

RECEIVED

Jun 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Appellate Case No.: 2022-001529

Frederick E. Brown, Charles O. Pakosta, Conrad A. Calvano, Gayle N. Scott, and Philip D. Cox, individually and derivatively on behalf of Myrtle Beach Resort Homeowners' Association, Inc., and on behalf of all other similarly situated Co-owners, and Lori Niedzwiecki, and Robert S. Rosencrans, individually and derivatively on behalf of the Myrtle Beach Resort Homeowners' Association, Inc. for its right and benefit.....Appellants,

v.

Jeffery L. Richardson and Nancy L. Moore, individually and as current members of the Board of Directors for Myrtle Beach Resort Homeowners' Association, Inc., and Peter A. Grusauskas and Jim Perkins, individually and as former members of the Board of Directors for Myrtle Beach Resort Homeowners' Association, Inc.....Respondents,

and

Myrtle Beach Resort Homeowners' Association, Inc.....Nominal Respondent

**RECORD ON APPEAL
VOLUME 1**

Howell V. Bellamy, III
Howell V. Bellamy, Jr.
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
P. O. Box 357
Myrtle Beach, SC 29578
843-448-2400

Charles B. Jordan, Jr.
The Pearce Law Group, PC
1314 Professional Drive
Myrtle Beach, SC 29577
843-839-3210

Attorneys for Appellants

Edward D. Buckley, Jr.
Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401
843-577-4000

Robert E. Lee
Robert E. Lee, LLC
P.O. Box 1096
Marion, SC 29571
843-423-1313

Robert Bruce Wallace
Maynard Nexsen, PC
205 King Street, Suite 400
Charleston, SC 29402
843-720-1760

Andrew A. Mathias
Maynard Nexsen
104 South Main Street
Suite 900
Greenville, SC 29601
864-370-2211

Nicholas J. Rivera
Young Clement Rivers
P.O. Box 993
Charleston, SC 29402
843-577-4000

Attorneys for Respondents

INDEX

Order Appointing Kenneth Moss as a Fifth Board Member filed December 21, 2018.....	0001
Order for Case Assignment to the Business Court filed April 24, 2020	0005
Order Granting Defendants’ Motion for Partial Summary Judgment and Denying Plaintiffs’ Motion for Summary Judgment filed January 10, 2022	0007
Order for Case Assignment to the Business Court filed August 26, 2022	0014
Order Denying Plaintiffs’ Motion to Reconsider, Alter, or Amend filed October 5, 2022	0017
Members’ Verified Derivative Complaint filed May 24, 2018	0022
Answer of Defendants Jeffery L. Richardson and Peter A. Grusauskas filed July 13, 2018	0123
Nominal Defendant Myrtle Beach Resort Homeowners’ Association, Inc.’s Answer to Members’ Derivative Complaint filed July 30, 2018	0134
Answer of Defendants Nancy L. Moore and Jim Perkins filed August 24, 2018	0145
Plaintiffs’ Notice of Motion and Motion for the Appointment of a Temporary Custodian to Operate and Manage Myrtle Beach Resort Homeowners’ Association, Inc. filed November 14, 2018.....	0156
Amended Members’ Derivative Complaint, with exhibits filed February 17, 2020	0344
Answer of Defendants Nancy L. Moore and Jim Perkins to Amended Members’ Derivative Complaint filed March 16, 2020	0827
Answer of Defendants Jeffery L. Richardson and Peter A. Grusauskas to Amended Members’ Derivative Complaint filed March 16, 2020	0840
Plaintiffs’ Notice of Motion and Motion for Summary Judgment filed March 24, 2020.....	0853
Defendants’ Notice of Motion and Motion for Partial Summary Judgment on Plaintiffs’ Third Cause of Action, including exhibits filed March 22, 2021	0858
Defendants’ Memorandum in Support of Motion for Partial Summary Judgment on Plaintiffs’ Third Cause of Action filed April 28, 2021	0860
Memorandum in Support of Plaintiffs’ Motion for Partial Summary Judgment and in Opposition of Defendants’ Motion for Partial Summary Judgment filed April 30, 2021	0896
Plaintiffs’ Notice of Motion and Motion and Memorandum in Support of Motion to Reconsider, Alter, or Amend the Court’s Order Granting Defendants’ Motion for	

Summary Judgment and Also Denying Plaintiffs’ Motion for Summary Judgment Pursuant to Rules 52 and 59, SCRCF filed January 18, 2022	0988
Affidavit of Freddy Brown filed April 23, 2021	1142
Affidavit of Daniel L. Patrick filed April 30, 2021	1148
Affidavit of Otis Allen Jeffcoat filed April 23, 2021	1150
Affidavit of Michael Parades filed April 13, 2022	1608
Transcript of May 4, 2021 Motions Hearing for Partial Summary Judgment, pp. 16-29.....	1968
Transcript of Deposition of Barbara Johnson, pp. 23, 24 25, 26, 27, 28, 29, 36, 40, 43, 44, 61, 62, 65, 66, 67, 130, 131	1982
Defendants’ Responses to Plaintiffs’ Requests for Admission of Fact dated September 28, 2018	2003
Letter from Empress Management to Board of Directors at Myrtle Beach Resort Homeowners Association dated October 23, 2018.....	2006
Assignment of Declarant Rights recorded March 18, 1987 in the Office of the R.M.C. for Horry County in Deed Book 1121, Page 401 on March 18, 1987.....	2006
Assignment of Rights recorded on February 2, 1989 in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 239	2019
Master Deed and By-Laws of Myrtle Beach Resort Horizontal Property Regime recorded on June 6, 1982 in the Office of the R.M.C. for Horry County in Deed Book 750, at Page 642	2032
Master Deed and By-Laws of Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime recorded on April 25, 1983 in the Office of the R.M.C. for Horry County in Deed Book 789, at Page 362	2111
Master Deed and By-Laws of The Renaissance Tower Horizontal Property Regime recorded on November 28, 1984 in the Office of the R.M.C. for Horry County in Deed Book 917, at Page 885	2193
Master Deed and By-Laws of Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime recorded on June 20, 1985 in the Office of the R.M.C. for Horry County in Deed Book 966, at Page 654.....	2305
Deed recorded October 10, 1987 in the Office of the R.M.C. for Horry County in Deed Book 1173, at Page 404	2421

Deed recorded January 19, 1988 in the Office of the R.M.C. for Horry County in Deed Book 1192, at Page 4672425

Deed recorded February 2, 1989 in the Office of the R.M.C. for Horry County in Deed Book 1284, at Page 2232429

Deed recorded February 3, 1989 in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 6242433

Declaration of Covenants, Conditions and Restrictions for The Myrtle Beach Resort Homeowners' Association, Inc. and filed of record on April 25, 1991 in the Office of the R.M.C. for Horry County in Deed Book 1465 at Page 329.....2437

Amended By-Laws of The Myrtle Beach Resort Homeowners' Association, Inc. and filed of record on April 25, 1991 in the Office of the R.M.C. for Horry County in Deed Book 1465 at Page 3472466

Certificate of Counsel2477

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-26-03173

Frederick E. Brown, et al.,

Plaintiffs,

vs.

ORDER

Jeffery L. Richardson, et al.,

Defendants.

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendant.

This case is before the Court on Plaintiffs' Motion for Temporary Corporate Custodian to Operate and Manage Myrtle Beach Resort Homeowners' Association, Inc. ("MBRHOA"). The motion was argued before the Court at the Horry County Courthouse in Conway, South Carolina, on December 12, 2018. Present before the Court was Howell V. Bellamy, III, Esquire for the Plaintiffs, Molly Hughes Cherry, Esquire for the Defendants, and Nicholas J. Rivera, Esquire for the Nominal Defendant. During the hearing, this Court heard testimony from Robert E. Lee, Esquire, corporate counsel for the MBRHOA. For the reasons stated below, the Motion is DENIED as to Plaintiffs' request for a Temporary Custodian and GRANTED as to Plaintiffs' request for equitable relief.

The MBRHOA is comprised of four (4) individual condominium associations within the Myrtle Beach Resort: (1) Myrtle Beach Resort Horizontal Property Regime (“HPR”); (2) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime (“Ocean Front Spa”); (3) Renaissance Tower Horizontal Property Regime, Inc. (“Renaissance Tower”); and (4) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. (“Five Seasons Centre”). Each individual condominium association elects a member from its Board to serve on the Board of Directors for the MBRHOA.

Plaintiffs’ motion was filed before this Court based on the premise that the four (4) directors of the MBRHOA are deadlocked in the management of the corporation’s affairs, the directors and members are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury unless this Court grants relief. After careful review of the pleadings, the motion, submissions of the parties, arguments of counsel, exhibits, and testimony, it is apparent to the Court that the MBRHOA has an imminently serious problem in that the Board of Directors cannot fulfill their duties to the Members of the MBRHOA. Thus, this Court hereby invokes its equitable powers and appoints Kenneth R. Moss, Esquire¹ as a fifth (5th) Board of Director for the MBRHOA during the pendency of this action with full power and authority to vote and assist the Board in establishing officers to immediately have the power to sign and bind insurance coverage for the Members, as this is the most immediate problem. It is hereby ordered that this must take place within fifteen (15) days of the date of this Order. Furthermore, Mr. Moss is to continue to assist the Board as a fifth (5th) Board of Director with full power and authority to vote to address other immediate problems involving the MBRHOA.

¹ Mr. Moss is an attorney with the law firm of Wright, Worley, Pope, Ekster & Moss located at 628 A Sea Mountain Highway, North Myrtle Beach, 29582.

It is ordered that Mr. Moss is to be paid \$250.00 per hour for his services during the pendency of this action. The MBRHOA shall ensure that Mr. Moss is provided the same insurance coverage that other Board of Directors receive for their service and add him as an additional insured on their policy.²

For the reasons set forth above, IT IS SO ORDERED.

The Honorable William H. Seals, Jr.

December _____, 2018
_____, South Carolina

² For all intents and purposes, Mr. Moss is a director under S.C. Code § 33-31-180.



Horry Common Pleas

Case Caption: Frederick E Brown , plaintiff, et al VS Jeffery L Richardson ,
defendant, et al
Case Number: 2018CP2603173
Type: Order/Other

IT IS SO ORDERED

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

Electronically signed on 2018-12-21 13:17:32 page 4 of 4

ELECTRONICALLY FILED - 2018 Dec 21 3:50 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Frederick E. Brown, et al.,)
) Plaintiff,)
)
vs.)
)
Jeffrey L. Richardson, et al.,)
) Defendants.)
)
Myrtle Beach Resort Homeowners')
Association, Inc.,)
)
Nominal Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-26-3173

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT**

It is hereby ordered that the above-captioned case be assigned to the Business Court for Horry County. It is further ordered that exclusive jurisdiction over this case be assigned to the **Honorable R. Markley Dennis, Jr.** to hear and handle all pretrial motions and other matters pertaining to this case.

AND IT IS SO ORDERED.

Charleston, South Carolina

ELECTRONICALLY FILED - 2020 Apr 24 1:43 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173



Horry Common Pleas

Case Caption: Frederick E Brown , plaintiff, et al VS Jeffery L Richardson ,
defendant, et al
Case Number: 2018CP2603173
Type: Order/Case Assignment to Business Court Approved

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2020-04-24 12:11:51 page 2 of 2

ELECTRONICALLY FILED - 2020 Apr 24 1:43 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

FREDERICK E. BROWN, *et al.*,
Plaintiffs,

vs.

JEFFERY L. RICHARDSON, *et al.*,
Defendants.

and

MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.,
Nominal Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CIVIL CASE NO. 2018-CP-26-03173

**ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

This matter comes before the Court on the Motion for Summary Judgment filed by Defendants Jeffery L. Richardson, Nancy L. Moore, Peter A. Grusauskas, and Jim Perkins ("Defendants"), as well as Plaintiffs' Motion for Summary Judgment. Defendants request summary judgment on Plaintiffs' Third Cause of Action for Declaratory Judgment. Plaintiffs' Third Cause of Action seeks a judgment of this Court declaring the language of Section 4.1, Article IV of the Declaration of Covenants, Conditions and Restrictions for the Myrtle Beach Resort Homeowners' Association, Inc. (hereafter, the "Declaration") grants additional mandatory powers to the Board of Directors for the Myrtle Beach Resort Homeowners' Association, Inc. (hereafter, the "Master Association", "Association", or the "Board"). The undersigned heard the Motion for Summary Judgment on May 4, 2021. Charles Jordan and Howell Bellamy appeared for the Plaintiffs, and Bruce Wallace and Clay Turner appeared for the Defendants. Nick Rivera and Robert Lee appeared for the nominal Defendant Association. For the reasons set forth below, the Court grants

summary judgment in favor of Defendants and declares that Section 4.1, Article IV merely grants additional powers to the Board, but does not mandate their use by the Board.

Standard of Review

Both Plaintiffs and Defendants agree the third cause of action involves the interpretation of a contract and, as such, constitutes an action at law. See *Jacobs v. Service Merchandise Co.*, 297 S.C. 123, 375 S.E.2d 1 (Ct.App.1988). A trial court may determine summary judgment is appropriate "when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "[T]o resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings." *Nationsbank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995).

Discussion

The parties agree that the language of Section 4.1 of Article IV of the Declaration is clear and unambiguous. Section 4.1, Article IV of the Declaration states in relevant part:

4.1 The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; (b) provide for all refuse collection (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master

television service and telephone service; (d) maintain the oceanfront area; (e) grant easements, rights-of way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (f) maintain such policy or policies of liability and fire insurance with respect to property owned by the Association; (g) employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same; (h) install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project; (i) take such other reasonable action as the Board shall deem advisable with respect to the Myrtle Beach Resort for the benefit of the overall Property.

The parties also agree that the rules of construction for contracts apply to the resolution of this Motion. “The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties.” *Chan v. Thompson*, 302 S.C. 285, 289, 395 S.E.2d 731, 734 (Ct.App.1990). “In determining the intention of the parties, a court first looks to the language of the contract and if the language is clear and unambiguous, the language alone determines the contract's force and effect.” *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146-47, 538 S.E.2d 672, 675 (Ct. App. 2000). “The intention of the parties is to be gathered from the whole scope and effect of the language used.” *Id.*, 343 S.C. at 147, 538 S.E.2d at 675, see *Greenwood Mfg. Co. v. Worley*, 222 S.C. 156, 71 S.E.2d 889 (1952). The Court will interpret documents to give effect to all of their provisions, if practical. *Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime*, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997).

The parties posit the question as follows – does the language of Section 4.1 of Article IV create mandatory obligations for the Board to follow unerringly or merely grant additional powers that the Board may exercise in their discretion? For the reasons set

forth in the Defendants' Memorandum of Law, and as explained below, the Court concludes that the powers set forth in Section 4.1 are not mandatory obligations and constitute only an additional grant of discretionary authority.

Under South Carolina law, "[c]ontract interpretation begins with the plain language of the agreement." *Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 756 S.E.2d 148, 152 (2014) (citation omitted) (internal quotation marks omitted). Where the contract's language is clear and unambiguous, the language alone determines its effect. *Schulmeyer v. State Farm Fire & Casualty Ins. Co.*, 353 S.C. 491, 579 S.E.2d 132, 134 (2003). Section 4.1 starts with "[t]he Association, acting through the Board of Directors, shall also have the power to ..." Thereafter, Section 4.1 enumerates several powers of the Board. Plaintiffs ask the Court to ignore the words "also have to power to" and determine that Section 4.1 mandates the Board exercise each of the enumerated powers, without discretion or consideration. Defendants ask the Court to read the phrase "also have the power to" in conjunction with the Declaration's use of similar phrases to determine Section 4.1 merely grants additional powers, which are discretionary in nature.

Other sections of the Declaration use similar but not identical language. Specifically, Section 3.2 of Article III, which appears immediately before section 4.1 in the Declaration, states "[t]his Board of Directors shall act in accordance with the By-Laws which are attached hereto as Exhibit B." Section 3.2 lacks the phrase "ha[s] the power to", demonstrating the Declarant's intention to differentiate between mandatory and discretionary authority for the Board. Similarly, Section 2.1 of Article II of the Declaration states the Association has "**the power to** grant and accept easements to and from any private and public authority...", which easements "**may be** granted or accepted by the

Association...” (emphasis added). The language in Section 2.1 tracks the language of Section 4.1(e), again indicating the Declarant’s intent to create discretionary powers for the Board. The Court cannot interpret the language in 4.1 as mandatory where Section 2.1 clearly grants discretion in the use of one of those powers. To do as Plaintiffs’ contend would ignore the language of section 2.1 completely. Moreover, Plaintiffs’ interpretation ignores the phrase “shall also have the power to” in Section 4.1.

The By-Laws reinforce the Court’s conclusion. Section 8 of the By-Laws states in relevant part:

Consistent with these By-Laws and applicable Declarations, the Board shall: (a) transact all Association business ...; (b) annually set a budget for the Association; (c) fix, impose, and remit penalties for violations of these By-Laws and the rules and regulations of the Association; (d) elect from the Board... the President, Vice-President, Secretary and Treasurer; (e) carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the Act.

Both parties agree that section 3.2 of Article III of the Declaration and Section 8 of the By-Laws mandate certain Board actions. Conspicuously missing from both these sections, however, is the phrase “also have the power to” as seen in Section 4.1, Article IV of the Declaration.

Plaintiffs’ citation to subsection 8(e) of the By-Laws does not move the Court to a different conclusion. That subsection states the Board “shall ... exercise all rights granted it by these By-Laws, the Declaration and the Act.” Plaintiffs argue that “rights” are equivalent to “powers”, such that the Board must exercise the powers set forth in Section 4.1. The Court concludes that subsection 8(e), read in conjunction with the By-Laws and the Declaration as a whole, corroborates the discretion granted to Board in Section 4.1. Again, when compared with other language in the Declaration and the By-Laws, the Court

cannot reconcile the documents other than to conclude Section 4.1 grants additional discretionary powers. Any other interpretation eviscerates Section 4.1(i) of Article IV of the Declaration, which grants the Board the power to “take other such reasonable action as the Board shall deem advisable with respect to the Myrtle Beach Resort for the benefit of the overall Property.” And no interpretation advanced by the Plaintiffs reconciles this broad grant of discretionary power with a mandate that takes that discretion away.

Conclusion

For these reasons, the Court declares the language of Section 4.1 of Article IV of the Declaration grants additional powers or authority to the Board, but the Board is not required to exercise those powers. In so declaring, the Court hereby GRANTS Defendants' Motion for Summary Judgment as to Plaintiff's Third Cause of Action.

For the reasons set forth in the record of the hearing May 4, 2021, the Court DENIES Plaintiffs' Motion for Summary Judgment.

AND IT IS SO ORDERED.

Electronic signature on next page
R. MARKLEY DENNIS, Judge

ELECTRONICALLY FILED - 2022 Jan 10 4:26 PM - Horry - COMMON PLEAS - CASE#2018CP2603173



Horry Common Pleas

Case Caption: Frederick E Brown , plaintiff, et al VS Jeffery L Richardson ,
defendant, et al
Case Number: 2018CP2603173
Type: Order/Other

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

Electronically signed on 2022-01-10 12:29:05 page 7 of 7

ELECTRONICALLY FILED - 2022 Jan 10 4:26 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA
COUNTY OF MARION

Frederick E. Brown, Charles O. Pakosta,
Conrad A. Calvano, Gayle N. Scott, and Phillip
D. Cox, individually and derivatively on behalf
of Myrtle Beach Resort Homeowners'
Association, Inc., and on behalf of all other
similarly situated Co-owners, and Lori
Niedzwiecki and Robert S. Rosencrans,
individually and derivatively on behalf of the
Myrtle Beach Resort Homeowners'
Association, Inc. for its right and benefit,

Plaintiffs,

vs.

Jeffery L. Richardson and Nancy L Moore,
individually and as current members of the
Board of Directors for Myrtle Beach Resort
Homeowners' Association, Inc., and Peter A.
Grusaukas and Jim Perkins, individually and as
former members of the Board of Directors for
Myrtle Beach Resort Homeowners'
Association, Inc.,

Defendants.

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-26-03173

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT**

It is hereby ordered that the above-captioned case be un-assigned from the Honorable Markley Dennis.

It is further ordered that the above-captioned case be assigned to the Business Court for Marion County, and that exclusive jurisdiction over this case be assigned to the **Honorable William H. Seals, Jr.** to hear and handle all pretrial motions and other matters pertaining to this case.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW

ELECTRONICALLY FILED - 2022 Aug 26 3:13 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173



Horry Common Pleas

Case Caption: Frederick E Brown , plaintiff, et al VS Jeffery L Richardson ,
defendant, et al
Case Number: 2018CP2603173
Type: Order/Case Assignment to Business Court Approved

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2022-08-25 15:51:17 page 3 of 3

ELECTRONICALLY FILED - 2022 Aug 26 3:13 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

FREDERICK E. BROWN, *et al.*,
Plaintiffs,

vs.

JEFFERY L. RICHARDSON, *et al.*,
Defendants.

and

MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.,
Nominal Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CIVIL CASE NO. 2018-CP-26-03173

**ORDER DENYING PLAINTIFFS'
MOTION TO RECONSIDER,
ALTER, OR AMEND**

This matter comes before the Court on Plaintiffs' Motion to Reconsider, Alter, or Amend the Court's Order Granting Defendants' Motion for Summary Judgment and Also Denying Plaintiffs' Motions for Summary Judgment filed January 18, 2022.¹ Defendants filed a Memorandum in Opposition on March 17, 2022. Plaintiffs filed a Reply Memorandum on March 21, 2022. Pursuant to the South Carolina Supreme Court's Administrative Order dated January 28, 2022², the undersigned determined that a hearing on the Motion is unnecessary because the Motion may readily be decided without further input from the lawyers. The Motion is now ripe for adjudication.

The Court has considered all of the arguments raised in Plaintiffs' Motion and supporting Memoranda. For the reasons stated herein, the Court denies the Motion.

PROCEDURAL POSTURE

Plaintiffs' Motion to Reconsider dates back to their initial Motion for Summary Judgment filed March 24, 2020. Plaintiffs filed a memorandum in support of their motion

¹ Plaintiffs filed an Amended Motion and Memorandum January 20, 2022.

² Supreme Court Order No. 2022-01-28-01.

on April 30, 2021. Defendants filed their motion for partial summary judgment March 22, 2021, and their memorandum in support on April 28, 2022. The Court conducted a hearing May 4, 2021, and issued a written Order dated January 10, 2022 granting partial summary judgment to Defendants. Plaintiffs filed the instant Motion to Reconsider on January 18, 2022. Plaintiffs filed an amended Motion and Memorandum on January 20, 2022.

This action was previously assigned to the Honorable R. Markley Dennis, Jr. by Order dated April 24, 2020. Judge Dennis heard the original motion for summary judgment and entered the Order to which Plaintiffs' Motion to Reconsider is addressed. By email dated April 6, 2022, Judge Dennis communicated to all counsel of record his decision to deny the Motion to Reconsider. Judge Dennis requested Defendants prepare the Order, and counsel for Defendants submitted the proposed Order to Judge Dennis' chambers by email dated April 7, 2022. Judge Dennis retired without issuing a written Order on the Motion to Reconsider, and Court administration assigned this action to the undersigned by Order dated August 26, 2022 for handling of all matters, including "all pretrial motions and other matters pertaining to this case".

DISCUSSION

1. The Court properly interpreted Section 4.1 of Article IV of the Declaration. Plaintiffs argue the Court erred in interpreting the discretionary powers of Section 4.1. The Court is not persuaded by Plaintiffs' arguments in this regard. The language of Section 4.1 clearly grants the Master Association Board additional powers that it may employ in the management of the Master Association. Article III, Section 3.2 of the Declaration states the Board shall act in accordance with the By-Laws. The language of Article VIII, Section 8(e) of the Amended By-Laws does not require the Board to employ

the powers set forth in Section 4.1. Rather, it requires the Board to exercise its discretion in employing the powers set forth in Section 4.1, which necessarily entails the right not to employ said powers.

2. Article XVIII of the Master Deeds does not persuade the Court to a different conclusion. Plaintiffs argue that Article XVIII of the Master Deeds confirm that the Section 4.1 powers are mandatory. Article XVIII does not reference Section 4.1, but addresses unit owners' obligations to pay certain assessments to the Master Association for "Resort Expenses" "as such exist from time to time."

3. S.C. Code Ann. §§ 27-31-160 and 240 do not mandate a different result. Section 27-31-160 does not mandate an association's board of directors do anything. Rather, that section simply requires the By-Laws to include certain topics. Similarly, section 27-31-240 does not require the board of directors to insure the property. It actually requires the council of co-owners to insure the property. Under the Act, the term "council of co-owners" means all owners who own an apartment in the building. See S.C. Code Ann. § 27-31-20(d) and (e). In fact, the Act does not define, use, or mention the term "board of directors."

4. Sections 6.2 and 6.4 of the Declaration also do not suggest a different result. The Court, in its prior order, harmonized the language of Section 4.1 with the other relevant language of the Declaration.

5. The Court is unpersuaded by Plaintiffs' argument regarding the Court's reconciliation of Section 8(e) of the Amended By-Laws and Section 4.1 of the Declaration. The Court addressed this argument in its Order of January 10, 2022. The language of these two sections is neither contradictory nor repugnant to each other.

6. Even assuming the Board undertook to employ one or more of those powers enumerated in Section 4.1, such assumption does not make those powers mandatory. Rather, the employment of some or all of the powers over time demonstrates the discretionary nature of such powers.

Having addressed all of the arguments posed by Plaintiffs, the Court denies the Motion for Reconsideration. To the extent the Court has not addressed a specific argument raised by Plaintiffs in this Order, the Court rejects each such argument and denies Plaintiffs' Motion to Reconsider.

AND IT IS SO ORDERED.

Electronic Signature on Following Page

ELECTRONICALLY FILED - 2022 Oct 05 8:19 AM - HORRY - COMMON PLEAS - CASE#2018CP2603173



Horry Common Pleas

Case Caption: Frederick E Brown , plaintiff, et al VS Jeffery L Richardson ,
defendant, et al
Case Number: 2018CP2603173
Type: Order/Other

IT IS SO ORDERED

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

Electronically signed on 2022-10-04 13:18:58 page 5 of 5

ELECTRONICALLY FILED - 2022 Oct 05 8:19 AM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-

FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO,)
GAYLE N. SCOTT, and PHILIP D. COX,) individually and derivatively on behalf
of MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and on behalf of all other similarly situated
Co-owners, and LORI NIEDZWIECKI, and)
ROBERT S. ROSENCRANS, individually)
and derivatively on behalf of the MYRTLE)
BEACH RESORT HOMEOWNERS')
ASSOCIATION, INC. for its right and
benefit,)

Plaintiffs,)

SUMMONS

vs.)

JEFFERY L. RICHARDSON and NANCY)
L. MOORE, individually and as current)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and PETER A. GRUSAUSKAS and JIM)
PERKINS, individually and as former)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC. ,)

Defendants.)

MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Nominal Defendant.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Verified Members Derivative Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Verified Members Derivative Complaint on the subscribers at their office at 1000 29th Ave. N., Myrtle Beach, South Carolina 29577 and to file your answer with the Clerk of Court for Horry County (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

s/Howell V. Bellamy, III

Howell V. Bellamy, III (SC Bar # 66575)

hbellamyiii@bellamylaw.com

Howell V. Bellamy, Jr. (SC Bar # 00642)

nrichardson@bellamylaw.com

1000 29th Ave. N.

Myrtle Beach, SC 29577

843-448-2400 Phone

843-448-3022 Facsimile

ATTORNEYS FOR PLAINTIFFS

Myrtle Beach, SC 29577

May 24, 2018

VERIFIED MEMBERS' DERIVATIVE COMPLAINT

The Plaintiffs for their derivative Complaint on behalf of nominal Defendant Myrtle Beach Resort Homeowners' Association Inc., ("Master HOA") make the following allegations upon Plaintiffs' personal Knowledge with regard to themselves and their own acts and upon information and belief as to all matters. Based upon the allegations in this Complaint, Plaintiffs assert derivative claims for *ultra vires* acts, breach of Master HOA's Declaration and By-Laws, and declaratory judgment and injunctive relief against the above named Defendants as outlined below.

PARTIES AND JURISDICTION

1. Plaintiff Frederick E. Brown ("Brown or Plaintiff") is a citizen and resident of Horry County, South Carolina. At all times relevant, the Plaintiff was and is now, an interest owner of fee simple title to Condominium Unit No. 117 in HPR ("Sometimes referred to as Building A"), located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a current Board member for Myrtle Beach Resort Horizontal Property Regime, Inc. ("HPR").

2. Plaintiff Conrad A. Calvano ("Calvano or Plaintiff") is a resident of Oakland County, Michigan. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit No. 137 in HPR ("Sometimes referred to as Building A") located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a current member of the Board of Directors for HPR.

3. Plaintiff Charles O. Pakosta ("Pakosta or Plaintiff") is a resident of Columbiana County, Ohio. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit No. 527 in HPR ("Sometimes referred to as Building A") located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is also a current Board member for HPR.

4. Plaintiff Gayle L. Scott (“Scott or Plaintiff”) is a resident of Chesapeake, Virginia. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit No. 509 in HPR (“Sometimes referred to as Building A”) located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is also a current Board member for HPR.

5. Plaintiff Robert S. Rosencrans (“Rosencrans or Plaintiff”) is a resident of Horry County, South Carolina. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit No. 545 in HPR (“Sometimes referred to as Building A”) and also Condominium Unit Nos.: 6105 and 6220 in Myrtle Beach Resort Five Seasons Centre Council of Co-owners, Inc. (“Five Seasons Centre”). These condominium units are located at 5905 Highway 17 South, Myrtle Beach, Horry County. Rosencrans is also a current Board member for both the Master HOA and Five Seasons Centre.

6. Plaintiff Lori Niedzwiecki (“Niedzwiecki or Plaintiff”) is a resident of Horry County, South Carolina. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit Nos. 4107 and 4113 in Five Seasons Centre (“Sometimes referred to as Phase IV”) located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a current Board member for both the Master HOA and Five Seasons Centre.

7. Plaintiff Philip D. Cox (“Cox or Plaintiff”) is a resident of Horry County, South Carolina. At all times relevant, the Plaintiff was and is now, an interest owner of fee simple title to Condominium Unit Nos. 6106 and 6110 in Five Seasons Centre (“Sometimes referred to as Phase IV”) located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a current member of the Board of Directors for Five Seasons Centre.

8. Myrtle Beach Resort Homeowners’ Association, Inc. (“Master HOA”), a nominal Defendant, is a nonprofit corporation formed pursuant to the laws of South Carolina.

9. Upon information and belief, the Defendant Jeffrey L. Richardson (“Richardson or Defendant”) is a resident of Cherokee County, South Carolina. At all times relevant, upon information and belief, Defendant was and is now an interest owner of fee simple title to Condominium Unit Nos.: 203C, 302, 311, 314, 315, 316, 508, 514, 812, 902, 908, 1405, 1406, 1408, 1712, 2211, and 2212 of the Renaissance Tower Horizontal Property Regime, Inc., (“Renaissance Tower”), which are located at 5905 Highway 17 South, Myrtle Beach, Horry County. Defendant Richardson is also a partner of Shaggy’s, Inc., which owns fee simple title to Condominium Unit Nos.: 501, 603, and 604 in the Renaissance Tower Regime as well as Condominium Unit Nos.: 210, 245, and 308 in the Ocean Front Spa Regime. Defendant Richardson is a current member of the Board of Directors for both the Master HOA and Renaissance Tower. At all times relevant hereto, Defendant acted individually and/or in his official capacity as an agent, representative, and current Board member for the Master HOA.

10. Upon information and belief, the Defendant Nancy L. Moore (“Moore or Defendant”) is a resident of Horry County, South Carolina. Defendant holds fee simple title to Condominium Unit Nos.: 106-B, 403, and 511-B of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc. (“Ocean Front Spa”), located at 5905 Hwy 17 South, Myrtle Beach, County of Horry, South Carolina, and is a current member of the Board of Directors for both the Master HOA and Ocean Front Spa. At all times relevant hereto, Defendant Moore acted individually and/or in her official capacity as an agent, representative, and current Board member for the Master HOA.

11. Upon information and belief, the Defendant Jim Perkins (“Perkins or Defendant”) is a resident of Clark County, Nevada. Defendant holds fee simple title to Condominium Unit No. 546, of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc. (“Ocean Front

Spa”), located at 5905 Hwy 17 South, Myrtle Beach, County of Horry, South Carolina, and is a former member of the Board of Directors for both the Master HOA and Ocean Front Spa. At all times relevant hereto, Defendant Perkins acted individually and/or in his official capacity as an agent, representative, Treasurer and Board member for the Master HOA.

12. Upon information and belief, the Defendant Peter A. Grusauskas (“Grusauskas or Defendant”) is a resident of City of Goshen, Connecticut. Defendant holds fee simple title to Condominium Unit No.: 1402-C of the Renaissance Tower Horizontal Property Regime, Inc., (“Renaissance Tower”) located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a former member of the Board of Directors for both the Master HOA and Renaissance Tower. At all times relevant hereto, Defendant acted individually and/or in his official capacity as an agent, representative, and President and Board member for the Master HOA.

13. Based upon the foregoing, this Honorable Court has subject matter jurisdiction and venue is proper pursuant to S.C. Code Ann. § 15-7-30. Furthermore, based on the foregoing this Honorable Court has general, personal and specific jurisdiction over the above-named parties hereto.

14. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of the Master HOA and its members with respect to the matters alleged herein.

DERIVATIVE ALLEGATIONS

15. Plaintiffs bring this action derivatively, pursuant to S.C. Code Ann. § 33-31-630 (2007) and Rule 23(b) (1), SCRCPP, to redress injuries suffered by the Master HOA and also on behalf of all other similarly situated members of the Master HOA as a direct result of the Defendants’ breaches of the Master HOA’s Declaration and By-Laws and *ultra vires* acts.

16. Plaintiffs are condominium unit owners at Myrtle Beach Resort and members of the Master Association.

17. Plaintiffs will fairly and adequately represent the interest of the Master HOA and its members in enforcing and prosecuting its rights and has retained competent experienced counsel.

18. Plaintiffs previously demanded the Defendants Grusauskas and Perkins stop engaging in *ultra vires* conduct by failing to comply with their affirmative duties as Board members of the Master HOA.

19. Thereafter Plaintiffs' counsel sent two letters attached hereto as Exhibits "B-1 and B-2" dated February 1, 2017 and March 29, 2017, respectively, to the Defendants Grusauskas and Perkins and received no response.

20. Because the current Master HOA's Board members, Richardson and Moore, suffer from conflicts of interest and divided loyalties, which preclude them from exercising independent business judgment, demand is also futile.

21. Upon information and belief, the current Master HOA's Board members, Richardson and Moore, are incapable or unwilling to comply with their affirmative duties to properly administer, maintain and repair, and manage the use and enjoyment of the Resort Properties in order to protect the Plaintiffs and other members' rights and property values in the resort in accordance the requirements of the Master HOA's Declaration and By-Laws.

BRIEF FACTUAL HISTORY OF MYRTLE BEACH RESORT REGIME

22. Master HOA was created as an umbrella or "Master Association" as evidenced by the Articles of Incorporation filed with the Office of the South Carolina Secretary of State on April 30, 1987 and as governed by the Master HOA's Declaration of Covenants, Conditions and Restrictions and By-Laws and filed of record on April 25, 1991 in the Office of the Register of

Mesne Conveyances (R.M.C.) for Horry County in Deed Book 1465 at Page 329 (“Master HOA’s Declaration and By-Laws attached thereto”). A copy of the Master HOA’s Declaration and By-Laws is attached hereto as Exhibit “C” and incorporated by reference as part of this Verified Members’ Derivative Complaint.

23. Master HOA is charged with administering certain affairs of the Myrtle Beach Resort, a resort within Horry County, South Carolina presently including: (a) Myrtle Beach Resort Horizontal Property Regime, Inc. (“HPR”); (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc. (“Ocean Front Spa”); (c) Renaissance Tower Horizontal Property Regime, Inc. (“Renaissance Tower”); (d) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. (“Five Seasons Centre”) (Collectively known as “Four Individual Condominium Regimes”).

24. The Four Individual Condominium Regimes agreed to the Master HOA’s creation and to be bound by its Declaration and By-Laws.

25. In addition, thereto, the authority of the Master HOA, stems from, and is in accordance with the Master Deeds of the aforementioned Four Individual Condominium Regimes, which specifically reserve to the developer the right to establish the Master HOA.

26. Moreover, all developer’s reserved rights were assigned to the Master HOA by that Assignment of Rights dated January 27, 1989 and filed of record in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 239.

27. The Four Individual Condominium Regimes as well as the Defendants Richardson, Moore, Grusauskas, and Perkins and their successors or designee are subject to the provisions of the Master HOA’s Declaration and By-Laws.

RELEVANT PROVISIONS OF THE BY-LAWS FOR THE MASTER HOA

28. Insofar as it is relevant to the assertions in this Complaint, Article II defines certain terms used in the Master HOA's By-laws as follows:

- a. "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., its successors and assigns.
- b. "Member" shall mean and refer to each and every Co-Owner at The Myrtle Beach Resort which includes (a) Myrtle Beach Resort Horizontal Property Regime, Inc.; (b) Myrtle Beach Oceanfront Spa Horizontal Property Regime; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime.
- c. "Voting Member" shall mean and refer to that representative from the Board of Directors of each Individual Condominium association who has been elected by that Board as a representative to the Board of Directors of this Association.
- d. "Individual Condominium Associations" shall mean and refer to those Associations at The Myrtle Beach Resort presently including: (a) Myrtle Beach Resort Horizontal Property Regime, Inc.; (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc.; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc.

29. Article IV of the By-Laws discusses voting, selection, term of office, and duties of the Board of Directors for the Master HOA. Article IV provides in pertinent part:

Section 1. The Association shall be managed by a Board of Directors consisting of not less than four (4) Directors. Each Individual Condominium Association of the Myrtle Beach Resort shall have a representative from its Regime as a Director on the board of the Association. Each Board Member of this Association shall also be a board member of the Individual Condominium Association which he or she represents.

Section 1.A. "Voting." Each Director is hereby assigned the number of votes that represents the number of Apartments (whether residential or commercial) that exists in that Director's Individual Condominium Association.

Section 7. Voting: Any action taken at a meeting of the Board of Directors shall be only upon the affirmative vote of 67% of the entire votes of the Association.

Section 8. Consistent with these By-Laws and applicable Declarations, the Board shall:

- (a) Transact all Association business and prescribe the rules and regulations for the use of the assets, facilities and property for which it is so charged and may appoint such officers, clerks, agents, servants or employees as it may deem necessary in its sole discretion and may fix their duties and compensation;
- (b) Annually set a budget for the Association;
- (c) Fix, impose and remit penalties for violations of these By-Laws and the rules and regulations of the Association;
- (d) Elect from the Board within thirty (30) days after each annual meeting the President, Vice-President, Secretary and Treasurer;
- (e) Carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the Act.

FOR A FIRST CAUSE OF ACTION
(Ultra Vires Acts and Reckless, Willful, and Wanton Conduct)

30. The Plaintiffs reiterate each and every relevant allegation set forth above as if fully incorporated herein.

31. As of April of 2017, the individual Defendants Grusauskas and Perkins were serving as members and officers of the Board of Directors for the Master HOA. Both Defendants Grusauskas and Perkins resigned from the Master HOA's Board of Directors in March and April of 2018, respectively. Their successors or designees on the Master HOA's Board of Directors are the Defendants Richardson and Moore.

32. Article IV of the Declaration for the Master HOA addresses the Board's affirmative duties with respect to the administration and management of the Myrtle Beach Resort Property. Section 4.1 provides:

The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and

periodic resurfacing; **(b) provide for all refuse collection** (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master television service and telephone service; (d) maintain the oceanfront area; grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (e) grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (f) maintain such policy or policies of liability and fire insurance with respect to property owned by the Association; (g) **employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same;** (h) **install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project; . . .** (Emphasis added.)

33. Defendants, Richardson and Moore, individually, and as current members of the Master HOA's Board of Directors, as well as the Defendants, Grusauskas and Perkins, individually, and as former members of the Master HOA's Board of Directors, have committed the following *ultra vires* acts:

- a. in attempting to disregard the Master HOA's governing documents¹ and take control of the Master HOA in direct contravention of the legal rights and property interest of the Plaintiffs and other members of the Master HOA;
- b. in improperly directing and/or instructing Empress Management Company to remove First Service Residential from possession of its office space in Commercial units D and E without the affirmative vote of 67% of the Board members for the Master HOA;
- c. in canceling the master security contract with the Master HOA without a vote from the Master Board and thereby resulting in each Individual Condominium Association having to make arrangements for security. Stated differently, in improperly delegating the duties and responsibilities for security services to the individual condominium associations from the Master HOA. This improper delegation of security services is in direct contravention of Article IV, Subsection (h) of Section 4.1 of Declaration of Covenants, Conditions and Restrictions for the Master HOA. Furthermore, assuming the Defendants had the authority to delegate these duties and

¹ See Defendants' e-mails attached hereto as Exhibit "D" and incorporated by reference as part of this Verified Members' Derivative Complaint.

- responsibilities for security services, which is expressly denied, their unauthorized delegation was made without the affirmative vote of 67% of the Board members for the Master HOA;
- d. in improperly delegating the duties and responsibilities for all trash collection services to the individual condominium associations from the Master HOA. This improper delegation of trash collection services is in direct contravention of Article IV, Subsection (b) of Section 4.1 of Declaration of Covenants, Conditions and Restrictions for the Master HOA. Furthermore, assuming the Defendants had the authority to delegate these affirmative duties and responsibilities, which is expressly denied, their unauthorized delegation was made without the affirmative vote of 67% of the Board members for the Master HOA;
 - e. in improperly entering into as well as cancelling vendor contracts on behalf of the Master HOA without obtaining the affirmative vote of 67% of the Board members for the Master HOA. This unauthorized action is in direct violation of Article IV, Section 7 of the By-Laws for the Master HOA;
 - f. in improperly directing and/or instructing Empress Management Company to make any operational decisions for the Master HOA without the affirmative vote of 67% of the Board members for the Master HOA;
 - g. in improperly asserting that they (Richardson and Moore) do NOT have to follow the voting provisions in the Bylaws for the Mater HOA because their individual Condominium Association (Renaissance Tower and Oceanfront Spa) have more than 50% of the total Myrtle Beach Resort Units;
 - h. in improperly authorizing a forensic audit to proceed at a cost of \$20,000.00 without a vote of the entire Board;
 - i. in improperly terminating the gate pass fee without the requisite vote from the Master Board. Upon information and belief, the gate pass fee has been in effect for over seventeen years and in 2017 generated annual funds for the Master HOA of approximately \$289,000.00;
 - j. Richardson and Moore as the two representatives from Renaissance Tower and Oceanfront Spa, respectively, are continuously taking improper action without a Board Vote; and
 - k. Any other unauthorized conduct or act of the Defendants that may be revealed during the discovery process of this case before trial.

34. As a direct and proximate result and consequence of the Defendants' actions herein, the Plaintiffs and other members of the Master HOA have been injured and damaged by the loss of protected rights as well as diminution of their property values.

35. Plaintiffs are entitled to a judgment against the Defendants, together with all damages, actual and punitive, and attorney's fees and such other and further relief as this Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Breach of Master HOA's Declaration and By-Laws)

36. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

37. The Myrtle Beach Resort's recorded documents, including the Master HOA's Declaration and By-Laws, constitute a contract between the Master Association on the one side and the four individual regimes and Co-owners on the other side. Failure of the Defendants, Richardson and Moore, individually, and as current members of the Master HOA's Board of Directors, as well as the Defendants, Grusauskas and Perkins, individually, and as former members, to comply with their affirmative duties under Article IV of the Declaration and Sections 1, 3, 5, 6, 7, and 8(e) of the By-Laws gives rise to an action for breach of contract against them by an aggrieved member/Co-owner.² Specifically, Article VI, Section 6.2 of the Declaration provides in pertinent part:

Each Co-owner and Occupant shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration, as same

² See Murphy vs. Yacht Cove Homeowners Ass'n, 289 S.C. 367, 345 S.E.2d 709 (1986), where the South Carolina Supreme Court held "*that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association*" for the failure to discharge its affirmative duties under the By-Laws. 289 S.C. at 369, 345 S.E.2d at 710.

may be lawfully amended from time to time. *Failure to comply with any of the same shall be grounds for . . . instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Board of Directors on behalf of the Association, or in a proper case, by an aggrieved Owner.* Should the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement including court costs and reasonable attorneys' fees, shall be paid by the violating Owner or Occupant. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Association, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation of breach. (Emphasis Added.)

38. Declaration of Covenants, Conditions and Restrictions for the Master HOA provides in pertinent part: "that all the property described in Exhibit "A" ("Resort Properties")³ shall be . . . subordinate and subject to the following easements, restrictions, charges, liens, and conditions which are hereby imposed for the purpose of protecting the value and desirability of these properties and which restrictions, easements, charges, liens, conditions and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchase or takes any interest in real property within the property subject to this instrument." Emphasis Added.) A copy of Exhibit "A" as described above is attached hereto and incorporated by reference as part of this Complaint.

39. Defendants, Grusauskas and Perkins, individually, and as former members of the Master HOA's Board of Directors, have breached their affirmative duties as set forth above, and

³ See Section 1.1.12 of the Master HOA's Declaration of Covenants, Conditions, and Restrictions, and attached hereto as Exhibit "C" and incorporated by reference as part of this Verified Members' Derivative Complaint.

have specifically violated Article IV, Subsections (b), (c), (g), and (h) of Section 4.1 of Declaration for the Master HOA as well as Article IV, Sections 1, 3, 5, 6, 7, 8(e) and 9 of the By-Laws. Furthermore, the Defendants, Richardson and Moore, individually, and as current members of the Master HOA's Board of Directors, have breached their affirmative duties as set forth above, and continue to violate Article IV, Subsections (b), (c), (g), and (h) of Section 4.1 of Declaration for the Master HOA as well as Article IV, Sections 1, 3, 5, 6, 7, 8(e) and 9 of the By-Laws by failing to discharge their affirmative duties in good faith for the reasons described above and below.

40. As a direct and proximate result and consequence of the Defendants' past and ongoing breaches of the Master Association's governing documents as described above, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to a judgment against the individual Defendants for all direct, indirect, and resulting consequential damages, and attorney's fees and such other and further relief as this Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

41. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

42. This is an action for declaratory judgment relief pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in §15-53-10 *et seq.*, of the South Carolina Code of Laws, 1976, as amended, to determine the rights, status or other legal relations of the parties under the Declaration and By-Laws for the Master HOA.

43. Specifically, § 15-53-30 provides:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal

ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

44. A justiciable controversy exists between the parties regarding their rights, status, and legal relations under the Master HOA's Declaration and By-Laws for the reasons described herein above.

45. Plaintiffs may not have an adequate remedy at law.

46. Plaintiffs desire a judicial determination with respect to the following declarations:

- a. That the Defendants and their successors or designees have affirmative duties and responsibilities under Master HOA's governing documents to provide security services for the Resort Property, which are non-delegable to the individual condominium associations from the Master HOA;
- b. That the Defendants and their successors or designees have affirmative duties and responsibilities under Master HOA's governing documents to provide trash collection services for the Resort Property, which cannot be legally delegated to the individual condominium associations from the Master HOA;
- c. That all vendor contracts with the Master HOA are null and void as matter of law that were not properly executed with the affirmative vote of 67% of the Board members for the Master HOA;
- d. That the Defendants and their successors or designees are bound by the express provisions of the Master HOA's governing documents and are required to comply with their affirmative obligations under these governing documents;
- e. That the Master Deeds of all four regimes (including the Ocean Front Spa and Renaissance Tower) provide for cross easements for ingress and egress and access to the amenities of all four regimes flowing from the cross easements that cannot be unreasonably impeded; and
- f. Any and all other relief that is deemed to be necessary and proper by this Court.

47. A judicial determination of the above declarations is necessary and proper at this time in order to ascertain the rights as well as affirmative duties and responsibilities of the Board members and members/Co-owners in confronting the Defendants Richardson, Moore, Grusauskas, and Perkins' *ultra vires* conduct.

FOR A FOURTH CAUSE OF ACTION
(Injunctive Relief)

48. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

49. Plaintiffs and other similarly situated members of the Master HOA, upon information and belief, have suffered and continue to suffer injury, irreparable harm, and damages in an amount equal to the depreciation in value of their dwelling units caused by the Defendants' disruption of the general plan of development - as contemplated by the governing documents for the protection of present and future member/Co-owners - by their continual failure to discharge their affirmative duties and responsibilities in good faith under Article IV, Section 4.1 of the Master HOA's Declaration as well as Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the Master HOA's By-Laws. Specifically, the Defendants, Richardson and Moore, upon information and belief, are unlawfully delegating their duties and responsibilities as current Board members to their individual condominium associations: *Myrtle Beach Oceanfront Spa Horizontal Property Regime, and Renaissance Tower Horizontal Property Regime, for the sole purpose of diminishing the Master Association's control and authority over their regimes*. Stated differently, upon information and belief, it is the ultimate intent of the Defendants Richardson and Moore to disaffiliate their individual regimes from the Master HOA. (Emphasis Added.) For example, there had been an ongoing and concerted effort by one or more of the Defendants starting in 2016 to weaken financially the Master HOA with respect to its affirmative duties and

responsibilities over the individual regimes by having the Renaissance Tower Regime, upon information and belief, to purposely withhold its Co-owners' assessments which were legally owed to the Master Association for its operation. A lawsuit was brought in 2016 by the Plaintiff Master HOA, under Civil Action No.; 2016-CP-26-7895, to challenge the Renaissance Tower Regime's bad acts and/or *ultra vires* conduct which the Defendant Richardson was a sitting Board member of Renaissance Tower at this time. In concurrence with its Complaint, the Plaintiff Master HOA filed a Motion for a Temporary Injunction which the Circuit Court granted and further ordered that the Defendant pay to the Horry County Clerk of Court its withheld assessments that it had collected from its Co-owners for the year 2016 as well as future assessments that the Plaintiff maintained were owed to it, until such further time as the Court could rule on the merits of the matter. On March 22, 2017, the action was referred to the Master-in-Equity Cynthia Graham Howe ("Master"). On November 28, 2017, the Master issued an Order finding that the Plaintiff Master HOA was operating at an estimated deficit of \$432,023.00 as of December 31, 2017 due to the Defendant withholding past due assessments owed to the Plaintiff for its operation, which was jointly consented to by the parties.

50. The Master's Order recorded on November 28, 2017, ordered the release of the deposited withheld funds collected by the Defendant Renaissance Tower as follows:

- a. That the Clerk of Court for Horry County shall disburse funds on deposit with Court to Plaintiff [Master HOA], this being a total of \$220,719.65 being remitted to the Plaintiff, which Plaintiff has agreed to accept;
- b. That the Defendant Renaissance Tower shall pay \$185,268,.65 in past due assessments directly to Plaintiff [Master HOA] within ten (10) days of issuance of its Order; and
- c. That "Defendant shall pay all future assessments to the Plaintiff [Master HOA] directly in accordance with the [Master HOA's] Declaration of Covenants, Conditions, and Restrictions for Myrtle Beach Resort filed in

Deed Book filed on April 25, 1991 in Deed Book 1465 at Page 329 in the Horry County Register of Deeds.” (Emphasis Added).

A copy of the Master-in-Equity’s Order disbursing funds from the Clerk of Court to the Plaintiff Master HOA is attached here to as Exhibit “E” and incorporated by reference as part of this Verified Members’ Derivative Complaint.

51. As to liens wrongfully filed by Renaissance Tower Regime against the Master HOA’s Units A, D, and E is another example of bad faith on the part of Richardson in attempting to weaken financially the Master HOA’s position with respect to its operation and control over Renaissance Tower Regime. The Master HOA’s Commercial Units A, D, and E are located in the Renaissance Tower Condominium Building. Excluding attorney fees and costs, the improper lien amounts were: Unit A - \$19, 083.61; Unit D -\$3,442.58 and Unit E - \$3,442.58. It is important to point out that the Master HOA timely paid its assessment to the Renaissance Tower Regime, but its checks were never cashed by the Board for Renaissance Tower Regime of which Richardson was a member. For the foregoing reasons, the Defendant Richardson, upon information and belief, purposely created a cloud of title on the Master HOA’s property in order to marginalize the Master HOA’s ability to exert control the Renaissance Tower regime as well as comply with its affirmative duties under Section 4.1 of the Declaration and Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the By-Laws.

52. Injunctive relief is necessary to remedy the past violations of Section 4.1 of the Declaration and Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the By-Laws as well as the Defendants’ *ultra vires* acts in order to prevent future injury, irreparable harm, and depreciation in value to the Plaintiffs and other similarly situated members’ property interest in their individual units along with preventing the Defendants’ disruption of the general plan of development by

weakening the Master HOA's authority as provided for in the Myrtle Beach Resort's governing documents. (Emphasis Added.)

53. Both S.C. Code Ann. § 27-31-170 (2007) and Article VI, Section 6.2 of the Declaration for the Master HOA authorize the Plaintiffs as "aggrieved owner[s]" with the contractual right to bring an action for mandatory injunctive relief to ensure that the Defendants and their successors or designees are complying with their affirmative duties under Article IV, Section 4.1 of the Declaration as well as Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the By-Laws in order to properly administer the Master HOA, pursuant to its recorded plan of development, for the protection of present and future Co-owners and their individual condominium associations. Specifically, Article VI of the Declaration provides in pertinent part:

Failure to comply with any of the same shall be grounds for imposing fines, for suspending rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or *for injunctive relief, such actions to be maintainable by the Board of Directors on behalf of the Association, or in a proper case, by an aggrieved Owner*. . . . Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, *it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Association, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation of breach*. (Emphasis Added).

54. Plaintiffs have no adequate remedy at law to challenge the Defendants' past and ongoing violations of the Master HOA's Declaration and By-Laws or otherwise *ultra vires* acts, and the Plaintiffs and other similarly situated members of the Master HOA will suffer irreparable harm as evidenced by the findings and opinions set forth in the Affidavits of Daniel L. Patrick ("Patrick") and Plaintiffs Expert Michael R. Parades ("Parades"), attached hereto as Exhibits "F" and "G" unless they obtain injunctive relief for the reasons described above and below.

55. Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA seek the following injunctive relief from this Court:

- a. To permanently enjoin the Defendants Richardson and Moore and their successors or designees from delegating the Master HOA's affirmative duty and responsibility for providing security services to the individual condominium associations in violation of the Master HOA's Declaration and By-Laws;
- b. To permanently enjoin the Defendants Richardson and Moore and their successors or designees from delegating the Master HOA's affirmative duty and responsibility for providing trash collection services to the individual condominium associations in violation of the Master HOA's Declaration and By-Laws;
- c. To enjoin the Defendants Richardson and Moore and their successors or designees, from improperly entering into, modifying, or cancelling contracts with the Master HOA without first obtaining the affirmative vote of 67% of the current Board members for the Master HOA;
- d. To enjoin the Defendants Richardson and Moore and their successors or designees, from improperly directing and/or instructing the Management Company to vacate First Service Residential from possession of its office space in Commercial units D and E without first obtaining the affirmative vote of 67% of the current Board members for the Master HOA;
- e. To issue a mandatory injunction requiring the Defendants Richardson and Moore and their successors or designees, to comply with their affirmative duties under the Master HOA's Declaration and By-Laws; and
- f. For such other and further injunctive relief as this Court may deem just and proper.

56. That the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA are likely to succeed on the merits of this litigation based on the expressed language of the provisions for Master HOA's Declaration and By-Laws.

57. That a permanent injunction is required to require the Defendants Richardson and Moore and their successors or designees to come into compliance with the Master HOA's Declaration and By-Laws, as they are bound by the same, and other remedies at law will be

inadequate to protect the rights and property values of the Plaintiffs and all other similarly situated members of the Master HOA for the reasons explicitly set forth in the Affidavits of Daniel L. Patrick (“Patrick”) and Plaintiffs Expert Michael R. Parades (“Parades”), which are attached hereto as Exhibits “F” and “G”.

WHEREFORE, having fully set forth their Verified Members’ Derivative Complaint, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA pray for the following relief:

- a. For an Order of the Court finding the Defendants Richardson, Moore, Grusauskas and Perkins, individually and as current and former members of the Board of Directors, respectively, have breached and violated, including, but not limited to, Section 4.1 of the Master HOA’s Declaration and Article IV, Sections 1, 3, 5, 6, 7, 8(e) and 9 of the Master HOA’s By-Laws;
- b. For an Order of the Court declaring the Defendants Richardson and Moore and their successors or designees are enjoined from continuing to violate, including, but not limited to, Section 4.1 of the Master HOA’s Declaration and Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the Master HOA’s By-Laws;
- c. As to the First Cause of Action, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to a judgment against the Defendants Richardson, Moore, Grusauskas, and Perkins, for all direct, indirect, resulting consequential and punitive damages and attorney’s fees in an amount to be determined at the trial of this case;
- d. As to the Second Cause of Action, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to a judgment against the Defendants, Richardson, Moore, Grusauskas, and Perkins, for all direct, indirect, and resulting consequential damages and attorney’s fees in an amount to be determined at the trial of this case;
- e. As to the Third Cause of Action, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to declaratory relief as demanded in the following particulars requested under subparagraphs (a), (b), (c), (d) (e) and (f) of Paragraph 46 of the Verified Members’ Derivative Complaint;

- f. As to the Fourth Cause of Action, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to a mandatory injunction compelling one or more of the following particulars requested under subparagraphs (a), (b), (c), (d), and (e) of Paragraph 55 of the Verified Members' Derivative Complaint;
- g. For attorney's fees, costs and expenses incurred in bringing this action;
- h. For a trial by Jury; and
- i. For such other and further relief as the Court may deem necessary and proper.

Bellamy, Rutenberg, Copeland
Epps, Gravely & Bowers, P. A.

s/ Howell V. Bellamy, III
Howell V. Bellamy, III (S. C. Bar #66575)
hbellamyiii@bellamylaw.com
Howell V. Bellamy, Jr. (S.C. Bar #00642)
nrichardson@bellamylaw.com
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
(843)-448-2400 Phone
(843)-448-3022 Facsimile
Attorneys for Plaintiffs

Myrtle Beach, South Carolina

May 24, 2018

EXHIBIT "A"

EXHIBIT "A"

PHASE I - MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately five (5) miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.198 acres, more or less, and being shown and described as a 6.198, more or less acres parcel on a certain plat entitled Plat of 44.668, more or less, acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" prepared for Resort Investment Corporation by Culler Land Surveying Company, Inc., dated August 17, 1981, which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 72 at Page 58; also being shown and described on the plats recorded in the Condominium Plat Book, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 15, 1982, in the Office of the Clerk of Court for Horry County in Deed Book 750 at Page 642.

PHASE II - MYRTLE BEACH RESORT OCEANFRONT SPA HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately 5 miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.205 acres, more or less, and being shown and described as "Phase II (6.205 Ac)" on a certain plat entitled "Plat of 44.668+- Acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" dated June 10, 1982, revised July 13, 1982, and July 19, 1982, prepared by Culler Land surveying Company, Inc., which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 74 at Page 32; also being shown and described on the plats and architectural plans and drawings prepared by Culler Land Surveying Company, Inc. and Stevenson & Wilkinson, Inc., respectively, which are recorded in the Condominium Plat Book at Book 2, Page 31, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on April 15, 1983, in the Office of the Clerk of Court for Horry County in Deed Book 789 at Page 362.

EXHIBIT "A" CONTINUED

PHASE III - RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying, and being on the South Eastern side of U.S. Highway 17 containing 8.672 acres, more or less and designated as a Portion of Lot 5 of Lakewood Plantation Tract, further designated as Phase III of The Myrtle Beach Resort, and described on a Map prepared by Culler Land Surveying Co., Inc. dated November 16, 1984, also being shown as Phase III on a Plat of 44.668 +/-Acres, lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, revised November 27, 1984, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the

aforesaid Horizontal Property Regime recorded on November 28, 1984, in the Office of the Clerk of Court for Horry County in Deed Book 917 at Page 885.

PHASE IV - MYRTLE BEACH RESORT FIVE SEASONS CENTRE (Phase I)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase I of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Culler Land Surveying Co., Inc. dated June 4, 1985, also being shown as Phase I, Myrtle Beach Resort Five Seasons Centre on a plat of 44.668+/- acres, Lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, dated June 10, 1982, with latest revision dated June 14, 1985, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 20, 1985, in the Office of the Clerk of Court for Horry County in Deed Book 966 at Page 654.

(Phase II)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase II of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Atlantic Land Surveying Co., Inc. dated May 1, 1986, all as is more particularly described in that First Amendment to the Master Deed for the aforesaid Horizontal Property Regime recorded on May 29, 1986, in the Office of the Clerk of Court for Horry County in Deed Book 1048 at Page 824.

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

EXHIBIT “B-1”

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
M. EDWIN HINDS, JR.
DAVID J. GUNDLING⁺⁺
DAVID B. MILLER⁺
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON⁺
HOWELL V. BELLAMY, III

* LLM TAXATION
** LICENSED IN SC & NC
⁺ CERTIFIED MEDIATOR
⁺⁺ CERTIFIED ARBITRATOR



ASHLEY P. MORRISON
GEORGE W. REDMAN, III⁺ ** **
BENJAMIN A. BAROODY⁺ **
PHILIP H. ALBERGOTTI* **
HAYES K. STANTON⁺ **
KARA J. KEITH **
HOLLY M. LUSK
LAUREN BREARLEY BENTON
JON CRAIG HOWELL, JR.
JAMES C. SPEARS, III *

RETIRED:
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY
JILL F. GRIFFITH

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

February 1, 2017

HAND DELIVERED AND
U. S. POSTAL SERVICE

Myrtle Beach Resort Homeowners'
Association, Inc. ("MBRHOA" or "Master Association")
Peter Frausauskas, President of MBRHOA
Jim Perkins, Secretary of MBRHOA
5905 S. Kings Highway
Myrtle Beach, South Carolina 29575

Sarah Morrow, Registered Agent for MBRHOA
4615 Oleander Dr., Suite 202
Myrtle Beach, South Carolina 29577

Re: Attempted removal of First Service Residential from its possession of office space in
Commercial Units D and E in the HOA regime, which directly contravenes the provisions
of the governing documents of the Master Association as well as State Law.

Dear Messrs. Grausauskas and Perkins and Ms. Morrow:

Our firm represents current Board Members Conrad Calvano ("Calvano") and Phil
Cox ("Cox") of the Master Association as well as Myrtle Beach Resort Horizontal Property
Regime, Inc. ("HPR") and Myrtle Beach Resort Five Seasons Centre Council of Co-Owners,
Inc. ("CCO") regarding the above-mentioned matter.

As you are aware, the Board of Directors ("Board") for the Master Association held a
meeting on or about January 28, 2018. A motion was made by you (Grausauskas) and seconded
by you (Perkins) to permit other management companies to have the right to occupy space in
Commercial Units D and E of the HOA's on site office. Consequently, the motion did not pass

February 2, 2018
Page 2

because both of you voted against it. Unbeknownst to Calvano and Cox, both of you sought to vacate First Service Residential from possession of its office space in Commercial Units D and E as a result of your motion failing to pass. This ruse is evidence of bad faith conduct. See Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc. 379 S.C. 31, 43, 664 S.E.2d 83, 88 - 89 (Ct. App. 2008)(Bad faith is defined as “[t]he opposite of good faith, generally implying or involving actual or constructive fraud, or a *design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.*)

As you know, First Service Residential has occupied a portion of Commercial Units D and E as office space for a period of time in excess of ten (10) years based upon the assent of the Master Association. First Service Residential is a tenant under State law. Based upon the foregoing, First Service Residential is entitled to certain protections and/or notice requirements under S.C. Code Ann. § 27-35-10 *et seq.*, (2007) as well as under State Law.

Your actions in instructing Ms. Sarah Morrow of Empress Management are without authority and constitute an *ultra vires* act. Ms. Morrow's actions in attempting to evict First Service Residential are likewise without authority and must be retracted immediately. Your actions have exposed the Master Association to legal liability. First Service Residential has legal rights and they must be honored

Additionally, the scope of your “*motion to allow other management companies to occupy office space*” in Commercial Units D and E as recorded at the meeting held on January 28, 2018, does not expressly authorize the Board to vacate First Service Residential from its office space due to motion's failure to pass by the affirmative vote of 67% of the entire votes of the association members.¹ Your failed motion was silent with respect to the removal First Service Residential from the commercial property. Stated differently, First Service Residential can only be removed from its office space in Commercial Units D and E by the affirmative vote of 67% of the Board members for the Master Association.

Based upon the foregoing, Sarah Morrow (“Morrow”) of Empress Management, LLC was improperly authorized and directed by both of you to vacate First Service Residential from its office space in Commercial Units D and E. This is supposed to occur no later than this Tuesday, February 6, 2018.² This *ultra vires* action is contrary to State law as well as your affirmative obligations under the governing documents.

Upon receipt of this cease and desist letter, our clients demand that both of you terminate all efforts to remove First Service Residential from its office space in the aforementioned commercial units. We specifically request, on behalf of our clients, that both of you maintain the

¹ See Section Seven of the Amended Bylaws of Myrtle Beach Resort Homeowners Association, Inc.

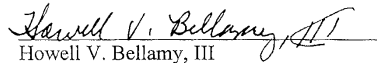
² A copy of the e-mail from Sarah Morrow, marked as Exhibit “A”, is attached hereto and incorporated by reference.

February 2, 2018
Page 3

status quo pending a reasonable and equitable resolution with respect to the use of office space by other management companies in the Commercial Units D and E of the HOA . Hopefully, this will occur on or before the next regularly scheduled meeting of the Board of Directors in April of 2018.

You are both hereby requested to provide written assurances to us by Tuesday, February 6, 2018, indicating that both of you no longer seek to remove First Serve Residential from its office space as well as agreeing to maintain the status quo until a resolution can be reached with respect to the use of office space by other management companies. If you have any questions, please feel free to contact us at the following phone number:
Howell V. Bellamy, III at (843)-602-8024.

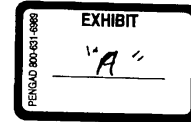
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


Howell V. Bellamy, III
David B. Miller

HVBIII/lh
cc: Sam G. Stathos
Phil Cox
Freddy Brown
Conrad Calvano

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

From: Sarah Morrow <Sarah@empresstmgt.com>
Date: January 29, 2018 at 3:07:05 PM CST
To: "Jack Boselli, AMS, CMCA, PCAM" <Jack.Boselli@fsresidential.com>
Cc: PETER GRUSAUSKAS <pgrussy_mbr@gmail.com>, Barbara Johnson <barbara@empresstmgt.com>, Sarah Morrow <Sarah@empresstmgt.com>
Subject: FW: 2017 November Financial pack



ELECTRONICALLY FILED - 2018 May 24 5:09 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

Thank you Jack. We did receive a thumb drive last week. The Alliance Bank accounts will not be closed as we are planning to simply change signature cards and continue working with Alliance so you don't need to worry about checking that off your list!

However, there are a few items that haven't been provided such as:

- The password/access to the camera system
- Board of Director Minutes
- Legal Files
- General Ledger Report – I believe your system allows to run a GL report for a length of time. The Board would like to have this report since inception and save to a thumb drive.
- Rules and Regulations, Bike Week procedures, Protocol for Parking Passes, etc.

As you are aware we had a Board of Directors meeting yesterday for the MBR HOA. A motion was made to allow other management companies the right to occupy space in the HOA on site office for the Master. Unfortunately, it was not passed. The Board tasked us to come up with a solution to be determined at the next regularly scheduled meeting in April. Because this motion did not pass and the Master HOA office is occupied by the Management company for the Master, then we would ask that First Service Residential vacate the office until a resolution has been agreed upon by the Board of Directors. We understand this may take time, we would like all items (except for Master Association equipment and files) be removed from the office no later than Friday at noon.

Please let me know if you have any questions and I'll be glad to try to assist the best I can.

Thank you,
Sarah



Sarah Morrow | President
Empress Management
sarah@empresstmgt.com
www.empresstmgt.com
(P) 843.443.4003
(F) 843.444.4055

Below is the information on Sarah Morrow.

Sarah Morrow, President
Empress Management
4615 Oleander Drive, Suite 202
Myrtle Beach SC 29577
Office Phone: 843-443-4003
Office Fax: 843-444-4055

Her e-mail is sarah@empresstmgt.com

EXHIBIT “B-2”

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
M. EDWIN HINDS, JR.
DAVID J. GUNDLING**
DAVID B. MILLER*
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAVICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON*
HOWELL V. BELLAMY, III

* LLM TAXATION
** LICENSED IN SC & NC
+ CERTIFIED MEDIATOR
** CERTIFIED ARBITRATOR



ASHLEY P. MORRISON
GEORGE W. REDMAN, III* ** **
BENJAMIN A. BAROODY* **
PHILLIP H. ALBERGOTTI* **
HAYES K. STANTON* **
KARA J. KEITH**
HOLLY M. LUSK
LAUREN BREARLEY BENTON
JON CRAIG HOWELL, JR.
JAMES C. SPEARS, III*

RETIRED:
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY
JILL F. GRIFFITH

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - Horry - COMMON PLEAS - CASE#2018CP2803173

March 29, 2018

CERTIFIED MAIL RETURN RECEIPT REQUESTED AND
HAND DELIVERED
7016 0910 00017848 4440

Myrtle Beach Resort Homeowners'
Association, Inc. ("MBRHOA" or "Master Association")
Peter Grusauskas, President of MBRHOA
Jim Perkins, Secretary of MBRHOA
5905 S. Kings Highway
Myrtle Beach, South Carolina 29575

Sarah Morrow, Registered Agent for MBRHOA
4615 Oleander Dr., Suite 202
Myrtle Beach, South Carolina 29577

Re: ***Ultra Vires* acts committed by both of you as well as your continuing breach of your affirmative duties under the governing documents of the Master Association under Article IV, Section 4.1 of the Declaration as well as Article IV, Sections 1, 3, 7, and 8(e) of the By-Laws.**

Dear Messrs. Grusauskas and Perkins and Ms. Morrow:

Our firm represents current Board Members Conrad Calvano ("Calvano") and Lori Niedzwiecki ("Niedzwiecki")¹ of the Master Association as well as Myrtle Beach Resort Horizontal Property Regime, Inc. ("HPR") and Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. ("CCO") regarding the above-mentioned matter.

¹ Niedzwiecki is the current President for CCO and also the acting Board member for the Master Association on behalf of CCO.

April 3, 2018
Page 2

Our clients contend, upon information and belief, that the Defendants Grusauskas and Perkins, individually and as members of the Board of Directors of the Master Association, have committed the following *ultra vires* acts in direct contravention of Article IV, Section 4.1 of the Declaration as well as Article IV, Sections 1, 3, 7, and 8(e) of the By-Laws:

- a. In improperly directing and/or instructing Empress Management Company to remove First Service Residential from possession of its office space in Commercial units D and E without the affirmative vote of 67% of the Board members for the Master Association;
- b. in improperly delegating the duties and responsibilities for security services to the individual condominium associations from the Master Association. This improper delegation of security services is in direct contravention of Article IV, Subsection (h) of Section 4.1 of Declaration of Covenants, Conditions and Restrictions for the Master Association. Furthermore, assuming the Defendants had the authority to delegate these duties and responsibilities for security services, which is expressly denied, their unauthorized delegation was made without the affirmative vote of 67% of the Board members for the Master Association;
- c. in improperly delegating the duties and responsibilities for all trash collection services to the individual condominium associations from the Master Association. This improper delegation of trash collection services is in direct contravention of Article IV, Subsection (b) of Section 4.1 of Declaration of Covenants, Conditions and Restrictions for the Master Association. Furthermore, assuming the Defendants had the authority to delegate these affirmative duties and responsibilities, which is expressly denied, their unauthorized delegation was made without the affirmative vote of 67% of the Board members for the Master Association;
- d. in improperly entering into as well as cancelling vendor contracts on behalf of the Master Association without obtaining the affirmative vote of 67% of the Board members for the Master Association. This unauthorized action is in direction violation of Article IV, Section 7 of the By-Laws for the Master Association;
- e. in improperly directing and/or instructing Empress Management Company to make any operational decisions for the Master Association without the affirmative vote of 67% of the Board members for the Master Association; and
- f. Any other unauthorized conduct or act of the Defendants that may revealed in the near future.

Upon receipt of this cease and desist letter, our clients demand that both of you refrain from engaging in the above-mentioned *ultra vires* acts. If your response or your conduct is

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

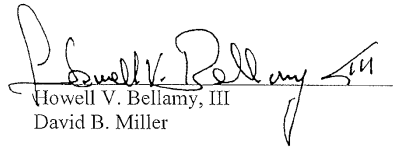
April 3, 2018
Page 3

unsatisfactory, or if both of you continue to breach your affirmative duties under the governing documents and/or under applicable law, our clients will file suit against both of you and seek all available equitable and legal remedies under the law.

You are both hereby requested to provide written assurances to us by Wednesday, April 4, 2018, indicating that both of you will no longer engage in the above described *ultra vires* conduct.

If you have any questions, please feel free to contact us at the following phone number:
Howell V. Bellamy, III at (843)-602-8024.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


Howell V. Bellamy, III
David B. Miller

HVBIII/lh
cc: Sam G. Stathos
Phil Cox
Freddy Brown
Conrad Calvano
Lori Niedzwiecki

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - Horry - COMMON PLEAS - CASE#2018CP2803173

EXHIBIT "C"

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

FILED
STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.
R.M.C.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC. is made by The Myrtle Beach Resort Homeowners' Association, Inc., a South Carolina corporation and Myrtle Beach Resort Horizontal Property Regime, Inc. (Phase I), Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc. (Phase II), Renaissance Tower Horizontal Property Regime, Inc. (Phase III), and Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. (Phase IV), collectively referred to hereinafter as the "Declarant".

WITNESSETH:

WHEREAS, Resort Development Corporation reserved the right and privilege to establish The Myrtle Beach Resort Homeowners' Association consisting of all Co-Owners of all phases of the Myrtle Beach Resort, including Phase I (Myrtle Beach Resort Horizontal Property Regime), Phase II (Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime), Phase III (Renaissance Tower Horizontal Property Regime) and Phase IV (Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime), as set out in the respective Master Deeds in each of the above referenced phases at the Myrtle Beach Resort; and

WHEREAS, Resort Development Corporation has previously granted, conveyed and assigned to Vacation Properties, Inc., all of its rights under the respective Master Deeds to establish an "umbrella" homeowners' association as is more particularly set out in that assignment dated February 27th, 1987 and recorded in the office of the Register of Mesne Conveyances (R.M.C.) for Horry County in Deed Book 1121 at Page 401; and

WHEREAS, Vacation Properties, Inc., granted, conveyed and assigned to The Myrtle Beach Resort Homeowners' Association, Inc., all of said rights referenced above by Assignment of Rights dated January 27, 1989 and filed of record in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 239.

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

11/1/2018

NOW, THEREFORE, the Declarants hereby declare that all the property described in Exhibit A shall be held, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these properties and which restrictions, easements, charges, liens, conditions and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchase or takes any interest in real property within the property subject to this instrument.

ARTICLE I

DEFINITIONS

1.1 Definitions. When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have all the following meanings, and all definitions shall be applicable to the singular and plural forms of any such term(s):

1.1.0 "Act" shall mean the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as Amended.

1.1.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of The Myrtle Beach Resort Homeowners' Association, Inc., as it may be constituted or amended from time to time.

1.1.2 "Assessment" shall mean and refer to a share of the Common Expenses, capital improvements or other charges from time to time assessed against Co-Owners in the manner herein provided.

1.1.3 "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., a South Carolina non-profit Corporation.

1.1.4 "Board of Directors" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

1.1.5 "By-Laws of the Association" shall mean and refer to those By-Laws of The Myrtle Beach Resort Homeowners' Association, Inc., which govern the administration and operation of the Association, as may be amended from time to time, which By-Laws are attached as Exhibit "B" to this Declaration.

1.1.6 "Commercial Unit" shall mean and refer to any unit designated as a commercial space in the Master Deed of the appropriate Condominium Association.

1.1.7 "Common Areas" means as defined in the Individual Condominium Associations' respective Master Deeds.

1.1.8 "Common Expenses" shall mean and refer to all expenditures, including debt retirement, capital improvements, and operating expenses, lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.

1.1.9 "Condominium Association" or "Individual Condominium Association" shall mean and refer to the four individual horizontal property regimes making up the Myrtle Beach Resort including the Myrtle Beach Resort Horizontal Property Regime (Phase I); Myrtle Beach Resort Oceanfront Spa (Phase II); Renaissance Tower Horizontal Property Regime (Phase III); and the Myrtle Beach Resort Five Seasons Centre (Phase IV).

1.1.10 "Co-Owner or "Owner" means as defined in the South Carolina Horizontal Property Regime Act and specifically means an owner of a Dwelling or a Commercial Unit at the Myrtle Beach Resort.

1.1.11 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Myrtle Beach Resort and all supplements or amendments to it as filed for record in the Office of the R.M.C for Horry County, South Carolina.

1.1.12 "Development or Property" shall mean and refer to The Myrtle Beach Resort which includes the four individual horizontal property regimes referenced above.

1.1.13 "Dwelling", with an initial capital letter, shall mean and refer to any improved property located within the Development intended for the use as a residential condominium unit.

1.1.14 "Member" shall mean any person or entity holding a membership in the Association as provided herein.

1.1.15 "Occupant" shall mean and refer to any person, including without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an Owner lawfully occupying or otherwise using a Dwelling or Commercial Unit within the Development.

1.1.16 "Person" shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

1.1.17 "Recreational Amenities" shall include such recreational facilities located within the Myrtle Beach Resort, including, without limitation, tennis courts, sporting or exercise areas, meeting areas, swimming pools, tennis courts, locker room facilities, clubhouses, food and beverage facilities, lagoons, beach access paths, jogging trails and bike paths.

1.1.18 "Voting Member" shall mean a member elected by the Board of each individual Condominium Association to this Association's Board of Directors as specified herein and in the By-Laws.

Law Offices of
Daniel L. Patrick
P. O. Box 15689
Surfside Beach,
S.C. 29587

ARTICLE II
PROPERTY RIGHTS

2.1 Easements for Utilities. There is hereby reserved for the benefit of the Association, and its respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across all of the Common Areas and all portions of other areas in which Dwellings or Commercial Units are not constructed or erected; for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by the Association, its successors or assigns. To the extent possible, all utility lines serving the Development and located therein shall be located underground. By virtue of any such easement granted, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate and fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

2.2 Easements for Walks, Trails and Signs. There is hereby reserved for the benefit of the Association and its successors and assigns the alienable, transferable and perpetual right and easement upon, over and across all lands which may remain unimproved for the installation, maintenance and use of sidewalks, jogging trails, bike paths, traffic directional signs and related improvements.

2.3 Easements for the Association. There is hereby reserved a general right and easement for the benefit of the Association's Directors, officers, agents and employees, including but not limited to any property manager employed by the Association and any employees of such manager, to enter

into the Property and any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the occupant, the Individual Condominium Association, or the Owner(s) of the Dwelling or Commercial Unit.

2.4 Maintenance Easement. There is hereby reserved for the benefit of the Association and its respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any unimproved portions of any Property for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided that such easements shall not impose any duty or obligation upon the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Association and its agent, employees, successors and assigns an alienable, transferable and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of the Property which is located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Development for the purpose of mowing such areas and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

2.5 Environmental Easement. There is hereby reserved for the benefit of the Association and its agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Property for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easements to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

2.6 Wells. There is hereby reserved for the benefit of the Association and its agents, employees, successors and assigns an alienable, transferable and perpetual right and easement: (i) to pump water from lagoons, ponds and other bodies of water located within the Development for the purpose of

Law Offices of
Daniel L. Patrick
P. O. Box 15869
Surfside Beach,
S.C. 29587

irrigating any portions of the Development; (ii) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Areas.

ARTICLE III

MEMBERSHIP AND VOTING

3.1 Membership. Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Dwelling or Commercial Unit, and Ownership of such Dwelling or Commercial Unit shall be the sole qualification for such membership. No Owner, whether one or more persons, shall have more than one membership per Dwelling or Commercial Unit

3.2 Board of Directors. The Board of Directors of each Individual Condominium Association at the Myrtle Beach Resort shall elect a representative to sit on the Board of Directors of this Association. This Board of Directors shall act in accordance with the By-Laws which are attached hereto as Exhibit B. The Association shall be operated by the Board of Directors, and the Members of the Association shall have only such powers as are specified herein or in the By-laws.

ARTICLE IV

POWERS OF THE ASSOCIATION

4.1 The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; (b) provide for all refuse collection (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master television service and telephone service; (d) maintain the oceanfront area; (e) grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (f) maintain such policy or policies of liability and fire insurance with respect to property owned by

the Association; (g) employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same; (h) install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project; (i) take such other reasonable action as the Board shall deem advisable with respect to the Myrtle Beach Resort for the benefit of the overall Property.

