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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 2**

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A. I did.

Q. And you prepared it on behalf of Empress for the board, correct?

A. I did.

Q. First thing is "Call to Order and Opening Comments."

There was a quorum, correct?

A. There was.

Q. Were there any guests present at the meeting?

A. There were.

Q. Who were the guests?

A. The guests were Nick Rivera and Krista McGuire. We also had Ricky Davis from Securitas.

Q. Okay.

A. We had Richard Monroe, Jane Weldon, and James McDonough from Four of a Kind.

Q. All right. Were the -- you've got under -- if I'm looking at the agenda, on the upper left-hand part of the page, it's got -- after "Introductions of Guests," it's got "Selection of Officers."

Was the board able to vote to select officers?

A. They did not.

11:43AM

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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

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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,

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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 -

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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?

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A. Yes, sir.

Q. And I think they're titled like "Option 1," "Option 2," and "Option 3"?

A. They are.

Q. Did Empress management prepare those budgets?

A. We did.

Q. Did you prepare it, or did -- who was --

A. Elaine Campbell.

Q. Did you and Elaine Campbell both prepare them or just Elaine Campbell?

A. We both talked about them and prepared them together.

Q. Those three budgets identified as "Option 1," "Option 2," and "Option 3," also for the record, shown as Exhibits 6, 7, and 8, respectively, were these 6, 7, and 8, were they presented to the board for their review and consideration this past Saturday?

A. They were.

Q. Okay. And did the current board members adopt either Budget 6, Option 1 -- or either -- did they adopt any of the budgets previously marked as Exhibits 6, 7, or 8 to your deposition?

A. No, sir, they did not.

11:00AM

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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."

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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?

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?

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?

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.

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.

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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

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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?

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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,

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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.

11:52AM

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.

11:53AM

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.

11:53AM

20 Am I correct on that?

11:53AM

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

11:53AM

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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

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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.

11:38AM

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:

11:38AM

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?

11:38AM

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.

11:38AM

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

11:39AM

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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?

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 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?

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...

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.

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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.

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
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?

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.

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,

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A. Yes, I am.

Q. And you've read them before, and you're familiar with those provisions?

A. I've read them, yes.

Q. Okay. That's all I want -- I'll come back to Exhibit 4 at a later point in time.

Let me ask you about -- have you had an opportunity -- I guess you've looked at the budget that was prepared for 2018?

A. I did.

Q. And it was prepared by First Services Residential, correct?

A. It was.

Q. Did any of the individual sub-associations -- were there any shortfalls in -- as far as assessments that are due by the individual sub-associations, such as -- I'll refer to them as HBR, Oceanfront Spa, the Tower, and the Five Seasons Center -- when you went back and looked at the -- they had a budget for the assessments that were due for sub-regimes, correct?

A. That's correct.

Q. And pursuant to the governing documents, the master board could individually assess each member, or they could have the association, the individual

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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.

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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

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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.

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.?

13 A. For what year?

14 Q. We'll start with 2018.

15 A. No, they're not.

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?

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

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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

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A. Nancy Moore.

Q. Does she have documentation to support that?

A. I haven't seen it. She said she has it.

Q. Okay. Is she going to provide you with that information?

A. She is trying to negotiate with the master board with regard to those fees.

Q. Can you do that under the governing documents?

A. I don't know. I'm not -- I'm just telling you what she said.

Q. And, Barbara, what I would ask you to do, because I'm not going to go through each, but if you're aware of any provision which allows the board to negotiate what's owed under the -- as far as assessments, if you could point that out, I would appreciate it.

A. I'm not aware of any.

Q. Now, are any of the regimes currently -- I guess we've talked about two-thousand -- if I understand your testimony, none of the individual regimes or sub-regimes were delinquent in 2018.

Is that a fair statement?

A. The master association is delinquent.

Q. Okay. Explain that to me.

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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?

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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.

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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.

12:30 PM

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.

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.

12:30 PM

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.

12:31 PM

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

12:31 PM

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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

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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

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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

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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?

12:36 PM

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.

12:37 PM

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.

12:37 PM

19 Is that a fair statement?

20 **A.** Yes.

12:37 PM

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?

12:37 PM

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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?

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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

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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

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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,

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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 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.

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:

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?

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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

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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.

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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 --

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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.

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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?

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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

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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.

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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."

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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

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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

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**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



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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 resolve the legal disputes between the parties, but shall not 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 Moses
Pres. / Sub-Pres. / President

The Myrtle Beach Resort HOA, Inc:

By: Jim Pate
Its: SFC

WITNESS:

Julian Johnson
Michelle Taylor

EMPRESS MANAGEMENT, LLC

By: John
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.

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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.

ELLECTRONICALLY FILED - 2018 SEP 14 12:47 PM - HONOLULU - COMMUNICATIONS - CASE#2018091420001733

Myrtle Beach Resort HOA, Inc.

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Balance Sheet
As of 09/30/18

ELECTRONICALLY FILED - 20180930 PM 1:47:32 AM PW - HOA - COMM/CON/PL/REAS - CASE#201809302031733

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

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

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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)

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Myrtle Beach Resort HOA, Inc.

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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/Impvmts.	.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

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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

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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 AddlStaffingfrWE9/2/18					
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 AfterHrcncChemicalsPrchs					
	09/28/18 AP0817 VH817 440.00 KEN'S POOL SERVICE, LLC InspctGrvityFlowSystem					
	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					

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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 BLkLiners/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.					

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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					

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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

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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
	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

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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

FILED: 10/06/18 10:58:49 AM - COMMERCIAL - 20180930 - 147-32-417-PWV-1-HO089898 - COMMERCIAL PLEASED - CASE# 201809301733

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	Reference
				5,666.67	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	Reference
				9,878.40	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	Reference
				697.66	RplcdCrkdChmlLinefrSpaAc
				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	Reference
				222.33	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	Reference
				121.65	66.26 Gal Blk Bldh
				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	Reference
				95.00	AUG 2018-B Bldg
				120.00	Five Seasons
				110.00	Ocean Front
				95.00	Renaissance

FILED: 10/06/18 11:00 AM - 20180930 - 147 32417 PWV - HOA MYRTLE BEACH - COMMUNICATIONS - CASE# 201809301733

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				

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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 WtrPrkIl-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			

FILED:KONICALLY:FILED-2020/09/14 14:32:41 PM W-11037777 - COMMUNICATIONS - CASH#220180328031733

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 8/7-9/7/18MBSSeasonsRstr
		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 AfterHrncneChemicalsPrchs
				Totals:	781.61
9/28/18	1463	200061	SECURITAS SECURITY SERVICES	13,672.45	

FILED FOR RECORDING BY THE CLERK OF THE SUPERIOR COURT OF THE STATE OF FLORIDA IN AND FOR THE COUNTY OF MIAMI

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 InspctGrvityFlowSystem
		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

FILED: 10/06/18 11:00:51 AM - COMMUNICATIONS - 20180930 - 147 12417 PMW - H03RRY - COMMUNICATIONS - CASE#220180128031733

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	

FILED - 2018 OCT 17 12:47 PM - H038888 - COMM/CON/PLEAS - CASE#20180328031733

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 - 20180930 147 13:417 PMW - H03RRRY - COMMUNION PLEASES - CASE#201809301733

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
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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

FILED:10/06/18 11:03 AM - 20180930 - 147-32417-PWV-1-HO088888 - COMMUNION PLEASES - CASE#201809302018093020180930

ELECTRONICALLY FILED - 2020 Nov 14 12:41 PM - H03RRY - COMMUNICATIONS - CASE#20200926031733

2019 Budget Projection - Option 3

Account	YTD	OCT	NOV	DEC	BUDGET	ESTIMATED	2018	BUDGET VS.	2019
INCOME	ACTUAL	ESTIMATE	ESTIMATE	ESTIMATE	PROJECTIONS	TOTAL	ANNUAL	ANNUAL	2019 Budget
	9/30/2017				OCT-DEC		BUDGET	VARIANCE	vs 2018 Budget
30100 Regular Assessments	\$572,148	\$74,672	\$74,672	\$74,672	\$224,016	\$396,054	\$396,054	(\$1)	\$11,578,844
30200 Sales Commission (Bldg Lease)	\$60,444	\$5,584	\$5,584	\$5,584	\$16,151	\$55,615	\$55,615	\$1,001	\$66,543
30400 RENTY 2017 Rental Commissions	\$72,690	\$4,700	\$4,700	\$4,700	\$13,900	\$92,948	\$92,948	(\$1,250)	\$91,540
30500 RENTY 2018 Rental Commissions	\$78,729	\$0	\$0	\$0	\$0	\$78,729	\$78,729	\$1,928	\$80,657
30700 Gate Income	\$1,100	\$0	\$0	\$0	\$0	\$1,100	\$1,100	\$3,800	\$3,800
30750 Gate Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$10,499	\$10,499
30750 Bike Week Parking Income	\$20,055	\$6,330	\$6,330	\$6,330	\$19,069	\$45,000	\$45,000	(\$15,000)	\$30,000
31000 Street Income Operating	\$10,000	\$0	\$0	\$0	\$0	\$10,000	\$10,000	\$2,911	\$12,911
31090 Common Element Fee(1/2 Gate)	\$2	\$0	\$0	\$0	\$0	\$2	\$2	\$2,311	\$2,311
32400 Estimate Carry Forward	\$1,465	\$200	\$200	\$200	\$500	\$2,065	\$2,065	\$2,065	\$2,065
35000 Other Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Income	\$396,032	\$92,428	\$92,428	\$92,428	\$277,288	\$1,203,156	\$1,203,156	(\$2,397)	\$1,205,458

EXPENSES

Account	YTD	OCT	NOV	DEC	BUDGET	ESTIMATED	2018	BUDGET VS.	2019
INCOME	ACTUAL	ESTIMATE	ESTIMATE	ESTIMATE	PROJECTIONS	TOTAL	ANNUAL	ANNUAL	2019 Budget
	9/30/2017				OCT-DEC		BUDGET	VARIANCE	vs 2018 Budget
59900 General & Administrative	\$41,158	\$102	\$102	\$102	\$309	\$44,467	\$44,467	\$2,000	\$46,500
51000 Office Supplies & Expense	\$3,133	\$82	\$82	\$82	\$245	\$4,447	\$4,447	\$1,700	\$6,147
51200 Printing/Copies Expense	\$1,032	\$102	\$102	\$102	\$307	\$1,439	\$1,439	\$12,453	\$13,892
51500 Mileage Reimbursement	\$240	\$0	\$0	\$0	\$1,260	\$1,500	\$1,500	\$2,161	\$3,661
52000 Board Meeting Expense	\$24,013	\$6,000	\$6,000	\$6,000	\$17,900	\$47,913	\$47,913	\$4,030	\$51,943
52200 Management Services	\$51,500	\$5,697	\$5,697	\$5,697	\$17,000	\$80,500	\$80,500	\$9,500	\$90,000
52300 Auditor's Preparation Ser	\$37,100	\$0	\$0	\$0	\$0	\$37,100	\$37,100	\$37,000	\$74,100
55000 Gate Pass Redund.	\$3,400	\$0	\$0	\$0	\$0	\$3,400	\$3,400	\$8,095	\$11,495
55600 Overd Unit Expense	\$83,951	\$6,500	\$6,500	\$6,500	\$20,400	\$110,451	\$110,451	(\$2,400)	\$108,051
59000 Other Unit Expense	\$3,256	\$256	\$256	\$256	\$768	\$3,712	\$3,712	(\$2,834)	\$4,296
59377 Total General & Administrative	\$206,544	\$20,414	\$20,414	\$20,414	\$64,230	\$251,158	\$251,158	(\$6,500)	\$257,658
41300 Grounds/Star Contract Maint.	\$79,132	\$7,440	\$7,440	\$7,440	\$22,230	\$111,342	\$111,342	\$13,528	\$124,870
41400 Seasonal Maintenance	\$38,753	\$6,586	\$6,586	\$6,586	\$19,747	\$69,510	\$69,510	(\$14,000)	\$83,510
42000 Pool Supplies/Repairs	\$45,276	\$2,500	\$2,500	\$2,500	\$7,500	\$52,776	\$52,776	\$2,000	\$54,776
42300 Golf Cart Maintenance/Repairs	\$3,008	\$0	\$0	\$0	\$0	\$3,008	\$3,008	\$1,433	\$4,441
43000 Golf Cart Maintenance/Repairs	\$41,507	\$1,800	\$1,800	\$1,800	\$5,400	\$49,707	\$49,707	(\$4,407)	\$54,114
44000 Landscaping Maintenance/Supplies	\$11,250	\$1,750	\$1,750	\$1,750	\$5,250	\$22,000	\$22,000	\$1,050	\$23,050
44400 Lake Maintenance	\$3,780	\$420	\$420	\$420	\$1,260	\$5,040	\$5,040	\$1,200	\$6,240
45000 Pest Control	\$699	\$0	\$0	\$0	\$289	\$988	\$988	(\$12)	\$1,000
45200 Nuance Control	\$1,170	\$0	\$0	\$0	\$0	\$1,170	\$1,170	\$1,130	\$2,300
46600 Fire System Maintenance	\$9,409	\$1,000	\$1,000	\$1,000	\$3,000	\$14,409	\$14,409	\$2,403	\$16,812
48000 HVAC/Chilled Water	\$1,000	\$0	\$0	\$0	\$0	\$1,000	\$1,000	(\$6,909)	\$4,909
49000 Repairs & Maintenance Tot	\$250,992	\$22,201	\$22,201	\$22,201	\$68,276	\$341,469	\$341,469	(\$7,479)	\$348,948
60000 Electricity	\$33,317	\$4,800	\$4,800	\$4,800	\$14,400	\$52,517	\$52,517	\$2,282	\$54,800
60100 Water & Sewer	\$12,754	\$900	\$900	\$900	\$2,700	\$15,454	\$15,454	\$1,546	\$17,000
60300 Trash Removal	\$37,613	\$3,000	\$3,000	\$3,000	\$9,000	\$46,613	\$46,613	(\$2,463)	\$49,076
60400 Seasonal Trash Service	\$81,195	\$2,610	\$2,610	\$2,610	\$7,830	\$93,645	\$93,645	(\$6,982)	\$98,627
60900 Telephone (R/Security/Maint)	\$19,007	\$1,600	\$1,600	\$1,600	\$4,800	\$26,407	\$26,407	\$1,080	\$27,487
60700 Internet	\$58,305	\$4,750	\$4,750	\$4,750	\$14,250	\$77,055	\$77,055	(\$18,312)	\$95,367
Other Expenses	\$298,761	\$26,000	\$26,000	\$26,000	\$78,000	\$326,761	\$326,761	\$41,239	\$368,000
71000 Security Services	\$2,939	\$300	\$300	\$300	\$900	\$3,539	\$3,539	(\$239)	\$3,800
71200 Security Upgrade	\$43,206	\$0	\$0	\$0	\$2,400	\$45,606	\$45,606	\$5,680	\$51,286
72000 Licenses & Permits	\$468	\$0	\$0	\$0	\$0	\$468	\$468	\$6,838	\$7,306
99910 Depreciation Expense	\$102,000	\$11,333	\$11,333	\$11,333	\$34,000	\$156,000	\$156,000	(\$0)	\$156,000
99930 Reserve Contingency	\$2,785	\$999	\$999	\$999	\$2,998	\$6,784	\$6,784	(\$0)	\$6,784
99940 Other Expenses Total	\$380,139	\$37,243	\$37,243	\$37,243	\$137,413	\$494,635	\$494,635	\$52,464	\$547,099
Total Expenses	\$627,076	\$80,741	\$80,741	\$80,741	\$241,518	\$708,515	\$708,515	(\$19,095)	\$727,610

NET INCOME/(LOSS)

	\$347,056	\$30,741	\$30,741	\$30,741	\$46,331	\$130,302	\$130,302	(\$37,267)	\$159,289
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Page 1



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MBRHOA, Inc Minutes of meeting December 04, 2018¹⁷

A conference call Meeting duly called by the President was called to ordered 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	\$ 15,613.99
10035	Conway Nat Bank-Operating Funds	10570	405,988.30	0.00	405,988.30
105	TD Bank-Mailbox Deposits	10500	6,370.53	0.00	6,370.53
1055	TD Bank -Operating Checking	10550	7,534.00	0.00	7,534.00
1335	Alliance Reserve Money Market	10900	0.00	119,966.24	119,966.24
	Total Cash		\$ 435,506.82	\$ 119,966.24	\$ 555,473.06
Accounts Receivable					
1100	A/R -Owner Assessment	12000	\$ 232,425.74	\$ 0.00	\$ 232,425.74
1115	A/R - Other Due from Owners	12070	3,971.41	0.00	3,971.41
	Accounts Receivable		\$ 236,397.15	\$ 0.00	\$ 236,397.15
	Total Accounts Receivable		\$ 236,397.15	\$ 0.00	\$ 236,397.15
Fixed Assets					
1158	Land/Land Improvemnt	14000	\$ 286,400.01	\$ 0.00	\$ 286,400.01
1152	Furniture & Fixtures	13000	69,988.78	0.00	69,988.78
1153	Building Improvements	13720	330,588.58	0.00	330,588.58
1154	Signage	13800	7,286.23	0.00	7,286.23
1157	Capital Equipment	13900	896,613.64	0.00	896,613.64
1159	Commercial Units	13111	412,138.21	0.00	412,138.21
1170	Accum. Depreciation	13150	(1,571,172.65)	0.00	(1,571,172.65)
	Total Fixed Assets		\$ 431,843.00	\$ 0.00	\$ 431,843.00
Other Assets					
1134	Prepaid Insurance	13300	\$ 10,293.09	\$ 0.00	\$ 10,293.09
1135	Prepaid Expenses	13400	1,575.00	0.00	1,575.00
1136	Prepaid Taxes	13500	8,576.00	0.00	8,576.00
1420	Due from Operating		0.00	361,257.36	361,257.36
	Total Other Assets		\$ 20,444.09	\$ 361,257.36	\$ 381,701.45
	TOTAL ASSETS		\$ 1,124,191.06	\$ 481,223.60	\$ 1,605,414.66
LIABILITIES & EQUITY					
LIABILITIES					
2000	Prepaid Owners	21000	\$ 50,709.28	\$ 0.00	\$ 50,709.28
2030	Accounts Payable	20500	12,515.32	0.00	12,515.32
2050	Accrued Expenses	20600	68,191.56	0.00	68,191.56
2060	Due to Reserves Fr Ops	14100/24100	361,257.36	0.00	361,257.36
2176	Mail Box Deposits	21400	6,370.53	0.00	6,370.53
	Total Liabilities		\$ 499,044.05	\$ 0.00	\$ 499,044.05
EQUITY					
3600	Owners Equity-Oper	28000	\$ 534,224.51	\$ 0.00	\$ 534,224.51
3700	Owners Equity-Rsrv	28100	0.00	385,892.31	385,892.31
	Net Income/(Loss)		90,922.50	95,331.29	186,253.79
	TOTAL EQUITY		\$ 625,147.01	\$ 481,223.60	\$ 1,106,370.61
	TOTAL LIABILITIES & EQUITY		\$ 1,124,191.06	\$ 481,223.60	\$ 1,605,414.66

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① Funds Rec'd from RT as ordered by Court.

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

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① At 12/31/17, Balance was \$405,988.30, where did \$165,988.30 go?

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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 \$240,000 go to?

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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



F&B 6/1 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



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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
Diane M. Kupczys

ASSOCIATION:

MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.

By: Mel Renkey
Mel Renkey, Sr. Community Manager

ALLEGiant FOOD &
BEVERAGE, LLC

Darla S. Donovan
Diane M. Kupczys

By: Robert N. Jones
Robert Jones, Managing Member

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

FILED FROM COMICALLY FILED - 2018 OCT 14 12:41 PM - H037777 - COMM/COM/PLEAS - CASE#20180328031733

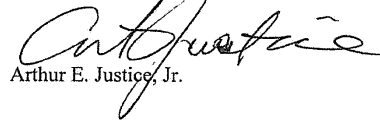
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Board of Directors
Re: Allegiant Food & Beverage, LLC
October 9, 2018
Page 2

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

ELLECTRONICALLY FILED - 2018 OCT 14 12:41 PM - H038888 - COMMUNICATIONS - CASE#20180328031733

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@empresmgmt.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)
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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

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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	\$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

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EXHIBIT D

ELECTRONICALLY FILED - 2020 Nov 17 13:47 PM - HONOLULU - COMMOTION PLEASE - CASE#20180328031733



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.empresmgr.com

FILED FOR RECORDING - 2018 OCT 23 PM 1:47:34 BY PWI - H0000000 - COMM/COMM/PLERAS - CASE#201803280031733

EXHIBIT E

ELECTRONICALLY FILED - 2020 Nov 17 13:41:17 PM - HONORARY - COMMUNION PLEASE - CASE#20180328031723

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.

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



EXHIBIT A

ELECTRONICALLY FILED - 2023 Nov 14 02:47 PM - HONOLULU - COMMOTION PLEASE - CASE#2019CGP2803173

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

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 - Addestone 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

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Updated 3/7/18

MICHAEL R. PARADES, PCAM
Addendum-Lawsuits

Lawsuits Involved as Fact Witness

Courtside Villa I Owners Assn.	Settlement in favor of Courtside I
Courtside Villa II Owners Assn.	Settlement in favor of Courtside II
Racquet Club Villa Owners Assn.	Settlement in favor of Racquet Club
Pelican Watch Villa Owners Assn.	Settlement in favor of Pelican Watch
Atrium Villa Owners Assn.	Settlement in favor of Atrium
Shadowwood Villa Owners Assn.	Settlement in favor of Shadowwood
Beach Club Villa Owners Assn.	Settlement in favor of Beach Club
Links Clubhouse Villa Owners Assn.	Settlement in favor of Links Clubhouse
Yacht Harbor Villa Owners Assn.	Settlement in favor of Yacht Harbor
Riverside Villa Owners Assn.	Verdict in favor of Riverside with punitive damages awarded.
Stono Watch Villa Owners Assn.	Settlement in favor of Stono Watch
Little Oak Condominium Assn.	Settlement in favor of Little Oak.
Pointe James Property Owners Assn.	Settlement in favor of Pointe James POA

Note: I represented all of the above Owners Associations.

Other Lawsuits Involved as Fact Witness

3 Chisolm Street HOA, Inc (09-CP-10-267)	As former Management Company/Manager
Montclair POA, Inc.(08-CP-10-6897)	As former Management Company/Manager

Lawsuits Involved as Expert Witness

Kenneth Schneider vs Board of Directors Bohicket Marina Villa Owners Assn. (Testified)

Case certified as a class action. Jury verdict in favor of Mr. Schneider. Verdict was appealed to the SC Court of Appeals and upheld. I was qualified as an expert witness in matters of Community Association governance, management and Board fiduciary duties.

I was engaged as an expert witness on behalf of Mr. Schneider by Leath, Bouch & Crawford

Bluebeards Castle Villas I Board of Directors
Bluebeards Castle Hilltop Villas Board of Directors,
Bluebeards Castle Villas III Board of Directors
Vs

Fairfield Resorts, Inc., Equivest Finance Inc., RCI Resort Management, Inc.,
Equivest Capital, Inc., John S. Cavanaugh and Bluebeard's Castle Pirates Pension

This was an action in the Superior Court of the Virgin Islands. The case was settled in favor of the Plaintiff.

I was engaged as an expert witness on behalf of the Plaintiffs by Rogers Townsend and Thomas

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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. While 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.

EXHIBIT I

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

ORDER

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

EXHIBIT J

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

**SECOND 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 1**, 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 Plaintiff's Motion to Amend Members' Derivative Complaint.

A. PROJECT DESCRIPTION

6. The Myrtle Beach Resort (**MBRHOA**) 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 MBRHOA.
7. 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, see (**#23, section 7 below**).

B. HISTORY

8. The organizational meeting of the Myrtle Beach Resort Homeowners Association (**Master**) was held in October 1987, (**Exhibit 2**). At that time, the Master was a

voluntary organization of the four sub-associations: Five Seasons HPR, Inc (FS); Myrtle Beach Resort HPR, Inc. (HPR); Ocean Front Spa HPR, Inc. (OFS) and Renaissance Tower HPR, Inc. (RT). Each sub-association elected one of its Board members to serve on the Board of the Master.

9. I have attached (Exhibit 3), which is some background history of the Myrtle Beach Resort and the common property it owns prepared by long time corporate council Dan Patrick. As noted after acquiring all developer rights including the right to form a Master Association, the necessary documents were prepared reviewed and approved by each of the four sub-associations and then filed with the Horry County Register of Deeds, (see Exhibits 4, 5 and 6).
10. It should be noted that the governing documents were unanimously adopted by the Boards of each sub-association and each sub-association President was listed as a co-declarant to further reinforce the validity of the governing documents.
11. I have read all available minutes from inception of the Master (June 1987) to present. I will note there are missing minutes for many of the meetings since Empress Management assumed responsibility for the Master on January 1, 2018. I have listened to the audio of the meeting held December 21, 2018 and was present for about 2 hours of the 6 hour meeting on January 12, 2019.
12. In my 30 plus years of providing management and consulting services to HOAs and POAs, I have never seen or heard the chaos that is the Myrtle Beach Resort (MBR). Based on everything I have read, heard and seen, the chaos can be directly attributed to one individual, Jeff Richardson, who has conspired with others in an effort to totally disrupt the Master HOA by bankrupting it in an apparent effort to gain control of common elements owned by the Master and potentially for his personal gain.
13. His methods have involved actions that were/are breaches of his fiduciary duties as a board member of the Master, were/are breaches of his obligations as a Board member of Renaissance Towner POA (RT) for over 20 years and as President of RT for the last 15 plus years, (see Exhibit 7). Mr. Richardson has convinced one other sub-association to follow his lead resulting in the occurrence of several Ultra Vires actions by Master Board members that were also Board members of RT or Ocean Front Spa HOA (OFS). Further, RT and OFS believe because they represent the largest majority of MBR, they can take actions on their own authority.
14. The argument of Mr. Richardson and his conspirators attempting to disrupt the Master that the 1991 Governing documents are not legitimate is in fact a fairy tale. These

documents governed the operation of the Master for 25 plus years, and have been reviewed by numerous attorneys representing owners buying and selling villas and upheld in the numerous lawsuits involving the Master. While the conspirators allege they have been told by legal counsel the documents are not valid, when asked to put up or shut up they have declined, (see Exhibit 7 page 2).

15. Exhibit 7 also represents another fabrication by Mr. Richardson. In a Board meeting on May 15, 2015 he advised that RT had a lawsuit pending against them and that their legal counsel had advised they needed to have available 322 parking spaces for Tower Owners. There is no question that someone who has been on the Board continuously for many years, most of them as Board President, should be able to read the RT governing documents which clearly state there shall be NO assigned parking and that all parking shall be open to all MBR residents and guests. If one reads the actual lawsuit filed against RT, it was by an owner who was being charged to park a trailer in the lot in front of RT. The case was settled out of court by confidential settlement; however, I suspect it was settled favorable to the plaintiff as RT had NO authority to do what it was doing.

C. MASTER DEED AND BYLAWS

16. The following table reflects the 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. HPR recorded 6/15/82 in Book 750 Page 642;
 - b. OFS recorded 4/25/83 in Book 789 Page 362;
 - c. RT recorded 11/28/84 in Book 917 Page 885;
 - d. FS recorded 6/20/85 in Book 966 Page 654; and
 - e. HOA (Master) recorded 4/25/91 in Book 1465 Page 329 (Exhibit C to Complaint)
17. 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 8 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**).

D. RELEVANT PROVISIONS OF MASTER HOA GOVERNING DOCUMENTS

18. 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.”

19. 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. The CCR’s for the HOA provides a pertinent part as follows:

1.1.1 “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.

20. CCRs Article III Membership and Voting provides as follows:

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."

21. 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.
22. 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 9 attached.**
23. By-Laws, Article IV Board of Directors: Voting, Selection, Term of Office and Duties are as follows:
- 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.
24. A recurring theme over the past three years is Mr. Richardson and his fellow Defendants continually saying they would be willing to **(fill in the blank)** if the other two sub-associations would agree to share all costs evenly (25% each). At the July 31, 2019 Master workshop, Mr. Richardson and his fellow defendants are now insisting that each sub-CA must pay 25% of costs.
25. The representatives do not seem to understand that while each sub has a different percentage interest in the master, it is because each association has a different number of units, **(see Exhibit 10)**. The main point of **Exhibit 10** is that each unit within the resort has the exact same percentage interest and pays the exact same as any other unit. The comparative side of **Exhibit 10** shows how the Annual cost per unit would change if the Defendant’s demand that all costs be shared by each sub-CA 25/25/25/25 was the rule.

As an example, an RT unit owner's share of costs would decrease by 23% while a FS unit owner's share of costs would increase 56.7%.

26. Because of the difference in total percentage interest between the sub-associations, the Bylaws provide that all decisions of the Board require approval by 67% of the Board, in essence 3 of the 4 members have to approve.

E. ADDITIONAL MATERIALS REVIEWED

27. I have reviewed numerous documents that have been produced including the following:
- 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 August 2019.
 - 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 related to this lawsuit and unsupported allegations of the Defendant group in their attempt to disrupt operations and management of the Master, bankrupt the Master and force changes to the benefit of the defendant group.
 - e. I have also reviewed the depositions of Barbara Johnson, who is the manager for the resort assigned by the management agent Empress Management, LLC and Jeff Richardson, who is the President of RT and an OFF and ON member of the Master Board.
 - f. I have also reviewed the Defendant's proposed amendments to the CCRs and Bylaws, see summary **Exhibit 24**.
 - g. Finally, I have reviewed the July 17, 2019 letter from Board member Robert Rosencrans to Ken Moss, appointed 5th Board member and President of the Board requesting immediate termination of the

management agreement with Empress Management, LLC, see Exhibit 25.

F. RELEVANT ISSUES

28. In my May 21, 2018 Affidavit, I addressed the numerous **Ultra Vires** actions by members of the Defendant group that if not halted have and would result in irreparable harm to the Resort and its members/owners. In my November 13, 2018 Affidavit, due to the continuing Ultra Vires actions by the Defendant group I strongly recommended a Temporary Custodian needed to be appointed by the Court to take over operation and management of the Resort until such time as all issues could be resolved.
29. Having now a more clear picture of Resort operation over the past few years, it is very obvious that Defendant group and Empress Management have conspired to take actions that will result in financial bankruptcy of the Master; result in improper maintenance of the Resort's amenities creating potential damage to property and personal injury; result in a deterioration of Security services creating serious risks for the Master, result in diminution of value of member/owner property; result in significantly increased insurance costs and potential inability to obtain insurance which could lead to mortgage loans being called and/or inability to obtain loans due to lack of insurance and other unforeseen consequences of the civil conspiracy that has been in progress since at least 2015.
30. As noted earlier, the Developer's goal was to establish a single governing body to operate, maintain and provide security for the Resort's 1,010 residential and commercial units and to include the various amenities that create a quality one-stop vacation experience for ALL members and guests. Due to the phased nature of construction of the sub-CAs, each sub's governing documents provided for the creation of a Master that would include deeding over certain properties and amenities to the Master.
31. From review of the documents, it is clear the Master functioned very well from 1987 through approximately 2014 (27 years), when the Defendant group began attempting to take control of properties deeded to the Master upon its formation in accordance with the Master Deed of each sub-CA in 1991. The Defendant group is led by Jeff Richardson, who has been the President of RT for many years and beginning the early 2010s started taking Ultra Vires actions directly impacting the Master's ability to govern and maintain the common areas of the resort.
32. As will be shown, the Defendant group tactics have been focused on on-going litigation regarding the validity of the Master HOA, challenging the legality of gate pass fees and

who controls various on-going amenity contracts and service contracts. In addition, the Defendant group has also withheld payment of its share of assessments by the Master for operation, management and funding of reserves. Withholding of payment of assessments is particularly egregious given that two of the four Board members of the Master are members of the Defendant group who are responsible for approval of the budget for the Master.

33. The actions of the Defendant group have caused Plaintiff special damages including, but not limited to, attorneys' fees and costs associated with multiple lawsuits by and against the Defendant group; diminution in the value of the Resort member's property as a result of the allegations made by the Defendant group; inability to conduct business as usual due to votes on any issue of the Master resulting in a 2 to 2 tie; disruption of contracted services for the Resort impacting credit rating and the ability to obtain competitive pricing for goods and services; impacting insurability of properties within the resort due to the numerous lawsuits that have occurred over the past 4-5 years.

G. DOCUMENTATION OF ALLEGATIONS

34. The following are examples of litigation actions by Defendant group as strategies in an effort to regain control of the Common Elements transferred to the Master when it was formed:
- a. Parking in Lot in front of RT: On January 12, 2015 a lawsuit was filed (2015-CP-26-00160) by an RT owner against the RTHPR related to parking in the lot in front of RT. The issue related to fees imposed by RT on trailers being parked in the common area parking lot. The relevant section of the RT Master Deed, Article III Section 5 (page 1 of Exhibit D attached) clearly states "***Parking spaces SHALL not be reserved solely for the use of Occupants of any particular Apartment nor SHALL they be numbered. Declarant hereby reserves unto itself (including the right to grant to others) and grants to all present and future Owners of real property interests within, Occupants of and visitors within Myrtle Beach Resort...***"
 - b. Mr. Richardson then intentionally lied at the May 21, 2015 Board meeting during the discussion on parking "***...that RT has a lawsuit pending against them, and their legal counsel has advised that they need to have available 322 parking spaces for their Renaissance Tower owners.***" He further stated "***...that Renaissance Tower parking belongs to Renaissance Tower not the Master Association and doesn't feel the***

Master Board has the right to dictate the designated areas for motorcycle parking during bike weeks.” See page 2 of Exhibit 7 attached.

- c. Following further discussion, *“Chairman Urban stated a legal opinion was sought from the Master Association’s attorney that states the individual regimes don’t have the right to restrict parking areas, and a copy was provided to each regime Board. Mr. Richardson stated he has three (3) legal opinions that state otherwise and Chairman Urban requested a copy of the legal opinions and Mr. Richardson denied this request.”*
- d. It is my opinion the request was denied because Mr. Richardson had zero legal opinions from a licensed SC attorney.
- e. This was the first time members of the Defendant group have made statements and not provided supporting documentation for those statements.
- f. Finally, a settlement agreement was reached August 18, 2016 but was ordered to remain confidential. I expect that was because the settlement was in favor of the owner who sued and RT had to reimburse the Plaintiff’s legal costs.
- g. Defendant group lawsuits, see Exhibit 11 for 4 suits consolidated into 1 and subsequently settled. These suits were related to a number of issues but ultimately boiled down to providing funds to seek a declaratory judgement on the validity of gate pass fees being charged. Settlement was reached in 2016. One defendant party to that action has appealed the settlement alleging he was not there and never authorized his attorney to sign on his behalf. The matter has been appealed to the SC Court of Appeals. It has not yet been heard.
- h. K.A. Diehl (former Management Company) lawsuit against members of Defendant group (2015-CP-26-05573): Causes of Action include a) Defamation b) Tortious Interference with Contractual Relationship c) Intentional Interference with Prospective Contractual Relations d) Civil Conspiracy e) Permanent Injunction.
- i. Case was settled in Mediation in favor of K.A. Diehl, see Exhibit 12.

This case was appealed to the SC Court of Appeals on the same grounds by the same defendant as the action in 2 above. The Appeal has not yet been heard.

- j. HOA, HPR, OFS and FS vs RT (2014-CP-05228): Breach of terms of Land Use Agreement. Another example of Defendant's group attempting to take back property deeded to Master when Master was formed. See **Exhibit 13**.
 - k. HOA vs RT (2016-CP-26-7895: Action taken due to RT intentionally not paying Annual assessments for 2016 and 2017 totaling approximately \$432,023.00. This is an intentional action to force HOA into bankruptcy. HOA with knowledge and approval of Board used accumulated Reserve funds to pay operating expenses during 2016 and 2017 with the intent to reimburse the reserve when RT paid the assessments due. It should be noted, RT billed and collected the assessments from their owners.
 - l. Scheduling order November 28, 2017 required RT to pay all funds being held to Plaintiff. Total of \$405,988.30 was deposited into new account at Conway National Bank. Authorized signers were HOA legal counsel and Board Treasurer, who is a member of the Defendant group. See **Exhibit 14**.
 - m. Finally with respect to legal actions, a demand letter was received from a new attorney, Andrew Mathias of Nexsen Pruet, dated October 12, 2018. This letter is revisiting grounds that have already been adjudicated. The demands are without merit and making threats against the Master Board of further legal action. It is interesting to note that two of the members of the Master Board are Mr. Mathias' clients. See **Exhibit 15**.
35. The following are more examples of conspiratorial actions at the direction of the Defendant Group:
- a. Directions to the Master Management agent, Empress Management: It is apparent that Empress is not complying with its management agreement, see **Exhibit 25**. Meetings have been held in 2018 and 2019, yet minutes are not being sent to ALL Board members for review, comment and approval.
 - i. When I was reviewing documents, I noted there was a discrepancy in the

funds disbursed under court order from RT to the Master as noted above. When the management agent was deposed, she was asked the question as to where the money went and responded she had no idea.

- ii. Subsequently, I came across a draft of the January 11, 2018 minutes of a Board special meeting with corrections on page 1. The corrections clearly established that a large portion of the funds received was transferred to the operating account to pay bills. The management agent was in the meeting, see **Exhibits 16 and 17**.
- b. **Exhibit 18** attached clearly indicates there was a meeting on March 22nd where the Board allegedly voted to remove the management agent for 2 of the 4 sub CAs from the management office. Absent any meeting minutes, the action is not enforceable in my opinion. This is another example of NO meeting minute drafts being distributed to all 4 Board members.
- c. A question has also arisen as to the truth of the minutes approved. On the September 30, 2017 minutes, see **Exhibit 19**, it is noted that there has been spending over budgeted line items without Board approval and that the reserves were transferred to operating without a plan for repayment or approval by the Board. These statements are a flat lie and would imply someone is modifying the minutes to intentionally lay blame on the management company. Further the October 29, 2017 minutes, see **Exhibit 20**, again the minutes reflect the management company admitting using Reserve Funds for Operating Expenses without Board approval. This is again a flat lie and imply someone is modifying the minutes to intentionally lay blame on the management company.
 - i. See Jack Boselli's email response to my questions about the above statements, **Exhibit 21** attached.
- d. When this lawsuit was filed, Empress, without consulting with the entire Board, filed a claim with the insurance carrier. In fact, the entire Board should have been involved in the decision to file a claim. The only person Empress consulted with was Mr. Richardson who chose to act as the Board President, even though he was not. See minutes of May 14, 2018 board meeting attached as **Exhibit 22**.
 - i. Further, when the insurance carrier sent its coverage letter, it was only mailed to the defendants and addressed to Mr. Richardson as "Board President", which as shown in **Exhibit 22** clearly reflect he is NOT Board President, see **Exhibit 23**.

