matters:

United States of America vs. Martha F. Mims (multiple litigated matters) (1981-1992). I was appointed a federal receiver in 1981 in a complex, multi-state receivership in which I was a party in several litigated matters. My deposition was taken several times, and I testified in at least one trial. See, e.g., Jeffcoat vs. Morris, 300 S.C. 526, 389 S.E. 2d 159 (1989).

Cianbro Corporation vs. Jeffcoat & Martin, et al. (1991-1993). I was a party defendant in this attorney malpractice action, which was dismissed at summary judgment. My deposition was taken, but the case did not go to trial. See 804 F. Supp. 784 (D.S.C. 1992), 10 F.3d 806, 1993 WL 478836 (4th Cir. 1993).

Jeffcoat Law Firm, LLC vs. Three Corporate Centre, LLC, Horry County Civil Action No. 2008-CP-26-7089 (2008-date). My law firm was a party plaintiff in this case and I was a defendant in a related case, involving the breach of a lease agreement. I was deposed, but the case was settled.

SUMMARY OF APPELLATE CASES

Bank Repossessions v. Mobile America Corp, 268 S.C.622, 235 S.E.2d 709 (1977)

Johnston v. City of Myrtle Beach, 283 S.C. 288, 321 S.E.2d 627 (S.C.App.1984)

Preferred Sav. And Loan Ass'n, Inc. v. Royal Garden Resort, Inc., 295 S.C. 268, 368 S.E.2d 78 (S.C. App. 1988); aff'd 301 S.C. 1, 389 S.E.2d 853 (1990)
Crossley v. State Farm Mut. Auto Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992)

Muller v. Myrtle Beach Golf & Yacht Club, 303 S.C. 137, 399 S.E.2d 430 (S.C. App. 1990); cert. den. 305 S.C. 330, 408 S.E.2d 242 (1991)

Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 399 S.E.2d 430 (1993)

Truluck v. Snyder, 362 S.C. 108, 606 S.E.2d 792 (S.C. App. 2004)

CHARITABLE/ CIVIC ACTIVITIES

Member, City of Myrtle Beach Election Commission (2000 to 2015)
YMCA of Coastal Carolina

•• Director (2006 to 2015)

Waccamaw Community Foundation

•• Director (2007 to 2016)

Princeton University

•• Alumni Schools Committee

•• Regional Annual Giving Chairman

United Way of Horry County, Inc.

•• Trustee (1994 to 2009)

Grand Strand Family YMCA

- Director (1983 to 2006)
- Founder and 1st President (1983-1988)

Winyah Rivers Foundation, Inc. (Waccamaw Riverkeeper sponsor)

- Director and Vice President (2001-2005)

The Nature Conservancy (South Carolina Chapter)

- Trustee (1985 to 2003)
- Chairman (1987-1989), Vice Chairman

Rotary Club of North Myrtle Beach

- Past President (1994-95)

Myrtle Beach Civitan Club

- Past President
- Lieutenant Governor
- Civitan of the Year

Graduate, Leadership Grand Strand III

Boy Scouts of America

- Eagle Scout Award
- God and Country Award
- Order of the Arrow Award
- Assistant Scoutmaster

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime)
 Homeowners Association, Inc.,)
)
 Plaintiff,)

vs.)

Sea Breeze Property Management &)
 Contract Services, Inc.; Calvin)
 Donaldson; and Phoenix of the Strand,)
 Inc.,)
)
 Defendants.)

AFFIDAVIT OF
DANIEL W. STACY, JR.

PERSONALLY APPEARED BEFORE ME, Daniel W. Stacy, Jr., who first being duly sworn, states as follows:

1. My name is Daniel W. Stacy, Jr. and I am a licensed attorney in the state of South Carolina and am a partner in the firm of Oxner & Stacy Law Firm, LLC.

2. My areas of practice include business and commercial law, business organizations/formations, contracts, banking and finance laws, landlord/tenant law, real estate closing, commercial transactions, real estate development, condominium law, and land and use zoning. I have offered expert opinions on real estate matters in the past.

3. I am a 1992 graduate of Wofford College and am a 1995 graduate of the University of South Carolina School of Law. I was admitted to the South Carolina Bar in 1995.

4. I have been asked to review the expert report of Allen Jeffcoat in regard to this case. The Jeffcoat Affidavit is voluminous, and I have received a copy of the file subpoenaed by Plaintiff's counsel.

5. It appears that Royal Garden Resort Regime Homeowners Association is a condominium association organized and existing pursuant to the Horizontal Property Regime Act. It further appears that there are numerous factual and legal questions surrounding ownership and use of commercial units and/or units known as “honeycombs” at Royal Garden Resort.

6. In preparing my opinion, I have reviewed the following documents:

- a. The entire file of Otis Allen Jeffcoat, III;
- b. The Affidavit of Otis Allen Jeffcoat, III;
- c. The correspondence between Otis Allen Jeffcoat, III and attorney for the Defendants, Douglas Zayicek;
- d. The Amended Complaint of the Plaintiff against the Defendants;
- e. The Motion for Injunction filed by the Plaintiff against the Defendants;
- f. The Motion to Amend;
- g. A letter written by Plaintiff’s counsel to Calvin Donaldson dated January 18, 2019;
- h. The Amendment to the Master Deed filed in the Horry County RMC Office on June 29, 1984 and dated June 13, 1984;
- i. The various maps presented of the honeycombs which are also the commercial units;
- j. The Declaration filed by the Declarant in the Horry County RMC Office dated September 28, 1990 found in Deed Book 1424, page 583;
- k. The Master Deed of Royal Garden Resort dated June 12, 1984 found in Deed Book 875, page 638;
- l. The Storage Facility Agreement dated February 1, 2012 signed by Royal Garden Resort Homeowners’ Association;
- m. The Storage Room Agreement dated March 6, 1995;
- n. The Lease between Preferred Savings Bank and Royal Garden Resort filed February 19, 1988;

- o. The License Agreement between Phoenix of the Strand and Royal Garden Resort Homeowners Association filed February 21, 2013 and located at Deed Book 3639, page 2304;
- p. The Lease Agreement between Royal Garden Resort Regime Homeowners Association and Tower Management dated April 29, 1989;
- q. The Lease Agreement between Royal Garden Resort Homeowners Association, Inc. and Sea Breeze Property Management filed May 13, 1991 and dated April 6, 1991;
- r. The Assignment of Lease and Bill of Sale filed June 13, 1988 and dated June 13, 1988;
- s. The Lease Agreement between Royal Garden Resort Regime Homeowners Association and Tower Management dated April 31, 1988 and filed May 12, 1988;
- t. Chain of title document handwritten by Otis Allen Jeffcoat;
- u. Horry County land records for Royal Garden Resort Commercial 1;
- v. Amendment to Lease Agreement dated October 3, 2003 and filed October 7, 2003;
- w. Second Amendment to Lease Agreement dated April 14, 2010 and filed April 30, 2010;
- x. Various title abstract summaries from Coastal Paralegal Services, LLC;
- y. Annual Homeowners' Meeting of Royal Garden Resort dated October 7, 2017 and October 6, 2018;
- z. Online Tax Payments for Royal Garden Resort;
- aa. Online Tax Payment for Sea Breeze Realty;
- bb. Cross Easement Agreement between Phoenix of the Strand and Royal Garden Resort Condominium Homeowner's Association dated September 27, 1990 and filed September 28, 1990;
- cc. Cross Easement Agreement dated February 16, 1988 between Preferred Savings Bank and Tamarijn Restaurant Corporation;
- dd. Deed to Real Estate between Preferred Savings Bank and Phoenix of the Strand, dated September 27, 1990 and filed in the Horry County RMC Office September 28, 1990;

- ee. Master's Deed between Preferred Savings Bank and Tamarijn Restaurant Corporation dated October 5, 1989 and filed in the Horry County RMC Office October 11, 1989;
- ff. Master's Deed between Preferred Savings and Loan and royal Garden Resort dated June 27, 1986 and filed in the Horry County RMC office on June 27, 1986;
- gg. South Carolina Withholding Tax Seller's Affidavit dated September 27, 1990;
- hh. Mortgage on Commercial Unit 3 between S&J Scale Company, Inc. and Phoenix of the Strand filed in the Horry County RMC Office on April 8, 2005;
- ii. Notice of Right of First Refusal between S&J Scale Company and Phoenix of the Strand filed April 8, 2005;
- jj. Warranty Deed between S&J Scale Company and Phoenix of the Strand dated January 4, 2010 and filed in Deed Book 3438, pg. 1976 on January 1, 2010;
- kk. Title abstract summary notes from Coastal Paralegal Services, LLC on Commercial Unit #3;
- ll. Various documents found which are provided as title notes.

7. I render the following opinions to a reasonable degree of title and legal certainty regarding this case. I first note that the legal and procedural history of Royal Garden Resort Regime Homeowners Association is a tortured path. Preferred Savings Bank apparently foreclosed Royal Garden Resort Regime Homeowners Association in the early 1980's. At the time of foreclosure, numerous third parties owned units at Royal Garden Resort Homeowners Association besides the bank.

8. The Master Deed and Bylaws of the Royal Garden Resort Homeowners Association clearly defines General Common Elements to be the honeycomb and/or commercial units. Further Section 4(e) of the same Master Deed defines those same honeycomb units to be Limited Common Elements, all of which, according to well settled condominium law, are owned by Royal Garden

Resort Homeowners Association. Further, the plats on file at the Horry County Courthouse describe the honeycomb units as either being General Common Area, Limited Common Area, and one commercial unit. It is my opinion to a reasonable degree of certainty that the honeycomb units which are defined as either Limited Common Elements or General Common Elements cannot be conveyed from the Association to any third parties without approval of the Homeowners Association membership which requires 75% of the individuals then owning units. Also, to dispose of Common Elements would further require a release of same from the lien of any mortgage holder holding a mortgage on any unit. It is further my opinion that the deeding of general common areas to individual companies and businesses violates the South Carolina Horizontal Property Regime Act since everyone who owns a unit at Royal Garden Resort would have had to consent to such a deed.

9. It is further my opinion to a reasonable degree of certainty that individuals who have purchased units at Royal Garden Resort would not be aware of the various license and lease agreement as they would not be part of the Master Deed available at closing. Those individuals would be bona fide purchasers, for value, without notice and would be entitled to rely on the Master Deed and would expect that all Common Area Elements, such as the pools, the trash chutes, the decking, and the honeycomb units would be available for each homeowner's use. No reasonable real estate attorney or buyer would be aware of the less than arm's length deals between Phoenix of the Strand, Calvin Donaldson or any other defendant. No homeowner could possibly be aware of all of the leases, storage facility agreements, assignments and other documents when purchasing a condominium unit. A homeowner need only rely upon the Master Deed and Bylaws to be a bona fide purchaser, for value, without notice. These homeowners are deprived of what they bargained for and purchased pursuant to the Master Deed since defendants now claim the same homeowners themselves are subject to these leases, assignments and agreements.

10. Further, Exhibit B to the Master Deed clearly defines the General Common Elements to be the pool, the sun deck, and landscaping. The same Master Deed, which created Royal Garden Resort is inherently inconsistent since it defines honeycombs, which are the subject of part of this litigation as both General Common Elements and Limited Common Elements.

11. I cannot agree, based on the Master Deed, that Phoenix of the Strand is the sole owner of Commercial Units 2 and 3. I further do not agree that Phoenix of the Strand is the only entity that may conduct commercial activities in the Regime. The documents I have been presented with all involve conflict of interest between the Bank and the Association. For instance, William Judy signed both as the Association President and at other times as a Bank Vice President. The documents and HOA records do not reveal that the 75% of the total votes of the current homeowners was taken to appropriately amend the Master Deed. The documents and HOA minutes and records do not show who or what person had authority to enter into any of these leases and license agreements, and all of them are questionable as it appears that Calvin Donaldson, the property manager for the last 35 years, has been involved in self-dealing at the expense of the homeowners and is the beneficiary of those agreements, without any record of disclosure of his conflict of interest.

12. As an example, trash chutes are common elements under the Master Deed. Mr. Donaldson, as the owner of Commercial Unit 2, claims that he can restrict access to the trash chutes. This is incorrect and the Master Deed only allows his company to restrict access to the storage rooms and not to the trash chutes, which are clearly shown on the plats in the public record attached to the Master Deed.

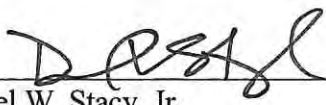
13. Further, the documents in Jeffcoat's file show a license agreement and/or lease agreement between Phoenix of the Strand by which the Homeowners Association is paying Phoenix

of the Strand to lease those Common Elements already owned by the Homeowners Association. This is a clear conflict of interest, and there is no indication from the records I provided as to whether or not the Homeowners Association or the membership themselves voted to approve this Agreement.

14. In sum, I do not agree, based on the Master Deed, that Phoenix of the Strand owns any of the honeycombs or that any of the leases entered into with Phoenix of the Strand are valid based on the points I have raised above. Further, it is my opinion that Phoenix of the Strand and its related entities cannot control all commercial activities at the Royal Garden Resort Homeowners Association. Clearly, the Homeowners Association can manage units, can rent units, can use all of the limited common elements, all of the common elements, to include the trash chutes, without interference by the defendants. In fact, the Master Deed clearly provides that the Board of Directors are to decide if a question arises as to what part of the general common elements can be used. The Board of Directors has the right to promulgate customary rules and regulations regarding use and enjoyment of the Common Elements of the Regime.

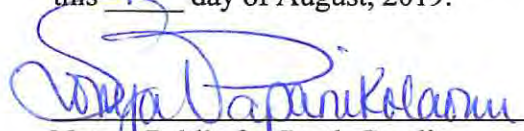
15. In summary, there are many ambiguities, legal questions, and genuine issues of material fact raised by Jeffcoat's Affidavit. As an attorney who has handled real estate transactions, including commercial development transactions, for years, it is my opinion that numerous additional documents and discovery are necessary to determine true ownership and leasing of the units listed in Jeffcoat's Affidavit. Accordingly, I disagree with Jeffcoat's professional opinions since there is not enough evidence to support his position and many of his conclusions are contrary to the plain language of the Master Deed.

FURTHER AFFIANT SAYETH NOT.



Daniel W. Stacy, Jr.

SWORN AND SUBSCRIBED before me,
this 9th day of August, 2019.



Notary Public for South Carolina
My Commission Expires: 9/11/2025

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime Homeowners
 Association, Inc.,

Plaintiff,

vs.

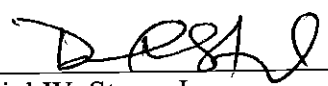
Sea Breeze Property Management &
 Contract Services, Inc.; Calvin Donaldson;
 and Phoenix of the Strand, Inc.,

Defendants.

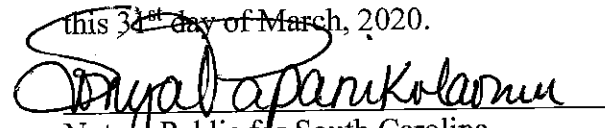
SUPPLEMENTAL AFFIDAVIT OF
 DANIEL W. STACY, JR.

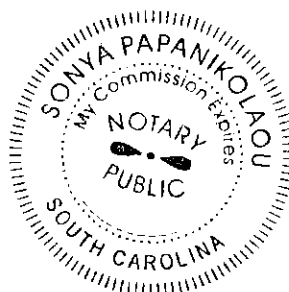
My name is Daniel W. Stacy, Jr. and I am a licensed attorney in the state of South Carolina and I am a partner in the firm of Oxner & Stacy Law Firm, LLC. I have additional information to provide with my original affidavit dated August 9, 2019. Per the survey attached hereto, Honeycomb #7 and Honeycomb #8 are clearly identified as "General Common Areas" per said map, and should be treated as such.

FURTHER AFFIANT SAYETH NOT.


 Daniel W. Stacy, Jr.

SWORN AND SUBSCRIBED before me
 this 31st day of March, 2020.


 Notary Public for South Carolina
 Name: Sonya Papanikolaou
 My Commission Expires: 9/11/2025



Referred to as
#17

Referred to as
Kenny's #8
in the letter

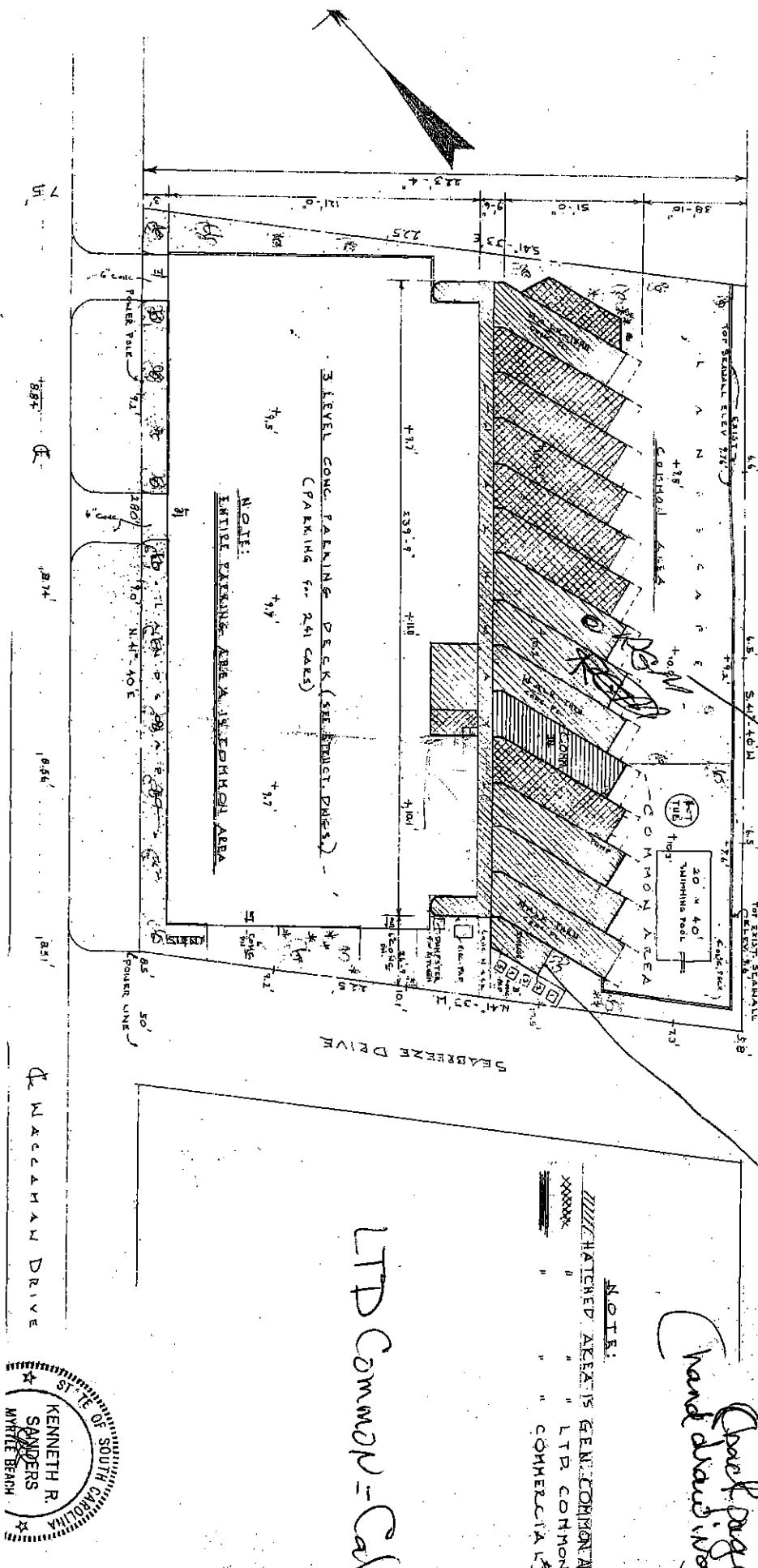
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HATCHED	AREAS	GEN. COMMON AREA
~~XXXXXX~~	"	LTD. COMMON "
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ROA-0121



Certificate of Electronic Notification

Recipients

Douglas Zayicek - Notification transmitted on 04-21-2020 02:26:59 PM.

Gene Connell - Notification transmitted on 04-21-2020 02:26:59 PM.

Jay Anderson - Notification transmitted on 04-21-2020 02:26:59 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP2606033

Official File Stamp: 04-21-2020 02:26:49 PM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Royal Garden Resort Regime Homeowners
Association Inc VS Sea Breeze Property
Management & Contract Services Inc , defendant,
et al

Document(s) Submitted: Affidavit/Affidavit of

Filed by or on behalf of: Gene McCain Connell, Jr.

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Jay Glenn Anderson for Sea Breeze Property
Management & Contract Services Inc, Calvin
Donaldson

Gene McCain Connell, Jr. for Royal Garden
Resort Regime Homeowners Association Inc

Douglas Michael Zayicek for Sea Breeze Property
Management & Contract Services Inc et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime Homeowners
 Association, Inc.,

Plaintiff,

vs.

Sea Breeze Property Management &
 Contract Services, Inc.; Calvin Donaldson;
 and Phoenix of the Strand, Inc.,

Defendants.

THIRD
 AMENDED COMPLAINT
 (Declaratory Judgment/
 Disgorgement)

JURY TRIAL

The Plaintiff, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiff, Royal Garden Resort Regime Homeowners Association, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a Homeowners Association.

2. The Defendant, Sea Breeze Property Management & Contract Services, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a property management company.

3. The Defendant, Calvin Donaldson, is, upon information and belief, the owner and managing member of Sea Breeze Property Management & Contract Services, Inc.

4. The Defendant, Phoenix of the Strand, Inc., is a corporation organized and existing pursuant to the laws of the State of South Carolina and doing business in Horry County.

5. The Plaintiff brings this cause of action for a mandatory injunction requiring the Defendants to produce, preserve, copy and deliver the following information to the Plaintiff since the Defendants are the duly authorized representatives of the Homeowners Association and the Defendants have resigned and no longer manage, operate or direct the Association's business.

6. That the Plaintiff requests immediately a mandatory injunction requiring the Defendants to turn over the following records:

- (a) all bank accounts to include but not limited to ledgers and checking account records of the operating account at Conway National Bank and the reserve account at Conway National Bank;
- (b) a copy of any front desk lease from the HOA to the Defendants;
- (c) a copy of all insurance policies to include hazard, flood and wind and hail policies;
- (d) a copy of all accounting records of the Association for the last twenty years to include copies of any and all checking accounts, savings accounts, reserve accounts, contingency accounts, ledgers, Quick Book entries or other bookkeeping materials owned by the Association;
- (e) a list of all employees of the Homeowners Association for the past twenty years including their addresses and phone numbers;
- (f) a copy of any and all management contracts between the Plaintiff and Defendants for the last twenty years;
- (g) a copy of all leases signed by the Plaintiff in favor of Defendants;
- (h) copies of all easements which the Defendants have concerning the Plaintiff's property to include any easement for the trash bins, hallways and storage areas;
- (i) a copy of all records showing the amount of money paid for cable by the Defendant for the Plaintiff Association to include any lease for the charges for cable wiring currently on site and located in maintenance and/or storage units which Defendants claim to own;

- (j) to produce all office computers and all programs used for the Association to include all hard drives and other materials on those computers which are Plaintiff's property;
- (k) to include keys to post office boxes either currently used for the Association's business;
- (l) to produce and turn over any and all debit and/or credit cards in the Royal Garden Resort Homeowners Association's name;
- (m) to produce and turn over to Plaintiff copies of the Lowe's credit card including copies of the ledgers for the credit card for the past ten years; and
- (n) to include all Association property or equipment.

7. The Plaintiff is informed and believes that it is entitled to mandatory injunction requiring Defendants to produce these documents immediately.

8. The Plaintiff further asks for a mandatory injunction enjoining the Defendants from interrupting any telecommunications, cable television or internet services on the property and further request a mandatory injunction enjoining the Defendants from closing the trash chutes on each floor which are used by the homeowners for their trash collection.

9. The Plaintiff further requests the Court grant a mandatory injunction enjoining the Defendants from being involved in the operation of the maintenance shop owned by the Plaintiff Association to include the pool and pool property.

10. The Plaintiff requests the Court immediately issue such an emergency injunction as such is necessary for the Plaintiff to continue its ongoing business as an Association and that without this documentation, records and other items listed above Plaintiff Association will be unable to operate the real property.

11. The Plaintiff requests emergency mandatory injunction for these documents and for such other and further relief as the Court may deem just, necessary and proper.

FOR A SECOND CAUSE OF ACTION

12. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

13. The Plaintiff, as the duly authorized Homeowners Association, is entitled under S.C. Code § 33-31-1601 to physical possession of all Association records maintained by the Defendants. The records are Association property and vital to the operation of the Association.

14. The Plaintiff is informed and believes that the Defendants have operated as the property management company for the Association for over twenty years and that under the South Carolina Nonprofit Corporations Act S.C. Code § 33-31-1602 Plaintiff is entitled to all Association records.

15. That the Plaintiff as the Homeowners Association is in control of the management of the Association. Plaintiff requests this Court allow it and its designees to inspect, copy and collect all original business records of the Royal Garden Resort Homeowners Association with any reasonable time and reasonable location no less than five (5) business days from the date of service this Complaint.

16. That the records Plaintiff requests be produced include the following: all original records required to be maintained under S.C. Code § 33-31-1601; all accounting records of the corporation; the membership list of the Association; all records concerning the operation of Plaintiff corporation including the debts of the corporation, the account receivables of the corporation to include a list of all homeowners who have not paid their dues; to include any contracts entered into in order to further the business of the Homeowners Association.

17. That Plaintiff seeks an order of the circuit court pursuant to S.C. Code § 33-31-1604(a) for reasonable access to the records to inspect, copy and collect those records.

18. That Plaintiff seeks reasonable attorney's fees and costs should Defendants fail or refuse to produce the records immediately.

FOR A THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS

(Declaratory Judgment)

19. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

20. This cause of action is for declaratory judgment pursuant to the South Carolina Uniform Declaratory Judgment Act.

21. The Plaintiff Royal Garden Resort Regime Homeowners Association, Inc. is the owner in fee simple of the common elements of the resort known as Royal Garden Resort located in Garden City, South Carolina.

22. That the attached map is on file at the Horry County RMC and provides that Plaintiff is the owner in fee simple of Honeycomb #7.

23. That Honeycomb #7 is currently occupied by the Defendants and being used as a retail store.

24. The Plaintiff is informed and believes that it is entitled to an Order of the Court requiring Defendants to vacate the premises known as Honeycomb #7 and for an Order of this Court finding that Plaintiff is the owner in fee simple of Honeycomb #7 located at the Royal Garden Resort as shown on Exhibit 1.

FOR A FOURTH CAUSE OF ACTION AS TO ALL DEFENDANTS

25. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

26. That unbeknownst to the Plaintiff, the Defendants, through a corporation known as Phoenix of the Strand, Inc., did lease to the Plaintiff Honeycomb #8 on Exhibit 1.

27. That Phoenix of the Strand, Inc. had no right to enter into a Lease Agreement with Plaintiff for \$118,000.00.

28. That the Lease Agreement, a copy of which is attached hereto, is void because Phoenix of the Strand, Inc. is not, nor has it ever been, the owner of Honeycomb #8; and, in fact, Plaintiff is the right, truthful and lawful owner.

29. That the payment of \$118,000.00 made by Plaintiff to Phoenix of the Strand, Inc. should be returned and that at the time the License Agreement was entered into Plaintiff was unaware it was the true owner of the real property.

30. The Plaintiff seeks an Order of this Court declaring the License Agreement null and void because Defendant Phoenix of the Strand, Inc. is not the owner of the real property in question; for an Order placing Plaintiff in possession and control of that unit (Honeycomb #8); and for an Order of this Court requiring Phoenix of the Strand, Inc. and its related entities to disgorge the \$118,000.00 that Plaintiff paid for the 99 year lease and interest.

31. That the Defendants are currently changing the locks on the entry doors to the trash chutes; thus, locking the homeowners out of using them.

32. The Plaintiff seeks an Order of this Court that the trash chutes are common elements, that Defendant cannot lock the homeowners and guests out of using the trash chutes and that those entry doors to the trash chutes are to remain open for use by the homeowners.

33. The Plaintiff requests the Court inquire into the matter and declare that the License Agreement between the parties is null and void and that all relief be granted as stated above.

34. The Plaintiff further requests the Court declare the trash chutes are common elements and that those chutes and entry doors are to remain open for use by the homeowners at all times.

FOR A FIFTH CAUSE OF ACTION AS TO ALL DEFENDANTS

35. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

36. The Defendants were in charge of the homeowners' dues for over twenty years and also in charge of paying all bills, charges and/or invoices for the Homeowners Association.

37. That the Defendants were negligent in the handling of the homeowners' dues and in the payment of those dues, the collection of the dues and the payment of the debts of the Homeowners Association in the following particulars:

- (a) in failing to properly account for the payments;
- (b) in disbursing money without authority of the Board of Directors;
- (c) in using homeowners' dues for purposes not approved;
- (d) in failing to employ generally accepted accounting practices in the handling of homeowners' dues;
- (e) in paying homeowners dues to Defendants and/or Defendants' related businesses without approval of the Board of Directors;
- (f) in negligently handling homeowners' dues;
- (g) in using homeowners' dues without authority;
- (h) In failing to provide audits to the Plaintiff of how their dues were used;
- (i) in failing to account to the homeowners for all the dues which were paid;
- (j) in using shoddy business and accounting practices in the handling of homeowners' dues; and

(k) in disbursing money without proper authority from the Board of Directors;

38. That as a direct and proximate result of the negligent acts of the Defendants, the Plaintiff has suffered severe financial losses, including the loss of homeowners dues which the Plaintiff needs to run its business, to include the loss of interest and to include the loss of use of those funds.

39. The Plaintiff asks for judgment for actual damages and for punitive damages.

FOR A SIXTH CAUSE OF ACTION AS TO ALL DEFENDANTS

40. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

41. That the Defendants in their authority as managers of the Homeowners Association were authorized to collect homeowners' dues from the homeowners.

42. That the Defendants did collect the homeowners' dues for years.

43. That the homeowners' dues were the sole property of the homeowners and were to be used for their benefit.

44. That the Defendants wrongfully and improperly converted funds which were rightfully the homeowners for their own uses.

45. That the Defendants had no authority to convert the funds to their own uses.

46. That the Plaintiff has requested the funds be returned and the Defendants have refused to return the funds.

47. That Plaintiff brings this cause of action for conversion and requests the court award actual damages, punitive damages and costs.

FOR A SEVENTH CAUSE OF ACTION AS TO ALL DEFENDANTS

48. The Plaintiff requests an accounting of all funds obtained by the Defendants which were homeowners dues to include how the funds were disbursed, to whom they were paid to and as to what commissions and/or monies the Defendants retained.

49. That Plaintiff requests the Court order an accounting and for such other and further relief as the court deems just and proper.

FOR AN EIGHTH CAUSE OF ACTION AS TO ALL DEFENDANTS

(Breach of Fiduciary Duty)

50. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

51. The Plaintiff brings this cause of action for breach of fiduciary duty.

52. That the Defendant Sea Breeze Property Management & Contract Services, Inc., Phoenix of the Strand, Inc. and Calvin Donaldson had duties to the Plaintiff because of the special trust invested in them by Plaintiff to manage the affairs of Royal Garden Resort Regime Homeowners Association.

53. That the Defendants acted as fiduciaries of Royal Garden Resort Regime Homeowners Association, Inc. in collecting and spending monies of the Homeowners Association.

54. That as a fiduciary the Defendants must act with upmost care and honesty in their dealings with the Plaintiff.

55. That the Defendants have breached their fiduciary duty to the Plaintiff because Plaintiff's money was misused, misappropriated or used for purposes not authorized and/or lost by these Defendants.

