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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

The Honorable R. Keith Kelly
Circuit Court Judge

Appellate Case Number 2023-000969

Terence Sullivan, ...Appellant,

v.

Ocean 22 Vacation Owners' Association, Inc., ... Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
TERENCE SULLIVAN,	)	CASE NO. 2021-CP-26-05377
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	ORDER
	)	
OCEAN 22 VACATION OWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

This matter came before this Court on February 14, 2022 at the Horry County Courthouse upon the motion of Defendant Ocean 22 Vacation Owners' Association, Inc. (hereinafter the "Association" or "Defendant") to dismiss Plaintiff Terrance Sullivan's Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRPC. Plaintiff was represented by J. Clay Hopkins, Esquire. The Association was represented by W. Cole Shannon, Esquire. The Association's Motion is premised on the fact that Plaintiff's sole remedy is available through the South Carolina Workers' Compensation Act, S.C. Code Ann. § 42-1-400 since Plaintiff was a statutory employee of the Association at the time of the accident. As such, the Association argues, Plaintiff tort liability claims in circuit court are barred.

Having reviewed the court record, the Association's motion, memoranda, attachments, exhibits, and affidavits, and having considered the oral arguments of

counsel, and the applicable law, I find that the matter is now ripe for disposition and hereby **GRANT** the Association's Motion to Dismiss.

APPLICABLE LAW

Subject matter jurisdiction is the “power to hear and determine cases of the general class to which the proceedings in question belong.” *Coon v. Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005); *Mr. T v. Ms. T*, 378 S.C. 127, 133, 662 S.E.2d 413, 416 (Ct. App. 2008). “Subject matter jurisdiction is met if the case is brought in the court which has the authority and power to determine the type of action at issue.” *Washington v. Whitaker*, 317 S.C. 108, 115, 451 S.E.2d 894, 898 (1994). A challenge to subject matter jurisdiction can be raised by a motion to dismiss pursuant to Rule 12(b)(1), SCRCP. *Ballenger v. Bowen*, 313 S.C. 476, 478, 443 S.E.2d 379, 380, n. 2 (1994); *Wheeler v. Morrison*, 313 S.C. 440, 442, 438 S.E.2d 264, 265 (Ct. App. 1993).

South Carolina has adopted a comprehensive workers' compensation scheme for governing claims between an employer and an employee pertaining to work-related injuries. In circumstances where the South Carolina Workers' Compensation Act covers an employee's work-related injury, the Act provides the exclusive remedy against the employer, and the employee gives up all “other rights and remedies ... as against his employer, at common law or otherwise, on account of [the] injury.” S.C. Code Ann. § 42-1-540; *see also Sabb v. S.C. State Univ.*, 350 S.C. 416, 422, 567 S.E.2d 231, 234 (2002). Workers' compensation statutes are construed liberally in favor of coverage, and South Carolina's policy is to resolve jurisdictional doubts in

favor of the inclusion of employees within workers' compensation coverage. *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 243, 647 S.E.2d 691, 695 (Ct. App. 2007)

The immunity provided by the Act's exclusivity provision is conferred not only on the employee's direct employer but also on statutory employers as well. The determination of whether a worker is a statutory employee is jurisdictional and a question of law. *Harrell v. Pineland Plantation, Ltd.* 337 S.C. 313, 320, 523 S.E.2d 766, 769 (S.C. 1999); *Glass v. Dow Chem. Co.*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (S.C. 1997).

RELEVANT FACTS

The Association filed its Motion to Dismiss on October 15, 2021 along with its memorandum in support, numerous exhibits, and the affidavit of Kelly Lodde, the Vice President and Assistant Secretary of Plaintiff's employer, HGV, Inc. Plaintiff did not file any memoranda in response to the Association's Motion or Ms. Lodde's affidavit. Accordingly, the Court adopts the following uncontested facts from the Association's Motion and Ms. Lodde's affidavit:

As stated in Ms. Lodde's Affidavit, Plaintiff is an employee of Hilton Grand Vacations, Inc. ("HGV, Inc.") and was injured while working at a HGV brand time-share resort managed by HGV's wholly owned subsidiary, Hilton Grand Vacations Management, LLC ("HGVM") (collectively "HGV").¹ Following the accident, Plaintiff

¹ "A holding company and its wholly owned subsidiary will be considered a single employer for workers' compensation purposes if the two corporations are so integrated and commingled that neither can be realistically viewed as a separate economic entity." *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 374, 747 S.E.2d 757, 765 (2013) (quoting 1 William Meade Fletcher, *Fletcher Cyclopedic of the Law of Corporations* § 43.80 (Supp.2012)).

sought workers' compensation benefits through his employer, HGV, Inc. Plaintiff's claim was resolved with his employer in June of 2021 whereby Plaintiff settled his claims for \$80,000.00. A Medicare Set Aside trust account was established for Plaintiff in the amount of \$57,285.31. Two months after settling his workers' compensation claim with HGV, Plaintiff filed suit against the Association alleging causes of action for (1) Premises Liability – Negligence/Gross Negligence as to an Invitee and (2) Negligent Hiring, Training, Supervision and Retention.

As explained in Ms. Lodde's Affidavit, HGV, Inc., is a publically traded corporation which develops, manages, markets, and operates timeshare and vacation club ownership resorts whereby club members are jointly owned by members giving them use of the club properties for limited periods of time. In 2013, HGV, Inc., as the ultimate parent company, entered into an agreement through its wholly owned subsidiary, HGVM, to manage and operate the property where Plaintiff was employed (hereinafter the "HGV Resort" or "Project"). This arrangement was formalized in the "Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suits." Thereafter, the Association was established in order to manage, operate and administer the HGV Resort on behalf of timeshare owners.

According to Ms. Lodde's Affidavit, the Association is a nonprofit corporation that is made up of each owner with an ownership interest in the HGV Resort. Under "Management of Association", the Declarations state that the Association's sole affirmative obligation is to "employ a manager for the Project pursuant to a written

management agreement” which delegates “authority to the Manager to carry out the duties and obligations of the Association” and authorizes the manager “to do all other acts necessary for the proper operation and maintenance of the Project [.]” In accordance with this directive, the Association entered into a management agreement with HGV, under which HGV undertook to “manage and operate the Project in accordance with the same practices and standards utilized in the management of other Hilton Grand Vacation Club projects” and “maintain and repair the Project to a first class resort standard.” As such, HGV agreed to “employ, compensate and supervise all persons necessary to manage, maintain, administer and operate the Project.”

As noted in Ms. Lodde’s Affidavit, HGV employed Plaintiff pursuant to the management agreement as a “bellperson” to assist owners and guests with transporting and/or securing their luggage; to provide instructions regarding the amenities of the room and property services and activities provided for guests’ use, and to deliver messages, express check-out folios, newspapers and other requested items to the owners and guests.

LEGAL ANALYSIS

In assessing whether the Association qualifies as Plaintiff’s statutory employer for the purposes of workers’ compensation exclusivity, the court must make two (2) determinations: First, the Association must qualify as a business under the Act. Second, the work contracted out to Plaintiff’s employer, HGV, must have constituted

part of the Association's "trade, business, or occupation." *Harrell*, 337 S.C. at 321, 523 S.E.2d at 770.

With regard to the first determination, I find that the Association is a business under the Act's extensive definition of the word "employer." Accordingly, the Court will now move to the second determination.

In analyzing whether the Association is Plaintiff's statutory employer under the Act, the Court must look to the nature of the work contracted out to HGV by the Association in order to determine whether it was part of the Association's "trade, business or occupation." *Boone v. Huntington and Guerry Elec. Co.*, 311 S.C. 550, 552, 430 S.E.2d 507, 508 (1993). Here, the business of the Association is governed by the Declarations and is performed in its entirety by the Plaintiff's direct employer. The Association hired HGV to manage, operate, and administer the HGV Resort. The Association instructed HGV to hire and employ all employees necessary for the operation of the HGV Resort and empowered it to perform all necessary duties. The operation of the HGV Resort, on behalf of the time-share owners, is the Association's sole business, and the work being performed by HGV was essential to its operation. HGV acts in every respect on behalf of the Association, employing the Plaintiff to perform certain duties essential to the operation of the HGV Resort. Therefore, the Association is the Plaintiff's statutory employer. Furthermore, as pointed out by authorities cited by the Association, the South Carolina Workers' Compensation Commission has held that resort subcontractors' work constitutes part of the resort operator's trade, business or occupation. Similarly, our courts have found the

existence of a statutory employer-employee relationship when entities, like the Association, delegate their responsibilities to a management company because the management company assumes the entity's trade, business or occupation. *See Harrell*, 337 S.C. at 320; 523 S.E.2d at 767; *Carter v. Florentine Corporation*, 310 S.C. 228, 423 S.E.2d 112 (1992), *overruled on other grounds*, *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994).

Based upon the foregoing, I find that the Association is Plaintiff's statutory employer because it is (1) a business and (2) because HGV's work is part of the Association's trade, business, or occupation. As such, Plaintiff's claims must be dismissed as a matter of law. To hold the Association liable to Plaintiff in tort for the same injury already compensated by HGV would circumvent the express public policy underlying South Carolina's system of workers' compensation: the quick and efficient delivery of medical benefits to an injured worker at reasonable cost to the employer. *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 389, 769 S.E.2d 1, 5 (2015) ("The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation.").

Plaintiff's exclusive remedy is dictated by the Workers' Compensation Act. As such, this Court lacks subject matter jurisdiction to entertain his work related injury claims. Therefore, the Court **GRANTS** the Association's Motion to Dismiss and dismisses Plaintiff's Complaint **WITH PREJUDICE**.

IT IS SO ORDERED.

Hon. R. Keith Kelly

Dated: _____



Horry Common Pleas

Case Caption: Terence Sullivan VS Ocean 22 Vacation Owners Association Inc

Case Number: 2021CP2605377

Type: Order/Dismissal

It is so Ordered.

s/ R. Keith Kelly - 2165

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2021-CP-26-05377
TERENCE SULLIVAN,	)	
	)	
Plaintiff,	)	ORDER DENYING
	)	PLAINTIFF'S MOTION TO
vs.	)	RECONSIDER, ALTER, OR AMEND
	)	
OCEAN 22 VACATION OWNERS'	)	
ASSOCIATION, INC.,	)	
	)	
Defendant.	)	
	)	

This matter is before the Court on Plaintiff's Motion to Reconsider, Alter, or Amend, filed September 12, 2022 (the "Subject Motion"). The Subject Motion challenges the Court's order, filed September 2, 2022 (the "Order of Dismissal"), granting Defendant's Motion to Dismiss Pursuant to Rule 12(b)(1), SCRCPC, filed October 15, 2021 (the "Motion to Dismiss").

In dismissing this action, the Court determined that Plaintiff, Terence Sullivan ("Mr. Sullivan"), was a statutory employee of Defendant, Ocean 22 Vacation Owners' Association, Inc. (the "Association"), at the time of the underlying work-related accident (the "Underlying Accident") and thus cannot pursue the tort claims he asserts herein, because his exclusive remedy against the Association for all damages arising out of the Underlying Accident is under the South Carolina Workers' Compensation Act (the "Act").

Having carefully considered the matter, the Court DENIES the Subject Motion, as explained below.

BACKGROUND

The Association is the owners association for a Hilton¹ branded timeshare resort in Myrtle Beach known as Ocean 22 (the “Project”). (See Ex. B to Motion to Dismiss [Aff. of Kelly Lodde] ¶¶ 2–7.) The timeshare structure of the Project is formalized in the recorded Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suits (the “Declaration”). (*Id.* at ¶ 6; *see also* Ex. C to Motion to Dismiss [Declaration].)

The Association has no direct employees. (Ex. B to Motion to Dismiss [Aff. of Kelly Lodde] ¶ 8.) In accordance with the Declaration, the Association’s duties and obligations are delegated to and carried out by a manager, namely, Hilton, pursuant to a written Timeshare Management Agreement (the “Management Agreement”). (See *Id.* ¶¶ 7–10; *see also* Ex. D to Motion to Dismiss [Management Agreement].)²

Under the terms of the Management Agreement, Hilton “manage[s] and operate[s] the Project in accordance with the same practices and standards utilized in the management of other Hilton Grand Vacation Club projects;”³ “maintain[s] and repair[s] the Project to a first class resort

¹ “Hilton” refers to Hilton Grand Vacations, Inc.

² Technically, the Management Agreement is between the Association and Hilton Grand Vacations, Inc.’s wholly owned subsidiary Hilton Grand Vacations Management, LLC; however, for present purposes, the distinction between Hilton Grand Vacations, Inc., and Hilton Grand Vacations Management, LLC, is immaterial, because, as the Court explained in the Order of Dismissal (*see* Order of Dismissal p. 3 n.1), and as Mr. Sullivan does not dispute in the Subject Motion (*see* Subject Motion), Hilton Grand Vacations, Inc., and Hilton Grand Vacations Management, LLC, are properly considered a single employer for workers’ compensation purposes. *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 374, 747 S.E.2d 757, 765 (2013) (“A holding company and its wholly owned subsidiary will be considered a single employer for workers’ compensation purposes if the two corporations are so integrated and commingled that neither can be realistically viewed as a separate economic entity.”) (quoting 1 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 43.80 (Supp. 2012)). Accordingly, for the sake of simplicity, the reference “Hilton” is sufficient to cover both Hilton Grand Vacations, Inc., and Hilton Grand Vacations Management, LLC, herein.

³ (Ex. B to Motion to Dismiss [Aff. of Kelly Lodde] ¶ 11.)

standard;”⁴ and “employ[s], compensate[s] and supervise[s] all persons necessary to manage, maintain, administer and operate the Project.” (*Id.* at ¶ 12.)

Hilton employed Mr. Sullivan to serve as a bellperson at the Project. (*Id.* at ¶ 14.) The role of bellperson required Mr. Sullivan to assist owners and guests with transporting and/or securing their luggage; to provide instructions regarding the amenities of the room and property services and activities offered; and to deliver messages, express checkout folios, newspapers, and other requested items to the owners and guests. (*Id.* at ¶ 16.) The performance of this role was an important part of meeting Hilton’s obligations under the Management Agreement and a necessary, essential, and integral part of the operation of the Project on behalf of the Association. (*Id.* at ¶ 17.)

In this lawsuit, Mr. Sullivan alleges the Association is liable to him in tort for damages arising out of the Underlying Accident. (*See* Complaint.) In his complaint, Mr. Sullivan describes the Underlying Accident as follows: “On August 9, 2019, [Mr. Sullivan] was working at the Ocean 22 resort owned by [the Association] as an employee for [Hilton]. While walking along a paved sidewalk on the property [Mr. Sullivan] slipped and fell after stepping in a low spot on the sidewalk in which a small amount of water had pooled and very slick algae/mold had also formed.” (*Id.* at ¶ 5.) Prior to bringing this lawsuit, Mr. Sullivan sought and received workers’ compensation benefits through Hilton. (Ex. B to Motion to Dismiss [Aff. of Kelly Lodde] ¶ 18.)⁵

The Association responded to the lawsuit with the Motion to Dismiss. (*See* Motion to Dismiss.) The Court granted the Motion to Dismiss via the Order of Dismissal, concluding that Mr. Sullivan was a statutory employee of the Association at the time of the Underlying Accident

⁴ (*Id.*)

⁵ Mr. Sullivan’s workers’ compensation claim has been fully resolved. (*Id.*; *see also* Ex. A to Motion to Dismiss [Workers’ Compensation Settlement Agreement and Release].)

and, therefore, cannot hold the Association liable in tort for damages arising out of the Underlying Accident, because his exclusive remedy against the Association for such damages is under the Act. (See Order of Dismissal.) The Subject Motion challenges the Order of Dismissal. (See Subject Motion.)

Mr. Sullivan makes two arguments in support of the Subject Motion, i.e., two arguments why, according to him, the Court was wrong to issue the Order of Dismissal and should now reverse course and deny the Motion to Dismiss instead. First, he argues the Court was mistaken in finding that he was a statutory employee of the Association. (Subject Motion pp. 3–5.) Second, he argues that, even assuming the Court was not mistaken in finding the Association to be his statutory employer, i.e., even assuming that he was indeed a statutory employee of the Association, the Association still was not entitled to tort immunity under the Act, because the Association did not establish that it maintained workers’ compensation insurance as required by the Act. (*Id.* at pp. 5–7.)

The Court’s analysis of Mr. Sullivan’s arguments follows.

ANALYSIS

1.

For his first argument in support of the Subject Motion, Mr. Sullivan contends that reconsideration is warranted because he was not a statutory employee of the Association. (Subject Motion pp. 3–5.) The Court disagrees.

As the Court explained in the Order of Dismissal, “In assessing whether the Association qualifies as [Mr. Sullivan’s] statutory employer for the purposes of workers’ compensation exclusivity, the court must make two (2) determinations: First, the Association must qualify as a business under the Act. Second, the work contracted out to [Mr. Sullivan’s] employer, [Hilton],

must have constituted part of the Association’s ‘trade, business, or occupation.’” (Order of Dismissal pp. 5–6 (citing *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 321, 523 S.E.2d 766, 770 (1999)).) And the Court has determined (1) that the Association qualifies as a business under the Act and (2) that the work in which Mr. Sullivan was engaged at the time of the Underlying Accident was an important part of the Association’s trade, business, or occupation. (*Id.* at pp. 6–7.)

In the Subject Motion, Mr. Sullivan does not dispute the Court’s first determination, i.e., its determination that the Association qualifies as a business under the Act. (*See* Subject Motion.)

Mr. Sullivan’s criticism of the Court’s second determination, i.e., its determination that the work in which he was engaged at the time of the Underlying Accident was an important part of the Association’s trade, business, or occupation, is based on an erroneous distinction he attempts to draw between the business of the Association and that of his direct employer, Hilton. According to Mr. Sullivan, Hilton’s business is the “resort business,”⁶ or “resort operation business;”⁷ the Association’s business is the “timeshare ownership and vacation suite ownership business;”⁸ and the “resort business – for which Hilton was hired to manage – is wholly separate and distinct from the ownership of timeshares.” (*Id.*)

As an initial matter, there is a procedural problem with Mr. Sullivan’s argument, because he did not raise any argument based on this supposed distinction previously, and an argument cannot be raised for the first time in a motion under Rule 59(e), SCRCp. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (“[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior

⁶ (Subject Motion p. 4.)

⁷ (*Id.* at p. 5.)

⁸ (*Id.*)

to judgment, but did not.”) (citing *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990)); *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482 (same) (citing *Natural Resources Defense Council v. U.S. E.P.A.*, 705 F. Supp. 698, 701 (D.D.C. 1989), *vacated on other grounds*, 707 F. Supp. 3 (D.D.C. 1989) (“Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier.”); *Smith v. Stoner*, 594 F. Supp. 1091, 1118 (N.D. Ind. 1984) (“Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived.”); *Johnson v. City of Richmond*, 102 F.R.D. 623, 623 (E.D. Va. 1984) (“I do not conceive of Fed. R. Civ. P. 59(e) as serving the office of providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment.”). In any event, however, the argument is without merit, as Mr. Sullivan is mistaken in claiming that the “resort business” is separate from the Association’s business.

In support of this argument, Mr. Sullivan quotes the following language from the Declaration:

Management of the Hotel Interests shall be independent of the management of the other Vacation Ownership Interests to the greatest extent practically and economically feasible, provided, however, this requirement does not contemplate any prohibition or restriction on the use of personnel hired to regularly furnish materials and services for the Hotel Interests in the Project and to furnish the same or similar services to the other Vacation Ownership Interests. Such use of common personnel shall not imply that the Hotel Interests and Vacation Ownership Interests are under common management.

(Subject Motion pp. 4–5 (quoting Ex. C to Motion to Dismiss [Declaration] p. 10 § 6.1) (emphasis added by Mr. Sullivan omitted).)⁹

⁹ The language that Mr. Sullivan quotes is immediately preceded by the following language explaining what is meant by “Hotel Interests:” “Declarant shall have the right to use and

Mr. Sullivan's reliance on the above-quoted language reflects a misunderstanding of the Declaration. The distinction he would draw between the business of the Association and that of his direct employer, Hilton, is based on the mistaken belief that the "resort" is only the "Hotel Interests" in the "Project" and the "Vacation Ownership Interests" in the "Project" are separate from the "resort." What Mr. Sullivan fails to understand is that the "Project" is the "resort" and the "resort" is the "Project." In other words, the "Project" and the "resort" are one and the same, and just as the "Vacation Ownership Interests" in the "Project" are a part of the "Project," so, too, are they a part of the "resort." (See Ex. C to Motion to Dismiss [Declaration] p. 6 § 2.56 (defining the "Project" as all real property and improvements thereon submitted to the terms of the Declaration and the South Carolina Timeshare Act); *id.* at p. 7 § 4.1 ("Declarant hereby submits the Project, including but not limited to, the property, the buildings and all other improvements associated with the Project to the provisions of this Declaration and the Timeshare Act creating a Timeshare Plan. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a vacation ownership (timeshare) undivided interest project."); *id.* at p. 6 § 2.53 (defining "Owner" as "[a]ny person or entity . . . owning an Ownership Interest within the Project."); *id.* at p. 6 § 2.54 (defining "Ownership Interest" as "[a] Vacation Ownership Interest."); *id.* at p. 6 § 2.68 (defining "Vacation Ownership Interest or Ownership Interest" as "[a]n undivided interest in a Phase of the Project together with (i) a membership in the Club, (ii) membership in the Association, and (iii) a recurring right (either annually or biennially) to occupy and use, on an exclusive basis as described hereinafter, a Suite in the Project in accordance with, and subject to, the terms of this Declaration and the Project

operate the Vacation Support Areas and Vacation Ownership Interests it owns as a hotel available to the public for nightly occupancy ('Hotel Interests')." (Ex. C to Motion to Dismiss [Declaration] p. 10 § 6.1.)

Documents.”); *id.* at p. 2 § 2.14 (defining “Club Member” as “[a]n Owner at the Project and/or an Affiliated Resort”); *id.* at p. 4 § 2.37 (defining “Home Resort” as “[t]he Affiliated Resort at which a Club Member owns an ownership interest.”); *see also* Ex. B to Motion to Dismiss [Aff. of Kelly Lodde] ¶ 3 (“[Hilton] is a publically traded corporation which develops, manages, markets, and operates timeshare and vacation club ownership *resorts* whereby the [Hilton] properties are jointly owned by individual purchasers giving them use of the club properties for limited periods of time.”) (emphasis added); *id.* at ¶ 10 (“[T]he Association entered into a management agreement with [Hilton] on October 25, 2013.”); *id.* at ¶ 11 (“Under the terms of the management agreement, [Hilton] would ‘manage and operate the Project in accordance with the same practices and standards utilized in the management of other Hilton Grand Vacation Club projects’ and ‘maintain and repair the Project to a first class *resort* standard.’”) (emphasis added).)

As the Court explained in the Order of Dismissal, “[t]he operation of the [Hilton] *Resort*, on behalf of the time-share owners, is the Association’s sole business, and the work being performed by [Hilton, i.e., Mr. Sullivan’s direct employer] was essential to its operation:”

Here, the business of the Association is governed by the Declarations and is performed in its entirety by [Mr. Sullivan’s] direct employer. The Association hired [Mr. Sullivan’s direct employer] to manage, operate, and administer the [Hilton] *Resort*. The Association instructed [Mr. Sullivan’s direct employer] to hire and employ all employees necessary for the operation of the [Hilton] *Resort* and empowered it to perform all necessary duties. The operation of the [Hilton] *Resort*, on behalf of the time-share owners, is the Association’s sole business, and the work being performed by [Mr. Sullivan’s direct employer] was essential to its operation. [Mr. Sullivan’s direct employer] acts in every respect on behalf of the Association, employing [Mr. Sullivan] to perform certain duties essential to the operation of the [Hilton] *Resort*. Therefore, the Association is the [Mr. Sullivan’s] statutory employer. Furthermore, as pointed out by authorities cited by the Association, the South Carolina Workers’ Compensation Commission has held that *resort* subcontractors’ work constitutes part of the *resort* operator’s trade, business or occupation.

(Order of Dismissal p. 6 (emphasis added).)

Accordingly, the Court adheres to its ruling that Mr. Sullivan was a statutory employee of the Association at the time of the Underlying Accident and rejects Mr. Sullivan's challenge to that ruling.

2.