ARTICLE V

COVENANT FOR ASSESSMENTS

5.1 Creation of the Lien. Each Individual Condominium Association together with each Co-Owner is deemed to covenant and agrees to pay to the Association Assessments for the Association expenses including common expenses as provided for herein.

Such assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof shall be a charge on any Dwelling Unit or Commercial Unit, and shall be a continuing lien upon it, until full payment of such Assessment is made.

A Co-Owner shall become liable for payment of Assessments upon issuance of a Statement of Assessments by the Association.

On any Assessment that remains unpaid for over ten (10) days after its due date, at the sole discretion of the Board, a late charge not to exceed Ten and No/100 Dollars (\$10.00) or Ten Percent (10%) of the amount due, whichever is greater, shall also be due and payable to defray the expense of late collection.

Further, the Association shall have a lien on each Dwelling Unit or Commercial Unit together with the common elements appurtenant thereto in the amount of each Assessment not paid when due as provided herein, which may be collected and/or the lien foreclosed upon as provided in the South Carolina Horizontal Property Regime Act. Reasonable attorney's fees incurred by the Board incident to the collection of such Assessments or the enforcement (including but not limited to

ELECTRONICALLY FILED - 2016 May 24 5:09 PM - HENRY - COMMON FILES - CASE#2016052803173

foreclosure) of such lien and all other charges allowed by the Act shall be payable by the delinquent Co-Owner and secured by such lien. The Board may take such action as it deems necessary to collect Assessments as provided in the Act and further may settle and/or compromise same if deemed in its best interest.

No Co-Owner may exempt himself from liability for his share of the Assessments by waiving the use or enjoyment of any of the common elements or otherwise.

5.2 Association Assessments may be assessed directly to the Co-Owners or may be collected by the Individual Condominium Associations at the discretion of the Board. The Assessments levied by the Association, as well as the manner of collecting same, shall be determined by the Board of Directors at a regularly scheduled or at a special meeting and the approval of the budget for the Association shall require the vote of 67% or more of all Voting Members of the Association.

5.3 Allocation of Assessments. Assessments for budgeted expenses shall be allocated and assessed as follows: Myrtle Beach Resort Horizontal Property Regime (Phase I) - 24.8515%; Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime (Phase II) - 26.8317%; Renaissance Tower Horizontal Property Regime (Phase III) - 32.3762%; Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime (Phase IV) - 15.9406%.

The allocation of each Co-Owner's share of the Assessments shall be determined by multiplying that Co-Owner's share of ownership in the common area of such Co-Owner's Individual Condominium Association as shown in the respective Master Deed times the percentage as shown above for the respective Individual Condominium Association.

Provided, however, in respect to television and telephone rental expenses, each Co-Owner will pay an amount determined by dividing the total of such expenses incurred by such Co-Owner's Individual Condominium Association pursuant to its agreement with this Association by the total number of Dwellings within that particular Individual Condominium Association.

ARTICLE VI

GENERAL PROVISIONS

6.1 Amendments. Amendments to this Declaration shall be proposed and adopted in the following manner:

Law Offices of
Daniel L. Patrick
P. O. Box 156669
Surfside Beach, FL
S.C. 29587

6.1.1 Notice of the subject matter of the proposed amendment shall be included in the notice of the Board meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Board member of the Association. Provided, however, that any amendment shall be consistent with the Master Deed of the Individual Condominium Associations.

At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the Board of an Individual Condominium Association. Such amendment must be approved by a vote of 67% or more of the Board of Directors of the Association.

6.1.2 Amendments to this Declaration may also be adopted in a meeting duly called by the Owners pursuant to the Association By-Laws, provided notice of the subject matter of the proposed amendment is included in a notice of such meeting. At such meeting the proposed amendment, as noticed, must be approved by either 67% or more of the Board of Directors of the Association or by majority of the total Owners at the Myrtle Beach Resort.

6.2 Enforcement. Each Co-Owner and Occupant shall comply strictly with the By-laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration, as same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for imposing fines, for suspending rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Board of Directors on behalf of the Association, or in a proper case, by an aggrieved Owner. Should the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner or Occupant. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Association, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of the

Association in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws or any rules and regulations of the Association, however long continued.

6.3 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewable periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of an initial thirty (30) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of termination of this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Records of the R.M.C. Office for Horry County, South Carolina, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

6.4 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they

shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Records of the R. M. C. Office for Horry County, South Carolina. The captions of each Article and Paragraph hereof as to the contents of each Article and Paragraph are inserted only for convenience and are in no way to be construed as refining, limiting, extending or otherwise modifying or adding to the particular Article or Paragraph to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

6.5 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 other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

6.6 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

6.7 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Association, the Individual Condominium Associations, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of Declarant and Mortgagees herein provided. The Association shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

IN WITNESS WHEREOF, the duly authorized officer of the undersigned Declarant have executed this Declaration under seal this 16th day of April, 1991.

WITNESSETH: THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

~~Whitney H. Wells~~ BY: Alfred Wells, Jr.
ITS: PRESIDENT

Annette Jordan BY: Freddy Brown
ITS: President

Michelle S. Hoss BY: Sam M. Brock
ITS: President

Pamela S. Mahalik BY: Stanley M. Jordan
ITS: President

Annette Jordan BY: William H. Cole
ITS: President

Law Offices of Daniel L. Patrick P. O. Box 15669 Surfside Beach, S.C. 29587

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Shirley W. Wells
 who states under oath that
(s)he saw the within named Myrtle Beach Resort Homeowners'
Association, Inc., by Alfred H. Wells, its
President, as its act and deed, sign, seal and deliver
the within Declaration of Covenants, Conditions and Restrictions
for Myrtle Beach Resort Master Association and that (s)he with
Daniel L. Patrick witnessed the execution thereof.

Shirley W. Wells

SWORN to before me this
6th day of April, 1991.

[Signature]
Notary Public for South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Judy B. Reynolds
 who states under oath that
(s)he saw the within named Myrtle Beach Resort Horizontal Property
Regime, Inc., by Freddy Brown, its Presiden
as its act and deed, sign, seal and deliver the within Declaration
of Covenants, Conditions and Restrictions for Myrtle Beach Resort
Master Association and that (s)he with Annette Jordan
witnessed the execution thereof.

[Signature]

SWORN to before me this
1st day of April, 1991.

Annette Jordan
Notary Public for South Carolina

My Commission Expires: 4-25-91

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken) PROBATE

PERSONALLY APPEARED BEFORE ME ⁽¹⁾ Michelle S. Hoar, who states under oath that (s)he saw the within named Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc., by ⁽¹⁾ Sam R. Ruch, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with ⁽²⁾ Barbara J. Creech witnessed the execution thereof.

⁽¹⁾ Michelle S. Hoar

SWORN to before me this 12th day of April, 1991.

⁽²⁾ Barbara J. Creech
Notary Public for South Carolina
My Commission Expires: ⁽⁴⁾ 10-5-94

COMMONWEALTH OF MASSACHUSETTS
~~STATE OF~~)
⁽⁴⁾) PROBATE
COUNTY OF HAMPSHIRE)

PERSONALLY APPEARED BEFORE ME ⁽¹⁾ Pamela S. Malchik, who states under oath that (s)he saw the within named Renaissance Horizontal Property Regime, Inc., by ⁽¹⁾ Frank J. Juchan, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with ⁽²⁾ Todd D. Boudreau witnessed the execution thereof.

⁽¹⁾ Pamela S. Malchik

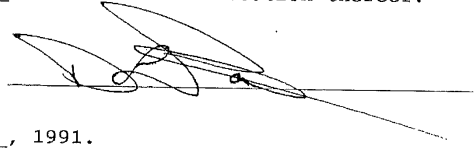
SWORN to before me this 11th day of April, 1991.

⁽²⁾ Todd D. Boudreau
Notary Public for ~~South Carolina~~ Massachusetts
My Commission Expires: ⁽⁴⁾ 11/29/96

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Daniel L. Patrick, who states under oath that (s)he saw the within named Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc., by William Cole, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with Annette Jordan witnessed the execution thereof.



SWORN to before me this 3rd day of April, 1991.

Annette Jordan
Notary Public for South Carolina
My Commission Expires: 4-25-96

Law Offices of
Daniel L. Patrick
P. O. Box 15069
Suffield Beach,
S.C. 29587

EXHIBIT "A" CONTINUED

PHASE III - RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying, and being on the South Eastern side of U.S. Highway 17 containing 8.672 acres, more or less, and designated as a Portion of Lot 5 of Lakewood Plantation Tract, further designated as Phase III of The Myrtle Beach Resort, and described on a Map prepared by Culler Land Surveying Co., Inc. dated November 16, 1984, also being shown as Phase III on a Plat of 44.668 +/- Acres, lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, revised November 27, 1984, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on November 28, 1984, in the Office of the Clerk of Court for Horry County in Deed Book 917 at Page 885.

PHASE IV - MYRTLE BEACH RESORT FIVE SEASONS CENTRE

(Phase I)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase I of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Culler Land Surveying Co., Inc. dated June 4, 1985, also being shown as Phase I, Myrtle Beach Resort Five Seasons Centre on a plat of 44.668 +/- acres, Lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, dated June 10, 1982, with latest revision dated June 14, 1985, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 20, 1985, in the Office of the Clerk of Court for Horry County in Deed Book 966 at Page 654.

(Phase II)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase II of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Atlantic Land Surveying Co., Inc. dated May 1, 1986, all as is more particularly described in that First Amendment to the Master Deed for the aforesaid Horizontal Property Regime recorded on May 29, 1986, in the Office of the Clerk of Court for Horry County in Deed Book 1048 at Page 824.

EXHIBIT "A"

PHASE I - MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately five (5) miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.198 acres, more or less, and being shown and described as a 6.198, more or less acres parcel on a certain plat entitled "Plat of 44.668, more or less, acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" prepared for Resort Investment Corporation by Culler Land Surveying Company, Inc., dated August 17, 1981, which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 72 at Page 58; also being shown and described on the plats recorded in the Condominium Plat Book, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 15, 1982, in the Office of the Clerk of Court for Horry County in Deed Book 750 at Page 642.

PHASE II - MYRTLE BEACH RESORT OCEANFRONT SPA
HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately 5 miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.205 acres, more or less, and being shown and described as "Phase II (6.205 Ac)" on a certain plat entitled "Plat of 44.668+- Acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" dated June 10, 1982, revised July 13, 1982, and July 19, 1982, prepared by Culler Land surveying Company, Inc., which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 74 at Page 32; also being shown and described on the plats and architectural plans and drawings prepared by Culler Land Surveying Company, Inc. and Stevenson & Wilkinson, Inc., respectively, which are recorded in the Condominium Plat Book at Book 2, Page 31, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on April 15, 1983, in the Office of the Clerk of Court for Horry County in Deed Book 789 at Page 362.

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

EXHIBIT "B"

AMENDED

BY-LAWS

OF

THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the Association is The Myrtle Beach Resort Homeowners' Association, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be located at Highway 17 South, Surfside Beach, South Carolina, but meetings of members and directors may be held at such places within the State of South Carolina, County of Horry, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., its successors and assigns.

Section 2. "Member" shall mean and refer to each and every Co-Owner at The Myrtle Beach Resort which includes (a) Myrtle Beach Resort Horizontal Property Regime; (b) Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime.

"Voting Member" shall mean and refer to that representative from the Board of Directors of each Individual Condominium Association who has been elected by that Board as a representative to the Board of Directors of this Association.

Section 3. "Individual Condominium Associations" shall mean and refer to those Associations at The Myrtle Beach Resort presently including: (a) Myrtle Beach Resort Horizontal Property Regime, Inc.; (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc.; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc.

Law Offices of
Dantel L. Patrick
P. O. Box 16669
Surfside Beach,
S.C. 29587

Section 4. All terms and phrases used herein shall, unless the context otherwise requires, have the same definition and meaning as set forth in the various Master Deeds of the Horizontal Property Regimes comprising The Myrtle Beach Resort and/or in the South Carolina Horizontal Property Regime Act, as the case may be.

ARTICLE III

MEETING OF MEMBERS

Section 1. "Annual Meetings." The annual meeting of Voting Members shall be held during the first six months of each calendar year at a time and place designated by the President.

Annual meetings of the Members shall be held only if required by a vote of the majority of the Voting Members or upon petition signed by greater than Thirty Percent (30%) of the entire outstanding membership. In the event the annual meeting of Members is held pursuant to these By-Laws such meeting shall be at a time and place designated by the President, or a majority of the Board of this Association, or by a petition signed by a number greater than Thirty Percent (30%) of the outstanding members.

Section 2. "Special Meetings." Special meetings of the Voting Members may be called at any time by the President or by a majority of the Directors of this Association. A special meeting of the Members may be called at any time as provided for under Section 1. for annual meetings.

Section 3. "Notice of Meetings." Written notice of each meeting of the Members or Voting Members shall be given by, or at the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days (but not more than sixty (60) days) before such meeting to each Member or Voting Member entitled to vote thereat, addressed to the Member's or Voting Member's address last appearing on the books of the Association, or supplied by such Member or Voting Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Law Offices of
Daniel L. Patrick
P. O. Box 16669
Surfside Beach,
S.C. 29587

Section 4. "Quorum." The presence at the meeting of a majority of the Voting Members, represented in person or by proxy, shall constitute a quorum at a meeting of the Voting Members. The presence at the meeting of a majority of the Members, represented in person or by proxy, shall constitute a quorum at a meeting of the Members.

Any action required by law to be taken at a meeting of the Association or any action which may be taken in the meeting of the Association may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by Voting Members, or Members, as the case may be, holding not less than sixty-seven percent (67%) of the entire votes entitled to vote on the subject matter thereof and further provided the same is not otherwise prevented by these By-Laws, the Declarations, or the respective Master Deeds of the individual Horizontal Property Regimes of the Myrtle Beach Resort, or the Act.

Section 5. "Proxies." At all meetings of Voting Members or Members, each Voting Member or Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable.

ARTICLE IV

Board of Directors: Voting: Selection: Term of Office: Duties

Selection 1. The Association shall be managed by a Board of Directors consisting of not less four (4) Directors. Each Individual Condominium Association of the Myrtle Beach Resort shall have a representative from its Regime as a Director on the Board of the Association. Each Board Member of this Association shall also be a board member of the Individual Condominium Association which he or she represents.

Section 1.A. "Voting." Each Director is hereby assigned the number of votes that represents the number of Apartments (whether residential or commercial) that exists in that Director's Individual Condominium Association.

Section 2. "Term of Office." Each Director shall hold office until the next annual meeting of Voting Members and/or until each successor has been elected and qualified. Provided, however, that a Director's term in office may be terminated and a successor elected at any meeting of Members called pursuant to the provisions in these By-Laws.

Section 3. Regular Meetings: There shall be at least one (1) regular meeting of the Board quarterly at a time designated by the President. The President or two (2) members of the Board may call as many special meetings of the Board as are deemed necessary or desirable and in the best interest of the Association.

Section 4. Presentation of Annual Budget: The Board of Directors shall annually, on or before November 1st of each year, prepare a budget for the upcoming calendar year to include such sums as it deems adequate. The Board of Directors, on or before November 1st, shall deliver the budget for the upcoming year together with the statement of the amounts due from the Co-Owners of the respective Regimes for that year and the date or dates upon which payments are due from the Individual Condominium Associations. Thereafter, should an increase or decrease be determined appropriate by the Board of Directors in assessments to be paid by Co-Owners, the Board shall notify all Individual Condominium Associations at least thirty (30) days prior to the time such assessments so changed shall be due. The Association shall have a lien upon each apartment together with the common elements and common surplus appurtenant thereto for payment of all assessments not paid when due in the amount of such unpaid assessments together with late charges thereon from the date due together with the cost of collection thereof including a reasonable attorney's fee.

Section 5. Notice: Notice of any special meeting shall be given at least five (5) days previously thereto by written notice delivered personally, or by telegram or mailed to each director at this business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a Director at a meeting shall constitute a Waiver of Notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 6. Quorum. At any meeting of the Directors a majority of the Directors fixed by these By-Laws shall constitute a quorum for the transaction of business, but if less than said number is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 7. Voting: Any action taken at a meeting of the Board of Directors shall be only upon the affirmative vote of 67% of the entire votes of the Association.

Section 8. Consistent with these By-Laws and applicable Declarations, the Board shall:

- (a) transact all Association business and prescribe the rules and regulations for the use of the assets, facilities and property for which it is so charged and may appoint such officers, clerks, agents, servants or employees as it may deem necessary in its sole discretion and may fix their duties and compensation;
- (b) annually set a budget for the Association;
- (c) fix, impose and remit penalties for violations of these By-Laws and the rules and regulations of the Association;
- (d) elect from the Board within thirty (30) days after each annual meeting the President, Vice-President, Secretary and Treasurer;
- (e) carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the Act.

Section 9. Vacancies. Vacancies occurring on this Board of Directors shall be filled immediately by an election of the Director's successor by that Individual Condominium Association which the Director in question represents. Provided, however, that in the event of a vacancy, and prior to any election by the Individual Condominium Association, the highest presiding officer of the Individual Condominium Association shall automatically be a Director and Voting Member of this Association. For purposes of this section, the ranking of the Officers of each Individual Condominium Association shall be in this order: President, Vice President, Secretary and Treasurer.

Law Offices of
Daniel L. Patrick
P. O. Box 16889
Surfside Beach,
S.C. 29587

Section 10. Resignation. A Director may resign at any time by giving written notice to the Board, the President or the Secretary of the Association. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

Section 11. Compensation. No compensation shall be paid to Directors, as such, for their services, but by resolution of the Board a fixed sum and expenses for actual attendance at each regular or special meeting of the Board may be authorized. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 12. Presumption of Assent. A Director of the Association who is present at a meeting of the Directors at which action on any Association matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 13. Executive and Other Committees: The Board, by resolution, may designate from among its members an executive committee and other committees, each consisting of one or more Directors. Each such committee shall serve at the pleasure of the Board.

ARTICLE V

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. "Contracts." The Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. "Loans." No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Directors. Such authority may be general or confined to specific instances.

Section 3. "Check, Drafts, Etc." All checks, drafts or other orders for the payment of money, notes or other evidences signed by such officer or officers, agent or agents of the Association and in

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

such manner as shall from time to time be determined by resolution of the Directors.

Section 4. "Deposits." All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Directors may select.

ARTICLE VI

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Articles of Incorporation 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 at reasonable cost.

ARTICLE VII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: The Myrtle Beach Resort Homeowners' Association, Inc.

ARTICLE VIII

These By-Laws may be amended at a regular or special meeting of the voting Members or at a regular or special meeting of the Members, by a vote representing 67% or greater of the total votes of the Association. Provided, however, that any amendment to these By-Laws shall be consistent with the Declarations of this Association and the Master Deeds of the Individual Condominium Associations.

ARTICLE IX

Miscellaneous


The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the Directors and Shareholders of The Myrtle Beach Resort Homeowners' Association, Inc., have hereunto set our hands this 16th day of April, 1991.


Law Offices of
Daniel L. Patrick
P. O. Box 16669
Surfside Beach,
S.C. 29587

WITNESSETH:

MYRTLE BEACH RESORT HORIZONTAL
PROPERTY REGIME, INC.



Annette Jordan

BY: 
James R. Brunner

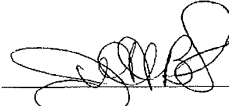
ITS: Authorized Board Representative

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)


PROBATE

PERSONALLY APPEARED BEFORE ME Judith B. Reynolds

_____, who states under oath that
(s)he saw the within named Myrtle Beach Resort Horizontal Property
Regime, Inc., by James R. Brunner, its Authorized Board Member, as
its act and deed, sign, seal and deliver the within Amended By-Laws
of the Myrtle Beach Resort Homeowners' Association, Inc. and that
(s)he with Annette Jordan witnessed the execution
thereof.



SWORN to before me this
9th day of April, 1991.



Notary Public for South Carolina

My Commission Expires: 4-25-96

WITNESSETH: MYRTLE BEACH RESORT OCEANFRONT SPA HORIZONTAL PROPERTY REGIME, INC.

(6) [Signature] BY: (1) George Kidney
George Kidney
(3) Lauren V. Isaacs ITS: Authorized Board Representative

STATE OF GEORGIA)
(6)) PROBATE
COUNTY OF COBB)

PERSONALLY APPEARED BEFORE ME Lauren V. ISAACS
(3) who states under oath that (s)he saw the within named Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc., by George Kidney, its Authorized Board Representative, as its act and deed, sign, seal and deliver the within Amended By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc., and that (s)he with (3) Lauren V. Isaacs witnessed the execution thereof.

(6) [Signature]
SWORN to before me this
4th day of April, 1991.

(3) Lauren V. Isaacs
Notary Public for ~~South Carolina~~ Georgia
My Commission Expires: Notary Public, Cobb County, Georgia
(5) My Commission Expires January 21, 1994

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Sunside Beach,
S.C. 29587

WITNESSETH: RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME, INC.

(2) Jean Marshall BY: (1) Alfred H. Wells
(3) James E. Youmans ITS: Authorized Board Representative

STATE OF VIRGINIA)
(6)) PROBATE
COUNTY OF HENRICO)

PERSONALLY APPEARED BEFORE ME (2) JEAN O. MARSHALL, who states under oath that (s)he saw the within named Renaissance Horizontal Property Regime, Inc., by Alred H. Wells, its Authorized Board Representative, as its act and deed, sign, seal and deliver the within Amended By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc. and that (s)he with (3) James E. Youmans witnessed the execution thereof.

(2) Jean Marshall

SWORN to before me this 15th day of (7) April, 1991.

(3) James E. Youmans
Notary Public for ~~SOUTH CAROLINA~~ Virginia
My Commission Expires: _____ (4)
(5) My Commission Expires June 13, 1993

Law Offices of Daniel L. Patrick P. O. Box 15669 Surfside Beach, S.C. 29587

WITNESSETH:

MYRTLE BEACH RESORT FIVE SEASONS
CENTRE COUNCIL OF CO-OWNERS, INC.

(1) William A. Ullery BY: [Signature]
Bill Hunt
(2) Beverly C Harmon ITS: Authorized Board Representative

STATE OF SOUTH CAROLINA)
(10))
COUNTY OF RICHLAND) PROBATE

PERSONALLY APPEARED BEFORE ME _____
(2) William G. Ullery, who states under oath that
(s)he saw the within named Myrtle Beach Resort Five Seasons Centre
Council of Co-Owners, Inc., by Bill Hunt, its Authorized Board
Representative, as its act and deed, sign, seal and deliver the
within Amended By-Laws of the Myrtle Beach Resort Homeowners'
Association, Inc. and that (s)he with (3) Beverly C Harmon
witnessed the execution thereof.

(2) William A. Ullery

SWORN to before me this
10TH day of (6) APRIL, 1991.

(3) Beverly C Harmon
Notary Public for South Carolina
My Commission Expires: 5/16/2000 (4)
(5)

Law Offices of
Daniel L. Parsick
P. O. Box 15669
Surfside Beach,
S.C. 29987

EXHIBIT "D"

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

Hearl, Lynn

From: Lori Niedzwiecki <lniedz@aol.com>
Sent: Thursday, May 24, 2018 3:16 PM
To: Bellamy III, Howell V.
Cc: Hearl, Lynn
Subject: Fwd: Resolution to end the Ego?

I believe this is what you are looking for.

Lori

-----Original Message-----

From: PETER GRUSAUSKAS <pgrussy.mbr@gmail.com>
To: Lori Niedzwiecki <lniedz@aol.com>; Jim Perkins <mbrijimperkins@aol.com>; Conrad Calvano <dmscac@msn.com>; Phil Cox <rvspc@yahoo.com>
Cc: Freddy Brown <misc16@aol.com>; jlr5456 <jlr5456@yahoo.com>; Nancy Moore <nancyl.moore@outlook.com>; Sarah Morrow <sarah@empresgmt.com>
Sent: Tue, Apr 3, 2018 12:56 pm
Subject: Re: Resolution to end the Ego?

I thought that you were there, on the phone at the time. But I know Conrad left the meeting at that point and about the same time your line went quiet then came back. Because of the nature of the subject issue, and given had served legal notice to the board and myself, at the advice of one of our attorneys, the FSC and HPR were found to have a conflict of interest in the passage or denial of passage of the motion. Therefore the two were not included in the count because they were dis qualified to vote.

The motion was made and seconded to empower the President to take appropriate action to carry out the decision of the board made at the January meeting, regarding use of the commercial space in the HOA building. Before the vote, the president disqualified the voting of the conflicted members. Motion passed.
I will forward you the minutes when available

So now with that charge, I am attempting to resolve the issue in a positive way.
Let's not lose focus and forget the Board did vote in January, to not allow, anyone to use space in the building except for Empress

Peter

On Tuesday, April 3, 2018, Lori Niedzwiecki <lniedz@aol.com> wrote:
Peter the board did not empower you to do anything, unless the vote was taken prior to my being on the phone.

Lori Niedzwiecki
908-268-1316

-----Original Message-----

From: PETER GRUSAUSKAS <pgrussy.mbr@gmail.com>
To: Lori Niedzwiecki <lniedz@aol.com>; Freddy Brown <misc16@aol.com>; Nancy Moore <nancyl.moore@outlook.com>; jlr5456 <jlr5456@yahoo.com>; Jim Perkins <mbrijimperkins@aol.com>; Conrad Calvano <dmscac@msn.com>; Phil Cox <rvspc@yahoo.com>; Barbara Johnson <barbara@empresgmt.com>
Cc: densassa <densassa@yahoo.com>; deerfoot35 <deerfoot35@aol.com>; Tracy Meadows <meadowsoceanfrontcondo@gmail.com>
Sent: Mon, Apr 2, 2018 8:34 pm
Subject: Resolution to end the Ego?

Lori and Freddy

At the Board's last conference call meeting on March 22nd, The board voted to empower the President to take all necessary action to remove First Services Residential from the MBRHOA Inc property. (Commercial Unit E or part thereof).

In reviewing the FSR 2014 contract with your Regimes it is apparent that you both have a responsibility to supply FSR with office space to conduct the contracted services to your regimes.

At the time of the Mach 22 vote, I was unaware of your contractual requirements to supply that office on site. I think it is important to note that the MBRHOA, Inc is not required in any way to provide an office for you or FSR.

Board member Conrad had approached me in February, about letting everything ride as is, until the annual meeting. Our conversation included the possibility of an informal rental agreement till April. In that discussion I told Conrad that a fee of possibly \$900.00 monthly might make sense. Conrad thought the amount was extremely excessive and has not spoke of resolving the issue since.

On behalf of the MBRHOA, I sought out legal advice and consult on this along with other various issues facing the MBRHOA. The attorney advised me that FSR is currently in trespass and should be removed and could be with a simple call to the County authorities, for said trespass. To my knowledge the HPRHPR or FSCHPR have never been in a lease rental agreement for any space in the MBRHOA office Buildings Commercial D or E and now have no legal standing to demand such leasing/rental arrangement.

Understand, FSR is trespassing on MBRHOA, Inc property. FRS has no rights to be an occupier within MBRHOA's real estate. FSR, nor either of your Regimes, have a lease or rental agreement with the MBRHOA. Any previous use of the small office in the rear of Commercial unit "D" by FSR for Your Regimes' operation was only possible because FSR, did, at that time, have a similar clause in it's contract with the MBRHOA to use the Building's offices. The MBRHOA no longer has a contract with FSR. The MBRHOA does have a contract with Empress Property Management. That new Empress contract was negotiated under the premise, that like it had with FSR, the MBRHOA would provide the office space to Empress.

Unfortunately, like most things at the Resort, any action has the unfortunate ability to cause unintended consequences. In this case, removing FSR from the MBRHOA building would then place a hardship and consequence to your Regimes. In the wording of your contract, You have a responsibility to provide on site office space,

I am frustrated with the Resort Regimes unwillingness to come together and solve even the smallest of issues. Everyone just wants to place blame on someone else. I know in my heart that the Owners (remember them, the people who own the properties) want tranquility and adult resolution to problematic issues that plague the Resort. (thats all of our job, BTW)

The MBRHOA didn't purchase commercial Unit E because they didn't feel a need for added space. FSC HPR didn't sell it, all those years ago, because it was making a profitable rate of return on the \$600.00 monthly rent they were charging for the space prior to the sale either. I don't feel the not so arbitrary rental number of \$900.00 was out of line, but even that would still require the Board to approve such an arrangement.

What is clear is that I have been advised, and now empowered, to end the squatting on our property. If no action is taken in the short haul, the other two regimes of the Resort have reason to be upset and cry foul. I am open to options you may wish to bring forward.

The time has come to put this behind us. End the arrogance of your Management Contractor and start, for once, working together. Ego, arrogance and maybe even a little greed and corruption have been the calling cards of the Myrtle Beach Resort for to long. If you doubt my saying so, just ask our Owners. The time has come to end all the BS.

Peter Grusauskas, President
MBRHOA, Inc

I would ask that each regime share this with their Board members as well. Perhaps it will lead to a mirror look back for all of us.

EXHIBIT "E"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2016-CP-26-7895
)	
Myrtle Beach Resort Homeowners' Association, Inc.,)	
)	
Plaintiff,)	
)	
vs.	)	ORDER AMENDING SCHEDULING
	)	ORDER DATED SEPTEMBER 12, 2017
Renaissance Tower Horizontal Property Regime, Inc.,	)	AND DISBURSING FUNDS FROM
	)	CLERK OF COURT
Defendant.)	
)	

This matter is before the Court upon the Motion for Status Conference and Amended Scheduling Order ("Motion") filed on October 25, 2017 by Defendant Renaissance Tower Horizontal Property Regime, Inc. ("Defendant") under Rule 16 of the South Carolina Rules of Civil Procedure. In attendance by telephone at the November 9, 2017 status conference and hearing on the Defendant's Motion were Taylor Peace, Esq. on behalf of the Defendant and Sam Stathos, Esq., Henrietta Golding, Esq., and Alicia Thompson, Esq. on behalf of the Plaintiff, Myrtle Beach Resort Homeowners' Association, Inc. ("Plaintiff").

1/ GAH

This Court retains jurisdiction over this matter pursuant to an Order of Reference executed by the Honorable Benjamin H. Culbertson on March 14, 2017 and filed on March 22, 2017. The undersigned has reviewed the Defendant's Motion, has considered the arguments of the parties at the November 9, 2017 status conference and hearing, and is familiar with the legal issues, the pleadings, and the procedural history of the above captioned action. For the reasons set forth below, the Court **GRANTS** Defendant's Motion to amend the Amended Scheduling Order filed on September 12, 2017, and further orders that the Defendant shall pay past due assessments, except for \$20,000.00 held by the Clerk of Court, and future assessments owed directly to the

Plaintiff, with additional funds to be released to Plaintiff from the Clerk of Court for Horry County in the amount of \$220,719.65.

1. On February 21, 2017, the Circuit Court granted the Plaintiff's Motion for a Temporary Injunction and ordered that the Defendant pay to the Clerk of Court the funds that it collected from its owners for assessments for the year 2016 as well as future assessments until such further Order of the Court.

2. The Consent Order of Reference was filed on March 22, 2017 referring this case to the undersigned, Master in Equity for Horry County, "to take testimony, make her findings of fact and conclusions of law, and determine the issues with finality, with any appeal being directly to the South Carolina Supreme Court or Court of Appeals as provided for in the South Carolina Rules of Civil Procedure."

2
AK

3. After the matter was referred, the parties scheduled the trial for July 10 and 11, 2017.

4. On June 23, 2017, Defendant filed a Motion for Continuance and for a Scheduling Order.

5. A Scheduling Order was entered on July 7, 2017 compelling Defendant's responses to discovery requests and setting deadlines for expert related discovery and for the trial. The new trial date, pursuant to the Scheduling Order, was October 9, 2017 and October 10, 2017.

6. Because the Plaintiff was unable to operate due to insufficient assessments collected, Plaintiff requested that funds be released from the Clerk of Court for Horry County. The parties entered into a Consent Order Regarding Disbursement of Assessments on August 10, 2017 releasing \$200,000.00 on deposit with the Court to Plaintiff.

7. The parties determined that the deadlines set forth in the Scheduling Order for expert related discovery and for trial were impracticable. A Consent Amended Scheduling Order was entered on September 12, 2017 scheduling trial for December 11, 2017 and December 12, 2017.

8. On October 25, 2017, Defendant filed the Motion before this Court requesting that new deadlines be entered for expert related discovery and for the trial.

9. At the November 9, 2017 status conference and hearing on the Motion, Defendant asserted that several logistical issues arose that caused delay in serving the audit report by the deadline of October 3, 2017. Defendant sought additional time to subpoena records from third-parties not named in the above captioned action in order to complete the Defendant's expert report.

10. Plaintiff agreed that the deadlines in the Amended Scheduling Order needed to be revised, for there was insufficient time available to prepare a rebuttal report to Defendant's expert report, as the Defendant's final expert report had not yet been served as of the date of the November 9, 2017 hearing. The Plaintiff asserted that the delay was caused, not by Plaintiff's failure to produce documents, but instead, due to the coordination between the Defendant and its expert in preparing the report. Plaintiff also argued that rescheduling the trial dates only prejudiced the Plaintiff, the party that had complied with the Amended Scheduling Order to date, because it was operating at an estimated deficit of \$432,023.00 as of December 31, 2017. Plaintiff requested that, if a Second Amended Scheduling Order was entered, the remaining funds held by the Clerk of Court, as well as past due and future assessments, be paid to Plaintiff. According to Defendant's attorney, the Defendant had not deposited with the Clerk of Court any funds it had collected since July, 2017.

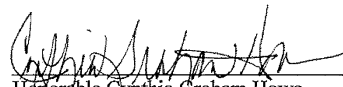
3
SA

Therefore, it appears that an Order Amending the Amended Scheduling Order dated September 12, 2017 and Disbursing Additional Funds From the Clerk of Court is appropriate . Accordingly, the Court enters the Second Amended Scheduling Order and orders the release of funds as follows:

1. Defendant's final expert report shall be served on the Plaintiff no later than **December 31, 2017**;
2. Plaintiff may retain an expert and respond to Defendant's expert's report no later than **February 28, 2018**;
3. This action shall be tried on Wednesday, **March 14, 2018** and Thursday, **March 15, 2018**, commencing at 10:00 a.m. each day;
4. Ten (10) days from the date of this Order, the Clerk of Court for Horry County shall disburse all but \$20,000.00 of the funds on deposit with the Court to Plaintiff, this being a total of \$220,719.65 being remitted to the Plaintiff, and Plaintiff has agreed to accept the same;
5. The Clerk of Court for Horry County shall retain possession of the remaining \$20,000.00 that it has on deposit related to this matter pending further Order of the Court;
6. The Defendant shall pay \$185,268.65, which has ^{not} not been deposited with the Clerk of Court's office, in past due assessments directly to Plaintiff within ten (10) days of this Order;
7. The Defendant shall pay all future assessments to Plaintiff directly in accordance with the Declaration of Covenants and Restrictions for Myrtle Beach Resort filed in Deed Book filed on April 25, 1991 in Deed Book 1465 at Page 329 in the Horry County Register of Deeds Office.

H
GA

IT IS SO ORDERED.


Honorable Cynthia Graham Howe
Horry County Master in Equity

Conway, South Carolina
November 28, 2017

EXHIBIT "F"

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) AFFIDAVIT

PERSONALLY appeared before me Daniel L. Patrick, who, after being duly sworn, does state as follows:

DP
/

1. I am a licensed attorney in the state of South Carolina, now "of counsel" with the firm of Patrick and Stathos, L.L.C.
2. The Myrtle Beach Resort project ("Resort") located in Horry County, South Carolina includes four horizontal property regimes: the Myrtle Beach Resort Horizontal Property Regime ("HPR"), Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime ("OF Spa"), The Renaissance Tower Horizontal Property Regime ("RT") and the Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime ("5 Seasons"), together with commercial properties located at the entrance to the Resort and beachfront as well as the entry/exit roads at the Resort.
3. The Master Deeds in Article XVIII of both the OF Spa (filed in April 1983) and the RT (filed in November 1984) provide that the Declarant (developer) may "establish The Myrtle Beach Resort Homeowners' Association... and all Co-owners shall... automatically become members thereof." The Master Deeds further provide that, if established, the Master Association board shall be comprised of one representative from each regime.
4. By 1986 I was legal Counsel for the four regimes.
5. By 1986 the original developer of the Resort, Resort Development Corporation f/k/a Resort Investment Corporation, had transferred to a successor certain rights and title it held at the Resort. Shortly thereafter the successor filed bankruptcy.
6. By February of 1987, the original developer assigned to its successor's Trustee-in-Bankruptcy ("Bankruptcy Trustee") certain remaining rights it had at the Resort including the right to establish a master homeowners' association for the present and future owners at the Resort, as referred to in paragraph 3 above.
7. On April 30, 1987, the four regimes, by their respective authorized representatives, incorporated The Myrtle Beach Resort Homeowners' Association, Inc. ("Association").
8. By assignment recorded February 3, 1989, the Bankruptcy Trustee transferred to the Association all rights it had acquired as referenced in paragraph 6 above. In 1989 the Trustee also transferred to the Association the commercial property mentioned in paragraph 2 above.
9. In April 1991 the Declaration of Covenants, Conditions and Restrictions ("DCCR") of Association and its By-laws were recorded in Horry County. The DCCR was signed by the authorized representatives of all four regimes and by the authorized representative of the Association.
10. I drafted the DCCR and By-laws ("governing documents") according to my clients' directions and consistent with the existing Master Deeds which require one board member from each Regime to be on the board of the Association.

11. Those governing documents provide for a super-majority of 67% of the voting membership (1 elected from each Regime and totaling 4) or a majority of all members (which total 1,010) to take any action including without limitation, election of officers; entering into, terminating, or altering contracts; creating new or modifying or terminating existing rules, regulations, or procedures.

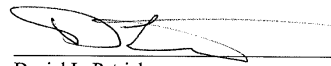
12. The super-majority provision was requested and agreed to by all board members to protect minority interests. To reach the super-majority requires no less than 3 of the 4 voting members to concur.

13. The enumerated powers of the Association set out in the DCCR (Article IV) were intended to be mandatory obligations, not optional. They include, among other obligations, employing security services for the overall Myrtle Beach Resort project, which includes all four regimes set out in paragraph 2 herein (DCCR 4.1(L)). From the beginning there has always been just one security company site-wide under contract at any given time, at first through the developer and then under the Association. In particular because of the cross-easements contained in the various Master Deeds of the regimes for vehicular and pedestrian ingress and egress and for the use of amenities it was reasoned that having multiple contracts for security created the risk of irreparable damage to the Resort because of potential conflicting security rules, enforcement, and oversight. Also having differing directions given to security from various regimes would conflict with the developer's design of a seamless Resort as reflected in the Master Deeds of all regimes..

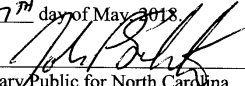
211

14. It is my understanding that the gate pass "fee" is no longer being collected through direction or acquiescence of the RT and OF Spa representatives on the board of the Association without the requisite vote of the board. That fee was adopted approximately 15 years ago by the Association board to help offset the added expenses incurred by the Association as a result of the number of guests, including in particular, additional security costs. I am now informed that the line item for security in the Association's 2018 budget is substantially less than that in 2017. I am also informed that, unless the gate fee is immediately restored, the Master Association will be severely underfunded for security and with the influx of guests as high season is here will potentially cause irreparable damage.

15. Patrick & Stathos, LLC (of which I am no longer a member, but "of counsel") and its predecessor (of which I was either sole owner or principle member) has continuously represented the Master Association since its inception. To my knowledge neither the super-majority requirement nor the mandatory obligations in the governing documents recorded over 27 years ago have been challenged until recently.



Daniel L. Patrick

SWORN to before me this
17th day of May, 2018.

Notary Public for North Carolina
John P. Salute
Print name of Notary Public
My Commission Expires: 3/20/22

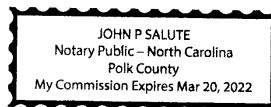


EXHIBIT "G"

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-

FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO, GAYLE)
L. SCOTT, PHILLIP D. COX, individually and)
derivatively on behalf of MYRTLE BEACH)
RESORT HOMEOWNERS' ASSOCIATION,)
INC., and on behalf of all other similarly situated)
Co-owners, and LORI NIEDZWIECKI and)
ROBERT S. ROSENCRANS, individually and)
derivatively on behalf of Myrtle Beach Resort)
Homeowners' Association, Inc. for its right and)
benefit,)
)

Plaintiffs,)

AFFIDAVIT OF MICHAEL R. PARADES, PCAM)

v.)
)

JEFFREY L. RICHARDSON AND NANCY L.)
MOORE, individually and as current members of)
the Board of Directors for MYRTLE BEACH)
RESORT HOMEOWNERS' ASSOCIATION,)
INC., AND PETER GRUSAUSKAS AND JIM)
PERKINS individually and as former members)
of the Board of Directors for MYRTLE)
BEACH RESORT HOMEOWNERS')
ASSOCIATION, INC.)
)

Defendants.)
)

MYRTLE BEACH RESORT)
HOWEOWNERS' ASSOCIATION, INC.)
)

Nominal Defendant,)
)

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

1. My name is Michael R. Parades. 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 community association governance, community association management, and affirmative duties of a Board of Directors with regard to the operation and management of community associations and to the maintenance, repair, and replacement of common components of the General and Limited Common Elements. A copy of my Curriculum Vitae, marked **Exhibit A**, is attached hereto and incorporated by reference as part of this Affidavit.
2. I attended the College of Charleston, in Charleston, SC, from which I received a B.S. in Business Administration, Summa Cum Laude, 1979.
3. I am currently the President of Parades Consulting Services and provide consulting services to community associations primarily in the areas of governance, management and affirmative duties of Community Association Boards of Directors. I have been qualified by the South Carolina State courts as an expert witness in the field of community association management, community association governance and affirmative duties of Community Association Boards of Directors. Based on my work experience and the fact that I am a retired Certified Public Accountant (CPA) with over 30 years of accounting experience related to community associations, I could also be qualified as an expert forensic accountant if the need arose.
4. I am not a party to the above entitled action, nor am I related to any of the above-captioned parties.
5. This Affidavit is submitted in support of the allegations contained in Plaintiffs' Derivative Complaint.

PROJECT DESCRIPTION

6. The Myrtle Beach Resort (MBR) is a master planned resort made up of four (4) separate Condominium Associations (CA). The four (4) CAs are (a) Myrtle Beach Resort Horizontal Property Regime (MBRHPR) consisting of 251 Residential Units (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime (MBROFSHPR) consisting of 267 Residential Units and 4 Commercial Units for a total of 271 Units (c) Myrtle Beach Resort Renaissance Tower Horizontal Property Regime (MRBRTHPR) consisting of 322 Residential Units and 5 Commercial Units for a total of 327 Units and (d) Myrtle Beach Resort Five Seasons Horizontal Property Regime (MBR5SHPR) consisting of 156 Residential Units and 5 Commercial Units.

Thus in total the MBR consists of 996 Residential Units and 14 Commercial Units, as well as many recreational amenities available to the owners and guests of the MBR.

Each CA is a separate entity established by recordation of its own Master Deed and Bylaws and governed by a member elected Board of Directors. In accordance with provisions included in each CA's governing documents, the Developer provided for the establishment of a Master Association that owns, operates and maintains all amenities and controls access into the Resort. The Master Association was created by recordation of a Declaration of Covenants, Conditions and Restrictions (CCRs) as well as Bylaws and is governed by a four member Board. The Board is composed of one representative from each of the sub-CAs who is also a Board member in the sub-CA. Any action taken by the Master Board must be approved by 67% of the Voting Board members.

MASTER DEED AND BYLAWS

7. The following table reflects that Date, Book and Page wherein the Master Deed and Bylaws for each of the sub-CAs and the CCRs for the Master were recorded in the Office of Register of Deeds for Horry County, South Carolina:

- (a) MBRHPR recorded 6/15/82 in Book 750 Page 642;
- (b) MBROFSHPR recorded 4/25/83 in Book 789 Page 362;
- (c) MBRRTHPR recorded 11/28/84 in Book 917 Page 885;
- (d) MBR5SHPR recorded 6/20/85 in Book 966 Page 654 and
- (e) MBRHOA (Master) recorded 4/25/91 in Book 1465 Page 329 (**Exhibit C to Complaint**)

Each sub-CA Master Deed and Bylaws are similar to the other sub-CAs and each contain essentially the same *Article XVIII The Myrtle Beach Resort*. This Article grants authority to the Declarant or his successors and assigns to create a Master Association, **see Exhibit B attached**. The balance of this Affidavit will deal primarily with the CCRs and Bylaws of the Master Association, Myrtle Beach Resort Homeowners' Association, Inc, (**Master**).

RELEVANT PROVISIONS OF MASTER HOA GOVERNING DOCUMENTS

8. Reason for formation of Master as set forth on page 2 of the CCRs, **NOW, THEREFORE:**

“for the purpose of protecting the value and desirability of these properties and which restrictions, easements, charges, liens, conditions and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or portion of them.”

9. Specifically, the CCRs and Bylaws are the governing documents of the Master and define aspects and duties of the Developer, the Association, the Board of Directors, the Unit Owners and Manager. Article I of the CCRs provides definitions for terms used in the CCRs and Bylaws, which **SHALL** have the meanings contained in S.C. Code Ann. 27-31-20.
- 1.1.0 “Act” **SHALL** mean the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as Amended.
 - 1.1.8 “Common Expenses” **SHALL** mean and refer to all expenditures, including debt retirement, capital improvements, and operating expenses, lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.
 - 1.1.9 “Condominium Association” or “Individual Condominium Association” **SHALL** mean and refer to the four individual horizontal property regimes making up the Myrtle Beach Resort including the Myrtle Beach Resort Horizontal Property Regime (Phase I); Myrtle Beach Resort Oceanfront Spa (Phase II); Renaissance Tower Horizontal Property Regime (Phase III); and Myrtle Beach Resort Five Seasons Centre (Phase IV).
 - 1.1.17 “Recreational Amenities” **SHALL** include such recreational facilities located within the Myrtle Beach Resort, including, without limitation, tennis courts, sporting or exercise areas, meeting areas, swimming pools, tennis courts, locker room facilities, clubhouses, food and beverage facilities, lagoons, beach access paths, jogging trails and bike paths.
 - 1.1.18 “Voting Member” **SHALL** mean a member elected by the Board of each individual Condominium Association to this Association’s Board of Directors as specified herein and in the By-Laws.
10. CCRs Article III Membership and Voting
- 3.2 Board of Directors. “The Board of Directors of each Individual Condominium Association at the Myrtle Beach Resort **SHALL** elect a representative to sit on the Board of Directors of this Association. ***This Board of Directors SHALL act in accordance with the By-Laws.*** The Association **SHALL** be operated by the Board of Directors, and the Members of the Association **SHALL** have only such powers as

are specifically herein or in the By-Laws.”

11. CCRs, Article IV POWERS OF THE ASSOCIATION:

provides: “ the Association, acting through the Board of Directors **SHALL** also have the power to:

- (a) **Maintain ALL** streets and roads within the Property (Resort),
- (b) **Provide for ALL** refuse collection,
- (c) Obtain via purchase, lease or other means Cable or Master TV service and telephone services for all Units,
- (d) Maintain the Ocean front area,
- (e) Grant easements and right of ways where necessary for services,
- (f) Maintain insurance for Liability and fire,
- (g) Employ a management company,
- (h) **Install and maintain security devises, detectors, communication facilities and contract for security services, guards and other watchmen,**
- (i) Take such other reasonable actions as the Board **SHALL** deem advisable.

Where the CCRs and Bylaws use words such as “**SHALL**”, “**WILL**”, “**MUST**”, etc, these words create an affirmative obligation for the Board to act. **There is NO choice.** Failure to fulfill its **affirmative obligations is a breach of its duties and considered an “Ultra Vires” act and the Board CANNOT** use the “Business Judgment Rule” as a defense. See South Carolina Supreme Court ruling in Fisher vs Shipyard Village HOA, **Exhibit C attached.**

12. By-Laws, Article IV Board of Directors: Voting, Selection, Term of Office and Duties

Section 3. Regular Meetings: There **SHALL** be at least one (1) regular meeting of the Board quarterly at a time designated by the President. The President or two (2) members of the Board may call as many special meetings of the Board as are deemed necessary or desirable and in the best interest of the Association.

Section 7. Voting: Any action taken at a meeting of the Board of Directors **SHALL** be only upon affirmative vote of 67% of the entire votes of the Association.

RELEVANT ISSUES

13. I have been advised of a number of issues being raised by the Defendants, current Master members Richardson and Mace as well as former Master members Grusauskas and Perkins. I have also been advised that these individuals have been or are being given advice by a current owner who is an attorney from another state that is not licensed to practice in South Carolina. Following is a list of the issues:
- (1) The CCRs and Bylaws for the Master Association were never voted on by the Owners and are therefore NOT valid.
 - (2) Where does it say the Individual Condominium Associations give authority to the Master?
 - (3) Do decisions of the Master HOA Board first have to be approved by the Individual Condominium Associations?
 - (4) Article 4.1(h) of the Master HOA CCRs uses the word "project" when discussing security services and one Defendant representative claims it references a conference center never built instead of the Myrtle Beach Resort.
 - (5) A former Master HOA Board member acted without a Board vote to cancel the master security contract and forcing each Individual Condominium Association to make arrangements for security.
 - (6) The same two current members of the Master HOA Board are attempting to make each Individual Condominium Association arrange for their own trash service.
 - (7) The same two members of the Master HOA Board have also changed the grounds maintenance contractor without a vote of the entire Board.
 - (8) Mr. Richardson, who is now a Member of the HOA Board says the President has greater power than other Master Board members.
 - (9) Current Master HOA Board members Richardson and Mace have stated on occasion they do NOT have to follow the voting provisions in the Bylaws because their Individual Condominium Associations (Renaissance and Oceanfront Spa) have more than 50% of the total Myrtle Beach Resort units.
 - (10) The new representative from Renaissan, Jeff Richardson, has asserted that according to SC Law on May 25th he will take the presidency with a minor majority vote of

Renaissance and Oceanfront Spa.

- (11) The Master Board discussed having a forensic audit done and authorized obtaining quotes but to NOT proceed. Either the Renaissance representative or the Oceanfront Spa representative authorized an audit firm to proceed at a cost of \$20,000 without a vote of the entire Board.
- (12) In short, the two current representatives and the former representatives from Renaissance and Oceanfront Spa are continuously taking action without a Board vote.

FACTUAL AND PROFESSIONAL OPINIONS

Based on my review of documents and discussion with plaintiffs, it is apparent to me that the prior and current Master HOA Board members from Renaissance Towers (RT) and Oceanfront Spa (OS) are either getting really poor free legal advice, do NOT understand the provisions of the governing documents or have some ulterior motive for their actions. Following are my opinions on the relevant issues presented.

1. The CCRs and Bylaws for the Master Association were NOT required to be approved by the Owners as Article XVIII in each Individual Condominium Association provided the authority for the Developer, his successor or assigns to create The Myrtle Beach Resort as the overall Master Association. It is my opinion to a reasonable degree of certainty the CCRs and Bylaws are VALID,
2. As noted in (1) Article XVIII in each Individual Condominium Association's Master Deed provided the authority to establish the Myrtle Beach Resort and transfer those properties, duties and responsibilities that would enable to Resort to more efficiently and cost effectively operate the Resort in the best interests of the members/owners at the Resort.
3. There is NO requirement for decisions of the Master HOA Board to first have their proposed actions approved by the Individual Condominium Associations.
4. The use of the word "project" in Article 4.1(h) of the Master HOA's CCRs clearly is a scrivener's error and as such is meant to say Resort. This has been confirmed with Dan Patrick, the attorney who wrote the Master HOA CCRs.
5. The past (Grusauskas and Perkins) and current (Richardson and Moore) representatives from RT and OS **HAVE committed "Ultra Vires" acts** by canceling the master security contract without a vote of the Board as a whole. This action has a strong likelihood of causing irreparable harm to the Resort through loss of revenue (gate pass fees) that help fund security

and maintenance of roadways; control access to only those authorized through several cross easements for vehicle and pedestrian access traffic and parking and use of the many recreational amenities and makes response to emergencies more difficult.


6. The current representatives from RT and OS are again trying to take “**Ultra Vires**” action by making significant changes to the trash service. Such action will likely result in less efficient service and greater expense for some of the Individual Condominium Associations.
7. The change in the grounds maintenance contractor by the representatives from RT and OS without a vote of the entire Master Board is again an “**Ultra Vires**” act that could well result in overall deterioration of the common grounds appearance and safety.
8. The President of the HOA Board has no greater power than any other Master Board member. He has some extra duties BUT is only one vote.
9. Article 3.2 of the ByLaws as noted above clearly provides that the Board of Directors **SHALL act in accordance with the Bylaws**. As has been noted, the two members from RT and OS have ignored the provision of the Bylaws requiring all Board decisions to be approved by 67%. Their **Ultra Vires** actions are and will continue to do irreparable harm to The Resort and its members/owners.
10. Mr. Richardson’s assertion that under SC Law he is going to make himself President is another case of receiving bad advice. He has to be elected President by the Board. There is no relevant SC Law that will allow him to be crowned King.
11. The authorization for an auditor to perform a forensic audit at a cost of \$20,000 without a vote of the entire Board is again an **Ultra Vires** act by the RT and/or OS representatives. As a retired CPA, the approved cost seems very excessive without knowing the scope of work.

In summary, the actions taken or proposed to be taken by the Defendants are serious violations of State statute, the Master Deed and Bylaws of the Master HOA and if NOT stopped immediately will result in irreparable harm to the Resort and its members/owners.

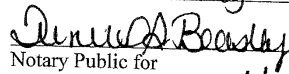
The breach of their affirmative obligations by the RT and OS representatives past and present are serious, will result in diminuation of property values, inconsistent services to owners and a potential security risks throughout the Resort.

I affirm that the foregoing is true to the best of my personal knowledge, information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same. I reserve the right to modify my opinions based on any new information that may be provided subsequent to this Affidavit.

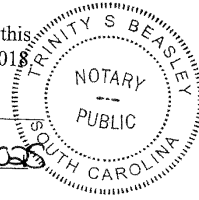
FURTHER AFFIANT SAYETH NOT


Mike Parades, PCAM

SWORN to and subscribed before me this 21 day of May, 2018


Notary Public for

My Commission Expires: 4/16/2025



ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-

FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO,))
GAYLE L. SCOTT, PHILIP D. COX, and)
individually and derivatively on behalf)
of MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,))
and on behalf of all other similarly situated)
Co-owners, and LORI NIEDZWIECKI, and)
ROBERT S. ROSENCRANS, individually))
and derivatively on behalf of the MYRTLE)
BEACH RESORT HOMEOWNERS')
ASSOCIATION, INC. for its right and)
benefit,)

Plaintiffs,)

VERIFICATION

vs.)


JEFFERY L. RICHARDSON and NANCY)
L. MOORE, individually and as current)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and PETER A. GRUSAUSKAS and JIM)
PERKINS, individually and as former)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Defendants.)

MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Nominal Defendant.)

I, Frederick E. Brown, hereby verify, that the facts and allegations in the Members' Derivative Complaint are made upon personal knowledge with regard to my own acts and upon information and belief as to all other matters. I further verify that I became a member of the Myrtle Beach Resort Homeowners' Association, Inc. when I purchased my unit 117, Building A in the Myrtle Beach Resort in June 1, 2003 and remain a member today. I am a resident of Horry County, South Carolina.


Frederick E. Brown

SWORN to and subscribed to me
this ~~24th~~ day of May, 2018.


Notary Public for South Carolina

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-

FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO,)
GAYLE L. SCOTT, PHILIP D. COX, and)
individually and derivatively on behalf)
of MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and on behalf of all other similarly situated)
Co-owners, and LORI NIEDZWIECKI, and)
ROBERT S. ROSENCRANS, individually)
and derivatively on behalf of the MYRTLE)
BEACH RESORT HOMEOWNERS')
ASSOCIATION, INC. for its right and)
benefit,)

Plaintiffs,)

VERIFICATION

vs.)

JEFFERY L. RICHARDSON and NANCY)
L. MOORE, individually and as current)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and PETER A. GRUSAUSKAS and JIM)
PERKINS, individually and as former)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Defendants.)

MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Nominal Defendant.)

I, Conrad A. Calvano, hereby verify, that the facts and allegations in the Members' Derivative Complaint are made upon personal knowledge with regard to my own acts and upon information and belief as to all other matters. I further verify that I became a member of the Myrtle Beach Resort Horizontal Property Regime, also known as the A Building. I purchased Unit A-137 in the Myrtle Beach Resort in June 17, 1982 and became a member in the Myrtle Beach Resort Homeowners Association, Inc., when it was recorded on April 16, 1991 and remain a member in both today. I reside in Oakland County, in the State of Michigan.

Conrad A. Calvano
 Conrad A. Calvano

SWORN to and subscribed to me
 this 23 day of May, 2018.

Joyce M. Becker
 Notary Public for the State of Michigan

JOYCE M BECKER
 Notary Public, State of Michigan
 County of Oakland
 My Commission Expires 10-30-2020
 Acting in the County of Oakland

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-

FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO,))
GAYLE L. SCOTT, PHILIP D. COX, and)
individually and derivatively on behalf)
of MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and on behalf of all other similarly situated)
Co-owners, and LORI NIEDZWIECKI, and)
ROBERT S. ROSENCRANS, individually)
and derivatively on behalf of the MYRTLE)
BEACH RESORT HOMEOWNERS')
ASSOCIATION, INC. for its right and)
benefit,)

Plaintiffs,)

VERIFICATION

vs.)

JEFFERY L. RICHARDSON and NANCY)
L. MOORE, individually and as current)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and PETER A. GRUSAUSKAS and JIM)
PERKINS, individually and as former)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

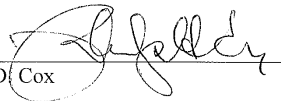
Defendants.)

MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Nominal Defendant.)

I, Philip D. Cox, hereby verify, that the facts and allegations in the Members' Derivative Complaint are made upon personal knowledge with regard to my own acts and upon information and belief as to all other matters. I further verify that I became a member of the Myrtle Beach Resort Homeowners' Association, Inc. when I purchased my units 6106 in Five Seasons in April 19, 2011 and remain a member today. I reside in Horry County, State of South Carolina.

Philip D. Cox



SWORN to and subscribed to me
this 24~~th~~ day of May, 2018.

Lynna R. Stead
Notary Public for South Carolina

My Commission Expires - 10-12-21

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-

FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO,))
GAYLE L. SCOTT, PHILIP D. COX, and)
individually and derivatively on behalf)
of MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,))
and on behalf of all other similarly situated)
Co-owners, and LORI NIEDZWIECKI, and)
ROBERT S. ROSENCRANS, individually))
and derivatively on behalf of the MYRTLE)
BEACH RESORT HOMEOWNERS')
ASSOCIATION, INC. for its right and)
benefit,)

Plaintiffs,)

VERIFICATION

vs.)

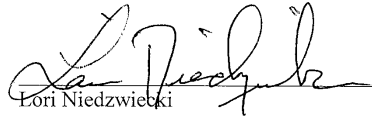
JEFFERY L. RICHARDSON and NANCY)
L. MOORE, individually and as current)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and PETER A. GRUSAUSKAS and JIM)
PERKINS, individually and as former)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Defendants.)

MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Nominal Defendant.)

I, Lori Niedzwiecki, hereby verify, that the facts and allegations in the Members' Derivative Complaint are made upon personal knowledge with regard to my own acts and upon information and belief as to all other matters. I further verify that I became a member of the Myrtle Beach Resort Homeowners' Association, Inc. when I purchased my unit 4107 in Five Seasons in May 17, 1999 and remain a member today. I reside in Horry County, South Carolina.



Lori Niedzwiecki

SWORN to and subscribed to me
this 24~~th~~ day of May, 2018.



Notary Public for South Carolina

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-

FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO,))
GAYLE L. SCOTT, PHILIP D. COX, and)
individually and derivatively on behalf)
of MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and on behalf of all other similarly situated)
Co-owners, and LORI NIEDZWIECKI, and)
ROBERT S. ROSENCRANS, individually)
and derivatively on behalf of the MYRTLE)
BEACH RESORT HOMEOWNERS')
ASSOCIATION, INC. for its right and)
benefit,)

Plaintiffs,)

VERIFICATION

vs.)

JEFFERY L. RICHARDSON and NANCY)
L. MOORE, individually and as current)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and PETER A. GRUSAUSKAS and JIM)
PERKINS, individually and as former)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Defendants.)

MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Nominal Defendant.)

I, Charles O. Pakosta, hereby verify, that the facts and allegations in the Members' Derivative Complaint are made upon personal knowledge with regard to my own acts and upon information and belief as to all other matters. I further verify that I became a member of the Myrtle Beach Resort Homeowners' Association, Inc. when I purchased my unit S27, Building A in the Myrtle Beach Resort June 225, 1982 and remain a member today. My residence is in Columbiana County, in the State of Ohio.

SWORN to and subscribed to me
 this 22nd day of May, 2018.

Julia A. Hupp
 Notary Public for the State of Ohio

Charles O. Pakosta
 Charles O. Pakosta



JULIA A. HUPP
 NOTARY PUBLIC
 STATE OF OHIO
 Comm. Expires
 04-04-2022

ELECTRONICALLY FILED - 2018 May 24 5:09 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO,))
GAYLE L. SCOTT, PHILIP D. COX, and)
individually and derivatively on behalf)
of MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,))
and on behalf of all other similarly situated)
Co-owners, and LORI NIEDZWIECKI, and)
ROBERT S. ROSENCRANS, individually))
and derivatively on behalf of the MYRTLE)
BEACH RESORT HOMEOWNERS')
ASSOCIATION, INC. for its right and)
benefit,)

Plaintiffs,)

vs.)

JEFFERY L. RICHARDSON and NANCY)
L. MOORE, individually and as current)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,))
and PETER A. GRUSAUSKAS and JIM)
PERKINS, individually and as former)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Defendants.)

MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
)
Nominal Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-

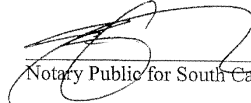
VERIFICATION

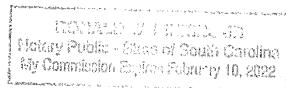
I, Robert S. Rosencrans, hereby verify, that the facts and allegations in the Members' Derivative Complaint are made upon personal knowledge with regard to my own acts and upon information and belief as to all other matters. I further verify that I became a member of the Myrtle Beach Resort Homeowners' Association, Inc. when I purchased my unit 545, Building A in the Myrtle Beach Resort on January 24, 2011 and remain a member today. I am a resident of Horry County, South Carolina.

Robert S. Rosencrans

Robert S. Rosencrans

SWORN to and subscribed to me
this 22 day of May, 2018.


Notary Public for South Carolina



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-

FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO,))
GAYLE L. SCOTT, PHILIP D. COX, and)
individually and derivatively on behalf)
of MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and on behalf of all other similarly situated)
Co-owners, and LORI NIEDZWIECKI, and)
ROBERT S. ROSENCRANS, individually)
and derivatively on behalf of the MYRTLE)
BEACH RESORT HOMEOWNERS')
ASSOCIATION, INC. for its right and)
benefit,)

Plaintiffs,)

VERIFICATION

vs.)


JEFFERY L. RICHARDSON and NANCY)
L. MOORE, individually and as current)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)
and PETER A. GRUSAUSKAS and JIM)
PERKINS, individually and as former)
members of the Board of Directors for)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

Defendants.)

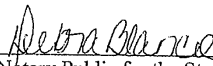
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.,)

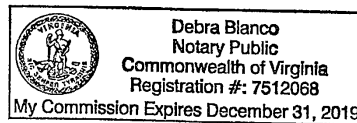
Nominal Defendant.)

I, Gayle N. Scott, hereby verify, that the facts and allegations in the Members' Derivative Complaint are made upon personal knowledge with regard to my own acts and upon information and belief as to all other matters. I further verify that I became a member of the Myrtle Beach Resort Homeowners' Association, Inc. when I purchased my unit 509, Building A in Myrtle Beach Resort in November of 2014 and remain a member today. I reside in Chesapeake, Virginia.


Gayle N. Scott

SWORN to and subscribed to me
this 23 day of May, 2018.


Notary Public for the State of Virginia



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Frederick E. Brown, et al.,

Case No. 2018-CP-26-03173

Plaintiffs,

vs.

**ANSWER OF DEFENDANTS
JEFFERY L. RICHARDSON AND
PETER A. GRUSAUSKAS**

Jeffery L. Richardson, et al.,

Defendants.

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendants.

Defendants Jeffery L. Richardson and Peter A. Grusauskas (together referred to hereinafter as "Defendants"), by and through their undersigned counsel, submit this Answer in response to the Complaint (the "Complaint") of Plaintiffs Frederick E. Brown, Charles O. Pakosta, Conrad A. Calvano, Gayle N. Scott, and Philip D. Cox, individually and derivatively on behalf of Myrtle Beach Resort Homeowners' Association, Inc. ("MBHOA"), and on behalf of all other similarly situated Co-owners, and Lori Niedzwiecki, and Robert S. Rosencrans, individually and derivatively on behalf of the MBHOA, for its right and benefit ("Plaintiffs"), and state as follows:

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted.
2. Defendants lack knowledge and information sufficient to form a belief as to the allegations of Paragraphs 1, 2, 3, 4, 5, 6 and 7 of the Complaint and therefore, deny the same and demand strict proof thereof.
3. Defendants admit the allegations of Paragraph 8 of the Complaint.

PPAB 4319526v3

4. Defendants deny the allegations of Paragraph 9 of the Complaint.

5. As to the allegations of Paragraph 10 of the Complaint, Defendants admit that Nancy Moore is a current member of the Boards of Directors for the MBHOA and Ocean Front Spas. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 10 of the Complaint and therefore, deny the same and demand strict proof thereof.

6. As to the allegations of Paragraph 11 of the Complaint, Defendants admit that Jim Perkins is a former member of the Board of Directors for the MBHOA. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations of said Paragraph and therefore, deny the same and demand strict proof thereof.

7. Defendants deny the allegations of Paragraph 12 of the Complaint.

8. The allegations of Paragraph 13 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny.

9. The allegations of Paragraph 14 of the Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny that this action is a proper derivative action under South Carolina Rule 23(b)(1).

10. The allegations of Paragraph 15 of the Complaint constitute conclusions of law to which Defendants are neither required to admit nor deny. To the extent a response is required, Defendants expressly deny that this is a proper derivative action, deny all allegations and implications of wrongdoing, deny liability to Plaintiffs and deny that Plaintiffs are entitled to any relief.

11. Defendants deny the allegations of Paragraph 16 of the Complaint as stated.

12. The allegations of Paragraph 17 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the allegations of Paragraph 17 of the Complaint.

13. Defendants deny the allegations of Paragraph 18 of the Complaint.

14. Responding to the allegations of Paragraph 19 of the Complaint, Defendants admit that two letters are attached to the Complaint as Exhibit "B-1" and "B-2". All other allegations in Paragraph 19 of the Complaint are denied.

15. Defendants deny the allegations of Paragraphs 20 and 21 of the Complaint.

16. Responding to the allegations of Paragraph 22 of the Complaint, Defendants admit that a copy of the Myrtle Beach Resort Homeowners' Association, Inc.'s Declaration of Covenants, Conditions and Restrictions and By-Laws is attached to the Complaint as Exhibit "C". Further responding to the allegations of Paragraph 22 of the Complaint, Defendants crave reference to the Articles of Incorporation and the MBHOA's Declaration of Covenants, Conditions and Restrictions and By-Laws and deny any allegations or characterizations inconsistent therewith.

17. Responding to the allegations of Paragraph 23 of the Complaint, Defendants crave reference to the MBHOA's governing documents and deny any allegations or characterizations inconsistent therewith.

18. Responding to the allegations of Paragraph 24 of the Complaint, Defendants crave reference to the Four Individual Condominium Regimes' governing documents and the MBHOA's governing documents and deny any allegations or characterizations inconsistent therewith and/or with established procedure and law.

19. Responding to the allegations of Paragraph 25 of the Complaint, Defendants crave reference to the Master Deeds of the Four Individual Condominium Regimes and deny any allegations or characterizations inconsistent therewith.

20. Responding to the allegations of Paragraph 26 of the Complaint, Defendants crave reference to the referenced Assignment of Rights and deny any allegations or characterizations inconsistent therewith.

21. The allegations of Paragraph 27 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Defendants crave reference to the Four Individual Regimes' governing documents and the MBHOA's Declarations and By-Laws and deny any allegations or characterizations inconsistent therewith and with established law.

22. Responding to the allegations of Paragraphs 28 and 29 of the Complaint, Defendants crave reference to Article II and Article IV of the MBHOA's By-laws and deny any allegations or characterizations inconsistent therewith.

AS TO THE FIRST CAUSE OF ACTION
(Ultra Vires Acts and Reckless, Willful, and Wanton Conduct)

23. Responding to the allegations of Paragraph 30 of the Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

24. Defendants deny the allegations of Paragraph 31 of the Complaint.

25. Responding to the allegations of Paragraph 32 of the Complaint, Defendants crave reference to Article IV, Section 4.1 of MBHOA's By-laws and deny any allegations or characterizations inconsistent therewith.

26. Defendants deny the allegations of Paragraph 33 of the Complaint, including all subparts a-k.

27. Defendants deny the allegations of Paragraph 34 of the Complaint.

28. Defendants deny the allegations of Paragraph 35 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Master HOA's Declarations and By-Laws)

29. Responding to the allegations of Paragraph 36 of the Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

30. The allegations of Paragraph 37 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants expressly deny all allegations and implications of wrongdoing and deny liability to Plaintiffs and/or the relief sought. Further responding to the allegations of Paragraph 37 of the Complaint, Defendants crave reference to the MBHOA's Declaration of Covenants, Conditions and Restrictions and By-Laws and deny all allegations and characterizations inconsistent therewith. Defendants deny any remaining allegations of said Paragraph.

31. Regarding the allegations of Paragraph 38 of the Complaint, Defendants crave reference to the Declaration of Covenants, Conditions and Restrictions for the MBHOA and deny any allegations or characterizations inconsistent therewith.

32. Defendants deny the allegations of Paragraphs 39 and 40 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Declaratory Judgment)

33. Responding to the allegations of Paragraph 41 of the Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

34. The allegations of Paragraph 42 of the Complaint constitute Plaintiffs' characterization of this action and further constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief.

35. Defendants admit the allegations of Paragraph 43 of the Complaint.

36. The allegations of Paragraph 44 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the allegations of Paragraph 44 of the Complaint.

37. Defendants deny the allegations of Paragraph 45 of the Complaint.

38. Responding to the allegations of Paragraph 46 of the Complaint, Defendants deny all allegations (including all subparts a-f) and deny implications of wrongdoing and further deny that Plaintiffs are entitled to the requested judicial determinations or any relief whatsoever.

39. Defendants deny the allegations of Paragraph 47 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Injunctive Relief)

40. Responding to the allegations of Paragraph 48 of the Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

41. Responding to the allegations of Paragraph 49 of the Complaint, Defendants crave reference to the filings in the referenced lawsuit and deny all allegations and characterizations inconsistent therewith. Defendants deny all remaining allegations of Paragraph 49 of the Complaint.

42. Responding to the allegations of Paragraph 50 of the Complaint, Defendants admit that a copy of the Master-in-Equity's Order dated November 28, 2017 is attached to the Complaint as Exhibit "E". Further responding to the allegations of Paragraph 50 of the Complaint, Defendants crave reference to the Master-in-Equity's Order dated November 28, 2017 and deny all allegations and characterizations inconsistent therewith.

43. Defendants deny the allegations of Paragraph 51 of the Complaint.

44. Defendants deny the allegations of Paragraph 52 of the Complaint.

45. The allegations of Paragraph 53 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants crave reference to Article IV of the MBHOA's Declarations and By-laws and deny all allegations and characterizations inconsistent therewith. Defendants deny all remaining allegations of said Paragraph.

46. Responding to the allegations of Paragraph 54 of the Complaint, Defendants admit only that the Affidavits of Daniel L. Patrick and Michael R. Parades are attached to the Complaint as Exhibit "F" and Exhibit "G". Defendants deny all remaining allegations of Paragraph 54 of the Complaint.

47. Responding to the allegations of Paragraph 55 of the Complaint, Defendants deny all allegations and implications of wrongdoing and deny that Plaintiffs are entitled to the requested injunctive relief or any relief whatsoever.

48. Defendants deny the allegations of Paragraphs 56 and 57 of the Complaint.

49. Defendants deny the WHEREFORE clause following Paragraph 57 of the Complaint, deny any liability to Plaintiffs and deny that Plaintiffs are entitled to any relief or damages whatsoever.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

50. Plaintiffs' Complaint should be dismissed, in whole or in part, to the extent it fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

SECOND AFFIRMATIVE DEFENSE
(Good Faith)

51. Defendants acted at all times in good faith, without malice in their actions, and with a proper business purpose and judgment.

THIRD AFFIRMATIVE DEFENSE
(Prior Breach)

52. The Complaint is barred to the extent that Plaintiffs failed to uphold their contractual obligations.

FOURTH AFFIRMATIVE DEFENSE
(Affirmation)

53. Defendants allege that all actions taken by them were ratified and affirmed, and Defendants plead affirmation as a complete defense to Plaintiffs' claims.

FIFTH AFFIRMATIVE DEFENSE
(Director Immunity)

54. Defendants are immune from this lawsuit pursuant to S.C. Code Ann. § 33-31-834.

SIXTH AFFIRMATIVE DEFENSE
(Legal Claims to be Tried By Judge)

55. Defendants assert that certain of Plaintiffs' claims against Defendants contain legal claims to be tried by a judge not a jury.

SEVENTH AFFIRMATIVE DEFENSE
(Failure to Satisfy Rule 23(b)(1), SCRCP)

56. The Complaint fails to satisfy the pleading requirements and have failed to comply with pre-suit demand and other fundamental requirements necessary to bring this derivative action pursuant to Rule 23(b)(1) of the South Carolina Rules of Civil Procedure.

EIGHTH AFFIRMATIVE DEFENSE
(Failure to Satisfy Rule 23(b)(1), SCRCP)

57. Plaintiffs are not appropriate representatives and are not otherwise entitled to prosecute a derivative claim under Rule 23(b)(1) of the South Carolina Rules of Civil Procedure. Specifically, Plaintiffs cannot fairly and adequately represent the interests of the membership they purport to represent and the relief they request is antagonistic to the best interests of the MBHOA and therefore, this purported derivative action should be dismissed as a matter of law.

NINTH AFFIRMATIVE DEFENSE
(Injunctive Relief Improper)

58. Plaintiffs' claim for an injunction is barred due to the Plaintiffs' inability to establish the necessary elements: (1) irreparable harm; (2) likelihood of success on the merits and (3) an inadequate remedy at law.

TENTH AFFIRMATIVE DEFENSE
(Business Judgment)

59. The Business Judgment Rule bars the claims alleged against Defendants.

ELEVENTH AFFIRMATIVE DEFENSE
(Equitable Defenses)

60. Plaintiffs' claims are barred by one, or more, of the equitable doctrine of waiver, laches, estoppel and/or unclean hands.

TWELFTH AFFIRMATIVE DEFENSE
(Advice of Counsel)

61. To the extent Defendants relied on the advice of counsel after disclosure of all pertinent facts, such reliance serves to defeat any claim of intentional, willful or reckless conduct.

THIRTEENTH AFFIRMATIVE DEFENSE
(Punitive Damages Inappropriate)

62. Plaintiffs fail to state any basis upon which punitive damages are recoverable against Defendants and accordingly, Plaintiffs' prayer for such damages should be dismissed and/or stricken from the Complaint pursuant to Rules 12(b)(6) and/or 12(f) of the South Carolina Rules of Civil Procedure. Moreover, Plaintiffs' claim for recovery of punitive damages is barred by the South Carolina Constitution and the Constitution of the United States, because no reasonable and well-defined limits are placed on such punitive damages award; because the award and payment of punitive damages would constitute an imposition of punishment on

Defendants without adequate notice of the substantive rules governing the conduct giving rise to such punitive damages.

FOURTEENTH AFFIRMATIVE DEFENSE
(Reservation of Rights)

63. Defendants hereby give notice that they reserve the right to assert, and do not waive, any additional or further defenses as may be revealed by additional information acquired during discovery or otherwise, and reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, Defendants pray to the Court that:

1. Plaintiffs' Complaint be dismissed with prejudice;
2. Judgment be entered in favor of Defendants;
3. Plaintiffs recover nothing from Defendants;
4. Plaintiffs' requested judicial determinations be denied;
5. Plaintiffs' request for an injunction be denied;
6. The costs of this action be taxed against Plaintiffs and that Defendants recover their costs in defending this action, including, but not limited to, attorneys' fees as allowed by law; and
7. The Court grant Defendants such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Krista M. McGuire
Krista M. McGuire
SC Bar No. 72021
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650
kristamcguire@parkerpoe.com

*Attorneys for Defendants
Jeffery L. Richardson and Peter A. Grusauskas*

_____, 2018

Charleston, South Carolina

ELECTRONICALLY FILED - 2018 Jul 13 11:49 AM - Horry - COMMON PLEAS - CASE#2018CP2803173

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF Horry) FIFTEENTH JUDICIAL CIRCUIT

FREDERICK E. BROWN, CHARLES O.) CASE NO. 2018-CP-26-03173
PAKOSTA, CONRAD A. CALVANO,)
GAYLE N. SCOTT, AND PHILIP D.)
COX, INDIVIDUALLY AND)
DERIVATIVELY ON BEHALF OF)
MYRLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.)
AND ON BEHALF OF ALL OTHER)
SIMILARLY SITUATED CO-OWNERS,)
AND LORI NIEDZWIECKI, AND)
ROBERT S. ROSENCRANS,)
INDIVIDUALLY AND DERIVATELY)
ON BEHALF OF MYRTLE BEACH)
RESORT HOMEOWNERS')
ASSOCIATION, INC. FOR ITS RIGHT)
AND BENEFIT,)

PLAINTIFFS,)

vs.)

JEFFERY L. RICHARDSON AND)
NANCY L. MOORE, INDIVIDUALLY)
AND AS CURRENT MEMBERS OF)
THE BOARD OF DIRECTORS FOR)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.)
AND PETER A. GRUSAUSKAS AND)
JIM PERKINS, INDIVIDUALLY AND)
AS FORMER MEMBERS OF THE)
BOARD OF DIRECTORS FOR)
MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.-)

DEFENDANTS,)

MYRTLE BEACH RESORT)
HOMEOWNERS' ASSOCIATION, INC.)

NOMINAL DEFENDANT.)

**NOMINAL DEFENDANT MYRTLE
BEACH RESORT HOMEOWNERS'
ASSOCIATION, INC.'S,
ANSWER TO MEMBERS'
DERIVATIVE COMPLAINT**

TO: HOWELL V. BELLAMY, III AND HOWELL V. BELLAMY, JR., ATTORNEYS FOR THE PLAINTIFFS:

The Nominal Defendant, Myrtle Beach Resort Homeowners' Association, Inc. (hereinafter referenced as "Nominal Defendant" or "this Defendant") by and through its undersigned attorneys, hereby answers the Members' Derivative Complaint (hereinafter referred to as "Plaintiffs") as follows:

Each and every allegation not specifically admitted below is hereby denied.

PARTIES AND JURISDICTION

1. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 1 of the Members' Derivative Complaint, and therefore denies the same.

2. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 2 of the Members' Derivative Complaint, and therefore denies the same.

3. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 3 of the Members' Derivative Complaint, and therefore denies the same.

4. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 4 of the Members' Derivative Complaint, and therefore denies the same.

5. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 5 of the Members' Derivative Complaint, and therefore denies the same.

6. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 6 of the Members' Derivative Complaint, and therefore denies the same.

7. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 7 of the Members' Derivative Complaint, and therefore denies the same.

8. This Defendant admits the allegations contained in Paragraph 8 of the Members' Derivative Complaint.

9. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 9 of the Members' Derivative Complaint, and therefore denies the same.

10. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 10 of the Members' Derivative Complaint, and therefore denies the same.

11. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 11 of the Members' Derivative Complaint, and therefore denies the same.

12. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 12 of the Members' Derivative Complaint, and therefore denies the same.

13. The allegations contained in Paragraph 13 of the Members' Derivative Complaint contain conclusions of law to which no response is required. To the extent that a response is required, this Defendant lacks knowledge or information sufficient to form a belief as to the

allegations contained in Paragraph 13 of the Members' Derivative Complaint, and therefore, denies the same.

14. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 14 of the Members' Derivative Complaint, and therefore denies the same.

DERIVATIVE ALLEGATIONS

15. The allegations contained in Paragraph 15 of the Members' Derivative Complaint contain conclusions of law to which no response is required. To the extent that a response is required, this Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 15 of the Members' Derivative Complaint, and therefore, denies the same.

16. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 16 of the Members' Derivative Complaint, and therefore denies the same.

17. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 17 of the Members' Derivative Complaint, and therefore denies the same.

18. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 18 of the Members' Derivative Complaint, and therefore denies the same.

19. In answering the allegation of Paragraph 19, this Defendant craves reference to the letters, and denies any and all allegations inconsistent therewith.

20. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 20 of the Members' Derivative Complaint, and therefore denies the same.

21. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 21 of the Members' Derivative Complaint, and therefore denies the same.

BRIEF FACTUAL HISTORY OF MYRTLE BEACH RESORT REGIME

22. In answering the allegation of Paragraph 22, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

23. In answering the allegation of Paragraph 23, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

24. In answering the allegation of Paragraph 24, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

25. In answering the allegation of Paragraph 25, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

26. In answering the allegation of Paragraph 26, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

27. In answering the allegation of Paragraph 27, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

RELEVANT PROVISIONS OF THE BY-LAWS FOR THE MASTER HOA

28. In answering the allegation of Paragraph 28, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

29. In answering the allegation of Paragraph 29, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

FOR A FIRST CAUSE OF ACTION
(Ultra Vires Acts and Recklessness, Willful, and Wanton Conduct)

30. In response to Paragraph 30 of Members' Derivative Complaint, this Defendant re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

31. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 31 of the Members' Derivative Complaint, and therefore denies the same.

32. In answering the allegation of Paragraph 32, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

33. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 33 of the Members' Derivative Complaint, including subparts therein, and therefore denies the same.

34. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 34 of the Members' Derivative Complaint, and therefore denies the same.

35. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 35 of the Members' Derivative Complaint, and therefore denies the same.

FOR A SECOND CAUSE OF ACTION
(Breach of Master HOA's Declaration and By-Law's)

36. In response to Paragraph 36 of Members' Derivative Complaint, this Defendant re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

37. In answering the allegation of Paragraph 37, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

38. In answering the allegation of Paragraph 38, this Defendant craves reference to the governing documents, and denies any and all allegations inconsistent therewith.

39. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 39 of the Members' Derivative Complaint, and therefore denies the same.

40. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 40 of the Members' Derivative Complaint, and therefore denies the same.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

41. In response to Paragraph 41 of Members' Derivative Complaint, this Defendant re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

42. The allegations contained in Paragraph 42 of the Members' Derivative Complaint contain conclusions of law to which no response is required. To the extent that a response is required, this Defendant lacks knowledge or information sufficient to form a belief as to the

allegations contained in Paragraph 42 of the Members' Derivative Complaint, and therefore, denies the same.

43. In answering the allegation of Paragraph 43, this Defendant craves reference to the statute, and denies any and all allegations inconsistent therewith.

44. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 44 of the Members' Derivative Complaint, and therefore denies the same.

45. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 45 of the Members' Derivative Complaint, and therefore denies the same.

46. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 46 of the Members' Derivative Complaint, including subparts therein, and therefore denies the same.

47. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 47 of the Members' Derivative Complaint, and therefore denies the same.

FOR A FOURTH CAUSE OF ACTION
(Injunctive Relief)

48. In response to Paragraph 48 of Members' Derivative Complaint, this Defendant re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

49. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 49 of the Members' Derivative Complaint, and therefore denies the same.

50. In answering the allegation of Paragraph 50, this Defendant craves reference to the Order, and denies any and all allegations inconsistent therewith.

51. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 51 of the Members' Derivative Complaint, and therefore denies the same.

52. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 52 of the Members' Derivative Complaint, and therefore denies the same.

53. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 53 of the Members' Derivative Complaint, and therefore denies the same.

54. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 54 of the Members' Derivative Complaint, and therefore denies the same.

55. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 55 of the Members' Derivative Complaint, including subparts therein, and therefore denies the same.

56. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 56 of the Members' Derivative Complaint, and therefore denies the same.

57. This Defendant lacks sufficient knowledge or information to form a belief as to the truth of those allegations in Paragraph 57 of the Members' Derivative Complaint, and therefore denies the same.

58. As to the unnumbered "WHEREFORE" Paragraph following Paragraph 57, including subparts therein, the allegations of the Plaintiffs are denied.

FURTHERING ANSWERING BY WAY OF AFFIRMATIVE DEFENSES

For a First Affirmative Defense
(Failure to State a Claim)

59. One or more of Plaintiffs' claims fails to state facts sufficient to constitute a cause of action against this Defendant. Therefore, Plaintiffs' Action against this Defendant should be dismissed under Rule 12(b) (6), SCRCP with prejudice.

For a Second Affirmative Defense
(Additional Defense)

60. This Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Members' Derivative Complaint and asserted these affirmative defenses, Nominal Defendant Myrtle Beach Resort Homeowners' Association, Inc. prays that the same be dismissed, together with the costs and disbursements of this action, and for such other and further relief as this Court deems proper.

(Attorney Signature on Following Page)

YOUNG CLEMENT RIVERS, LLP

By: s/Nicholas J. Rivera
Edward D. Buckley, Jr.
ebuckley@yclaw.com
Nicholas J. Rivera
nriviera@yclaw.com
P.O. Box 993,
Charleston, South Carolina 29402
(843) 724-6671
Attorneys for the Nominal Defendant Myrtle Beach
Resort Homeowners' Association, Inc.

Charleston, South Carolina

Dated: July 30, 2018

ELECTRONICALLY FILED - 2018 Jul 30 3:59 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Frederick E. Brown, et al.,

Case No. 2018-CP-26-03173

Plaintiffs,

vs.

**ANSWER OF DEFENDANTS
NANCY L. MOORE AND JIM PERKINS**

Jeffery L. Richardson, et al.,

Defendants.

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendants.

Defendants Nancy L. Moore and Jim Perkins (together referred to hereinafter as "Defendants"), by and through their undersigned counsel, submit this Answer in response to the Complaint (the "Complaint") of Plaintiffs Frederick E. Brown, Charles O. Pakosta, Conrad A. Calvano, Gayle N. Scott, and Philip D. Cox, individually and derivatively on behalf of Myrtle Beach Resort Homeowners' Association, Inc. ("MBRHOA"), and on behalf of all other similarly situated Co-owners, and Lori Niedzwiecki, and Robert S. Rosencrans, individually and derivatively on behalf of the MBRHOA, for its right and benefit ("Plaintiffs"), and state as follows:

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted.
2. Defendants lack knowledge and information sufficient to form a belief as to the allegations of Paragraphs 1, 2, 3, 4, 5, 6 and 7 of the Complaint and therefore, deny the same and demand strict proof thereof.
3. Defendants admit the allegations of Paragraph 8 of the Complaint.

PPAB 4368255v1

4. Defendants deny, upon information and belief, the allegations of Paragraph 9 of the Complaint.

5. As to the allegations of Paragraph 10 of the Complaint, Defendants admit that Nancy Moore is a resident of Horry County, that she is a current member of the Boards of Directors for the MBRHOA and Ocean Front Spa, and that she owns the listed units. Defendants further admit that Ms. Moore acted in good faith in her capacity as a member of the MBRHOA Board and deny any remaining allegations of Paragraph 10 of the Complaint.

6. As to the allegations of Paragraph 11 of the Complaint, Defendants deny that Jim Perkins is a resident of Nevada, but admit that he is a former member of the Board of Directors for the MBRHOA and the Ocean Front Spa. Defendants further admit that Mr. Perkins acted in good faith in his capacity as a member of the MBRHOA Board and deny any remaining allegations of Paragraph 11 of the Complaint.

7. Defendants deny the allegations of Paragraph 12 of the Complaint.

8. The allegations of Paragraph 13 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny.

9. The allegations of Paragraph 14 of the Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny that this action is a proper derivative action under South Carolina Rule 23(b)(1).

10. The allegations of Paragraph 15 of the Complaint constitute conclusions of law to which Defendants are neither required to admit nor deny. To the extent a response is required, Defendants expressly deny that this is a proper derivative action, deny all allegations and implications of wrongdoing, deny liability to Plaintiffs and deny that Plaintiffs are entitled to any relief.

11. Defendants deny the allegations of Paragraph 16 of the Complaint as stated.

12. The allegations of Paragraph 17 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the allegations of Paragraph 17 of the Complaint.

13. Defendants deny they have engaged in *ultra vires* conduct and further deny the allegations of Paragraph 18 of the Complaint.

14. Responding to the allegations of Paragraph 19 of the Complaint, Defendants admit that two letters are attached to the Complaint as Exhibit "B-1" and "B-2". All other allegations in Paragraph 19 of the Complaint are denied.

15. Defendants expressly deny the allegations of Paragraphs 20 and 21 of the Complaint.

16. Responding to the allegations of Paragraph 22 of the Complaint, Defendants admit that a copy of the Myrtle Beach Resort Homeowners' Association, Inc.'s Declaration of Covenants, Conditions and Restrictions and By-Laws is attached to the Complaint as Exhibit "C". Further responding to the allegations of Paragraph 22 of the Complaint, Defendants crave reference to the Articles of Incorporation and the MBRHOA's Declaration of Covenants, Conditions and Restrictions and By-Laws and deny any allegations or characterizations inconsistent therewith.

17. Responding to the allegations of Paragraph 23 of the Complaint, Defendants crave reference to the MBRHOA's governing documents and deny any allegations or characterizations inconsistent therewith.

18. Responding to the allegations of Paragraph 24 of the Complaint, Defendants crave reference to the Four Individual Condominium Regimes' governing documents and the MBRHOA's governing documents and deny any allegations or characterizations inconsistent therewith and/or with established procedure and law.

19. Responding to the allegations of Paragraph 25 of the Complaint, Defendants crave reference to the Master Deeds of the Four Individual Condominium Regimes and deny any allegations or characterizations inconsistent therewith.

20. Responding to the allegations of Paragraph 26 of the Complaint, Defendants crave reference to the referenced Assignment of Rights and deny any allegations or characterizations inconsistent therewith.

21. The allegations of Paragraph 27 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is required, Defendants craves reference to the Four Individual Regimes' governing documents and the MBRHOA's Declarations and By-Laws and deny any allegations or characterizations inconsistent therewith and with established law.

22. Responding to the allegations of Paragraphs 28 and 29 of the Complaint, Defendants crave reference to Article II and Article IV of the MBRHOA's By-laws and deny any allegations or characterizations inconsistent therewith.

AS TO THE FIRST CAUSE OF ACTION
(Ultra Vires Acts and Reckless, Willful, and Wanton Conduct)

23. Responding to the allegations of Paragraph 30 of the Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

24. Defendants deny the allegations of Paragraph 31 of the Complaint.

25. Responding to the allegations of Paragraph 32 of the Complaint, Defendants crave reference to Article IV, Section 4.1 of MBRHOA's By-laws and deny any allegations or characterizations inconsistent therewith.

26. Defendants deny the allegations of Paragraph 33 of the Complaint, including all subparts a-k.

- 27. Defendants deny the allegations of Paragraph 34 of the Complaint.
- 28. Defendants deny the allegations of Paragraph 35 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Master HOA's Declarations and By-Laws)

29. Responding to the allegations of Paragraph 36 of the Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

30. The allegations of Paragraph 37 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants expressly deny all allegations and implications of wrongdoing and deny liability to Plaintiffs and/or the relief sought. Further responding to the allegations of Paragraph 37 of the Complaint, Defendants crave reference to the MBRHOA's Declaration of Covenants, Conditions and Restrictions and By-Laws and deny all allegations and characterizations inconsistent therewith. Defendants deny any remaining allegations of said Paragraph.

31. Regarding the allegations of Paragraph 38 of the Complaint, Defendants crave reference to the Declaration of Covenants, Conditions and Restrictions for the MBRHOA and deny any allegations or characterizations inconsistent therewith.

- 32. Defendants deny the allegations of Paragraphs 39 and 40 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Declaratory Judgment)

33. Responding to the allegations of Paragraph 41 of the Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

34. The allegations of Paragraph 42 of the Complaint constitute Plaintiffs' characterization of this action and further constitute conclusions of law to which Defendants are

neither required to admit or deny. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief.

35. Defendants admit the allegations of Paragraph 43 of the Complaint and crave reference to the referenced statute.

36. The allegations of Paragraph 44 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the allegations of Paragraph 44 of the Complaint.

37. Defendants deny the allegations of Paragraph 45 of the Complaint.

38. Responding to the allegations of Paragraph 46 of the Complaint, Defendants deny all allegations of wrongdoing or implications that they have not complied with their duties and responsibilities (including all subparts a-f) and further deny that Plaintiffs are entitled to the requested judicial determinations as stated or any relief whatsoever.

39. Defendants deny the allegations of Paragraph 47 of the Complaint as stated.

AS TO THE FOURTH CAUSE OF ACTION
(Injunctive Relief)

40. Responding to the allegations of Paragraph 48 of the Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

41. Responding to the allegations of Paragraph 49 of the Complaint, Defendants crave reference to the filings in the referenced lawsuit and deny all allegations and characterizations inconsistent therewith. Defendants deny all remaining allegations of Paragraph 49 of the Complaint.

42. Responding to the allegations of Paragraph 50 of the Complaint, Defendants admit that a copy of the Master-in-Equity's Order dated November 28, 2017 is attached to the Complaint as Exhibit "E". Further responding to the allegations of Paragraph 50 of the

Complaint, Defendants crave reference to the Master-in-Equity's Order dated November 28, 2017 and deny all allegations and characterizations inconsistent therewith.

43. Defendants deny the allegations of Paragraph 51 of the Complaint.

44. Defendants deny the allegations of Paragraph 52 of the Complaint.

45. The allegations of Paragraph 53 of the Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants crave reference to Article IV of the MBRHOA's Declarations and By-laws and deny all allegations and characterizations inconsistent therewith. Defendants deny all remaining allegations of said Paragraph.

46. Responding to the allegations of Paragraph 54 of the Complaint, Defendants admit only that the Affidavits of Daniel L. Patrick and Michael R. Parades are attached to the Complaint as Exhibit "F" and Exhibit "G". Defendants deny all remaining allegations of Paragraph 54 of the Complaint.

47. Responding to the allegations of Paragraph 55 of the Complaint, Defendants deny all allegations and implications of wrongdoing and deny that Plaintiffs are entitled to the requested injunctive relief or any relief whatsoever.

48. Defendants deny the allegations of Paragraphs 56 and 57 of the Complaint.

49. Defendants deny the WHEREFORE clause following Paragraph 57 of the Complaint, deny any liability to Plaintiffs and deny that Plaintiffs are entitled to any relief or damages whatsoever.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

50. Plaintiffs' Complaint should be dismissed, in whole or in part, to the extent it fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

SECOND AFFIRMATIVE DEFENSE
(Good Faith)

51. Defendants acted at all times in good faith, without malice in their actions, and with a proper business purpose and judgment.

THIRD AFFIRMATIVE DEFENSE
(Prior Breach)

52. The Complaint is barred to the extent that Plaintiffs failed to uphold their contractual obligations.

FOURTH AFFIRMATIVE DEFENSE
(Affirmation)

53. Defendants allege that all actions taken by them were ratified and affirmed, and Defendants plead affirmation as a complete defense to Plaintiffs' claims.

FIFTH AFFIRMATIVE DEFENSE
(Director Immunity)

54. Defendants are immune from this lawsuit pursuant to S.C. Code Ann. § 33-31-834.

SIXTH AFFIRMATIVE DEFENSE
(Legal Claims to be Tried By Judge)

55. Defendants assert that certain of Plaintiffs' claims against Defendants contain legal claims to be tried by a judge not a jury.

SEVENTH AFFIRMATIVE DEFENSE
(Failure to Satisfy Rule 23(b)(1), SCRCP)

56. The Complaint fails to satisfy the pleading requirements and have failed to comply with pre-suit demand and other fundamental requirements necessary to bring this derivative action pursuant to Rule 23(b)(1) of the South Carolina Rules of Civil Procedure.

EIGHTH AFFIRMATIVE DEFENSE
(Failure to Satisfy Rule 23(b)(1), SCRPC)

57. Plaintiffs are not appropriate representatives are otherwise not entitled to prosecute a derivative claim under Rule 23(b)(1) of the South Carolina Rules of Civil Procedure. Specifically, Plaintiffs cannot fairly and adequately represent the interests of the membership they purport to represent and the relief they request is antagonistic to the best interests of the MBRHOA and therefore, this purported derivative action should be dismissed as a matter of law.

NINTH AFFIRMATIVE DEFENSE
(Injunctive Relief Improper)

58. Plaintiffs' claim for an injunction is barred due to the Plaintiffs' inability to establish the necessary elements: (1) irreparable harm; (2) likelihood of success on the merits and (3) an inadequate remedy at law.

TENTH AFFIRMATIVE DEFENSE
(Business Judgment)

59. The Business Judgment Rule bars the claims alleged against Defendants.

ELEVENTH AFFIRMATIVE DEFENSE
(Equitable Defenses)

60. Plaintiffs' claims are barred by one, or more, of the equitable doctrine of waiver, laches, estoppel and/or unclean hands.

TWELFTH AFFIRMATIVE DEFENSE
(Advice of Counsel)

61. To the extent Defendants relied on the advice of counsel after disclosure of all pertinent facts, such reliance serves to defeat any claim of intentional, willful or reckless conduct.

THIRTEENTH AFFIRMATIVE DEFENSE
(Punitive Damages Inappropriate)

62. Plaintiffs fail to state any basis upon which punitive damages are recoverable against Defendants and accordingly, Plaintiffs' prayer for such damages should be dismissed and/or stricken from the Complaint pursuant to Rules 12(b)(6) and/or 12(f) of the South Carolina Rules of Civil Procedure. Moreover, Plaintiffs' claim for recovery of punitive damages is barred by the South Carolina Constitution and the Constitution of the United States, because no reasonable and well-defined limits are placed on such punitive damages award; because the award and payment of punitive damages would constitute an imposition of punishment on Defendants without adequate notice of the substantive rules governing the conduct giving rise to such punitive damages.

FOURTEENTH AFFIRMATIVE DEFENSE
(Reservation of Rights)

63. Defendants hereby give notice that they reserve the right to assert, and do not waive, any additional or further defenses as may be revealed by additional information acquired during discovery or otherwise, and reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, Defendants pray to the Court that:

1. Plaintiffs' Complaint be dismissed with prejudice;
2. Judgment be entered in favor of Defendants;
3. Plaintiffs recover nothing from Defendants;
4. Plaintiffs' requested judicial determinations be denied;
5. Plaintiffs' request for an injunction be denied;
6. The costs of this action be taxed against Plaintiffs and that Defendants recover their costs in defending this action, including, but not limited to, attorneys' fees as allowed by law; and

7. The Court grant Defendants such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Krista M. McGuire
Krista M. McGuire
SC Bar No. 72021
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650
kristamcguire@parkerpoe.com

*Attorneys for Defendants
Nancy L. Moore and Jim Perkins*

August 24, 2018
Charleston, South Carolina

ELECTRONICALLY FILED - 2018 Aug 24 1:36 PM - Horry - COMMON PLEAS - CASE#2018CP2803173

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Frederick E. Brown, et al.,

Plaintiffs,

vs.

Jeffery L. Richardson, et al.,

Defendants,

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-26-03173

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR THE
APPOINTMENT OF A TEMPORARY
CUSTODIAN TO OPERATE AND
MANAGE MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.**

NOW COME Plaintiffs Frederick E. Brown, Charles O. Pakosta, Conrad A. Calvano, Gayle N. Scott, and Philip D. Cox, individually and derivatively on behalf of Myrtle Beach Resort Homeowners' Association, Inc., and on behalf of all other similarly situated Co-owners, and Lori L. Niedzwiecki, and Robert S. Rosencrans, individually and derivatively on behalf of the Myrtle Beach Resort Homeowners' Association, Inc. ("MBRHOA") for its right and benefit ("Plaintiffs"), moves the Court to appoint a Temporary Custodian, not as a anticipatory adjunct to dissolution, but to operate and manage MBRHOA during the pendency of this litigation or until the intracorporate deadlock between the four-member Board is resolved. The moving party relies upon S.C. Code Ann. §§ 33-31-1430 and 1432(b)(1) (2006) of the South Carolina Non-Profit Corporation Act (Non- Profit Act") and the applicable case law in support of its motion for the Court to appoint a Temporary Custodian to alleviate the deadlock that exists preventing the Board from making decisions and acting on many important matters of business and policy

confronting the Board, which pose an imminent threat to the functioning viability or even existence of the Master Association.

The basis of this Motion to appoint a Temporary Custodian is as follows:

1. This action was commenced by Plaintiffs derivatively on behalf of the MBRHOA on May 24, 2018, by the filing of their Verified Complaint seeking relief from the Court regarding their *Ultra Vires* and Breach of Contract Claims (“Personal Claims”) against the Defendants and also seeking Declaratory Judgment Relief, among other things, that the Defendants have affirmative duties under MBRHOA’s governing documents regarding administration and management of the Myrtle Beach Resort Property. However, the Defendants seek to challenge the validity, enforceability, and interpretation of Declaration of Covenants, Conditions and Restrictions and By-Laws for MBRHOA. (“Declaration and By-Laws”). Specifically, the Defendants contend MBRHOA’s Declaration and the By-Laws “*may be flawed or invalid to the extent that [they] exceed the reserved authority provided under the Master Deed . . .*” for the four individual horizontal property regimes located inside Myrtle Beach Resort. (Emphasis Added). A true and correct copy of the Defendants’ responses to Plaintiffs’ Requests for Admission of Fact is attached hereto as **Exhibit A** and incorporated by reference. Plaintiffs argue that the Defendants’ contentions above are misplaced and without any merit. Furthermore, the moving party, does not specifically seek to challenge the validity, enforceability, and interpretation of MBRHOA’s Declaration and By-Laws.

2. The MBRHOA is a Master Umbrella Association (“Master Association”) charged with certain affirmative duties related to the administration and management of Myrtle Beach Resort. Specifically, Article IV of the Declaration for the Master Association addresses the Board’s affirmative duties under Section 4.1. This section provides:

The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; **(b) provide for all refuse collection** (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master television service and telephone service; (d) maintain the oceanfront area; grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (e) grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property (f) maintain such policy or policies of liability and fire insurance with respect to property owned by the Association; **(g) employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same; (h) install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project.** (Emphasis added.)

3. The nature and extent of the MBRHOA's affirmative duties under Section 4.1 are specifically disputed by the Defendants in this case. A true and correct copy of the Declaration of Covenants, Conditions and Restrictions and the By-laws of MBRHOA are attached hereto as **Exhibit B** and incorporated by reference.

4. There are four sub-horizontal property regimes ("HPRs or Regimes") within the Myrtle Beach Resort: (1) Myrtle Beach Resort Horizontal Property Regime ("HPR"); (2) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime ("Ocean Front Spa"); (3) Renaissance Tower Horizontal Property Regime, Inc. ("Renaissance Tower"); and (4) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. ("Five Seasons Centre").

5. Some of the Plaintiffs are current and former Board members of the MBRHOA, but all of them are current and former Board members of their respective Regimes. Plaintiff Lori L. Niedzwiecki ("Niedzwiecki") currently serves on the Board of the MBRHOA as well as on the Board of the Five Seasons Centre. Plaintiff Robert S. Rosencrans ("Rosencrans") currently serves on the Board of the MBRHOA as well as on the Board of HPR. Plaintiff Fredrick E.

Brown (“Brown”) is a current Board member for the HPR. Plaintiff Charles O. Pakosta (“Pakosta”) is a current Board member for the HPR. Plaintiff Conrad A. Calvano (“Calvano”) is a former Board member of the MBRHOA as well as a current Board member for the HPR. Plaintiff Gayle N. Scott (“Scott”) is a current Board member for the HPR. Plaintiff Philip D. Cox (“Cox”) is a current Board member for the Five Seasons Centre.

6. Defendants are current and former Board members of the MBRHOA and their respective Regimes. Defendant Jeff Richardson (“Richardson”) is a current Board member for the MBRHOA as well as a current Board member for the Renaissance Tower. Defendant Nancy Moore (“Moore”) is a current Board member of the MBRHOA as well as a current Board member of the Ocean Front Spa. Defendants Peter Grusauskas (“Grusauskas”) and Jim Perkins (“Perkins”) are former Board members of the MBRHOA as well as former Board members for the Renaissance Tower and the Ocean Front Spa, respectively.

7. Pursuant to Article IV of the By-Laws, MBRHOA is managed by a four- member Board of Directors. Each Individual Condominium Association of the Myrtle Beach Resort is required to have one representative Board member serve as a Board member of the MBRHOA. Stated differently, each Board Member of the MBRHOA is also a current Board member of the Individual Condominium Association which he or she represents.

8. Pursuant to Article IV of Section 1.A, each Director is hereby assigned the number of votes that represents the number of Apartments (whether residential or commercial) that exists in that director’s Individual Condominium Association. For example, the voting director of HPR has 251 votes; the voting director of Ocean Front Spa has 271 votes; the voting director of the Tower has 327 votes; and the voting director of Five Seasons Center 161 votes.

There are 1010 combined residential and commercial votes for any action taken at a meeting of the Board members for MBRHOA in the Myrtle Beach Resort.

9. Pursuant to Article IV of Section 7 of the By-laws, ***“any action taken at a meeting of the Board of Directors shall be only upon the affirmative vote of 67% of the entire votes of the Association.”*** (Emphasis Added). This requires three Board members to vote in favor of any action taken at a meeting of the Board of Directors to obtain an enforceable decision or resolution of the Board.

10. Disagreements have arisen between the Board members concerning the conduct and management of the affairs of Myrtle Beach Resort, and, because of the inability of the Board members to reach an agreement by the affirmative vote of 67% of the entire votes of MBRHOA, a deadlock exists preventing the Board from making day-to-day decisions and acting on many important matters of business and policy confronting the Board. Specifically, the four-member Board is deadlocked - two Board members against two Board members - with respect to the following issues and/or actions not taken by them as set forth below:

- a. cannot elect corporate officers: the President, the Vice President, the Secretary, and the Treasurer, within thirty (30) days after the Association’s Annual Meeting that was held on April 29, 2018. (Exhibit C, Transcript of Deposition of Barbara Johnson, Page 65: 23-25; Pg. 66: 1-25; Pg. 67:1-2);
- b. cannot adopt the 2019 Annual Operating Budget¹ for the MBRHOA prepared by Empress. The three different annual budget options adequately addressed all known shortfalls in the operating and reserve accounts. (p. 40: 13-25; p. 43: 1-10; p. 44: 22-25; p. 130: 22-24);
- c. cannot provide direction to Empress and approval on day-to-day business operations of the MBRHOA as well as not prescribing the rules and regulations for the use of the assets, facilities, and property for which the Association is so charged. (p. 108: 5-23; p. 130:10-14);

¹ See Letter from Empress dated October 23, 2018 addressed to the current Board, discussing annual budgetary shortfalls in operating and reserve accounts for 2019, which is attached hereto as **Exhibit D** and incorporated by reference.

- d. cannot agree to fix, impose, and remit penalties for violations of MBRHOA's By-laws and the rules and regulations of the Myrtle Beach Resort. (p. 72: 1-25);
- e. cannot agree to carry out the Board's affirmative duties and obligations imposed by the MBRHOA's By-Laws, its Declaration, and the Act. (pp. 102-113: 1-17; p. 129:15-25; pp. 130-135; p. 136:1-8);
- f. cannot agree to hire legal counsel to properly advise the Board with respect to its rights and affirmative duties under **Exhibit B** or the 1991 governing documents. (p. 130: 25; p. 131: 1-2);
- g. cannot agree to approve the \$100,000.00 repair and resurfacing estimate for the "Lazy River Pool, the "Zero Entry Pool", and the "Water Park Pool" as recommended by Empress. (pp. 70-72: 1-3);
- h. cannot agree to special assessment for the \$297,000.00 shortfall in the 2018 operating account as directed by Empress. (pp. 61-62: 13-21);
- i. cannot agree to special assessment for the \$377, 239.87 shortfall in the 2018 reserve account as directed by Empress. (p. 36: 1-25; p. 43: 4-13);
- j. cannot agree to prosecute Renaissance Tower for non-payment of MBRHOA assessment in the amount of \$116,000.00. (pp. 23-29:1-10);
- k. cannot agree to prosecute Oceanfront Spa for non-payment of MBRHOA assessment in the amount of \$106,000.00. (pp. 26-28:1-18);
- l. cannot agree to adopt and record the Myrtle Beach Resort's Rules and Regulations to comply with State law. (pp. 72: 4-25; p.73: 1-4);
- m. cannot agree to approve cable contract and the phones included in the contract. Specifically, two board members want to renegotiate the cable contract, while the other two Board members want to maintain the current contract. (p. 130: 15-21);
- n. cannot agree to sign and approve the Board meeting minutes recorded and transcribed in 2018. (p.131:6-9);
- o. cannot agree to resolve the liens charged against MBRHOA's commercial units that were filed by Renaissance Tower. (p.132: 9-11);
- p. cannot agree on security issues at the front and back gates of the Myrtle Beach Resort. (p.131:3-5; p.135: 22-25; p.136: 1-6); and
- q. cannot agree on the designation of an agent or Board member to directly communicate with Empress. (pp. 104: 9-25; p. 105: 1-16; pp. 106- 107: 1-17).

11. Such dissension or deadlock on operational and management decisions as shown above has completely paralyzed corporate action by the Board. And clearly the ongoing deadlock by the Board poses an imminent threat to the well-being and economic viability of MBRHOA. Barbara J. Johnson (“Johnson”), who manages the Myrtle Beach Resort Property for Empress Management, LLC (“Empress”), testified during her deposition the current Board is the most dysfunctional association she has ever managed or worked for in her twenty-three years in the community management industry. Johnson further agreed that a Temporary Custodian should be appointed to take over the operation and the management of MBRHOA, replacing the current Board members, during the pendency of the litigation or until the intercorporate dispute could be resolved by the parties. A true and correct copy of the excerpts from the Deposition of Barbara J. Johnson are attached hereto as **Exhibit C** and incorporated by reference.

12. Plaintiffs and other similarly situated members of the MBRHOA will suffer irreparable harm as evidenced by the findings and opinions set forth in the Affidavit of Plaintiffs Expert Michael R. Parades (“Parades”), attached hereto as **Exhibits E**, unless a Temporary Custodian is appointed to take over the operation and the management of the MBRHOA, replacing the current Board members, for the reasons described above and below.

13. In light of the above, the moving party believes that a Temporary Custodian should be appointed to take over the operation and the management of MBRHOA, replacing the present four-member Board, for such time as may be fixed by the Court, during which interval the individual parties and their respective counsel shall attempt to resolve the Defendants’ challenges to the validity, enforceability and interpretation of the provisions of **Exhibit B** by seeking Declaratory Judgment Relief from the Court. And hopefully the Declaratory Judgment Relief sought by the parties will help alleviate the intracorporate dissension or deadlock that

currently exists in this case so that effective decisions can be made by the current and/or future board members of MBRHOA.

14. Furthermore, the moving party believes that a Temporary Custodian should be appointed to operate and manage MBRHOA to alleviate the paralytic effects of such intracorporate dissension or to resolve the ongoing deadlock on operational or management decisions, which poses an imminent threat to the well-being and economic viability of the Association. **WHEREFORE**, the Moving Parties respectfully request that this Honorable Court:

- a. Appoint a Temporary Custodian for MBRHOA to take over the operation and management of MBRHOA, replacing the present Board members, for such time as may be fixed by the Court, during which time the parties shall seek joint Declaratory Judgment Relief on, among other things, the validity and interpretation of the 1991 Declaration of Covenants, Conditions, and Restriction for MBRHOA so that effective decisions can be made by the current and future Board members regarding the management and administration of the Myrtle Beach Resort; and
- b. Grant such other and further legal and/or equitable relief as the Court deems just and proper.

FURTHERMORE, this motion is based upon the pleadings, the controlling law, the deposition of Barbara J. Johnson, and such other and further material as the Court may deem appropriate. The moving party, as counsel for the Plaintiffs, hereby certifies that the undersigned did consult with opposing counsel for the Defendants

[SIGNATURE PAGE TO FOLLOW]

Bellamy, Rutenberg, Copeland
Epps, Gravely & Bowers, P. A.

s/ Howell V. Bellamy, III
Howell V. Bellamy, III (S. C. Bar #66575)
hbellamyiii@bellamylaw.com
Howell V. Bellamy, Jr. (S.C. Bar #00642)
nrichardson@bellamylaw.com
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
(843)-448-2400 Phone
(843)-448-3022 Facsimile

Attorneys for Plaintiffs

Myrtle Beach, South Carolina

November 14, 2018

EXHIBIT A

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Frederick E. Brown, et al.,

Plaintiffs,

vs.

Jeffery L. Richardson, et al.,

Defendants.

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-26-03173

**RESPONSES TO PLAINTIFF'S
REQUESTS FOR
ADMISSIONS OF FACT**

TO: HOWELL V. BELLAMY, III, ESQ., ATTORNEY FOR PLAINTIFFS:

Pursuant to Rules 26 and 36 of the South Carolina Rules of Civil Procedure, Defendants Jeffrey Richardson, Nancy Moore, Peter Grusauskas and Jim Perkins (the "Defendants"), by and through their undersigned counsel, hereby submit their Responses to Plaintiff's Requests for Admissions of Fact.

RESPONSES TO REQUESTS FOR ADMISSIONS OF FACT

1. Admit that the Declaration of Covenants, Conditions and Restrictions for the Myrtle Beach Resort Homeowners' Association, Inc. ("Declaration of Covenants, Conditions and Restrictions for the Association") dated April 25, 1991 filed of record in the Office of the R.M.C. for Horry County in Deed Book 1465, at Page 329 (Exhibit A), are legally valid, binding on its members, and enforceable as a matter of law by its current board of directors.

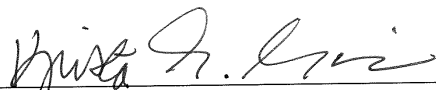
RESPONSE: Defendants admit that the document attached as Exhibit A to Plaintiffs' Requests for Admission is a true and genuine copy of the recorded Declaration of Covenants, Conditions and Restrictions for the Association dated April 25, 1991 (the "Declaration"). The validity, enforceability and interpretation of the Declaration presents a genuine issue for trial. Defendants cannot truthfully admit or deny the validity and

PPAB 4466024v1

enforceability of the Declaration because only the Court can make such determination. Defendants state that the Declaration may be flawed or invalid to the extent that it exceeds the reserved authority provided under the Master Deeds of the Regimes or for any other reason determined by the Court. Finally, Defendants admit that, nevertheless, they have at all times acted in accordance with and under the authority provided by the Declaration while serving as members of the Board of the Myrtle Beach Resort Homeowners' Association ("MBRHOA").

2. Admit that the By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc. ("By-Laws for the Association") dated April 25, 1991 filed of record in the Office of the R.M.C. for Horry County in Deed Book 1465, at Page 347 (Exhibit B), are legally valid, binding on its members, and enforceable as a matter of law by its current board of directors. If you deny any or all of said Request, please state the reason for your denial of same.

RESPONSE: RESPONSE: Defendants admit that the document attached as Exhibit B to Plaintiffs' Requests for Admission is a true and genuine copy of the recorded Amended By-Laws of the MBRHOA dated April 25, 1991 (the "Declaration"). The validity, enforceability and interpretation of the By-Laws presents a genuine issue for trial. Defendants cannot truthfully admit or deny the validity and enforceability of the By-Laws because only the Court can make such determination. Defendants state that the By-Laws may be flawed or invalid to the extent that the Declaration is declared invalid in whole or in part or for any other reason determined by the Court. Finally, Defendants admit that, nevertheless, they have at all times acted in accordance with and under the authority provided by the By-Laws while serving as members of the Board of the MBRHOA.



Krista M. McGuire
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

*Attorney for Defendants Jeffrey Richardson,
Nancy Moore, Peter Grusauskas and Jim Perkins*

September 29, 2018

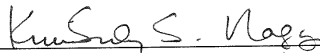
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS OF FACT** has been served upon the following counsel of record this 28th day of September, 2018, by placing a copy of the same in the United States Mail, first-class postage prepaid, addressed as follows:

Howell V. Bellamy, III
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
1000 29th Ave. N.
Myrtle Beach, SC 29577

Edward D. Buckley, Jr.
Nicholas J. Rivera
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402



Kimberly S. Nagy, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN LLP

EXHIBIT B

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

1429 15
FILED
STATE OF SOUTH CAROLINA, S.C. DECLARATION OF COVENANTS,
COUNTY OF HORRY) CONDITIONS AND RESTRICTIONS
APR 25 PM 2:02 FOR THE MYRTLE BEACH RESORT
R.M.C. HOMEOWNERS' ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC. is made by The Myrtle Beach Resort Homeowners' Association, Inc., a South Carolina corporation and Myrtle Beach Resort Horizontal Property Regime, Inc. (Phase I), Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc. (Phase II), Renaissance Tower Horizontal Property Regime, Inc. (Phase III), and Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. (Phase IV), collectively referred to hereinafter as the "Declarant".

WITNESSETH:

WHEREAS, Resort Development Corporation reserved the right and privilege to establish The Myrtle Beach Resort Homeowners' Association consisting of all Co-Owners of all phases of the Myrtle Beach Resort, including Phase I (Myrtle Beach Resort Horizontal Property Regime), Phase II (Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime), Phase III (Renaissance Tower Horizontal Property Regime) and Phase IV (Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime), as set out in the respective Master Deeds in each of the above referenced phases at the Myrtle Beach Resort; and

WHEREAS, Resort Development Corporation has previously granted, conveyed and assigned to Vacation Properties, Inc., all of its rights under the respective Master Deeds to establish an "umbrella" homeowners' association as is more particularly set out in that assignment dated February 27th, 1987 and recorded in the office of the Register of Mesne Conveyances (R.M.C.) for Horry County in Deed Book 1121 at Page 401; and

WHEREAS, Vacation Properties, Inc., granted, conveyed and assigned to The Myrtle Beach Resort Homeowners' Association, Inc., all of said rights referenced above by Assignment of Rights dated January 27, 1989 and filed of record in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 239.

HORRY COUNTY ASSESSOR

192-05 - Blocks 01-4 thru 05

Map .. Bk Parcel

4-26-91

1

BOOK 1465 PAGE 329

329

Law Office of
Daniel L. Patrick
P. O. Box 15666
Surfside Beach,
S.C. 29587

TRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

NOW, THEREFORE, the Declarants hereby declare that all the property described in Exhibit A shall be held, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these properties and which restrictions, easements, charges, liens, conditions and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchase or takes any interest in real property within the property subject to this instrument.

ARTICLE I
DEFINITIONS

1.1 Definitions. When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have all the following meanings, and all definitions shall be applicable to the singular and plural forms of any such term(s):

1.1.0 "Act" shall mean the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as Amended.

1.1.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of The Myrtle Beach Resort Homeowners' Association, Inc., as it may be constituted or amended from time to time.

1.1.2 "Assessment" shall mean and refer to a share of the Common Expenses, capital improvements or other charges from time to time assessed against Co-Owners in the manner herein provided.

1.1.3 "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., a South Carolina non-profit Corporation.

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 330

330

1.1.4 "Board of Directors" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

1.1.5 "By-Laws of the Association" shall mean and refer to those By-Laws of The Myrtle Beach Resort Homeowners' Association, Inc., which govern the administration and operation of the Association, as may be amended from time to time, which By-Laws are attached as Exhibit "B" to this Declaration.

1.1.6 "Commercial Unit" shall mean and refer to any unit designated as a commercial space in the Master Deed of the appropriate Condominium Association.

1.1.7 "Common Areas" means as defined in the Individual Condominium Associations' respective Master Deeds.

1.1.8 "Common Expenses" shall mean and refer to all expenditures, including debt retirement, capital improvements, and operating expenses, lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.

1.1.9 "Condominium Association" or "Individual Condominium Association" shall mean and refer to the four individual horizontal property regimes making up the Myrtle Beach Resort including the Myrtle Beach Resort Horizontal Property Regime (Phase I); Myrtle Beach Resort Oceanfront Spa (Phase II); Renaissance Tower Horizontal Property Regime (Phase III); and the Myrtle Beach Resort Five Seasons Centre (Phase IV).

1.1.10 "Co-Owner or "Owner" means as defined in the South Carolina Horizontal Property Regime Act and specifically means an owner of a Dwelling or a Commercial Unit at the Myrtle Beach Resort.

Law Offices of
Daniel L. Patrick
P. O. Box 18889
Surfside Beach,
S.C. 29587

1.1.11 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Myrtle Beach Resort and all supplements or amendments to it as filed for record in the Office of the R.M.C for Horry County, South Carolina.

1.1.12 "Development or Property" shall mean and refer to The Myrtle Beach Resort which includes the four individual horizontal property regimes referenced above.

1.1.13 "Dwelling", with an initial capital letter, shall mean and refer to any improved property located within the Development intended for the use as a residential condominium unit.

1.1.14 "Member" shall mean any person or entity holding a membership in the Association as provided herein.

1.1.15 "Occupant" shall mean and refer to any person, including without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an Owner lawfully occupying or otherwise using a Dwelling or Commercial Unit within the Development.

1.1.16 "Person" shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

1.1.17 "Recreational Amenities" shall include such recreational facilities located within the Myrtle Beach Resort, including, without limitation, tennis courts, sporting or exercise areas, meeting areas, swimming pools, tennis courts, locker room facilities, clubhouses, food and beverage facilities, lagoons, beach access paths, jogging trails and bike paths.

1.1.18 "Voting Member" shall mean a member elected by the Board of each individual Condominium Association to this Association's Board of Directors as specified herein and in the By-Laws.

Law Offices of
Dandel L. Patrick
P. O. Box 15069
Surfside Beach,
S.C. 29587

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

ARTICLE II
PROPERTY RIGHTS

2.1 Easements for Utilities. There is hereby reserved for the benefit of the Association, and its respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across all of the Common Areas and all portions of other areas in which Dwellings or Commercial Units are not constructed or erected; for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by the Association, its successors or assigns. To the extent possible, all utility lines serving the Development and located therein shall be located underground. By virtue of any such easement granted, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate and fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

2.2 Easements for Walks, Trails and Signs. There is hereby reserved for the benefit of the Association and its successors and assigns the alienable, transferable and perpetual right and easement upon, over and across all lands which may remain unimproved for the installation, maintenance and use of sidewalks, jogging trails, bike paths, traffic directional signs and related improvements.

2.3 Easements for the Association. There is hereby reserved a general right and easement for the benefit of the Association's Directors, officers, agents and employees, including but not limited to any property manager employed by the Association and any employees of such manager, to enter

Law Offices of
Janet L. Patrick
P.O. Box 16069
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 333

into the Property and any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the occupant, the Individual Condominium Association, or the Owner(s) of the Dwelling or Commercial Unit.

2.4 Maintenance Easement. There is hereby reserved for the benefit of the Association and its respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any unimproved portions of any Property for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided that such easements shall not impose any duty or obligation upon the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Association and its agent, employees, successors and assigns an alienable, transferable and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of the Property which is located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Development for the purpose of mowing such areas and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

2.5 Environmental Easement. There is hereby reserved for the benefit of the Association and its agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Property for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easements to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

2.6 Wells. There is hereby reserved for the benefit of the Association and its agents, employees, successors and assigns an alienable, transferable and perpetual right and easement: (i) to pump water from lagoons, ponds and other bodies of water located within the Development for the purpose of

Law Offices of
Jared L. Patrick
P. O. Box 15569
Surfside Beach,
S.C. 29567

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

irrigating any portions of the Development; (ii) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Areas.

ARTICLE III

MEMBERSHIP AND VOTING

3.1 Membership. Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Dwelling or Commercial Unit, and Ownership of such Dwelling or Commercial Unit shall be the sole qualification for such membership. No Owner, whether one or more persons, shall have more than one membership per Dwelling or Commercial Unit

3.2 Board of Directors. The Board of Directors of each Individual Condominium Association at the Myrtle Beach Resort shall elect a representative to sit on the Board of Directors of this Association. This Board of Directors shall act in accordance with the By-Laws which are attached hereto as Exhibit B. The Association shall be operated by the Board of Directors, and the Members of the Association shall have only such powers as are specified herein or in the By-laws.

ARTICLE IV

POWERS OF THE ASSOCIATION

4.1 The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; (b) provide for all refuse collection (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master television service and telephone service; (d) maintain the oceanfront area; (e) grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (f) maintain such policy or policies of liability and fire insurance with respect to property owned by

Law Offices of
Daniel L. Petrick
P. O. Box 15689
Surfside Beach,
S.C. 29587

the Association; (g) employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same; (h) install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project; (i) take such other reasonable action as the Board shall deem advisable with respect to the Myrtle Beach Resort for the benefit of the overall Property.

ARTICLE V

COVENANT FOR ASSESSMENTS

5.1 Creation of the Lien. Each Individual Condominium Association together with each Co-Owner is deemed to covenant and agrees to pay to the Association Assessments for the Association expenses including common expenses as provided for herein.

Such assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof shall be a charge on any Dwelling Unit or Commercial Unit, and shall be a continuing lien upon it, until full payment of such Assessment is made.

A Co-Owner shall become liable for payment of Assessments upon issuance of a Statement of Assessments by the Association.

On any Assessment that remains unpaid for over ten (10) days after its due date, at the sole discretion of the Board, a late charge not to exceed Ten and No/100 Dollars (\$10.00) or Ten Percent (10%) of the amount due, whichever is greater, shall also be due and payable to defray the expense of late collection.

Further, the Association shall have a lien on each Dwelling Unit or Commercial Unit together with the common elements appurtenant thereto in the amount of each Assessment not paid when due as provided herein, which may be collected and/or the lien foreclosed upon as provided in the South Carolina Horizontal Property Regime Act. Reasonable attorney's fees incurred by the Board incident to the collection of such Assessments or the enforcement (including but not limited to

Law Offices of
Darel L. Patrick
P. O. Box 15088
Surfside Beach,
S.C. 29587

foreclosure) of such lien and all other charges allowed by the Act shall be payable by the delinquent Co-Owner and secured by such lien. The Board may take such action as it deems necessary to collect Assessments as provided in the Act and further may settle and/or compromise same if deemed in its best interest.

No Co-Owner may exempt himself from liability for his share of the Assessments by waiving the use or enjoyment of any of the common elements or otherwise.

5.2 Association Assessments may be assessed directly to the Co-Owners or may be collected by the Individual Condominium Associations at the discretion of the Board. The Assessments levied by the Association, as well as the manner of collecting same, shall be determined by the Board of Directors at a regularly scheduled or at a special meeting and the approval of the budget for the Association shall require the vote of 67% or more of all Voting Members of the Association.

5.3 Allocation of Assessments. Assessments for budgeted expenses shall be allocated and assessed as follows: Myrtle Beach Resort Horizontal Property Regime (Phase I) - 24.8515%; Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime (Phase II) - 26.8317%; Renaissance Tower Horizontal Property Regime (Phase III) - 32.3762%; Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime (Phase IV) - 15.9406%.

The allocation of each Co-Owner's share of the Assessments shall be determined by multiplying that Co-Owner's share of ownership in the common area of such Co-Owner's Individual Condominium Association as shown in the respective Master Deed times the percentage as shown above for the respective Individual Condominium Association.

Provided, however, in respect to television and telephone rental expenses, each Co-Owner will pay an amount determined by dividing the total of such expenses incurred by such Co-Owner's Individual Condominium Association pursuant to its agreement with this Association by the total number of Dwellings within that particular Individual Condominium Association.

ARTICLE VI

GENERAL PROVISIONS

6.1 Amendments. Amendments to this Declaration shall be proposed and adopted in the following manner:

6.1.1 Notice of the subject matter of the proposed amendment shall be included in the notice of the Board meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Board member of the Association. Provided, however, that any amendment shall be consistent with the Master Deed of the Individual Condominium Associations.

At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the Board of an Individual Condominium Association. Such amendment must be approved by a vote of 67% or more of the Board of Directors of the Association.

6.1.2 Amendments to this Declaration may also be adopted in a meeting duly called by the Owners pursuant to the Association By-Laws, provided notice of the subject matter of the proposed amendment is included in a notice of such meeting. At such meeting the proposed amendment, as noticed, must be approved by either 67% or more of the Board of Directors of the Association or by majority of the total Owners at the Myrtle Beach Resort.

6.2 Enforcement. Each Co-Owner and Occupant shall comply strictly with the By-laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration, as same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for imposing fines, for suspending rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Board of Directors on behalf of the Association, or in a proper case, by an aggrieved Owner. Should the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner or Occupant. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Association, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of the

Law Offices of
Daniel L. Patrick
P.O. Box 15889
Surfside Beach,
S.C. 29587

Association in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws or any rules and regulations of the Association, however long continued.

6.3 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewable periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of an initial thirty (30) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of termination of this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Records of the R.M.C. Office for Horry County, South Carolina, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

6.4 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they

Law Offices of
Daniel L. Patrick
P. O. Box 18689
Surfside Beach,
S.C. 29587

shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Records of the R. M. C. Office for Horry County, South Carolina. The captions of each Article and Paragraph hereof as to the contents of each Article and Paragraph are inserted only for convenience and are in no way to be construed as refining, limiting, extending or otherwise modifying or adding to the particular Article or Paragraph to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

6.5 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 other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

6.6 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

6.7 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Association, the Individual Condominium Associations, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of Declarant and Mortgagees herein provided. The Association shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

Law Office of
Wendell L. Patrick
P.O. Box 15868
Myrtle Beach,
S.C. 29587

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

IN WITNESS WHEREOF, the duly authorized officer of the undersigned Declarant have executed this Declaration under seal this 16th day of April, 1991.

WITNESSETH: THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

~~Richard H. Wells~~ BY: Alfred H. Wells, Jr.
ITS: PRESIDENT

MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME, INC.
Annette Jordan BY: Freddy Brown
ITS: President

MYRTLE BEACH RESORT OCEANFRONT SPA HORIZONTAL PROPERTY REGIME, INC.
Michelle S. Hoas BY: Sam M. Broad
Barbara L. Couch ITS: President

RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME, INC.
Pamela S. Malick BY: Stanley M. Jordan
William F. Fudreau ITS: President

MYRTLE BEACH RESORT FIVE SEASONS CENTRE COUNCIL OF CO-OWNERS, INC.
Annette Jordan BY: William H. Cole
ITS: President

Law Offices of Daniel L. Patrick P. O. Box 15668 Surfside Beach, 29587

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Shirley W. Wells
who states under oath that
(s)he saw the within named Myrtle Beach Resort Homeowners'
Association, Inc., by Alfred H. Wells, its
President, as its act and deed, sign, seal and deliver
the within Declaration of Covenants, Conditions and Restrictions
for Myrtle Beach Resort Master Association and that (s)he with
Daniel L. Patrick witnessed the execution thereof.

Shirley W. Wells

SWORN to before me this
6th day of April, 1991.

[Signature]
Notary Public for South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Judy B. Reynolds
who states under oath that
(s)he saw the within named Myrtle Beach Resort Horizontal Property
Regime, Inc., by Freddy Brown, its Presiden,
as its act and deed, sign, seal and deliver the within Declaration
of Covenants, Conditions and Restrictions for Myrtle Beach Resort
Master Association and that (s)he with Annette Jordan
witnessed the execution thereof.

[Signature]

SWORN to before me this
1st day of April, 1991.

Annette Jordan
Notary Public for South Carolina

My Commission Expires: 4-25-91

Law Offices of
Daniel L. Patrick
P. O. Box 13458
Myrtle Beach,
S.C. 29587

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken) PROBATE

PERSONALLY APPEARED BEFORE ME Michelle S. Hoos, who states under oath that (s)he saw the within named Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc., by SAM ROACH, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with Barbara L. Creel witnessed the execution thereof.

Michelle S. Hoos

SWORN to before me this 12th day of April, 1991.

Barbara L. Creel
Notary Public for South Carolina
My Commission Expires: 10-5-94
COMMONWEALTH OF MASSACHUSETTS
~~STATE OF~~)
COUNTY OF HAMPSHIRE) PROBATE

PERSONALLY APPEARED BEFORE ME Pamela S. Malchik, who states under oath that (s)he saw the within named Renaissance Horizontal Property Regime, Inc., by Frank Jordan, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with Frank Jordan witnessed the execution thereof.

Pamela S. Malchik

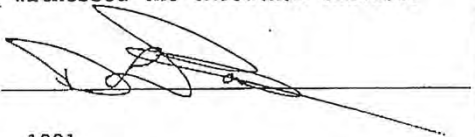
SWORN to before me this 11th day of April, 1991.

Frank Jordan
Notary Public for ~~South Carolina~~ Massachusetts
My Commission Expires: 11/24/96

Law Offices of
Daniel L. Patrick
P. O. Box 18888
Surfside Beach,
S.C. 29587

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry) PROBATE

PERSONALLY APPEARED BEFORE ME
Daniel L. Patrick, who states under oath that
(s)he saw the within named Myrtle Beach Resort Five Seasons Centre
Council of Co-Owners, Inc., by William Cole, its
President, as its act and deed, sign, seal and deliver
the within Declaration of Covenants, Conditions and Restrictions
for Myrtle Beach Resort Master Association and that (s)he with
Annette Jordan witnessed the execution thereof.



SWORN to before me this
3rd day of April, 1991.

Annette Jordan
Notary Public for South Carolina
My Commission Expires: 4-25-96

Law Offices of
Daniel L. Patrick
P. O. Box 15658
Myrtle Beach,
S.C. 29587

BOOK 1465 PAGE 344

EXHIBIT "A"

PHASE I - MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately five (5) miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.198 acres, more or less, and being shown and described as a 6.198, more or less acres parcel on a certain plat entitled "Plat of 44.668, more or less, acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" prepared for Resort Investment Corporation by Culler Land Surveying Company, Inc., dated August 17, 1981, which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 72 at Page 58; also being shown and described on the plats recorded in the Condominium Plat Book, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 15, 1982, in the Office of the Clerk of Court for Horry County in Deed Book 750 at Page 642.

PHASE II - MYRTLE BEACH RESORT OCEANFRONT SPA
HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately 5 miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.205 acres, more or less, and being shown and described as "Phase II (6.205 Ac)" on a certain plat entitled "Plat of 44.668+- Acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" dated June 10, 1982, revised July 13, 1982, and July 19, 1982, prepared by Culler Land surveying Company, Inc., which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 74 at Page 32; also being shown and described on the plats and architectural plans and drawings prepared by Culler Land Surveying Company, Inc. and Stevenson & Wilkinson, Inc., respectively, which are recorded in the Condominium Plat Book at Book 2, Page 31, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on April 15, 1983, in the Office of the Clerk of Court for Horry County in Deed Book 789 at Page 362.

Law Office of
Daniel L. Pablick
P. O. Box 15668
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 345

EXHIBIT "A" CONTINUED

PHASE III - RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying, and being on the South Eastern side of U.S. Highway 17 containing 8.672 acres, more or less, and designated as a Portion of Lot 5 of Lakewood Plantation Tract, further designated as Phase III of The Myrtle Beach Resort, and described on a Map prepared by Culler Land Surveying Co., Inc. dated November 16, 1984, also being shown as Phase III on a Plat of 44.668 +/- Acres, lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, revised November 27, 1984, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on November 28, 1984, in the Office of the Clerk of Court for Horry County in Deed Book 917 at Page 885.

PHASE IV - MYRTLE BEACH RESORT FIVE SEASONS CENTRE

(Phase I)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase I of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Culler Land Surveying Co., Inc. dated June 4, 1985, also being shown as Phase I, Myrtle Beach Resort Five Seasons Centre on a plat of 44.668 +/- acres, Lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, dated June 10, 1982, with latest revision dated June 14, 1985, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 20, 1985, in the Office of the Clerk of Court for Horry County in Deed Book 966 at Page 654.

(Phase II)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase II of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Atlantic Land Surveying Co., Inc. dated May 1, 1986, all as is more particularly described in that First Amendment to the Master Deed for the aforesaid Horizontal Property Regime recorded on May 29, 1986, in the Office of the Clerk of Court for Horry County in Deed Book 1048 at Page 824.

Law Offices of
Daniel L. Patrick
P. O. Box 18608
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 346

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

EXHIBIT "B"

AMENDED

BY-LAWS

OF

THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the Association is The Myrtle Beach Resort Homeowners' Association, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be located at Highway 17 South, Surfside Beach, South Carolina, but meetings of members and directors may be held at such places within the State of South Carolina, County of Horry, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., its successors and assigns.

Section 2. "Member" shall mean and refer to each and every Co-Owner at The Myrtle Beach Resort which includes (a) Myrtle Beach Resort Horizontal Property Regime; (b) Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime.

"Voting Member" shall mean and refer to that representative from the Board of Directors of each Individual Condominium Association who has been elected by that Board as a representative to the Board of Directors of this Association.

Section 3. "Individual Condominium Associations" shall mean and refer to those Associations at The Myrtle Beach Resort presently including: (a) Myrtle Beach Resort Horizontal Property Regime, Inc.; (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc.; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc.

Law Offices of
Janet L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

Section 4. All terms and phrases used herein shall, unless the context otherwise requires, have the same definition and meaning as set forth in the various Master Deeds of the Horizontal Property Regimes comprising The Myrtle Beach Resort and/or in the South Carolina Horizontal Property Regime Act, as the case may be.

ARTICLE III

MEETING OF MEMBERS

Section 1. "Annual Meetings." The annual meeting of Voting Members shall be held during the first six months of each calendar year at a time and place designated by the President.

Annual meetings of the Members shall be held only if required by a vote of the majority of the Voting Members or upon petition signed by greater than Thirty Percent (30%) of the entire outstanding membership. In the event the annual meeting of Members is held pursuant to these By-Laws such meeting shall be at a time and place designated by the President, or a majority of the Board of this Association, or by a petition signed by a number greater than Thirty Percent (30%) of the outstanding members.

Section 2. "Special Meetings." Special meetings of the Voting Members may be called at any time by the President or by a majority of the Directors of this Association. A special meeting of the Members may be called at any time as provided for under Section 1. for annual meetings.

Section 3. "Notice of Meetings." Written notice of each meeting of the Members or Voting Members shall be given by, or at the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days (but not more than sixty (60) days) before such meeting to each Member or Voting Member entitled to vote thereat, addressed to the Member's or Voting Member's address last appearing on the books of the Association, or supplied by such Member or Voting Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Law Offices of
Daniel L. Patrick
P. O. Box 15688
Surfside Beach,
S.C. 29587

Section 4. "Quorum." The presence at the meeting of a majority of the Voting Members, represented in person or by proxy, shall constitute a quorum at a meeting of the Voting Members. The presence at the meeting of a majority of the Members, represented in person or by proxy, shall constitute a quorum at a meeting of the Members.

Any action required by law to be taken at a meeting of the Association or any action which may be taken in the meeting of the Association may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by Voting Members, or Members, as the case may be, holding not less than sixty-seven percent (67%) of the entire votes entitled to vote on the subject matter thereof and further provided the same is not otherwise prevented by these By-Laws, the Declarations, or the respective Master Deeds of the Individual Horizontal Property Regimes of the Myrtle Beach Resort, or the Act.

Section 5. "Proxies." At all meetings of Voting Members or Members, each Voting Member or Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable.

ARTICLE IV

Board of Directors: Voting: Selection: Term of Office: Duties

Selection 1. The Association shall be managed by a Board of Directors consisting of not less four (4) Directors. Each Individual Condominium Association of the Myrtle Beach Resort shall have a representative from its Regime as a Director on the Board of the Association. Each Board Member of this Association shall also be a board member of the Individual Condominium Association which he or she represents.

Section 1.A. "Voting." Each Director is hereby assigned the number of votes that represents the number of Apartments (whether residential or commercial) that exists in that Director's Individual Condominium Association.

Law Offices of
Daniel L. Patrick
P. O. Box 15685
Surfside Beach,
S.C. 29587

Section 2. "Term of Office." Each Director shall hold office until the next annual meeting of Voting Members and/or until each successor has been elected and qualified. Provided, however, that a Director's term in office may be terminated and a successor elected at any meeting of Members called pursuant to the provisions in these By-Laws.

Section 3. Regular Meetings: There shall be at least one (1) regular meeting of the Board quarterly at a time designated by the President. The President or two (2) members of the Board may call as many special meetings of the Board as are deemed necessary or desirable and in the best interest of the Association.

Section 4. Presentation of Annual Budget: The Board of Directors shall annually, on or before November 1st of each year, prepare a budget for the upcoming calendar year to include such sums as it deems adequate. The Board of Directors, on or before November 1st, shall deliver the budget for the upcoming year together with the statement of the amounts due from the Co-Owners of the respective Regimes for that year and the date or dates upon which payments are due from the Individual Condominium Associations. Thereafter, should an increase or decrease be determined appropriate by the Board of Directors in assessments to be paid by Co-Owners, the Board shall notify all Individual Condominium Associations at least thirty (30) days prior to the time such assessments so changed shall be due. The Association shall have a lien upon each apartment together with the common elements and common surplus appurtenant thereto for payment of all assessments not paid when due in the amount of such unpaid assessments together with late charges thereon from the date due together with the cost of collection thereof including a reasonable attorney's fee.

Section 5. Notice: Notice of any special meeting shall be given at least five (5) days previously thereto by written notice delivered personally, or by telegram or mailed to each director at this business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a Director at a meeting shall constitute a Waiver of Notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Law Offices of
Daniel L. Patrick
P. O. Box 16689
Surfside Beach,
S.C. 29587

Section 6. Quorum. At any meeting of the Directors a majority of the Directors fixed by these By-Laws shall constitute a quorum for the transaction of business, but if less than said number is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 7. Voting: Any action taken at a meeting of the Board of Directors shall be only upon the affirmative vote of 67% of the entire votes of the Association.

Section 8. Consistent with these By-Laws and applicable Declarations, the Board shall:

- (a) transact all Association business and prescribe the rules and regulations for the use of the assets, facilities and property for which it is so charged and may appoint such officers, clerks, agents, servants or employees as it may deem necessary in its sole discretion and may fix their duties and compensation;
- (b) annually set a budget for the Association;
- (c) fix, impose and remit penalties for violations of these By-Laws and the rules and regulations of the Association;
- (d) elect from the Board within thirty (30) days after each annual meeting the President, Vice-President, Secretary and Treasurer;
- (e) carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the Act.

Section 9. Vacancies. Vacancies occurring on this Board of Directors shall be filled immediately by an election of the Director's successor by that Individual Condominium Association which the Director in question represents. Provided, however, that in the event of a vacancy, and prior to any election by the Individual Condominium Association, the highest presiding officer of the Individual Condominium Association shall automatically be a Director and Voting Member of this Association. For purposes of this section, the ranking of the Officers of each Individual Condominium Association shall be in this order: President, Vice President, Secretary and Treasurer.

Law Offices of
Daniel L. Patrick
P. O. Box 16688
Surfside Beach,
S.C. 29587

Section 10. Resignation. A Director may resign at any time by giving written notice to the Board, the President or the Secretary of the Association. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

Section 11. Compensation. No compensation shall be paid to Directors, as such, for their services, but by resolution of the Board a fixed sum and expenses for actual attendance at each regular or special meeting of the Board may be authorized. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 12. Presumption of Assent. A Director of the Association who is present at a meeting of the Directors at which action on any Association matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 13. Executive and Other Committees: The Board, by resolution, may designate from among its members an executive committee and other committees, each consisting of one or more Directors. Each such committee shall serve at the pleasure of the Board.

ARTICLE V

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. "Contracts." The Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. "Loans." No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Directors. Such authority may be general or confined to specific instances.

Section 3. "Check, Drafts, Etc." All checks, drafts or other orders for the payment of money, notes or other evidences signed by such officer or officers, agent or agents of the Association and in

Law Offices of
Daniel L. Patrick
P. O. Box 18669
Surfside Beach,
S.C. 29887

such manner as shall from time to time be determined by resolution of the Directors.

Section 4. "Deposits." All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Directors may select.

ARTICLE VI

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Articles of Incorporation 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 at reasonable cost.

ARTICLE VII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: The Myrtle Beach Resort Homeowners' Association, Inc.

ARTICLE VIII

These By-Laws may be amended at a regular or special meeting of the voting Members or at a regular or special meeting of the Members, by a vote representing 67% or greater of the total votes of the Association. Provided, however, that any amendment to these By-Laws shall be consistent with the Declarations of this Association and the Master Deeds of the Individual Condominium Associations.

ARTICLE IX

Miscellaneous

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the Directors and Shareholders of The Myrtle Beach Resort Homeowners' Association, Inc., have hereunto set our hands this 16th day of April, 1991.

Law Offices of
Jennifer L. Patrick
P. O. Box 16988
Surfside Beach,
S.C. 29687

BOOK 1465 PAGE 353

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

WITNESSETH:

MYRTLE BEACH RESORT OCEANFRONT SPA
HORIZONTAL PROPERTY REGIME, INC.

(2) [Signature]

BY: (1) George Kidney
George Kidney

(2) Lauren W. Isaacs

ITS: Authorized Board Representative

STATE OF GEORGIA)
COUNTY OF COBB)

PROBATE

PERSONALLY APPEARED BEFORE ME Lauren W. Isaacs, who states under oath that (s)he saw the within named Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc., by George Kidney, its Authorized Board Representative, as its act and deed, sign, seal and deliver the within Amended By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc., and that (s)he with Lauren W. Isaacs witnessed the execution thereof.

[Signature]

SWORN to before me this 11th day of April, 1991.

(2) Lauren W. Isaacs
Notary Public for ~~South~~ Georgia

My Commission Expires: Notary Public Cobb County Georgia
My Commission Expires: 2/1/2001

Law Offices of
Janet L. Patrick
100 Bow 11669
Sutcliffe Beach,
S.C. 29687

BOOK 1465 PAGE 355

WITNESSETH:

RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME, INC.

(1) Jean Marshall

BY: (1) Alfred H. Wells

(2) Janice E. Hounshell

ITS: Authorized Board Representative

STATE OF VIRGINIA)
COUNTY OF HENRICO)

PROBATE

PERSONALLY APPEARED BEFORE ME JEAN O. MARSHALL

who states under oath that (s)he saw the within named Renaissance Horizontal Property Regime, Inc., by Alred H. Wells, its Authorized Board Representative, as its act and deed, sign, seal and deliver the within Amended By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc. and that (s)he with Janice E. Hounshell witnessed the execution thereof.

(1) Jean Marshall

SWORN to before me this 15th day of April, 1991.

(2) Janice E. Hounshell
Notary Public for ~~SOMEWHERE~~ Virginia
My Commission Expires: June 13, 1993

(5) My Commission Expires June 13, 1993

Law Offices of
Daniel L. Patrick
P. O. Box 15889
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 356

WITNESSETH:

MYRTLE BEACH RESORT FIVE SEASONS CENTRE COUNCIL OF CO-OWNERS, INC.

(2) William A. Ullery

BY: [Signature]
Bill Hunt

(3) Beverly C. Harmon

ITS: Authorized Board Representative

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED BEFORE ME

(2) William G. Ullery, who states under oath that (s)he saw the within named Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc., by Bill Hunt, its Authorized Board Representative, as its act and deed, sign, seal and deliver the within Amended By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc. and that (s)he with Beverly C. Harmon witnessed the execution thereof.

(2) William A. Ullery

SWORN to before me this 10TH day of APRIL, 1991.

(3) Beverly C. Harmon
Notary Public for South Carolina

My Commission Expires: 5/16/2000 (d)

Law Offices of Daniel L. Patrick
P. O. Box 15069
Surfside Beach, S.C. 29587

BOOK 1465 PAGE 357

357

EXHIBIT C

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
 2 COUNTY OF HORRY
 3
 4 Frederick E. Brown, et al.,
 5 Plaintiffs,
 6 vs. CIVIL ACTION NO.
 7 Jeffrey L. Richardson, et al., 2018-CP-26-03173
 8 Defendants.
 9 Myrtle Beach Resort Homeowners'
 10 Association, Inc.,
 11 Nominal Defendants.

DEPOSITION OF: BARBARA JOANNE JOHNSON

DATE: Monday, October 15th, 2018

TIME: 10:10 a.m. through 1:50 p.m.

LOCATION: Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Plaintiff(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **APPEARANCES OF COUNSEL**

2 **REPRESENTING THE PLAINTIFF:**

3 BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY
& BOWERS, P.A.

4 BY: HOWELL V. BELLAMY, III, ESQUIRE
1000 29th Avenue North
5 Myrtle Beach, SC 29578-0357
Office: (843) 448-2400
6 Fax: (843) 448-3022
E-mail: Hbellamyiii@bellamylaw.com

7 **REPRESENTING THE DEFENDANT JEFFREY L. RICHARDSON,
8 ET AL.:**

9 PARKER POE ADAMS & BERNSTEIN, LLP

10 BY: KRISTA M. MCGUIRE, ESQUIRE

200 Meeting Street, Suite 301

11 Charleston, SC 29401

Office: (843) 727-2650

12 Fax: (843) 727-2680

E-mail: Kristamcguire@parkerpoe.com

13 **REPRESENTING THE DEFENDANT MYRTLE BEACH RESORT
14 HOMEOWNERS ASSOCIATION, INC.:**

15 YOUNG, CLEMENT, RIVERS LLP

BY: NICK RIVERA, ESQUIRE

25 Calhoun Street, Suite 400 (29401)

16 P.O. Box 993(29403-0993_

17 Charleston, SC 29401

Office: (843) 577-4000

18 Fax: (843) 579-1370

E-mail: Nrivera@ycrlaw.com

19
20
21 **ALSO PRESENT:** SARAH MORROW
22
23
24
25

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25**INDEX**

Examination By	Page	Line
By Mr. Bellamy, III	5	15
By Ms. Mcguire	114	7
By Mr. Rivera	128	4
By Mr. Bellamy, III	136	14
By Mr. Rivera	149	24
Certificate of Reporter	151	1

REQUESTED INFORMATION INDEX	Page	Line
Did Patrick and Stathos law firm have an employment agreement with the master association?	31	1
Meeting minutes	115	24

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PLAINTIFF(S) EXHIBITS			
Exh. #	Description	Page	Line
EXHIBIT 1	Notice of Deposition	5	8
EXHIBIT 2	Letter & Subpoena	5	10
EXHIBIT 3	Management Agreement	9	15
EXHIBIT 4	Declaration of Covenants, Conditions and Restrictions	22	9
EXHIBIT 5	September 2018 Empress Monthly Variance Report	34	2
EXHIBIT 6	2019 Budget Projection - Option 1	40	25
EXHIBIT 7	2019 Budget Projection - Option 2	41	3
EXHIBIT 8	2019 Budget Projection - Option 3	41	6
EXHIBIT 9	Meeting Minutes	47	6
EXHIBIT 10	Meeting Minutes Agenda	64	3
EXHIBIT 11	Commercial Lease Agreement	80	2
EXHIBIT 12	Letter	83	3
EXHIBIT 13	A Message from the Ocean Front Spa and Renaissance Tower	136	10
EXHIBIT 14	Letter	141	4
EXHIBIT 15	Responses to Plaintiff's Request for Admissions of Fact	145	2

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

COURT OF COMMON PLEAS

Frederick E. Brown, et al.,
Plaintiffs,
vs. CIVIL ACTION NO.
2018-CP-26-03173
Jeffrey L. Richardson, et al.,
Defendants.
Myrtle Beach Resort Homeowners'
Association, Inc.,
Nominal Defendants.

DEPOSITION OF: BARBARA JOANNE JOHNSON
DATE: Monday, October 15th, 2018
TIME: 10:10 a.m. through 1:50 p.m.
LOCATION: Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, South Carolina
TAKEN BY: Attorneys for the Plaintiff(s)
COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

STENOTYPE REPORTING SERVICE, LLC
Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

COURT OF COMMON PLEAS

Frederick E. Brown, et al.,
Plaintiffs,

vs.

CIVIL ACTION NO.
2018-CP-26-03173

Jeffrey L. Richardson, et al.,
Defendants.

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendants.

DEPOSITION OF: BARBARA JOANNE JOHNSON

DATE: Monday, October 15th, 2018

TIME: 10:10 a.m. through 1:50 p.m.

LOCATION: Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Plaintiff(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES OF COUNSEL

REPRESENTING THE PLAINTIFF:

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELLY
& BOWERS, P.A.
BY: HOWELL V. BELLAMY, III, ESQUIRE
1000 29th Avenue North
Myrtle Beach, SC 29578-0357
Office: (843) 448-2400
Fax: (843) 448-3022
E-mail: Hbellamyiii@bellamylaw.com

**REPRESENTING THE DEFENDANT JEFFREY L. RICHARDSON,
ET AL.:**

PARKER POE ADAMS & BERNSTEIN, LLP
BY: KRISTA M. McGUIRE, ESQUIRE
200 Meeting Street, Suite 301
Charleston, SC 29401
Office: (843) 727-2650
Fax: (843) 727-2680
E-mail: Kristamcguire@parkerpoe.com

**REPRESENTING THE DEFENDANT MYRTLE BEACH RESORT
HOMEOWNERS ASSOCIATION, INC.:**

YOUNG, CLEMENT, RIVERS LLP
BY: NICK RIVERA, ESQUIRE
25 Calhoun Street, Suite 400 (29401)
P.O. Box 993 (29403-0993)
Charleston, SC 29401
Office: (843) 577-4000
Fax: (843) 579-1370
E-mail: Nrivera@ycrlaw.com

ALSO PRESENT: SARAH MORROW

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Examination By	Page	Line
By Mr. Bellamy, III	5	15
By Ms. Mcguire	114	7
By Mr. Rivera	128	4
By Mr. Bellamy, III	136	14
By Mr. Rivera	149	24
Certificate of Reporter	151	1

REQUESTED INFORMATION INDEX	Page	Line
Did Patrick and Stathos law firm have an employment agreement with the master association?	31	1
Meeting minutes	115	24

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PLAINTIFF(S) EXHIBITS			
Exh. #	Description	Page	Line
EXHIBIT 1	Notice of Deposition	5	8
EXHIBIT 2	Letter & Subpoena	5	10
EXHIBIT 3	Management Agreement	9	15
EXHIBIT 4	Declaration of Covenants, Conditions and Restrictions	22	9
EXHIBIT 5	September 2018 Empress Monthly Variance Report	34	2
EXHIBIT 6	2019 Budget Projection - Option 1	40	25
EXHIBIT 7	2019 Budget Projection - Option 2	41	3
EXHIBIT 8	2019 Budget Projection - Option 3	41	6
EXHIBIT 9	Meeting Minutes	47	6
EXHIBIT 10	Meeting Minutes Agenda	64	3
EXHIBIT 11	Commercial Lease Agreement	80	2
EXHIBIT 12	Letter	83	3
EXHIBIT 13	A Message from the Ocean Front Spa and Renaissance Tower	136	10
EXHIBIT 14	Letter	141	4
EXHIBIT 15	Responses to Plaintiff's Request for Admissions of Fact	145	2

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **A.** I did.

2 **Q.** And you prepared it on behalf of Empress for
3 the board, correct?

4 **A.** I did.

5 **Q.** First thing is "Call to Order and Opening
6 Comments."
7 There was a quorum, correct?

8 **A.** There was.

9 **Q.** Were there any guests present at the
10 meeting?

11 **A.** There were.

12 **Q.** Who were the guests?

13 **A.** The guests were Nick Rivera and Krista
14 McGuire. We also had Ricky Davis from Securitas.

15 **Q.** Okay.

16 **A.** We had Richard Monroe, Jane Weldon, and
17 James McDonough from Four of a Kind.

18 **Q.** All right. Were the -- you've got under --
19 if I'm looking at the agenda, on the upper
20 left-hand part of the page, it's got -- after
21 "Introductions of Guests," it's got "Selection of
22 Officers."
23 Was the board able to vote to select
24 officers?

25 **A.** They did not.

11:43AM

11:43AM

11:43AM

11:43AM

11:43AM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 Q. So they're deadlocked on that issue?

2 A. Yes, they are.

3 Q. And both the governing documents and the
4 Nonprofit Corporation Act required the board to
5 select officers?

6 A. That's correct.

7 Q. So they're in breach of the governing
8 documents for the master association and the
9 nonprofit corporation, correct?

10 A. Correct.

11 Q. Okay. How many times have they tried to
12 select officers?

13 Is this the...

14 A. They tried on April the 29th. They tried on
15 May 6th, May 11th, May 14th. July 27th was a
16 meeting that wasn't held. October the 7th, and
17 then again this past Saturday night, October the
18 13th.

19 Q. Barbara, when was the annual meeting? Has
20 the annual meeting already been held for...

21 A. Yes, sir, it was. It was Sunday, April 29th
22 at 9 a.m.

23 Q. And my understanding from the governing
24 documents, the board is supposed to elect its
25 officers within 30 days of the annual meeting, is

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

11:44AM

11:44AM

11:44AM

11:44AM

11:45AM

1 that -- you agree with me?

2 **A.** That's correct.

3 **Q.** All right. Then you've got under the
4 heading, "Old Business: Lawsuit Update."

5 I'm sure that Nick Rivera gave a pretty good
6 presentation update on that.

7 **A.** Well, actually he didn't.

8 **Q.** Now, we've already talked about the
9 "Renaissance Tower Liens." I'll move on.

10 Then the "Patrick Stathos Outstanding
11 Invoices." Tell me a little bit about that.

12 **A.** At this time, there's \$7,900 that's owed to
13 Sam Stathos for work that he has done for the
14 association, but none of us know who asked him to
15 do that work. I did not. And I don't know why he
16 took it upon himself to do it.

17 **Q.** Was he -- and what I'm referring -- this is
18 the lawsuit, if I understand, where the association
19 sued Renaissance Tower for assessments that had
20 not -- or this is not that lawsuit?

21 **A.** No. This is other -- and it was itemized on
22 a statement that was dated, but nobody called and
23 asked him to do these things. He -- one of the
24 items that I can recall right off is that he
25 reviewed a letter from Art Justice to the board,

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

11:45AM

11:45AM

11:45AM

11:46AM

11:46AM

1 **A.** I don't.

2 **Q.** Okay. Who would be the person at Empress
3 that would be able to speak more intelligently
4 about where that number, 377,239.87, which
5 operating account -- or which reserve account it
6 originated in, and which operating account it was
7 transferred to?

8 **A.** Sarah Moore.

9 **Q.** Sarah would know that, okay.
10 Are there any other shortfalls that you're
11 aware of?

12 **A.** There is.

13 **Q.** Let me ask this: Did the -- the board
14 was -- I think met this past Saturday, correct?

15 **A.** They did.

16 **Q.** And for the purposes of adopting an annual
17 budget for the fiscal year 2019, correct?

18 **A.** That is correct.

19 **Q.** Did the board, did they agree upon a budget?

20 **A.** They did.

21 **Q.** Now, I notice that you prepared three
22 proposed --

23 MR. BELLAMY, III: Let me mark these
24 real quick.

25 (EXHIBIT 6, 2019 Budget Projection -

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 Option 1, was marked for
 2 identification.)
 3 (EXHIBIT 7, 2019 Budget Projection -
 4 Option 2, was marked for
 5 identification.)
 6 (EXHIBIT 8, 2019 Budget Projection -
 7 Option 3, was marked
 8 for identification.)

9 BY MR. BELLAMY, III:

10 Q. Barbara, I hand you what's been previously
 11 marked as Exhibits 6, 7, 8 to your deposition.
 12 These are identified as Option 1, Option 2, and
 13 Option 3. Essentially they're proposed annual
 14 budgets for two-thousand -- looks like it says
 15 "2018 Budget Template," but I think they're
 16 supposed to be proposed budgets for 2019.

17 Take a minute and look at them.

18 **A.** (Complies.)

19 (Off-the-record conference.)

20 BY MR. BELLAMY, III:

21 Q. Barbara, do you recognize Exhibits 6, 7, and
 22 8 to your deposition?

23 **A.** I do.

24 Q. Those were proposed budgets for 2019,
 25 correct?

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

10:58AM

10:59AM

11:00AM

11:00AM

1 **A.** Yes, sir.

2 **Q.** And I think they're titled like "Option 1,"
3 "Option 2," and "Option 3"?

4 **A.** They are.

5 **Q.** Did Empress management prepare those
6 budgets?

7 **A.** We did.

8 **Q.** Did you prepare it, or did -- who was --

9 **A.** Elaine Campbell.

10 **Q.** Did you and Elaine Campbell both prepare
11 them or just Elaine Campbell?

12 **A.** We both talked about them and prepared them
13 together.

14 **Q.** Those three budgets identified as "Option
15 1," "Option 2," and "Option 3," also for the
16 record, shown as Exhibits 6, 7, and 8,
17 respectively, were these 6, 7, and 8, were they
18 presented to the board for their review and
19 consideration this past Saturday?

20 **A.** They were.

21 **Q.** Okay. And did the current board members
22 adopt either Budget 6, Option 1 -- or either -- did
23 they adopt any of the budgets previously marked as
24 Exhibits 6, 7, or 8 to your deposition?