56. The Plaintiff brings this cause of action for breach of fiduciary duty in failing to properly account, manage, control, invest and retain Plaintiff's money to be used by Plaintiff.

57. The Plaintiff asks for actual damages, punitive damages and the costs of this action.

FOR A NINTH CAUSE OF ACTION AS TO ALL DEFENDANTS

(Unfair Trade Practices)

58. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

59. The Plaintiff brings this cause of action for unfair trade practices in that the Defendants have violated the South Carolina Unfair Trade Practices Act by using deceptive, harmful, illegal and inappropriate methods of managing Plaintiff Homeowners Association and its monies during the course that Defendants managed Plaintiff Homeowners Association.

60. That Defendants' activities affect the public interest and affected the homeowners assessments paid by all homeowners at the Plaintiff Homeowners Association and that such monies were used by Defendants for their own purposes and without approval of the Board of Directors or without the Board of Directors of Plaintiff Homeowners Association being aware of how the money was being spent.

61. That Defendants' illicit and unfair trade practices are well documented in a report prepared by Cooper and Jaskot Certified Public Accountants, LLC who performed a forensic audit on Plaintiff's books and determined various irregularities.

62. The Plaintiff is informed and believes the actions of Defendants affect the public interest and that Plaintiff is entitled to judgment under the South Carolina Unfair Trade Practices Act for actual damages, treble damages, punitive damages, attorney's fees and costs.

FOR A TENTH CAUSE OF ACTION AS TO ALL DEFENDANTS

(Civil Conspiracy)

63. The Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

64. The Plaintiff is informed and believes that Defendants jointly and through various employees and agents of Defendants entered into an illicit agreement to take and/or retain monies of Plaintiff Homeowners Association.

65. The Plaintiff is informed and believes that Defendants' officers, agents and/or employees jointly conspired to misappropriate funds of the Plaintiff and that this misappropriation of funds was performed by Defendants through their officers, agents and/or employees over a number of years and that various monies were paid out and/or taken by Defendants and used by them without approval of the Plaintiff Homeowners Association.

66. That Defendants and their officers, agents and/or employees had an explicit agreement to overbill, over collect and overcharge Plaintiff Homeowners Association and to use those monies for their own personal gain.

67. The Defendants by their agreement as cited above caused the Plaintiff special damages including loss of Homeowners Association funds and dues to repair, maintain and improve the Plaintiff Homeowners Association.

68. That this special damage to the Plaintiff Homeowners Association includes loss of interest and the use of the funds that were appropriated by the Defendants.

69. The Plaintiff brings tis cause of action for actual damages, punitive damages and the costs of the action.

WHEREFORE, Plaintiff prays as follows:

- A. For an Order of the Court granting the relief requested in the declaratory judgment action.
- B. For an Order of the Court ousting Defendant from Honeycomb #7 and for a declaration that the owner of Honeycomb #7 is Plaintiff Royal Garden Resort

Regime Homeowners Association and for an Order requiring Phoenix of the Strand, Inc. be ousted and that all past rent be paid for their use of the property.

- C. For a judgment against all Defendants for \$118,000.00.
- D. For an Order that Honeycomb #7 and #8 are lawfully and legally owned by the Plaintiff and always have been in the past.
- E. For injunctive relief against the Defendants in regard to the locking of the trash chutes.
- F. On the Fifth Cause of Action for actual damages and punitive damages.
- G. On the Sixth Cause of Action for actual damages and punitive damages.
- H. On the Seventh Cause of Action for an accounting of all funds paid by the homeowners to the Defendants.
- I. On the Eighth Cause of Action for actual damages and punitive damages.
- J. On the Ninth Cause of Action for actual damages, punitive damages, treble damages, attorney's fees and costs of this action.
- K. On the Tenth Cause of Action for actual damages, punitive damages and the costs of this action.
- L. For an Order of attorney's fees.

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)
 The Courtyard, Suite 209
 1500 U.S. Highway 17 North
 Post Office Drawer 14547
 Surfside Beach, South Carolina 29587-4547
 (843) 238-5648 (phone)
 (843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

July 28, 2020
 Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2018-CP-26-06033
Royal Garden Resort Regime Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phoenix of the Strand, Inc.,	)	
	)	
Defendants.	)	
_____	)	

ANSWER TO THIRD AMENDED COMPLAINT AND COUNTERCLAIMS
(Jury Trial Demanded)

TO: GENE M. CONNELL, JR., ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendants Sea Breeze Property Management & Contract Services, Inc., Calvin Donaldson, and Phoenix of the Strand, Inc., answering Plaintiff's Third Amended Complaint, would respectfully show and allege unto this Honorable Court as follows:

FOR A FIRST AFFIRMATIVE DEFENSE
(General Denial)

1. Defendants make a general denial of all allegations in Plaintiff's Third Amended Complaint.

FOR A SECOND AFFIRMATIVE DEFENSE
(Reservation of Rights)

2. Each and every allegation above is realleged as if repeated verbatim herein.
3. Defendants reserve the right to amend their Answer and raise additional claims and defenses as this action proceeds.

FOR A THIRD AFFIRMATIVE DEFENSE
(Specific Allegations)

4. Each and every allegation above is realleged as if repeated verbatim herein.
5. With regard to the allegations in Paragraph 1 of Plaintiff's Third Amended Complaint, Defendants admit that Plaintiff is incorporated, however, Defendants deny any other inference or allegation in said Paragraph.
6. Defendants, upon information and belief, admit the allegations of Paragraphs 2, 3, 4, 13, 14, 20, and 23 of Plaintiff's Third Amended Complaint.
7. Defendants admit the first sentence in Paragraph 15, but deny all remaining allegations in said Paragraph that imply Defendants possess any such information, and demand strict proof thereof.
8. Defendants expressly deny the allegations in Paragraphs 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62, 64, 65, 66, 67, 68, and 69 of Plaintiff's Third Amended Complaint.
9. The allegations in Paragraphs 12, 19, 25, 35, 40, 50, 58, and 63 of Plaintiff's Third Amended Complaint do not require a response herein. To the extent a response is necessary, all allegations in said paragraphs are strictly denied and strict proof demanded thereof.
10. As to all Paragraphs in Plaintiff's Third Amended Complaint, Defendants admit only that the documents referred to therein speak for themselves, and any allegations contrary thereto are expressly denied and strict proof is demanded thereof.
11. Defendants expressly deny the allegations in the Prayer for Relief and strict proof is demanded thereof.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Demand for Jury Trial)

12. Each and every allegation above is realleged as if repeated verbatim herein.
13. Defendants specifically demand this matter be tried by a jury to the extent allowed by law, after necessary discovery related to the facts and circumstances of this case.

FOR A FIFTH DEFENSE
(Waiver/Release/Estoppel)

14. Each and every allegation above is realleged as if repeated verbatim herein.
15. Plaintiff's claims, allegations and/or causes of action, or some of them, are barred by the doctrines of waiver, release and/or estoppel, including, but not limited to, collateral estoppel, judicial estoppel, and res judicata.

FOR A SIXTH DEFENSE
(Permission/Ratification/Acceptance)

16. Each and every allegation above is realleged as if repeated verbatim herein.
17. Plaintiff's claims, allegations, and/or causes of action, or some of them, are barred by permission, ratification, and/or acceptance.

FOR A SEVENTH DEFENSE
(Failure of Condition Precedent/Breach)

18. Each and every allegation above is realleged as if repeated verbatim herein.
19. Plaintiff's claims, allegations and/or causes of actions, or some of them, are barred by its failure to perform conditions precedent and/or its obligations.

FOR AN EIGHTH DEFENSE
(Knowledge/Notice/Consent)

20. Each and every allegation above is realleged as if repeated verbatim herein.
21. Plaintiff's claims, allegations and/or causes of action, or some of them, are barred by its knowledge, notice and/or consent.

FOR A NINTH DEFENSE
(Statute of Limitations/Laches)

22. Each and every allegation above is realleged as if repeated verbatim herein.

23. Plaintiff's allegations, or some of them, are barred from recovering from Defendants, because said claim(s) are barred by the applicable statute of limitations and/or the doctrine of laches. For example, it is unconscionable, and frivolous, for Plaintiff to even request a refund of money that it paid to Defendants in 2010.

FOR A TENTH DEFENSE
(Res Judicata)

24. Each and every allegation above is realleged as if repeated verbatim herein.

25. Plaintiff's claims, allegations and/or causes of action, or some of them, are barred by res judicata.

FOR AN ELEVENTH DEFENSE
(Failure to Mitigate Damages)

26. Each and every allegation above is realleged as if repeated verbatim herein.

27. Plaintiff's alleged damages are, at least in part, due to its failure to take all reasonable steps to mitigate its damages.

FOR A TWELFTH DEFENSE
(Rule 12, SCRCP Motions)

28. Each and every allegation above is realleged as if repeated verbatim herein.

29. Defendants reserve the right to move to dismiss various of Plaintiff's claims, allegations and/or causes of action under Rule 12.

FOR A THIRTEENTH DEFENSE
(No Standing/No Damage)

30. Each and every allegation above is realleged as if repeated verbatim herein.

31. Plaintiff lacks standing to bring its claims, allegations and/or causes of actions, or some

of them, or in the alternative, has not been damaged. Defendants note that Plaintiff is not the entity named in the Master Deed.

FOR A FOURTEENTH DEFENSE
(Merger/Statute of Frauds/Parol Evidence Rule)

32. Each and every allegation above is realleged as if repeated verbatim herein.

33. Plaintiff's claims, allegations, and/or causes of action, or some of them, are barred by the doctrine of merger, the applicable statute of frauds, and/or the parol evidence rule.

FOR A FIFTEENTH DEFENSE
(Unclean Hands)

34. Each and every allegation above is realleged as if repeated verbatim herein.

35. Plaintiff's claims, allegations, and/or causes of action, or some of them, are barred because of its unclean hands.

FACTUAL ALLEGATIONS IN SUPPORT OF
DEFENDANTS' DEFENSES AND COUNTERCLAIMS

36. Three commercial units are allowed under the Master Deed, and the only commercial activities allowed on the premises must be conducted therein. Defendants own or control all three. Per the Master Deed, the only commercial activities allowed on the property are those conducted by Defendants. Plaintiff is knowingly and intentionally violating the Master Deed in an effort to hurt Defendants' business activities.

37. Commercial Unit 2 is owned by Defendant Phoenix, who licensed Honeycomb 8 to Plaintiff.

38. Commercial Unit 3 is owned by Defendant Phoenix.

39. Commercial Unit 1 is owned by Plaintiff, but leased to Defendant Sea Breeze Realty until 2046.

40. Defendant Donaldson is current on all HOA dues, but has received default letters, even though Plaintiff's own records show said Defendant is current.
41. Plaintiff has failed to honor its agreement with Defendants as to the phone and cable boxes. Plaintiff is required to pay Defendants \$255/month.
42. Plaintiff has claimed ownership and/or destroyed various of Defendants' signage on the property.
43. Plaintiff has allowed unauthorized entry into Defendants' units, without Defendants' consent, and submitted unapproved and unauthorized invoices to Defendants.
44. Even though Plaintiff is not allowed to engage in any business activities onsite, Plaintiff gives out keys to realtors and others.
45. Even though Plaintiff is not allowed to conduct business activities onsite, it advertises in elevators and lobbies.
46. Plaintiff has physically taken Defendants' phone numbers, fax machines, video cameras, and tools, knowing that said items do not belong to Plaintiff.
47. Plaintiff has interfered with Defendants' business operations in several respects, including turn off the Vacancy sign at night so as to prevent renters from even attempting to use Defendants' services, eliminating a parking spot used by Defendants' customers, etc.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE AND FIRST COUNTERCLAIM
(Breach of Contract)

48. Each and every allegation above is realleged as if repeated verbatim herein.
49. Plaintiff entered into a binding agreement(s) with Defendants.
50. Plaintiff has breached its obligations, and said breaches have damaged Defendants.

51. Plaintiff has injured Defendants, and Defendants are entitled to their actual, special, and consequential damages for said breaches.

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE AND
SECOND COUNTERCLAIM
(Breach of Contract with Fraudulent Intent)

52. Each and every allegation above is realleged as if repeated verbatim herein.

53. Plaintiff breached its agreements with Defendants in several respects as stated above, and said breaches were accompanied by fraudulent intent and a fraudulent act. Plaintiff's breaches proximately damaged Defendants.

54. Defendants are entitled to all compensable damages, including punitive damages, relating to Plaintiff's breaches.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE AND THIRD COUNTERCLAIM
(Injunctive Relief)

55. Each and every allegation above is realleged as if repeated verbatim herein.

56. Plaintiff has taken the actions alleged above. In addition, Plaintiff has begun conducting commercial activities on the property, even though the applicable Master's Deed does not allow it do so.

57. To allow Plaintiff to occupy Defendants' real property, keep continuing to breach its agreements, breach the Master Deed, hold Defendant's property, and interfere with Defendants' business, will effectuate an extreme hardship on Defendants. Further, Defendants have no adequate remedy at law to prevent the deprivation of their rights during the pendency of this action. Without a temporary injunction, Defendants' rights will be irreparably damaged should they prevail on the merits of this case. Therefore, a temporary injunction should be issued until after a trial on the merits.

58. Defendants are also (or in the alternative) entitled to a permanent injunction, enjoining Plaintiff from interfering with Defendants' rights. Defendants have no adequate remedy at law to prevent the deprivation of their rights, or to prevent further violations. Without this Court's injunction, Defendants will be irreparably damaged.

**FOR A NINETEENTH AFFIRMATIVE DEFENSE AND
FOURTH COUNTERCLAIM
(Civil Conspiracy)**

59. Each and every allegation above is realleged as if repeated verbatim herein.

60. Plaintiff, or several of its members, in particular the Treasurer, engaged in a civil conspiracy by combining together with Plaintiff's General Manager and/or others to cause Defendants harm, to the detriment of Defendants.

61. Defendants are entitled to special (and other) damages from Plaintiff for its actions.

**FOR A TWENTIETH AFFIRMATIVE DEFENSE AND
FIFTH COUNTERCLAIM
(Interference with Contractual Relationships)**

62. Each and every allegation above is realleged as if repeated verbatim herein.

63. Defendants have the sole ability to conduct commercial activities on the premises;
however, Plaintiff's actions have resulted in damage to Defendants' business.

64. Plaintiff's actions are without justification, causing damage to Defendants.

65. Defendants are entitled to all allowable damages from Plaintiff for its actions.

**FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE AND SIXTH COUNTERCLAIM
(Conversion)**

66. Each and every allegation above is realleged as if repeated verbatim herein.

67. Plaintiff has converted Defendants' property to its own use, without Defendants' permission.

68. Plaintiff's action has injured Defendants, and Defendants are entitled to their actual, special, consequential, and punitive damages resulting therefrom.

**FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE AND
SEVENTH COUNTERCLAIM
(Negligent Supervision)**

69. Each and every allegation above is realleged as if repeated verbatim herein.

70. Plaintiff has instructed, or allowed, its General Manager and/or individual Board members to take whatever action he or they want, regardless of their right to do so, and regardless of the harm caused from their actions, without adequate supervision or control.

71. Plaintiff's action and/or inaction in doing so has caused harm to Defendants.

72. Defendants are entitled to all allowable damages from Plaintiff for its actions.

**FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE AND EIGHTH
COUNTERCLAIM
(Breach of Fiduciary Duty)**

73. Each and every allegation above is realleged as if repeated verbatim herein.

74. Plaintiff was and is a fiduciary to Defendants and all other homeowners, and has a duty to not spend money frivolously, and without doing a proper investigation.

75. Plaintiff, through its Board members, have breached their duty, causing damage to Defendants and other homeowners.

**FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE AND NINTH
COUNTERCLAIM
(Defamation)**

76. Each and every allegation above is realleged as if repeated verbatim herein.

77. Plaintiff, through its Board members and agents/consultants it hired and paid, has defamed Defendants by alleging illegal and illicit conduct by Defendants.

78. Plaintiff intentionally and maliciously published false and defamatory statements with regard to Defendants.
79. Plaintiff, intending to harm Defendants and Defendants' businesses, business reputations, and/or personal reputation, did maliciously publish the defamatory statements and/or words, knowing that the words were, and are untrue, and were known by Plaintiff to be untrue when published, or were made with reckless disregard for the truth thereof.
80. Plaintiff's statements are defamatory per se.
81. As a direct and proximate result of these publications, Defendants' names and professional reputations have been injured and damaged entitling them to recover compensatory and special damages.
82. Defendants are also entitled to recover punitive damages from Plaintiff based on its willful defamation of Defendants' good names, professions, and business reputations.

FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE AND TENTH
COUNTERCLAIM
(Unfair Trade Practices)

83. Each and every allegation above is realleged as if repeated verbatim herein.
84. Plaintiff has used unfair, deceptive, harmful, illegal and inappropriate practices to attempt to drive Defendants off the property, and destroy Defendants' business and good name. In doing so, Plaintiffs have improperly investigated, and improperly spent homeowners' monies in the pursuit of a vendetta by one or more Board members against Defendants, to help a Board members' spouse's and friend's businesses. Other Board members were allowed such endeavors to continue and took no action to stop the Board member.

85. Plaintiff's activities affect the public interest, are capable of repetition, and violate the South Carolina Unfair Trade Practices Act, and entitle Defendants to actual, treble, and punitive damages, and attorney's fees and costs.

WHEREAS, Defendants request this Honorable Court Order as follows:

- A. Defendants be awarded judgment against Plaintiff for Defendants' actual, consequential, special, treble, and punitive damages;
- B. Defendants be awarded judgment declaring their ownership and control over various portions of the property;
- B. Defendants be awarded its attorney's fees and costs; and
- C. For all other relief this Honorable Court deems just and proper.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
Attorney for Defendants

Douglas M. Zayicek
Douglas M. Zayicek, Esquire
S.C. Bar No. 11304
1000 29th Avenue North (29577)
P.O. Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400
(843) 448-3022 (Facsimile)
dzayicek@bellamylaw.com

Dated: February 15, 2021.

Certificate of Electronic Notification

Recipients

Douglas Zayicek - Notification transmitted on 02-15-2021 09:19:48 AM.

Gene Connell - Notification transmitted on 02-15-2021 09:19:48 AM.

Jay Anderson - Notification transmitted on 02-15-2021 09:19:48 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP2606033

Official File Stamp: 02-15-2021 09:19:33 AM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Royal Garden Resort Regime Homeowners
Association Inc VS Sea Breeze Property
Management & Contract Services Inc , defendant,
et al

Document(s) Submitted: Answer/Answer To Amended Complaint

Filed by or on behalf of: Douglas Michael Zayicek

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Jay Glenn Anderson for Sea Breeze Property
Management & Contract Services Inc, Calvin
Donaldson

Gene McCain Connell, Jr. for Royal Garden
Resort Regime Homeowners Association Inc

Douglas Michael Zayicek for Sea Breeze Property
Management & Contract Services Inc et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2018-CP-26-06033
Royal Garden Resort Regime Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phocnix of the Strand, Inc.,	)	
	)	
Defendants.	)	
	)	

AFFIDAVIT OF CALVIN DONALDSON

The undersigned, being duly sworn, hereby states and affirms as follows:

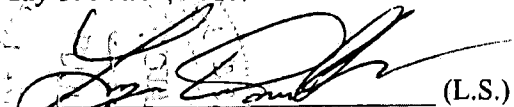
1. I am the President of Defendants Phoenix of the Strand, Inc. and Sea Breeze Property Management & Contract Services, Inc. (collectively "Defendant"), and have personal knowledge of the facts below, and make this Affidavit under penalty of perjury.
2. On March 6, 1995, Defendant and Plaintiff entered into a Storage Room Agreement, a copy of which is attached hereto as Exhibit A.
3. On February 1, 2012, Defendant and Plaintiff entered into a Storage Facility Agreement, a copy of which is attached as Exhibit B.
4. The agreed-upon rent under the Storage Room Agreement is \$1,050.00/month, through April, 2046, the same term as that of Commercial Unit I. A copy of Commercial Unit I Lease is attached as Exhibit C.

5. The agreed-upon rent under the Storage Facility Agreement is \$255.00/month, until Defendant sells Commercial Unit II.
6. The last payment Plaintiff made on either Agreement was on December 4, 2018.
7. The remaining balance owed by Plaintiff to Defendant under the Storage Room Agreement is \$343,350.00. Damages under the Storage Facility Agreement as of March 1, 2021 are \$6,885.00, and continue to accrue.
8. Defendant cannot lease the spaces to anyone else because no one else may conduct any commercial activities on the premises.

**Phoenix of the Strand, Inc. & Sea Breeze
Property Management & Contract Services, Inc.**

By: 
Calvin Donaldson
President

SWORN to before me this 12
day of March, 2021.

 (L.S.)

Notary Public for South Carolina

Notary Public Printed Name or Seal: _____

My Commission Expires: _____

LOGAN DONALDSON

Notary Public, State of South Carolina
My Commission Expires 7/1/2023

EXHIBIT “A”

STATE OF) SOUTH CAROLINA
COUNTY OF) Horry

STORAGE ROOM AGREEMENT

This Agreement, made and entered into this 6th day of MARCH, 19 95 is by and between Phoenix of the Strand, Inc., hereinafter called the "Grantor" and Royal Garden Resort Homeowners' Association, Inc., hereinafter called the "Grantee."

WHEREAS, the Grantee wishes to use that certain storage area located adjacent to the game room of Commercial Unit # II, Royal Garden Resort Condominiums for the placement of a telephone switch box; and

WHEREAS, the Grantee agrees to abide by the terms and conditions set forth below;

NOW THEREFORE, in consideration of the terms and conditions and mutual covenants herein set forth, the parties agree that:

A. The term of this Agreement shall run concurrently with that certain agreement by and between Sea Breeze Realty, its successors and or assigns, and the Grantee for the lease of Commercial Unit # I (the lobby area).

B. Grantee agrees to continue paying Lessee of Commercial Unit # I, its successors and or assigns, an amount of not less than \$1,050.00 per month for operating the telephone switchboard for the Grantee.

C. Grantee is guaranteed ingress and egress to storage area at any time for the purpose of making emergency repairs to switching system.

D. Grantor is guaranteed use of the space currently being taken up by old switching system (located adjacent to electrical room on 1st floor) for storage.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be duly executed and to become effective upon the date first written above.

WITNESS:

Barton S. Daniel

Barton S. Daniel

BY

W.D. Appiah
President

Royal Garden Resort H.O.A.

Julius C. Calley
Secretary

EXHIBIT “B”

STATE OF) SOUTH CAROLINA
COUNTY OF) Horry

STORAGE FACILITY AGREEMENT

This Agreement, made and entered into this 1st day of February, 2012 is by and between Phoenix of the Strand, Inc., hereinafter called the "Grantor" and Royal Garden Resort Homeowners' Association, Inc., hereinafter called the "Grantee."

WHEREAS, the Grantee wishes to lease a portion of storage facilities listed below for the placement of a Time Warner Cable switch boxes. All facilities are located in Royal Garden Resort, 1210 N. Waccamaw Dr Garden City, SC 29587

Fifteen (15) storage units on each walkway in building
One (1) storage cubical on south end ground floor
One (1) time clock facility

NOW THEREFORE, in consideration of the terms and conditions and mutual covenants herein set forth, the parties agree that:

- A. The term of this Agreement shall remain in effect until such times as Grantor sells or relinquishes rights to commercial unit II.
- B. Grantee agrees to pay Grantor an amount of \$255.00 per month for use of referenced facilities.
- C. Grantor is guaranteed ingress and egress to storage facilities at any time for the purpose of making repairs to cable system.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be duly executed and to become effective upon the date first written above.

WITNESS:

Linda Donaldson
Linda Donaldson
Linda Donaldson
Linda Donaldson
Linda Donaldson

BY [Signature]
President
Royal Garden Resort H.O.A.

[Signature]
Secretary/Treasurer

[Signature]
Director

[Signature]
Director

[Signature]
Director

EXHIBIT “C”

Deed Bk B17
Pg 731
Q 9

3987 4868

FILED
Horry County

FILED
Horry County
1988 MAY 12 PM 3:00
R.M.C.

STATE OF SOUTH CAROLINA

1988 MAY 12 PM 3:00

COUNTY OF HORRY

Recorded 12228893

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this 31st day of April 1988, by and between ROYAL GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION, INC. a South Carolina Corporation, hereinafter referred to as "LESSOR", and TOWER MANAGEMENT, INC. a North Carolina Corporation, hereinafter referred to as "LESSEE".

WITNESSETH

In consideration of the rents hereinafter reserved and the covenants and agreements hereinafter expressed on the parts of the parties to be performed, the LESSOR leases unto the LESSEE and the LESSEE leases from the LESSOR the land and premises hereinafter described on the terms and conditions stated, to wit:

1. DEMISED PREMISES: The demised premises are described or identified as being:

SEE EXHIBIT "A"

2. TERM: The primary term of this lease shall be for a period of five (5) years and six (6) months beginning on the first day of May, 1988, and terminating on the 31st day of October, 1993.

BOOK 1222 PAGE 893

1217 Pg 731

593

3. RENTAL: The rental shall be Four Hundred Sixty-nine and 08/100 (\$469.08) Dollars per month, paid in advance, on the first day of every month hereunder. The rental may be increased by a like amount of any increase in the monthly homeowners association assessments assessed against the leased premises for Roy l Garden Resort Horizontal Property Regime.

4. IMPROVEMENTS: LESSEE shall have the right to make alterations, repairs, improvements, or modifications in the leased premises without the necessity of obtaining consent of the LESSOR.

At the termination of the within Lease Agreement, or any extensions thereof, all improvements placed on the demised premises by LESSEE shall become the property of LESSOR. Provided, however, that the LESSEE shall have the right to remove any and all furniture, furnishings, equipment or trade fixtures (purchased or added by the LESSEE only) which may be located on or on the demised premises and any other property belonging to it so long as no structural damage occurs in removal.

5. USE OF PREMISES: The demised premises shall be used by LESSEE for a hotel lobby/desk and for administrative purposes associated therewith. The LESSEE shall at all times keep the premises in a safe and clear condition and comply in all respects with all laws, ordinances and regulations of every lawful authority having jurisdiction of said premises.

BOOK 1222 PAGE 894

BOOK 1217 PAGE 732

6. ASSIGNMENT AND SUBLETTING: LESSEE shall have the right to assign this Lease Agreement or sublet the demised premises or any portion thereof subject to the approval of LESSOR, which approval shall not be unreasonably withheld.

7. MAINTENANCE: LESSEE covenants and agrees that LESSEE will be solely responsible for the maintenance and repair of the demised premises throughout the term of this lease exclusive of capital items or structural repairs or items that are included in the maintenance and for repairs by the Royal Garden Resort Horizontal Property Regime. Any necessary maintenance shall be performed in a workmanlike manner utilizing proper contractors, sub-contractors and materialmen. LESSEE shall be solely responsible for the cost of such maintenance required of it and shall save LESSOR harmless from any claim for labor and/or materials utilized in the performance of such maintenance and repairs. Nothing contained herein shall be deemed to make LESSEE or any of LESSEE'S employees or agents (including contractors, sub-contractors or suppliers of materials) the agent or employee of LESSOR nor give rise to any lien against the fee-ownership of the demised premises of LESSOR.

8. PAYMENT OF TAXES: During the term of this lease or any renewal or extension thereof, LESSEE shall be responsible for the payment of all ad valorem taxes assessed against the demised premises and any improvements thereon.

BOOK 1222 PAGE 895

BOOK 1217 PAGE 733

89

753

9. UTILITIES: LESSEE shall be responsible for the payment of all charges for electric, gas, heat, water, telephone, and other utility service used by LESSEE on the demised premises, except those items which are included in the monthly assessments for Royal Garden Resort Horizontal Property Regime.

10. LIAB. L.V., FIRE AND EXTENDED COVERAGE INSURANCE:
The LESSOR, throughout the term of this Lease, agrees to take out and maintain at LESSOR'S sole expense liability, fire and extended coverage insurance on the premises in the amount of the full insurable value thereof.

11. DAMAGE: Should the Demised Premises be damaged by fire or other casualty so as to require rebuilding, then the LESSOR shall promptly, at its expense, rebuild the same so that the property shall thereafter be substantially in the same condition as before such damage. The LESSOR shall utilize the proceeds of casualty insurance to accomplish this purpose. The rental shall abate during the rebuilding or restoration. The term of the Lease shall be extended by the time LESSEE does not have full use and possession of the premises if such interruption is caused by casualty, such extension being on the terms herein contained.

12. DEFAULT: If the LESSEE shall fail or neglect to pay any amount of rent when the same is due and payable or if the LESSEE shall fail or neglect to perform any of the covenants of

1217 MAY 734

896

the agreements or covenants herein contained, then the LESSOR shall deliver to the LESSEE at the place of business or at the office of the registered agent for the LESSEE, written notice of such failure to pay rents or other default, and LESSEE shall have a period of thirty (30) days after such notice in which to pay the rents due or cure any other default. In the event that the LESSEE shall fail to pay the rent due or cure the default complained about after thirty (30) days written notice, the LESSOR may immediately terminate this Lease and take possession of the premises (including furnishings and personal property which are fixtures owned by the LESSEE) in accordance with the termination provisions of this Lease Agreement.

If LESSOR fails to object to a breach at the time it occurs, the LESSOR does not waive LESSOR'S right to object to and demand a cure of said breach or of a similar breach at a later date.

13. NOTICES: All notices required to be given to LESSOR hereunder shall be sent by registered or certified mail to and all rent payments shall be made to LESSOR at:

Royal Garden Resort Regime
PO Box 16110
Myrtle Beach, SC 29577
Tel. 750-1946

1222 PAGE 897

1217 PAGE 735

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735

or to such other address as LESSOR may direct from time to time by written notice forwarded by REGISTERED or CERTIFIED mail.

All notices required to be given to LESSEE shall be sent by registered or certified mail to LESSEE at:

Tower Management
ATTN: William T. Judy, President
PO Box 5768
High Point, NC 27260
919-868-3132

or to such other address as LESSEE may direct from time to time by written notice forwarded to LESSOR by registered or certified mail.

14. HOLDING OVER: In the event LESSEE continues to occupy the Demised Premises after the last day of the term hereby created, or after the last day of any extension of said term, and the LESSOR elects to accept the rent thereafter, a tenancy from month to month only shall be created and not for any longer period time.

15. QUIET ENJOYMENT: LESSOR covenants and warrants that LESSEE shall have quiet enjoyment of the premises as long as the terms hereof are not breached by LESSOR.

16. MISCELLANEOUS: This lease and all provisions hereon shall be subject to the following:

(a) The article and paragraph headings shall not be deemed to contain the subject matter nor be considered in the

BOOK 1222 PAGE 898

EX-1217 PAGE 736

898

73.6

interpretation thereof, it being understood that the headings are for convenience and not for the purpose of interpretation.

(b) This instrument or any part thereof is not to be construed as a joint enterprise, partnership or other relationship except that of LESSOR and LESSEE. The provisions of the lease contained in this instrument.

(c) The parties hereto agree that all of the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof.

(d) No amendment or modification of this instrument shall be binding or effective unless it shall be in writing properly executed by the parties hereto. The terms, covenants, agreements and conditions contained herein constitute the entire agreement between the parties. No oral statement or prior written matter shall have any force or effect.

(e) Each and all of LESSEE'S agreements herein contained are conditions. The time of the performance of each such agreement is of the essence of this instrument and the strict performance of each such agreement shall be a condition precedent to the right of LESSEE to remain in possession of the leased premises or to have this lease continue in effect. The various rights, elections, powers and remedies of LESSOR contained in this lease shall be construed as cumulative, and no one of them is exclusive of any of the others, or of any right or priority allowed by law.