H. FACTUAL AND PROFESSIONAL OPINIONS

36. 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**).
37. 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 as follows:
- a. The Defendant group halted collection of “gate pass fees”, which resulted 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.
 - b. The Defendant group 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. By the tie vote, the Defendant group forced the Master to operate at a deficit, which is a violation of the governing documents.
 - c. The Defendant group refused to pay their share of monthly operating assessments in 2016 and 2017 resulting in insufficient funds to pay bills. In order to continue paying operating expenses, reserve funds were utilized. The Master filed a collection action against RT and the court subsequently ordered RT to pay over the funds it had collected from its owners but not paid to the Master, approximately \$405,000. As is shown on the last page of **Exhibit 14**, RT did NOT pay all it owed and in fact as of August 31, 2019 still owes approximately \$117,224 to the Master.
 - i. These funds were to have been used to repay the funds borrowed from reserves. These funds were under the signature authority of the Defendant group and management. Without knowledge or approval of the entire Board, 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.
 - d. 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 tie vote with the Defendants refusing to fulfill their affirmative obligation.
 - e. Defendants continue to totally ignore the governing documents and commit Ultra Vires Acts such as:

- i. At the March 22, 2018 Board meeting (see **Exhibit 18**), which only had the Defendant members present, the Defendant members 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.
 - ii. 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 (\$300,000) and refusal to pass a budget that includes funding to make up the approximate \$400,000 spent from Reserves.
 - iii. 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.
- f. A review of the minutes, when they are prepared, of Board meetings in 2018 clearly support the statements by Ms. Johnson in her deposition regarding the dysfunctional Board as enumerated in item 10 of the Motion to Appoint a Temporary Custodian.
 - g. As is shown by the summary of Defendant proposed amendments to the CCRs and Bylaws (**Exhibit 24**), Defendant Board members continue their efforts to take control of the Master Association. Most of the proposed amendments should be ignored as I have indicated in the comment section on the Exhibit.
 - h. With respect to current management, **Exhibit 25** clearly documents the need to end the management relationship with Empress. They have totally ignored the duties under the management agreement and colluded with the Defendants in the effort to take control of the Master.
 - i. As discussed above, there is more than adequate evidence demonstrating the intent of the Defendant group with the assistance of Empress Management to take over the Master and shift costs unfairly to the Plaintiff group owners. The continuing demand by the Defendant group that all costs be split 25% to each sub-CA would not only be a violation of the governing documents but also change the concept of every owner at the Myrtle Beach Resort paying the same amount as every other owner. It is interesting that the Defendant group did not propose amending the CCR section addressing allocation of assessments. The actions by the Defendant group resulted in:
 - i. attorneys' fee and costs associated with multiple lawsuits by and against the Defendant group with the Master's policy paying the legal costs;

- ii. diminuation in the value of the Resort member's property as a result of the on-going unsubstantiated allegations made by the Defendant group and never ending litigation;
- iii. inability to conduct business as usual due to votes on any issue of the Master resulting in a 2 to 2 tie;
- iv. disruption of contracted services for the Resort impacting credit rating and the ability to obtain competitive pricing for goods and services;
- v. impacting insurability of properties within the resort due to the numerous lawsuits that have occurred over the past 4-5 years.
- vi. Significant costs for the court appointed 5th Board member who serves as the Master Board President and for the legal counsel engaged to advise the Master Board. Those costs over the last twelve (12) months are approaching \$100,000.
- vii. The non-payment of assessments; utilizing Reserve funds to fund Operations in 2016, 2017 and 2018; failure to approve budget increases to repay the Reserve funds owed and make up funding for Operations that was lost when Gate Pass Fees were eliminated has impacted the Reserve funds being set aside for future major maintenance. Continuing down this path only weakens the financial condition of the Master. A review of future anticipated Reserve expenditures in the next 6 years reveals anticipated expenditures will be approximately \$1,500,000.
- viii. Due to the borrowing of Reserve funds and lack of a plan to repay, the current deficit in the reserve fund is Three Hundred Twenty Two Thousand Six Hundred Forty Two Hundred and no/100 (\$322,642). Absent having funds available for upcoming major maintenance needs and as the Board members who refuse to fulfill their duty, it is my opinion the Defendant group are liable individually for NOT fulfilling their affirmative obligations which may lead to financial insolvency and bankruptcy of the Master HOA.
- ix. A review of the Defendant's proposed amendments, see **Exhibit 24**, clearly shows the intent of the group is to completely destroy the original intent of the Developer to create a one-stop destination Resort for the 1,010 property owners by creating optional participation by each CA. In my 30+ years of management service to all sorts of home owner associations, I have never seen documents that provide for optional participation by members as that will simply not work.


The cardinal rules for buying in an HOA are: if you buy (1) you are automatically a member; (2) you have to obey the governing documents; (3) you have to pay the HOA assessments that provide for operation of the HOA; (4) if you don't pay the assessments, the HOA can file a lien and foreclose if necessary

38. **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 are causing irreparable harm to the Resort and its members/owners. For the reasons set forth in the Motion and above, the time has come to stop the bleeding, protect the assets of the Master and operations of the Plaintiff by dissolving the Master HOA. It is clear that the Defendant group will continue its tactics.**
39. 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


Michael R. Parades, PCAM

SWORN to and subscribed before me this
4th day of December, 2019.


Notary Public for South Carolina.

My Commission Expires: MY COMMISSION EXPIRES MARCH 27, 2023



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EXHIBIT 1

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EXHIBIT 1

EXHIBIT
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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

EXHIBIT 1

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** - Addestone 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-PMDP 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

Updated 3/7/18

MICHAEL R. PARADES, PCAM
Addendum-Lawsuits

Lawsuits Involved as Fact Witness

Courtside Villa I Owners Assn.	Settlement in favor of Courtside I
Courtside Villa II Owners Assn.	Settlement in favor of Courtside II
Raquet Club Villa Owners Assn.	Settlement in favor of Racquet Club
Pelican Watch Villa Owners Assn.	Settlement in favor of Pelican Watch
Atrium Villa Owners Assn.	Settlement in favor of Atrium
Shadowwood Villa Owners Assn.	Settlement in favor of Shadowwood
Beach Club Villa Owners Assn.	Settlement in favor of Beach Club
Links Clubhouse Villa Owners Assn.	Settlement in favor of Links Clubhouse
Yacht Harbor Villa Owners Assn.	Settlement in favor of Yacht Harbor
Riverside Villa Owners Assn.	Verdict in favor of Riverside with punitive damages awarded.
Stono Watch Villa Owners Assn.	Settlement in favor of Stono Watch
Little Oak Condominium Assn.	Settlement in favor of Little Oak.
Pointe James Property Owners Assn.	Settlement in favor of Pointe James POA

Note: I represented all of the above Owners Associations.

Other Lawsuits Involved as Fact Witness

3 Chisolm Street HOA, Inc (09-CP-10-267)	As former Management Company/Manager
Montclair POA, Inc.(08-CP-10-6897)	As former Management Company/Manager

Lawsuits Involved as Expert Witness

Kenneth Schneider vs Board of Directors Bohicket Marina Villa Owners Assn. (Testified)

Case certified as a class action. Jury verdict in favor of Mr. Schneider. Verdict was appealed to the SC Court of Appeals and upheld. I was qualified as an expert witness in matters of Community Association governance, management and Board fiduciary duties.

I was engaged as an expert witness on behalf of Mr. Schneider by Leath, Bouch & Crawford

Bluebeards Castle Villas I Board of Directors
Bluebeards Castle Hilltop Villas Board of Directors,
Bluebeards Castle Villas III Board of Directors

Vs

Fairfield Resorts, Inc., Equivest Finance Inc., RCI Resort Management, Inc.,
Equivest Capital, Inc., John S. Cavanaugh and Bluebeard's Castle Pirates Pension

This was an action in the Superior Court of the Virgin Islands. The case was settled in favor of the Plaintiff.

I was engaged as an expert witness on behalf of the Plaintiffs by Rogers Townsend and Thomas

EXHIBIT 1

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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. Defendanat 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. While 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.

EXHIBIT 2

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EXHIBIT 2

EXHIBIT
2

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

ADDENDUM

MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.

ORGANIZATIONAL MEETING
JUNE 6, 1987

Further resolutions are as follows:

Upon a motion duly made, seconded and carried, it was
RESOLVED, that the Corporation's books and records would be
audited by an independent C.P.A. on an annual basis.

Upon a motion duly made, seconded and carried, it was
RESOLVED, that an insurance policy for liability coverage be
obtained for Directors and Officers of the Corporation.

Upon a motion duly made, seconded and carried, it was
RESOLVED, that Carlisle Reams of McGuire-Wire, a consulting
firm, negotiate on behalf of the Corporation with General Telephone
of the South in connection with the purchase and installation of a
new telephone system at Myrtle Beach Resort.

Sam Brock, Chairman

G. Tyrone Courtney, Secretary

EXHIBIT 2

EXHIBIT 2
2/3

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MINUTES OF THE ORGANIZATIONAL MEETING OF
THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

The organizational meeting of incorporators was held at
412 North Poplar Drive Surfside Beach, South Carolina on
_____ at _____.

The following were present:

Sam Brock
C. Tyrone Courtney
Bill Hunt
Dick Brunner

Sam Brock was appointed Chairman of the meeting and C.
Tyrone Courtney was appointed Secretary.

The Secretary then presented and read to the meeting a copy
of the Certificate of Incorporation and reported that on
April 30, 1987, the original thereof was filed in the
office of the Secretary of State of this State. The copy of the
Certificate of Incorporation was ordered to be inserted in the
minute book of the Corporation.

The Chairman then stated that nominations were in order for
election of directors of the Corporation to hold office until the
first annual meeting of stockholders and until their successors
shall be elected and shall qualify.

The following persons were nominated:

Sam Brock
C. Tyrone Courtney
Bill Hunt
Dick Brunner

No further nominations being made nominations were closed
and a vote was taken.

After the vote had been counted, the Chairman declared that
the foregoing named nominees were elected directors of the
Corporation.

The Chairman then stated that the newly elected directors
would assume their responsibilities immediately and that this
meeting would be considered as the first meeting of directors to
organize the Corporation and to transact such business as should
properly come before the meeting.

① subsequently became Patrick & Struthus

EXHIBIT 2
3/3

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① The Secretary then presented a proposed form of By-Laws prepared by the Law Offices of Parsons & Patrick, P.A., counsel to the Corporation. The proposed By-Laws were read to the meeting, considered and upon motion duly made, seconded and carried, were adopted as and for the By-Laws of the Corporation and ordered inserted in the minute book of the Corporation.

The Chairman of the meeting then called for the election of officers of the Corporation. The following persons were nominated to the office preceding their name:

President	Sam Brock
Vice-President	Bill Hunt
Secretary	C. Tyrone Courtney
Treasurer	Dick Brunner

No further nominations being made the nominations were closed and the Directors proceeded to vote on the nominees. The Chairman announced that the foregoing nominees were elected to the offices set before their respective names.

The Secretary submitted to the meeting a seal proposed for use as the corporate seal, and the corporate record book. Upon motion duly made, seconded and carried, it was

RESOLVED, that the seal now presented at this meeting, an impression of which is impressed hereon, be and the same hereby is adopted as the seal of the Corporation, and further,

Upon motion duly made, seconded and carried, it was

RESOLVED, that the corporate record book be and hereby is adopted as the record book of the Association.

Upon motion duly made, seconded and carried, it was

RESOLVED, that an office of the Corporation be established and maintained at Highway 17 South, in ~~the City of Surfside~~ ^{County} Beach, State of South Carolina and that meetings of the Board of Directors from time to time may be held either at the principal office or at such other place as the Board of Directors shall from time to time order.

Upon motion duly made, seconded and carried, it was

RESOLVED, that for the purpose of authorizing the Corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is

necessary or expedient for this Corporation to transact business, the proper officers of this Corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and, under the corporate seal, to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the Corporation to transact business therein.

The Chairman then stated that it was desirable to designate a depository for the funds of the Corporation. Thereupon, on motion duly made, seconded and unanimously adopted, it was

RESOLVED, that the Treasurer be and hereby is authorized to open a bank account on behalf of the Corporation with FN + Company located in _____, South Carolina, and a resolution for that purpose on the printed form of said bank was adopted and was ordered appended to the minutes of this meeting.

Upon motion duly made, seconded and carried, it was

RESOLVED, that the Corporation proceed to carry on the business for which it was incorporated, and further

RESOLVED, that the signing of these minutes shall constitute full ratification thereof and waiver of notice of the meeting by the signatories.

There being no further business before the meeting, on motion duly made, seconded and carried, the meeting was adjourned.

Sam Brock, Chairman

C. Tyrone Courtney, Secretary

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, and 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 the following: each individual Homeowners' Association 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, Inc.; (d) Myrtle Beach Resort Five Seasons Centre Council of Co-owners, Inc. Additional members may be added upon the vote of the majority of the then-existing members. Each member shall assign an individual to act as a voting member for the individual Condominium Association. Any act taken or vote given by the voting member shall be deemed to be representative of a vote or act of the member which that voting member represents.

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.

ARTICLE III

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held during the first six months of the calendar year and at a time and place designated by the President.

Section 2. Special Meetings. Special meetings of the members may be called at any time by a majority of the Directors.

Section 3. Notice of Meetings. Written notice of each meeting of the 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 entitled to vote thereat, addressed to the member's address last appearing on the books of the Association or supplied by such 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 members. If there is no quorum at the opening of the meeting of the members, the meeting of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting for which it was originally notified. The members present at the duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

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

Section 6. Voting. Each member shall be allocated one vote. All action to be taken by the Association shall require a majority vote of those voting members, represented in person or by proxy, at a regular or a special meeting.

ARTICLE IV

BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Term of Office. The Homeowners' Association shall be managed by a Board of Directors consisting of not less than four (4) directors. Each Individual Condominium Association at the Myrtle Beach Resort shall have a representative from said Association as a Director on the Board of this Master Association. Said representative shall be a member of the Individual Condominium Association.

Section 2. Term of Office. Each Director shall hold office until the next annual meeting of members and/or until each successor has been elected and qualified.

Section 3. Regular Meetings. A regular meeting of the Directors shall be held without other notice than this By-Law immediately after, and at the same place as the annual meeting of members. The Directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 4. Special Meetings. Special meetings of the Directors may be called by or at the request of the President or a majority of the Directors. The person or persons authorized to call special meetings of the Directors may fix the place for holding any special meeting of the Directors called by them.

Section 5. Notice. Notice of any special meeting shall be given at least ten (10) 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. Manner of Acting. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Directors.

Section 8. Newly Created Directorships and Vacancies. Newly created directorships resulting from an increase in the number of Directors and vacancies occurring in the Board for any reason except the removal of Directors without cause may be filled by a vote of a majority of the Directors then in office, although less than a quorum exists.

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.

Section 9. 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 10. 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 11. Presumption of Assent. A Director of the Association who is present at a meeting of the Directors at which action on any corporate 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 12. 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 VI

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 of indebtedness issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association and in 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 VII

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 VIII

CORPORATE SEAL

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

ARTICLE IX

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular

or special meeting of the voting members, by a vote of a majority of a quorum of voting members present, in person or by proxy.

ARTICLE X

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 of the Myrtle Beach Resort Homeowners' Association, have hereunto set our hands this 6th day of June, 1987.

_____	<i>S. M. Buck 6-6-87</i>
_____	<i>C. Eugene Campbell</i>
_____	<i>James P. Brunner</i>
_____	<i>William Hunt</i>

(Add appropriate acknowledgment)

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PAWLEYS ISLAND, SC 29585
TELEPHONE (843) 237-8346
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DANIEL L. PATRICK
ET. MARK CHANDLER

REPLY TO:

Surfside Beach

Clarence D. Neish, Esquire
2009 Wood Street
Arlington, PA 15001

Re: Myrtle Beach Resort Homeowners' Association - Special Assessment

Dear Clarence:

As you know, I represent The Myrtle Beach Resort Homeowners' Association, Inc., and I have been asked to respond to your memorandum of April 5, 2002, addressed to the "Master Board Directors and Management."

The simple answer to the questions you have asked is that the "law" was never changed and that the purpose of the current special assessments is fundamentally different from that proposed by some owners prior to the March 1989 members' meeting. However, since your questions suggest you are either uninformed or misinformed about the pertinent facts regarding the transaction involving Ocean Lakes, I thought it would be appropriate to give you certain background information so that at least you would have the benefit of being informed, which may or may not affect your opinion regarding the appropriateness of the recent or past Master Association's action.

You appear to be under a misconception in respect to the role the Master Board had in the transfer of property from Vacation Properties, Inc. to Ocean Lakes.

In 1985 American Resort Management Corporation ("ARMC") purchased from Resort Development Corporation ("RDC", the developer of Myrtle Beach Resort) the following real property at the Myrtle Beach Resort: Commercial Units A, B, C, D, and E of the Renaissance Tower, 2.358 acres designated as "Myrtle Beach Resort Commercial Area A;" (the location of the present on-site rental office), "Commercial Area B" comprising 1.365 acres (the site of the original rental office), 2.08 acres (proposed "Convention Center Site"), and .303 acres designated as "Cabana Lot" (now known as Shaggies).

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In addition to the above referenced real property, Capital Tele-Communications Corp. (a related corporation to RDC) transferred to ARMC the rights under the various television and telephone contracts, which are part and parcel of the master deeds affecting each unit owner at the Myrtle Beach Resort.

Subsequent to the misappropriation of a large sum of money from the Myrtle Beach Resort homeowners (the total sum was in excess of \$600,000), ARMC filed bankruptcy. (As I recall, it was shortly thereafter that RDC also filed for protection in bankruptcy court.) ARMC was a major debtor in respect to RDC which in turn owed substantial obligations to Mellon Bank.

In 1986 as a result of the crisis created by the ARMC and RDC matters the Master Association was formed by an action of the four regimes. The Master Association employed me to represent the various associations and its members during that time. Because of the outside threat the Boards worked together in unison and the goal I was given was to attempt to obtain as much control for the Association as possible over the various assets at the Myrtle Beach Resort owned or claimed by ARMC, RDC and Mellon Bank.

In June, 1987, we were able to convince the Trustee for ARMC to convey all rights to the television and telephone systems at the Myrtle Beach Resort to the Master Association in consideration for the monies that had been paid into my trust account by the various regimes for television and telephone assessments. This conveyance was done pursuant to the order of the Honorable Rufus Reynolds who was adjudicating the bankruptcy for the District of South Carolina.

We were also able to obtain the rights to the on-site rental business at the Resort, again from the Trustee in Bankruptcy for ARMC, and with the consent of Judge Reynolds. At that point the Association was receiving income from the television and telephone contracts and from its contract with Manny Ferreira for on-site rentals.

In November of 1987, the Association acquired Units A, B, & D of the Ocean Front Spa Regime from RDC. This again was gained through virtually no consideration through negotiations with RDC.

In January of 1988, the Association was deeded (for little consideration) Commercial Units "A", "B" and "D" in the Ocean Front Spa from RDC. In early 1989, the Association was able to obtain the Right of First Refusal in respect to "Commercial Unit D" of the Five Seasons Centre (which ultimately was transferred to the Five Seasons Centre) as well as title to the entry road serving the Resort (again for no consideration).

Notwithstanding the successes in obtaining the above assets for the Master Association for little, if any, monetary consideration, the claim for title to Resort real estate by Mellon Bank in the Bankruptcy Court was a stumbling block and there was extreme concern that the Association would not be able to acquire any of this property. In 1987 we filed an action seeking to block Mellon Bank from obtaining this property free and clear of all

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liens and encumbrances. Dead restrictions had never been filed of record on any of the undeveloped property nor on the Cabana Bar lot. The Association in an action filed in Bankruptcy Court claimed that the property should be encumbered and our lawsuit had the effect of delaying the sale of the property.

As a result of this action, the Master Association, in October of 1987, was deeded (for no consideration) one acre (Parcel C) on the south side of the entry road and was given a one year option and right of first refusal to purchase the remaining real property at the Resort by Vacation Properties (a subsidiary of Mellon Bank). At that time this property was being marketed to third parties without any restrictions on the use of the property which, again, was perceived by every board member at the Myrtle Beach Resort to be yet another crisis. Anyone acquiring any of these properties would have had free access through the Resort and could have used the property for any manner allowed by County zoning which at that time was fairly wide open.

In February of 1989 the Association purchased from Vacation Properties, Commercial Parcel "A" (where the rental office now sits), the landscaped buffer, Commercial Units "A", "B", "C", "D" and "E" of the Renaissance Tower, and the Cabana Bar. The total amount paid was \$501,000 after allowing for a credit from Ocean Lakes for Parcel "C" which was conveyed to Ocean Lakes. Ocean Lakes received the property on the south side of the entry road except for the "buffer". At that same time the Association was assigned by Vacation Properties all the rights of RDC, including the right to form a "true umbrella" association pursuant to the respective master deeds.

This brings us to the point of the March 1989 minutes, which you referenced in your recent correspondence. At that time the Master Association was still a voluntary association with the members being only the four (4) individual regimes. As I have mentioned to prior board members, at least two judges (Judge Reynolds and Judge Cottingham, who handled the criminal trial of Don Williams of ARMC), and to the present legal counsel for the Renaissance Tower, at the outset there could be questions raised about the validity of the Master Association. As an attorney I am sure you understand the legal concept of *ultra vires*. However, as the board members of the various regimes commented back in 1986, as did both Judge Reynolds and Judge Cottingham, a single voice was needed to speak for the owners at the Resort and the Master Association was the best and logical choice. However, in 1989 we had not filed the documents establishing the Association pursuant to the Assignment we had from Vacation Properties, which in turn related back to the respective master deeds of each regime, and which I believe gave legitimacy to the Association.

In addition to the fact that in 1989 the Master Association was on shakier legal ground than it would be later, I believed that a special assessment for the sole purpose of acquiring commercial property, would have been an *ultra vires* act.

At that time various board members had proposed everything from a special assessment to which you have referred, to borrowing the money from a commercial lender (which they were unable to do), to attempting to issue bonds to Myrtle Beach Resort owners and

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others, which would have been extremely expensive and time consuming because of securities regulations.

In fact, the Association was working with a short window in time and ultimately the only source for the funds needed to purchase the commercial properties which the Association ultimately acquired was through its neighbor, Ocean Lakes.

"The trailer park guy next door", as you probably are aware, is the Jackson family who own, besides Ocean Lakes, Prestwick residential development and golf course, and most of the property between Business Highway 17 and Bypass Highway 17 south of Highway 544. The only incentive for the Jackson family to extend the loan, which all prospective lenders at the time viewed as very risky, was that it would be able to acquire that property adjacent to the entry road to the Resort contiguous to Ocean Lakes Campground. The Master Board was able to negotiate a buffer zone between the road and the property to be developed by Ocean Lakes and ultimately it felt it had no other option but to take the only course of action that was available to it rather than let a third party come in and acquire all the properties. Again, this property was not restricted and the marketing agent for the Bank said whoever had the cash would get the land, whether it was Wings, a pawn shop or whatever. The "Convention Center Site" could have been sold to another developer who could build yet more condos, the owner of whom would have had access through the Resort but could not be required to be members of the Association. The Cabana Lot could have been sold to a third party who could insist on allowing the general public to have access to the Bar through the Resort. These concerns were real and much time and deliberation was dedicated to the final resolution. Under the circumstances it cannot be fairly said that "the Master Board wholesaled our 10 acres of land to the trailer park guy next door."

Notwithstanding the change in the status of the Master Association from 1989 to present (that is, its legitimacy), I would view a special assessment today by the present Association solely for the purpose of acquiring real property as still likely to be considered *ultra vires*. When the loan was taken from Ocean Lakes, the Master Association had sufficient income from various resources it owned including the rental income, properties within the Tower, the Cabana Bar, and the television and telephone contracts to repay that loan without any direct assessment to the homeowners.

At the present time there is no crisis facing Myrtle Beach Resort (at least from the outside) and, in any respect, the Master Association is not assessing for acquisition of real property but only for those purposes for which it is specifically authorized pursuant to the master deeds of the various regimes at the Resort, the Declaration of Covenants, Conditions and Restrictions, and the By-Laws, as amended.

I hope the above journey into the past helps clear up any misunderstanding that you may have regarding the history of the Myrtle Beach Resort. While you may still differ with me, it is my opinion that The Myrtle Beach Resort Homeowners' Association, Inc., may legitimately assess its individual members pursuant to its Declaration and the By-Laws.

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for those purposes as set out in the respective documents. Should you have any further questions about now or then I would be happy to discuss them with you by telephone.

Sincerely,



DANIEL L. PATRICK, Esquire

DLP/eh

cc: The Myrtle Beach Resort Homeowners' Association, Inc.

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MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.

MEETING OF THE BOARD OF DIRECTORS
FEBRUARY 16, 1991

M I N U T E S

Pursuant to call, a Meeting of the Board of Directors of the Myrtle Beach Resort Homeowners Association, Inc., was held on Saturday, February 16, 1991, commencing at 9:00 A. M. in the Meeting Room of the Winter Centre, Myrtle Beach Resort, Myrtle Beach, South Carolina.

The following persons, Directors of the Association, were present in person:

Al Wells
Dick Brunner
George Kidney
Bill Cole

Also present were Stanley Jordan, President of the Renaissance Tower Board, Frank Cody and Julia Wallen with Property Management, Jim Melton, Building Superintendent, Glenn Brown, Grounds Superintendent/Security Coordinator, and Dan Patrick the Associations attorney.

Al Wells President of the Association, served as Chairman for the Meeting and Julia Wallen served as Recording Secretary.

The Chairman opened the meeting and asked that the minutes of the meeting of December 1, 1990 be corrected and/or approved. Upon a motion by George Kidney, seconded by Bill Cole and unanimously carried the minutes were approved as written.

Next there was a discussion concerning recorders being used in Master Board Meetings. It was decided that recorders may inhibit free and open discussion and upon a motion by George Kidney seconded by Dick Brunner and unanimously approved, the Board adopted the policy prohibiting the use of recorders during the Board Meetings effective immediately.

The Chairman asked Jim Melton to up-date the Board on the progress of the new guard house.

Mr. Melton stated that the progress is evident and speaks for itself. It is on schedule and should be completed on or about March 15, or in time for Easter.

At this time the Chairman turned the meeting over to Glenn Brown for a report on landscaping and grounds.

Mr. Brown stated that the work being done is ahead of schedule on winter projects and plans are to clean the parking areas in March.

Mr. Brown then requested approval to purchase a new riding mower at a cost of \$5,650, and a "Billy Goat" (a high powered vacuum/sweeper) for use to keep the parking areas cleaned.

After considerable discussion regarding the financial position of PM&M and upon a motion by Bill Cole, seconded by George Kidney and unanimously carried, the Board approved the purchase of both pieces of equipment at a cost not to exceed \$7,500.

Next Mr. Brown presented the plan for landscaping and improvements at the entrance which will need to be done when the new guard house is complete. The projected cost for this is \$19,209.00 including the installation of a well for irrigation.

At this time the Chairman asked that Mr. Brown present all of the projects with the estimated costs. Each item was discussed and prioritized according to the time frame the work would be done, as the Board tried to determine all of the expenses the Master Association would be incurring during 1991.

The items are as follows:

- > Landscaping at the entrance and fence on the Lakewood side. \$23,100.00 (adjusted).
- > Barrier at the exit \$3,800.00 (Mr. Wells explained the need)
- > The first phase of the roadway/buffer \$11,500.00

- > Beach Renourishment (Master Portion) \$ 5,040.00
- > New Owner Decals \$3,000.00
- > Security Arm at the new gate house \$1,800.00
- > Guest pass/Info cards - new design - cost to be determined after printing is complete.

After considerable discussion the following items were acted upon as follows:

* Beach Renourishment - Dick Brunner moved the project be done because of its critical nature. The motion was seconded by George Kidney and unanimously carried.

~~Y~~* Guest Passes/Info Cards - Dick Brunner moved that the Board authorize management to set price structures for the new guest passes at the cost of the printing plus a reasonable administrative charge designed to cover only the handling costs, to be determined in conjunction with the auditor, Ron Hendrix. This motion was seconded by George Kidney and unanimously approved.

With the above authorization the following procedures were approved:

- ** Pass must be used by all rental guests, and will be made available for distribution to their rental clients by all of the owners and agents who conduct rentals on the property.
- ** Pass will include Name, Unit #, and Departure Date, and a lower portion below a perforated line with guest info card

(to be detached only at the gate by security.) ** Card must be completed before entering the property. ** Security will validate pass and collect info card. ** Guests who attempt to enter the property without a pass will be charged an administrative fee for the pass. The fee to be determined, again, in conjunction with the auditor with the intent to recoup only the costs of administering the system.

- * Owner Decals - Printing and issuing new owner decals was approved with a motion by George Kidney seconded by Bill Cole and carried unanimously, along with a recommendation to each Phase Board that a policy be adopted to the effect that if an owner allows a guest to use his/her Homeowner Decal, the decal will be pulled and held at the gate until a fine is paid by the Homeowner. The amount of the fine to be determined following discussion at each Phase Board Meeting. The Master Board recommends a fine in the amount of \$25.00.
- ** Change from Red to Green and add "NON-TRANSFERABLE"
- ** Each owner of record will receive two (2) decals. ** Additional decals available at an administrative cost of \$5.00 per decal and a completed homeowner decal form for whom the decal is for. ** Change of Owner Decals to be every three (3) years.

> Employee/Staff Decals will remain the same red on white with the following procedures to be followed. ** New employees must complete a three (3) month probationary period before being issued a permanent staff decal. ** Part-time and temporary (seasonal employees) will not be issued a staff decal. ** Decals or passes will be collected at the end of employment, much like uniforms and keys. ** Staff Decals will be changed out when necessary.

*** Other items above presented by Mr. Brown were deferred until near the end of the meeting for a decision, at a time when all project expenditures could be looked at as a whole. ***

Next Mr. Brown presented figures for costs for the Master Association taking over security. He stated the main advantage would be in the control the Resort would have in implementing procedures and following through with them.

After discussion the Board asked that management check with the insurance carrier in regards to liability and come back to the Board with specific steps at the first Board meeting in the fall for a possible security take over after the 1991 summer season.

The number of missing item reports (from units) was discussed next. Mr. Brown stated there had been thirty-two (32) in six (6) months and most of these were where the unit door did not have a dead bolt.

Mr. Brown, as the security coordinator recommended each Board look at the possibility of re-keying the unit doors. He further stated that this was done a few years back at The Five Seasons Centre and it has been very successful both in regards to the homeowners response and in controlling unauthorized entry into each unit.

Next for discussion was upgrading the present radio system to a UHF private channel with a repeater. Mr. Brown stated this would cost from \$12,000 to \$16,000 for 20 radios and a base station.

The Board agreed this step was necessary however, at the present with funds for the project at a minimum the Board directed the staff to write a policy regarding the use of radios by those other than staff. To be presented at the next Master Board Meeting and implemented by each Phase Board at the May meetings.

The Deli/Cameroom, which will go into a portion of

Commercial space "A" in The Renaissance Tower, was discussed next. Mr. Wells stated the cost to the Master Association to complete the access and support areas would be approximately \$25,000 for the HVAC, sprinkler system, hallway walls, floor and ceiling, electrical panel and meters. The cost of up-fitting the ocean front area with regards to the walls, the four large ocean front windows, the floors and the ceiling will be the responsibility of the tenant. In return for incurring the costs of upfitting the entire front, the prospective lessee, Mrs. Carol Kuhn, would not be charged rent for the first summer season that the Deli is open. In addition in consideration of undertaking to supervise the Gameroom, the tenant would receive one half of the proceeds from the Gameroom during months that the deli is in operation during the first two (2) summer rental seasons.

After discussion George Kidney moved that the lessee be asked to incur expenses of any increase in taxes and insurance with the contract to include a provision for trash pick-up. With the above change the Board authorized Al Wells to execute the contract. The motion was seconded by Bill Cole and unanimously approved.

A discussion took place regarding the possibility of refinancing the loan which is now with Ocean Lakes Campground.

It was the general consensus of the Board that this was an appropriate time to consider this action since interest rates were much lower now and banks seemed more willing to work with the Association. Mr. Wells instructed Dan Patrick, Dick Brunner and management to look into the possibility of refinancing the commercial note now held by OLC.

At this time the Chairman turned the meeting over to Dan Patrick for a legal report.

Mr. Patrick up-dated the Board on the following legal matters which are/were pending:

- * Tower suit against LPA regarding drainage and the bridge leading to the parking area - settled two (2) weeks ago.
- * Dufner vs The Master Association - Coastal Security settled out of court for a nominal sum.
- * Charlotte Shope, injury at the ocean front pool - new suit, management to notify all insurance companies involved.
- * Phase II vs L. P. Cox, caulking and roof top garden deficiencies. - Pending
- * Anglin vs MBR - Liability insurance carrier to cover the cost of this suit. All prior legal expenses will be turned over to the insurance company.

The attorney informed the Board of the agreement between the Anglin's and Southern Hospitality (Phil Cox of Conner Realty) for

lease of the sales office (Commercial Unit D at The Five Seasons Centre) giving rights to conduct sales and rentals out of the office. The Association had obtained the right of first refusal over the sale or lease of this building formerly held by the developer of the Resort, and had considered exercising this right. However, the terms of the proposed lease offered by the Anglins to Conner Realty could have been enforced in a way that would have rendered the lease economically prohibitive for the Association, so the right was not exercised. It was agreed nonetheless, that the right was still alive, and the opportunity was seized to record at the Horry County Court House a document having the status of a deed of easement declaring that MBRHOA has the 'Right of First Refusal' if Commercial Unit D is sold, or if it is leased under terms more favorable to the tenant than the lease to Conner Realty.

A discussion took place involving the possibility of leasing any of the commercial spaces for use as a resale office. There was speculation that such action might be challenged in court, and although the Board felt that it clearly had the right to make such uses of its property, Mr. Patrick advised that a declaratory judgement action would remove all doubt before a lease was entered into, avoiding any possible delay while a case was heard.

Following discussion and upon a motion duly made by Bill Cole, seconded by George Kidney and unanimously carried, it was:

RESOLVED, That the Association's Counsel is authorized to file on its behalf an action for declaratory judgement for the purpose of ascertaining that the Association has the right freely to lease appropriate portions of the property which it owns for the purpose of a real estate resale office.

Signage on the property regarding the sales office (Resort Brokerage Service) was discussed. It was decided that since the sign would be on The Five Seasons Centre property the FSC Board should approve or disapprove any signage as long as it is in line with the general design over all the property. - Sand blasted and painted -.

Also signage relating to commercial activities was discussed. Mr. Cody presented photos of enclosed signs which could be placed in specific areas on the resort and used by the commercial activities on the property. Again it was determined that each Phase Board would approve the type signage proposed, with the possibility of the commercial entities helping to fund such signs.

The creation of an "Umbrella Association" was discussed next. The attorney went over the proposed By-Laws and Master Deed with the Board and explained each point. He pointed out that the Master Deed was in line with each phase Master Deed.

Upon a motion by George Kidney, seconded by Bill Cole and unanimously carried, the Board approved the concept, in principle of converting to an "umbrella association", and determined that final implementation would be contingent upon the ratification of the act at the March meeting of each Phase Board.

The proposed By-Laws and the Master Deed will be mailed to all twenty-two (22) Board Members for conditional approval of the same, and a letter will be mailed, by special mailing, to each homeowner to inform them of the effects before the Annual Meetings of each Phase.

A new copier for the PM&M office was discussed next. Mrs. Wallen stated that after checking into the possibility of leasing a copier within the guidelines of the monthly cost not being more than \$50.00 over the current lease payment, she had discovered that to obtain a copier with the additional features needed would cost a considerable amount above the current lease. She presented three proposals for comparable machines and all were within the same price range with the features needed to operate efficiently.

After discussion, and upon a motion by George Kidney seconded by Dick Brunner and unanimously carried, the Board approved a new copier based on a forty-eight (48) month lease.

Alternate Operator Services for long distance dialing were discussed next. Mrs. Wallen explained how the service functions and how it benefits the Resort. She explained there were guest communication problems as well as maintenance problems with the current carrier and presented proposals from four (4) different carriers.

After discussion it was the general consensus of the Board to contract with Summit Telecommunications/Telesphere for the service.

At this time the Board went over the proposed spending program. Upon a motion by George Kidney, seconded by Dick Brunner and unanimously carried, the following items were approved for expenditure. This will be reviewed periodically throughout the year for possible future expenditures.

> Landscaping at entrance with fence	\$ 20,600
> Exit Barrier	3,800
> Roadway/Buffer (first phase)	11,500
> Restaurant area - Tower	25,000
> Beach renourishment	5,040
> Owner Decals	3,000
> Gate arm	1,800
TOTAL	\$ 70,740

At this time the Board called executive session.

The next meeting is scheduled for Sunday, March 24, 1991,
following The Renaissance Tower Organizational Meeting.

There being no further business to come before the meeting
and upon a motion by Bill Cole, seconded by George Kidney and
unanimously approved the meeting was adjourned at 7:20 P. M.



Alfred H. Wells, President



Julia Wallen, Recording Secretary

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MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.

FOURTH ANNUAL MEMBERS' MEETING
MARCH 24, 1991

M I N U T E S

Pursuant to call, a Meeting of the Board of Directors of the Myrtle Beach Resort Homeowners Association, Inc., was held on Sunday, March 24, 1991, commencing at 4:00 o'clock P. M. in the Meeting Room of the Winter Centre, Myrtle Beach Resort, Myrtle Beach, South Carolina.