25 **A.** No, sir, they did not.

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 Q. Okay. I guess they -- what they did, they
2 rolled over the prior 2018 budget?

3 A. They did.

4 Q. Okay. Did you -- getting back to the
5 shortfall and the -- in the reserve account in the
6 amount of \$377,239.89, did you recommend to the
7 board to special assess for that amount of money?

8 A. I did.

9 Q. Did they follow your recommendation?

10 A. They did not.

11 Q. They did not, okay.

12 Do you know why they did not follow it?

13 A. I don't know.

14 Q. And in accordance with paragraph --
15 Subparagraph 8, under "Financial Services," let me
16 refer you to paragraph -- let me refer you to Page
17 4 of Exhibit 3, and it's got Subparagraph 8,
18 "Financial Services." And you go down under that,
19 and you get to Subparagraph A. And let me read
20 this into the record one more time.

21 "Failure on the part of the association to
22 provide said funds or make special assessment when
23 requested by the managing agent may, at the option
24 of the managing agent, be construed as a material
25 breach of the agreement."

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 In their failure to follow your advice to
 2 special assess for \$377,239.87 monies that need to
 3 be placed back into the reserve account, do you
 4 consider their failure to do that to be a material
 5 breach of the employment agreement?

11:03AM

6 **A.** That's not my decision.

7 **Q.** Okay.

8 MR. RIVERA: Howell, sorry to
 9 interject. Can we ask her whether or not
 10 they could make a decision, or they all
 11 agreed not to do it, just so we have some
 12 clarity?

11:03AM

13 MR. BELLAMY, III: Sure.

14 BY MR. BELLAMY, III:

15 **Q.** Now, did they give -- let me ask -- Barbara,
 16 did they indicate why?

11:03AM

17 **A.** They did not. Option 3 of the Operating
 18 Budget Template, that includes \$361,000 in the
 19 operating budget in attempts for them to make that
 20 up, and it was Option 1 with the 361,000 added it
 21 to, and they did not vote on it.

11:03AM

22 **Q.** Okay. And three out of the four board
 23 members voted to -- basically voted to roll over
 24 the 2018 budget into 2019, correct?

25 **A.** That is correct.

11:04AM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
 4350 Old Kings Highway, Murrells Inlet, SC 29576

1 Q. Any other meeting besides that one special
2 meeting where the board of directors actually
3 signed meeting minutes prepared for them to
4 circulate to the association?

5 A. No.

6 Q. So since Empress has taken over, the board
7 of directors has not signed any meeting minutes for
8 approval, correct?

9 A. That's correct.

10 Q. Okay. And I believe you testified earlier
11 that you believe that the board is having problems
12 functioning on day-to-day operations; is that
13 correct?

14 A. That is correct.

15 Q. And some of those issues you talked about
16 were they are having trouble making decisions
17 related to cable, correct?

18 A. Yes.

19 Q. They're having issues with making decisions
20 in regard to telephones, right?

21 A. Correct.

22 Q. They're having issues related to coming up
23 with the 2019 budget, right?

24 A. That's correct.

25 Q. And they're having issues in dealing with

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **A.** I do not.

2 **Q.** You would agree there's a lot of dissension
3 on the board, correct?

4 **A.** Yes.

5 **Q.** Barbara, I know this is -- can you give me a
6 number or a range of how many issues that the
7 current board has deadlocked on that they just
8 can't come to some compromise or agreement?

9 I mean, to the best of your ability, can
10 you, you know, like, give examples, one, two,
11 three, four, how many you're aware of?

12 **A.** They can't make a decision with regard to
13 officers. They can't make a decision with regard
14 to the gates, activating them, the placement of the
15 gates. They can't make a decision with regard to
16 the cable contract. They can't make a decision
17 with regard to the phones that are inside the cable
18 contract. Part of them want to renegotiate a
19 contract, and part of them want to maintain the
20 current contract.

21 **Q.** Okay. Anything else?

22 **A.** The budget, the operating budget, they can't
23 make a decision with regard to that.

24 **Q.** I think you indicated they can't make a
25 decision to special assess for reserve shortfalls?

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

12:38PM

12:39PM

12:39PM

12:39PM

12:40PM

1 to approve this repair and maintenance estimate to
2 fix the lazy river?

3 **A.** I'm hopeful.

4 **Q.** Let's move to "MBR Rules and Regulations."
5 I'll read it into the record. "MBR Rules and
6 Regulations: Review of all - to be recorded for
7 compliance with new law. One, establish fees and
8 parking areas for Bike Week trailers and
9 motorcycles. Two, establish pool hours and
10 seasonal opening and closing dates; and three,
11 establish parking lot policies."

12 Has the board voted on this?

13 **A.** No, sir, they have not.

14 **Q.** Were they supposed to vote on this on
15 October 7, 2018?

16 **A.** Yes, sir.

17 **Q.** They're deadlocked on this?

18 **A.** They haven't discussed it.

19 **Q.** Okay. It was put on the agenda.

20 Do you know why they didn't discuss it?

21 **A.** No, sir. They're aware that it needs to be
22 done. According to the new South Carolina law, it
23 has to be recorded by January 10th in order to be
24 enforced.

25 **Q.** Okay. So this current board is deadlocked,

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

11:51AM

11:52AM

11:52AM

11:52AM

11:52AM

1 at least they're in breach of that, yeah, under
2 South Carolina law for failure to vote on this?

3 **A.** (Moves head up and down.)

4 **Q.** Okay.

5 MS. MCGUIRE: Object to form.

6 BY MR. BELLAMY, III:

7 **Q.** Okay. Let me ask you this: Where it says,
8 "Establish fees and parking areas for bikes," who
9 prepared that for the board?

10 **A.** Last year, the four presidents for the four
11 regimes walked around the parking lot and decided
12 which sections would be utilized for motorcycles
13 and which sections would be utilized for trailers
14 and how much they were going to charge for
15 motorcycle parking and trailer parking.

16 **Q.** Okay. Same thing, the board members, or at
17 least the boards for the four regimes, also
18 approved the pool hours and seasonal opening and
19 closing dates.

20 Am I correct on that?

21 **A.** They need to do that, yes.

22 **Q.** They haven't, but --

23 **A.** They have not.

24 **Q.** But was that -- were these submitted by the
25 individual association boards to the master board

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

11:52AM

11:53AM

11:53AM

11:53AM

11:53AM

1 for these amounts of monies?

2 **A.** I advised them about the reserves, but I
3 couldn't get a response on that, even after
4 advising that it was their fiduciary responsibility
5 to do that, and it would -- it could impact their
6 tax exempt status. And they didn't act on that, so
7 they didn't act on the shortfall in the budget,
8 as well.

9 Q. Did they give you any reason why they
10 decided not to act or failed to act?

11 **A.** They did not.

12 Q. Was the board deadlocked on this issue, to
13 your knowledge?

14 **A.** Well, they're deadlocked on most every
15 issue, but no, they didn't. They just didn't
16 discuss it.

17 Q. And you mentioned something -- you caught my
18 attention about the nonprofit corporation losing
19 its tax exempt status.

20 Am I right about that?

21 **A.** Yes, sir.

22 Q. Explain what you meant by that.

23 **A.** There are certain protocols that are used
24 when -- for your reserve study. That money is put
25 away, and you're protected through the tax statutes

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

11:36AM

11:37AM

11:37AM

11:37AM

11:38AM

1 as long as you use that money as it's delegated.

2 But the IRS is very strict about these
3 accounts. And if you don't follow their protocol,
4 you could be subject to losing your tax exempt
5 status.

6 Q. Has the board, to your knowledge, have they
7 failed to follow the protocol that would cause them
8 to lose their tax exempt status?

9 MR. RIVERA: Object to the form.

10 BY MR. BELLAMY, III:

11 Q. You can answer.

12 A. Can you state that again?

13 Q. To your knowledge, has this current board
14 failed to follow the protocol which would cause
15 them to lose their tax exempt status about how they
16 move monies from operating to the reserve -- from
17 the reserve to the operating account?

18 Is that -- is that what you're talking
19 about?

20 A. That is correct. But this shortfall was
21 created prior to this current board in April.

22 Q. It was created, okay -- the shortfall was
23 created in April of this year or April of last
24 year?

25 A. This board, this current board, is

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

11:38AM

11:38AM

11:38AM

11:38AM

11:39AM

1 completely new members as of April 29th. So the
2 shortfall occurred prior to this board being
3 elected.

4 Q. And that would be which -- can you identify
5 the prior board and the members?

11:39AM

6 A. Well, I can tell you who was on the board in
7 January of this year.

8 Q. Okay.

9 A. But that shortfall was created prior to
10 January of this year.

11:39AM

11 Q. It was created in 2017?

12 A. I don't know when it was created. I wasn't
13 involved until January 1st.

14 Q. What you're saying is it was created
15 sometime before January 1st?

11:39AM

16 Is that what you're saying?

17 A. Yes, sir, I am.

18 Q. Okay. That's when Peter Grusauskas was
19 president of the board, Jim Perkins was the
20 secretary, Conrad Calvano was...

11:39AM

21 A. I believe he was the treasurer.

22 Q. Okay, the treasurer.

23 And I think the last was --

24 A. Joe Dongallo was on the board.

25 Q. Okay.

11:40AM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **A.** (Complies.)

2 **Q.** It shows Myrtle Beach Resort HOA, Inc., and
3 it's got a "Balance Sheet as of September 30,
4 2018."

5 Did I read that correctly? It's on the top. 10:51AM

6 **A.** You did.

7 **Q.** Then what you've got is you've got -- it's
8 broken down into assets and liabilities.

9 Under assets, can you identify the -- as far
10 as where the -- we talked about the 361,000 that 10:51AM
11 is, I think, due from operating to reserves,
12 377,239.87?

13 **A.** That's the correct figure, not the 361,000.

14 **Q.** I asked you about this: Which one of these
15 accounts is the reserve account? 10:52AM

16 **A.** It's in the BB&T, and there's also one in
17 Alliance.

18 **Q.** So where it says 10600 BB&T -- well, let me
19 back up for a second.

20 **A.** 10700. 10:52AM

21 **Q.** Okay. 10700, okay, BB&T cash reserves.

22 Is there another reserve account?

23 **A.** There is. There's a Money Market Account at
24 Alliance.

25 **Q.** And is that 1,000 -- or where it says, 10:52AM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **A.** Yes, I am.

2 **Q.** And you've read them before, and you're
3 familiar with those provisions?

4 **A.** I've read them, yes.

5 **Q.** Okay. That's all I want -- I'll come back
6 to Exhibit 4 at a later point in time.

7 Let me ask you about -- have you had an
8 opportunity -- I guess you've looked at the budget
9 that was prepared for 2018?

10 **A.** I did.

11 **Q.** And it was prepared by First Services
12 Residential, correct?

13 **A.** It was.

14 **Q.** Did any of the individual sub-associations
15 -- were there any shortfalls in -- as far as
16 assessments that are due by the individual
17 sub-associations, such as -- I'll refer to them as
18 HBR, Oceanfront Spa, the Tower, and the Five
19 Seasons Center -- when you went back and looked at
20 the -- they had a budget for the assessments that
21 were due for sub-regimes, correct?

22 **A.** That's correct.

23 **Q.** And pursuant to the governing documents, the
24 master board could individually assess each member,
25 or they could have the association, the individual

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 regime, acquire the assessments and forward them to
2 the management company; correct?

3 **A.** That's correct.

4 **Q.** Were any of the individual sub-associations
5 or sub-regimes delinquent in their assessments, to
6 your knowledge?

7 **A.** Yes, they were.

8 **Q.** Which ones?

9 **A.** Renaissance Tower and Oceanfront Spa.

10 **Q.** Let's talk about Renaissance Tower. How
11 much were they delinquent for their assessments for
12 2018, to your knowledge?

13 **A.** They weren't delinquent for 2018.

14 **Q.** What year were they delinquent for?

15 **A.** Sometime prior to 2018.

16 **Q.** And how much -- how much -- okay. They were
17 delinquent prior to 2018.

18 Do you know what the amount was?

19 **A.** \$116,000.

20 **Q.** Do you know why that amount has not been
21 paid by Renaissance Tower?

22 **A.** No, I do not.

23 **Q.** And let me ask you: When was that amount
24 due, to your knowledge?

25 **A.** I don't know.

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

10:34AM

10:35AM

10:35AM

10:35AM

10:35AM

1 Q. Was it due before 2015 or after 2015?

2 A. I don't know.

3 Q. Okay. And let me ask you this: Has the
4 current board -- what is the position of the
5 current board with respect to the delinquent
6 assessment owed by Renaissance Tower?

10:35AM

7 And I'm sorry, what was that amount again?

8 A. 116,000 was reported on their financial.

9 Q. Okay. Is -- is the -- what action has the
10 board taken to collect that amount from Renaissance
11 Tower, to your knowledge?

10:36AM

12 A. We discussed it in a board meeting this past
13 week, and Renaissance Tower says that they have
14 paid that balance.

15 Q. Okay.

10:36AM

16 A. So we are trying to find records that show
17 that it's been paid.

18 Q. Okay. And the -- I guess you're referring
19 to the -- Jeff Richardson -- let me ask my question
20 this way: How does Renaissance Tower plan to
21 document or show that they have paid that
22 assessment, the 116,000, on a prior occasion?

10:36AM

23 A. Our accounting office has reached out to
24 Attorney Sam Stathos to find out if he has record
25 that that amount has been paid, as he represented

10:37AM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 the master association.

2 Q. Was Sam Stathos the -- he was -- at one
3 point in time, he was the attorney for the
4 individual sub-association and the master
5 association.

10:37AM

6 Is that a correct statement?

7 A. Yes.

8 Q. Okay. All right. Let's take a minute and
9 talk about Oceanfront Spa.

10 To your knowledge, Barbara, are they
11 delinquent in assessments owed to Myrtle
12 Beach Resort HOA, Inc.?

10:37AM

13 A. For what year?

14 Q. We'll start with 2018.

15 A. No, they're not.

10:37AM

16 Q. 2017?

17 A. I don't know when they were delinquent, but
18 they have a delinquent balance of 106,000.

19 Q. Okay. 106,000.

20 Now, do you know if that delinquent amount
21 was due before 2015 or after 2015?

10:38AM

22 A. I don't know. I'm assuming it was due in
23 2017.

24 Q. In 2017, okay.

25 And what is the position of the board for

10:38AM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 Oceanfront Spa why that amount has not been paid?

2 **A.** The money was withheld from the master
3 insur- -- the master association due to
4 non-collection of trash and lack of security
5 services.

10:38AM

6 **Q.** So basically what they did is used the
7 116,000 as the offset to offset the lack of
8 security service and the lack of trash refuse,
9 correct?

10 **A.** No, sir. Their balance was 106,000. And
11 from May through December of 2017, they did not
12 receive trash pick up or security from the master
13 association.

10:38AM

14 **Q.** Do you know why that is?

15 **A.** I do not.

10:39AM

16 **Q.** And we're talking about in May of -- I want
17 to make sure -- May of?

18 **A.** 2017.

19 **Q.** May through December of 2017?

20 **A.** Yes.

10:39AM

21 **Q.** Okay. Do you know that of your own
22 knowledge, or is that what you've been told?

23 **A.** That's what I've been told.

24 **Q.** And who relayed that to you? I guess Nancy
25 Moore?

10:39AM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **A.** Nancy Moore.

2 **Q.** Does she have documentation to support that?

3 **A.** I haven't seen it. She said she has it.

4 **Q.** Okay. Is she going to provide you with that
5 information?

6 **A.** She is trying to negotiate with the master
7 board with regard to those fees.

8 **Q.** Can you do that under the governing
9 documents?

10 **A.** I don't know. I'm not -- I'm just telling
11 you what she said.

12 **Q.** And, Barbara, what I would ask you to do,
13 because I'm not going to go through each, but if
14 you're aware of any provision which allows the
15 board to negotiate what's owed under the -- as far
16 as assessments, if you could point that out, I
17 would appreciate it.

18 **A.** I'm not aware of any.

19 **Q.** Now, are any of the regimes currently -- I
20 guess we've talked about two-thousand -- if I
21 understand your testimony, none of the individual
22 regimes or sub-regimes were delinquent in 2018.

23 Is that a fair statement?

24 **A.** The master association is delinquent.

25 **Q.** Okay. Explain that to me.

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

10:39AM

10:39AM

10:40AM

10:40AM

10:40AM

1 **A.** I wasn't involved when this happened because
2 it was prior to 2018, but there are three liens
3 currently filed with Horry County against the
4 master association for Renaissance Tower.

5 **Q.** Okay. Does that -- in the -- let me see if
6 I understand, and help me with this. That is with
7 respect to a commercial unit owned by the master
8 association?

9 **A.** Yes, sir. It's three commercial units.

10 **Q.** Three commercial units within Renaissance
11 Tower, okay.

12 To your knowledge, why are -- so the
13 Renaissance Tower has a lien on those three
14 commercial units that are owned by the master
15 association?

16 **A.** That is correct.

17 **Q.** And to your knowledge, what is the basis of
18 the lien?

19 **A.** I don't know what two of the units are for,
20 because I wasn't involved prior to January of 2018.
21 I have been told that one of the units is being
22 fined \$167 a day because there was a walkway
23 erected on Renaissance Tower property.

24 **Q.** To your knowledge, does Renaissance Tower
25 have the right to do that?

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

10:40AM

10:41AM

10:41AM

10:41AM

10:41AM

1 **A.** I don't know.

2 **Q.** Has anybody -- has the board sought a legal
3 opinion on that issue?

4 **A.** I don't know.

5 **Q.** When I say "the board," I'm talking about
6 the current board for the master association.

7 **A.** The current board has not, no.

8 **Q.** Does the current board for the master
9 association have an attorney?

10 **A.** They do not.

11 **Q.** And my follow-up question: Why is that?
12 At some point, it used to be Sam Stathos,
13 correct?

14 **A.** Yes, it did.

15 **Q.** Do you know why they let Sam Stathos go or
16 they --

17 **A.** I don't know what the agreement was with
18 Sam. I know there's no current retainer with Sam.

19 **Q.** Okay. Did the -- I call it -- did Patrick
20 and Stathos law firm have an employment agreement
21 with the master association, to your knowledge?

22 **A.** I don't know.

23 **Q.** Could you look into that for me?

24 **A.** I will.

25 **Q.** Okay. Thank you.

STENOGRAPHY REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

10:41AM

10:42AM

10:42AM

10:42AM

10:43AM

1 I think it's an exhibit, Exhibit F or G, to the
2 Complaint.

3 Did you have an opportunity to read it?

4 **A.** I glanced through it. I didn't read it in
5 its entirety, no.

12:30PM

6 **Q.** Was there anything in there that you thought
7 was incorrect or misstated, to your knowledge?

8 **A.** I don't know the history of the property, as
9 we only became involved January 1st.

12:30PM

10 **Q.** Sounds to me like you became very
11 knowledgeable about a lot of things in a short
12 period of time, so that's why I asked the question.

13 **A.** Thank you.

14 **Q.** Okay. Let me refer you to Article 5,
15 "Covenant for Assessments." And I'm not going to,
16 Barbara, read, you know -- you've got Section 5.1
17 and it goes on, 5.2, 5.3 that goes on Page 9.

12:31PM

18 But as far as the heading under Article 5,
19 "Covenant for Assessments," you agree that the
20 master association has an affirmative duty to
21 assess the individual unit owners or, collectively,
22 the individual sub-association for monies in order
23 to maintain, repair, administer, and manage the
24 project, which would be properties owned by the
25 master association and properties that are not

12:31PM

12:31PM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 owned but subject to the master association
2 covenants, conditions, and restrictions.

3 Do you agree with that statement?

4 **A.** I do.

5 Q. And if I understand your testimony, that
6 would not be a discretionary duty on the part of
7 the master association, correct?

8 **A.** That's correct.

9 Q. They can't say, you know, in 2017, well,
10 we'll -- yeah, we'll assess, you know, the
11 individual sub-association so we can manage and
12 maintain the common areas, but -- and then they go
13 to 2018 and say, no, we're not going to do it this
14 year.

15 They have an affirmative duty on the
16 governing documents?

17 **A.** Yes, they do.

18 Q. To the extent they don't do that, they are
19 in breach of the governing documents.

20 And to the extent the members of the master
21 association are grossly negligent, they're
22 individually liable under the governing documents,
23 correct?

24 **A.** Correct.

25 Q. And Barbara, to your knowledge, has any

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

12:32 PM

12:32 PM

12:32 PM

12:32 PM

12:32 PM

1 attorney -- the association currently doesn't have
 2 an attorney, but any past attorney for the
 3 association you're aware of, have they ever written
 4 any type of memorandum or treatise indicating that
 5 the governing documents are unenforceable as a
 6 matter of law, to your knowledge?

12:33 PM

7 **A.** Not to my knowledge, but I've only been
 8 involved since January 1st of this year.

9 **Q.** Okay. Let me ask you this, if you go
 10 back -- let me refer you to Page 5. This is of the
 11 bylaws, and more specifically, look at Section 8
 12 where it says -- and I'll read this into the
 13 record.

12:34 PM

14 "Consistent with these bylaws and applicable
 15 declarations, the board shall" -- and let me refer
 16 you down to Subparagraph D, which says, "Elect from
 17 the board within 30 days after each annual meeting
 18 the president, vice president, secretary, and
 19 treasurer."

12:34 PM

20 And you testified earlier that has not
 21 happened, right?

12:34 PM

22 **A.** It has not.

23 **Q.** Pursuant to Empress' management agreement,
 24 that the management company -- either the board's
 25 going to designate a specific agent to act -- you

12:35 PM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
 4350 Old Kings Highway, Murrells Inlet, SC 29576

1 know, to communicate with the management company or
2 an alternative to the president will communicate
3 with the management company, correct?

4 And if I understand your testimony, the
5 board has not designated -- because they're
6 deadlocked -- a particular agent or board member to
7 communicate with the management company. And
8 because they can't elect a president, the
9 president -- there is no president to communicate
10 with the management company.

11 When the management company needs to -- how
12 do you communicate with the current four board
13 members? When you have a decision or something you
14 want to bring to their attention, do you notice all
15 four of them?

16 **A.** I do. I e-mail all four.

17 **Q.** Okay. And Barbara, to your knowledge, are
18 there other things, board's duties and
19 responsibilities, that the current board needs to
20 vote on in order for the management company to
21 comply with their decision and implement, you know,
22 the board's policy regarding, you know, any
23 administrative maintenance matter?

24 And my question is: What other decisions
25 does the board need to vote upon so the management

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

12:35 PM

12:35 PM

12:35 PM

12:36 PM

12:36 PM

1 company can take care of matters to deal with
2 administratively or maintenance repair with the
3 master association -- with the project? Excuse me.

4 What I am trying to find out: Are there
5 other things the board needs to vote on in order
6 for the management of Empress to comply with their
7 duties and responsibilities under the Exhibit 3 to
8 your deposition, the employment agreement?

12:36PM

9 **A.** Well, the day-to-day operations of the
10 association have to be approved by the board. I
11 work at the direction of the board, and if they
12 can't give me direction, my hands are tied.

12:37PM

13 **Q.** And I'm asking: You've had a problem with
14 the board giving you -- so if I understand your
15 testimony, the board has failed to give you
16 direction on the day-to-day operations as far as
17 Empress under the terms and conditions of their
18 contract.

12:37PM

19 Is that a fair statement?

20 **A.** Yes.

12:37PM

21 **Q.** And I guess you brought that to the board's
22 attention, correct?

23 **A.** Yes.

24 **Q.** And since you have to notify all four
25 individual board members, what are their responses?

12:37PM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **A.** Well, they're deadlocked when I ask them if
2 we can do something. I get two to two, or I don't
3 get an answer at all.

4 **Q.** Would it be a fair statement to say they're
5 essentially deadlocked on about everything with the
6 exception of maybe one or two things?

7 **A.** That's fair, yes.

8 **Q.** In your opinion, is this a dysfunctional
9 board?

10 **A.** Absolutely.

11 **Q.** Okay. And I say -- well, okay.

12 **A.** In 23 years of property management, I have
13 not worked with a board that can't make a decision
14 to -- they're elected to run the facility, and
15 they're not doing it.

16 **Q.** Right. And they're breaching their duty of
17 care and their fiduciary duties --

18 **A.** Responsibilities, yes.

19 MS. MCGUIRE: Object to the form.

20 MR. RIVERA: Object to the form.

21 BY MR. BELLAMY, III:

22 **Q.** And you've been doing this for 23 years, and
23 this is the first time -- do you know of any other
24 board that has been as dysfunctional as this
25 current board?

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **A.** They have not made a decision in that
2 regard, either.

3 **Q.** And if I understand your earlier testimony,
4 you informed the board as -- pursuant to your
5 employment agreement, you informed them of the
6 shortfalls and the necessity to special assess to
7 remediate the shortfalls, and they refuse to follow
8 your advice regarding, I would say, the reserves?

9 **A.** That's correct.

10 **Q.** And would that also include the operating
11 budget, too?

12 **A.** It would, but they are planning to have
13 another meeting on the 28th of the month to discuss
14 these. So I wouldn't definitively say at this
15 minute that they're not going to do it.

16 **Q.** You're saying the glass is half full instead
17 of half empty?

18 **A.** Yes, I'm optimistic.

19 **Q.** And let me ask you this. You've been doing
20 this -- I think you indicated you've been doing
21 this for 23 years, correct?

22 **A.** That's correct.

23 **Q.** And based upon your experience, your
24 training, your education, and doing this for 23
25 years, you would agree that you have some special

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

12:40 PM

12:40 PM

12:41 PM

12:41 PM

12:41 PM

1 knowledge, expertise that other people wouldn't
2 have, correct?

3 **A.** I believe so.

4 **Q.** And I would think, you know -- I would
5 consider that you could probably be qualified as an
6 expert regarding -- as a managing agent to make a
7 determination whether the board or not is -- if
8 they're dysfunctional or not dysfunctional.

9 And if I understand your opinion, your
10 opinions in this case -- and a court would
11 obviously have to -- we would have to put you on
12 the stand, and then we would have to voir dire you,
13 and the court would have to ask questions and then
14 would make a determination, and we would present
15 you as an expert. But I understand, if you would
16 be allowed by the court to render opinions, you
17 would say this board is dysfunctional, correct?

18 **A.** That's correct.

19 **Q.** And they're deadlocked on numerous issues
20 that deal with financial matters, maintenance
21 matters, repair matters, and administrative matters
22 that could adversely effect, as far as the
23 viability of the project as a whole.

24 Because obviously if they're -- and they've
25 got numerous shortfalls that they're not currently

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

12:41 PM

12:42 PM

12:42 PM

12:42 PM

12:42 PM

1 dealing with that would affect their ability to
2 respond to accounts payable that need to be paid.

3 And I think you indicated earlier, you
4 testified that they may lose their tax exempt
5 status as a nonprofit corporation based upon the
6 way that they have moved monies around.

7 I'm not a forensic accountant, so to the
8 extent that I say something's wrong, you know, the
9 record will correct it, but they haven't moved
10 it -- whether it's the management company prior to
11 y'all or they moved from operating account or
12 the -- to the reserve account, operating account,
13 that they didn't do it -- they didn't do it based
14 on accrual basis.

15 Is that a fair statement?

16 **A.** I'm not sure what they did with the money
17 prior to January 1st.

18 **Q.** But in -- is it -- here's the ultimate
19 question I want to ask you: Do you think a
20 custodian needs to be appointed in this case until
21 the board can work out some of these issues, areas
22 of dissension regarding whether the governing
23 documents are valid, regarding monies owed that,
24 you know -- I think you indicated that Jeff
25 Richardson said 106,000, whatever that number was,

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry COMMON PLEAS - CASE#2018CP2603173

12:43PM

12:43PM

12:43PM

12:43PM

12:43PM

1 has already been paid, and you're trying to get
2 documentation to show that.

3 Do you think until some of these issues can
4 be resolved regarding a lot of the bad blood that's
5 developing over years and years and years, it would
6 be good to have a temporary custodian appointed to
7 help administer and manage the resort until a lot
8 of these issues regarding monies owed that a
9 forensic audit would probably shed light on, and
10 having a court make a determination regarding the
11 viability of the governing documents?

12:44 PM

12:44 PM

12 Would it be your opinion that it would be
13 wise to appoint a custodian?

14 MS. MCGUIRE: Object to the form.

15 MR. RIVERA: Object to the form.

12:44 PM

16 MR. BELLAMY, III: Under these
17 circumstances?

18 THE DEPONENT: They need -- they need
19 some sort of guidance.

20 BY MR. BELLAMY, III:

12:44 PM

21 Q. Okay. Let me ask you this. If -- so -- if
22 I understand your testimony, you're not opposed to
23 a custodian being appointed to run and manage the
24 master association.

25 Is that a fair statement?

12:44 PM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **A.** That's fair.

2 **Q.** You wouldn't be opposed to having a
3 provisional director appointed that would break the
4 deadlock between the two directors?

5 **A.** That's true.

6 **Q.** And you wouldn't be opposed to possibly
7 having a receiver temporarily appointed to manage
8 and administer the association in order so some of
9 these issues could be resolved by a judge on a
10 non-jury basis?

11 **A.** I would like to see the issues resolved,
12 yes.

13 **Q.** Let me ask you: In the 23 years that you've
14 worked in the community association area, is this
15 the worst, most dysfunctional board or association
16 you've ever tried to assist?

17 **A.** It is.

18 **Q.** Has it caused you a lot of stress and
19 anguish? Sleepless nights?

20 **A.** Yes, it has.

21 MR. BELLAMY, III: I don't have
22 anything further at this point.

23 MR. RIVERA: Maybe she's got a claim
24 against y'all's clients, sleepless nights.

25 MS. MCGUIRE: Barbara, I have a few

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

12:45PM

12:45PM

12:45PM

12:45PM

12:46PM

1 Q. And there -- and I believe there may have
2 been some argument that there wasn't proper notice
3 of the meeting, correct?

4 A. That wasn't the issue.

5 Q. Okay. What was the issue?

6 A. The issue was that they were advised by
7 their attorney not to attend.

8 Q. And we're not referencing any attorney in
9 this room, but just an attorney in general,
10 correct?

11 A. That's true.

12 Q. Again, that's another example how this board
13 has not been able to function since your company
14 has taken over in January of 2018, correct?

15 A. That's true.

16 Q. And are there actually any signed meeting
17 minutes from the board of directors in regard to
18 any meetings they've held in 2018?

19 A. There is one set that was signed by Bob
20 Rosencrans, which was the July meeting that wasn't
21 held. He signed those and sent them back to me as
22 approved.

23 Q. Okay. And I think he converted it to a
24 special meeting as -- was his argument, correct?

25 A. Yes, he did.

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

01:14PM

01:15PM

01:15PM

01:15PM

01:15PM

1 special assessments, correct?

2 A. Correct.

3 Q. And they're having issues dealing with the
4 security front and back gate, correct?

5 A. Yes, that's correct.

6 Q. And, again, they're unable to agree on
7 meeting minutes since you've been involved in 2018,
8 correct?

9 A. That's correct.

10 Q. Okay. And they have been unable to select
11 an attorney to serve as general counsel which may
12 alleviate many of the issues that we're facing in
13 this litigation, correct?

14 A. That's correct.

15 Q. And they have been unable, as of today, to
16 come up with any master rules and regulations,
17 correct?

18 A. Correct.

19 Q. We're hopeful they will do that in the
20 future, correct?

21 A. Yes, I am.

22 Q. They have been unable to select any officers
23 since January 1, 2018, correct?

24 A. That's correct.

25 Q. Has the issue with the Renaissance Tower --

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

01:16PM

01:17PM

01:17PM

01:17PM

01:17PM

1 **A.** I beg your pardon. Did you say January or
2 April?

3 **Q.** I'm sorry, January 2018?

4 **A.** No. They had officers in January. It was
5 when the new ones were elected April 29th.

6 **Q.** Okay. Since April 29, 2018, has the board
7 been able to select officers?

8 **A.** No.

9 **Q.** Has the board been able to address the issue
10 with the Renaissance Tower liens?

11 **A.** No.

12 **Q.** Okay. And has the board been able to
13 address the issue with the seven, almost eight
14 grand owed to their former general counsel
15 Mr. Stathos' invoice?

16 **A.** No.

17 **Q.** These are just -- all just examples of
18 issues that have come up since Empress has been
19 involved since January of 2018 that kind of would
20 give the Court a lay of the land of problems at the
21 association, correct?

22 **A.** Correct.

23 **Q.** This isn't a full list.

24 There could be other ones, correct?

25 **A.** That's correct.

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 Q. And in regard to any custodian or
2 receivership, I was present at the meeting a couple
3 weeks ago, correct?

4 A. Yes, sir.

5 Q. It's pretty obvious -- it was pretty obvious
6 to me, and I'm sure it was pretty obvious to you,
7 that the homeowners are not happy with the current
8 condition of the master association's board.

9 Is that fair?

10 A. The homeowners present were not happy, the
11 majority.

12 Q. In fact, there's a -- it was -- it was --
13 how long did the meeting last?

14 A. From 9:00 a.m. until 2:30.

15 Q. Okay. So five and a half hours?

16 A. Yes, sir.

17 Q. Okay. Long day for you?

18 A. Very long.

19 Q. Did you accomplish anything in -- did you --

20 A. No, sir.

21 Q. Let me finish my question so she can get
22 down everything.

23 In those five and a half hours, were you, as
24 a property manager for the association, were you
25 happy with what you were able to accomplish?

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

01:18PM

01:19PM

01:19PM

01:19PM

01:19PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. No, sir.

Q. Is there still a lot of business to be done with the association before the end of the year?

A. Yes, sir.

Q. Okay. In regard to any cost to custodian or receivership, do you think we should be looking at the cost of the custodian or receivership or the fact that this board is unable to function?

A. The board is unable to function.

Q. Okay. And, again, we're seeing it, you've been asked some questions about letters being sent out without approval of the board or other people, correct?

A. That's correct.

Q. That's just another example of how this board is acting among each other with letters being sent out without approval by the master association, correct?

A. That's true.

Q. Are you concerned with the functionality of the master association as it currently stands today?

A. I am.

Q. Okay. And I think the best example of the issues involved with the master association is just

01:19PM
01:20PM
01:20PM
01:20PM
01:20PM

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 the fact that there's a lawsuit where two board
2 members have sued the other two board members,
3 correct?

4 **A.** That's true.

5 Q. Have you ever been in an association in your
6 20 years where two board members have sued the
7 other two board members?

8 **A.** No, sir.

9 Q. Does it concern you?

10 **A.** It absolutely concerns me because prior to
11 the suit we had problems binding coverage, D&O
12 coverage. And I'm concerned that next year they
13 may not have it.

14 Q. Okay.

15 **A.** Due to the number of lawsuits.

16 Q. And aren't some of these issues that we've
17 talked about that I just ran through as examples of
18 issues with the master association, aren't some of
19 those issues pretty easy to fix if everybody got
20 along?

21 **A.** I would think they would be, yes.

22 Q. For example, the security and the security's
23 contract, whether or not to go live on the front
24 gate now and leave the back gate open, for example?

25 **A.** Yes.

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

01:21PM

01:21PM

01:21PM

01:21PM

01:22PM

1 Q. I mean, it's easy to come to a compromise in
2 regard to let's go live on the front gate while we
3 figure out the issue with the back gate, correct?

4 A. Yes, sir.

5 Q. But they can't even do that, correct?

6 A. No, sir.

7 MR. RIVERA: That's all the questions I
8 have.

9 MR. BELLAMY, III: Let's mark this.
10 (EXHIBIT 13, A Message from the Ocean
11 Front Spa and Renaissance Tower, was
12 marked for identification.)

13 **EXAMINATION**

14 **BY MR. BELLAMY, III:**

15 Q. Barbara, I'm going to hand you what's been
16 previously marked as Exhibit 13 to your deposition.
17 It's a three-page document. It's titled, "A
18 Message from Oceanfront Spa and Renaissance Tower."

19 Then under that it's got the introduction,
20 and there's another heading "Legal Update." And
21 I'm on the second page. There's a heading, "Loss
22 of Income, Security Issues." Another heading,
23 "Summary Issues." Another heading, "No Board of
24 Officers Elected." And the last two headings are
25 "Receiver, Special Referee" and "Final Summary."

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

01:22 PM

01:22 PM

01:23 PM

01:23 PM

01:23 PM

1 the contract. The second motion was that they
2 would authorize Laurie to sign the contract.

3 Q. Okay. And who voted? Was it unanimous?

4 A. Yes, it was.

5 Q. Next issue: "Lazy River Resurface and
6 Lights." Tell me a little bit about that.

7 A. The lazy river is in dire need of
8 resurfacing. They had been painting it, and it had
9 been painted prior to us. And there's a fiberglass
10 coat on it, so it's going to cost more to take just
11 the paint off. You have to remove the fiberglass.

12 And we have been getting bids for that, and
13 they haven't made their final selection. They're
14 going to have another meeting on Sunday, October
15 28th, and hopefully we'll be able to get the pool
16 resurfaced.

17 Q. What amount are the bids coming back at to
18 resurface --

19 A. The lazy river is 50,000 just itself, and
20 then the others are -- like the zero entry pool is
21 around 20,000, and then the water park pool is
22 around 20,000.

23 So it will be close to \$100,000 for those
24 three water features.

25 Q. That's been bid out to three separate

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

11:49AM

11:49AM

11:49AM

11:50AM

11:50AM

1 contractors?

2 **A.** I actually have four proposals.

3 Q. Is the work going to be -- scope of work
4 will be over -- is an engineer going to overlook
5 it?

6 Have y'all employed an engineer?

7 **A.** No, we have not.

8 Q. So my understanding is no engineer's going
9 to oversee that work being done, correct?

10 **A.** No.

11 Q. And who are the contractors that submitted
12 bids on this?

13 **A.** Ken's Pool, Hauk Pools, Active Concrete
14 Shooters, and Pool Services.

15 Q. When you say "And Lights," what is that?
16 You're talking about the resurfacing, along with
17 the lights in the --

18 **A.** There are 13 lights in the lazy river, and
19 at this time, only one of the lights is working.
20 So when they do the refinishing project, we are
21 hopeful that they will approve the lighting to be
22 repaired at that time.

23 Q. But you find out on the 28th?

24 **A.** Yes, sir, hopefully.

25 Q. Do you have any hope that the board is going

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

11:50AM

11:50AM

11:51AM

11:51AM

11:51AM

**EMPRESS MANAGEMENT, LLC
MANAGEMENT AGREEMENT**

**THIS AGREEMENT CONTAINS A BINDING IRREVOCABLE AGREEMENT TO ARBITRATE
AND IS SUBJECT TO ARBITRATION PURSUANT
TO TITLE 15, CHAPTER 48 (UNIFORM ARBITRATION ACT) OF
THE CODE OF LAWS OF SOUTH CAROLINA**

THIS AGREEMENT, made and entered into this ___ day of _____, 2017, by and between The Myrtle Beach Resort HOA, Inc., hereinafter "Association," and Empress Management, LLC, hereinafter "Managing Agent."

WITNESSETH

WHEREAS, Association is a nonprofit corporation consisting of the owners of lots or units in The Myrtle Beach Resort HOA, Inc, located in Horry County, South Carolina, and is vested with certain duties relative to the administration and operation of The Myrtle Beach Resort HOA, Inc.; and

WHEREAS, The Myrtle Beach Resort HOA, Inc, Inc. consists of Units, Common Elements, and Common Property, and improvements as described in the Governing Documents, defined below; and

WHEREAS, the nature of the duties and responsibilities of the Association is such that the Association desires to employ a Managing Agent;

NOW, THEREFORE, in consideration of the mutual promises made in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged by the parties hereto, the parties agree as follows:

1. DEFINITIONS:

a. "Assessments" means those assessments, dues, charges, and/or fees established and approved by the Board pursuant to the Governing Documents and/or applicable law, which the Owners are bound to pay as their share of the common expenses of the Association.

b. "Association" means the Association consisting of all the Owners of units and/or lots in the Project, as organized under the Governing Documents of the Project for the purpose of administering the Project.

c. "Approved Budget" means the annual financial projection for Association operations, which has been approved by the Board.

d. "Board of Directors" or "Board" means the Board of Directors or other body in charge of the Association pursuant to the Governing Documents.

e. "Common Elements," "Common Property," or "Common Properties" means the common elements and any property and improvements specified in the Governing Documents as belonging to the Association or the Owners in common. These terms do not include the interior



space of any unit, any lot or residence owned by an individual Owner and not owned by the Association or in common with other Owners.

f. "Governing Documents" means the Articles of Incorporation, Declaration, Master Deed, Covenants, Conditions, and Restrictions, By-Laws, and other recorded or adopted documents and amendments thereto as may be applicable that govern or control the administration, management, and operation of the Project.

g. "Monthly Financial Reports" shall include the following: Balance Sheet, Income Statement, and supporting reports and schedules for Accounts Receivable and Accounts Payable.

h. "Owner" or "Owners" shall mean all of the persons or entities which own Units and/or Lots in the Project and shall also refer to a particular person owning a Unit or Lot in the Project.

i. "Project" shall mean the property that is subject to the Governing Documents.

j. "Unit[s]" or "Lot[s]" shall mean a portion of the Project which may be independently owned and is intended for use and occupancy as a single family residence. The terms shall include, by way of illustration but not limitation, condominium units, townhouse units, duplex homes, cluster homes, patio or zero lot in homes, and single family detached houses on separately plotted lots, and vacant land intended for development for use and occupancy as a residence or residences, but shall not include Common Areas or Common Property.

2. EMPLOYMENT:

a. The Association hereby appoints the Managing Agent as its exclusive Association Manager and Managing Agent hereby accepts the appointment on the terms, covenants, and conditions set forth in this Agreement. The Managing Agent will deliver services as provided in this Agreement under the direction of the Board of Directors of the Association. The Board may appoint a single representative to furnish information and instructions to the Managing Agent for performance of its duties. In the event the Board does not appoint a single representative, the President shall serve as the representative. The Managing Agent shall be entitled to rely on the appointed representative or President as being authorized by the Association's Board.

b. The Association acknowledges the importance and value of the Managing Agent's employees and agents to the business of the Managing Agent, and agrees to refrain from hiring or employing, directly or indirectly, any person who is or was employed by the Managing Agent during the term of this Agreement, including any renewal term or holdover period, and for a period of one year after the termination of this Agreement without first obtaining the written consent of the Managing Agent.

3. TERM:

Unless sooner terminated, as provided herein, this Agreement shall remain in full force and effect for an initial period of 24 month(s) commencing January 1, 2018 through December 31, 2020 ("Initial Term"). Thereafter, this Agreement shall automatically renew for one (1) year periods ("Renewal Term"). After the expiration of the Initial Term and Renewal Term this Agreement shall continue on a month to month basis. This Agreement may be terminated by either party hereto by giving 90 days written notice to the other party; however, the Association

shall be responsible for the payment of all compensation due to the Managing Agent through the effective date of cancellation.

4. COMPENSATION:

a. The Association agrees to pay all reasonable costs and expenses incurred by the Managing Agent in the performance of its duties, and agrees to pay the Managing Agent a fee of \$68,000 annually, payable in equal monthly installments which shall be billed on the first day of each month and due for payment no later than the fifth day of each month. If the Association is late in its payment, a late fee of \$100.00 will be added. The fee due to the Managing Agent shall be subject to an annual increase as approved and/or negotiated between the agent and the Board of Directors.

b. Additional Services: The Association may request the Managing Agent provide additional or expanded services beyond the services set forth in this Agreement and not included in the annual compensation. Such additional or expanded services may include but are not limited to insurance claim management, assistance with special projects such as roofing, siding, painting, seal coating, or other construction or maintenance projects, and assistance, participation, or research related to legal action initiated by or against the Association or the Board. The Association agrees to pay the Managing Agent a fee for such services as described in Exhibit "A" hereto. If such additional or expanded services are requested, the Managing Agent will bill the Association and the Association will pay the Managing Agent on a monthly basis for such services.

c. The Association agrees to pay the Managing Agent on a monthly basis for office, administrative, and other charges as described in Exhibit "A" hereto.

d. Transfer and Set-Up Fee: Association shall pay the Managing Agent a one-time fee of \$500.00 upon acceptance of this Agreement.

5. LIMITATIONS ON AUTHORITY:

It is understood and agreed that the authority and duties conferred on the Managing Agent hereunder are limited as provided herein and are in accordance with the Association's governing documents and applicable state law. The Managing Agent shall be responsible for implementing the policy decisions of the Board and shall be subject to the lawful decisions of the Board, but shall be entitled to exercise its discretion as to the means of implementation of such policies within the scope and intent of the Agreement.

6. RESPONSIBILITY OF THE ASSOCIATION:

The Association shall retain the primary responsibility for enforcement of the provisions of its Governing Documents and its contractual agreements.

7. DUTIES OF MANAGING AGENT:

The Managing Agent shall perform the following services and duties, consistent with the Governing Documents and consistent with such budgetary limitations as may be imposed by the Association and pursuant to the consent of the Association's Board:

a. Financial Services:

1. Prepare and submit to the Board for approval a proposed budget for the Project, setting forth the projected revenue and expenses for the Project for the next fiscal year. The proposed budget shall be submitted to the Board for its approval prior to the commencement of the new accounting year. Any proposed budget prepared by the Managing Agent shall be subject to the approval of the Board, and the Board retains full responsibility for the appropriateness of data contained within the budget.

2. Prepare and review routine monthly financial reports on an accrual basis of receipts and disbursements, itemized according to the budget, and submit these statements to the Board of Directors.

3. Maintain accounting records in a manner to facilitate an annual audit and the preparation of tax returns by an independent accountant. Such records shall be available for inspection by members of the Association during regular business hours.

4. Prepare an annual letter to members of the Association reflecting the adopted budget and outlining the members' assessments for each Unit or Lot as computed by reference to the appropriate section of the Governing Documents.

5. Be the exclusive receiving agent to receive assessment payments due the Association. In the name of the Association, the Managing Agent shall have the authority to bill, request, demand, collect, receive, and give receipt for all assessments which may be due to the Association.

6. Maintain a monthly record of assessment billings, payments, late fees, and adjustments.

7. Assist in the development and enforcement of procedures to collect assessments from delinquent Owners. In the name of the Association, the Managing Agent may institute legal or equitable action against a defaulting Owner for assessment payments due the Association. The Managing Agent shall not institute a lawsuit against a defaulting Owner unless authorized to do so by the Board of Directors.

8. Inform the Board of Directors of any monetary shortfalls and request that the Board provide the funds or make a special assessment to remedy the anticipated insufficiency. Failure on the part of the Association to provide said funds or make a special assessment when requested by the Managing Agent may, at the option of the Managing Agent, be construed as a material breach of the Agreement, and Managing Agent may provide 30-day notice. The Managing Agent shall not undertake to pay expenses of the Association from the Managing Agent's own funds, but shall only be required to pay expenses of the Association to the extent that funds have been received by the Association.

9. Establish and maintain a separate account for all operating funds of the Association in a federally insured institution selected by the Managing Agent, indicating the agency or custodial nature thereof. *Unless prohibited by the Governing Documents or applicable state law, the Managing Agent shall be an authorized signatory on such account.* Managing Agent shall be authorized to deposit all funds collected from the

Association's Members or otherwise accruing to the Association. The Managing Agent may also establish and maintain such other accounts for the Association as may be requested by the Board of Directors or required by the Governing Documents, including Operating, Reserve, Savings or Insurance accounts.

10. Be responsible for processing all payments due to the Association and paying all expenses and obligations of the Association out of the Association's funds.

11. Be authorized to purchase, out of the Association's funds equipment, tools, goods, supplies, and materials as shall be reasonably necessary to perform the maintenance, upkeep, repair, replacement, refurbishing, and preservation of the Common Areas.

12. Arrange for and assist in the preparation of annual federal tax returns and annual State tax returns.

13. Handle all correspondence related to business matters concerning financial transactions of the Association.

b. Administration:

1. The Managing Agent shall confer with the Board when so requested in connection with the performance of the Managing Agent's duties. The Managing Agent shall be available to attend four (4) Board meetings per year either in person or via teleconference, with each up to two (2) hours duration. In the case of additional meeting time and / or special meetings, there will be an additional charge. The Managing Agent shall prepare and send notice of the board meeting and prepare the Agenda. The Managing Agent shall prepare minutes and send to each Board member.

2. Attend one (1) Annual and one (1) Organizational Meeting per year. In addition, shall assist the Board in preparing for the Annual Meeting.

3. Assist the Officers of the Board in maintaining the Association's minute book(s), membership list, all financial record books, accounts and other records required to be kept by the Association. Such records shall be kept by the Managing Agent and shall be available for use and inspection by the Association members upon request during normal business hours.

4. Assist in conjunction with a qualified insurance agent and make recommendations to the Board as to the form or forms of Insurance for the Association, and which may be required to comply with the provisions of Association documents. The Managing Agent shall assist the Board in acquiring its insurance policies. The Association may delegate to the Managing Agent its authority to obtain bids for, contract to purchase and actually purchase such insurance for the Association following final selection and at the direction of the Board of Directors.

5. Assist in preparing and distributing Bulletins to the general membership relating to affairs of the Association and/or new policies as promulgated by the Board.

6. At the direction of the Board of Directors and at the expense of the Association, the Managing Agent may retain and employ attorneys, accountants, engineers and such other experts and professionals whose services are reasonably required to effectively perform its duties and exercise the powers hereunder.

7. Assist the Board and/or appointed Committees in drafting and notifying owners of Rules and Regulations as promulgated by the Board of Directors.

8. Archived files / records will be stored on Association property whenever practicable. If needed, the Managing Agent will warehouse archived files / records at a rate of \$4.00 per box per month.

9. When the Association institutes an action of foreclosure against a unit / lot owner, the Managing Agent will be due a fee of \$100.00 for special preparation of attorney requested information. This fee will be added to the amounts due to the Association in the foreclosure action.

c. Property Supervision:

1. The Managing Agent shall, with the assistance and/or guidance of the Board, cause the Common Elements and Limited Common Elements to be maintained and repaired, including landscaping, cleaning and such other normal maintenance and repair work as may be necessary. The Managing Agent shall inspect, with the assistance and / or guidance of the Association's appointed committees, the general appearance of the buildings and grounds, to determine that the facility manager and/or maintenance subcontractors are causing the general Common Elements and Limited Common Elements to be reasonably maintained. For any one item of repair, replacement or refurbishment, the expense incurred may not exceed the sum of one thousand dollars (\$1000.00) unless specifically authorized by the Board, excepting, however, that emergency repair involving manifest danger to persons or property or immediately necessary for the preservation or safety of the property or for the safety of persons or require to avoid suspension of any necessary services to the Association, may be made by the Managing Agent, with regard to the above limitation.

2. The Association grants to the Managing Agent access at all times to all of the Common Elements, Limited Common Elements and all other Association property to carry out its obligations in this Agreement. Subject to the provisions of the Association documents, the Association grants the Managing Agent access to each unit / lot during reasonable hours as may be necessary for the maintenance of the Common Elements or Limited Common Elements. The Association shall indemnify the Managing Agent from any claims, demands, judgments or suits that may be brought against or incurred as a result of its exercising its right of access to individual units/lots as herein provided.

3. Be reasonably available to negotiate and supervise, at the direction of the Board of Directors, any needed maintenance and service contracts.

4. Assist the Association in obtaining professional personnel and services to repair items in the Common Elements and Limited Common Elements.

5. The Managing Agent shall make regular visual inspections of the Common Elements to ensure compliance with the Association's covenants, rules, and regulations,

and shall report the results of the inspections to the Board of Directors. If more visual inspections are requested, an additional fee may be required.

d. Maintenance Services/Supplying Goods and Services:

1. The Managing Agent may provide or cause to be provided on-site personnel, assigned to the Association on a full time and/or part time basis for such purposes as may be necessary or appropriate to carry out the maintenance responsibilities of the Association. The fee for the maintenance personnel will be the approved budget allocation, including, but not limited to, payroll, social security, state and federal unemployment, employer and employee liability insurance, payroll administration, worker's compensation, and applicable benefits, invoiced and payable per pay period. In the event the Association approves overtime and/or increases in payroll or benefits, the fee payable will be adjusted accordingly.

2. The Managing Agent may provide or cause to be provided pest control treatment to the Common Elements, the Limited Common Elements, and the Unit/Lot invoiced and payable monthly in advance. The Managing Agent shall not be responsible nor have any obligations for the inspection and/or treatment of any property for termites, fungus, mold, excessive moisture, or any other wood destroying organisms.

3. The Managing Agent has disclosed and further discloses to the Association that, primarily by virtue of its services to other similar Associations, the Managing Agent is, on occasion, able to obtain some discounts by dealing on a volume basis with suppliers, subcontractors and laborers. All goods and services provided or caused to be provided shall be priced at or below market, reflecting its volume purchasing ability. Any deviation from the budget for goods and/services provided by the Managing Agent must have prior approval of the Board and/or its designee before the rendering of said services, except in the event of an emergency, when the Managing Agent is authorized to act in its sole discretion.

e. Casualty Loss, Restoration, Major Projects, and Improvements:

1. Casualty Loss and Restoration: In respect to casualty loss and restoration of Association property, or any portion thereof, including restoration or repair made necessary by Acts of God or other cause of any portion of the Common Area or Limited Common Area, the Managing Agent shall, if authorized by the Board, provide the necessary service for the filing of insurance claims, coordination with insurance adjusters, assist in filing proof of losses, coordinate restorations efforts through general contractors and / or individual contractors and inspect workmanship. The Managing Agent shall make recommendations to the Board as to determine, assess, charge and levy the cost of casualty loss, restoration among the Owners in such proportions as it deems advisable, notwithstanding the fact that in the event of casualty loss, damage may be covered by insurance. All services rendered by the Managing Agent hereunder shall be additional services for which the Managing Agent is entitled to additional compensation as set forth in Exhibit "A."

2. Major Projects and Improvements: In respect to major projects and improvements of any Association property, or any portion thereof, including painting,

waterproofing, roofing, carpeting, and paving of any portion of the Common Area or Limited Common Area, the Managing Agent shall, if authorized by the Board, provide necessary service to coordinate work efforts through general contractors and/or individual contractors and inspect workmanship. The Managing Agent shall make recommendations to the Board as to determine, assess, charge and levy costs of major projects and improvements among the Owners in such proportions as it deems advisable. All services rendered by the Managing Agent hereunder shall be additional services for which the Managing Agent is entitled to compensation as set forth in Exhibit "A."

f. Additional Services:

1. The Managing Agent, when authorized by the Board, will be available as an Association witness or representative when involved in legal claims. The hourly rate for the Managing Agent shall be \$60.00 per hour clerical, research and discovery time and \$100.00 per hour for court appearance and deposition time.

2. The Managing Agent, when required by the Board, shall have the right, but not the duty, to provide or perform or cause to be provided or performed, other specialized services, other than those listed in items identified above, and shall be paid a fee as follows: Association Manager \$100.00, Administrative \$60.00 and Accounting Staff \$80.00 per hour.

8. MANAGER AS MANAGING AGENT or AGENT OF THE ASSOCIATION:

It is understood and agreed that everything done by the Managing Agent under the provisions of Section 7 herein shall be done as the Managing Agent for the Association and any and all obligations or expenses incurred thereunder shall be on behalf of and at the expense of the Association. Any payments to be made hereunder shall be made out of the accounts of the Association. The Managing Agent shall not be obligated to make any advance on account of the Association or pay any sum on the Association's behalf, nor shall the Managing Agent be required or obligated to incur any liability or obligation under this Agreement.

9. DWELLINGS (UNITS/LOTS):

This Agreement does not contemplate nor is the Managing Agent responsible or required to perform the upkeep and repair of non-Association property, including Units and Lots, the responsibility for which belongs to a third party under the Governing Documents. However, the Managing Agent may, in its sole discretion, perform such maintenance and repair services for and to a Unit or Lot as may be required and shall attempt to obtain reimbursement from the owner of the Unit or Lot as permitted by the Governing Documents and/or applicable law.

10. INDEMNITY AND EXCULPATION:

The Managing Agent and its officers, directors, agents, and employees shall not be liable to the Association and/or its members or any other party for any loss or damage caused by acts or omissions of the Managing Agent, its officers, directors, agents, and employees unless such acts or omissions constitute gross negligence or willful misconduct. The Association agrees to indemnify, defend, and hold harmless the Managing Agent, its officers, agents, members, directors, and employees from all claims, damages, judgments and fees arising from any injury to any person or persons or damage to any property in, about, or in connection with the

Association, unless such injury or damage has been caused by the Managing Agent's gross negligence or willful misconduct. The Association agrees to include the Managing Agent as a named insured on all Association liability policies.

In the event of failure by the Association to fully perform hereunder, the Managing Agent may do so, but all costs and expenses so incurred by the Managing Agent shall be reimbursed by the Association to the Managing Agent, together with interest on the same from the date any such expense was paid until reimbursed, at the rate of 8% per annum.

All indemnity and exculpation provisions contained herein shall survive the termination of this Agreement.

11. INSURANCE:

The Managing Agent will at all times during the term of this Agreement keep in force and furnish the Association with Certificates of Insurance for the following coverage, upon written request from the Association:

- a. Fidelity Coverage for the employees of the Managing Agent in an amount not less than \$500,000.00. *(If the Board of Directors requires additional coverage or increased limits, this can be completed prior to the start date.)*
- b. Comprehensive general liability coverage, including completed operations, blanket contractual and personal injury coverage, in an amount not less than \$1,000,000.00.
- c. Errors and Omissions Insurance/Professional Liability in an amount not less than \$1,000,000.00.
- d. Workers Compensation insurance in the statutory amount covering all employees who work at the Project.

The Association will at all times during the term of this Agreement keep in force and name the Managing Agent as an Additional Named Insured for the following coverage:

- a. Comprehensive general liability insurance in an amount not less than \$1,000,000.00.
- b. Directors and Officers liability insurance in an amount not less than \$1,000,000.00.

12. DEFAULT:

a. By the Association: If the Association or its Members shall interfere with the Managing Agent in the performance of its duties and the exercise of its powers hereunder, or if the Association shall fail to promptly do any of the things required of it under the terms of this Agreement, then after ten (10) days written notice to the Association, the Managing Agent, may, in addition to any other remedy find it in law or in equity, bring an action against the Association for damages and / or specific performance and / or such other rights and remedies as it may have. In the event the Association breaches this Agreement, the Managing Agent shall be

entitled to be reimbursed for its attorney's fees and costs incurred by it in enforcing its rights under this Agreement.

b. By the Managing Agent: Failure by the Managing Agent to substantially perform its duties and obligations under this Agreement for a continuous period of thirty (30) days after written notice of default from the Association, specifying the default complained of, shall be grounds for the Association's cancellation of this Agreement. In addition to any other remedy in law or in equity, the Association may bring an action against the Managing Agent for damages and/or specific performance and/or such other rights and remedies as it may have and shall further be entitled to be reimbursed for its attorney's fees and costs incurred by it in enforcing its rights under this Agreement.

13. ARBITRATION:

In the event of any controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity of this Agreement, the parties will attempt in good faith to resolve such controversy or claim. If the matter has not been resolved within sixty (60) days of the commencement of such discussion (which period may be extended by mutual agreement), then the parties hereby agree to immediately submit the controversy to binding arbitration, for the parties agree to waive their right to a jury trial. The arbitration shall be conducted by a single arbitrator in accordance with the commercial rules of the American Arbitration Association.

Judgment upon the award rendered by the arbitrator may be entered by a court having jurisdiction thereof. All proceedings relating to the arbitration shall occur in Horry County, South Carolina. The arbitration shall have the authority to abridge or enlarge the substantive rights or remedies available under existing law, and shall determine the right and obligations of the parties according to the substantive and procedural laws of South Carolina. Each of the parties shall use all reasonable efforts to ensure that any arbitration proceeding is completed within ninety (90) days following notice of a request for arbitration. The prevailing party in any arbitration proceeding shall be entitled to an award of all reasonable out-of-pocket costs and expenses. Upon request of either party, (i) the arbitrator may require that the subject arbitration proceedings be kept confidential, and (ii) no party shall disclose or permit the disclosure of any information procedural or disclosed in the arbitration proceedings until the award is final. A party shall not be prevented from seeking temporary injunctive relief before a court of competent jurisdiction in an emergency or other urgent or exigent situation, but responsibility for resolution of any disputes shall be appropriately transferred to the arbitrator upon appointment in accordance with the provisions hereof.

14. ENTIRE AGREEMENT:

This Agreement contains the entire agreement between the parties hereto and any agreement hereafter made shall be ineffective to modify or amend this Agreement unless such subsequent agreement is in writing and signed by both parties.

15. APPLICABLE LAW:

This Agreement shall be construed in accordance with the laws of the State of South Carolina.

16. SEVERABILITY:

If any section, subsection, clause, phrase, or word of this Agreement shall be and is for any reason held or ruled to be inoperative, void, or unenforceable, such holding or ruling shall not affect the remaining provisions of this Agreement, and it shall be construed to have been the intent of the parties hereto to agree without such void or inoperative part therein and the remaining provisions of this Agreement shall be deemed and held to be valid and fully effective as if the excluded parts had never been included herein.

17. SUCCESSORS AND ASSIGNS:

This Agreement shall inure to the benefit of and constitute a binding obligation upon the Managing Agent, Association, Board, and their successors and assigns.

18. FORCE MAJEURE:

For the purposes of this Agreement, "Force Majeure" shall mean Acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of the Managing Agent. In the event of a Force Majeure, the time for performance under this Agreement shall be appropriately extended by the amount of delay so caused.

19. WAIVER:

The failure of any party to exercise any right or power given hereunder, or to insist upon strict compliance by the other party with its obligations set forth herein and/or any custom or practice of the parties at variance with the terms hereof shall not constitute a waiver of either party's rights to demand strict compliance with the terms and conditions of this Agreement.

20. NOTICE:

Any notice required to be given under this Agreement by either party to the other shall be in writing and shall be deemed to have been sufficiently given when made in writing and sent via United States Mail as certified mail, return receipt requested, postage prepaid, addressed as follows:

IF TO THE ASSOCIATION:

IF TO THE MANAGING AGENT:

Either party may change its address to which notices shall be sent by giving the other party written notice of such change of address.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers or members on the date above first written.

WITNESS:

Manay Moore

Pres. Shelby Phipps

The Myrtle Beach Resort HOA, Inc:

By: Jim Pate

Its: SFC

WITNESS:

Julian Johnson

Michelle Casper

EMPRESS MANAGEMENT, LLC

By: Dale

Its: Owner



Myrtle Beach Resort HOA, Inc.

Monthly Variance Report: September 2018

OPERATING EXPENSES

REPAIRS & MAINTENANCE

41300 Grounds Staff Contract Maintenance: Slightly over budget for September. An invoice for extra staffing for the week ending 9/9/18 was received during the month.

41800 Pool Contract Maintenance: Over budget for the month due to contract being higher than budgeted amount and extra staffing for week ending 9/2/18.

42000 Pool Supplies/Repairs: Over budget for the month. The largest invoices received were for replacing an impeller, inspecting the gravity flow system between the negative entry pool and the holding tank, installing new plaster rings and drain covers in the negative entry pool and pool chemicals.

42700 Golf Cart Lease Expense: The lease is over for the golf cart.

43000 General Maintenance & Materials: Under budget for the month. The largest invoices received during the month were for the monthly copier rental, paint for the front entrance, the rental of a scope to determine why the mushroom at the pool wasn't returning any water and repairs to two Husquarna blowers.

44000 Landscape Maint./Supply: There were no invoices for this line item received for September.

47000 Janitorial Supplies: Over budget for the month. Invoices were received for general cleaning supplies, garbage can liners and W/C Restroom upkeep restroom supplies.

GENERAL & ADMINISTRATIVE

51100 Printing/Copies: Under budget for September. The budget for this line item should be reduced for next year's budget.

52000 Legal Services: There were no invoices received for this line item for September.

55000 Gate Pass Refunds: Refunds were issued in the amount of \$120 during the month.

56000 Owned Unit Expense: Over budget for September. Invoices were received from MBR Five Seasons and Renaissance Tower for September dues on units.

57000 Storage Units - Building A: There was no line item for this in the budget. Invoices were received from Myrtle Beach Resort HPR for the use of storage rooms #1-3, 3-2 and 4-2 for January through September of this year.

83377 Insurance Claim-Hurricane Florence: An invoice was received for the clean-up and disposal of debris from the Hurricane.

UTILITIES

60000 Electricity: Over budget for the month of September. Once we have more historical data, we will weigh the utility line items.

60100 Water/Sewer: Under budget for the month. Once we have more historical data, we will weigh the utility line items.

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173



60200 Fuel: Under budget for September. The amount accrued last month was higher than the actual invoice received, resulting in a lower expense this month. Also, the invoices for September had not yet been received at the time the financial statements were prepared, so an accrual was made based on prior month data. Once we have more historical data, we will weigh the utility line items.

60300 Trash Removal: Over budget for the month. The invoices for August and September had not yet been received at the time the financial statements were prepared so an accrual was made.

60500 Cable TV: Over budget for the month. There was an increase in fees from Spectrum beginning in June, therefore this line item will be over budget each month for the remainder of the year.

60600 Phone: Due to an overpayment in August and the HTC Capital Credit Refund received in September, there is a negative expense for this line item for the month.

OTHER EXPENSES

71000 Security Services: Under budget for September. Invoices were received for the first three weeks in the month and an accrual was made for the fourth week.

71010 Security Supplies Expense: There were no invoices received for this line item for the month.

RESERVE EXPENSES

There were no reserve expenses received for September.

ACCOUNTS RECEIVABLE

The Accounts Receivable balance at 9/30/18 is \$222,301.50.

Myrtle Beach Resort HOA, Inc.

Page:

Balance Sheet
As of 09/30/18

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

Account	Description	Operating	Reserves	Other	Totals
ASSETS					
10000	Alliance Bank Operating Cash	12,120.12			12,120.12
10500	TD Bank-Mailbox Deposits	4,355.53			4,355.53
10550	TD Bank Operating Account	7,534.00			7,534.00
10600	BB&T Cash Operating	155,039.94			155,039.94
10700	BB&T Cash Reserves		61,357.65		61,357.65
10900	Alliance Reserve MM Account		120,351.79		120,351.79
11000	BB&T Insurance Escrow	3,125.00			3,125.00
12000	Regular Assessment Receivables	222,301.50			222,301.50
13111	Commercial Units	412,138.21			412,138.21
13150	Accumulated Depreciation	(1,571,172.65)			(1,571,172.65)
13300	Prepaid Insurance	21,435.48			21,435.48
13400	Other Prepaid Expenses	9,052.50			9,052.50
13500	Prepaid Taxes	8,576.00			8,576.00
13600	Furniture and Fixtures	69,988.78			69,988.78
13720	Building Improvements	330,588.58			330,588.58
13800	Signage	7,286.23			7,286.23
13900	Capital Equipment	896,613.84			896,613.84
14000	Land/Land Improvements	286,400.01			286,400.01
14100	Due from Operating to Reserves		377,239.87		377,239.87
14300	Due from Insurance to Operatin	11,455.13			11,455.13
	TOTAL ASSETS	886,838.20	558,949.31	.00	1,445,787.51
LIABILITIES & EQUITY					
CURRENT LIABILITIES:					
20500	Accounts Payable	20,071.62			20,071.62
21000	Prepaid Owner Assessments	2,821.08			2,821.08
21400	Mail Box Deposits	4,325.53			4,325.53
24100	Due to Reserve from Operating	377,239.87			377,239.87
24120	Due fr Insurance to Operating	11,455.13			11,455.13
	Subtotal Current Liab.	415,913.23	.00	.00	415,913.23
RESERVES:					
	Subtotal Reserves	.00	.00	.00	.00
EQUITY:					
28000	Retained Earnings - Operating	702,357.99			702,357.99
28100	Retained Earnings - Reserves		481,223.60		481,223.60
	Current Year Net Income/(Loss)	(231,433.02)	77,725.71	.00	(153,707.31)
	Subtotal Equity	470,924.97	558,949.31	.00	1,029,874.28
	TOTAL LIABILITIES & EQUITY	886,838.20	558,949.31	.00	1,445,787.51

Myrtle Beach Resort HOA, Inc.

Operating Income Statement
Period: 09/01/18 to 09/30/18

Page: 1

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

Account	Description	Current Period			Year-To-Date			Yearly Budget
		Actual	Budget	Variance	Actual	Budget	Variance	
OPERATING REVENUES								
30100	Regular Assessments	74,672.00	74,672.08	(.08)	672,048.00	672,048.72	(.72)	896,065.00
30200	Sales Commissions (BB)	2,595.25	1,000.00	1,595.25	8,942.85	9,000.00	(57.15)	12,000.00
30300	MBVR Sales/Rental Office Leas	46,706.18	5,384.56	41,321.60	49,464.43	48,461.22	1,003.21	64,615.00
30400	MBRV 2% Rental Commissions	13,886.31	7,653.33	6,232.98	72,690.42	68,879.97	3,810.45	91,840.00
30500	MBRV Food/Beverage Lease Inc.	14,298.44	10,723.83	3,574.61	128,728.67	96,514.47	32,214.20	128,686.00
30600	Trash Reimbursement Income	.00	200.00	(200.00)	12,898.53	1,800.00	11,098.53	2,400.00
30700	Gate Income	.00	12,083.33	(12,083.33)	.00	108,749.97	(108,749.97)	145,000.00
30750	Bike Week Parking Income	.00	.00	.00	20,265.00	.00	20,265.00	.00
30800	Storage Room Lease Income	(41,447.65)	942.58	(42,390.23)	16,652.59	8,483.22	8,169.37	11,311.00
30900	Common Element Fee(1/2 Gate)	.00	12,083.33	(12,083.33)	.00	108,749.97	(108,749.97)	145,000.00
31000	Interest Income	.00	.00	.00	2.03	.00	2.03	.00
32400	Mail Box Rental Income	21.00	.00	21.00	1,465.00	.00	1,465.00	.00
35000	Other Income	881.57	.00	881.57	881.57	.00	881.57	.00
	TOTAL REVENUES	111,613.10	124,743.06	(13,129.96)	984,039.09	1,122,687.54	(138,648.45)	1,496,917.00
LESS:RESERVE FUNDING								
99910	General Reserve Contribution	(11,333.33)	(11,333.33)	.00	(102,000.00)	(101,999.97)	(.03)	(136,000.00)
99930	Contingency Fund Contribution	(309.42)	(309.42)	.00	(2,784.78)	(2,784.78)	.00	(3,713.00)
	NET OPERATING REVENUE	99,970.35	113,100.31	(13,129.96)	879,254.31	1,017,902.79	(138,648.48)	1,357,204.00
OPERATING EXPENSES								
REPAIRS & MAINTENANCE								
41300	Grounds Staff Contract Maint.	10,598.40	10,416.67	(181.73)	111,552.00	93,750.03	(17,801.97)	125,000.00
41800	Pool Contract Maintenance	8,265.60	1,166.67	(7,098.93)	38,753.00	10,500.03	(28,252.97)	14,000.00
42000	Pool Supplies/Repairs	2,767.47	1,666.67	(1,100.80)	45,275.52	15,000.03	(30,275.49)	20,000.00
42500	Golf Cart Maintenance/Repairs	.00	250.00	250.00	4,990.75	2,250.00	(2,740.75)	3,000.00
42700	Golf Cart Lease Expense	.00	1,119.42	1,119.42	3,007.52	10,074.78	7,067.26	13,433.00
43000	General Maintenance & Materia	1,764.29	3,716.67	1,952.38	41,607.07	33,450.03	(8,157.04)	44,600.00
44000	Landscape Maint./Supply	.00	1,250.00	1,250.00	13,290.17	11,250.00	(2,040.17)	16,000.00
44300	Landscape Contract	1,750.00	1,837.50	87.50	15,750.00	16,537.50	787.50	22,050.00
44400	Lake Maintenance Contract	420.00	520.00	100.00	3,780.00	4,680.00	900.00	6,240.00
45000	Pest Control	.00	233.33	233.33	696.99	2,099.97	1,402.98	2,800.00
45100	Termite Bond	.00	18.60	18.60	289.00	529.25	240.25	566.40
45200	Nuisance Control Expense	.00	.00	.00	1,170.00	2,300.00	1,130.00	2,300.00
46600	Fire Alarm Maintenance	.00	200.00	200.00	924.44	1,800.00	875.56	2,400.00
46800	HVAC Maintenance	.00	250.00	250.00	497.00	2,250.00	1,753.00	3,000.00
47000	Janitorial Supplies	903.11	458.33	(444.78)	9,409.02	4,124.97	(5,284.05)	5,500.00
	TOTAL REPAIRS & MAINTENANCE	26,468.87	23,103.86	(3,365.01)	290,992.48	210,596.59	(80,395.89)	279,889.40

Myrtle Beach Resort HOA, Inc.

Operating Income Statement
Period: 09/01/18 to 09/30/18

Account	Description	Current Period			Year-To-Date			Yearly Budget
		Actual	Budget	Variance	Actual	Budget	Variance	
GENERAL & ADMIN								
51000	Office Supplies	13.64	333.33	319.69	5,183.31	2,999.97	(2,183.34)	4,000.00
51100	Printing/Copies	198.00	1,416.67	1,218.67	3,861.98	12,750.03	8,888.05	17,000.00
51200	Postage	204.86	291.67	86.81	1,032.02	2,625.03	1,593.01	3,500.00
51500	Mileage Reimbursement	.00	.00	.00	240.22	.00	(240.22)	.00
52000	Legal Services	.00	1,916.67	1,916.67	24,012.55	17,250.03	(6,762.52)	23,000.00
52100	Accounting/Tax Preparation	.00	.00	.00	.00	.00	.00	4,500.00
52200	Management Services	5,666.67	6,500.00	833.33	51,500.03	58,500.00	6,999.97	78,000.00
54000	Board Meeting Expense	.00	416.67	416.67	969.95	3,750.03	2,780.08	5,000.00
55000	Gate Pass Refunds	120.00	.00	(120.00)	5,400.00	.00	(5,400.00)	.00
56000	Owned Unit Expense	6,806.73	4,858.00	(1,948.73)	63,960.57	43,722.00	(20,238.57)	58,296.00
57000	Storage Units - Building A	2,125.53	.00	(2,125.53)	2,125.53	.00	(2,125.53)	.00
59900	Administrative Expense	299.04	166.67	(132.37)	4,157.70	1,500.03	(2,657.67)	2,000.00
83300	Insurance Expense	3,041.68	3,125.00	83.32	25,957.74	26,125.00	2,167.26	37,500.00
83377	Ins. Claim- Hurricane Florenc	2,600.00	.00	(2,600.00)	2,600.00	.00	(2,600.00)	.00
TOTAL GENERAL & ADMIN		21,076.15	19,024.68	(2,051.47)	191,001.60	171,222.12	(19,779.48)	232,796.00
UTILITIES								
60000	Electricity	4,822.01	4,416.67	(405.34)	33,316.93	39,750.03	6,433.10	53,000.00
60100	Water/Sewer	1,293.50	1,416.67	123.17	12,153.96	12,750.03	596.07	17,000.00
60200	Fuel	885.19	1,416.67	531.48	12,753.53	12,750.03	(3.50)	17,000.00
60300	Trash Removal	2,483.55	1,762.50	(721.05)	45,809.33	15,862.50	(29,946.83)	21,150.00
60500	Cable TV	23,612.39	15,735.83	(7,876.56)	181,974.54	141,622.47	(40,352.07)	188,830.00
60600	Phone	(581.58)	7,974.75	8,556.33	19,006.57	71,772.75	52,766.18	95,697.00
60700	Internet Service Expense	7,477.50	7,583.33	105.83	68,304.50	68,249.97	(54.53)	91,000.00
TOTAL UTILITIES		39,992.56	40,306.42	313.86	373,319.36	362,757.78	(10,561.58)	483,677.00
OTHER EXPENSES								
71000	Security Services Expense	26,000.06	27,500.00	1,499.94	208,761.31	247,500.00	38,738.69	330,000.00
71010	Security Supplies Expense	.00	250.00	250.00	2,938.91	2,250.00	(688.91)	3,000.00
72000	Income Taxes Expense	.00	.00	.00	.00	.00	.00	24,685.00
72010	Property Tax Expense	.00	.00	.00	43,206.17	56,600.00	13,393.83	56,600.00
72020	Licenses and Permits	.00	.00	.00	467.50	525.00	57.50	525.00
73000	Depreciation Expense	.00	501.08	501.08	.00	4,509.72	4,509.72	6,013.00
TOTAL OTHER EXPENSES		26,000.06	28,251.08	2,251.02	255,373.89	311,384.72	56,010.83	420,823.00
TOTAL EXPENSES		113,537.64	110,686.04	(2,851.60)	1,110,687.33	1,055,961.21	(54,726.12)	1,417,185.40
NET INCOME OPERATIONS		(13,567.29)	2,414.27	(15,981.56)	(231,433.02)	(38,058.42)	(193,374.60)	(59,981.40)

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

Myrtle Beach Resort HOA, Inc.