(f) If any provisions of this instrument, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this instrument or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this instrument shall be valid and enforced to the fullest extent permitted by law.

(g) This instrument may be executed for the convenience of the parties in several counterparts originals, each of which is in all respects identical to the other and complete. All counterparts, taken together, containing the signatures of all parties to this instrument shall be deemed valid and binding instrument for the purposes contained herein.

(h) Whenever the word "LESSEE" or "LESSOR" is used in this lease it shall be deemed to include all the parties referred to in the definition of such word.

ed to as LESSEE or LESSOR on the first page of this Lease and all of said parties hereby agree to be jointly and severally liable and obligated for all the obligations of "LESSEE" or "LESSOR" under this instrument. The parties hereto shall be binding upon the parties hereto, their heirs, successors and assigns.

17. BINDING AGREEMENT: The provisions contained herein shall be binding upon and inure to the benefit of the parties hereto, their personal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, LESSOR and LESSEE have caused this Lease to be executed in their respective names and in the manner provided by law, as of the day and year first above written.

WITNESSES:

3. Rosy C. Wassace
Witness as to Small

4. Hope R. Dean
Witness as to Small

5. Barbara J. Miller
Witness as to Miller

6. Bebecca B. Kirby
Witness as to Miller

Dona K. Eason

[Signature]

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PROBATE

LESSOR:

ROYAL GARDEN RESORT REGIME
H. JEOWNERS ASSOCIATION, INC.

BY: 1. Billy Small
William Small, Vice Pres.

BY: 2. Max G. Miller
Max G. Miller, Sec./Treasurer

LESSEE:

TOWER MANAGEMENT, INC.

BY: William L. Judy
William L. Judy, President

PERSONALLY appeared before me the below signed
witness and me:

that is/are saw the within named ROYAL

BOOK 1222 PAGE 900

181, Page 738

738

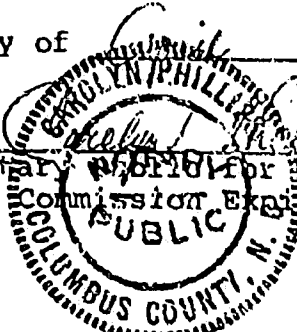
GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION, INC. by and through William Small, its Vice President sign, seal and as his act and deed deliver the within written Lease Agreement; and that (s)he with the below signed Notary Public witnessed the execution thereof.

SWORN TO before me this 20th

day of April 1988.

W. R. Staley
WITNESS

W. R. Staley
Notary Public for South Carolina
My Commission Expires: 4-21-90



STATE OF NORTH CAROLINA)

COUNTY

OF

Richland

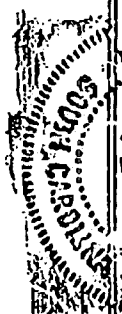
PROBATE

PERSONALLY appeared before me the below signed witness and made oath the (s)he saw the within named ROYAL GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION, INC. by Max G. Miller, its Secretary/Treasurer sign, seal and as its act and deed deliver the within written Lease Agreement; and that (s)he with the below signed Notary Public witnessed the execution thereof.

SWORN TO before me this 23rd

day of April 1988.

W. R. Staley
WITNESS



W. R. Staley
Notary Public for South Carolina
My Commission Expires: 4-21-90

BOOK 1222 PAGE 901

1222 PAGE 739

STATE OF NORTH CAROLINA)

COUNTY OF Randolph)

PROBATE

PERSONALLY appeared before me the undersigned
 witness and made oath that (s)he saw the within named LOWER
 MANAGEMENT, INC. by and through William E. Judy, its President,
 sign, seal and as its act and deed deliver the within written
 Lease Agreement; and that (s)he with the other signed witness
 witnessed the execution thereof.

SWORN to before me this 5thDonna S. Eason
NOTARYday of May, 1988.

Quia Vernon
 Notary Public for North Carolina
 My Commission Expires 3-28-92



BOOK 1222 PAGE 902
 BOOK 1217 PAGE 740

7/4/88

EXHIBIT "A"

Commerical Unit One of ROYAL GARDEN RESORT Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as amended, and submitted by a Master Deed recorded June 13, 1981, in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 875 at Page 638, with the first amendment to Master Deed being recorded June 29, 1984 in Deed Book 880 at Page 85, Office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, and certified by Kenneth R. Sanders, AIA, dated October 20, 1981 and filed in the Office of the Clerk of Court for Horry County, South Carolina, in Condominium Plat Book 4 at Page 1.

SUBJECT to all the provisions of the aforesaid Master Deed.

TOGETHER with all the appurtenances thereto according to said Master Deed and the GRANTEE(S) assume and agree to observe and perform all obligations under said Master Deed and Exhibit and the South Carolina Horizontal Property Act including, but not limited to, the payment of assessments for the maintenance, and operation of the dwelling and of the Regime. AND SUBJECT to the provisions of the By-Laws of Royal Garden Resort Homeowners Inc. and to all other reservations and restrictions of record, easements, zoning ordinances and rights of way of record, including, but not limited to, those set out in the Master Deed and Exhibits thereto.

BOOK 1222 PAGE 903

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FILED
HORRY COUNTY
STATE OF SOUTH CAROLINA)
COUNTY OF HORRY 91 MAY 13 PM 2:51 LEASE AGREEMENT
R.M.C.

THIS LEASE AGREEMENT made and entered into this 6th day of April, 1991, by and between ROYAL GARDEN RESORT REGIME HOME OWNERS ASSOCIATION, INC., a South Carolina Corporation, hereinafter referred to as "LESSOR", and SEA BREEZE PROPERTY MANAGEMENT AND CONTRACT SERVICES, INC., hereinafter referred to as "LESSEE".

W I T N E S S E T H

In consideration of the rents hereinafter reserved and the covenants and agreements hereinafter expressed on the parts of the parties to be performed, the LESSOR leases unto the LESSEE and the LESSEE leases from the LESSOR the land and premises hereinafter described on the terms and conditions stated, to wit:

1. DEMISED PREMISES: The demised premises are described or identified as being:

SEE EXHIBIT "A"

2. TERM: The primary term of this Lease shall be for a period of Ten (10) years commencing on the date hereof and terminating on the 6th day of April, 2001. LESSEE and its permitted assigns, shall have the exclusive option to renew and extend this Lease Agreement for an additional period of Fifteen (15) years, upon written notification by LESSEE to LESSOR, *8/20*

BOOK 1468 PAGE 815

8/15

a minimum of sixty (60) days prior to the expiration of the initial rental period.

3. RENTAL: The rental shall be Four Hundred Sixty-nine and 08/100 (\$469.08) Dollars per month, paid in advance, on the first day of every month hereunder. The rental shall increase five (5%) percent every Two (2) years hereunder beginning on April 6, 1993 and during the extension period, if exercised.

4. IMPROVEMENTS: LESSEE shall have the right to make alterations, repairs, improvements or modifications in the leased premises without the necessity of obtaining consent of the LESSOR.

At the termination of the within Lease Agreement, or any extensions thereof, all improvements placed on the demised premises by LESSEE shall become the property of LESSOR. Provided, however, that the LESSEE shall have the right to remove any and all furniture, furnishings, equipment or trade fixtures (purchased or added by LESSEE only) which may be located in or on the demised premises and any other property belonging to it so long as no structural damage occurs in removal.

5. USE OF PREMISES: The demised premises may be used by LESSEE for a hotel lobby/desk or any other lawful activity. The LESSEE shall at all times keep the premises, in a safe, and clean condition, and comply in all respects with all laws, ordinances and regulations of every lawful authority having jurisdiction of said premises.

LESSOR shall have the right to use the linen closet areas located on the third, sixth, ninth and twelfth floors, during the term hereof, for washers and dryers for the owner, tenants and guests of Royal Garden Resort and LESSOR shall have the right to all revenue generated thereby.

6. ASSIGNMENT AND SUBLETTING: LESSEE shall have the right to assign this Lease Agreement or sublet the demised premises or any portion thereof subject to the approval of LESSOR, which approval shall not be unreasonably withheld.

7. MAINTENANCE: LESSEE covenants and agrees that LESSEE will be solely responsible for the maintenance and repair of the interior of the demised premises throughout the term of this Lease exclusive of capital items or structural repairs or for items that are included in the maintenance and for repairs by the Royal Garden Resort Horizontal Property Regime. Any necessary maintenance shall be performed in a workmanlike manner utilizing proper contractors, sub-contractors and materialmen. LESSEE shall be solely responsible for the cost of such maintenance and shall save LESSOR harmless from any claim for labor and/or materials utilized in the performance of such maintenance and repairs. Nothing contained herein shall be deemed to make LESSEE or any of LESSEE'S employees or agents (including contractors, sub-contractors or suppliers of materials) the agent or employee of LESSOR nor give rise to any lien against the fee-ownership of the demised premises of LESSOR.

8. PAYMENT OF TAXES: During the term of this Lease or any renewal or extension thereof, LESSOR shall be responsible for the payment of all ad valorem taxes assessed against the demised premises and any improvements thereon.

9. UTILITIES: LESSOR shall be solely responsible for the payment of all charges for electricity, gas, heat, water, telephone, and other utility service, except those items which are included in the monthly assessments for Royal Garden Resort Horizontal Property Regime.

10. LIABILITY, FIRE AND EXTENDED COVERAGE INSURANCE: The LESSOR, throughout the term of this Lease, agrees to take out and maintain at LESSOR'S sole expense liability, fire and extended coverage insurance on the premises in the amount of full insurable value thereof.

11. DAMAGE: Should the demised premises be damaged by fire or other casualty so as to require rebuilding, then the LESSOR shall promptly, at its expense, rebuild the same so that the property shall thereafter be substantially in the same condition as before such damage. The LESSOR shall utilize the proceeds of casualty insurance to accomplish this purpose. The rental shall abate during the rebuilding or restoration. The term of the Lease shall be extended by the time LESSEE does not have full use and possession of the premises if such interruption is caused by casualty, such extension being on the terms herein contained.

12. DEFAULT: If the LESSEE shall fail or neglect to pay any amount of rent when the same is due and payable or if the LESSEE shall fail or neglect to perform or observe any of the agreements or covenants herein contained, then the LESSOR shall deliver to the LESSEE at the leased premises, or at the office of the registered agent for the LESSEE, a written notice of such failure to pay rents or other default, and LESSEE shall have a period of thirty (30) days after such notice in which to pay the rents due or cure any other default. In the event that the LESSEE shall fail to pay the rent due or cure the default complained about after thirty (30) days written notice, the LESSOR may immediately terminate this Lease and take possession of the premises (excluding furnishings and personal property which are fixtures owned by the LESSEE) in accordance with the termination provisions of this Lease Agreement.

If LESSOR fails to object to a breach at the time it occurs, the LESSOR does not waive LESSOR'S right to object to and demand a cure of said breach or of a similar breach at a later date.

13. NOTICES: All notices required to be given to LESSOR hereunder shall be sent by registered or certified mail to and all rent payments shall be made to LESSOR at:

Royal Garden Resort Regime Homeowners Assoc. Inc.
PO Box 16110
Surfside Beach, SC 29587

or to such other address as LESSOR may direct from time to time by written notice forwarded to LESSEE by registered or certified mail.

All notices required to be given to LESSEE shall be sent by registered or certified mail to LESSEE at:

Sea Breeze Property Management and Contract
Services, Inc.

PO Box 16130

Surfside Beach, SC 29587

or to such other address as LESSEE may direct from time to time by written notice forwarded to LESSOR by registered or certified mail.

14. HOLDING OVER: In the event LESSEE continues to occupy the Demised Premises after the last day of the term hereby created, or after the last day of any extension of said term, and the LESSOR elects to accept the rent thereafter, a tenancy from month to month only shall be created and not for any longer period time.

15. QUIET ENJOYMENT: LESSOR covenants and warrants that LESSEE shall have quiet enjoyment of the premises as long as the terms hereof are not breached by LESSEE.

16. MISCELLANEOUS: This Lease and all provisions hereof shall be subject to the following:

(a) The article and paragraph headings shall not be deemed to contain the subject matter nor be considered in the interpretation thereof, it being understood that the headings are for convenience and not for the purpose of interpretation.

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5/17

(b) This instrument or any part thereof is not to be construed as a joint enterprise, a partnership, or any other relationship except that of LESSOR and LESSEE under the provisions of the Lease contained in this instrument.

(c) The parties hereto agree that all of the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof.

(d) No amendment or modification of this instrument shall be binding or effective unless it shall be in writing properly executed by the parties hereto. The terms, covenants, agreements and conditions contained herein constitute the entire agreement between the parties. No oral statement or prior written matter shall have any force or effect.

(e) Each and all of LESSEE'S agreements herein contained are conditions. The time of the performance of each such agreement is of the essence of this instrument and the strict performance of each such agreement shall be a condition precedent to the right of LESSEE to remain in possession of the leased premises or to have this Lease continue in effect. The various rights, elections, powers and remedies of LESSOR contained in this Lease shall be construed as cumulative, and no one of them is exclusive of any of the others, or of any right or priority allowed by law.

(f) If any provisions of this instrument, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this instrument or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this instrument shall be valid and enforced to the fullest extent permitted by law.

(g) This instrument may be executed for the convenience of the parties in several counterpart originals, each of which is in all respects identical to the other and complete. All counterparts, taken together, containing the signatures of all parties to this instrument shall be deemed a valid and binding instrument for the purposes contained herein.

(h) Whenever the word "LESSEE" or "LESSOR" is used in this Lease it shall be deemed to include all the parties referred to as LESSEE or LESSOR on the first page of this Lease and all of said parties hereby agree to be jointly and severally liable and obligated for all the obligations of "LESSEE" or "LESSOR" under this instrument. Further, this Agreement shall

be binding upon the parties hereto, their heirs, successors and assigns.

(1) This Lease Agreement is to be in the place and stead of that certain Lease Agreement between LESSOR herein and Tower Management, Inc., dated April 31, 1988 and recorded in Deed Book 1222 at Page 893, being assigned to LESSEE hereunder by Instrument recorded in Deed Book 1224 at Page 727.

17. BINDING AGREEMENT: The provisions contained herein shall be binding upon and inure to the benefit of the parties hereto, their personal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, LESSOR and LESSEE have caused this Lease to be executed in their respective names and in the manner provided by law, as of the day and year first above written.

WITNESSES:

LESSOR:

ROYAL GARDEN RESORT REGIME
HOMEOWNERS ASSOCIATION, INC.

BY: Billy A. Small

BY: President

LESSEE:

SEA BREEZE PROPERTY MANAGEMENT
AND CONTRACT SERVICES, INC.

BY: Cathy Z. Donald

Its: President

Jimmy Weatherly
Carolyn S. Foley

April A. Steele
W. Keith Andrews

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ELECTRONICALLY FILED - 2021 Apr 27 3:04 PM - Horry - COMMON PLEAS - CASE#2018CP2606033

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me one of the above signed witnesses and made oath the (s)he saw the within named ROYAL GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION, INC., by and through its authorized officers, sign, seal and as his act and deed deliver the within written Lease Agreement; and that (s)he with the other witness above signed witnessed the execution thereof.

SWORN TO before me this 17th
day of April 1991.

Jimmy Weatherly

Charles Feltz

Notary Public for ~~South Carolina~~ North Carolina
My Commission Expires:

My Commission Expires February 20, 1996

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me one of the above signed witnesses and made oath the (s)he saw the within named SEA BREEZE PROPERTY MANAGEMENT AND CONTRACT SERVICES, INC., by and through its authorized officers, sign, seal and as its act and deed deliver the within written Lease Agreement; and that (s)he with the other witness above signed witnessed the execution thereof.

SWORN TO before me this 10th
day of April 1991.

Lysil A. Steele

W. Keith Anderson
Notary Public for South Carolina
My Commission Expires: 4-5-98

EXHIBIT "A"

Commercial Unit One of ROYAL GARDEN RESORT Horizontal Property Regime; a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as amended and submitted by a Master Deed recorded June 13, 1984, in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 875 at Page 638, with the first amendment to Master Deed being recorded June 29, 1984 in Deed Book 880 at Page 85, Office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared by Kenneth R. Sanders, AIA, and certified by Kenneth R. Sanders, AIA, dated October 20, 1981 and filed in the Office of the Clerk of Court for Horry County, South Carolina in Condominium Plat Book 4 at Page 1.

524

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY) AMENDMENT TO LEASE AGREEMENT

This AMENDMENT made this 29th day of April, 1989,
 by and between ROYAL GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION,
 INC., ("LESSOR"); TOWER MANAGEMENT, INC., ("LESSEE") and SEA
 BREEZE PROPERTY MANAGEMENT AND CONTRACT SERVICES, INC.,
 ("ASSIGNEE").

W I T N E S S E T H

WHEREAS, the LESSOR and LESSEE entered into that certain
 Lease Agreement, dated April 31, 1988 and recorded in the RMC
 Office for Horry County in Deed Book 1217 at Page 731 and
 re-recorded in Deed Book 1222, at Page 893; and

WHEREAS, the LESSEE assigned its interest in the said
 Lease Agreement to ASSIGNEE by Instrument dated June 13, 1988 and
 recorded in Deed Book 1224 at Page 727; LESSEE reserving unto
 itself, a first right of refusal to repurchase the assets thereby
 assigned; and

WHEREAS, the parties are desirous of entering into this
 Amendment To Lease Agreement to provide an option to extend the
 term thereof for an additional five (5) years;

NOW, FOR AND IN CONSIDERATION of the sum of Five and
 No/100 (\$5.00) Dollars paid to LESSOR, the premises and other
 good and valuable consideration, the parties hereby agree as
 follows:

1. That Item 2, Term, of the above-stated Lease Agreement is amended to add the following: LESSOR hereby grants unto LESSEE, and its permitted assigns, an option to extend the term of this Lease for an additional Five (5) years upon the same terms and conditions. LESSEE, or its permitted assigns, shall give LESSOR a minimum of Ninety (90) days written notice, i.e., on or before August 2, 1993, of its intention to extend the term of this Lease Agreement.

2. All other terms of the Lease Agreement remain unchanged hereby.

3. All parties hereto, warrant and covenant that they have all required authority to enter into this instrument.

EXECUTED the day and date first above written.

WITNESSES:

[Signature]
[Signature]

LESSOR:
ROYAL GARDEN RESORT REGIME
HOMEOWNERS ASSOCIATION, INC.

BY: Billy A. Small

ITS: Vice President

BY: Earl T. Willhite

ITS: Member

LESSEE:
TOWER MANAGEMENT, INC.

BY: William J. [Signature]

ITS: President

BY: Randy [Signature]

ITS: Secretary

Ann Vernon

Donna K. Eason

ION

ASSIGNEE:

SEA BREEZE PROPERTY MANAGEMENT
AND CONTRACT SERVICES, INC.

BY:

ITS:

BY:

ITS:

W. Keith Anderson

W. Keith Anderson

Jacqueline K. Donaldson

Secretary

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the with- in named ROYAL GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION, INC. by Jelly B. Smith, its Vice President and by Shirley M. Smith, its Secretary sign, seal and deliver the foregoing Amendment to Lease Agreement and that (s)he, together with the undersigned Notary Public, witnessed the execution hereof.

SWORN to before me this 27th
 day of April 1989.

William L. Lee
 WITNESS

W. Keith Adkins (SEAL)
 Notary Public for South Carolina
 My Commission Expires: _____
 MY COMMISSION EXPIRES 4-5-1998

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the within named SEA BREEZE PROPERTY MANAGEMENT AND CONTRACT SERVICES, INC., by David L. Smith, its President and by Deborah R. Norman, its Secretary sign, seal and deliver the foregoing Amendment to Lease Agreement and that (s)he, together with the undersigned Notary Public, witnessed the execution hereof.

SWORN to before me this 23rd
day of April 1989.

Cliff Harned, Jr.
WITNESS

W. Keith Butler (SEAL)
Notary Public for South Carolina
My Commission Expires: _____
MY COMMISSION EXPIRES 4-5-1998

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
) AMENDMENT TO
) LEASE AGREEMENT

WHEREAS Royal Garden Resort Regime Homeowners' Association, Inc. ("Lessor") entered into a Lease Agreement with Sea Breeze Property Management and Contract Service, Inc. ("Lessee") dated April 6, 1991 and recorded May 13, 1991 in deed book 1468 at page 815;

WHEREAS the Lessee previously exercised its option to extend the term of the Lease for an additional fifteen (15) years so that the expiration of the Lease is now April 6, 2016;

WHEREAS in consideration of the transfer of the right to use certain storage units (sometimes referred to as honeycombs), the Lessor has agreed to grant two additional ten year options to the Lessee;

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Lessee, its successors and assigns, is hereby granted an option to renew and extend this Lease Agreement for two (2) additional periods of ten (10) years each. Each of these two ten year options shall be automatically exercised unless the Lessee notifies in writing the Lessor no less than 60 days prior to the expiration of the then existing term of its intent not to exercise the applicable option. In the absence of such notification from the Lessee to the Lessor of the Lessee's intent not to exercise these options, the first option shall automatically extend the Lease Agreement until April 6, 2026 and the second ten year option shall automatically extend the expiration date of the Lease until April 6, 2036.
2. All other terms, conditions and provisions of said lease, as amended herein, are ratified and restated as fully as if set out herein verbatim, except such provisions as would be inconsistent with this Amendment.
3. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

2651 / 71

IN WITNESS whereof the parties have hereunto set their hands and seals this 3 day of October, 2003.

[Signature]
Witness
[Signature]
Witness

Royal Garden Resort Regime
Homeowners' Association, Inc.

By: [Signature]
Its: [Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGEMENT
(S.C. CODE ANN. §30-5-30(B)(C))

I, the undersigned Notary Public for South Carolina, do hereby certify that Royal Garden Resort Regime Homeowners' Association, Inc. by ART FORD, its PRESIDENT, appeared before me this day and acknowledged the due execution of the foregoing instrument as their act and deed. Witness my hand and official seal this day of October, 2003.

[Signature]
Notary Public for South Carolina
My Commission Expires: 7-23-2010

[Signature]
Witness
[Signature]
Witness

Sea Breeze Property Management
And Contract Services, Inc.

By: [Signature]
Its: [Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGEMENT
(S.C. CODE ANN. §30-5-30(B)(C))

I, the undersigned Notary Public for South Carolina, do hereby certify that Sea Breeze Property Management and Contract Services, Inc. by CALVIN L. DONALDSON, its PRESIDENT, appeared before me this day and acknowledged the due execution of the foregoing instrument as their act and deed. Witness my hand and official seal this 3 day of October, 2003.

[Signature]
Notary Public for South Carolina
My Commission Expires: 7-23-2010

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
SECOND AMENDMENT TO
LEASE AGREEMENT

WHEREAS Royal Garden Resort Regime Homeowners' Association, Inc. ("Lessor") entered into a Lease Agreement with Sea Breeze Property Management and Contract Service, Inc. ("Lessee") dated April 6, 1991 and recorded May 13, 1991 in deed book 1468 at page 815;

WHEREAS the Lessor and Lessee entered into an Amendment to Lease Agreement dated October 3, 2003 and recorded October 7, 2003 in deed book 2651 at page 71 whereby the Lessor agreed to grant two additional ten year options to the Lessee; and

WHEREAS, the Lessor has agreed to extend the aforementioned second ten year option from the current expiration date of April 6, 2036 to April 6, 2046;

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Lessee, its successors and assigns, is hereby granted an extension of its second option to renew and extend the Lease Agreement in deed book 1468 at page 815 and any amendments thereto so that this second option shall automatically extend the expiration date of the Lease until April 6, 2046.
2. All other terms, conditions and provisions of said lease and amendments thereto and as further amended herein, are ratified and restated as fully as if set out herein verbatim, except such provisions as would be inconsistent with this Amendment.
3. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS whereof the parties have hereunto set their hands and seals this 14 day of April, 2010.

Rebecca Brookes
Witness

Anna Williams
Witness

Royal Garden Resort Regime
Homeowners' Association, Inc.

By: [Signature]
Its: President

By: [Signature]
Its: Secretary

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGEMENT
(S.C. CODE ANN. §30-5-30(B)(C))

I, the undersigned Notary Public for South Carolina, do hereby certify that Royal Garden Resort Regime Homeowners' Association, Inc. by Arthur Ford, its President and by Harold Outz, its Secretary / Treasurer, appeared before me this day and acknowledged the due execution of the foregoing instrument as their act and deed. Witness my hand and official seal this 29th day of April, 2010.

Disa Wiggins
Notary Public for South Carolina
My Commission Expires: 11-20-2012

Sea Breeze Property Management
And Contract Services, Inc.

[Signature]
Witness
Disa Wiggins
Witness

By: [Signature]
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGEMENT
(S.C. CODE ANN. §30-5-30(B)(C))

I, the undersigned Notary Public for South Carolina, do hereby certify that Sea Breeze Property Management and Contract Services, Inc. by Calvin Donaldson, its President, appeared before me this day and acknowledged the due execution of the foregoing instrument as their act and deed. Witness my hand and official seal this 14 day of April, 2010.

Disa Wiggins
Notary Public for South Carolina
My Commission Expires: 11-20-2012

Certificate of Electronic Notification

Recipients

Douglas Zayicek - Notification transmitted on 04-27-2021 03:05:13 PM.

Gene Connell - Notification transmitted on 04-27-2021 03:05:13 PM.

Kirby Shealy - Notification transmitted on 04-27-2021 03:05:14 PM.

Jay Anderson - Notification transmitted on 04-27-2021 03:05:13 PM.

Luke Allen - Notification transmitted on 04-27-2021 03:05:14 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP2606033

Official File Stamp: 04-27-2021 03:04:44 PM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc , defendant, et al

Document(s) Submitted: Motion/Summary Judgment

Affidavit/Affidavit of

- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits

Filed by or on behalf of: Douglas Michael Zayicek

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Douglas Michael Zayicek for Sea Breeze Property Management & Contract Services Inc et al

Jay Glenn Anderson for Sea Breeze Property Management & Contract Services Inc, Calvin Donaldson

Gene McCain Connell, Jr. for Royal Garden Resort Regime Homeowners Association Inc

Kirby Darr Shealy, III for Royal Garden Resort Regime Homeowners Association Inc

Luke M. Allen for Royal Garden Resort Regime
Homeowners Association Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

ELECTRONICALLY FILED - 2021 Apr 28 8:26 AM - Horry - COMMON PLEAS - CASE#2018CP2606033

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime Homeowners
 Association, Inc.,

Plaintiff,

vs.

Sea Breeze Property Management &
 Contract Services, Inc.; Calvin Donaldson;
 and Phoenix of the Strand, Inc.,

Defendants.

NOTICE OF MOTION AND
 MOTION TO ALLOW ENTRY

TO: DOUGLAS M. ZAYICEK, ATTORNEY FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, moves the Court for an Order allowing Royal Garden Resort Homeowners Association to enter supply closets located on various floors so that television cabling and equipment can be installed.

The basis of this Motion is Article IX, Section 2 of the Master Deed (see attached) governing the Royal Garden HPR which states as follows:

There is hereby granted an easement subject to the regulations and requirements of the Board of Directors of Association upon, across, over and under all of the Property for ingress, egress, installations, replacing, repairing and maintaining a master television antenna system and all utilities including, but not limited to, water, gas, sewers, telephones and electricity. Such easements grant to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain utility wires, circuits, and conduits on, above, across and under the roofs and exterior walls of the Units.

Further, it is the position of Royal Garden Resort Homeowners Association that Defendant Donaldson and others may not charge Royal Garden Resort Homeowners Association pursuant to the terms of the Master Deed since the existence of the easements is for the benefit of all homeowners.

WHEREFORE, Plaintiff seeks an Order of the Court barring Defendant from charging Plaintiff to use the access and/or supply closets for cabling and other telephone equipment necessary to provide cable tv services to the entire Resort.

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)

The Courtyard, Suite 209

1500 U.S. Highway 17 North

Post Office Drawer 14547

Surfside Beach, South Carolina 29587-4547

(843) 238-5648 (phone)

(843) 238-5050 (facsimile)

gconnell@classactlaw.net

Attorney for Plaintiff

April 28, 2021

Surfside Beach, South Carolina

Unit upon any other Unit or upon any portion of the General Common Elements and/or the Limited Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the subject building shall stand.

Section 2. Utilities, Etc. There is hereby granted an easement subject to the regulations and requirements of the Board of Directors of Association upon, across, over and under all of the Property for ingress, egress, installations, replacing, repairing, and maintaining a master television antenna system and all utilities including, but not limited to, water, gas, sewers, telephones and electricity. Such easements grant to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain utility wires, circuits, and conduits on, above, across and under the roofs and exterior walls of the Units.

Section 3: Other. There is hereby granted to the Association, its directors, officers, agents and employees and to any Manager employed by the Association as provided for in Section 2 of Article III hereof, and to all policemen, firemen, ambulance personnel and all similar emergency personnel an easement to enter upon the Property or any part thereof in the proper performance of their respective duties. Except in the event of emergencies, the rights under Section 3 of this Article IX shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to the Owner or Owners affected thereby.

ARTICLE X

ASSIGNED VALUE AND UNIT VOTE

Section 1. Unit and Property Values. The Master Plan contained in Exhibit "C" attached hereto shows the value of each Unit as of the date this Declaration is recorded and the percentage of undivided interest in the General Common Elements and Limited Common Elements appurtenant to such Unit for all purposes. The value of the Property is equal to the total value of all Units together with the value of the Percentage Interest in the General Common Elements and Limited Common Elements appurtenant to such Units, all as shown in Exhibit "C".

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime)
 Homeowners Association, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 Sea Breeze Property Management &)
 Contract Services, Inc.; Calvin)
 Donaldson; and Phoenix of the Strand,)
 Inc.,)
)
 Defendants.)

SUPPLEMENTAL AFFIDAVIT
OF DANIEL W. STACY, JR.

PERSONALLY APPEARED BEFORE ME, Daniel W. Stacy, Jr., who first being duly sworn, states as follows:

1. My name is Daniel W. Stacy, Jr. and I am an attorney specializing in real estate law which includes real estate closings, preparing of master deeds, condominium association bylaws, to include the sale of commercial and residential real estate.

2. I have been asked to offer an expert opinion regarding various real estate matters concerning this case and this supplements my Affidavit of August 9, 2019.

3. I have reviewed the Defendant Phoenix of the Strand, Inc.'s Motion for Partial Summary Judgement in which Phoenix of the Strand and Sea Breeze Property Management allege that it had a lease with Royal Garden Resort Regime Homeowners Association for certain storage facilities at the Royal Garden Resort. These storage facilities were allegedly leased for the placement of telephone and television switchboxes. I am also aware from a review of the title records for Royal Garden Resort Regime Homeowners Association that a Cable Communications Easement had been

obtained from the Royal Garden Resort Regime Homeowners Association on November 18, 2005, and such was filed in the Horry County records on February 7, 2006. This Cable Communications Easement was signed by the Property Manager.

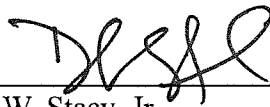
4. I am further aware from a review of the Master Deed of the Royal Garden Resort Article IX, Section 2 that the Royal Garden Resort Regime Homeowners Association was granted an easement over, and under all the property for ingress, egress, installations, replacing, repairing and maintaining a master television antenna system and all utilities including, but not limited to, water, gas, sewers, telephones and electricity. As a result of the Master Deed the contract entered into by the Homeowners Association and Seabreeze Property and Management is void *ab initio*. Royal Garden Resort Regime Homeowners Association and its Board of Directors had a blanket easement over the entire project for utilities and thus were not required to pay lease payments for the Storage Room Agreement dated March 6, 1995 and the Storage Facility Agreement dated February 1, 2012.