The following persons, Directors of the Association, were present in person:

Al Wells
Dick Brunner
Sam Brock
Bill Cole

Also present were Bill Hunt, Board Member elect for the Five Seasons Centre Board of Directors, Stanley Jordan, President of the Renaissance Tower Board, Bill Guhl Renaissance Tower Board Member, Frank Cody and Julia Wallen with Property Management, and Dan Patrick the Associations attorney.

Al Wells President of the Association, served as Chairman for the Meeting and Julia Wallen served as Recording Secretary.

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EXHIBIT 5

The Chairman opened the meeting and asked that the minutes of the meeting of February 16, 1991 be corrected and/or approved. Upon a motion by Dick Brunner, seconded by Bill Cole and unanimously carried, the minutes were approved as written.

At this time the Chairman declared the Annual Meeting of The Myrtle Beach Resort in session and election of officers was held. Upon a motion by Dick Brunner seconded by Sam Brock and unanimously carried the Board declared that the slate of officers would remain as in 1990 with the replacement members taking the position that the Board Member from his association held.

The Officers are:

Al Wells	President	Renaissance Tower
Dick Brunner	Vice President	Phase I
Bill Hunt	Secretary	Five Seasons Centre
George Kidney	Treasurer	Phase II

In the absence of George Kidney, Sam Brock is serving as alternate representing Phase II,

Next the Chairman turned the meeting over to Dan Patrick, the association's attorney, for a report on the status of the By-Laws and amendments for the umbrella association.

A discussion took place concerning the final format of the document and approval of the same. Mr. Patrick stated that the

final document would be mailed to each Board President for approval before Mr. Wells signed the document. The attorney stated he was looking for direction from the Board to Al Wells concerning the matter.

Upon a motion by Dick Brunner, seconded by Sam Brock and unanimously approved;

The Myrtle Beach Resort Homeowners Association agreed to adopt the amended By-Laws and declarations of covenants as presented to the four (4) Phases of the Myrtle Beach Resort at the respective Annual Meetings in March. The president of the Myrtle Beach Resort Homeowners Association, Inc. is authorized to execute, on behalf of The Myrtle Beach Resort Homeowners Association, Inc. following receipt of advice on concurrence in language of documents from each Director of Myrtle Beach Resort Homeowners Association, Inc.'

A discussion took place regarding the proposed sign that Resort Brokerage Services has requested to place on the north of the property on frontage road. Upon a motion by Bill Hunt, seconded by Dick Brunner and unanimously carried, the Board decided not to allow Resort Brokerage Service to place the sign on the proposed frontage road area. A letter will be drafted to Resort Brokerage Service by Dan Patrick.

Relating to signs on the property, Mr. Patrick advised each Board to adopt a policy regarding signs (i.e. type, size limits and whether they can be hand painted or sand blasted) on each regime in order to keep the overall Resort signage the same.

Next Mr. Patrick stated the 'Declaratory Judgement' action was ready to file, and explained this would give the Master Association the right to operate a sales office out of the new building.

At this time the problems involving the phone system were discussed. Julia Wallen stated that for some months there had been numerous complaints from guests because they were not receiving calls. The caller was getting a busy signal when dialing the unit direct even when the phone was not in use. BTE has stated the need for additional DID trunks and Mrs. Wallen read a portion of the letter in which they recommended a total of eight (8) new DID trunks. This was based on traffic studies which BTE had been doing since October, 1990. The letter also stated that studies were now being done on all twenty (20) of the two (2) way trunks as well.

After considerable discussion with cost factors taken into consideration and upon a motion by Bill Hunt, seconded by Sam Brock and unanimously carried, it was decided to install four (4)

additional two-way trunks and four (4) additional DID trunks, and to make 828-8000 the main number and delete 238-3411 (the old MBR main number) from the system. This will make the 828-8000 number come in to the switchboard on a two (2) way trunk instead of tying up a DID trunk.

The matter of consultants and Board Member conflicts of interest was discussed next. The Chairman suggested that there be no dealing with outside suppliers of goods and services who has any relationship with a Board Member or employee unless three (3) bids are obtained. It was the general consensus that this policy will be adopted by this Board and it would be recommended that each Phase Board adopt a similar policy.

At this time the Board discussed the internal control policy as first designed in December, 1989. Mr. Wells suggested having the auditor look at them and give suggestions regarding changes and implementation.

The next topic discussed was the possibility that Board Members on MBRVR rental program could be considered a conflict of interest. Bill Hunt moved that this be investigated by the attorney and Mr. Wells and be discussed at the next meeting. This was seconded by Dick Brunner and unanimously carried.

Another topic for the agenda of the next meeting will be the Job Description for the Property Manager.

There being no further business to come before the meeting and upon a motion by Bill Hunt, seconded by Sam Brock and unanimously carried, the meeting was adjourned at 5:15 P. M.


Al Wells, President

Bill Hunt, Secretary

EXHIBIT 6

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EXHIBIT 6

EXHIBIT
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MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.

MEETING OF THE BOARD OF DIRECTORS
APRIL 20, 1991

M I N U T E S

Pursuant to call, a Meeting of the Board of Directors of the Myrtle Beach Resort Homeowners Association, Inc., was held on Saturday, April 20, 1991, commencing at 10:00 o'clock A. M. in the Meeting Room of the Winter Centre, Myrtle Beach Resort, Myrtle Beach, South Carolina.

The following persons, Directors of the Association, were present in person:

- Al Wells
- Dick Brunner
- Sam Brock
- Bill Cole

Also present were Ralph Jump, Board Member of B Building; Stanley Jordan and Bill Guhl, Board Members of The Tower; and Dan Patrick, the Association's legal counsel.

Al Wells, President of the Association, served as Chairman for the Meeting, and Sam Brock served as Secretary for the Meeting.

EXHIBIT 6

No minutes of prior meetings were presented or discussed.

The Chairman opened the Meeting and turned the floor over to Dan Patrick for a report on legal matters.

Dan Patrick reported that the documents converting the Association to the long-discussed "umbrella" association had been signed and would be filed and put to record in the near future.

Also, in the Anglin Cable suit, the insurance company having coverage of Board Members for tortious acts would be asked to reimburse the Association for fees of Association counsel. It was mentioned that the Hogan Agency had apparently recently agreed that it would seek to expedite the underwriting company making the reimbursement. Also, the Declaratory Judgment action had been filed, which, if granted, would clarify that the Association had the right to operate a resales brokerage office out of the presently unused space in its rental office.

Mr. Patrick then described the letter he had written to Resort Brokerage Services protesting their alteration of the sign outside their offices listing rental rates. This letter demanded the restoration of the sign to its former condition, saying that the display of rates was a violation of restrictions of the Five Seasons Centre, and stating that unless promptly restored, the Five Seasons Centre would seek an injunction and

payment of attorney fees. It was mentioned that Myrtle Beach Resort Vacation Rentals, the Association's lessee and operator of its sanctioned onsite rental office, had been denied permission to display rates. If a temporary injunction is sought in order to obtain faster action, a bond may have to be posted for the eventuality that the other party might ultimately prevail and be awarded damages. Upon a motion by Dick Brunner, seconded by Sam Brock and unanimously approved, it was:

RESOLVED, That in view of the overall benefit to the Resort and its homeowners in preserving a good appearance at the Resort, the Master Association will reimburse the Five Seasons Centre for its expenditures required to enforce the signage policy.

It was mentioned that Mr. Cox of Connor Realty/Resort Brokerage Services had offered several goodwill gestures such as donating the flags which were formerly displayed on the perimeter fence. This offer was accepted.

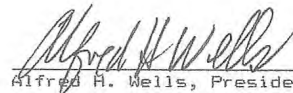
Dan Patrick said that he had written a letter to Mr. Glennon, a businessman who had purchased property together with Don Williams, who had embezzled homeowners' funds while operating ARMC, offering to compromise the Association's approximately \$40,000 claim for \$25,000. Mr. Glennon was reported to be

financially pressed, and the settlement was in the approximate amount that might be the net amount realized if legal action was instituted. In the event that legal action did become necessary, the Board voted unanimously to give Dan Patrick the authority to hire local New York counsel on a contingency basis to pursue collection should that become necessary.

The Board was then informed of the investigation into whether the structures being built on Ocean Lakes property just south of the buffer strip along the entry road were in violation of the County's setback requirement. It appeared that at least some of the structures were closer to the boundary line than the 25 feet which the zoning ordinance required. A survey by Culler had been requested to determine whether this was the case, and this would be done Tuesday April 23. Mr. Patrick related that he had contacted Ed Hines, sometime counsel to Nelson Jackson and Winston Hoy, to alert him to the potential problem and to suggest that he might want to see if the encroachment was as serious as it seemed. It was stated that in the course of the transaction wherein the Association acquired title to the properties which it purchased from the Mellon Bank, the Association had acquired fee title to the buffer strip from the Ocean Lakes interests, and that the consideration paid was at least \$58,000 and may have been adjusted upwards to as much as \$61,000.

The Board determined that if the survey confirmed the apparent encroachment, Dan Patrick would be authorized to investigate the matter further with the Ocean Lakes principals. He would, if appropriate, draw up a package for settlement which he and the Ocean Lakes principals thought was fair, and present it to the Association for consideration. The Board later, after Mr. Patrick had left the meeting, discussed the matter further and decided that it would seek a second opinion from a knowledgeable local attorney as to the fairness of any settlement that might be proposed.

There being no further business to come before the meeting, upon a motion duly made and seconded, the meeting was adjourned at 2:00 P.M.


Alfred H. Wells, President


Sam Brock, Secretary

EXHIBIT 7

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EXHIBIT 7

ORIGINAL

EXHIBIT
7

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT
Civil Action No.: 2015-CP-26-05228

The Myrtle Beach Resort Homeowners')
Association, Inc., Myrtle Beach Resort)
Horizontal Property Regime, Inc., Myrtle)
Beach Resort Ocean Front Spa Horizontal)
Property Regime, Inc., and The Myrtle)
Beach Resort Five Seasons Centre Council)
of Co-Owners, Inc.,)

AFFIDAVIT OF JEFFREY RICHARDSON

Plaintiffs,

vs.

Renaissance Tower Horizontal Property)
Regime,)
Defendant.)

FILED
CLARENCE HIGGINS-WARD
CLERK OF COURT
2015 DEC 11 PM 2:54

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TO: THE HONORABLE COURT AND ABOVE NAMED PLAINTIFFS:

Personally appeared before me the undersigned Jeffrey Richardson, who being duly sworn, deposes and states:

My name is Jeffrey Richardson and I am over twenty-one years of age and competent to make this Affidavit.

I, Jeffrey Richardson, serve as the President of the Renaissance Tower Horizontal Property Regime HOA presently and have been on the board in various positions for at least fourteen years including the office of President the majority of the time.

That I have served on the board of directors for Renaissance Tower HOA from 1997 to present.

That I own the following unit(s) 203, 302, 311, 314, 315, 501, 603, 1406, and 2211 in whole or part at Renaissance Tower Horizontal Property Regime and the following unit(s) 210.

308, and 245 in partnership at Ocean Front Spa both of which are part and parcel of Myrtle Beach Resort.

That during my term of service as President of Renaissance Tower HOA, I negotiated on behalf of the Renaissance Tower HOA a lease agreement with Myrtle Beach Resort Homeowners' Association, Inc. regarding the cut-through and was one of the two signers.

That the lease agreement required Renaissance Tower to permit construction of a cut-through road over a small section of its landscape property; that it further required Renaissance Tower to permit all owners to use the cut-through road.

That the lease agreement required Myrtle Beach Resort Homeowners' Association, Inc. to: (1) build a cut-through between Ocean Front Spa and Renaissance Tower, (2) maintain the cut-through and the exit road, (3) place a water fountain in the play area on Renaissance Tower property, (4) place grass sod upon the play area, (5) maintain the play area of Renaissance Tower, (6) enforce all rules and regulations set by the board of Renaissance Tower on play area property.

That the lease agreement contained additional terms to include: duration of two years after which either party may terminate the agreement with 30 days written notice to the other party. Further, that if terminated by Renaissance Tower in the first two years, Renaissance Tower would reimburse the Myrtle Beach Resort Homeowners' Association for any funds spent up to Ten thousand dollars to put the cut-through back to the original state.

That Myrtle Beach Resort HOA has breached their part of the contract: (1) never put the water fountain in, (2) never maintained the play area to our satisfaction, and (3) informed us in May 2015, that they were going to instruct security to NOT ENFORCE our (Renaissance Tower)

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EXHIBIT 7

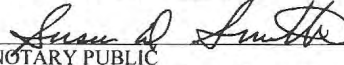
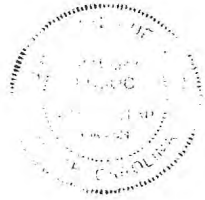
rules and regulations in our play area. Upon learning of a decision, Renaissance Tower gave them there 30 day termination notice.

AFFIANT:



JEFFREY RICHARDSON
Dated: 12/9, 2015

STATE OF SC
COUNTY OF Cherokee


NOTARY PUBLIC
My commission expires: 10-2-24

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THE MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.

SPECIAL MEETING OF THE BOARD OF DIRECTORS

MAY 21, 2015

MINUTES

A Special Meeting of The Myrtle Beach Resort Homeowners Association, Inc. Board of Directors was held o May 21, 2015 via conference call originating in the Myrtle Beach Resort HOA office located at 5905 S. Kings Highway, Myrtle Beach, SC 29575.

I. OPENING OF MEETING

Wayne Urban called the meeting to order at 4:00 pm. Board members in attendance via teleconference were Wayne Urban and Phil Cox, Bill Cameron, and Denny Sassa (representing Kay Gregor). Representing K. A. Diehl were Vicki Gallagher, Executive Vice President, Glenn Magjil, Community Manager and Becky McCarthy, Assistant Community Manager. Also in attendance via teleconference were Anita Pedraza with William Douglas, Jeff Richardson, Jim Perkins and Nancy Moore. There were also several homeowners in attendance.

Wayne Urban, President of the Association, served as Chairman of the Meeting
Bill Cameron, Secretary of the Association, served as Secretary of the Meeting
Becky McCarthy, Served as Recording Secretary of the meeting.

Chairman Urban welcomed everyone to the meeting.

II. BIKE WEEK PARKING

Chairman Urban noted that the purpose of this agenda item was to address Renaissance Tower changing the dynamic of the motorcycle designated parking areas within the Renaissance Tower parking lot, which has reduced the number of parking spaces for motorcycles during bike weeks. At this time, Mr. Richardson addressed the Board stating that an email was generated to the Master Board in January and again on April 2, 2015 relative to the motorcycle parking spaces within Renaissance Tower; however, he did not receive any response until a few days prior to bike week beginning. Chairman Urban and Mr. Cox reported that they did not receive either email, and upon the learning of the emails requested copies. He then stated that he has not received a copy of the January email; however, has subsequently received a copy of the April 2, 2015. The Chairman reported that the email was only addressed to Mr. Perkins and Mr. Sassa as well as the balance of the Renaissance Tower Board but not to the balance of the Master Board or management. Mr. Richardson asked why it was not put on the April meeting agenda, and Chairman Urban said he can't answer the question because the emails were not shared with them. Mr. Perkins stated as far as he knew there were emails sent to each regime and there were not a lot of replies back. Chairman Urban said they were not copied on the April 2nd email and therefore there was no email discussion on this issue. Mr. Richardson stated that he met with their Community Manager, the Master Association's Community Manager and the head of Security a week before bike week and showed them what the new parking areas where going to be and they said this will not work.

Mr. Richardson explained that the Renaissance Tower has a lawsuit pending against them, and their legal counsel has advised that they need to have available 322 parking spaces for their Renaissance Tower owners. Mr. Richardson stated this is why their Board has been talking about the need to reduce the parking spaces for bike weeks so that there are 322 parking spaces available for the Renaissance Tower owners. Mr. Richardson stated that Renaissance Tower parking belongs to Renaissance Tower not the Master Association and doesn't feel the Master Board has the right to dictate the designated areas for motorcycle parking during the bike weeks. He then expressed his dissatisfaction that the Master Board made the decision to take Renaissance Tower's barricades down and allowed the motorcycles to be parked in those barricaded areas and he almost had them towed.

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EXHIBIT 7 3/4

The Myrtle Beach Resort Homeowners Association, Inc.
Special Meeting of the Board of Directors – May 21, 2015

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Mr. Cox stated that if they would have known a month or so in advance then the Master Board would have discussed with the Renaissance Tower Board; however, the request was only sent to Mr. Perkins and Mr. Sassa and debate at length continued relative to parking within the Resort and who has authority to dictate who parks where. Chairman Urban stated that a legal opinion was sought from the Master Association's attorney that states the individual regimes don't have the right to restrict parking areas, and a copy was provided to each regime Board. Mr. Richardson stated that he has three (3) legal opinions that state otherwise, and Chairman Wayne requested a copy of the legal opinions and Mr. Richardson denied this request. Chairman Urban reminded the Master Board that the Master Association paid to repave the motorcycle parking portion of the Renaissance Tower's parking lot and that a parking plan has been in place for nine (9) years. Mr. Richardson stated their governing documents provide the authority to dictate parking within their parking lot to Renaissance Tower. Mr. Richardson stated that each year the Master Board needs to discuss a plan with the regimes for parking procedures in advance of the motorcycle festivals.

Mr. Magill reported that all regimes have sacrificed parking spaces that worked for the Harley Bike Festival and should work for the Atlantic Beach Bike Festival for this year. At the end of the discussion, there was no change in the reconfiguring of the designated motorcycle parking spaces at each regime.

Mr. Richardson asked the Board about the bands on the motorcycles. Mr. Richardson stated he and four other bikes had 2014 bands on their bikes and were not stopped at the Guard Gate which he reported to Mr. Magill. Mr. Richardson said there needs to be accounting for bike week to make sure we are not spending more on Security that we are bringing in. Chairman Urban stated this discussion will be put on the agenda for the September meeting.

III. WRISTBANDS

A. DISTRIBUTION

Chairman Urban asked the Renaissance Tower representative to review the plan for wristbands. Mr. Richardson stated they will be using wristbands the same as they did last year. The Renaissance Tower staff will be distributing wristbands to the membership at the Tower.

B. ENFORCEMENT

Chairman Urban asked Mr. Richardson if they were planning on enforcing the wristband policy at the playground/park and the volley ball court. Chairman Urban reported the Master Association has a legal opinion that was provided to each Regime Board indicating that Renaissance Tower can't restrict the playground/park and volleyball court due to the fact that the Master Association has been paying to maintain these areas. Mr. Richardson stated that he also has an opinion from their legal counsel that says they have the right as it's their property. Mr. Cox stated that the Master Board will instruct Security not to enforce the wristband policy at the playground/park and the volleyball court. Mr. Richardson reported the Renaissance Tower will be bringing in their own Security to enforce their policy at the playground/park and volleyball court. A discussion/debate ensued, and upon its conclusion, a motion was made by Mr. Cameron, seconded by Mr. Cox authorizing the wristbands to be distributed at the gate and the Master Association's Security will not enforce Renaissance Tower's wristband policy at the playground/park. There was no second so the motion died. A motion was made by Mr. Cox, seconded by Mr. Cameron that the Master Association's Security will issue the wristbands to inbound vehicles proving they are supplied by Renaissance Tower providing the message accompanying them states they are to be used exclusively for the Renaissance Tower amenities which are limited to their swimming pool, whirlpool, and the exercise room within the Renaissance Tower. The motion carried three in favor to one against with the Renaissance Tower voting no, Five Seasons voting yes, Horizontal Property Regime voting yes, Ocean Front Spa voting yes. Jeff Richardson stated Renaissance Tower will be using their own Security to enforce the policy on their property. Mr. Richardson reported he will not give the wristbands to Security to hand out at the gate; the wristbands will be handed out at the Renaissance Tower only.

IV. GATE INCOME COLLECTION PROCEDURES

Mr. Richardson asked about the Gate Committee and what their goal is. Mr. Cameron explained what the Gate Committee was working on and their goals. Mr. Cameron suggested to Mr. Richardson to have someone from their Board join the Gate Pass Committee.

EXHIBIT 7

Mr. Richardson asked the Board if Security hands out packets for MBRV after hours, and if so they should do it for all. Mr. Cox stated he did not agree with this due to the fact that MBRV has a contract with The Myrtle Beach Resort and the Resort receives income from them.

V. **ESTABLISHMENT OF A SURVEY MONKEY SURVEY FOR THE GATE PASS FEES**

Chairman Urban stated there was a request to do a monkey survey at the last meeting as it relates to the gate pass fees and it was based on the aspect of the excess funds as earnings that the Resort pays income tax on. One of the aspects that could be considered is if to do the survey monkey to the whole resort on different topics, or open to do various surveys as needed or as requested by anyone in the Resort. Mr. Cameron stated the surveys are a good idea; you just need to make sure you have the questions drafted correctly. Mr. Cox asked what the Gate Pass revenue was for 2014. Chairman Urban reported it was \$285,000.00. Mr. Cox stated if we dispensed with the \$10.00 fee it would raise HOA fees approximately \$300.00 per condo. Mr. Richardson stated if Security didn't have to collect money you wouldn't need to have such a large Security staff. The Gate Pass Committee will research this issue.

VI. **ESTABLISHMENT OF A LONG RANGE PLANNING AND COMMUNITY ENHANCEMENTS' COMMITTEE**

Chairman Urban reported that the Board is looking for owners to volunteer to serve this committee to look at a lot of different enhancements for the Resort. Further, this committee will also look at what kind of programs and projects they should work on and prioritize and get input from all the Regime's Boards and represent the homeowners as we move forward to try and enhance the rental capabilities of the property. All Master Board members agreed this would be a good idea. Mr. Cameron committed to drafting a Charter for this committee.

VII. **Establishment of a Quarterly Newsletter from the Master Board**

Chairman Urban suggested disseminating a quarterly newsletter to the membership from the Master Board, and is looking to see if the Board members are in agreement. The Board was in favor. The Board will see if there is a homeowner that would be willing to put together a proto type and put the information in it. It would then go to the community manager for review and then the community manager would distribute them out to the owner that have an email address and a hard copy to those owners who do not have an email address with an additional fee for mailing on a quarterly basis. Mr. Cox agreed this would be a good idea with a minimal expense. Mr. Richardson said it would be a good idea as long as it didn't get political. Mr. Cameron said it would be better than just an email to inform homeowners.

VIII. **Adjournment**

A motion was by Phil Cox, seconded by Bill Cameron to adjourn the meeting at 5:25 pm. The motion carried unanimously in favor.

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Common Elements shall have the right to bring any action for partition or division of the Common Elements.

Initial rules and regulations governing the use of the Submitted Property shall be promulgated by the Declarant on behalf of the Board of Directors. Additional and/or amended rules and regulations may be adopted or repealed by the Board of Directors. The Board of Directors may amend or repeal any rule or regulation adopted by it or by the Declarant provided such does not affect any right(s) of Declarant or any affiliate of it. All rules and regulations shall be posted in conspicuous places in the Common Elements.

Each Co-Owner, by acquiring his Unit, shall be deemed to agree to be bound by, among other things: (i) all rules and regulations adopted for the use of the Submitted Property; (ii) such rules and regulations as the Declarant may adopt pursuant to the Long Term Lease; and (iii) the Master Deed and by By-Laws.

The Association shall have the right to deny any Co-Owner or Occupant the right to use the Common Elements for a period not to exceed thirty (30) days for a violation of the rules and regulations promulgated for the use of the Property.

If a Co-Owner fails to pay an Assessment for the period specified herein, the Association may deny such Co-Owner or any Occupant of that Co-Owner's Apartment the right to occupy that Apartment and the right to use the Common Elements until such time as all Assessments are paid. There shall be no reduction in the Assessments payable by any Co-Owner during any period while his right to use an Apartment or the Common Elements is suspended.

Any Occupant may use the Common Elements reserved for the use of the Apartment he occupies during the time such Occupant is actually in residence in the Apartment. Guests and invitees of an Occupant of an Apartment and the Co-Owner of an Apartment (while another occupies his Apartment) may only use the Common Elements, including facilities under the Long Term Lease, with the express permission of the Board of Directors and subject to such terms and conditions as the Board of Directors may specify in its sole discretion, including the payment of a fee for the use thereof.

4. There are no Limited Common Elements presently designated except that portion of the Common Elements so designated which is adjacent to the Commercial Unit A. Said Limited Common Element so designated shall and may be used by the Co-Owner of Commercial Unit A, his lessees, assignees and guests for seating, tables and like furnishings and for the service and consumption of food and beverage and such other uses as are consistent with or required thereby. The maid/storage areas located on the various residential floors shall be Limited Common Elements appurtenant to Commercial Unit B.

5. Parking spaces shall not be reserved solely for the use of Occupants of any particular Apartment nor shall they be numbered. Further, Declarant hereby reserves unto itself (including the right to grant to others) and grants to all present and future Owners of real property interests within, Occupants of and visitors within Myrtle Beach Resort (as hereafter described) an easement for vehicular parking upon the parking spaces within the Regime, together with an easement for ingress and egress for access to and from such parking. Declarant does further hereby grant unto the Co-Owners, Occupants and visitors of the Regime like easements for access and parking over the appropriate vehicular access and parking areas of Myrtle Beach Resort Horizontal Property Regime and Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime.

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EXHIBIT 8

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Mortgagee and its successors and assigns shall have and enjoy all of the rights, privileges and exemptions granted to Declarant by this Master Deed and/or by the By-Laws.

ARTICLE XVII
Rights of Landers

Notwithstanding any other provision hereof, any mortgagee of record (including, but not limited to, the Construction Mortgagee while such Construction Mortgage shall remain unsatisfied) shall:

1. Upon request, be permitted to inspect the books and records of the Association during normal business hours;
2. Receive a copy of any audit performed by or for the Association and all proposed and adopted budgets;
3. Upon request, receive written notice of all meetings of the Association and be permitted to designate a representative to attend and observe all such meetings; and
4. Receive written notification from the Association of any default by any of its mortgagors in the performance of his obligations to the Association which is not cured within thirty (30) days.

ARTICLE XVIII
The Myrtle Beach Resort

The Regime is located within and is a part of a certain 44.62, more or less, acres tract of land owned/or under option by Declarant lying between U.S. Highway 17 and the Atlantic Ocean, portions of which Declarant presently has included within and has named The Myrtle Beach Resort (herein "Resort"). Declarant has heretofore included within the Resort a horizontal property regime named Myrtle Beach Resort Horizontal Property Regime (which was established by Master Deed which is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Deed Book 750 at Page 642). Developer does, by the recording of this Master Deed, include the Regime within the Resort and does hereby grant to the Council of Co-Owners, the present and further Co-Owners thereof, all Occupants of the Apartments and their successors and assigns, non-exclusive easements and licenses of use of the pathways, streets and roads (together with roadside and entrance areas), paved areas and recreational facilities and amenities of the Resort (herein "Resort Facilities"). Developer may, in its sole discretion, add additional property up to the entire 44.62 acres tract, build additional streets and roads, pathways, develop certain portions for other multi-family complexes, tennis courts, parking facilities, recreational facilities and develop portions for commercial facilities within the Resort, provided any such development shall be in Developer's sole discretion and no representations are made as to the same whatsoever. As a consequence, Declarant reserves unto itself, its successors and assigns in interest as developer of the Resort, and the present owner of the balance of the real property shown within the Resort in the Exhibits (herein "Present Owner"), the right to include up to the entire tract within the Resort.

Declarant does hereby grant and does further reserve unto itself, its successors and assigns, and Present Owner as owner of the balance of the 44.62 acres tract the right to grant to and for all present and future owners and occupants within the Resort which presently consists of the Co-Owners and Occupants of Myrtle Beach Resort Horizontal Property Regime non-exclusive easements over, across and through, and right to use, the paved areas of the Resort (including within the Regime) and its paths and ways for

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normal pedestrian and vehicular access and ingress and egress from the public road and for parking and a license to use the areas of the Common Elements (including amenities) in the manner ordinarily intended, such easements and licenses to exist in perpetuity. Provided, further, such owners and occupants to whom such easements, licenses and rights are granted must, in order to preserve such easements and licenses, pay their pro rata share of upkeep, maintenance and repair of such Common Elements so used based upon a fair and equitable system.

Further, Declarant does hereby reserve unto itself and all present and future owners within the Resort a perpetual drainage and flowage easement for waters across the Property along the routes for drainage to connect with drains and drainage pipes located upon the Property, such easements to be in perpetuity.

Declarant, pursuant to the power reserved to it in the Master Deed of Myrtle Beach Resort Horizontal Property Regime to which reference is made above, does hereby grant unto all Co-Owners and the Occupants of their Apartments non-exclusive easements over, across and through, and the right to use the paved areas of that regime and its paths and ways for normal pedestrian and vehicular access and ingress and egress from the public road and for parking and a license to use the areas of the common elements (including amenities) in the manner ordinarily intended, such easements and licenses to exist in perpetuity. Provided, further, the Co-Owners shall, as part of the Common Expenses and in order to preserve such easements and licenses, pay their pro rata share of upkeep, maintenance and repair of such common elements so used based upon a fair and equitable system.

Developer, its successors and assigns in interest as developer may retain some or all of the recreational facilities included within the Resort Facilities in trust, provided, however, Declarant reserves the right to convey the same to The Myrtle Beach Resort Homeowners Association (as hereinafter defined) upon the terms hereinafter described.

Declarant, its successors and assigns in interest as developer, and/or Present Owner may elect, in its sole discretion, to include portions or all of the additional property shown in the Exhibits within the Resort and construct and develop additional Resort Facilities upon which the Council of Co-Owners, all present and future Co-Owners, all Occupants of the Apartments and their respective successors and assigns, shall be granted non-exclusive easements and licenses of use to use in common with all others whom Declarant shall designate. Said easements and licenses to use shall be established by one or more easements and licenses which shall be recorded in the public records of Horry County, South Carolina, and which shall require the Council of Co-Owners and the Co-Owners thereof to bear their pro rata share of the costs associated with such facilities (including, but not limited to, insurance, taxes, maintenance, upkeep, repair and replacement). Such shall be recorded as an amendment to this Master Deed in the public records of Horry County, South Carolina. Such additional real property and/or Resort Facilities shall become a part of the Resort and all costs and expenses in connection therewith or associated therewith as determined and set by Declarant, its successors and assigns in interest as Developer (and/or Present Owner) or its designee shall, as aforesaid, become part of the Resort Expenses to be paid pro rata by the Council of Co-Owners and the Co-Owners thereof as an item of Common Expense (together with others having like rights of use) as is herein described.

Declarant, its successors and assigns in interest as developer of the Resort, and/or Present Owner, may, in its sole discretion, declare certain other areas upon inclusion within the Resort as natural marsh and forest areas and may, within such areas, create plantings, lagoons or such other features as it

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determines in its sole discretion add to the esthetic qualities of such areas, which areas shall, upon so declaring, be held by Declarant, its successors and assigns (or Present Owner) (which declaration(s) shall be filed in the public records of Horry County, South Carolina) in trust as areas of natural beauty and scenery for use and enjoyment of the Co-Owners and their occupants, such other owners of commercial and dwelling units, homes and apartments and occupants within the Resort and such third parties as Declarant, its successors and assigns (or Present Owner) may select in its sole discretion (which shall become, upon so declaring, part of the Resort Facilities and the pro rata share of upkeep, maintenance, management and replacement of such areas as so set shall be part of the Resort Expenses to be paid pro rata by the Council of Co-Owners and the Co-Owners thereof as an item of Common Expense as is herein described).

Declarant further reserves unto itself, its successors and assigns, and Present Owner, the right to grant easements for ingress and egress across appropriate areas of the Submitted Property to the Atlantic Ocean and its beach (including that portion of the beach of the Atlantic Ocean which is included with the Submitted Property) and easements and licenses of use to use the beach area of the Submitted Property for uses consistent with its being a natural beach and dune area and provided such does not unduly interfere with the activities and rights of the Co-Owners of the Regime.

The Co-Owners shall each be members of The Myrtle Beach Resort Homeowners Association and as such shall pay pro rata with the Owners of other Dwelling Apartments and other interests in real property within the Resort who shall be given similar easements and licenses of use all costs of maintenance, upkeep and repair arising out of or associated with the Resort Facilities as such exist from time to time; such costs to include, but not be limited to, providing management supervision and control thereof, property taxes, insurance, maintenance and reserve funds and all other costs connected or associated therewith (herein collectively "Resort Expenses"). Such Resort Expenses shall be included as an item of Common Expense and paid over by the Council of Co-Owners to Declarant, its successors or assigns in interest as developer of the Resort (or Present Owner, as the case may be), or its designee, upon such schedule (but not more frequently than once a month) and in advance for use for such purposes, provided the Board or the Council of Co-Owners shall be entitled to an annual accounting of the use of all Resort Expenses by Declarant or its designee. In the event of non-payment of Resort Expenses, Declarant, or if appropriate its designee, shall be subrogated to the rights of the Council of Co-Owners as to the individual Co-Owners to collect the Resort Expenses from the Co-Owners, including being subrogated to all lien rights for non-payment of Common Expenses as described in this Master Deed.

Declarant (its successors or assigns or Present Owner, as the case may be) or its designee shall establish rules and regulations for use of the Resort Facilities and the Board of Directors shall appoint a Resort Facilities committee and, if appropriate, one member to serve on the Board of Directors of the Homeowners (as hereinafter defined) to assist in formulating and enforcing the same, it being the intent that such rules and regulations shall encourage safety, use and enjoyment of the Resort Facilities, provided Declarant makes no warranties whatsoever that said rules and regulations will be inclusive or allow absolute safety of use.

Declarant (its successors or assigns in interest as developer of the Resort or Present Owner, as the case may be) may, in its sole discretion, establish The Myrtle Beach Resort Homeowners Association (herein "Homeowners"), which shall be an association (which may, in Declarant's sole discretion, be incorporated as a corporation or as a corporation not for profit

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or unincorporated) to operate, manage, control, care for the Resort and, if conveyed to it, own the Resort Facilities and all Co-Owners shall, in addition to being Co-Owners, automatically become members thereof. In addition, the Board of Directors shall elect one of its members who shall serve as a member of the Board of Directors of Homeowners. The Board of Directors of Homeowners shall be comprised of at least one representative from this Regime, at least one representative from Myrtle Beach Resort Horizontal Property Regime and at least one representative from each other development within the Resort as Declarant as developer of the Resort shall designate. In the event of such establishment, Declarant shall designate Homeowners as its designee to carry out the duties and responsibilities and have the powers granted in this Article to Declarant's designee.

In addition, Declarant (its successors or assigns in interest as developer of the Resort or Present Owner as the case may be) may, in its sole discretion, at any time convey to the Regime and its Co-Owners and/or any other horizontal property regimes or other multi-family developments within the Resort or which Declarant has developed in proximity to the Resort having like non-exclusive easements and licenses of use, or to Homeowners, all or any portion of the Resort Facilities or any interests therein, provided such shall be for no consideration other than the actual cost of such improvement or facility. Declarant shall have no liability whatsoever for any taxes, assessments, utility charges or other matters whatsoever arising out of the ownership of any Resort Facilities so conveyed and such conveyance shall be subject to Declarant (its successors or assigns in interest as developer of the Resort or Present Owner, as the case may be) retaining unto itself and the right to grant to such third parties as it may designate easements and licenses for use consistent with the conveyed facilities and contract(s) for management thereof and all matters and rights theretofore of record. In such event, such documents shall be considered an amendment to this Master Deed and execution only by the Declarant (or its successors or assigns in interest as developer of the Resort or Present Owner as the case may be), shall be sufficient and no execution, concurrence or consent shall be required of the Council of Co-Owners, any Co-Owner, any Mortgagee or any third party whatsoever.

ARTICLE XIX
Miscellaneous Provisions

1. The Co-Owners of the respective Apartments shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding their respective Apartments nor shall any Co-Owner be deemed to own pipes, wires, conduits or other public utility lines running through said respective Apartments which are utilized for or serve more than one Apartment, which items are hereby made a part of the Common Elements. Each Co-Owner shall, however, be deemed to own the walls and partitions which are contained in said Co-Owner's Apartment and shall also be deemed to own the interior decorated and finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc.; however, all load-bearing walls, and where applicable the floor between the first or ground floor and second floor located within a Apartment are part of the Common Elements to the unfinished surface of said walls and/or floors.

2. No Co-Owner may exempt himself from liability for his contribution toward the Common Expenses or other assessments duly made by the Association and/or the Board of Directors by waiver of the use or enjoyment of any of the Common Elements or the recreational facilities of the Regime or by abandonment of his Apartment.

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**OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA**

**ADVANCE SHEET NO. 4
January 27, 2016
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard T. White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider; William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008, and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC; Harry L. Belk and Jan C. Belk; Dennis E. Barrett and Wilma J. Barrett; First Family Properties, Inc., Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and

Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H. Heaton; Robert N. Kelly; H. S. Keeter and Sandra C. Keeter; Brian R. Nisbet Trust Agreement dated November 16, 1998 and Mary M. Nisbet Trustee of the Mary M. Nisbet Trust Agreement dated November 16, 1998, Dorothy Jean Foster; Captains Quarters D-24 Association of Owners, Inc., Michael H. Sanders and Rebecca H. Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serro, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P. McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, Riggs Ventures, LLC, and SGS Beach Partners, LLC; Morgan J. Mann and Angela M. Mann; Michael Cameron Foster, Sr. and Laura Lee Foster; Captains Quarters Unit D-31 Association of Multiple Ownerships, Inc., Evelyn Gail Earnest, Francis G. Thomson and Arleen S. Thomson, Robert W. Dalton, Red Oak Limited Partnership, William R. McKeown and Margaret A. McKeown, Norman K. Moon and Barbara W. Moon, David T. McGill and Carol G. McGill, Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, LLC; Georgia M. Pruitt and Howard M. Pruitt, Jr.; Jean T. Blaylock; William C. Covington, Jr. and Donna C. Covington; Litchfield Captain's Quarters, LLC; James A. Schubert and Laraine C. Schubert; Daniel P. Duvall and Mary Lynn Duvall; Victor A. Medina and Melinda Leigh Medina; Judy P. Hamer; Boyce F. Miler and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. and Susan A. Wingo, Melanie S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith

and Margaret H. Smith, Jason A. Underwood, Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame, Petitioners,

v.

Shipyard Village Council of Co-Owners, Inc.,
Respondent.

Shipyard Village Council of Co-Owners, Inc., Third-Party Plaintiff,

v.