For his second argument in support of the Subject Motion, Mr. Sullivan contends that reconsideration is warranted because the Association failed to provide evidence that it carried workers' compensation insurance as required by law. (Subject Motion pp. 5–7.) The Court disagrees.

Mr. Sullivan's second argument in support of the Subject Motion is based on an erroneous legal premise, namely, that, to be immune from tort liability as Mr. Sullivan's statutory employer, the Association had to show that it maintained workers' compensation insurance.

According to Mr. Sullivan, "South Carolina precedent . . . ha[s] consistently interpreted statutory employer liability as providing 'double protection' for employees." (Subject Motion p. 7.) While Mr. Sullivan is correct that there is precedent to this effect, *that precedent is out of date and is no longer good law*, because of the legislature's enactment and subsequent amendment of S.C. Code Ann. § 42-1-415, as our Supreme Court made expressly clear in *Glover v. U.S.*, 337 S.C. 307, 523 S.E.2d 763 (1999):

[P]rior to the enactment and amendment of S.C. Code § 42-1-415 (Supp.1998), the fact that the immediate employer had properly secured the payment of compensation did not remove the statutory employer's obligation under the Act. As observed by this Court in Harrell, the Act imposed a scheme where the owner and the immediate employer were subjected to the requirements of the Act, and the employees received "double protection." See Long v. Atlantic Homes, 311 S.C. 237, 428 S.E.2d 711 (1993); Parker v. Williams and Madjanik, Inc., 275 S.C. 65, 267 S.E.2d 524 (1980).

Finally, we noted in *Harrell* that our conclusion on this point was supported by the enactment and subsequent amendment of S.C. Code Ann. § 42-1-415 (Supp.1998). *Under section 42-1-415, as amended, a statutory employer no longer needs to secure the payment of compensation to avail itself of tort immunity under the Act, if the requirements of section 42-1-415 are met.*

337 S.C. at 311, 523 S.E.2d at 764-65 (emphasis added).

As a practical matter, no further analysis is necessary at this point, because Mr. Sullivan staked the entirety of his argument here on the false premise that the Association needed to secure the payment of workers' compensation to avail itself of tort immunity, without addressing the change in the law effected by the enactment and amendment of § 42-1-415 and, thus, without arguing that the requirements of § 42-1-215 are not met. And having raised no such argument prior to the filing of the Order of Dismissal, Mr. Sullivan can make no such argument now. See *Stevens & Wilkinson*, 409 S.C. at 567, 762 S.E.2d at 695; *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482. In any event, however, the requirements of § 42-1-415 are met here.

In pertinent part, § 42-1-415(A) provides as follows:

Notwithstanding any other provision of law, upon the submission of *documentation* to the commission *that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work*, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section.

(emphasis added).

The “documentation” referenced in § 42-1-415(A), i.e., “documentation . . . that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or

subcontractor was engaged to perform work,” is present here in the form of the Management Agreement, which, in pertinent part, provides as follows:

4. Powers and Duties of Management Firm; Services.

(a) Employment of Personnel. [Hilton] shall employ, compensate and supervise all persons necessary to manage, maintain, administer and operate the Project. Such persons shall be employees of [Hilton] and not of the Association. All matters pertaining to employment, interviewing and screening process, supervision, compensation, promotion, and discharge of employees of [Hilton] are the responsibility of [Hilton].

(d) Compliance with Laws. [Hilton] shall take such actions as may be necessary to operate and manage the Project in compliance in all material respects with all applicable federal, state and local laws, statutes, ordinances, orders, rules, regulations and other requirements including, but not limited to any requirements of the Timeshare Act (as defined in the Declaration).

(Ex. D to Motion to Dismiss [Management Agreement] pp. 5–6.)

The Management Agreement thus makes clear that Hilton is responsible for “employ[ing], compensate[ing] and supervis[ing] all persons necessary to manage, maintain, administer and operate the Project;” that Hilton is responsible for “[a]ll matters pertaining to employment, interviewing and screening process, supervision, compensation, promotion, and discharge of [such] employees,” which necessarily includes securing required workers’ compensation insurance; and, further, that Hilton expressly recognized and agreed that, in carrying out its responsibilities under the Management Agreement, it must comply with all applicable laws, which necessarily includes complying with the insurance requirements of the Act. And Hilton did in fact comply with the insurance requirements of the Act, as shown by the workers’ compensation

settlement reached between Mr. Sullivan and Hilton and its workers' compensation insurance carrier, Starr Indemnity & Liability Company. (See Ex. A to Motion to Dismiss [Workers' Compensation Settlement Agreement and Release].)

Accordingly, Mr. Sullivan's second argument in challenge to the Order of Dismissal is unavailing. It is based on inapplicable legal authority that does not account for the change in the law effected by the legislature's enactment and subsequent amendment of § 42-1-415. And having raised no timely argument based on the applicable law, i.e., based on § 42-1-415, Mr. Sullivan cannot raise any such argument now. But in any event, such an argument would be without merit, because the requirements of § 42-1-415 are met here.

CONCLUSION

The Subject Motion is hereby DENIED.

AND IT IS SO ORDERED.

R. KEITH KELLY
Circuit Court Judge

Dated: _____



Horry Common Pleas

Case Caption: Terence Sullivan VS Ocean 22 Vacation Owners Association Inc

Case Number: 2021CP2605377

Type: Order/Dismissal

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2023-05-16 17:17:44 page 13 of 13

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

TERENCE SULLIVAN,

Plaintiff,

v.

OCEAN 22 VACATION OWNERS'
ASSOCIATION, INC.

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

SUMMONS
(Jury Trial Demanded)

TO: DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in this action. A copy of the Amended Complaint is attached to this Amended Summons and is herewith served upon you. 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. Your answer must be served upon the undersigned attorneys for the Plaintiff within thirty (30) days after the service hereof, exclusive of the day of service, at Hopkins Law Firm, LLC, 171 Church Street, Suite 160, Charleston, South Carolina 29401.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Amended Complaint as required by this Amended Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

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Attorneys for the Plaintiff

Charleston, South Carolina

August 16, 2021

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

TERENCE SULLIVAN,

Plaintiff,

v.

OCEAN 22 VACATION OWNERS'
ASSOCIATION, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

COMPLAINT
(Jury Trial Demanded)

Terence Sullivan (hereinafter referred to as "Plaintiff"), complaining of Defendant Ocean 22 Vacation Owners Association, Inc. (hereinafter referred to as "Defendant"), would allege as follows, upon information and belief:

PARTIES

1. Plaintiff is a citizen and resident of Murrells Inlet, Georgetown County, South Carolina.

2. Defendant Ocean 22 Vacation Owners Association, Inc. is and was at all times relevant hereto a company organized under the laws of the State of South Carolina with its principal place of business located at 2200 North Ocean Boulevard, Myrtle Beach, South Carolina 29577 and doing business in Horry County, South Carolina, where the incident giving rise to this lawsuit occurred. Through its website, Defendant is in the business of owning, developing, managing, maintaining, marketing, selling and operation of a vacation ownership resort and rooms/units within the resort for use by owners and short term rental by customers.

3. Venue is proper in Horry County, South Carolina, and this Court may

exercise personal jurisdiction over Defendant since Horry County is where it owns property, where its “nerve center” is located, where the events complained of in this matter occurred and where Defendants transacted business and committed a tortious act (stated differently, the most substantial part of the acts or omissions giving rise to Plaintiff’s cause(s) of action occurred in Horry County, South Carolina).

4. At all times relevant hereto, the Defendant is and was vicariously liable for the acts or omissions of its employees, agents, servants and contractors under the doctrine of *respondeat superior*.

FACTS

5. On August 9, 2019, Plaintiff was working at the Ocean 22 resort owned by Defendant as an employee for Hilton Grand Vacations, Inc. While walking along a paved sidewalk on the property Plaintiff slipped and fell after stepping in a low spot on the sidewalk in which a small amount of water had pooled and very slick algae/mold had also formed. Plaintiff immediately felt excruciating pain in his back, neck and elbow and as a direct and proximate result of the incident is now completely and totally disabled.

6. As a direct and proximate result of this incident, Plaintiff sustained serious injuries which have caused him to suffer and endure considerable temporary and permanent pain and discomfort. Additionally, Plaintiff has undergone significant medical treatments, including but not limited to back surgery, and the services of doctors under whose care he has been and under whose care he will, upon information and belief, be compelled to be in the future and he will, upon information and belief, also be compelled to expend monies for further medical and doctors’ treatments required in the future. Plaintiff is now permanently and totally disabled and has lost his employment as a direct

result of his injuries and disability and has and will continue to be prevented from attending to his ordinary affairs and duties; he has, upon information and belief, been and will continue to be deprived of the normal enjoyments of life he otherwise would have; he has, upon information and belief, lost wages and will continue to do so in the future; and he, upon information and belief, will continue to endure discomforting pain and suffering which he otherwise would not have, and he has been otherwise injured and damaged.

7. As a direct and proximate result of this incident, Plaintiff has incurred and will incur actual damages, lost wages, medical expenses, permanent disability and loss of mobility, emotional distress, mental anguish and impairment of health and bodily efficiency.

FOR A FIRST CAUSE OF ACTION
(Premises Liability – Negligence/Gross Negligence as to an Invitee)

8. Plaintiff reiterates and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

9. Defendant had a duty to exercise reasonable or ordinary care for Plaintiff's safety as an invitee Ocean 22 resort, use reasonable care to prevent Plaintiff from suffering bodily injury and exercise due care to discover risks and take safety precautions to warn of or eliminate unreasonable risks on its property including sidewalks. Defendant breached the duties owed to Plaintiff and failed to make the dangerous condition on the Defendant's premises safe or warn Plaintiff of the dangerous condition.

10. Prior to Plaintiff's injury, Defendant had actual and/or constructive knowledge of the dangerous condition on the sidewalk used by Plaintiff on their premises.

11. Defendant, its employees, servants, contractors and/or agents were negligent, careless, reckless, grossly negligent, willful and wanton in the following

particulars:

- In failing to exercise ordinary care to maintain and keep their property in a reasonably safe condition for use by its invitees;
- In failing to warn Plaintiff of the dangerous condition on the property when it could have easily done so;
- In failing to implement preventive measures, procedures or policies designed to eliminate or reduce such dangerous conditions on sidewalks and the hazards posed therefrom;
- In failing to exercise the reasonable care, skill and prudence exercised by an ordinary, reasonable operator and/or manager of a resort with sidewalks under the circumstances;
- In failing to properly remedy the dangerous condition on the sidewalk after it knew or should have known, through reasonable diligence, that the dangerous condition existed;
- In failing to properly supervise, instruct, train and discipline its employees and agents/contractors in the manner in which to inspect and discover and report and reduce such hazards on sidewalks;
- In improperly and negligently designing the sidewalk used by Plaintiff;
- In improperly and negligently maintaining/cleaning the sidewalk used by Plaintiff;
- In causing the dangerous condition to exist in the sidewalk;
- In failing to obey the laws, statutes, regulations and ordinances then and there prevailing;
- In failing to protect the safety and interests of Plaintiff in the premises; and
- In such other particulars as the evidence produced in discovery and at trial may show.

12. As a direct and proximate result of Defendant's negligence regarding this incident, Plaintiff suffered and will continue to suffer severe physical and psychological injuries, pain and suffering, temporary and/or permanent physical and psychological disability and limitations, embarrassment, anxiety, stress, emotional upset, substantial

medical bills, lost employment and lost wages and such other injuries/damages as the evidence produced in discovery and at trial may show. Plaintiff is therefore entitled to judgment against Defendant for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Hiring, Training, Supervision and Retention)

13. Plaintiff reiterates and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

14. Plaintiff is informed and believes that Defendant was also negligent, careless, reckless, wanton, and grossly negligent at the time and place hereinabove mentioned in the following particulars:

- In failing to have in place policies and procedures to properly hire, train, supervise and/or retain its employees, agents, contractors and/or servants regarding sidewalks, or if such procedures were in place, in failing to enforce them;
- In failing to have in place adequate policies and procedures to mandate compliance by its employees, agents, contractors and/or servants with standards of care related to the safety of its customers and maintenance of their sidewalks and if such procedures were in place, in failing to enforce them;
- In failing to ensure that its employees, agents, contractors and/or servants had the proper training and experience to be able to discover and/or remove dangerous conditions, warn of dangerous conditions, and provide for the safety of users of their sidewalks in a manner and at a level that met or exceeded recognized standards, policies and/or procedures; and
- In generally failing to use the degree of care and caution that a reasonably prudent entity would have used under the same or similar circumstances as to sidewalks.

15. That because of the acts and/or omissions of Defendant as enumerated hereinabove, which resulted both proximately and directly in the damages set out above, and such other injuries/damages, medical bills and lost wages as the evidence produced

in discovery and at trial may show, Plaintiff is entitled to judgment of actual and punitive damages against Defendant.

WHEREFORE, having fully set forth his Complaint, Plaintiff would respectfully request judgment against Defendant for actual damages, punitive damages, costs, attorney's fees, pre-judgment interest, and other damages as the evidence produced in discovery and at trial may show, as well as any other relief the Court may deem just and equitable.

Plaintiff hereby demands a trial by jury.

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s/ J. Clay Hopkins

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Attorneys for the Plaintiff

Pawleys Island, South Carolina

August 16, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
TERENCE SULLIVAN,	)	Civil Action No. 2021-CP-26-05377
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S ANSWER TO
	)	PLAINTIFF'S COMPLAINT
OCEAN 22 VACATION OWNERS'	)	(Jury Trial Demanded)
ASSOCIATION, INC.,	)	
	)	
Defendant.	)	
	)	

Defendant, Ocean 22 Vacation Owners' Association, Inc., (this "Defendant"), answers the Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER TO THE PLAINTIFF'S COMPLAINT

2. Admits Paragraph 1, upon information and belief.
3. Admits Paragraph 2.
4. Responding to Paragraph 3, admits that Venue is proper, and does not contest this Court's Jurisdiction. Denies the remaining allegations of Paragraph 3.
5. Paragraph 4 is a conclusion of law and requires no response. To the extent a response is deemed required, denies Paragraph 4.

FOR A THIRD DEFENSE

6. Admits only that Plaintiff was working on the alleged date, upon information and belief. Denies all remaining allegations of Paragraph 5.

7. Denies Paragraphs 6 - 7.

**FOR A FOURTH DEFENSE AND BY WAY OF ANSWER TO THE PLAINTIFF'S
FIRST CAUSE OF ACTION**

8. Defendant reasserts and realleges each and every preceding response as if set forth herein verbatim.

9. Paragraph 9 contains conclusions of law which require no response. Defendant denies the allegations of Paragraph 9.

10. Denies Paragraph 10.

11. Denies Paragraph 11, including all subparts. Defendant specifically denies that it was negligent, careless, reckless, grossly negligent, willful or wanton in any way whatsoever.

12. Denies Paragraph 12.

**FOR A FIFTH DEFENSE AND BY WAY OF ANSWER TO THE PLAINTIFF'S
SECOND CAUSE OF ACTION**

13. Defendant reasserts and realleges each and every preceding response as if set forth herein verbatim.

14. Denies Paragraph 14, including all subparts. Defendant specifically denies that it was negligent, careless, reckless, wanton, or grossly negligent in any way whatsoever.

15. Denies Paragraph 15.

16. Defendant denies the "WHEREFORE" section of Plaintiff's Complaint.

17. Defendant demands a trial by jury.

**FOR A SIXTH AND AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

18. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A SEVENTH AND AFFIRMATIVE DEFENSE

19. Defendant alleges all of the risks and dangers, if any, existing at the time and place of Plaintiff's alleged accident and injury were open, obvious, apparent, and were either known by the Plaintiff or should have been known by the Plaintiff. Furthermore, Plaintiff was perfectly competent to judge the appropriateness of the circumstances and conditions alleged to be existing at the time and place of the alleged accident and, therefore, by his actions, Plaintiff freely and voluntarily exposed himself to the alleged danger, thereby assuming the risk of being injured in the manner alleged in the Complaint. Therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR AN EIGHTH AND AFFIRMATIVE DEFENSE

20. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff was greater than the negligence, if any, which might be established against Defendant and, therefore, Plaintiff is barred from any recovery in this action. Defendant further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR A NINTH AND AFFIRMATIVE DEFENSE

21. Defendant would show that any injuries or damages sustained by Plaintiff that Plaintiff alleges were caused by an act or omission of this Defendant were either caused by an intervening efficient act, omission or event, or could not be avoided and was an unavoidable accident.

FOR A TENTH AND AFFIRMATIVE DEFENSE

22. The Defendant would show any claim for punitive damages in the Complaint cannot be maintained as pled because any award of punitive damages without the appropriate procedural and substantive safeguards would violate the Defendant's equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions and common law of the State of South Carolina.

FOR AN ELEVENTH AND AFFIRMATIVE DEFENSE

23. Defendant would show that any award of punitive damages is subject to the limitations set forth in South Carolina Code Ann. § 15-32-530.

FOR A TWELFTH AND AFFIRMATIVE DEFENSE

24. Defendant alleges any injury and damage sustained by Plaintiff was due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A THIRTEENTH AND AFFIRMATIVE DEFENSE

25. Defendant alleges, upon information and belief, that any injury and damage sustained by Plaintiff were due to and caused by the sole and negligent acts or omissions of some other person or persons other than Defendant over whom Defendant neither had nor exercised any authority or control, and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A FOURTEENTH AND AFFIRMATIVE DEFENSE

26. Defendant alleges, upon information and belief, the exclusive remedy doctrine acts as a complete bar to the Plaintiff's claims.

FOR A FIFTEENTH AND AFFIRMATIVE DEFENSE

27. Defendant reserves the right assert additional affirmative defenses as may be available to it or revealed to it during the course of the investigation and/or discovery in this case.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Abby Edwards Saunders

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ATTORNEYS FOR OCEAN 22 VACATION
OWNERS' ASSOCIATION, INC.

October 15, 2021

1 STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 15
2 COUNTY OF GEORGETOWN) DOCKET NO. 2021-CP-26-05377
3

4
5 _____
6 TERENCE SULLIVAN,
7 Plaintiff,)
8 versus
9)
10 OCEAN 22 VACATION OWNERS '
11 ASSOCIATION, INC.,)
12 Defendant.
13 _____

14 H E A R I N G
15

16
17 DATE: February 14, 2022
18 LOCATION: South Carolina Circuit Court 15
19 JUDGE: R. Keith Kelly
20 TRANSCRIBED BY: Jeanne Meldrim

21
22 LEGAL EAGLE
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EXHIBITS

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

PROCEEDINGS

1 CLERK: Docket is 2021-CP-26-05377 Terence Sullivan
2 versus Ocean 22 Vacation Owners' Association.

3 THE COURT: Gentleman, tell me who you are and what
4 we have here.

5 MR. SHANNON: Good morning, Your Honor. My name is
6 Cole Shannon, and I represent the defendant Ocean 22
7 Vacation Owners' Association.

8 We have moved to dismiss the plaintiff's complaint,
9 and we believe this is a pretty straightforward case
10 where the plaintiff's complaint is barred by doctrine of
11 Workers' Compensation exclusivity.

12 The association I represent, manages, operates, and
13 administers, a timeshare resort in Myrtle Beach, which is
14 Hilton branded.

15 In 2014 it subcontracted out all of its management
16 administrative operation duties to Hilton. Thereafter,
17 Hilton was responsible for hiring all employees necessary
18 to staff and operate the timeshare resort, including the
19 plaintiff in this case.

20 In August of 2019, the plaintiff who served as a
21 bellhop at the resort, slipped and fell on a wet sidewalk
22 outside of the resort, and subsequently sought Workers'
23 Compensation benefits through, Hilton, his employer,
24 which was successfully resolved.

25 About two months after resolving the Workers'

PROCEEDINGS

1 Compensation claim, plaintiff filed the complaint in this
2 action against the association for mostly premises
3 liability.

4 And we believe that the association --- yes, we
5 believe that the plaintiff's complaint should be
6 dismissed, because the association is plaintiff's
7 statutory employer, and as such, this Court is without
8 jurisdiction, because this is a Workers' Compensation
9 matter.

10 As you know, Your Honor, Workers' Compensation
11 statutes in this case --- or in this state, are construed
12 liberally in favor of coverage. And all jurisdictional
13 doubts should be drawn in favor of including employees
14 within Workers' Compensation coverage.

15 And to sell the interconnection between plaintiff's
16 employer, Hilton, and the association in this case, I'd
17 like to provide a brief timeline. This project --- this
18 timeshare resort, was specifically developed to be Hilton
19 branded. There --- there's an agreement between the
20 developer and Hilton, which is memorialized in the
21 covenant's declarations and restrictions.

22 At --- thereafter, the --- the --- the developer
23 established the defendant association with the explicit
24 purpose to administer, operate, and manage the resort.

25 And pursuant to the declarations, the association

PROCEEDINGS

1 only has one sole affirmative obligation, which is to
2 intern to a management agreement with a manager for the
3 operation of the resort, which it did in 2014, with
4 Hilton, whereby Hilton would do three things: One, it
5 would administer and operate the resort.

6 Two, it would maintain and repair the project to
7 keep it consistent with what it termed a "First class
8 resort."

9 And three, it would hire all employees necessary to
10 operate the resort, including plaintiff.

11 So Your Honor, based on these interconnections
12 between Hilton and the association, we believe that the
13 association is the plaintiff's statutory employer. And
14 in order to come to that conclusion, the Court needs to
15 make two findings: First, that the association is a
16 business.

17 And second that the --- that Hilton's work at the
18 resort constituted part of the association's trade
19 business or occupation.

20 So moving to that first element, whether the
21 association is a business: Our courts have said that
22 when analyzing this, all inferences should be construed
23 liberally in favor --- it's not about profit or loss, but
24 it's about what the association holds itself out to do,
25 which is manage, and operate, and administer a resort.

PROCEEDINGS

1 And moreover, the association is registered with the
2 South Carolina Secretary of State's office as a
3 corporation. So clearly, the association constitutes a
4 business.

5 Now, moving to the second element, which is whether
6 Hilton's work at the resort constituted part of the
7 association's trade, business, or occupation, our courts
8 have instructed in the Boone v. Huntington (phonetic)
9 case, that the court should look to what the nature of
10 the work was that was assumed. And here, the nature of
11 the work was every obligation needed and necessary to
12 administer, operate, run, manage, repair and maintain
13 this timeshare resort.

14 So our Supreme Court has stated that when looking at
15 the second element, there's three criteria the Court
16 should look to, which are noted in the Olmsted (phonetic)
17 case, and that if any one of these three criteria are
18 met, then finding that the owner is the statutory
19 employer of the plaintiff is proper.

20 And those three criteria are, whether the work
21 performed is an important part of the owner's business or
22 trade, whether it's a necessary, essential, and integral
23 part of the owner's business or trade, or has been ---
24 previously been performed by the owner's employees.

25 And I would submit to the Court, that here, the

PROCEEDINGS

1 first two elements --- or first two criteria are met as
2 the association's entire business is performed by Hilton.
3 And in support of this, I would direct the Court to the
4 cases that were cited in our motion, which is that our
5 Workers' Compensation Commission has already found that
6 hotels' employees are statutory employees of resort
7 operators. Which is the --- how the Heather Price
8 (phonetic) case, out of the Workers' Compensation
9 Commission.

10 And that secondly, our courts found that employees
11 of management companies are statutory employees of the
12 entities for which those companies manage. And that
13 would be --- I point the Court to the Harold v Pinewood
14 Plantation (phonetic) case and the R v Florentine
15 (phonetic) case.

16 So, Your Honor, as I said in the beginning, we
17 believe this is a fairly straightforward case of Workers'
18 Compensation exclusivity. The plaintiff has already
19 recovered against his employer, Hilton, and we
20 respectfully request that the Court dismiss the
21 plaintiff's complaint for lack of jurisdiction. Thank
22 you.

23 THE COURT: Thank you, sir. Yes, sir.

24 MR. HOPKINS: Good morning, Judge.

25 THE COURT: Good morning.

PROCEEDINGS

1 MR. HOPKINS: Clay Hopkins for the plaintiff, Your
2 Honor. I really don't dispute anything Counsel said
3 regarding the case law for determining a statutory
4 employee. However, I do disagree on one distinct --- one
5 minor --- I think major distinction in this case
6 regarding the (unintelligible) of some of these other
7 hotel operating cases.