5. In fact, the Storage Room Agreement entered into March 6, 1995 indicates it is to be used for the placement of a telephone switchbox. The Storage Room Agreement is void because Royal Garden Resort Regime Homeowners Association already had a blanket easement to use the property for any telephone, television or other wiring. My prior Affidavit of August 9, 2019 is on file.

6. As a result, Seabreeze Property Management and Contract Services, Inc., Calvin Donaldson and Phoenix of the Strand Inc had nothing to lease to Royal Garden Resort Regime Homeowners Association because Royal Garden Resort Regime Homeowners Association, Inc. already had a blanket easement pursuant to the Master Deed for all utilities including television antenna system, water, gas, sewers, telephone and electricity.

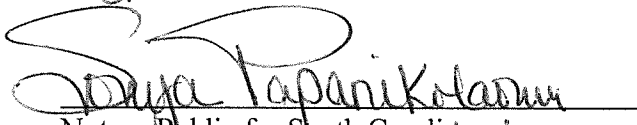
7. Accordingly, it is my opinion to a reasonable degree of legal certainty that the Master Deed at the Royal Garden Resort Regime Homeowners Association specifically, Article IX, Section 2 controls and that the leases for the Storage Facility Agreement dated February 1, 2012 along with the Storage Room Agreement dated March 6, 1995 are of no force and affect and that the Royal Garden Resort does not have to make any lease payment since it already holds the easements to use the property for television and/or telephone switch boxes

FURTHER AFFIANT SAYETH NOT.



Daniel W. Stacy, Jr.

SWORN AND SUBSCRIBED before me,
this 29th day of July 2021.



Notary Public for South Carolina
My Commission Expires: 9/11/2025

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033Royal Garden Resort Regime
Homeowners Association, Inc.,

Plaintiff,

vs.

Sea Breeze Property Management &
Contract Services, Inc.; Calvin
Donaldson; and Phoenix of the Strand,
Inc.,

Defendants.

AFFIDAVIT OF
HAROLD OUTZ.

PERSONALLY APPEARED BEFORE ME, Harold Outz., who swears and states as follows:

1. My name is Harold Outz and I was a member of the Board of Directors of the Royal Garden Resort Regime Homeowners Association for over twenty years. I have been asked to provide certain information regarding two types of contracts which are at issue in this case. The first contract is a Storage Room Agreement dated March 6, 1995. The second contract is a Storage Facility Agreement dated February 1, 2012.

2. As to the Storage Room Agreement dated March 6, 1995, it is my understanding that Phoenix of the Strand, Inc. was to operate a telephone switchboard for Royal Garden Resort. The switchboard in question was moved three years ago and is in the Royal Garden Resort Homeowners Association offices on site. The switchboard is not operated by Phoenix of the Strand, Inc. nor is it located in Commercial Unit #1.

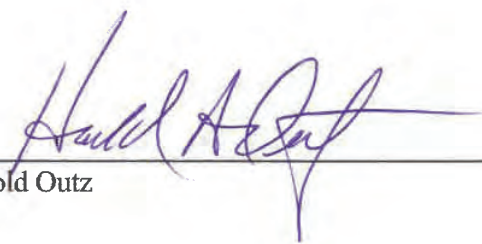
3. Phoenix of the Strand, Inc. and its officers, agents and/or employees have not operated the telephone switchboard, nor has it been located in Commercial Unit #1 for at least 2018.

4. As to the Storage Facility Agreement dated February 1, 2012, each of the Board of Directors signed that Agreement; however, the wiring cable system has been in those storage units since the construction of the Royal Garden Resort. All of the Board of Directors including myself did not live at the Royal Garden Resort were not made aware by Calvin Donaldson that Article IX Section 2 of the Master Deed granted unlimited easements over the Royal Garden Resort for water, gas, sewer, telephones and electricity including a television antenna system.

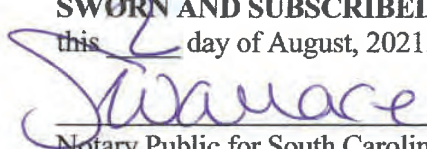
5. Calvin Donaldson as Property Manager failed to advise us that no such contract was necessary because we already had easement rights to place the cable system in those storage units.

6. When Donaldson demanded that we pay him so that the cable system could remain in those closets the Board of Directors did that under duress because we wanted to make sure that each of the units had cable television. At no time were we advised of Article IX Section 2 of the Master Deed which granted an unlimited easement and did not learn of this until years later.

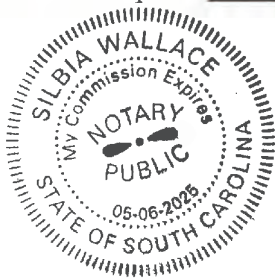
FURTHER AFFIANT SAYETH NOT.


Harold Outz

SWORN AND SUBSCRIBED before me,
this 2 day of August, 2021.


Notary Public for South Carolina

My Commission Expires: 5/6/25



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime Homeowners Association, Inc.,
Plaintiff,
vs.
Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phoenix of the Strand, Inc.,
Defendants.

AFFIDAVIT OF
STEPHEN HUNT, SR.

PERSONALLY APPEARED BEFORE ME, Stephen Hunt, Sr., who first being duly sworn, states as follows:

1. My name is Stephen Hunt, Sr. and I am the Property Manager at Royal Garden Resort Regime Homeowners Association and have been so since January 1, 2020. I was appointed Interim Manager when Steve Pitzer left on November 11, 2019.

2. I have reviewed the Storage Facility Agreement dated February 1, 2012 and the Storage Room Agreement dated March 6, 1995.

3. The March 6, 1995 Storage Room Agreement required Phoenix of the Strand, Inc. to operate a telephone switchboard for Royal Garden Resort Regime Homeowners Association.

4. The telephone switchboard referenced in this 1995 Storage Room Agreement is not operated by Phoenix of the Strand and is not located on property owned and/or leased to Phoenix of the Strand, Inc.

5. In 1995 when Calvin Donaldson was Property Manager of Royal Garden Resort and the owner of Sea Breeze Realty, the switchboard/console was probably used to forward calls to

various condominium units. This equipment was also used to block guests from making calls and/or allowing them to make long distance calls.

6. The switchboard had previously been in the Sea Breeze Office which was leased to Sea Breeze Realty by Royal Garden Resort. Steve Pitzer, previous Royal Garden Resort HOA manager, had One Source Communications move the equipment from the Sea Breeze office to the current Royal Garden Resort HOA office on December 17, 2018.

7. I started working for Sea Breeze Realty in July of 2017. The only time I ever used the switchboard was to forward all incoming calls to the Security Office each night and to release the forward when the Sea Breeze Office opened the next day. The only other time I recall using it was to change the time twice per year from Daylight Savings Time to Standard Time. During my tenure the switchboard has never rung and even today the switchboard does not ring. All calls were and are now answered from our desk phones. Any transfers were from our desk phones. When someone calls from the outside, a recording asks if you want Sea Breeze Realty, press 1; if you would like the Royal Garden Resort Homeowners Association Office, press 0. Prior to December 2018, I believe all outside calls came through directly without this recording. I can also state that when I worked for Sea Breeze Realty, we did not have a person who manned the switchboard. In fact, no person has ever operated the switchboard. It does not ring.

8. I am further aware of Section IX (2) of the Master Deed governing the Royal Garden Resort Regime Homeowners Association which states:

There is hereby granted an easement subject to the regulations and requirements of the Board of Directors of Association upon, across, over and under all of the Property for ingress, egress, installations, replacing, repairing and maintaining a master television antenna system and all utilities including, but not limited to, water, gas, sewers, telephones and electricity.

9. The existence of this Easement prohibits Sea Breeze Realty or any owner of any unit from charging Royal Garden Resort Homeowners Association for the use of a location of a television cable system.

FURTHER AFFIANT SAYETH NOT.


Stephen Hunt, Sr.

SWORN AND SUBSCRIBED before me,
this _____ day of August, 2021.


Notary Public for South Carolina

My Commission Expires: 7-28-27

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2018-CP-26-06033
Royal Garden Resort Regime Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phoenix of the Strand, Inc.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION TO RECONSIDER, OR ALTER OR AMEND

Pursuant to Rules 52, 58, 59, and 60, SCRCPP, and all other legal authority, Defendants respectfully request the Court reconsider, and/or alter or amend its Order Granting Plaintiff's Motion to Allow Entry, filed on September 15, 2021. The grounds for this Motion are:

1. Plaintiff's "Motion to Allow Entry" was a motion for temporary mandatory injunction. There is no remedial writ that can be granted for a self-titled "Motion to Allow Entry". Regardless of how it is labelled, Plaintiff requested a mandatory injunction from the Court to allow Plaintiff to go onto Defendant's property, to rip out, replace, and install new cable TV boxes.

2. An injunction is a drastic remedy issued by a court to prevent irreparable harm suffered by the plaintiff. The plaintiff's complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. Plaintiff's Complaint does not allege such facts, whatsoever. Plaintiff has no cause of action to rescind any contract entered into between the parties.

3. For a temporary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation. See, e.g., *AJG Holdings, LLC v. Dunn*, 674 S.E.2d 505 (Ct. App. 2009). Plaintiff does not allege, and certainly did not prove any irreparable harm. The unit owners have cable television, and there has been no disruption of service. Plaintiff did also not prove a likelihood of success on the merits. Restrictive covenants are strictly construed in favor of the property owner. The language cited by Plaintiff in no way extends to permanently storing equipment for free on Defendants' property—that is why there is a contract in place between the parties. And Plaintiff clearly has an adequate remedy at law, even though it has not alleged any such cause of action in its pleadings.

4. The Court's Order does not comply with SCRPC Rule 65(c), in that the Court did not require a bond to allow Plaintiff to enter upon Defendant's land. Defendants put up evidence of a contract between the parties that allowed Plaintiff the access it seeks, but that Plaintiff failed to make the payments. The Court refused to consider or require the payment amount, or any amount, as being the required bond under Rule 65.

5. The purpose of a temporary injunction is to preserve the status quo. County Council of Charleston v. Felkel, 244 S.C. 480, 484, 137 S.E.2d 577, 578 (1964); Zabinski v. Bright Acres Associates, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001); Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 455, 626 S.E.2d 34, 37 (Ct. App. 2005); see also JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 511 (2nd ed., 1996) ("A temporary injunction preserves the *status quo* pending the completion of the case."). An injunction is appropriate to preserve the *status quo* so that a party can enforce a disputed legal right. Seaboard

Air Line Ry. v. Atlantic Coast Line R, 71 S.E. 39 (S.C. 1911). The Court's Order actually does the exact opposite, and completely changes the status quo. The status quo is that there has been a contract in place between the parties for many years, for which Plaintiff has paid for the very right it seeks in its Motion. The Court's Order reverses the status quo without any bond being required.

6. The Court's Order is for a mandatory injunction, because it orders some positive act to be performed, as opposed to a prohibitory injunction, in which the status quo is merely maintained. *Ingles v. S.C. Republican Party & Drew McKissick*, 2019 S.C. C.P. LEXIS 10098; C.J.S., *Injunctions*, Section 19 (2019). As such, mandatory injunctions are exceedingly rare, and should rarely be granted. Plaintiff offered no dire circumstances or evidence supporting its request, and the Court did not make any such findings in its Order.

7. Based on the above, the Court's findings of facts and conclusions of law granting Plaintiff's requested relief, and all implications therefrom, are incorrect, to include but not be limited to:

a. Any finding that the unit owners are not receiving a television signal, or that access to Defendants' property is necessary to provide such service;

b. Any finding that Article IX, Section 2 of the Master Deed (or any other provision) for the Royal Garden resort, allows Plaintiff unfettered access to Defendants' property to remove cable boxes and/or switches, and allow Plaintiff to permanently store such equipment on Defendants' property;

c. Any finding that ignores the contract between the Parties for the purpose Plaintiff seeks relief;

d. Any finding that changes the status quo;

e. Any finding that finds Plaintiff shall suffer irreparable harm if the relief is not granted;

f. The complete failure to require any bond by Plaintiff, to protect damage to Defendants; and

g. Any finding that Plaintiff does not have an adequate remedy at law.

Defendants respectfully request the Court reconsider, and/or alter or amend its Order accordingly.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

Post Office Box 357
1000 29th Avenue North
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Defendants

/s/ Douglas M. Zayicek

Douglas M. Zayicek, Esquire
SC Bar No. 11304

September 21, 2021.
Myrtle Beach, South Carolina.

Certificate of Electronic Notification

Recipients

Douglas Zayicek - Notification transmitted on 09-21-2021 09:15:29 AM.

Gene Connell - Notification transmitted on 09-21-2021 09:15:29 AM.

Kirby Shealy - Notification transmitted on 09-21-2021 09:15:30 AM.

Jay Anderson - Notification transmitted on 09-21-2021 09:15:29 AM.

Luke Allen - Notification transmitted on 09-21-2021 09:15:30 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP2606033

Official File Stamp: 09-21-2021 09:14:11 AM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc , defendant, et al

Document(s) Submitted: Motion/Reconsider

Filed by or on behalf of: Douglas Michael Zayicek

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Douglas Michael Zayicek for Sea Breeze Property Management & Contract Services Inc et al

Jay Glenn Anderson for Sea Breeze Property Management & Contract Services Inc, Calvin Donaldson

Gene McCain Connell, Jr. for Royal Garden Resort Regime Homeowners Association Inc

Kirby Darr Shealy, III for Royal Garden Resort Regime Homeowners Association Inc

Luke M. Allen for Royal Garden Resort Regime Homeowners Association Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime Homeowners
 Association, Inc.,

Plaintiff,

vs.

Sea Breeze Property Management &
 Contract Services, Inc.; Calvin Donaldson;
 and Phoenix of the Strand, Inc.,

Defendants.

AFFIDAVIT OF
STEPHEN HUNT, SR.

PERSONALLY APPEARED BEFORE ME, Stephen Hunt, Sr., who first being duly sworn,
 states as follows:

1. My name is Stephen Hunt, Sr. and I am the Property Manager at Royal Garden Resort Regime Homeowners Association and have been so since January 1, 2020.
2. The Board of Directors of for Royal Garden Resort Regime Homeowners Association voted to change television/Internet providers to Horry Telephone Cooperative (HTC) for better and cheaper service.
3. The current wiring for internet and television service runs to all condominiums through storage closets on each floor of the Royal Garden Resort. This wiring has been in place since Royal Garden Resort was constructed in the 1980s and used for television service. Royal Garden Resort is simply replacing old equipment – nothing else.
4. I spoke with employees of HTC about the work to be done in each storage closet and have been advised HTC will only be replacing boxes and not ripping out any wiring. No damage will be done to the storage closets by HTC employees.

5. Royal Garden Resort has an express written easement to utilize the closets on each floor to perform this work.

6. Royal Garden Resort must have this work done by HTC to get better and cheaper television and internet service to all homeowners including the Defendants in this case.

7. Royal Garden Resort understands that the Defendants have rented these storage closets to certain homeowners. I requested those homeowners take photos of the storage closets. I nor anyone from Royal Garden Resort went into the storage closets to get photos. I have attached the photos of the storage closets given to me by the homeowners.

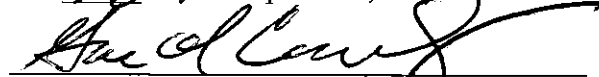
8. The attached photos are provided to show one of the areas in question. As you can see, the wiring and boxes will not interfere with the use of the storage closets and will only replace certain equipment.

9. I respectfully request the Court deny Defendants' motion to reconsider and allow us entry under the provisions of the Master Deed for Royal Garden Resort.

FURTHER AFFIANT SAYETH NOT.


Stephen Hunt, Sr.

SWORN AND SUBSCRIBED before me,
this 28 day of September, 2021


Notary Public for South Carolina
My Commission Expires: 1-24-27





TP NO. 2



Certificate of Electronic Notification

Recipients

Douglas Zayicek - Notification transmitted on 09-28-2021 10:06:00 AM.

Gene Connell - Notification transmitted on 09-28-2021 10:05:59 AM.

Kirby Shealy - Notification transmitted on 09-28-2021 10:06:00 AM.

Jay Anderson - Notification transmitted on 09-28-2021 10:06:00 AM.

Luke Allen - Notification transmitted on 09-28-2021 10:06:00 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP2606033

Official File Stamp: 09-28-2021 10:05:33 AM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc , defendant, et al

Document(s) Submitted: Affidavit/Affidavit of

- E-Filing/Additional Parts
- E-Filing/Additional Parts
- E-Filing/Additional Parts

Filed by or on behalf of: Gene McCain Connell, Jr.

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-

The following people were served electronically:

Douglas Michael Zayicek for Sea Breeze Property Management & Contract Services Inc et al

Jay Glenn Anderson for Sea Breeze Property Management & Contract Services Inc, Calvin Donaldson

Gene McCain Connell, Jr. for Royal Garden Resort Regime Homeowners Association Inc

Kirby Darr Shealy, III for Royal Garden Resort Regime Homeowners Association Inc

Luke M. Allen for Royal Garden Resort Regime Homeowners Association Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2018-CP-26-06033

Royal Garden Resort Regime Homeowners
 Association, Inc.,

Plaintiff,

vs.

Sea Breeze Property Management &
 Contract Services, Inc.; Calvin Donaldson;
 and Phoenix of the Strand, Inc.,

Defendants.

PLAINTIFF'S RESPONSE TO
 DEFENDANTS' MOTION TO
 RECONSIDER, ALTER OR AMEND

The Plaintiff, in response to Defendants' Motion to Reconsider, Alter or Amend filed September 21, 2021, craves reference to the Affidavit of its property manager, Stephen Hunt, Sr., filed September 28, 2021, which shows the closets Plaintiff intends to replace television/internet cable. Plaintiff will not damage or "rip out" any part of Defendants' property. Plaintiff will simply replace any equipment which will benefit both the homeowners and the Defendants who will get better, faster television and internet service for a cheaper prices.

Further, as the Court found in its original Order, the Plaintiff has an express easement in the Master Deed over the entire building for water, cable and electricity. All owners upon buying a condominium have actual knowledge of the Master Deed and thus agree to its contents. See *Roundtree Villas Assoc., Inc. v. 4701 Kings Corp.*, 252 S.C. 415, 321 S.E.2d 46 (1984) (authority of Regime gleaned from the Act and master deed.). See also S.C. Code Ann. § 27-31-30 (owner of fee simple may declare land subject to master deed upon recording it).

In sum, the Court's ruling is correct, and no bond is necessary since the case involves a legal interpretation of a master deed which is clearly permissible in South Carolina.

Finally, Plaintiff, in the spirit of cooperation, would agree not to request copies of the keys to the storage units as long as Defendants agree to immediate access if the internet/television system needs service.

Accordingly, Plaintiff requests the Court deny Defendants' Motion to Reconsider or Alter or Amend and adhere to its Order as Plaintiff is on a time schedule to upgrade the internet/television system for all the owners.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.
Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

October 13, 2021
Surfside Beach, South Carolina

Certificate of Electronic Notification

Recipients

Douglas Zayicek - Notification transmitted on 10-13-2021 10:08:04 AM.

Gene Connell - Notification transmitted on 10-13-2021 10:08:04 AM.

Kirby Shealy - Notification transmitted on 10-13-2021 10:08:05 AM.

Jay Anderson - Notification transmitted on 10-13-2021 10:08:04 AM.

Luke Allen - Notification transmitted on 10-13-2021 10:08:05 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP2606033

Official File Stamp: 10-13-2021 10:07:57 AM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Royal Garden Resort Regime Homeowners
Association Inc VS Sea Breeze Property
Management & Contract Services Inc , defendant,
et al

Document(s) Submitted: Response

Filed by or on behalf of: Gene McCain Connell, Jr.

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Douglas Michael Zayicek for Sea Breeze Property
Management & Contract Services Inc et al

Jay Glenn Anderson for Sea Breeze Property
Management & Contract Services Inc, Calvin
Donaldson

Gene McCain Connell, Jr. for Royal Garden
Resort Regime Homeowners Association Inc

Kirby Darr Shealy, III for Royal Garden Resort
Regime Homeowners Association Inc

Luke M. Allen for Royal Garden Resort Regime
Homeowners Association Inc

The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2018-CP-26-06033

Royal Garden Resort Regime)
Homeowners Association, Inc.,)

Plaintiff,)

vs.)

Sea Breeze Property Management &)
Contract Services, Inc.; Calvin)
Donaldson; and Phoenix of the)
Strand, Inc.,)

Defendants.)

Transcript of Record

AUGUST 4, 2021

B E F O R E:

Honorable Robert E. Hood
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Kirby D. Shealy, III, Esquire
Gene M. Connell, Jr., Esquire
Attorneys for Plaintiff

Douglas M. Zayicek, Esquire
Attorney for Defendants

Sallie Beth Todd
Circuit Court Reporter

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>

(THERE WERE NO WITNESSES CALLED DURING THIS HEARING.)

Certificate of Court Reporter..... 24

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>

(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

1 **THE COURT:** All right. Sea Breeze Property Management
2 and Contract Services, Royal Garden Resort Regime. All right.
3 Mr. Shealy, good morning.
4 **MR. SHEALY:** Good morning, sir.
5 **THE COURT:** All right. And Mr. Connell.
6 **MR. CONNELL:** Yes, sir.
7 **THE COURT:** How are you?
8 **MR. CONNELL:** Fine. How are you, sir?
9 **THE COURT:** Great. Thanks.
10 And you are Mr.?
11 **MR. ZAYICEK:** Zayicek.
12 **THE COURT:** Zayicek.
13 **MR. ZAYICEK:** Yes, sir.
14 **THE COURT:** All right. And do you have Sea Breeze?
15 **MR. ZAYICEK:** I do. I have all of the defendants, Your
16 Honor.
17 **THE COURT:** You have all of the defendants. Awesome.
18 Okay.
19 So we are on 2018-CP-26-06033. We have a motion for
20 partial summary judgment by Sea Breeze, another motion for
21 partial summary judgment by Sea Breeze, and then a motion to
22 enter the property by the plaintiff. Is all of that right?
23 **MR. ZAYICEK:** Yes, sir.
24 **THE COURT:** Okay. Mr. Zayicek, do you want to get us
25 started?

1 **MR. ZAYICEK:** Thank you, Your Honor. As you indicated,
2 there's three motions, two are on behalf of defendants and Mr.
3 Connell on behalf of the plaintiffs has filed the third
4 motion. The first motion is for partial summary judgment as
5 to plaintiff's first two causes of action. Those two causes
6 of action request that my client, one of my clients, who is
7 the property manager at the HOA for over 20 years turn over
8 all of the records in his possession that were asked for, turn
9 over those records to the plaintiff.

10 A little bit of background, Your Honor, may I approach?

11 **THE COURT:** Of course.

12 **MR. ZAYICEK:** In October of 2018 my client informed the
13 Board of Directors that he was going to be resigning his
14 position on December 31st of that year. Again, that was on
15 October 6th of 2018. A couple of days later there was an
16 annual meeting and at that annual meeting some new board
17 members were elected. And on October 25th just 18 days later
18 the plaintiff filed this lawsuit alleging various things
19 against my client the property manager. So just within 17
20 days to be exact this action was filed on behalf of the
21 plaintiff against the defendants.

22 The evidence is going to show that the board did not
23 authorize this lawsuit to be filed at that time, had not
24 discussed it, had not voted on it. This is an action, the
25 evidence is going to show, by one board member would wanted to

1 get my clients, as the onsite rental management company, off
2 of the property. The board secretary said that they didn't
3 even discuss this lawsuit until April of the following year,
4 some six months later.

5 So we've got a board member who wants to get her friend
6 installed as the onsite property manager. The HOA even went
7 so far as to say that my clients didn't even own the real
8 estate in the HOA, which my clients have owned since -- for
9 over 20 some years. But Judge Hyman has already granted me
10 summary judgment, my clients summary judgment, on that issue
11 and thankfully has resolved that.

12 So when the request for the records came, my client filed
13 an affidavit and attached to that affidavit you will see, Your
14 Honor, two pages where some of the board members and the
15 general manager have all signed indicating that they have
16 received all of these records that were in the defendant's
17 possession. Then on December 21st of that same year, Judge
18 Seals issued an order refraining the defendants, the last
19 sentence on that first page, restrained the defendants from
20 destroying, deleting, hiding, or doing anything else with any
21 records that it may have, that they may have in their
22 possession. Then there was a hearing on January 22nd in which
23 Judge Seals issued another order saying that the defendants
24 have indicated that they have turned over all of the records
25 and that they have and if any more records are found they must

1 be turned over to the HOA by notifying the plaintiff's
2 counsel.

3 So the plaintiff's have the exact relief that they've
4 requested in the first two causes of action. It's been two
5 and a half years. They have not at any point asked for any
6 other documents that they believe the defendants may have in
7 their possession. There's no discovery requests on those
8 issues. They've not gone back to the Court for a rule to show
9 cause or anything saying that there are any more records. So
10 we believe the first two causes of action should be granted
11 summary judgment in favor of the defendants because the
12 plaintiffs already have the relief that they've requested.
13 And if they think there's more records out there, they can
14 certainly, certainly file a rule to show cause, like I said,
15 and ask for them and we can address them at that time. They
16 have the relief that they've already requested.

17 **THE COURT:** All right.

18 **MR. ZAYICEK:** And I'll sit on that motion, Your Honor.

19 **MR. CONNELL:** Your Honor, can I give you our exhibits?

20 **THE COURT:** Sure.

21 **MR. CONNELL:** It's one through ten.

22 **THE COURT:** Thank you.

23 **MR. CONNELL:** Yes, sir.

24 So, Your Honor, this case started as a result of some
25 records but has morphed into a mismanagement case of the

1 defendant's involvement in the financial portion of Royal
2 Garden Resort. So it all started back in November 2018 when
3 Judge Hyman or Judge Seals did issue an order and rule to show
4 cause. Mr. Zayicek was not the lawyer at that time. And the
5 defendant said he could not come because he had a funeral and
6 so it was carried over until January 14th, 2019. At that
7 hearing Mr. Donaldson appeared with another lawyer and said
8 that he quote had given up what records he had. That he had
9 lost documents in a hurricane. And that he had given
10 everything he had in 2018.

11 So our position, Your Honor, is based on two affidavits
12 which you have as part of the ten. One was the affidavit of
13 Steven Hunt, a former employee of the defendant's, who
14 indicated that on December 18th all of the record were at the
15 facility on the second floor, there was no hurricane, and that
16 all of the records had been there when he left on his last day
17 of employment on December 16, 2018.

18 Another former employee indicated in an affidavit which
19 is in your records that he said that he was told to go to the
20 second floor by Mr. Donaldson, get all of the records, place
21 them in a trash bag, put them in the dumpster.

22 So, Your Honor, our position is, and we understand that
23 there's a Supreme Court opinion that says that you can't bring
24 a cause of action for spoliation of evidence, there certainly
25 is one. But that same opinion says that at a trial the Court

1 may decide based upon the evidence and testimony that the
2 Court could strike all of defendant's pleadings, which is what
3 we intend to ask at the hearing -- at the trial of this case.

4 So the issues of whether or not the first causes of
5 action and the second causes of action should be dismissed for
6 summary judgment is improper at this time based on all of the
7 affidavits that have been presented, the ambiguities, and the
8 fact that the summary judgment rule says that if there is a
9 genuine issue of material fact -- and this defendant, Mr.
10 Donaldson, came to this Court and he told us way back in 2019
11 that he had lost the records in a hurricane and he had given
12 up all he had, and that's just not true based on two
13 witnesses, one a prior employee of his, and the second a
14 person that was told to take care of the records. Now, Mr.
15 Donaldson presents an affidavit that says yeah, those were
16 records from somewhere else. We believe based on all of the
17 evidence that Your Honor has that creates a genuine issue of
18 material fact and as a result Your Honor should deny the
19 motion for summary judgment on those causes of action.

20 **THE COURT:** All right.

21 **MR. ZAYICEK:** Your Honor, as Mr. Connell just indicated
22 there's a reply affidavit that my client filed and said he was
23 the property manager for over 15 properties, and all of the
24 records for all of them were stored at this location. So as
25 they were going through and trying to find the records for the

1 plaintiff, they decided to throw out and clean out and just do
2 housekeeping as to all of those other records. There is
3 nothing in Mr. Hunts affidavit that says any documents that
4 were thrown out belonged to the plaintiff. It is pure
5 speculation by Mr. Hunt, he threw out some records. And
6 again, there's nothing indicating that they were plaintiff's
7 records at all, and if they were Mr. Connell has the right to
8 go file a rule to show cause and prove that there are
9 documents that were thrown away that belong to the plaintiff.
10 But none of his affidavits indicate that any documents of the
11 plaintiff were thrown away. It was just records were thrown
12 away. The only evidence before the Court is that those
13 records belong to other clients that my client was the
14 property manager for. It was not in any way, shape, or form
15 the plaintiff's records.

16 So again, in two and half years they've never asked for
17 any documents whatsoever that they feel is essential to the
18 operation of the HOA that they allege my clients have in any
19 way, shape, or form. He just wants this open-ended cause of
20 action out there when he's already got the relief requested.

21 **THE COURT:** All right.

22 **MR. CONNELL:** Your Honor, I would just point out exhibit
23 number seven, the affidavit of Mr. Hunt. I can unequivocally
24 say that all of the business records of Royal Garden Resort
25 were there on the last day of my employment, December 16th,

1 2018, which actually tailors into the period of time when
2 Judge Seals issued his order and rule to show cause.

3 **THE COURT:** All right. Next motion.

4 **MR. ZAYICEK:** Your Honor, the next motion for partial
5 summary judgment involves two contracts that the parties had
6 entered into that the plaintiff's had just flat breached
7 without any justification whatsoever. The first is a storage
8 rental agreement, Your Honor. Again, may I approach?

9 **THE COURT:** Sure. Thank you.

10 **MR. ZAYICEK:** Your Honor, this contract was entered into
11 in 1995 as you can see at the top, March 6th of 1995. You can
12 see under subsection B it requires that the HOA pay my clients
13 an amount of not less than \$1,050 per month for operating the
14 switchboard, the telephone system, all calls that come into
15 the HOA. When the new board took over in 2018, they just came
16 in and said we're not going to pay you to do that anymore.
17 We're going to have our staff person do it. So beginning in,
18 I think it was December 2018, after this contract had already
19 been in place, in effect, and honored for some 23 years the
20 plaintiff just says I guess we can do it better and cheaper so
21 we're not going to pay you anymore to do this. That is clear
22 and unambiguous and as the Court knows, the Court is obligated
23 to enforce a contract that is clear and unambiguous.

24 And I know the plaintiff is going to go in and try to
25 argue various reason why the contract was void in the

1 beginning, and there's provisions in the master deed that say
2 that the board doesn't have to pay for this kind of stuff.
3 But it's the exact reason, Your Honor, why the South Carolina
4 Supreme Court has ruled that under the Business Judgment Rule
5 this Court is precluded from taking any action with regard to
6 a corporate governing body absent a showing of lack of good
7 faith, fraud, self-dealing, or unconscionable conduct on
8 behalf of the board members. That's headnote one in the case
9 of Dockside Association versus Detyens, Supreme Court of South
10 Carolina opinion 22799 and the site is 294 S.C 86. And the
11 burden of proof, Your Honor, is on them. They're actually
12 saying they want the Court to hold that a previous board
13 should not have entered into this contract. They just don't
14 like this contract. That's not the basis for turning over a
15 contract that's been honored for over 25 years.