Page:

Reserve Income Statement
 Period: 09/01/18 to 09/30/18

Account	Description	Current Period			Year-To-Date			Yearly Budget
		Actual	Budget	Variance	Actual	Budget	Variance	
RESERVE REVENUES								
39500	General Reserve Funding	11,333.33	11,333.33	.00	102,000.00	101,999.97	.03	136,000.00
39510	YTD Contingency Funding	309.42	309.42	.00	2,784.78	2,784.78	.00	3,713.00
39520	YTD Interest Earned-Cap Reser	6.64	.00	6.64	443.00	.00	443.00	.00
TOTAL RESERVE REVENUES		11,649.39	11,642.75	6.64	105,227.78	104,784.75	443.03	139,713.00
RESERVE EXPENSES								
90903	RE-Curbing	.00	.00	.00	17,250.00	.00	(17,250.00)	.00
90904	RE-Pool Repairs	.00	.00	.00	4,121.42	.00	(4,121.42)	.00
90907	RE-Security Gate/Equipment	.00	.00	.00	2,650.00	.00	(2,650.00)	.00
90913	RE-Roof Replacement	.00	.00	.00	1,298.82	.00	(1,298.82)	.00
90921	RE-Office Furniture/Imprvmts.	.00	.00	.00	2,181.83	.00	(2,181.83)	.00
TOTAL RESERVE EXPENSES		.00	.00	.00	27,502.07	.00	(27,502.07)	.00
NET RESERVE REVENUE		11,649.39	11,642.75	6.64	77,725.71	104,784.75	(27,059.04)	139,713.00

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

GENERAL LEDGER TRIAL BALANCE

Starting account #: 30100 Starting date: 09/01/18
 Ending account #: "Last" Ending date: 09/30/18

Acct#	Description	Begin-balance	Total-DR	Total-CR	Net-change	End-balance
30100	Regular Assessments	597,376.00CR	.00	74,672.00	74,672.00CR	672,048.00CR
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 AR0000 AR01 74,672.00 Apply Assmt/Opt Charges					
30200	Sales Commissions (BB)	6,347.60CR	.00	2,595.25	2,595.25CR	8,942.85CR
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/30/18 AR0000 20703 847.50 BrownAug18SalesComms					
	09/30/18 GJ0060 ETVC-09 1,747.75 RclFeb/MarBBComms-30300					
30300	MBVR Sales/Rental Office Lease	2,758.25CR	1,747.75	48,453.93	46,706.18CR	49,464.43CR
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/30/18 GJ0060 ETVC-09 1,747.75 RclFeb/MarBBComms-30200					
	09/30/18 GJ0061 ETC-09 48,453.93 RclMoOfcl.Se fr30800to3030					
30400	MBRV 2% Rental Commissions	58,804.11CR	.00	13,886.31	13,886.31CR	72,690.42CR
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/28/18 AR0000 19909 13,886.31 MBRV Aug18 2% Comms.					
30500	MBRV Food/Beverage Lease Inc.	114,430.23CR	.00	14,298.44	14,298.44CR	128,728.67CR
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/10/18 AR0000 10093 14,298.44 Sep18 Lease-Allegiant					
30600	Trash Reimbursement Income	12,898.53CR	.00	.00	.00	12,898.53CR
30700	Gate Income	.00	.00	.00	.00	.00
30750	Bike Week Parking Income	20,265.00CR	.00	.00	.00	20,265.00CR
30800	Storage Room Lease Income	58,100.24CR	48,453.93	7,006.28	41,447.65	16,652.59CR
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/10/18 AR0000 20603 7,006.28 Sep18 MBRV Lease/StrgPymt					
	09/30/18 GJ0061 ETC-09 48,453.93 RclMoOfcl.Se fr30800to3030					
31000	Interest Income	2.03CR	.00	.00	.00	2.03CR
32400	Mail Box Rental Income	1,444.00CR	.00	21.00	21.00CR	1,465.00CR
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/06/18 AR0000 5958 21.00 Mailbox#237-Young					
33000	Storage Rm Lease Income	.00	.00	.00	.00	.00
35000	Other Income	.00	.00	881.57	881.57CR	881.57CR

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

GENERAL LEDGER TRIAL BALANCE

Starting account #: 30100 Starting date: 09/01/18
 Ending account #: "Last" Ending date: 09/30/18

Acct-#	Description	Begin-balance	Total-DR	Total-CR	Net-change	End-balance
	DATE SOURCE REFERENCE	DR-AMOUNT	CR-AMOUNT	DESCRIPTION	A/P REFERENCE	
	09/28/18 AR0000 006155		47.06	CitibankUnclaimedPropCk		
	09/28/18 AR0000 006156		126.57	CitibankUnclaimedPropCk		
	09/28/18 AR0000 006157		483.84	CitibankUnclaimedPropCk		
	09/28/18 AR0000 011032		224.10	CitibankUnclaimedPropCk		
39500	General Reserve Funding	90,666.67CR	.00	11,333.33	11,333.33CR	102,000.00CR
	DATE SOURCE REFERENCE	DR-AMOUNT	CR-AMOUNT	DESCRIPTION	A/P REFERENCE	
	09/27/18 RJ0001 ETC-09		11,333.33	Monthly RSV Contrib fr Op		
39510	YTD Contingency Funding	2,475.36CR	.00	309.42	309.42CR	2,784.78CR
	DATE SOURCE REFERENCE	DR-AMOUNT	CR-AMOUNT	DESCRIPTION	A/P REFERENCE	
	09/27/18 RJ0001 ETC-09		309.42	Monthly RSV Contrib fr Op		
39520	YTD Interest Earned-Cap Reserv	436.36CR	.00	6.64	6.64CR	443.00CR
	DATE SOURCE REFERENCE	DR-AMOUNT	CR-AMOUNT	DESCRIPTION	A/P REFERENCE	
	09/30/18 CR0000 ADJUST		6.64	Sep18 Int-BB&T RSV		
41300	Grounds Staff Contract Maint.	100,953.60	10,598.40	.00	10,598.40	111,552.00
	DATE SOURCE REFERENCE	DR-AMOUNT	CR-AMOUNT	DESCRIPTION	A/P REFERENCE	
	09/01/18 AP0010 VH765	9,878.40		FOUR OF A KIND	SEPT 18-Janitorial Staff	
	09/19/18 AP0802 VH811	720.00		FOUR OF A KIND	ExtraStaffingWE9/9/18	
41800	Pool Contract Maintenance	30,487.40	8,265.60	.00	8,265.60	38,753.00
	DATE SOURCE REFERENCE	DR-AMOUNT	CR-AMOUNT	DESCRIPTION	A/P REFERENCE	
	09/01/18 AP0010 VH765	6,585.60		FOUR OF A KIND	SEPT 18- Pool Contract	
	09/04/18 AP0760 VH776	1,680.00		FOUR OF A KIND	AddStaffingfrWE9/2/18	
42000	Pool Supplies/Repairs	42,508.05	2,868.04	100.57	2,767.47	45,275.52
	DATE SOURCE REFERENCE	DR-AMOUNT	CR-AMOUNT	DESCRIPTION	A/P REFERENCE	
	09/21/18 AP0805 VH812		100.57	HUCKS POOL CO.	Credit-Overpayment	
	09/28/18 AP0817 VH814	120.85		FOUR OF A KIND	ImpellerRplcd/CrcksfrmDeb	
	09/28/18 AP0817 VH815	41.58		FOUR OF A KIND	1GoKitPrchsdttoStck	
	09/28/18 AP0817 VH816	389.70		FOUR OF A KIND	AfterHrcneChemicalsPrchs	
	09/28/18 AP0817 VH817	440.00		KEN'S POOL SERVICE, LLC	InspectGrvityFlowSystem	
	09/28/18 AP0817 VH818	428.00		KEN'S POOL SERVICE, LLC	InstllNwPistrRngs/DrmCvrs	
	09/28/18 AP0817 VH819	280.00		KEN'S POOL SERVICE, LLC	BlewDebrisfrmHldngTrnk	
	09/28/18 AP0817 VH820	288.06		HUCKS POOL CO.	1DrumAcid 106.9 Gal	
	09/28/18 AP0817 VH821	91.80		HUCKS POOL CO.	1DrumAcidTnkOK	
	09/30/18 AP0828 VH833	172.69		HUCKS POOL CO.	12x12AqwarMnDrain	
	09/30/18 AP0828 VH834	246.91		HUCKS POOL CO.	1DrumAcid 84.48 Gal	
	09/30/18 AP0828 VH835	91.80		HUCKS POOL CO.	1DrumAcidTank OK	

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

GENERAL LEDGER TRIAL BALANCE

Starting account #: 30100 Starting date: 09/01/18
 Ending account #: "Last" Ending date: 09/30/18

Acct#	Description	Begin-balance	Total-DR	Total-CR	Net-change	End-balance
09/30/18	AP0828 VH836	276.65		HUCKS POOL CO.		1DmAcid 100.68 Gal
42500	Golf Cart Maintenance/Repairs	4,990.75	.00	.00	.00	4,990.75
42700	Golf Cart Lease Expense	3,007.52	.00	.00	.00	3,007.52
43000	General Maintenance & Material	39,842.78	1,764.29	.00	1,764.29	41,607.07
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/19/18 AP0802 VH809 138.54 SHERWIN-WILLIAMS ST.2711 Handicap Blue					
	09/19/18 AP0802 VH810 895.29 SHERWIN-WILLIAMS ST.2711 15/5GalMBRFmtEntrcPaint					
	09/28/18 AP0817 VH813 229.48 FOUR OF A KIND ReimbrsmntfRprHusqvrnaBl					
	09/30/18 GJ0059 ETC-09 500.98 SEP18AcRicoHCopierInv.					
44000	Landscape Maint./Supply	13,290.17	.00	.00	.00	13,290.17
44300	Landscape Contract	14,000.00	1,750.00	.00	1,750.00	15,750.00
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/30/18 AP0016 VH830 1,750.00 BBI LANDSCAPING SEPT 18 Monthly Maint					
44400	Lake Maintenance Contract	3,360.00	420.00	.00	420.00	3,780.00
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/30/18 GJ0059 ETC-09 420.00 SEP18AcRClearLakesInvoice					
45000	Pest Control	696.99	.00	.00	.00	696.99
45100	Termite Bond	289.00	.00	.00	.00	289.00
45200	Nuisance Control Expense	1,170.00	.00	.00	.00	1,170.00
46600	Fire Alarm Maintenance	924.44	.00	.00	.00	924.44
46800	HVAC Maintenance	497.00	.00	.00	.00	497.00
47000	Janitorial Supplies	8,505.91	903.11	.00	903.11	9,409.02
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/04/18 AP0035 VH785 600.00 MB RESORT OCEAN FRONT SPA Sept 18 W/C Restroom Upke					
	09/30/18 AP0828 VH837 303.11 GENCO BLKLinens/LavFablosa/TmC					
51000	Office Supplies	5,169.67	33.64	20.00	13.64	5,183.31
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0055 ETC-08 20.00 AUG18AcREmprsOfficeExplnv.					
	09/30/18 AP0019 VH854 13.64 EMPRESS MANAGEMENT, LLC AUG 18 Office Supplies					
	09/30/18 GJ0059 ETC-09 20.00 SEP18AcREmprsOfficeExplnv.					

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

GENERAL LEDGER TRIAL BALANCE

Starting account #: 30100 Starting date: 09/01/18
 Ending account #: "Last" Ending date: 09/30/18

Acct-#	Description	Begin-balance	Total-DR	Total-CR	Net-change	End-balance
51100	Printing/Copies	3,663.98	323.00	125.00	198.00	3,861.98
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0055 ETC-08 125.00 AUG18AcrEmprsPmtgExpln.					
	09/30/18 AP0019 VH854 98.00 EMPRESS MANAGEMENT, LLC AUG 18 OFFICE EXPENSES					
	09/30/18 GJ0059 ETC-09 225.00 SEP18AcrEmprsPmtgExpln.					
51200	Postage	827.16	254.86	50.00	204.86	1,032.02
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0055 ETC-08 50.00 AUG18AcrEmprsPstgeExpln.					
	09/19/18 AP0049 VH808 152.28 PITNEY BOWES LseEquipment9/30-12/30/18					
	09/30/18 AP0019 VH854 52.58 EMPRESS MANAGEMENT, LLC AUG 18 OFFICE EXPENSES					
	09/30/18 GJ0059 ETC-09 50.00 SEP18AcrEmprsPstgeExpln.					
51500	Mileage Reimbursement	240.22	.00	.00	.00	240.22
52000	Legal Services	24,012.55	.00	.00	.00	24,012.55
52200	Management Services	45,833.36	5,666.67	.00	5,666.67	51,500.03
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 AP0001 VH764 5,666.67 EMPRESS MANAGEMENT, LLC SEPT 2018 MANAGEMENT FEE					
54000	Board Meeting Expense	969.95	.00	.00	.00	969.95
55000	Gate Pass Refunds	5,280.00	120.00	.00	120.00	5,400.00
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0057 ETC-09 50.00 Ck.#1123 O'NeillRfnd5Prkg					
	09/01/18 GJ0057 ETC-09 20.00 Ck.#1124 PinhaRfnd2Prkg					
	09/01/18 GJ0057 ETC-09 30.00 Ck.#1126 ClarkRfnd3Prkg					
	09/01/18 GJ0057 ETC-09 20.00 Ck.#1127 SturgesRfnd2Prkg					
56000	Owned Unit Expense	57,153.84	6,806.73	.00	6,806.73	63,960.57
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/04/18 AP0020 VH780 534.00 MB RESORT OCEAN FRONT SPA CU-A Sept 18 HOA Dues					
	09/04/18 AP0020 VH780 356.00 MB RESORT OCEAN FRONT SPA CU-B Sept 18 HOA Dues					
	09/04/18 AP0020 VH780 356.00 MB RESORT OCEAN FRONT SPA CU-D Sept 18 HOA Dues					
	09/04/18 AP0029 VH781 2,707.39 RENAISSANCE TOWER (#699) Sept 18 699 Unit A1					
	09/04/18 AP0030 VH782 175.00 RENAISSANCE TOWER (#699) Sept 18 699 Unit A2					
	09/04/18 AP0031 VH783 432.36 RENAISSANCE TOWER (#699) Sept 18 699 Unit D					
	09/04/18 AP0032 VH784 164.82 RENAISSANCE TOWER (#699) Sept 18 699 Unit E					
	09/04/18 AP0036 VH786 255.00 MB RESORT OCEAN FRONT SPA Sept 18 1stFlrLaundryUnit					
	09/04/18 AP0037 VH787 255.00 MB RESORT OCEAN FRONT SPA Sept 18 W/C Bar&Food Unit					
	09/04/18 AP0038 VH788 255.00 MB RESORT OCEAN FRONT SPA Sept Mail Kiosk Unit D					
	09/04/18 AP0039 VH789 118.08 MB RESORT OCEAN FRONT SPA Sept 18 Storage Room 3-3					
	09/04/18 AP0040 VH790 118.08 MB RESORT OCEAN FRONT SPA Sept 18 Storage Room 5-3					

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

GENERAL LEDGER TRIAL BALANCE

Starting account #: 30100 Starting date: 09/01/18
 Ending account #: "Last" Ending date: 09/30/18

Acct#	Description	Begin-balance	Total-DR	Total-CR	Net-change	End-balance
	09/04/18 AP0047 VH791	401.00		MBR FIVE SEASONS CENTRE C		640C PBX RM Sept 18
	09/04/18 AP0048 VH792	480.00		MBR FIVE SEASONS CENTRE C		640D HOA OFFICE-Sept
	09/04/18 AP0050 VH793	199.00		MBR FIVE SEASONS CENTRE C		Sept 640 Unit E
57000	Storage Units - Building A	.00	2,125.53	.00	2,125.53	2,125.53
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/04/18 AP0051 VH794	487.53		MYRTLE BEACH RESORT HPR,		1/1-9/30 Stor Rm 1-3
	09/04/18 AP0052 VH795	819.00		MYRTLE BEACH RESORT HPR,		1/1-9/30/18 Stor. Rm 3-2
	09/04/18 AP0053 VH796	819.00		MYRTLE BEACH RESORT HPR,		1/1-9/30/18 Stor Rm 4-2
59900	Administrative Expense	3,858.66	349.04	50.00	299.04	4,157.70
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0055 ETC-08		50.00	AUG18AcrEmprsAdminExplnv.		
	09/30/18 AP0008 VH852	52.95		AT HOME NET		TOPS 9/1-9/30/18
	09/30/18 AP0019 VH854	46.09		EMPRESS MANAGEMENT, LLC		AUG 18 OFFICE EXPENSES
	09/30/18 AP0019 VH854	200.00		EMPRESS MANAGEMENT, LLC		Mngmnt Consulting
	09/30/18 GJ0059 ETC-09	50.00		SEP18AcrEmprsAdminExplnv.		
60000	Electricity	28,494.92	4,822.01	.00	4,822.01	33,316.93
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/19/18 AP0026 VH806	118.85		SANTEE COOPER		8/7-9/7/18- 5905 Hwy17
	09/19/18 AP0026 VH806	1,769.79		SANTEE COOPER		8/8-9/10/18-OutdoorLight
	09/19/18 AP0026 VH806	2,108.61		SANTEE COOPER		8/7-9/7/18-5905 SKingsHw
	09/19/18 AP0026 VH806	262.74		SANTEE COOPER		8/7-9/7/18MaintShed
	09/19/18 AP0026 VH806	32.28		SANTEE COOPER		8/7-9/7/18MB5SeasonsRstr
	09/19/18 AP0026 VH806	261.51		SANTEE COOPER		8/7-9/7/18ResaleOFC
	09/19/18 AP0026 VH806	59.42		SANTEE COOPER		8/7-9/7/18 Fire Pump
	09/19/18 AP0026 VH806	208.81		SANTEE COOPER		8/8-9/8/185905Hwy17SEnt
60100	Water/Sewer	10,860.46	2,793.50	1,500.00	1,293.50	12,153.96
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0055 ETC-08		1,500.00	AUG18AcrGSW&SA Invs.		
	09/05/18 AP0003 VH797	239.46		GRAND STRAND W&S AUTHORIT		7/16-8/14/18 Irrigation
	09/05/18 AP0004 VH798	563.02		GRAND STRAND W&S AUTHORIT		7/16-8/14/18 Hwy/Irrgtn
	09/05/18 AP0005 VH799	318.28		GRAND STRAND W&S AUTHORIT		7/16-8/14/18 MBR Irrig
	09/05/18 AP0006 VH800	154.79		GRAND STRAND W&S AUTHORIT		7/16-8/14/18 Pools/MB
	09/05/18 AP0007 VH801	63.78		GRAND STRAND W&S AUTHORIT		7/16-8/14/18 Sales Offc
	09/30/18 AP0003 VH855	206.56		GRAND STRAND W&S AUTHORIT		8/14-9/12/18 Irrigation
	09/30/18 AP0004 VH856	550.62		GRAND STRAND W&S AUTHORIT		8/14-9/17/18 Hwy/Irrgtn
	09/30/18 AP0005 VH857	318.15		GRAND STRAND W&S AUTHORIT		8/14-9/12/18 MBR Irrig
	09/30/18 AP0006 VH858	124.04		GRAND STRAND W&S AUTHORIT		8/14-9/12/18 Pools/MB
	09/30/18 AP0007 VH859	62.93		GRAND STRAND W&S AUTHORIT		8/14-9/12/18 Sales Offc
	09/30/18 AP0828 VH829	191.87		ALLEGIAN FOOD & BEVERAGE		ShrdWtrbill7/16-8/14/18
60200	Fuel	11,868.34	2,185.19	1,300.00	885.19	12,753.53

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

GENERAL LEDGER TRIAL BALANCE

Starting account #: 30100 Starting date: 09/01/18
 Ending account #: "Last" Ending date: 09/30/18

Acct-#	Description	Begin-balance	Total-DR	Total-CR	Net-change	End-balance
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0055 ETC-08			1,300.00		
	09/19/18 AP0014 VH804	1,085.19				8/6-9/4/18 WtrPrkII-Fu
	09/30/18 GJ0059 ETC-09	1,100.00				SEP18 Acr SCE&G Invoice
60300	Trash Removal	43,325.78	6,483.55	4,000.00	2,483.55	45,809.33
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0055 ETC-08			4,000.00		
	09/21/18 AP0043 VH823	249.65				9/21- 18-9326
	09/28/18 AP0043 VH826	233.90				9/25-18-9420
	09/30/18 GJ0059 ETC-09	6,000.00				Aug/Sep18AcrLeeDisplnvs
60500	Cable TV	158,362.15	23,612.39	.00	23,612.39	181,974.54
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0055 ETC-08	23,612.39				RclSepSpectrumInv-13400
60600	Phone	19,588.15	80.95	662.53	581.58CR	19,006.57
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/19/18 AP0041 VH807	80.95				9/4-10/3/18 -SecrtyLine
	09/30/18 AR0000 849861			662.53		HTC Capital Credit Refund
60700	Internet Service Expense	60,827.00	14,955.00	7,477.50	7,477.50	68,304.50
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 GJ0055 ETC-08	7,477.50				RclSepContractData-13400
	09/19/18 AP0013 VH803	2,415.00				CONTRACTDATA.NET Renaissance Tower
	09/19/18 AP0013 VH803	1,882.50				CONTRACTDATA.NET Building A
	09/19/18 AP0013 VH803	2,002.50				CONTRACTDATA.NET Ocean Front Spa
	09/19/18 AP0013 VH803	1,177.50				CONTRACTDATA.NET Five Seasons
	09/30/18 GJ0059 ETC-09			7,477.50		RclOctContractDataInv-134
71000	Security Services Expense	182,761.25	30,800.06	4,800.00	26,000.06	208,761.31
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/01/18 AP0017 VH802	4,882.61				SECURITAS SECURITY SERVIC 8/24-8/30/18 Sec Srvc
	09/01/18 GJ0055 ETC-08			4,800.00		AUG18AcrSecuritasInvoice
	09/19/18 AP0017 VH805	5,245.00				SECURITAS SECURITY SERVIC 8/31-9/6/18 Sec Srvc
	09/21/18 AP0017 VH822	6,284.70				SECURITAS SECURITY SERVIC 9/7-9/13/18 Sec Srvc
	09/28/18 AP0017 VH825	7,387.75				SECURITAS SECURITY SERVIC 9/14-9/20/18 Sec Srvc
	09/30/18 GJ0059 ETC-09	7,000.00				SEP18AcrSecuritasInvoice
71010	Security Supplies Expense	2,938.91	.00	.00	.00	2,938.91
72000	Income Taxes Expense	.00	.00	.00	.00	.00

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

Myrtle Beach Resort HOA, Inc.

GENERAL LEDGER TRIAL BALANCE

Starting account #: 30100 Starting date: 09/01/18
 Ending account #: "Last" Ending date: 09/30/18

Acct-#	Description	Begin-balance	Total-DR	Total-CR	Net-change	End-balance
72010	Property Tax Expense	43,206.17	.00	.00	.00	43,206.17
72020	Licenses and Permits	467.50	.00	.00	.00	467.50
83300	Insurance Expense	22,916.06	3,041.68	.00	3,041.68	25,957.74
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/27/18 RJ0003 ETC-09 3,041.68 Monthly PrePaid Ins Amort					
83377	Ins. Claim- Hurricane Florence	.00	2,600.00	.00	2,600.00	2,600.00
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/28/18 AP0819 VH824 2,600.00 BBI LANDSCAPING CleanUpHtroneFloDispsal					
90901	RE-Miscellaneous Reserve Exps	.00	.00	.00	.00	.00
90903	RE-Curbing	17,250.00	.00	.00	.00	17,250.00
90904	RE-Pool Repairs	4,121.42	.00	.00	.00	4,121.42
90907	RE-Security Gate/Equipment	2,650.00	.00	.00	.00	2,650.00
90913	RE-Roof Replacement	1,298.82	.00	.00	.00	1,298.82
90921	RE-Office Furniture/Imprvmts.	2,181.83	.00	.00	.00	2,181.83
99910	General Reserve Contribution	90,666.67	11,333.33	.00	11,333.33	102,000.00
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/27/18 RJ0001 ETC-09 11,333.33 Monthly RSV Contrib fr Op					
99930	Contingency Fund Contribution	2,475.36	309.42	.00	309.42	2,784.78
	DATE SOURCE REFERENCE DR-AMOUNT CR-AMOUNT DESCRIPTION A/P REFERENCE					
	09/27/18 RJ0001 ETC-09 309.42 Monthly RSV Contrib fr Op					
*** Totals do not include all accounts ***						
Gnd Total:		151,789.41	195,467.67	193,549.77	1,917.90	153,707.31

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

CASH DISBURSEMENTS

Starting Check Date: 9/01/18 Cash account #: "All"
 Ending Check Date: 9/30/18

Check-date	Check-#	Vend-#	Vendor Name	Check-amount	Reference
Cash account #:		10600	BB&T Cash Operating		
9/01/18	1440	100000	EMPRESS MANAGEMENT, LLC	5,666.67	SEPT 2018 MANAGEMENT SRVC
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date
	764	SEPT 2018	9/01/18	52200	9/01/18
					Amount-paid
					5,666.67
					Reference
					SEPT 2018 MANAGEMENT FEE
9/01/18	1441	200004	FOUR OF A KIND	16,464.00	SEPT 2018- BULK SERVICES
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date
	765	5850	9/01/18	41300	9/01/18
	765	5850	9/01/18	41800	9/01/18
					Amount-paid
					9,878.40
					Reference
					SEPT 18- Janitorial Staff
					6,585.60
					SEPT 18- Pool Contract
				Totals:	16,464.00
9/07/18	1443	200004	FOUR OF A KIND	2,863.72	
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date
	771	5940	8/30/18	42000	8/31/18
	772	5952	8/31/18	42000	8/31/18
	776	5946	9/02/18	41800	9/04/18
					Amount-paid
					697.66
					Reference
					RplcdCrkdChmlLinefrSpaAcid
					486.06
					PoolChemicals/Bicarb/Sulf
					1,680.00
					AddStaffingfrWE9/2/18
				Totals:	2,863.72
9/07/18	1444	200013	GENCO	381.36	
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date
	770	067313	8/27/18	47000	8/31/18
	774	067333	8/28/18	47000	8/31/18
					Amount-paid
					222.33
					Reference
					BLKLinersTP/PwdrFreeGives
					159.03
					TP/DrawstringTrshLnrsBlk
				Totals:	381.36
9/07/18	1445	200064	HUCKS POOL CO.	454.73	
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date
	767	116533	8/06/18	42000	8/31/18
	768	116402	8/02/18	42000	8/31/18
	769	116671	8/09/18	42000	8/31/18
					Amount-paid
					121.65
					Reference
					66.26 Gal Blk Blich
					163.95
					39.30 Gall/1 Drum Acid
					169.13
					42.12 Gall/ 1 Drum Acid
				Totals:	454.73
9/07/18	1446	200158	CLEAR LAKES & WETLAND SRVC, INC	420.00	AUG 2018 LAKE MAINT
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date
	777	25620	8/31/18	44400	8/31/18
	777	25620	8/31/18	44400	8/31/18
	777	25620	8/31/18	44400	8/31/18
	777	25620	8/31/18	44400	8/31/18
					Amount-paid
					95.00
					Reference
					AUG 2018-B Bldg
					120.00
					Five Seasons
					110.00
					Ocean Front
					95.00
					Renaissance

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

Date 10/06/18 Time 11:00:51

Myrtle Beach Resort HOA, Inc.

Report #0899 Page: 2

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

CASH DISBURSEMENTS

Starting Check Date: 9/01/18 Cash account #: "All"
 Ending Check Date: 9/30/18

Check-date	Check-#	Vend-#	Vendor Name	Check-amount	Reference		
				Totals:	420.00		
Cash account #:	10600		BB&T Cash Operating				
9/07/18	1447	200178	GRAND STRAND W&S AUTHORITY	1,339.33			
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	797	50895106 00	9/05/18	60100	9/05/18	239.46	7/16-8/14/18 Irrigation
	798	50911525 00	9/05/18	60100	9/05/18	563.02	7/16-8/14/18 Hwy/Irrgtn
	799	50315930 00	9/05/18	60100	9/05/18	318.28	7/16-8/14/18 MBR Irrig
	800	50915905 02	9/05/18	60100	9/05/18	154.79	7/16-8/14/18 Pools/MB
	801	50915063 00	9/05/18	60100	9/05/18	63.78	7/16-8/14/18 Sales Ofc
				Totals:	1,339.33		
9/07/18	1448	200780	E-Z DUMP INC	180.00	18-8514 ROLLOFF GRND		
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	779	200701113	8/31/18	60300	8/31/18	180.00	8/27- 18-8514
9/07/18	1449	200782	RICOH	500.98	AUG RICOH COPIER		
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	778	036-0040095-000	8/31/18	43000	8/31/18	500.98	Aug RICOH COPIER
9/07/18	1450	200829	AMERICAN PURE SPRING WATER CO	266.88	MB Resort Guard Booth		
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	773	004798	8/31/18	43000	8/31/18	266.88	MB Resort Guard Booth
9/07/18	1451	200853	MBR FIVE SEASONS CENTRE COUNCI	1,080.00			
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	791	00053765	9/04/18	56000	9/04/18	401.00	640C PBX RM Sept 18
	792	00004902	9/04/18	56000	9/04/18	480.00	640D HOA OFFICE-Sept
	793	00015482	9/04/18	56000	9/04/18	199.00	Sept 640 Unit E
				Totals:	1,080.00		
9/07/18	1452	200912	MYRTLE BEACH RESORT HPR, INC.	2,125.53			
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	794	1-3 2018	9/04/18	57000	9/04/18	487.53	1/1-9/30 Stor Rm 1-3
	795	3-2 2018	9/04/18	57000	9/04/18	819.00	1/1-9/30/18 Stor. Rm 3-2
	796	4-2 2018	9/04/18	57000	9/04/18	819.00	1/1-9/30/18 Stor Rm 4-2
				Totals:	2,125.53		
Cash account #:	10600		BB&T Cash Operating				

CASH DISBURSEMENTS

Starting Check Date: 9/01/18 Cash account #: "All"
 Ending Check Date: 9/30/18

Check-date	Check-#	Vend-#	Vendor Name	Check-amount	Reference		
9/07/18	1453	206021	MB RESORT OCEAN FRONT SPA, INC	2,847.16			
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	780	SEPT 18-MSTR	9/04/18	56000	9/04/18	534.00	CU-A Sept 18 HOA Dues
	780	SEPT 18-MSTR	9/04/18	56000	9/04/18	356.00	CU-B Sept 18 HOA Dues
	780	SEPT 18-MSTR	9/04/18	56000	9/04/18	356.00	CU-D Sept 18 HOA Dues
	785	SEPT 18-JANITO	9/04/18	47000	9/04/18	600.00	Sept 18 W/C Restroom Upke
	786	SEPT 18-UNIT A	9/04/18	56000	9/04/18	255.00	Sept 18 1stFlrLaundryUnit
	787	SEPT 18-UNIT B	9/04/18	56000	9/04/18	255.00	Sept 18 W/C Bar&Food Unit
	788	SEPT18-UNIT D	9/04/18	56000	9/04/18	255.00	Sept Mail Kiosk Unit D
	789	SEPT 18-3-3	9/04/18	56000	9/04/18	118.08	Sept 18 Storage Room 3-3
	790	SEPT 18-5-3	9/04/18	56000	9/04/18	118.08	Sept 18 Storage Room 5-3
					Totals:	2,847.16	
9/07/18	1454	206022	RENAISSANCE TOWER (#699)	3,479.57			
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	781	SEPT 18 699 A1	9/04/18	56000	9/04/18	2,707.39	Sept 18 699 Unit A1
	782	SEPT 18 699 A2	9/04/18	56000	9/04/18	175.00	Sept 18 699 Unit A2
	783	SEPT 18 699 D	9/04/18	56000	9/04/18	432.36	Sept 18 699 Unit D
	784	SEPT 18 699 E	9/04/18	56000	9/04/18	164.82	Sept 18 699 Unit E
					Totals:	3,479.57	
9/20/18	1455	200004	FOUR OF A KIND	720.00	ExtraStaffingWE9/9/18		
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	811	5961	9/10/18	41300	9/19/18	720.00	ExtraStaffingWE9/9/18
9/20/18	1456	200038	SCE&G	1,085.19	8/6-9/4/18 WTRPRK2 FUEL		
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	804	2210064852020	9/19/18	60200	9/19/18	1,085.19	8/6-9/4/18 WtrPrkll-Fu
9/20/18	1457	200057	CONTRACTDATA.NET	7,477.50	10/1-11/1/18 INTERNET		
	Vchr-#	Invoice-#	Inv-date	Acct #	Eff-date	Amount-paid	Reference
	803	INV-1483-33871	9/19/18	60700	9/19/18	2,415.00	Renaissance Tower
	803	INV-1483-33871	9/19/18	60700	9/19/18	1,882.50	Building A
	803	INV-1483-33871	9/19/18	60700	9/19/18	2,002.50	Ocean Front Spa
	803	INV-1483-33871	9/19/18	60700	9/19/18	1,177.50	Five Seasons
					Totals:	7,477.50	
Cash account #:	10600		BB&T Cash Operating				
9/20/18	1458	200061	SECURITAS SECURITY SERVICES	10,127.61			

Date 10/06/18 Time 11:00:51

Myrtle Beach Resort HOA, Inc.

Report #0899 Page: 4

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

CASH DISBURSEMENTS

Starting Check Date: 9/01/18 Cash account #: "All"
 Ending Check Date: 9/30/18

Check-date	Check-#	Vend-#	Vendor Name	Check-amount	Reference
		Vchr-# Invoice-#	Inv-date Acct #	Eff-date	Amount-paid Reference
		802 E4173205	9/01/18 71000	9/01/18	4,882.61 8/24-8/30/18 Sec Svc
		805 E4178802	9/19/18 71000	9/19/18	5,245.00 8/31-9/6/18 Sec Svc
				Totals:	10,127.61
9/20/18	1459	200113	HTC	80.95	9/4-10/3/18-SECURITY PHN
		Vchr-# Invoice-#	Inv-date Acct #	Eff-date	Amount-paid Reference
		807 09195540	9/19/18 60600	9/19/18	80.95 9/4-10/3/18 -SecrtyLine
9/20/18	1460	200140	SHERWIN-WILLIAMS ST.2711	1,033.83	
		Vchr-# Invoice-#	Inv-date Acct #	Eff-date	Amount-paid Reference
		809 1090-0	7/06/18 43000	9/19/18	138.54 Handicap Blue
		810 1653-8	6/11/18 43000	9/19/18	895.29 15/5GalMBRFmEntrcpaint
				Totals:	1,033.83
9/20/18	1461	200808	PITNEY BOWES	152.28	LSE EQUIPMENT9/30-12/30
		Vchr-# Invoice-#	Inv-date Acct #	Eff-date	Amount-paid Reference
		808 LSIN#3305606995	9/19/18 51200	9/19/18	152.28 LseEquipment9/30-12/30/18
9/25/18	9999 (M)	200009	SANTEE COOPER	4,822.01	8/7-9/7/18- MBR ELECTRIC
		Vchr-# Invoice-#	Inv-date Acct #	Eff-date	Amount-paid Reference
		806 3704410000	9/19/18 60000	9/19/18	118.85 8/7-9/7/18- 5905 Hwy17
		806 3704410000	9/19/18 60000	9/19/18	1,769.79 8/8-9/10/18-OutdoorLight
		806 3704410000	9/19/18 60000	9/19/18	2,108.61 8/7-9/7/18-5905 SKingsHw
		806 3704410000	9/19/18 60000	9/19/18	262.74 8/7-9/7/18MaintShed
		806 3704410000	9/19/18 60000	9/19/18	32.28 8/7-9/7/18MBSSeasonsRprt
		806 3704410000	9/19/18 60000	9/19/18	261.51 8/7-9/7/18ResaleOFC
		806 3704410000	9/19/18 60000	9/19/18	59.42 8/7-9/7/18 Fire Pump
		806 3704410000	9/19/18 60000	9/19/18	208.81 8/8-9/8/185905Hwy17SEnt
				Totals:	4,822.01
9/28/18	1462	200004	FOUR OF A KIND	781.61	
		Vchr-# Invoice-#	Inv-date Acct #	Eff-date	Amount-paid Reference
		813 6091	9/27/18 43000	9/28/18	229.48 ReimbrsmntfrRprHusqvmabI
		814 10088	9/26/18 42000	9/28/18	120.85 ImpellerRplcd/CrcksfrmDeb
		815 10080	9/25/18 42000	9/28/18	41.58 1GoKitPrchsdttoStck
		816 10076	9/24/18 42000	9/28/18	389.70 AfterHrrcneChemicalsPrchs
				Totals:	781.61
9/28/18	1463	200061	SECURITAS SECURITY SERVICES	13,672.45	

Date 10/06/18 Time 11:00:51

Myrtle Beach Resort HOA, Inc.

Report #0899 Page: 5

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

CASH DISBURSEMENTS

Starting Check Date: 9/01/18 Cash account #: "All"
 Ending Check Date: 9/30/18

Check-date	Check#	Vend#	Vendor Name	Check-amount	Reference
		Vchr# Invoice#	Inv-date Acct #	Eff-date	Amount-paid Reference
		822 E4178802	9/21/18 71000	9/21/18	6,284.70 9/7-9/13/18 Sec Srvc
		825 E4190644	9/28/18 71000	9/28/18	7,387.75 9/14-9/20/18 Sec Srvc
			Totals:		13,672.45
9/28/18	1464	200064	HUCKS POOL CO.	279.29	
		Vchr# Invoice#	Inv-date Acct #	Eff-date	Amount-paid Reference
		812 001433	8/31/18 42000	9/21/18	100.57- Credit-Overpayment
		820 118150	9/27/18 42000	9/28/18	288.06 1DrumAcid 106.9 Gal
		821 117826	9/13/18 42000	9/28/18	91.80 1DrumAcidTnkOK
			Totals:		279.29
9/28/18	1465	200749	BBI LANDSCAPING	2,600.00	CleanUpHrrcneFloDisposal
		Vchr# Invoice#	Inv-date Acct #	Eff-date	Amount-paid Reference
		824 1578	9/23/18 83377	9/28/18	2,600.00 CleanUpHrrcneFloDispsal
9/28/18	1466	200780	E-Z DUMP INC	483.55	
		Vchr# Invoice#	Inv-date Acct #	Eff-date	Amount-paid Reference
		823 200701113	9/21/18 60300	9/21/18	249.65 9/21- 18-9326
		826 200701113	9/28/18 60300	9/28/18	233.90 9/25-18-9420
			Totals:		483.55
9/28/18	1467	200854	KEN'S POOL SERVICE, LLC	1,148.00	
		Vchr# Invoice#	Inv-date Acct #	Eff-date	Amount-paid Reference
		817 014405	8/31/18 42000	9/28/18	440.00 InspectGrvityFlowSystem
		818 014406	9/01/18 42000	9/28/18	428.00 InstllNwPlstrRngs/DmCvrs
		819 014399	9/08/18 42000	9/28/18	280.00 BlewDebrisfrmHldngTnk
			Totals:		1,148.00
9/30/18	9999 (M)200342		AT HOME NET	52.95	TOPS INTEG 9/1-9/30/18
		Vchr# Invoice#	Inv-date Acct #	Eff-date	Amount-paid Reference
		852 INV-090718	9/30/18 59900	9/30/18	52.95 TOPS 9/1-9/30/18
			Totals:		82,587.15
	Cash account #:	10700	BB&T Cash Reserves		
9/07/18	109	200695	HIGHLAND ROOFING COMPANY, INC.	1,298.82	RoofRepairs
		Vchr# Invoice#	Inv-date Acct #	Eff-date	Amount-paid Reference
		775 745021CG	8/28/18 90913	8/31/18	1,298.82 Roof Repairs

Date 10/06/18 Time 11:00:51

Myrtle Beach Resort HOA, Inc.

Report #0899 Page: 6

CASH DISBURSEMENTS

Starting Check Date: 9/01/18
Ending Check Date: 9/30/18

Cash account #: "All"

Check-date	Check#	Vend-#	Vendor Name	Check-amount	Reference
Totals:				1,298.82	

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

DATE: 10/06/18 TIME: 11:03 AM

Myrtle Beach Resort HOA, Inc.

Page: 1

**AGED OWNER BALANCES: AS OF Sept. 30, 2018
ACCOUNT NUMBER SEQUENCE**

* - Previous Owner or Renter

ACCOUNT #	UNIT #	NAME	CURRENT	OVER 30	OVER 60	OVER 90	TOTAL	STATUS
MBROFS	MBROFS	MBR Ocean Front Spa HPR, Inc.	20036.00	0.00	20036.00	65871.76	105943.76	
RENAISSANCE	RENAISSANC	Renaissance Tower HPR, Inc.	24176.00	0.00	24176.00	68005.74	116357.74	
TOTAL:			44212.00	0.00	44212.00	133877.50	222301.50	

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

DATE: 10/06/18 TIME: 11:03 AM

Myrtle Beach Resort HOA, Inc.

Page: 2

AGED OWNER BALANCES: AS OF Sept. 30, 2018
ACCOUNT NUMBER SEQUENCE

* - Previous Owner or Renter

ACCOUNT #	UNIT #	NAME	CURRENT	OVER 30	OVER 60	OVER 90	TOTAL	STATUS
-----------	--------	------	---------	---------	---------	---------	-------	--------

REPORT SUMMARY

CODE N/A	DESCRIPTION	ACCOUNT #	CURRENT	OVER 30	OVER 60	OVER 90	TOTAL
A1	ASSESSMENT	12000	44212.00	0.00	44212.00	133877.50	222301.50
GRAND TOTAL:			44212.00	0.00	44212.00	133877.50	222301.50

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	DELINQUENCY AMOUNT
12000	Regular Assessment Receivab	222301.50
TOTAL		\$222301.50

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

MR HOA
 ELECTRONICALLY FILED on 2018 Nov 14 12:17 PM - HORRY - COMMON PEAS CVSE#2018CP2603173

WRITE BEACH RESORT HOA

Account Descriptions	YTD	OCT	NOV	DEC	BUDGET		ESTIMATED		BUDGET VS.		ANNUAL		2019 Budget	
					9/30/2017	ESTIMATE	ESTIMATE	ESTIMATE	2018	2018	2018	2018	2018	2018	2019	2019
30100 Regular Assessments (BB)	\$67,208	\$14,672	\$14,672	\$14,672	\$14,672	\$24,016	\$24,016	\$24,016	\$24,016	\$2,000	\$2,000	\$24,016	\$24,016	\$21,779
30100 Sales Commissions (BB)	\$8,943	\$1,250	\$1,250	\$1,250	\$1,250	\$3,750	\$3,750	\$3,750	\$3,750	\$2,500	\$2,500	\$3,750	\$3,750	\$4,500
30100 Storage Room Lease	\$72,666	\$2,500	\$2,500	\$2,500	\$2,500	\$7,500	\$7,500	\$7,500	\$7,500	\$0	\$0	\$7,500	\$7,500	\$7,500
30100 Motorcycles & Trailers Parking Fees	\$128,729	\$4,000	\$4,000	\$4,000	\$4,000	\$12,000	\$12,000	\$12,000	\$12,000	\$0	\$0	\$12,000	\$12,000	\$12,000
30100 Trash Removal	\$12,899	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30100 Fuel	\$20,465	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30750 Bike Week Parking Income	\$16,653	\$6,232	\$6,232	\$6,232	\$6,232	\$18,666	\$18,666	\$18,666	\$18,666	\$0	\$0	\$18,666	\$18,666	\$18,666
30800 Storage Room Lease Income	\$2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30900 Earned Income Operating	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30900 Earnings Carry Forward	\$1,465	\$200	\$200	\$200	\$200	\$600	\$600	\$600	\$600	\$0	\$0	\$600	\$600	\$600
32400 Mail Box Rental Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
35000 Total Income	\$395,493	\$97,539	\$97,459	\$97,459	\$97,459	\$277,956	\$277,956	\$277,956	\$277,956	\$1,261,425	\$1,486,917	\$2,255,192	\$2,255,192	\$1,955,245

EXPENSES

Account Descriptions	YTD	OCT	NOV	DEC	BUDGET		ESTIMATED		BUDGET VS.		ANNUAL		2019 Budget	
					9/30/2017	ESTIMATE	ESTIMATE	ESTIMATE	2018	2018	2018	2018	2019	2019
59900 General & Administrative	\$4,188	\$103	\$103	\$103	\$103	\$309	\$309	\$309	\$309	\$0	\$0	\$309	\$309	\$309
51000 Office Supplies & Expense	\$5,183	\$67	\$67	\$67	\$67	\$201	\$201	\$201	\$201	\$0	\$0	\$201	\$201	\$201
51200 Postage	\$1,032	\$120	\$120	\$120	\$120	\$360	\$360	\$360	\$360	\$0	\$0	\$360	\$360	\$360
51500 Mileage Reimbursement	\$340	\$1,200	\$1,200	\$1,200	\$1,200	\$3,600	\$3,600	\$3,600	\$3,600	\$0	\$0	\$3,600	\$3,600	\$3,600
52000 Loaner Printing Expense	\$970	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
52000 Management Services	\$24,000	\$6,000	\$6,000	\$6,000	\$6,000	\$18,000	\$18,000	\$18,000	\$18,000	\$0	\$0	\$18,000	\$18,000	\$18,000
52100 Audit/Tax Preparation Ser	\$4,500	\$5,667	\$5,667	\$5,667	\$5,667	\$17,001	\$17,001	\$17,001	\$17,001	\$0	\$0	\$17,001	\$17,001	\$17,001
55000 Cater Pass Refunds	\$27,400	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
56000 Owned Unit Expense	\$63,981	\$6,807	\$6,807	\$6,807	\$6,807	\$20,421	\$20,421	\$20,421	\$20,421	\$0	\$0	\$20,421	\$20,421	\$20,421
59777 Storage Units - Building A	\$2,126	\$236	\$236	\$236	\$236	\$708	\$708	\$708	\$708	\$0	\$0	\$708	\$708	\$708
Total General & Administrative	\$106,690	\$20,419	\$20,419	\$20,419	\$20,419	\$58,730	\$58,730	\$58,730	\$58,730	\$2,651,374	\$2,237,956	\$3,390,705	\$3,390,705	\$3,390,705

Repairs & Maintenance

Account Descriptions	YTD	OCT	NOV	DEC	BUDGET		ESTIMATED		BUDGET VS.		ANNUAL		2019 Budget	
					9/30/2017	ESTIMATE	ESTIMATE	ESTIMATE	2018	2018	2018	2018	2019	2019
41300 Seasonal Maintenance Staff	\$29,152	\$7,440	\$7,440	\$7,440	\$7,440	\$22,320	\$22,320	\$22,320	\$22,320	\$0	\$0	\$22,320	\$22,320	\$22,320
41800 Pool Contract Maintenance	\$38,753	\$5,586	\$5,586	\$5,586	\$5,586	\$19,728	\$19,728	\$19,728	\$19,728	\$0	\$0	\$19,728	\$19,728	\$19,728
42500 Golf Cart Maintenance/Repairs	\$49,276	\$2,500	\$2,500	\$2,500	\$2,500	\$7,500	\$7,500	\$7,500	\$7,500	\$0	\$0	\$7,500	\$7,500	\$7,500
42700 Golf Cart Lease	\$3,008	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
43000 General Maintenance	\$11,607	\$1,800	\$1,800	\$1,800	\$1,800	\$5,400	\$5,400	\$5,400	\$5,400	\$0	\$0	\$5,400	\$5,400	\$5,400
44300 Landscaping Contractor	\$13,290	\$3,500	\$3,500	\$3,500	\$3,500	\$10,500	\$10,500	\$10,500	\$10,500	\$0	\$0	\$10,500	\$10,500	\$10,500
44400 Lake Maintenance	\$3,780	\$440	\$440	\$440	\$440	\$1,320	\$1,320	\$1,320	\$1,320	\$0	\$0	\$1,320	\$1,320	\$1,320
45000 Pest Control	\$697	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
45200 Nuisance Control	\$1,200	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
46600 Fire System Maintenance	\$924	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
46800 HVAC Maintenance	\$497	\$1,200	\$1,200	\$1,200	\$1,200	\$3,600	\$3,600	\$3,600	\$3,600	\$0	\$0	\$3,600	\$3,600	\$3,600
47800 Repairs & Maintenance Tot	\$320,992	\$42,021	\$42,021	\$42,021	\$42,021	\$124,049	\$124,049	\$124,049	\$124,049	\$5,500	\$5,500	\$129,549	\$129,549	\$129,549

Utilities

Account Descriptions	YTD	OCT	NOV	DEC	BUDGET		ESTIMATED		BUDGET VS.		ANNUAL		2019 Budget	
					9/30/2017	ESTIMATE	ESTIMATE	ESTIMATE	2018	2018	2018	2018	2019	2019
60000 Electricity	\$13,317	\$4,800	\$4,800	\$4,800	\$4,800	\$14,400	\$14,400	\$14,400	\$14,400	\$0	\$0	\$14,400	\$14,400	\$14,400
60100 Water & Sewer	\$12,154	\$1,200	\$1,200	\$1,200	\$1,200	\$3,600	\$3,600	\$3,600	\$3,600	\$0	\$0	\$3,600	\$3,600	\$3,600
60200 Fuel	\$12,754	\$900	\$900	\$900	\$900	\$2,700	\$2,700	\$2,700	\$2,700	\$0	\$0	\$2,700	\$2,700	\$2,700
60300 Fuel Removal	\$7,614	\$3,000	\$3,000	\$3,000	\$3,000	\$9,000	\$9,000	\$9,000	\$9,000	\$0	\$0	\$9,000	\$9,000	\$9,000
60400 Seasonal Trash Service	\$181,975	\$23,612	\$23,612	\$23,612	\$23,612	\$70,836	\$70,836	\$70,836	\$70,836	\$0	\$0	\$70,836	\$70,836	\$70,836
60500 Cable/Phone	\$19,007	\$1,600	\$1,600	\$1,600	\$1,600	\$4,800	\$4,800	\$4,800	\$4,800	\$0	\$0	\$4,800	\$4,800	\$4,800
60700 Telephone (U/R/Security/Rent)	\$3,920	\$2,500	\$2,500	\$2,500	\$2,500	\$7,500	\$7,500	\$7,500	\$7,500	\$0	\$0	\$7,500	\$7,500	\$7,500
Utilities Total	\$339,920	\$42,950	\$42,950	\$42,950	\$42,950	\$128,670	\$128,670	\$128,670	\$128,670	\$5,000	\$5,000	\$133,670	\$133,670	\$133,670

Other Expenses

Account Descriptions	YTD	OCT	NOV	DEC	BUDGET		ESTIMATED		BUDGET VS.		ANNUAL		2019 Budget	
					9/30/2017	ESTIMATE	ESTIMATE	ESTIMATE	2018	2018	2018	2018	2019	2019
71000 Security Supplies	\$28,364	\$36,000	\$36,000	\$36,000	\$36,000	\$78,000	\$78,000	\$78,000	\$78,000	\$286,761	\$330,000	\$43,239	\$178,022	(\$151,978)
71000 Property Taxes	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
72010 Security Upgrade	\$41,200	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$24,685	\$24,685	\$0	\$1,600	\$51,000
72020 Depreciation & Furnish	\$468	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$43,706	\$56,600	\$13,394	\$59,101	\$2,701
99910 Depreciation Expense	\$102,000	\$11,333	\$11,333	\$11,333	\$11,333	\$34,000	\$34,000	\$34,000	\$34,000	\$0	\$0	\$34,000	\$34,000	\$34,000
99930 Reserve Contribution	\$360,759	\$37,693	\$37,693	\$37,693	\$37,693	\$98,072	\$98,072	\$98,072	\$98,072	\$50,538	\$50,538	\$0	\$0	\$9,500
Other Expenses Total	\$1,231,115	\$123,270	\$123,659	\$124,079	\$124,079	\$397,689	\$397,689	\$397,689	\$397,689	\$61,905	\$1,556,245	\$471,574	\$471,574	(\$88,362)

Total Expenses

YTD	OCT	NOV	DEC	BUDGET	ESTIMATED	BUDGET VS.	ANNUAL	2019 Budget
\$2,297,076	\$370,743	\$371,200	\$371,200	\$371,200	\$371,200	\$110,300	\$3,397,981	\$3,397,981



ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

2019 Budget Projection - Option 3

Account Descriptions	YTD ACTUAL 9/30/2017	OCT ESTIMATE	NOV ESTIMATE	DEC ESTIMATE	BUDGET PROJECTIONS		ESTIMATED TOTAL 2018	2018 ANNUAL BUDGET	BUDGET VS. ANNUAL VARIANCE	2019 BUDGET	2019 BUDGET VS 2018 BUDGET
					OCT-DEC	TOTAL					
INCOME											
30100 Regular Assessments	\$672,148	\$74,672	\$74,672	\$74,672	\$224,016	\$396,034	\$396,034	\$396,034	(\$1)	\$1,578,844	\$582,779
30200 Sales Commission (90) Lease	\$46,444	\$5,584	\$5,584	\$5,584	\$16,752	\$68,364	\$68,364	\$68,364	\$1,001	\$66,343	\$0
30400 Heavy 200 Rental Commissions	\$72,690	\$4,700	\$4,600	\$4,600	\$13,900	\$92,590	\$92,590	\$92,590	(\$1,230)	\$91,540	\$1,050
30500 Heavy Food & Beverage Lease	\$78,129	\$0	\$0	\$0	\$0	\$78,129	\$78,129	\$78,129	\$10,469	\$67,660	\$10,469
30700 Gate Income	\$41,000	\$0	\$0	\$0	\$0	\$41,000	\$41,000	\$41,000	\$0	\$41,000	\$0
30750 Bike Week Parking Income	\$20,000	\$0	\$0	\$0	\$0	\$20,000	\$20,000	\$20,000	\$0	\$20,000	\$0
31000 Storage Income Operating	\$10,000	\$0	\$0	\$0	\$0	\$10,000	\$10,000	\$10,000	\$0	\$10,000	\$0
31090 Common Element Fee(1/2 Gate)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
32400 Estimate Carry Forward	\$1,465	\$200	\$200	\$200	\$600	\$2,065	\$2,065	\$2,065	\$2,065	\$0	\$2,065
35000 Other Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Income	\$396,034	\$82,456	\$82,456	\$82,456	\$227,064	\$1,205,196	\$1,205,196	\$1,205,196	(\$2,065)	\$1,207,261	\$2,065

EXPENSES

59900 General & Administrative	\$41,158	\$102	\$102	\$102	\$306	\$446	\$446	\$446	(\$2,487)	\$4,500	\$2,500
51000 Office Supplies & Expense	\$3,132	\$82	\$82	\$82	\$246	\$328	\$328	\$328	(\$1,453)	\$7,500	(\$5,200)
51200 Printing Copies Expense	\$1,032	\$200	\$200	\$200	\$600	\$800	\$800	\$800	\$2,161	\$1,400	(\$2,100)
51500 Mileage Reimbursement	\$240	\$1,200	\$1,200	\$1,200	\$3,600	\$5,400	\$5,400	\$5,400	\$4,030	\$2,000	(\$3,000)
52000 Board Meeting Expense	\$24,013	\$6,000	\$6,000	\$6,000	\$18,000	\$27,000	\$27,000	\$27,000	(\$14,913)	\$47,000	\$24,000
52200 Management Services	\$51,500	\$5,697	\$5,697	\$5,697	\$17,000	\$68,500	\$68,500	\$68,500	\$9,500	\$70,000	\$1,500
52300 Audit/ra Preparation Ser	\$37,100	\$0	\$0	\$0	\$0	\$37,100	\$37,100	\$37,100	\$37,100	\$0	\$37,100
55000 Gate Pass Refunds	\$35,400	\$0	\$0	\$0	\$0	\$35,400	\$35,400	\$35,400	\$0	\$35,400	\$0
55600 Overhead Unit Expense	\$83,954	\$356	\$356	\$356	\$1,068	\$85,368	\$85,368	\$85,368	(\$2,834)	\$82,500	\$2,850
56000 Other Unit Expense	\$2,600	\$0	\$0	\$0	\$0	\$2,600	\$2,600	\$2,600	(\$8,000)	\$10,000	(\$7,400)
83377 Total General & Administrative	\$206,644	\$20,414	\$20,414	\$20,414	\$64,230	\$233,798	\$233,798	\$233,798	(\$2,500)	\$230,298	\$3,500

Repairs & Maintenance

41300 Grounds Staff Contract Maint.	\$79,132	\$7,440	\$7,440	\$7,440	\$22,320	\$101,452	\$101,452	\$101,452	\$33,536	\$44,500	(\$40,000)
41400 Seasonal Maintenance	\$38,753	\$6,586	\$6,586	\$6,586	\$19,757	\$58,510	\$58,510	\$58,510	(\$44,510)	\$46,234	\$22,234
42000 Pool Supplies/Repairs	\$45,276	\$2,500	\$2,500	\$2,500	\$7,500	\$52,776	\$52,776	\$52,776	(\$31,995)	\$5,000	(\$2,000)
42300 Golf Cart Maintenance/Repairs	\$3,008	\$0	\$0	\$0	\$0	\$3,008	\$3,008	\$3,008	(\$1,425)	\$0	(\$13,433)
43000 General Maintenance	\$41,507	\$1,800	\$1,800	\$1,800	\$5,400	\$47,007	\$47,007	\$47,007	(\$4,407)	\$45,000	\$400
44000 Landscaping Maintenance/Supplies	\$11,250	\$1,750	\$1,750	\$1,750	\$5,250	\$17,500	\$17,500	\$17,500	(\$1,050)	\$18,000	(\$1,000)
44400 Lake Maintenance	\$3,780	\$420	\$420	\$420	\$1,260	\$5,040	\$5,040	\$5,040	(\$12)	\$3,000	\$1,934
45000 Pest Control	\$697	\$0	\$0	\$0	\$0	\$697	\$697	\$697	(\$12)	\$2,000	\$1,303
45200 Nuance Control	\$1,170	\$0	\$0	\$0	\$0	\$1,170	\$1,170	\$1,170	\$1,170	\$0	\$1,170
46600 Fire System Maintenance	\$9,400	\$1,000	\$1,000	\$1,000	\$3,000	\$12,400	\$12,400	\$12,400	(\$6,909)	\$13,000	\$6,500
46800 HVAC Maintenance	\$2,400	\$0	\$0	\$0	\$0	\$2,400	\$2,400	\$2,400	\$2,400	\$0	\$2,400
47000 Repairs & Maintenance Tot	\$250,992	\$22,201	\$22,201	\$22,201	\$66,276	\$279,869	\$279,869	\$279,869	(\$7,479)	\$287,174	\$7,305

Utilities

60000 Electricity	\$33,317	\$4,800	\$4,800	\$4,800	\$14,400	\$52,517	\$52,517	\$52,517	\$5,262	\$53,100	\$10,112
60100 Water & Sewer	\$12,754	\$3,000	\$3,000	\$3,000	\$9,000	\$15,454	\$15,454	\$15,454	\$1,546	\$17,000	\$1,546
60300 Trash Removal	\$37,613	\$3,000	\$3,000	\$3,000	\$9,000	\$46,613	\$46,613	\$46,613	(\$3,600)	\$38,000	\$4,500
60400 Seasonal Trash Service	\$81,195	\$2,610	\$2,610	\$2,610	\$7,830	\$88,830	\$88,830	\$88,830	(\$63,982)	\$283,200	\$34,370
60600 Telephone (R/Security/Maint)	\$19,007	\$1,600	\$1,600	\$1,600	\$4,800	\$23,807	\$23,807	\$23,807	\$1,080	\$24,900	(\$94,617)
60700 Internet	\$58,305	\$2,700	\$2,700	\$2,700	\$8,100	\$66,405	\$66,405	\$66,405	(\$16,312)	\$10,192	\$32,215
60900 Other Expenses	\$39,300	\$4,200	\$4,200	\$4,200	\$12,600	\$51,900	\$51,900	\$51,900	(\$15,192)	\$115,192	(\$151,292)
Total Utilities	\$308,761	\$26,600	\$26,600	\$26,600	\$78,000	\$386,761	\$386,761	\$386,761	(\$4,239)	\$413,000	(\$151,292)

Other Expenses

71000 Security Services	\$2,939	\$300	\$300	\$300	\$900	\$3,839	\$3,839	\$3,839	(\$239)	\$4,100	\$51
71200 Security Upgrade	\$43,206	\$0	\$0	\$0	\$0	\$43,206	\$43,206	\$43,206	(\$5,660)	\$55,660	\$12,454
72000 Licenses & Permits	\$468	\$0	\$0	\$0	\$0	\$468	\$468	\$468	(\$8)	\$440	(\$88)
99910 Depreciation Expense	\$102,000	\$11,333	\$11,333	\$11,333	\$34,000	\$136,000	\$136,000	\$136,000	(\$0)	\$136,000	\$0
99930 Reserve Contingency	\$2,785	\$999	\$999	\$999	\$2,988	\$5,774	\$5,774	\$5,774	(\$0)	\$5,774	\$0
99940 Other Expenses Total	\$380,130	\$37,944	\$37,944	\$37,944	\$137,413	\$466,027	\$466,027	\$466,027	(\$52,464)	\$519,491	\$272,038
Total Expenses	\$2,627,076	\$307,741	\$307,741	\$307,741	\$968,331	\$3,957,381	\$3,957,381	\$3,957,381	(\$61,905)	\$4,192,626	\$39,246

NET INCOME/(LOSS)

Page 1



Increase to 2018 actual

Pool Number

\$6,585.60 x 6 mos. + \$1,080 x 4 wks

\$2,750 x 12 mos.

\$1,750 x 12 mos.

Annual Nuance Pest Contract

Annual Fire Exchange Inspections

Includes \$20K for Bike Week

\$4,500 x 12 mos. - Equipment

Based on 2017 Actual

\$110 x 4 OHCC Pool Permits

Based on Reserve Study for 2019 Contrib.

MBRHOA, Inc Minutes of meeting December 04, 2018¹⁷

A conference call Meeting duly called by the President was called to order at 1740hrs by President Grusauskas. Mr. Perkins, Domagala, Calvano, Attorney Stathos and Grusauskas were in attendance.

Mr Calvano did not enter the meeting until 1740hrs. Before he arrived Attorney Stathos explained the process of his review of the contracts from Empress, Securitas and Four of A Kind. He expressed what his concerns were and the changes he recommended be made to them before signing by the MBRHOA.

The Board reviewed their expectations of services it would receive from each contractors. Two guards at the front gate; one permanent at gate 24 / 7 and one roving when able to break away for 16 hours a day. Management on site for not less than 40 hours a week. Maintenance would start out with 2 persons for winter and add additional staff as work load increased in spring.

With the arrival of Mr Calvano, the President called the meeting to order.

A discussion of opening bank accounts as decided in the October meeting and the need to protect the funds from our current management contractor; ended up with Grusauskas making a motion with a second from Calvano; to have Mr Perkins and Attorney Stathos open a new Bank Account in the name of the Corporation, for receiving and depositing the Court funds from the RT Lawsuit, which are now in escrow and said would require both signatures for withdrawals. Once the entire board was at Myrtle the signature card would be updated and Stathos would be removed from the account. The vote was unanimously passed 4 to 0.

A discussion of the Empress contract which Mr Stathos had reviewed for the Board lead to an agreement to hold of final approval of the contract until the FSC had an opportunity to meet with Empress and consider the hiring of Empress as the Managing agent for the FSC as well. Further discussion lead to the President making a motion and seconded by Mr Perkins to accept the proposal, for service, by Empress, with final review by Attorney Stathos before signing. The vote was unanimously passed 4 to 0.

Discussion regarding the HOA providing security resort wide or just for the HOA property and securing the Resort, along with the HOA obligation to do so. Mr Calvano stated his objection and concerns of the HOA changing its course on this

EXHIBIT
9

FirstService
RESIDENTIAL
c/o FirstService Residential
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

FirstService
Residential

Account #	Description	Operating	Reserves	Specia Project	Totals	
ASSETS						
Cash						
100	Alliance Operating Checking	10000	\$ 15,613.99	\$ 0.00	\$ 0.00	\$ 15,613.99
10035	Conway Nat Bank-Operating Funds	10570	405,988.30	0.00	0.00	405,988.30
105	TD Bank-Mailbox Deposits	10500	6,370.53	0.00	0.00	6,370.53
1055	TD Bank -Operating Checking	10550	7,534.00	0.00	0.00	7,534.00
1335	Alliance Reserve Money Market	10900	0.00	119,966.24	0.00	119,966.24
	Total Cash		\$ 435,506.82	\$ 119,966.24	\$ 0.00	\$ 555,473.06
Accounts Receivable						
1100	A/R -Owner Assessment	12000	\$ 232,425.74	\$ 0.00	\$ 0.00	\$ 232,425.74
1115	A/R - Other Due from Owners	12070	3,971.41	0.00	0.00	3,971.41
	Accounts Receivable		\$ 236,397.15	\$ 0.00	\$ 0.00	\$ 236,397.15
	Total Accounts Receivable		\$ 236,397.15	\$ 0.00	\$ 0.00	\$ 236,397.15
Fixed Assets						
1158	Land/Land Improvemnt	14000	\$ 286,400.01	\$ 0.00	\$ 0.00	\$ 286,400.01
1152	Furniture & Fixtures	13000	69,988.78	0.00	0.00	69,988.78
1153	Building Improvements	13720	330,588.58	0.00	0.00	330,588.58
1154	Signage	13800	7,286.23	0.00	0.00	7,286.23
1157	Capital Equipment	13900	896,613.64	0.00	0.00	896,613.64
1159	Commercial Units	13111	412,138.21	0.00	0.00	412,138.21
1170	Accum. Depreciation	13150	(1,571,172.65)	0.00	0.00	(1,571,172.65)
	Total Fixed Assets		\$ 431,843.00	\$ 0.00	\$ 0.00	\$ 431,843.00
Other Assets						
1134	Prepaid Insurance	13300	\$ 10,293.09	\$ 0.00	\$ 0.00	\$ 10,293.09
1135	Prepaid Expenses	13400	1,575.00	0.00	0.00	1,575.00
1136	Prepaid Taxes	13500	8,576.00	0.00	0.00	8,576.00
1420	Due from Operating		0.00	361,257.36	0.00	361,257.36
	Total Other Assets		\$ 20,444.09	\$ 361,257.36	\$ 0.00	\$ 381,701.45
	TOTAL ASSETS		\$ 1,124,191.06	\$ 481,223.60	\$ 0.00	\$ 1,605,414.66
LIABILITIES & EQUITY						
LIABILITIES						
2000	Prepaid Owners	21000	\$ 50,709.28	\$ 0.00	\$ 0.00	\$ 50,709.28
2030	Accounts Payable	20500	12,515.32	0.00	0.00	12,515.32
2050	Accrued Expenses	20600	68,191.56	0.00	0.00	68,191.56
2060	Due to Reserves Fr Ops	14100/24100	361,257.36	0.00	0.00	361,257.36
2176	Mail Box Deposits	21400	6,370.53	0.00	0.00	6,370.53
	Total Liabilities		\$ 499,044.05	\$ 0.00	\$ 0.00	\$ 499,044.05
EQUITY						
3600	Owners Equity-Oper	28000	\$ 534,224.51	\$ 0.00	\$ 0.00	\$ 534,224.51
3700	Owners Equity-Rsrv	28100	0.00	386,892.31	0.00	386,892.31
	Net Income/(Loss)		90,922.50	95,331.29	0.00	186,253.79
	TOTAL EQUITY		\$ 625,147.01	\$ 481,223.60	\$ 0.00	\$ 1,106,370.61
	TOTAL LIABILITIES & EQUITY		\$ 1,124,191.06	\$ 481,223.60	\$ 0.00	\$ 1,605,414.66

① Funds Rec'd from RT as ordered by Court.

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

Myrtle Beach Resort HOA, Inc.

Balance Sheet
As of 01/31/18

Account	Description	Operating	Reserves	Other	Totals
ASSETS					
10000	Alliance Bank Operating Cash	15,613.99			15,613.99
10500	TD Bank-Mailbox Deposits	6,370.53			6,370.53
10550	TD Bank Operating Account	7,534.00			7,534.00
① 10570	CNB Operating Account ①	240,000.00			240,000.00
10600	BB&T Cash Operating	49,747.31			49,747.31
10700	BB&T Cash Reserves		11,333.42		11,333.42
10900	Alliance Reserve MM Account		119,966.24		119,966.24
11000	BB&T ICS Insurance Escrow	3,125.00			3,125.00
12000	Regular Assessment Receivables	307,097.74			307,097.74
12070	A/R Other Due from Owners	3,971.41			3,971.41
12700	Other Receivables	26,665.29			26,665.29
13111	Commercial Units	412,138.21			412,138.21
13150	Accumulated Depreciation	(1,571,172.65)			(1,571,172.65)
13300	Prepaid Insurance	6,889.56			6,889.56
13400	Other Prepaid Expenses	1,575.00			1,575.00
13500	Prepaid Taxes	8,576.00			8,576.00
13600	Furniture and Fixtures	69,988.78			69,988.78
13720	Building Improvements	330,588.58			330,588.58
13800	Signage	7,286.23			7,286.23
13900	Capital Equipment	896,613.84			896,613.84
14000	Land/Land Improvements	286,400.01			286,400.01
14100	Due from Operating to Reserves		361,257.36		361,257.36
TOTAL ASSETS		1,109,008.83	492,557.02	.00	1,601,565.85
LIABILITIES & EQUITY					
CURRENT LIABILITIES:					
20300	Accounts Payable - Reserve		2,181.83		2,181.83
20500	Accounts Payable	56,160.77			56,160.77
21000	Prepaid Owner Assessments	50,709.28			50,709.28
21400	Mail Box Deposits	7,285.53			7,285.53
24100	Due to Reserve from Operating	361,257.36			361,257.36
Subtotal Current Liab.		475,412.94	2,181.83	.00	477,594.77
RESERVES:					
Subtotal Reserves		.00	.00	.00	.00

① At 12/31/17, Balance was \$405,988.30, where did \$165,988.30 go?

Myrtle Beach Resort HOA, Inc.

Balance Sheet
As of 09/30/18

Account	Description	Operating	Reserves	Other	Totals
ASSETS					
10000	Alliance Bank Operating Cash	12,120.12			12,120.12
10500	TD Bank-Mailbox Deposits	4,355.53			4,355.53
10550	TD Bank Operating Account	7,534.00			7,534.00
10600	BB&T Cash Operating	155,039.94			155,039.94
10700	BB&T Cash Reserves		61,357.65		61,357.65
10900	Alliance Reserve MM Account		120,351.79		120,351.79
11000	BB&T Insurance Escrow	3,125.00			3,125.00
12000	Regular Assessment Receivables	222,301.50			222,301.50
13111	Commercial Units	412,138.21			412,138.21
13150	Accumulated Depreciation	(1,571,172.65)			(1,571,172.65)
13300	Prepaid Insurance	21,435.48			21,435.48
13400	Other Prepaid Expenses	9,052.50			9,052.50
13500	Prepaid Taxes	8,576.00			8,576.00
13600	Furniture and Fixtures	69,988.78			69,988.78
13720	Building Improvements	330,588.56			330,588.56
13800	Signage	7,286.23			7,286.23
13900	Capital Equipment	896,613.84			896,613.84
14000	Land/Land Improvements	286,400.01			286,400.01
14100	Due from Operating to Reserves		377,239.87		377,239.87
14300	Due from Insurance to Operatin	11,455.13			11,455.13
	TOTAL ASSETS	886,838.20	558,949.31	.00	1,445,787.51
LIABILITIES & EQUITY					
CURRENT LIABILITIES:					
20500	Accounts Payable	20,071.62			20,071.62
21000	Prepaid Owner Assessments	2,821.08			2,821.08
21400	Mail Box Deposits	4,325.53			4,325.53
24100	Due to Reserve from Operating	377,239.87			377,239.87
24120	Due fr Insurance to Operating	11,455.13			11,455.13
	Subtotal Current Liab.	415,913.23	.00	.00	415,913.23
RESERVES:					
	Subtotal Reserves	.00	.00	.00	.00
EQUITY:					
28000	Retained Earnings - Operating	702,357.99			702,357.99
28100	Retained Earnings - Reserves		481,223.60		481,223.60
	Current Year Net Income/(Loss)	(231,433.02)	77,725.71	.00	(153,707.31)
	Subtotal Equity	470,924.97	558,949.31	.00	1,029,874.28
	TOTAL LIABILITIES & EQUITY	886,838.20	558,949.31	.00	1,445,787.51

①

① Conroy Nat'l Bank A/C gone. What did 9240,000 go to?

MYRTLE BEACH RESORT HOA, INC.
REGULAR MEETING OF THE BOARD OF DIRECTORS
Sunday, October 7, 2018

AGENDA

Call to Order & Opening Comments
Introduction of Guests
Selection of Officers

Reports:
Securitas – Security - Ricky Davis – new parking pass system
Four of a Kind – Maintenance – Richard “Bubba” Monroe
Financial Review - September 2018 Financials -Elaine Campbell
Management Report – Barbara Johnson

Old Business:
Lawsuit Update
Renaissance Tower Liens
Patrick Stathos Outstanding Invoices
Security Gates on Walkways
Other

New Business:
Selection of Association Attorney
Approval of Snake Chaser Contract
Lazy River Resurface – and lights - quotes
MBR Rules and Regulations – Review of all – to be recorded for compliance with new law
 1. Establish fees and parking areas for bike week - trailers and motorcycles
 2. Establish pool hours and seasonal opening and closing dates
 3. Establish parking lot policies
MBRV Late Check in Guest Packages
Mgmt. Ignoring Previous Board Decisions – Mr. Rosencrans Email
Proposed 2019 Operating Budget
Appointment of Special Referee
Other

Owner Comments
Executive Session
Scheduling of Next Meeting
Adjournment



ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

F&B G/L 4044

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) COMMERCIAL LEASE AGREEMENT

THIS AGREEMENT, made and entered into as of the 11th day of November, 2009, by and between THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC., a South Carolina corporation (hereinafter the "Association") and ALLEGHANT FOOD & BEVERAGE, LLC, a North Carolina limited liability company (hereinafter referred to as "Tenant").

WITNESSETH

WHEREAS, the Association owns certain commercial property at The Myrtle Beach Resort, as is more particularly set out below; and

WHEREAS, the Association further has the authority to lease other commercial areas owned or controlled by other Homeowners' Associations at The Myrtle Beach Resort, as more particularly set out below; and

WHEREAS, the Association has determined it to be in the best interest of the homeowners at The Myrtle Beach Resort to enter into an Agreement providing for a consolidated operation of the food and beverage and other commercial activities, including gift shop and convenience store, all as is more particularly set out below; and

WHEREAS, Tenant has made certain promises and has committed to certain undertakings, as more particularly set out herein, as an inducement to the Association to enter into this Agreement.

NOW THEREFORE, in consideration of Five Dollars (\$5.00), and the mutual covenants given herein, the receipt and sufficiency of such consideration being hereby acknowledged, the parties agree to as follows:

I. COMMERCIAL AREAS OWNED BY THE ASSOCIATION HEREWITH LEASED TO TENANT

The Association owns the following commercial property and agrees to lease these properties to the tenant for operation:

- A. Cabana Bar and lot consisting of approximately .303 acres (Also known as Cabana Lot, 5905 S. Kings Hwy., Myrtle Beach, SC 20575. The Tenant may use and occupy the leased property for entertainment



or food service or any other lawful purpose approved in writing by the Association. Tenant agrees that bars/entertainment will be geared to a family-type audience. Tenant also agrees and warrants that there will be no loud or disturbing noise on the premises. Tenant warrants that there will be no cover charge or admission fees levied by Tenant, except as approved by Association.

B. Ocean front portion of the first floor of The Renaissance Tower of The Myrtle Beach Resort being a portion of commercial Unit A and consisting of approximately 1,600 square feet (Deli area, also known as Unit A, 5905 S. Kings Hwy., Myrtle Beach, SC 20575). The Tenant may use and occupy the leased property for the operation of a delicatessen or similar food service operation, or such other lawful purpose approved in writing by the Association.

C. Ocean front portion of the first floor of The Renaissance Tower of The Myrtle Beach Resort being a portion of commercial Unit A and consisting of approximately 700 square feet (formerly "Gift Shop" area). The Tenant may use and occupy the leased property for the operation of a delicatessen or similar food service operation, or such other lawful purpose approved in writing by the Association

D. Commercial Unit D, of the Renaissance Tower of the Myrtle Beach Resort, commonly known as the "General Store". The Tenant may use and occupy the leased property for a General Store or for such other lawful purpose approved in writing by the Association.

E. Commercial Unit B, of the Ocean Front Spa of the Myrtle Beach Resort, commonly referred to as the "Snack Bar". Tenant may use and occupy the leased property for a snack bar or any lawful purpose approved in writing by the Association.

F. "Snack Bar" located at Myrtle Beach Resort Horizontal Property Regime and owned by that Association. Tenant may use and occupy the leased property for a snack bar or any lawful purpose approved in writing by the Association.

G. Snack Bar located in the Lazy River/Water park area of the Horizontal Property. Tenant may use and occupy the leased property for a snack bar or any lawful purpose approved in writing by the Association.

In addition to the above, the Tenant agrees to abide by all reasonable rules and regulations of the

Association as well as the rules and regulations of the Alcoholic Beverage Control Commission, the individual horizontal property regimes upon which such leased property is located, and any other governing authority. Tenant, and its employees, guests and invitees, shall adhere to all parking regulations and traffic rules established by the Association or the individual horizontal property regimes.

Tenant agrees and warrants that it will undertake no advertising in respect to its use of premises, unless consented to in advance by Association.

It is anticipated that the leased space and the extent of operations of the Tenant may be modified from time to time by mutual written consent of the Association and Tenant. The parties agree to negotiate and act in good faith with one another in an attempt to provide a consolidated operation of food, beverage and other commercial activities, including gift shop and convenience store operations, all in a manner that will be in the best interest of the homeowners at The Myrtle Beach Resort.

II. HOURS OF OPERATION.

It is the intent of all parties that the food, beverage and retail operations at Myrtle Beach Resort be profitable for the Tenant and provides a quality experience for the owners and guests. Therefore, it is agreed that the Tenant will provide adequate food, beverage and retail service on a year round basis as is more specifically set forth below. Any operations after 11:00 P.M. shall be permitted only with the advance written consent of the Association.

Tenant will meet with management, or other Association designated contacts, on a regular basis to review operating schedules and events, and will, to the extent possible, operate in coordination with other resort operations. Any changes to operating hours must be approved in writing by Association.

LOCATION:	Off Season* Hours	In Season* Hours
Cabana Bar	closed	11AM until 11PM
Delif	7AM until 7PM	7AM until 11PM

Convenience Store	7AM until 7PM	11AM until 11PM
"A" Building Pool Shack	closed	11AM until 5PM
Oceanfront Spa Snack Bar	9AM until 2PM January through March	closed
Water Park Snack Bar	11AM until 5PM only during times Water Park is open	10AM until 7PM

* "In Season" is defined as the period of time from Memorial Day weekend through Labor Day Weekend; plus "Bike Weeks" (Myrtle Beach Harley Davidson Spring and Fall rallies and Atlantic Beach Bike fest; dates for these may vary from year to year) and Spring Break Weeks. "Off Season" means and includes all times not designated as "In Season."

III. TERM.

The term for this Lease shall be for a period of five (5) years commencing January 1, 2010 and ending December 31, 2014. Provided that Tenant has complied with the terms of the lease, this lease shall automatically extend for additional five (5) year periods unless either party notifies the other of a desire to terminate or re-negotiate the contract by August 31st of the last year of any term. The Association shall maintain the right to test the market place via negotiations with other parties at any time during the final year of each term, however Tenant shall have the right of first refusal to match any Agreement the Association may obtain with other parties. The Association shall have the option to buyout the remainder of this Agreement from tenant as of December 31, 2012 for the amount of Two Hundred Thousand Dollars (\$200,000.00) upon providing notice to tenant on or before August 31, 2012.

	2010: 95,000	2015: 110,131.05
	2011 97,850	
IV. RENT.	2012 100,785.51	F 8 B
	2013 103,808.97	61L 4044
	2014 106,923.24	

A. Tenant shall pay the Association a fixed annual rent of: Ninety-Five Thousand Dollars (\$95,000.00) for 2010 with an annual Three percent (3.0 %) increase on January 1st of every year for the duration of this Agreement.

* B. The annual rent shall be payable in advance in nine (9) equal monthly installments with the first installment due on January 1 of each year and with subsequent monthly installments due on the first day of each succeeding month until the annual rent is paid in full.

C. In addition to the fixed rent set out above, the Tenant shall pay to the Association any increase in insurance premiums incurred by the Association as a result of the operations of the Tenant from any portion of this property.

Tenant shall pay ten percent (10%) late charge on any payment not received by the Association within ten (10) days of the date, which it is otherwise due.

If Tenant is in default of its obligation to pay rent, the Association shall have a lien upon all personal property, equipment, and trade fixtures located upon the leased premises. If the Association asserts such a lien and/or levies for distress, the Tenant agrees not to remove or permit the removal of such property until all defaults have been cured.

V. MAINTENANCE OF PREMISES

Tenant shall, at its own expense, keep and maintain the premises and all equipment now or hereafter located on or affixed to the premises, including without limitation permanent equipment and fixtures, in good order and repair during the term of this Lease Agreement and shall surrender same to the Association at the expiration or earlier termination of this Lease Agreement in as good condition as they were when received (or subsequently improved or altered), normal wear and tear excepted.

All repairs, replacements and renewals shall be at least equal in quality of materials and workmanship to that which originally existed on the leased property. The Association shall in no event be required to

make any repair, alteration, or improvement to the leased property except as specifically provided for herein. The Tenant shall indemnify the Association against all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims, and demands, including reasonable attorney's fees, because of Tenant's failure to comply with the foregoing.

Any improvements, alterations and additions to the premises by the Tenant shall be made only at Tenant's expense, in good and workmanlike manner and in accordance with plans and specifications, which have been previously approved in writing by the Association. Association reserves the right to approve any contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, evidence of financial responsibility, permits, licenses, and insurance to be provided by the contractor.

All improvements and additions made by the Tenant and permanently attached to the premises, including without limitation all venting partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets, counters, ceiling and all other permanent improvements and fixtures, including trade fixtures of any kind, shall remain with the premises and shall be surrendered to the Association at the expiration or earlier termination of this Lease Agreement.

The parties agree that any and all items on the premises at the time of the commencement of this lease Agreement and attached to the premises by any means are fixtures that shall remain with the premises and be rendered to the Association at the termination of this lease Agreement, including without limitation the following: Two wall air conditioning units located in the Cabana Bar; a three-compartment sink and a hand sink located in the Cabana Bar; the hood, exhaust, and fire suppression system located in the Cabana and any and all cabinetry, shelving, counters, and sinks located anywhere upon any of the leased premises.

Tenant shall not, in any event, cause or permit any waste, damage or injury to the leased property.

Association shall be under no liability for damages to the Tenant due to the discontinuance of heat, air conditioning, electricity, water, or of any other service provided by Association or for loss or damage to property of Tenant caused by rain, water, or otherwise. Provided, however, if the loss is insured, the Association will use reasonable efforts to recover any appropriate loss for Tenant, but is under no liability to do so.

The Tenant agrees and acknowledges that it has been afforded ample time to inspect the premises and further agrees to accept the premises "as is."

VI. SIGNAGE

EXTERIOR SIGNS.

At its sole expense, Tenant shall install a Sign, displaying the Tenant's business trade name, on the storefront of the leased premises. If the Association requests the Tenant shall also install at its sole expense an under canopy sign displaying the Tenant's business trade name. All signs erected by Tenant must comply with the Association's sign criteria and with all applicable laws, rules, and ordinances passed by any governmental Agency. Tenant shall not erect any signs whose design and appearance have not first been approved in writing by the Association. Tenant shall at its sole expense obtain any permits or licenses required by any governmental authorities for any signs erected by the Tenant. Tenant agrees to indemnify the Association and hold it harmless from any claims, costs, or damages arising in any way from the erection, maintenance, existence, or removal of any signage. Upon vacating the leased premises, the Tenant shall at its sole expense remove any signs erected by Tenant and to promptly repair any damage caused by the removal.

Tenant agrees not to erect any other sign, decal, awning, advertisement, antenna, satellite dish, or other structure or object on the exterior of the leased premises without first obtaining the written approval of the Association.

INTERIOR SIGNS AND DISPLAYS AND WINDOW DISPLAYS

All interior signs and displays and window displays shall be tasteful, prepared in a professional manner, and in keeping with the character and standards of the Myrtle Beach Resort as determined by the Association in its sole discretion. No hand lettered signs or displays shall be permitted. The Tenant agrees to remove any nonconforming sign or display, as determined by the Association, upon request by the Association.