Cincinnati Insurance Company, Travelers Insurance Company, Companion Property & Casualty Insurance Company, Philadelphia Insurance Company, Zurich American Insurance Company, American Guarantee and Liability Ins. Co., St. Paul Fire and Marine Insurance Company, and Illinois National Insurance Company, Third-Party Defendants.

Appellate Case No. 2014-002394

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Georgetown County
Larry B. Hyman, Jr., Circuit Court Judge

Opinion No. 27603
Heard November 3, 2015 – Filed January 27, 2016

AFFIRMED AS MODIFIED

Howell V. Bellamy, Jr., and Howell V. Bellamy, III, both of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, PA, of Myrtle Beach, for Petitioners.

Carlyle Richardson Cromer and R. Wayne Byrd, both of Turner Padgett Graham & Laney, PA, of Myrtle Beach, for Respondents.

Acting Justice Toal: The underlying dispute in this case involves the repair of faulty windows and sliding glass doors in a condominium development, Shipyard Village Horizontal Property Regime (Shipyard Village), in Pawleys Island, South Carolina. Fifty co-owners of units in Buildings C & D of the development (Petitioners) appeal the court of appeals' decision reversing the trial court's finding that the business judgment rule does not apply to the conduct of the Board of Directors (the Board) of the Shipyard Village Council of Co-Owners, Inc. (the Council), and the trial court's decision granting Petitioners partial summary judgment on the issue of breach of the Board's duty to investigate. *See Fisher v. Shipyard Village Council of Co-Owners, Inc.*, 409 S.C. 164, 760 S.E.2d 121 (Ct. App. 2014). We affirm the court of appeals' decision as modified.

FACTS/PROCEDURAL BACKGROUND

Shipyard Village was established in 1982 pursuant to the recording of its Master Deed. Bylaws were promulgated to govern the Board's administration of the Council. Phase I of Shipyard Village was completed in 1982, and consists of Buildings A and B, each of which contains forty units. Phase II was completed in 1998, and consists of Buildings C and D, each of which contains thirty units.

Evidence in the record indicates that water leaks around the windows and sliding glass doors in various units in Buildings A and B date back to 1983. Moreover—although there is conflicting evidence as to the cause—the evidence indicates that the Board knew about the leaks for years, and that the co-owners of

units with leaks failed to maintain and repair their units as required by the Master Deed and Bylaws.

Section 3.6(c) of the Master Deed provides that a unit's balcony doors, including the doors' "frames, casings, hinges, handles, and other fixtures" are part of each unit. Under Section 3.7(a) of the Master Deed, the roofs and stucco exteriors of the units are common elements.

Sections 6.1 and 6.2 of the Bylaws provide that the property manager of Shipyard Village or the Board is responsible for the maintenance, repair, and replacement of the "common elements," and co-owners are responsible for the maintenance and repair of their own units. However, section 6.3 of the Bylaws provides:

[I]f a co-owner fails to perform the maintenance required of him by [the Bylaws], and such failure creates or permits a condition which is hazardous to life, health, or property, or which unreasonably interferes with the rights of another [c]o-owner, or which substantially detracts from the value or appearance of the Regime Property, the Board [] shall, after giving such [c]o-owner reasonable notice and opportunity to perform such maintenance, cause such maintenance to be performed and charge all reasonable expense of so doing to such [c]o-owner by an Individual Assessment.

Section 6.4 of the Bylaws further states:

The expenses of all maintenance, repair, and replacement provided by the Manager or the Board . . . shall be Common Expenses, except that when such expenses are not fully reimbursed by insurance proceeds and when they are necessitated by (1) the failure of a [c]o-owner to perform the maintenance required by these Bylaws or by any lawful Regulation or (2) the willful act, neglect, or abuse of a [c]o-owner, they shall be charged to such [c]o-owner as an Individual Assessment.

Similar to the Bylaws, Section 5.6 of the Master Deed provides that maintenance, repair, and replacement of the common elements are the Board's responsibility, and that the expenses incurred for such purposes shall be assessed as common expenses except in the case of the negligence of a co-owner.

At a board meeting on June 15, 1999, the Board discussed the responsibility for waterproofing the units' balcony thresholds (the area underneath the sliding glass doors) and window frames pursuant to the Master Deed. The Board moved to notify all co-owners that they were responsible for waterproofing their balcony thresholds and window frames, and subsequently mailed such notice to the co-owners on August 11, 1999.

A management report dated August 23, 2002, referenced the "many calls" the Board was receiving about leaking windows in Buildings A and B. The report noted that "[t]his is the owners' responsibility and [is] very difficult for some to try to deal with getting the work done," and further stated that "[w]e are in the process of inspecting the windows and formulating a plan/price."

At some point in 2002, the Board hired McGee Consulting Association (MCA) to investigate and perform testing on the windows of Buildings A and B. The minutes from the September 27, 2002, special meeting of the Board indicate that MCA conducted water testing on some of the windows. The water testing confirmed positive water intrusion, which had caused some of the wood framing to deteriorate. In response to this information, the Council's attorney informed the Board that "there were safety issues with respect to the durability of the windows," and recommended the Board pursue legal action against the responsible parties.¹

In response to co-owners' complaints, the Board repeatedly informed co-owners that under the Master Deed, the leaks in windows and sliding doors were their responsibility. For example, a letter dated March 28, 2003—written on behalf of the Board by Kelli Diehl, the property manager of Shipyard Village, to a co-owner in Building A—stated, in pertinent part: "It has been determined that during a hard rain, water flows under the threshold of your sliding glass door and leaks onto the unit below. The sliding doors are the owners' responsibility to maintain and thus, we are requesting that you take action to correct this problem." Furthermore, Dr. Leon Jennings—the president of the Board at that time—sent a letter informing co-owners that for various reasons, the Board did not endorse a lawsuit on behalf of the Board regarding the faulty windows. Instead, the Board

¹ At a special meeting of the Board that occurred on February 21, 2002, an engineer's report "stressed that problems from water intrusion are time related and tend to compound."

"advise[d] all owners to have their windows inspected and repaired if needed."

In 2003, the Board hired Keystone Construction (Keystone) to study leaks that were manifesting themselves at some of the windows. Keystone concluded that the water was leaking through the stucco—not the windows. Keystone also found that non-existent window flashing² was part of the problem.

In 2004, after reporting water intrusion problems, Ben and Katie Morrow, co-owners of a unit in Building B, replaced their windows. However, even after replacing their windows, they continued to experience water intrusion problems and engaged an engineer, Donald Manning, who identified stucco cracks as the source of the water intrusion.³ Ultimately, Manning confirmed that Building B was "sick and about to become cancerous," that the inside intrusion of moisture was "severe," and that some co-owners were in "denial of this ever-increasing problem."

At the Board meeting on February 17, 2006, Jennings discussed the stucco problems. Jennings explained that repairing individual windows would not solve leak issues, but rather, the leakage occurred at the window/stucco interface—a problem which required vertical stacks of windows be removed, flashed, and replaced at the same time. According to Jennings, stucco problems around a window were the Board's responsibility to repair, but if stucco was damaged during the installation of a window, the co-owner was responsible for repairing the stucco. In essence, Jennings acknowledged that it was "difficult and impractical" for owners to try to replace the windows.

A proposal from Pro-Tec Finishes, Inc., estimated a cost of approximately \$2,400,000 to replace the windows in Buildings A and B. At the annual members' meeting on April 15, 2006, the Board attempted to amend the Bylaws to designate the windows and sliding glass doors as common elements (via the "window amendment")—and therefore, the responsibility of the Board. However, the

² Window flashing is not the responsibility of co-owners under section 3.6(c) of the Master Deed.

³ Similarly, Shipyard Village's new site maintenance supervisor, Richard Bennett, determined that sealant joint failures at the window-stucco interface, as well as cracked stucco, could be causing the problem.

amendment failed to receive the required two-thirds affirmative vote needed to pass. A motion was made, and carried unanimously, to leave the vote open for thirty days to allow those co-owners who did not vote at the meeting, to vote. However, upon subsequent discussions with its attorney, the Board decided not to leave the vote open.

Instead, on April 24, 2006, the Board sent a letter to co-owners stating that because the first vote on the window amendment did not pass, the Board "decided to start the amendment process over." Therefore, along with that letter, the Board mailed out a new proxy card to all co-owners, seeking the co-owners' approval of the window amendment, and instructing the co-owners to return the proxy card by mail or fax.⁴

On July 6, 2006, the Board sent a letter to co-owners, stating that the window amendment had passed. The letter did not address the voting procedure used to adopt the window amendment. In fact, the recorded amendment itself misrepresents the procedure, providing that "a Special Meeting was held on April 15, 2006 for the purpose of voting on this Amendment to the Master Deed."⁵ Further, the window amendment did not explicitly make the sliding glass doors a common element.

In 2007, the Board hired Kenneth G. Schneider, Jr., who identified an "open joint" directly under the sliding glass doors' threshold between adjoining hollow core slabs of the balcony and unit, which allowed water to leak into the unit below. On September 18, 2007, Diehl e-mailed the Board regarding window leaks in Buildings A and B. The e-mail states, in pertinent part:

Please understand that many, many of these units were leaking

⁴ Section 1.3 of the Bylaws, which declares that votes may only be cast at meetings, and Section 1.5 of the Bylaws, which states that "[a]ny action which may be taken by a vote of the unit owners may also be taken by written consent to such action signed by *all* [co-]owners entitled to vote," are the only two voting procedures permitted under the governing documents for amending the Master Deed and Bylaws. (Emphasis added).

⁵ The amendment was actually passed as a result of the proxy vote by mail, about which no meeting was held.

previously and because windows were the owners' responsibility, the issue was thrown back at the owners who most ended up doing nothing, and now that this is the [Board's] responsibility, owners are impatient Most of you were not on the board to remember but I tried to bring this up after I was here for a while and I got my hand slapped big time by Bobby Warner [the maintenance supervisor] and some board members because this was an owner responsibility. Bobby Warner only did cosmetic stucco repairs to these [buildings] for 20+ years and kept pushing back to the owners—who clearly could not handle and needed help.

On April 19, 2008, the Board reported at the annual members meeting that Buildings A and B required extensive repairs, and that all co-owners' windows and sliding glass doors needed to be removed and replaced—work which would cost \$12,000,000 to \$13,000,000. At the meeting, the Board provided that all co-owners would be responsible for a proposed special assessment to fund the work, if it passed.

Around this time, one of the Board's consultants, HICAPS, gave a presentation to the Board identifying the problems in Buildings A and B. HICAPS identified two primary problems: (1) failures in the structural concrete, including corrosion of the reinforcing steel; and (2) the building envelope was not "weather tight." Another structural inspection revealed numerous failures in Buildings A and B: roof failure, façade failure, edge beam failure, soffit failure, concrete failure, expansion joint failure, horizontal surface failure, HVAC anchorage failure, and poor to non-existent flashing in the windows and doors.

In May 2008, co-owners who owned units in Buildings C and D hired attorney Jeff King, who sent a letter to the Board asserting that the proposed special assessment was invalid because the window amendment was not properly adopted under the Bylaws, and therefore, the total cost of repair and replacement remained the sole responsibility of the co-owners of Buildings A and B. In January 2009, a majority of co-owners of Buildings C and D brought a lawsuit challenging the validity of the window amendment.

As a result of the lawsuit, the Board called for a re-vote on the window

amendment, and a vote on an additional "sliding glass door amendment"⁶ at a special members meeting held on March 21, 2009. Both votes failed to obtain the required two-thirds affirmative vote to pass.

On July 8, 2009, the Board notified co-owners that the windows and sliding glass doors would be replaced in Buildings A and B, and that the "most efficient way to finance the necessary repairs is through a Special Assessment" and the "more cumbersome alternative called for in the Bylaws would make it necessary for the cost of the repairs to be added to the 2010 and 2011 Operating Fund[, and to] bill all homeowners monthly just like other homeowners['] expenses." The proposed assessment was \$88,398 per unit for Buildings A and B; \$64,868 per unit for three-bedroom units in Buildings C and D; and \$68,471 for four-bedroom units in buildings C and D.

The co-owners voted against the special assessment. Consequently, the Board incorporated the repair costs into the 2010 and 2011 annual operating budgets. Minutes from the November 13, 2009, special meeting of the Board provide that the 2010 operational budget was increased to fund approximately half of the repairs and reconstruction of Buildings A and B. However, the Board never submitted the 2010 operational budget to the co-owners for their review and amendment, as required by the Bylaws.⁷ The balance of the repairs and reconstruction were to be funded in the 2011 operational budget.

On October 7, 2009, Petitioners filed a new lawsuit, alleging negligence and gross negligence, negligent/gross negligent misrepresentation, breach of fiduciary duty, and breach of the Master Deed and Bylaws. This suit was consolidated with the prior lawsuit brought by co-owners of Buildings C and D.

In May 2012, Petitioners moved for summary judgment on their negligence

⁶ Similar to the window amendment, this amendment would have made each unit's sliding glass door a common element.

⁷ Section 5.2 of the Bylaws provides that the Board shall "prepare, adopt and present, or cause to be prepared and presented, to the [c]o-owners at their annual meeting an annual budget" for the next fiscal year. Further, Section 5.3 of the Bylaws states that the budget, as adopted by the Board, may be amended upon the motion and affirmative vote of co-owners holding two-thirds of the percentage interest in the common elements.

and breach of fiduciary duty causes of action. Following a hearing, the trial court granted Petitioners' motion for summary judgment in part for the negligence claim on the issues of duty and breach. The trial court found that the Bylaws and Master Deed imposed affirmative duties on the Board to enforce, investigate, and correct known violations of the Master Deed and the Bylaws, and to investigate when presented with evidence showing that an individual co-owner's neglect in maintaining his or her unit resulted in damage to the common elements. The trial court found that the Board breached its duty to investigate the substantial evidence in the record that reasonably showed that co-owners neglected the maintenance of their leaking windows and sliding glass doors.

Ultimately, the trial court found that the Board was precluded from asserting protection under the business judgment rule for two reasons. First, the trial court found that "the standards of [the Board] are controlled by three specific documents"—Shipyard Village's Master Deed, its Bylaws, and the South Carolina Horizontal Property Act⁸ (the Act)—"and not the general corporate standard of the business judgment rule." Second, the trial court found that the Board was precluded from asserting the business judgment rule based on its *ultra vires* conduct, as well as its lack of good faith and failure to exercise due care or reasonable care in discharging its duties under the Bylaws. Specifically, the trial court cited the Board's "lack of good faith in continuing to enforce the 2006 window amendment . . . when it admittedly knew the amendment was invalid and [un]enforceable in June 2008." Further, the trial court found that the Board's failure to place its adopted annual budgets on the agenda for presentation to the co-owners at the 2009 and 2010 annual members' meetings, as well as the Board's "invalid assessment" of costs, were *ultra vires* acts.

The court of appeals affirmed the trial court's grant of summary judgment on the existence of a duty to investigate.⁹ *Fisher*, 409 S.C. at 182, 760 S.E.2d at 131. However, the court of appeals reversed the trial court's finding on the business judgment rule and its decision to grant summary judgment on the issue of breach, and remanded the case for trial. *Id.*

This Court granted Petitioner's petition for writ of certiorari to review the

⁸ S.C. Code Ann. §§ 27-31-10 to -440 (2007 & Supp. 2014).

⁹ Neither party appeals the court of appeals' decision on this issue.

court of appeals' opinion.

ISSUES PRESENTED

- I. Whether the court of appeals erred in reversing the trial court's finding that the business judgment rule does not apply to the Board's conduct?
- II. Whether the court of appeals erred in reversing the trial court's decision granting Petitioners summary judgment on the issue of whether the Board breached its duty to investigate?

STANDARD OF REVIEW

On review of an order granting summary judgment, the appellate court applies the same standard as that used by the trial court pursuant to Rule 56(c), SCRCP. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Turner*, 392 S.C. at 766, 708 S.E.2d at 769. In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment. *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011) (citation omitted). In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

LAW/ANALYSIS

I. Business Judgment Rule

Petitioners argue the court of appeals erred in reversing the trial court's decision that Respondent is precluded from asserting the protection of the business judgment rule. We disagree.

In South Carolina, courts apply the business judgment rule to protect corporate directors. "Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motives and in good faith." *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 599, 538 S.E.2d 15, 25 (Ct. App. 2000) (quoting *Dockside Ass'n, v. Detyens*, 291 S.C. 214, 217, 352 S.E.2d 714, 716 (Ct. App. 1987)); see also *Dockside Ass'n, v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) ("We now uphold the [c]ourt of [a]ppeals' determination that the business judgment rule precludes judicial review of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct."). The business judgment rule applies to disputes between directors of a homeowners' association and aggrieved homeowners, and as the court of appeals has stated, "the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." *Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993) (citing 4 S.C. Juris. *Condominiums* § 42 (1991)).

A corporation may exercise only those powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto. *Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987) (citing *Lovering v. Seabrook Island Prop. Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 862 (Ct. App. 1986), *aff'd as modified*, 291 S.C. 201, 352 S.E.2d 707 (1987)). A corporation's actions taken within the scope of the powers granted it are considered *intra vires* acts; acts beyond the scope of its powers, however, are *ultra vires* acts. See *id.* The business judgment rule applies to *intra vires* acts of the corporation, but not to *ultra vires* acts. *Id.* In other words, while the business judgment rule protects a corporation's exercise of its best judgment when deciding between viable options in a given business-related situation, the business judgment rule is not a cloak that protects a corporation from a violation of its own bylaws.

Here, the court of appeals held that the trial court erred in finding the business judgment rule did not apply because the Master Deed, Bylaws, and the Act "applied instead." *Fisher*, 409 S.C. at 180, 760 S.E.2d at 130. Similarly, Respondent contends that the "trial court concluded that because the [] Act, the Master Deed, and the Bylaws all governed [the Board's] conduct, the business judgment rule offers . . . no protection." To the extent that the trial court found that

Shipyards Village's governing documents and the business judgment rule are mutually exclusive, we agree that the trial court erred. While any *ultra vires* action of the Board, as well as any failure of the Board to comply with its affirmative duties under the governing documents, are not subject to the business judgment rule, the mere existence of the Master Deed, Bylaws, and the Act does not preclude the application of the business judgment rule.

The court of appeals also found that the trial court "erred in finding that because the [Board] committed two acts it found to be *ultra vires*, the business [judgment] rule did not apply to any of its actions." *Id.* at 180–81, 760 S.E.2d at 130. We agree with the court of appeals. Even if the Board did commit *ultra vires* acts, those acts would not preclude the Board from asserting the protection of the business judgment rule for *intra vires* acts, made in good faith. On that note, we emphasize that because the business judgment rule only applies where a corporation acts within its authority, without corrupt motives, and in good faith, *see Kuznik*, 342 S.C. at 599, 538 S.E.2d at 25, the court of appeals incorrectly stated that "any investigation" conducted by the Board pursuant to its duty to investigate "would be looked at under the business judgment rule to determine if the [Board] met its duty." *See Fisher*, 409 S.C. at 181, 760 S.E.2d at 130.

Therefore, we affirm as modified the court of appeals' reversal of the trial court's ruling on the business judgment rule. The trial court should permit Respondent to assert the business judgment rule as a defense at trial. Nevertheless, the Board will not be entitled to the protection of the business judgment rule if the jury finds that the Board acted beyond the scope of its authority, or acted with corrupt motives or in bad faith. Therefore, ultimately, the jury must decide whether the Board violated the requirements of the Master Deed and Bylaws, which of the Board's actions were *intra vires* and which were *ultra vires*, and the impact of that breakdown on Petitioners' negligence claim.

II. Summary Judgment on Breach of Duty

Petitioners argue the court of appeals erred in reversing the trial court's decision to grant them summary judgment on the issue of breach of the duty to investigate. Respondent, on the other hand, contends that the record contains at least a mere scintilla of evidence that Respondent did not breach its duty to investigate, and thus, the Court should uphold the court of appeals' decision. We agree with Respondent.

The issue of negligence is a mixed question of law and fact. *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011) (citing *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007)). A court must first determine, as a matter of law, whether the law recognizes a particular duty. *Id.* (citing *Moore*, 373 S.C. at 221, 644 S.E.2d at 746). If a duty exists, the jury then determines whether the defendant breached the duty, resulting in damages. *Moore*, 373 S.C. at 221, 644 S.E.2d at 746.

Here, the trial court ruled:

[The Board] had a duty to investigate[,] when presented with evidence which would show or reasonably show that an individual [co-owner's] neglect in maintaining his or her [u]nit has resulted in damage to the common elements[,] that an investigation is required by the Bylaws. That is the [Council] through its Board, upon receiving such information, would be required to initiate some investigation to determine whether or not it would be appropriate to individually assess the defaulting [co-owner] for the damage

The trial court then found as a matter of law that the Board breached its duty when it failed to determine: (1) whether the water intrusion damage to the common elements of Buildings A and B was the fault of a particular co-owner, or group of co-owners; and (2) whether other non-defaulting co-owners were entitled to a rebate by individual assessment from the A and B co-owners who caused the damage.

We find evidence in the record that could support the conclusion that the Board indeed breached its duty to investigate. For example, there is evidence that the Board had actual notice of the leaks occurring in Buildings A and B since 1983, that the co-owners in those buildings were neglecting the problems, and that the co-owners' neglect to repair their own windows and doors caused damage to the common elements. Further, as Petitioners point out, Respondent acknowledged on the record that it never asked any qualified expert to allocate the damages to the common elements attributable to the leaking windows and sliding glass doors and the alleged failure of the co-owners to maintain those windows and sliding glass doors.

However, when viewed in the light most favorable to Respondent, there is at least a scintilla of evidence in the record to indicate an issue of material fact as to whether the Board breached its duty to investigate, as set forth by the trial court. *See Bass*, 395 S.C. at 134, 716 S.E.2d at 912; *Fleming*, 350 S.C. at 493–94, 567 S.E.2d at 860. In the years preceding the initiation of this lawsuit, the Board hired numerous engineers and consultants to determine the cause of the water intrusion. In addition to citing leaks around the windows and doors, these engineers and consultants' reports attributed the water intrusion problems to the common elements—including the stucco and various components of the building envelope system. For instance, Keystone concluded that the water was leaking through the stucco, and that non-existent window flashing was part of the problem. Moreover, Schneider determined that the water was leaking at the "stacks" of the units, while HICAPS informed the Board that the building envelopes were not water tight and allowed water to enter the structures. In sum, there is evidence in the record to support a conclusion that the water leaks occurred due to water intrusion through the common elements, and thus, the Board could have made an informed decision not to apportion the costs of the damage to the co-owners. As a result, the trial court should not have decided the question of whether the Board breached its duty to investigate as a matter of law.

Therefore, we hold that the trial court erred in granting Petitioners' motion for summary judgment, as the jury should have decided whether the Board breached its duty to investigate. Accordingly, we affirm the court of appeals' decision on this issue.

CONCLUSION

Based on the foregoing, we affirm as modified the court of appeals' decision and remand the case for trial.

AFFIRMED AS MODIFIED.

PLEICONES, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.

EXHIBIT 10

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EXHIBIT 10

**MYRTLE BEACH RESORT OWNERS ASSOCIATION
PERCENTAGE OF INTEREST
PER THE RECORDED CCRS**

<u>SUB ASSOCIATION</u>	<u>Condos Units</u>	<u>Comm Units</u>	<u>Total Units</u>	<u>Sub-Assn Percentage Interest</u>	<u>Unit Percentage Interest</u>
Five Seasons (FS)	156	5	161	15.9406%	0.0990%
Bldg A (HPR)	251	0	251	24.8515%	0.0990%
Ocean Front Spa (OFS)	267	4	271	26.8317%	0.0990%
Renaissance Tower (RT)	322	5	327	32.3762%	0.0990%
Totals	<u>996</u>	<u>14</u>	<u>1010</u>	<u>100.0000%</u>	

NOTE 1 While the total percentage interest for each Sub-Assn is different the percentage of each unit in the Sub-Assn is exactly the same as in every other Sub-Assn.

**PERCENTAGE INTEREST PER DEFENDANT'S
DEMAND COMPARISON**

<u>Sub-Assn Percentage Interest</u>	<u>Unit Percentage Interest</u>	<u>CCRs Defendants</u>	
		<u>Per Unit Annual Cost</u>	<u>Per Unit Annual Cost</u>
25.0000%	0.1553%	\$99.00	\$155.30
25.0000%	0.0996%	\$99.00	\$99.60
25.0000%	0.0923%	\$99.00	\$92.30
25.0000%	0.0765%	\$99.00	\$76.50
<u>100.0000%</u>			

NOTE 2 Using hypothetical Master Annual Budget of \$1,000 and applying the Unit Percentage per the CCRs and per the Defendant's demand, shows how per unit cost changes to the advantage of the defendants.

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EXHIBIT 10

EXHIBIT 11

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EXHIBIT 11

CONSOLIDATED MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT

EXHIBIT 

SETTLEMENT AGREEMENT

EXHIBIT
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9 pgs.

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EXHIBIT 11

Settlement Agreement

Civil Action Nos.: 2016-CP-26-00673, -00674, -00743, -00744

The following is a Settlement Agreement ("Agreement") between Plaintiffs Jim Perkins, Colleen Franke a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dames, Errol Dos Santos, and Jeffrey Richardson ("Plaintiffs") on the one hand and Defendants The Myrtle Beach Resort Homeowners Association, Inc., ("MBRHOA"), Ocean Front Spa Horizontal Property Regime, Inc. ("OFS"), Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Ken Perkins, Ray Coghill, Ralph Jump, and Wayne Urban ("Defendants") on the other (Plaintiffs and Defendants hereafter referred to as the "Parties") to settle Civil Action Nos.: 2016-CP-26-00673, -00674, -00743, -00744, currently pending on the South Carolina Circuit Court in Horry County ("Settled Actions").

1. For good and valuable consideration, upon full execution and effectuation of this Agreement, in full satisfaction of the Settled Actions, and any other claims or charges Plaintiffs have, claim to have, or may have, against Defendants, including, without limitation, any claim for attorneys' fees or costs, Defendants agree to pay the gross amount of \$85,000.00 (the "Payment") in full satisfaction of any claims, charges or actions Plaintiffs have against Defendants.

- a) Defendants will, thirty (30) business days hereafter, pay to Plaintiffs and Plaintiffs' attorney the total sum of Fifteen Thousand Dollars (\$15,000.00) for the purposes of funding a binding arbitration of a declaratory judgment action to adjudicate whether the gate pass fee currently charged by MBRHOA is authorized under the governing MBRHOA documents and applicable law.
- b) Defendants will, thirty (30) business days hereafter, pay to The Board of Directors for the Myrtle Beach Resort Horizontal Property Regime ("A Building Board") and the Board of Directors for the Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime, ("Five Seasons Board") the total sum of Fifteen Thousand Dollars (\$15,000.00) for the purposes of defending a binding arbitration of a declaratory judgment action filed by Plaintiffs for the purpose of adjudicating whether the gate pass fee currently charged is authorized under the governing MBRHOA documents and applicable law.
- c) Arbitrator. Defendants will pay to Plaintiff's counsel the sum of \$5,000.00 to be held in trust by his law firm to pay to an arbitrator to resolve the arbitration set forth in the previous two paragraphs. In the event this amount does not fund the arbitration in full, the balance, if any, shall be paid by the attorneys receiving the sums set out in the two previous paragraphs.
- d) Defendants will, thirty (30) business days hereafter, pay "Brittain Law Firm" in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00), as payment for attorneys' fees and costs, such amount not being subject to income or employment tax withholding, but to be reported on a Form 1099

15,000
15,000
5,000
50,000
85,000

2. The Parties hereto recognize that the Defendants do not admit any liability to Plaintiffs, or to anyone else because of, or growing out of, matters set forth in Plaintiffs' Amended Complaints in the Settled Actions. The Parties have agreed to settle any and all claims

MBRHOA, OFSPA, et al pay
① \$15,000 to Plaintiff for purpose of funding binding arbitration of a declaratory judgment action to adjudicate whether gate pass fee currently charged by MBRHOA is authorized under MBRHOA Gov Docs & applicable law
② \$15,000 to BOS of MBRHOA and OFSPA

50,000
15,000
65,000
A

EXHIBIT 11

Plaintiffs have asserted or may have asserted against Defendants in order to avoid further cost and inconvenience in moving forward with a trial.

3. MBRHOA and OFS will use their best efforts to have their respective By-Laws amended to require at least three bids to be received prior to the awarding of any contract which will exceed \$10,000.00 in value.

4. In exchange for and in consideration of the promises set forth in this Agreement, and except for the rights to enforce the provisions of this Agreement, Plaintiffs, their heirs, executors, administrators, legal and personal representatives, successors and assigns, hereby covenant not to sue and fully release and forever discharge Defendants and their respective present and former parents, heirs, assigns, subsidiaries, affiliates, and related entities or corporations, and any of their past and present officers, directors, shareholders, employers, past and present employees, agents, partners, attorneys, heirs, successors, insurers and assigns (the "Released Parties"), from any and all claims, demands, actions, charges, complaints, suits, administrative proceedings, debts, promises, contracts, grievances, and causes of action (hereinafter collectively referred to as "Claims"), in law or in equity, whether known or unknown, which Plaintiffs and their heirs, executors, administrators, agents, distributees, beneficiaries, successors in interest and assignees may have by reason of any matter, cause or thing whatsoever from the beginning of the world to only the day of the date of Plaintiffs' execution of this Agreement, including, but not limited to, any and all claims which were actually asserted or might have been asserted by Plaintiffs in the Settled Actions. Plaintiffs agree never to file a lawsuit against Defendants based on any reason contained in this Agreement. The Release does not purport to release any claims that the law does not permit to be released.

5. Within 15 days of receipt of the Payment, Plaintiffs' counsel shall file a stipulation of dismissal with prejudice in each of the Settled Actions.

6. Plaintiffs further acknowledge and agree that this Agreement extends to all claims of every kind and nature whatsoever, known or unknown, suspected or unsuspected, and Plaintiffs acknowledges they may hereafter discover facts in addition to or different from those which they know or believe to be true with respect to the subject matter of this Agreement, but it is their intention to hereby fully and finally settle and release all such matters as well and, in furtherance of that intention, the foregoing Release shall remain in effect as a full and complete release notwithstanding the discovery or existence of such additional or different facts.

7. Plaintiffs agree that they will not make any statements, oral or written, which they know or reasonably should know to be a disparaging or negative comment about Defendants or their officers, directors, employees and agents, or otherwise detrimental to the reputation or goodwill of Defendants, and shall refrain from suggesting to anyone else that such disparaging, negative or detrimental comment be made, unless required by law. Defendants agree that they will not make any statements, oral or written, which they know or reasonably should know to be a disparaging or negative comment about Plaintiffs or their officers, directors, employees and agents, or otherwise detrimental to the reputation or goodwill of Plaintiffs, and shall refrain from suggesting to anyone else that such disparaging, negative or detrimental comment be made, unless required by law.

EXHIBIT 11

8. It is understood and agreed that Defendants expressly rely upon the promises, representations, and warranties made by Plaintiffs in this Agreement; that any breach of such promises, representations, and warranties would constitute a material breach of this Agreement; and that in the event of any such breach, Defendants shall be entitled to any and all of the following relief: (a) the immediate repayment to Defendants of the full Settlement Amount hereunder (b) the indemnification and hold harmless protection set forth above; (c) specific enforcement of all promises and undertakings made by Plaintiffs hereunder; and (d) all other relief and damages available at law or in equity.

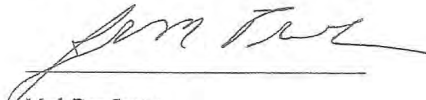
Agreed to this 1st Day of May, 2017.

Plaintiffs

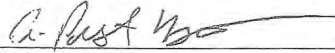
Jim Perkins



Colleen Franke a/k/a Colleen Franke Perkins

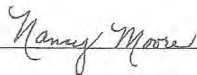

_____, Attorney in MDS

Mark Dos Santos

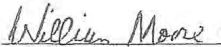


By his Attorney

Nancy Moore



William Moore

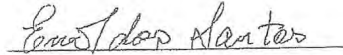


Steven Dame



EXHIBIT 11

Errol Dos Santos



Jeffrey Richardson



By his Attorney


Defendants

The Myrtle Beach Resort Homeowners Association, Inc., ("MBRHOA")



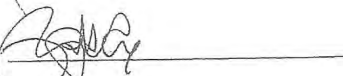
By its Attorney

Ocean Front Spa Horizontal Property Regime, Inc. ("OFS"),



By its Attorney

Phil Cox



Bill Cameron



By his Attorney

Stanley Jordan



By his Attorney

Walter Jordan

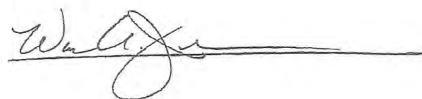


EXHIBIT 11

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) 15TH JUDICIAL CIRCUIT

Jim Perkins, Colleen Franke, a/k/a)
Colleen Franke Perkins, Mark Dos Santos,)
Nancy Moore, William Moore, Steven)
Dame, Errol Dos Santos, and)
Jeffrey Richardson, individually in their)
capacity as derivative shareholders of Ocean)
Front Spa Horizontal Property Regime, Inc.,)

Plaintiffs,)

v.)

Civil Action No.: 2016-CP-26-00744

Ocean Front Spa Horizontal Property)
Regime, Inc., Walter Jordan, Ralph Jump,)
Ray Coghill, John Doe past board)
directors of Ocean Front Spa Horizontal)
Property Regime, Inc., The Myrtle Beach)
Resort Homeowners Association, Inc.,)
Phil Cox, Bill Cameron, Stanley Jordan,)
Wayne Urban, Ken Perkins, John Doe past)
board directors of The Myrtle Beach)
Resort Homeowners Association, Inc.,)
and K.A. Diehl and Associates, Inc.,)

Defendants.)

ORDER DENYING PLAINTIFFS' MOTIONS TO RECONSIDER

THIS MATTER IS BEFORE THE COURT upon the Motions and Amended Motions of the Plaintiffs in each of the above-captioned cases (C.A. Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-00743, and 2016-CP-26-00744) (collectively, the "Actions"). Plaintiffs move for reconsideration of the Court's September 21, 2017, Order Granting Defendants' Motion to Enforce Settlement Agreement.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) 15th JUDICIAL CIRCUIT

Jim Perkins, Colleen Franke, a/k/a)
Colleen Franke Perkins, Mark Dos Santos,)
Nancy Moore, William Moore, Steven)
Dame, and Errol Dos Santos, and)
Jeffrey Richardson, individually in their)
capacity as derivative shareholders,)

Plaintiffs,)

v.)

K.A. Diehl and Associates, Inc., The)
Myrtle Beach Resort Homeowners)
Association, Inc., Phil Cox, Bill Cameron,)
Stanley Jordan, Wayne Urban, Walter)
Jordan, Ken Perkins, and John Doe past)
board directors of The Myrtle Beach)
Resort Homeowners Association, Inc.,)

Defendants.)

Civil Action No.: 2016-CP-26-00743

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) 15TH JUDICIAL CIRCUIT

Jim Perkins, Colleen Franke, a/k/a)
Colleen Franke Perkins, Mark Dos Santos,)
Nancy Moore, William Moore, Steven)
Dame, Errol Dos Santos, and)
Jeffrey Richardson, on behalf of)
themselves and all other similarly situated,)

Plaintiffs,)

v.)

Civil Action No.: 2016-CP-26-00674

The Myrtle Beach Resort Homeowners)
Association, Inc., Phil Cox, Bill Cameron,)
Stanley Jordan, Walter Jordan, Wayne)
Urban, Ken Perkins, and John Doe past)
board directors of The Myrtle Beach)
Resort Homeowners Association, Inc.,)

Defendants.)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) 15TH JUDICIAL CIRCUIT

Jim Perkins, Colleen Franke, a/k/a)
Colleen Franke Perkins, Mark Dos Santos,)
Nancy Moore, William Moore, Steven)
Dame, Errol Dos Santos, and)
Jeffrey Richardson, on behalf of)
themselves and all other similarly situated,)

Plaintiffs,)

v.)

Civil Action No.: 2016-CP-26-00673

Ocean Front Spa Horizontal Property)
Regime, Inc., Bill Cameron, Walter Jordan,)
Ralph Jump, Stanley Jordan, Ray Coghill,)
and John Doe past board directors of)
Ocean Front Spa Horizontal Property)
Regime, Inc.,)

Defendants.)

Deny Motion To Reconsider

EXHIBIT 11

EXHIBIT 12

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EXHIBIT 12

EXHIBIT
12

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
K. A. Diehl and Associates, Inc.,)
)
Plaintiff,)
)
vs.)
)
James Perkins, Colleen Franke a/k/a)
Colleen Franke Perkins, Mark Dos)
Santos, Nancy Moore, William Moore,)
Stevén Dame and Errol Dos Santos,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-26-05573

**ORDER GRANTING
PLAINTIFF'S MOTION TO
ENFORCE THE SETTLEMENT
AGREEMENT**

THIS MATTER COMES BEFORE THE COURT upon the Motion of the Plaintiff, K.A. Diehl and Associates, Inc., to enforce the settlement agreement dated May 1, 2017 in the above captioned action ("Settlement Agreement" attached as Exhibit A). The only Defendant that opposes the Motion is Mark dos Santos ("dos Santos").

The Court has reviewed the Settlement Agreement, held a hearing on the Motion, considered dos Santos' opposition to the Motion, and is familiar with the facts, legal issues, and procedural history of this action.