16 Another case, Your Honor, that I want to hand up is
17 Kuznik versus Bees Ferry Association, it 342 S.C 579. I
18 believe it's headnote 19, yeah, headnote 19 on page 5. It
19 says the Business Judgment Rule requires its director to act
20 reasonable in good faith. It does not expect perfect.
21 However, the rule will not apply if the directors have engaged
22 in self-dealing, fraud, or other unconscionable conduct.
23 Again, coinciding with what I had cited in the previous case.
24 There is nothing in the plaintiff's affidavits that indicate
25 the board, back in 1995, committed fraud or was dealing --

1 involved in self-dealing or some other unconscionable conduct.
2 They just don't like this contract. And as that headnote
3 indicates, the Court is precluded from even considering the
4 issue unless and until they produce evidence of the directors
5 themselves involved in self-dealing, fraud, or other
6 unconscionable conduct.

7 So, Your Honor, we believe on that contract they just
8 stopped paying that \$1,050 for my clients to operate the
9 telephone switchboard. And again, this was done again by the
10 action of one board member who wanted to have control over the
11 incoming calls so the incoming calls could be directed to her
12 friend who had her own rental management company. Again, the
13 sole purpose of trying to get my client's rental management
14 company off of the premises. They changed all of the phone
15 numbers for my clients. They deleted things and moved things
16 around, again in furtherance of what this one board member
17 wanted to do.

18 But again, we have the Business Judgment Rule and if
19 anybody can just go in and go back to something that was done
20 25 years ago and had been honored for 23 years prior to the
21 issue then every corporate board action that has been taken
22 anywhere by any corporation could be upset just because they
23 would come in and want to come up with some reason as to why
24 the contract shouldn't have been entered into in the
25 beginning, or they can do it cheaper, or anything else. But

1 again, the Court enforces the contract regardless of its
2 wisdom or (inaudible) or anything else, and it can't even
3 consider even setting it aside unless it can show itself, it's
4 kind of suing itself to show that the prior directors did
5 something wrong and had no ability and shouldn't have entered
6 into that contract. But that's why we can't go back and look
7 at what the board did 25 years ago. And it's important to
8 point out, Your Honor, the plaintiffs have no causes of action
9 whatsoever to resend any contract. They've just flat ignored
10 it. So on that contract, which is clear and unambiguous and
11 says you're going to pay \$1,050 a month for the defendants to
12 answer the phones. We believe that contract should be
13 honored, and they should continue paying on it, and that their
14 breach -- a summary judgment should be granted as to their
15 unlawful breach on that contract. And I'll give you the
16 second contract, I guess, after Mr. Connell argues on that
17 one.

18 **THE COURT:** Okay.

19 **MR. CONNELL:** Your Honor, the Business Judgment Rule has
20 nothing to do with whether or not the contract was breached.
21 As Your Honor knows a breach of contract and whether or not a
22 contract has been breached is not for the Court to decide,
23 it's for a jury to decide. And in this case the operative
24 language is operating the telephone switchboard. And so if
25 Your Honor looks at the affidavits I've presented to you,

1 affidavits number five and number six, and also Mr. Hunt's
2 affidavit of August 2nd, 2021. Mr. Hunt is an employee of the
3 Royal Garden Resort and was previously an employee of the
4 defendants. And he says that the switchboard was never
5 operated by the defendants, that they didn't have anybody
6 running it, and for all of these years the association had
7 been paying for something that wasn't being done. He said no
8 person ever did anything there, it was automated, and the
9 switchboard was moved in December of 2018, about three years
10 ago.

11 So, Mr. Utz a prior board member said that all of the
12 board members of Royal Garden Resort, in his August 2nd, 2021
13 affidavit, are people who don't live in the area and aren't on
14 the premises. He said they relied on Mr. Donaldson to tell
15 them what to do and how to operate the premises. He said that
16 they were not advised that the master deed provided in
17 articles XI Section 2 that the Royal Garden Resort Homeowners
18 Association had an easement over the entire 12 story building
19 that said you could use the premises for any type of utilities
20 without charge.

21 So we argue, Your Honor, that the contract -- not only
22 did they not operate the switchboard, but the fact of the
23 matter is that Mr. Donaldson did not advise the board that
24 there was a blanket easement and he was not allowed to charge
25 for such. And if Your Honor looks at our submissions, I think

1 it's number seven. If you look at our submission number
2 seven, you'll see quite interestingly that Mr. Donaldson on
3 behalf of the board signed an easement to Spectrum or Time
4 Warner back in 2005 authorizing them to put cable anywhere
5 throughout the building.

6 So, Your Honor, we argue not only mismanagement, but on
7 behalf of Mr. Donaldson in trying to self-deal himself into a
8 lucrative contract. But again, that's an argument for another
9 day for a jury to decide based on what they hear the testimony
10 to be.

11 Then I would also point out affidavit number five, that's
12 an affidavit of Stacy Stanley, a recognized real estate lawyer
13 in the area. And he looked at the master deed and said that
14 this contract had never been approved because you need to have
15 75 percent of the owners to amend a master deed to allow
16 someone to be paid for a utility when the master deed says
17 that that's entitled. He also said that the homeowners are
18 not bound by these, and that this was a matter of self-dealing
19 by Mr. Donaldson, and it at least created a conflict of
20 interest because he was the manager of the association and
21 there was no vote of the association to have such a contract.

22 So, Your Honor, affidavits five, six, seven, eight, and
23 nine along with our position from the outset and the fact that
24 the Business Judgment Rule doesn't apply. The question is who
25 operated the switchboard, and we find out from the evidence

1 that's been presented to Your Honor today on summary judgment
2 that there is no operation nor was there even an operation of
3 the switchboard in the last 20 some years. So we'd ask that
4 the motion be denied, Your Honor.

5 **THE COURT:** All right.

6 **MR. ZAYICEK:** Your Honor, that's not what Mr. Hunt's
7 affidavit says. In fact, Mr. Utz's affidavit says the exact
8 opposite with regard to the contract. He admits the contract
9 was signed. He said they didn't read the master deed and they
10 don't know what it says. So they want to be excused for their
11 own negligence for not reading their master deed, the document
12 that gives them the authority, that puts them in charge, and
13 the document they're supposed to be enforcing. So how is that
14 a defense? You're required as a director to read the
15 documents, to know what you're doing, and you can't just
16 absolve yourself of authority and responsibility by saying you
17 relied on your property manager that you hired to assist you.

18 And again, this is the very reason why we have the
19 Business Judgment Rule. They want to go back 25 years and
20 undo a contract that has been honored for 23 of those 25
21 years. And the Court specifically says, the South Carolina
22 Supreme Court says the judicial review of those actions is
23 precluded unless they show that the prior board acted
24 fraudulently, or the directors were involved in self-dealing
25 or unconscionable content -- conduct.

1 The easement that he talks about in no way, shape, or
2 form says that the board doesn't have to pay to operate a
3 utility. It gives the board the standard easements for
4 utility companies to come in and put wires and do things like
5 that. It does not in any way, shape, or form talk about who's
6 going to answer the phones. And it specifically says even
7 those easements are subject to the board of director's
8 discretion and control. And the board clearly felt at that
9 time, and Mr. Utz says yeah, they signed the contracts. They
10 felt at that time they had to pay to have the defendant's
11 personnel operate that phone system, which they did through
12 2018. So again, they were paying for a service that they
13 didn't get? There's no evidence of that.

14 **THE COURT:** All right. Let's move on to the next one.

15 **MR. ZAYICEK:** Okay. The next contract is very similar,
16 Your Honor. I believe it's probably going to have the same
17 arguments involved. It's called a storage facility agreement.
18 This document was entered into on February 1st of 2012. Again,
19 this one is signed actually by all of the board members. It
20 covers various things including where the plaintiffs are going
21 to keep their time clock facility. So that's not a utility in
22 any way, shape, or form. So even plaintiff's argument that
23 somehow they have a utility easement where they can just put
24 things wherever they way, anywhere on the property. Under
25 their theory, Your Honor, they could go to John Smith who may

1 own unit 201 and put all of the equipment they want for all of
2 the utilities in that unit, and they don't have to pay
3 anything. Well that's not what the board read and believed
4 the bi-laws to say. And they entered into this agreement, to
5 again -- this one is for \$255 a month for access to the
6 storage units on each walkway, and the storage cubical on the
7 ground floor, and the instillation of a time clock facility.
8 Again, all on property owned by my clients.

9 And again, same thing, December of 2018 a new board comes
10 in and says hey, we don't like that contract. We're not going
11 to pay that anymore. And they try to come up with all of
12 these reasons to get around it. But it's -- Mr. Connell has
13 not argued in any way that this is ambiguous in any way,
14 shape, or form. There's no evidence whatsoever that these
15 contracts weren't entered into and weren't honored up until
16 December of 2018. There's no evidence whatsoever that would
17 allow the Court to go back under the Business Judgment Rule
18 and review actions taken back in 1995 or 2012. They're
19 subject to statutes of limitation and lashes, just like
20 everyone else. So they can't just do it and claim the prior
21 board screwed up and shouldn't have done these things so we
22 should be able to get out of them now. Thank you, Your Honor.

23 **MR. CONNELL:** Your Honor, the same arguments apply. I'm
24 not going to go through all of them that we've already talked
25 about. I will point out to Your Honor exhibit number one

1 which is an affidavit which is attached to our motion to enter
2 property that gives the Royal Garden Homeowners Association a
3 blanket easement over all of the property to put in telephone
4 wires, etcetera, and that's what this agreement provided for.

5 Mr. Donaldson was in a position of trust as the manager
6 for over 25 years. He abused that position of trust and used
7 this agreement in such a way to enrich himself. And, Your
8 Honor, we argue that a jury should decide whether or not this
9 is a void contract.

10 But also I'd argue to Your Honor what they're going to
11 talk about which is the affidavits of Mr. Stacy, Mr. Hunt, and
12 others which clearly show that this is a self-dealing
13 situation. Your Honor, we simply ask that their motion be
14 denied, and these are the rest of our submissions.

15 **THE COURT:** All right. We don't need to go back over it.
16 What's the motion to enter the property?

17 **MR. CONNELL:** So, Your Honor, my motion to enter the
18 property is number one. Royal Garden Resort at this point is
19 a multi-level condominium association and we would like to get
20 Horry Telephone Coop to come into these particular closets,
21 which we believe we have a the right to do under the easement,
22 and to set up new telephone -- television communication
23 equipment. The defendants have denied our request to do so,
24 but the master deed clearly allows us to do so. We wrote them
25 a letter and said we want to change television service from

1 Spectrum to Horry Telephone. We want to go ahead and get the
2 keys to these units, to these closets, these are closets in
3 the hallways, if you will, of this particular association.
4 And we want to go ahead and enter into a contract with HTC
5 which will allow us to do that. They denied our request to do
6 that. We think the master deed is clear on that. I've
7 attached that portion of the master deed for Your Honor. That
8 is section -- that's section 2 that says that the association
9 is granted an easement across all property for any antenna
10 system, utilities not limited to water, gas, sewer,
11 telephones, electricity. And we believe we're entitled to
12 have the Court do that and we're entitled to get keys so we
13 can give them to HTC so they can do the work for these people
14 so they can see their televisions.

15 **MR. ZAYICEK:** Your Honor, they still have television
16 service so Mr. Connell arguing that somehow the television
17 service has been cut is inaccurate. I'll point out that Mr.
18 Connell has argued multiple times that this language in the
19 master deed is clear. He's not shown you that language. The
20 language in no way, shape, or form says we can just go in and
21 store whatever equipment that we have and boxes, and switches,
22 and everything else we can just physically store on your
23 property and perpetuity and don't have to pay you anything for
24 it. These -- the items that they want to put in -- they want
25 to take out all of the old cable system and put in a new one.

1 It's in the areas covered by these two contracts. What Mr.
2 Connell is asking for is an injunction. He doesn't call it an
3 injunction because he doesn't want to have to put up a bond.
4 So -- and I've told Mr. Connell, we have no problem letting
5 them go in and do that if he would at least put up all of the
6 rent that's due under those contracts and continues to pay
7 rent while the action is pending so he can go in -- they can
8 go in and do whatever they want to do. But the easement
9 language in no way, shape, or form says the HOA can take the
10 property, any property that it wants, of any owner and put in
11 -- and just use it to store equipment. It doesn't say that.
12 It gives the standard easement language of we have the right
13 to go in and put wires wherever we want, and you have to let
14 us in to be able to do that. It doesn't say we can just store
15 in perpetuity all of these switches and cable boxes on your
16 property. The prior boards entered into those agreements. My
17 clients allowed them to do that for 23 years or whatever it
18 was until they stopped paying.

19 So if Mr. Connell's clients will go ahead and put up the
20 money that's owed since December of 2018 and get that rent
21 current, even if it's paid into my trust account and not to be
22 released, at least it will be held. So that bond should be
23 put in place if they want to go in and have the rights and
24 privileges that they would have under the contracts if they
25 honored and made their payments, we'll be glad to do that.

1 Even if the Court decides it wants to ---

2 **THE COURT:** So you don't want to pay the rent, but you
3 want to use the buildings?

4 **MR. CONNELL:** No. We want to use the easement. And I
5 will point this out, we had this same argument before Judge
6 Hyman about the trash chutes. The defendants attempted to
7 block the trash chutes so we couldn't drop the trash down from
8 the 12th floor to the bottom floor. Judge Hyman ruled in an
9 order which is in the file that they could not do that. All
10 we're asking you to do in this case, the master deed says that
11 there was an easement granted throughout the entire facility.
12 So they don't have a right to charge us for that. The
13 easement language, which is part of exhibit number one, will
14 show you that. So we think we're entitled to do that as a
15 matter of law.

16 **MR. ZAYICEK:** There is no order in that file that Judge
17 Hyman signed. He denied their motion with regard to the trash
18 chutes. And I'm shocked that Mr. Connell would say there's an
19 order in the file where Judge Hyman ---

20 **MR. CONNELL:** No, no, no.

21 **MR. ZAYICEK:** Pull out the order. Let me see the order.

22 **MR. CONNELL:** I don't have it with me, but there is --
23 you were stopped from blocking the trash chutes.

24 **MR. ZAYICEK:** No. Judge Hyman asked that have y'all ever
25 done that and I said no, we've never done it. Mr. Donaldson

1 was sitting in the courtroom and he acknowledged he'd never
2 blocked the trash chutes. Judge Hyman never executed any
3 order. He said I'm not going to do it. There is no order
4 saying that we can't block the trash chutes, or that we have
5 in the past, or ever would. That's complete
6 mischaracterization of the record. One of us is dead wrong on
7 that issue.

8 So again, if they want the rights and privileges, we're
9 certainly willing to give them to them. Put up the amount of
10 money as the bond, continue to pay the rent while the action
11 is pending and we'll let them go in and do whatever they want
12 to do as they would have the right to do under those
13 contracts. Thank you, Your Honor.

14 **THE COURT:** Okay. I'll let y'all know my decision by
15 early next week.

16 **MR. CONNELL:** Thank you, Your Honor.

17 **MR. ZAYICEK:** Thank you, Your Honor.

18 **THE COURT:** Thank you.

19 **(END OF MOTION HEARING)**

COPY

PERCUT-Bayonne, N. J.

PLAINTIFF'S
EXHIBIT

14

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

MASTER DEED

ROYAL GARDEN RESORT, INC. HORIZONTAL PROPERTY REGIME

KNOW ALL MEN BY THESE PRESENTS, that this Master Deed made this 12th day of June, 1984, by Royal Garden Resort, Inc., a South Carolina corporation, hereinafter referred to as Grantor, as the sole owner in fee simple of the land and improvements hereinafter described, does hereby make, publish and declare:

W I T N E S S E T H:

WHEREAS, Grantor is the owner in fee simple of certain real property situate in the County of Horry, State of South Carolina, which real property is more fully described in Exhibit "A", which is attached hereto and made a part hereof and incorporated herein by reference (which real property is hereinafter called "the Property")

WHEREAS, Grantor desires to submit the Property to condominium ownership pursuant to the "Horizontal Property Act" of South Carolina, Chapter 31 of Title 27, Code of Laws of South Carolina, 1976, as amended, subject to the easements and agreements set forth herein and to certain protective covenants, conditions, restrictions, reservations, liens, and charges hereinafter set forth; and

WHEREAS, Grantor by submitting and conveying said Property, desires to create a condominium development known as "Royal Garden Resort Horizontal Property Regime", (hereinafter referred to as "R.G.R.") thereby establishing a plan for the individual ownership of units and the ownership of undivided interest in the "general common elements" and "limited common elements"; and

WHEREAS, Grantor desires to convey the Property pursuant to and subject to certain protective covenants, conditions, restrictions, reservations, liens, and charges hereinafter set forth;

NOW, THEREFORE, Royal Garden Resort, Inc., as Grantor, hereby submits the Property to the provisions of the Horizontal Property Act of South Carolina, which is Chapter 31 of Title 27, Code of Laws of South Carolina, 1976, as amended, and hereby establishes a plan as to the division of the Property, the imposition of covenants, conditions, restrictions, reservations, liens and charges thereon and the individual

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ownership thereof. Grantor hereby specifies that this Master Deed shall constitute covenants, conditions and restrictions which shall run with the Property and shall bind and inure to the benefit of the Grantor, its successors and assigns, and all subsequent owners of any interest in the Property, their grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE I

DEFINITIONS

Section 1. Unless defined herein or unless the context requires otherwise, the words defined in Section 27-31-20 of the Code of Laws of South Carolina, 1976, as Amended, when used in this Master Deed or in any amendment hereto, shall have the meaning therein; provided, the following words, when used in this Master Deed or any amendment hereto, unless the context requires otherwise, shall have the following meanings:

(a) "Act" means the Horizontal Property Act of South Carolina, Chapter 31, Title 27, Code of Laws of South Carolina, 1976, as amended, and as may be further amended from time to time.

(b) "Assessment" means an owner's share of the common expenses assessed against such owner and his Unit from time to time by the Association in the manner hereinafter provided.

(c) "Association" means Royal Garden Resort Condominium Homeowners Association, Inc., an association of and limited to Owners of the Condominium Units located in Royal Garden Resort Horizontal Property Regime in the form of a non-profit, non-stock membership corporation organized under the laws of the State of South Carolina.

(d) "Board of Directors" or "Board" means the Board of Directors of the Royal Garden Resort Condominium Homeowners Association, Inc., and "director" or "directors" means a member or members of the Board.

(e) "Common Expenses" means and includes (a) all expenses incident to the administration, maintenance, repair and replacement of the General Common Elements and the Limited Common Elements, after excluding therefrom such expenses which are the responsibility of a Unit Owner as set forth in Section 2 of Article VIII hereof; (b) expenses determined by the Association to be Common Expenses and which are

lawfully assessed against Unit Owners; and (c) expenses incident to the General Common Elements and Limited Common Elements as defined in Horizontal Property Act or declared to be common expenses by the Condominium Documents. Electricity, water, and other common expenses, shall be allocated to the respective units according to the respective percentages in Exhibit "C" hereto, unless specifically provided otherwise.

(f) "Condominium Documents" means and includes the Master Deed and Exhibits, Declaration of Conditions and Restrictions for Royal Garden Resort, Articles of Incorporation for Royal Garden Resort Condominium Homeowners Association, Inc., and the By-Laws of Royal Garden Resort Condominium Homeowners Association, Inc., all as amended from time to time.

(g) "Condominium Property" or "Property" means and includes all the property submitted to the Horizontal Property Regime by this Master Deed and described on Exhibit "A".

(h) "General Common Elements" means and includes all of the Condominium Property after excluding the Condominium Units and Limited Common Elements, as so designated in Exhibit "B" attached hereto and incorporated herein by this reference, and related drawings.

(i) "Grantor" shall mean and refer to Royal Garden Resort, Inc., a South Carolina corporation, its successors and assigns.

(j) "Limited Common Elements" means and includes those areas so designated in Exhibit "B" attached hereto and incorporated herein by this reference, and related drawings.

(k) "Mortgage" shall include real property mortgages, security agreements and financing statements, chattel mortgage, bills of sale to secure debt, and any and all other liens or similar instruments given to secure the payment of an indebtedness.

(l) "Owner" means the record owner, whether one or more persons, of fee simple title in and to any Condominium Unit, whether such unit be residential or commercial; excluding, however, those persons having such interest merely as security for the performance of an obligation by the record owner.

(m) "Percentage Interest" means the percentage of undivided interest each Unit Owner owns as tenant in common in the Limited and General Common Elements, all as specified in Exhibit "C" hereto.

lawfully assessed against Unit Owners; and (c) expenses incident to the General Common Elements and Limited Common Elements as defined in Horizontal Property Act or declared to be common expenses by the Condominium Documents. Electricity, water, and other common expenses, shall be allocated to the respective units according to the respective percentages in Exhibit "C" hereto, unless specifically provided otherwise.

(f) "Condominium Documents" means and includes the Master Deed and Exhibits, Declaration of Conditions and Restrictions for Royal Garden Resort, Articles of Incorporation for Royal Garden Resort Condominium Homeowners Association, Inc., and the By-Laws of Royal Garden Resort Condominium Homeowners Association, Inc., all as amended from time to time.

(g) "Condominium Property" or "Property" means and includes all the property submitted to the Horizontal Property Regime by this Master Deed and described on Exhibit "A".

(h) "General Common Elements" means and includes all of the Condominium Property after excluding the Condominium Units and Limited Common Elements, as so designated in Exhibit "B" attached hereto and incorporated herein by this reference, and related drawings.

(i) "Grantor" shall mean and refer to Royal Garden Resort, Inc., a South Carolina corporation, its successors and assigns.

(j) "Limited Common Elements" means and includes those areas so designated in Exhibit "B" attached hereto and incorporated herein by this reference, and related drawings.

(k) "Mortgage" shall include real property mortgages, security agreements and financing statements, chattel mortgage, bills of sale to secure debt, and any and all other liens or similar instruments given to secure the payment of an indebtedness.

(l) "Owner" means the record owner, whether one or more persons, of fee simple title in and to any Condominium Unit, whether such unit be residential or commercial; excluding, however, those persons having such interest merely as security for the performance of an obligation by the record owner.

(m) "Percentage Interest" means the percentage of undivided interest each Unit Owner owns as tenant in common in the Limited and General Common Elements, all as specified in Exhibit "C" hereto.

(n) "Unit" means those parts of the Property which are subject to individual ownership, as so designated in the Exhibits and Attachments hereto and made a part hereof. There are both residential units and commercial units in the property. A Unit consists of the space enclosed by the intersection of horizontal and vertical planes described as follows:

- (1) The vertical boundaries consist of the unexposed, unfinished interior faces of the exterior walls of the building and the unexposed, unfinished interior faces of the concrete walls, concrete block walls, and the drywalls separating such Unit from elevators, stairs, corridors, or other residential units; and
- (2) The horizontal boundaries consist of the upper surface of the finished structural concrete floor and lower surface of the unfinished structural concrete slab ceiling.

The boundaries are not themselves included in a Unit, and doors, sliding glass doors, windows that open from the Unit, and screens are deemed part of a Unit.

(o) "Unit Plans" means and includes the architectural plans of the Units erected or to be erected on the Condominium Property, which plans were prepared by Kenneth R. Sanders, Architect, which will be filed for record in the Office of the Register of Mesne Conveyance of Horry County, South Carolina, simultaneously with the filing for record of this Master Deed.

(p) "Survey Plat" or "Surveys" means and includes the surveys of the Condominium Property, Units, and Common Elements,

including, but not limited to, boundary survey, as-built surveys and site plans.

(q) "Trustee" means the financial institution selected by Grantor or the Association to hold certain funds of the Association.

(r) The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

ARTICLE II

REGIME OWNERSHIP AND RIGHTS

Section 1. Development Plan. Grantor shall construct or cause to be constructed on the Property identified on Exhibit "A" hereto one (1) building containing a total of Two Hundred Six (206) Residential Condominium Units and three (3) Commercial Condominium Units. The building shall be constructed substantially in accordance with the Unit Plans, Master Plans, and Surveys, all of which are contained in Exhibit "B", which is attached hereto and incorporated herein by this reference, and which Exhibit "B" shall show the building, number and identity of the Units, and the materials of which the Units are to be constructed. The Grantor expressly reserves the right, during the course of construction, to revise, modify or change in whole or in part any of such Condominium Units; provided, however, (i) Grantor shall adhere to the general scheme of development as set forth in Exhibit "B" attached hereto, and (ii) Grantor shall not make any such alterations to any Condominium Unit sold or under a valid sales contract without having first notified the Owner thereof. If such Owner does not agree in writing to the changes, then the agreement between the Owner and Grantor shall be terminated, and Grantor shall refund to Owner all of the funds that Owner has paid to Grantor; and title and all claims to said unit shall revert back to Grantor upon such payment. Any such change or modification shall not alter the Percentage Interests set forth in Exhibit "C" without the unanimous consent (100%) of the Unit Owners expressed in an amendment hereto duly recorded.

Subject to the preceding, the Grantor reserves the right to amend the Master Deed and any exhibits hereto within One (1) year of the original filing hereof, or at any time prior to the date on which Seventy-Five (75%) percent of the Units herein have been transferred by

Grantor to the Purchasers thereof, whichever time period occurs later.. Some Units may be conveyed and occupied prior to the completion of other Units; provided, however, that prior to the conveyance under such circumstances of each Unit, there shall be filed or recorded an amendment to this Master Deed together with an attached verified statement of a registered architect or licensed professional engineer certifying that the Unit Plans and Surveys theretofore filed, or supplemental Unit Plans and/or Surveys being filed simultaneously therewith together with such plans and surveys as may have been filed prior thereto, fully depict the layout, location, identification, dimensions, and materials used in the construction of such Unit as built.

* The Grantor hereof reserves the right to add additional phases hereto at a later time.

Section 2. Units. Each Unit, together with its Percentage Interest in the General Common Elements and Limited Common Elements, shall, for all purposes, constitute a separate parcel of real property which, subject to the provisions of this Master Deed, may be owned in the same manner as any other real property. Each Owner, subject to the provisions of this act and this Master Deed, shall be entitled to the exclusive ownership and possession of his Unit. Grantor, by the recordation of this Master Deed, agrees, consents and warrants to faithfully complete construction of all such Condominium Units and buildings within two years of the date of sale thereof; provided, however, that if Grantor fails to complete any building or Condominium Unit as agreed herein, Grantor agrees to repurchase the same for a price equal in amount to the sum of all monies heretofore paid by the Seller for such unit by the Owner thereof. In the event of such repurchase, Grantor shall thereafter be completely and forever absolved and relieved of any and all liability or responsibility relating to or derived from its failure to complete such construction.

Section 3. Conveyance by Warranty Deed. All conveyances of title in any Condominium Unit shall be by general warranty deed; the conveyance of each unit by the Grantor to the first Purchaser(s) shall be by indenture deed.

Section 4. Common Area and Facilities.

(a) Percentage Interest. The Unit Owners shall own the General Common Elements and Limited Common Elements as tenants in common, with each Unit having assigned thereto the Percentage Interest in said General Common Elements and Limited Common Elements as set forth in the Master Plan contained in Exhibit "C" attached hereto; provided, however, the use of the Limited Common Elements shall be restricted as set forth in Section 4(a) of this Article II. The Percentage Interest assigned to each Unit has been determined by dividing the assigned fair market value of such Unit as of the effective date of the Declaration by the aggregate assigned fair market value of all of the Units as of said date. This Percentage Interest assigned to each Unit has been determined by finding the percentage equivalent to the value of the individual Unit, with relation to the value of the Property. The stated Percentage Interest is permanent in character and cannot be altered except as provided in this Article and in Exhibit "C" without the consent of all (100%) of the Unit Owners expressed in an amendment to the Master Deed duly recorded.

(b) Inseparability of Percentage Interest. The Percentage Interest in the General Common Elements and the Limited Common Elements cannot be separated from the Unit to which it is assigned and shall be automatically conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the deed or other instrument.

(c) No Partition. The General Common Elements and Limited Common Elements shall remain undivided and no right to partition the same or any part thereof shall exist except as provided in the Unit Ownership Act, the By-Laws, and this Declaration.

(d) Use of General Common Elements. The Unit Owners may use the General Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners. The Board of Directors shall, if any question arises, determine the purpose for which a part of the General Common Elements is intended to be used. The Board shall have the right to promulgate rules and regulations limiting the use of the General Common Elements to Unit Owners and their guests, as well as to provide

for the exclusive use of a part of the General Common Elements by a Unit Owner and his guests for special occasions which exclusive use may be conditioned, among other things, upon the payment of a fee. Any Owner may delegate, in accordance with the provisions of this Deed and the By-Laws, his right to use the General Common Elements to the immediate members of his family, to a limited number of guests, or to his tenants of his Condominium Unit.

(a). Limited Common Elements. Ownership of each a Condominium Unit shall entitle the Owner thereof to the exclusive use of the Limited Common Elements either adjacent to or assigned to such Unit in Exhibit "B" hereto; which exclusive use may be delegated by such Owner to the immediate members of his family, to his guests, or to the tenants of his Condominium Unit. Owners may place plants, furniture, and other similar items within the Limited Common Elements.

The supply closets on each floor are limited common elements assigned to Commercial Unit No. Two (2), and eight (8) of the sixteen (16) honeycombs on the ground level of the building are also limited common elements assigned to Commercial Unit No. Two (2), all as specified in Exhibit "B" hereto. Until title to Commercial Unit No. Two (2) is transferred, Grantor reserves sole and exclusive right to control use and access to the limited common elements assigned to Commercial Unit No. Two (2), and upon transfer of ownership thereof by Grantor, Grantor assigns shall have such sole and exclusive right to said limited common elements. Provided that such plants shall not be allowed to grow or climb to a height higher than the wall or rail enclosing such Limited Common Element unless the placement of such plants shall have been approved in writing prior to reaching said height by the Board of Directors or by an architectural committee appointed thereby as provided in Section 1 of Article VII hereof, and provided that such plants shall be properly maintained by such occupants.

(f) Percentage of Interest in General Common Elements. Exhibit "C" contains a chart showing the value assigned and fixed for the sole purpose of the Act and is not intended to establish or delineate sales price, but such value is fixed in order to establish and show the percentage of undivided interest in the General Common Elements and Limited Common Elements appurtenant to such Units in the entire Condominium Property.

ARTICLE III

ASSOCIATION, ASSESSMENTS AND MAINTENANCE

Section 1. Administration. The administration of the Condominium Property, the maintenance, repair, replacement and operation of the General Common Elements and Limited Common Elements as herein provided, and those acts required of the Association by the Condominium Documents shall be the responsibility of the R.C.R. Condominium Homeowners Association, Inc. Such administration shall be in strict accordance with the provisions of the Act, this Master Deed, the Articles of Incorporation and the By-Laws of the Association.

Section 2. Agreements. The Association shall be and hereby is authorized to enter into such agreements, including without limitation, management contracts, as it may deem necessary or desirable for the administration and operation of the Condominium Property in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Each Owner by acquiring or holding an interest in any Condominium Unit thereby agrees to be bound by the terms and conditions of all such agreements entered into by the initial or subsequent Board of Directors on behalf of the Association. A copy of all such agreements shall be made available at the office of the Association for review by each Owner.

Section 3. Creation of Lien and Personal Obligation for Assessment. Each Condominium Unit is and shall be subject to a lien and permanent charge in favor of the Association for the annual and special Assessments set forth in Sections 4 and 5 of this Article III. Each Assessment, together with interest thereon and cost of collection thereof as hereinafter provided, shall be a permanent charge and continuing lien upon the Condominium Unit upon which it relates; and shall also be the joint and several personal obligation of each Owner of such Condominium Unit at the time the Assessment comes due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Unit, and each and every Owner by acquiring or holding an interest in any Condominium Unit thereby covenants to pay such amount to the Association when the same shall become due. The purchaser of a Condominium Unit at a judicial or foreclosure sale shall be liable only for the Assessments coming due after the date of such sale.