8 You know, I don't dispute that if a hotel hires a
9 subcontractor, or contractor, or vending person. And
10 from one of the cases cited by Hilton, that that person
11 would be a statutory employee, because the hotel's in the
12 business of running a hotel and providing this resort
13 (unintelligible).

14 However, the distinction here is that we have a ---
15 have an ownership association, essentially, an HOA,
16 owners.

17 And then what they realize, Judge, is that
18 obviously, these owners would not stay there year-round.
19 They would end up renting their --- their suites, or
20 renting their rooms --- renting their ownership interest
21 instead of having (unintelligible) something individual
22 owners running that. Or doing that and having, you know,
23 that --- that sort of influx of management and this owner
24 needs to do it themselves, but this one hires a different
25 management company.

PROCEEDINGS

1 What the HOA did, is they voted and said, we're just
2 going to hire one management company. We're going to
3 contract with a management company, one that has a big
4 banner, and a big name. So that's what they did, they
5 entered in to this agreement with Hilton to manage the
6 timeshare portion of the facility. They don't manage the
7 owners' units. They don't --- they don't book for the
8 owners. The owners own their units, they operate their
9 units. So I --- I think there's an important distinction
10 there, Judge in the case law.

11 I don't dispute my client's case is a --- is a
12 resort --- (unintelligible) resort case.
13 (Unintelligible) hire somebody to run the resort. So the
14 distinction here is not hiring somebody to run the whole
15 facility. The owners do that, that's what the HOA does.
16 The HOA decided it would hire a management company
17 instead of everybody going to out and doing it on their
18 own.

19 But the last --- the last peg of the Workers'
20 Compensation statutory employee analysis that account for
21 (unintelligible) is really important from the Harold v
22 Pinewood case, is that even if they're determined and
23 this Court makes a jurisdictional determination that the
24 HOA is the statutory employer of my client, they're
25 required, not only by the law, but also by the ---

1 agreement that they attached in materials to their
2 motion, to provide Workers' Compensation insurance.

3 I reached out to opposing counsel about a month ago
4 to see if that was the case. I --- I think I was
5 anticipating that had they had that, we might lose this
6 motion. Your Honor, they've not provided that. They've
7 not provided the Court with any information that they
8 carried Workers' Compensation insurance. And that is the
9 last thing to entitle them tort immunity for a statutory
10 employer.

11 So I don't think they met that burden, Your Honor.
12 (Unintelligible) motion (unintelligible) facts of the
13 complaint (unintelligible) jurisdictional determination
14 for a statutory employee --- employer - employee, but
15 they've not met the last hurdle. Any argument that
16 Counsel's made, any material they submitted, or anything
17 in the complaint or the answer.

18 THE COURT: How about that?

19 MR. SHANNON: Pardon, Your Honor?

20 THE COURT: How about that argument that the HOA ---
21 that might have to provide the Workers' Comp?

22 MR. SHANNON: The management agreement between the
23 parties significantly talks about which parties are
24 responsible for Workers' Compensation agreements, and
25 specifically delineates if the employee is a statutory

PROCEEDINGS

1 employer of the association, then the association carries
2 Workers' Compensation insurance. But if it's a employee
3 of Hilton, then Hilton covers the Workers' Compensation
4 insurance.

5 Now, Counsel is correct, I am not aware of --- at
6 this point, of whether the association is carrying
7 Workers' Compensation insurance. But I would note that
8 the Poach (phonetic) case mentions that it is the
9 insurer's obligation to file with the Workers'
10 Compensation Commission whether a entity has complied.

11 THE COURT: Okay. Anything further?

12 MR. SHANNON: (Unintelligible) Your Honor, he's ---
13 he's correct the bylaws says specifically if the
14 association (unintelligible) statutory employer,
15 (unintelligible) the employees of the association, such
16 other party must obtain Workers' Compensation coverage.

17 So I don't think they've met the burden, Your Honor.
18 We did file the Workers' Compensation claim. They didn't
19 step up, so they were providing that (unintelligible)
20 employer going to cover that. That's why this case was
21 filed.

22 So at --- at the minimum, Your Honor, I think there
23 (unintelligible) at least (unintelligible) advance
24 (unintelligible) discovery (unintelligible). If that's
25 the case, there's a policy in place (technical

PROCEEDINGS

1 difficulty) I disagree that they would be entitled to
2 summary judgment or judgment in this case. But I don't
3 think there's a policy. And what they did is, they
4 agreed to a --- an agreement (unintelligible) on whether
5 we're going to hire you, you're going to employ these
6 people, so you're going to carry the Workers'
7 Compensation (unintelligible) (technical difficulty) that
8 if they were the statutory employer, they would do it.

9 And so they --- they kind of hid behind that shield
10 (unintelligible) liability protection, and did not obtain
11 the coverage (unintelligible) filed this claim, and now
12 they're going to shield themselves from the liability,
13 without doing what they needed to do (unintelligible).

14 THE COURT: Okay. All right. I'm going to do a
15 little reading and thinking on that, gentleman. Thank
16 you so much.

17 (PROCEEDINGS CONCLUDED)
18
19
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22
23
24
25

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT 15 for GEORGETOWN County, South Carolina, on the 14th Day of February, 2022, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 8, 2023

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a large initial 'J' and a period at the end.

Jeanne Meldrim

Transcriber

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEASE
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
TERENCE SULLIVAN,	)	CASE NO. 2021-CP-26-05377
	)	
	)	
PLAINTIFF,	)	
	)	DEFENDANT’S MOTION TO DIMISS
vs.	)	PURSUANT TO RULE 12(B)(1), SCRC
	)	AND MEMORANDUM OF LAW IN
OCEAN 22 VACATION OWNERS'	)	SUPPORT
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

TO: J. CLAY HOPKINS, ESQUIRE, J. RYAN HEISKELL, ESQUIRE, AND JASON P. BOAN, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

Defendant Ocean 22 Vacation Owners’ Association (the “Association” or “Defendant”) hereby moves to dismiss Plaintiff’s Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRC on the basis that the Plaintiff’s sole remedy is available through the South Carolina Workers’ Compensation Act, S.C. Code Ann. § 42–1–400. Plaintiff was a statutory employee of the Association at the time of the accident pursuant to the South Carolina Workers’ Compensation Act. As a statutory employee of the Association, his liability claims in circuit court are barred.

Plaintiff is an employee of Hilton Grand Vacations, Inc. (“HGV, Inc.”) and was injured while working at a HGV brand time-share resort managed by HGV’s wholly owned subsidiary, Hilton Grand Vacations Management, LLC (“HGVM”) (collectively “HGV”).¹ Thereafter,

¹ “A holding company and its wholly owned subsidiary will be considered a single employer for workers’ compensation purposes if the two corporations are so integrated and commingled that neither can be realistically viewed as a separate economic entity.” *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 374, 747 S.E.2d 757, 765 (2013) (quoting 1 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 43.80 (Supp.2012)).

Plaintiff's workers' compensation claim was quickly and efficiently resolved in accordance with the public policy underlying South Carolina's Workers' Compensation Act.

Plaintiff has presently filed suit against the Association in order to effectively obtain a double recovery. The Association is a nonprofit, non-stock corporation made up of time-share owners and is responsible for managing and operating the HGV brand time-share resort under the Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suits. The Association has no direct employees, and HGV performs all functions of the Association. HGV assumed the Association's responsibilities via a management agreement. This arrangement makes the Association Plaintiff's statutory employer under the Act, because (1) the Association is a business and (2) the work HGV assumed in the management agreement constituted part of the Association's "trade, business, or occupation." As such, the Association is immune from Plaintiff's action at law, and his remedy—which he has already received—is exclusively found under the South Carolina Workers' Compensation Act.

PROCEDURAL HISTORY

This suit arises out of work related injuries allegedly suffered by Plaintiff Terrance Sullivan on August 9, 2019, at his place of employment: Ocean 22 by Hilton Grand Vacations, located at 2200 North Ocean Boulevard, Myrtle Beach, South Carolina. Plaintiff is employed by HGV, Inc. as a bellperson and alleges that he slipped on water and slick algae that had accumulated in a low spot on the property's paved sidewalk while "Plaintiff was working at the Ocean 22 resort owned by Defendant as an employee for Hilton Grand Vacations, Inc." Pltf's Cmpl. at ¶5. Plaintiff further alleges that "[t]hrough its website, Defendant is in the business of owning, developing, managing, maintaining, marketing, selling and operation of a vacation

ownership resort and rooms/units within the resort for use by owners and short term rental by customers.” Pltf’s Cmpl. at ¶ 2.²

Following the accident, Plaintiff sought workers’ compensation benefits through his employer, HGV, Inc. *See Exhibit A* (Settlement Agreement and Release). Plaintiff’s claim was resolved with his employer in June of 2021 whereby Plaintiff settled his claims for \$80,000.00. A Medicare Set Aside trust account was established for Plaintiff in the amount of \$57,285.31. Two months after settling his workers’ compensation claim with HGV, Plaintiff filed suit against the Association alleging causes of action for (1) Premises Liability – Negligence/Gross Negligence as to an Invitee and (2) Negligent Hiring, Training, Supervision and Retention.

OCEAN 22 BY HGV

Plaintiff’s employer, HGV, Inc., is a publically traded corporation which develops, manages, markets, and operates timeshare and vacation club ownership resorts whereby club members are jointly owned by members giving them use of the club properties for limited periods of time. *See Exhibit B* (Affidavit of Kelly Lodde). In 2013, HGV, Inc., as the ultimate parent company, entered into an agreement through its wholly owned subsidiary, HGVM, to manage and operate the property located at 2200 North Ocean Boulevard, Myrtle Beach, South Carolina into a Hilton Grand Vacations Club resort consisting of 230 units, which are sold as timeshares and rented as hotel rooms (hereinafter the “HGV Resort” or “Project”). *Id.* This arrangement was formalized in the “Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suits.” *See Id.*; *Exhibit C* at 1, 4 (Declarations of Covenants, Conditions and Restrictions).

² The Association would note that it does not have a website. The website to which Plaintiff is referring is, in fact, the website of his employer. *See* <http://www.hilton.com/en/hotels/myrttgv-ocean-22-by-hilton-grand-vacations/>

Thereafter, the Defendant Association was established in order to manage, operate and administer the HGV Resort. Id. The Association is a nonprofit corporation that is made up of each owner with an ownership interest in the HGV Resort. Id. Under “Management of Association”, the Declarations state that the Association’s sole affirmative obligation is to “employ a manager for the Project pursuant to a written management agreement” which delegates “authority to the Manager to carry out the duties and obligations of the Association” and authorizes the manager “to do all other acts necessary for the proper operation and maintenance of the Project [.]” Id. at Article IX. In accordance with this directive, the Association entered into a management agreement with HGV, under which HGV undertook to “manage and operate the Project in accordance with the same practices and standards utilized in the management of other Hilton Grand Vacation Club projects” and “maintain and repair the Project to a first class resort standard.” Exhibit D (Timeshare Management Agreement); *see also* Exhibit B. As such, HGV agreed to “employ, compensate and supervise all persons necessary to manage, maintain, administer and operate the Project.” Id.; *see also* Exhibit B.

Pursuant to the management agreement, HGV employed Plaintiff as a “bellperson” to assist owners and guests with transporting and/or securing their luggage; to provide instructions regarding the amenities of the room and property services and activities provided for guests’ use, and to deliver messages, express check-out folios, newspapers and other requested items to the owners and guests. Exhibit B.

GOVERNING LAW

The determination of whether a worker is a statutory employee is jurisdictional and a question of law. *Harrell v. Pineland Plantation, Ltd.* 337 S.C. 313, 320, 523 S.E.2d 766, 769 (S.C. 1999); *Glass v. Dow Chem. Co.*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (S.C. 1997). The

proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss pursuant to Rule 12(b)(1), SCRCF, rather than a motion for summary judgment pursuant to Rule 56, SCRCF. *Edens v. Bellini*, 359 S.C. 433, 440–41, 597 S.E.2d 863, 867 (Ct. App. 2004). If a party files a Rule 56 motion for summary judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the motion as if it were a Rule 12(b)(1) motion to dismiss. *Id.* Workers' compensation statutes are construed liberally in favor of coverage, and South Carolina's policy is to resolve jurisdictional doubts in favor of the inclusion of employees within workers' compensation coverage. *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 243, 647 S.E.2d 691, 695 (Ct. App. 2007)

ARGUMENT

I. PLAINTIFF'S TORT CLAIMS AGAINST THE ASSOCIATION ARE BARRED BY THE WORKERS' COMPENSATION EXCLUSIVITY DOCTRINE BECAUSE THE ASSOCIATION WAS PLAINTIFF'S STATUTORY EMPLOYER.

South Carolina has adopted a comprehensive workers' compensation scheme for governing claims between an employer and an employee pertaining to work-related injuries. In circumstances where the South Carolina Workers' Compensation Act covers an employee's work-related injury, the Act provides the exclusive remedy against the employer, and the employee gives up all "other rights and remedies ... as against his employer, at common law or otherwise, on account of [the] injury." S.C. Code Ann. § 42–1–540; *see also Sabb v. S.C. State Univ.*, 350 S.C. 416, 422, 567 S.E.2d 231, 234 (2002). The immunity provided by the Act's

exclusivity provision is conferred not only on the employee's direct employer but also on statutory employers as well.³

In assessing whether the Association qualifies as Plaintiff's statutory employer for the purposes of workers' compensation exclusivity, the court must make two (2) determinations: First, the Association must qualify as a business under the Act. Second, the work contracted out to Plaintiff's employer, HGV, must have constituted part of the Association's "trade, business, or occupation." *Harrell*, 337 S.C. at 321, 523 S.E.2d at 770.

A. The Association is a business.

Since the enactment of workers' compensation statutes, courts have given the word 'business' "its ordinary and popular meaning." *Id.* (citing 4 Arthur Larson, Workers' Compensation Law § 50.22 (1998)). For the purposes of workers' compensation, "[t]he test is not whether the employer is in business for profit, but whether the employer is in business at all. If he supplies a product or service, it is immaterial what he does with his profits, or whether he expects or gets any profits at all." *Id.* (quoting Larson at § 50.44(a)). "[W]ell settled is the rule that the definitions of 'employer' contained in the compensation acts, or statements as to who shall be deemed employers, should be broadly or liberally construed, in order to effectuate the purpose of the legislation." *Caughman v. Columbia Y.M.C.A.*, 212 S.C. 337, 341, 47 S.E.2d 788, 789 (1948) (citations omitted).

³ The relevant statute, S.C. Code Ann. § 42-1-400, provides: When any person, in this section and §§ 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and §§ 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

Additionally, "[t]he term 'owner' as used in Section 42-1-400 is synonymous with 'principal contractor'." *Murray v. Aaron Mizell Trucking Co.*, 286 S.C. 351, 354, 334 S.E.2d 128, 130 (Ct. App. 1985). Here, the Association is the principle contractor.

Here, the Association conducts business through the operation of the HGV Resort as vacation time-shares and as a hotel under the HGV brand and provided this service on behalf of the time-share unit owners that make up the Association. The Association is registered as a corporation with the South Carolina Secretary of State. Clearly, the Association is a business under the Act's expansive definition of the word "employer."

B. Plaintiff and HGV's work at the HGV Resort constituted part of the Association's "trade, business or occupation."

In analyzing whether the Association is an employee's statutory employer under the Act, the court must look to the nature of the work contracted out to HGV by the Association in order to determine whether it was part of the Association's "trade, business or occupation." *Boone v. Huntington and Guerry Elec. Co.*, 311 S.C. 550, 552, 430 S.E.2d 507, 508 (1993). The "trade, business, or occupation" analysis focuses on the work the owner has employed the subcontractor to complete. *Id.* ("[W]hen an owner contracts with a subcontractor to perform or execute any work which is a part of his trade, business, or occupation, the subcontractor becomes a 'statutory employee' of the owner for the purposes of workers' compensation liability.") The South Carolina Supreme Court has held that an activity is considered "part of the owner's trade, business, or occupation" for purposes of the statute if it (1) is an important part of the owner's business or trade; (2) is a necessary, essential, and integral part of the owner's business; or (3) has previously been performed by the owner's employees. *Olmstead v. Shakespeare*, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (S.C. 2003) (citing *Glass v. Dow Chemical*, 325 S.C. 198, 482 S.E.2d 49 (S.C. 1997)). If the activity at issue meets *even one* of these three criteria, the worker qualifies as the statutory employee of the owner. *Id.* Moreover, "In answering the question posed by section 42-1-400—whether the work contracted out is 'part of [the owner's] trade, business or occupation'—the court should focus initially on what the owner decided is part of its

business.” *Keene v. CNA Holdings*, Op. No. 28052 (S.C. Sup. Ct. filed Aug. 11, 2021) (Howard Adv. Sh. No. 27 at 61).

Here, the business of the Association is governed by the Declarations and is performed in its entirety by the Plaintiff’s direct employer. This relationship meets the “necessary, essential, and integral” tests, making Plaintiff the Association’s statutory employer. The court need not inquire which test applies because the South Carolina Workers’ Compensation Commission has held that resort subcontractors’ work constitutes part of the resort operator’s trade, business or occupation under both tests. Similarly, our courts have found both tests are met when entities, like the Association, delegate their responsibilities to a management company because the management company assumes the entity’s trade, business or occupation.

1. The South Carolina Workers’ Compensation Commission has concluded that Resort Operators are the statutory employer of employees of their subcontractors.

The South Carolina Workers’ Compensation Commission has previously concluded that resort subcontractors meet both the owner’s business or trade and the necessary, essential, and integral statutory employee tests, because their work is part of the resort operator’s trade, business, or occupation. *See Heather Price, Emp., Claimant Hilton Resorts & George Grady, d/b/a, Four Seas Concessions, Emps., & the Travelers Prop. & Cas. Co. & the S.C. Uninsured Employers’ Fund, Carriers, Defe*, No. 9646652, 1999 WL 33222038, at *7 (S.C. Work. Comp. Comm. Sept. 14, 1999). In *Price*, the claimant was employed as a sno-cone operator by a subcontractor of Hilton Resorts. *Id.* at *3. Her finger was partially amputated when the sno-cone machine malfunctioned. *Id.* Her employer ran the sno-cone operation for Hilton Resorts under a contract and was instructed by Hilton Resorts regarding “the hotel’s ‘expectations’ with respect to the operation of the stand[.]” *Id.* Following her injury, she sought a determination before the

Commission that Hilton was her statutory employer. *Id.* at *1. The Commission found that the claimant was a statutory employer of Hilton Resorts for the following reasons:

The activities performed by [Claimant] (a) constituted work which was part of the general trade and business of the Hilton Resort, which substantially included *the provision of hospitality services* to its guests, who comprised a significant portion of the “sno-cone” stand's patrons; and (b) were a necessary and essential part of the Hilton Resort’s trade/business, which was premised upon the provision of hospitality related amenities to these guests.

Id. at *4 (emphasis added).

In this case, the Association was created to operate and manage the HGV Resort on behalf of the time-share owners and specifically delegated this duty to HGV. The operation of the HGV Resort is the Association’s business or trade. In *Price*, the Commission found that selling sno-cones at Hilton Resorts constituted work that was part of Hilton Resort’s business or trade and was a necessary, essential, and integral part of Hilton Resort’s business. *Id.* Like the sno-cone vendor in *Price*, HGV manages the HGV Resort pursuant to a contract with the Association which similarly contains the Association’s expectations that the Project is held “to a first class resort standard.” See Exhibits B & D. Logically, if something as miniscule as selling sno-cones could be construed as a necessary, essential, and integral part of a hotel’s trade or business, then it follows that working as a bellperson providing hospitality services to all of the resort’s guests must also constitute work that is a necessary, essential, and integral part of the Association’s trade or business.

2. South Carolina’s courts have found that employees of management companies are statutory employees of the entity for whom they manage the property.

South Carolina’s courts have found that entities, like the Association, who delegate there management and operation responsibilities to a management company, are the statutory

employers of the management company's employees. These arrangements meet both the important part of the owner's business or trade and the necessary, essential, and integral tests.

In *Harrell*, our Supreme Court found that both the "important part of the trade or business" and the "necessary, essential, and integral part of the business" tests were met when an employee of a plantation's property management service filed suit against the entity that owned the plantation. 337 S.C. at 325, 523 S.E.2d at 772. The Court supported this finding by noting that the property management service "maintained every aspect of the daily operations of the plantation" and without the work of the property management company and its employee, the plantation "would have had to hire direct employees to complete those duties. Their relationship is *exactly the type* that the statutory employer theory is meant to cover." *Id.* (emphasis added).

Here, HGV, like the property manager in *Harrell*, maintained every aspect of the daily operations of the HGV Resort. After all, without HGV, and its employees, the Association would have had to hire direct employees to perform bellhop services. Those services and all others necessary for the operation of the HGV Resort are performed by HGV, as the Association has no direct employees. Exhibit B. As our courts have noted, this is the *exact* relationship that the statutory employer provision is meant to cover.

In *Carter v. Florentine Corporation*, our Supreme Court summarily concluded that the employees of a management company were the statutory employees of a mall. 310 S.C. 228, 423 S.E.2d 112 (1992), *overruled on other grounds*, *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994). The defendant Florentine Corporation's sole assets were the land and buildings comprising Magnolia Mall in Florence, SC. *Id.* at 228, 423 S.E.2d at 112. Florentine retained Equity Property Management to hire, discharge and pay all the employees necessary to operate the mall, to negotiate leases for all the stores in the mall, and to perform all necessary duties. *Id.*

An employee of Equity Management filed suit against Florentine after a slip and fall accident in the mall. *Id.* The Supreme Court reversed a denial of summary judgment on the grounds that the injured employee was a statutory employee, stating that “the Mall is clearly Florentine’s sole business, and the work being performed by Equity was essential to its operation.” *Id.*

Like the mall owner in *Carter*, the Association hired HGV to manage, operate, and administer the HGV Resort. The Association instructed HGV to hire and employ all employees necessary for the operation of the HGV Resort and empowered it to perform all necessary duties. *See Exhibits B & D.* The operation of the HGV Resort, on behalf of the time-share owners, is the Association’s sole business, and the work being performed by HGV was essential to its operation. HGV acts in every respect on behalf of the Association, employing the Plaintiff to perform certain duties essential to the operation of the HGV Resort. The Association is the Plaintiff’s statutory employer, and he is prohibited from bringing this suit. This court lacks subject matter jurisdiction over Plaintiff’s claims, as the Workers’ Compensation Commission has exclusive jurisdiction over his claims.

CONCLUSION

Based upon the foregoing, the Association is Plaintiff’s statutory employer because it is (1) a business and (2) because HGV’s work is part of the Association’s trade, business, or occupation. As such, Plaintiff’s claims must be dismissed as a matter of law. When the public policy behind the statutory employee doctrine leads to a finding that a worker is a statutory employee, the collateral consequence of that finding is the claim against the owner must be filed with the Workers’ Compensation Commission. In that event, the owner collaterally enjoys immunity from tort liability. *Keene*, Op. No. 28052 (S.C. Sup. Ct. filed Aug. 11, 2021) (Howard Adv. Sh. No. 27 at 61). To hold the Association liable to the Plaintiff in tort for the same injury *already*

compensated by HGV would circumvent the express public policy underlying South Carolina's system of workers' compensation: the quick and efficient delivery of medical benefits to an injured worker at reasonable cost to the employer. *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 389, 769 S.E.2d 1, 5 (2015) ("The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation.").

The Plaintiff's exclusive remedy under the Workers' Compensation Act and his status as a statutory employee of the Association bar this action. The Plaintiff's claims should be dismissed with prejudice pursuant to Rule 12(b)(1), SCRPC, as this Court lacks subject matter jurisdiction to entertain his work related injury claims.

CLEMENT RIVERS, LLP

By: s/ Nicholas J. Rivera

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Attorneys for the Defendant Ocean 22 Vacation
Owners' Association, Inc.

Charleston, South Carolina

Dated: October 15, 2021

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. File No. 1911335

TERENCE J. SULLIVAN,
Employee/Claimant,

-versus-

**SETTLEMENT
AGREEMENT AND RELEASE**

HILTON GRAND VACATIONS, INC.,
Employer, and

STARR INDEMNITY & LIABILITY COMPANY,
Carrier/Defendants.

RECEIVED

JUN 04 2021

Division of Claims
SC Workers' Comp. Comm.