At the hearing, and in his legal memorandum, dos Santos asserted that the Settlement Agreement is unenforceable under SCRCF, Rule 43(k), because he was not present at the mediation and did not read the Settlement Agreement before his attorney signed on his behalf. The Settlement Agreement was signed with dos Santos's name with the statement that it was signed on his behalf with permission. Each of the three attorneys representing dos Santos also signed the Settlement Agreement. No evidence was presented that his permission was lacking or withdrawn. Furthermore, all Parties to this action, with the exception of dos Santos, personally signed the

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EXHIBIT 12

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CIRCUIT COURT

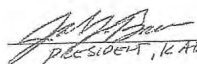
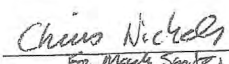
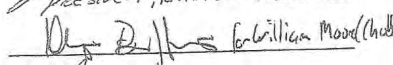


K. A. DIEHL AND ASSOCIATES, INC. V. JAMES PERKINS, ET AL.

Docket No. 2015-CP-26-05573

MEDIATED SETTLEMENT AGREEMENT

As a result of mediation, the parties have agreed as follows:

1. Defendants' insurers shall pay to Plaintiff the total sum of \$100,000.00 as soon as practicable, but no later than 20 days.
2. Ocean Front Spa ("OFS") shall pay Plaintiff \$5,000.00 for property management services through June 1, 2017 after which its property management services shall cease. OFS shall pay an additional \$10,000.00 to Plaintiff by June 10, 2017.
3. The existing maintenance personnel will be paid by OFS through Plaintiff through May 5, 2017, after which the existing maintenance personnel will no longer provide services to OFS.
4. Plaintiff shall transfer financial records and other documentation and assets to OFS by June 1, 2017, as required by South Carolina law and generally accepted property management standards
5. The parties will execute a mutual release releasing the other and the other's employees, agents, directors, members, officers, attorneys, insurers and related parties (but specifically excluding Allegiant as a "related party") from all claims and damages
6. The parties acknowledge that a more comprehensive mutual release will be executed incorporating the terms of this Agreement. The parties intend for this Agreement to be enforceable by the Court, and if any material term is omitted, the Court shall determine what is reasonable rather than voiding this Agreement.
7. All parties authorize their respective attorneys to execute a dismissal with prejudice.
8. The parties shall equally divide the costs of the mediation seven ways.

 PRESIDENT, K. A. DIEHL & ASSOCIATES, INC.	 For Michele Santos
 for William Mood (Hubb)	 For ALL DEFENDANTS / Party 715
 Enrol Das Santos	

OFS Insurer \$ 100,000
OFS HPR 15,000

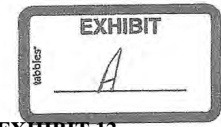


EXHIBIT 12

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 ELECTRONICALLY FILED - 2018 Mar 21 9:33 AM - HORRY - COMMON PLEAS - CASE#2015CP2605573

Nancy Moore
William Frank
Jim Peters
Ernst de la Cruz
Mark Scales w/pen

Christa Skigman w/pen
William Moore
[Signature]
Jeff Madach w/pen

May 1, 2017

MA17-126

2

EXHIBIT 12

EXHIBIT 13

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EXHIBIT 13

EXHIBIT
13

ELECTRONICALLY FILED - 2020 Feb 17 3:41 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. 2014-CP-26- 5228

The Myrtle Beach Resort Homeowners' Association, Inc.; Myrtle Beach Resort Horizontal Property Regime, Inc.; Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc. and The Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc.,)

Plaintiffs,)

vs.)

Renaissance Tower Horizontal Property Regime,)

Defendant.)

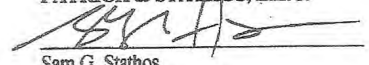
SUMMONS

CLARE HUGHES-WARD
CLERK OF COURT

TO: THE DEFENDANT LISTED ABOVE

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the foregoing action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber, Patrick & Stathos, L.L.C., at its offices at 412 North Poplar Drive, Surfside Beach, South Carolina, 29575, within thirty (30) days after the service hereof upon you, exclusive of the date of such service. If you fail to answer within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in said Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint. Your Answer must be in writing and signed by you or by your attorney, and must state your address or the address of your attorney, if signed by your attorney.

PATRICK & STATHOS, L.L.C.



Sam G. Stathos
Patrick & Stathos, L.L.C.
412 N. Poplar St. (29575)
Post Office Drawer 15669
Surfside Beach, SC 29587
(843) 238-5618 phone
(843) 238-8246 facsimile
sgs@patrickandstathos.com
Attorney for Plaintiff

Dated: July 10, 2015

EXHIBIT 13

July 3, 2015

2015-CP-26-5228

Re: Agreement Regarding Master Association Use of The Renaissance Tower Property for a Playground.

To Whom It May Concern:

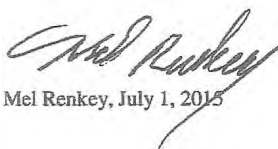
I was employed by K. A. Diehl and Associates, Inc. in May of 2004 to help prepare for a proposal to be Community Manager of the Renaissance Tower Property in The Myrtle Beach Resort. In November of 2005 I was engaged to be the Community Manager for the Master Association and the Ocean Front Spa in addition to the Renaissance Tower and to supervise the Community Manager of the Five Seasons and the A-Building Associations.

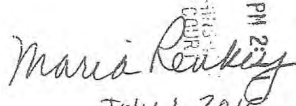
Upon gaining these new responsibilities, I needed to become familiar with the Governing Documents of all of the Associations at Myrtle Beach Resort and with the history of the Master Association. In addition to reading various minutes regarding the creation of the Master Association, I read the contents of a large portfolio entitled Historical Data that was in the credenza of my desk in the Master Association office.

One document in that portfolio, was a long-term agreement regarding the use of land belonging to the Renaissance Tower for a playground that would become the responsibility of the Master Association. This agreement contained a clause establishing a 99-year time frame for the use of that property and a clause assigning responsibility for all maintenance of that property and the playground equipment to the MBR Master Association for the duration of the lease.

When I created the long-term agreement between the Master Association and the Renaissance Tower on January 23, 2011, I used the 99-year provision in that document as well. However, Jeff Richardson, the President of the Renaissance Board, requested that language be included that provided a procedure to be used if the Tower Board felt that the Master Board was not fulfilling its maintenance responsibility and a clause that provided for termination of the agreement should both the Tower and Master Boards mutually agree to do so.

Attached is a copy of the 12/23/2011 agreement.


Mel Renkey, July 1, 2015

2015 DEC 10 PM 2:27
CLERK OF COURT

July 1, 2015

MARIA RENKEY
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 4/03/2020

EXHIBIT 13

check minutes

Background on MBRHOA/RT Land Use Agreement

At the 11/21/10 MBRHOA Board Meeting, Jeff Richardson suggested that there be a formal agreement between the RT and the HOA regarding the use of RT land for the bathrooms and the proposed building addition to the Quarter Deck. Some discussion about the need for such a document took place and ultimately I was charged with preparing such a document for the January 2011 Board Meeting. Since Jeff had brought up the item, I had some discussions with Jeff in the time between the meetings.

I began by asking Jeff what he thought he might want from the Master Board in this regard. He said he would have to think about it and get back to me. The next time we spoke, Jeff suggested that the HOA should maintain all of the land between the Quarter Deck and the Renaissance Tower Building. I told Jeff that the HOA had already agreed to maintain the beach walkways and had paid for the replacement of the decking on the walkways with Trex in 2010. I also said that the HOA did not have anything to do with any of the other property in that area except for the Volley Ball court, which is generally used by patrons of the Quarter Deck. I told Jeff I could not recommend to the HOA to take over maintenance of all of that property without a rationale. I asked Jeff if he were on the Master Board, would he agree to such a document. He said no, but he felt we should ask for it and see what happens. I said I would not recommend that the HOA approve such an agreement. He said what about them maintaining the Volley ball Court. I said I agreed that would be appropriate, because most of the use is from patrons of the bar, it helps the bar be profitable, and the HOA benefits from that in an increased value of the food and beverage contract. We agreed at that point that the agreement would cover the RT granting the HOA the rights to maintain the building on the RT property and the right to make an additional addition to the building on RT property. In exchange the HOA agreed to be responsible for the maintenance of all HOA structures on RT property and to maintain the walkways and the volleyball court, both of which are on RT property. The HOA had previously agreed verbally to take over maintenance of the beach walkways, but had not previously maintained the volleyball court. This agreement reduced to writing the previous verbal agreements regarding HOA use of RT property and maintenance of the RT beach walkways as well as give formal permission for the new addition. This document was e-mailed to 16 MBR Board Members at 9:28 PM and copies were given to all Board Members at the Saturday 1/22/11 Regime Board Meetings so that the regime Boards could prepare to approve the document at the Sunday, 1/23/11 HOA Board Meeting.

The Renaissance Tower Board, which included Jeff Richardson, who asked in the 1/22/11 meeting for some language to be added to ensure that the HOA fulfilled their responsibilities and to provide a process for dispute resolution. It was decided and approved in the RT 1/22/11 meeting to add the words found in paragraph 3. a. of the final agreement to the agreement that was created on 1/21/11. The RT Board and I and spouses were together for several hours at P. J. Chang's on the evening of 1/22/11 and the document was formally changed upon my return home from P.F. Chang's the evening of 1/22/11. The new document was provided to all Board members who attended the 1/23/11 HOA Board meeting, which included at least three of the Tower Board, Capps, Gregor, and Benson. I believe Jeff was there as well but he did not sign in. However, I know he was at the 11/21/10 meeting and he didn't sign in at that meeting.

I read paragraph 3. a. at the 1/23/11 meeting, there was discussion, and the agreement was approved at the meeting. I got tied up at the end of the meeting and did not get the agreement signed before I left. When I returned to my office and was cleaning up the paper work I realized the agreement had not been signed. I called Stanley Jordan and he had not left the property and I asked him if he could stop by the office and sign the agreement. He stated that he would. I attempted to get in touch with Jeff Richardson, but could not and was advised he had already left the Resort. Since the agreement was exactly as approved by the Tower Board and since according to the RT By-Laws, the Vice President is fully empowered to act on behalf of the President, I called Diane Benson, to see if she were still at the Resort. She was and said she would come up to office and sign the agreement on behalf of the Board of Directors of the RT HPR. She did so and the signing was notarized by Darla Donovan. Not once during the entire weekend of 1/21 thru 1/23/11 did Jeff indicate disagreement with the final document.

Stanley Jordan 10/19/11 5:21 PM
Who is this →

EXHIBIT 13

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this 23rd day of January, 2011, by and between the Myrtle Beach Resort Homeowners' Association, Inc. (hereinafter "MBRHOA") and the Renaissance Tower HPR, Inc. (hereinafter "RTHPR):

WITNESSETH

WHEREAS, the MBRHOA is a homeowners' Association consisting of all of the owners of units in four individual horizontal property regimes located within the Myrtle Beach Resort in Horry County, South Carolina; and

WHEREAS the MBRHOA is the owner of the cabana lot on the southeast corner of the Myrtle Beach Resort and a building, a deck, a gazebo, and bathrooms adjacent to the building, and

WHEREAS the MBRHOA has previously erected the bathrooms and a section of the deck on property belonging to the RTHPR in the past and wishes to erect another addition annexed to said bathrooms and the building, and

WHEREAS the RTHPR is a homeowners' Association within the Myrtle Beach Resort and wishes to grant the MBRHOA the right to erect this addition on said RTHPR property, and

WHEREAS the MBRHOA and the RTHPR have determined that it to be in the best interests of the homeowners of both Associations and their guests for the Associations to enter into this agreement;

NOW, THEREFORE, in consideration of the sum of \$5.00 to each of the parties in hand paid, the receipt of which is hereby acknowledged, and in further consideration of mutual covenants and promises contained herein, the parties do hereby agree as follows:

1. The RTHPR hereby grants to the MBRHOA the rights to maintain the existing MBRHOA facilities occupying land owned by the RTHPR and to grant the right for the MBRHOA to build an additional structure adjoining the bathrooms and the southwest corner of the existing building on land owned by the RTHPR.
2. The MBRHOA agrees to continue to be responsible for the maintenance of all MBRHOA structures occupying property owned by RTHPR.
3. The MBRHOA also agrees to maintain the walkways and the Volleyball Court, which are located on RTHPR property adjacent to the cabana lot, the walkways of which provide access from the Renaissance Tower building to the cabana lot and the beach along the Atlantic Ocean.
 - a. If a majority of the RTHPR Board agrees that the MBRHOA is not keeping the structures on RTHPR property or the aforementioned walkways and the Volleyball Court in a state of reasonable repair, the RTHPR shall notify the MBRHOA Board in writing of their decision. The written notice must outline in writing the specific failures to maintain the structures, walkways, or Volleyball Court as perceived by the RTHPR Board. Within 10 days of receipt of such notice, the MBRHOA Board shall commence a dialog with the RTHPR Board in an attempt to understand the position of the RTHPR Board and negotiate an agreement between the two Boards with respect to what actions shall be taken by the MBRHOA and the time frames involved to cure the maintenance failures. If an agreement has not been reached within 30 days of the receipt of the written notice by the MBRHOA Board, the RTHPR Board shall have the option of continuing negotiations or proceeding to cure the failures themselves, with reimbursement for all reasonable expenses being provided to the RTHPR by the MBRHOA.

EXHIBIT 14

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

EXHIBIT 14

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Myrtle Beach Resort Homeowners')
 Association, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 Renaissance Tower Horizontal)
 Property Regime, Inc.,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2016-CP-26-7895

**ORDER AMENDING SCHEDULING
 ORDER DATED SEPTEMBER 12, 2017
 AND DISBURSING FUNDS FROM
 CLERK OF COURT**

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

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EXHIBIT 14
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 EXHIBIT 14

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."

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.

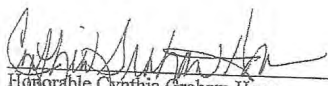
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Therefore, it appears that an Order Amending the Amended Scheduling Order dated September 12, 2017 and Disbursing Additional Funds From the Clerk of Court is appropriate. Accordingly, the Court enters the Second Amended Scheduling Order and orders 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;
 $\$220,719.65 \pm 185,268.65 = \$385,988.30$ ①
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; ②
6. The Defendant shall pay \$185,268.65, which has ^{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.

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IT IS SO ORDERED.


Honorable Cynthia Graham Howe
Horry County Master in Equity

Conway, South Carolina
November 28, 2017

① 385,988.30
② 20,000.00
\$ 405,988.30
TOTAL xfered to H&A and put in new CMB account w/ Batters and Sargent
EXHIBIT 14

RENAISSANCE TOWER PAST DUE

<u>Month</u>	<u>Beginning Balance</u>	<u>Assessment Billed</u>	<u>Payment</u>	<u>End of Month Balance Due</u>
2016:				
January	\$0.00	\$27,866.94		\$27,866.94
February	\$27,866.94	\$27,866.94		\$55,733.88
March	\$55,733.88	\$27,866.94		\$83,600.82
April	\$83,600.82	\$27,866.94		\$111,467.76
May	\$111,467.76	\$27,866.94		\$139,334.70
June	\$139,334.70	\$27,866.94		\$167,201.64
July	\$167,201.64	\$27,866.94		\$195,068.58
August	\$195,068.58	\$27,866.94		\$222,935.52
September	\$222,935.52	\$27,866.94		\$250,802.46
October	\$250,802.46	\$27,866.94		\$278,669.40
November	\$278,669.40	\$27,866.94		\$306,536.34
December	\$306,536.34	\$27,866.94		\$334,403.28
2017:				
January	\$334,403.28	\$30,435.90		\$364,839.18
February	\$364,839.18	\$30,435.90		\$395,275.08
March	\$395,275.08	\$30,435.90		\$425,710.98
April	\$425,710.98	\$30,435.90		\$456,146.88
May	\$456,146.88	\$30,435.90		\$486,582.78
June	\$486,582.78	\$30,435.90		\$517,018.68
July	\$517,018.68	\$30,435.90		\$547,454.58
August	\$547,454.58	\$30,435.90		\$577,890.48
September	\$577,890.48	\$30,435.90	\$200,000.00	\$408,326.38
October	\$408,326.38	\$30,435.90		\$438,762.28
November	\$438,762.28	\$30,435.90		\$469,198.18
December	\$469,198.18	\$30,435.90		\$499,634.08
12/2017 payment made under court order				
by RT to Master, deposit to Conway Bank			\$405,988.38	\$93,645.70
Accrued Interest and collection charges				\$29,067.28
January 2018 Assessment				\$27,945.00
Balance 1/31/18 per AR Report				<u>\$150,657.98</u>

EXHIBIT 14

EXHIBIT 15

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

EXHIBIT 15

NEXSEN|PRUET

Andrew A. Mathias
Member

October 12, 2018

VIA E-MAIL

Barbara Johnson
Empress Management
P. O. Box 8939
Myrtle Beach SC 29577
Barbara@empressmgt.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.

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:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

55 East Camperdown Way
Suite 400 (2501)
PO BOX 10848
Greenville, SC 29503-0548
www.nxsenpruet.com

T 864.282.1195
F 864.477.2697
E A.Mathias@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

NPGLI:1628897.1-LT-(AMATHIAS) 060693-00001

EXHIBIT 15

EXHIBIT 15
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ELECTRONICALLY FILED
COMMON PLEAS - CASE#2018CP2603173

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.

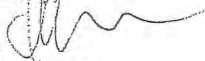
October 12, 2018
Page 3

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

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EXHIBIT 15

EXHIBIT 16

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

EXHIBIT 16

Exhibit
15
4/18

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - Horry - COMMON PLEAS - CASE #2018CP2603173

MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.
SPECIAL MEETING OF THE BOARD OF DIRECTORS
Thursday, January 11th, 2018
MINUTES

Pursuant to call, a Special Meeting of the Myrtle Beach Resort Homeowners' Association, Inc. was held on Thursday, January 11th, 2018 commencing at 6:06 o'clock PM, via teleconference.

- 1. **Opening Comments**
Directors participating via conference call were: Peter Grusauskas, Jim Perkins, Conrad Calvano and, Laura Medwalski, Joseph Domagala, Board President; Bill Cox, Met. Freddy Brown with the "A" Building, Je. and Nancy Moore with Oceanfront Spa, Lori Medwalski with the Five Season and Jeff Richardson with Renaissance Tower along with Phil Cox and Neil Z were in attendance.

Also present were Sarah Morrow and Barbara Johnson of Empress Management, LLC.
Peter Grusauskas served as Chairman of the meeting and Barbara Johnson served as Recording Secretary.

Business

(Handwritten mark: a circled 'X' with a red scribble)

Sarah Ms. Morrow reported that she and Jim Perkins met with Mr. Stefanos this morning. There was \$406,898.30 in the Corvus National Bank account. We kept \$240,000 in the account so that we remain under the FDIC coverage. Afterward we deposited the \$166,898.30 into BHRT Operating account.

She then stated they visited TD Bank and changed signers to find out that MBR had 8 accounts (2 active and 6 inactive). It was noted that they were only allowed to change signers on the 2 active accounts. We requested that the current signers on the 6 inactive accounts be eliminated from signing in online banking. The 6 inactive accounts were solicited by depositing a penny for each account. Mr. Lynn Wheeler and Mr. Jack Bassell appear to be the signers on the other 6 accounts.

The banks holding Association funds and the authorized signers on the accounts have been changed. She further stated that all those signers can be added as the Board directs. In addition, Peter Mr. Grusauskas agreed to have to send confirmation to Alliance Bank confirming the bank, by email, that the accounts were to remain open and signature cards be changed.

Sarah Ms. Morrow stated that Empress has received some of the items requested for the transition such as the Federal ID #, detail of GL accounts, and the legal names of the 4 sub-regions. She was told she would receive the 2018 budget along with a few other financial and outstanding invoices. She stated that she would be following up with First Services the following week on the outstanding items. Mr. Perkins also noted that First Services had emailed previously that all furniture and contents belonging to the Master Association would be provided by December 31st. It was noted that many contents were still in Ms. Donevan's office.

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EXHIBIT 16

Ms. Morrow stated that when the phone system is activated by Spectrum the PBX system in the office will be eliminated. All of the Myrtle Beach Resort Owners and guests will be provided with the Empress Management phone number, which is 843-443-4003. Discussion ensued, and the Board determined if Daria O'Donovan wants to keep her current direct line she will have to work directly with One- Source Communications.

Sarah Morrow stated that a web site is being established for the Myrtle Beach Resort Master Association. She stated that the on-site office was being used as a post office with mail and package delivery. Laurie Niedzweicki stated that she is concerned about stopping the mail delivery as this is the way it has been done for 30 years, and she feels that owners and guests need to be notified. Ms. Morrow agreed to continue to receive the mail until January 31st. After this time all mail delivery to Myrtle Beach Resort will be stopped with the exception of the postal kiosk in the "B" Building. The Board Members do not want UPS or Fed EX to leave package on the walkways, the driver should leave a note on the unit door that delivery was attempted.

Jim Perkins reported that the Myrtle Beach Resort Vacation Web-site on Google advertises that the Myrtle Beach Resort is pet friendly. The Board requested that Paul Williams, Manager of the Myrtle Beach Resort Vacation Office be contacted to have this verbiage removed from the advertising.

Sarah Morrow stated that there is currently a large leased Ricoh copier and a Pitney Bowes postage meter in the Master Association Office. Ms. Morrow stated that she is going to see if these can be removed which will save the Master Association money as Empress Management has a postage meter in the corporate office and large printing jobs are outsourced.

Discussion ensued regarding the Owner parking passes for 2018, and the Board determined that window sticker parking passes will be ordered for Owners for a one-year period (2018), and they be distributed from the Guard House when Owners arrive on-site as has been done in the past. Sarah Marrow stated that there are boxes of green parking passes that can be used for the guests, and the red ones can be used by employees. The Board determined that Security will not collect fees for parking passes at the gate and they will work on a plan to collect the fees for guest tags, as cash will no longer be accepted.

Discussion ensued regarding the Myrtle Beach Resort Management Office and the painting and cleaning of the same. Sarah Marrow stated that the office needed to be cleaned and painted. She reported that items that were removed and discarded were documented and were either trash and/or roach infested. Ms. Marrow stated that the ground floor of the on-site office has been painted and new LED lighting has been installed as the previous lighting was in disrepair. Upon a motion by Jim Perkins, seconded by Conrad Calvano and carried it was:

MOVED: that the Board voted to reimburse Empress Management the cost to ready the office and pay for the painting, lighting repairs, office furniture, and computers. They requested that Empress provide copies of the invoices for the work accomplished and the furnishings, etc. The Board also determined that the newly purchased items need to be inventoried and the tax returns should reflect the equipment, etc. Joe Domagal, Peter Grusaukas all voted yes.

EXHIBIT 16

Peter Grusauskas stated that a request was forwarded to First Service Residential asking that they return the furnishings and equipment purchased by Myrtle Beach Resort to the Management Office. It was discussed that Anita Pedraza of William Douglas who manages Renaissance Tower has requested office space in the on-site management office. It was suggested that the large office currently being used by First Service Residential has sufficient space for two desks, and William Douglas could move in there. No final decision was made in this regard.

The Board determined that going forward they will not be using Andy Thompson for the annual audit and they want to have a forensic audit prepared.

The next Meeting will be by conference call and is scheduled on Thursday, January 18, 2018 at 6:00 PM.

3. **Adjournment**

There being no further business to come before the Board, the meeting was adjourned.

Meeting Commenced: 6:06 o'clock PM

Meeting Adjourned: 7:50 o'clock PM

Prepared by:
Barbara Johnson, Recording Secretary

For Jim Perkins, Director of MBRHOA

Approved by:

Peter Grusauskas, Association President

EXHIBIT 16

FirstService
RESIDENTIAL
c/o FirstService Residential
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

0137 Myrtle Beach Resort Homeowners Assoc., Inc
Consolidated Balance Sheet
12/31/2017

01/22/2018 3:36 P

FirstService
Residentia

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Account #	Description	Operating	Reserves	Specia Project
ASSETS				
Cash				
100	Alliance Operating Checking			
10035	Conway Nat Bank-Operating Funds	15,613.99	0.00	0.00
105	TD Bank-Mailbox Deposits	405,988.30	0.00	0.00
1055	TD Bank-Operating Checking	6,370.53	0.00	6,370.53
1335	Alliance Reserve Money Market	7,534.00	0.00	7,534.00
		0.00	119,966.24	0.00
	Total Cash	\$ 436,606.82	\$ 119,966.24	\$ 0.00
	Accounts Receivable			
1100	A/R - Owner Assessment	232,425.74	0.00	0.00
1115	A/R - Other Due from Owners	3,971.41	0.00	0.00
	Accounts Receivable	\$ 236,397.15	\$ 0.00	\$ 0.00
	Total Accounts Receivable	\$ 236,397.15	\$ 0.00	\$ 0.00
	Fixed Assets			
1158	Land/Land Improvemnt	286,400.01	0.00	0.00
1152	Furniture & Fixtures	69,988.78	0.00	0.00
1153	Building Improvements	330,588.58	0.00	69,988.78
1154	Signage	7,286.23	0.00	330,588.58
1157	Capital Equipment	896,813.84	0.00	7,286.23
1159	Commercial Units	412,138.21	0.00	896,813.84
1170	Accum. Depreciation	(1,571,172.65)	0.00	412,138.21
	Total Fixed Assets	\$ 431,843.00	\$ 0.00	\$ 0.00
	Other Assets			
1134	Prepaid Insurance	10,293.09	0.00	0.00
1135	Prepaid Expenses	1,575.00	0.00	0.00
1136	Prepaid Taxes	8,576.00	0.00	1,575.00
1420	Due from Operating	0.00	361,257.36	0.00
	Total Other Assets	\$ 20,444.09	\$ 361,257.36	\$ 0.00
	TOTAL ASSETS	\$ 1,124,191.06	\$ 481,223.60	\$ 0.00
LIABILITIES & EQUITY				
	LIABILITIES			
2000	Prepaid Owners	50,709.28	0.00	0.00
2030	Accounts Payable	12,515.32	0.00	0.00
2050	Accrued Expenses	68,191.56	0.00	12,515.32
2080	Due to Reserves Fr Ops	361,257.36	0.00	68,191.56
2176	Mail Box Deposits	6,370.53	0.00	361,257.36
	Total Liabilities	\$ 499,044.05	\$ 0.00	\$ 0.00
	EQUITY			
3600	Owners Equity-Oper	534,224.51	0.00	0.00
3700	Owners Equity-Rsrv	0.00	385,892.31	0.00
	Net Income/(Loss)	90,922.50	95,331.29	0.00
	TOTAL EQUITY	\$ 625,147.01	\$ 481,223.60	\$ 0.00
	TOTAL LIABILITIES & EQUITY	\$ 1,124,191.06	\$ 481,223.60	\$ 0.00

① Funds Rec'd from RT as ordered by Court.

EXHIBIT 16

EXHIBIT 17

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EXHIBIT 17

10/31/2018

Gmail - FW: Frederick E. Brown, et al. vs. Jeffery L. Richardson, et al.



EXHIBIT 17
mike parades <p...>

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FW: Frederick E. Brown, et al. vs. Jeffery L. Richardson, et al.

2 messages

Bellamy III, Howell V. <HBellamyIII@bellamylaw.com>
To: "paradesm@gmail.com" <paradesm@gmail.com>

Wed, Oct 31, 2018 at 9:53 AM

From: Rivera, Nicholas (Nick) [mailto:NRivera@ycrlaw.com]
Sent: Tuesday, October 30, 2018 2:52 PM
To: Bellamy III, Howell V. <HBellamyIII@bellamylaw.com>; Player, Logan <LPlayer@bellamylaw.com>; McGuire, Krista M. <kristamcguire@parkerpoe.com>
Cc: Nagy, Kim S. <kimnagy@parkerpoe.com>; Wisch, Julia <jwisch@ycrlaw.com>
Subject: RE: Frederick E. Brown, et al. vs. Jeffery L. Richardson, et al.

A little off topic but here is the update on the missing \$405k discussed at the deposition of Barbara Johnson for Empress Management.

"This \$405,988.30 was applied against the Renaissance Tower account by First Services on 12/31/17. Of this amount that was originally deposited into the Conway National Bank account, \$165,988.30 was transferred into the BB&T Operating account on 1/10/18 in order to keep the amount in the CNB account under the \$250,000 limit so that it was covered by the FDIC. On 8/9/18 the CNB account was closed and \$239,890.00 was transferred to the BB&T Operating account to help pay operating expenses. The balance of \$110.00 was deducted by CNB as bank fees for closing out the account."

Nicholas J. Rivera, Esq.
P.O. Box 993 (29402)
Telephone: (843) 720-5413
Direct: (843) 724-6675
Facsimile: (843) 579-1300
Email: nrivera@ycrlaw.com

Operating Fund over Reserve Fund

Note: August 9, 2018 transfer was approved by Jim Perkins - who was NO longer a Master Board member.

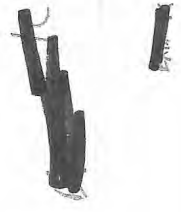


EXHIBIT 18

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EXHIBIT 18

EXHIBIT 18

STRO ELECTRONICALLY FILED - 2020 Feb 17 3:45 PM PUNJIT HARRIS COMMUNION REEFERS 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 <mbrjimperkins@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@empresmtg.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.

UNBELIEVABLE, IF ANYONE SIB DISQUALIFIED...

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

Not to

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 <mbrjimperkins@aol.com>; Conrad Calvano <dmscac@msn.com>; Phil Cox <rvspc@yahoo.com>; Barbara Johnson <barbara@empresmtg.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

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PACIFIC POWER & LIGHT
CASE #2018CP2603173

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).

(No minutes) (Who was in meeting?)

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.

WHAT ABOUT ?

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.

who advised, who empowered

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 19

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EXHIBIT 19

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**MBRHOA Meeting Minutes (Unapproved)
September 30th, 2017 09:15 AM
OFS Conference Room / MBR**

Meeting was assembled and waited for last member, Wayne Urban to join into conference for 09:15 call to order.

At 09:22 Meeting was called to order by Board member Peter Grusauskas. Jim Perkins was also in attendance at the OFS Conference Room, Joseph Domagala was in attendance via conference phone. Richard Krumich was in attendance at the OFS for the Management Agency. Wayne Urban was not in attendance in person or by teleconference.

Mr. Grusauskas welcomed all members in attendance of the meeting which numbered about twenty, including Presidents from FSC, OFS and RT.

In an effort to resolve the election dilemma: Mr. Domagala made a motion to have the board operate with a four member board using the oversight of a fifth person to act in the duties normally performed by a president. Mr. Perkins seconded. The motion failed with Directors Perkins and Grusauskas voting nay.

Director Domagala then made a motion for a slate of: Grusauskas as President/ Domigala as Vice / Perkins as secretary / Urban as Treasurer. Seconded by Grusauskas. The Motion failed with Directors Grusauskas and Perkins voting nay.

Director Domagala then made a motion for an officer slate of: Grusauskas as President / Urban as Vice President / Perkins as Secretary / Domagala as treasurer. Seconded by Perkins. Motion Passes with yah vote from Grusauskas, Perkins and Domagala.

The treasurers report was simply a reading of August 31st total funds available, given that there was no treasurer in attendance. It was discussed that the Court had released the agreed funds from held 2016 RT assessment in the amount of two hundred thousand dollars. The court is holding the remainder of 2016 and the 2017 funds due to the MBRHOA, Inc.

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MBRHOA Meeting Minutes (Unapproved)
September 30th, 2017 09:15 AM
OFS Conference Room / MBR

It was noted that there has been spending over budgeted line item amounts without prior board approval. Further that the reserves account has been transferred to operating without a plan for repayment or approval by the board. Management explained the method of approval by the Board Treasurer who they believe to be FSC Director Phil Cox. The Board will be reviewing the procedures for the future. } NOT SO. \$6 PROPOSED EMAIL

Mr. Krumich reported that Spectrum was not going to sending a representative to the Board meeting and had sent a letter instead. The letter was not available at the meeting for our review. It was reported that Spectrum wanted to have a "pre install" meeting with the OFS Board, before stating the wiring project for the building. OFS President Moore was present and she was going to set that meeting up with her Board and Mr. Krumich of FSR. President Grusaukas requested that Mr. Krumich provide the MBRHOA Board with a copy of the Spectrum Letter.

Mr. Krumich reported that the Galley has had water damage from Storm Irma. Vilagant is again doing repair and clean up. The RT is doing an engineering inspection on the possible cause of water intrusion. It is apparent that Allegiant should report to the RT and the MBRHOA during the event or when it is discovered so that the RT Maintenance can get information as it is happening rather than after the event ends. The project is waiting for the Vilaigant Report and the Engineering Report as well. RT is again requesting a key be made available to the RT Maintenance department to allow entrance for inspection during an emergency event. Such key access is required by the RT Master Plan.

Discussion on the Repair and expansion of the swash pipe on the OFS beach access remains on hold. Inspection of the seating area has shown that the pylons are deep enough to give the needed structure foundation strength. Horry County plans for the swash extension is still unclear.

A discussion ensued as to the request by the President of OFS Board to have Watchmen Services, KAD Security release/ transfer the OFS Master keys and homeowners keys / combinations to the new OFS Security company. Mr. Krumich from FSR suggested duplicating the keys for the

**MBRHOA Meeting Minutes (Unapproved)
September 30th, 2017 09:15 AM
OFS Conference Room / MBR**

new security company and having KAD hold the original or copied set. After discussion with the OFS President and a OFS owner, the Board decided that it is not in the best interests of the homeowners to issue more keys. Management was told not to make duplicates. Director Perkins made a motion to have FSR Watchmen Services turn over the keys and combinations of the OFS as soon as possible, to the OFS HPR. Seconded by Director Grusauskas. Motion Passed with yah votes from Grusauskas, Perkins and Domagala.

The Board discussed the facts of operating the resort with the limited income budget. It was suggested that any expenditures should be prioritized and have projects that can be delayed, wait until next fiscal year. Management was told to consider staffing reductions, such as when the Lazy River shuts down.

Mr. Krumich was asked to speak with Eric Ault about his recommendation of ways to reduce Security staffing and show the current and past level and the current plan in place for the off season months; given that the OFS and Tower have their own security thus lessening the work load on the MBRHOA security needs.

Mr. Dennis Mercer (B352) in attendance suggested that the MBRHOA might consider having "Memorandums of Understanding" with the OFS and Tower describing the reduced role responsibility of security for the two regimes.

Given that the contracts for security and management expire at sunset on December 31st this year; and given that FSR has stated they have no interest in renewing the current Management Contract and given the MBRHOA has no desire to continue the Security Contract's auto renew clause; the Board recognizes the need to prepare RFPs for both services.

Director Perkins made a motion to have two (2) RFPs written and sent out for services of (1) Management and (2) Security and also make the required notification; (2009 contract Item 11); in the current Security Contract, with the MBRHOA's "Intent Not To Renew" under Its Auto Renewal clause. Seconded by Director Domagala. Motion Passed with yah vote by Domagala, Perkins and Grusauskas.

EXHIBIT 19

MBRHOA Meeting Minutes (Unapproved)
September 30th, 2017 09:15 AM
OFS Conference Room / MBR

The board discussed the "Owners Dumpster" along with the use and placement of it. Mr. Krumich spoke about how it seems that contractors had been using it last year, which is not the intent of our providing it. It was discussed to possible placing it within the gated area instead of out in the parking area to insure that debris from outside the resort compound doesn't end up in our dumpster.

Director Grusauskas made a motion to have management obtain a dumpster for homeowners again this year. Seconded by Director Domagala. Motion passed with yah vote by Domagala, Perkins and Grusauskas.

There are currently two requests from homeowners to review the Books and Records of the MBRHOA. A correspondence from our Management Company was sent to the Board relating to this topic. A discussion followed.

Director Grusauskas motioned to instruct Management to make itself available to the two requests and to produce the Books and Records of the Corporation to those individuals. Seconded by Director Domagala. Motion passed with yah vote from Perkins, Domagala and Grusauskas. *who?*

Director Grusauskas motioned that the MBRHOA have a detailed forensic audit for Non-profits completed using GAAP standards. Once prices have been obtained, The Board will give final approval for the selected firm, via conference call or meeting. Seconded by Director Domagala. Motion passed with yah votes from Domagal, Perkins and Grusauskas.

Director Grusauskas noted that during a walk around he found that we have a gasoline transfer tank on site. He has concerns about EPA and SC DEP and NFPA regulations regulating the quantity stored here, including the type of gas cans we are currently using. Though discussion the Board felt that the phasing out our storing large quantities of gasoline would be in the best interest of the Resort. There are two golf cart leases expiring in December. To that end, the Board will move forward by replacing gas powered carts, with electric.

EXHIBIT 19

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MBRHOA Meeting Minutes (Unapproved)
September 30th, 2017 09:15 AM
OFS Conference Room / MBR

A suggestion by the FSC President to install solar powered charging stations for them will be considered.

Motion to Adjourn by Director Perkins and seconded by Director Domagala. Unanimously approved.

Adjournment at 11:54am

Next meeting: Sunday October 29th 9:00am OFS Conference Room

Respectfully submitted by Jim Perkins MBRHOA Secretary

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EXHIBIT 19

EXHIBIT 20

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

EXHIBIT 20

MBRHOA MEETING MINUTES
October 29th, 2017 01:00 PM
OFS Conference Room / MBR

EXHIBIT
1920
398

Meeting called to order at 01:00 PM by President Peter Grusauskas(RT). Board members present Treasurer Joseph Domagala (FS), Secretary Jim Perkins (OFS). Vice President Conrad C (HPR) was not in attendance and therefore Freddy Brown (President HPR) was in attendance for Mr. Calvano. Also in attendance were Jack Boselli, Darla Donovan and Richard Krumlich representing First Service Residential.

President Grusauskas welcomed all members in attendance. An addition, guests present including but not limited to MBRV, Realtor Bruce Brown and Shannon the FSR Grounds manager.

Approval of minutes for September 30th 2017 Board minutes. Motion made by Jim Perkins, second by Joe Domagala. Peter Grusauskas approved.

Treasurers Report:

Management Agent: Presented by Richard Krumlich work done.

1. Repair Drains / Deck Boards for outdoor showers
2. Sanding walkways to Beach (not painting).
3. Adding Posts to walk between drive to A building and FS parking lot to stop golf carts over.
4. Replace Damaged fencing around resort. (No Painting)
5. No funds available to do any projects.

Old Business:

Time Warner Cable

- o OFS Board Members starting with Winter Center.
- o As soon as OFS complete / 45 to 60 days to install. Completion date end of December to second week in January. After OFS complete, equipment can be Freddy Brown- Is phone with cable? Donovan – yes.
- o Each regime to receive to courtesy locations, individual regimes to contact TW to inform them of the placement of location.
- o Telephone numbers with now seven-digit unknown at this time.
- o Emergency telephones will not be affected by this change.
- o No internet at this time (contract with ContractData still in effect). Telephone and cable at this time.

Legal Matters – All current MBRHOA board members are working hard along with Regimes Presidents and attorney and homeowner George Williams to end lawsuits involving resort. Five lawsuits are still active.