Section 4. Annual Assessments. No later than Thirty (30) days prior to the end of the fiscal year of the Homeowner's Association, the Board of Directors or its authorized agent shall set the annual Assessments for the immediately succeeding calendar year by estimating the Common Expenses to be incurred during this year and shall pro-rate them among the Owners of the Condominium Units in accordance with the Percentage Interest assigned to such Condominium Units, and shall give written notice to each Unit Owner of the annual Assessment fixed against his Unit for such immediately succeeding calendar year. The annual Assessments levied by the Association shall be collected by the Treasurer or his authorized agent as provided in Section 8 of this Article III.

The annual Assessments shall not be used to pay for the following:

(a) Property insurance of individual Owners on their possessions with the Units, and liability insurance of such Owners insuring themselves and their families individually; each of these shall be the sole responsibility of the Owner;

(b) Telephone, gas, or electrical utility charges for the Commercial Units, each of which shall be the sole responsibility of the Owner of said Commercial Unit. (The maintenance assessment fee shall include charges for electricity, telephone, cable T.V., sewer, water and other utilities for each Residential Unit, which assessment shall be allocated as provided herein.

Grantor anticipates, pursuant to the Act, that ad valorem taxes and other governmental assessments, if any, upon the Property will be assessed by the taxing authority upon the Unit Owners, and that each assessment will include the assessed value of the Condominium Unit and of the undivided interest of the Unit Owner in the General Common Elements and the Limited Common Elements. Any such taxes and governmental assessments upon the Property which are not so assessed shall be included in the Association's budget as a recurring expense and shall be paid by the Association as a Common Expense. Each Unit Owner is responsible for making his own return of taxes and such return shall include such Owner's undivided interest in the General Common Elements and Limited Common Elements as such undivided interest is determined by law for purpose of returning taxes. If no provision is made by law or the

taxing authorities for the determination of an Owner's share of the undivided interest in the General Common Elements and Limited Common Elements, each Owner shall return that percentage of the undivided interest in the General Common Elements and Limited Common Elements attributable to his Unit under Exhibit "C".

*Hayward
see premium*

Section 5. Special Assessments. In addition to the annual Assessments, the Association may levy in any calendar year, special Assessments for the purpose of supplementing the annual Assessments if the same are inadequate to pay the Common Expenses and of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of the Limited Common Elements, or General Common Elements, including the necessary fixtures and personal property related thereto; provided, however, that any such special Assessments subsequent to the first annual meeting of the members as provided in the By-Laws shall have the assent of a majority of the votes represented, in person or by proxy, at a meeting, at which a quorum is present, duly called for the express purpose of approving such expenditure, written notice of which shall be sent to all Owners not less than ten (10) days nor more than sixty (60) days in advance of the meeting, which notice shall set forth the purpose of the meeting. Special Assessments shall be fixed against the Units according to their Percentage Interests; the period of the Assessment and manner of payment shall be determined by the Board.

Section 6. Working Capital Fund. The Association shall establish a working capital fund for the initial months of the project's operation, which fund shall be equal to at least two-month's Assessment for each Unit. Each Unit's share of the capital reserve fund must be collected and transferred to the Association at the time of closing of the sale of each Unit. The monies paid hereunder shall not be considered advance payment of regular Assessment. If no annual Assessment has been established, then the Association shall estimate the regular Assessment installment for the purposes of calculating a two-month's Assessment requirement for this Section.

Section 7. Reserve Funds. The Association may establish reserve funds from its annual Assessments to be held in reserve in an interest drawing account or in obligations backed by the United States, the State of South Carolina, or any agency of either; or in triple-A

debt, or in prime commercial paper with a maturity of not more than nine (9) months, as a reserve for

- (a) Major rehabilitation or major repairs.
- (b) Emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss.
- (c) Reoccurring periodic maintenance.
- (d) Initial cost of any new service to be performed by the Association.

Section 8. Date of Commencement of Annual Assessments; Due Dates. Although the annual Assessment is calculated on the calendar year basis, each Owner of a Condominium Unit shall be obligated to pay to the Treasurer or his authorized agent of the Association such Assessment in equal monthly installments on or before the first day of each month during such calendar year, or in such other reasonable manner as the Board of Directors shall designate.

The annual Assessments provided for in this Article III shall as to each Condominium Unit commence upon the conveyance thereof (the "commencement date"). The first monthly payment for the annual Assessment for each Unit shall be an amount (rounding to the nearest whole dollar) equal to the monthly payment for the fiscal year in progress on such commencement date, divided by the number of days in the month of conveyance, and multiplied by the number of days then remaining in such month.

The Association shall, upon demand at any time, furnish to any Condominium Owner liable for any such Assessment a certificate in writing signed by an officer or a designated agent of the Association, setting forth whether the same has been paid. A reasonable charge, as determined by the Board, may be made for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments; The Personal Obligation of the Owner; the Lien; Remedies of Grantor. If an Assessment is not paid on the date when due, as hereinabove provided, then such Assessment, together with such interest thereon and any cost of collection thereof as hereafter provided, shall be a charge and continuing lien on the Unit to which it relates and shall bind such

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fee
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property in the hands of the Condominium Owner, his heirs, legal representatives, successors and assigns. The personal obligation of the then Condominium Owner to pay such Assessment, however, shall remain his personal obligation and if his successor in title assumes his personal obligation, such prior Condominium Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer; and such prior Condominium Owner and his successor in title who assumes such liabilities shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Condominium Owner and his successor in title creating the relationship of principal and surety as between themselves other than one by virtue of which such prior Condominium Owner and his successor in title would be jointly and severally liable to pay such amounts. Upon the sale or conveyance of a Unit, all unpaid Assessments against an Owner shall first be paid out of the sale price or by the purchaser in preference over any other Assessments except Assessments, liens and charges for taxes past due and payments due under mortgage instruments or encumbrances duly recorded.

Any such Assessment not paid by the 10th of the month within which such Assessment is due shall bear interest from such date (the "delinquency date") at the maximum legal rate allowable under South Carolina law. The Association may bring legal action against the Condominium Owner personally obligated to pay the same or foreclose its lien against the Condominium Unit to which it relates or pursue either such course at the same time or successively. In any such event, the Association shall also be entitled to recover reasonable attorney's fees actually incurred and all other costs of collection. Each Condominium Owner, by his acceptance of a deed or other conveyance to a Condominium Unit, vests in the Association or its agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity. The Association shall have the power to bid in the Unit at any foreclosure sale and to hold, lease, mortgage and convey the same. No Condominium Owner may be relieved from the Assessments provided for herein by the abandonment of his Condominium Unit or otherwise.

Section 10. Subordination of the Charges and Liens to Mortgages.

(a) The lien and permanent charge for the annual and Special Assessments (together with interest thereon and any cost of collection) authorized herein with respect to any Unit is hereby made subordinate to the lien of any mortgage or his assigns placed on such Condominium Unit if, but only if, all such Assessments with respect to such Unit having a due date on or prior to the date such mortgage is filed for record have been paid. The lien and permanent charge hereby subordinated are only such lien and charge as relate to Assessments authorized hereunder having a due date subsequent to the date such mortgage is filed for a record and prior to the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure.

(b) Such subordination is merely a subordination and shall not relieve the Condominium Owner of the mortgaged property of his personal obligation to pay all Assessments coming due at a time when he is the Condominium Owner; shall not relieve such property from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished as a result of such subordination or against a mortgagee or such mortgagees, assignee, or transferee by foreclosure or by sale or transfer in any proceeding in lieu of foreclosure); and no sale or transfer of such property to the mortgagee or to any other person pursuant to a foreclosure sale, or pursuant to any other proceeding in lieu of foreclosure, shall relieve any existing or previous Condominium Owner of such property of any personal obligation, or relieve subsequent Condominium Owners from liability for any Assessment coming due after such sale or transfer.

(c) Notwithstanding the foregoing, the Association may, in writing, at any time, whether before or after any mortgage or mortgages are placed on such Property, waive, relinquish or quit-claim in whole or in part the right of the Association to Assessments provided for hereunder with respect to such Property coming due during the period while such Property is or may be held by mortgagee or mortgagees pursuant to said sale or transfer.

Section 11. Exempt Property. Each Condominium Unit shall be exempt from the Assessments created herein until a certificate of occupancy has been issued by the architect or structural engineer responsible for the regime. Except as expressly provided herein, no Unit and its appurtenant Percentage Interest shall be exempt from said Assessments. The following Property, individuals, partnerships, or corporations subject to this declaration shall be exempted from the Assessments, charges and lien created herein:

(a) The grantees in conveyances made for the purpose of granting utility and drainage easements;

(b) All General Common Elements and Limited Common Elements as defined in Article I hereof;

(c) Property which is used in the maintenance and service of facilities within common elements, or by non-profit, governmental or charitable institutions.

Notwithstanding the above, there will be no maintenance assessments on Units which have not been transferred by the Grantor to a purchaser, but in lieu thereof, the Grantor shall make up any deficiencies in the operating budget until such time as Seventy-Five (75%) percent of the Units have been conveyed by the Grantor to Purchasers.

ARTICLE IV

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Board of Directors of the Association or its authorized agent shall obtain insurance for all of the improvements on the Property (excepting the personal property of the Condominium Owners, their guests and lessees and all improvements and betterments made by such Owners at their expense) against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full cost of any repair, reconstruction or replacement in the event of damage or destruction from any such hazard, and shall also obtain a public liability policy covering the General Common Elements, Limited Common Elements and all damage or injury caused by the negligence of the Association or any of its agents, which public liability policy shall have reasonable limits set by the Board of Directors. Premiums for all such insurance shall be Common Expenses and paid for by the Association.

All such insurance coverage obtained by the Board of Directors, which liability policy shall have a minimum of one million dollars combined, single limit, shall be written in the name of the Association for the Owners of the Units in same percentage as the Percentage Interest appurtenant to their Units. Such insurance policies shall comply with the provisions hereinafter set forth.

(a) All policies shall be written with a company approved to sell insurance in the State of South Carolina and holding a rating of "A" or better by Best's Insurance Reports.

(b) All policies shall be for the benefit of the Unit Owners and their mortgagees as their interests may appear.

(c) Provisions shall be made for the issuance of a certificate of insurance to each Owner and his mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular Owner's Unit.

(d) The original of all policies and endorsements thereto shall be deposited with the Trustees which shall hold them subject to the provisions of Section 3 of this Article IV.

(e) Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in the Board of Directors or its duly authorized agent; provided, however, that no mortgagees having an interest in such losses may be prohibited from participating in the settlement negotiations related thereto.

(f) In no event shall any recovery or payment under the insurance coverage obtained and maintained by the Board of Directors hereunder be affected or diminished by insurance purchased by individual Owners or their mortgagees.

(g) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, on behalf of all of the Owners and their mortgagees, may realize under any insurance policy which the Board of Directors may have in force on the Property at any particular time.

(h) Any Owner who obtains an individual insurance policy covering any portion of the Property, other than on personal property

belonging to such Owner and on improvements and betterments made by such an Owner at his expense, shall file a copy of such policy with the Board of Directors within thirty (30) days after purchase of such insurance.

(i) Each Owner at his own expense may obtain on his Unit, or the contents thereof, title insurance, homeowner's liability insurance, theft and other insurance covering improvements, betterments and personal property damage and loss.

(j) The Board of Directors or its duly authorized agent shall conduct an annual insurance review for the purposes of determining the full insurable value of the entire Property including all Buildings and Units, the Limited Common Elements and the General Common Elements, without respect to depreciation, of all improvements on the Property (with the exception of improvements and betterments made by the respective Owners at their expense) by one or more qualified persons.

(k) The Board of Directors or its duly authorized agent shall make reasonable efforts to secure insurance policies that will provide for the following: (1) a waiver of subrogation by the insurer as to any claims against the Board of Directors, its duly authorized agents and the Owners and their respective servants, agents and guests; (2) a waiver of insurer's right to repair or reconstruct instead of paying cash; (3) a waiver of insurer's right to cancel, invalidate or suspend the policy on account of the acts of fewer than five Owners or the conduct of any director, officer or employee of the Association or its duly authorized agent without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its agent, any Owner or mortgagee; and (4) that any "other insurance" clause in the master policy or policies exclude individual owners' policies from consideration.

Section 2. No Partition. There shall be no judicial partition of the Property or any part thereof, and Grantor and every person acquiring any interest in the Property or any part thereof shall acquire the same subject to this Master Deed and shall be deemed to have waived any right to seek any such judicial partition until the happening of the conditions set forth in Section 4 of this Article IV in the case

of damage or destruction or until the Property has been removed from the provisions of the Act as provided for in this Master Deed.

Section 3. Trustee.

(a) All insurance policies purchased by and in the name of the Board of Directors shall provide that proceeds covering Property losses shall be paid jointly to the Association and Trustee. Immediately upon the receipt by the Association of such proceeds, the Association shall endorse the instrument by means of which such proceeds are paid and deliver such instrument to the Trustee. The Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds. Nor shall the Trustee have any obligation to inspect the Property to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.

(b) Among other things, the duty of the Trustee shall be to receive proceeds delivered to it and to hold such proceeds in trust for the benefit of the Owners and their mortgagees. An undivided share of such proceeds on account of damage or destruction to the General Common Elements and Limited Common Elements shall be allocated and assigned for the Owners in accordance with the Percentage Interest appurtenant to their Units. Proceeds on account of damage or destruction to Units shall be allocated and assigned for the Owners of the damaged or destroyed Units in proportion to the cost of repairing or reconstructing the damage or destruction suffered by each such Owner. In the event that a mortgage endorsement has been issued as to any particular Unit, the share of such Unit Owner shall be held in trust for such Owner and his mortgagee as their interests may appear.

(c) The net proceeds received by or due to the Board of Directors from any indemnity paid under a policy of hazard insurance obtained on the Property by the Board of Directors shall promptly be paid by the Board of Directors or the appropriate insurer to an Insurance Trustee as trustee for the Co-Owners as hereinafter provided. The Insurance Trustee shall be a state or federally chartered bank selected by the Board of Directors and having trust powers and capital and surplus of Five Million and No/100 (\$5,000,000.00) Dollars or more. The Insurance Trustee shall hold the insurance proceeds in

trust and disburse said proceeds, after deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

- (i) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such proceeds thereof as may be required for such purpose, shall be disbursed in payment for such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs shall be paid into the Trust Fund for the benefit of all Owners.
- (ii) If it is determined, as provided in Section 4 of this Article IV, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed to such persons as therein provided.
- (iii) Any and all disbursements of funds by the Trustee for any purpose whatsoever shall be made pursuant to and in accordance with a certificate of the Association signed by the President or Vice President and attested by the Secretary or Assistant Secretary directing the Trustee to make the disbursements.

If the damage or destruction is to the General Common Elements and/or to the Limited Common Elements, and is to be repaired or reconstructed, said certificate shall also be signed by or on behalf of the mortgagee known by the Trustee to have the largest interest in or lien upon such General Common Elements and/or Limited Common Elements. If the damage or destruction is to one or more Units and is to be repaired or reconstructed, said certificate shall also be signed by or on behalf of the mortgagee or mortgagees, in any, known by the Trustee to have an interest in or lien upon such Unit or Units. The Trustee shall not incur liability to any Owner, mortgagee or other person for any disbursements made by it pursuant to and in accordance with any such certificates or written authorizations.

Section 4. Damage and Destruction.

- (a) Immediately after all or any part of the Property covered by insurance written in the name of the Board of Directors is damaged or destroyed by fire or other casualty, the Board of Directors or its duly

authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty with each Unit, the General Common Elements and the Limited Common Elements having the same vertical and horizontal boundaries as before.

(b) Any such damage or destruction to a Condominium Unit which does not render such Unit untenable shall be repaired unless all the Owners unanimously agree in writing not to repair, reconstruct or rebuild the Property in accordance with provisions of the Act. Any such damage or destruction which renders the Condominium Units in a building untenable or uninhabitable, or any such damage or destruction to the General Common Elements and Limited Common Elements, shall be repaired and reconstructed unless the damage or destruction is to the whole or more than two-thirds (2/3) of the Units and their General Common Elements and Limited Common Elements and at least seventy-five percent (75%) of the total vote of the Association, evidenced by a written agreement, within sixty (60) days after the casualty vote not to repair or reconstruct. If, for any reason, the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable or detailed estimates of the cost of repair or reconstruction are not made available to the Association within said period of sixty (60) days after the casualty, then such period shall be extended until such information shall be made available to the Association; provided, however, that said extension of time shall not exceed ninety (90) days. No mortgagee shall have any right to participate in the determination as to whether the damage or destruction shall be repaired or reconstructed.

(c) In the event that it is determined by the Association in the manner prescribed above that the damage or destruction shall not be repaired or reconstructed, then and in that event (i) the Property shall be deemed to be owned by the Unit Owners as tenants in common; (ii) the undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the percentage of Percentage Interest

appurtenant to each Unit, (iii) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of Percentage Interest of the Unit Owner, and (iv) the Property shall be subject to an action for partition at the instance of any Unit Owner, in which event the net proceeds of sale shall be paid to the Trustee. Said net proceeds of sale, together with the net proceeds of the insurance on the Property, shall be divided among all of the Unit Owners in a percentage equal to the Percentage Interest appurtenant to their Units, after first paying out of the respective share of the Unit Owners, to the extent sufficient for such purpose, all liens on the undivided interest in the Property owned by each Unit Owner. Disbursements to such Owners shall be made pursuant to certificates provided for in Section 3 of this Article IV.

Section 5. Repair and Reconstruction.

(a) If the damage or destruction for which the insurance proceeds are paid to the Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall levy a special Assessment against the Owners of damaged or affected Units in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Additional Assessments may be made at any time during or following the completion of any repair or reconstruction. That portion of such Assessments levied against each such Unit Owner shall be equal to that percentage computed by dividing the Percentage Interest appurtenant to all Units affected.

(b) Any and all sums paid to the Association under and by virtue of those special Assessments provided for in paragraph (a) of this Section shall be deposited by the Association with the Trustee. Such proceeds from insurance and Assessments, if any, received by the Trustee shall be disbursed as provided in Section 3 of this Article IV.

ARTICLE V

CONDEMNATION

Section 1. General. Whenever all or any part of the Property shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the

Trustee. Unless otherwise required by law at the time of such taking, any award made therefor shall be disbursed by the Trustee, as herein-after provided in Section 2 of this Article V.

Section 2. General Common Elements. If the taking is confined to the General Common Elements on which improvements, excluding Units, shall have been constructed and if at least seventy-five percent (75%) of the total vote of the Association shall decide within sixty (60) days after such taking to replace said improvements, or any part thereof, on the remaining land included in the General Common Elements and according to plans therefor to be approved by the Association, then the Board of Directors shall arrange for such replacement and the Trustee shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the Property is to be repaired or reconstructed as provided for in this Article V hereof; subject, however, to the right hereby reserved to the Association which may be exercised by a majority of the total vote thereof to provide for the disbursement by the Trustee of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Owners or any one or more of them in amounts disproportionate to the Percentage Interest appurtenant to their Units established herein, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Owners or any one or more of them as the Association may determine. If at least seventy-five percent (75%) of the total vote of the Association shall not decide within sixty (60) days after such taking to replace such improvements or if the taking is confined to the General Common Elements on which no improvements shall have been constructed, then the Association or the Trustee, as the case may be, shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements taken, including the right reserved to the Association to provide for the disbursement by the Trustee of the remaining proceeds held by it to the Owners in disproportionate amounts.

Section 3. Units and Limited Common Elements. If the taking includes one or more Units, any part or parts thereof or the Limited

Common Elements, or parts thereof, to which a Unit has exclusive use or use exclusive with other Unit Owners in a particular building, then the award shall be disbursed and all related matters including, without limitation, alteration of the Percentage Interest appurtenant to each Unit, shall be handled pursuant to and in accordance with the consent of all Owners expressed in a duly recorded amendment to this Master Deed. In the event that such an amendment shall not be recorded within ninety (90) days after such taking, then such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided for in Section 4 of Article IV herein, whereupon the development will be terminated in the manner therein prescribed.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. Approval Required for Changes. To preserve the original architectural appearance of the R.C.R. Horizontal Property Regime, after the purchase of a Condominium Unit from Grantor, its successors or assigns, no exterior construction of any nature whatsoever, except as specified in the Condominium Documents, shall be commenced or maintained upon any building including, without limitation, the Limited Common Elements nor shall there be any change, modification or alteration of any nature whatsoever of the design and appearance of any of the exterior surfaces or facades, nor shall any Owner paint, decorate or change the color of any exterior surface, gate, fence or roof, nor shall any Owner change the design or color of the exterior lights, nor shall any Owner install, erect or attach to any part of the exterior any sign of any kind whatsoever, nor shall any exterior addition or change including, without limiting the generality of the foregoing, the erection or construction of any fence or wall, be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of exterior design, color and location in relation to the surrounding structures by the Board of Directors of the Association or by an architectural committee composed of three or more representatives appointed by the Board. Failure of the Board, or its designated committee, to approve or

disapprove such plans and specifications within sixty (60) days after their being submitted to it shall constitute approval.

ARTICLE VII

EXTERIOR MAINTENANCE

Section 1. Responsibility of Association. Except as specifically provided to the contrary herein, the Association shall maintain, repair and replace, at its expense, all parts of the General Common Elements and Limited Common Elements whether located inside or outside of a Condominium Unit, the cost of which shall be charged to the Unit Owners as a Common Expense subject to the provisions of Section 2 of this Article VII. The Association shall have the irrevocable right, to be exercised by the Board of Directors, or its agents, to have access to each Condominium Unit from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of any of the General Common Elements and/or Limited Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the General Common Elements, Limited Common Elements, or to other Units.

Section 2. Responsibility of Owner. In the event that the Board of Directors should determine that the need for maintenance or repairs by the Association as provided for in Section 1 of this Article VII is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of which is not covered or paid for by insurance, then the cost, both direct and indirect, of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and his Unit is subject. Each Owner shall maintain, repair or replace, at his own expense, all portions of his Unit which may become in need thereof, including the heating and air conditioning system for such Unit, all bathroom and kitchen fixtures and appliances, light fixtures, interior non-loadbearing walls, carpeting, drapes and other items within the Unit. Further, each Owner shall, at his own expense, keep the Limited Common Elements to which his Unit has exclusive access and to which he has exclusive use clean and neat. Where Units in buildings which have an entry, stairs, and other Limited Common Elements exclusive to the Unit Owners in the building, the Unit Owners in the building shall, at their expense, keep these areas clean and

ment. If the Owner does not make those repairs to be made by him within ten (10) days from written demand from the Association, the same may be repaired by the Association and the cost thereof shall be assessed against the Unit owned by such Owner.

ARTICLE VIII

RESTRICTIONS

Section 1. Residential Purposes. Buildings and all Units contemplated in the property shall be, and the same hereby are, restricted exclusively to residential or commercial use. No structures of a temporary character, trailer, basement, tent, shack, carport, garage, barn or other outbuilding shall be used as a residence on any portion of the Property at any time.

Section 2. Construction and Sale. Anything contained herein to the contrary notwithstanding, it shall be permissible for Grantor to maintain, during the period of construction and sale of said Units, upon such portion of the Property as the Grantor may deem necessary, such facilities as in the sole option of the Grantor may be reasonably required, convenient or incidental to the construction and sale of said Units including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 3. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the Property, except that dogs, cats or other household pets may be kept by the respective Owners in their respective Units, provided that they are not kept, bred or maintained for any commercial purpose and do not endanger the health or, in the sole discretion of the Board of Directors, unreasonably disturb the Owner of any Unit or resident thereof. No pets shall be allowed in the Common areas except for ingress and egress. All pets are excluded from lawns, pools, and parking areas.

Section 4. Signs and Business Activities. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property, nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or any resident thereof. No business activities of any kind whatsoever shall be conducted in any building or in any portion of the Property; provided, however, the

foregoing covenants shall not apply to the business activities of the Commercial Units on the property, but such for the Commercial Units they will be subject to regulation by the Board of Governors. Furthermore, Grantor shall be permitted to maintain models and sales persons on the premises, and signs designating the entrances and exits to the property and premises are permitted.

Section 5. Clotheslines. No outside clothesline shall be permitted, and all garbage cans and similar items shall be kept screened so as to conceal them from view of neighboring Units.

Section 6. Exterior Antennas. No exterior television or radio antennas shall be placed on any improvements without prior written approval of the Board of Directors.

Section 7. Leasing of Units. Units may be rented provided the occupancy is only by the Lessee and his immediate family or guests, unless otherwise provided by the Association's Board of Directors. No less than all of a Unit may be rented.

Section 8. Deadbolts. Unit owners may install deadbolts, but said deadbolts must be able to be opened with a master key for the purpose of allowing the manager of the building to have emergency access to such unit.

ARTICLE IX

EASEMENTS

Section 1. Encroachments. If any portion of the General Common Elements and/or the Limited Common Elements encroaches upon any Unit or any Unit encroaches upon any other Unit or upon any portion of the General Common Elements and/or the Limited Common Elements as a result of settling or shifting of a building, or by reason of any deviation from the plat or plans in the construction or rebuilding of any improvement or portion thereof, an easement for the encroachment and for the maintenance of the same so long as the Unit, improvement or building stands, shall exist. If any building, improvement, any Unit, any adjoining Unit, or any adjoining part of the General Common Elements and/or Limited Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of eminent domain proceedings, and then rebuilt, encroachments of parts of the General Common Elements and/or Limited Common Elements upon any Unit or of any

Unit upon any other Unit or upon any portion of the General Common Elements and/or the Limited Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the subject building shall stand.

Section 2. Utilities, Etc. There is hereby granted an easement subject to the regulations and requirements of the Board of Directors of Association upon, across, over and under all of the Property for ingress, egress, installations, replacing, repairing, and maintaining a master television antenna system and all utilities including, but not limited to, water, gas, sewers, telephones and electricity. Such easements grant to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain utility wires, circuits, and conduits on, above, across and under the roofs and exterior walls of the Units.

Section 3. Other. There is hereby granted to the Association, its directors, officers, agents and employees and to any Manager employed by the Association as provided for in Section 2 of Article III hereof, and to all policemen, firemen, ambulance personnel and all similar emergency personnel an easement to enter upon the Property or any part thereof in the proper performance of their respective duties. Except in the event of emergencies, the rights under Section 3 of this Article IX shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to the Owner or Owners affected thereby.

ARTICLE X

ASSIGNED VALUE AND UNIT VOTE

Section 1. Unit and Property Values. The Master Plan contained in Exhibit "C" attached hereto shows the value of each Unit as of the date this Declaration is recorded and the percentage of undivided interest in the General Common Elements and Limited Common Elements appurtenant to such Unit for all purposes. The value of the Property is equal to the total value of all Units together with the value of the Percentage Interest in the General Common Elements and Limited Common Elements appurtenant to such Units, all as shown in Exhibit "C".

Section 2. Unit Votes. Each Unit shall be entitled to a vote in the Association and for all other purposes herein equivalent to the Percentage Interest appurtenant to such Unit and such vote shall be exercisable by the Owner or Owners of such Unit through the member assigned to represent such Unit pursuant to Section 7 of Article IV¹ of the By-Laws.

ARTICLE XI

NOTICES TO LENDERS

Section 1. Notice to Lender. Upon written request to the Association by a lender, identifying the name and address of the mortgagor, insurer, or guarantor and the Unit number or address, any mortgages, mortgagor, insurer, or guarantor will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its Mortgage;
- (b) Any 60-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit securing its Mortgage;
- (c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action that requires the consent of a specified percentage of mortgagors.

Section 2. Notice Shall Be by Mail. The written notice set forth in Section 1 of this Article shall be by regular service of the U. S. Postal Service and deposit by the Association of said information with the U. S. Postal Service shall comply with the requirements of Section 1 of this Article.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Amendment. Amendments to this Master Deed, except as herein expressly provided to the contrary, shall be proposed by the Board of Directors or by any member of the Association in accordance with the following procedure.

- (a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered.

(b) Adoption. Subject to the provisions of Section 1 of Article II hereof, The Master Deed may be amended at any time and from time to time, after notice as hereinabove provided has been given by a vote of not less than seventy-five percent (75%) of the total vote of the Association; provided, however, that if the Association shall vote to amend the By-Laws in any respect, such amendment shall be set forth in an amendment to this Master Deed and shall be valid when approved by a vote of not less than seventy-five percent (75%) of the total vote of the Association. The Grantor reserves the right to amend this Master Deed to make correction thereto or typographical changes.

(c) Recording. A copy of each amendment provided for in this Section 1 shall be certified by the Board of Directors of the Association as having been duly adopted and shall be effective when recorded.

Section 2. Termination. The Condominium may be terminated and the Property removed from the provisions of the Act in the following manner:

(a) Agreement. All of the Unit Owners may remove the Property from the provisions of the Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the Units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred so as to affect and be a lien upon only the Percentage Interest appurtenant to the Unit subject to such lien.

(b) Destruction. In the event it is determined in the manner provided in Section 4 of Article IV hereof, that the Property shall not be repaired or reconstructed after casualty, the Condominium will be terminated and the Condominium Documents revoked. The determination not to repair or reconstruct after casualty shall be evidenced by a certificate of the Association, certifying as to facts effecting the termination, which certificate shall become effective upon being recorded.

(c) Condemnation. In the event that one or more Units, any part or parts thereof, or the Limited Common Elements, or parts thereof, to which a Unit has exclusive use shall be taken by any authority having the power of eminent domain and the consent of all Owners as provided for in Section 3 of Article IV hereof, shall not be expressed in an

amendment to this declaration duly recorded within ninety (90) days after such taking, the Condominium will be terminated and the Condominium Documents revoked. Such taking shall be evidenced by a certificate of the Association certifying as to the facts affecting the termination, which certificate shall become effective upon being recorded.

(d) Ownership After Termination. After termination of the Condominium, the rights of the Unit Owners and their respective mortgagees and lienholders shall be determined in the manner provided in Article III herein.

Section 3. Covenants Running with the Land. All provisions of this Master Deed shall be construed to be covenants running with the land, and with every part thereof and interest therein including, but not limited to, every Unit and the appurtenances thereto; and each and every provision of the Master Deed shall bind and inure to the benefit of all Unit Owners and claimants of the land or any part thereof or interest therein, and their heirs, executors, administrators, successors and assigns.

Section 4. Duration. So long as South Carolina law limits the period during which covenants restricting lands to certain use may run, it shall be the duty of the Board of Directors to cause the restrictive covenants contained herein, as amended from time to time, to be extended when necessary by filing a document bearing the signatures of a majority of the then Owners reaffirming and newly adopting the Master Deed and covenants then existing in order that the same may continue to be covenants running with the land. Such adoption by a majority shall be binding on all, and each Owner of any Unit, by acceptance of a deed therefor, is deemed to agree that the Master Deed and covenants may be extended as provided in this Section 4.

Section 5. By-Laws. A true copy of the By-Laws of the Association, which together with this Master Deed shall govern the administration of the Condominium, is attached hereto as Exhibit "g" and, by reference, made a part hereof.

Section 6. Insurance and Fidelity Bonds. The Association shall maintain casualty and liability insurance and fidelity bonds as

required by FHMA Lending Guide, Chapter Three, Part 5, Insurance Requirements, as amended.

Section 7. Enforcement. Each Owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Master Deed or in the deed to his Unit. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both maintainable by the Board of Directors on behalf of the Association or by an aggrieved Owner. Failure by the Association or any other Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Section 8. Severability. Invalidation of any covenant, condition, restriction or other provision of this Master Deed or the By-Laws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 9. Perpetuities and Restraints on Alienation. If any of the covenants, conditions, restrictions or other provisions of this Master Deed shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Ronald Reagan, President of the United States.

Section 10. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

IN WITNESS WHEREOF, Declarant has executed this Master Deed this the 12th day of June, 1984.