Terence J. Sullivan (hereinafter "Claimant") sustained an injury by accident arising out of and in the course of his employment with the employer on or about 8/9/2019, the said accident occurring in Horry County, South Carolina. An actual bona fide disagreement exists between the Claimant on the one hand and the employer/insurance carrier (hereinafter "Defendants") on the other as to the extent of residual disability, if any, and the amount of compensation for disability, temporary and permanent, partial and total, and compensation for any disfigurement to which the Claimant might be due and for which the Defendants may be liable under the South Carolina Workers' Compensation Act based upon the aforesaid accident and injury.

The parties have negotiated the resolution of any and all outstanding issues and have now reached a final compromise settlement agreement and release under the terms of which the Defendants will pay and the Claimant will accept the sum of **\$80,000.00**, plus the sum of **\$57,285.31** which will be used by the Claimant to establish a Medicare Set-

Aside (MSA) trust account as outlined in Exhibit A attached hereto, in full payment and compromise settlement of all rights and claims of the Claimant under the South Carolina Workers' Compensation Act based upon and by reason of the aforesaid accident and injuries, including, without limiting the generality of said agreement, all claims of the said Claimant for compensation of any and every kind under the South Carolina Workers' Compensation Act for disability, temporary and permanent, total and partial, present and future, and all claims for compensation under the South Carolina Workers' Compensation Act for disfigurement and for any change of condition, and all claims under the South Carolina Workers' Compensation Act for any medical, hospital, surgical, and nursing and any other expenses which the Claimant may have incurred in the past or may incur in the present or future (the sole exception being such medical, hospital, surgical and nursing expenses as have previously been incurred by the Claimant at the request of the Defendants) so that the Claimant shall have no further right or claim and the Defendants shall have no further liability under the said Workers' Compensation Law based upon said accident and injuries after the payment and receipt of said sum of **\$80,000.00**, plus the sum of **\$57,285.31** which will be used by the Claimant to establish a Medicare Set-Aside (MSA) trust account as outlined in Exhibit A attached hereto.

It is hereby agreed that the settlement amount of **\$80,000.00** is hereby allocated as follows: \$26,666.66 as attorney's fees, pursuant to a written contract between the client and his attorney; plus \$415.09 in costs, pursuant to the same written agreement between the client and his attorney; \$52,918.25 in compromise settlement of disputed future

disability at the rate of \$51.26 per week for a period of 1,032.20 weeks (Claimant's remaining life expectancy is 19.85 years, DOB: August 18, 1959), pursuant to Sections 42-9-10 and 42-9-20 as interpreted by the South Carolina Supreme Court in the decisions of Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E. 2d 593, Sciarotta v. Bowen, 837 F3d 135.

The parties agree that the amount of **\$57,285.31** will be used by the Claimant to establish a Medicare Set-Aside (MSA) trust account as outlined in Exhibit A, which is attached.

The MSA funds are in consideration of future medical payments that may be covered by Medicare. This amount shall be allocated and kept in a self-administered trust by the Claimant. The total sum of the MSA shall be placed in an interest-bearing account and shall be disbursed pursuant to the Centers for Medicare & Medicaid Services (CMS) requirements. It is the responsibility of the Claimant to administer the trust in accordance with the rules and regulations of CMS. This may include, but is not limited to, providing CMS with an accounting of funds on an annual basis.

The Claimant understands that the Medicare Set-Aside funds must be used to pay only for covered Medicare expenses. Claimant understands that the funds must be placed in an interest-bearing account, and this account must be separate from the Claimant's personal savings and checking accounts. The funds in this account may only be used for payment of medical services related to the injuries associated with this claim that would normally be paid by Medicare. If payments from this account are used to pay

for services that are not covered by Medicare, Medicare may not pay injury-related claims until these funds are restored to the MSA account and then properly exhausted.

It is not the intention of the Defendants to shift responsibility of future medical benefits to the Federal Government. The above-mentioned funds allocated for otherwise-covered Medicare-covered future medical expenses are intended directly for payment of medical expenses related to this claim. This settlement is meant to give consideration to Medicare's interest pursuant to the Medicare Secondary Payer Act (42 U.S.C. §1395y(b)) as amended and the relevant regulations contained in 42 C.F.R. §411. The parties are in agreement that this amount is a reasonable consideration of Medicare's interest pursuant to the Medicare Secondary Payer Act.

The MSA amount was based on a review of the Claimant's medical records, life expectancy, and future care projections from a certified nurse life care planner. The amount of the MSA has been carefully determined based upon factors including, but not limited to, the Claimant's date of entitlement to Medicare, the basis for Medicare entitlement, the type and severity of the claimed injury or illness, and the age of the Claimant. The parties are in agreement that this amount is a reasonable consideration of Medicare's interest pursuant to the Medicare Secondary Payer Act.

As noted above, it is not the purpose of the settlement agreement to shift to Medicare the responsibility for payment of medical expenses for the treatment for work-related conditions. Instead, this settlement is intended to provide the Claimant with a

Medicare Set-Aside trust that will foreclose any responsibility that the Defendants might otherwise have for future medical treatment related to this claim.

Should the Centers for Medicare & Medicaid Services (CMS) (or any of its affiliates or subcontractors) submit or make any claim, allegation, investigation, or otherwise inquire about any Medicare-related expenses alleged by CMS to be associated with this claim at any time in the future, the Claimant expressly agrees to cooperate with the Defendants or any of its agents, subsidiaries, or designees in responding to or addressing the claims raised by CMS. This includes, but is not limited to, providing the Defendants with a consent form in order to transmit and receive data to and from CMS (including medical information), providing the Defendants with details about any alleged expenses CMS claims is related to this claim, and providing any other information that is reasonably necessary to allow the Defendants to properly address any claim(s) by CMS.

The Claimant releases, acquits, and forever discharges the released parties from any claim of the action the Claimant may have had pursuant to 42 U.S.C. §1395y (b)(3)(A).

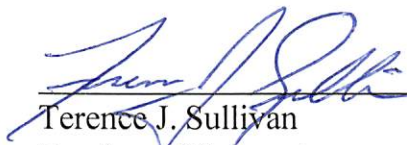
The Claimant hereby represents that he has been fully advised of his rights under the South Carolina Workers' Compensation Act and that he is of the opinion that the proposed settlement is reasonable and fair. Claimant's counsel represents that he has reviewed the settlement and has explained the terms to the Claimant and Claimant voluntarily and without coercion agreed to the terms. Claimant's counsel concurs in the opinion that the settlement is reasonable and fair. The parties acknowledge that the

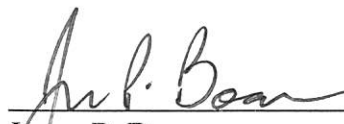
Commission relies upon the representation of counsel for the Claimant that the Claimant has been fully apprised of his rights under the laws of the South Carolina Workers' Compensation Act. Both Claimant and Claimant's counsel request the South Carolina Workers' Compensation Commission approve this SETTLEMENT AGREEMENT AND RELEASE in compliance with S.C. Code Ann. §42-9-390 (amended July 1, 2007), whereunder this SETTLEMENT AGREEMENT AND RELEASE, when stamped "received settlement" by the South Carolina Workers' Compensation Commission, shall be deemed approved by the South Carolina Workers' Compensation Commission and shall be binding on the parties as an unappealed Order, Decision and Award of the Commission and shall not be reviewable or modifiable by the Workers' Compensation Commission or any court or tribunal consistent with Spivey vs. Carolina Crawler, 624 S.E.2d 435 (Ct. App. 2005).

NOW, THEREFORE, based upon the premises herein and the payment of the sum as aforesaid, the Claimant does hereby release, acquit, and forever discharge the Defendants of and from any and all known and unknown claims under the South Carolina Workers' Compensation Act for disability, temporary and permanent, total and partial, present and future, and all claims for compensation under the South Carolina Workers' Compensation Act for disfigurement and for any change of condition, and all claims under the South Carolina Workers' Compensation Act for any medical, hospital, surgical, and nursing and any other expenses which the Claimant may have incurred in the past or may incur in the present or future (the sole exception being such medical, hospital, surgical and

nursing expenses as have previously been incurred by the Claimant at the request of the Defendants) connected with the aforesaid accident, injuries, and problems sustained by the Claimant after the payment and receipt of said sum of **\$80,000.00**, plus the sum of **\$57,285.31** which will be used by the Claimant to establish a Medicare Set-Aside (MSA) trust account as outlined in Exhibit A attached hereto.

The parties are hereby filing this SETTLEMENT AGREEMENT AND RELEASE with the South Carolina Workers' Compensation Commission as required by S.C. Code Ann. §42-9-390 (amended July 1, 2007).



Terence J. Sullivan
Employee/Claimant

Jason P. Boan
Attorney for the Employee/Claimant

HILTON GRAND VACATIONS, INC.
Employer

STARR INDEMNITY & LIABILITY
COMPANY
Insurance Carrier



F. Drake Rogers III
Attorney for the Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEASE
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
TERENCE SULLIVAN,	)	CASE NO. 2021-CP-26-05377
	)	
PLAINTIFF,	)	
	)	
vs.	)	AFFIDAVIT OF KELLY LODDE
	)	
OCEAN 22 VACATION OWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

PERSONALLY APPEARED BEFORE ME, the undersigned notary public in and for the State of Florida aforesaid, the within named Kelly Lodde, who, on her oath, stated as follows:

1. My name is Kelly Lodde. I am over the age of eighteen (18) and competent to testify regarding the matters asserted herein.

2. I am the Senior Vice President and Assistant Secretary of Hilton Grand Vacations, Inc. ("HGV, Inc.") and am knowledgeable about its affairs and relationships with other entities.

3. HGV, Inc. is a publically traded corporation which develops, manages, markets, and operates timeshare and vacation club ownership resorts whereby properties are jointly owned by individual purchasers giving them use of the club properties for limited periods of time.

4. HGV, Inc. operates several of these timeshare clubs across the United States including the one located at 2200 North Ocean Boulevard, Myrtle Beach, South Carolina (the "Project") which is the subject of this lawsuit.

5. HGV, Inc. through its wholly owned subsidiary, Hilton Grand Vacations Management ("HGVM") (collectively "HGV"), entered into an agreement to manage and operate the Project as a Hilton branded timeshare resort.

6. This timeshare structure was formalized in the "Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suits" (the "Declaration") which is attached hereto.

7. Pursuant to the Declaration, the Ocean 22 Vacation Owners' Association (the "Association"), a nonprofit, non-stock corporation made up of each owner with an ownership interest in the Project, was established in order to manage, operate and administer the Project.

8. The Association has no direct employees.

9. The Declaration empowers the Association to employ a manager for the Project and to delegate authority to the manager to carry out the duties and obligations of the Association.

10. Pursuant to this authority, the Association entered into a management agreement with HGV on October 25, 2013. *See* Timeshare Management Agreement which is attached hereto.

11. Under the terms of the management agreement, HGV would "manage and operate the Project in accordance with the same practices and standards utilized in the management of other Hilton Grand Vacation Club projects" and "maintain and repair the Project to a first class resort standard."

12. HGV agreed to "employ, compensate and supervise all persons necessary to manage, maintain, administer and operate the Project."

13. The management agreement allowed HGV to delegate and subcontract all or part of its obligations to an Affiliate.

14. Mr. Sullivan was hired by HGV, to serve as a Bellperson at the Project.

15. This arrangement is common practice for Hilton brand entities in accordance with the practices and standards utilized in the management of Hilton Grand Vacation Club projects.

16. The role of Bellperson required Mr. Sullivan to assist owners and guests with transporting and/or securing their luggage; provide instructions regarding the amenities of the room and property services and activities provided for guest's use, and deliver messages, express check-out folios, newspapers and other requested items to the owners and guests.

17. The performance of this role was an important part of meeting HGV's obligations under the management agreement and was further a necessary, essential, and integral part of the operation of the Project on behalf of the Association.

18. Following Mr. Sullivan's fall at the premises, he sought and received worker's compensation benefits through HGV. His worker's compensation claim arising out of this incident has been fully resolved.

19. The contents of this Affidavit are true and correct to the best of my knowledge and are based on my own personal knowledge.

FURTHER AFFAINT SAITH NOT.

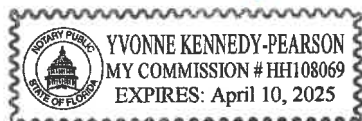
Kelly Jane
(NAME)

SWORN TO AND SUBSCRIBED TO BEFORE ME

this 15 day of October, 2021.

Yvonne Kennedy-Pearson
NOTARY PUBLIC

My Commission Expires: April 10, 2025
(SEAL)



This document prepared by:
King Cunningham, LLC
1000 2nd Avenue South, Suite 325
North Myrtle Beach, SC 29582
843-249-0777

Instrument#: 2014000021102, DEED BK:
3717 PG: 3380 DOCTYPE: 082 02/28/2014
at 02:45:48 PM, 1 OF 87 BALLERY V.
SKIPPER, HORRY COUNTY, SC
REGISTRAR OF DEEDS

RE-RECORDED TO ADD EXHIBIT B PREVIOUSLY OMITTED

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AND VACATION OWNERSHIP INSTRUMENT

FOR

OCEAN 22 VACATION SUITES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT for OCEAN 22 VACATION SUITES ("Declaration") is made and executed by **Ocean 22 Development, LLC**, a South Carolina limited liability company (hereinafter referred to as "Declarant") to establish a timeshare plan pursuant to Chapter 32, Article 27, Code of Laws of South Carolina (1976), as amended.

**ARTICLE I
RECITALS**

1.1 Declarant holds legal title to the real property located at 2200 North Ocean Boulevard, Myrtle Beach, Horry County, South Carolina, hereinafter more particularly described.

1.2 Declarant proposes to convey undivided timeshare interests in the real property and improvements described in this Declaration.

1.3 The covenants, conditions and restrictions contained in this Declaration, including specifically, but without limitation, the covenants contained in Article VII and VIII hereof, shall be enforceable, liens, covenants and equitable servitudes, and shall run with the land.

1.4 All terms used in this Declaration shall have the definitions as set forth herein.

1.5 The timeshare project shall be known as Ocean 22 Vacation Suites ("Project") and is intended to be a timeshare project pursuant to the Timeshare Act (as hereinafter defined).

1.6 No Owner shall at any time have a separate ownership interest in or to a specific Suite (as hereinafter defined) or any other portion of the Project. An Owner shall have an undivided interest in a specific Phase of the Project rather than any specific portions of the Project whether denominated as Suites or otherwise.

**ARTICLE II
DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article II.

2.1 Affiliated Resort. Any resort subject to the provisions of the Club program.

2.2 Annual Ownership Interest. A Vacation Ownership Interest which enables the Owner thereof, subject to terms and conditions set forth in this Declaration, to the use, possession, and occupancy of a Suite on an annual and recurring basis.

2.3 Articles. The Articles of Incorporation for Ocean 22 Vacation Owners Association, Inc., as amended from time to time.

2.4 Assessments. All fees described in Article X to fund the Total Expenses.

2.5 Association. The Ocean 22 Vacation Owners Association, Inc., a South Carolina non-profit corporation, organized for the purposes set forth in this Declaration. The Association manages the Project through the Board and the Manager.

2.6 Association Property. All real and personal property owned by the Association, including but not limited to all furnishings and other personal property contained within each Suite that are not the property of an individual Owner.

2.7 Biennial Ownership Interest. A Vacation Ownership Interest which enables the Owner thereof, subject to terms and conditions set forth in this Declaration and other Club Documents, to the use, possession, and occupancy of a Suite on a biennial and recurring basis in either an odd or even numbered year. Biennial Ownership Interests are further identified and designated as either Even Year Biennial Ownership Interests or Odd Year Biennial Ownership Interests.

2.8 Board. The Board of Directors of the Association appointed or elected in accordance with the Articles and the Bylaws.

2.9 Building. All structures, whether one or more, located on any portion of the Project.

2.10 Bylaws. The bylaws of the Association, as amended from time to time.

2.11 Club Documents. Only those instruments governing the use and operation of the Club which may be promulgated, executed or amended by HGVC from time to time, including, but not limited to, the Club Rules, and Resort Agreement.

2.12 Club Dues. The costs and expenses of the Club that are assessable to each Club Member and/or the Affiliated Resort.

2.13 Club Marks. Those certain trademarks or service marks owned by or registered or licensed to HGVC, its affiliates or subsidiaries, in the United States or any other country.

2.14 Club Member. An Owner at the Project and/or an Affiliated Resort whose ownership interest is subject to the terms of the Club Documents.

2.15 Club Rules. The rules, regulations and procedures governing reservation of Club accommodations and facilities, as amended from time to time.

2.16 Club Suite. A Suite in the Project the use of which shall be subject to the Club Documents, and for which membership in the Club is a condition of ownership.

2.17 Common Area. All portions of the Project other than the Suites or Vacation Support Areas, including easements in favor of the Suites, Vacation Support Areas or Common Areas and includes those portions of the Project designated in this Declaration as Limited Common Areas; provided that this inclusion shall in no way serve to infringe upon the rights of an Owner to which such Limited Common Areas are appurtenant.

2.18 Common Expenses or Total Expenses. All expenses associated with the administration, maintenance, repair, or replacement of the Project and Association Property, including but not limited to, real estate taxes, uncollected Club Dues, and all other expenses denominated by this Declaration as well as all expenditures made by or financial liabilities of the Association, together with any allocations for reserves including, but not limited to the following:

(a) Expenses of administration and management of the Association, including but not limited to compensation paid by the Association to a manager, accountant, attorney, or other employee or independent contractor acting on behalf of the Association;

(b) Any valid charge against the Project as a whole;

(c) All costs and expenses incurred by the Association in connection with regulatory compliance, including but not limited to filing fees and attorneys' fees incurred for the benefit of the Owners;

(d) The cost of casualty, flood and/or liability insurance on the Project as well as insurance coverage relating to the interior of any Suite or Vacation Support Area;

(e) All expenses pertaining to the maintenance, operation, repair and replacement of the Common Areas;

(f) The cost of repair and maintenance of the interior of a Suite for normal wear and tear;

(g) The cost of repair and replacement of furniture, fixtures, appliances and carpeting or other floor covering of Suites, and deferred maintenance and replacement reserves for the same;

(h) The cost of providing utility services for the Suites;

(i) All real property and other governmental taxes and charges as to the Project and the Suites;

(j) Expenses incurred for uninsured liabilities and charges;

(k) The cost of housekeeping services;

(l) Expenses incurred in connection with any permitted purchase or lease of a Vacation Ownership Interest by the Association;

(m) The cost of accessing, operating, maintaining and repairing the commonly used easement areas pertaining to the Project or any Shared Facilities; and

(n) All expenses pertaining to the maintenance, repair of the Limited Common Areas and replacement of all items located in the Limited Common Areas;

(o) Any other expenses of the Association described in this Declaration.

2.19 Common Surplus. Any excess of all collected receipts of the Association over the amount of Common Expenses.

2.20 Convertible Space. The Vacation Support Areas, all of which are subject to the Declarant's reserved right and option to create additional Association Property, Common Areas, or Suites from such space, as set forth in Article V.

2.21 Declarant. Ocean 22 Development, LLC, a South Carolina limited liability company, or any successor in interest, by express assignment of some or all of the rights of Declarant hereunder by an instrument executed by Declarant and the successor in interest and filed in the Office of the Register of Deeds for Horry County, South Carolina.

2.22 Declarant Rights. All rights reserved in the Declarant, including but not limited to, those set forth in Articles V and XIII hereof.

2.23 Director. An individual elected or appointed to the Board in accordance with the Articles and the Bylaws.

2.24 Easements. Those certain rights granted from time to time in favor of Declarant, Owners, all tenants, subtenants, guests, exchange guests, employees, agents, customers, licensees, concessionaires, and other invitees of such owners and such owners' successors, heirs, transferees and assigns, and the Association, its employees and agents which

provide for certain pedestrian, vehicular, recreational and utility easements available for use by the Project and such parties.

2.25 Even Year Biennial Ownership Interest. The right of an Owner of a Biennial Ownership Interest to use and occupy a Suite of the Suite Configuration purchased only during even numbered years (for example, 2014, 2016, 2018).

2.26 Event. Certain designated holidays, currently consisting of the week of the fourth of July, as more specifically described in Article VIII.

2.27 Event Interest. A Vacation Ownership Interest pursuant to which the Owner thereof shall be entitled, subject to the terms and conditions set forth herein and subject to the Club Rules, to a priority reservation of the use and occupancy of a Suite committed to the Club of the same configuration purchased by the Owner during specifically designated Event Time.

2.28 Event Time. An annual or biennial Time Period consisting of seven (7) consecutive nights during which the Owner of an Event Interest has a priority reservation right in a Suite of a particular Suite Configuration during the Event.

2.29 Expense Fund. One or more deposit and investment accounts of the Association into which the Assessments are deposited.

2.30 Fixed Unit/Event Time or Fixed/Event Use Rights. The right to use a specific Suite of the Suite Configuration purchased during the specific Event Time purchased on an annual or biennial basis.

2.31 Fixed Unit/Fixed Time or Fixed/Fixed Use Rights. The right to use a specific Suite of the Suite Configuration purchased during the specific Time Period purchased on an annual or biennial basis.

2.32 Floating Unit/Event Time or Float/Event Use Rights. The right to use a Suite of the Suite Configuration purchased during the specific Event Time purchased on an annual or biennial basis.

2.33 Floating Unit /Fixed Time or Float/Fixed Use Rights. The right to use a Suite of the Suite Configuration purchased during the specific Time Period purchased on an annual or biennial basis.

2.34 Floating Unit/Floating Time or Float/Float Use Rights. The right to use a Suite of the Suite Configuration purchased within the Season purchased on a priority basis on an annual or biennial basis.

2.35 Furnishings. All furniture, furnishings, equipment, facilities and personal property within the Suites and Common Areas available for the exclusive use and benefit of Owners, and all furniture, furnishings, equipment, facilities and personal property hereafter purchased or leased with monies from the Expense Fund, which furnishings shall be deemed Association Property.

2.36 HGVClub or Club. Hilton Grand Vacations Club, the reservation and exchange program operated by Hilton Grand Vacations Club, LLC ("HGVC"), a Delaware limited liability company or any successor in interest, pursuant to which Club Members make exchanges at the Project or Affiliated Resorts, or receive other related services offered from time to time pursuant to the priorities, restrictions and limitations of the Club Rules.

2.37 Home Resort. The Affiliated Resort at which a Club Member owns an ownership interest.

2.38 Home Week Reservation Window. The period of time each calendar year, as determined by HGVC from time to time, during which a Club Member has the exclusive priority right to reserve the use of their Home Week through the Club without competing for such reservation with other Club Members other than those owning the same suite configuration and Season at the same Home Resort. Club Members who own floating time or other flexible use ownership must still compete with the other owners of similar interests at the Home Resort to receive a Home Week reservation in accordance with the rules and regulations of that Resort's reservation system.

2.39 Home Week. A full week (seven consecutive nights) in the unit type and Season owned by the Club Member at his Home Resort.

2.40 Limited Common Area(s). Those Common Areas designated in this Declaration as reserved for the exclusive use of one or more Suites to the exclusion of other Suites and Common Areas; provided that no alteration to a Limited Common Area nor any amendment to this Declaration materially and adversely affecting a Limited Common Area appurtenant to a Suite shall be effective without the consent of the Association. The costs and expenses pertaining to the Limited Common Areas, including, but not limited to, the costs of maintenance, repair, replacement, improvement or additions to the Limited Common Areas, shall be a Common Expense.

2.41 Maintenance Period(s). A period of time not to exceed seven (7) days per year, which is reserved by the Association for maintenance and repair as provided in Section 8.11 hereof.

2.42 Management Agreement. That certain written agreement between the Association and the Manager pursuant to which the Manager has agreed to provide certain management services to the Association for the benefit of the Project and the Owners.

2.43 Manager. The person, firm, or company designated by the Association to manage, in whole or in part, certain affairs of the Association and the Project pursuant to the Management Agreement.

2.44 Map. That certain survey of the Project depicting the property subject to this Declaration.

2.45 Mortgage. Any mortgage, deed of trust or other security instrument (including the seller's rights under a contract of sale) by which an Ownership Interest or any part thereof or interest therein is encumbered. A "First Mortgage" is a Mortgage having priority as to all other Mortgages encumbering an Ownership Interest or any part thereof or interest therein.