VII. OTHER PROVISIONS

1. **ENTRY ON PREMISES BY ASSOCIATION.** Association reserves the right to enter on the premises at any reasonable time to inspect the premises.

2. **BUSINESS RECORDS.** The Tenant agrees to make all sales and financial records pertaining to all its operations on the premises available on an annual basis by the 31st day of January following the preceding year by forwarding copies to the association's managing agent.

3. **UTILITIES.** The Tenant shall arrange and pay for the use of utilities furnished to the demised premises during the term of this Lease, including, but not limited to, water, electricity, gas, sewer and telephone.

Tenant agrees to pay reasonable pro-rata cost of garbage collection and disposal as provided by Association. Provided, however, Tenant is solely responsible for collecting and transporting garbage to a dumpster to be provided by Association, the location of which is to be designated by Association.

4. **TAXES AND ASSESSMENTS.** All ad valorem taxes, assessments, liens or charges on the land or improvements now located thereon, and all obligations secured by millage or other liens that may be against or levied upon the demised premises shall be properly paid by Association when due. All taxes on property owned by Tenant, as well as all business licenses required by Tenant for the operation of its business, shall be paid by Tenant.

5. **INSURANCE.** During the entire term of this Lease, the Tenant shall, at the Tenant's sole expense, secure and maintain such personal property insurance as it may determine upon all personal property owned by Tenant and located upon the leased premises, at the expense of Tenant. The Tenant shall, at the expense of the Tenant, secure and maintain during the entire term of its Lease, public liability insurance upon, and in respect to, the leased premises in an amount of no less than Two Million (\$2,000,000.00) Dollars for each occurrence and an Umbrella Policy of no less than Five Million (\$5,000,000.00) Dollars, and said public liability insurance shall be procured with an insurance company licensed to do business in the State of South Carolina and shall be procured by the Tenant in such manner as to include The Myrtle Beach Resort Homeowners' Association and all individual horizontal property regimes as additional insured's. Tenant shall promptly furnish copies of said policies of insurance to Association and shall direct and instruct the insuring company to mail

duplicate notices of premiums due from time to time under said policies of insurance to the Association at the address designated by the Association.

6. NO SET-OFF OR ABATEMENTS OF RENT. The Tenant shall not be entitled under any circumstances to withhold rent payments or to set off rent payments for any reason whatsoever. The Tenant further agrees that it shall not be entitled to any abatement of rent unless the Myrtle Beach Resort is closed for more than ten (10) consecutive days during the period beginning with the Memorial Day weekend and ending with the Labor Day weekend.

In the event, during the term of this Agreement the Myrtle Beach Resort is closed for more than ten (10) consecutive days during the period beginning with the Memorial Day weekend and ending with Labor Day weekend, the annual rental payment shall be reduced as hereinafter provided. The minimum annual payment shall be reduced by the number of days the Myrtle Beach Resort is closed divided by the number of days between Memorial Day and Labor Day.

7. COMPLIANCE WITH APPLICABLE LAWS. The Tenant, at its sole expense, shall comply with all laws, orders, and regulations of federal, state, and municipal authorities, and with any direction of any public officer, pursuant to the law, which impose any duty upon the Association or the Tenant with respect to the leased property. The Tenant, at its sole expense, shall obtain all licenses or permits which may be required by the conduct of its business within the terms of this Lease, or for the making of repairs, alterations, improvements, or additions, if permitted by Association. The Tenant shall comply with the requirements of all policies of public liability, fire, and all other types of insurance at any time in force with respect to the buildings and other improvements on the leased property.

8. TENANT TO MAKE GOLF PACKAGES AND OTHER PROMOTIONAL OFFERS AVAILABLE TO ALL UNIT OWNERS AND GUESTS AT THE MYRTLE BEACH RESORT. The Tenant agrees to extend any services, sales, and promotional offers made by the Tenant while on the Premises to all guests and owners at the Myrtle Beach Resort on equal terms; this Section includes without limitation any offers for golf packages and other off premises activities offered by the Tenant.

9. TENANT TO PROVIDE SECURITY. The Tenant shall provide, at its sole expense, adequate security for all activities conducted by the Tenant on the leased premises.

10. SURRENDER OF PREMISES AND OPTION TO PURCHASE PERSONALTY. The Tenant shall on the last day of the term, or upon the sooner termination of the term, peaceably and quietly surrender the leased property to the Association, in as good condition and repair as at the commencement of the term, including replacements, or additions, or improvements constructed, erected, added, or placed thereon by the Tenant with Association's consent, with the natural wear and tear thereof excepted.

The Tenant hereby grants to the Association an option to purchase at the termination of this lease, any movable trade fixtures, furniture, equipment, and personal property of every nature and kind owned by the Tenant and utilized in the operation of the business transacted on the property. The option price shall be the cost of the item or items less cumulative book depreciation at the time this option is exercisable. Association shall have thirty (30) days within which to decide whether it wishes to exercise its option to purchase said personal property at the expiration of this Lease.

If the Tenant fails to remove any personal property, equipment, or movable trade fixtures from the premises within ten days of being notified by the Association that it does not intend to exercise its option, then the Association may in its discretion do one of the following: 1) The Association may deem the property to have been abandoned by the Tenant, and the Association shall have right to dispose of the property as it sees fit; or 2) the Association may have the property removed and may recover from the Tenant the costs of removing the property.

11. DESTRUCTION OF PREMISES. If at any time during the term of this Lease, the leased premises should be damaged by fire or other major casualty, not the fault of Tenant, and if the cost of repairing the damage does not exceed twenty-five percent (25%) of the value of the premises herein leased, then the Association shall as soon as practicable repair the damage caused by said fire or other casualty. If, however, the damage should exceed twenty-five percent (25%) of the value of the premises herein leased, then Association shall have the option of either restoring said premises as set out above or terminating this Lease as of the date of said fire or other casualty. In no event shall the Tenant be entitled to an abatement of rent unless the Myrtle Beach Resort is closed for more than ten consecutive days during the period beginning with the Memorial Day weekend and ending with the Labor Day Weekend.

If, during the period beginning with the Memorial Day weekend and ending with the Labor Day

weekend the leased premises shall be rendered uninhabitable for more than ten consecutive days by damage which is not the fault of Tenant, the rent shall be abated from the eleventh day following the date of the event rendering the premises uninhabitable to the date of completion of the restoration of the premises. Such abatement shall be proportionate to the loss of occupancy sustained in respect to the revenue generated by that portion of the leased premises. If the damage is so extensive as to an amount practically to the total destruction of the entire leased premises, either Tenant or Association shall have the right to cancel this Lease by giving written notice and rental shall be apportioned to the date of the damage.

12. DEFAULT. If Tenant shall default in the terms of this Agreement, Tenant agrees to pay all reasonable attorney's fees and costs incurred by the Association in enforcing the obligations of the Tenant under this Agreement.

13. DECLARATION OF GOVERNING LAW. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina

14. SUBORDINATION TO EXISTING AND FUTURE MORTGAGES. This Lease shall be subject and subordinate at all times to the lien of existing mortgages and of mortgages which hereafter may be made a lien of the leased property. Although no instrument or act on the part of the Tenant shall be necessary to effectuate such subordination, the Tenant will, nevertheless, execute and deliver such further instruments subordinating this lien to the lien of any mortgages as may be desired by the mortgagee. The Tenant hereby appoints the Association, its attorney-in-fact, irrevocably to execute and deliver any such instrument for the Tenant.

15. WAIVER. Failure of either party to insist upon strict performance of any covenant or condition of this Lease in anyone or more instances shall not be constituted as a waiver for the future of any such covenant or condition, but the same shall be and remain in full force and effect.

16. BINDING EFFECT. The covenants, terms, conditions, provisions, and undertakings in this Lease, or in any renewals thereof, shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto, as if they were in every case named and expressed, and shall be considered as covenants running with the land; and, wherever reference is made to either of the parties hereto, it shall be held to include and apply also to the heirs,

executors, administrators, successors, and assigns of such party, as if in each and every case so expressed.

17. ENTIRE AGREEMENT, MODIFICATION, SEVERABILITY. This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

18. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT. Tenant agrees to indemnify and save Association harmless except in the event of gross negligence on the part of Association, its employees, or agents, against any and all claims, demands, damages, costs and expenses, including reasonable attorney's fees for the defense thereof, arising in any way from the leasing of the aforesaid premises to the Tenant or from the conduct or management of any business operated by the Tenant in or on the Demised Premises or from any breach or default on the part of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to the terms of this Lease Agreement, including any work done in respect to improvements to be performed by Tenant, or from any act of negligence of Tenant, Tenant's agent, contractors, sub-contractors, servants, employees, sublease, concessionaires, or licensees in or about the Demised Premises. In case of any action or proceeding brought against the Association by reason of any such claim, upon notice from Association, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Association.

All property kept, stored, or maintained in the Demised Premises shall be so kept, stored or maintained at the sole risk of Tenant.

Tenant agrees to pay and discharge any mechanic's, material men's or other liens against the Demised Premises or Association's interest therein claimed in respect to any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or upon the request of Tenant, provided that Tenant may contest such lien claim upon promptly securing the discharge of the leased premises from the lien by the filing of a written undertaking as provided by statute, or upon furnishing to

Association such indemnification as the Association may reasonably require for the final payment and discharge of the lien, together with the costs and expenses of defending the same. If the Tenant fails to secure the discharge of the leased premises from any such lien within ten days of the filing of the lien, or fails to furnish the Association within ten days of demand by the Association with such indemnification as the Association may require for the final payment and discharge of the lien, then Association may release the lien by any means allowed by law, and the Tenant shall reimburse the Association for all costs and expenses incurred by the Association in procuring the release of the lien, including attorney's fees, plus interest at the rate of prime plus four per cent on any sum paid by the Association.

Nothing contained in the Lease Agreement shall be so construed as to in any way as to subject Association's interest in the Demised Premises to any such lien.

Association shall not be liable to Tenant, and Tenant hereby agrees to hold Association harmless, for any damage occasioned by plumbing, electrical, gas, water, steam or other utility pipes, systems, and facilities or by the bursting, stopping, leaking or running of any tank, closet, waste, or other pipes in or about which they are a part; nor, from any damage occasioned by water being upon or coming through the roof, vent, windows, doors, or otherwise.

19. **ASSIGNMENT.** Tenant may not assign this Lease or sublease any portion of this property without the express written consent of the Association, which may be withheld for any reason.

(This Section Left Blank Intentionally)

IN WITNESS WHEREOF, the Association and Tenant subscribed their names and affixed their seals the day and year first above written.

WITNESSES:

Darla S. Donovan
Liane M. Kupczyk

ASSOCIATION:

MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.

By: Mel Renkey
Mel Renkey, Sr. Community Manager

ALLEGIANT FOOD &
BEVERAGE, LLC

By: Robert N. Jones
Robert Jones, Managing Member

Darla S. Donovan
Liane M. Kupczyk

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

Turner | Padget

Arthur E. Justice, Jr.

REPLY TO:

E-Mail: AJustice@TurnerPadget.com
Writer's Direct Dial: (843) 656-4412
Writer's Direct Fax: (843) 413-5819

October 9, 2018

Via E-Mail and Regular Mail

Board of Directors
Myrtle Beach Resort Homeowners'
Association, Inc.
Attn: Sarah Morrow, Registered Agent
4615 Oleander Drive, Suite 202
Myrtle Beach, SC 29577

Re: Allegiant Food & Beverage, LLC
TPGL File No. 10677-103



To the Board of Directors:

This firm represents Allegiant Food & Beverage, LLC ("Allegiant"). As you are aware from the discussions at your board meeting of Oct. 7, 2018, the Galley, which is a commercial unit leased by Allegiant from the Master Association, suffered damage from a major casualty event, Hurricane Florence. This damage was caused by water intrusion from the outer shell/cladding of the building (Tower) which is a common element. Per Section VII, Paragraph 11 of the 2009 Commercial Lease Agreement, when the leased premises is damaged by a major casualty and the cost of repairing the damage does not exceed twenty-five (25%) of the value of the leased premises, the Association "shall as soon as practicable repair the damage" caused by the casualty.

The damage to the leased premises has rendered the leased premises uninhabitable for business purposes and so the Galley is currently closed and shall remain so until the Association complies with the terms of the Commercial Lease as set forth above. Though the lease does not provide for, nor does Allegiant seek abatement of rent due to the closure, the failure of the Association to comply with the terms of the Commercial Lease is and will continue to be a breach of contract causing damages to Allegiant in the form of loss of profit for the time the lease premises cannot be open for business.

TURNER PADGET GRAHAM & LANEY P.A.
Columbia | Charleston | Greenville | Florence | Myrtle Beach

www.turnerpadget.com P 843-662-9008 F 843-667-0828
319 South Irby St. (29501) | P.O. Box 5478, Florence, SC 29502

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

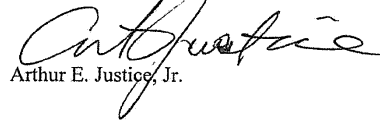
Turner | Padget

Board of Directors
Re: Allegiant Food & Beverage, LLC
October 9, 2018
Page 2

We are currently not aware if the Master Association has legal counsel, but would respectfully suggest that it retain legal counsel to provide it with a legal opinion of the terms and conditions of the Commercial Lease in lieu of the interpretation that is apparently being provided by the Association's property management company, none of whose employees we believe are licensed to practice law. We would ask that you please have your legal counsel communicate further with the undersigned instead of communications between your property manager and our client.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.



Arthur E. Justice, Jr.

AEJ/met

Cc: Howell Bellamy, Esq., E-mail Only
Empress Management, Regular Mail Only

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

A Message from the Ocean Front Spa and Renaissance Tower

Introduction

This correspondence serves to respond to correspondence entitled "A Message from the Five Seasons and the HPR (A Building) Boards". Although that Message purports to be a message from two of the four regimes, it was apparently sent to the entire MBRHOA membership. This was done without the involvement of the management company for the MBRHOA and was not authorized by the Board of the MBRHOA. In our opinion this was propaganda against the other Regimes and is a detriment to properly managing the Resort.

The Message contains inaccuracies and misstatements about current and former members of the MBRHOA Board and fails to provide a complete context for events discussed therein. Many of the matters discussed in the Message are currently before the court in a case styled Fredrick Brown, et al. v. Jeffery Richardson, et al., Case No. 2018-CP-26-03173. It has been reported that the A Building and Five Seasons are paying for the lawsuit and mailing of the propaganda letters. No rulings have been made by the court and no findings have been established. Rather, there are hotly disputed issues, issues disputed in good faith and with reasonable cause. Thus, it is inappropriate and irresponsible to send a mailing that speaks in terms of unauthorized actions and violations when no such findings have been made in a court of law.

The duties of Board Members are defined as the 1) Duty of Loyalty, and 2) Duty of Care. These duties are owed to Homeowners by every board member. In a previous lawsuit there was a partial audit of 2011 and 2014 done by a reputable auditing firm regarding MBRHOA expenditures. The audit found over \$150,000 in questionable expenditures paid to contractors of the MBRHOA. This information was distributed to the other three regimes and the MBRHOA. Did the MBRHOA Board comply with their fiduciary duty to the Homeowners by investigating this audit and requiring any necessary action to be taken? Did the MBRHOA authorize further complete audits for 2012, 2013, 2015, etc.? The answer is NO. Nothing happened to follow-up or act on the two partial audits from 2011 and 2014. Why do you think that RT and OFS have been resistant to give money to the MBRHOA? Is our money being spent wisely?

Legal Update

On May 29, 2018 a lawsuit was filed against two present MBRHOA Board Members and two past MBRHOA Board Members. The date of this filing is very significant. The week of September 24, 2018 two letters were sent out to all Myrtle Beach Resort Homeowners. One letter was dated June 26, 2018. Between June 26, 2018 and September 24, 2018 several facts were revealed that undermined the basis for the lawsuit. In particular, MBRHOA Board Meeting minutes were presented to prove the existence of the 67% vote required for three vendors: Empress Management, Four Of A Kind, & Securitas. In order to attain the 67% vote requirement, that means that a board member from either Five Seasons or A Building had to vote in favor of the decision. These minutes were provided to the A Building and Five Seasons Board as well as to its attorney. Nowhere within the recent letters sent to the Homeowners is this fact mentioned.



A lawsuit was started complaining about prior decisions made by the MBRHOA Board, and making accusations that these decisions were not authorized. Yet, the people that filed the suit didn't even bother to verify the Board Meeting minutes demonstrating the necessary 67% vote was actually attained, and with the affirmative vote of a board member from either Five Seasons or A Building.

Loss of Income

The MBRHOA Board Members agreed to discontinue the charge for gate passes until they were able to determine if it was legal to charge the fee. This was never brought up at a later meeting and no information was ever brought forward. The minutes show that the MBRHOA would only provide security for all common property. Therefore, the cost of security at the MBRHOA level would be significantly reduced. We will not know the full impact, if any, from the MBRHOA's decision to stop charging for gate passes until the first year is completed. To send out a message to all Homeowners that there may have to be an increase in monthly assessment fees resort wide, is wrong and nothing more than an intentional scare tactic.

Security Issues

There are many questions concerning the wording of the 1991 Covenant, especially Article IV, 4.1. The gate pass fee is an issue. The parking lot belongs to the Regimes. Per the Master Deed, "...the Occupants of each apartment shall be entitled to the use of one parking space...". The OFS Master Deed states the parking is for occupants and their visitors. The MBRHOA collected the money and deposited it into the MBRHOA account. The Regimes own the parking lots, they pay for the upkeep, including paving, but get no funds from the gate pass income to maintain the parking lots.

The gates at the beach were included in the discussion of securing the beachfront property. We advertise that Myrtle Beach Resort is a gated community. The gate installed at the Quarterdeck has not been removed but someone has tied it open.

Summer Issues

The Lazy River experienced lighting issues later in the season. The lazy river needs to be resurfaced completely. The lights will be changed to LED lighting which means the housing for the lights must be changed. All this work will be done after the end of season closing, rather than in stages. The Ocean Front pool is property of the A Building, and is not an MBRHOA issue.

No Board Officers Elected

There have been two motions made for placement of MBRHOA officers. Both motions failed because of a disagreement among the entire board as to who would hold what office. Not electing officers is a violation of the Master Deed of the MBRHOA which states that Board Members shall elect from the Board within (30) thirty days after each annual meeting the President, Vice-President, Secretary and Treasurer. Rather than remain dead in the water, RT and OFS have indicated they may have to try and govern in some capacity in order to manage the MBRHOA, and until Five Seasons and A Building agree to cooperate. The RT and OFS together make up 59.2079% of the Homeowners.

A Receiver or Special Referee

The Message mentions appointing a receiver or special referee. The only reason this has been raised is because of a disagreement regarding the governance of the MBRHOA, a disagreement of which Five Seasons and A Building are active participants. The Message also refers to money that would be spent on a receiver or special referee, but just look at the money that has already been spent in lawyer fees and insurance deductibles because of the lawsuit just filed. According to our insurance carrier, next year attaining insurance coverage for board members will be almost impossible, if not impossible because of all the litigation. The deductible on this year's policy is \$10,000.00. If board insurance cannot be secured for the individual Regimes or for the MBRHOA that will make it impossible to have a Board for the MBRHOA. No one can put their own personal livelihood in jeopardy just to be a board member.

Final Summary

While it appears that A Building and Five Seasons wish to enforce the 1991 Covenants and protect the rights of the Homeowners, we believe their conduct paints a different picture. It appears A Building and Five Seasons want to continue the practice of picking and choosing the covenants that suit their interests, while ignoring others. Article IV, 4.1 states that the MBRHOA "acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; (b) provide for all refuse collection, ..." The OFS resurfaced their parking lot this year but this was paid for entirely by the OFS. The OFS had to secure a trash compactor for their garbage because most weekends during the hot summer months of 2017 the MBRHOA compactor was gone for hours at a time to be emptied. This created a health hazard for the OFS Homeowners and visitors. The MBRHOA did not provide for our refuse collection nor a place to put it when it was gathered by OFS maintenance employees.

It is not the desire of the RT nor OFS to continue lawsuits that not only cost a lot of money provided by the Homeowner's, but take a large amount of time. However, we have a duty to protect the Homeowner's property, which includes their funds. While we are currently in a disagreement with Five Seasons and A Building over how to operate the MBRHOA, one thing we can agree on is the last paragraph of their summary, "in the interim other actions may be available to protect the collective rights of the Resort Homeowners."

Andrew A. Mathias
Member

October 12, 2018

VIA E-MAIL

Barbara Johnson
Empress Management
P. O. Box 8939
Myrtle Beach SC 29577
Barbara@empresmgt.com

Dear Ms. Johnson,

This law firm has been retained to represent Nancy Moore and Jeff Richardson and provide advice on various aspects of their service on the MBRHOA Board. I am writing this letter as a follow-up to the MBRHOA Board Meeting held on October 7, 2018 to raise the following issues outlined below. Please distribute this to all members of the MBRHOA Board, as well as the members of the other regime boards.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

1. Audit of MBR books and records

Recently, the MBRHOA Board approved an audit of the MBRHOA's financial records from 2016 to 2017 to confirm that MBRHOA expenditures and receipts were in accordance with all relevant contracts, management agreements, and governing documents. This is necessary for many reasons, not the least of which are the findings of an independent forensic audit by a Certified Public Accounting firm for the years 2011, 2014, and 2016 that revealed severe discrepancies involving expenditures that were out of compliance with vendor contracts, and these required further action. For example, the audit of the 2011 and 2014 MBRHOA contracts, receipts, and disbursements revealed a total of \$163,745.56 in non-compliant disbursements that evidence misallocation and/or misappropriation of homeowner funds as follows:



55 East Camperdown Way
Suite 400 (29601)
PO BOX 10648
Greenville, SC 29603-0648
www.nexsenpruet.com

T 864.282.1195
F 864.477.2697
E AMathias@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

NPGVL1:1628897.1-LT-(AMATHIAS) 060693-00001

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

October 12, 2018
Page 2

2011 Audit

Type of Noncompliance	Amounts
(a) Consulting charges paid without apparent agreement or authorization	\$11,928.00
(b) Expenditures for repairs or additions that were the responsibility of Allegiant	\$10,488.88
(c) Actual amount of overtime paid to security employees	\$25,051.13
(d) Actual amount of sick time paid to security employees	\$4,701.00
(e) Bonuses paid to security employees	\$6,696.58
(f) Security related expenditures made which appear to be outside of contractual guidelines	\$6,417.03
(g) Other expenditures made which appear to be outside contractual guidelines	\$4,763.66
TOTAL	\$70,046.28

2014 Audit

Type of Noncompliance	Amounts
(a) Consulting charges paid without apparent agreement or authorization	\$12,600.00
(b) Expenditures for repairs or additions that were the responsibility of Allegiant	\$20,152.91
(c) Actual amount of overtime paid to security employees	\$38,849.83
(d) Actual amount of sick time paid to security employees	\$9,358.60
(e) Bonuses paid to security employees	\$6,889.00
(f) Security related expenditures made which appear to be outside of contractual guidelines	\$2,722.83
(g) Other expenditures made which appear to be outside contractual guidelines	\$3,126.11
TOTAL	\$93,699.28

In my view, the MBRHOA Board members are duty-bound to demand and recover any and all misallocated and/or misappropriated homeowner funds from vendors to whom these monies were improperly paid, and recover damages from the vendors and board members responsible for this gross negligence.

In furtherance of this duty, the Hobbs Group PA was selected to perform a forensic audit of the 2016 and 2017 contracts, receipts, and disbursements. It is my understanding that the Hobbs Group has made several requests for missing accounting records needed to complete the audit. It is the duty of the Board Members to demand these missing records from FirstService Residential (FSR), as FSR is contractually obligated to furnish these to the MBRHOA as part of the account turnover. Failure to take any and all necessary actions to hold FSR responsible to produce these records subjects the board members and MBRHOA to liability for breach of the various duties they owe.

2. Vendor Contracts

Empress Management (the "Management Company"), MBRHOA, and the MBRHOA board members have a duty hold vendors accountable to their contractual obligations with the MBRHOA. Failure to do so could subject the MBRHOA and its individual board members to liability.

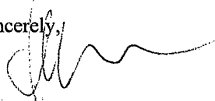
October 12, 2018
Page 3

3. Compliance votes MBRHOA Board votes

The MBRHOA has properly voted to enter into contracts with the Management Company, Four of a Kind Maintenance, and Securitas Security to provide services to the MBRHOA. The MBRHOA, its board members, and the Management Company are obligated to allow these vendors to perform according to their contracts across the resort including all commercial properties, and to hold any entity who interferes with the performance of these contracts accountable.

At the January 2018 meeting of the MBRHOA, the board voted to have only the Management Company in the MBRHOA office. The MBRHOA board must take all actions necessary to implement this vote and remove any and all FRS employees from the MBRHOA office.

Sincerely,



Andrew A. Mathias

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

NPGVL1:1628897.1-LT-(AMATHIAS) 060693-00001

EXHIBIT D

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173



Myrtle Beach Resort HOA, Inc
Board of Directors: Jeff Richardson, Nancy Moore, Lori Niedzwiecki, and Robert Rosencrans


October 23, 2018
Dear Board of Directors at Myrtle Beach Resort HOA,

We recently prepared and submitted a proposed budget for the Association, setting forth projected revenue and expenses for 2019. It was brought to my attention that the Board approved the same budget as was approved in 2018 which brings many concerns. Please see some of our concerns outlined below that we would like to bring to your attention:

- 1.) There is currently a shortfall of \$290,000 for 2018 budget labeled for "Gate Income" as Revenue. These funds were not collected and should not be included in your 2019 budget unless the board agrees to collect these funds by charging for gate passes.
- 2.) The shortfall in Item 1 listed above called "Gate Income" leaves the HOA short by a substantial amount and has a direct impact on paying operating expenses.
- 3.) There is also a Revenue line item in the 2018 budget called "Earning Carry Forward" of \$60,000. We are unsure what it is and why this was budgeted in 2018. Further, this does not appear to be a source of income, leaving the association short by the \$60,000 for the current year.
- 4.) The shortfall in Item 3 listed above called "Earning Carry Forward" leaves the HOA short again by a substantial amount and has a direct impact in your current budget and if budgeted for 2019 since no income is occurring.
- 5.) It is our understanding that the Board has approved a Forensic Audit to be performed. This may cost \$20,000 and upwards, however, the Board only approved a line item amount of \$4,500 for 2019.
- 6.) Seasonal Maintenance Staff expenses in 2018 were \$32,400. If Seasonal Maintenance is expected for 2019, the Board should consider budgeting for this expense.
- 7.) There is a \$377,000 in *Due to Reserves* from Operating on the Balance Sheet currently. \$361K of this came over from what the previous management company had on the Balance Sheet as of 12/31/17. This needs to be paid back and the Board of Directors should have a plan for doing so.

On page 4, a. Financial Services, 8. Of our Management Contract, it specifically states, "Inform the Board of Directors of any monetary shortfalls and request that the Board provide the funds or make a special assessment to remedy the anticipated insufficiency...". It is our responsibility to provide you with this information, however, the Board retains full responsibility for the appropriateness of data contained in the budget.

We believe at the upcoming meeting scheduled for Sunday, October 28th, the Board needs to consider revising and approving a 2019 budget to properly reflect the projected revenue and expenses along with consider the items listed above.

Thank you 
Sarah Morrow, President
Empress Management

PO Box 8939 Myrtle Beach, South Carolina 29577 Phone: (843) 443-4003 Fax: (843) 444-4055 Website: www.empresmgrm.com

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

EXHIBIT E

ELECTRONICALLY FILED - 2018 Nov 14 12:17 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-26-03173

Frederick E. Brown, et al.,

Plaintiffs,

vs.

Jeffery L. Richardson, et al.,

**AFFIDAVIT OF MICHAEL R. PARADES,
PCAM**

Defendants.

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendant.

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

1. My name is Michael R. Parades. 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 community association governance, community association management, and affirmative duties of a Board of Directors with regard to the operation and management of community associations and to the maintenance, repair, and replacement of common components of the General and Limited Common Elements. A copy of my Curriculum Vitae, marked **Exhibit A**, is attached hereto and incorporated by reference as part of this Affidavit.
2. I attended the College of Charleston, in Charleston, SC, from which I received a B.S. in Business Administration, Summa Cum Laude, 1979.
3. I am currently the President of Parades Consulting Services and provide consulting services to community associations primarily in the areas of governance, management and affirmative duties of Community Association Boards of Directors. I have been qualified by the South Carolina State courts as an expert witness in the field of community

association management, community association governance and affirmative duties of Community Association Boards of Directors. Based on my work experience and the fact that I am a retired Certified Public Accountant (CPA) with over 30 years of accounting experience related to community associations, I could also be qualified as an expert forensic accountant if the need arose.

4. I am not a party to the above entitled action, nor am I related to any of the above-captioned parties.
5. This Affidavit is submitted in support of the Plaintiffs' Motion for the Appointment of a Temporary Custodian to Operate and Manage Myrtle Beach Resort Homeowners Association, Inc.

PROJECT DESCRIPTION

6. The Myrtle Beach Resort (MBR) is a master planned resort made up of four (4) separate Condominium Associations (CA). The four (4) CAs are (a) Myrtle Beach Resort Horizontal Property Regime (HPR) consisting of 251 Residential Units (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime (OFS) consisting of 267 Residential Units and 4 Commercial Units for a total of 271 Units (c) Myrtle Beach Resort Renaissance Tower Horizontal Property Regime (RT) consisting of 322 Residential Units and 5 Commercial Units for a total of 327 Units and (d) Myrtle Beach Resort Five Seasons Horizontal Property Regime (FS) consisting of 156 Residential Units and 5 Commercial Units. Thus in total the MBR consists of 996 Residential Units and 14 Commercial Units, as well as many recreational amenities available to the owners and guests of the MBR.

Each CA is a separate entity established by recordation of its own Master Deed and Bylaws and governed by a member elected Board of Directors. In accordance with provisions included in each CA's governing documents, the Developer provided for the establishment of a Master Association that owns, operates and maintains all amenities and controls access into the Resort. The Master Association was created by recordation of a Declaration of Covenants, Conditions and Restrictions (CCRs) as well as Bylaws and is governed by a four member Board. The Board is composed of one representative from each of the sub-CAs who is also a Board member in the sub-CA. Any action taken by the Master Board must be approved by 67% of the Voting Board members.

MASTER DEED AND BYLAWS

7. The following table reflects that Date, Book and Page wherein the Master Deed and Bylaws

for each of the sub-CAs and the CCRs for the Master were recorded in the Office of Register of Deeds for Horry County, South Carolina:

- a. MBRHPR recorded 6/15/82 in Book 750 Page 642;
- b. MBROFSHPR recorded 4/25/83 in Book 789 Page 362;
- c. MBRRTHPR recorded 11/28/84 in Book 917 Page 885;
- d. MBR5SHPR recorded 6/20/85 in Book 966 Page 654 and
- e. MBRHOA (**Master**) recorded 4/25/91 in Book 1465 Page 329

Each sub-CA Master Deed and Bylaws are similar to the other sub-CAs and each contain essentially the same *Article XVIII The Myrtle Beach Resort*. This Article grants authority to the Declarant or his successors and assigns to create a Master Association, see **Exhibit B** to the Motion for Appointment of a Temporary Custodian.

8. CCRs, Article IV POWERS OF THE ASSOCIATION:

This section provides: “the Association, acting through the Board of Directors **SHALL** also have the power to:

- a. **Maintain ALL** streets and roads within the Property (Resort),
- b. **Provide for ALL** refuse collection,
- c. Obtain via purchase, lease or other means Cable or Master TV service and telephone services for all Units,
- d. Maintain the Ocean front area,
- e. Grant easements and right of ways where necessary for services,
- f. Maintain insurance for Liability and fire,
- g. Employ a management company,
- h. **Install and maintain security devises, detectors, communication facilities and contract for security services, guards and other watchmen,**
- i. Take such other reasonable actions as the Board **SHALL** deem advisable.

Where the CCRs and Bylaws use words such as “**SHALL**”, “**WILL**”, “**MUST**”, etc, these words create an affirmative obligation for the Board to act. **There is NO choice**. Failure to fulfill its **affirmative obligations is a breach of its duties and considered an “Ultra Vires” act and the Board CANNOT** use the “Business Judgment Rule” as a defense. See South Carolina Supreme Court ruling in Fisher vs Shipyard Village HOA.

9. By-Laws, Article IV Board of Directors: Voting, Selection, Term of Office and Duties

Section 3. Regular Meetings: There **SHALL** be at least one (1) regular meeting of the Board quarterly at a time designated by the President. The President or two (2) members of the Board may call as many special meetings of the Board as are deemed necessary or desirable and in the best interest of the Association.

Section 7. Voting: Any action taken at a meeting of the Board of Directors **SHALL** be only upon affirmative vote of 67% of the entire votes of the Association.

RELEVANT ISSUES

10. Since my Affidavit dated May 21, 2018, I have had the opportunity to review numerous additional documents that have been produced including:
 - a. Minutes of Board meetings from 1987 to present. It should be noted that there are minutes of several meetings that have not yet been produced.
 - b. The Annual audit reports for FYE 2014, 2015 and 2016. In addition, I have reviewed monthly financial statements produced by the HOA/Management for the period December 31, 2017 and monthly financial reports for January 2018 through September 2018.
 - c. I have also reviewed several of the related lawsuits filed in conjunction with unsupported allegations of individuals who are part of the Defendant group named in this motion.
 - d. I have also reviewed a large number of emails and other written correspondence regarding issues of concern in this motion.
 - e. Finally, I have also reviewed the deposition of Barbara Johnson, who is the manager for the resort assigned by the management agent Empress Management, LLC.

FACTUAL AND PROFESSIONAL OPINIONS

Based on my review of documents and discussion with plaintiffs, there is no question that the Master Board has been unable to provide direction and appropriate financial management of the Master for at least the past three (3) years as the Board in most cases has been deadlocked in a tie with the HPR and FS on one side (**PLAINTIFFS**) and RT and OFS on the other (**DEFENDANTS**).

There have been several instances of Ultra Vires action taken by the Defendants that have caused direct harm to the Master. Among the more severe instances are:

1. The Defendants halted collection of “gate pass fees”, which result in a loss of approximately \$300,000 in annual revenue that was used to offset various operating expenses and assist funding to the Maintenance Reserves.
2. The Defendants refused to approve an increase in the Operating budget for 2017, 2018 and 2019 that would fund operating expenses previously offset by gate pass revenues.
3. The Defendants refused to pay their share of monthly operating assessments in 2016 and 2017 resulting in insufficient funds to pay bills. The defendants then directed management to use Maintenance reserves to pay operating expenses.
4. Defendant RT was sued for failure to pay assessments and was subsequently ordered by the court to pay the funds already collected from their owners to the Master. Instead of reimbursing the Master Reserve account (approximately \$400,000) the funds were put into the operating account to pay operating expense thereby continuing the deficit operation.
5. It should be noted that Plaintiffs have made the effort to get a budget passed that will make the Master whole and provide operating funds for routine expenses. Each effort has resulted in the Defendants refusal to fulfil their affirmative obligation.
6. Defendants continue to totally ignore the governing documents and commit Ultra Vires Acts such as:
 - a. At the March 22, 2018 Board meeting, which only had the Defendant members present as they made the determination that the Plaintiff members were conflicted and could not vote, a resolution to evict the Defendant management agent from common property was passed. In fact there was no conflict of interest.
 - b. From 2016 to present and continuing, there is a conflict of interest with the Defendant Master Board members in that they are not current with payment of assessments to the Master, refuse to pass a budget that includes funding operations for the loss of revenue previously generated by gate fees (\$290,000) and refusal to pass a budget that includes funding to make up the approximate \$400,000 spent from Reserves.
 - c. The Defendant Board members also claim the governing documents are not valid and contest the legality yet continue to serve on the Board and breach their duty to fulfill their affirmative obligations.

7. A review of the minutes, when they are prepared, of Board meetings in 2018 clearly support that statements by Ms. Johnson in her deposition regarding the dysfunctional Board as enumerated in paragraph 10 of the Motion to Appoint a Temporary Custodian.

In summary, the inability of the Board to function as a Board in the best interest of the members of the Master Association due to the actions/inactions by the Defendants are serious violations of State statute, the CCRs and Bylaws of the Master HOA and if NOT stopped immediately will result in irreparable harm to the Resort and its members/owners. For the reasons set forth in the Motion and above, it is critical that the court appoint a Temporary Custodian to take over operation and management of the Master Association.

I affirm that the foregoing is true to the best of my personal knowledge, information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same. I reserve the right to modify my opinions based on any new information that may be provided subsequent to this Affidavit.

FILED ELECTRONICALLY FILED - 2018 NOV 14 12:38 PM - HONORARY - COMMONWEALTHS - CASE#201803280381733

FURTHER AFFIANT SAYETH NOT

Mike Parades
Mike Parades, PCAM

SWORN to and subscribed before me this
13th day of November 2018.

Logan Player
Notary Public for South Carolina
My Commission Expires: 10/25/2027



FILED ELECTRONICALLY - FILED - 2018 NOV 14 12:38 PM - HERRICK - COMMON PLEAS - CASE#20180328038173

EXHIBIT A

ЕЛЕКТРОННО ЦЯЛІСЬ ПІДЛЕД - ЗОПЕКИНОВ 143 12 387 РИВ - ПЛОДІНЬ - ССММММММ ПІЛІАС - САСЕ#220148012280381723

MICHAEL R. PARADES, PCAM
9 Harrill Ct., Charleston, SC 29412
Phone: 843-364-6962 Email: paradesm@gmail.com

EXPERIENCE

7/12-Present **Community Association Consulting:**

Provide consulting services to community associations in primary areas of governance, management and fiduciary duty. Services as expert witness in litigation involving community associations. Other services available upon request.

11/13-12/17 **General Manager, I'On Assembly, Inc.**

Provide management services including financial management, operations management and assist Board of Trustees in governance of 762 home community.

7/09-6/12 **Realtor-Dunes Properties and Community Association Consulting:** Real estate sales and Provide consulting services to community associations in primary areas of governance, management and fiduciary duty. Services as expert witness in litigation involving community associations.

12/05-6/09 **DISTRICT MANAGER-SC-**Sentry Management, Inc. Supervise and manage delivery of professional management services for Community Association clients in South Carolina.

1/88-12/05 **PRESIDENT/CEO - CCM Management, Inc. AAMC, Charleston, S.C.** Supervise and manage delivery of professional management services for Community Association clients. Responsibilities include preparation of bid specifications, contract negotiations and contractor oversight; supervision of all financial operations for each Community including monthly billings, collections, payments for services and financial statement preparation. Provide other specialized services such as assistance in drafting amendments to governing documents: insurance claim negotiations; services as insurance trustee; construction project management coordination of litigation by Communities and services as expert witness for Community management.

6/87-12/87 **REGIME ADMINISTRATION MANAGER - Seabrook Island Ocean Club Incorporated, Charleston, S.C.** Manage property operations for 22 Property Owner Associations totaling 827 units. Responsibilities include preparation of bid specifications, contract negotiations and contractor oversight; supervision of all financial statement preparation.

1985-4/87 **CONTROLLER - Seabrook Island Ocean Club Incorporated, Charleston, S.C.** Managed all financial matters for the resort corporation, the real estate limited partnership and for the wholly owned utility company; prepared and coordinated all work required by external auditors for tax returns, SEC filings and annual audits; originated corporate policies and procedures; formulated 20 million dollar operating and capital budget forecasts; supervised preparation and analysis of financial

FILED FOR ONLINE FILING - 20181109 14:42:38 PM - HONORARY - COMMONION FLEAS - CASE#201803280381733

MICHAEL R. PARADES, PCAM

statements cash management; scheduled work flow prioritization of 26 people in three departments and preparation of biweekly payroll for over 400 people; organized and participated in 15 million dollar asset purchase by new owners; and prepared for initial stock offering. Supervised and scheduled all data processing systems including complete hardware replacement and software upgrades, resulting in an improved information processing system which increased operations efficiency and reduced costs.

- 1983 - 1985 **ACCOUNTING MANAGER** - Support Systems International Incorporated, Charleston, S.C. Managed and systematized monthly financial statements for 125 cost centers, including consolidated financial statements for parent manufacturing corporation and sales and service subsidiaries; supervised, prepared and executed financial data reviews, budget variance reports, multi-state tax filings, and annual detailed analysis for external auditors; assessed corporate policies and procedures; developed and recommended changes to perpetuate an efficient organization and reduce costs; and organized and supervised transition period after 50 million dollar purchase of primary competitor.
- 1979 - 1983 **SENIOR ACCOUNTANT** - Deloitte Haskins & Sells, Columbia, S.C. In charge of various audits with primary emphasis in Real Estate Development, Hospitality, Health Care Industries, and Governmental Accounting.
- 1978 - 1979 **BOOKKEEPER** - Adlestone International Corporation, Charleston S.C. Responsible for payroll, inventory, accounts payable, and associated records of parent corporation and subsidiaries.
- 1967 - 1976 **UNITED STATES NAVY** - Nuclear trained Machinist's Mate, submarine qualified. Attained qualifications as Engineering Officer of the Watch and Engineering Watch Supervisor. Honorably discharged.

EDUCATION

- 1977 - 1979 COLLEGE OF CHARLESTON, Charleston, S.C., Bachelor of Science, Business Administration, Summa Cum Laude. Honors include awarded Alumni Medal in 1979 and Wall Street Journal Award in 1980.

PROFESSIONAL DESIGNATIONS

- 1981 Certified Public Accountant(CPA) by South Carolina, retired 2005
- 1998 Professional Community Association Manager (PCAM) by National Board of Certification for Community Association Managers (NBC-CAM).
- 2003-2006 Accredited Association Management Company (AAMC) by National Board of Certification for Community Association Managers (NBC-CAM)
- 2005 Qualified as Expert Witness in SC State Court in matters related to Community Association Management, Community Association Governance and Board Fiduciary Duties
- 2009-2011 Licensed as Real Estate Salesman by SC Real Estate Commission
- 2010-2012 Qualified by SC Real Estate Commission as Instructor for classes related to Homeowner Associations.

MICHAEL R. PARADES, PCAM

MEMBERSHIPS

Community Associations Institute (CAI)
Association of Professional Community Managers
CAI-PMMP National Faculty, Retired
Community Associations Institute of South Carolina (CAI-SC)-Past President
Past Vice chair CAI-SC Legislative Action Committee
SC Association of Realtors and National Association of Realtors-past member

FILED FROM ONLINE - FILED - 2018 NOV 14 10 38 PM - HONORARY - COMMONWEALTHS - CASE#201801220001723

Louis and Brenda Distefano vs Board of Directors Windswept Villas III, HPR (Deposed)
Breach of fiduciary responsibility. Settlement in favor of Distefano

I was engaged as an expert witness on behalf of the Plaintiffs by Leath Bouch & Crawford.

Montecito Enclave, LLLP, et al vs Guggenheim Enclave, LLC et al (06-CP-10-1316) (Deposed)

This was an action alleging failure to disclose and improper maintenance. Defendant paid nuisance settlement to be released from the lawsuit.

I was engaged as an expert witness on behalf of the Defendant by Buist Moore Smythe & McGee. The Defendant has been dismissed from the lawsuit.

Blackhurst vs Spences Point Council of Co-Owners, HOA Services and Lund Property Management. (Deposed)

This is an action involving a fire at the property resulting in death of an owner. Plaintiff is alleging Wrongful death. The lawsuit was settled and payment from the Defendant's insurance policy made to the Plaintiff.

I was engaged as an expert witness on behalf of Defendant Spences Point by Halio & Halio.

**Jay Kalan and Kalan Enterprises, Plaintiffs
Vs Peckerhead Pub, Lynne Wilkin and Michael Godfrey, Defendants and Third Party Plaintiffs
Vs Dry Creek, LLC, Nathaniel Rackett, Heritage Plaza HPR, Hilton Head Kitchen and Bath and
Kenneth Schultz, Third Party Defendants. (07-CP-07-2504)**

This lawsuit has been dismissed.

I was engaged as an expert witness on behalf of the Defendants/Third Party Plaintiffs by the Law Offices of Fletcher M. Johnson.

**Ellington Woods I, II, III, IV, V, Alan Arthur and John Doe (Testified)
Vs**

Dunes West Property Owners Association, Inc. (10-CP-008911)

This is an action related to alleged breach of Covenants by the Defendant. This case was tried in front of Judge Mikel Scarborough May 2014. I was qualified as an expert witness in community governance, community management and Board fiduciary responsibilities. Judge has issued orders denying plaintiff motion to decertify class and denying plaintiff motions related to various defense claims. The orders were very clear as to the Judge's probable final ruling. Settlement in favor of Plaintiff.

I was engaged as an expert witness on behalf of the Plaintiffs by Tecklenburg & Jenkins.

Susan K. Bryant vs Board of Directors for Ellington Woods III HOA

This was an action alleging negligence and breach of fiduciary responsibilities. The lawsuit has been dismissed.

I was engaged as an expert witness on behalf of the Defendants by Clawson & Staubes.

Distant Island Community Association vs Mark Christmus

This is a Covenant compliance action. The lawsuit has been settled in favor of the Plaintiff.

I was engaged as an expert witness on behalf of the Plaintiff by Ashley Twombly.

Misty Lake Association, Inc. vs Bridlebridge Homeowners' Association, Inc. (07-CP-32-3492) (Deposed)

This case is primarily a dispute over the obligation of the Defendant to pay assessments to the Plaintiff. The case was heard by the Lexington County, SC Master-in-Equity. This case ended with Master-in-Equity ruling in favor of Bridlebridge Homeowner's Association, Inc.

I was engaged as an expert witness on behalf of the Plaintiff by Rogers, Townsend & Thomas. Defendant counsel stipulated my qualifications as an expert witness and the Master qualified me accordingly as an expert witness in matters of community governance, community management and Board fiduciary obligations.

Various Kensington Place owners individually vs M.U.I. Corporation and Kensington Place Owners Association. (08-CP-46-2158) (Deposed) (Testified)

This is primarily a Breach of Fiduciary Duties action against the Developer and the Developer controlled Board of Directors. I was engaged as an expert witness on behalf of the Plaintiffs by Leach Bouch & Crawford.

The case was tried the week of October 20, 2014. Defendenat M.U.I. reached settlement with Plaintiffs during the trial. Trial continued against remaining defendant. I was qualified as an expert witness by Judge John Hayes. Trial resulted in verdict in favor of plaintiff.

Rivers Point Row POA vs John B. Hagerty, John W. Derbyshire, Linda L. Derbyshire and Rivers Point Row, LLC. (08-CP-10-6740) (Deposed)

This is an action for Breach of Fiduciary Duty and failure to disclose against the Developer. I was engaged as an expert witness on behalf of the Defendants by Wills & Massalon. The lawsuit was settled in favor of the Plaintiffs.

John Schuler & Jeff Merrell vs Hyperion Towers Homeowners Assn Board of Directors (08-CP-26-3365) (Deposed)

This is a class action for Breach of Fiduciary Duty by the Board of Directors. I have been engaged as an expert witness on behalf of the Plaintiffs by the Stanley Law Firm. The lawsuit was settled in favor of the Plaintiffs.

Bruce Langson, Representing a class of similarly situated people vs Lyons Cove Homeowners Assn Board of Directors. (09-CP-26-5507)

This is a class action for Breach of Fiduciary Duty by the Board of Directors. I have been engaged as an expert witness on behalf of the Plaintiffs by the Stanley Law Firm. The lawsuit is in the discovery phase.

Bluffton Village Lot 11 Horizontal Property Regime and Bluffton Village Lot 11 Owners' Association, Inc. Plaintiffs (08-CP-07-1724)

vs Bluffton Village, LLC f/k/a Rowkris Development I, LLC, Strecansky & Co., Inc a/k/a Strecansky & Co. of the Low Country, Inc., The Pro Framing Corporation, Pro Plastering & Stucco, Inc., American Block Company, Inc. d/b/a Builders Plus Distribution Company, Inc., Pana Roofing, Inc., Shelter Wood Windows, A Division of Shelter Superstore Corporation and Park-Vue Patio Doors, A Division of Merrill Millwork, Inc., Defendants

AND Strecansky & Co., Inc. a/k/a Strecansky & Co. of the Low Country, Inc. Third Party Plaintiff

Vs Golden Triangle Repair, Inc., Tupelo Builders, Inc. William Vitto Architect, Inc., William Vitto, Individually, Pro Plastering and Stucco, Inc., Pro-Slab, Inc., Fox Interiors, Malphrus Construction Company, SOCAR, Inc., Shaw Manufacturing's Wrought Iron Works, Hydro-Stop Inc. and Don Brashears, Joan M. Burr, George York, Mary Vaux and Jan Horan, Third-Party Defendants,

This case is a design/construction defect case in which Defendant and Third-Party Plaintiff have denied liability and counterclaimed failure to maintain against the Board of Directors. I was engaged as an expert witness on behalf of the Defendant and Third-Party Plaintiff (Strecansky & Co) by Rogers, Townsend & Thomas. The lawsuit has been settled.

Bluffton Village Lot 13 Horizontal Property Regime and Bluffton Village Lot 13 Owners' Association, Inc. Plaintiffs (08-CP-07-4638)

vs Bluffton Village, LLC f/k/a Rowkris Development I, LLC, Strecansky & Co., Inc a/k/a Strecansky & Co. of the Low Country, Inc., James Hilton, Synco Enterprises, The Pro Framing Corporation, Pro Plastering & Stucco, Inc., American Block Company, Inc. d/b/a Builders Plus Distribution Company, Inc., Pana Roofing, Inc., Shelter Wood Windows, A Division of Shelter Superstore Corporation and Park-Vue Patio Doors, A Division of Merrill Millwork, Inc., Defendants

AND Strecansky & Co., Inc. a/k/a Strecansky & Co. of the Low Country, Inc. Third Party Plaintiff

Vs Golden Triangle Repair, Inc., Tupelo Builders, Inc. William Vitto Architect, Inc., William Vitto, Individually, Pro Plastering and Stucco, Inc., Pro-Slab, Inc., Fox Interiors, Malphrus Construction Company, SOCAR, Inc., Shaw Manufacturing's Wrought Iron Works, Hydro-Stop Inc. and James A. Buckley, Nannette Manning, Tony A. Ritter, Jr., B.J. Frazier and Stephanie Brooke Mendenhall, Third-Party Defendants,

This case is a design/construction defect case in which Defendant and Third-Party Plaintiff have denied liability and counterclaimed failure to maintain against the Board of Directors. I was engaged as an expert witness on behalf of the Defendant and Third-Party Plaintiff (Strecansky & Co) by Rogers, Townsend & Thomas. The lawsuit has been settled.

Jay Kalan, MD and Kalan Enterprises, Inc, Plaintiffs

vs

Peckerhead Pub LLC, Lynne D. Wilken and Michael E. Godfrey, Defendants and 3rd Party Plaintiffs

Vs

Dry Creek LLC, Nathaniel Rackett, Heritage Plaza HPR and Hilton Head Kitchen and Bath, Inc., 3rd Party Defendants

This case involved breach of Board fiduciary duty and failure to maintain against the Developer Board. I was engaged as an expert witness on behalf of the defendants by The Law Offices of Fletcher Johnson. The case has been dismissed.

Simmons Pointe HOA, Inc., Plaintiff (10-CP-10-4926) (Deposed)

Vs

Patricia Tyner, Defendant and 3rd Party Plaintiff

Vs

Ravenel Associates, Inc. and John Collins, 3rd Party Defendants

This case started as a association lien foreclosure action where the defendant counterclaimed against the management company and Board President alleging breach of fiduciary duty and other causes.

I was engaged as an expert witness on behalf of Ravenel Associates, Inc. by Clawson & Staubes. The case has been settled.

Michael McNulty, Plaintiff (2010 CP 31-1313)

Vs

Al Shadwick, Jack Shadwick, Cross Creek Plantation POA, Inc., Cross Creek Plantation Country Club, Inc., Cross Creek Development of Oconee, Inc., John Doe 1, John Doe 2, John Doe 3
Defendants

Lawsuit by plaintiff for access to records and require compliance with governing documents and SC Non Profit Corporation Act.

I was engaged as an expert witness on behalf of Plaintiff by the Finkel Law Firm. The action has been dropped by Plaintiff

Lisa A. Viera, Plaintiff (US District Court 3:10-CV-1659-MJP) (Deposed)

Vs

Gramercy Capital Corporation d/b/a Gramercy Realty, EMCOR Facilities Services, Inc, TRW& Associates, Inc., Commercial Roof Solutions, LLC and Liquid Plastics, Inc. Defendants

Lawsuit relates to personal injury due to negligence of defendants.

I was engaged as an expert witness on behalf of EMCOR by Carlock, Copeland & Stair, LLP. The case has been settled in favor of Plaintiff.

William Erickson and Randy McDaniel on behalf of themselves and all other similarly situated, Plaintiffs (2010-CP-18-2787)

Vs

Alison Dailey, in her capacity as Chairman and Director of the Highlands of Legend Oaks POA, Inc. Defendant

Lawsuit related to claim of negligence and breach of fiduciary duties by Developer who controlled Board of Directors.

I was engaged as an expert witness on behalf of Plaintiffs by Leath Bouch & Seekings, LLP. Lawsuit has been settled in favor of Plaintiffs.

Meridian Place HOA, Inc., Plaintiff (2010-CP-10-0506)

Vs

Ravenel Associates Regime and Association Management, Inc., Ravenel Associates, Property Management Services, Inc., Ravenel Associates, Inc.

Lawsuit is a breach of contract lawsuit.

I was engaged as an expert witness on behalf of Plaintiff by the Martin Law Firm. Settlement Agreement pending.

Rivergate Homeowners Association, etal, Plaintiffs (2010-CP-26-03901)

Vs

WW & LB Development Co. LLC, Wayne Winderman Individually, etal, Defendants

Lawsuit is a claim of negligence and breach of fiduciary duties by developer controlled Board of Directors.

I was engaged as an expert witness on behalf of Plaintiffs by The Stanley Law Firm. The lawsuit has been settled in favor of Plaintiffs.

Richard Fisher etal, Plaintiffs (2009-CP-22-01655) (Deposed)

Vs

Shipyard Village Council of Co-Owners, Inc., Defendants

Lawsuit is a claim of negligence and breach of fiduciary duties by past Boards of Directors. At motions hearing on May 21, 2012, judge ruled as matter of law that defendants have violated fiduciary duties. Defendants have indicated the judge's ruling will be appealed.

I have been engaged as an expert witness on behalf of Plaintiffs by Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. Appeal has been heard and is awaiting ruling by the SC Court of Appeals. SC Court of Appeals ruling partially upheld and partially reversed lower court ruling. Remanded to lower court for trial to be scheduled. Plaintiff has appealed to SC Supreme Court who accepted appeal and case will be heard November 2015. Case heard, ruling issued and remanded back to lower court. Settlement in favor of Plaintiffs reached at mediation.

Charles Clinton etal, Plaintiffs (2010-CP-22-00400)

Vs

Sandpiper Run Council of Co-Owners, Inc., Richard Allen, Roland David Roty, Thomas Dulin, Leland Cropper and Robert Jaeger, individually and as members of the Board of Directors of Sandpiper Run Council of Co-Owners, Inc.

Lawsuit is a claim of negligence and breach of fiduciary duties by Board of Directors. I was engaged as an expert witness on behalf of Plaintiffs by Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. Lawsuit has been settled in favor of the Plaintiffs.

US Bankruptcy Court Case No. 09-08102-hb, Chapter 11

IN RE: South Capital Group Inc., Debtor

I was engaged as an expert witness on behalf of a group of homeowners located in Flora Springs Park HOA by the Finkel Law Firm. The HOA was developed by the Debtor, who transferred development rights to another firm that changed the overall development scheme of the community without approval of the membership to the detriment of original purchasers. Action has been settled with payment of damages by Debtor to the group of homeowners.

Ann Staten, Plaintiff (2011-CP-10-498) (Deposed)

Vs

Dovefield HOA, W. Dean Murphy, III, Kelsey Murphy, Party X and Party Y

Case was a claim by owner of Board breach of fiduciary duties resulting in property damage and personal injury. I was engaged as an expert witness on behalf of the Defendant Dovefield HOA by Clawson & Staubes. The case was dismissed.

Marlene Lee, as Guardian ad Litem for Alfonzo Lee, Jr.

Vs

Singleton Rental Property, Inc. and The Agent Owned Realty Company/Premier Group, Inc.

Case No. 13-CP-18=213 (Deposed)

Case is claim for bodily injury in fire due to negligence. I was engaged as an expert witness on behalf of the Defendant Agent Owned by Hampton Green Law. The case has been settled.

Magnolia Point Property Owners Association, Inc.

Vs

Springwood Estates LLC, Richard E. Lester, Mike Harrington and Caroline Bahr

Case No. 2012-CP-26-7448 (Deposed)

Case is claim of breach of fiduciary duties for failure to properly fund reserves. I have been engaged as an expert witness on behalf of the Defendants by the Bellamy Law Firm. The case was settled for a nominal sum in favor of Plaintiff.

Riverland Place Owners Association Inc.

Vs

Weichman Realty

Case will be a claim of breach of fiduciary duties. I have been engaged as an expert witness on behalf of the Plaintiff by the Martin Law Firm. Complaint will be filed when initial investigation completed. Case dismissed.

John Henderson

Vs

**Coral Sands Owners Association, Inc., Coral Resorts LLC, Trew Holdings LLC, Coral Holdings LLC, Reba Management, Inc and Van Der Meer Tennis University, Inc.
Federal Court Action No. 9:13-cv-962-SB**

Case is an action for negligence resulting in personal injury. I was engaged as an expert witness on behalf of Plaintiff by The Richter Law Firm. Lawsuit has been settled in favor of Plaintiff.

Cameron Hutson Rowe, a minor child by Deirdre Eileen Rowe as Guardian Ad Litem and Deirdre Eileen Rowe, Plaintiffs

Vs

The State of South Carolina, The SC Department of Transportation, The County of Dorchester, The Dorchester County Department of Public Works, The Town of Summerville, Community Management Group, LLC, Irongate Civic Associations, Inc. Meadwestvaco Corporation, Defendants

CASE NO: 2010 GP-18-1903

Case is an action for negligence resulting in personal injury. I was engaged as an expert witness on behalf of Defendant Community Management Group, LLC., by E. Glenn Elliott Esq., Aiken Bridges. The case was settled.

Bridge Tender Owners' Association, Inc., Plaintiff

Vs

Bridge Tender, LLC; A. Edward Jackson, III; Superior Construction Corp.; Chris R. Clark, AIA; The Earthworks Group, Inc., d/b/a Earthworks Group Planning & Design Consultants; Derrick Spivey, Inc. and S.C.S.S. Inc. a/k/a South Carolina Specialty Services, Defendants

Case No: 2012 CP-26-7487

Case involves numerous potential actions from design/construction defect to Board breach of Fiduciary duties. I was engaged as an expert witness on behalf of Defendant Superior Construction Group by J. Ryan Oates, Esq. Murphy & Grantland PA. The case was settled before trial.

Sallie Ann Laidlaw and Richard H. Laidlaw, plaintiffs

Vs

**Invesco, LP; Childress Klein Properties, Inc. and CK Retail Brokerages, LLP, defendants.
(DEPOSED)**

Case No: 2013-CP-08-504 (Deposed)

Case is an action for negligence resulting in personal injury. I have been engaged as an expert witness on behalf of Plaintiffs by Geroge J. Kefalos, P.A. The case is in discovery phase. The case has been settled.

Broadway Station Owners Association, Inc., et al vs Easlan Capital Inc., et al

Case No: 2012-CP-26-0510

Case is an action involves several actions by HOA against original apartment owner who sold property to a subsequent grantor who then converted apartments to condominiums and sold those condominiums to the general public. Allegations include original design/construction defects, failure to disclose and breach

I was originally engaged by Ryan Oates at Murphy & Grantland, P.A. on behalf of defendant, Easlan Capital. Murphy & Grantland were replaced by as counsel by William Watkins and Katie Stanton of Wall Templeton. The case has been settled on terms favorable to defendants.

Colonial Villas II HOA vs Colonial Charters Development, Inc., et.al.

Case No: 2012-CP-26-9905 (Deposed)

Case was claim for negligence, Breach of Warranties, Unfair Trade Practices, Fraud and misrepresentation by the Developer when the Developer controlled the Board. I was engaged on behalf of Plaintiff by Stacy Stanley of the Stanley Law Firm. Case has been settled in favor of Plaintiff.

Sallie Ann Laidlaw and Richard H. Laidlaw vs Invesco, LP, et.al. (DEPOSED)

Case No: 2013-Cp-08-0504

Case involved personal injury damages due to alleged negligent maintenance. I was engaged by George Kefalos, Esq on behalf of Plaintiffs. Case was settled in favor of Plaintiffs.

Langston, et.al. vs Lyons Cove HOA Board of Directors

Case No: 2013-CP-26-1497 (Deposed)

Case involved property damages to common and personal property due to lack of and negligent maintenance by HOA Board of Directors. I was engaged as expert witness on behalf of the Plaintiffs by Stacy Stanley of the Stanley Law Firm. Case has been settled in favor of the Plaintiffs.

Dennis and Janet Skibinski vs Racquet Club Villa Owners Association and Sentry Management, Inc.

Case No: 2014-CP-10-03858 (Deposed)

Case involves allegation Plaintiffs breach fiduciary duties resulting in unspecified damages. I was engaged as an expert witness on behalf of Defendants by Arthur Justice, Jr. Esq. of Turner Padgett. Case was dismissed.

**Cynthia Hickman Ray, Personal Representative of the Estate of Marie Melton Smith, Plaintiff
Vs
Colonial Villas II HOA, Inc., Mark's Lawn Service and Mark Bullard, Defendants**

Case No: 2014-CP-26-0010 (Deposed)

Case was claim of negligence resulting in resident's death. I was engaged on behalf of Defendant Colonial Villas II by Carrie A. Fox, Esq. of Aiken Bridges. Case was dismissed.

North Hampton POA vs Ethan Carney, Chicora Association Management LLC, Chris Yarbro Construction LLC, Chris Yarbro, Cecil Horne and Waterbridge Marine LLC, Waterbridge Construction LLC and Waterbridge Marine Contractors

Case No: 2015-CP-26-0100

Case involved damages to Condo buildings for negligently installed roof by non-licensed contractor. I was engaged by Nick Fata, Esq on behalf of Plaintiff. Case settled at mediation in favor of Plaintiff.

Emira Rinella, Plaintiff vs Bridgeport HOA Inc.

Case No: 2015-CP-26-5979 (Deposed)

Case was dispute over responsibility to repair damage to private property due to storm drain pipe leak on common property. I was engaged as expert witness on behalf of Plaintiff by John G. Hofler, III, Esq of Aiken Bridges. Case was settled in favor of Plaintiff.

Chris Manley vs Hilton Head Long Term Rentals Inc. and Stuart Gaynes

Case No: 2016-CP-07-----

Case involved personal injury claim due to negligence by Property Management Co. I was engaged as expert witness on behalf of Plaintiff by Alexandra S. Williams, Esq. of Ben Traywick Law Firm. Case was settled in mediation.

Jill Keck Humphries, Dennis L Johnston Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries and Nancy Johnson, PLAINTIFFS

Vs

Tilghman Beach and Racquet Club Condominium Association, Inc., James H Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle III individually as members of the Board of Directors for Tilghman Beach and Racquet Club Condominium Association Inc.

Case No: 2016-CP-26-4465

Case involves failure of Board of Directors to fulfill its affirmative obligations to levy necessary assessments to repair the buildings in the HOA. I was engaged as expert witness on behalf of the Plaintiffs by Howell Bellamy, III. Case is in Discovery.

Larry F Simmons and Eugene K. Stahl, Plaintiffs

Vs

Tuscany Master Association, Inc., et.al.

Case No: 2017-CP-26-

Case is requesting Court order requiring defendants to comply with Plaintiffs Demand to inspect Corporate Records. I was engaged as expert witness on behalf of Plaintiffs by Howell Bellamy, III. Case is awaiting Court hearing.

Preserve at Fenwick Hall POA, Inc., a S.C. Non-Profit Corporation by and through its Directors, Michel LaPlante, John LaPlante, as Directors, Pursuant to SC Code of Laws 33-31-304, Preserve JMP, LLC, Michel "Mitch" LaPlante, Marianne LaPlante Scarlatta, John LaPlante and Lauren LaPlante, PLAINTIFFS

Vs

The Preserve at Fenwick Hall POA, Inc. (as nominal defendant only), Jay Sifly, Carol Vernon, Nicholas Chalfa, Susan Crawford and Dennis Curtin, and Property Management Services, Inc. DFENDANTS

Case No: 2017-CP-10-6038

Case involved dispute of Declarant Control Rights, Control of ARB and when Assessments begin for Declarant owned Lots/Parcels. I was engaged as expert witness on behalf of Defendants by Keving Mimms, Esq. Case is in Discovery phase.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2018-CP-26-03173

FREDERICK E. BROWN, CHARLES O.)
PAKOSTA, CONRAD A. CALVANO,))
GAYLE N. SCOTT, and PHILIP D. COX,))
individually and derivatively on behalf)
of MYRTLE BEACH RESORT))
HOMEOWNERS' ASSOCIATION, INC.,))
and on behalf of all other similarly situated)
Co-owners, and LORI NIEDZWIECKI, and))
ROBERT S. ROSENCRANS, individually))
and derivatively on behalf of the MYRTLE))
BEACH RESORT HOMEOWNERS'))
ASSOCIATION, INC. for its right and))
benefit,)

Plaintiffs,)

AMENDED SUMMONS

vs.)

JEFFERY L. RICHARDSON and NANCY))
L. MOORE, individually and as current))
members of the Board of Directors for))
MYRTLE BEACH RESORT))
HOMEOWNERS' ASSOCIATION, INC.,))
and PETER A. GRUSAUSKAS and JIM))
PERKINS, individually and as former))
members of the Board of Directors for))
MYRTLE BEACH RESORT))
HOMEOWNERS' ASSOCIATION, INC. ,))

Defendants.)

MYRTLE BEACH RESORT))
HOMEOWNERS' ASSOCIATION, INC.,))

Nominal Defendant.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Members' Derivative Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their office at 1000 29th Ave. N., Myrtle Beach, South Carolina 29577 and to file your answer with the Clerk of Court for Horry County (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

s/ Howell V. Bellamy, III
Howell V. Bellamy, III (SC Bar # 66575)
hbellamyiii@bellamylaw.com
Howell V. Bellamy, Jr. (SC Bar # 00642)
nrichardson@bellamylaw.com
1000 29th Ave. N.
Myrtle Beach, SC 29577
843-448-2400 Phone
843-448-3022 Facsimile

Attorneys for Plaintiffs

Myrtle Beach, SC 29577

February 17, 2020

VERIFIED MEMBERS' DERIVATIVE COMPLAINT

The Plaintiffs for their derivative Complaint on behalf of nominal Defendant Myrtle Beach Resort Homeowners' Association Inc., ("Master HOA") make the following allegations upon Plaintiffs' personal Knowledge with regard to themselves and their own acts and upon information and belief as to all matters. Based upon the allegations in this Complaint, Plaintiffs assert derivative claims for *ultra vires* acts, breach of Master HOA's Declaration and By-Laws, and declaratory judgment and injunctive relief against the above named Defendants as outlined below.

PARTIES AND JURISDICTION

1. Plaintiff Frederick E. Brown ("Brown or Plaintiff") is a citizen and resident of Horry County, South Carolina. At all times relevant, the Plaintiff was and is now, an interest owner of fee simple title to Condominium Unit No. 117 in HPR ("Sometimes referred to as Building A"), located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a current Board member for Myrtle Beach Resort Horizontal Property Regime, Inc. ("HPR").
2. Plaintiff Conrad A. Calvano ("Calvano or Plaintiff") is a resident of Oakland County, Michigan. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit No. 137 in HPR ("Sometimes referred to as Building A") located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a current member of the Board of Directors for HPR.
3. Plaintiff Charles O. Pakosta ("Pakosta or Plaintiff") is a resident of Columbiana County, Ohio. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit No. 527 in HPR ("Sometimes referred to as Building A")

located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is also a current Board member for HPR.

4. Plaintiff Gayle L. Scott ("Scott or Plaintiff") is a resident of Chesapeake, Virginia. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit No. 509 in HPR ("Sometimes referred to as Building A") located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is also a current Board member for HPR.
5. Plaintiff Robert S. Rosencrans ("Rosencrans or Plaintiff") is a resident of Horry County, South Carolina. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit No. 545 in HPR ("Sometimes referred to as Building A") and also Condominium Unit Nos.: 6105 and 6220 in Myrtle Beach Resort Five Seasons Centre Council of Co-owners, Inc. ("Five Seasons Centre"). These condominium units are located at 5905 Highway 17 South, Myrtle Beach, Horry County. Rosencrans is also a current Board member for both the Master HOA and Five Seasons Centre.
6. Plaintiff Lori Niedzwiecki ("Niedzwiecki or Plaintiff") is a resident of Horry County, South Carolina. At all times relevant, the Plaintiff was and is now an interest owner of fee simple title to Condominium Unit Nos. 4107 and 4113 in Five Seasons Centre ("Sometimes referred to as Phase IV") located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a current Board member for both the Master HOA and Five Seasons Centre.
7. Plaintiff Philip D. Cox ("Cox or Plaintiff") is a resident of Horry County, South Carolina. At all times relevant, the Plaintiff was and is now, an interest owner of fee simple title to Condominium Unit Nos. 6106 and 6110 in Five Seasons Centre ("Sometimes referred to

as Phase IV”) located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a current member of the Board of Directors for Five Seasons Centre.

8. Myrtle Beach Resort Homeowners’ Association, Inc. (“Master HOA”), a nominal Defendant, is a nonprofit corporation formed pursuant to the laws of South Carolina.
9. Upon information and belief, the Defendant Jeffrey L. Richardson (“Richardson or Defendant”) is a resident of Cherokee County, South Carolina. At all times relevant, upon information and belief, Defendant was and is now an interest owner of fee simple title to Condominium Unit Nos.: 203C, 302, 311, 314, 315, 316, 508, 514, 812, 902, 908, 1405, 1406, 1408, 1712, 2211, and 2212 of the Renaissance Tower Horizontal Property Regime, Inc., (“Renaissance Tower”), which are located at 5905 Highway 17 South, Myrtle Beach, Horry County. Defendant Richardson is also a partner of Shaggy’s, Inc., which owns fee simple title to Condominium Unit Nos.: 501, 603, and 604 in the Renaissance Tower Regime as well as Condominium Unit Nos.: 210, 245, and 308 in the Ocean Front Spa Regime. Defendant Richardson is a current member of the Board of Directors for both the Master HOA and Renaissance Tower. At all times relevant hereto, Defendant acted individually and/or in his official capacity as an agent, representative, and current Board member for the Master HOA.
10. Upon information and belief, the Defendant Nancy L. Moore (“Moore or Defendant”) is a resident of Horry County, South Carolina. Defendant holds fee simple title to Condominium Unit Nos.: 106-B, 403, and 511-B of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc. (“Ocean Front Spa”), located at 5905 Hwy 17 South, Myrtle Beach, County of Horry, South Carolina, and is a current member of the Board of Directors for both the Master HOA and Ocean Front Spa. At all times relevant hereto,

Defendant Moore acted individually and/or in her official capacity as an agent, representative, and current Board member for the Master HOA.

11. Upon information and belief, the Defendant Jim Perkins (“Perkins or Defendant”) is a resident of Clark County, Nevada. Defendant holds fee simple title to Condominium Unit No. 546, of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc. (“Ocean Front Spa”), located at 5905 Hwy 17 South, Myrtle Beach, County of Horry, South Carolina, and is a former member of the Board of Directors for both the Master HOA and Ocean Front Spa. At all times relevant hereto, Defendant Perkins acted individually and/or in his official capacity as an agent, representative, Treasurer and Board member for the Master HOA.
12. Upon information and belief, the Defendant Peter A. Grusauskas (“Grusauskas or Defendant”) is a resident of City of Goshen, Connecticut. Defendant holds fee simple title to Condominium Unit No.: 1402-C of the Renaissance Tower Horizontal Property Regime, Inc., (“Renaissance Tower”) located at 5905 Highway 17 South, Myrtle Beach, Horry County, and is a former member of the Board of Directors for both the Master HOA and Renaissance Tower. At all times relevant hereto, Defendant acted individually and/or in his official capacity as an agent, representative, and President and Board member for the Master HOA.
13. Based upon the foregoing, this Honorable Court has subject matter jurisdiction and venue is proper pursuant to S.C. Code Ann. § 15-7-30. Furthermore, based on the foregoing this Honorable Court has general, personal and specific jurisdiction over the above-named parties hereto.

14. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of the Master HOA and its members with respect to the matters alleged herein.

DERIVATIVE ALLEGATIONS

15. Plaintiffs bring this action derivatively, pursuant to S.C. Code Ann. § 33-31-630 (2007) and Rule 23(b) (1), SCRCPP, to redress injuries suffered by the Master HOA and also on behalf of all other similarly situated members of the Master HOA as a direct result of the Defendants' breaches of the Master HOA's Declaration and By-Laws and *ultra vires* acts.
16. Plaintiffs are condominium unit owners at Myrtle Beach Resort and members of the Master Association.
17. Plaintiffs will fairly and adequately represent the interest of the Master HOA and its members in enforcing and prosecuting its rights and has retained competent experienced counsel.
18. Plaintiffs previously demanded the Defendants Grusauskas and Perkins stop engaging in *ultra vires* conduct by failing to comply with their affirmative duties as Board members of the Master HOA.
19. Thereafter Plaintiffs' counsel sent two letters attached hereto as Exhibits "B-1 and B-2" dated February 1, 2017 and March 29, 2017, respectively, to the Defendants Grusauskas and Perkins and received no response.
20. Because the current Master HOA's Board members, Richardson and Moore, suffer from conflicts of interest and divided loyalties, which preclude them from exercising independent business judgment, demand is also futile.
21. Upon information and belief, the current Master HOA's Board members, Richardson and Moore, are incapable or unwilling to comply with their affirmative duties to properly

administer, maintain and repair, and manage the use and enjoyment of the Resort Properties in order to protect the Plaintiffs and other members' rights and property values in the resort in accordance the requirements of the Master HOA's Declaration and By-Laws.

BRIEF FACTUAL HISTORY OF MYRTLE BEACH RESORT REGIME

22. Master HOA was created as an umbrella or "Master Association" as evidenced by the Articles of Incorporation filed with the Office of the South Carolina Secretary of State on April 30, 1987 and as governed by the Master HOA's Declaration of Covenants, Conditions and Restrictions and By-Laws and filed of record on April 25, 1991 in the Office of the Register of Mesne Conveyances (R.M.C.) for Horry County in Deed Book 1465 at Page 329 ("Master HOA's Declaration and By-Laws attached thereto"). A copy of the Master HOA's Declaration and By-Laws is attached hereto as Exhibit "C" and incorporated by reference as part of this Amended Verified Members' Derivative Complaint.
23. Master HOA is charged with administering certain affairs of the Myrtle Beach Resort, a resort within Horry County, South Carolina presently including: (a) Myrtle Beach Resort Horizontal Property Regime, Inc. ("HPR"); (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc. ("Ocean Front Spa"); (c) Renaissance Tower Horizontal Property Regime, Inc. ("Renaissance Tower"); (d) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. ("Five Seasons Centre") (Collectively known as "Four Individual Condominium Regimes").
24. The Four Individual Condominium Regimes agreed to the Master HOA's creation and to be bound by its Declaration and By-Laws.

25. In addition, thereto, the authority of the Master HOA, stems from, and is in accordance with the Master Deeds of the aforementioned Four Individual Condominium Regimes, which specifically reserve to the developer the right to establish the Master HOA.
26. Moreover, all developer's reserved rights were assigned to the Master HOA by that Assignment of Rights dated January 27, 1989 and filed of record in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 239.
27. The Four Individual Condominium Regimes as well as the Defendants Richardson, Moore, Grusauskas, and Perkins and their successors or designee are subject to the provisions of the Master HOA's Declaration and By-Laws.

RELEVANT PROVISIONS OF THE BY-LAWS FOR THE MASTER HOA

28. Insofar as it is relevant to the assertions in this Complaint, Article II defines certain terms used in the Master HOA's By-laws as follows:
 - a. "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., its successors and assigns.
 - b. "Member" shall mean and refer to each and every Co-Owner at The Myrtle Beach Resort which includes (a) Myrtle Beach Resort Horizontal Property Regime, Inc.; (b) Myrtle Beach Oceanfront Spa Horizontal Property Regime; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime.
 - c. "Voting Member" shall mean and refer to that representative from the Board of Directors of each Individual Condominium association who has been elected by that Board as a representative to the Board of Directors of this Association.
 - d. "Individual Condominium Associations" shall mean and refer to those Associations at The Myrtle Beach Resort presently including: (a) Myrtle Beach Resort Horizontal Property Regime, Inc.; (b) Myrtle Beach Resort

Ocean Front Spa Horizontal Property Regime, Inc.; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc.

29. Article IV of the By-Laws discusses voting, selection, term of office, and duties of the Board of Directors for the Master HOA. Article IV provides in pertinent part:

Section 1. The Association shall be managed by a Board of Directors consisting of not less than four (4) Directors. Each Individual Condominium Association of the Myrtle Beach Resort shall have a representative from its Regime as a Director on the board of the Association. Each Board Member of this Association shall also be a board member of the Individual Condominium Association which he or she represents.

Section 1.A. "Voting." Each Director is hereby assigned the number of votes that represents the number of Apartments (whether residential or commercial) that exists in that Director's Individual Condominium Association.

Section 7. Voting: Any action taken at a meeting of the Board of Directors shall be only upon the affirmative vote of 67% of the entire votes of the Association.

Section 8. Consistent with these By-Laws and applicable Declarations, the Board shall:

- a. Transact all Association business and prescribe the rules and regulations for the use of the assets, facilities and property for which it is so charged and may appoint such officers, clerks, agents, servants or employees as it may deem necessary in its sole discretion and may fix their duties and compensation;
- b. Annually set a budget for the Association;
- c. Fix, impose and remit penalties for violations of these By-Laws and the rules and regulations of the Association;
- d. Elect from the Board within thirty (30) days after each annual meeting the President, Vice-President, Secretary and Treasurer;
- e. Carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the Act.

FOR A FIRST CAUSE OF ACTION
(Ultra Vires Acts and Reckless, Willful, and Wanton Conduct)

30. The Plaintiffs reiterate each and every relevant allegation set forth above as if fully incorporated herein.
31. As of April of 2017, the individual Defendants Grusauskas and Perkins were serving as members and officers of the Board of Directors for the Master HOA. Both Defendants Grusauskas and Perkins resigned from the Master HOA's Board of Directors in March and April of 2018, respectively. Their successors or designees on the Master HOA's Board of Directors are the Defendants Richardson and Moore.
32. Article IV of the Declaration for the Master HOA addresses the Board's affirmative duties with respect to the administration and management of the Myrtle Beach Resort Property. Section 4.1 provides:

The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; **(b) provide for all refuse collection** (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master television service and telephone service; (d) maintain the oceanfront area; grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (e) grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (f) maintain such policy or policies of liability and fire insurance with respect to property owned by the Association; (g) **employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same;** (h) **install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project; . . .** (Emphasis added.)

33. Upon information and belief, the past Board members of the Master HOA for over twenty years have continuously undertaken to perform all of their powers in subsections (a)

through (h) of Article IV for the sole purpose of administering and managing the resort property for the mutual benefit of all the members. “Inasmuch as the enforcement of provisions of this Declaration the By-laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future owners,”¹ it cannot be reasonably argued the Board members’ powers and duties are only optional rather than affirmative obligations. For example, this is evidenced in Article VI Section 6.4 which states, “Provisions shall be construed together and given that interpretation or construction which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development. Provisions shall be liberally interpreted and, if necessary, shall be extended or enlarged by implication as to make them fully effective.” The general plan of the development as referenced in the language of Article VI Section 6.4 is likely to maintain a viable community. The intent of this plan is best effected when Article IV of the Declaration is read in conjunction with Article IV Section 8(e) of the By-Laws to make the powers of the Association affirmative duties. The affirmative exercise of the powers in subsections (a) through (h) would surely best effect the intent of the general plan of development of the community sought in Declaration.

34. Defendants, Richardson and Moore, individually, and as current members of the Master HOA’s Board of Directors, as well as the Defendants, Grusauskas and Perkins, individually, and as former members of the Master HOA’s Board of Directors, have committed the following *ultra vires* acts:

¹ Section 6.2, Article VI of the Declaration.