In the Presence of:

ROYAL GARDEN RESORT, INC.

Donna R. Nichols

By: Whitwell M. Howell
Its President

Donna R. Nichols

Attest: William B. [Signature]
Its Secretary

STATE OF SOUTH CAROLINA

COUNTY OF Horry

PROBATE

PERSONALLY appeared before me L. W. Brown Jr. and
made oath that (s)he saw the within named ROYAL GARDEN RESORT, INC., by
its duly authorized officers, sign, seal and, as its act and deed,
deliver the within written Master Deed, and that (s)he with
Annette R. Michaux witnessed the due execution thereof.

SWORN to and subscribed before me this
12th day of June, 1984.

Annette R. Michaux
Notary Public for South Carolina
My Commission Expires: 9/18/93

EXHIBIT "A"

ALL AND SINGULAR those certain pieces, parcels or lots of land situate, lying and being in Socastee Township, County of Horry, State of South Carolina, being more particularly described as Lots 1, 2, 3, and 4 of Block 1 of the Myrtle Dunes Section of Garden City, Horry County, South Carolina, as shown on a map recorded September 30, 1949, in Deed Book 9 at page 70, office of the Clerk of Court for Horry County, South Carolina, reference to which is craved as forming a part and parcel hereof.

Lots 1, 2, and 3 of Block 1 were conveyed to Royal Garden Resort, Inc. by J. S. Frazier, Inc., by deed dated July 1, 1982, and recorded July 1, 1982, in Deed Book 753 at page 49, office of the Clerk of Court for Horry County, South Carolina.

Lot 4 of Block 1 was conveyed to Royal Garden Resort, Inc. by J. S. Frazier, Inc., by deed dated and recorded July 1, 1982, in Deed Book 753 at page 46, office of the Clerk of Court for Horry County, South Carolina.

EXHIBIT "B"

Apartment Description and Numbers

Exhibit "B" incorporates into the Master Deed a boundary survey, an as-built survey, and site plan, showing the location of the buildings and other improvements, and a set of floor plans of the buildings which show graphically the dimensions, area, and location of the Common Elements appurtenant to and affording access to each Unit.

The aforementioned survey and plans (hereinafter collectively called "the Regime Plans") were prepared by L. J. Alex Hester and Kenneth R. Sanders, respectively, and are recorded in the Office of the Clerk of Court for Horry County in Condominium Plat Book 4, Page 11, and are hereby incorporated herein and made a part hereof by reference.

The Regime Plans and the as-built survey show that the Two Hundred Nine (209) Units in the Regime are contained in one building. The Regime Plans, filed in the Office of the Clerk of Court for Horry County, South Carolina in Condominium Plat Book 4, Page 11, show, in detail, the individual units, together with their specifications and dimensions, and also show the location of the swimming pool and related facilities.

All kitchen and other electrical appliances, air-conditioning wherever installed, and heating units and hot water heaters and similar items located within each Unit are neither General Common Elements nor Limited Common Elements, but are the personal property of the owner of each unit.

Included in the General Common Elements are parking areas, walkways, a pool, sundeck surrounding the pool, and landscaping. Specific designations of General Common Elements contained herein are for clarification only and are to be read in conjunction with the definitions of such elements contained elsewhere in the Master Deed and also in conjunction with the Regime Plans. Those honeycombes on the ground floor designated as such are General Common Elements.

Included in the Limited Common Elements are decks and porches of individual units, interior stairways. The service rooms on each floor are Limited Common Elements, and those honeycombes on the ground floor designated as such are Limited Common Elements.

EXHIBIT "C"

Schedule of Percentage of Undivided Interest in the General Common
Elements appurtenant to Units in Royal Garden Resort Horizontal Property,
Regime, pursuant to Section 27-31-60, South Carolina Code of Laws, 1976,
as amended:

<u>Unit Number</u>	<u>Value for Statutory Purposes</u>	<u>Percentage of Undivided Interest in General Common Elements</u>
101	\$130,000.00	.6163
102	93,000.00	.4409
103	93,000.00	.4409
104	93,000.00	.4409
105	93,000.00	.4409
106	93,000.00	.4409
107	93,000.00	.4409
108	93,000.00	.4409
109	93,000.00	.4409
110	93,000.00	.4409
111	93,000.00	.4409
112	93,000.00	.4409
114	93,000.00	.4409
115	120,000.00	.5689
201	\$130,000.00	.6163
202	93,000.00	.4409
203	93,000.00	.4409
204	93,000.00	.4409
205	93,000.00	.4409
206	93,000.00	.4409
207	93,000.00	.4409
208	93,000.00	.4409
209	93,000.00	.4409
210	93,000.00	.4409
211	93,000.00	.4409
212	93,000.00	.4409
214	93,000.00	.4409
215	120,000.00	.5689
301	\$130,000.00	.6163
302	93,000.00	.4409
303	93,000.00	.4409
304	93,000.00	.4409
305	93,000.00	.4409
306	93,000.00	.4409

307	93,000.00	.4409
308	93,000.00	.4409
309	93,000.00	.4409
310	93,000.00	.4409
311	93,000.00	.4409
312	93,000.00	.4409
314	93,000.00	.4409
315	120,000.00	.5689
401	\$130,000.00	.6163
402	93,000.00	.4409
403	93,000.00	.4409
404	93,000.00	.4409
405	93,000.00	.4409
406	93,000.00	.4409
407	93,000.00	.4409
408	93,000.00	.4409
409	93,000.00	.4409
410	93,000.00	.4409
411	93,000.00	.4409
412	93,000.00	.4409
414	93,000.00	.4409
415	120,000.00	.5689
501	\$130,000.00	.6163
502	93,000.00	.4409
503	93,000.00	.4409
504	93,000.00	.4409
505	93,000.00	.4409
506	93,000.00	.4409
507	93,000.00	.4409
508	93,000.00	.4409
509	93,000.00	.4409
510	93,000.00	.4409
511	93,000.00	.4409
512	93,000.00	.4409
514	93,000.00	.4409
515	120,000.00	.5689
601	\$130,000.00	.6163
602	93,000.00	.4409
603	93,000.00	.4409
604	93,000.00	.4409
605	93,000.00	.4409
606	93,000.00	.4409
607	93,000.00	.4409
603	93,000.00	.4409

609	93,000.00	
610	93,000.00	.4409
611	93,000.00	.4409
612	93,000.00	.4409
614	93,000.00	.4409
615	120,000.00	.4409
		.5689
701	\$130,000.00	
702	93,000.00	.6163
703	93,000.00	.4409
704	93,000.00	.4409
705	93,000.00	.4409
706	93,000.00	.4409
707	93,000.00	.4409
708	93,000.00	.4409
709	93,000.00	.4409
710	93,000.00	.4409
711	93,000.00	.4409
712	93,000.00	.4409
714	93,000.00	.4409
715	120,000.00	.4409
		.5689
801	\$130,000.00	
802	93,000.00	.6163
803	93,000.00	.4409
804	93,000.00	.4409
805	93,000.00	.4409
806	93,000.00	.4409
807	93,000.00	.4409
808	93,000.00	.4409
809	93,000.00	.4409
810	93,000.00	.4409
811	93,000.00	.4409
812	93,000.00	.4409
814	93,000.00	.4409
815	120,000.00	.4409
		.5689
901	\$130,000.00	
902	93,000.00	.6163
903	93,000.00	.4409
904	93,000.00	.4409
905	93,000.00	.4409
906	93,000.00	.4409
907	93,000.00	.4409
908	93,000.00	.4409
909	93,000.00	.4409
910	93,000.00	.4409

911	93,000.00	.4409
912	93,000.00	.4409
914	93,000.00	.4409
915	120,000.00	.5689
1001	\$130,000.00	.6163
1002	93,000.00	.4409
1003	93,000.00	.4409
1004	93,000.00	.4409
1005	93,000.00	.4409
1006	93,000.00	.4409
1007	93,000.00	.4409
1008	93,000.00	.4409
1009	93,000.00	.4409
1010	93,000.00	.4409
1011	93,000.00	.4409
1012	93,000.00	.4409
1014	93,000.00	.4409
1015	120,000.00	.5689
1101	\$130,000.00	.6163
1102	93,000.00	.4409
1103	93,000.00	.4409
1104	93,000.00	.4409
1105	93,000.00	.4409
1106	93,000.00	.4409
1107	93,000.00	.4409
1108	93,000.00	.4409
1109	93,000.00	.4409
1110	93,000.00	.4409
1111	93,000.00	.4409
1112	93,000.00	.4409
1114	93,000.00	.4409
1115	120,000.00	.5689
1201	\$130,000.00	.6163
1202	93,000.00	.4409
1203	93,000.00	.4409
1204	93,000.00	.4409
1205	93,000.00	.4409
1206	93,000.00	.4409
1207	93,000.00	.4409
1208	93,000.00	.4409
1209	93,000.00	.4409
1210	93,000.00	.4409
1211	93,000.00	.4409
1212	93,000.00	.4409
1214	93,000.00	.4409

1215	120,000.00	.5689
1401	\$130,000.00	.6163
1402	93,000.00	.4409
1403	93,000.00	.4409
1404	93,000.00	.4409
1405	93,000.00	.4409
1406	93,000.00	.4409
1407	93,000.00	.4409
1408	93,000.00	.4409
1409	93,000.00	.4409
1410	93,000.00	.4409
1411	93,000.00	.4409
1412	93,000.00	.4409
1414	93,000.00	.4409
1415	120,000.00	.5689
1501	\$130,000.00	.6163
1502	93,000.00	.4409
1503	93,000.00	.4409
1504	93,000.00	.4409
1505	93,000.00	.4409
1506	93,000.00	.4409
1507	93,000.00	.4409
1508	93,000.00	.4409
1509	93,000.00	.4409
1510	93,000.00	.4409
1511	93,000.00	.4409
1512	93,000.00	.4409
1514	93,000.00	.4409
1515	120,000.00	.5689

Penthouse

A	\$160,000.00	.7585
B	160,000.00	.7585
C	160,000.00	.7585
D	160,000.00	.7585
E	160,000.00	.7585
F	160,000.00	.7585
G	160,000.00	.7585
H	160,000.00	.7585
I	160,000.00	.7585
J	160,000.00	.7585

Commercial

1	\$233,000.00	1.1046
2	116,000.00	.5499
3	20,000.00	.0965

EXHIBIT "D"

ARTICLES OF INCORPORATION

OF 7

ROYAL GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION, INC.

(A CORPORATION NOT FOR PROFIT)

In order to form a corporation under and in accordance with the provisions of the laws of the State of South Carolina for the formation of Corporations Not for Profit, we, the undersigned, hereby associate ourselves into a corporation for the purpose and with the powers hereinafter mentioned; and to that end we do, by these Articles of Incorporation, set forth:

ARTICLE I.

The name of the proposed corporation shall be:

ROYAL GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION, INC.

ARTICLE II.

The purposes and objects of the corporation shall be to administer the operation and management of Royal Garden Resort, a Horizontal Property Regime (hereinafter referred to as the "REGIME"), a multi-story apartment project to be established in accordance with the Horizontal Property Act of the State of South Carolina upon property situate, lying and being in Horry County, South Carolina, and being more particularly described in Exhibit A annexed herewith; and to undertake the performance of the acts and duties incident to the administration of the operation and management of said REGIME in accordance with the terms, provisions, conditions and authorizations contained in these Articles of Incorporation and which may be contained in the formal Master Deed, which will be recorded in the Public Records of Horry County, South Carolina, at the time said property, and the improvements now or hereafter situate thereon, are submitted to a plan of condominium ownership; and to own, operate, lease, sell, trade and otherwise deal with such property, whether real or personal, as may be necessary or convenient in the administration of said REGIME. The Corporation shall be conducted as a non-profit organization for the benefit of its members.

ARTICLE III.

The Corporation shall have the following powers:

1. The Corporation shall have all of the powers and privileges granted to corporations not for profit under the law pursuant to which this Corporation is chartered.
2. The Corporation shall have all of the powers reasonably necessary to implement and effectuate the purposes of the Corporation including, but not limited to, the following:
 - (a) To make and establish reasonable rules and regulations governing the use of condominium UNITS (hereinafter referred to as "UNITS") and COMMON ELEMENTS in said REGIME as said terms may be defined in said Master Deed to be recorded.
 - (b) To levy and collect assessments against members of the Corporation to defray the common expenses of the REGIME as may be provided in said Master Deed and in the By-Laws of the Corporation which

may be hereafter adopted, including the right to levy and collect assessments for the purposes of acquiring, operating, leasing, managing and otherwise trading and dealing with such property, whether real or personal, convenient in the operation and management of the REGIME and in accomplishing the purposes set forth in said Master Deed.

(c) To maintain, repair, replace, operate and manage the REGIME and the property comprising same, including the right to reconstruct improvements after casualty and to make further improvements of the REGIME property.

(d) To contract for the management of the REGIME and to delegate to such contractor all of the powers and duties of the ASSOCIATION except those which may be required by the Master Deed to have approval of the Board of Directors or Membership of the Corporation.

(e) To enforce the provisions of said Master Deed, these Articles of Incorporation, the By-Laws of the Corporation which may be hereafter adopted, and the rules and regulations governing the use of said REGIME as same may be hereafter established.

(f) To exercise, undertake and accomplish all of the rights, duties and obligations which may be granted to or imposed upon the Corporation pursuant to the Master Deed aforementioned.

ARTICLE IV.

The qualifications of the members, the manner of their admission to membership and termination of such membership, and voting by members shall be as follows:

1. The owners of all UNITS in the REGIME shall be members of the Corporation, and no other persons or entities shall be entitled to membership, except as provided in Item (5) of Article IV.

2. Membership shall be established by the acquisition of fee simple title to a UNIT in the REGIME or by acquisition of a fee ownership interest therein, whether by conveyance, judicial decree or otherwise, and the membership of any party shall be automatically terminated upon his being divested of all title to or his entire fee ownership interest in any UNITS, except that nothing herein contained shall be construed as terminating the membership of any party who may own two or more UNITS, or who may own a fee ownership interest in two or more UNITS, so long as such party shall retain title to or a fee ownership interest in any UNITS.

3. The interest of a member in the funds and assets of the Corporation cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to his UNITS. The funds and assets of the Corporation shall be loaned solely to the Corporation subject to the limitation that the same be expended, held or used for the benefit of the Membership and for the purposes authorized herein, in the Master Deed and in the By-Laws which may be hereafter adopted.

4. On all matters which the Membership shall be entitled to vote, the number of votes of each member, as owner of a UNIT, shall have is as follows: each owner shall have the same number of votes as he has percentage interest in all of the Common Elements, which percentage is specified on Exhibit "C" to the Master Deed, and thus the total number of votes available to all of the unit owners shall equal one hundred (100) votes. Should any member own more than one UNIT, such member shall be entitled to exercise or cast votes for each such UNIT that he owns, in the manner provided by said By-Laws. In the event that a UNIT is owned by two or more persons, those persons must designate a member,

and that member must vote all of the votes for that unit in the same manner.

5. Until such time as the property described in Article II hereof, and the improvements which may be hereafter constructed thereon, are submitted to a plan of REGIME ownership by the recordation of said Master Deed, the Membership of the Corporation shall be comprised of the Subscribers to these Articles, each of which Subscribers shall be entitled to cast one vote on all matters on which the Membership shall be entitled to vote.

ARTICLE V.

The Corporation shall have perpetual existence.

ARTICLE VI.

The principal office of the Corporation shall be located in South Carolina, but the Corporation may maintain offices and transact business in such other places within or without the State of South Carolina as may from time to time be designated by the Board of Directors. The principal office of the Corporation shall be located at the site of the REGIME in Garden City, South Carolina.

ARTICLE VII.

The affairs of the Corporation shall be managed by the President of the Corporation assisted by the Vice President, Secretary and Treasurer and, if any, the Assistant Secretaries and Assistant Treasurers, subject to the direction of the Board of Directors. The Board of Directors, may employ a Managing Agent or such other managerial and supervisory personnel, or contract other entities to manage, administer, and assist in the management of the operation of the REGIME, and the affairs of the Corporation; and any such person or entity may be so employed without regard to whether such person or entity is a member of the Corporation or a Director or Officer of the Corporation, as the case may be.

ARTICLE VIII.

The number of members of the first Board of Directors of the Corporation shall be three (3). The members of the Board of Directors shall be elected by the members of the Corporation at the Annual Meeting of the Membership as provided by the By-Laws of the Corporation, and all of the members of the Board of Directors shall be members of the Corporation or shall be authorized representatives, officers or employees of a corporate member of the Corporation. Notwithstanding the foregoing, and subject to the following, Royal Garden Resort, Inc., hereinafter referred to as "OWNER", shall initially have the right to designate and select all of the persons who shall serve as members of each Board of Directors of the ASSOCIATION. OWNER may continue to designate and select the person or persons to serve as a member or members of each said Board of Directors in the manner provided in the By-Laws of the Corporation, but this power of the OWNER to so designate directors shall terminate no later than the earlier of the following events:

- (i) One hundred eighty (180) days after seventy-five (75%) percent of the UNITS of the project have been conveyed; or
- (ii) One (1) year following the date of recordation of the Master Deed for the REGIME.

ARTICLE IX.

The Board of Directors shall elect a President, Secretary, and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board of Directors shall determine. President shall be elected from among the membership of the Board of Directors, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, that the office of President and Vice President shall not be held by the same person nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE X.

The names and post office addresses of the first Board of Directors, who, subject to the provision of the Articles of Incorporation, the By-Laws, and the laws of the State of South Carolina, shall hold office for the first year of the Corporation's existence, or until their successors are elected and have qualified are as follows:

NAME	ADDRESS
Lucius W. Greene, Jr.	9600 N. Kings Highway Myrtle Beach, S. C. 29577
Whitfield M. Howard	9600 N. Kings Highway Myrtle Beach, S. C. 29577
William J. Burk	9600 N. Kings Highway Myrtle Beach, S. C. 29577

ARTICLE XI.

The subscribers to these Articles of Incorporation are two of the persons herein named to act and serve as members of the first Board of Directors of the Corporation, the names of said two Subscribers and their respective post office addresses are more particularly set forth in Article X above.

ARTICLE XII.

The Officers of the Corporation, who shall serve until the first election under these Articles of Incorporation, shall be the following:

President:	Whitfield M. Howard 9600 North Kings Highway Myrtle Beach, S. C. 29577
Secretary:	W. J. Burk 9600 North Kings Highway Myrtle Beach, S. C. 29577

ARTICLE XIII.

The first By-Laws of the Corporation shall be adopted by the board of Directors and may be altered, amended, or rescinded in the manner provided in the By-Laws.

ARTICLE XIV.

Every Director and every officer of the Corporation shall be indemnified by the Corporation against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Corporation, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interests of the addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE XV.

An Amendment or Amendments to these Articles of Incorporation may be proposed by the Board of Directors of the Corporation acting upon a vote of the majority of the Directors, or by a majority of the votes of the members, whether such vote arises out of a meeting or by instrument in writing signed by the respective parties. Upon any Amendment or Amendments to these Articles of Incorporation being proposed by said Board of Directors or members, such proposed Amendment or Amendments shall be transmitted to the President of the Corporation or other Officer of the Corporation in the absence of the members of the President who shall thereupon call a Special Joint Meeting of the members of the Board of Directors of the Corporation and the membership for a date not sooner than twenty (20) days nor later than sixty (60) days from the receipt by him of the proposed Amendment or Amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such Meeting stating the time and place of the meeting and reciting the proposed Amendment or Amendments in reasonably detailed form, which notice shall be mailed or presented personally to each member, not less than ten (10) or more than thirty (30) days before the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the member at his post office address as it appears on the records of the Corporation, the postage thereon prepaid. Any member, may by written waiver of notice signed by such member, waive such notice, and such waiver when filed in the records of the Corporation, whether before or after the holding of the Meeting, shall be deemed equivalent to the giving of such notice to such member. At such Meeting, the Amendment or Amendments proposed shall be approved by an affirmative vote two-thirds (2/3) of the total votes of all of the members, including the votes of those members who are not present.

Thereupon, such Amendment or Amendments of these Articles of Incorporation shall be transcribed and certified in such form as may be necessary to register the same in the Office of the Secretary of State of the State of South Carolina, and upon the registration of such Amendment or Amendments with said Secretary of State, a certified copy thereof shall be recorded in the Public records of Horry County, South Carolina, within ten (10) days from the date on which the same are so registered. At any Meeting held to consider such Amendment or Amendments of these Articles of Incorporation, the written vote of any member of the Corporation shall be recognized, if such member is not in attendance at such Meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Corporation at or prior to such Meeting.

WHEREFORE, Your Petitioners pray that the Secretary of State does issue to the aforesaid Royal Garden Resort Condominium Homeowners Association, Inc., a charter with all rights, powers, privileges and

immunities and subject to all of the limitations and liabilities conferred by Chapter 31, Title 33, South Carolina Code of Laws, 1976, as Amended and acts amendatory thereto.

/s/ Whitfield M. Howard

/s/ William J. Burk

Dated: June 5, 1984

This is to certify that I have examined and approved the foregoing Articles and Declarations of Incorporation pursuant to Section 33-31-40, South Carolina Code of Laws, 1976, as Amended.

/s/ M. L. Brown, Jr.
M. L. Brown, Jr.
Sheriff for Horry County

EXHIBIT "E"

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

BY-LAWS OF ROYAL GARDEN RESORT CONDOMINIUM.

HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME, LOCATION AND MEMBERSHIP

Section 1. Name. The name of the association is Royal Garden Resort Condominium Homeowners Association, Inc. (the "Association").

Section 2. Location. The principal office of the Association shall be located at 129 N. Waccamaw Drive, Garden City, South Carolina, Horry County, South Carolina, but meetings of the Board of Directors may be held at such places designated by the Board in accordance with the provisions of these By-Laws.

Section 3. Membership. Each and every record owner of a fee or undivided fee interest in any Royal Garden Resort Condominiums Unit shall be a member of the Association, excluding persons who hold such interest under a deed to secure debt, mortgage, or deed of trust. Membership in the Association shall be confined to such Owners and shall be appurtenant to and inseparable from Unit ownership. Such Owner or Owners of each Condominium Unit shall designate in writing, delivered to the Secretary, one member of the Association from among such Owner or Owners of such Unit, or a member of the immediate family of such Owner or Owners, and such member shall represent the Owner or Owners of such Unit in connection with the activities of the Association and exercise the voting rights thereof. Such designation shall be valid until revoked in writing, delivered to the Secretary, or until such Owner sells his Condominium Unit, whichever event shall first occur. No Unit Owner shall be required to pay any consideration whatsoever for his membership.

Section 4. Suspension of Membership and Voting Rights. During any period in which an Owner or Owners of a Condominium Unit shall be in default of the payment of any annual or special Assessment levied by the Association, the voting rights of the member designated by such Owner or Owners and the rights of such Owner or Owners, the members of their family or families, and the tenants who reside in such Owner's

or Owners' Condominium Unit to use and enjoy the General Common Elements and Limited Common Elements may also be suspended by the Board of Directors until such time as the Assessment has been paid. Such rights may also be suspended by the Board of Directors for the violation of the published rules and regulations with respect to the use of the General Common Elements and the Limited Common Elements as published from time to time by the Board of Directors. Such rules shall be kept in the Office of the Association as a matter of record, and copies thereof shall be furnished to any Unit Owner on request.

Section 5. Applicability. These By-Laws are established pursuant to the "Horizontal Property Act", Chapter 31 of Title 26, South Carolina Code of Laws, 1976, As Amended; are applicable to the Royal Garden Resort Condominiums, General Common Elements, Limited Common Elements, and the Association; and are binding on all Condominium Owners, their families, tenants and guests, and any other persons residing in or occupying a Condominium Unit. Each and every person who accepts a deed to, a lease of, or who occupies any Condominium Unit thereby consents to be bound by the provisions of these By-Laws.

ARTICLE II

DEFINITIONS

Section 1. Definitions. The terms used in these By-Laws, unless the context requires otherwise or unless otherwise specified herein, shall have the same meaning as in the recorded Master Deed of Conditions and Restrictions for Royal Garden Resort Condominiums to which these By-Laws are annexed.

ARTICLE III

PROPERTY RIGHTS: RIGHTS OF ENJOYMENT

Section 1. Delegation of Property Rights. Each member of the Association shall be entitled to the use and enjoyment of the General Common Elements and Limited Common Elements as provided in the Declaration. Any member may assign his rights of enjoyment and use of the General Common Elements and the Limited Common Elements to the members of his immediate family, to his guests, or to his tenants who reside in his Condominium Unit. Such member shall notify the Secretary of the Association in writing of the name or names of any such assignees. The

rights and privileges of such assignees are subject to suspension to the same extent as those of the member.

ARTICLE IV

MEETINGS OF MEMBERS

Section 1. Place of Meeting. Meetings of the Association shall be held at Royal Garden Resort Condominiums in Horry County, South Carolina, at such suitable place convenient to the members as may be designated by Grantor with regard to the first annual meeting and by the Board of Directors with regard to all subsequent meetings.

Section 2. Annual Meeting. The first annual meeting shall be called by Grantor and shall be held on the 9th day of July, 1984, at 10:00 A. M. o'clock at the offices of Royal Garden Resort, located at 129 Waccamaw Drive, Garden City, South Carolina. Thereafter, regular annual meetings shall be held on the first (1st) Monday in July of each calendar year at 10:00 o'clock, unless otherwise provided by the members at any previous meeting. If the date of the annual meeting shall fall on a legal holiday, the meeting shall be held at the same hour on the next following business day.

Section 3. Special Meetings. Special meetings of the Association may be called at any time by the President, by resolution of the Board of Directors, or upon the receipt by the Secretary of a petition signed by members holding greater than twenty percent (20%) of the total vote of the Association. The call of a special meeting shall be by notice stating the date, time, place, purpose and order of business of such special meeting. Only the business stated in the notice may be transacted at a special meeting.

Section 4. Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each member at the last address of such member furnished to the Secretary at least ten (10) but not more than twenty (20) days prior to such meeting. Mailing notice as herein provided shall be deemed delivery thereof. Any member may waive notice of the meeting in writing either before or after the meeting. Attendance of a member at a meeting, either in person or by proxy, except for the purpose of stating, at the beginning of the

meeting, any objection to the transaction of business, shall constitute waiver of notice and any objection of any nature whatsoever as to the transaction of any business at such meeting. Notice given to one tenant in common, joint tenant or tenant by the entirety shall be deemed notice to all such Owners.

Section 5. Order of Business. The order of business of each annual meeting shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees, if any.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.

Section 6. Quorum. At all meetings, regular or special, a quorum shall consist of the presence in person or by proxy, of members holding greater than fifty percent (50%) of the total vote of the Association. If a quorum shall not be present at any meeting, a majority vote of that percentage present, in person or by proxy, may adjourn the meeting from time to time until a quorum can be obtained. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 7. Voting Rights. The Association shall have one (1) class of voting membership, which shall consist of all Owners of both residential and commercial Condominium Units in Royal Garden Resort Horizontal Property Regime. On all matters which the Membership shall be entitled to vote, the number of votes for each member, as owner of a UNIT, shall have is as follows: each owner shall have the same number of votes as he has percentage interest in all of the Common Elements, which percentage is specified on Exhibit "C" to the Master Deed, and thus the total number of votes available to all of the unit owners shall equal one hundred (100) votes. Should any member own more than one UNIT, such member shall be entitled to exercise or cast votes for each such UNIT that he owns in the manner provided by said By-Laws. In the

event that a UNIT is owned by two or more persons, those persons must designate a member, and that member must vote all of the votes for that UNIT in the same manner. In addition to those voting rights granted herein, and any provisions herein or in the By-Laws to the contrary notwithstanding, Royal Garden Resort, Inc., shall have the following rights and powers:

(i) Until such time as Royal Garden Resort, Inc., has sold, conveyed or otherwise disposed of seventy-five percent (75%) of all Condominium Units located in the Royal Garden Resort, Inc., i.e. One Hundred Fifty-Seven (157) units, Royal Garden Resort, Inc., shall retain the right to exercise all voting rights of the members of the Association and to exercise and perform all of its duties and functions.

(ii) Until such time as Royal Garden Resort, Inc. has sold, conveyed or otherwise disposed of Seventy-Five (75%) percent of the Condominium Units located in the Royal Garden Resort Horizontal Property Regime, the Master Deed and the By-Laws may not be changed, altered, amended or revoked with regard to the method of selecting the managing agent, the imposition of Assessments, the repair or reconstruction of any Condominium Unit, the method and procedure of adopting rules and regulations pertaining to the conduct of members and the use of the General Common Elements and Limited Common Elements without the express written approval of Royal Garden Resort, Inc. first had and obtained.

Section 8. Proxy. Votes by owners may be cast in person or by proxy. Proxies must be filed with the Secretary before the designated time of each meeting.

Section 9. Majority Vote. Acts authorized; approved or ratified by the casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be the acts of the Association, except where a higher percentage vote is required by these By-Laws or by law, and shall be binding for all purposes.

Section 10. Actions Without Meeting. Any action which may be taken at a meeting of the membership may be taken without a meeting if a consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by persons who would be entitled to cast seventy-five percent (75%) of the votes of membership of the Association at a meeting and such consent is filed with the Secretary of the Association and is inserted in the Minute Book thereof.

ARTICLE V

BOARD OF DIRECTORS, NUMBER, POWERS, MEETINGS

Section 1. Number. The business and affairs of the Association shall be governed by a Board of Directors (herein sometimes referred to as the "Board"), all of whom, after Royal Garden Resort, Inc. has sold seventy-five percent (75%) of the Units of the Royal Garden Resort Condominiums, shall be Owners of Condominium Units in the Royal Garden Resort Condominiums at all times during their term as directors. The initial Board shall consist of three (3) individuals whose names are set forth in the Articles of Incorporation. From and after the day of the first annual meeting of the Association, there shall be at least three (3) directors, but the membership, by a majority vote, can vote to increase the number of directors as the membership so chooses. Each director shall be at least twenty-five (25) years of age and any qualified director may be re-elected. Each director shall hold office until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualified.

Section 2. Powers and Duties. The Board of Directors shall manage and direct the affairs of the Association and, subject to any restrictions imposed by law, by the Master Deed, or these By-Laws, may exercise all the powers of the Association. The Board of Directors shall exercise such duties and responsibility as shall be incumbent upon it by law, the Master Deed, or these By-Laws as it may deem necessary or appropriate in the exercise of its powers, including, without limitation, the collection of assessments and charges from the Owners, the establishment and amendment from time to time of reasonable regulations governing the use of the General Common Elements and the Limited Common Elements, and the employment and dismissal of personnel necessary for the maintenance and operation of the General Common Elements and the Limited Common Elements. Additionally, the Board of Directors of the Association shall require that each employee of the Association handling or responsible for Association funds be covered by a fidelity bond of at least \$50,000.00 continuously. The premium on such bonds shall be paid by the Association.

Section 3. Management. The Board of Directors may employ for the Association a managing agent under such terms and conditions as the Board may authorize; provided, however, the Board shall not delegate to such agent the complete and total responsibility of the Association in violation of the provisions of Chapter 31 of Title 33, South Carolina Code of Laws, 1976, As Amended. Such managing agent shall have such duties and shall receive such compensation as determined by the Board.

Section 4. Election and Term of Office. At the first annual meeting of the Association, the members thereof shall elect one (1) director for an initial term of three (3) years, one (1) director for an initial term of two (2) years, and one (1) director for an initial term of one (1) year. At the expiration of the initial term of each respective director, his successor shall be elected for a term of three (3) years. Cumulative voting is not permitted.