2.46 Mortgagee. Any person or entity named as the mortgagee, beneficiary or holder of the seller's interest under any security instrument by which the interest of any Owner is encumbered, or any successor to the interest of such person under such security instrument. A "First Mortgagee" shall mean any person or entity holding a First Mortgage. Any and all Mortgagee protections contained in the Declaration shall also protect the Declarant as the holder of a First Mortgage of an Ownership Interest or any interest therein.

2.47 Non-Club Reservation Rules. The rules and regulations as amended from time to time governing the reservation by the Association and use by Owners of Non-Club Suites.

2.48 Non-Club Suite. A Suite in the Project which is not subject to the Club Documents, and for which membership in the Club is not a condition of ownership.

2.49 Occupancy Period. The periods of time during which a Suite may be reserved and occupied.

2.50 Odd Year Biennial Ownership Interest. The right of an Owner of a Biennial Ownership Interest to use and occupy a Suite of the Suite Configuration purchased only during odd numbered years (for example, 2015, 2017, 2019).

2.51 Option to Convert. The Declarant's reserved right to convert any or all of the Vacation Support Area into additional Association Property, Common Areas or Suites, as more fully provided in Section 5.6 hereof.

2.52 Option to Expand. The Declarant's reserved right to expand the Project, as more fully provided in Section 5.4 hereof.

2.53 Owner. Any person or entity, including Declarant, owning an Ownership Interest within the Project. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

2.54 Ownership Interest. A Vacation Ownership Interest.

2.55 Phase. Separate parcels of land and/or improvements which may be subjected to this Declaration and made a part of the Project as described in Section 5.4 hereof.

2.56 Project. The real property comprised of approximately 1.5 acres and all improvements thereon submitted to the terms of this Declaration and to the provisions of the Timeshare Act situated in Myrtle Beach, in the State of South Carolina, including all lands, leaseholds, easements and personal property that may be subjected through future Phases to vacation ownership from time to time pursuant to this Declaration, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto.

2.57 Project Documents. This Declaration, the Bylaws, the Articles, the Resort Agreement, the Management Agreement, the Rules and Regulations, and the Non-Club Reservation Rules, as all may be amended from time to time.

2.58 Resort Agreement. The agreement between the Club and a declarant or owners' association pursuant to which a resort and the accommodations and facilities therein become affiliated with the Club whereby owners at such resort obtain exchange privileges and rights within the Club.

2.59 Rules and Regulations. The rules and regulations concerning the use of the Project as may be promulgated and amended from time to time by the Association in the manner provided by the Articles and the Bylaws.

2.60 Season shall mean the time each calendar year during which the Owner may use a Home Week as set forth on the purchase agreement and deed for Owner's use rights.

2.61 Shared Facilities or Shared Facilities Areas. Those certain amenities and facilities located within the Project, which are listed and more particularly described in a Shared Facilities Agreement.

2.62 Shared Facilities Agreement. That certain agreement between the Association and the Declarant pursuant to which Shared Facilities within the Vacation Support Area owned by the Declarant shall be made available for the use and enjoyment by Owners and pursuant to which the cost of operating, maintaining, and repairing such facilities and providing services shall be shared by the Association.

2.63 Suite. A physical portion of the Project designed for separate occupancy, including any portion of a Suite designated for separate occupancy.

2.64 Suite Configuration. The particular space layout, view, and bedroom count of each Suite as more fully described in Article III hereof.

2.65 Time Period. Each of the annually recurring time periods described in Section 8.2 hereof.

2.66 Timeshare Act. Chapter 32, Title 27, Code of Laws of South Carolina (1976), as amended.

2.67 Total Votes of the Association. The total number of votes pertaining to all Ownership Interests, as described in Article IX hereof.

2.68 Vacation Ownership Interest or Ownership Interest. An undivided interest in a Phase of the Project together with (i) a membership in the Club, (ii) membership in the Association, and (iii) a recurring right (either annually or biennially) to occupy and use, on an exclusive basis as described hereinafter, a Suite in the Project in accordance with, and subject to, the terms of this Declaration and the Project Documents.

The undivided Ownership Interest for each Vacation Ownership Interest is, and shall remain, a fixed undivided interest in a Phase in the Project and shall be a percentage interest based upon the average square footage of a particular Suite Configuration over the total average square footage of all Suites in the Phase divided by the total number of Vacation Ownership Interests offered for sale within such Suite Configuration in such Phase, all as more particularly described on Exhibit B attached hereto. Purchasers will own an interest in a particular Phase of the Project and the amenities located within that Phase.

2.69 Vacation Support Areas. Those physical portions of the Project intended and designed for the exclusive use by the Vacation Support Owner which may be used to serve Owners, guests, invitees and such other persons who may lawfully be entitled to come upon the Project, including, but not limited to, the areas designated on the Map of the Project for hotel support, sales support, amenities, convenience store operations and deli operations. Such areas may be converted to Suites, Association Property, and/or Common Areas as described in Section 5.6 hereof.

2.70 Vacation Support Owner. Any person or entity, including Declarant or the Association, at any time holding a Vacation Support Ownership Interest.

2.71 Vacation Support Ownership Interest. The ownership interest of a Vacation Support Area by a Vacation Support Owner. The formula for determining the Common Expense of the Project applicable to each Vacation Support Ownership Interest shall be based upon the square footage of the Vacation Support Area in relation to the total square footage of the Project.

ARTICLE III DESCRIPTION OF THE PROJECT AND THE IMPROVEMENTS

3.1 Project. The property on which the Suites and the other improvements of Phase 1 of the Project are located is more particularly described on Exhibit A attached hereto and incorporated herein by reference.

3.2 Improvements, Amenities and Suite Configuration Mix. Phase 1 of the Project will consist of one 23 story building initially containing 33 Suites, Common Areas and Vacation Support Areas, all of which will be supplied with water and sewer service, electricity, telephone, and television. The Common Area amenities will consist of an indoor swimming pool, an outdoor swimming pool, a whirlpool spas, a fitness area, and an activities area. The Suites in Phase 1 will initially consist of 12 one-bedroom Suites, 6 one-bedroom plus Suites, 6 two-bedroom Suites, 3 two-bedroom plus Suites, and 6 three-bedroom plus Suites. The size of the one bedroom Suites will range from approximately 717-878 square feet, the two bedroom Suites will range from approximately 1,141-1,161 square feet, and the three-bedroom Suites will range from approximately 1,354-1,564 square feet as set forth on Exhibit A.

ARTICLE IV SUBMISSION TO DECLARATION AND TIMESHARE ACT

4.1 Submission to Declaration. Declarant hereby submits the Project, including but not limited to, the property, the buildings and all other improvements associated with the Project to the provisions of this Declaration and the Timeshare Act creating a Timeshare Plan. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a vacation ownership (timeshare) undivided interest project. The Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein and in the Project Documents, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said Project; further, each and all of the provisions hereof, specifically including without limitation the provisions of Articles VII and VIII hereof, shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, the successors and assigns of said Declarant, and any person acquiring, leasing, subleasing, owning or occupying an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, personal representatives, executors, administrators, devisees and successors.

4.2 Owner's Acceptance. The execution or acceptance by and Owner of an Ownership Interest shall evidence such Owner's acceptance and agreement to the covenants, conditions, restrictions, agreements and other provisions stated herein and shall bind such Owner's Ownership Interest therein and such Owner's heirs, devisees, successors, personal representatives, assigns and other persons claiming by, through or under said Owner. All Owners shall be entitled to the rights, privileges and benefits granted by the Project Documents, including the right to enforce the provisions set forth in the Project Documents. Each Owner shall comply with the Project Documents notwithstanding the means by which such person acquired his or her Ownership Interest.

ARTICLE V RESERVATION OF DECLARANT RIGHTS

5.1 Right to Change Interior Design and Arrangement. Declarant reserves the right to change the interior design, configuration and arrangement of a Suite so long as the Declarant owns all of the Vacation Ownership Interests for such Suite so changed and altered. No Owner, other than the Declarant and the Association shall make any changes or repairs to a Suite without prior written approval of the Association.

5.2 Sharing of Facilities and Other Common Areas. The Declarant reserves the right to provide for the sharing of the facilities (if any) and other Common Areas of this Project with the owners of suites in other resorts, projects or other hotels or the guests thereof located adjacent to, in, or near proximity to this Project, including the granting of any ingress and egress easements necessary to effectuate same; provided, however, that in the event that such other resort, project, hotel owners or guests thereof shall be required to share with the Owners of this Project any facilities and other common areas existing as a part of their resort, project or hotel, the owners at each resort, project or hotel shall bear their pro rata share of the costs of maintaining all such shared facilities and Common Areas.

5.3 Declarant's Right of First Refusal to Purchase. In the event an Owner desires to sell, transfer, assign or hypothecate his or her Ownership Interest and for so long as the Declarant has interests to sell in the Project, the Declarant shall have the right of first refusal to purchase the Ownership Interest under the same terms and conditions including financing terms as may be offered to or by a bona fide third party. Accordingly, each Owner desiring to sell his Ownership Interest must notify the Declarant in writing of his intent to list or sell his Vacation Ownership Interest. The Owner's written notice to the Declarant must include the proposed listing or offer price and general terms of the listing or sale, provided however, that the Declarant by virtue of this covenant shall be deemed an exception to any listing agreement for the sale of such Ownership Interest. Upon receipt of such written notice, the Declarant shall have fifteen (15) days within which to notify the Owner in writing as to whether the Declarant elects to exercise its right of first refusal set forth herein. If the Declarant notifies the Owner that the Declarant elects to exercise its right of first refusal, the purchase by the Declarant of such Owner's Ownership Interest shall close no later than thirty (30) days after the Declarant's receipt of the Owner's written notice to the Declarant of the Owner's intent to sell or list his Ownership Interest. If the Declarant elects not to exercise its right of first refusal or fails to notify the Owner in writing of the Declarant's election to exercise its right of first refusal within said fifteen (15) days of Declarant's receipt of Owner's notice, the Owner shall be entitled to list Owner's interval with a third party resale agent or sell the interval for a price equal to or greater than the price offered to Declarant without further notice to Declarant. In addition, any permitted sale between an Owner and a bona fide third party shall be deemed to contain a provision requiring that any sums due to the Association as assessments must be paid in full as a condition of closing of the sale. In any and all events, the Declarant's right of first refusal as set forth above, and, with respect to Club Suites, membership in the Club, in accordance with the Resort Agreement and the Club Rules, shall be a requirement of and be binding upon any successor in title to an Owner, the same being covenants running with the land and the membership being an appurtenance to each Ownership Interest.

5.4 Option to Expand. The Project may be expanded by the submission of additional Phases to the terms of this Declaration, however, the Declarant is under no obligation to construct or develop any additional Phase. Currently, it is contemplated that the Project will contain no more than a total of 500 Suites nor more than 26,000 Ownership Interests available for use by purchasers. However, the maximum number of Ownership Interests sold may vary depending upon whether Ownership Interests consisting of less than seven (7) day use periods are sold by Declarant and the number of Annual Vacation Ownership Interests versus Biennial Ownership Interests sold by the Declarant.

Subsequent Phases may consist of additional parcels of land, Suites, Common Areas, recreational facilities, Vacation Support Areas, or some combination thereof. There shall be no time limit during which the Declarant must complete its phasing plan and the Declarant reserves the right to submit additional Phases, if any, to the Project in any sequence. There are no assurances that any subsequent Phase of the Project will be constructed. The documents for a particular Phase will be recorded prior to the closing of the purchase of an Ownership Interest in that phase. Moreover the Declarant reserves all rights to vary the phasing plan of the Project with respect to phase boundaries, plot plans and floor plans, unit types, Suite Configurations, number of suites, and recreational areas and facilities with respect to each subsequent Phase. Additional Suites will not restrict or limit the existing rights and privileges of Owners in and to their Ownership Interests.

(i) Vacation Ownership Interest. An Owner's fractional interest in a Phase will not change if and when any additional Phase is added to the Project. However, an Owner's Common Expense Assessment may be changed at the time Declarant records an amendment reflecting Declarant's exercise of the Option to Expand in accordance with the provisions set forth in paragraph 5.5 below.

(ii) Impact of Additional Phases: Change in Ownership of Area and Common Surplus and Share of Common Expenses. The impact, if any, which the completion of subsequent Phases would have upon prior Phases, would be to increase the number of Suites, Common Areas, Vacation Support Areas and the number of Owners. The Common Expense, Common Surplus and Common Area ownership reallocation caused by the addition of any Phase shall be adjusted in accordance with Section 5.5.

(iii) Amendment. Phases may be added to this Project by the execution of an amendment to this Declaration executed by the Declarant, its successors or assigns only, and such amendment shall not require the execution or consent of any Owners other than the Declarant.

5.5 Right to Adjust Common Expenses. In the event the Declarant exercises its Option to Expand (as set forth in Section 5.4 above) or its Option to Convert (as set forth in Section 5.6 below), it may be necessary to adjust the Common Expense Assessment. Any such adjustment shall become effective upon the Declarant recording an amendment to this Declaration reflecting Declarant's exercise of the option to expand the Project. Any such adjustment shall be attributable to the addition of Suites and/or Common Areas. However, Declarant shall have the right to adjust the non-occupancy related Common Expenses for Owners based upon the total number of Ownership Interests in the Project, and the occupancy related Common Expenses based upon an Owner's Suite Configuration, all as may be necessary to assure that the total amount of Common Expenses is allocated to all Owners on an equitable basis.

5.6 Option to Convert Vacation Support Areas. Declarant hereby reserves as a Declarant Right the option to create separate Association Property, Suites or Common Areas from Vacation Support Areas (collectively "Option to Convert") upon the terms and provisions set forth herein:

(a) The real property subject to this Option to Convert consists of Vacation Support Areas ("Convertible Space"), depicted upon Exhibit A attached hereto and incorporated herein by reference. Upon Declarant's exercise of its Option to Convert, the Declarant shall initially own the Vacation Ownership Interests and exclusive occupancy rights attributable to the newly-formed Suites. The filing of an amendment to this Declaration in the Register of Deeds Office for Horry County, South Carolina shall evidence Declarant's ownership of said Vacation Ownership Interests and newly created Suites.

(b) Declarant may, in its sole discretion and without any limitation, convert from time to time and at different times, all or any portion or portions of the Convertible Space into one or more Suites, Association Property, and/or Common Areas (and, if the conversion is to Suites, convert all or portions of the Convertible Space to Vacation Ownership Interests). No assurance is made with regard to which portions of the Convertible Space, if any, will be so converted or conveyed, or the order in which such portions will be converted nor is any assurance given that any conversion will occur at all. In the event the Option to Convert is exercised, the option may or may not, in Declarant's sole discretion, be exercised with respect to any other portion of the Convertible Space at a later time.

(c) Any Convertible Space converted to Suites or Common Areas shall be subject to the provisions of this Declaration. Any Suites created from the Convertible Space may, in the sole discretion of Declarant,

be dissimilar to other Suites in the Project. Declarant shall determine the undivided interest attributable to the additional Vacation Ownership Interests created consistent with the undivided interest previously committed to the Project. Declarant reserves the right to exercise all Declarant Rights with respect to any Suites created pursuant to the Option to Convert. Declarant shall determine the Common Expense attributable to each Vacation Ownership Interest created in connection with the Option to Convert in accordance with the provisions of Section 5.5 hereof.

(d) Declarant shall not be required to obtain the consent of any Owners, Mortgagees or any other person or entity having any right or interest in all or any portion of the Project prior or subsequent to converting all or portions of the Convertible Space. The Vacation Support Owner may, in their discretion, divide the use rights attributable to such Vacation Support Ownership Interest without the consent of any other Owners or the Association. The Vacation Support Owner may also convey their Vacation Support Ownership Interest, or any portion thereof, to the Association without the consent of any other Owners or the Association.

(e) In order to convert all or any portion of the Convertible Space, the Declarant shall file an amendment to this Declaration describing the conversion. Upon such amendment the allocation of each Owner's share of the Common Expense shall be adjusted in accordance with Section 5.5.

(f) No provision of this Section 5.6 shall be amended without the prior written consent of the Declarant, so long as the Declarant owns any Ownership Interest.

(g) Each Owner or Mortgagee shall be subject to all provisions of this Section 5.6

(h) After the filing for record of any amendment to this Declaration reflecting Declarant's exercise of the full Option to Convert, or any part thereof, Declarant may also file for record in the Register of Deeds Office for Horry County, South Carolina, a deed which evidences the transfer of title in and to each newly-created Vacation Ownership Interest to Declarant.

(i) Additional Association Property, Suites, Common Area will not restrict or limit the existing rights and privileges of Owners in and to their Ownership Interests.

5.7 Recreational Areas and/or Facilities. The Declarant expressly reserves the right to add recreational areas and/or facilities in all Phases without the consent of Owners. The Declarant reserves the right, but not the obligation, to add such recreational areas and/or facilities as it determines in its sole discretion by constructing such recreational areas and/or facilities in some or all Phases. Any additional recreational areas and/or facilities shall be constructed at Declarant's sole expense, and upon declaration of the Phase containing the additional recreational area and/or facility as part of the Project, the same shall become Common Areas of the Project.

5.8 Declarant's Right to Withdraw Suites. Declarant hereby reserves the right to withdraw Suites from the Ocean 22 Vacation Suites Timeshare Plan, provided that Declarant, at the time of withdrawal, is the owner of one hundred percent (100%) of the Vacation Ownership Interests within such Suites. Declarant shall file an amendment to this Declaration withdrawing any such Suite in the Office of the Register of Deeds for Horry County, South Carolina, and shall additionally file an amendment to the Ocean 22 Vacation Suites Timeshare Plan registration with the South Carolina Real Estate Commission. Thereafter, such Suite shall not be a part of the Ocean 22 Vacation Suites Timeshare Plan, but shall revert to Vacation Support Area owned by the Declarant unless added again by another expansion.

ARTICLE VI MANAGEMENT OF DECLARANT VACATION OWNERSHIP INTERESTS

6.1 Hotel Interests. Declarant shall have the right to use and operate the Vacation Support Areas and Vacation Ownership Interests it owns as a hotel available to the public for nightly occupancy ("Hotel Interests"). Management of the Hotel Interests shall be independent of the management of the other Vacation Ownership Interests to the greatest extent practically and economically feasible, provided, however, this requirement does not contemplate any prohibition or restriction on the use of personnel hired to regularly furnish materials and services for the Hotel Interests in the Project and to furnish the same or similar services to the other Vacation Ownership Interests. Such use of common personnel shall not imply that the Hotel Interests and Vacation Ownership Interests are under common management.

Management of the Ownership Interests owned by Owners other than the Declarant and not utilized pursuant to the Club Rules shall be accomplished by the Association as described in this Declaration and shall be separate from Declarant's management of the Hotel Interests. Unused Club Suites may be used by HGVC for income producing purposes in order to provide Club benefits and services to Club Members. To implement such separate operation, the following procedures shall be followed:

(a) The books and records for the Hotel Interests shall be maintained separately and independently of the books and records for the Association;

(b) Costs of operation incurred for the joint benefit of Hotel Interests and the other Vacation Ownership Interests shall be equitably allocated between the Hotel Interests and the other Vacation Ownership Interests in accordance with the Common Expense associated with such Ownership interests. The Declarant shall reimburse the Association for any increased expenses for housekeeping services that exceed the amount allocated for Common Expenses.

ARTICLE VII CLUB PROGRAM MEMBERSHIP AND OPERATION

7.1 Club Suites. Membership in the Club is a condition of owning an Ownership Interest in the Project. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be such an Owner. Each membership shall be appurtenant to an Ownership Interest to which it relates and shall be transferred automatically by conveyance of that Ownership Interest. If title to an Ownership Interest is held by more than one (1) person, there shall be one (1) membership appurtenant to that Ownership Interest which shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Ownership Interest is held. If there are multiple owners of an Ownership Interest, such owners shall designate in writing one (1) owner as their agent for purposes of making reservations and otherwise utilizing the services of the Club. So long as the Declarant owns all of the undivided Ownership Interests attributable to a given Suite, the Declarant reserves the right to file an instrument in the Register of Deeds Office for Horry County, South Carolina, specifically designating such Suite as a Non-Club Suite. Reservation and occupancy rights for Owners of an Ownership Interest in a Club Suite are governed by the Club Rules, and shall not be governed by the Non-Club Reservation Rules.

7.2 Non-Club Suite Reservations. The Declarant reserves the right to offer, on an individual contract basis or otherwise, an Ownership Interest in Non-Club Suites, so long as acceptance of any such offer would not serve to materially and adversely affect the rights of other Owners of interests in Club Suites. Owners of Non-Club Suites shall make all reservations to use the Suites in accordance with the procedures set forth in the then current Non-Club Reservation Rules adopted by the Association. In the event the Project and the Association are not subject to the Club, the provisions set forth in the Non-Club Reservation Rules will govern an Owner's reservation of Suites.

7.3 Club Documents. HGVC shall have the right, from time to time, to amend the terms and conditions of the Club Documents, which include the Resort Agreement, and the Club Rules.

7.4 Termination of Affiliated Resort. In the event that the Resort Agreement for the Project is terminated in accordance with its terms, or the Project otherwise ceases to constitute a part of the Club, then the reservation and occupancy of Suites shall be provided by the Association in accordance with the Non-Club Reservation Rules. Furthermore, as set forth in the Resort Agreement, upon the termination of the Association's affiliation with the Club, the Association and all Owners shall cease using and thereafter abstain from using any and all personal or intellectual property owned by HGVC or otherwise related to the Club including, but not limited to, any and all computer hardware and software used for the operation of the Club reservation and exchange system (except as otherwise set forth in the Resort Agreement or by applicable law).

ARTICLE VIII NATURE, INCIDENTS AND USE OF VACATION OWNERSHIP INTERESTS AND VACATION SUPPORT OWNERSHIP INTERESTS

8.1 Nature of Interest. Each Ownership Interest is and shall hereafter be an interest in real property, which, together with its appurtenant interest in the Club, may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied and otherwise affected in accordance with the provisions of this Declaration. The specific percentages of undivided interests which comprise a portion of the Vacation Ownership Interests are more particularly described in Exhibit "B" attached hereto. Neither an Owner nor any successor thereof shall have the right to further divide the undivided interest conveyed by the Declarant to said Owner, and any attempt to do so shall be null and void. Declarant shall have the sole and exclusive authority to create and determine the particular undivided interest attributable to each Vacation Ownership Interest.

No Owner shall have the right to use and enjoy the Project except during the Time Period or Occupancy Period reserved during which time such Owner shall have the exclusive right to occupy a Suite in accordance with the provisions of this Declaration. Each Owner waives his or her right to possess the commonly owned property constituting the Project except as otherwise provided in this Declaration. The Declarant shall maintain a one-to-one use-right to use-night ratio in compliance with the provisions of the Timeshare Act.

8.2 Time Periods and Occupancy Periods.

(a) Time Periods. Each year shall be divided into 52 Time Periods consisting of seven (7) consecutive nights, or as applicable in certain calendar years, 53 Time Periods, designated, respectively, Time Periods 1 through 52 or 53. Time Period 1 shall commence on the first Friday, Saturday or Sunday (as designated by the Board) of each calendar year at 4:00 p.m. local time and end at 10:00 a.m. (unless otherwise designated by the Board) local time on the following Friday, Saturday or Sunday. Succeeding Time Periods shall be numbered consecutively and shall commence at 4:00 p.m. local time on the last day of the previous Time Period. Notwithstanding the foregoing, Time Period 52 or 53 as applicable shall end at 10:00 a.m. local time on the commencement date for Time Period 1 for the next calendar year.

(b) Occupancy Periods. Suites may be occupied in full week increments or less as follows:

(i) Full Week Occupancy Period shall mean seven (7) consecutive days and nights commencing at 4:00 p.m. (or another starting time designated) on a Friday (or another starting day designated) and ending at 10:00 a.m. (or another ending time designated) on the following Friday (or another day, seven days later, in the event a different starting day is designated).

(ii) Weekday Occupancy Period shall mean a period of consecutive days and nights commencing on a Monday, Tuesday, Wednesday or Thursday at 4:00 p.m. (or another starting time designated) and ending on or before the next Friday at 10:00 a.m. (or another ending time designated).

(iii) Weekend Occupancy Period shall mean a period of consecutive days and nights commencing on a Friday, Saturday or Sunday at 4:00 p.m. (or another starting time designated) and ending on the next Monday at 10:00 a.m. (or another ending time designated).