- a. in attempting to disregard the Master HOA's governing documents² and take control of the Master HOA in direct contravention of the legal rights and property interest of the Plaintiffs and other members of the Master HOA;
- b. in improperly directing and/or instructing Empress Management Company to remove First Service Residential from possession of its office space in Commercial units D and E without the affirmative vote of 67% of the Board members for the Master HOA;
- c. in canceling the master security contract with the Master HOA without a vote from the Master Board and thereby resulting in each Individual Condominium Association having to make arrangements for security. Stated differently, in improperly delegating the duties and responsibilities for security services to the individual condominium associations from the Master HOA. This improper delegation of security services is in direct contravention of Article IV, Subsection (h) of Section 4.1 of Declaration of Covenants, Conditions and Restrictions for the Master HOA. Furthermore, assuming the Defendants had the authority to delegate these duties and responsibilities for security services, which is expressly denied, their unauthorized delegation was made without the affirmative vote of 67% of the Board members for the Master HOA;
- d. in improperly delegating the duties and responsibilities for all trash collection services to the individual condominium associations from the Master HOA. This improper delegation of trash collection services is in direct contravention of Article IV, Subsection (b) of Section 4.1 of Declaration of Covenants, Conditions and Restrictions for the Master HOA. Furthermore, assuming the Defendants had the authority to delegate these affirmative duties and responsibilities, which is expressly denied, their unauthorized delegation was made without the affirmative vote of 67% of the Board members for the Master HOA;
- e. in improperly entering into as well as cancelling vendor contracts on behalf of the Master HOA without obtaining the affirmative vote of 67% of the Board members for the Master HOA. This unauthorized action is in direct violation of Article IV, Section 7 of the By-Laws for the Master HOA;

² See Defendants' e-mails attached hereto as Exhibit "D" and incorporated by reference as part of this Amended Verified Members' Derivative Complaint.

- f. in improperly directing and/or instructing Empress Management Company to make any operational decisions for the Master HOA without the affirmative vote of 67% of the Board members for the Master HOA;
 - g. in improperly asserting that they (Richardson and Moore) do NOT have to follow the voting provisions in the Bylaws for the Master HOA because their individual Condominium Association (Renaissance Tower and Oceanfront Spa) have more than 50% of the total Myrtle Beach Resort Units;
 - h. in improperly terminating the gate pass fee without the requisite vote from the Master Board. Upon information and belief, the gate pass fee has been in effect for over seventeen years and in 2017 generated annual funds for the Master HOA of approximately \$289,000.00;
 - i. Richardson and Moore as the two representatives from Renaissance Tower and Oceanfront Spa, respectively, are continuously taking improper action without a Board Vote; and
 - j. Any other unauthorized conduct or act of the Defendants that may be revealed during the discovery process of this case before trial.
35. As a direct and proximate result and consequence of the Defendants' actions herein, the Plaintiffs and other members of the Master HOA have been injured and damaged by the loss of protected rights as well as diminution of their property values.
36. Plaintiffs are entitled to a judgment against the Defendants, together with all damages, actual and punitive, and attorney's fees and such other and further relief as this Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Breach of Master HOA's Declaration and By-Laws)

37. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

38. The Myrtle Beach Resort's recorded documents, including the Master HOA's Declaration and By-Laws, constitute a contract between the Master Association on the one side and the four individual regimes and Co-owners on the other side. Failure of the Defendants, Richardson and Moore, individually, and as current members of the Master HOA's Board of Directors, as well as the Defendants, Grusauskas and Perkins, individually, and as former members, to comply with their affirmative duties under Article IV of the Declaration and Sections 1, 3, 5, 6, 7, and 8(e) of the By-Laws gives rise to an action for breach of contract against them by an aggrieved member/Co-owner.³ Specifically, Article VI, Section 6.2 of the Declaration provides in pertinent part:

Each Co-owner and Occupant shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration, as same may be lawfully amended from time to time. ***Failure to comply with any of the same shall be grounds for . . . instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Board of Directors on behalf of the Association, or in a proper case, by an aggrieved Owner.*** Should the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement including court costs and reasonable attorneys' fees, shall be paid by the violating Owner or Occupant. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Association, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation of breach. (Emphasis Added.)

³ See Murphy vs. Yacht Cove Homeowners Ass'n, 289 S.C. 367, 345 S.E.2d 709 (1986), where the South Carolina Supreme Court held "***that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association***" for the failure to discharge its affirmative duties under the By-Laws. 289 S.C. at 369, 345 S.E.2d at 710.

39. Declaration of Covenants, Conditions and Restrictions for the Master HOA provides in pertinent part: “that all the property described in Exhibit “A” (“Resort Properties”)⁴ *shall be . . . subordinate and subject to the following easements, restrictions, charges, liens, and conditions which are hereby imposed for the purpose of protecting the value and desirability of these properties and which restrictions, easements, charges, liens, conditions and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchase or takes any interest in real property within the property subject to this instrument.*” Emphasis Added.) A copy of Exhibit “A” as described above is attached hereto and incorporated by reference as part of this Amended Verified Complaint.
40. Defendants, Grusauskas and Perkins, individually, and as former members of the Master HOA’s Board of Directors, have breached their affirmative duties as set forth above, and have specifically violated Article IV, Subsections (b), (c), (g), and (h) of Section 4.1 of Declaration for the Master HOA as well as Article IV, Sections 1, 3, 5, 6, 7, 8(e) and 9 of the By-Laws. Furthermore, the Defendants, Richardson and Moore, individually, and as current members of the Master HOA’s Board of Directors, have breached their affirmative duties as set forth above, and continue to violate Article IV, Subsections (b), (c), (g), and (h) of Section 4.1 of Declaration for the Master HOA as well as Article IV, Sections 1, 3,

⁴ See Section 1.1.12 of the Master HOA’s Declaration of Covenants, Conditions, and Restrictions, and attached hereto as Exhibit “C” and incorporated by reference as part of this Amended Verified Members’ Derivative Complaint.

5, 6, 7, 8(e) and 9 of the By-Laws by failing to discharge their affirmative duties in good faith for the reasons described above and below.

41. As a direct and proximate result and consequence of the Defendants' past and ongoing breaches of the Master Association's governing documents as described above, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to a judgment against the individual Defendants for all direct, indirect, and resulting consequential damages, and attorney's fees and such other and further relief as this Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

42. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.
43. This is an action for declaratory judgment relief pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in §15-53-10 *et seq.*, of the South Carolina Code of Laws, 1976, as amended, to determine the rights, status or other legal relations of the parties under the Declaration and By-Laws for the Master HOA.
44. Specifically, § 15-53-30 provides:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

45. A justiciable controversy exists between the parties regarding their rights, status, and legal relations under the Master HOA's Declaration and By-Laws for the reasons described herein above.
46. Plaintiffs may not have an adequate remedy at law.
47. Plaintiffs desire a judicial determination with respect to the following declarations:
 - a. That the Defendants and their successors or designees have affirmative duties and responsibilities under Master HOA's governing documents to provide security services for the Resort Property, which are non-delegable to the individual condominium associations from the Master HOA;
 - b. That the Defendants and their successors or designees have affirmative duties and responsibilities under Master HOA's governing documents to provide trash collection services for the Resort Property, which cannot be legally delegated to the individual condominium associations from the Master HOA;
 - c. That all vendor contracts with the Master HOA are null and void as matter of law that were not properly executed with the affirmative vote of 67% of the Board members for the Master HOA;
 - d. That the Defendants and their successors or designees are bound by the express provisions of the Master HOA's governing documents and are required to comply with their affirmative obligations under these governing documents;
 - e. That the Master Deeds of all four regimes (including the Ocean Front Spa and Renaissance Tower) provide for cross easements for ingress and egress and access to the amenities of all four regimes flowing from the cross easements that cannot be unreasonably impeded; and
 - f. Any and all other relief that is deemed to be necessary and proper by this Court.
48. A judicial determination of the above declarations is necessary and proper at this time in order to ascertain the rights as well as affirmative duties and responsibilities of the Board

members and members/Co-owners in confronting the Defendants Richardson, Moore, Grusauskas, and Perkins' *ultra vires* conduct.

FOR A FOURTH CAUSE OF ACTION
(Injunctive Relief)

49. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.
50. Plaintiffs and other similarly situated members of the Master HOA, upon information and belief, have suffered and continue to suffer injury, irreparable harm, and damages in an amount equal to the depreciation in value of their dwelling units caused by the Defendants' disruption of the general plan of development - as contemplated by the governing documents for the protection of present and future member/Co-owners – by their continual failure to discharge their affirmative duties and responsibilities in good faith under Article IV, Section 4.1 of the Master HOA's Declaration as well as Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the Master HOA's By-Laws. Specifically, the Defendants, Richardson and Moore, upon information and belief, are unlawfully delegating their duties and responsibilities as current Board members to their individual condominium associations: *Myrtle Beach Oceanfront Spa Horizontal Property Regime, and Renaissance Tower Horizontal Property Regime, for the sole purpose of diminishing the Master Association's control and authority over their regimes.* Stated differently, upon information and belief, it is the ultimate intent of the Defendants Richardson and Moore to disaffiliate their individual regimes from the Master HOA. (Emphasis Added.) For example, there had been an ongoing and concerted effort by one or more of the Defendants starting in 2016 to weaken financially the Master HOA with respect to its affirmative duties and responsibilities over the individual regimes by having the Renaissance Tower Regime,

upon information and belief, to purposely withhold its Co-owners' assessments which were legally owed to the Master Association for its operation. A lawsuit was brought in 2016 by the Plaintiff Master HOA, under Civil Action No.; 2016-CP-26-7895, to challenge the Renaissance Tower Regime's bad acts and/or *ultra vires* conduct which the Defendant Richardson was a sitting Board member of Renaissance Tower at this time. In concurrence with its Complaint, the Plaintiff Master HOA filed a Motion for a Temporary Injunction which the Circuit Court granted and further ordered that the Defendant pay to the Horry County Clerk of Court its withheld assessments that it had collected from its Co-owners for the year 2016 as well as future assessments that the Plaintiff maintained were owed to it, until such further time as the Court could rule on the merits of the matter. On March 22, 2017, the action was referred to the Master-in-Equity Cynthia Graham Howe ("Master"). On November 28, 2017, the Master issued an Order finding that the Plaintiff Master HOA was operating at an estimated deficit of \$432,023.00 as of December 31, 2017 due to the Defendant withholding past due assessments owed to the Plaintiff for its operation, which was jointly consented to by the parties.

51. The Master's Order recorded on November 28, 2017, ordered the release of the deposited withheld funds collected by the Defendant Renaissance Tower as follows:
- a. That the Clerk of Court for Horry County shall disburse funds on deposit with Court to Plaintiff [Master HOA], this being a total of \$220,719.65 being remitted to the Plaintiff, which Plaintiff has agreed to accept;
 - b. That the Defendant Renaissance Tower shall pay \$185,268,.65 in past due assessments directly to Plaintiff [Master HOA] within ten (10) days of issuance of its Order; and
 - c. That "Defendant shall pay all future assessments to the Plaintiff [Master HOA] directly in accordance with the [Master HOA's] Declaration of

Covenants, Conditions, and Restrictions for Myrtle Beach Resort filed in Deed Book filed on April 25, 1991 in Deed Book 1465 at Page 329 in the Horry County Register of Deeds.” (Emphasis Added).

A copy of the Master-in-Equity’s Order disbursing funds from the Clerk of Court to the Plaintiff Master HOA is attached here to as Exhibit “E” and incorporated by reference as part of this Amended Verified Members’ Derivative Complaint.

52. As to liens wrongfully filed by Renaissance Tower Regime against the Master HOA’s Units A, D, and E is another example of bad faith on the part of Richardson in attempting to weaken financially the Master HOA’s position with respect to its operation and control over Renaissance Tower Regime. The Master HOA’s Commercial Units A, D, and E are located in the Renaissance Tower Condominium Building. Excluding attorney fees and costs, the improper lien amounts were: Unit A - \$19, 083.61; Unit D -\$3,442.58 and Unit E - \$3,442.58. It is important to point out that the Master HOA timely paid its assessment to the Renaissance Tower Regime, but its checks were never cashed by the Board for Renaissance Tower Regime of which Richardson was a member. For the foregoing reasons, the Defendant Richardson, upon information and belief, purposely created a cloud of title on the Master HOA’s property in order to marginalize the Master HOA’s ability to exert control the Renaissance Tower regime as well as comply with its affirmative duties under Section 4.1 of the Declaration and Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the By-Laws.
53. Injunctive relief is necessary to remedy the past violations of Section 4.1 of the Declaration and Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the By-Laws as well as the Defendants’ *ultra vires* acts in order to prevent future injury, irreparable harm, and depreciation in value to the Plaintiffs and other similarly situated members’ property interest in their individual

units along with preventing the Defendants' disruption of the general plan of development by weakening the Master HOA's authority as provided for in the Myrtle Beach Resort's governing documents. (Emphasis Added.)

54. Both S.C. Code Ann. § 27-31-170 (2007) and Article VI, Section 6.2 of the Declaration for the Master HOA authorize the Plaintiffs as "aggrieved owner[s]" with the contractual right to bring an action for mandatory injunctive relief to ensure that the Defendants and their successors or designees are complying with their affirmative duties under Article IV, Section 4.1 of the Declaration as well as Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the By-Laws in order to properly administer the Master HOA, pursuant to its recorded plan of development, for the protection of present and future Co-owners and their individual condominium associations. Specifically, Article VI of the Declaration provides in pertinent part:

Failure to comply with any of the same shall be grounds for imposing fines, for suspending rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or *for injunctive relief, such actions to be maintainable by the Board of Directors on behalf of the Association, or in a proper case, by an aggrieved Owner*. . . . Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, *it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Association, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation of breach*. (Emphasis Added).

55. Plaintiffs have no adequate remedy at law to challenge the Defendants' past and ongoing violations of the Master HOA's Declaration and By-Laws or otherwise *ultra vires* acts, and the Plaintiffs and other similarly situated members of the Master HOA will suffer irreparable harm as evidenced by the findings and opinions set forth in the Affidavits of Daniel L. Patrick ("Patrick") and Plaintiffs Expert Michael R. Parades ("Parades"),

attached hereto as Exhibits "F" and "G" unless they obtain injunctive relief for the reasons described above and below.

56. Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA seek the following injunctive relief from this Court:
- a. To permanently enjoin the Defendants Richardson and Moore and their successors or designees from delegating the Master HOA's affirmative duty and responsibility for providing security services to the individual condominium associations in violation of the Master HOA's Declaration and By-Laws;
 - b. To permanently enjoin the Defendants Richardson and Moore and their successors or designees from delegating the Master HOA's affirmative duty and responsibility for providing trash collection services to the individual condominium associations in violation of the Master HOA's Declaration and By-Laws;
 - c. To enjoin the Defendants Richardson and Moore and their successors or designees, from improperly entering into, modifying, or cancelling contracts with the Master HOA without first obtaining the affirmative vote of 67% of the current Board members for the Master HOA;
 - d. To enjoin the Defendants Richardson and Moore and their successors or designees, from improperly directing and/or instructing the Management Company to vacate First Service Residential from possession of its office space in Commercial units D and E without first obtaining the affirmative vote of 67% of the current Board members for the Master HOA;
 - e. To issue a mandatory injunction requiring the Defendants Richardson and Moore and their successors or designees, to comply with their affirmative duties under the Master HOA's Declaration and By-Laws; and
 - f. For such other and further injunctive relief as this Court may deem just and proper.
57. That the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA are likely to succeed on the merits of this litigation based on the expressed language of the provisions for Master HOA's Declaration and By-Laws.

58. That a permanent injunction is required to require the Defendants Richardson and Moore and their successors or designees to come into compliance with the Master HOA's Declaration and By-Laws, as they are bound by the same, and other remedies at law will be inadequate to protect the rights and property values of the Plaintiffs and all other similarly situated members of the Master HOA for the reasons explicitly set forth in the Affidavits of Patrick and Plaintiffs Expert Parades, which are attached hereto as Exhibits "F" and "G".

FOR A FIFTH CAUSE OF ACTION
(Judicial Dissolution of Myrtle Beach Resort Homeowners Association, Inc., or
reasonable alternatives to dissolution)

59. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.
60. Plaintiffs' action for Involuntary Dissolution or reasonable alternatives to dissolution is filed pursuant to the provisions of S.C. Code Ann. § 33-31-1430 (2006).
61. Plaintiffs are authorized to bring this action for Involuntary Dissolution or reasonable alternatives to Judicial Dissolution under S.C. Code Ann. § 33-31-1430(a)(2) and (b)(1) and (3) (2006).
62. Defendant Master HOA is a mutual benefit corporation organized and existing under the laws of the State of South Carolina as well as being subject to the provisions of the South Carolina Nonprofit Corporation Act.
63. Defendant Master HOA is comprised of four (4) individual condominium associations within the Myrtle Beach Resort: (1) Myrtle Beach Resort Horizontal Property Regime ("HPR"); (2) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime ("Ocean Front Spa"); (3) Renaissance Tower Horizontal Property Regime, Inc. ("Renaissance

Tower”); and (4) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. (“Five Seasons Centre”). Each individual condominium association elects a member from its Board to serve on the Board of Directors for the Master HOA.

64. Plaintiffs Niedzwiecki and Rosencrans and Defendants Richardson and Perkins are the current Board of Directors for the Defendant Master HOA.
65. That the Defendant Master HOA owns certain assets, including real property and improvements in the Myrtle Beach Resort Project.
66. That, upon information and belief, the Defendant Master HOA has outstanding debts and liabilities; that Master HOA has insufficient income and assets to pay those debts; and that, upon information and belief, the Defendant Master HOA is or will soon become insolvent or bankrupt in the near future for the reasons described below in Paragraph 68.
67. That the S.C. Code §33-31-1430(2)(i-vi) (2018) provides that the circuit court may dissolve a corporation for one or more of the reasons enumerated therein.
68. Plaintiffs assert following enumerated grounds exist for the Involuntary or Judicial Dissolution of Defendant Master HOA, including, but not limited to:
 - a. The four elected directors are still deadlocked or in dissension in the management of the corporate affairs of the Master HOA and a fifth director, who was appointed by the Circuit Court over twelve months ago, has been unable to break the ongoing philosophical deadlock or dissension between the evenly divided directors on how to manage the corporate affairs of the Myrtle Beach Resort.⁵ This is because the Defendant directors, who represent over sixty percent (60%) of the 1,010 members of the Master HOA, have argued and continue to argue, incorrectly, that the Master HOA’s 1991 governing documents are invalid and unenforceable or only optional powers under Section 4.1, yet they continue to serve on the Master Board without fulfilling their affirmative obligations under Section 4.1, Article IV of the Declaration and Sections 1, 3, 5, 6, 7, 8(e) and 9 of the By-laws. By arguing the Master HOA’s 1991 governing documents are invalid

⁵ See Plaintiffs’ Notice of Motion and Motion to appoint a custodian as well as Order of the Court appointing a 5th Board member, marked as Exhibits “H” and “I”, are attached hereto and incorporated by reference.

and unenforceable or alternatively that their powers are only optional under Section 4.1, Article IV of the Declaration, Richardson, Moore, and/or Perkins have an inherent conflict of interest with other directors and members by continuing to serve on the Master HOA's Board of Directors;

- b. The Defendant directors, Richardson, Moore, and/or Perkins, have acted, are acting, or will act in a manner that is illegal, oppressive, or *ultra vires*, or unfairly prejudicial either to the Master HOA or to the Plaintiffs and all other similarly situated members, whether in their capacity as a member, director, or officer of the Master HOA for the enumerated reasons set forth in the Second Affidavit of Plaintiffs' Expert Witness Michael R. Parades, PCAM,⁶ which include, but are not limited to the following:
- (1) The refusal of Defendant directors, Richardson, Moore, and/or Perkins, to approve an increase in the operating budget for 2018 and 2019 is forcing the Master HOA to operate at a deficit which is in direct contravention of the 1991 governing documents;
 - (2) The continuing demand by the Defendant directors, Richardson, Moore, and/or Perkins that all costs be split twenty-five percent (25%) for each sub-association. This would not only be a violation of Section 5.3, Article V of the Declaration, but also would change the concept of every member at the Myrtle Beach Resort having to pay the same amount for assessments as every other member;
 - (3) The multiple lawsuits, past and present, by and against the Defendant directors pertaining to Master HOA's administration and management of the Myrtle Beach Resort property, which have required it to pay significant legal fees and costs in order to establish compliance with its affirmative duties under Section 4.1, Article IV of the Declaration and Sections 1, 3, 5, 6, 7, 8(e) and 9 of the By-laws;
 - (4) The diminution in the value of the Myrtle Beach Resort members' property has occurred as a result of the on-going deadlocked in the management of the corporate affairs of the Master HOA between the current directors, the unsubstantiated allegations made by the Defendant directors about the invalidity of the 1991 governing documents, and never ending litigation between the parties;

⁶ See Second Affidavit of Plaintiffs' Expert Witness Michael R. Parades, PCAM, marked as Exhibit J, attached hereto and incorporated by reference.

- (5) The inability to conduct business as usual due to votes on any issue of the Master HOA resulting in a two to two tie;
 - (6) The disruption of contracted services for the Myrtle Beach Resort impacting the Master HOA's credit rating and the ability to obtain competitive pricing or goods and services; and
 - (7) The negative impact on insurability of properties within the Myrtle Beach Resort due to the numerous lawsuits that have occurred over the past 4-5 years;
- c. The corporate assets of the Master HOA are being misapplied or wasted due to the current elected directors' inability to conduct business because they are still in dissension and/or deadlocked in the management of the corporate affairs of the Master HOA as shown in the Second Affidavit of Plaintiffs' Expert Witness Parades, marked as Exhibit J, which is attached hereto and incorporated by reference; and
 - d. The Master HOA is no longer able to carry out its purposes as set out in the preamble of 1991 Recorded Declaration with respect to the administration and management of the Myrtle Beach Resort Project property under Section 4.1, Article IV of the Declaration along with Sections 1, 3, 5, 6, 7, 8(e) and 9 of the By-Laws for the clear and obvious reasons set forth in Exhibit J attached hereto and incorporated by reference.
69. The voting structure of the Defendant Master HOA as established under the 1991 governing documents is such that the Plaintiffs and all other similarly situated members cannot now or in the future avoid the oppressive misconduct or illegal acts, or *ultra vires* conduct caused to them by the Defendants' actions and inaction or otherwise protect their rights and properties located within the resort without the Court dissolving the Master HOA or ordering some type of alternate remedy, other than dissolution, such as modifying the Master HOA's governing documents.
70. Venue is proper for a proceeding to dissolve the Master HOA in the court of common pleas for Horry County, under S.C. Code §33-31-1431(a), because the Master HOA's principal office is located 5901 Highway 17 South, Myrtle Beach, South Carolina.

71. Under procedures of S.C. Code §33-31-1431, the Plaintiffs are entitled and request the issuance of an injunction for the reasons stated in Paragraphs 76 through 80, and further they request the appointment of a custodian pendent with all powers and duties needed to take any action required to preserve the corporate assets wherever located as well as carrying on all activities of the Master HOA until a full hearing can be held by the Court.
72. Prior to dissolving the Defendant Master HOA, the Plaintiffs seek consideration, under S.C. Code §33-31-1430(b) whether: “(1) there are reasonable alternatives to dissolution; . . . and (3) [whether] dissolution is the best way of protecting the interest of [all] of the members . . . [of] a mutual benefit corporation.” Id.
73. Furthermore, in accordance with the matters set forth in subsections (b)(1) and (3), the Plaintiffs request the Court to consider ordering a form of relief, other than dissolution, which it deems just and proper under the circumstances, including, but not limited, to:
- a. canceling or altering any provision contained in the governing documents or any amendment to the governing documents, or in the bylaws of the Master HOA;
 - b. canceling, altering, or enjoining any act or resolution for the Master HOA;
 - c. directing or prohibiting any act of the Master HOA, or of member, directors, officers, or other persons party to the action;
 - e. the removal from office of any director or officer; and
 - f. ordering an accounting with respect to any matters in dispute.
74. That the Plaintiffs believe that the existing facts as described above, support the Court entering a decree to dissolve the Master HOA or granting such other relief, other than dissolution, in its discretion that it deems just and appropriate, including, without limitation that actions that may be taken by the Court as described in the preceding paragraph. Specifically, the Plaintiffs ultimately seek reasonable alternatives to Judicial Dissolution

as these are the only remedies and/or best way of protecting their rights, interest, and properties as well as of the rights, interest, and properties of all existing members.

75. Based upon the forgoing, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA request the Court to enter a decree of dissolution by requiring the winding up and liquidation up of the Master HOA's affairs in accordance with S.C. Code Ann. §§ 33-31-1406, 33-31-1407 and 33-31-1408, or granting in the alternative other such relief short of dissolving the Master HOA as described without limitation in Paragraph 73; and, lastly, that this Court grant the Plaintiffs such other and further relief as this Court deems just and proper.

FOR A SIXTH CAUSE OF ACTION
(Injunctive Relief)

76. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.
77. Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA seek to enjoin the Master Board and its current and future Board members and all other persons acting on its behalf from selling the Master HOA's commercial properties to the individual HPRs or other third parties until a full hearing can be held by the Court concerning the issue of involuntary dissolution or some other relief or remedy short of dissolution. The commercial properties owned by the Master HOA sought to be protected are as follows:

TMS No.:	Regime	Location
192-05-06-002	MBRV	MBRV Rental Office

192-00-01-031	MBRV	Parcel 4 or Tract of land comprising 0.303 Acres known as the Cabana Lot.
192-05-05-070	Five Seasons Centre HPR	HOA Office/Commercial Unit D.
192-05-05-071	Five Seasons Centre HPR	Office/Commercial Unit E.
192-05-05-071	Five Seasons Centre HPR	PBX Room
192-05-02-276	Ocean Front Spa HPR	Commercial Unit A consists of a Laundry facility containing approximately 925 square feet.
192-05-02-277	Ocean Front Spa HPR	Commercial Unit B consists of a Bar and Food facility containing approximately 925 square feet.
192-05-02-279	Ocean Front Spa HPR	Commercial Unit D consists of a Post Office containing approximately 411 square feet.
192-05-03-341	Renaissance Tower HPR	Galley/ Commercial Unit A
192-05-03-344	Renaissance Tower HPR	Convenience Store/ Commercial Unit D
192-05-03-345	Renaissance Tower HPR	Game Room/Commercial Unit E

78. The commercial properties described in the preceding paragraph are subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions as described in the Master HOA's Declaration and By-Laws attached hereto as Exhibit "C", and, upon information and belief, the Master HOA's governing documents are real

covenants running with the land which require unanimous consent of all 1010 members before the Master HOA's commercial properties can be sold.

79. The Plaintiffs and other similarly situated members of the Master HOA will suffer irreparable harm if the Master HOA's commercial properties are sold prior to a hearing being held by the Court in the matter as evidenced by the findings and opinions set forth in the Affidavits of Patrick and Plaintiffs Expert Parades, attached hereto as Exhibits "F" and "G" and "J".
80. Based upon the forgoing, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to a temporary injunction to enjoin the current and future members of the Master Board from selling the Master HOA's commercial properties to the individual HPRs or other third parties prior to the Court holding a hearing on the issue of whether to grant dissolution of the Master HOA or order something short of dissolution, as they are bound by the same, and other remedies at law will be inadequate to protect the rights and property values of the Plaintiffs and all other similarly situated members of the Master HOA for the reasons explicitly set forth in the Affidavits of Patrick and Plaintiffs Expert Parades, which are attached hereto as Exhibits "F" and "G" and "J".

WHEREFORE, having fully set forth their Amended Verified Members' Derivative Complaint, the Plaintiffs on their own behalf and on behalf and all other similarly situated members of the Master HOA pray for the following relief:

- a. For an Order of the Court finding the Defendants Richardson, Moore, Grusauskas and Perkins, individually and as current and former members of the Board of Directors, respectively, have breached and violated, including, but not limited to, Section 4.1 of the Master HOA's Declaration and Article IV, Sections 1, 3, 5, 6, 7, 8(e) and 9 of the Master HOA's By-Laws;

- b. For an Order of the Court declaring the Defendants Richardson and Moore and their successors or designees are enjoined from continuing to violate, including, but not limited to, Section 4.1 of the Master HOA's Declaration and Article IV, Sections 1, 3, 5, 6, 7, 8(e), and 9 of the Master HOA's By-Laws;
- c. As to the First Cause of Action, the Plaintiffs, on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to a judgment against the Defendants Richardson, Moore, Grusauskas, and Perkins, for all direct, indirect, resulting consequential and punitive damages and attorney's fees in an amount to be determined at the trial of this case;
- d. As to the Second Cause of Action, the Plaintiffs, on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to a judgment against the Defendants, Richardson, Moore, Grusauskas, and Perkins, for all direct, indirect, and resulting consequential damages and attorney's fees in an amount to be determined at the trial of this case;
- e. As to the Third Cause of Action, the Plaintiffs, on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to declaratory relief as demanded in the following particulars requested under subparagraphs (a), (b), (c), (d) (e) and (f) of Paragraph 47 of the Amended Verified Members' Derivative Complaint;
- f. As to the Fourth Cause of Action, the Plaintiffs, on their own behalf and on behalf and all other similarly situated members of the Master HOA, are entitled to a mandatory injunction compelling one or more of the following particulars requested under subparagraphs (a), (b), (c), (d), and (e) of Paragraph 56 of the Amended Verified Members' Derivative Complaint;
- g. As to the Fifth Cause of Action, the Plaintiffs, on their own behalf and on behalf and all other similarly situated members of the Master HOA, request the Court to enter a decree of dissolution by requiring the winding up and liquidation up of the Master HOA's affairs in accordance with S.C. Code Ann. §§ 33-31-1406, 33-31-1407 and 33-31-1408, or in the alternative granting such other relief short of dissolving the Master HOA as described without limitation in Paragraph 68; and, lastly, that this Court grant the Plaintiffs such other and further relief as this Court deems just and proper.
- h. As to the Sixth Cause of Action, the Plaintiffs, on their own behalf and on behalf and all other similarly situated members of the Master HOA are entitled to and seek a temporary injunction to enjoin the members, current and future, of the Master Board from selling the HOA's commercial

properties, described in Paragraph 77 to the HPRs or other third parties until a full hearing can be held by the Court;

- i. For attorney's fees, costs and expenses incurred in bringing this action;
- j. For a trial by Jury; and
- k. For such other and further relief as the Court may deem necessary and proper.

BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P. A.

s/ Howell V. Bellamy, III
Howell V. Bellamy, III (S. C. Bar #66575)
hbellamyiii@bellamylaw.com
Howell V. Bellamy, Jr. (S.C. Bar #00642)
nrichardson@bellamylaw.com
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
(843)-448-2400 Phone
(843)-448-3022 Facsimile

Attorneys for Plaintiffs

Myrtle Beach, South Carolina

February 17, 2020

EXHIBIT "A"

EXHIBIT "A"

PHASE I - MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately five (5) miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.198 acres, more or less, and being shown and described as a 6.198, more or less acres parcel on a certain plat entitled Plat of 44.668, more or less, acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" prepared for Resort Investment Corporation by Culler Land Surveying Company, Inc., dated August 17, 1981, which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 72 at Page 58; also being shown and described on the plats recorded in the Condominium Plat Book, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 15, 1982, in the Office of the Clerk of Court for Horry County in Deed Book 750 at Page 642.

PHASE II - MYRTLE BEACH RESORT OCEANFRONT SPA HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately 5 miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.205 acres, more or less, and being shown and described as "Phase II (6.205 Ac)" on a certain plat entitled "Plat of 44.668+- Acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" dated June 10, 1982, revised July 13, 1982, and July 19, 1982, prepared by Culler Land surveying Company, Inc., which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 74 at Page 32; also being shown and described on the plats and architectural plans and drawings prepared by Culler Land Surveying Company, Inc. and Stevenson & Wilkinson, Inc., respectively, which are recorded in the Condominium Plat Book at Book 2, Page 31, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on April 15, 1983, in the Office of the Clerk of Court for Horry County in Deed Book 789 at Page 362.

EXHIBIT "A" CONTINUED

PHASE III - RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying, and being on the South Eastern side of U.S. Highway 17 containing 8.672 acres, more or less and designated as a Portion of Lot 5 of Lakewood Plantation Tract, further designated as Phase III of The Myrtle Beach Resort, and described on a Map prepared by Culler Land Surveying Co., Inc. dated November 16, 1984, also being shown as Phase III on a Plat of 44.668 +/-Acres, lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, revised November 27, 1984, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the

aforesaid Horizontal Property Regime recorded on November 28, 1984, in the Office of the Clerk of Court for Horry County in Deed Book 917 at Page 885.

PHASE IV - MYRTLE BEACH RESORT FIVE SEASONS CENTRE (Phase I)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase I of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Culler Land Surveying Co., Inc. dated June 4, 1985, also being shown as Phase I, Myrtle Beach Resort Five Seasons Centre on a plat of 44.668+/- acres, Lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, dated June 10, 1982, with latest revision dated June 14, 1985, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 20, 1985, in the Office of the Clerk of Court for Horry County in Deed Book 966 at Page 654.

(Phase II)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase II of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Atlantic Land Surveying Co., Inc. dated May 1, 1986, all as is more particularly described in that First Amendment to the Master Deed for the aforesaid Horizontal Property Regime recorded on May 29, 1986, in the Office of the Clerk of Court for Horry County in Deed Book 1048 at Page 824.

ELECTRONICALLY FILED - 2028 May 27 3:49 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

EXHIBIT “B-1”

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
M. EDWIN HINDS, JR.
DAVID J. GUNDLING***
DAVID B. MILLER*
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON*
HOWELL V. BELLAMY, III

* LLM TAXATION
** LICENSED IN SC & NC
* CERTIFIED MEDIATOR
** CERTIFIED ARBITRATOR



ASHLEY P. MORRISON
GEORGE W. REDMAN, III + ** **
BENJAMIN A. BAROODY + **
PHILIP H. ALBERGOTTI* **
HAYES K. STANTON + **
KARA J. KEITH **
HOLLY M. LUSK
LAUREN BREARLEY BENTON
JON CRAIG HOWELL, JR.
JAMES C. SPEARS, III *

RETIRED:
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY
JILL F. GRIFFITH

ELECTRONICALLY FILED - 2028 Feb 27 3:49 PM - HERRY - COMMON FILES - CASE#2018CP2603173

February 1, 2017

HAND DELIVERED AND
U. S. POSTAL SERVICE

Myrtle Beach Resort Homeowners'
Association, Inc. ("MBRHOA" or "Master Association")
Peter Frausauskas, President of MBRHOA
Jim Perkins, Secretary of MBRHOA
5905 S. Kings Highway
Myrtle Beach, South Carolina 29575

Sarah Morrow, Registered Agent for MBRHOA
4615 Oleander Dr., Suite 202
Myrtle Beach, South Carolina 29577

Re: Attempted removal of First Service Residential from its possession of office space in
Commercial Units D and E in the HOA regime, which directly contravenes the provisions
of the governing documents of the Master Association as well as State Law.

Dear Messrs. Grausauskas and Perkins and Ms. Morrow:

Our firm represents current Board Members Conrad Calvano ("Calvano") and Phil
Cox ("Cox") of the Master Association as well as Myrtle Beach Resort Horizontal Property
Regime, Inc. ("HPR") and Myrtle Beach Resort Five Seasons Centre Council of Co-Owners,
Inc. ("CCO") regarding the above-mentioned matter.

As you are aware, the Board of Directors ("Board") for the Master Association held a
meeting on or about January 28, 2018. A motion was made by you (Grausauskas) and seconded
by you (Perkins) to permit other management companies to have the right to occupy space in
Commercial Units D and E of the HOA's on site office. Consequently, the motion did not pass

February 2, 2018
Page 2

because both of you voted against it. Unbeknownst to Calvano and Cox, both of you sought to vacate First Service Residential from possession of its office space in Commercial Units D and E as a result of your motion failing to pass. This ruse is evidence of bad faith conduct. See Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc. 379 S.C. 31, 43, 664 S.E.2d 83, 88 - 89 (Ct. App. 2008)(Bad faith is defined as “[t]he opposite of good faith, generally implying or involving actual or constructive fraud, or a *design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.*)

As you know, First Service Residential has occupied a portion of Commercial Units D and E as office space for a period of time in excess of ten (10) years based upon the assent of the Master Association. First Service Residential is a tenant under State law. Based upon the foregoing, First Service Residential is entitled to certain protections and/or notice requirements under S.C. Code Ann. § 27-35-10 *et seq.*, (2007) as well as under State Law.

Your actions in instructing Ms. Sarah Morrow of Empress Management are without authority and constitute an *ultra vires* act. Ms. Morrow's actions in attempting to evict First Service Residential are likewise without authority and must be retracted immediately. Your actions have exposed the Master Association to legal liability. First Service Residential has legal rights and they must be honored

Additionally, the scope of your “*motion to allow other management companies to occupy office space*” in Commercial Units D and E as recorded at the meeting held on January 28, 2018, does not expressly authorize the Board to vacate First Service Residential from its office space due to motion's failure to pass by the affirmative vote of 67% of the entire votes of the association members.¹ Your failed motion was silent with respect to the removal First Service Residential from the commercial property. Stated differently, First Service Residential can only be removed from its office space in Commercial Units D and E by the affirmative vote of 67% of the Board members for the Master Association.

Based upon the foregoing, Sarah Morrow (“Morrow”) of Empress Management, LLC was improperly authorized and directed by both of you to vacate First Service Residential from its office space in Commercial Units D and E. This is supposed to occur no later than this Tuesday, February 6, 2018.² This *ultra vires* action is contrary to State law as well as your affirmative obligations under the governing documents.

Upon receipt of this cease and desist letter, our clients demand that both of you terminate all efforts to remove First Service Residential from its office space in the aforementioned commercial units. We specifically request, on behalf of our clients, that both of you maintain the

¹ See Section Seven of the Amended Bylaws of Myrtle Beach Resort Homeowners Association, Inc.

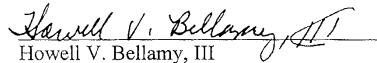
² A copy of the e-mail from Sarah Morrow, marked as Exhibit “A”, is attached hereto and incorporated by reference.

February 2, 2018
Page 3

status quo pending a reasonable and equitable resolution with respect to the use of office space by other management companies in the Commercial Units D and E of the HOA . Hopefully, this will occur on or before the next regularly scheduled meeting of the Board of Directors in April of 2018.

You are both hereby requested to provide written assurances to us by Tuesday, February 6, 2018, indicating that both of you no longer seek to remove First Serve Residential from its office space as well as agreeing to maintain the status quo until a resolution can be reached with respect to the use of office space by other management companies. If you have any questions, please feel free to contact us at the following phone number:
Howell V. Bellamy, III at (843)-602-8024.

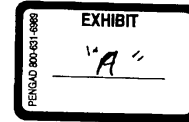
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


Howell V. Bellamy, III
David B. Miller

HVBIII/lh
cc: Sam G. Stathos
Phil Cox
Freddy Brown
Conrad Calvano

ELECTRONICALLY FILED - 2018 Feb 27 3:49 PM - Horry - COMMON FILES - CASE#2018CP2603173

From: Sarah Morrow <Sarah@empresstmgt.com>
Date: January 29, 2018 at 3:07:05 PM CST
To: "Jack Boselli, AMS, CMCA, PCAM" <Jack.Boselli@fsresidential.com>
Cc: PETER GRUSAUSKAS <pgrussy_mbr@gmail.com>, Barbara Johnson <barbara@empresstmgt.com>, Sarah Morrow <Sarah@empresstmgt.com>
Subject: FW: 2017 November Financial pack



ELECTRONICALLY FILED - 2018 Feb 27 3:49 PM - HERRY - COMMON FILES - CASE#2018CP2603173

Thank you Jack. We did receive a thumb drive last week. The Alliance Bank accounts will not be closed as we are planning to simply change signature cards and continue working with Alliance so you don't need to worry about checking that off your list!

However, there are a few items that haven't been provided such as:

- The password/access to the camera system
- Board of Director Minutes
- Legal Files
- General Ledger Report – I believe your system allows to run a GL report for a length of time. The Board would like to have this report since inception and save to a thumb drive.
- Rules and Regulations, Bike Week procedures, Protocol for Parking Passes, etc.

As you are aware we had a Board of Directors meeting yesterday for the MBR HOA. A motion was made to allow other management companies the right to occupy space in the HOA on site office for the Master. Unfortunately, it was not passed. The Board tasked us to come up with a solution to be determined at the next regularly scheduled meeting in April. Because this motion did not pass and the Master HOA office is occupied by the Management company for the Master, then we would ask that First Service Residential vacate the office until a resolution has been agreed upon by the Board of Directors. We understand this may take time, we would like all items (except for Master Association equipment and files) be removed from the office no later than Friday at noon.

Please let me know if you have any questions and I'll be glad to try to assist the best I can.

Thank you,
Sarah



Sarah Morrow | President
Empress Management
sarah@empresstmgt.com
www.empresstmgt.com
(P) 843.443.4003
(F) 843.444.4055

Below is the information on Sarah Morrow.

Sarah Morrow, President
Empress Management
4615 Oleander Drive, Suite 202
Myrtle Beach SC 29577
Office Phone: 843-443-4003
Office Fax: 843-444-4055

Her e-mail is sarah@empresstmgt.com

EXHIBIT “B-2”

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
M. EDWIN HINDS, JR.
DAVID J. GUNDLING**
DAVID B. MILLER*
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAVICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON*
HOWELL V. BELLAMY, III

* LLM TAXATION
** LICENSED IN SC & NC
+ CERTIFIED MEDIATOR
** CERTIFIED ARBITRATOR



ASHLEY P. MORRISON
GEORGE W. REDMAN, III* **
BENJAMIN A. BAROODY* **
PHILLIP H. ALBERGOTTI* **
HAYES K. STANTON* **
KARA J. KEITH**
HOLLY M. LUSK
LAUREN BREARLEY BENTON
JON CRAIG HOWELL, JR.
JAMES C. SPEARS, III*

RETIRED:
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY
JILL F. GRIFFITH

ELECTRONICALLY FILED - 2018 Mar 29 3:49 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

March 29, 2018

CERTIFIED MAIL RETURN RECEIPT REQUESTED AND
HAND DELIVERED
7016 0910 00017848 4440

Myrtle Beach Resort Homeowners'
Association, Inc. ("MBRHOA" or "Master Association")
Peter Grusauskas, President of MBRHOA
Jim Perkins, Secretary of MBRHOA
5905 S. Kings Highway
Myrtle Beach, South Carolina 29575

Sarah Morrow, Registered Agent for MBRHOA
4615 Oleander Dr., Suite 202
Myrtle Beach, South Carolina 29577

Re: ***Ultra Vires*** acts committed by both of you as well as your continuing breach
of your affirmative duties under the governing documents of the Master
Association under Article IV, Section 4.1 of the Declaration as well as Article
IV, Sections 1, 3, 7, and 8(e) of the By-Laws.

Dear Messrs. Grusauskas and Perkins and Ms. Morrow:

Our firm represents current Board Members Conrad Calvano ("Calvano") and Lori Niedzwiecki ("Niedzwiecki")¹ of the Master Association as well as Myrtle Beach Resort Horizontal Property Regime, Inc. ("HPR") and Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. ("CCO") regarding the above-mentioned matter.

¹ Niedzwiecki is the current President for CCO and also the acting Board member for the Master Association on behalf of CCO.

April 3, 2018
Page 2

Our clients contend, upon information and belief, that the Defendants Grusauskas and Perkins, individually and as members of the Board of Directors of the Master Association, have committed the following *ultra vires* acts in direct contravention of Article IV, Section 4.1 of the Declaration as well as Article IV, Sections 1, 3, 7, and 8(e) of the By-Laws:

- a. In improperly directing and/or instructing Empress Management Company to remove First Service Residential from possession of its office space in Commercial units D and E without the affirmative vote of 67% of the Board members for the Master Association;
- b. in improperly delegating the duties and responsibilities for security services to the individual condominium associations from the Master Association. This improper delegation of security services is in direct contravention of Article IV, Subsection (h) of Section 4.1 of Declaration of Covenants, Conditions and Restrictions for the Master Association. Furthermore, assuming the Defendants had the authority to delegate these duties and responsibilities for security services, which is expressly denied, their unauthorized delegation was made without the affirmative vote of 67% of the Board members for the Master Association;
- c. in improperly delegating the duties and responsibilities for all trash collection services to the individual condominium associations from the Master Association. This improper delegation of trash collection services is in direct contravention of Article IV, Subsection (b) of Section 4.1 of Declaration of Covenants, Conditions and Restrictions for the Master Association. Furthermore, assuming the Defendants had the authority to delegate these affirmative duties and responsibilities, which is expressly denied, their unauthorized delegation was made without the affirmative vote of 67% of the Board members for the Master Association;
- d. in improperly entering into as well as cancelling vendor contracts on behalf of the Master Association without obtaining the affirmative vote of 67% of the Board members for the Master Association. This unauthorized action is in direction violation of Article IV, Section 7 of the By-Laws for the Master Association;
- e. in improperly directing and/or instructing Empress Management Company to make any operational decisions for the Master Association without the affirmative vote of 67% of the Board members for the Master Association; and
- f. Any other unauthorized conduct or act of the Defendants that may revealed in the near future.

Upon receipt of this cease and desist letter, our clients demand that both of you refrain from engaging in the above-mentioned *ultra vires* acts. If your response or your conduct is

ELECTRONICALLY FILED - 2028 Filed 04/03/18 3:49 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

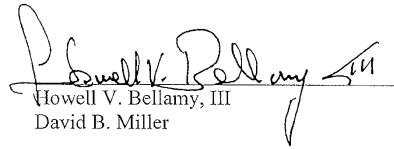
April 3, 2018
Page 3

unsatisfactory, or if both of you continue to breach your affirmative duties under the governing documents and/or under applicable law, our clients will file suit against both of you and seek all available equitable and legal remedies under the law.

You are both hereby requested to provide written assurances to us by Wednesday, April 4, 2018, indicating that both of you will no longer engage in the above described *ultra vires* conduct.

If you have any questions, please feel free to contact us at the following phone number:
Howell V. Bellamy, III at (843)-602-8024.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


Howell V. Bellamy, III
David B. Miller

HVBIII/lh
cc: Sam G. Stathos
Phil Cox
Freddy Brown
Conrad Calvano
Lori Niedzwiecki

ELECTRONICALLY FILED - 2018 May 24 3:49 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

EXHIBIT "C"

ELECTRONICALLY FILED - 2028 May 27 3:49 PM - HORRY - COMMON FILES - CASE#2018CP2603173

FILED
STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.
R.M.C.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC. is made by The Myrtle Beach Resort Homeowners' Association, Inc., a South Carolina corporation and Myrtle Beach Resort Horizontal Property Regime, Inc. (Phase I), Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc. (Phase II), Renaissance Tower Horizontal Property Regime, Inc. (Phase III), and Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. (Phase IV), collectively referred to hereinafter as the "Declarant".

WITNESSETH:

WHEREAS, Resort Development Corporation reserved the right and privilege to establish The Myrtle Beach Resort Homeowners' Association consisting of all Co-Owners of all phases of the Myrtle Beach Resort, including Phase I (Myrtle Beach Resort Horizontal Property Regime), Phase II (Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime), Phase III (Renaissance Tower Horizontal Property Regime) and Phase IV (Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime), as set out in the respective Master Deeds in each of the above referenced phases at the Myrtle Beach Resort; and

WHEREAS, Resort Development Corporation has previously granted, conveyed and assigned to Vacation Properties, Inc., all of its rights under the respective Master Deeds to establish an "umbrella" homeowners' association as is more particularly set out in that assignment dated February 27th, 1987 and recorded in the office of the Register of Mesne Conveyances (R.M.C.) for Horry County in Deed Book 1121 at Page 401; and

WHEREAS, Vacation Properties, Inc., granted, conveyed and assigned to The Myrtle Beach Resort Homeowners' Association, Inc., all of said rights referenced above by Assignment of Rights dated January 27, 1989 and filed of record in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 239.

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

11/1/2029

NOW, THEREFORE, the Declarants hereby declare that all the property described in Exhibit A shall be held, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these properties and which restrictions, easements, charges, liens, conditions and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchase or takes any interest in real property within the property subject to this instrument.

ARTICLE I

DEFINITIONS

1.1 Definitions. When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have all the following meanings, and all definitions shall be applicable to the singular and plural forms of any such term(s):

1.1.0 "Act" shall mean the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as Amended.

1.1.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of The Myrtle Beach Resort Homeowners' Association, Inc., as it may be constituted or amended from time to time.

1.1.2 "Assessment" shall mean and refer to a share of the Common Expenses, capital improvements or other charges from time to time assessed against Co-Owners in the manner herein provided.

1.1.3 "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., a South Carolina non-profit Corporation.

Law Offices of
Daniel L. Patrick
P. O. Box 16609
Surfside Beach,
S.C. 29587

1.1.4 "Board of Directors" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

1.1.5 "By-Laws of the Association" shall mean and refer to those By-Laws of The Myrtle Beach Resort Homeowners' Association, Inc., which govern the administration and operation of the Association, as may be amended from time to time, which By-Laws are attached as Exhibit "B" to this Declaration.

1.1.6 "Commercial Unit" shall mean and refer to any unit designated as a commercial space in the Master Deed of the appropriate Condominium Association.

1.1.7 "Common Areas" means as defined in the Individual Condominium Associations' respective Master Deeds.

1.1.8 "Common Expenses" shall mean and refer to all expenditures, including debt retirement, capital improvements, and operating expenses, lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.

1.1.9 "Condominium Association" or "Individual Condominium Association" shall mean and refer to the four individual horizontal property regimes making up the Myrtle Beach Resort including the Myrtle Beach Resort Horizontal Property Regime (Phase I); Myrtle Beach Resort Oceanfront Spa (Phase II); Renaissance Tower Horizontal Property Regime (Phase III); and the Myrtle Beach Resort Five Seasons Centre (Phase IV).

1.1.10 "Co-Owner or "Owner" means as defined in the South Carolina Horizontal Property Regime Act and specifically means an owner of a Dwelling or a Commercial Unit at the Myrtle Beach Resort.

1.1.11 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Myrtle Beach Resort and all supplements or amendments to it as filed for record in the Office of the R.M.C for Horry County, South Carolina.

1.1.12 "Development or Property" shall mean and refer to The Myrtle Beach Resort which includes the four individual horizontal property regimes referenced above.

1.1.13 "Dwelling", with an initial capital letter, shall mean and refer to any improved property located within the Development intended for the use as a residential condominium unit.

1.1.14 "Member" shall mean any person or entity holding a membership in the Association as provided herein.

1.1.15 "Occupant" shall mean and refer to any person, including without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an Owner lawfully occupying or otherwise using a Dwelling or Commercial Unit within the Development.

1.1.16 "Person" shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

1.1.17 "Recreational Amenities" shall include such recreational facilities located within the Myrtle Beach Resort, including, without limitation, tennis courts, sporting or exercise areas, meeting areas, swimming pools, tennis courts, locker room facilities, clubhouses, food and beverage facilities, lagoons, beach access paths, jogging trails and bike paths.

1.1.18 "Voting Member" shall mean a member elected by the Board of each individual Condominium Association to this Association's Board of Directors as specified herein and in the By-Laws.

Law Offices of
Daniel L. Patrick
P. O. Box 15689
Surfside Beach,
S.C. 29587

ARTICLE II
PROPERTY RIGHTS

2.1 Easements for Utilities. There is hereby reserved for the benefit of the Association, and its respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across all of the Common Areas and all portions of other areas in which Dwellings or Commercial Units are not constructed or erected; for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by the Association, its successors or assigns. To the extent possible, all utility lines serving the Development and located therein shall be located underground. By virtue of any such easement granted, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate and fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

2.2 Easements for Walks, Trails and Signs. There is hereby reserved for the benefit of the Association and its successors and assigns the alienable, transferable and perpetual right and easement upon, over and across all lands which may remain unimproved for the installation, maintenance and use of sidewalks, jogging trails, bike paths, traffic directional signs and related improvements.

2.3 Easements for the Association. There is hereby reserved a general right and easement for the benefit of the Association's Directors, officers, agents and employees, including but not limited to any property manager employed by the Association and any employees of such manager, to enter

into the Property and any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the occupant, the Individual Condominium Association, or the Owner(s) of the Dwelling or Commercial Unit.

2.4 Maintenance Easement. There is hereby reserved for the benefit of the Association and its respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any unimproved portions of any Property for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided that such easements shall not impose any duty or obligation upon the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Association and its agent, employees, successors and assigns an alienable, transferable and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of the Property which is located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Development for the purpose of mowing such areas and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

2.5 Environmental Easement. There is hereby reserved for the benefit of the Association and its agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Property for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easements to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

2.6 Wells. There is hereby reserved for the benefit of the Association and its agents, employees, successors and assigns an alienable, transferable and perpetual right and easement: (i) to pump water from lagoons, ponds and other bodies of water located within the Development for the purpose of

Law Offices of
Daniel L. Patrick
P. O. Box 15869
Surfside Beach,
S.C. 29587

irrigating any portions of the Development; (ii) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Areas.

ARTICLE III

MEMBERSHIP AND VOTING

3.1 Membership. Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Dwelling or Commercial Unit, and Ownership of such Dwelling or Commercial Unit shall be the sole qualification for such membership. No Owner, whether one or more persons, shall have more than one membership per Dwelling or Commercial Unit

3.2 Board of Directors. The Board of Directors of each Individual Condominium Association at the Myrtle Beach Resort shall elect a representative to sit on the Board of Directors of this Association. This Board of Directors shall act in accordance with the By-Laws which are attached hereto as Exhibit B. The Association shall be operated by the Board of Directors, and the Members of the Association shall have only such powers as are specified herein or in the By-laws.

ARTICLE IV

POWERS OF THE ASSOCIATION

4.1 The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; (b) provide for all refuse collection (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master television service and telephone service; (d) maintain the oceanfront area; (e) grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (f) maintain such policy or policies of liability and fire insurance with respect to property owned by

the Association; (g) employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same; (h) install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project; (i) take such other reasonable action as the Board shall deem advisable with respect to the Myrtle Beach Resort for the benefit of the overall Property.

ARTICLE V

COVENANT FOR ASSESSMENTS

5.1 Creation of the Lien. Each Individual Condominium Association together with each Co-Owner is deemed to covenant and agrees to pay to the Association Assessments for the Association expenses including common expenses as provided for herein.

Such assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof shall be a charge on any Dwelling Unit or Commercial Unit, and shall be a continuing lien upon it, until full payment of such Assessment is made.

A Co-Owner shall become liable for payment of Assessments upon issuance of a Statement of Assessments by the Association.

On any Assessment that remains unpaid for over ten (10) days after its due date, at the sole discretion of the Board, a late charge not to exceed Ten and No/100 Dollars (\$10.00) or Ten Percent (10%) of the amount due, whichever is greater, shall also be due and payable to defray the expense of late collection.

Further, the Association shall have a lien on each Dwelling Unit or Commercial Unit together with the common elements appurtenant thereto in the amount of each Assessment not paid when due as provided herein, which may be collected and/or the lien foreclosed upon as provided in the South Carolina Horizontal Property Regime Act. Reasonable attorney's fees incurred by the Board incident to the collection of such Assessments or the enforcement (including but not limited to

ELECTRONICALLY FILED - 2008 Feb 27 5:08 PM - HONRY - COMMON FILES - CASE#2010032003173

foreclosure) of such lien and all other charges allowed by the Act shall be payable by the delinquent Co-Owner and secured by such lien. The Board may take such action as it deems necessary to collect Assessments as provided in the Act and further may settle and/or compromise same if deemed in its best interest.

No Co-Owner may exempt himself from liability for his share of the Assessments by waiving the use or enjoyment of any of the common elements or otherwise.

5.2 Association Assessments may be assessed directly to the Co-Owners or may be collected by the Individual Condominium Associations at the discretion of the Board. The Assessments levied by the Association, as well as the manner of collecting same, shall be determined by the Board of Directors at a regularly scheduled or at a special meeting and the approval of the budget for the Association shall require the vote of 67% or more of all Voting Members of the Association.

5.3 Allocation of Assessments. Assessments for budgeted expenses shall be allocated and assessed as follows: Myrtle Beach Resort Horizontal Property Regime (Phase I) - 24.8515%; Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime (Phase II) - 26.8317%; Renaissance Tower Horizontal Property Regime (Phase III) - 32.3762%; Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime (Phase IV) - 15.9406%.

The allocation of each Co-Owner's share of the Assessments shall be determined by multiplying that Co-Owner's share of ownership in the common area of such Co-Owner's Individual Condominium Association as shown in the respective Master Deed times the percentage as shown above for the respective Individual Condominium Association.

Provided, however, in respect to television and telephone rental expenses, each Co-Owner will pay an amount determined by dividing the total of such expenses incurred by such Co-Owner's Individual Condominium Association pursuant to its agreement with this Association by the total number of Dwellings within that particular Individual Condominium Association.

ARTICLE VI

GENERAL PROVISIONS

6.1 Amendments. Amendments to this Declaration shall be proposed and adopted in the following manner:

Law Offices of
Daniel L. Patrick
P. O. Box 156669
Surfside Beach, FL
S.C. 29587

6.1.1 Notice of the subject matter of the proposed amendment shall be included in the notice of the Board meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Board member of the Association. Provided, however, that any amendment shall be consistent with the Master Deed of the Individual Condominium Associations.

At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the Board of an Individual Condominium Association. Such amendment must be approved by a vote of 67% or more of the Board of Directors of the Association.

6.1.2 Amendments to this Declaration may also be adopted in a meeting duly called by the Owners pursuant to the Association By-Laws, provided notice of the subject matter of the proposed amendment is included in a notice of such meeting. At such meeting the proposed amendment, as noticed, must be approved by either 67% or more of the Board of Directors of the Association or by majority of the total Owners at the Myrtle Beach Resort.

6.2 Enforcement. Each Co-Owner and Occupant shall comply strictly with the By-laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration, as same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for imposing fines, for suspending rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Board of Directors on behalf of the Association, or in a proper case, by an aggrieved Owner. Should the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner or Occupant. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Association, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of the

Association in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws or any rules and regulations of the Association, however long continued.

6.3 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewable periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of an initial thirty (30) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of termination of this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Records of the R.M.C. Office for Horry County, South Carolina, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

6.4 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they

shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Records of the R. M. C. Office for Horry County, South Carolina. The captions of each Article and Paragraph hereof as to the contents of each Article and Paragraph are inserted only for convenience and are in no way to be construed as refining, limiting, extending or otherwise modifying or adding to the particular Article or Paragraph to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

6.5 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 other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

6.6 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

6.7 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Association, the Individual Condominium Associations, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of Declarant and Mortgagees herein provided. The Association shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

IN WITNESS WHEREOF, the duly authorized officer of the undersigned Declarant have executed this Declaration under seal this 16th day of April, 1991.

WITNESSETH: THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

~~Whitney H. Wells~~ BY: Alfred Wells, Jr.
ITS: PRESIDENT

Annette Jordan BY: Freddy Brown
ITS: President

Michelle S. Hoss BY: Sam M. Brock
ITS: President

Pamela S. Mahalik BY: Stanley M. Jordan
ITS: President

Annette Jordan BY: William H. Cole
ITS: President

Law Offices of Daniel L. Patrick P. O. Box 15669 Surfside Beach, S.C. 29587

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Shirley W. Wells

who states under oath that (s)he saw the within named Myrtle Beach Resort Homeowners' Association, Inc., by Alfred H. Wells, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with Daniel L. Patrick witnessed the execution thereof.

Shirley W. Wells

SWORN to before me this 6th day of April, 1991.

[Signature]

Notary Public for South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Judy B. Reynolds

who states under oath that (s)he saw the within named Myrtle Beach Resort Horizontal Property Regime, Inc., by Freddy Brown, its Presiden, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with Annette Jordan witnessed the execution thereof.

[Signature]

SWORN to before me this 1st day of April, 1991.

Annette Jordan

Notary Public for South Carolina

My Commission Expires: 4-25-91

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken) PROBATE

PERSONALLY APPEARED BEFORE ME ⁽¹⁾ Michelle S. Hoar, who states under oath that (s)he saw the within named Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc., by ⁽¹⁾ Sam R. Ruch, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with ⁽²⁾ Barbara J. Creech witnessed the execution thereof.

⁽¹⁾ Michelle S. Hoar

SWORN to before me this 12th day of April, 1991.

⁽²⁾ Barbara J. Creech
Notary Public for South Carolina
My Commission Expires ⁽⁴⁾ 10-5-94

COMMONWEALTH OF MASSACHUSETTS
~~STATE OF~~)
⁽⁴⁾) PROBATE
COUNTY OF HAMPSHIRE)

PERSONALLY APPEARED BEFORE ME ⁽¹⁾ Pamela S. Malchik, who states under oath that (s)he saw the within named Renaissance Horizontal Property Regime, Inc., by ⁽¹⁾ Frank J. Juchan, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with ⁽²⁾ Todd D. Boudreau witnessed the execution thereof.

⁽¹⁾ Pamela S. Malchik

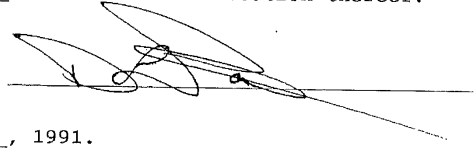
SWORN to before me this 11th day of April, 1991.

⁽²⁾ Todd D. Boudreau
Notary Public for ~~South Carolina~~ Massachusetts
My Commission Expires: ⁽⁴⁾ 11/29/96

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Daniel L. Patrick, who states under oath that (s)he saw the within named Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc., by William Cole, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with Annette Jordan witnessed the execution thereof.



SWORN to before me this 3rd day of April, 1991.

Annette Jordan
Notary Public for South Carolina
My Commission Expires: 4-25-96

Law Offices of
Daniel L. Patrick
P. O. Box 15069
Suffield Beach,
S.C. 29587

EXHIBIT "A" CONTINUED

PHASE III - RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying, and being on the South Eastern side of U.S. Highway 17 containing 8.672 acres, more or less, and designated as a Portion of Lot 5 of Lakewood Plantation Tract, further designated as Phase III of The Myrtle Beach Resort, and described on a Map prepared by Culler Land Surveying Co., Inc. dated November 16, 1984, also being shown as Phase III on a Plat of 44.668 +/- Acres, lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, revised November 27, 1984, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on November 28, 1984, in the Office of the Clerk of Court for Horry County in Deed Book 917 at Page 885.

PHASE IV - MYRTLE BEACH RESORT FIVE SEASONS CENTRE

(Phase I)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase I of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Culler Land Surveying Co., Inc. dated June 4, 1985, also being shown as Phase I, Myrtle Beach Resort Five Seasons Centre on a plat of 44.668 +/- acres, Lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, dated June 10, 1982, with latest revision dated June 14, 1985, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 20, 1985, in the Office of the Clerk of Court for Horry County in Deed Book 966 at Page 654.

(Phase II)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase II of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Atlantic Land Surveying Co., Inc. dated May 1, 1986, all as is more particularly described in that First Amendment to the Master Deed for the aforesaid Horizontal Property Regime recorded on May 29, 1986, in the Office of the Clerk of Court for Horry County in Deed Book 1048 at Page 824.

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

EXHIBIT "A"

PHASE I - MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately five (5) miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.198 acres, more or less, and being shown and described as a 6.198, more or less acres parcel on a certain plat entitled "Plat of 44.668, more or less, acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" prepared for Resort Investment Corporation by Culler Land Surveying Company, Inc., dated August 17, 1981, which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 72 at Page 58; also being shown and described on the plats recorded in the Condominium Plat Book, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 15, 1982, in the Office of the Clerk of Court for Horry County in Deed Book 750 at Page 642.

PHASE II - MYRTLE BEACH RESORT OCEANFRONT SPA
HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately 5 miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.205 acres, more or less, and being shown and described as "Phase II (6.205 Ac)" on a certain plat entitled "Plat of 44.668+- Acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" dated June 10, 1982, revised July 13, 1982, and July 19, 1982, prepared by Culler Land surveying Company, Inc., which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 74 at Page 32; also being shown and described on the plats and architectural plans and drawings prepared by Culler Land Surveying Company, Inc. and Stevenson & Wilkinson, Inc., respectively, which are recorded in the Condominium Plat Book at Book 2, Page 31, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on April 15, 1983, in the Office of the Clerk of Court for Horry County in Deed Book 789 at Page 362.

EXHIBIT "B"

AMENDED

BY-LAWS

OF

THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the Association is The Myrtle Beach Resort Homeowners' Association, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be located at Highway 17 South, Surfside Beach, South Carolina, but meetings of members and directors may be held at such places within the State of South Carolina, County of Horry, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., its successors and assigns.

Section 2. "Member" shall mean and refer to each and every Co-Owner at The Myrtle Beach Resort which includes (a) Myrtle Beach Resort Horizontal Property Regime; (b) Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime.

"Voting Member" shall mean and refer to that representative from the Board of Directors of each Individual Condominium Association who has been elected by that Board as a representative to the Board of Directors of this Association.

Section 3. "Individual Condominium Associations" shall mean and refer to those Associations at The Myrtle Beach Resort presently including: (a) Myrtle Beach Resort Horizontal Property Regime, Inc.; (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc.; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc.

Law Offices of
Dantel L. Patrick
P. O. Box 16669
Surfside Beach,
S.C. 29587

Section 4. All terms and phrases used herein shall, unless the context otherwise requires, have the same definition and meaning as set forth in the various Master Deeds of the Horizontal Property Regimes comprising The Myrtle Beach Resort and/or in the South Carolina Horizontal Property Regime Act, as the case may be.

ARTICLE III

MEETING OF MEMBERS

Section 1. "Annual Meetings." The annual meeting of Voting Members shall be held during the first six months of each calendar year at a time and place designated by the President.

Annual meetings of the Members shall be held only if required by a vote of the majority of the Voting Members or upon petition signed by greater than Thirty Percent (30%) of the entire outstanding membership. In the event the annual meeting of Members is held pursuant to these By-Laws such meeting shall be at a time and place designated by the President, or a majority of the Board of this Association, or by a petition signed by a number greater than Thirty Percent (30%) of the outstanding members.

Section 2. "Special Meetings." Special meetings of the Voting Members may be called at any time by the President or by a majority of the Directors of this Association. A special meeting of the Members may be called at any time as provided for under Section 1. for annual meetings.

Section 3. "Notice of Meetings." Written notice of each meeting of the Members or Voting Members shall be given by, or at the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days (but not more than sixty (60) days) before such meeting to each Member or Voting Member entitled to vote thereat, addressed to the Member's or Voting Member's address last appearing on the books of the Association, or supplied by such Member or Voting Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 4. "Quorum." The presence at the meeting of a majority of the Voting Members, represented in person or by proxy, shall constitute a quorum at a meeting of the Voting Members. The presence at the meeting of a majority of the Members, represented in person or by proxy, shall constitute a quorum at a meeting of the Members.

Any action required by law to be taken at a meeting of the Association or any action which may be taken in the meeting of the Association may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by Voting Members, or Members, as the case may be, holding not less than sixty-seven percent (67%) of the entire votes entitled to vote on the subject matter thereof and further provided the same is not otherwise prevented by these By-Laws, the Declarations, or the respective Master Deeds of the individual Horizontal Property Regimes of the Myrtle Beach Resort, or the Act.

Section 5. "Proxies." At all meetings of Voting Members or Members, each Voting Member or Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable.

ARTICLE IV

Board of Directors: Voting: Selection: Term of Office: Duties

Section 1. The Association shall be managed by a Board of Directors consisting of not less four (4) Directors. Each Individual Condominium Association of the Myrtle Beach Resort shall have a representative from its Regime as a Director on the Board of the Association. Each Board Member of this Association shall also be a board member of the Individual Condominium Association which he or she represents.

Section 1.A. "Voting." Each Director is hereby assigned the number of votes that represents the number of Apartments (whether residential or commercial) that exists in that Director's Individual Condominium Association.

Section 2. "Term of Office." Each Director shall hold office until the next annual meeting of Voting Members and/or until each successor has been elected and qualified. Provided, however, that a Director's term in office may be terminated and a successor elected at any meeting of Members called pursuant to the provisions in these By-Laws.

Section 3. Regular Meetings: There shall be at least one (1) regular meeting of the Board quarterly at a time designated by the President. The President or two (2) members of the Board may call as many special meetings of the Board as are deemed necessary or desirable and in the best interest of the Association.

Section 4. Presentation of Annual Budget: The Board of Directors shall annually, on or before November 1st of each year, prepare a budget for the upcoming calendar year to include such sums as it deems adequate. The Board of Directors, on or before November 1st, shall deliver the budget for the upcoming year together with the statement of the amounts due from the Co-Owners of the respective Regimes for that year and the date or dates upon which payments are due from the Individual Condominium Associations. Thereafter, should an increase or decrease be determined appropriate by the Board of Directors in assessments to be paid by Co-Owners, the Board shall notify all Individual Condominium Associations at least thirty (30) days prior to the time such assessments so changed shall be due. The Association shall have a lien upon each apartment together with the common elements and common surplus appurtenant thereto for payment of all assessments not paid when due in the amount of such unpaid assessments together with late charges thereon from the date due together with the cost of collection thereof including a reasonable attorney's fee.

Section 5. Notice: Notice of any special meeting shall be given at least five (5) days previously thereto by written notice delivered personally, or by telegram or mailed to each director at this business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a Director at a meeting shall constitute a Waiver of Notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 6. Quorum. At any meeting of the Directors a majority of the Directors fixed by these By-Laws shall constitute a quorum for the transaction of business, but if less than said number is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 7. Voting: Any action taken at a meeting of the Board of Directors shall be only upon the affirmative vote of 67% of the entire votes of the Association.

Section 8. Consistent with these By-Laws and applicable Declarations, the Board shall:

- (a) transact all Association business and prescribe the rules and regulations for the use of the assets, facilities and property for which it is so charged and may appoint such officers, clerks, agents, servants or employees as it may deem necessary in its sole discretion and may fix their duties and compensation;
- (b) annually set a budget for the Association;
- (c) fix, impose and remit penalties for violations of these By-Laws and the rules and regulations of the Association;
- (d) elect from the Board within thirty (30) days after each annual meeting the President, Vice-President, Secretary and Treasurer;
- (e) carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the Act.

Section 9. Vacancies. Vacancies occurring on this Board of Directors shall be filled immediately by an election of the Director's successor by that Individual Condominium Association which the Director in question represents. Provided, however, that in the event of a vacancy, and prior to any election by the Individual Condominium Association, the highest presiding officer of the Individual Condominium Association shall automatically be a Director and Voting Member of this Association. For purposes of this section, the ranking of the Officers of each Individual Condominium Association shall be in this order: President, Vice President, Secretary and Treasurer.

Law Offices of
Daniel L. Patrick
P. O. Box 16889
Surfside Beach,
S.C. 29587

Section 10. Resignation. A Director may resign at any time by giving written notice to the Board, the President or the Secretary of the Association. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

Section 11. Compensation. No compensation shall be paid to Directors, as such, for their services, but by resolution of the Board a fixed sum and expenses for actual attendance at each regular or special meeting of the Board may be authorized. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 12. Presumption of Assent. A Director of the Association who is present at a meeting of the Directors at which action on any Association matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 13. Executive and Other Committees: The Board, by resolution, may designate from among its members an executive committee and other committees, each consisting of one or more Directors. Each such committee shall serve at the pleasure of the Board.

ARTICLE V

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. "Contracts." The Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. "Loans." No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Directors. Such authority may be general or confined to specific instances.

Section 3. "Check, Drafts, Etc." All checks, drafts or other orders for the payment of money, notes or other evidences signed by such officer or officers, agent or agents of the Association and in

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

such manner as shall from time to time be determined by resolution of the Directors.

Section 4. "Deposits." All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Directors may select.

ARTICLE VI

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Articles of Incorporation 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 at reasonable cost.

ARTICLE VII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: The Myrtle Beach Resort Homeowners' Association, Inc.

ARTICLE VIII

These By-Laws may be amended at a regular or special meeting of the voting Members or at a regular or special meeting of the Members, by a vote representing 67% or greater of the total votes of the Association. Provided, however, that any amendment to these By-Laws shall be consistent with the Declarations of this Association and the Master Deeds of the Individual Condominium Associations.

ARTICLE IX

Miscellaneous

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

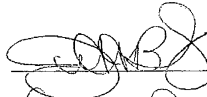
IN WITNESS WHEREOF, we, being all of the Directors and Shareholders of The Myrtle Beach Resort Homeowners' Association, Inc., have hereunto set our hands this 16th day of April, 1991.

Law Offices of
Daniel L. Patrick
P. O. Box 16669
Surfside Beach,
S.C. 29597

ELECTRONICALLY FILED - 2028 Fri May 27 3:49 PM - Horry - COMMON FILES - CASE#2018CP2603173

WITNESSETH:

MYRTLE BEACH RESORT HORIZONTAL
PROPERTY REGIME, INC.



Annette Jordan

BY: 
James R. Brunner

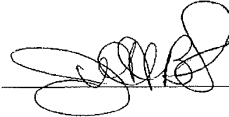
ITS: Authorized Board Representative

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)


PROBATE

PERSONALLY APPEARED BEFORE ME Judith B. Reynolds

_____, who states under oath that
(s)he saw the within named Myrtle Beach Resort Horizontal Property
Regime, Inc., by James R. Brunner, its Authorized Board Member, as
its act and deed, sign, seal and deliver the within Amended By-Laws
of the Myrtle Beach Resort Homeowners' Association, Inc. and that
(s)he with Annette Jordan witnessed the execution
thereof.



SWORN to before me this
9th day of April, 1991.



Notary Public for South Carolina

My Commission Expires: 4-25-96

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

WITNESSETH: MYRTLE BEACH RESORT OCEANFRONT SPA HORIZONTAL PROPERTY REGIME, INC.

(6) [Signature] BY: (1) George Kidney
George Kidney
(3) Lauren V. Isaacs ITS: Authorized Board Representative

STATE OF GEORGIA)
(6)) PROBATE
COUNTY OF COBB)

PERSONALLY APPEARED BEFORE ME Lauren V. ISAACS
(2) who states under oath that
(s)he saw the within named Myrtle Beach Resort Oceanfront Spa
Horizontal Property Regime, Inc., by George Kidney, its Authorized
Board Representative, as its act and deed, sign, seal and deliver
the within Amended By-Laws of the Myrtle Beach Resort Homeowners'
Association, Inc., and that (s)he with (3) Lauren V. Isaacs
witnessed the execution thereof.

(6) [Signature]
SWORN to before me this
4th day of April, 1991.

(3) Lauren V. Isaacs
Notary Public for ~~South Carolina~~ Georgia
My Commission Expires: Notary Public, Cobb County, Georgia
(5) My Commission Expires January 21, 1994

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Sunside Beach,
S.C. 29587

WITNESSETH: RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME, INC.

(2) Jean Marshall BY: (1) Alfred H. Wells
(3) James E. Youmans ITS: Authorized Board Representative

STATE OF VIRGINIA)
(6)) PROBATE
COUNTY OF HENRICO)

PERSONALLY APPEARED BEFORE ME (2) JEAN O. MARSHALL, who states under oath that (s)he saw the within named Renaissance Horizontal Property Regime, Inc., by Alred H. Wells, its Authorized Board Representative, as its act and deed, sign, seal and deliver the within Amended By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc. and that (s)he with (3) James E. Youmans witnessed the execution thereof.

(2) Jean Marshall
SWORN to before me this
15th day of (7) April, 1991.

(3) James E. Youmans
Notary Public for ~~SOUTH CAROLINA~~ Virginia
My Commission Expires: _____ (4)
(5) My Commission Expires June 13, 1993

Law Offices of Daniel L. Patrick P. O. Box 15669 Surfside Beach, S.C. 29587

WITNESSETH:

MYRTLE BEACH RESORT FIVE SEASONS
CENTRE COUNCIL OF CO-OWNERS, INC.

(1) William A. Ullery BY: [Signature]
Bill Hunt
(2) Beverly C Harmon ITS: Authorized Board Representative

STATE OF SOUTH CAROLINA)
(10))
COUNTY OF RICHLAND) PROBATE

PERSONALLY APPEARED BEFORE ME _____
(2) William G. Ullery, who states under oath that
(s)he saw the within named Myrtle Beach Resort Five Seasons Centre
Council of Co-Owners, Inc., by Bill Hunt, its Authorized Board
Representative, as its act and deed, sign, seal and deliver the
within Amended By-Laws of the Myrtle Beach Resort Homeowners'
Association, Inc. and that (s)he with (3) Beverly C Harmon
witnessed the execution thereof.

(2) William A. Ullery
SWORN to before me this
10TH day of (6) APRIL, 1991.

(3) Beverly C Harmon
Notary Public for South Carolina
My Commission Expires: 5/16/2000 (4)
(5)

Law Offices of
Daniel L. Parsik
P. O. Box 15669
Surfside Beach,
S.C. 29987

EXHIBIT "D"

Hearl, Lynn

From: Lori Niedzwiecki <lniedz@aol.com>
Sent: Thursday, May 24, 2018 3:16 PM
To: Bellamy III, Howell V.
Cc: Hearl, Lynn
Subject: Fwd: Resolution to end the Ego?

I believe this is what you are looking for.

Lori

-----Original Message-----

From: PETER GRUSAUSKAS <pgrussy.mbr@gmail.com>
To: Lori Niedzwiecki <lniedz@aol.com>; Jim Perkins <mbrijimperkins@aol.com>; Conrad Calvano <dmscac@msn.com>; Phil Cox <rvspc@yahoo.com>
Cc: Freddy Brown <misc16@aol.com>; jlr5456 <jlr5456@yahoo.com>; Nancy Moore <nancyl.moore@outlook.com>; Sarah Morrow <sarah@empresgmt.com>
Sent: Tue, Apr 3, 2018 12:56 pm
Subject: Re: Resolution to end the Ego?

I thought that you were there, on the phone at the time. But I know Conrad left the meeting at that point and about the same time your line went quiet then came back. Because of the nature of the subject issue, and given had served legal notice to the board and myself, at the advice of one of our attorneys, the FSC and HPR were found to have a conflict of interest in the passage or denial of passage of the motion. Therefore the two were not included in the count because they were dis qualified to vote.

The motion was made and seconded to empower the President to take appropriate action to carry out the decision of the board made at the January meeting, regarding use of the commercial space in the HOA building. Before the vote, the president disqualified the voting of the conflicted members. Motion passed.
I will forward you the minutes when available

So now with that charge, I am attempting to resolve the issue in a positive way.
Let's not lose focus and forget the Board did vote in January, to not allow, anyone to use space in the building except for Empress

Peter

On Tuesday, April 3, 2018, Lori Niedzwiecki <lniedz@aol.com> wrote:
Peter the board did not empower you to do anything, unless the vote was taken prior to my being on the phone.

Lori Niedzwiecki
908-268-1316

-----Original Message-----

From: PETER GRUSAUSKAS <pgrussy.mbr@gmail.com>
To: Lori Niedzwiecki <lniedz@aol.com>; Freddy Brown <misc16@aol.com>; Nancy Moore <nancyl.moore@outlook.com>; jlr5456 <jlr5456@yahoo.com>; Jim Perkins <mbrijimperkins@aol.com>; Conrad Calvano <dmscac@msn.com>; Phil Cox <rvspc@yahoo.com>; Barbara Johnson <barbara@empresgmt.com>
Cc: densassa <densassa@yahoo.com>; deerfoot35 <deerfoot35@aol.com>; Tracy Meadows <meadowsoceanfrontcondo@gmail.com>
Sent: Mon, Apr 2, 2018 8:34 pm
Subject: Resolution to end the Ego?

Lori and Freddy

At the Board's last conference call meeting on March 22nd, The board voted to empower the President to take all necessary action to remove First Services Residential from the MBRHOA Inc property. (Commercial Unit E or part thereof).

In reviewing the FSR 2014 contract with your Regimes it is apparent that you both have a responsibility to supply FSR with office space to conduct the contracted services to your regimes.

At the time of the Mach 22 vote, I was unaware of your contractual requirements to supply that office on site. I think it is important to note that the MBRHOA, Inc is not required in any way to provide an office for you or FSR.

Board member Conrad had approached me in February, about letting everything ride as is, until the annual meeting. Our conversation included the possibility of an informal rental agreement till April. In that discussion I told Conrad that a fee of possibly \$900.00 monthly might make sense. Conrad thought the amount was extremely excessive and has not spoke of resolving the issue since.

On behalf of the MBRHOA, I sought out legal advice and consult on this along with other various issues facing the MBRHOA. The attorney advised me that FSR is currently in trespass and should be removed and could be with a simple call to the County authorities, for said trespass. To my knowledge the HPRHPR or FSCHPR have never been in a lease rental agreement for any space in the MBRHOA office Buildings Commercial D or E and now have no legal standing to demand such leasing/rental arrangement.