1. MBRHOA vs RT – OFS opted out of suit. HPR and FS will consider ending suit with condition of "no Restrictions on Playground" in writing from RT. Per Freddy Brown wrist bands were not considered a restriction.
2. RT vs MBRHOA – still active. RT Board to discuss.
3. Allegiant/MBRV vs MBRHOA – Restriction of Business.
4. MBRHOA vs RT – Payment of HOA dues / OFS could be added.
5. KA Diehl (Jack Boselli) vs Seven homeowners. Lawsuits is in the final stages.

EXHIBIT 20

RFP's for Management and Security:

The MBRHOA Board has already had one presentation from a Security Service in the morning before this meeting. RFP's will need to be sent out to request proposals in the near future. Jim Perkins in on property and will send out RFP's. Peter Grusauskas motion on floor to send out RFP's. Motion on floor by Jim Perkins, second by Joe Domagala. Yah vote by Grusauskas, Perkins and Domagala with Brown abstaining. Motion Passed.

Forensic Audit:

Peter Grusauskas taking lead. Need to understand that Forensic Audit and Year end audit are two totally different audits. Forensic Audits take a much deeper look into the accounting of an organization. The Myrtle Beach Resort has never done a Forensic Audit since it's inception. There are several forensic audits that have been done or currently being done at the resort.

1. RT Audit, which is in the preliminary stages. As part of a lawsuit.
2. Mark DeSantos audit of several years as part of a lawsuit.

Galley: Now open.

1. FSR Residential to provide Peter with Viligant Restorations written report.
2. The suggestion that all commercial units maintain a 74 degree temperature at all times to dry air and help prevent mold growth. In addition, a dehumidifier may need to be added.
3. The MBRHOA has requested that there be some sort of opening so that damp area can be inspected after storms.

RT Master Keys:

The RT is requesting all their keys in possession of FSR be turned over to the RT. Richard Krumlich says the keys are in the HOA office and that will be done.

Gate Passes:

Peter Grusauskas made the suggestion to homeowners that they should hold off purchasing gate passes for the 2018 season because it has yet to be determined if gate passes are a legal means of collecting revenue and for operating costs at the resort. There were questions asked about Bike Weeks, questions and details need to be worked thru for all aspects of gate passes.

Motion to stop VIP Passes:

The motion was made by Peter to the discontinue the acceptance of VIP gate passes to visit the Quarter Deck. Joe Domagala seconded the motion. The vote was a unanimous Yea. Management was instructed to inform the security staff that beginning November 1, 2017 we would no longer provide the outside public with a VIP gate pass to use the quarter Deck.

MBRV Sign Located at the Entrance Gate:

A reminder to MBRV is stop using verbiage "Walk In's Welcome". Use "Rentals Available", "Vacancy" etc. on sign.

Reduce Staffing, Grounds and Security.

Peter requested that FSR reduce staffing on grounds to three and security to two except for weekends. Jack Boselli stated that they have already reduced grounds staff to three. Jack further stated that he had spoken with Eric Ault and it was unsafe to reduce security staffing any further. It was decided that Peter would meet with Chuck and review scheduling. Jack explained to the MBRHOA Boa that they were not educated on the tasks of the security staff. Peter stated that he had requested from Richard and from Jack scheduling of security. Peter went on to state that neither Richard or Jack every responding to his email requests. Peter explained to Jack if they could not find was to cut staff or the MBRHOA are ready to replace it. Peter explained to FSR

EXHIBIT 20

(Jack) that we would not pay 2017 bills with 2018 funds. He also reminded the management company no to spend over \$500 without board approval. FSR stated that legal fees and maintenance can be spent as needed.

First Services Residential reminded the MBR HOA Board the following:

1. There is no money to pay salaries in December.
2. The MBR HOA will be -\$188,000 at the end of December.
3. -\$55,000. At the end of November.
4. Will owe \$432,000 to reserve funds at the end of the 2017 year.
5. FSR has been using Reserve Funds without Board Approval.
6. Reserve Monies have been used to work as operating expenses.
7. At the end of 2017 (12/31/17) will only have \$20,000 left in MBRHOA Reserves.

JACK BUSSELL Spk Not No. See his email

Peter stated as the MBRHOA President, he has no idea where our funds (in which bank(s) are our funds located. He asked for permission to open a bank account with MBRHOA board members as signatories. The suggested signers would be treasurer and secretary. Carolina Savings & Trust is the bank chosen.

The MBRHOA Board is voting to open a Bank Account for the MBRHOA funds. Peter Made the Motion, seconded by Jim. Freddy Yea, Joe Yea, Jim Yea and Peter Yea. Motion Passes.

2018 Reserve Expenses:

\$170,000 needed for Lazy River pool plaster and concrete decking repair.

2018 Budget:

2018 Budget to be accepted with all regimes being assessed for the budget as in the past years. The following changes to be made:

6241 Watchman Services to be reduced to \$330 Thousand

6080 Grounds Staff to be reduced to \$135 Thousand

Jim Perkins Made the Motion to accept the 2018 budget less the reductions to of 6241 to \$330 thousand and the reduction of 6080 to \$135 thousand. With all regimes to be assessed their percentages as in past years.

Joe Domagala Seconded. Vote Freddy Yea, Joe Yea, Jim Yea and Peter Yea. Passes with 100%

Christmas Bonuses:

The 2017 Christmas Bonus. The bonuses are one or more weeks salary. The decision was made by the board to stop the distribution of Christmas Bonuses.

Motion to Discontinue Christmas Bonus of employees of any kind by Jim Perkins. Seconded by Joe Domagala. Vote as follows: Freddy Na, Joe Yea, Jim Yea and Peter Yea. The vote passes and Christmas Bonuses are discontinued.

Discontinuing of All Non-Essential Contributions:

The MBRHOA Board is voting to stop contributions to all Non-Essential Contributions (example CAI) from any of the MBRHOA funds. Peter Made the Motion, seconded by Jim. Freddy Yea, Joe Yea, Jim Yea and Peter Yea. Motion Passes.

Meeting Adjournment at 3:27PM

EXHIBIT 21

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

EXHIBIT 21

11/27/2018

Gmail - Myrtle Beach Resort



mike parades <paradesm@gmail.com>

EXHIBIT 20

Myrtle Beach Resort

Jack Boselli, AMS, CMCA, PCAM <Jack.Boselli@fsresidential.com>
To: mike parades <paradesm@gmail.com>

Mon, Nov 26, 2018 at 3:30 PM

Mike,

Apologizes for the delay in a response. Please see my response below in green. Please let me know if you have any further questions.

Best regards,



FirstService
RESIDENTIAL

JACK BOSELLI, CMCA, AMS, PCAM
President

Cell 484.459.1130

Fax 843.652.2190
Email Jack.Boselli@fsresidential.com
www.fsresidential.com

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From: mike parades <paradesm@gmail.com>
Sent: Wednesday, November 14, 2018 2:36 PM
To: Jack Boselli, AMS, CMCA, PCAM
Subject: Myrtle Beach Resort

Jack

I hope this email finds you well and ready for Thanksgiving.

<https://mail.google.com/mail/u/0?ik=c8dd9f8e8e&view=pt&search=all&permmsgid=msg-f%3A1618229846649617594&siml=msg-f%3A1618229846649617594> 1/3

EXHIBIT 21

11/27/2018

Gmail - Myrtle Beach Resort

The purpose of the email is to see if you can help answer a couple of questions and even better have some written documentation to support your answer.

I am attaching the minutes of the BOD meeting held 9/30/17, which reports that FSR was spending funds without approval of the Board and transferred reserve funds to the operating fund without a plan for repayment and without BOD approval. When we last talked, you indicated the BOD knew exactly where the funds were coming from. I have to assume you would not have authorized reserves to be used for operating expenses without specific approval from the BOD or one of its members. That is the piece of written documentation that will really help. This is the first time I saw these minutes. As you will see on page 3, paragraph 2, the Board members were involved in the cash management of the association. This particularly relates to Peter G. and Perkins. They both were in regular conversations with Richard Krumich, Community Manager with regard to spending. I also believe at the time Wayne Urban was the Treasurer and he was aware of the cash flow issues and the need to pay operating expenses and defer the funding of reserves. This was all due to RT not paying their fees. The repayment plan for reserves was to fund them when RT paid their fees. This should have been done at the end of 2017 when RT paid their funds. KAD never had access to those funds.

* {

I am also attaching the minutes of the 10/29/17 meeting wherein you allegedly reported FSR was spending reserves to pay operating expenses. As you were at the meeting, is that what you really reported or could someone on the Board have made a change in the final version of the minutes? This is the first time I saw these minutes. I never stated that FSR was using reserve funds without Board approval. As stated in my response for the 9.30.17 minutes, they Board was heavily involved in the cash management of the association. Further, they received financial statements on a monthly basis which outlined all cash accounts, and that the operating fund owed the reserve fund \$. For Peter G. to state that he does not know where the association has their cash is ridiculous. These minutes also show how this Board, in particular Peter G., Joe D., and Perkins created the 2018 shortfall by ultimately stopping gate pass income. As stated above, when RT paid their fees, reserves should have been replenished. Sounds like Peter G., Perkins, and Empress Management used those funds to pay operating expenses.

* {

Finally, it seems Jeff Richardson will not stop and has now hired a different attorney on the theory he will get different results, see attached letter from attorney at Nelson Mullins. Can you shed any light on the allegations being made? I have been through the minutes for the past 5 years and can find nothing where Richardson or Moore or Dos Santos ever shared any forensic audit reports or documentation for the allegations in the letter with the Master Board. As you are aware, K.A. Diehl & Associates, Inc. filed a lawsuit against certain Board members at MBR. These Board members plus Jeff Richardson filed a countersuit against KAD, other Board members, and other associations, including the Master. Richardson's group hired an accounting firm who came up with these allegations. They came to these conclusions without requesting documentation or financial detail from management. Therefore, their findings were incomplete. The Board members and associations counter sued by Richardson and his group, hired an accounting firm to review these allegations and perform their own forensic audit. Management provided the accounting firm with significant financial detail and contracts. They concluded that the finding of Richardson's accountant were inaccurate and further that there were no improprieties. This was all done prior to the mediation on May 1, 2017. On that date, a settlement was reached where all of this was to be in the rear view mirror. Now it is being brought up again. The attorney hired by the insurance company to represent the Master has a copy of the forensic audit. As you stated above, Richardson seems to continually bring up the same information to whoever will listen. Then it starts all over again.

* {

Also, please understand that I provided Peter G. with a flash drive of all association files we had. He was to give it to Dos Santos. Also, we provided Empress with all of the files that we had. Not sure what they could possible be looking for.

* {

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11/27/2018

Gmail - Myrtle Beach Resort

Hopefully, you saved some written documents as protection for future claims.

Look forward to hearing back from you.

Mike

--

Mike Parades
843-364-6962
email: paradesm@gmail.com

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<https://mail.google.com/mail/u/0?ik=c8dd9f8e8e&view=pt&search=all&permmsgid=msg-f%3A1618229846649617594&simpl=msg-f%3A1618229846649617594> EXHIBIT 24 3/3

EXHIBIT 22

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EXHIBIT 22

EXH 22 1/3

MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.
SPECIAL MEETING OF THE BOARD OF DIRECTORS

Monday, May 14, 2018

MINUTES

Pursuant to call, a Special Conference call Meeting of the Myrtle Beach Resort Homeowners' Association, Inc. was held on Monday, May 14, 2018 commencing at 5:00 PM by conference call.

1. **Opening Comments**

Master Board Members Lori Niedzwiecki, Nancy Moore, Jeff Richardson, and Robert Rosencrans also attended by conference call. Persons present by conference call were: Jim Perkins - B Building Board Member, Freddy Brown - A Building Board Member and George Williams - B Building Board Member.

Also present by phone was Barbara Johnson, Association Manager from Empress Management, who served as Recording Secretary.

Discussion ensued regarding the selection of officers for 2018-2019. Upon a motion by Nancy Moore, seconded by Jeff Richardson it was:

MOVED: That the 2018 -2019 slate of officers be as follows:

- President – Jeff Richardson
- Vice-President – Lori Niedzwiecki
- Secretary – Robert Rosencrans
- Treasurer – Nancy Moore

** The vote was recorded as: Nancy Moore – Yes, Jeff Richardson – Yes, Lori Niedzwiecki – No, Robert Rosencrans -No. Therefore, no decision was made in this regard.

Discussion ensued regarding the installation of the beach access gates. Jeff Richardson stated that to be a gated community the gates at the beach access need to be locked. Freddy Brown said the gates can be installed at the A Building, but they cannot be locked. He stated that the A Building will accept liability for this decision. Lori Niedzwiecki stated she does not think the gates should be locked during the day as it will be difficult for owners and guests walking back from the beach. Jim Perkins stated that if the gates are not locked the B Building will have to consider the use of wrist bands for their amenities, as there is too much property liability with their indoor pool. The Board discussed the gate registration system and Jeff Richardson stated that a 6-digit gate code will be too difficult for people to remember. He suggested the code should be no more than 4 digits. Nancy Moore stated that the front entry gates are slow and there needs to be an upgrade to the equipment, so the gate arms will open faster.

Discussion ensued regarding the 2017 dues withheld by Ocean Front Spa. Nancy Moore stated that trash collection problems began in May 2017 and the OFS withheld dues from September 2017 – December 2017 (the last quarter of 2017). Mrs. Moore stated that numerous calls and emails were made to First Services in an attempt to have the issue resolved. She reported that when she discussed the issue with Jack Boselli he laughed and told her it was her problem. She stated OFS had no other solution than to obtain their own trash collection service. Mrs. Moore stated that the OFS will pay the dues if it is reduced by the cost of the trash fees.

(*) Seriously doubt this statement

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EXHIBIT 22

Ex 22 2/3

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

Barbara Johnson

From: Rae Whisenant <rae@cwsinsurance.com>
Sent: Friday, April 13, 2018 10:59 AM
To: Barbara Johnson
Cc: Jim Perkins (mbrjimperkins@aol.com); Sarah Morrow; Jeffrey Richardson
Subject: RE: Myrtle Beach Resort Master

Thanks, Barbara! I will send the applications to you now for signature. Please return to me and Resa Houser, copied here, as I am out of the office. We have not yet received the total cost of the crime and D&O. Those prices will come in on the 18th, I've been told. We'll send an invoice at that time, but will confirm binding to you today. Rae

Rae H. Whisenant

P.O. Box 1030 P.O. Box 1988
Gaffney, S.C. 29342 Spartanburg, S.C. 29304
(864)489-5757 (864)583-1451

Fax: (864)489-1470



From: Barbara Johnson [mailto:barbara@empresmgt.com]
Sent: Friday, April 13, 2018 10:46 AM
To: Rae Whisenant <rae@cwsinsurance.com>
Cc: Jim Perkins (mbrjimperkins@aol.com) <mbrjimperkins@aol.com>; Sarah Morrow <Sarah@empresmgt.com>; Jeffrey Richardson <jlr5456@yahoo.com>
Subject: RE: Myrtle Beach Resort Master
Importance: High

Good morning Rae,
Please bind coverage for the 2018-2019 policy period for the Myrtle Beach Resort Master Association per confirmation from the Board President, Jeff Richardson. Please send the forms and invoices to me for signature. Thank you! I look forward to working with you!

was Jeff President? No. Her name on the Board in April Grusalkis was RT Rep.

From: Rae Whisenant <rae@cwsinsurance.com>
Sent: Friday, April 13, 2018 8:31 AM
To: Barbara Johnson <barbara@empresmgt.com>
Cc: Jim Perkins (mbrjimperkins@aol.com) <mbrjimperkins@aol.com>; Sarah Morrow <Sarah@empresmgt.com>
Subject: RE: Myrtle Beach Resort Master

EXHIBIT 22
3/3

OK, thank you for the update!

Rae H. Whisenant

P.O. Box 1030 P.O. Box 1988
Gaffney, S.C. 29342 Spartanburg, S.C. 29304
(864)489-5757 (864)583-1451

Fax: (864)489-1470



From: Barbara Johnson [<mailto:barbara@empresgmt.com>]
Sent: Friday, April 13, 2018 8:24 AM
To: Rae Whisenant <rae@cwsinsurance.com>
Cc: Barbara Johnson <barbara@empresgmt.com>; Jim Perkins (mbrijimperkins@aol.com) <mbrijimperkins@aol.com>; Sarah Morrow <Sarah@empresgmt.com>
Subject: Myrtle Beach Resort Master

Good Morning,

One of the board members is anticipating the receipt of another quote today. I will be in touch with you this afternoon.
Thank you,
Barbara

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EXHIBIT 23

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EXHIBIT 23

EXH 23

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

Barbara Johnson

From: Barbara Johnson
Sent: Wednesday, July 25, 2018 4:25 PM
To: 'Chmielecki, Sharon M'
Subject: RE: Brown et al v Myrtle Beach - Travelers Claim # 1808299

Thank you Sharon, I will keep the information confidential.

From: Chmielecki, Sharon M <SCHMIELE@travelers.com>
Sent: Wednesday, July 25, 2018 3:59 PM
To: Barbara Johnson <barbara@empresgmt.com>
Subject: RE: Brown et al v Myrtle Beach - Travelers Claim # 1808299

Barbara,

where is letter

Here is a copy of the coverage letter. You will see that I was very selective and only sent a copy to Jeff and Nancy. The only people who should have a copy of the coverage letter should be: Jeff, Nancy, Peter and Jim.

I appreciate your keeping this information confidential.

Thank you,
Sharon

Disagree, entire Board should see.

Sharon Chmielecki | Senior Claim Representative | Bond & Specialty Insurance
Travelers
One Tower Square | 0000-S202A
Hartford, CT 06183-6016
W: 860.954.1399 F: 888.201.5587



From: Barbara Johnson [<mailto:barbara@empresgmt.com>]
Sent: Wednesday, July 25, 2018 3:47 PM
To: Chmielecki, Sharon M <SCHMIELE@travelers.com>
Subject: RE: Brown et al v Myrtle Beach - Travelers Claim # 1808299
Importance: High

Hi Sharon,

I have a couple of questions, and I was unable to reach you by telephone. You mentioned you would be sending a separate Travelers coverage letter for the Board Members, and I don't see that I received it. Could you please forward that to me? Also I have not received an invoice for the MBR HOA attorney or the individual board members attorney. If this was mailed it was probably sent to the previous insurance company HUB or the previous management company, First Services. Would you please email the invoices as soon as possible to me so I can submit them for payment. Going forward the new mailing address for the Myrtle Beach Resort is as follows: Myrtle Beach Resort HOA, Attn: Empress Management, PO Box 8939, Myrtle Beach, SC 29577. Thank you and have a great day!

From: Chmielecki, Sharon M <SCHMIELE@travelers.com>
Sent: Monday, July 02, 2018 4:32 PM

EXH 23 2/2

To: Barbara Johnson <barbara@empressmgt.com>
Subject: Brown et al v Myrtle Beach - Travelers Claim # 1808299

Barbara,

Attached, please find Travelers coverage letter for Myrtle Beach Resort HOA. This is for the Association only. I will send separate letter for the board members.

Please let me know if you have any questions.

Thank you,
Sharon

Sharon Chmielewski | Senior Claim Representative | Bond & Specialty Insurance
Travelers
One Tower Square | 0000-S202A
Hartford, CT 06183-6016
W: 860.954.1399 F: 888.201.5587



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EXHIBIT 24

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EXHIBIT 24

EXH 24

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - Horry - COMMON PLEAS - CASE#2018CP2803173

Myrtle Beach Resort Homeowners Association, Inc. (MBRHOA)

Summary of Proposed Amendments by Defendants

October 2019

Note: Blue means delete and red means add.

CCRS

Article I Definitions:

- 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.
- 1.1.0 "Act" shall mean the South Carolina Homeowner's Association Act, Title 33, Chapter 31, Non-profit SC Code, 1994.

COMMENTS:

There is no such law as the South Carolina Homeowner's Association Act. I believe the reference should be the South Carolina Nonprofit Corporation Act, Title 33, Chapter 31, Code of Laws of South Carolina, 2006, as Amended.

This would be an appropriate Amendment as the MBRHOA is by definition NOT a Horizontal Property Regime.

Article IV Powers of the Association:

- 4.1 The Association, acting through the Board of Directors, SHALL also have the power to:
- 4.1 The Association, acting through the Board of Directors, MAY choose to join with all Regimes for the following services for financial savings or other reasons, the following services:

COMMENT: This proposed Amendment completely changes the intent and purpose of why the Master Association was created. As such, this Amendment would require approval of the membership of the entire Master Association.

- 4.1 Add the following sentence to the last paragraph:
The Board of Directors MUST supply and meet the needs of all Regimes pertaining to A through I, otherwise, the Regimes MAY elect to not be a party to any items, A through I, that has not satisfied the requirements and needs of their Homeowners.

EXHIBIT 24

COMMENT: Again, this new sentence totally changes the intent and purpose of why the Master Association was created. Further, this would allow one Master Board member to totally disrupt the operation and maintenance of the Master Association. This is a bad proposed Amendment and should be rejected.

5.2 Delete "Voting Members" from last sentence.

5.2 Insert "the Board of Directors" in last sentence.

COMMENT: This amendment is NOT needed as by definition, a Voting Member is a member of the Board of Directors.

BYLAWS

Article II: Definitions

Add new Section 5. "Submitted Property" means property controlled by the HPR's, owned by the homeowner's and members, that can be controlled by the MBRHOA (all or any part only with proper voting of members of individual HPR's for a specific period of time.

COMMENT: This section makes no sense other than to be a blatant attempt to gain control of amenities that are controlled by the Master in perpetuity.

Add new Section 6. "Resort Facilities" common property owned or leased by the MBRHOA.

COMMENT: Again this proposed section makes no sense.

Article IV: Board of Directors: Voting; Selection; Term of Office; Duties

First paragraph, correct type in original by changing "Selection" to "Section".

COMMENT: Agree

Add new Section 14. Regime Voting Rights. Any Regime not current in payments of assessments forfeit the right to vote at the MBRHOA meetings until the accounts are paid in full.

COMMENT: While the wording of this proposed Amendment is poor, the intent is needed. There are additional issues to address such as if the right to vote is suspended for delinquency, what percentage vote is needed to approve any business item.

EXHIBIT 25

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EXHIBIT 25

EXH. 25

ELECTRONICALLY FILED - 2020 Feb 17 3:41 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

July 17, 2019

Kenneth Ray Moss, Esquire
628 Sea Mountain Highway
North Myrtle Beach, South Carolina 29582

Re: Termination of Empress Management, LLC

Dear Ken:

The purpose of this letter is to express my firm opinion that Empress Management, LLC's employment ("Empress") with Myrtle Beach Resort Homeowners' Association, Inc. ("Myrtle Beach Resort HOA" or "Master Association") should be immediately terminated in which Empress should not be allowed to finish its term which expires on December 31, 2019. My reasons for requesting the Board to immediately terminate Empress as the managing agent for the Master association are discussed below:

First, Empress has breached and continues to breach the provisions of its management agreement with the Master association as documented by the 29 May, 2019 Memo prepared by Mike Parades, PCAM. A copy of the Parades' Memo, marked as Exhibit "A", is attached hereto and incorporated by reference as part of this letter.

Second, Empress has violated and continues to violate its professional code of ethics as established by Community Association Institute ("CAI") in one or more of the following particulars:

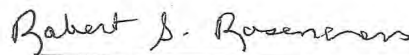
1. In failing to comply with current bylaws, standards and practices established by CAI as evidenced in the Parades' Memo.
2. In failing to act in the best interest of the Master Association; not refraining from making inaccurate or misleading representations or statements as evidenced in the Parades' Memo.
3. In failing to exercise due care and perform planning and supervisions as specified in Empress' written management agreement with the Master Association as evidenced in the Parades' Memo.
4. In failing to recognize the records, files, and books held by it are the property of the Master Association to be returned to us at the end of its engagement as evidenced in the Parades' Memo.
5. In failing to conduct itself in a professional manner at all times when acting in the scope of its employment as evidenced in the Parades' Memo.


Third, Empress has not always acted in the best interest of the Master Association in disputes involving the Ocean Front Spa with respect to the administration and governance of the resort property. This is because Empress was originally employed by the Ocean Front Spa before becoming the managing agent for the Master Association roughly a year later in December of 2017. In light of the above, Empress has an inherent conflict of interest by serving both the Master

Association and the Ocean Front Spa due to its conflicting duties of care and loyalty owed to each association concerning the management and governance of their separate properties which constitute one resort.

Fourth, Sarah Morrow, the Master Association's registered agent, was served with a lawsuit against the Master Association on September 4, 2018. However, as you are aware the Master Association or our insurance carrier was never notified of the lawsuit by Sarah Morrow. She failed to provide us with timely notice of the lawsuit and left us in a ditch without protecting the rights of the Association and its members under State Law. Furthermore, as you are aware, the Board was unaware of the lawsuit for over 9 months and only learned of the lawsuit when a Mark Dos Santos was reviewing court records online and discovered the filing of the lawsuit. To this day, Sarah Morrow has never apologized to Board or anyone for her gross incompetence in failing to timely notify us of the lawsuit. Her gross incompetence has placed the Master Association in default and may lead to a monetary judgement against the Association for a substantial sum of money. Under these circumstances, the Master Association will be required to sue Empress in a separate lawsuit for indemnification to offset any monetary judgment awarded by a jury.

For this reason and the other reasons stated above, Empress' employment agreement needs to be immediately terminated by a vote of the Board at the next schedule Board meeting to be held on July 30, 2019. Stated differently, if Master Association fails to terminate Empress' employment by ignoring its known *ultra vires* conduct as well as other acts and omissions as described above, we as individual Board members may lose the protection of the Business Judgement Rule.


Robert S. Rosencrans

DATE: May 29, 2019
FROM: Mike Parades, PCAM 
TO: Howell Bellamy, III
Bob Rosencrans
Lori Niedzwicki
Freddy Brown
RE: Empress Management, LLC

The purpose of this memo is to document several instances since inception of management of the Myrtle Beach Resort HOA, Inc. (Master) by Empress Management, LLC (Empress) where the management agreement terms have been and continue to be breached by Empress. The management agreement, copy attached as **Exhibit 1**, specifies the terms and condition of service by Empress in the management of the Master.

Item 1.d. defines "*Board of Directors*" or "*Board*" means the *Board of Directors or other body in charge of the Association pursuant to the Governing Documents.*" The Bylaws of the Association provide that each sub-association (Sub) SHALL appoint one member of the Sub as a Director of the Master. Each Director has voting power based on the proportionate percentage of units in his/her Sub in relation to the total units of the Master. The Bylaws also provide that any matter to be approved by the Master Board must be approved by 67% (or 3 out of 4 Board members)

Item 2.a. states in part "*The Managing Agent WILL deliver services as provided in this Agreement under the direction of the BOARD OF DIRECTORS of the Association.*"

It should be noted that **Item 3, TERM** of the management agreement, provides for an initial term of 24 months beginning January 1, 2018 and ending December 31, 2020. The stated date range is actually 36 months. It is not clear if the date range is intentionally wrong or simply a typo; however, the executed copy should be corrected with an end date of December 31, 2019.

SPECIFIC BREACHS OF CONTRACT BY EMPRESS

- 7. **Duties of Management**
 - a. **Financial Services**
 - a.2. "Prepare and review 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."

Breach #1: Empress often only submits monthly financial reports to the Board representatives from Ocean Front Spa (OFS) and Renaissance Towners (RT).

EXHIBIT 25

Breach #2: Empress denied knowledge of the settlement proceeds from the collection action against RT in 2017. These funds were to be used to reimburse the Reserve fund for monies spent out of Reserves to fund Operations. Empress knew exactly where the funds were and had full knowledge when the funds were transferred to the Operating fund in January 2018 and August 2018 to pay operating expenses rather than being used to pay back the funds borrowed in 2016 and 2017. Further, Empress knew the August transfer was completed by a non Board member and said nothing. The transfers in January and August were done without full Board approval.

a.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.

Breach: On several occasions, Empress has paid bills in excess of its limit without approval of the entire Board. When a large payment was discovered to have been made by the Board members from Five Seasons (FS) and (HPR), they requested copies of the invoice and backup only to be denied by Empress.
(See attached **Exhibit 2**)

a.7. "Assist in the development and enforcement of procedures to collect assessments from delinquent Owners."

Breach: RT has been continuously delinquent from January 1, 2018 through April 30, 2019. At April 30, 2019, the outstanding balance due from RT was \$147,557.74. The governing documents provide procedures to follow when an owner or in this case RT which collects the Master's assessments from its owners and is responsible to remit them to the Master, does not pay the Master on time.

b. **Administration**

b.1. "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 member*"

Breach: Empress has on several occasions either NOT prepared minutes of meetings or has not distributed the minutes to all Board meetings. Empress has also prepared minutes that were modified to say something other than what was said at a meeting.

c. **Property Supervision**

c.1. "...For any one item of repair, replacement or refurbishment, the expense incurred may not exceed the sum of one thousand dollars (\$1,000.00) unless specifically authorized by the Board."

Breach: There have been multiple instances of Empress paying bills in excess of \$1,000.00 without approval of the Board. One specific instance was payment of a legal bill in excess of \$15,000.00 allegedly for defense costs submitted to an insurance carrier with the amount purported to be the deductible. In fact, the deductible should have only been for \$5,000.00. Empress has refused requests to copies of said bills, see **Exhibit 2**.

d. **Maintenance Services/Supplying Goods and Services**

d.3. ...”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...”

Breach: A review of minutes and financial statements when issued reflect multiple occasions where there are deviations from budget without prior approval by the Board. There is **NO** single designee who can authorize deviations or expenditures.

e. **Casualty Loss, Restoration, Major Projects and Improvements**

e.1. ...the Managing Agent **SHALL**, if authorized by the Board, provide the necessary service for the filing of insurance claims...”

Breach: When the current case was filed by the Board members from FS and HPR against Board members of OFS and RT, Empress apparently filed a claim with the D&O Carrier **WITHOUT** approval by the Board. At issue is whether there is coverage for the alleged Ultra Vires actions by OFS and RT board members.

When FS and HPR Board members learned a claim had been filed, they requested copies documents and their request was denied.

11. **INDEMNITY AND EXCULPATION**

This provision provides management is NOT liable to the Master for any loss “*unless such acts or omissions constitute gross negligence or will full misconduct.*”

Breach: It is clear from the preceding listing of acts by Empress, that their actions have been grossly negligent and done willfully.

12. **DEFAULT**

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 the Agreement.

BREACH OF PROFESSIONAL MANAGER CODE OF ETHICS

I also enclosed a copy of the CAI Professional Manager Code of Ethics annotated to reflect those portions that I believe Empress has breached (Exhibit 3).

Actions that should occur ASAP:

1. Notice of Breach of Contract to Empress to be cured or contract will be terminated in 30 days.
2. File an Ethics violation Complaint with CAI naming Sarah Morrow.

Exhibit 1

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

EXHIBIT 25

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

5/8 12/1/19

shall be responsible for the payment of all compensation due to the Managing Agent through the effective date of cancellation.

5/6/20
62/AV

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. (All 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. *To All Board members*

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. *No authority to file claims without Board approval*

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.

*Partially pays
bill in excess
of limit without
Board approval* →

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 resolve the legal disputes between the parties, but shall not 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:

Monique Moore

Quinn Smith-Lynn Phipps

The Myrtle Beach Resort HOA, Inc.

By: [Signature]

Its: SFC

WITNESS:

[Signature]

Michelle Payne

EMPRESS MANAGEMENT, LLC

By: [Signature]

Its: Owner

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
FIFTEENTH JUDICIAL CIRCUIT

CIVIL CASE NO. 2018-CP-26-03173

**ANSWER OF DEFENDANTS
NANCY L. MOORE AND
JIM PERKINS TO
AMENDED MEMBERS'
DERIVATIVE COMPLAINT**

Defendants Nancy L. Moore and Jim Perkins (together referred to hereinafter as "Defendants"), by and through their undersigned counsel, in answer to the Amended Complaint (the "Amended Complaint") of Plaintiffs filed herein, would allege and show unto this Honorable Court as follows:

1. Defendants deny each and every allegation of the Amended 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 Amended Complaint and therefore, deny the same and demand strict proof thereof.
3. Defendants admit the allegations of Paragraph 8 of the Amended Complaint.
4. Defendants deny, upon information and belief, the allegations of Paragraph 9 of the Amended Complaint.
5. As to the allegations of Paragraph 10 of the Amended 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 Myrtle Beach Resort Homeowners' Association, Inc. ("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 Amended Complaint.

6. As to the allegations in Paragraph 11 of the Amended 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 Amended Complaint.

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

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

9. The allegations of Paragraph 14 of the Amended 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) or S.C. Code Ann. §33-7-400 or §33-31-630.

10. The allegations of Paragraph 15 of the Amended Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants 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 Amended Complaint as stated.

12. The allegations of Paragraph 17 of the Amended 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 Amended Complaint.

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

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

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

16. Answering the allegations of Paragraph 22 of the Amended 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 Amended Complaint as Exhibit "C". Further Answering the allegations of Paragraph 22 of the Amended 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. Answering the allegations of Paragraph 23 of the Amended Complaint, Defendants crave reference to the MBRHOA's governing documents and deny any allegations or characterizations inconsistent therewith.

18. Answering the allegations of Paragraph 24 of the Amended 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 or with established procedure and law.

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

20. Answering the allegations of Paragraph 26 of the Amended Complaint, Defendants crave reference to the Assignment of Rights described therein, and deny any allegations or characterizations inconsistent therewith.

21. The allegations of Paragraph 27 of the Amended 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 MBRHOA's Declarations and By-Laws and deny any allegations or characterizations inconsistent therewith and with established law.

22. Answering the allegations of Paragraphs 28 and 29 of the Amended 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. Answering the allegations of Paragraph 30 of the Amended 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 Amended Complaint.

25. Answering the allegations of Paragraph 32 of the Amended 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 Paragraphs 33, 34, 35, and 36 of the Amended Complaint, including all subparts.

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

27. Answering the allegations of Paragraph 37 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

28. The allegations of Paragraph 38 of the Amended Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny all allegations and implications of wrongdoing and deny liability to Plaintiffs and/or the relief sought. Further Answering the allegations of Paragraph 38 of the Amended 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.

29. Regarding the allegations of Paragraph 39 of the Amended Complaint, Defendants crave reference to the Declaration of Covenants, Conditions and Restrictions for the MBRHOA and deny any allegations or characterizations inconsistent therewith.

30. Defendants deny the allegations of Paragraphs 40 and 41 of the Amended Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Declaratory Judgment)

31. Answering the allegations of Paragraph 42 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

32. The allegations of Paragraph 43 of the Amended 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 requested relief.

33. Defendants admit the allegations of Paragraph 44 of the Amended Complaint and crave reference to the referenced statute.

34. The allegations of Paragraph 45 of the Amended 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 45 of the Amended Complaint.

35. Defendants deny the allegations of Paragraph 46 of the Amended Complaint.

36. Answering the allegations of Paragraph 47 of the Amended Complaint, Defendants deny all allegations of wrongdoing (including all subparts a-f) and further deny that Plaintiffs are entitled to the requested judicial determinations or any relief whatsoever.

37. Defendants deny the allegations of Paragraph 48 of the Amended Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Injunctive Relief)

38. Answering the allegations of Paragraph 49 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

39. Answering the allegations of Paragraph 50 of the Amended 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 50 of the Amended Complaint.

40. Answering the allegations of Paragraph 51 of the Amended Complaint, Defendants admit that a copy of the Master-in-Equity's Order dated November 28, 2017 is attached to the Amended Complaint as Exhibit "E". Further answering the allegations of Paragraph 51 of the Amended Complaint, Defendants crave reference to the Master-in-Equity's Order dated November 28, 2017 and deny all allegations and characterizations inconsistent therewith.

41. Defendants deny the allegations of Paragraphs 52 and 53 of the Amended Complaint.

42. The allegations of Paragraph 54 of the Amended 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.

43. Answering the allegations of Paragraph 55 of the Amended Complaint, Defendants admit only that the Affidavits of Daniel L. Patrick and Michael R. Parades are attached to the Amended Complaint as Exhibit "F" and Exhibit "G". Defendants deny all remaining allegations of Paragraph 55 of the Amended Complaint.

44. Answering the allegations of Paragraph 56 of the Amended Complaint, Defendant deny all allegations and implications of wrongdoing and deny that Plaintiffs are entitled to the requested injunctive relief or any relief whatsoever.

45. Defendants deny the allegations of Paragraphs 57 and 58 of the Amended Complaint.

AS TO THE FIFTH CAUSE OF ACTION
(Judicial Dissolution of Myrtle Beach Resort Homeowners Association, Inc., or reasonable alternatives to dissolution)

46. Answering the allegations of Paragraph 59 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

47. The allegations of Paragraphs 60, 61, and 62 of the Amended 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.

48. Defendants admit the allegations of Paragraphs 63, 64, and 65 of the Amended Complaint.

49. Defendants deny the allegations of Paragraph 66 of the Amended Complaint.

50. The allegations of Paragraph 67 of the Amended Complaint constitute conclusions of law to which Defendants are neither required to admit or deny.

51. Defendants deny the allegations of Paragraphs 68 and 69 of the Amended Complaint, including all subparts.

52. The allegations of Paragraphs 70 and 71 of the Amended Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny all allegations and implications of wrongdoing, deny liability to Plaintiffs and deny that Plaintiffs are entitled to any relief.

53. The allegations of Paragraphs 72, 73, and 74 of the Amended Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny Plaintiffs are entitled to the consideration requested.

54. The allegations of Paragraph 75 of the Amended Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny Plaintiffs are entitled to the relief requested.

AS TO THE SIXTH CAUSE OF ACTION
(Injunctive Relief)

55. Answering the allegations of Paragraph 76 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

56. The allegations of Paragraph 77 of the Amended Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny Plaintiffs are entitled to the relief requested.

57. Defendants deny the allegations of Paragraphs 78 and 79 of the Amended Complaint.

58. The allegations of Paragraph 80 of the Amended Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny Plaintiffs are entitled to the relief requested.

59. Defendants deny Plaintiffs' prayer for relief.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

60. Plaintiffs' Amended 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)

61. 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)

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

FOURTH AFFIRMATIVE DEFENSE
(Affirmation)

63. 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)

64. 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)

65. 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), SCRCPP)

66. The Amended Complaint fails to satisfy the pleadings 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.

67. Further, 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.

EIGHTH AFFIRMATIVE DEFENSE
(Injunctive Relief Improper)

68. Plaintiffs' claim for an injunctive relief 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.

NINTH AFFIRMATIVE DEFENSE
(Business Judgment)

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

TENTH AFFIRMATIVE DEFENSE
(Equitable Defenses)

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

ELEVENTH AFFIRMATIVE DEFENSE
(Advice of Counsel)

71. 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.