(iv) Daily Occupancy. If authorized by the Club or the Board, a daily Occupancy Period shall mean any calendar day of the week commencing at 4:00 p.m. (or another starting time designated) thereof and ending on the next following calendar day at 10:00 a.m. (or another ending time designated).

8.3 Use Rights. At the time of acquisition of a Vacation Ownership Interest, each Owner becomes entitled to use and occupy a Suite of a particular Suite Configuration ("Floating Unit") or a specific Suite ("Fixed Unit") during either an available time period within a specific Season or a designated Time Period.

Each Vacation Ownership Interest shall be designated in the purchaser's deed and purchase agreement as a Floating Unit or Fixed Unit with either Floating Time, Fixed Time or Event Time:

(a) Floating Unit. Certain Vacation Ownership Interests committed to the Club will be designated as Floating Unit which entitles an Owner the right to reserve on a priority basis each calendar year a Time Period in any

one of the Suites of the same Suite Configuration purchased during the Floating Time, Fixed Time or Event Time designated on the Owner's purchase contract and deed.

(i) Floating Time. Subject to the limitations set forth in this Declaration, Owners with Floating Time are entitled to the priority right to reserve and the exclusive right to use and occupy a Suite of a particular Suite Configuration purchased, and the non-exclusive right to use and enjoy the Project during a Time Period either annually or biennially, as designated on the Owner's purchase contract and deed. All Owners of Floating Time will have floating use rights in any one of the Suites of the same Suite Configuration purchased during a Time Period within the Season designated on the Owner's purchase contract and deed.

(ii) Fixed Time. Subject to the limitations set forth in this Declaration, Owners with Fixed Time are entitled to a permanent reservation and the exclusive right to use and occupy a Suite of a particular Suite Configuration purchased and the non-exclusive right to use and enjoy the Project during the specifically confirmed Time Period, either annually or biennially, as designated in the Owner's purchase contract and deed without further action, provided however, the check-in /check-out day may vary as determined by the Club and set forth in the Club Rules from year to year.

(iii) Event Time. Subject to the limitations set forth in this Declaration, Owners with Event Time are entitled to a permanent reservation and the exclusive right to use and occupy a Suite of a particular Suite Configuration purchased, and the non-exclusive right to use and enjoy the Project during the specifically confirmed Event Time purchased either annually or biennially, as designated on the Owner's purchase contract and deed, without further action, provided however, the check-in /check-out day may vary as determined by the Club and set forth in the Club Rules from year to year. Time Period 27 is designated as Event Time, the Owner of which shall have the recurring annual or biennial right, as set forth on the Purchaser's contract and deed, to occupy a Suite of the Suite Configuration acquired during the Event Time owned. However, in any calendar year in which there is a Time Period 53, the Owner of Event Time Period 27 (generally referred to as the "July Fourth" Event Time) shall have the right to utilize Time Period 26 so that such Owner shall retain the right to utilize the July Fourth Event Time. In such calendar years where there is a Time Period 53, the unused Time Period 27 shall be the property of the Declarant.

(b) Fixed Unit. Certain Vacation Ownership Interests committed to the Club will be designated as Fixed Unit which entitles an Owner to reserve on a priority basis each calendar year a Time Period in a specific Suite during the Floating Time, Fixed Time or Event Time as designated on the Owner's purchase contract and deed.

(i) Floating Time. Units designated as Fixed Unit shall not have Floating Time.

(ii) Fixed Time. Subject to the limitations of this Declaration, Owners with Fixed Time shall have the exclusive right to use and occupy a specific Suite and the non-exclusive right to use and enjoy the Project only during the specifically numbered Time Period either annually or biennially as set forth in the Owner's purchase contract and deed without further action, provided however, the check-in / check-out day may vary as determined by the Club and set forth in the Club Rules from year to year.

(iii) Event Time. Subject to the limitations set forth in this Declaration, Fixed Unit Owners with the July Fourth Event Time shall have the exclusive right to use and occupy a specific Suite and the non-exclusive right to use and enjoy the Project only during the specifically confirmed Event Time purchased either annually or biennially, as designated on the Owner's purchase contract and deed, without further action, provided however, the check-in / check-out day may vary as determined by the Club and set forth in the Club Rules from year to year.

(c) Limitation Fixed Time Use Rights. The Declarant shall limit the granting of Floating Unit Fixed Time and Fixed Unit /Fixed Time in all Suite Configurations to no more than fifty percent (50%) of the total number of Time Periods in any particular Time Period for each such Suite Configuration. The Declarant may (but is not required to) add one or more schedules to this Declaration to list the Fixed Unit/Fixed Time and Floating Unit/Fixed Time granted.

8.4 Conversion of Fixed Use Rights to Floating Use Rights

(a) Permanent Conversion. If permitted by the Association and the Club Rules, an Owner with occupancy rights to a Club Suite designated as a "Floating Unit with Fixed Time" may declare that the Floating Unit with Fixed Time is permanently changed to Floating Time by recording a declaration amendment, which upon filing will convert an Owner to a Floating Time within the same Suite Configuration and Season as the former Fixed Time Use Right.

(b) Temporary Conversion. If permitted by the Association and the Club Rules, an Owner with occupancy rights to a Club Suite designated as a "Floating Unit with Fixed Time" may temporarily convert such Floating Unit Fixed Time to Floating Time during any given calendar year by canceling their automatic reservation. Upon such conversion the Owner will have a Floating Time of the same Suite Configuration and Season owned by the Owner of the Floating Unit Fixed Time and will compete with other Owners of Floating Time of the same Suite Configuration and Season.

8.5 Biennial Ownership Interests. The Declarant may offer Vacation Ownership Interests as Biennial Ownership Interests by indicating in the contract to purchase or deed conveying a Vacation Ownership Interest. The Owner of a Biennial Ownership Interest receives the right to occupy a Suite every other calendar year as provided herein. At the time of filing a deed to a Biennial Ownership Interest in a given Suite, the Declarant shall also indicate whether the Biennial Ownership Interest is either an Even Year Biennial Ownership Interest or an Odd Year Biennial Ownership Interest. Owners of a Vacation Ownership Interest other than the Declarant are expressly prohibited from creating Biennial Ownership Interests, and only the Declarant and Owners of Biennial Ownership Interests can subsequently convey a Biennial Ownership Interest. The Biennial Ownership Interests shall have an undivided interest equal to one-half (1/2) the undivided Ownership Interest otherwise attributable to the type of Vacation Ownership Interest which they own, which may be designated in deeds of conveyance from time to time. It is contemplated that Vacation Ownership Interests with Even Year occupancy and Odd Year occupancy rights will be owned by two separate Owners who will annually alternate their right to participate in the Club and utilize a Suite in the Project. The Owner of the Ownership Interest with Even Year occupancy rights will be entitled to reserve the use and occupy a Suite each even numbered year. The Owner of the Ownership Interest with Odd Year occupancy rights will be entitled to reserve the use and occupy a Suite each odd numbered year. All Suites are subject to Even Year and Odd Year occupancy rights. Except for the use and occupancy limitations associated with Even Year occupancy and Odd Year occupancy rights, Owners of such interests shall have all of the rights, benefits and be subject to all obligations of Owners set forth in this Declaration.

8.6 Occupancy Rights. Declarant reserves the right to offer Vacation Ownership Interests of Time Periods consisting of less than a seven (7) day Occupancy Period, the Owner of which shall be entitled to a non-exclusive right to use and enjoy the Project and the exclusive right to use and occupy a Suite of the Suite Configuration purchased, either annually or biennially, for the number of daily occupancy periods reflected on the purchase agreement and deed. Such Vacation Ownership Interests will be of a Suite Configuration otherwise attributable to a Full Week Occupancy Period. The beginning and ending days and times of such Occupancy Periods shall be consistent with those set forth in Section 8.2 hereof.

Except as otherwise provided herein, by executing a contract to purchase or by acceptance of a conveyance of an Ownership Interest, each Owner acknowledges and agrees that all Ownership Interests shall be available for exchange by all Owners on a first come, first served, reservation basis, in accordance with the Club Rules, or the Non-Club Reservation Rules, as applicable and that no Owner shall have the right to use or occupy a Suite without first receiving a confirmed reservation as provided herein. An Owner of a Biennial Ownership Interest shall not be entitled to request and will not be granted a confirmed reservation during the Home Resort Reservation Window for use of a Suite in any year other than those years applicable to the Biennial Ownership Interest purchased. Specifically, an Even Year Biennial Ownership Interest Owner may only request and will only be granted a confirmed reservation for occupancy of a Suite in calendar years ending in an even digit. An Odd Year Biennial Ownership Interest Owner may only request and will only be granted a confirmed reservation for occupancy of a Suite in calendar years ending in an odd digit.

8.7 Suite Configuration. A Suite Configuration will be designated as either a one-bedroom, a one-bedroom plus, a two-bedroom, a two-bedroom plus, or a three-bedroom plus Suite. Maximum occupancy for each Suite Configuration is four (4) individuals in a one-bedroom or one-bedroom plus Suite, six (6) individuals in a two-bedroom

or two-bedroom plus Suite and eight (8) individuals in a three-bedroom plus Suite, unless otherwise designated by the Board of Directors. No Suite shall be used to accommodate more persons than it was designed to accommodate.

8.8 Club Suites. In addition to the floating and fixed use plans described above, and notwithstanding anything contained therein to the contrary, it is the express intent of this Declaration, which intent is consented to by each Owner through acceptance of the conveyance of an Ownership Interest in the Project, that only Club Suites designated with Floating Time use rights shall be available for use by all Owners of Vacation Ownership Interests and by Owners of ownership interests in all other Affiliated Resorts, on a reservation basis, subject to the priority rights of Owners, in accordance with the terms of the Resort Agreement and the Club Rules. HGVC shall administer all reservations for the exchange of Club Suites in conjunction with its operation and management of the Club in accordance with the terms of the Resort Agreement and the Club Rules. During the term of the Resort Agreement, the Club Rules, as may be changed from time to time shall govern the procedures and requirements for the use, exchange or rental of all Club Suites.

8.9 Other Timeshare Plans or Vacation Clubs. No Ownership Interest shall be contributed or subjected to any timeshare plan or vacation club other than the timeshare plan for the Project and the Club Documents without the prior written consent of the Declarant and HGVC, which consent may be withheld in either party's sole discretion.

8.10 Housekeeping. The Association shall provide, or cause to be provided, maid service for any and all cleaning, maintenance, painting and repair of Suites, and repair and replacement of the Furnishings therein. The Association shall acquire and pay for such goods and services with funds from the Expense Fund, as hereinafter provided for, unless the goods and services were required as the result of damage caused by the intentional or negligent acts or omissions of an individual Owner, his family, guests, invitees or licensees, in which event the costs of repair and replacement may be paid from the Expense Fund, but shall be assessed to such Owner. The Association shall not, however, be responsible to any Owner for loss or damage by theft or otherwise of Owner's personal articles stored in any storage area, balcony, Suite or other portion of the Project.

8.11 Maintenance. Declarant and each Owner grants to the Association and the Manager an easement to enter each Suite for maintenance purposes for a period of time not to exceed seven (7) days per year for each Suite during which time a Suite will be unavailable for occupancy. The Association and/or the Manager shall exercise its rights under this easement at times when a specific Suite is not otherwise in use. The purpose for said easement is to facilitate cleaning, maintenance, repair, replacement and refurbishment of the Suite and Furnishings therein.

8.12 Holdover. In the event that any Owner or occupant shall occupy a Suite beyond the Occupancy Period(s) to which such Owner is entitled, or otherwise attempts to use or occupy such Suite at any time other than the Occupancy Period(s) for which such Owner has a confirmed reservation, the Board or the Manager shall be entitled to collect from Owner or occupant who wrongfully occupied a Suite an amount equal to the sum of the following: (1) two and one-half times the cost of reasonable alternate lodging for the rightful Owner(s), occupants and their guests for so many 24-hour days or parts thereof as such rightful Owner(s), occupants and their guests have been deprived of the use and occupancy of the Suite, (2) the reasonable cost of transportation for the rightful Owner(s), occupants and their guests from their home(s) or other point of origination to such alternate lodging or the cost of transportation to the Suite wrongfully held over, and (3) reasonable attorney's fees and costs, including but not limited to administrative costs, incurred by the Association in connection with such wrongful occupation. When the amounts covered by items (1) and (2) are collected by the Association, they shall be promptly remitted to the rightful Owner or occupant. The amounts covered by item (3) shall, when collected, be remitted to the Association. In no event shall a Suite be occupied for over 30 continuous days by the same occupant.

8.13 Reservation Error. In the event an error by the Association or Manager deprives the rightful Owner or occupant of the use and occupancy of a Suite during an Occupancy Period to which the Owner or occupant has a confirmed reservation, the Association shall provide such Owner or occupant a comparable or higher quality Suite or pay the cost of alternate comparable or higher quality lodging for such persons for so many 24-hour days, or parts thereof, as such rightful occupant(s) have been deprived of the use and occupancy of the Suite. The cost thereof shall be a portion of the Total Expenses, unless chargeable to the Manager pursuant to its contract for services.

8.14 No Alterations. No Owner, other than the Declarant or Association, shall make or cause to be made any alterations, improvements, replacements or repairs in or to any Suite or to any Furnishings therein, except as may be

necessary in an emergency to prevent injury to persons or damage to property. In no event shall the Owner subject any Suite or Furnishings therein to any lien for the making of any alterations, improvements, replacements or repairs therein or thereto. No Owner, or persons within such Owner's control, shall commit any waste with respect to the Project or any part thereof, including without limitation Suites and Furnishings.

8.15 No Partition. No Owner, other than the Declarant, or other person or entity acquiring any right, lien, title or interest in a Ownership Interest shall seek or obtain through any legal procedures, judicial partition of the Project, a Suite or sale of the Project or a Suite in lieu of partition or partition or other separation of the membership in the Club from the Ownership Interest, and all rights that an Owner might otherwise have as a tenant in common in real property, including but not limited to, the right to possess the commonly held property equally with all other co-tenants, are waived and are subordinate to the terms of the Declaration. This Section 8.15 shall not limit the rights of Owners under Article XI hereof.

8.16 Suite Rental. Ownership Interests owned by Owners other than the Declarant shall not be used for transient accommodations or other income producing purposes by the Declarant during periods of non-use by Owners, other than in accordance with the Club Rules. Ownership Interests owned by the Declarant may be used for transient or other income producing purposes pursuant to Article VI above. In addition, the Association may rent Ownership Interests of Owners whose use rights have been suspended in accordance with Section 22.9.

8.17 Vacation Support Ownership. Each Vacation Support Ownership Interest is, and shall hereafter, be an easement in gross of a commercial character to use real property, the exclusive use rights of which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration. No Vacation Support Owner shall have the right to use or occupy any Suite in the Project, unless such Vacation Support Owner is also an Owner or otherwise acquires the right to occupy a Suite. Each Vacation Support Owner waives his or her right to possess the commonly owned property constituting the Project except for the right to access and occupy the Vacation Support Area derived from their ownership of a Vacation Support Ownership Interest. The Vacation Support Owner shall be responsible for all expenses attributable to the maintenance and upkeep of the Vacation Support Area owned and shall be entitled to any and all revenue, profits and all benefits derived there from. Each Vacation Support Owner shall be responsible for a pro rata share of the non-occupancy related Common Expenses attributable to the Project based upon a formula of the square footage of the Vacation Support Area in relation to the total square footage of the Project.

(a) Each Vacation Support Owner shall have the exclusive right, at such Owner's sole cost and expense, to paint, repaint, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of such Owner's Vacation Support Area.

(b) Each Vacation Support Owner shall keep the interior of the Vacation Support Area, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Vacation Support Area should develop an unsanitary or unclean condition or fall into a state of disrepair, or in the event that the Vacation Support Owner should fail to correct such condition or state of disrepair promptly upon notice from the Association, the Association shall have the right, at the expense of the Vacation Support Owner and without any liability to such Owner for trespass or otherwise, to enter said Vacation Support Area and correct or eliminate said unsanitary or unclean condition or state of disrepair, and to be reimbursed by the Vacation Support Owner for the full amount expended.

(c) The profits derived from each Vacation Support Area shall inure solely to the benefit of the Owner of the Vacation Support Ownership Interest who shall have exclusive occupancy rights in such Vacation Support Area, and said Owner's successors and assigns; provided however, that such Vacation Support Areas may be designated as Association Property or Shared Facilities or converted by the Declarant into separate Common Areas or Suites. Each Vacation Support Owner shall be responsible for the upkeep and maintenance of the Vacation Support Area.

ARTICLE IX ASSOCIATION

9.1 Association Membership. Ocean 22 Vacation Owners Association, Inc. is the nonprofit corporation whose members include each Owner of an Ownership Interest in the Project. All Owners shall be deemed members of the Association and the characteristics and nature of which memberships are determined by the Timeshare Act, the Declaration, the Bylaws, the Articles, and where not inconsistent with this Declaration, other applicable South Carolina law.

9.2 Association Voting Rights. At any meeting of the Association, each Owner, including the Declarant, either in person or by proxy, shall be entitled to one vote for each Vacation Ownership Interest owned with annual occupancy rights or one-half vote for each Biennial Ownership Interest owned. The voting rights appurtenant to each Ownership Interest shall vest upon the execution and filing of this Declaration. The right to vote by proxy shall exist in accordance with the Bylaws. No voting rights shall exist for a timeshare purchaser under an agreement of sale. All regular and special meetings of the Board shall be open to Owners. The Board shall maintain a membership list of the members of the timeshare owners association (as set forth in Article XX).

9.3 Power of Attorney. Each Owner of an Ownership Interest shall grant and be deemed to have granted an irrevocable power of attorney, coupled with an interest and irrevocable proxy to the Board, as may be necessary to conduct the business of the Project including with respect to foreclosing liens on Ownership Interests, entering into contracts with respect to the Project, leasing, selling, mortgaging, accepting title to property, including without limitation Ownership Interests, pursuing and settling and bringing certiorari proceedings and any other litigation with respect to the Project Documents. Each person as the owner of an Ownership Interest agrees to waive and forgo any rights with respect to bringing, maintaining or requesting an action for partition with respect to ownership by Owners of Ownership Interests.

9.4 Association Board. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Board consisting of at least three (3) natural persons, as provided by the Bylaws. The Board shall be appointed or elected as provided in the Articles and in the Bylaws. Each Owner agrees that the Project will be managed through the Association according to the provisions of the Project Documents. Each Owner:

(a) grants the Association all rights and powers to manage according to the provisions of the Project Documents; and

(b) agrees that what the Association decides and does in accordance with the Project Documents is binding on said Owner.

9.5 Management of Association. The Board shall employ a Manager for the Project pursuant to a written management agreement which shall include at least the following provisions:

(a) Delegation of authority to the Manager to carry out the duties and obligations of the Association and/or the Declarant to the Owners.

(b) Authority of the Manager to employ subagents.

(c) The initial term of the Management Agreement shall be three (3) years, with automatic renewal periods of three (3) years thereafter, unless, pursuant to the terms of the Management Agreement, the Manager or the Association determine not to renew the Management Agreement and gives appropriate notice of that determination.

(d) Termination for cause at any time by the Board or a majority of Owners excluding Declarant with provision for arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association if requested by or on behalf of the Manager or by the other parties to the agreement.

(e) Not less than ninety (90) days written notice to the Association of the intention of the Manager to resign.

(f) Enumeration of the powers and duties of the Manager in the operation of the Project and the maintenance of the Suites comprising the Project.

- (g) Compensation to be paid to the Manager.
- (h) Records to be maintained by the Manager.
- (i) Periodic reports and other information to be communicated to the Association and/or Owners by the Manager.
- (j) A statement that the Manager shall not take any of the following actions except with the vote or written assent of a majority of the Board of Directors for the Association:
 - (1) Entering into a contract with a third person wherein the third person will furnish goods or services for the Project or the Association for a term longer than one year with the following exceptions:
 - (i) A contract with a public utility company if the rates charged for the materials or services are regulated by the public utilities commission; provided, however, that the term of the contract should not exceed the shortest term for which the supplier will contract at the regulated rate;
 - (ii) Prepaid casualty and/or liability insurance policies not to exceed three years duration, provided that the policy provides for short rate cancellation by the insured;
 - (iii) Leases of the furnishings for the Suites having a term of not to exceed five years, provided that the lessor under such lease(s) is not an entity in which the Declarant or the Manager has direct or indirect ownership of ten percent (10%) or more.
 - (iv) Lease agreements for laundry room fixtures and equipment of a term not to exceed five years duration provided that the lessor under the agreement is not an entity in which the Declarant or Manager has a direct or indirect ownership of ten percent (10%) or more.
 - (v) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the Declarant or Manager has a direct or indirect ownership interest of ten percent (10%) or more.
 - (vi) Agreements for burglar alarm services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the Declarant or Manager has a direct or indirect ownership interest of ten percent (10%) or more.
 - (2) Selling any property of the Association except as permitted by the Timeshare Act.
- (k) Fidelity bonding of the Manager.
- (l) Errors and omissions insurance coverage for the Manager if available.
- (m) Delineation of the authority of the Manager and persons authorized by the Manager to enter into the Suites of the Project for the purpose of cleaning, maid service, maintenance and repair including emergency repairs and for the purpose of abating a nuisance or dangerous, unlawful or prohibited activity being conducted in the Suites.
- (n) Delineation of the authority, or an express statement in negation of any authority, of the Manager with respect to the administration of an exchange program available to Owners.
- (o) Authorization to do all other acts necessary for the proper operation and maintenance of the Project, including but not limited to those powers and duties set forth under Section 9.6 hereof which may be delegated by the Board to the Manager.

9.6 Board Powers. Except as otherwise limited herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Timeshare Act, this Declaration, the Articles and the Bylaws, which powers, duties and responsibilities may be delegated to the Manager by written agreement.

9.7 No Obligation to Act. Notwithstanding anything contained in the Project Documents to the contrary, the Association (and the Board, the Manager and any other party acting on its behalf) is not required to take any action if the Association does not possess sufficient funds, and need not act until it raises sufficient funds from the Owners, to pay for any such action.

9.8 Legal Proceedings. The Board or the Manager, if authorized by the Board, may represent the Association (or any two (2) or more Owners in the same situation as a class) in any lawsuit or other legal proceedings pertaining to the Association or the Project or any portion thereof. The Board or the Manager, if authorized by the Board, may commence, defend, join in, or settle any such proceedings. For this purpose, each Owner hereby appoints the Board and the Manager as such Owner's special attorney-in-fact to do all things and perform all acts in connection with such proceedings. Any Owner may, however, pursue or defend any such legal proceedings on his own behalf, or in the name of the Association or any other Owners, if the law generally gives the Owner this right or if such Owner is directly affected. Each member of the Board may be served with the papers involved in any lawsuit or other legal proceedings.

9.9 Indemnification from Third Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the Association, by reason of the fact that he or she is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Association, and that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his or her conduct was unlawful.

9.10 Indemnification from Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a Director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him or her in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Association. Indemnification shall not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the Association for amounts paid in settlement to the Association, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

9.11 Expenses in Defense or Actions. To the extent that a Director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 9.9 and 9.10, or in defense of any claim, issue or matter therein, he or she must be indemnified by the Association against expenses, including attorneys' fees and costs, actually and reasonably incurred by him in connection with the defense.

9.12 Limitations in Indemnification. Any indemnification under Sections 9.9 and 9.10, unless ordered by a court or pursuant to Section 9.11, must be made by the Association only as authorized in the specific case upon a

determination that indemnification of the Director, officer, employee or agent is proper in the circumstances. The determination must be made:

- (a) By the Owners;
- (b) By the Board by majority vote of a quorum consisting of Directors who were not parties to the act, suit or proceeding; or
- (c) If a majority votes of a quorum consisting of Directors who were not parties to the act, suit or proceeding so orders, by independent legal counsel in a written opinion.

9.13 Time of Payment. The Association agrees that the expenses of officers and Directors incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt by the Association of an undertaking by or on behalf of the Director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Association. The provisions of this Section 9.13 do not affect any rights to advancement of expenses to which corporate personnel other than Directors or officers may be entitled under any contract or otherwise by law. The indemnification and advancement of expenses authorized in or ordered by a court pursuant to this Article IX:

- (a) Does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Articles or the Bylaws, agreement, vote of members or disinterested Directors or otherwise, for either an action in his or her official capacity or an action in another capacity while holding his or her office, except that indemnification, unless ordered by a court pursuant to Section 9.10 or for the advancement of expenses made may not be made to or on behalf of any Director if a final adjudication establishes that his or her acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action.
- (b) Continues for a person who has ceased to be a Director, officer, employee or agent and inures to the benefit of the heirs, personal representatives, executors and administrators of such person.