Section 5. Vacancies. Vacancies on the Board of Directors caused by any reason other than the removal of a director by a vote of the Association shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until a successor is elected at the next annual meeting of the Association. Vacancies caused by removal shall be filled by vote of the Association at the same meeting at which a director or directors were removed.

Section 6. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by a vote of eighty percent (80%) of the total Percentage Interests authorized to vote thereon, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by any Owner or Owners shall be given an opportunity to be heard at such meeting. Sale of his Condominium Unit by a director shall automatically terminate his directorship.

Section 7. Regular Meetings. The first regular meeting of the Board of Directors shall be held immediately following the first annual meeting of the members of the Association and regular meetings thereafter shall be held on such dates and at such place and hour, but not less frequently than biannually, as may be fixed from time to time

by resolution of the Board. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day of such meeting; provided, however, notice of the first regular meeting shall not be required to be given to the directors provided that a majority of the entire Board is present at such meeting. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the date, time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice upon the written request of at least two (2) directors.

Section 9. Waiver of Notice. Before or at any meeting of the Board of Directors any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the date, time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 10. Quorum. At all meetings of the Board of Directors, a majority of the then qualified directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Compensation. No director shall receive compensation for any service he may render to the Association nor shall the Association make any loan, directly or indirectly, to a director; provided, however, a director may be reimbursed for the expenses incurred by him in the performance of his duties.

Section 12. Action by Board Without a Meeting. The Board of Directors shall have the right to take any action which it could take at a meeting by obtaining the written approval of all directors thereto. Any action so approved shall have the same effect as though taken at a meeting of the Board. In addition, the Board of Directors may have a meeting by telephone, or one or more directors may be counted as present if he is in telephone communication with the other members of the Board who are present at a Board Meeting.

Section 13. Liability of Directors. To the extent permitted by Chapter 31, Title 33, South Carolina Code of Laws, 1976, As Amended, in effect at the applicable time, no director shall be liable to any Owner for injury or damage caused by such director in the performance of his duties, unless due to the willful misfeasance or malfeasance of such director. Furthermore, each director shall be indemnified by the Association against all liabilities and expenses, including attorneys' fees, reasonably incurred and imposed upon him in connection with any proceeding to which he may be a party or in which he becomes involved by reason of his being or having been a director of the Association, whether or not he is a director of the Association at the times such expenses and liabilities are incurred, except in such cases where the director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. Such indemnity shall be subject to approval by the members of the Association only when such approval is required by Chapter 31, Title 33, South Carolina Code of Laws, 1976, As Amended.

ARTICLE VI

OFFICERS

Section 1. Number and Election. There shall be elected annually by and from the Board of Directors a President (who shall also be Chairman of the Board), a Secretary and a Treasurer. The office of Secretary and Treasurer may be filled by the same person. The directors may also elect from time to time such other officers as in their judgment may be needed, which officers need not be directors.

Section 2. Removal and Vacancies. Except as herein provided to the contrary, the officers shall be elected annually and hold office at the pleasure of the Board. A vacancy in any office may be filled by the Board at its next meeting. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 3. Duties. The duties of the officers shall be as follows:

(a) President. The President shall be the chief executive officer and shall preside at all meetings of the Board of Directors and the Association, shall see that orders and resolutions of the Board are carried out, shall appoint committees consisting of members of the Association as in his opinion is necessary, shall co-sign with the Treasurer all checks, promissory notes and similar documents, if any, and shall perform such other duties as may be delegated to him by the Board. He shall have all the general powers and duties which are incident to the office of President of a corporation organized under Chapter 31, Title 33, South Carolina Code of Laws, 1976, As Amended, and control and management of the Association in accordance with such Act and these By-Laws.

(b) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Association; keep appropriate current records, showing the members of the Association together with their addresses and designating those members entitled to vote; keep custody and attest the seal of the Association; and perform such other duties as may be required of him by the Board or incident to the office of Secretary of a corporation organized under Chapter 31, Title 33, South Carolina Code of Laws, 1976, As Amended.

(c) Treasurer. The Treasurer shall be responsible for the funds of the Association, shall co-sign with the President all checks, promissory notes and similar documents, shall maintain full and accurate fiscal accounts and records, and shall perform such other duties as may be designated by the Board of Directors or

incident to the office of Treasurer under Chapter 31, Title 33, South Carolina Code of Laws, 1976, As Amended.

Section 4. Compensation. Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to their offices, nor shall the Association make loans, directly or indirectly, to any officer of the Association. The officers may be reimbursed for reasonable expenses incurred on behalf of the Association.

Section 5. Liability of Officers. To the extent permitted by Chapter 31, Title 33, South Carolina Code of Laws, 1976, As Amended, in effect at the applicable time, no officer shall be liable to any Owner for injury or damage caused by such officer in the performance of his duties unless due to the willful misfeasance or malfeasance of such officer. Furthermore, each officer shall be indemnified by the Association against all liabilities and expenses, including attorneys' fees, reasonably incurred and imposed upon him in connection with any proceeding to which he may be a party or in which he becomes involved by reason of his being or having been an officer of the Association, whether or not he is an officer of the Association at the times such expenses and liabilities are incurred, except in such cases where the officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. Such indemnity shall be subject to approval by the members of the Association only when such approval is required by Chapter 31, Title 33, South Carolina Code of Laws, 1976, As Amended.

ARTICLE VII

OBLIGATIONS OF THE OWNERS

Section 1. Agreements. All Owners are obligated to pay monthly assessments imposed by the Association as provided in the Master Deed to meet Common Expenses, which may include the expense of liability insurance coverage and/or hazard insurance coverage for repair and reconstruction. An Owner is required to reimburse the Association for any expense incurred by it in repairing or replacing the General Common Elements and/or the Limited Common Elements damaged by such Owner.

Section 2. Maintenance and Repair.

(a) All maintenance of and repair to any Condominium Unit whether structural or non-structural, ordinary or extraordinary, other than maintenance of and repair to any General Common Elements contained therein or any Limited Common Elements adjacent and appurtenant thereto, and not necessitated by the misuse or neglect of the Owner or Owners of another Condominium Unit, shall be made by the Owner or Owners thereof, and such Owner or Owners shall keep the same in good condition and repair. Each such Owner shall be responsible for any and all damage to any and all other Condominium Units, to the General Common Elements and the Limited Common Elements caused by his failure to do so.

(b) All maintenance, repairs and replacements to the General Common Elements and Limited Common Elements, whether located inside or outside of the Condominium Units, unless necessitated by the negligence, misuse or neglect of the Owner or Owners of a Condominium Unit, in which case the cost shall be borne by the Owner or Owners of such Condominium Unit, shall be made by the Association or at its direction and shall be charged to the members thereof as a Common Expense.

Section 3. Right of Entry. Each and every Owner, by accepting a deed to a Condominium Unit, thereby grants to the managing agent or such other person designated by the Board of Directors, in the event that fire or some similar emergency is, in the opinion of such agent or designated person, threatening his Condominium Unit, the right to enter same, regardless of whether such Owner is present at such time. For such purpose, each and every Owner shall provide the Association with a key to his Condominium Unit.

Section 4. Conduct. All Owners, their families, guests, visitors and tenants, and each and every occupant of a Condominium Unit shall at all times observe the published rules of conduct which may be established from time to time by the Association or its Board of Directors.

Section 5. Notices. An Owner who mortgages his dwelling or executes and delivers a deed to secure debt, deed of trust or other security instrument which may become a lien on his Condominium Unit

shall notify the President or the Board of Directors of the name and address of his mortgage, or the holder of such deed to secure debt, deed of trust or security instrument, and thereby authorize the Association to furnish such information as such mortgagees may request respecting unpaid assessments, taxes or other reasonable information concerning such Unit.

ARTICLE VIII

COMPLIANCE

These By-Laws are set forth to comply with the requirements of Chapter 31, Title 26, South Carolina Code of Laws, 1976, As Amended. In the event any of these By-Laws conflict with the provisions of said Chapter, the provisions of said Chapter will control.

ARTICLE IX

BOOKS AND RECORDS

Section 1. Inspection. The books, records and papers of the Association shall at all times during reasonable business hours be subject to inspection by any member at the principal office of the Association. The Master Deed and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased for a reasonable price.

ARTICLE X

ASSOCIATION SEAL

Section 1. Description. The Association shall have a seal in circular form having within its circumference the words: "Royal Garden Resort Condominium Homeowners Association, Inc."

ARTICLE XI

AMENDMENTS

Section 1. By-Laws. These By-Laws may be amended by a vote of not less than seventy-five percent (75%) of the total vote of the Association at a duly constituted meeting for such purposes, in strict accordance with the recorded Master Deed to which they are attached, and Chapter 31, Title 27, Code of Laws of South Carolina, As Amended. Said amendments shall be set forth in an amended Master Deed and duly recorded. Each and every Owner of a Condominium Unit by accepting a deed therefor thereby agrees to be bound by and benefit from any such amendment hereto.

Section 2. Master Deed. The Master Deed for Royal Garden Resort Condominiums shall be amended only upon the written consent of seventy-five percent (75%) of the total Percentage Interest authorized to vote thereon.

Section 3. Conflicts. In the event of any conflict between the provisions of the Master Deed and the provisions of these By-Laws, the provisions of the Master Deed shall control.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of the ROYAL GARDEN RESORT CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., a South Carolina Non-Profit Corporation, and

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 12th day of June, 1984.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association, this 12th day of June, 1984.

William J. Burke
Secretary

EXHIBIT "P"

ARCHITECT'S CERTIFICATE

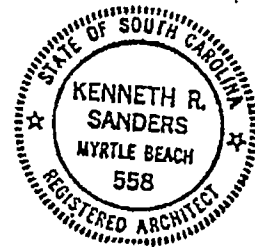
ROYAL GARDEN RESORT HORIZONTAL PROPERTY REGIME OF SURFSIDE BEACH,
HORRY COUNTY, SOUTH CAROLINA

I, KENNETH R. SANDERS, do hereby certify
that I am an Architect; that I am authorized and licensed to
practice my profession in the State of South Carolina; that my
South Carolina Registered Number is 558;
that I prepared the plans for the building and improvements in
this Regime which are attached to this Master Deed as Exhibit
"B", and certify to the accuracy and correctness of same as to
the dimensions, area and location of each apartment therein, and
the dimensions, area and location of Common Elements affording
access to each apartment and other Common Elements affording
access to each apartment and other Common Elements, both
Limited and General.

This Certificate is being made in accordance with
Code Section 27-31-110, Code of Laws of South Carolina, 1976,
as amended.

Kenneth R. Sanders
Kenneth R. Sanders

JUNE 5, 1984, 1984
Surfside Beach, South Carolina



STATE OF SOUTH CAROLINA)
) AMENDMENT TO LEASE AGREEMENT
COUNTY OF Horry)

This AMENDMENT made this 24th day of April, 1989,
by and between ROYAL GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION,
INC., ("LESSOR"); TOWER MANAGEMENT, INC., ("LESSEE") and SEA
BREEZE PROPERTY MANAGEMENT AND CONTRACT SERVICES, INC.,
("ASSIGNEE").

W I T N E S S E T H

WHEREAS, the LESSOR and LESSEE entered into that certain
Lease Agreement, dated April 31, 1988 and recorded in the RMC
Office for Horry County in Deed Book 1217 at Page 731 and
re-recorded in Deed Book 1222, at Page 893; and

WHEREAS, the LESSEE assigned its interest in the said
Lease Agreement to ASSIGNEE by Instrument dated June 13, 1988 and
recorded in Deed Book 1224 at Page 727; LESSEE reserving unto
itself, a first right of refusal to repurchase the assets thereby
assigned; and

WHEREAS, the parties are desirous of entering into this
Amendment To Lease Agreement to provide an option to extend the
term thereof for an additional five (5) years;

NOW, FOR AND IN CONSIDERATION of the sum of Five and
No/100 (\$5.00) Dollars paid to LESSOR, the premises and other
good and valuable consideration, the parties hereby agree as
follows:

1. That Item 2, Term, of the above-stated Lease Agreement is amended to add the following: LESSOR hereby grants unto LESSEE, and its permitted assigns, an option to extend the term of this Lease for an additional Five (5) years upon the same terms and conditions. LESSEE, or its permitted assigns, shall give LESSOR a minimum of Ninety (90) days written notice, i.e., on or before August 2, 1993, of its intention to extend the term of this Lease Agreement.

2. All other terms of the Lease Agreement remain unchanged hereby.

3. All parties hereto, warrant and covenant that they have all required authority to enter into this instrument.

EXECUTED the day and date first above written.

WITNESSES:

[Signature]
[Signature]

Ann Vernon
Donna K. Eason

LESSOR:

ROYAL GARDEN RESORT REGIME
HOMEOWNERS ASSOCIATION, INC.

BY: Billy A. Small

ITS: Vice President

BY: Earl T. Wilbur

ITS: Member

LESSEE:

TOWER MANAGEMENT, INC.

BY: William A. Guff

ITS: President

BY: Robert Klein

ITS: Secretary

W. Keith Anderson
W. Keith Anderson

ASSIGNEE:
SEA BREEZE PROPERTY MANAGEMENT
AND CONTRACT SERVICES, INC.

BY: W. Keith Anderson

ITS: President

BY: Jacqueline K. Donaldson

ITS: Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the within named ROYAL GARDEN RESORT REGIME HOMEOWNERS ASSOCIATION, INC. by Jolly A. Wall, its Vice President and by Sally T. W. Hines, its General Manager sign, seal and deliver the foregoing Amendment to Lease Agreement and that (s)he, together with the undersigned Notary Public, witnessed the execution hereof.

SWORN to before me this 29th
day of April 1989.

William R. Lee
WITNESS

W. Keith Archer (SEAL)
Notary Public for South Carolina
My Commission Expires: _____
MY COMMISSION EXPIRES 4-5-1998

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the within named SEA BREEZE PROPERTY MANAGEMENT AND CONTRACT SERVICES, INC., by David L. Smith, its President and by Reginald H. Smith, its Secretary sign, seal and deliver the foregoing Amendment to Lease Agreement and that (s)he, together with the undersigned Notary Public, witnessed the execution hereof.

SWORN to before me this 29th
day of April 1989.

Cliff H. Smith
WITNESS

W. Keith Anderson (SEAL)
Notary Public for South Carolina
My Commission Expires: _____
MY COMMISSION EXPIRES 4-5-1998

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
AMENDMENT TO
LEASE AGREEMENT

WHEREAS Royal Garden Resort Regime Homeowners' Association, Inc. ("Lessor") entered into a Lease Agreement with Sea Breeze Property Management and Contract Service, Inc. ("Lessee") dated April 6, 1991 and recorded May 13, 1991 in deed book 1468 at page 815;

WHEREAS the Lessee previously exercised its option to extend the term of the Lease for an additional fifteen (15) years so that the expiration of the Lease is now April 6, 2016;

WHEREAS in consideration of the transfer of the right to use certain storage units (sometimes referred to as honeycombs), the Lessor has agreed to grant two additional ten year options to the Lessee;

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Lessee, its successors and assigns, is hereby granted an option to renew and extend this Lease Agreement for two (2) additional periods of ten (10) years each. Each of these two ten year options shall be automatically exercised unless the Lessee notifies in writing the Lessor no less than 60 days prior to the expiration of the then existing term of its intent not to exercise the applicable option. In the absence of such notification from the Lessee to the Lessor of the Lessee's intent not to exercise these options, the first option shall automatically extend the Lease Agreement until April 6, 2026 and the second ten year option shall automatically extend the expiration date of the Lease until April 6, 2036.
2. All other terms, conditions and provisions of said lease, as amended herein, are ratified and restated as fully as if set out herein verbatim, except such provisions as would be inconsistent with this Amendment.
3. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

2651 / 71

IN WITNESS whereof the parties have hereunto set their hands and seals this 3 day of October, 2003.



Witness


Witness

**Royal Garden Resort Regime
Homeowners' Association, Inc.**

By: 
Its: 

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

**ACKNOWLEDGEMENT
(S.C. CODE ANN. §30-5-30(B)(C))**

I, the undersigned Notary Public for South Carolina, do hereby certify that Royal Garden Resort Regime Homeowners' Association, Inc. by ART FORD, its PRESIDENT, appeared before me this day and acknowledged the due execution of the foregoing instrument as their act and deed. Witness my hand and official seal this day of October, 2003.



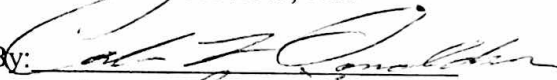
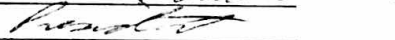
Notary Public for South Carolina
My Commission Expires: 9-23-2010



Witness


Witness

**Sea Breeze Property Management
And Contract Services, Inc.**

By: 
Its: 

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

**ACKNOWLEDGEMENT
(S.C. CODE ANN. §30-5-30(B)(C))**

I, the undersigned Notary Public for South Carolina, do hereby certify that Sea Breeze Property Management and Contract Services, Inc. by CALVIN L. DONALDSON, its PRESIDENT, appeared before me this day and acknowledged the due execution of the foregoing instrument as their act and deed. Witness my hand and official seal this 3 day of October, 2003.



Notary Public for South Carolina
My Commission Expires: 9-23-2010

Return to:
Time Warner Cable
Marketing Dept
1901 Oak St
Myrtle Beach, SC 29577

467978

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ED
COUNTY, S.C.

FEB -7 AM 9:57 CABLE COMMUNICATIONS EASEMENT

WILLIAM V. SKINNER
REGISTRAR OF DEEDS

This Easement is made and executed this 18th day of November, 2005, by Royal Garden Resort Regime Homeowners Association, Inc., authorized to do business under the laws of the State of South Carolina, and having a principal place of business PO Box 16110 Surfside Beach, SC 29587-6110 hereinafter called the Grantor, to TIME WARNER ENTERTAINMENT COMPANY, L.P., through its Time Warner Cable South Carolina Division, d/b/a Time Warner Cable, having a place of business at 1901 Oak Street, Myrtle Beach SC 29577, hereinafter called the Grantee.

GRANTOR, being the owner(s) of the following described land in consideration of One and No/100 Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is acknowledged,

HEREBY GRANTS, bargains, and sells to Grantee, its agents, successors and assigns, a perpetual non-exclusive easement for the construction, operation, and maintenance of cable communications facilities (including without limitation, wires, conduit, connectors and related equipment) installed or to be installed from time to time; with the right to reconstruct, improve, add to or remove any such facilities, and the right to ingress and egress to the premises at all times, this easement shall be for the benefit of Grantee, its successors and assigns as an easement in gross described as follows:

The land and building and improvements thereon, situated in Horry County, South Carolina, and currently known as Royal Garden Resort and legally described in Deed Book 875, Page 638 filed in the Office of the ROD of Horry County of Deeds, TMS No. 195-10-31-066 thru -275.

Restoration and Clean-Up. Upon the completion of any installation, maintenance, repair, removal, or other work performed by Grantee upon the Property, Grantee shall restore, repair, reconstruct and replace, at the Grantee's sole cost and expense, any portion thereof affected by Grantee's activities including landscaping, to substantially the same condition as before such work was performed by Grantee including, but not limited to, replacement of sod and hydration. Except in the case of emergency, all work performed by Grantee under this Agreement shall use its reasonable efforts to minimize any disturbance to any residents.

IN WITNESS WHEREOF, this easement runs with the title to the aforementioned property (inclusive of land and buildings) and is binding on Grantor and on all subsequent owners of such property, as well as on others who may claim an interest in such property. This easement is freely assignable by Grantee. Each Grantor has executed this easement in its name and has affixed its corporate seal hereto, by its officers, duly authorized to do so, on the day and year first written above.

OWNER:

By:

Its:

WITNESS:

First Witness

Second Witness

DEED
3046 0644

ROA-0310

644
D

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PROBATE

PERSONALLY APPEARED before me the first witness signing above, and made oath and s/he saw the within-named Royal Garden Resort Regime HOA, Inc. by Calvin Donaldson its Property Manager and sign, seal, and as its act and deed, deliver the within-written Cable Communications Easement and that s/he with the second witness signing above witnessed the execution thereof.

W. Jean Kent
(Signature of First witness)

SWORN to before me this

18 day of NOV, 2005

John S. Donaldson

Notary Public for HORRY COUNTY

My Commission Expires: 9-23-2010

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
SECOND AMENDMENT TO
LEASE AGREEMENT

WHEREAS Royal Garden Resort Regime Homeowners' Association, Inc. ("Lessor") entered into a Lease Agreement with Sea Breeze Property Management and Contract Service, Inc. ("Lessee") dated April 6, 1991 and recorded May 13, 1991 in deed book 1468 at page 815;

WHEREAS the Lessor and Lessee entered into an Amendment to Lease Agreement dated October 3, 2003 and recorded October 7, 2003 in deed book 2651 at page 71 whereby the Lessor agreed to grant two additional ten year options to the Lessee; and

WHEREAS, the Lessor has agreed to extend the aforementioned second ten year option from the current expiration date of April 6, 2036 to April 6, 2046;

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Lessee, its successors and assigns, is hereby granted an extension of its second option to renew and extend the Lease Agreement in deed book 1468 at page 815 and any amendments thereto so that this second option shall automatically extend the expiration date of the Lease until April 6, 2046.
2. All other terms, conditions and provisions of said lease and amendments thereto and as further amended herein, are ratified and restated as fully as if set out herein verbatim, except such provisions as would be inconsistent with this Amendment.
3. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS whereof the parties have hereunto set their hands and seals this 14 day of April, 2010.

Renee Ann Brooks
Witness
Tina Wiggins
Witness

Royal Garden Resort Regime
Homeowners' Association, Inc.

By: [Signature]
Its: President
By: [Signature]
Its: Secretary

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

ACKNOWLEDGEMENT
(S.C. CODE ANN. §30-5-30(B)(C))

I, the undersigned Notary Public for South Carolina, do hereby certify that Royal Garden Resort Regime Homeowners' Association, Inc. by Arthur Ford, its President and by Harold Outz, its Secretary / Treasurer, appeared before me this day and acknowledged the due execution of the foregoing instrument as their act and deed. Witness my hand and official seal this 29th day of April, 2010.

Diane Williams

Notary Public for South Carolina

My Commission Expires: 11-20-2012

Sea Breeze Property Management
And Contract Services, Inc.

By: Calvin Donaldson

Its: President

Witness [Signature]

Witness Diane Williams

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

ACKNOWLEDGEMENT
(S.C. CODE ANN. §30-5-30(B)(C))

I, the undersigned Notary Public for South Carolina, do hereby certify that Sea Breeze Property Management and Contract Services, Inc. by Calvin Donaldson, its President, appeared before me this day and acknowledged the due execution of the foregoing instrument as their act and deed. Witness my hand and official seal this 14 day of April, 2010.

Diane Williams

Notary Public for South Carolina

My Commission Expires: 11-20-2012

STATE OF)
COUNTY OF)

SOUTH CAROLINA
HORRY

STORAGE FACILITY AGREEMENT

This Agreement, made and entered into this 1st day of February, 2012 is by and between Phoenix of the Strand, Inc., hereinafter called the "Grantor" and Royal Garden Resort Homeowners' Association, Inc., hereinafter called the "Grantee."

WHEREAS, the Grantee wishes to lease a portion of storage facilities listed below for the placement of a Time Warner Cable switch boxes. All facilities are located in Royal Garden Resort, 1210 N. Waccamaw Dr Garden City, SC 29587

Fifteen (15) storage units on each walkway in building
One (1) storage cubical on south end ground floor
One (1) time clock facility

NOW THEREFORE, in consideration of the terms and conditions and mutual covenants herein set forth, the parties agree that:

- A. The term of this Agreement shall remain in effect until such times as Grantor sells or relinquishes rights to commercial unit II.
- B. Grantee agrees to pay Grantor an amount of \$255.00 per month for use of referenced facilities.
- C. Grantor is guaranteed ingress and egress to storage facilities at any time for the purpose of making repairs to cable system.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be duly executed and to become effective upon the date first written above.

WITNESS:

Lindsay Donaldson
Lindsay Donaldson
Lindsay Donaldson
Lindsay Donaldson
Lindsay Donaldson

BY [Signature]
President
Royal Garden Resort H.O.A.

[Signature]
Secretary/Treasurer

[Signature]
Director

[Signature]
Director

[Signature]
Director

ROYAL GARDEN RESORT

Homeowners Association

February 1, 2019

RE: February Invoice

Mr. Donaldson,

The board has conferred with their HOA attorney regarding the invoice Seabreeze sent for rent on the phone room located within commercial unit 2 as well as the tv junction boxes located with the storage closets on each floor associated to C2.

On January 18, 2019 at the request of the board, I had the phone system moved to the 1st floor electrical room. The only components remaining in the "old" phone area of C2 is the wiring that gives phone services to C2 and the front desk area of C1.

Regarding the cable junctions located within the storage closets belonging to C2, attorneys have reviewed the master deed and have advised the board to stop rent payments for usage. Article IX Section 2 of the Master Deed grants an easement for the installation and maintenance of utilities including but not limited to television system components.

If you have any questions regarding this matter, please direct them to the HOA's attorneys, Jay Haar's office or Gene Connell's office, as they will be handling the matter going forward.

Regards,

Steve Pitzer, GM

Lusk, Holly M.

From: Zayicek, Douglas M.
Sent: Wednesday, June 1, 2022 9:24 AM
To: Lusk, Holly M.
Subject: FW: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc ,defendant, et al - 2018CP2606033



Douglas M. Zayicek

Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
General: (843) 448-2400
Facsimile: (843) 448-3022
www.BellamyLaw.com

From: Gene Connell [mailto:gconnell@classactlaw.net]
Sent: Wednesday, August 25, 2021 8:54 AM
To: Zayicek, Douglas M. <DZayicek@bellamylaw.com>
Cc: Hood, Robert E. Law Clerk (Virginia Ball) <rhoodlc@sccourts.org>; jga@jayganderson.com; kirby.shealy@arlaw.com; luke.allen@arlaw.com
Subject: RE: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc ,defendant, et al - 2018CP2606033

The difference is Royal Gardens has express written easement over the entire project for cable lines to be replaced in these storage closets and thus no bond is required. The defendants knew this when they purchased their property. The issue of whether there is a valid contract is for another day when the case is tried.

From: Zayicek, Douglas M. <DZayicek@bellamylaw.com>
Sent: Wednesday, August 25, 2021 8:31 AM
To: Gene Connell <gconnell@classactlaw.net>
Cc: Hood, Robert E. Law Clerk (Virginia Ball) <rhoodlc@sccourts.org>; jga@jayganderson.com; kirby.shealy@arlaw.com; luke.allen@arlaw.com
Subject: Re: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc ,defendant, et al - 2018CP2606033

The HOA Motion is for a mandatory injunction, which requires a bond. The Motion is not for installing cable lines, it is for access to tear out old switches and boxes and install all new equipment on the Defendant's property, to service the entire building. The parties have a contract in place for that, and the HOA paid for years, but stopped paying when the lawsuit was filed. The Judge even asked Mr. Connell "you want the benefits of the contract, but don't want to pay do it?"

Douglas M. Zayicek, Esq.

This email was sent from my iPhone. Please excuse any errors.

On Aug 25, 2021, at 8:19 AM, Gene Connell <gconnell@classactlaw.net> wrote:

I believe by granting the motion which is controlled by the master deed that there is no bond. Royal Garden has an express easement to install cable lines over the entire building. If the jury finds anything is owed defendants it can be handled at that time. I will put in the Order that this ruling doesn't implicate defendants alleged claim for back rent which is to be decided by the finder of fact.

From: Zayicek, Douglas M. <DZayicek@bellamylaw.com>

Sent: Tuesday, August 24, 2021 1:07 PM

To: Hood, Robert E. Law Clerk (Virginia Ball) <rhoodylc@sccourts.org>

Cc: Gene Connell <gconnell@classactlaw.net>; jga@jayganderson.com; kirby.shealy@arlaw.com; luke.allen@arlaw.com

Subject: Re: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc ,defendant, et al - 2018CP2606033

Ms. Ball-does the ruling include a provision for the HOA paying the rent as bond? Thank you.

Douglas M. Zayicek, Esq.

This email was sent from my iPhone. Please excuse any errors.

On Aug 24, 2021, at 12:53 PM, Hood, Robert E. Law Clerk (Virginia Ball) <rhoodylc@sccourts.org> wrote:

Mr. Connell,

Thank you for your prompt response. I apologize for any confusion with the Court. In regards to the Plaintiff Royal Garden Resort Regime Homeowners Association's Motion to Enter Property, the Court has granted the motion. If you could please draft an order to that effect and send it to me via email or submit it to the e-filing system, whichever you prefer.

Thank you,

V. CAITLIN BALL

Law Clerk to the
Honorable Robert E. Hood
Circuit Court Judge
Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Post Office Box 192
Columbia, SC 29202-0192

From: Gene Connell <gconnell@classactlaw.net>

Sent: Tuesday, August 24, 2021 12:22 PM

To: Hood, Robert E. Law Clerk (Virginia Ball) <rhoodylc@sccourts.org>

Cc: jga@jayganderson.com; dzayicek@bellamylaw.com; kirby.shealy@arlaw.com; luke.allen@arlaw.com

Subject: RE: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc ,defendant, et al - 2018CP2606033

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Ms. Ball-I haven't received any request to prepare a Order(maybe I missed it) but am happy to do so. Could you tell me what the Court has decided on my motion and I will prepare it today.

Gene M. Connell, Jr.

Kelaher, Connell & Connor, P.C.

P.O. Drawer 14547

Surfside Beach, SC 29587

Phone: (843) 238-5648

Fax: (843) 238-5050

gconnell@classactlaw.net

From: Hood, Robert E. Law Clerk (Virginia Ball) <rhoodlc@sccourts.org>

Sent: Tuesday, August 24, 2021 11:43 AM

To: Gene Connell <gconnell@classactlaw.net>

Cc: jga@jayganderson.com; dzayicek@bellamylaw.com; kirby.shealy@arlaw.com; luke.allen@arlaw.com

Subject: Royal Garden Resort Regime Homeowners Association Inc VS Sea Breeze Property Management & Contract Services Inc ,defendant, et al - 2018CP2606033

Good Morning,

I am following up to check on the status of the proposed order for the hearing in the above referenced matter, heard before Judge Hood on August 4, 2021. Please feel free to send the proposed order to me via email or on the e-file system.

Best Regards,

V. CAITLIN BALL

Law Clerk to the

Honorable Robert E. Hood

Circuit Court Judge

Fifth Judicial Circuit

Richland County Judicial Center

1701 Main Street

Post Office Box 192

Columbia, SC 29202-0192

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**\*\*\*HELP US PREVENT WIRE FRAUD. Due to recent reports of attempted wire fraud involving the hacking of email accounts and the misdirection of wired funds, PLEASE CONTACT US IMMEDIATELY BY PHONE IF YOU RECEIVE ANY NOTIFICATION OF A CHANGE IN OUR WIRE INSTRUCTIONS! Our wire instructions will not change, and any attempt to deceive you with alternate wiring instructions is an attempted wire fraud, *even if the notification appears to have come from Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A.* We are not responsible for any misdirected funds that do not reach our account.\*\*\***

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**RECEIVED**  
**Aug 04 2022**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Common Pleas

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No.: 2022-000031

Royal Garden Resort Regime Homeowners Association, Inc. ....Respondent

v.

Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson;  
and Phoenix of the Strand, Inc. .... Appellants,

**APPELLANTS' RULE 210(G) CERTIFICATION**

The undersigned, attorney for the Appellants Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phoenix of the Strand, Inc., certifies, pursuant to Rule 210(g), SCACR, that the Record on Appeal, served herewith, contains all of the materials proposed by Appellant and Respondent and not any other material.

s/ Douglas M. Zayicek  
Douglas M. Zayicek, Esquire  
Holly M. Lusk, Esquire  
Attorneys for the Appellants