TWELFTH AFFIRMATIVE DEFENSE
(Punitive Damages Inappropriate)

72. 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 Amended 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.

73. Defendant requests trial bifurcation on the issues of actual damages and punitive damages, pursuant to S.C. Code Ann. §15-32-520. Further, Defendant pleads all defenses, limitations on damages, and other privileges codified at S.C. Code Ann. §15-32-520 and §15-32-530.

THIRTEENTH AFFIRMATIVE DEFENSE
(Reservation of Rights)

74. 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 asset any such defenses.

WHEREFORE, Defendants pray to the Court that:

1. Plaintiffs' Amended Complaint be dismissed with prejudice;
2. Judgement 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.

s/ Molly Hughes Cherry
Molly Hughes Cherry SC Bar ID 11188
R. Bruce Wallace SC Bar ID 11653
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, South Carolina 29402
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Facsimile: 843.414.8209
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ATTORNEYS FOR DEFENDANTS
NANCY L. MOORE and JIM PERKINS

16 March 2020

ELECTRONICALLY FILED - 2020 Mar 16 4:26 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 Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CIVIL CASE NO. 2018-CP-26-03173

**ANSWER OF DEFENDANTS JEFFERY
L. RICHARDSON AND PETER A.
GRUSAUSKAS TO AMENDED
MEMBERS' DERIVATIVE
COMPLAINT**

Defendants Jeffery L. Richardson and Peter A. Grusauskas (together referred to hereinafter as "Defendants"), by and through their undersigned counsel, in answer to the Amended Complaint (the "Amended Complaint") of Plaintiffs herein, would allege and show unto this Honorable Court as follows:

1. Defendants deny each and every allegation of the Amended 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 Amended Complaint and therefore, deny the same and demand strict proof thereof.
3. Defendants admit the allegations of Paragraph 8 of the Amended Complaint.
4. Defendants deny, upon information and belief, the allegations of Paragraph 9 of the Amended Complaint.
5. As to the allegations of Paragraph 10 of the Amended Complaint, Defendants admit that Nancy Moore is current member of the Boards of Directors of the Myrtle Beach Resort

Homeowners' Association, Inc. ("MBRHOA") and Ocean Front Spa. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 10 of the Amended Complaint and therefore, deny the same and demand strict proof thereof.

6. As to the allegations in Paragraph 11 of the Amended Complaint, Defendants admit that Jim Perkins is a former member of the Board of Directors for the MBRHOA. 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 Amended Complaint.

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

9. The allegations of Paragraph 14 of the Amended 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) or S.C. Code Ann. §33-7-400 or §33-31-630.

10. The allegations of Paragraph 15 of the Amended Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants 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 Amended Complaint as stated.

12. The allegations of Paragraph 17 of the Amended 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 Amended Complaint.

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

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

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

16. Answering the allegations of Paragraph 22 of the Amended 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 Amended Complaint as Exhibit "C". Further answering the allegations of Paragraph 22 of the Amended 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. Answering the allegations of Paragraph 23 of the Amended Complaint, Defendants crave reference to the MBRHOA's governing documents and deny any allegations or characterizations inconsistent therewith.

18. Answering the allegations of Paragraph 24 of the Amended 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 or with established procedure and law.

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

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

21. The allegations of Paragraph 27 of the Amended 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 MBRHOA's Declarations and By-Laws and deny any allegations or characterizations inconsistent therewith and with established law.

22. Answering the allegations of Paragraphs 28 and 29 of the Amended 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. Answering the allegations of Paragraph 30 of the Amended 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 Amended Complaint.

25. Answering the allegations of Paragraph 32 of the Amended 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, 34, 35, and 36 of the Amended Complaint, including all subparts.

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

27. Answering the allegations of Paragraph 37 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

28. The allegations of Paragraph 38 of the Amended Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny all allegations and implications of wrongdoing and deny liability to Plaintiffs and/or the relief sought. Further answering the allegations of Paragraph 38 of the Amended 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.

29. Regarding the allegations of Paragraph 39 of the Amended Complaint, Defendants crave reference to the Declaration of Covenants, Conditions and Restrictions for the MBRHOA and deny any allegations or characterizations inconsistent therewith.

30. Defendants deny the allegations of Paragraphs 40 and 41 of the Amended Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Declaratory Judgment)

31. Answering the allegations of Paragraph 42 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

32. The allegations of Paragraph 43 of the Amended 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 requested relief.

33. Defendants admit the allegations of Paragraph 44 of the Amended Complaint and crave reference to the statute quoted therein.

34. The allegations of Paragraph 45 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 45 of the Complaint.

35. Defendants deny the allegations of Paragraph 46 of the Amended Complaint.

36. Answering the allegations of Paragraph 47 of the Amended Complaint, Defendants deny all allegations (including all subparts a-f) and further deny that Plaintiffs are entitled to the requested judicial determinations or any relief whatsoever.

37. Defendants deny the allegations of Paragraph 48 of the Amended Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Injunctive Relief)

38. Answering the allegations of Paragraph 49 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

39. Answering the allegations of Paragraph 50 of the Amended 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 50 of the Amended Complaint.

40. Answering the allegations of Paragraph 51 of the Amended Complaint, Defendants admit that a copy of the Master-in-Equity's Order dated November 28, 2017 is attached to the Amended Complaint as Exhibit "E". Further answering the allegations of Paragraph 51 of the Amended Complaint, Defendants crave reference to the Master-in-Equity's Order dated November 28, 2017 and deny all allegations and characterizations inconsistent therewith.

41. Defendants deny the allegations of Paragraphs 52 and 53 of the Amended Complaint.

42. The allegations of Paragraph 54 of the Amended 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.

43. Answering the allegations of Paragraph 55 of the Amended Complaint, Defendants admit only that the Affidavits of Daniel L. Patrick and Michael R. Parades are attached to the Amended Complaint as Exhibit "F" and Exhibit "G". Defendants deny all remaining allegations of Paragraph 55 of the Amended Complaint.

44. Answering the allegations of Paragraph 56 of the Amended Complaint, Defendant deny all allegations and implications of wrongdoing and deny that Plaintiffs are entitled to the requested injunctive relief or any relief whatsoever.

45. Defendants deny the allegations of Paragraphs 57 and 58 of the Amended Complaint.

AS TO THE FIFTH CAUSE OF ACTION
(Judicial Dissolution of Myrtle Beach Resort Homeowners Association, Inc., or reasonable alternatives to dissolution)

46. Answering the allegations of Paragraph 59 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

47. The allegations of Paragraphs 60, 61, and 62 of the Amended 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.

48. Defendants admit the allegations of Paragraphs 63, 64, and 65 of the Amended Complaint.

49. Defendants deny the allegations of Paragraph 66 of the Amended Complaint.

50. The allegations of Paragraph 67 of the Amended Complaint constitute conclusions of law to which Defendants are neither required to admit or deny.

51. Defendants deny the allegations of Paragraphs 68 and 69 of the Amended Complaint, including all subparts.

52. The allegations of Paragraphs 70 and 71 of the Amended Complaint constitute conclusions of law to which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny all allegations and implications of wrongdoing, deny liability to Plaintiffs and deny that Plaintiffs are entitled to any relief.

53. The allegations of Paragraphs 72, 73, and 74 of the Amended Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny Plaintiffs are entitled to the consideration requested.

54. The allegations of Paragraph 75 of the Amended Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny Plaintiffs are entitled to the relief requested.

AS TO THE SIXTH CAUSE OF ACTION
(Injunctive Relief)

55. Answering the allegations of Paragraph 76 of the Amended Complaint, Defendants reassert the responses in the previous paragraphs and incorporate the same as if restated verbatim herein.

56. The allegations of Paragraph 77 of the Amended Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny Plaintiffs are entitled to the relief requested.

57. Defendants deny the allegations of Paragraphs 78 and 79 of the Amended Complaint.

58. The allegations of Paragraph 80 of the Amended Complaint constitute Plaintiffs' characterization of their claims and thus, require no response. To the extent a response is required, Defendants deny Plaintiffs are entitled to the relief requested.

59. Defendants deny Plaintiffs' prayer for relief.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

60. Plaintiffs' Amended 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)

61. 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)

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

FOURTH AFFIRMATIVE DEFENSE
(Affirmation)

63. 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)

64. 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)

65. 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), SCRCPP)

66. The Amended Complaint fails to satisfy the pleadings 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.

67. 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.

EIGHTH AFFIRMATIVE DEFENSE
(Injunctive Relief Improper)

68. Plaintiffs' claim for an injunctive relief 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.

NINTH AFFIRMATIVE DEFENSE
(Business Judgment)

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

TENTH AFFIRMATIVE DEFENSE
(Equitable Defenses)

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

ELEVENTH AFFIRMATIVE DEFENSE
(Advice of Counsel)

71. 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.

TWELFTH AFFIRMATIVE DEFENSE
(Punitive Damages Inappropriate)

72. 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 Amended 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.

73. Defendant requests trial bifurcation on the issues of actual damages and punitive damages, pursuant to S.C. Code Ann. §15-32-520. Further, Defendant pleads all defenses, limitations on damages, and other privileges codified at S.C. Code Ann. §15-32-520 and §15-32-530.

THIRTEENTH AFFIRMATIVE DEFENSE
(Reservation of Rights)

74. 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 asset any such defenses.

WHEREFORE, Defendants pray to the Court that:

1. Plaintiffs' Amended Complaint be dismissed with prejudice;
2. Judgement 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.

s/ Molly Hughes Cherry
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ATTORNEYS FOR DEFENDANTS
JEFFERY L. RICHARDSON and
PETER A. GRUSAUSKAS

16 March 2020

ELECTRONICALLY FILED - 2020 Mar 16 4:26 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 Defendant.

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

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

**TO: MOLLY HUGHES CHERRY, ESQUIRE ATTORNEY FOR THE DEFENDANTS
AND NICHOLAS J. RIVERA, ESQUIRE, ATTORNEY FOR THE NOMINAL
DEFENDANT**

PLEASE TAKE NOTICE that Plaintiffs, by and through her undersigned attorneys, will move before the Presiding Circuit Court Judge for Horry County, South Carolina, for an Order granting summary judgment in favor of Plaintiffs pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Plaintiffs move for summary judgment on the basis that there are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law on all of following issues or matters set forth below:

- The MBRHOA's Declaration and Bylaws are valid, enforceable, and/or legal.
- The MBRHOA's Board of Directors' powers under Section 4.1, Article IV of the Declaration are not optional, but affirmative obligations binding on each of the individual Board members.

- MBRHOA's Board of Directors cannot delegate their powers, duties, or obligations under subsections (a) through (i) of Section 4.1, Article IV of the Declaration to the individually condominium regimes.
- The MBRHOA's Board of Directors cannot sell the common properties and/or commercial units owned by the Association without a vote of the 1,010 members of the Association.

RELEVANT AND UNDISPUTED FACTS

The Myrtle Beach Resort Homeowners' Association, Inc. ("MBRHOA") oversees and governs the Myrtle Beach Resort. Myrtle Beach Resort is comprised of four individual horizontal property regimes: (1) Myrtle Beach Resort Horizontal Property Regime; (2) Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime ("HPR"); (3) Renaissance Tower Horizontal Property Regime; and (4) Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime (collectively, "regimes"). However, regardless of which regime an individual unit owner is a member of, he or she is still a member of the MBRHOA. The governing documents of the MBRHOA is that "Declaration of Covenants, Conditions, and Restrictions for the Myrtle Beach Resort Homeowners' Association, Inc." dated April 16, 1991, and filed on April 25, 1991, in the Deed Book 1465 at Page 329 in the Office of the Horry County Register of Deeds (the "Declaration").

The MBRHOA manages and administers certain aspects of the Myrtle Beach Resort and the regimes that make it up, including the common elements. As structured, the MBRHOA is managed by a four-member Board of Directors and each member of the Board is from one of the horizontal property regimes that make up the MBRHOA. The Board has the power and the obligation to perform certain services or actions on behalf of the property owners under subsections (a) through (i) of Section 4.1, Article IV of the Declaration in order to control and manage the MBRHOA for their benefit. Moreover, each Director is assigned the number of votes that represents the number of units (whether residential or commercial) that exists in that director's

individual regime.¹ There are 1,010 combined residential and commercial votes for any action taken at a meeting of the Board members for MBRHOA in the Myrtle Beach Resort. Under the MBRHOA's By-Laws Section 7 in order for any action to be approved by the Board, at least sixty-seven percent (67%) of the entire representative votes of the members of the MBRHOA must approve.

Over the years, the four (4) member Board of Directors for the MBRHOA and the underlying associations have disagreed about the legality of the MBRHOA, interpretation of the restrictive covenants, the duties of the MBRHOA, and numerous other aspects pertaining to the upkeep and repair of the MBRHOA.

PROCEDURAL HISTORY

On May 24, 2018, Board of Directors for both the HPR and Five Seasons Associations, as well as two currently serving MBRHOA members from the same, ("Plaintiffs") filed this lawsuit in Horry County individually and derivatively on behalf of the MBRHOA and its members against the Defendants, Jeffery L. Richardson ("Richardson"), Nancy L. Moore ("Moore"), and Jim Perkins ("Perkins"), who are either former and/or present Directors on the Board of Directors for the MBRHOA. The MBRHOA is a nominal defendant in this action. Plaintiffs Complaint alleged four (4) causes of action: (1) ultra vires acts and reckless, willful, and wanton conduct; (2) breach of Master HOA's Declaration and By-laws; (3) Declaratory Judgment; and (4) Injunctive Relief. The Defendants answered the Complaint, denying the allegations of wrongdoing.

¹ For example, the voting director of Myrtle Beach Resort Horizontal Property Regime has 251 votes; the voting director of Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime has 271 votes; the voting director of Renaissance Tower Horizontal Property Regime has 327 votes; and the voting director of Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime has 161 votes.

On November 14, 2018, the Plaintiffs filed a Motion for the Appointment of a Temporary Custodian to operate and manage the MBRHOA.

On December 12, 2018, the Honorable William H. Seals, Jr. denied Plaintiff's Motion for the Appointment of a Temporary Custodian but granted Plaintiffs' request for equitable relief and issued an Order appointing Attorney Kenneth Moss ("Moss") as a fifth board member for the MBRHOA with the authority to vote to resolve the dissension and deadlock between the four-member Board of Directors with regards to the governance issues of the resort.

On May 13, 2019, the parties attempted to mediate the case with Attorney William H. Lyles without success.

On December 6, 2019, the Plaintiffs' filed a Motion to amend their complaint to assert additional claim for judicial dissolution of MBRHOA, or reasonable alternatives to dissolution and an additional injunctive relief claim.

On December 19, 2019, Plaintiffs filed a Motion to Appoint a Custodian for MBRHOA requesting the court to exercise its statutory authority relying upon S.C. Code Ann. §§ 33-31-1430 and 1432.

On February 14, 2020, the Honorable William A. McKinnon granted Plaintiffs' Motion to amend their complaint limiting it to S.C. Code Ann. § 33-31-1430(a)(2)(ii) and authorized the Plaintiffs to re-file their Motion to appoint a Custodian, if they so choose.

On February 17, 2020, Plaintiffs filed their Amended Complaint.

On February 28, 2020, MBRHOA filed a motion to dismiss Plaintiffs' Amended Complaint pursuant to Rule 12(b)(7), SCRCP and Rule 19, SCRCP.

On February 28, 2020, the parties filed a joint motion for case assignment to the Business Court Program.

FURTHERMORE, this Motion is brought pursuant to Rule 56, SCRPC and is supported by the applicable statutory law and case law, the pleadings and discovery in this case, and any and all affidavits, memoranda of law and supporting material as may be filed with the Court prior to the hearing of this Motion or presented during oral arguments of the same. The moving party, as counsel for the Plaintiffs, hereby certifies that consultation with opposing counsel for the Defendants would serve no useful purpose at the present time.

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

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Myrtle Beach, South Carolina

March 24, 2020

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

**NOTICE OF MOTION AND MOTION
FOR PARTIAL SUMMARY
JUDGMENT ON PLAINTIFFS' THIRD
CAUSE OF ACTION**

TO: PLAINTIFFS ABOVE NAMED AND HOWELL BELLAMY THEIR ATTORNEY:

YOU WILL PLEASE TAKE NOTICE THAT Defendants Jeffery L. Richardson, Nancy L. Moore, Peter A. Grusauskas, and Jim Perkins, by and through their undersigned counsel, hereby move for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting Defendants judgment as a matter of law on Plaintiffs' Third Cause of Action. Specifically, Defendants request the Court grant judgment by declaring section 4.1 of Article IV of the Declaration of Covenants, Conditions and Restrictions for the Myrtle Beach Resort Homeowners' Association, Inc. (hereafter, the "Declarations") grants additional powers to the Board of Directors for the Myrtle Beach Resort Homeowners' Association, Inc. (hereafter, the "Master Association"). This section constitutes a grant of powers, not a mandate.

Section 4.1, Article IV of the Declarations 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.

This Motion is supported by the recorded Declarations, the By-Laws, and a Memorandum of Law to be filed with the Court. Please be present to defend if so minded.

s/ Bruce Wallace

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Attorneys for Defendants
Jeffrey L. Richardson, et al.

March 22, 2021

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

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
PLAINTIFFS' THIRD CAUSE OF
ACTION**

Defendants Jeffery L. Richardson, Nancy L. Moore, Peter A. Grusauskas, and Jim Perkins, by and through their undersigned counsel, hereby submit this Memorandum of Law in Support of their Motion for Partial Summary Judgment on Plaintiffs' third cause of action. Plaintiffs' third cause of action seeks a judgment of this Court declaring in part that 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 "Declarations") 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"). For the reasons set forth below, the Court should grant Judgment in favor of Defendants and declare that Section 4.1, Article IV merely grants additional powers to the Board, but does not mandate their use by the Board.

Section 4.1, Article IV of the Declarations 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.

I. Standard of Review

“The characterization of a declaratory judgment suit depends on the nature of the underlying controversy.” *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000). “In order to determine the standard of review to apply, the court must look to the kind of action in which the issue involved would have been decided if there were no declaratory judgment procedure.” *Id.* Both Plaintiffs and Defendants assert this action involves the interpretation of a contract and, as such, is an action at law. *Id.* See *Jacobs v. Service Merchandise Co.*, 297 S.C. 123, 375 S.E.2d 1 (Ct.App.1988). “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.” *Baker Broad., Inc.*, 343 S.C. at 146–47, 538 S.E.2d at 675. “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).

II. Argument

a. Application of the rules of construction for contracts makes clear that Section 4.1 is a grant of additional powers, not a mandate to use those powers.

Here, as a matter of law, it up to this Court to review the Declaration and By-laws of the Master Association, attached as Exhibit A, and determine whether the documents grant the Master Association additional discretionary powers or grants powers and mandates their use. South Carolina law controls the interpretation of the Master Association's Declaration and By-laws. *See* Exhibit A, §6.4, at pg. 12. 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). The contract should be read as a whole, not in a piecemeal fashion, to avoid reading ambiguity into the contract. *S.C. Dep’t of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299, 302–03 (2001). Further, “an interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous.” *Stevens Aviation*, 407 S.C. at 417, 756 S.E.2d at 153. In following the above-mentioned rules of construction for interpreting a contract, this Court should find that the Declarations and By-laws grant the Master Association additional powers to act, not the mandate of action by the Master Association.

b. Section 4.1 is a mere grant of additional powers.

In asserting that the powers listed in Section 4.1 of the Declarations are mandatory, Plaintiffs overlook the difference in “The Board shall...transact...set...fix...elect...carry out...” as seen in Section 3.2 and the “The Association... shall also **have the power to**” as seen in Section 4.1. Clearly the terms in Section 3.2 require mandatory action from the Board. On the contrary,

the addition of the terms “also have the power to” in the language of Section 4.1 grants the Board the possession of the powers listed therein with the responsibility to use the powers at the Board’s discretion.

Section 3.2 of Article III of the Declaration states in relevant part “This Board of Directors *shall act in accordance with the By-Laws* which are attached hereto” Exhibit A at §3.2, pg. 7 (emphasis added). Similarly, the By-Laws state 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.

Exhibit A at §8. at pg. 23 (emphasis added). All parties agree that section 3.2 of Article III of the Declaration and Section 8 of the By-Laws mandate certain conduct by the Board. Conspicuously missing from both these mandates, however is the phrase “also have the power to” as seen in Section 4.1, Article IV of the Declaration. In fact, that phrase appears nowhere else in the Declaration or the By-Laws.

Similarly, other sections of the Declaration corroborate the discretionary nature of the powers granted in section 4.1, Article IV. Section 4.1(e) grants the Master Association “the power to grant easements, rights of way ... for utilities, and sewer facilities and other services over the Common Areas....” Exhibit A, §4.1(e). Compare that to the language in Section 2.1 of the Declarations:

There is hereby reserved for the benefit of the Association, ... *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 ... 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.

Exhibit A, §2.1 at pg. 5 (emphasis added). In reconciling the Declarations and the By-laws, the Court cannot interpret the language in 4.1 as mandatory where other language in the Declarations regarding the same subject matter clearly allows discretion of whether to use that power. To do so would ignore the language of section 2.1 completely.

Finally, Section 4.1 of the Declarations, subsection (i), grants the Board the ability to “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.” Exhibit A, §4.1(i). This language in Section 4.1 should be read to grant the Board discretion to take or refrain from action if it “shall deem advisable...for the benefit of the Property.” *Id.* Here, it appears as though the primary intention of Section 4.1 of the Declarations is to allow the Board to take such actions which are believed to benefit the Property. In order to reasonably discern whether an action would benefit the Property, the Board would have to undergo a process of analysis which, at its conclusion, could result in the Board deciding to refrain from taking action. This ability for the Board to choose to refrain from taking action demonstrates that the powers granted in Section 4.1 of the Declarations are, in fact, discretionary and not mandates for the Board to take action.

III. Conclusion

Based on the foregoing, Defendants respectfully request that Defendants’ Motion for Partial Summary Judgment on Plaintiffs’ Third Cause of Action be granted.

Respectfully submitted,

s/R. Bruce Wallace
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*Attorneys for Defendants
Jeffrey L. Richardson, et al.*

April 28, 2021
Charleston, South Carolina

Exhibit A

ELECTRONICALLY FILED - 2021 Apr 28 3:03 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

ELECTRONICALLY FILED - 2028 Feb 22 5:49 PM - HORRY - COMMON PLEAS - CASE#20180CP2603173
ELECTRONICALLY FILED - 2021 Apr 28 3:03 PM - HORRY - COMMON PLEAS - CASE#20180CP2603173

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

111-1229

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.

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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

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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

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

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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

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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 Assessment levied by the Association, as well as the manner of collecting same, shall be determined by the Board of Directors at 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 Assessment 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:

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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

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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

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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.

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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 Wells BY: *Alfred Wells, Jr.*
[Signature] ITS: President

MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME, INC.
Annette Jordan BY: *Freddy Brown*
[Signature] ITS: President

MYRTLE BEACH RESORT OCEANFRONT SPA HORIZONTAL PROPERTY REGIME, INC.
Michelle S. Hoss BY: *Sam M. Brock*
Barbara L. Creech ITS: President

RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME, INC.
Pamela S. Mahalik BY: *Stanley M. Jordan*
Tom P. Boudreau ITS: President

MYRTLE BEACH RESORT FIVE SEASONS CENTRE COUNCIL OF CO-OWNERS, INC.
[Signature] BY: *William H. Cole*
Annette Jordan ITS: President

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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

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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.

⁽²⁾ Michelle S. Hoar

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

⁽³⁾ 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.

⁽²⁾ Pamela S. Malchik

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

⁽³⁾ Todd D. Boudreau
Notary Public for ~~South Carolina~~ Massachusetts
My Commission Expires: ⁽⁴⁾ 11/29/96

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Surfside 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.

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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.

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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.

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.

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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.

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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.

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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.

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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

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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

WITNESSETH:

MYRTLE BEACH RESORT HORIZONTAL
PROPERTY REGIME, INC.



Annette Jordan

BY: 
James R. Brunner

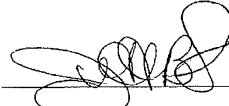
ITS: Authorized Board Representative

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

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

⁽⁴⁾ [Signature] BY: ⁽¹⁾ George Kidney
George Kidney
⁽³⁾ Lauren W. Isaacs ITS: Authorized Board Representative

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

PERSONALLY APPEARED BEFORE ME Lauren W. 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 W. Isaacs
witnessed the execution thereof.

⁽⁵⁾ [Signature]
SWORN to before me this
4th day of April, 1991.

⁽³⁾ Lauren W. 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

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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

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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

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

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AND IN
OPPOSITION OF DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Plaintiffs submit this Memorandum in Support of their Motion for Summary Judgment and in opposition of Defendants' Motion for Partial Summary Judgment. The grounds for Plaintiffs' Motion are that all undisputed material facts in this matter demonstrate that the Declaration and By-Laws of the Myrtle Beach Resort Homeowners' Association, Inc. ("MBRHOA") impose affirmative obligations upon the Defendants. Plaintiffs request this Court grant their Motion for Summary Judgment and deny Defendants' Motion for Partial Summary Judgment. The Plaintiffs rely on Rule 56, SCRCP, and applicable South Carolina law, documents filed of record including attached affidavits, and the Declaration and By-Laws of the MBRHOA ("Declaration and By-Laws") in support of its Motion for Summary Judgment in this action.

RELEVANT BACKGROUND

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.

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.)

A true and correct copy of the Declaration and By-laws are attached hereto as Exhibit “A” and incorporated by reference.

STANDARD OF REVIEW

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), SCRCP. “In order to 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).

ARGUMENT

I. MBRHOA’s Declaration and By-Laws are valid, enforceable, and/or mutually binding on the Board of Directors and the members of the Association.

Defendants contend that Declaration may be flawed or invalid to the extent that it exceeds the reserved authority provided under the Master Deeds of the Regimes.¹ Defendants’ contention is without merit.

Article XVIII of the Master Deeds for Ocean Front Spa and the Renaissance Tower Regimes provides in pertinent part as follows:

Declarant (its successors or assigns in interest as developer of the Resort or Present Owner, as the case may be) may, in its sole discretion establish the Myrtle Beach Resort Homeowners Association (herein "Homeowners"), which shall be an association (which may in Declarant's sole discretion, be incorporated as a corporation or as corporation not for profit or unincorporated) and all Co-Owners shall, in addition to being Co-Owners, automatically become members thereof. In

¹A true and correct copy of Plaintiffs’ Request for Admissions of Fact are attached hereto as Exhibit “B” and incorporated by reference.

addition, the Board of Directors shall elect one of its members who shall serve on the Board of Directors of the Homeowners. The Board of Directors shall be comprised of one representative from ... [each of the existing and future Regimes], one representative from Myrtle Beach Resort Horizontal Property Regime, one representative from Myrtle Beach Oceanfront Spa Horizontal Property Regime and one representative from each other development as Declarant as developer of the Resort shall designate. ***In the event of such establishment, Declarant shall designate Homeowners as its designee to carry out the duties and responsibilities and have the powers granted herein to Declarant's designee.*** In addition, Declarant (its successors or assigns in interest as developer of the Resort or Present Owner as the case may be) may, in its sole discretion, at any time convey to the Regime and its Co-Owners and/or any other horizontal property regimes or other multi-family developments within the Resort or which Declarant has developed in close proximity to the Resort having the like non-exclusive easements and Licenses for use, or to Homeowners, all or any portion of the Resort Facilities or any interests therein, provided such shall be for no consideration other than actual cost of such improvement or facility. Declarant... retaining unto itself and the right to grant to such third parties as it may designate easements and licenses for use consistent with the conveyed facilities and contracts for management thereof and all matters and right theretofore of record. **In such event, such documents shall be considered an amendment to this Master Deed and execution only by the Declarant (or its successors or assigns in interest as developer of the Resort or Present Owner as case may be), shall be sufficient and no execution, concurrence or consent shall be required of the Council of Co-Owners, any Co-owner, any Mortgagee or any third-party whatsoever.** (Emphasis added).

On March 18, 1987, the Original Declarant² ("Assignor") assigned its rights under the Master Deeds, including Articles XIV, XVIII, and XIX of each of the Master Deeds, to Vacation Properties, Inc. (hereinafter "Assignee Declarant" or "Vacation") by an Assignment of Declarant Rights filed in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1121, Page 401 on March 18, 1987 (hereinafter "First Assignment"). Specifically, Original Declarant granted, conveyed and assigned to Vacation under subparagraph (1) the following:

- a. all of the Assignor's rights, title and interest (on a non-exclusive basis) in and to the easements reserved by Assignor under Article XIV of the Master Deed, including but not limited to easements for access to and for ingress and egress across portions of the Regime Property for pedestrian and vehicular purposes, and

² The Original Declarant was Resort Development Corp (f/k/a Resort Investment Corp).

easements across the Regime Property for the purpose of providing access to the beach area which is part of the Regime Property, together with a license to use the beach area which is part of the Regime Property;

- b. all of the Assignor's rights reserved by Assignor under Article XIV of the Master Deed to grant the easements described in subparagraph a. above to those persons or entities designated in Article XIV;
- c. all of the Assignor's rights reserved by Assignor under Article XVIII of the Master Deed to add any part or all of portions of the Resort Property now owned or hereafter acquired by the Assignee to the Resort (as defined in the Master Deed), including but not limited to the Assignor's reserved right to grant easements for ingress and egress across areas of the Regime Property to the Atlantic Ocean and its beach;
- d. *all of the Assignor's rights reserved under Article XIV of the Master Deed to establish a master homeowners association for the present and future owners of any part or all of the Resort Property;* (Emphasis Added).
- e. all of the Assignor's rights under Article XIX of the Master Deeds to convey additional property located within the Resort Property to the regime and its co-owners, subject to the restrictions set forth in said Article XIX. (Emphasis added).

On January 27, 1989, Vacation Properties, Inc. (hereinafter "Assignor Declarant") assigned its rights under the Master Deeds, including Articles XIV, XVIII, and XIX of each of the Master Deeds, to MBRHOA (hereinafter "Assignee Declarant") by an Assignment of Declarant Rights³ filed in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 1284, Page 239 on February 2, 1989 (hereinafter "Second Assignment").

In accordance with the rights granted to the MBRHOA in Articles XIV and XVIII of the Master Deeds, and pursuant to the Second Assignment, the MBRHOA filed a Declaration of Covenants, Conditions and Restrictions and Amended By-Laws for the Myrtle Beach Resort Homeowners' Association, Inc. on April 25, 1991 in the Office of Register of Deeds Horry County, South Carolina in Deed Book 1465 at Page 329 (hereinafter "Declaration"). The Declaration was

³ A true and correct copy of the Second Assignment to MBRHOA is attached hereto as Exhibit "C" and incorporated by reference.

signed by the authorized representatives of all four regimes and by the authorized representative of the MBRHOA.⁴ In particular, Freddy Brown signed the Declaration as the Board President for Myrtle Beach Resort Horizontal Property Regime. See Exhibit E, Aff. of Freddy Brown, pp. 2-4 ¶ ¶ 9-15.

Here, the plain language of XVIII of the Master Deeds, including the pertinent language of the First and Second Assignments, clearly illustrates that the Original Declarant (its successor or assigns in interest as the developer of the Resort or Present Owner as case may be) had the authority in its sole discretion to establish the MBRHOA along with its governing documents. Stated differently, the plain language of XVIII of the Master Deeds did not require a vote of all 1,010 members in order to establish the Declaration of Covenants, Conditions, and Restrictions and Amended By-Laws for MBRHOA as argued by the Defendants. For the foregoing reasons, MBRHOA's Declaration and By-Laws are valid, enforceable, and/or mutually binding on the Board of Directors and the members of the Association.

II. The Declaration and By-Laws impose affirmative duties upon Defendants.

South Carolina law requires that restrictive covenants such as the Declaration and By-Laws be read as a whole. When the document is construed to give effect to all provisions, Article IV Section 8(e) of the By-Laws mandates that the powers enumerated in Article IV of the Declaration be carried out by the Association acting through the Board of Directors.

Restrictive covenants are contractual in nature and bind the parties thereto in the same manner as would any other contract. Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (2006) (citing 20 Am. Jur.

⁴ See Exhibit A, pp13-16, the executed signature pages of Declaration by the authorized Board Presidents of the four individual condominium regimes and MBRHOA.

2d Covenants, Conditions, and Restrictions § 1 (2005)). The paramount rule of contract construction is to ascertain and give effect to the intent of the parties as determined from the whole document. RV Resort and Yacht Club Owners Ass'n, Inc. v. BillyBob's Marina, Inc., 386 S.C. 313, 321, 688 S.E.2d 555, 559 (2010) (citing Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863–64 (1998)). Where the agreement in question is a written contract, the parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof. Thomas-McCain, Inc. v. Siter, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977) (citing Bruce v. Blalock, 241 S.C. 155, 127 S.E.2d 439 (1962)). The specific words and phrases of a covenant cannot be read exclusive of other contractual provisions. 20 Am Jur. 2d Covenants, Conditions, and Restrictions § 15. In interpreting any single provision in a covenant, the entire agreement must be viewed as a whole. Id. Wherever possible, a covenant should be construed to give effect to all of the provisions and to avoid rendering any provision meaningless. Id. Documents will be interpreted so as 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) (citing 17A Am. Jur. 2d Contracts § 385 (1991)).

Article IV of the Declaration lists the Powers of the Association and states, “The Association, acting through the Board of Directors, shall also have the power to: ...” The construction of a contract or even a phrase in the contract is not limited to one word, but rather the covenant as a whole must be taken into consideration. As stated above the covenant must be construed to give effect to all provisions. In accordance with the law, Article IV of the Declaration must then be read in light of Article IV, Section 8(e) of the By-Laws which states, “Consistent with these By-Laws and applicable Declarations, the Board *shall*: carry out all other duties and obligations imposed and *exercise all rights granted it by these By-Laws, the Declaration, and the*

Act.” (Emphasis added). Additionally, Article IV of the Declaration must be read in light of Article III, Section 3.2 of the Declaration which states, “*This Board of Directors shall act in accordance with the By-Laws . . .*” Exhibit A, p.7, Section 3.2 of the Declaration. (Emphasis added). When these three Sections are read in conjunction, the By-Laws mandate the execution of the powers of the Association in Article IV of the Declaration. Rights are synonymous with powers. See also, *Black's Law Dictionary* (7th ed. 1999) (defining “*right*” as “[a] power, privilege, or immunity secured to a person by law.”) (Emphasis added).

Furthermore, covenants are construed as a whole, keeping in mind their underlying purpose. 20 Am Jur. 2d Covenants, Conditions, and Restrictions § 15. Recently in Callawassie Island Mbrs. Club, Inc. v. Dennis, 821 S.E.2d 667 (S.C. 2018), the Supreme Court looked to the plain language of membership documents to ascertain the intent with which the provisions were written. In analyzing the documents to ascertain the meaning in accordance with the drafters’ intent, the Court made specific note that the provisions at issue were the very feature which enabled the members to sustain a viable Club and ensured that the Club would remain viable in the future. Id. at 671. Much the same, the drafters of the Declaration drafted these documents with the intent that the provisions would help further the development. Attorney Daniel L. Patrick drafted the Declaration and By-Laws and specifically stated in his May 17, 2018 Affidavit, “The enumerated powers of the Association set out in the DCCR (Article IV) were intended to be mandatory obligations, not optional.”⁵ This is further 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.

⁵ A true and correct copy of the Affidavit of Dan L. Patrick, marked as Exhibits D, is attached hereto and incorporated by reference.

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 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/rights of the Association affirmative duties. The exercise of these powers/rights surely best effects the intent of the general plan of development of the community.

A. The Horizontal Property Regime Act supports the affirmative obligation of the Board of Directors and their civil liability for not complying with the affirmative duties.

The Declaration was formed pursuant to the South Carolina Horizontal Property Act. Section 8(e) of the By-Laws states, “Consistent with these By-Laws and applicable Declarations, the Board shall: carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the *Act*.” (Emphasis added). Earlier in the document, Section 1.1.0 of the “Definitions” states “Act” shall mean the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, Code of Laws of South Carolina, 1976, as Amended.

Two statutes in the Horizontal Property Regime Act which explain the purpose of By-Laws and the necessity of compliance with By-Laws lend further clarity to the fact that Section 4.1 must be interpreted as affirmative duties.

S.C. Code Ann. § 27-31-150 states “The administration of the property constituted into horizontal property, whether incorporated or unincorporated, shall be governed by bylaws which shall be inserted in or appended to and recorded with the master deed or lease.” This statute notes that By-Laws must be part of the documents of the horizontal property regime and that the administration of the property must be governed by such. This language gives additional force to

Article IV Section 8(e) of the By-Laws and further confirms that the Association, through the Board of Directors, must carry out the duties, obligations, and rights granted them in the Declaration as mandated by the By-Laws.

S.C. Code Ann. § 27-31-170 then explains the necessity of compliance with the By-laws and the remedy for non-compliance. “Each co-owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the master deed or lease or in the deed or lease to his apartment. Failure to comply with any of the same shall be grounds for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by the administrator or the board of administration, or other form of administration specified in the bylaws, on behalf of the council of co-owners, or in a proper case, by an aggrieved co-owner.”

Similarly, Article VI, Section 6.4 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).

Thus, by not exercising the rights granted them in Article IV of the Declaration, as mandated by Article III, Section 3.2 of Declaration and the By-Laws under Article IV, Section 8

(a), (b), (c), (d), and (e), the Board of Directors of the Association is subject to injunctive relief and liability for damages to the aggrieved members. See Alala v. Peachtree Plantations, Inc., 292 S.C. 160, 167, 355 S.E.2d 286, 290 (Ct. App. 1987) (Of course, all parties must be obligated under a contract in order for it to be enforceable.) (Citing as authority 1A A.L. CORBIN, CORBIN ON CONTRACTS § 152 (1963); 1S. WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 105A (3d ed. 1957 and also the case of Humble Oil & Refining Co. v. DeLoache, 297 F. Supp. 647, 658 (D.S.C. 1969) (Judge Russell: "In the law of contracts, mutuality, both in definition and application, is largely synonymous with consideration.")). There is no *mutuality of obligation in a unilateral contract*. Towles v. United Healthcare Corp., 338 S.C. 29, 38, 524 S.E.2d 839, 844 (Ct. App. 1999). Defendants' assertion the Article IV, Section 4.1 powers are optional means that the Declaration and Amended By-laws are just a unilateral contract without any fiduciary obligations and/or duties of care owed to the members from the Board of Directors.