ARTICLE X ASSESSMENT OF OWNERSHIP INTERESTS BY THE ASSOCIATION

10.1 Association Assessments. The making and collection of Assessments by the Association from Owners of Ownership Interests for their share of Common Expenses assessed by the Association with respect to Ownership Interests shall be made pursuant to the Bylaws and subject to the following provisions:

- (a) Each Owner, including Declarant and the Association for Ownership Interests which it owns, shall be liable for its Common Expense allocation, which allocation is subject to adjustment upon the creation by the Declarant of any additional Suites or Ownership Interests. Until the Association makes an Assessment for Common Expenses, the Declarant shall pay all Common Expenses and all costs and expenses of the Association. Assessments by the Association shall be made at least annually in accordance with the provisions of this Declaration and the Bylaws to enable the Association to collect sufficient funds to pay its costs and expenses. Assessments shall commence on the first day of the month in which an Owner's occupancy rights commence.
- (b) The Association reserves the right to allocate certain occupancy related Common Expenses based upon an Owner's Suite Configuration, and non-occupancy related expenses of the Project allocated among Owners based on the undivided percentage interest for each Ownership Interest in the Project. Owners of Annual Ownership Interests shall pay an Assessment annually while Owners of Biennial Ownership Interests shall pay a Common Expense Assessment every other year. All Owners will pay a Club Dues assessment every year.
- (c) Two separate and distinct funds shall be created and maintained hereunder for (i) operating expenses and (ii) reserve expenses (for capital expenses, deferred maintenance, etc.), which together shall constitute the Expense Fund.

(d) Assessments shall be based upon the Association's cash requirements pursuant to its budget to provide for payment of all expenses arising out of or connected with the Suites, including but not limited to, accounting costs of the vacation ownership program, front desk costs, maid service for cleaning, and maintenance, repair and replacement of the Suites, the Furnishings and all other costs of operating the vacation ownership program, including costs incurred in operating the Association related to the Ownership Interests. Expenses may also include, among other things, the following: any deficit from a previous period; creation of a reasonable contingency reserve, surplus and/or sinking fund; payment of real property taxes; and any other expenses or liabilities which may be incurred by the Association for the benefit of the Owners. Assessments shall also include the costs associated with operating the reservation system and affiliation with the Club. The Association shall promptly remit all the Club Dues collected from the Owners directly to HGVC.

(e) Declarant shall be obligated to pay the Association its proportionate share of Common Expenses and other permitted Assessments for Ownership Interests which it owns unless it has executed a subsidy agreement requiring Declarant to pay monies which are sufficient, together with the Assessments paid by all other Owners, to enable the Association to timely pay all Common Expenses. Upon termination of such a subsidy agreement, Declarant would immediately be liable for its proportionate share of Common Expenses and other Assessments pursuant to the provisions of this Declaration. The subsidy agreement, if any, shall provide for the following:

(1) Declarant will pay to the Association the annual (other periodically due) pro rata amount for reserves attributable to each Ownership Interest owned by Declarant as of the last day of the immediately preceding calendar year specified in the then current Association budget for reserves.

(2) Declarant will pay to the Association the difference between the actual costs incurred in operating the Project during the preceding calendar year, taking into account all income and revenue received by the Association, and all amounts paid and payable by Owners other than Declarant with respect to such operating costs in order to keep amounts payable by Owners other than Declarant at an amount comparable to the amount payable by Owners if all Suites were in operation.

(3) In the event Declarant enters into a subsidy agreement, as provided in this section, Declarant shall, within thirty (30) days after the end of each fiscal year of the Association, furnish to each member of the Board at his or her residence address a statement containing the following information when applicable:

(a) A status report covering each improvement included in the offering which was scheduled for completion during the year according to the Planned Construction Statement for the Project and each still-uncompleted improvement that was scheduled for completion during the year.

(b) The number of Vacation Ownership Interests in the Project owned by the Declarant as of the first and last day of the year.

(c) The total amount which Declarant became obligated to pay during the year as an Owner operating Ownership Interests pursuant to the terms of this Agreement.

(d) The total amount paid by Declarant to the Association during the year under this Agreement.

(e) The amount of any delinquency of Declarant in the payment of amounts due and payable under this Agreement that has not been cured as of the date of the report to the Board.

(f) An itemized report of funds, goods and services furnished, or caused to be furnished, to the Association under this Agreement, including monetary contributions to the reserves of the Association for replacement or major repairs of the Project and an itemized monetary valuation of goods and services furnished.

(f) In addition to the other Assessments provided for herein, the Association may levy in any calendar year, special Assessments applicable to that year only, for the purpose of defraying, in whole or in part, unexpected repairs, costs, expenses or purchases related to the Project, or shortfalls in the collection of Assessments from the Owners or any shortfall arising in connection with the estimated Common Area Expenses. However, in any calendar year, any such special Assessments must be approved by the vote or written assent of a majority of the Total Votes of the Association residing in Owners other than Declarant unless (a) such Assessments, other than a special Assessment to restore or rebuild because of damage or destruction to the Project, do not exceed five percent (5%) of the budgeted gross expenses of the Association for the calendar year; or (b) such Assessment is a special Assessment for the repair or rebuilding of the Project which does not exceed ten percent (10%) of the budgeted gross expenses of the Association for the calendar year in which the Assessment is levied; or (c) such Assessment is a special Assessment against an Owner or Owners for the purpose of reimbursing the Association for costs incurred in bringing the Owner(s) into compliance with provisions of the governing instruments for the Project, or (d) such Assessment is a special assessment against an Owner or Owner(s) for the purpose of making up a shortfall arising in connection with the Common Area Expenses. The portion of any special Assessment levied on a particular Ownership Interest due to noncompliance by the Owner shall be the Common Expense allocation attributable to such Ownership Interest, except when the special Assessment against an Owner is a remedy utilized to reimburse the Association for costs incurred in bringing the Owner and/or his Ownership Interest into compliance with the provisions of this Declaration, the Bylaws, Rules and Regulations, or any other governing instrument for the Project.

10.2 Assessment Increase Limitation. The Board may not impose a regular annual Common Expense allocation per Ownership Interest which is more than twenty percent (20%) greater than the previous year's regular annual Assessment without first obtaining the vote or written assent of a majority of the Total Votes of the Association residing in Owners other than Declarant, provided that such percentage increase shall be calculated without regard to any increase attributable to an increase in real estate taxes against the Project.

10.3 Due Date. All Assessments shall be due as determined pursuant to the Bylaws. All Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Board, from the date when due until paid. Furthermore, Owners who do not pay their Assessments when due shall be subject to a late fee of fifty dollars (\$50.00), adjustable from time to time at the discretion of the Board. All payments on account shall be first applied to interest, then to principal and finally to the late fees due. All Assessments to pay a judgment rendered against the Association may be made only against the Ownership Interests in the Project at the time the judgment was entered, in accordance with an Owner's Common Expense allocation. If any Common Expense or any cost or expense of the Association is caused by the misconduct of any Owner, the Association may assess that expense exclusively against their Ownership Interests. If liabilities for Common Expenses or any cost or expense of the Association are reallocated, Assessments for Common Expenses or any cost or expense of the Association and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

10.4 Association Lien. The Association may levy and enforce an Assessment upon any Ownership Interest in accordance with this Declaration, which is a debt of the Owner thereof at the time the Assessment is made. The amount of the Assessment plus any other charges thereon, such as interest, costs, attorneys' fees and penalties, as may be provided for in the Declaration, is a lien upon the Ownership Interest assessed and all rental income associated therewith when the Association causes to be filed with the Register of Deeds Office for Horry County, South Carolina, a claim of lien, which must state:

- (a) the amount of the Assessment and such other charges thereon as may be authorized by this Declaration.
- (b) a description of the Ownership Interest against which the lien has been assessed; and
- (c) the name of the Owner.

The claim of lien must be signed by an authorized representative of the Association. Upon payment of the Assessment and charges in connection with which the claim has been filed, or other satisfaction thereof, the Association shall cause to be filed a further notice stating the satisfaction and the release of the lien thereof.

10.5 Notice of Delinquency. The notice must be signed by an authorized representative of the Association. Upon payment of the Assessment and charges in connection with which the notice has been so filed, or other satisfaction thereof, the Association shall cause to be filed a further notice stating the satisfaction and the release of the lien thereof.

10.6 Priority of Lien. The lien is prior to all other liens filed subsequent to the filing of the claim of lien except for a First Mortgage on an Ownership Interest as provided for in Section 20.3 hereof. Unless sooner satisfied and released or the enforcement thereof initiated as provided in Section 10.7, the lien expires and has no further force or effect one (1) year after the date of filing of the notice of assessment, but the one (1) year period may be extended by the Association for a period not to exceed one (1) additional year by filing a written extension thereof.

10.7 Lien Enforcement/Power of Sale/Appointment of Trustee. The lien of the Association may be foreclosed, and the Ownership Interest sold, in accordance with the South Carolina Timeshare Lien Foreclosure Act. Each Ownership Interest is subject to the Trustee's power of sale to sell the Ownership Interest in order to satisfy the lien. The initial Trustee is King Cunningham, LLC, whose address is P.O. Box 4896, North Myrtle Beach, SC 29597, and substitute Trustees may be appointed in accordance with said act.

Each obligor understands that, if the obligations owed for Assessments of the Association and for ad valorem taxes and special assessments are not satisfied and the obligor does not timely cure the default, the assessment lien may be foreclosed through a nonjudicial procedure in accordance with Article 3 of Chapter 32 of Title 27 of the Code of Laws of South Carolina. The obligor understands that he or she will not be subject to a deficiency judgment or personal liability for the assessment lien resulting from a nonjudicial foreclosure procedure, even if the sale of his or her timeshare estate resulting from the foreclosure for the assessment lien is insufficient to offset the amount of the assessment lien. The obligor acknowledges the trustee will send the notice required by this procedure to the obligor's notice address, and the obligor agrees to inform the managing entity of any change in the obligor's address. The obligor consents to notification by certified or registered mail and agrees that any person at the obligor's notice address may acknowledge receipt of any correspondence received in connection with this procedure. The obligor understands that the trustee may notify the obligor of the commencement of the procedure by publication if delivery of the notice is not accepted at the notice address. If the obligor sends the trustee a written objection to the nonjudicial procedure stating the reasons for the objection, the matter will be transferred to a judicial foreclosure procedure, but the obligor understands and agrees that in the judicial foreclosure procedure, the obligor may be subject to a deficiency judgment or personal liability for the assessment lien if the sale of his or her timeshare estate resulting from the foreclosure of the assessment lien is insufficient to offset the amount of the assessment lien. The obligor further understands and agrees that in the judicial foreclosure procedure for the assessment lien, if the court finds that there is a complete absence of a justifiable issue of either law or fact raised by the obligor's objection or defense, the obligor may be personally liable for the costs and attorney's fees incurred by the assessment lienholder in the judicial foreclosure.

10.8 New Owner. Every sale made under the provisions hereunder vests in the purchaser the title of the Owner without equity or right of redemption.

10.9 Suspension of Use Rights. If an Owner of an Ownership Interest is delinquent in the payment of Assessments as described in this Article X, or other charges duly levied by the Association or any charges levied by Club, then in addition to any other remedies afforded by this Declaration, the Bylaws and the Timeshare Act, the Board or its duly authorized managing agent acting on its behalf may suspend such Owner's right to occupy a Suite and may suspend all related rights and privileges as an Owner including the benefits of the Club, during the period of time such Owner is delinquent in the said payment provided it shall give such Owner written notice after the decision to suspend has been made.

10.10 Capital Account. The Board shall maintain a capital reserve account for the cost of replacement of or additions to capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section and shall be set up as capital accounts held by the Association for the benefit of each Ownership Interest. In the

event of transfer of an Ownership Interest, the beneficial interest of such Ownership Interest in the capital account shall be deemed transferred to the transferee of the Ownership Interest.

10.11 Personal Liability for Unpaid Assessments. Each Owner of a Ownership Interest, as applicable, is personally liable for all Assessments made against the Ownership Interest pursuant to this Declaration, and the Timeshare Act, and the Association may bring an action for a money judgment against a delinquent Owner to collect all sums due the Association, including interest, late charges, costs and reasonable attorneys' fees and costs. In the event an Ownership Interest is owned by more than one person or entity such owners shall be jointly and severally liable for all Assessments made against the Ownership Interest.

10.12 Rental Proceeds. If an Owner shall at any time lease their Ownership Interest, such Owner shall do so in accordance with the Bylaws and if such Owner defaults in the payment of Assessments, the Board may, at its option, so long as such default continues, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Board shall be sufficient payment and discharge of such tenant and the Owner for such Assessments to the extent of the amount so paid; provided, however, the Owner and not such tenant, shall remain responsible for all Assessments.

ARTICLE XI TITLE TO OWNERSHIP INTERESTS

11.1 Real Property Interests. Title to an Ownership Interest may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of South Carolina.

11.2 Transfer of Ownership Interests.

(a) Entire Ownership Interest. Subject to the Developer's right of first refusal to purchase, set forth in Article V, Owners have the right to sell, transfer, encumber, gift, devise and convey their Ownership Interest; provided that, no part of the title to an Ownership Interest may be separated from any other part thereof, and each Ownership Interest shall always be conveyed, devised, encumbered and otherwise affected only as a complete Ownership Interest. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of an Ownership Interest, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Ownership Interest, together with all appurtenant rights and responsibilities created by law and by this Declaration, including appurtenant membership in the Club as herein set forth, and in the Association. Following the initial transfer of Ownership Interests by the Declarant, upon an Owner's transfer of such Owner's Ownership Interest, the Association may charge a reasonable transfer fee, not to exceed \$200 to cover the cost to the Association of changing its books and records.

(b) Notice to the Association and Manager. Within ten (10) days after any transfer of an Ownership Interest, one of the parties to the transfer shall notify the Association and the Manager in writing of the transfer. The notice must contain: (1) the name and address of the parties involved; (2) the date of the transfer; and (3) a true copy of the legal transfer document.

(c) Failure of Notice. Unless and until the notice required by this Section is properly made:

(1) The Association and the Manager are not obligated to recognize the person receiving the transfer (the "transferee") as an Owner for any purpose;

(2) The Association and the Manager may continue to recognize the person making the transfer (the "transferor") as the Owner whereupon the transferor shall remain fully liable as an Owner; and

(3) The Association and the Manager may deal exclusively with the transferor; provided, however, that all communications to the transferor will have the same effect as if given to the transferee.

(d) Release from Further Obligations. No transferor shall be liable for any matter occurring after his transfer is recognized by the Association; provided, however, that such transferor shall remain liable for all matters occurring or arising prior to such transfer. A transferor shall be released from this liability when the transferor has paid all sums and performed all of such transferor's other duties required as of the time the transfer is recognized.

11.3 Limitation on Transfers.

(a) Effect on Others. The right to transfer and mortgage an Ownership Interest is limited to each Owner's respective interest in the Ownership Interest, and no Owner may transfer, mortgage or otherwise affect another Owner's Ownership Interest.

(b) Limitation on Transfer Rights. The right to transfer and mortgage shall not apply to all of the interests in the Project, any particular Suite or the Common Furnishings. An Owner shall not transfer or mortgage the Project, any Suite or the Common Furnishings, or any part or interest therein, except such Owner's individual Ownership Interest.

(c) Association Funds. No Owner shall transfer, mortgage or otherwise adversely affect funds held by the Association or the Manager, except to the extent required by this Declaration.

(d) Protection of Other Ownership Interests. No Owner shall take any action or fail to take any action which will subject any other Owner's Ownership Interest, the Project, any Suite, or Association funds to any lien, attachment or other similar proceedings, which may result in the sale or threatened sale of the Ownership Interest of any other Owner, any Suite, or the Project; or which would result in a sale or threatened sale or other action which would cause any interference in the use and enjoyment by any other Owner of such Owner's Ownership Interest.

11.4 Mortgage of Interest. Each Owner shall have the right to encumber said Owner's Ownership Interest with a Mortgage, subject always to the Project Documents. However, no Owner shall attempt to or shall have the right to encumber the Project as a whole or any part thereof except for such Owner's Ownership Interest. Any Mortgage of any Ownership Interest shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure and sale, or otherwise.

11.5 Liens. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Ownership Interest of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested, in writing, the performance of such labor or furnishing of such services. Such express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association and provided for in the Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove their Ownership Interest from a lien against two or more Ownership Interests or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is proportionately attributable to such Owner's Ownership Interest.

11.6 Ownership Interest Description. Every contract for the sale of an Ownership Interest and every other instrument affecting title to an Ownership Interest within the Project may describe an Ownership Interest by the name of the Project, the filing date for this Declaration, any identifying information for such Ownership Interests and by reference to any Annual, Even Year or Odd Year Occupancy Period. Such description will be construed to describe the Ownership Interest and to incorporate all the rights incident to ownership of an Ownership Interest within the Project and all of the limitations on such Ownership Interest as described in this Declaration.

11.7 Association as Agent. To the extent permitted by law, the Association shall be named as the party to receive, and shall receive, all notices concerning all taxes, assessments and other charges of the State of South Carolina or of any political subdivision or of any special improvement district or of any other taxing or assessing authority levied on the Ownership Interests. The Board shall pay when due and apportion such costs among the several Ownership Interests on the same basis as all other Ownership Interest costs and expenses. The Association shall furnish to the assessor, if requested by it, all necessary information with respect to such apportionment.

ARTICLE XII EASEMENTS

The following easements are hereby expressly reserved or have been granted:

12.1 General Easements. Non-exclusive easements over, across and under the Project are expressly provided for and reserved in favor of the Declarant, the Association, and the Owners, and their respective lessees, guests and invitees, as follows:

(a) Utilities. Easements are reserved over, across and under the Project as may be required for utility services in order to serve the Project adequately; including, but not limited to, easements for the purpose of allowing such access rights as are necessary to utilize and service any lift station or utility transformer boxes located within the Project.

(b) Encroachments. In the event that any Suite shall encroach upon any of the Common Areas, or upon any other Suite, or in the event any Common Area shall encroach upon any Suite or Limited Common Area, then an easement shall exist to permit such encroachment so long as same shall exist.

(c) Access. An easement shall exist for pedestrian access over, through and across sidewalks, paths, walks, halls, lobbies, and other portions of the Common Areas as may be from time to time intended and designated for such purpose and use, and for vehicular and pedestrian access over, through and across such portions of the Common Areas as may from time to time be paved and intended for such purposes, and such easements shall be for the use and benefit of the Declarant, the Association, Owners and their guests within the Project and those claiming by, through or under such Owners.

12.2 Association Easements. The Association may grant easements from time to time over the Common Areas. Easements may be granted over, across and under the Project.

12.3 Declarant Easements. The Declarant hereby reserves the following exclusive easements and rights to grant easements:

(a) Marketing, Sales and Rental. For so long as Declarant owns any Ownership Interest in the Project, the Declarant reserves exclusive easement rights over and across the Project for the purpose of marketing, sales and rental of Suites and Ownership Interests at the Project and ownership interests at other Club Affiliated Resorts, and for the purpose of leasing any Suites that are unoccupied or Ownership Interests which remain unsold. Lessees of Suites for which Declarant owns Ownership Interests shall have, for the length of the term of their leases, the same easement rights over and across the Project and use rights to the recreational areas and facilities of the Project as are reserved for Owners. The Declarant will utilize these easement rights in a manner that will minimize any adverse impact upon the use and enjoyment of the Project and upon any Owner occupying a Suite.

(b) Governmental Requirements. The Declarant hereby reserves the right to grant such easements, from time to time, as may be required by any government agency or utility company. Such easements shall specifically include, but not be limited to, any easement necessary for environmental studies, reports and reviews and/or required by state or federal environmental agencies, for so long as the Declarant holds any interest in any Ownership Interest subject to this Declaration. Declarant further reserves the right to consent to or initiate zoning changes with the City of Myrtle Beach affecting the Project, provided such zoning changes do not materially, adversely affect the Owners' rights in the Project.

(c) Declarant Easements. The Declarant reserves unto itself, for so long as it holds any interest in any Ownership Interest, specific easement rights over and across the Project as it may deem necessary for its use from time to time, provided such use does not materially and adversely impact the use of the Project Suites by Owners.

(d) Easements. The Declarant hereby reserves easement rights for the benefit and in favor of its agents, employees, consultants, contractors, licensees, successors and assigns, over, under, across and upon the Project

and any portion thereof, as it may require, from time to time, to create and cause noise, dust and other nuisances created by and resulting from any work connected with or incidental to the renovation, construction and sale of the Project, or any portion thereof.

12.4 Other Easements. Other easements may have been or may be granted over the Project.

ARTICLE XIII CERTAIN ADDITIONAL DECLARANT RIGHTS

The following additional Declarant Rights are hereby granted or reserved by Declarant:

13.1 Sales Office/Models. Declarant hereby reserves the right to maintain sales offices, management offices, any type of advertising of the Project, or any other vacation ownership project of Declarant or any affiliate of Declarant, and models in any of the Suites or other areas of the Project including lobbies and recreational areas. Declarant may relocate sales offices, management offices and models to other Suites or other locations within the Project at any time. In such event, Declarant shall be responsible for its pro-rata share of the Common Expenses attributable to the areas and facilities utilized by Declarant. In no event shall the Declarant's use of the facilities for such purposes materially and adversely impede the Owners' use and enjoyment of any recreational areas.

13.2 Reserved Right to Grant Easements. Notwithstanding anything herein provided to the contrary, Declarant does hereby reserve the right unto itself, its successors and assigns, to delete, relocate, realign, reserve, grant and receive any and all easements and rights of way over, under and on the Project deemed necessary or desirable in Declarant's sole discretion, including, but not limited to, easements and/or rights of way for utilities, cable television, refuse disposal, driveways, parking areas and roadways, provided that such easements shall not be exercised as to unreasonably disturb, impair or interfere with the normal use and enjoyment of the Project by the Owners.

13.3 Reserved Right to Modify Project to Comply with Law. Declarant shall have the reserved right to effect such modifications to any Suite or Common Area in the Project and/or to execute, file and deliver any amendments to this Declaration and the Bylaws, as may be necessary or required to effect compliance by the Project, the Association, or by the Declarant, with laws which apply to the Project or any portion of the Project.

13.4 Assignment of Reserved Rights. Notwithstanding anything stated herein to the contrary, the rights reserved to the Declarant in this Declaration shall be fully assignable by the Declarant in whole or in part, and every Owner and all holders of liens affecting any of the Suites or the Common Areas, and each and every other party acquiring an interest in the Project, by acquiring such Ownership Interest, lien or other interest, consents to any such assignment by Declarant, and, to the extent designated by the Declarant, agrees to recognize any assignee as the "Declarant" under this Declaration.

13.5 Amendment of Reserved Rights. Notwithstanding anything provided herein to the contrary, no provision in this Article XIII shall be amended without first obtaining the prior written consent of the Declarant.

13.6 Duration of Declarant Rights. Except as otherwise provided for herein, Declarant hereby reserves the right to exercise any applicable Declarant Right provided for in the Declaration with respect to the Project on or before the sale of all Ownership Interests.

13.7 Power of Attorney. Each and every Owner acquiring an Ownership Interest in the Project, by such acquisition, consents to any such action that Declarant may need to take in order to exercise any of its reserved rights set forth under this Article XIII, Article V or elsewhere in this Declaration, and to the filing of any and all documents necessary to effect the same in the Register of Deeds for Horry County, South Carolina, including, without limitation, any amendment or amendments of this Declaration and any deed of conveyance; agrees to execute, deliver and file such documents and instruments and do such other things as may be necessary, proper or convenient to effect the same; and appoints the Declarant and its assigns his attorney-in-fact with full power of substitution to execute, deliver and file such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such Owner or Owners; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such Owner and

shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Ownership Interest or any interest therein, whether by deed, Mortgage or any other instrument of conveyance.