Understand, FSR is trespassing on MBRHOA, Inc property. FRS has no rights to be an occupier within MBRHOA's real estate. FSR, nor either of your Regimes, have a lease or rental agreement with the MBRHOA. Any previous use of the small office in the rear of Commercial unit "D" by FSR for Your Regimes' operation was only possible because FSR, did, at that time, have a similar clause in it's contract with the MBRHOA to use the Building's offices. The MBRHOA no longer has a contract with FSR. The MBRHOA does have a contract with Empress Property Management. That new Empress contract was negotiated under the premise, that like it had with FSR, the MBRHOA would provide the office space to Empress.

Unfortunately, like most things at the Resort, any action has the unfortunate ability to cause unintended consequences. In this case, removing FSR from the MBRHOA building would then place a hardship and consequence to your Regimes. In the wording of your contract, You have a responsibility to provide on site office space,

I am frustrated with the Resort Regimes unwillingness to come together and solve even the smallest of issues. Everyone just wants to place blame on someone else. I know in my heart that the Owners (remember them, the people who own the properties) want tranquility and adult resolution to problematic issues that plague the Resort. (thats all of our job, BTW)

The MBRHOA didn't purchase commercial Unit E because they didn't feel a need for added space. FSC HPR didn't sell it, all those years ago, because it was making a profitable rate of return on the \$600.00 monthly rent they were charging for the space prior to the sale either I don't feel the not so arbitrary rental number of \$900.00 was out of line, but even that would still require the Board to approve such an arrangement.

What is clear is that I have been advised, and now empowered, to end the squatting on our property. If no action is taken in the short haul, the other two regimes of the Resort have reason to be upset and cry foul. I am open to options you may wish to bring forward.

The time has come to put this behind us. End the arrogance of your Management Contractor and start, for once, working together. Ego, arrogance and maybe even a little greed and corruption have been the calling cards of the Myrtle Beach Resort for to long. If you doubt my saying so, just ask our Owners. The time has come to end all the BS.

Peter Grusauskas, President
MBRHOA, Inc

I would ask that each regime share this with their Board members as well. Perhaps it will lead to a mirror look back for all of us.

EXHIBIT "E"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2016-CP-26-7895
)	
Myrtle Beach Resort Homeowners' Association, Inc.,)	
)	
Plaintiff,)	
)	
vs.	)	ORDER AMENDING SCHEDULING
	)	ORDER DATED SEPTEMBER 12, 2017
Renaissance Tower Horizontal Property Regime, Inc.,	)	AND DISBURSING FUNDS FROM
	)	CLERK OF COURT
Defendant.)	
)	

1
GAH

This matter is before the Court upon the Motion for Status Conference and Amended Scheduling Order ("Motion") filed on October 25, 2017 by Defendant Renaissance Tower Horizontal Property Regime, Inc. ("Defendant") under Rule 16 of the South Carolina Rules of Civil Procedure. In attendance by telephone at the November 9, 2017 status conference and hearing on the Defendant's Motion were Taylor Peace, Esq. on behalf of the Defendant and Sam Stathos, Esq., Henrietta Golding, Esq., and Alicia Thompson, Esq. on behalf of the Plaintiff, Myrtle Beach Resort Homeowners' Association, Inc. ("Plaintiff").

This Court retains jurisdiction over this matter pursuant to an Order of Reference executed by the Honorable Benjamin H. Culbertson on March 14, 2017 and filed on March 22, 2017. The undersigned has reviewed the Defendant's Motion, has considered the arguments of the parties at the November 9, 2017 status conference and hearing, and is familiar with the legal issues, the pleadings, and the procedural history of the above captioned action. For the reasons set forth below, the Court **GRANTS** Defendant's Motion to amend the Amended Scheduling Order filed on September 12, 2017, and further orders that the Defendant shall pay past due assessments, except for \$20,000.00 held by the Clerk of Court, and future assessments owed directly to the

Plaintiff, with additional funds to be released to Plaintiff from the Clerk of Court for Horry County in the amount of \$220,719.65.

1. On February 21, 2017, the Circuit Court granted the Plaintiff's Motion for a Temporary Injunction and ordered that the Defendant pay to the Clerk of Court the funds that it collected from its owners for assessments for the year 2016 as well as future assessments until such further Order of the Court.

2. The Consent Order of Reference was filed on March 22, 2017 referring this case to the undersigned, Master in Equity for Horry County, "to take testimony, make her findings of fact and conclusions of law, and determine the issues with finality, with any appeal being directly to the South Carolina Supreme Court or Court of Appeals as provided for in the South Carolina Rules of Civil Procedure."

2
AK

3. After the matter was referred, the parties scheduled the trial for July 10 and 11, 2017.

4. On June 23, 2017, Defendant filed a Motion for Continuance and for a Scheduling Order.

5. A Scheduling Order was entered on July 7, 2017 compelling Defendant's responses to discovery requests and setting deadlines for expert related discovery and for the trial. The new trial date, pursuant to the Scheduling Order, was October 9, 2017 and October 10, 2017.

6. Because the Plaintiff was unable to operate due to insufficient assessments collected, Plaintiff requested that funds be released from the Clerk of Court for Horry County. The parties entered into a Consent Order Regarding Disbursement of Assessments on August 10, 2017 releasing \$200,000.00 on deposit with the Court to Plaintiff.

7. The parties determined that the deadlines set forth in the Scheduling Order for expert related discovery and for trial were impracticable. A Consent Amended Scheduling Order was entered on September 12, 2017 scheduling trial for December 11, 2017 and December 12, 2017.

8. On October 25, 2017, Defendant filed the Motion before this Court requesting that new deadlines be entered for expert related discovery and for the trial.

9. At the November 9, 2017 status conference and hearing on the Motion, Defendant asserted that several logistical issues arose that caused delay in serving the audit report by the deadline of October 3, 2017. Defendant sought additional time to subpoena records from third-parties not named in the above captioned action in order to complete the Defendant's expert report.

10. Plaintiff agreed that the deadlines in the Amended Scheduling Order needed to be revised, for there was insufficient time available to prepare a rebuttal report to Defendant's expert report, as the Defendant's final expert report had not yet been served as of the date of the November 9, 2017 hearing. The Plaintiff asserted that the delay was caused, not by Plaintiff's failure to produce documents, but instead, due to the coordination between the Defendant and its expert in preparing the report. Plaintiff also argued that rescheduling the trial dates only prejudiced the Plaintiff, the party that had complied with the Amended Scheduling Order to date, because it was operating at an estimated deficit of \$432,023.00 as of December 31, 2017. Plaintiff requested that, if a Second Amended Scheduling Order was entered, the remaining funds held by the Clerk of Court, as well as past due and future assessments, be paid to Plaintiff. According to Defendant's attorney, the Defendant had not deposited with the Clerk of Court any funds it had collected since July, 2017.

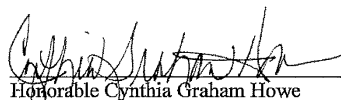
3
SA

Therefore, it appears that an Order Amending the Amended Scheduling Order dated September 12, 2017 and Disbursing Additional Funds From the Clerk of Court is appropriate . Accordingly, the Court enters the Second Amended Scheduling Order and orders the release of funds as follows:

1. Defendant's final expert report shall be served on the Plaintiff no later than **December 31, 2017**;
2. Plaintiff may retain an expert and respond to Defendant's expert's report no later than **February 28, 2018**;
3. This action shall be tried on Wednesday, **March 14, 2018** and Thursday, **March 15, 2018**, commencing at 10:00 a.m. each day;
4. Ten (10) days from the date of this Order, the Clerk of Court for Horry County shall disburse all but \$20,000.00 of the funds on deposit with the Court to Plaintiff, this being a total of \$220,719.65 being remitted to the Plaintiff, and Plaintiff has agreed to accept the same;
5. The Clerk of Court for Horry County shall retain possession of the remaining \$20,000.00 that it has on deposit related to this matter pending further Order of the Court;
6. The Defendant shall pay \$185,268.65, which has ^{not} not been deposited with the Clerk of Court's office, in past due assessments directly to Plaintiff within ten (10) days of this Order;
7. The Defendant shall pay all future assessments to Plaintiff directly in accordance with the Declaration of Covenants and Restrictions for Myrtle Beach Resort filed in Deed Book filed on April 25, 1991 in Deed Book 1465 at Page 329 in the Horry County Register of Deeds Office.

H
GA

IT IS SO ORDERED.


Honorable Cynthia Graham Howe
Horry County Master in Equity

Conway, South Carolina
November 28, 2017

EXHIBIT "F"

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) AFFIDAVIT

PERSONALLY appeared before me Daniel L. Patrick, who, after being duly sworn, does state as follows:

DP
/

1. I am a licensed attorney in the state of South Carolina, now "of counsel" with the firm of Patrick and Stathos, L.L.C.
2. The Myrtle Beach Resort project ("Resort") located in Horry County, South Carolina includes four horizontal property regimes: the Myrtle Beach Resort Horizontal Property Regime ("HPR"), Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime ("OF Spa"), The Renaissance Tower Horizontal Property Regime ("RT") and the Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime ("5 Seasons"), together with commercial properties located at the entrance to the Resort and beachfront as well as the entry/exit roads at the Resort.
3. The Master Deeds in Article XVIII of both the OF Spa (filed in April 1983) and the RT (filed in November 1984) provide that the Declarant (developer) may "establish The Myrtle Beach Resort Homeowners' Association... and all Co-owners shall... automatically become members thereof." The Master Deeds further provide that, if established, the Master Association board shall be comprised of one representative from each regime.
4. By 1986 I was legal Counsel for the four regimes.
5. By 1986 the original developer of the Resort, Resort Development Corporation f/k/a Resort Investment Corporation, had transferred to a successor certain rights and title it held at the Resort. Shortly thereafter the successor filed bankruptcy.
6. By February of 1987, the original developer assigned to its successor's Trustee-in-Bankruptcy ("Bankruptcy Trustee") certain remaining rights it had at the Resort including the right to establish a master homeowners' association for the present and future owners at the Resort, as referred to in paragraph 3 above.
7. On April 30, 1987, the four regimes, by their respective authorized representatives, incorporated The Myrtle Beach Resort Homeowners' Association, Inc. ("Association").
8. By assignment recorded February 3, 1989, the Bankruptcy Trustee transferred to the Association all rights it had acquired as referenced in paragraph 6 above. In 1989 the Trustee also transferred to the Association the commercial property mentioned in paragraph 2 above.
9. In April 1991 the Declaration of Covenants, Conditions and Restrictions ("DCCR") of Association and its By-laws were recorded in Horry County. The DCCR was signed by the authorized representatives of all four regimes and by the authorized representative of the Association.
10. I drafted the DCCR and By-laws ("governing documents") according to my clients' directions and consistent with the existing Master Deeds which require one board member from each Regime to be on the board of the Association.

11. Those governing documents provide for a super-majority of 67% of the voting membership (1 elected from each Regime and totaling 4) or a majority of all members (which total 1,010) to take any action including without limitation, election of officers; entering into, terminating, or altering contracts; creating new or modifying or terminating existing rules, regulations, or procedures.

12. The super-majority provision was requested and agreed to by all board members to protect minority interests. To reach the super-majority requires no less than 3 of the 4 voting members to concur.

13. The enumerated powers of the Association set out in the DCCR (Article IV) were intended to be mandatory obligations, not optional. They include, among other obligations, employing security services for the overall Myrtle Beach Resort project, which includes all four regimes set out in paragraph 2 herein (DCCR 4.1(L)). From the beginning there has always been just one security company site-wide under contract at any given time, at first through the developer and then under the Association. In particular because of the cross-easements contained in the various Master Deeds of the regimes for vehicular and pedestrian ingress and egress and for the use of amenities it was reasoned that having multiple contracts for security created the risk of irreparable damage to the Resort because of potential conflicting security rules, enforcement, and oversight. Also having differing directions given to security from various regimes would conflict with the developer's design of a seamless Resort as reflected in the Master Deeds of all regimes..

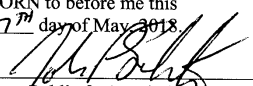
211

14. It is my understanding that the gate pass "fee" is no longer being collected through direction or acquiescence of the RT and OF Spa representatives on the board of the Association without the requisite vote of the board. That fee was adopted approximately 15 years ago by the Association board to help offset the added expenses incurred by the Association as a result of the number of guests, including in particular, additional security costs. I am now informed that the line item for security in the Association's 2018 budget is substantially less than that in 2017. I am also informed that, unless the gate fee is immediately restored, the Master Association will be severely underfunded for security and with the influx of guests as high season is here will potentially cause irreparable damage.

15. Patrick & Stathos, LLC (of which I am no longer a member, but "of counsel") and its predecessor (of which I was either sole owner or principle member) has continuously represented the Master Association since its inception. To my knowledge neither the super-majority requirement nor the mandatory obligations in the governing documents recorded over 27 years ago have been challenged until recently.



Daniel L. Patrick

SWORN to before me this
17th day of May, 2018.

Notary Public for North Carolina
John P. Salute
Print name of Notary Public
My Commission Expires: 3/20/22

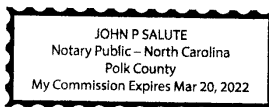


EXHIBIT "G"

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 FREDERICK E. BROWN, CHARLES O.)
 PAKOSTA, CONRAD A. CALVANO, GAYLE)
 L. SCOTT, PHILLIP D. COX, individually and)
 derivatively on behalf of MYRTLE BEACH)
 RESORT HOMEOWNERS' ASSOCIATION,)
 INC., and on behalf of all other similarly situated)
 Co-owners, and LORI NIEDZWIECKI and)
 ROBERT S. ROSENCRANS, individually and)
 derivatively on behalf of Myrtle Beach Resort)
 Homeowners' Association, Inc. for its right and)
 benefit,)
)
 Plaintiffs,)
)
 v.)
)
 JEFFREY L. RICHARDSON AND NANCY L.)
 MOORE, individually and as current members of)
 the Board of Directors for MYRTLE BEACH)
 RESORT HOMEOWNERS' ASSOCIATION,)
 INC., AND PETER GRUSAUSKAS AND JIM)
 PERKINS individually and as former members)
 of the Board of Directors for MYRTLE)
 BEACH RESORT HOMEOWNERS')
 ASSOCIATION, INC.)
)
 Defendants.)
)
 MYRTLE BEACH RESORT)
 HOWEOWNERS' ASSOCIATION, INC.)
)
 Nominal Defendant,)
)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2018-CP-26-

AFFIDAVIT OF MICHAEL R. PARADES, PCAM

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

1. My name is Michael R. Parades. 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 community association governance, community association management, and affirmative duties of a Board of Directors with regard to the operation and management of community associations and to the maintenance, repair, and replacement of common components of the General and Limited Common Elements. A copy of my Curriculum Vitae, marked **Exhibit A**, is attached hereto and incorporated by reference as part of this Affidavit.
2. I attended the College of Charleston, in Charleston, SC, from which I received a B.S. in Business Administration, Summa Cum Laude, 1979.
3. I am currently the President of Parades Consulting Services and provide consulting services to community associations primarily in the areas of governance, management and affirmative duties of Community Association Boards of Directors. I have been qualified by the South Carolina State courts as an expert witness in the field of community association management, community association governance and affirmative duties of Community Association Boards of Directors. Based on my work experience and the fact that I am a retired Certified Public Accountant (CPA) with over 30 years of accounting experience related to community associations, I could also be qualified as an expert forensic accountant if the need arose.
4. I am not a party to the above entitled action, nor am I related to any of the above-captioned parties.
5. This Affidavit is submitted in support of the allegations contained in Plaintiffs' Derivative Complaint.

PROJECT DESCRIPTION

6. The Myrtle Beach Resort (MBR) is a master planned resort made up of four (4) separate Condominium Associations (CA). The four (4) CAs are (a) Myrtle Beach Resort Horizontal Property Regime (MBRHPR) consisting of 251 Residential Units (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime (MBROFSHPR) consisting of 267 Residential Units and 4 Commercial Units for a total of 271 Units (c) Myrtle Beach Resort Renaissance Tower Horizontal Property Regime (MRBRTHPR) consisting of 322 Residential Units and 5 Commercial Units for a total of 327 Units and (d) Myrtle Beach Resort Five Seasons Horizontal Property Regime (MBR5SHPR) consisting of 156 Residential Units and 5 Commercial Units.

Thus in total the MBR consists of 996 Residential Units and 14 Commercial Units, as well as many recreational amenities available to the owners and guests of the MBR.

Each CA is a separate entity established by recordation of its own Master Deed and Bylaws and governed by a member elected Board of Directors. In accordance with provisions included in each CA's governing documents, the Developer provided for the establishment of a Master Association that owns, operates and maintains all amenities and controls access into the Resort. The Master Association was created by recordation of a Declaration of Covenants, Conditions and Restrictions (CCRs) as well as Bylaws and is governed by a four member Board. The Board is composed of one representative from each of the sub-CAs who is also a Board member in the sub-CA. Any action taken by the Master Board must be approved by 67% of the Voting Board members.

MASTER DEED AND BYLAWS

7. The following table reflects that Date, Book and Page wherein the Master Deed and Bylaws for each of the sub-CAs and the CCRs for the Master were recorded in the Office of Register of Deeds for Horry County, South Carolina:

- (a) MBRHPR recorded 6/15/82 in Book 750 Page 642;
- (b) MBROFSHPR recorded 4/25/83 in Book 789 Page 362;
- (c) MBRRTHPR recorded 11/28/84 in Book 917 Page 885;
- (d) MBR5SHPR recorded 6/20/85 in Book 966 Page 654 and
- (e) MBRHOA (Master) recorded 4/25/91 in Book 1465 Page 329 (**Exhibit C to Complaint**)

Each sub-CA Master Deed and Bylaws are similar to the other sub-CAs and each contain essentially the same *Article XVIII The Myrtle Beach Resort*. This Article grants authority to the Declarant or his successors and assigns to create a Master Association, **see Exhibit B attached**. The balance of this Affidavit will deal primarily with the CCRs and Bylaws of the Master Association, Myrtle Beach Resort Homeowners' Association, Inc, (**Master**).

RELEVANT PROVISIONS OF MASTER HOA GOVERNING DOCUMENTS

8. Reason for formation of Master as set forth on page 2 of the CCRs, **NOW, THEREFORE:**

“for the purpose of protecting the value and desirability of these properties and which restrictions, easements, charges, liens, conditions and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or portion of them.”

9. Specifically, the CCRs and Bylaws are the governing documents of the Master and define aspects and duties of the Developer, the Association, the Board of Directors, the Unit Owners and Manager. Article I of the CCRs provides definitions for terms used in the CCRs and Bylaws, which **SHALL** have the meanings contained in S.C. Code Ann. 27-31-20.
- 1.1.0 “Act” **SHALL** mean the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as Amended.
 - 1.1.8 “Common Expenses” **SHALL** mean and refer to all expenditures, including debt retirement, capital improvements, and operating expenses, lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.
 - 1.1.9 “Condominium Association” or “Individual Condominium Association” **SHALL** mean and refer to the four individual horizontal property regimes making up the Myrtle Beach Resort including the Myrtle Beach Resort Horizontal Property Regime (Phase I); Myrtle Beach Resort Oceanfront Spa (Phase II); Renaissance Tower Horizontal Property Regime (Phase III); and Myrtle Beach Resort Five Seasons Centre (Phase IV).
 - 1.1.17 “Recreational Amenities” **SHALL** include such recreational facilities located within the Myrtle Beach Resort, including, without limitation, tennis courts, sporting or exercise areas, meeting areas, swimming pools, tennis courts, locker room facilities, clubhouses, food and beverage facilities, lagoons, beach access paths, jogging trails and bike paths.
 - 1.1.18 “Voting Member” **SHALL** mean a member elected by the Board of each individual Condominium Association to this Association’s Board of Directors as specified herein and in the By-Laws.
10. CCRs Article III Membership and Voting
- 3.2 Board of Directors. “The Board of Directors of each Individual Condominium Association at the Myrtle Beach Resort **SHALL** elect a representative to sit on the Board of Directors of this Association. ***This Board of Directors SHALL act in accordance with the By-Laws.*** The Association **SHALL** be operated by the Board of Directors, and the Members of the Association **SHALL** have only such powers as

are specifically herein or in the By-Laws.”

11. CCRs, Article IV POWERS OF THE ASSOCIATION:

provides: “ the Association, acting through the Board of Directors **SHALL** also have the power to:

- (a) **Maintain ALL** streets and roads within the Property (Resort),
- (b) **Provide for ALL** refuse collection,
- (c) Obtain via purchase, lease or other means Cable or Master TV service and telephone services for all Units,
- (d) Maintain the Ocean front area,
- (e) Grant easements and right of ways where necessary for services,
- (f) Maintain insurance for Liability and fire,
- (g) Employ a management company,
- (h) **Install and maintain security devises, detectors, communication facilities and contract for security services, guards and other watchmen,**
- (i) Take such other reasonable actions as the Board **SHALL** deem advisable.

Where the CCRs and Bylaws use words such as “**SHALL**”, “**WILL**”, “**MUST**”, etc, these words create an affirmative obligation for the Board to act. **There is NO choice.** Failure to fulfill its **affirmative obligations is a breach of its duties and considered an “Ultra Vires” act and the Board CANNOT** use the “Business Judgment Rule” as a defense. See South Carolina Supreme Court ruling in Fisher vs Shipyard Village HOA, **Exhibit C attached.**

12. By-Laws, Article IV Board of Directors: Voting, Selection, Term of Office and Duties

Section 3. Regular Meetings: There **SHALL** be at least one (1) regular meeting of the Board quarterly at a time designated by the President. The President or two (2) members of the Board may call as many special meetings of the Board as are deemed necessary or desirable and in the best interest of the Association.

Section 7. Voting: Any action taken at a meeting of the Board of Directors **SHALL** be only upon affirmative vote of 67% of the entire votes of the Association.

RELEVANT ISSUES

13. I have been advised of a number of issues being raised by the Defendants, current Master members Richardson and Mace as well as former Master members Grusauskas and Perkins. I have also been advised that these individuals have been or are being given advice by a current owner who is an attorney from another state that is not licensed to practice in South Carolina. Following is a list of the issues:
- (1) The CCRs and Bylaws for the Master Association were never voted on by the Owners and are therefore NOT valid.
 - (2) Where does it say the Individual Condominium Associations give authority to the Master?
 - (3) Do decisions of the Master HOA Board first have to be approved by the Individual Condominium Associations?
 - (4) Article 4.1(h) of the Master HOA CCRs uses the word "project" when discussing security services and one Defendant representative claims it references a conference center never built instead of the Myrtle Beach Resort.
 - (5) A former Master HOA Board member acted without a Board vote to cancel the master security contract and forcing each Individual Condominium Association to make arrangements for security.
 - (6) The same two current members of the Master HOA Board are attempting to make each Individual Condominium Association arrange for their own trash service.
 - (7) The same two members of the Master HOA Board have also changed the grounds maintenance contractor without a vote of the entire Board.
 - (8) Mr. Richardson, who is now a Member of the HOA Board says the President has greater power than other Master Board members.
 - (9) Current Master HOA Board members Richardson and Mace have stated on occasion they do NOT have to follow the voting provisions in the Bylaws because their Individual Condominium Associations (Renaissance and Oceanfront Spa) have more than 50% of the total Myrtle Beach Resort units.
 - (10) The new representative from Renaissan, Jeff Richardson, has asserted that according to SC Law on May 25th he will take the presidency with a minor majority vote of

Renaissance and Oceanfront Spa.

- (11) The Master Board discussed having a forensic audit done and authorized obtaining quotes but to NOT proceed. Either the Renaissance representative or the Oceanfront Spa representative authorized an audit firm to proceed at a cost of \$20,000 without a vote of the entire Board.
- (12) In short, the two current representatives and the former representatives from Renaissance and Oceanfront Spa are continuously taking action without a Board vote.

FACTUAL AND PROFESSIONAL OPINIONS

Based on my review of documents and discussion with plaintiffs, it is apparent to me that the prior and current Master HOA Board members from Renaissance Towers (RT) and Oceanfront Spa (OS) are either getting really poor free legal advice, do NOT understand the provisions of the governing documents or have some ulterior motive for their actions. Following are my opinions on the relevant issues presented.

1. The CCRs and Bylaws for the Master Association were NOT required to be approved by the Owners as Article XVIII in each Individual Condominium Association provided the authority for the Developer, his successor or assigns to create The Myrtle Beach Resort as the overall Master Association. It is my opinion to a reasonable degree of certainty the CCRs and Bylaws are VALID,
2. As noted in (1) Article XVIII in each Individual Condominium Association's Master Deed provided the authority to establish the Myrtle Beach Resort and transfer those properties, duties and responsibilities that would enable to Resort to more efficiently and cost effectively operate the Resort in the best interests of the members/owners at the Resort.
3. There is NO requirement for decisions of the Master HOA Board to first have their proposed actions approved by the Individual Condominium Associations.
4. The use of the word "project" in Article 4.1(h) of the Master HOA's CCRs clearly is a scrivener's error and as such is meant to say Resort. This has been confirmed with Dan Patrick, the attorney who wrote the Master HOA CCRs.
5. The past (Grusauskas and Perkins) and current (Richardson and Moore) representatives from RT and OS **HAVE committed "Ultra Vires" acts** by canceling the master security contract without a vote of the Board as a whole. This action has a strong likelihood of causing irreparable harm to the Resort through loss of revenue (gate pass fees) that help fund security

and maintenance of roadways; control access to only those authorized through several cross easements for vehicle and pedestrian access traffic and parking and use of the many recreational amenities and makes response to emergencies more difficult.

6. The current representatives from RT and OS are again trying to take “**Ultra Vires**” action by making significant changes to the trash service. Such action will likely result in less efficient service and greater expense for some of the Individual Condominium Associations.
7. The change in the grounds maintenance contractor by the representatives from RT and OS without a vote of the entire Master Board is again an “**Ultra Vires**” act that could well result in overall deterioration of the common grounds appearance and safety.
8. The President of the HOA Board has no greater power than any other Master Board member. He has some extra duties BUT is only one vote.
9. Article 3.2 of the ByLaws as noted above clearly provides that the Board of Directors **SHALL act in accordance with the Bylaws**. As has been noted, the two members from RT and OS have ignored the provision of the Bylaws requiring all Board decisions to be approved by 67%. Their **Ultra Vires** actions are and will continue to do irreparable harm to The Resort and its members/owners.
10. Mr. Richardson’s assertion that under SC Law he is going to make himself President is another case of receiving bad advice. He has to be elected President by the Board. There is no relevant SC Law that will allow him to be crowned King.
11. The authorization for an auditor to perform a forensic audit at a cost of \$20,000 without a vote of the entire Board is again an **Ultra Vires** act by the RT and/or OS representatives. As a retired CPA, the approved cost seems very excessive without knowing the scope of work.

In summary, the actions taken or proposed to be taken by the Defendants are serious violations of State statute, the Master Deed and Bylaws of the Master HOA and if NOT stopped immediately will result in irreparable harm to the Resort and its members/owners.

The breach of their affirmative obligations by the RT and OS representatives past and present are serious, will result in diminuation of property values, inconsistent services to owners and a potential security risks throughout the Resort.

I affirm that the foregoing is true to the best of my personal knowledge, information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same. I reserve the right to modify my opinions based on any new information that may be provided subsequent to this Affidavit.

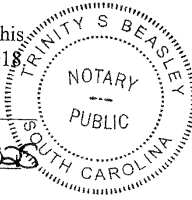
FURTHER AFFIANT SAYETH NOT

Mike Parades
Mike Parades, PCAM

SWORN to and subscribed before me this 21 day of May, 2018

Trinity S. Beasley
Notary Public for

My Commission Expires: 4/16/2025



ELECTRONICALLY FILED - 2028 May 22 3:49 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

EXHIBIT H

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Frederick E. Brown, et al.,

Plaintiffs,

vs.

Jeffery L. Richardson, et al.,

Defendants,

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-26-03173

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR THE
APPOINTMENT OF A TEMPORARY
CUSTODIAN TO OPERATE AND
MANAGE MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.**

NOW COME Plaintiffs Frederick E. Brown, Charles O. Pakosta, Conrad A. Calvano, Gayle N. Scott, and Philip D. Cox, individually and derivatively on behalf of Myrtle Beach Resort Homeowners' Association, Inc., and on behalf of all other similarly situated Co-owners, and Lori L. Niedzwiecki, and Robert S. Rosencrans, individually and derivatively on behalf of the Myrtle Beach Resort Homeowners' Association, Inc. ("MBRHOA") for its right and benefit ("Plaintiffs"), moves the Court to appoint a Temporary Custodian, not as a anticipatory adjunct to dissolution, but to operate and manage MBRHOA during the pendency of this litigation or until the intracorporate deadlock between the four-member Board is resolved. The moving party relies upon S.C. Code Ann. §§ 33-31-1430 and 1432(b)(1) (2006) of the South Carolina Non-Profit Corporation Act (Non- Profit Act") and the applicable case law in support of its motion for the Court to appoint a Temporary Custodian to alleviate the deadlock that exists preventing the Board from making decisions and acting on many important matters of business and policy

confronting the Board, which pose an imminent threat to the functioning viability or even existence of the Master Association.

The basis of this Motion to appoint a Temporary Custodian is as follows:

1. This action was commenced by Plaintiffs derivatively on behalf of the MBRHOA on May 24, 2018, by the filing of their Verified Complaint seeking relief from the Court regarding their *Ultra Vires* and Breach of Contract Claims (“Personal Claims”) against the Defendants and also seeking Declaratory Judgment Relief, among other things, that the Defendants have affirmative duties under MBRHOA’s governing documents regarding administration and management of the Myrtle Beach Resort Property. However, the Defendants seek to challenge the validity, enforceability, and interpretation of Declaration of Covenants, Conditions and Restrictions and By-Laws for MBRHOA. (“Declaration and By-Laws”). Specifically, the Defendants contend MBRHOA’s Declaration and the By-Laws “*may be flawed or invalid to the extent that [they] exceed the reserved authority provided under the Master Deed . . .*” for the four individual horizontal property regimes located inside Myrtle Beach Resort. (Emphasis Added). A true and correct copy of the Defendants’ responses to Plaintiffs’ Requests for Admission of Fact is attached hereto as **Exhibit A** and incorporated by reference. Plaintiffs argue that the Defendants’ contentions above are misplaced and without any merit. Furthermore, the moving party, does not specifically seek to challenge the validity, enforceability, and interpretation of MBRHOA’s Declaration and By-Laws.

2. The MBRHOA is a Master Umbrella Association (“Master Association”) charged with certain affirmative duties related to the administration and management of Myrtle Beach Resort. Specifically, Article IV of the Declaration for the Master Association addresses the Board’s affirmative duties under Section 4.1. This section provides:

The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; (b) *provide for all refuse collection* (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master television service and telephone service; (d) maintain the oceanfront area; grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (e) grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property (f) maintain such policy or policies of liability and fire insurance with respect to property owned by the Association; (g) *employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same; (h) install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project.* (Emphasis added.)

3. The nature and extent of the MBRHOA's affirmative duties under Section 4.1 are specifically disputed by the Defendants in this case. A true and correct copy of the Declaration of Covenants, Conditions and Restrictions and the By-laws of MBRHOA are attached hereto as **Exhibit B** and incorporated by reference.

4. There are four sub-horizontal property regimes ("HPRs or Regimes") within the Myrtle Beach Resort: (1) Myrtle Beach Resort Horizontal Property Regime ("HPR"); (2) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime ("Ocean Front Spa"); (3) Renaissance Tower Horizontal Property Regime, Inc. ("Renaissance Tower"); and (4) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. ("Five Seasons Centre").

5. Some of the Plaintiffs are current and former Board members of the MBRHOA, but all of them are current and former Board members of their respective Regimes. Plaintiff Lori L. Niedzwiecki ("Niedzwiecki") currently serves on the Board of the MBRHOA as well as on the Board of the Five Seasons Centre. Plaintiff Robert S. Rosencrans ("Rosencrans") currently serves on the Board of the MBRHOA as well as on the Board of HPR. Plaintiff Fredrick E.

There are 1010 combined residential and commercial votes for any action taken at a meeting of the Board members for MBRHOA in the Myrtle Beach Resort.

9. Pursuant to Article IV of Section 7 of the By-laws, ***“any action taken at a meeting of the Board of Directors shall be only upon the affirmative vote of 67% of the entire votes of the Association.”*** (Emphasis Added). This requires three Board members to vote in favor of any action taken at a meeting of the Board of Directors to obtain an enforceable decision or resolution of the Board.

10. Disagreements have arisen between the Board members concerning the conduct and management of the affairs of Myrtle Beach Resort, and, because of the inability of the Board members to reach an agreement by the affirmative vote of 67% of the entire votes of MBRHOA, a deadlock exists preventing the Board from making day-to-day decisions and acting on many important matters of business and policy confronting the Board. Specifically, the four-member Board is deadlocked - two Board members against two Board members - with respect to the following issues and/or actions not taken by them as set forth below:

- a. cannot elect corporate officers: the President, the Vice President, the Secretary, and the Treasurer, within thirty (30) days after the Association’s Annual Meeting that was held on April 29, 2018. (Exhibit C, Transcript of Deposition of Barbara Johnson, Page 65: 23-25; Pg. 66: 1-25; Pg. 67:1-2);
- b. cannot adopt the 2019 Annual Operating Budget¹ for the MBRHOA prepared by Empress. The three different annual budget options adequately addressed all known shortfalls in the operating and reserve accounts. (p. 40: 13-25; p. 43: 1-10; p. 44: 22-25; p. 130: 22-24);
- c. cannot provide direction to Empress and approval on day-to-day business operations of the MBRHOA as well as not prescribing the rules and regulations for the use of the assets, facilities, and property for which the Association is so charged. (p. 108: 5-23; p. 130:10-14);

¹ See Letter from Empress dated October 23, 2018 addressed to the current Board, discussing annual budgetary shortfalls in operating and reserve accounts for 2019, which is attached hereto as **Exhibit D** and incorporated by reference.

11. Such dissension or deadlock on operational and management decisions as shown above has completely paralyzed corporate action by the Board. And clearly the ongoing deadlock by the Board poses an imminent threat to the well-being and economic viability of MBRHOA. Barbara J. Johnson (“Johnson”), who manages the Myrtle Beach Resort Property for Empress Management, LLC (“Empress”), testified during her deposition the current Board is the most dysfunctional association she has ever managed or worked for in her twenty-three years in the community management industry. Johnson further agreed that a Temporary Custodian should be appointed to take over the operation and the management of MBRHOA, replacing the current Board members, during the pendency of the litigation or until the intercorporate dispute could be resolved by the parties. A true and correct copy of the excerpts from the Deposition of Barbara J. Johnson are attached hereto as **Exhibit C** and incorporated by reference.

12. Plaintiffs and other similarly situated members of the MBRHOA will suffer irreparable harm as evidenced by the findings and opinions set forth in the Affidavit of Plaintiffs Expert Michael R. Parades (“Parades”), attached hereto as **Exhibits E**, unless a Temporary Custodian is appointed to take over the operation and the management of the MBRHOA, replacing the current Board members, for the reasons described above and below.

13. In light of the above, the moving party believes that a Temporary Custodian should be appointed to take over the operation and the management of MBRHOA, replacing the present four-member Board, for such time as may be fixed by the Court, during which interval the individual parties and their respective counsel shall attempt to resolve the Defendants’ challenges to the validity, enforceability and interpretation of the provisions of **Exhibit B** by seeking Declaratory Judgment Relief from the Court. And hopefully the Declaratory Judgment Relief sought by the parties will help alleviate the intracorporate dissension or deadlock that

currently exists in this case so that effective decisions can be made by the current and/or future board members of MBRHOA.

14. Furthermore, the moving party believes that a Temporary Custodian should be appointed to operate and manage MBRHOA to alleviate the paralytic effects of such intracorporate dissension or to resolve the ongoing deadlock on operational or management decisions, which poses an imminent threat to the well-being and economic viability of the Association. **WHEREFORE**, the Moving Parties respectfully request that this Honorable Court:

- a. Appoint a Temporary Custodian for MBRHOA to take over the operation and management of MBRHOA, replacing the present Board members, for such time as may be fixed by the Court, during which time the parties shall seek joint Declaratory Judgment Relief on, among other things, the validity and interpretation of the 1991 Declaration of Covenants, Conditions, and Restriction for MBRHOA so that effective decisions can be made by the current and future Board members regarding the management and administration of the Myrtle Beach Resort; and
- b. Grant such other and further legal and/or equitable relief as the Court deems just and proper.

FURTHERMORE, this motion is based upon the pleadings, the controlling law, the deposition of Barbara J. Johnson, and such other and further material as the Court may deem appropriate. The moving party, as counsel for the Plaintiffs, hereby certifies that the undersigned did consult with opposing counsel for the Defendants

[SIGNATURE PAGE TO FOLLOW]

Bellamy, Rutenberg, Copeland
Epps, Gravely & Bowers, P. A.

s/ Howell V. Bellamy, III
Howell V. Bellamy, III (S. C. Bar #66575)
hbellamyiii@bellamylaw.com
Howell V. Bellamy, Jr. (S.C. Bar #00642)
nrichardson@bellamylaw.com
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
(843)-448-2400 Phone
(843)-448-3022 Facsimile

Attorneys for Plaintiffs

Myrtle Beach, South Carolina

November 14, 2018

FILED FROM NON-ICALLY FILED - 20181114 14:12:41T/PWV - H03RRRY - CC0MM0N1P1EAS - C0333#220130C0P22031723

EXHIBIT A

ELECTRONICALLY FILED - 2020 Nov 17 13:47 PM - HONOLULU - COMMUNICATIONS - CASE#20180328031733

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Frederick E. Brown, et al.,

Plaintiffs,

vs.

Jeffery L. Richardson, et al.,

Defendants.

Myrtle Beach Resort Homeowners'
Association, Inc.,

Nominal Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-26-03173

**RESPONSES TO PLAINTIFF'S
REQUESTS FOR
ADMISSIONS OF FACT**

TO: HOWELL V. BELLAMY, III, ESQ., ATTORNEY FOR PLAINTIFFS:

Pursuant to Rules 26 and 36 of the South Carolina Rules of Civil Procedure, Defendants Jeffrey Richardson, Nancy Moore, Peter Grusauskas and Jim Perkins (the "Defendants"), by and through their undersigned counsel, hereby submit their Responses to Plaintiff's Requests for Admissions of Fact.

RESPONSES TO REQUESTS FOR ADMISSIONS OF FACT

1. Admit that the Declaration of Covenants, Conditions and Restrictions for the Myrtle Beach Resort Homeowners' Association, Inc. ("Declaration of Covenants, Conditions and Restrictions for the Association") dated April 25, 1991 filed of record in the Office of the R.M.C. for Horry County in Deed Book 1465, at Page 329 (Exhibit A), are legally valid, binding on its members, and enforceable as a matter of law by its current board of directors.

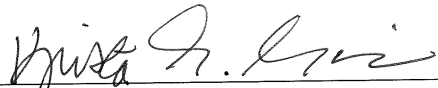
RESPONSE: Defendants admit that the document attached as Exhibit A to Plaintiffs' Requests for Admission is a true and genuine copy of the recorded Declaration of Covenants, Conditions and Restrictions for the Association dated April 25, 1991 (the "Declaration"). The validity, enforceability and interpretation of the Declaration presents a genuine issue for trial. Defendants cannot truthfully admit or deny the validity and

PPAB 4466024v1

enforceability of the Declaration because only the Court can make such determination. Defendants state that the Declaration may be flawed or invalid to the extent that it exceeds the reserved authority provided under the Master Deeds of the Regimes or for any other reason determined by the Court. Finally, Defendants admit that, nevertheless, they have at all times acted in accordance with and under the authority provided by the Declaration while serving as members of the Board of the Myrtle Beach Resort Homeowners' Association ("MBRHOA").

2. Admit that the By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc. ("By-Laws for the Association") dated April 25, 1991 filed of record in the Office of the R.M.C. for Horry County in Deed Book 1465, at Page 347 (Exhibit B), are legally valid, binding on its members, and enforceable as a matter of law by its current board of directors. If you deny any or all of said Request, please state the reason for your denial of same.

RESPONSE: RESPONSE: Defendants admit that the document attached as Exhibit B to Plaintiffs' Requests for Admission is a true and genuine copy of the recorded Amended By-Laws of the MBRHOA dated April 25, 1991 (the "Declaration"). The validity, enforceability and interpretation of the By-Laws presents a genuine issue for trial. Defendants cannot truthfully admit or deny the validity and enforceability of the By-Laws because only the Court can make such determination. Defendants state that the By-Laws may be flawed or invalid to the extent that the Declaration is declared invalid in whole or in part or for any other reason determined by the Court. Finally, Defendants admit that, nevertheless, they have at all times acted in accordance with and under the authority provided by the By-Laws while serving as members of the Board of the MBRHOA.



Krista M. McGuire
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

*Attorney for Defendants Jeffrey Richardson,
Nancy Moore, Peter Grusauskas and Jim Perkins*

September 29, 2018
Charleston, South Carolina

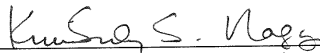
ELECTRONICALLY FILED - 20180906 147 13:417 PMW - H03RRRY - CC0MM0N1P1EAS - C433E#22013C0P2E2031733

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS OF FACT** has been served upon the following counsel of record this 28th day of September, 2018, by placing a copy of the same in the United States Mail, first-class postage prepaid, addressed as follows:

Howell V. Bellamy, III
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
1000 29th Ave. N.
Myrtle Beach, SC 29577

Edward D. Buckley, Jr.
Nicholas J. Rivera
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402



Kimberly S. Nagy, Legal Professional Assistant
PARKER POE ADAMS & BERNSTEIN LLP

EXHIBIT B

ELECTRONICALLY FILED - 2020 Nov 17 13:47 PM - HONORARY - COMMUNION PLEASE - CASE#20180328031733

1429 15
FILED
STATE OF SOUTH CAROLINA, S.C. DECLARATION OF COVENANTS,
COUNTY OF HORRY) CONDITIONS AND RESTRICTIONS
APR 25 PM 2:02 FOR THE MYRTLE BEACH RESORT
R.M.C. HOMEOWNERS' ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC. is made by The Myrtle Beach Resort Homeowners' Association, Inc., a South Carolina corporation and Myrtle Beach Resort Horizontal Property Regime, Inc. (Phase I), Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc. (Phase II), Renaissance Tower Horizontal Property Regime, Inc. (Phase III), and Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. (Phase IV), collectively referred to hereinafter as the "Declarant".

WITNESSETH:

WHEREAS, Resort Development Corporation reserved the right and privilege to establish The Myrtle Beach Resort Homeowners' Association consisting of all Co-Owners of all phases of the Myrtle Beach Resort, including Phase I (Myrtle Beach Resort Horizontal Property Regime), Phase II (Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime), Phase III (Renaissance Tower Horizontal Property Regime) and Phase IV (Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime), as set out in the respective Master Deeds in each of the above referenced phases at the Myrtle Beach Resort; and

WHEREAS, Resort Development Corporation has previously granted, conveyed and assigned to Vacation Properties, Inc., all of its rights under the respective Master Deeds to establish an "umbrella" homeowners' association as is more particularly set out in that assignment dated February 27th, 1987 and recorded in the office of the Register of Mesne Conveyances (R.M.C.) for Horry County in Deed Book 1121 at Page 401; and

WHEREAS, Vacation Properties, Inc., granted, conveyed and assigned to The Myrtle Beach Resort Homeowners' Association, Inc., all of said rights referenced above by Assignment of Rights dated January 27, 1989 and filed of record in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 239.

HORRY COUNTY ASSESSOR

192-05 - Blocks 01-4 thru 05

Map .. Bk Parcel

4-26-91

1

BOOK 1465 PAGE 329

329

Law Office of
Daniel L. Patrick
P. O. Box 15666
Surfside Beach,
S.C. 29587

FILED ELECTRONICALLY FILED - 20080306 147 13:417 PMW - H003RRY - COMM/COM/FILES - CASE#2007030328031733

ELECTRONICALLY FILED - 20180106 147 13:47 PM - H038887 - COMMON OWNERSHIP - CASE# 201801060388733

NOW, THEREFORE, the Declarants hereby declare that all the property described in Exhibit A shall be held, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these properties and which restrictions, easements, charges, liens, conditions and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchase or takes any interest in real property within the property subject to this instrument.

ARTICLE I
DEFINITIONS

1.1 Definitions. When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have all the following meanings, and all definitions shall be applicable to the singular and plural forms of any such term(s):

1.1.0 "Act" shall mean the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as Amended.

1.1.1 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of The Myrtle Beach Resort Homeowners' Association, Inc., as it may be constituted or amended from time to time.

1.1.2 "Assessment" shall mean and refer to a share of the Common Expenses, capital improvements or other charges from time to time assessed against Co-Owners in the manner herein provided.

1.1.3 "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., a South Carolina non-profit Corporation.

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 330

330

1.1.4 "Board of Directors" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

1.1.5 "By-Laws of the Association" shall mean and refer to those By-Laws of The Myrtle Beach Resort Homeowners' Association, Inc., which govern the administration and operation of the Association, as may be amended from time to time, which By-Laws are attached as Exhibit "B" to this Declaration.

1.1.6 "Commercial Unit" shall mean and refer to any unit designated as a commercial space in the Master Deed of the appropriate Condominium Association.

1.1.7 "Common Areas" means as defined in the Individual Condominium Associations' respective Master Deeds.

1.1.8 "Common Expenses" shall mean and refer to all expenditures, including debt retirement, capital improvements, and operating expenses, lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.

1.1.9 "Condominium Association" or "Individual Condominium Association" shall mean and refer to the four individual horizontal property regimes making up the Myrtle Beach Resort including the Myrtle Beach Resort Horizontal Property Regime (Phase I); Myrtle Beach Resort Oceanfront Spa (Phase II); Renaissance Tower Horizontal Property Regime (Phase III); and the Myrtle Beach Resort Five Seasons Centre (Phase IV).

1.1.10 "Co-Owner or "Owner" means as defined in the South Carolina Horizontal Property Regime Act and specifically means an owner of a Dwelling or a Commercial Unit at the Myrtle Beach Resort.

Law Offices of
Daniel L. Patrick
P. O. Box 18889
Surfside Beach,
S.C. 29587

1.1.11 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Myrtle Beach Resort and all supplements or amendments to it as filed for record in the Office of the R.M.C for Horry County, South Carolina.

1.1.12 "Development or Property" shall mean and refer to The Myrtle Beach Resort which includes the four individual horizontal property regimes referenced above.

1.1.13 "Dwelling", with an initial capital letter, shall mean and refer to any improved property located within the Development intended for the use as a residential condominium unit.

1.1.14 "Member" shall mean any person or entity holding a membership in the Association as provided herein.

1.1.15 "Occupant" shall mean and refer to any person, including without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an Owner lawfully occupying or otherwise using a Dwelling or Commercial Unit within the Development.

1.1.16 "Person" shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

1.1.17 "Recreational Amenities" shall include such recreational facilities located within the Myrtle Beach Resort, including, without limitation, tennis courts, sporting or exercise areas, meeting areas, swimming pools, tennis courts, locker room facilities, clubhouses, food and beverage facilities, lagoons, beach access paths, jogging trails and bike paths.

1.1.18 "Voting Member" shall mean a member elected by the Board of each individual Condominium Association to this Association's Board of Directors as specified herein and in the By-Laws.

ARTICLE II
PROPERTY RIGHTS

2.1 Easements for Utilities. There is hereby reserved for the benefit of the Association, and its respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across all of the Common Areas and all portions of other areas in which Dwellings or Commercial Units are not constructed or erected; for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by the Association, its successors or assigns. To the extent possible, all utility lines serving the Development and located therein shall be located underground. By virtue of any such easement granted, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate and fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

2.2 Easements for Walks, Trails and Signs. There is hereby reserved for the benefit of the Association and its successors and assigns the alienable, transferable and perpetual right and easement upon, over and across all lands which may remain unimproved for the installation, maintenance and use of sidewalks, jogging trails, bike paths, traffic directional signs and related improvements.

2.3 Easements for the Association. There is hereby reserved a general right and easement for the benefit of the Association's Directors, officers, agents and employees, including but not limited to any property manager employed by the Association and any employees of such manager, to enter

Law Offices of
Janet L. Patrick
P. O. Box 18069
Surfside Beach,
S.C. 29587

ELECTRONICALLY FILED - 2020 MAR 14 12:47 PM - H038888 - COMMON ONLINE CASE #2018CGF280381733

into the Property and any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the occupant, the Individual Condominium Association, or the Owner(s) of the Dwelling or Commercial Unit.

2.4 Maintenance Easement. There is hereby reserved for the benefit of the Association and its respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any unimproved portions of any Property for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided that such easements shall not impose any duty or obligation upon the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Association and its agent, employees, successors and assigns an alienable, transferable and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of the Property which is located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Development for the purpose of mowing such areas and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

2.5 Environmental Easement. There is hereby reserved for the benefit of the Association and its agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Property for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easements to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

2.6 Wells. There is hereby reserved for the benefit of the Association and its agents, employees, successors and assigns an alienable, transferable and perpetual right and easement: (i) to pump water from lagoons, ponds and other bodies of water located within the Development for the purpose of

Law Offices of
Jared L. Patrick
P. O. Box 15569
Surfside Beach,
S.C. 29567

irrigating any portions of the Development; (ii) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Areas.

ARTICLE III

MEMBERSHIP AND VOTING

3.1 Membership. Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Dwelling or Commercial Unit, and Ownership of such Dwelling or Commercial Unit shall be the sole qualification for such membership. No Owner, whether one or more persons, shall have more than one membership per Dwelling or Commercial Unit

3.2 Board of Directors. The Board of Directors of each Individual Condominium Association at the Myrtle Beach Resort shall elect a representative to sit on the Board of Directors of this Association. This Board of Directors shall act in accordance with the By-Laws which are attached hereto as Exhibit B. The Association shall be operated by the Board of Directors, and the Members of the Association shall have only such powers as are specified herein or in the By-laws.

ARTICLE IV

POWERS OF THE ASSOCIATION

4.1 The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; (b) provide for all refuse collection (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master television service and telephone service; (d) maintain the oceanfront area; (e) grant easements, rights-of-way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (f) maintain such policy or policies of liability and fire insurance with respect to property owned by

Law Offices of
Daniel L. Petrick
P. O. Box 15689
Surfside Beach,
S.C. 29587

the Association; (g) employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same; (h) install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project; (i) take such other reasonable action as the Board shall deem advisable with respect to the Myrtle Beach Resort for the benefit of the overall Property.

ARTICLE V

COVENANT FOR ASSESSMENTS

5.1 Creation of the Lien. Each Individual Condominium Association together with each Co-Owner is deemed to covenant and agrees to pay to the Association Assessments for the Association expenses including common expenses as provided for herein.

Such assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof shall be a charge on any Dwelling Unit or Commercial Unit, and shall be a continuing lien upon it, until full payment of such Assessment is made.

A Co-Owner shall become liable for payment of Assessments upon issuance of a Statement of Assessments by the Association.

On any Assessment that remains unpaid for over ten (10) days after its due date, at the sole discretion of the Board, a late charge not to exceed Ten and No/100 Dollars (\$10.00) or Ten Percent (10%) of the amount due, whichever is greater, shall also be due and payable to defray the expense of late collection.

Further, the Association shall have a lien on each Dwelling Unit or Commercial Unit together with the common elements appurtenant thereto in the amount of each Assessment not paid when due as provided herein, which may be collected and/or the lien foreclosed upon as provided in the South Carolina Horizontal Property Regime Act. Reasonable attorney's fees incurred by the Board incident to the collection of such Assessments or the enforcement (including but not limited to

Law Offices of
Darel L. Patrick
P. O. Box 15088
Surfside Beach,
S.C. 29587

FILED FROM PUBLIC RECORDS - 2025 FEB 14 10:47 AM - 147 13417 PMW - H0000000 - COMMUNION FILES - CASE# 2023030303030303

ELECTRONICALLY FILED - 2020 MAR 14 12:47 PM - H038888 - COMM/CON/PLANS - CASE#20180328031733

foreclosure) of such lien and all other charges allowed by the Act shall be payable by the delinquent Co-Owner and secured by such lien. The Board may take such action as it deems necessary to collect Assessments as provided in the Act and further may settle and/or compromise same if deemed in its best interest.

No Co-Owner may exempt himself from liability for his share of the Assessments by waiving the use or enjoyment of any of the common elements or otherwise.

5.2 Association Assessments may be assessed directly to the Co-Owners or may be collected by the Individual Condominium Associations at the discretion of the Board. The Assessments levied by the Association, as well as the manner of collecting same, shall be determined by the Board of Directors at a regularly scheduled or at a special meeting and the approval of the budget for the Association shall require the vote of 67% or more of all Voting Members of the Association.

5.3 Allocation of Assessments. Assessments for budgeted expenses shall be allocated and assessed as follows: Myrtle Beach Resort Horizontal Property Regime (Phase I) - 24.8515%; Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime (Phase II) - 26.8317%; Renaissance Tower Horizontal Property Regime (Phase III) - 32.3762%; Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime (Phase IV) - 15.9406%.

The allocation of each Co-Owner's share of the Assessments shall be determined by multiplying that Co-Owner's share of ownership in the common area of such Co-Owner's Individual Condominium Association as shown in the respective Master Deed times the percentage as shown above for the respective Individual Condominium Association.

Provided, however, in respect to television and telephone rental expenses, each Co-Owner will pay an amount determined by dividing the total of such expenses incurred by such Co-Owner's Individual Condominium Association pursuant to its agreement with this Association by the total number of Dwellings within that particular Individual Condominium Association.

ARTICLE VI

GENERAL PROVISIONS

6.1 Amendments. Amendments to this Declaration shall be proposed and adopted in the following manner:

Law Offices of
Janet L. Patrick
P.O. Box 15668
Surfside Beach,
S.C. 29587

ELECTRONICALLY FILED - 2020 NOV 14 12:47 PM - H038888 - COMMONWEALTH OF MASSACHUSETTS - 038888201803280381733

6.1.1 Notice of the subject matter of the proposed amendment shall be included in the notice of the Board meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Board member of the Association. Provided, however, that any amendment shall be consistent with the Master Deed of the Individual Condominium Associations.

At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the Board of an Individual Condominium Association. Such amendment must be approved by a vote of 67% or more of the Board of Directors of the Association.

6.1.2 Amendments to this Declaration may also be adopted in a meeting duly called by the Owners pursuant to the Association By-Laws, provided notice of the subject matter of the proposed amendment is included in a notice of such meeting. At such meeting the proposed amendment, as noticed, must be approved by either 67% or more of the Board of Directors of the Association or by majority of the total Owners at the Myrtle Beach Resort.

6.2 Enforcement. Each Co-Owner and Occupant shall comply strictly with the By-laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration, as same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for imposing fines, for suspending rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Board of Directors on behalf of the Association, or in a proper case, by an aggrieved Owner. Should the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner or Occupant. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Association, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of the

Law Office of
Daniel L. Patrick
P.O. Box 15889
Surfside Beach,
S.C. 29687

Association in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws or any rules and regulations of the Association, however long continued.

6.3 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewable periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of an initial thirty (30) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of termination of this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Records of the R.M.C. Office for Horry County, South Carolina, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

6.4 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they

Law Offices of
Daniel L. Patrick
P. O. Box 18689
Surfside Beach,
S.C. 29587

shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Records of the R. M. C. Office for Horry County, South Carolina. The captions of each Article and Paragraph hereof as to the contents of each Article and Paragraph are inserted only for convenience and are in no way to be construed as refining, limiting, extending or otherwise modifying or adding to the particular Article or Paragraph to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

6.5 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 other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

6.6 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

6.7 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Association, the Individual Condominium Associations, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of Declarant and Mortgagees herein provided. The Association shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

Law Office of
Wendell L. Futchok
P. O. Box 15868
Myrtle Beach,
S.C. 29587

ELECTRONICALLY FILED - 20230116 147 12:41:17 PM - H0388888 - COMM/CON/PLEAS - CASE#202301160328031733

IN WITNESS WHEREOF, the duly authorized officer of the undersigned Declarant have executed this Declaration under seal this 16th day of April, 1991.

WITNESSETH: THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

Alfred H. Wells BY: *Alfred H. Wells, Jr.*
ITS: PRESIDENT

MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME, INC.
Annette Jordan BY: *Freddy Brown*
ITS: President

MYRTLE BEACH RESORT OCEANFRONT SPA HORIZONTAL PROPERTY REGIME, INC.
Michelle S. Hoas BY: *Sam M. Brod*
Barbara L. Couch ITS: President

RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME, INC.
Pamela S. Malick BY: *Stanley M. Jordan*
William F. Fudreau ITS: President

MYRTLE BEACH RESORT FIVE SEASONS CENTRE COUNCIL OF CO-OWNERS, INC.
Annette Jordan BY: *William H. Cole*
ITS: President

Law Offices of Daniel L. Patrick P. O. Box 15658 Surfside Beach, 29587

ELECTRONICALLY FILED - 20200306 147 13:47 PM - H038888 - COMM/CON/PLEAS - CASE#20180328031733

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Shirley W. Wells
who states under oath that
(s)he saw the within named Myrtle Beach Resort Homeowners'
Association, Inc., by Alfred H. Wells, its
President, as its act and deed, sign, seal and deliver
the within Declaration of Covenants, Conditions and Restrictions
for Myrtle Beach Resort Master Association and that (s)he with
Daniel L. Patrick witnessed the execution thereof.

Shirley W. Wells

SWORN to before me this
6th day of April, 1991.

[Signature]
Notary Public for South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED BEFORE ME Judy B. Reynolds
who states under oath that
(s)he saw the within named Myrtle Beach Resort Horizontal Property
Regime, Inc., by Freddy Brown, its Presiden,
as its act and deed, sign, seal and deliver the within Declaration
of Covenants, Conditions and Restrictions for Myrtle Beach Resort
Master Association and that (s)he with Annette Jordan
witnessed the execution thereof.

[Signature]

SWORN to before me this
1st day of April, 1991.

Annette Jordan
Notary Public for South Carolina

My Commission Expires: 4-25-91

Law Offices of
Daniel L. Patrick
P. O. Box 13459
Myrtle Beach,
S.C. 29587

ELECTRONICALLY FILED - 20200319 147 23417 PMW - H007777 - COMMONWEALTH OF MASSACHUSETTS - CASE# 20200319031733

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken) PROBATE

PERSONALLY APPEARED BEFORE ME Michelle S. Hoos, who states under oath that (s)he saw the within named Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc., by SAM ROACH, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with Barbara L. Creel witnessed the execution thereof.

Michelle S. Hoos

SWORN to before me this 12th day of April, 1991.

Barbara L. Creel
Notary Public for South Carolina
My Commission Expires: 10-5-94
COMMONWEALTH OF MASSACHUSETTS
~~STATE OF~~)
COUNTY OF HAMPSHIRE) PROBATE

PERSONALLY APPEARED BEFORE ME Pamela S. Malchik, who states under oath that (s)he saw the within named Renaissance Horizontal Property Regime, Inc., by Frank Jordan, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with Frank Jordan witnessed the execution thereof.

Pamela S. Malchik

SWORN to before me this 11th day of April, 1991.

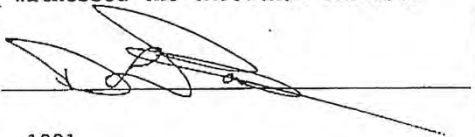
Frank Jordan
Notary Public for South Carolina
My Commission Expires: 11/24/96

Law Offices of
Daniel L. Patrick
P. O. Box 18989
Surfside Beach,
S.C. 29587

ELECTRONICALLY FILED - 20200319 147 13:41:17 PM - H038888 - COMMUNION PLEASES - CASE# 20180328031733

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry) PROBATE

PERSONALLY APPEARED BEFORE ME Daniel L. Patrick, who states under oath that (s)he saw the within named Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc., by William Cole, its President, as its act and deed, sign, seal and deliver the within Declaration of Covenants, Conditions and Restrictions for Myrtle Beach Resort Master Association and that (s)he with Annette Jordan witnessed the execution thereof.



SWORN to before me this 3rd day of April, 1991.

Annette Jordan
Notary Public for South Carolina
My Commission Expires: 4-25-96

Law Offices of
Daniel L. Patrick
P. O. Box 15658
Myrtle Beach,
S.C. 29587

BOOK 1465 PAGE 344

EXHIBIT "A"

PHASE I - MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately five (5) miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.198 acres, more or less, and being shown and described as a 6.198, more or less acres parcel on a certain plat entitled "Plat of 44.668, more or less, acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" prepared for Resort Investment Corporation by Culler Land Surveying Company, Inc., dated August 17, 1981, which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 72 at Page 58; also being shown and described on the plats recorded in the Condominium Plat Book, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 15, 1982, in the Office of the Clerk of Court for Horry County in Deed Book 750 at Page 642.

PHASE II - MYRTLE BEACH RESORT OCEANFRONT SPA
HORIZONTAL PROPERTY REGIME

ALL AND SINGULAR that certain piece, parcel or tract of land, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being located approximately 5 miles south of Myrtle Beach, South Carolina, and lying on the eastern side of U.S. Highway 17 Business, containing 6.205 acres, more or less, and being shown and described as "Phase II (6.205 Ac)" on a certain plat entitled "Plat of 44.668+- Acres, Lot 5 of Lakewood Plantation Property Near Myrtle Beach" dated June 10, 1982, revised July 13, 1982, and July 19, 1982, prepared by Culler Land surveying Company, Inc., which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 74 at Page 32; also being shown and described on the plats and architectural plans and drawings prepared by Culler Land Surveying Company, Inc. and Stevenson & Wilkinson, Inc., respectively, which are recorded in the Condominium Plat Book at Book 2, Page 31, all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on April 15, 1983, in the Office of the Clerk of Court for Horry County in Deed Book 789 at Page 362.

Law Office of
Daniel L. Pablick
P. O. Box 15668
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 345

ELECTRONICALLY FILED - 2020 MAR 14 12:47 PM - H038887 - COMM/CON/PLEAS - CASE#20180328031733

EXHIBIT "A" CONTINUED

PHASE III - RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying, and being on the South Eastern side of U.S. Highway 17 containing 8.672 acres, more or less, and designated as a Portion of Lot 5 of Lakewood Plantation Tract, further designated as Phase III of The Myrtle Beach Resort, and described on a Map prepared by Culler Land Surveying Co., Inc. dated November 16, 1984, also being shown as Phase III on a Plat of 44.668 +/- Acres, lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, revised November 27, 1984, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on November 28, 1984, in the Office of the Clerk of Court for Horry County in Deed Book 917 at Page 885.

PHASE IV - MYRTLE BEACH RESORT FIVE SEASONS CENTRE

(Phase I)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase I of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Culler Land Surveying Co., Inc. dated June 4, 1985, also being shown as Phase I, Myrtle Beach Resort Five Seasons Centre on a plat of 44.668 +/- acres, Lot 5 of Lakewood Plantation Property, Socastee Township, Horry County, South Carolina, dated June 10, 1982, with latest revision dated June 14, 1985, prepared by Culler Land Surveying Co., Inc., all as is more particularly described in the Master Deed for the aforesaid Horizontal Property Regime recorded on June 20, 1985, in the Office of the Clerk of Court for Horry County in Deed Book 966 at Page 654.

(Phase II)

ALL THAT piece, parcel, or tract of land, situate in the County of Horry, State of South Carolina, and Township of Socastee, situate, lying and being on the Southeastern side of U.S. Highway 17 designated as Phase II of The Myrtle Beach Resort Five Seasons Centre, and described on a plat prepared by Atlantic Land Surveying Co., Inc. dated May 1, 1986, all as is more particularly described in that First Amendment to the Master Deed for the aforesaid Horizontal Property Regime recorded on May 29, 1986, in the Office of the Clerk of Court for Horry County in Deed Book 1048 at Page 824.

Law Offices of
Daniel L. Patrick
P. O. Box 18608
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 346

ELECTRONICALLY FILED - 2020 NOV 14 12:47 PM - H008888 - COMMONS ONLINE AS - CASE# 20180328031733

EXHIBIT "B"

AMENDED

BY-LAWS

OF

THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the Association is The Myrtle Beach Resort Homeowners' Association, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be located at Highway 17 South, Surfside Beach, South Carolina, but meetings of members and directors may be held at such places within the State of South Carolina, County of Horry, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to The Myrtle Beach Resort Homeowners' Association, Inc., its successors and assigns.

Section 2. "Member" shall mean and refer to each and every Co-Owner at The Myrtle Beach Resort which includes (a) Myrtle Beach Resort Horizontal Property Regime; (b) Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime.

"Voting Member" shall mean and refer to that representative from the Board of Directors of each Individual Condominium Association who has been elected by that Board as a representative to the Board of Directors of this Association.

Section 3. "Individual Condominium Associations" shall mean and refer to those Associations at The Myrtle Beach Resort presently including: (a) Myrtle Beach Resort Horizontal Property Regime, Inc.; (b) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc.; (c) Renaissance Tower Horizontal Property Regime; (d) Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc.

Law Offices of
Janet L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

Section 4. All terms and phrases used herein shall, unless the context otherwise requires, have the same definition and meaning as set forth in the various Master Deeds of the Horizontal Property Regimes comprising The Myrtle Beach Resort and/or in the South Carolina Horizontal Property Regime Act, as the case may be.

ARTICLE III
MEETING OF MEMBERS

Section 1. "Annual Meetings." The annual meeting of Voting Members shall be held during the first six months of each calendar year at a time and place designated by the President.

Annual meetings of the Members shall be held only if required by a vote of the majority of the Voting Members or upon petition signed by greater than Thirty Percent (30%) of the entire outstanding membership. In the event the annual meeting of Members is held pursuant to these By-Laws such meeting shall be at a time and place designated by the President, or a majority of the Board of this Association, or by a petition signed by a number greater than Thirty Percent (30%) of the outstanding members.

Section 2. "Special Meetings." Special meetings of the Voting Members may be called at any time by the President or by a majority of the Directors of this Association. A special meeting of the Members may be called at any time as provided for under Section 1. for annual meetings.

Section 3. "Notice of Meetings." Written notice of each meeting of the Members or Voting Members shall be given by, or at the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days (but not more than sixty (60) days) before such meeting to each Member or Voting Member entitled to vote thereat, addressed to the Member's or Voting Member's address last appearing on the books of the Association, or supplied by such Member or Voting Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Law Offices of
Daniel L. Patrick
P. O. Box 15688
Surfside Beach,
S.C. 29587

ELECTRONICALLY FILED - 2020 NOV 14 12:47 PM - H038888 - COMMON DOMINIONS - CASE# 20180328031733

Section 4. "Quorum." The presence at the meeting of a majority of the Voting Members, represented in person or by proxy, shall constitute a quorum at a meeting of the Voting Members. The presence at the meeting of a majority of the Members, represented in person or by proxy, shall constitute a quorum at a meeting of the Members.

Any action required by law to be taken at a meeting of the Association or any action which may be taken in the meeting of the Association may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by Voting Members, or Members, as the case may be, holding not less than sixty-seven percent (67%) of the entire votes entitled to vote on the subject matter thereof and further provided the same is not otherwise prevented by these By-Laws, the Declarations, or the respective Master Deeds of the Individual Horizontal Property Regimes of the Myrtle Beach Resort, or the Act.

Section 5. "Proxies." At all meetings of Voting Members or Members, each Voting Member or Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable.

ARTICLE IV

Board of Directors: Voting: Selection: Term of Office: Duties

Selection 1. The Association shall be managed by a Board of Directors consisting of not less four (4) Directors. Each Individual Condominium Association of the Myrtle Beach Resort shall have a representative from its Regime as a Director on the Board of the Association. Each Board Member of this Association shall also be a board member of the Individual Condominium Association which he or she represents.

Section 1.A. "Voting." Each Director is hereby assigned the number of votes that represents the number of Apartments (whether residential or commercial) that exists in that Director's Individual Condominium Association.

Law Offices of
Daniel L. Patrick
P. O. Box 15685
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 349

Section 2. "Term of Office." Each Director shall hold office until the next annual meeting of Voting Members and/or until each successor has been elected and qualified. Provided, however, that a Director's term in office may be terminated and a successor elected at any meeting of Members called pursuant to the provisions in these By-Laws.

Section 3. Regular Meetings: There shall be at least one (1) regular meeting of the Board quarterly at a time designated by the President. The President or two (2) members of the Board may call as many special meetings of the Board as are deemed necessary or desirable and in the best interest of the Association.

Section 4. Presentation of Annual Budget: The Board of Directors shall annually, on or before November 1st of each year, prepare a budget for the upcoming calendar year to include such sums as it deems adequate. The Board of Directors, on or before November 1st, shall deliver the budget for the upcoming year together with the statement of the amounts due from the Co-Owners of the respective Regimes for that year and the date or dates upon which payments are due from the Individual Condominium Associations. Thereafter, should an increase or decrease be determined appropriate by the Board of Directors in assessments to be paid by Co-Owners, the Board shall notify all Individual Condominium Associations at least thirty (30) days prior to the time such assessments so changed shall be due. The Association shall have a lien upon each apartment together with the common elements and common surplus appurtenant thereto for payment of all assessments not paid when due in the amount of such unpaid assessments together with late charges thereon from the date due together with the cost of collection thereof including a reasonable attorney's fee.

Section 5. Notice: Notice of any special meeting shall be given at least five (5) days previously thereto by written notice delivered personally, or by telegram or mailed to each director at this business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a Director at a meeting shall constitute a Waiver of Notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Law Offices of
Daniel L. Patrick
P. O. Box 16689
Surfside Beach,
S.C. 29587

Section 6. Quorum. At any meeting of the Directors a majority of the Directors fixed by these By-Laws shall constitute a quorum for the transaction of business, but if less than said number is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 7. Voting: Any action taken at a meeting of the Board of Directors shall be only upon the affirmative vote of 67% of the entire votes of the Association.

Section 8. Consistent with these By-Laws and applicable Declarations, the Board shall:

- (a) transact all Association business and prescribe the rules and regulations for the use of the assets, facilities and property for which it is so charged and may appoint such officers, clerks, agents, servants or employees as it may deem necessary in its sole discretion and may fix their duties and compensation;
- (b) annually set a budget for the Association;
- (c) fix, impose and remit penalties for violations of these By-Laws and the rules and regulations of the Association;
- (d) elect from the Board within thirty (30) days after each annual meeting the President, Vice-President, Secretary and Treasurer;
- (e) carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the Act.

Section 9. Vacancies. Vacancies occurring on this Board of Directors shall be filled immediately by an election of the Director's successor by that Individual Condominium Association which the Director in question represents. Provided, however, that in the event of a vacancy, and prior to any election by the Individual Condominium Association, the highest presiding officer of the Individual Condominium Association shall automatically be a Director and Voting Member of this Association. For purposes of this section, the ranking of the Officers of each Individual Condominium Association shall be in this order: President, Vice President, Secretary and Treasurer.

Law Offices of
Daniel L. Patrick
P. O. Box 16688
Suffield Beach,
S.C. 29587

Section 10. Resignation. A Director may resign at any time by giving written notice to the Board, the President or the Secretary of the Association. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

Section 11. Compensation. No compensation shall be paid to Directors, as such, for their services, but by resolution of the Board a fixed sum and expenses for actual attendance at each regular or special meeting of the Board may be authorized. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 12. Presumption of Assent. A Director of the Association who is present at a meeting of the Directors at which action on any Association matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 13. Executive and Other Committees: The Board, by resolution, may designate from among its members an executive committee and other committees, each consisting of one or more Directors. Each such committee shall serve at the pleasure of the Board.

ARTICLE V

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. "Contracts." The Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. "Loans." No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Directors. Such authority may be general or confined to specific instances.

Section 3. "Check, Drafts, Etc." All checks, drafts or other orders for the payment of money, notes or other evidences signed by such officer or officers, agent or agents of the Association and in

Law Offices of
Daniel L. Patrick
P. O. Box 18888
Surfside Beach,
S.C. 29887

ELECTRONICALLY FILED - 20180106 147 13:417 PM - H030777 - COMM/COM/PLEAS - CASE#201801060328031733

WITNESSETH:

MYRTLE BEACH RESORT OCEANFRONT SPA
HORIZONTAL PROPERTY REGIME, INC.

(2) [Signature]
(2) [Signature]

BY: (1) [Signature]
George Kidney
ITS: Authorized Board Representative

STATE OF GEORGIA)
COUNTY OF COBB)

PROBATE

PERSONALLY APPEARED BEFORE ME Lauren W. Isaacs, who states under oath that (s)he saw the within named Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc., by George Kidney, its Authorized Board Representative, as its act and deed, sign, seal and deliver the within Amended By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc., and that (s)he with [Signature] witnessed the execution thereof.

SWORN to before me this 11th day of April, 1991.

(2) [Signature]
Notary Public for ~~South~~ Georgia
My Commission Expires: Notary Public Cobb County Georgia
My Commission Expires: December 21, 1991

Law Offices of
Janet L. Patrick
100 Bow 11669
Sarasota Beach,
S.C. 29687

BOOK 1465 PAGE 355

ELECTRONICALLY FILED - 20080106 147 13:417 PM - H038888 - COMM/CON/PLEAS - CASE#2007030220031733

WITNESSETH:

MYRTLE BEACH RESORT FIVE SEASONS
CENTRE COUNCIL OF CO-OWNERS, INC.

(1) William A. Ullery
(2) Beverly C. Harmon

BY: [Signature]
Bill Hunt
ITS: Authorized Board Representative

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED BEFORE ME
(1) William G. Ullery, who states under oath that
(s)he saw the within named Myrtle Beach Resort Five Seasons Centre
Council of Co-Owners, Inc., by Bill Hunt, its Authorized Board
Representative, as its act and deed, sign, seal and deliver the
within Amended By-Laws of the Myrtle Beach Resort Homeowners'
Association, Inc. and that (s)he with Beverly C. Harmon
witnessed the execution thereof.

(1) William A. Ullery

SWORN to before me this
10TH day of APRIL, 1991.

(2) Beverly C. Harmon
Notary Public for South Carolina
My Commission Expires: 5/16/2000 (d)

Law Offices of
Daniel L. Patrick
P. O. Box 15669
Surfside Beach,
S.C. 29587

BOOK 1465 PAGE 357

357

EXHIBIT C

ELECTRONICALLY FILED - 2020 Nov 17 13:47 PM - HONOLULU - COMMOTION PLEASE - CASE#20180128031733

ELECTRONICALLY FILED - 2018 OCT 15 10:47 AM - H038888 - COMMON PLEAS - CASE# 2018CP2603173

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
 2 COUNTY OF HORRY
 3
 4 Frederick E. Brown, et al.,
 5 Plaintiffs,
 6 vs. CIVIL ACTION NO.
 7 Jeffrey L. Richardson, et al., 2018-CP-26-03173
 8 Defendants.
 9 Myrtle Beach Resort Homeowners'
 10 Association, Inc.,
 11 Nominal Defendants.

12 **DEPOSITION OF: BARBARA JOANNE JOHNSON**
 13 **DATE:** Monday, October 15th, 2018
 14 **TIME:** 10:10 a.m. through 1:50 p.m.
 15 **LOCATION:** Bellamy Law Firm
 16 1000 29th Avenue North
 17 Myrtle Beach, South Carolina
 18 **TAKEN BY:** Attorneys for the Plaintiff(s)
 19 **COURT REPORTER:** MADONNA M. FARRELL
 20 Registered Professional Reporter
 21 Certified Livenote Reporter
 22 CaseViewNet Realtime Reporter
 23
 24
 25

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

FILED FROM ONLINE FILED - 2020 NOV 17 12:41 PM - H038888 - COMMONION PLEASE - CASE# 20180328031733

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES OF COUNSEL

REPRESENTING THE PLAINTIFF:

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY
& BOWERS, P.A.
BY: HOWELL V. BELLAMY, III, ESQUIRE
1000 29th Avenue North
Myrtle Beach, SC 29578-0357
Office: (843) 448-2400
Fax: (843) 448-3022
E-mail: Hbellamyiii@bellamylaw.com

**REPRESENTING THE DEFENDANT JEFFREY L. RICHARDSON,
ET AL.:**

PARKER POE ADAMS & BERNSTEIN, LLP
BY: KRISTA M. MCGUIRE, ESQUIRE
200 Meeting Street, Suite 301
Charleston, SC 29401
Office: (843) 727-2650
Fax: (843) 727-2680
E-mail: Kristamcguire@parkerpoe.com

**REPRESENTING THE DEFENDANT MYRTLE BEACH RESORT
HOMEOWNERS ASSOCIATION, INC.:**

YOUNG, CLEMENT, RIVERS LLP
BY: NICK RIVERA, ESQUIRE
25 Calhoun Street, Suite 400 (29401)
P.O. Box 993(29403-0993_
Charleston, SC 29401
Office: (843) 577-4000
Fax: (843) 579-1370
E-mail: Nrivera@ycrlaw.com

ALSO PRESENT: SARAH MORROW

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Examination By	Page	Line
By Mr. Bellamy, III	5	15
By Ms. Mcguire	114	7
By Mr. Rivera	128	4
By Mr. Bellamy, III	136	14
By Mr. Rivera	149	24
Certificate of Reporter	151	1

REQUESTED INFORMATION INDEX	Page	Line
Did Patrick and Stathos law firm have an employment agreement with the master association?	31	1
Meeting minutes	115	24

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PLAINTIFF(S) EXHIBITS			
Exh. #	Description	Page	Line
EXHIBIT 1	Notice of Deposition	5	8
EXHIBIT 2	Letter & Subpoena	5	10
EXHIBIT 3	Management Agreement	9	15
EXHIBIT 4	Declaration of Covenants, Conditions and Restrictions	22	9
EXHIBIT 5	September 2018 Empress Monthly Variance Report	34	2
EXHIBIT 6	2019 Budget Projection - Option 1	40	25
EXHIBIT 7	2019 Budget Projection - Option 2	41	3
EXHIBIT 8	2019 Budget Projection - Option 3	41	6
EXHIBIT 9	Meeting Minutes	47	6
EXHIBIT 10	Meeting Minutes Agenda	64	3
EXHIBIT 11	Commercial Lease Agreement	80	2
EXHIBIT 12	Letter	83	3
EXHIBIT 13	A Message from the Ocean Front Spa and Renaissance Tower	136	10
EXHIBIT 14	Letter	141	4
EXHIBIT 15	Responses to Plaintiff's Request for Admissions of Fact	145	2

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

FILED FROM ONLINE FILED - 2020 Nov 17 12:47 PM - H038888 - COMMON ONLINE FILED - CASE# 20180328031733

ELECTRONICALLY FILED - 2018 OCT 16 14:24:17 PM - H03RRRY - COMMON PLEAS - CASE#2018CP2603173

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
 COUNTY OF HORRY
 COURT OF COMMON PLEAS

Frederick E. Brown, et al.,
 Plaintiffs,
 vs. CIVIL ACTION NO.
 2018-CP-26-03173
 Jeffrey L. Richardson, et al.,
 Defendants.
 Myrtle Beach Resort Homeowners'
 Association, Inc.,
 Nominal Defendants.

DEPOSITION OF: BARBARA JOANNE JOHNSON
DATE: Monday, October 15th, 2018
TIME: 10:10 a.m. through 1:50 p.m.
LOCATION: Bellamy Law Firm
 1000 29th Avenue North
 Myrtle Beach, South Carolina
TAKEN BY: Attorneys for the Plaintiff(s)
COURT REPORTER: MADONNA M. FARRELL
 Registered Professional Reporter
 Certified Livenote Reporter
 CaseViewNet Realtime Reporter

STENOTYPE REPORTING SERVICE, LLC
 Madonna M. Farrell, RPR *** (843) 685-0075
 4350 Old Kings Highway, Murrells Inlet, SC 29576

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES OF COUNSEL

REPRESENTING THE PLAINTIFF:

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY
& BOWERS, P.A.
BY: HOWELL V. BELLAMY, III, ESQUIRE
1000 29th Avenue North
Myrtle Beach, SC 29578-0357
Office: (843) 448-2400
Fax: (843) 448-3022
E-mail: Hbellamyiii@bellamylaw.com

**REPRESENTING THE DEFENDANT JEFFREY L. RICHARDSON,
ET AL.:**

PARKER POE ADAMS & BERNSTEIN, LLP
BY: KRISTA M. McGUIRE, ESQUIRE
200 Meeting Street, Suite 301
Charleston, SC 29401
Office: (843) 727-2650
Fax: (843) 727-2680
E-mail: Kristamcguire@parkerpoe.com

**REPRESENTING THE DEFENDANT MYRTLE BEACH RESORT
HOMEOWNERS ASSOCIATION, INC.:**

YOUNG, CLEMENT, RIVERS LLP
BY: NICK RIVERA, ESQUIRE
25 Calhoun Street, Suite 400 (29401)
P.O. Box 993 (29403-0993)
Charleston, SC 29401
Office: (843) 577-4000
Fax: (843) 579-1370
E-mail: Nrivera@ycrlaw.com

ALSO PRESENT: SARAH MORROW

STENOTYPE REPORTING SERVICE, LLC

Madonna M. Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576