III. Defendants assumed the duties in the Declaration thus creating affirmative obligations.

Even assuming arguendo that the language of Article IV, Section 4.1 was not intended to create affirmative obligations, Defendants have undertaken to perform these duties rendering them affirmative. "Ordinarily, the common law imposes no duty on a person to act. [When] an act is *voluntarily undertaken*, however, the actor assumes the duty to use due care." Walbeck v. l'On Co., LLC, 426 S.C. 494, 514, 827 S.E.2d 348, 358 (Ct. App. 2018) (quoting Hendricks v. Clemson Univ., 353 S.C. 449, 456-57, 578 S.E.2d 711, 714 (2003)).

Over the past twenty years, the past Board members of the Association have continuously undertaken to perform all of the powers in Article IV, Section 4.1 for the sole purpose of

administering and managing the resort property for the mutual benefit of all members.⁶ Exhibit E, Aff. of Brown, pp. 5-6, ¶¶ 16-19. While the Board has now abandoned the performance of some of these tasks, it does not negate the fact that the Board voluntarily undertook to perform these duties which created a continuing obligation to execute these tasks with due care.

IV. The circumstances surrounding the execution of the Declaration and Regimes Amended By-laws indicate that the Board Presidents for the four Regimes and the Association intended for powers in Article IV, Section 4.1 of the Declaration to be mandatory.

Even assuming arguendo that the language of Article IV, Section 4.1 is equally capable of two or more different constructions and is considered ambiguous by the Court, the affidavits of Dan Patrick, the attorney who drafted the Declaration and Amended By-laws, and Freddy Brown, the Board President who signed Declaration, still indicate that true intent of Board Presidents for the four individual condominium regimes and the Association, who signed the Declaration, was for powers in Article IV, Section 4.1 of the Declaration to be mandatory as opposed to being only optional. See Penton v. J.F. Cleckley & Co., 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997) (where a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties).

VI. The Association cannot delegate its powers, duties, and obligations under Article IV, Section 4.1 to the individual condominium regimes.

Contrary to the Defendants' contention, the Plaintiffs in subparagraphs (c) and (d) of Paragraph 34 of their Amended Complaint do make reference to the MBRHOA's inability to delegate its duties to the individual condominium regimes. Further, the Plaintiffs in their Second Cause of Action under Paragraph 47 are seeking declaratory Judgment:

⁶ A true and correct copy of the Affidavits of Freddy Brown and Plaintiffs' Expert Witness Allen Jeffcoat, marked as Exhibits E and F, are attached hereto and incorporated by reference.

- 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; and
- 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.

Plaintiffs reassert the above arguments that the powers granted to the Board in Article IV, Section 4.1 are mandatory and not discretionary and cannot be delegated to the individual condominium regimes. Further, subsection (g) of Section of 4.1 states that "*further duties and responsibilities . . . may be delegated to the Association by the Individual Condominium Associations*" but this subsection does not allow Section 4.1 powers to be delegated to the individual condominium regimes. Therefore, absent language in the Declaration and the Amended By-Laws stating otherwise, the Board is clearly prohibited from delegating its Section 4.1 mandatory powers to the individual condominium regimes.

CONCLUSION

When the Declaration and By-Laws are construed to give effect to all provisions, Article IV, Section 4.1 imposes affirmative duties upon Defendants with respect to the administration and management of the Myrtle Beach Resort Property. The past Board members undertook to perform these duties, thus further affirming the duty to perform these tasks. Based upon the foregoing, Plaintiffs respectfully request this Honorable Court deny Defendants' Motion for Partial Summary Judgment and grant Plaintiffs' Motion for Partial Summary Judgment against Defendants finding that: (1) MBRHOA's Declaration and By-Laws are valid, enforceable, and/or legal; (2) Article IV, Section 4.1 of the Declaration to impose affirmative duties upon Defendants when read together with Article IV Section 8(e) of the By-Laws; and (3) MBRHOA cannot delegate its

powers, duties, and obligations under Article IV, Section 4.1 to the individual condominium regimes.

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

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Myrtle Beach, South Carolina

March 13, 2020

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EXHIBIT A

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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.

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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.

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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.

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

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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

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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

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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

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.

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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, Jr. BY: *Alfred H. Wells, Jr.*
ITS: PRESIDENT

MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME, INC.
Arnette Jordan BY: *Freddy Brown*
ITS: President

MYRTLE BEACH RESORT OCEANFRONT SPA HORIZONTAL PROPERTY REGIME, INC.
Michelle S. Hoan BY: *Sam M Brock*
ITS: President

RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME, INC.
Pamela S. Malick BY: *Stanley M. Jordan*
ITS: President

MYRTLE BEACH RESORT FIVE SEASONS CENTRE COUNCIL OF CO-OWNERS, INC.
Arnette Jordan BY: *William H. Cole*
ITS: President

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

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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 Attrek 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

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P. O. Box 16663
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STATE OF SOUTH CAROLINA)
COUNTY OF Aiken) PROBATE

PERSONALLY APPEARED BEFORE ME ⁽¹⁾ Michelle S. Hood, who states under oath that (s)he saw the within named Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime, Inc., by ⁽¹⁾ S.M. Brock, 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 L. Cribb witnessed the execution thereof.

⁽²⁾ Michelle S. Hood

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

⁽³⁾ Barbara L. Cribb
Notary Public for South Carolina
My Commission Expires ⁽⁴⁾ 10-5-94

~~COMMONWEALTH OF MASSACHUSETTS~~
~~NOTARY PUBLIC~~)
⁽⁶⁾) PROBATE
COUNTY OF HAMPSHIRE)

PERSONALLY APPEARED BEFORE ME ⁽²⁾ Pamela S. Malchik, who states under oath that (s)he saw the within named Renaissance Horizontal Property Regime, Inc., by ⁽¹⁾ Frank J. Jankovic, 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 ⁽³⁾ Frank J. Jankovic witnessed the execution thereof.

⁽²⁾ Pamela S. Malchik

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

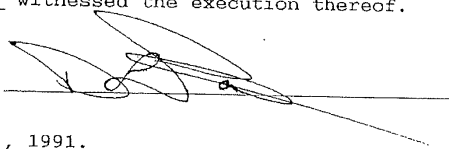
⁽²⁾ Frank J. Jankovic
Notary Public for ~~South Carolina~~ Massachusetts
My Commission Expires: ⁽⁴⁾ 11/29/96

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

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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 15009
Surfside Beach,
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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.

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Daniel L. Patrick
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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.

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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.

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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.

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P. O. Box 15668
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.

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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

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.

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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.

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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.

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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

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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

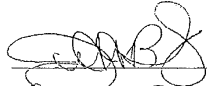
The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

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 15689 Surfside Beach, S.C. 29587

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WITNESSETH: MYRTLE BEACH RESORT HORIZONTAL
PROPERTY REGIME, INC.


BY: James R. Brunner
James R. Brunner
Annette Jordan 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.

Annette Jordan
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

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

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

⁽⁶⁾ [Signature] BY: ⁽¹⁾ [Signature]
George Kidney
⁽²⁾ [Signature] ITS: Authorized Board Representative

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

PERSONALLY APPEARED BEFORE ME Lauren W. 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⁾ [Signature]
witnessed the execution thereof.

SWORN to before me this
14th day of ⁽⁷⁾ April, 1991.

⁽²⁾ [Signature]
Notary Public for ~~XXXXXX~~ 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 15668
Sunside Beach,
S.C. 29587

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

WITNESSETH: RENAISSANCE TOWER HORIZONTAL PROPERTY REGIME, INC.

(2) Jean Marshall BY: (1) Alfred H. Wells
Alfred H. Wells
(3) Janice E. Hounski 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) Janice E. Hounski witnessed the execution thereof.

(2) Jean Marshall

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

(3) Janice E. Hounski
Notary Public for ~~SAN JOSE DE ORO~~ 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

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

WITNESSETH:

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

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

STATE OF SOUTH CAROLINA)
(6))
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 (7) 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 16669
Surfside Beach,
S.C. 29587

EXHIBIT "D"

EXHIBIT B

ELECTRONICALLY FILED - 2021 Apr 30 1:56 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173



Krista M. McGuire
Special Counsel
Telephone: 843.727.2643
Direct Fax: 843.727.2680
kristamcguire@parkerpoe.com

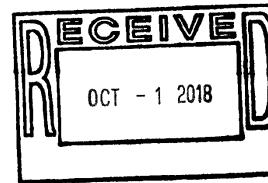
Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

September 28, 2018

Via E-Mail and U.S. Mail

Howell V. Bellamy, III, Esq.
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
1000 29th Ave. N.
Myrtle Beach, SC 29577

Re: **Fredrick Brown, et al. v. Jeffery Richardson, et al.**
C/A No. 2018-CP-26-03173



Dear Howell:

Enclosed for service on you, please find Defendants' Responses to Plaintiff's Requests for Admission of Fact.

With kind regards, I am

Sincerely yours,

Krista M. McGuire

KMM:kxl
Enclosure

cc: Nicholas A. Rivera, Esq. (w/enc.)

PPAB 4469413v1

Parker Poe Adams & Bernstein LLP Attorneys and Counselors at Law 200 Meeting Street Suite 301 Charleston, SC 29401
t 843.727.2650 f 843.727.2680 www.parkerpoe.com

ELECTRONICALLY FILED - 2021 Apr 30 1:56 PM - HARRY 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.

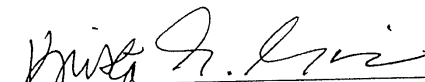
RESPONSE: Defendants admit that the document attached as Exhibit A to Plaintiffs' Requests for Admission is a true and genuine copy of the recorded Declaration of Covenants, Conditions and Restrictions for the Association dated April 25, 1991 (the "Declaration"). The validity, enforceability and interpretation 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

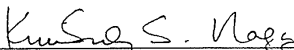
Charleston, South Carolina

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 C

ELECTRONICALLY FILED - 2021 Apr 30 1:56 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

FILED
HORRY COUNTY, S.C.

ASSIGNMENT OF RIGHTS
89 FEB -2 PM 4:57

This Agreement made this 17 day of January, 1989, by and between Vacation Properties, Inc. (hereinafter called the "Assignor") and The Myrtle Beach Resort Homeowners' Association, Inc. and its successors and assigns (hereinafter called the "Assignee").

For valuable consideration, the receipt of which is hereby acknowledged, the Assignor hereby grants, conveys and assigns to Assignee all of the Assignor's rights, title and interest in and to that Assignment of Declarant's Rights dated February 27th, 1987, a copy of which is attached hereto and incorporated by reference.

IN WITNESS WHEREOF, the undersigned have signed their hands and seals the first day and date above written.

WITNESSES:

ASSIGNOR:

VACATION PROPERTIES, INC.

BY: James S. [Signature] J.S.

Attest: [Signature]

ASSIGNEE:

THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC.

BY: Sam Brock

Attest: President

Rhiane M. Cafaro
Patricia A. Burnett

Paul C. Gray
[Signature]

Law Offices of
PARSONS & PATRICK, P.A.
P.O. Box 19288
Myrtle Beach
S.C. 29567

BOOK 1284 PAGE 239

239

JAN 24 89 16:59

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ELECTRONICALLY FILED - 2021 Apr 30 1:56 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173
ELECTRONICALLY FILED - 2021 Apr 23 2:48 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

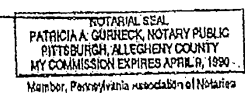
STATE OF PENNSYLVANIA)
COUNTY OF Allegheny) PROBATE

PERSONALLY APPEARED before me, the undersigned witness who after being first duly sworn, deposes and states that s/he was present and saw the within named VACATION HOMESITES, INC. by its duly authorized officers, sign, seal and as their act and deed, deliver the within written Assignment of Rights, and that s/he with the other subscribing witness witnessed the execution thereof.

Clarence M. Caserio
signature of witness #1

SWORN to before me this 27th day of January, 1989.

Patricia A. Gurneck
Notary Public
My Commission Expires:



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) PROBATE

PERSONALLY APPEARED before me, the undersigned witness, who after being first duly sworn deposes and states that s/he was present and saw the within named THE MIRTLE BEACH RESORT HOMEOWNERS! ASSOCIATION, INC., by SAM BROCK, sign, seal and as its act and deed, deliver the within written Assignment of Rights, and that s/he with the other subscribing witness witnessed the execution thereof.

SWORN to before me this 27th day of January, 1989. Frank C. Cozy

[Signature]
Notary Public
My Commission Expires: 6/9/89

BOOK 1284, PAGE 240

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1121-401
D. 2-27-87
R. 3-18-87

7045

HERRY COUNTY
CLERK OF COURT
1111 S. BROADWAY
MYRTLE BEACH, SOUTH CAROLINA 29577

ASSIGNMENT OF DECLARANT RIGHTS
(Myrtle 6 and 7)

THIS AGREEMENT, made as of this 27th day of February, 1987, by and between RESORT DEVELOPMENT CORPORATION (formerly RESORT INVESTMENT CORPORATION) and VACATION HOMES, INC., a North Carolina corporation qualified to do business in South Carolina as VP, Inc., and its successors and assigns (hereinafter called the "Assignee"),

Deed Book 1121
Pg 401

WITNESSETH:

WHEREAS, Assignor caused to be recorded a certain Master Deed of Myrtle Beach Resort Horizontal Property Regime ("Myrtle Beach Master Deed") which is recorded in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 750, Page 642, and which established a horizontal regime known as the "Myrtle Beach Resort Regime" and which is referred to herein as "Phase I";

WHEREAS, the Master Deed submitted the property more particularly described therein (the "Phase I Property") to the Myrtle Beach Resort Regime;

WHEREAS, Assignor caused to be recorded a certain Master Deed of Myrtle Beach Resort Oceanfront Spa Horizontal Property Regime (the "Oceanfront Master Deed") which is recorded with the Clerk of Court of Horry County, South Carolina in Deed Book _____,

HERRY COUNTY ASSESSOR
192-00-01-013
Map, Bk Parcel 3/19/87

1121-401

Page _____, and which established a horizontal regime known as the
"Myrtle Beach Resort Oceanfront Spa Regime" and which is referred
to herein as "Phase II";

WHEREAS, the Oceanfront _____
property more particularly described therein (the
"Property") to the Myrtle Beach Resort Oceanfront Spa Regime,

WHEREAS, Assignor caused to be recorded a Certain Master
Deed of The Renaissance Tower Horizontal Property Regime (the
"Renaissance Master Deed") which is recorded with the Clerk of
Court of Horry County, South Carolina in Deed Book ~~916~~, Page ~~683~~
and which established a horizontal regime known as the *Unity* *918*
"Renaissance Tower Regime" and which is referred to herein as
"Phase III";

WHEREAS, the Renaissance Master Deed submitted certain
property more particularly described therein (the "Phase III
Property") to the Renaissance Tower Regime;

WHEREAS, Assignor caused to be recorded a certain Master
Deed of Myrtle Beach Resort Five Seasons Centre Horizontal
Property Regime which is recorded with the Clerk of Court of Horry
County, South Carolina in Deed Book 966, Page 654, as amended by a
first amendment thereto recorded with the Clerk of Horry County,
South Carolina in Deed Book 1048, page 824 (as so amended, the

402

"Five Seasons Master Deed") which established a horizontal regime known as the "Five Seasons Centre Regime" and which is referred to herein as "Phases IV and V";

WHEREAS, the Five Seasons Centre Regime Property (the "Regime Property") to the Five Seasons Centre Regime;

WHEREAS, the Myrtle Beach Master Deed, the Oceanfront Master Deed, the Renaissance Master Deed, and the Five Seasons Master Deed are referred to collectively herein as the "Master Deed";

WHEREAS, the Phase I Property, the Phase II Property, the Phase III Property, and the Phase IV and V Property are collectively referred to herein as the "Regime Property";

WHEREAS, Assignor was the "Declarant" as defined in the Master Deed;

WHEREAS, Assignor reserved certain rights with respect to the Regime Property and desires hereby to assign those rights to the Assignee;

WHEREAS, Assignor reserved certain rights with respect to the Regime Property, including but not limited to certain rights with respect to other property (the "Resort Property"),

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which Resort Property is all that certain property shown on a plat of 44.668 +/- acres dated June 10, 1985 with the latest revision date of September 23, 1985, prepared by Culler Land Surveying Co., Inc. with base plat 1121, recorded with the Condominium Plat and Plans in Condominium Plat Book 1, Page 49, and Plat Book 75, Page 32, Office of the Clerk of the County, South Carolina.

WHEREAS, Assignor will, on the date hereof, convey to Assignee certain real property more particularly described on Exhibit A attached hereto (the "Conveyed Property") which is included within the Resort Property;

WHEREAS, Assignor formerly owned certain other property included within the Resort Property, and such other property or portions thereof, together with the Conveyed Property, may now or hereafter be owned by the Assignee (such other property, together with the Conveyed Property, being referred to herein as the "Property");

WHEREAS, Assignor wishes to assign to Assignee certain rights, easements and licenses reserved by the Assignor under the Master Deed, subject to the terms and conditions set forth herein;

NOW, THEREFORE, the parties hereto agree as follows:

1. Assignor hereby grants, conveys and assigns to Assignee the following:

- a. all of the Assignor's right, title and interest (on a non-exclusive basis) in and to the easements and licenses reserved by Assignor under Article XIV of the Master Deed to grant the easements and licenses to persons or entities designated in Article XIV, but not limited to easements for ingress and egress across portions of the Regime Property for pedestrian and vehicular purposes, and easements across the Regime Property for the purpose of providing access to the beach area which is part of the Regime Property, together with a license to use the beach area which is part of the Regime Property;
- b. all of the Assignor's rights reserved by Assignor under Article XIV of the Master Deed to grant the easements described in subparagraph a. above to those persons or entities designated in Article XIV;
- c. all of the Assignor's rights reserved by Assignor under Article XVIII of the Master Deed to add any part or all of portions of the Resort Property now owned or hereafter acquired by the Assignee to the Resort (as defined in the Master Deed), including, but not limited to the Assignor's reserved right to grant easements for ingress and egress across areas of the Regime Property to the Atlantic Ocean and its beach;
- d. all of the Assignor's rights reserved under Article XIV of the Master Deed to establish a master homeowners association for the present and future owners of any part or all of the Resort Property;
- e. all of the Assignor's right, title and interest (on a non-exclusive basis) in and to the easements and licenses reserved by Assignor under Article XVIII and under Article XIX of the Master Deed to use the beach area of the Regime Property;
- f. all of the Assignor's rights under Article XIX of the Master Deed to convey additional property located within the Resort Property to the Regime and its co-owners, subject to the restrictions set forth in said Article XIX.

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2. In the event that the Assignee or any owner of any part or all of the Property is granted access to the beach area or the amenities area of a particular regime, the grantee of such rights, easements and licenses shall be required to pay fees commensurate with such use as follows:

3. The rights granted to Assignee herein are solely for the benefit of Assignee and future owners of any part or all of the Property.

4. Nothing in this Agreement shall impose any obligations upon Assignee under the Master Deed, except as set forth expressly herein, and Assignor shall remain liable for the performance of all of its obligations under the Master Deed.

5. Assignor represents and warrants to Assignee that Assignor has good title to the rights, easements and licenses conveyed hereby.

6. This Agreement shall be binding on each party hereto and such party's successors and assigns.

ATTEST/WITNESS:

RESORT DEVELOPMENT CORPORATION

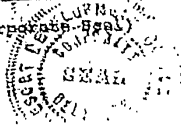
[Signature]

Its Attorney

[Signature]

Its President

Its Attorney
(Corporate Seal)



BOOK 1121 PAGE 406

BOOK 1284 PAGE 247

ATTEST/WITNESS

[Signature]
[Signature]

(Corporate Seal)

VACATION PROPERTIES, INC.

d/b/a VP, INC.

BY *[Signature]*

Its *[Signature]*



(107)

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ERRATA

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

Before me, the undersigned notary public, personally appeared Stephen M. D'Amico, who being sworn, deposed and said that he was Resort Development Corporation, by Donald R. Doolan, Jr., its President, sign, seal and deliver the foregoing instrument and that he, together with Andrew D'Amico, witnessed the execution thereof.

Sworn to and subscribed before me, this 23rd day of February, 1987.

WITNESS

[Signature]

[Signature]
Notary Public

My commission expires _____
I am authorized to perform notary public duties in the State of Pennsylvania.

11217408 208

PROBATE

STATE OF PENNSYLVANIA
COUNTY OF ALLEGHENY

Before me, the undersigned notary public, personally appeared Stephen M. [unclear], who being sworn, deposed and said that he saw Vacation Properties, Inc. d/b/a V.P. Int. By Ronald R. [unclear], its President, sign, seal and deliver the foregoing instrument and that he, together with James Bonds witnessed the execution thereof.

Sworn to and subscribed before me, this 27th day of February, 1987.

WITNESS

[Signature]

[Signature]

My Commission Expires
[unclear]
[unclear]
[unclear]
[unclear]

1987 FEB 27 10 09

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MYRTLE BEACH BEACH
THE FIVE SEASONS CLUB
PARCEL VI

All of the place, parcel or tract of land...
...in the County of Horry, State of South Carolina...
...and being more particularly described as follows:
...to-wit: A certain parcel of land...
...containing...
...as shown on the plat...
...of the City of Court for Horry County, South Carolina...
...Plat Book 74 at Page 32.

Beginning at an iron stake which is 148.72 feet, more or less, Southeast from U. S. Highway 17...
...in the Point of Beginning of the property herein described;
...thence running N 51 degrees 11' 30" E for a distance of 128.73 feet to a point; thence turn and run S 13 degrees 00' E for a distance of 12.97 feet to a point; thence run N 38 degrees 00' E along a curve to the right for a distance of 128.83 feet; thence run S 27 degrees 00' E for a distance of 122.80 feet to a point; thence run N 39 degrees 10' E along a curve to the left for a distance of 128.83 feet; thence run N 51 degrees 10' E for a distance of 30.51 feet to a point; thence turn and run S 51 degrees 52' 30" W for a distance of 122.34 feet to a point; thence turn and run N 38 degrees 00' 10" W for a distance of 795.80 feet to the POINT OF BEGINNING.

1121 PAGE 410

Exhibit 5

1121 PAGE 410

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ELECTRONICALLY FILED - 2021 Apr 23 2:48 PM - HORRY - COMMON PLEAS - CASE#2018CP2803173

PHYSICAL THEORY
THE FIVE STAGES OF
PHASE VII

All the... parcel or tract of land situated in the
County of Horry, State of South Carolina...
Bocates, et al., living and acting as the
U.S. Highway...
designated... of Lot 5 of...
and being...
60,868/-... Lot 5 of Lakeona Plantation...
Bocates to... Horry County, South Carolina...
1982, revised July 10, 1982 and July 16, 1982...
Culler Land Surveying Co., 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.

BEGINNING at an iron stake which is 489.77 feet, more or
less, southeasterly from U. S. Highway 17 Frontage Road, which
is the POINT OF BEGINNING of the property hereinafter described,
thence running N 31 degrees 51' 50" E 200 feet to a point; thence
feet to a point; thence turn and run S 51 degrees 00' 00" E
distance of 180.00 feet to a point; thence run S 41 degrees
46' 19" E along a curve to the right for a distance of 13.25
feet; thence turn and run S 21 degrees 51' 50" E for a distance
of 153.90 feet to a point; thence turn and run S 10 degrees
00' 10" E for a distance of 66.0 feet to a point; thence turn
and run S 3 degrees 51' 50" W for a distance of 13.25 feet to a
point; thence turn and run S 31 degrees 51' 50" E for a distance
of 143.0 feet to a point; thence turn and run S 10 degrees
00' 10" W for a distance of 25.0 feet to a point; thence turn
and run S 21 degrees 51' 50" W for a distance of 120.0 feet to a
point; thence turn and run N 18 degrees 00' 10" E for a distance
of 244.0 feet to the POINT OF BEGINNING.

111

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ELECTRONICALLY FILED - 2021 Apr 23 2:48 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

EXHIBIT D

ELECTRONICALLY FILED - 2021 Apr 30 1:56 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

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.

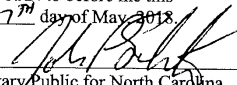
13. The enumerated powers of the Association set out in the DCCR (Article IV) were intended to be mandatory obligations, not optional. They include, among other obligations, employing security services for the overall Myrtle Beach Resort project, which includes all four regimes set out in paragraph 2 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..

2

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

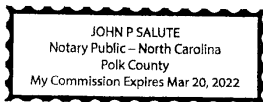


EXHIBIT E

ELECTRONICALLY FILED - 2021 Apr 30 1:56 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2018-CP-26-03173
)	
FREDERICK E. BROWN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	
	)	AFFIDAVIT OF FREDDY BROWN
JEFFERY L. RICHARDSON, <i>et al.</i> ,)	
)	
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 Freddy Brown, I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience on this matter alleged in this lawsuit.
2. I am retired from Motion Industries, retiring after 40 years in 2015. I currently resided in Myrtle Beach, SC at 396 Posada Dr.
3. I am currently the owner of units 117A in the Horizontal Property Regime (HPR) and 242B in the Ocean Front Spa buildings at the Myrtle Beach Resort.
4. I am currently Board President of the HPR at Myrtle Beach Resort.
5. This Affidavit is submitted in support of the allegations contained in Plaintiff's Complaint and their Subsequent Motions for Amended Complaint in support of plaintiff's motion for

Summary Judgment as well as being in opposition to defendant Richardson's Motion for summary judgement

BRIEF FACTUAL HISTORY OF MYRTLE BEACH RESORT REGIME

6. In 1987 when I purchased my first condo at Myrtle Beach Resort, the four regimes were each providing maintenance for each of their buildings and common elements. Telephone and Security were paid collectively by each regime on an equal pro-rata basis toward the overall resort wide cost for both.
7. In 1986, the original developer, U S Capital, and its subsidiaries. Resort Development and Resort Investment, filed for bankruptcy. The four regimes banded together, and with the assistance of their attorney, Dan Patrick, obtained first right of refusal for the properties consisting of the land on Hwy 17 where the current rental office is, the cabana bar, commercial properties in the Ocean Front Spa and the Renaissance Tower, and the property allotted for the fifth proposed regime, which would have included a conference center. Without the ability to borrow money to purchase the above properties, the regimes negotiated a deal to release the first right of refusal to Ocean Lakes Campground for the Convention Center Property in exchange for Ocean Lakes Campground financing the purchase of the remaining properties by The Myrtle Beach Resort Master HOA. This settlement was approved by the bankruptcy judge.
8. I was elected to the Board of the HPR in 1989 and was elected President of the Board in 1990. I have served on the HPR or the Ocean Front Spa Boards continuously since 1989.

9. As part of the bankruptcy settlement, the developer deeded the properties and roadways to the Myrtle Beach Resort, and an umbrella Association (Master HOA) was formed to own and manage this newly purchased property on behalf of all Myrtle Beach Beach Resort Homeowners . The Master Deed of the individual regimes allowed for cross easements which allowed for a seamless 32 Acre Resort.
10. All four Boards had input into the creation of the documents of the MBRHOA, and I was one of the four presidents representing the HPR on the signing of the final document.
11. Myrtle Beach Resort Homeowners Association (MBRHOA) 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 (CCRs) 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”).
12. The Master HOA is charged with administering specified 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”).

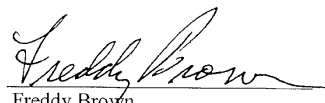
13. During the development and discussion between the Boards and Dan Patrick the Resort Attorney, the powers of the CCRs were clearly intended to be mandatory obligations and not in any manner optional or allow a regime to opt out of obligations or contracts .
14. The voting powers as called out in the CCRs were clear that each regime had an equal vote, with any motion of business conducted by the MBRHOA requiring a vote requiring a 67% majority. This provision was included to prevent any two regimes from passing business without the vote of the Five Seasons Center who only have 15.8% of the total project.
15. The original proposed development would have had a Fifth Regime but with the Conference Center canceled due to Bankruptcy, we were left with only four Regimes. Therefore a 4-person Master Board has created many deadlocks which have kept us from making decisions relevant to the Master Board
16. From inception of the MBRHOA in 1991 until roughly 2015 the CCRs and voting structure worked well as all boards worked well together for a common purpose and seamless resort operation. I was president in 1998 when the resort was having continuous issues with underage guests renting and creating both damage and loud and obnoxious behavior. A rule requiring at least one of the guests being the age of 23 was passed, and each regime worked to get 67% of the homeowners in each regime approve to amend or CCRs. Again, shortly after we worked together to replace tennis courts with a Lazy River paid for by the MBRHOA. Again, we had to get 67% of all homeowners to vote, and with each Board's support, we got the votes and built the Lazy River. The importance of these examples is to show that the Boards worked together to improve the property and make us more competitive with other properties without turf wars or favoritism towards individual regimes in the decisions made.

17. Starting in roughly 2015, the Renaissance Tower and Ocean Front Spa started working to undermine the powers of the MBRHOA. Their primary purpose was to weaken the powers of the MBRHOA for the benefit of these two regimes and to reduce the overall costs of those regimes and therefore, the costs of the individual homeowners in those regimes – at the expense of the HPR and Five Seasons regimes. The president and MBRHOA representative of the Renaissance Tower, who owns 30 condos primarily in the Renaissance Tower and Ocean Front Spa, has led this constant cutting of services, interpreting that the responsibilities detailed in the CCR’s are optional, and repeatedly moving the costs that should be Renaissance Tower costs to the MBRHOA. This is absolutely not a difference of opinion or failure to get along. The issue is money. Owning 30 condos as Mr. Richardson does or more than 10 condos as another owner and Board member in the Ocean Front Spa does, prevents their ability to make decisions that are in the best interest and for the good of the homeowners in all regimes.
18. Security has been the single largest expenditure of the MBRHOA and therefore has been the largest area of attempted cost cutting . Since 2017, the Renaissance Tower and Ocean Front Spa interpreted security as an optional duty of the MBRHPR and have broken the resort into segments with each regime providing security for its own building. Therefore, we are at a critical stage now as more and more costs are cut to the detriment of security at the entrance gate, grounds, and individual buildings. Homeowners are upset and continuously complain that the loss of safety for homeowners and guests is a major problem. In reality, the cost to the homeowners in HPR and Five Seasons increases when the costs for our individual building security is added to current MBRHOA cost. Effectively, we are paying the more to get less.

19. In summary, the board of the MBRHOA has totally fallen into a dysfunctional group of four regimes that is failing to provide a vision and to maintain at the Resort a safe environment for our homeowners and guests. Maintaining a family-friendly environment for homeowners and guests is crucial to the success of our homeowners as most derive income from rentals. A fragmented security does not meet the needs nor desires of the homeowners. Our homeowners clearly want Myrtle Beach Resort to return to a level of Security provided prior to 2018. Arbitrary departure from the CCR's that successfully governed the Resort for more than 2 decades threatens the management and administration of the MBRHOA. Furthermore Empress Management has failed to comply with the terms and conditions of the management contract with the Master Association. Their failure to provide financial reports and minutes has put the Representatives from HPR and Five Seasons in a position to not meet their fiduciary obligations. While contributing and allowing this to happen and continue Ken Moss must be replaced in order for the Master HOA to properly and legally function.

20. I affirm that the foregoing is true to the best of my personal knowledge or on 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.

FURTHER AFFIANT SAYETH NOT.


Freddy Brown

SWORN to and subscribed before me this

23rd day of April, 2021

Maureen Butwin

Notary Public for

My Commission Expires: 9/20/26



ELECTRONICALLY FILED - 2021 Apr 30 1:56 PM - Horry - COMMON PLEAS - CASE#2018CP2603173
ELECTRONICALLY FILED - 2021 Apr 23 2:48 PM - Horry - COMMON PLEAS - CASE#2018CP2603173

EXHIBIT F

ELECTRONICALLY FILED - 2021 Apr 30 1:56 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2018-CP-26-03173
FREDERICK E. BROWN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.	)	SUPPLEMENTAL AFFIDAVIT OF
	)	PLAINTIFFS' EXPERT
	)	OTIS ALLEN JEFFCOAT, III
JEFFERY L. RICHARDSON, <i>et al.</i> ,)	
)	
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 Otis Allen Jeffcoat, III., I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience and training, and expertise in the field of commercial and residential real estate law. I attended Princeton University, in Princeton, NJ from which I received an A.B. in Politics, magna cum Laude, in 1970. I received a J.D. from the University South Carolina Law Center, Columbia, SC in 1973. I am licensed in the States of South Carolina and North Carolina. A copy of my Curriculum Vitae ("CV") is attached hereto as (**Exhibit "A-1"**) and incorporated by reference as part of my Affidavit.

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

3. I am currently the owner of JeffcoatLaw, LLC located in Myrtle Beach, SC. My experience includes over Forty-eight (48) years in the practice areas of commercial and residential real estate, business transactions, estate planning, probate administration, business litigation, probate litigation, elder law, environmental law, and bankruptcy law.

4. This Affidavit is submitted in support of the allegations contained in Plaintiffs' Amended Complaint and Motion for Summary Judgment also in opposition of the Defendant Richardson's Motion for Summary Judgment.

RELEVANT FACTUAL BACKGROUND

5. The Master HOA is an umbrella or "Master Association" charged with administering the affairs of Myrtle Beach Resort, a resort within Horry County, South Carolina, consisting of the Myrtle Beach Resort HPR, Ocean Front Spa HPR, Five Seasons HPR and Defendant Renaissance Tower (collectively "Regimes.")

6. The Master HOA was created as an umbrella or "Master Association" as evidenced by the Articles of Incorporation filed with the South Carolina Secretary of State on April 30, 1987 and as governed by Declarations of Covenants, Conditions and Restrictions filed April 25, 1991 in Deed Book 1465 at Page 329 ("HOA Declaration.")

7. The aforementioned Regimes, including Renaissance Tower, agreed to Master HOA's creation and to be bound by its HOA Declaration.

8. In addition thereto, the authority of the Master HOA, stems from, and is in accordance with the individual Master Deeds of the aforementioned Regimes which specifically reserves to the developer the right to establish the HOA.

9. Moreover, all developer's reserved rights were assigned to the Master HOA by that Assignment of Rights dated January 27, 1989 and recorded February 2, 1989 in Deed Book 1284 at Page 239.

10. The Defendant Renaissance Tower is subject to the HOA Declaration and By-Laws.

**RELEVANT PROVISIONS OF THE MASTER HOA'S
DECLARATION AND BYLAWS**

11. Insofar as it is relevant to the assertions in this Complaint, Article I defines certain terms used in the Master HOA's Declaration as follows:

- a. 1.1.0 "Act" shall mean the South Carolina Horizontal Property Regime Act, Title 27, Chapter 31, and Code of Laws of South Carolina, 1976, as Amended;
- b. 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;
- c. 1.1.3 "Association" shall mean and refer to the Myrtle Beach Resort Homeowners Association, Inc., a South Carolina non-profit Corporation;
- d. 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;
- e. 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;
- f. 1.1.6 "Commercial Unit" shall mean and refer to any unit designated as commercial space in the Master Deed of the appropriate Condominium Association;
- g. 1.1.7 "Common Areas" means as defined in the Individual Condominium Associations' respective Master Deeds;
- h. 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; and

- i. 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 they Myrtle Beach Resort Five Seasons Centre (Phase IV).

12. Article V discusses the covenant for assessments as expressed in the Master HOA’s

Declaration as follows:

- a. 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.*** (Emphasis added).

Such assessments, together with interest, costs, and reasonable attorney’s fees for the collect on 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 (\$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 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. (Emphasis added).

- b. 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. (Emphasis added).
- c. 5.3 *Allocation of Assessments for budgeted expenses shall be allocated and assessed as follows: Myrtle Beach Resort Horizontal Property Regime (Phase I) -24.8515%; Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime -26.8317%; Renaissance Tower Horizontal Property Regime, Inc. (Phase III) – 32.3762%; and Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc.(Phase IV) – 15.9406%. (Emphasis added).*

13. 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 27. 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.

14. 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; and
- e. Carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the Act.

RELEVANT BACKGROUND

15. This action was commenced by Plaintiffs derivatively on behalf of the Master HOA 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 Master HOA’s governing documents regarding administration and management of the Myrtle Beach Resort Property.

16. The Master HOA 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.)

A true and correct copy of the Declaration and By-laws are attached hereto as Exhibit “A” and incorporated by reference.

SUMMARY OF APPLICABLE LAW

It is my opinion that the following legal authorities are relevant to the rights and obligations of the parties to this transaction.

I. The Declaration and By-Laws impose affirmative duties upon Defendants.

17. South Carolina law requires that restrictive covenants such as the Declaration and By-Laws be read as a whole. When the document is construed to give effect to all provisions, Article IV Section 8(e) of the By-Laws mandates that the powers enumerated in Article IV of the Declaration be carried out by the Association acting through the Board of Directors.

18. Restrictive covenants are contractual in nature and bind the parties thereto in the same manner as would any other contract. Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (2006) (citing 20 Am. Jur. 2d Covenants, Conditions, and Restrictions § 1 (2005)). The paramount rule of contract construction is to ascertain and give effect to the intent of the parties as determined from the whole document. RV Resort and Yacht Club Owners Ass'n, Inc. v. BillyBob's Marina, Inc., 386 S.C. 313, 321, 688 S.E.2d 555, 559 (2010) (citing Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863–64 (1998)). Where the agreement in question is a written contract, the parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof. Thomas-McCain, Inc. v. Siter, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977) (citing Bruce v. Blalock, 241 S.C. 155, 127 S.E.2d 439 (1962)). The specific words and phrases of a covenant cannot be read exclusive of other contractual provisions. 20 Am Jur 2d Covenants, Conditions, and Restrictions § 15. In interpreting any single provision in a covenant, the entire agreement must be viewed as a whole. Id. Wherever possible, a covenant should be construed to give effect to all of the provisions and to avoid rendering any provision meaningless. Id. Documents will be