13.8 Declarant Control Period. There is hereby established a period of Declarant control of the Association, during which period the Declarant or persons designated by it shall have the authority to appoint and remove the officers of the Association and Directors of the Board. The period of Declarant control shall terminate upon the conveyance of eighty percent (80%) of the Ownership Interests to Owners other than the Declarant. Upon termination of the Declarant control period, Owners, other than the Declarant, shall elect Directors to the Board in accordance with and in the manner set forth in the Bylaws. The Directors and officers of the Board shall take office upon election. Notwithstanding the foregoing, so long as Declarant holds for sale in the ordinary course of business, Ownership Interests representing at least three percent (3%) of the aggregate undivided Ownership Interests in the Project, Declarant shall be entitled to appoint at least one Director to the Board.

ARTICLE XIV RESTRICTIONS ON USE

14.1 Use of Project. The Suites, except as otherwise permitted in writing by the Association, shall be used and occupied only as follows:

(a) The Suites within the Project shall be used exclusively for long and short term hotel and timeshare use.

(b) No Suite shall be used to accommodate more persons than it was designed to accommodate comfortably. The maximum number of occupants for Suites is set forth above in Section 8.7.

(c) No Suite shall be used for business or commercial activity; provided, however, that nothing in this Subsection shall be deemed to prevent (i) Declarant or its duly authorized agent from using any Suite and/ or Ownership Interest owned by Declarant or any of the lobbies or recreational areas of the Project as sales offices and models or a property management office, or (ii) any Owner or such Owner's duly authorized agent from renting or leasing his Ownership Interest reserved during the priority reservation period from time to time, or (iii) Declarant or its successors and assigns from operating the Ownership Interests held by it as a commercial hotel or recreational facility so long as Declarant establishes a reasonable allocation of the costs of maintenance and operation between those Ownership Interests of Declarant being used for transient accommodations and those which have been transferred to Owners.

14.2 Use Restrictions. The Project shall be used in accordance with the following restrictions:

(a) No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners.

(b) No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

(c) Except for the Declarant, no Owner may post or otherwise distribute, on any part of the Project or in any vehicle parked at the Project, "for sale" or "for lease" signs with respect to their Ownership Interest.

(d) Except for service animals for the unsighted or for similar purposes, no animals, birds, fish or pets of any kind shall be kept or allowed to remain on any part of the Project.

(e) The draperies, shades and other interior window coverings in Suites shall present a uniform appearance from the outside of the Suites. All draperies, shades or other interior window coverings shall be installed or employed in each Suite by the Association or the Manager or with the prior inspection and written approval of the Association or the Manager.

(f) Except as otherwise provided in the Declaration, no Ownership Interest, or portions thereof, may be further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common, or other form of joint undivided ownership). Membership in Club shall not be separated from the Ownership Interest to which it is appurtenant.

(g) No Owner shall, without the prior written consent of the Association, make or permit to be made any alteration, improvement or addition in or to the Project. No Owner shall, without the prior written consent of the Association, do any act that would impair the structural soundness or integrity of the Building or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Project.

(h) There shall be no obstruction of access to, from or within the Project by any Owner. Owners shall neither store nor leave any of their properties in the Project, other than in their Suite during their period of permitted occupancy. No Owner shall be entitled to park more than one vehicle in any designated parking areas.

(i) Nothing shall be done or kept in the Project or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in the Project which would increase the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in the Project or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Project or any part thereof shall be committed by any Owner or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or their guests, lessees, licensees or invitees. However, an Owner shall not be liable for damage or loss caused by an exchange user who utilizes the Owner's Ownership Interest.

(j) No Owner shall violate the Rules and Regulations for the use of the Project, as adopted from time to time by the Association as applicable.

(k) No signs shall be erected or installed at the Project or the exterior of any Building or other structure, and the exterior of any Building or other structure shall not be changed including, without limitation, the color thereof, without the prior written consent of Declarant, which consent may be withheld for any reason or for no reason at all. Declarant may, at its' own expense, and without Association's consent, at any time and from time to time, change the exterior appearance of the Project including, without limitation, the color thereof.

(l) Except as otherwise may be permitted pursuant to a written license agreement, at no time will the Association adopt or use, either alone or in combination, any words or designs that are similar or likely to be confused with any other trademark, service mark or trade name of Declarant, Hilton Hotels Corporation, Hilton Resorts Corporation or any of their parent companies, subsidiaries or affiliates, including but not limited to the Club Marks. The Association hereby acknowledges and agrees that in the absence of a written license agreement, it will have no rights with respect to the "Club" or "Hilton" mark and name. In the event the Management Agreement between the Association and Hilton Grand Vacations Management, LLC is terminated for any reason, the license agreement, if any, permitting the Association to utilize the "Club" or "Hilton" mark and name, if any, shall automatically terminate.

(m) No Owners shall enroll in or contribute their Ownership Interest to any timeshare club program other than the Club so long as the Project is affiliated with the Club program without the prior written consent of the Declarant and HGVC, which consent may be withheld in either party's sole discretion.

(n) Each Owner shall be responsible and shall pay all costs and damages caused by such Owner's failure to comply with the foregoing. Each Owner shall, if requested by Declarant or the Board, execute an agreement to comply with the Project Documents before such Owner is permitted to occupy its designated Suite.

14.3 Vacating Units.

(a) Duties of Owners to Vacate. Each Owner shall:

- (1) Vacate the Suite occupied at the end of his Occupancy Period;
- (2) Leave the Suite and furnishings in such Suite in good and sanitary condition (except for ordinary wear and tear); and
- (3) Comply with any and all rules and regulations promulgated for the Project relating to check out.

(b) Removal of Personal Effects. At the end of the Occupancy Period, each Owner must remove all personal effects such as clothing, food, liquor and luggage. No party, including the Declarant, other than such Owner, shall be responsible for any personal effects that are left in the Suite. Moreover, personal effects not removed at the end of the Occupancy Period will be considered abandoned. The Association or Manager may dispose of them in any manner whatsoever and shall be entitled to keep any sales proceeds or bill such Owner or guest for any disposal or related costs arising therefrom.

14.4 Trespass and Damage to Units.

- (a) Definitions. The following terms shall have the meanings described below:
- (1) Trespasser. A "Trespasser" is any Owner or any Club Member or any other Suite occupant who:
 - (i) Does not vacate a Suite at the end of his or her Occupancy Period;
 - (ii) Uses a Suite during another Owner's Occupancy Period without permission of the Owner, Association, Manager, or Club; or
 - (iii) By any other act or failure to act, prevents another Owner from using a Suite such Owner is entitled to use.
 - (2) Vandal. A "Vandal" is any Owner or Club Member or other occupant permitted to utilize said Owner's Ownership Interest who damages a Suite or the Furnishings therein such that the Suite cannot be occupied during any one or more later Occupancy Periods.
 - (3) Injured Person. An "Injured Person" is any Owner, Club Member or other occupant permitted to utilize said Owner's Ownership Interest, who cannot use a Suite as a result of a Trespasser or Vandal. There may be several Injured Persons. For example, a Suite may be damaged so that it cannot be used for many later Occupancy Periods. Each person who had the right to use the Suite during these Occupancy Periods is an Injured Person.
 - (4) Fair Rental Value. "Fair Rental Value" is the cost of renting, on a daily basis, a comparable place to reside in the Project or elsewhere in the city in which the Project is located.
- (b) Eviction for Trespass or Vandalism. Each Trespasser and Vandal may be removed from the Project immediately upon the occurrence of the vandalism or trespass, and, to the fullest extent permitted by law, waives all eviction notices required by law.
- (c) Costs and Liquidated Damages. Each Trespasser and Vandal shall reimburse the Manager, Association and/or each Injured Person for all of their costs and expenses caused by his or her actions, including, but not limited to, costs of alternative living arrangements and additional travel costs, and all collection and enforcement costs. In order to obtain other accommodations, it may be necessary to rent for a period of time longer than the period that use is actually prevented, in which event, the cost of such other accommodations includes all of the rent for this longer period of time. The Manager shall determine whether it is necessary to rent for a longer time, which decision shall be final.

(d) Duties of the Association. The Manager shall take all reasonable steps to remove the Trespasser or Vandal, and shall assist each Injured Person to locate alternative accommodations, at its expense. The Manager shall attempt to collect all costs and liquidated damages for the Injured Person, if requested, such expenses shall be refunded to the Manager, or if applicable, the Association, by the Trespasser or Vandal.

14.5 Compliance with Use Restrictions. These restrictions and obligations imposed on use of the Project are cumulative and not exclusive. Each Owner, tenant, Trespasser and Vandal and other occupant shall comply with each and every one of the restrictions imposed by the Project Documents.

ARTICLE XV MAINTENANCE, ALTERATION AND IMPROVEMENT

15.1 Project Maintenance. The maintenance, replacement and repair of the Project shall be the responsibility of the Association, and the cost thereof shall constitute a portion of the Common Expenses. The Association shall maintain, replace and repair all Suites, Limited Common Areas, balconies and decks and all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service and the cost thereof shall constitute a portion of the Common Expenses. Each Owner has the duty (a) not to damage, beyond ordinary wear and tear, any part of the Project; (b) to keep the Suite occupied by such occupant (and the furnishings in that Suite) in good order and condition (except for ordinary wear and tear).

15.2 Access to Suites. The Association and the Manager shall have the irrevocable right to have access to each Suite and to all other parts of the Project from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement thereof or for making any emergency repairs at any time and when necessary to prevent damage to the Project or to any Suite. The Association and the Manager shall also have the irrevocable right to have access to any Suite when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association and/or the Manager.

ARTICLE XVI INSURANCE

16.1 Insurance Coverage. Commencing not later than the time of the first conveyance of an Ownership Interest to an Owner other than Declarant, the Association shall maintain insurance as follows:

(a) The Association shall maintain property insurance covering the Project which insurance shall, at a minimum, provide coverage against special causes of loss, including all perils normally covered by the standard "all risk" form, where such is available. The total amount of insurance shall be not less than one hundred percent (100%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of the cost of excavation, foundation and footings. Such policies shall include the Owners as a class as named insureds, and shall include a provision for the waiver by the insurer of its right to subrogation against any Owner, and a provision noting that no act or omission by an Owner will void the policy or operate as a condition to recovery under the policy by another person.

(b) The Association shall maintain liability insurance in an amount determined by the Board but not less than one million dollars (\$1,000,000) for any one person injured in any one occurrence and not less than three hundred thousand dollars (\$300,000) for property damage in each occurrence covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Project.

(c) The Association shall maintain insurance covering the costs of temporary quarters for the Owners due to the unavailability of a Suite caused by an insured peril and other losses commonly insured against by associations similar to the Association. This insurance shall apply only when the Manager is unable to contact the affected Vacation Owners prior to their arrival at the Project and alternate accommodations at a Club property cannot be

secured for the same intended occupancy dates. The Association shall also acquire property insurance to cover the common personal property owned by the Association, the cost of which shall be paid from the Expense Fund.

16.2 Owner's Responsibility. An insurance policy issued to the Association shall not prevent an Owner from obtaining insurance for their own benefit. The insurance maintained under Section 16.1 does not include the personal property of Owners, lost vacation time or alternate accommodations of the Owner during such lost vacation time, or any lost rental proceeds of the Owner as a result of a loss.

16.3 Unavailability of Insurance. If the insurance described in Section 16.1 is not commercially available on reasonable terms, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States Mail to the Owners. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Owners.

16.4 Insurance Provision. Where applicable, insurance policies carried pursuant to Sections 16.1, 16.2 and 16.3 shall provide the following:

(a) All Owners as a class shall be named as additional insureds in a policy issued to the Association.

(b) The insurer waives its right to subrogation under the policy against any Owner and members of their household.

(c) No act or omission by any Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or operate as a condition to recovery under the policy by another person.

16.5 Insurance Trustee. Any loss covered by the property policy under Sections 16.1 and 16.2 shall be adjusted with the Association but the insurance proceeds for that loss shall be payable to an insurance trustee designated for that purpose by the Association and not to the Association or any Mortgagee. The insurance trustee shall hold any insurance proceeds in trust for the Association, Owners and Mortgagees as their interests may appear. Subject to the provisions of Article XVII of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Project is terminated. This Section does not prohibit the Board from acquiring additional or greater amounts of coverage, as it reasonably deems appropriate.

16.6 Fidelity Bond. The Board shall require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time.

ARTICLE XVII DESTRUCTION OR DAMAGE

17.1 Repair and Replacement. Any portion of the Project for which property insurance is required under this Declaration which is damaged or destroyed shall be repaired or replaced promptly by the Association unless any of the following apply:

- (a) The Project is terminated;
- (b) Repair or replacement would be illegal under any South Carolina law governing the Project;

or

(c) Owners to which eighty percent (80%) of the Total Votes of the Association are allocated vote not to rebuild.

17.2 Cost to Repair/Replace. The cost of repair or replacement in excess of insurance proceeds and reserves is a portion of the Common Expenses.

17.3 Insurance Proceeds on Termination. Notwithstanding the provisions of Sections 17.1 and 17.2 hereof, Article XVIII of this Declaration governs the distribution of insurance proceeds if the Project is terminated.

ARTICLE XVIII TERMINATION

18.1 Termination by Association. Except in the case of a taking of the entire Project by eminent domain, the Project may be terminated only by agreement of Owners of at least eighty percent (80%) of the Total Votes of the Association are allocated.

18.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution of a termination agreement by the President of the Association. A termination agreement, including a recital of the requisite percentage of the Total Votes of the Association, shall be filed in the Register of Deeds Office for Horry County, South Carolina, and is effective only upon filing.

18.3 Sale Upon Termination. A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any interest in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale. The Association, on behalf of the Owners, may contract for the sale of interest in the Project, but the contract is not binding on the Owners until approved pursuant to Section 18.1. The Board of the Association shall have full power and authority to affect the sale and conveyance of the property constituting the Project to any party provided that the terms of the duly approved termination agreement are complied with. The President of the Association shall have the authority to execute and deliver such documents and do such things as may be required to sell and convey such property to the appropriate party or parties. All Owners, Mortgagees, and any other person or entity having an interest in the Project and/or the property to be sold or conveyed, by acquiring any such interest, (i) does hereby consent and agree to any such action or actions taken by the Board, the Association and/or its President, pursuant to any duly adopted termination agreement, agrees to do such things as may be necessary or appropriate to effect any such sale and/or conveyance, (2) and appoints the Board, the Association and its President, his, her or its attorney-in-fact, with power of substitution, to execute, deliver and file such documents and do such things on their behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of such parties, which grant of such power shall be binding upon any assign of, or successor-in-interest to any such party, and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of such interest. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, in proportion to the respective Common Expense Allocation of each Owner. Unless otherwise specified in the termination agreement, as long as the Association holds title to an interest in the Project, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the Project that formerly constituted their Ownership Interest in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

18.4 Proceeds Upon Sale. Following termination of the Project, the proceeds of any sale, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, creditors holding Mortgages on the Ownership Interests which were filed before termination may enforce those liens in the same manner as any lien holder. All other creditors of the Association are to be treated as if they had perfected liens on the Ownership Interests immediately before termination.

ARTICLE XIX EMINENT DOMAIN

If all or part of the Project is acquired by eminent domain, the award shall be paid to the Association for the benefit of the Owners as their interests may appear. The court decree shall be filed in the County of Horry County, South

Carolina. If the entire Project is acquired by eminent domain, the Project shall terminate and the provisions of Article XVIII hereof with respect to the distribution of proceeds shall apply. This Section does not restrict the rights of lessees, Mortgagees, Declarant or any other person holding an interest in an Ownership Interest from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this Section.

ARTICLE XX MORTGAGEE PROTECTION

20.1 Owner Roster. The Board shall maintain a roster of Owners, which roster shall include the mailing or other addresses of all Owners. Except for use by Declarant in connection with its sales program or by the Manager in fulfilling its obligation and duties under the Management Agreement, or use by HGVC in connection with operation of the Club, or pursuant to the Bylaws, the roster may not be used for commercial purposes. The Board will also maintain a roster containing the name and address of each First Mortgagee of an Ownership Interest if the Board is provided notice of such First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Board of a certified copy of a filed release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee.

20.2 Notice of Default. The Board shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Ownership Interests in the performance of such mortgagor's obligations under the Declaration which is not cured within thirty (30) days.

20.3 Mortgagee Interest. First Mortgagee of any Ownership Interest who comes into possession of an Ownership Interest pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure shall take the property free of any claims for unpaid Assessments or charges against the mortgaged Ownership Interest which accrued prior to the time such First Mortgagee comes into the possession of the Ownership Interest except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessment or charges to all Ownership Interests, including the mortgaged Ownership Interest. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Ownership Interest which have been suspended with respect to the defaulting Owner shall be reinstated.

20.4 Subordination of Liens. Any liens created under the Timeshare Act or pursuant to this Declaration, or the Bylaws upon any Ownership Interest shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Ownership Interest made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Timeshare Act, the Declaration and Bylaws.

20.5 Affect on Amendment. No amendment to this Article shall adversely affect a First Mortgagee who has filed a valid First Mortgage prior to the filing of any such amendment.

ARTICLE XXI AMENDMENT

21.1 Amendment by Association. Except as otherwise provided in this Declaration, the provisions of this Declaration may be amended by the affirmative vote or written assent of at least sixty-seven percent (67%) of the Total Votes of the Association. Any such amendment shall be evidenced by an instrument containing a certification from an officer of the Association designated for that purpose, or in the absence of such designation, by the President of the Association, that the appropriate consent has been obtained, and shall be duly filed in the Register of Deeds Office for Horry County, South Carolina. The percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required to be taken under that clause.

21.2 Mortgagee Consent. In addition to the vote required by Section 21.1, except as otherwise provided in this Declaration (including, but not limited to, Declarant's unilateral right to exercise Declarant Rights as provided herein), the written consent of Mortgagees holding First Mortgages on Ownership Interests having at least sixty seven

percent (67%) of the votes of the Association allocated to Ownership Interests encumbered by First Mortgages shall be required to do any of the following:

- (a) Abandon or terminate the legal status of the Project (whether by act or omission);
- (b) Sell or otherwise dispose of the Project in its entirety;
- (c) Amend in any material and adverse manner with reference to the rights of the First Mortgagees any provision of the Declaration, Articles, or Bylaws, which establishes, provides for, governs or regulates any of the following:
 - (1) Voting;
 - (2) Assessments, Assessment liens or subordination of such liens;
 - (3) Reserves for maintenance, repair and replacement of the Project;
 - (4) Fidelity bonds or insurance;
 - (5) Responsibility for maintenance and repair of the Project;
 - (6) The undivided Ownership Interests in the Project;
 - (7) Any provisions which are for the express benefit of First Mortgagees.
- (d) Change the pro rata interest or obligations of any Ownership Interest for the purpose of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards.
- (e) Use hazard insurance proceeds for losses to any portion of the Project for other than repair, replacement or reconstruction of the Project.

21.3 Declarant's Right to Amend. Without the consent of any other person, the Declarant may amend the Declaration and other Project Documents:

- (a) At any time for all purposes, before it transfers any Ownership Interests in the Project;
- (b) At any time to comply with the Timeshare Act or the then existing regulations issued by or requirements of any state or federal regulatory agency or by any title company licensed to do business in the State of South Carolina;
- (c) At any time to correct any scrivener's errors; or
- (d) At any time to submit additional Suites or exercise any Declarant Rights.

To the extent required by law, all Owners and other persons hereby appoint Declarant and its successors and assigns as their attorney-in-fact with the right of substitution, to act on their behalf to execute, deliver and file all documents necessary to affect any of the amendments referred to in this Article XXI. Such special power of attorney with the power of substitution, shall be coupled with an interest and is irrevocable for the term of the Declarant's reserved rights, and shall not be affected by the death, disability or incapacity of any party or parties.

ARTICLE XXII RESPONSIBILITY FOR TENANTS AND VISITORS

22.1 Liability for Tenants and Visitors. With respect to the Project, Affiliated Resorts, or any accommodation or facility available through Club or its affiliates, each Owner shall be personally liable for the following obligations relating to his tenants and visitors:

(a) Agreement.

- (1) Such Owner's tenants and visitors shall comply with the Project Documents;
- (2) Such Owner's tenants and visitors shall make all required payments and shall act in a manner consistent with the Project Documents; and
- (3) Such Owner shall ensure that his tenants and visitors fully comply with the foregoing.

Each Owner shall be fully responsible for his tenants and visitors, and all damages and liabilities caused by them, together with all interest, late charges and collection and enforcement costs charged to them, including, without limitation, all damages and liabilities caused to the extent that any such tenant or visitor is a Trespasser or Vandal. All such damages, interest, charges and costs shall be assessed as a personal charge to such Owner.

Each Owner's liability for his tenants and visitors shall be joint and several, meaning that the Owner must pay even if the tenant or visitor does not.

(b) Indemnification. Each Owner shall indemnify, protect and hold all other Owners, the Manager, Declarant, the Board, and the Association harmless from and against any and all claims, liabilities, damages, judgments, costs and expenses, including interest, late charges and collection and enforcement costs (including attorneys' fees and court costs), incurred as a result of the failure of such Owner's visitors or tenants to comply with the Project Documents, or the failure of the Owner to perform all of his obligations under Section 22.1. Each Owner shall also be assessed for the foregoing as a personal charge.

22.2 Charges by Tenants and Visitors. A lien and security interest shall automatically attach to each Owner's Ownership Interest, and the proceeds thereof, to secure payment for all personal charges incurred as a result of such Owner's tenants and visitors. If these charges are not paid when due, the Association or Manager may foreclose and sell such Owner's Ownership Interest to recover sums sufficient to pay such charges.

22.3 Liability of Exchange Users and Occupants. Each Club Member shall be personally liable for his tenants and/or visitors to the same extent (including all promises, guarantees and indemnities) as an Owner in accordance with Section 22.1 above. Each Club Member shall be jointly and severally liable with such Member's tenants and/or visitors, and will be assessed for the foregoing as a personal charge.

22.4 Joint and Several Liability. Each co-Owner shall observe and perform all promises made by all Owners of the Ownership Interest, and the Association and Manager may collect all payments due against co-Owners separately, or against any two or more co-Owners together, notwithstanding the failure of any other co-Owner to pay such co-Owner's share. Co-Owners shall also be jointly and severally liable for each other's tenants and visitors.

ARTICLE XXIII
NOTICES

Any notice permitted or required to be delivered as provided herein may be delivered personally, by first class mail, certified or registered mail, by express mail, overnight courier service providing receipt of delivery or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board for the purpose of service of such notice. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Board addressed to:

Board of Directors
Ocean 22 Vacation Owners Association, Inc.
6355 MetroWest Boulevard, Suite 180
Orlando, Florida 32835

ARTICLE XXIV
NO WAIVER

The failure of the Board or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or the Bylaws, to exercise any right or option herein contained or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board, its agents or designees of the payment of any Assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

ARTICLE XXV
ENFORCEMENT

25.1 Failure to Comply. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Declaration and all of the other Project Documents. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Board, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Board to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Suite and the Project, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Board shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board. The Board may delegate to the Manager the power and authority to carry out disciplinary actions duly imposed.

25.2 Forfeiture of Interest. The Association shall not be empowered to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of the Declaration or the rules and regulations for the Project except pursuant to:

- (a) The judgment of a court; or
- (b) A foreclosure for the failure of an Owner to pay Assessments duly levied by the Association.

ARTICLE XXVI
DECLARANT

The term "Declarant" as used herein shall mean and include Ocean 22 Development, LLC, a South Carolina limited liability company and any person or persons who might acquire title from it to all or substantially all unsold Vacation Ownership Interests through foreclosure or deed in lieu of foreclosure; or, any person who should purchase all, or substantially all, of such remaining Ownership Interests in a sale in the nature of a bulk sale.

ARTICLE XXVII
RULE AGAINST PERPETUITIES

If any provision of this Declaration would violate the Rule Against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provisions shall be deemed to remain in effect only for the maximum permissible period permitted by law.

ARTICLE XXVIII
SEVERABILITY

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

ARTICLE XXIX
CAPTIONS

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

ARTICLE XXX
LAW CONTROLLING

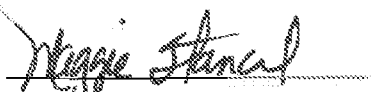
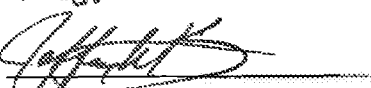
This Declaration shall be construed and controlled by and under the laws of the State of South Carolina.

ARTICLE XXXI
EFFECTIVE DATE

This Declaration shall take effect when filed.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 28th day of February, 2014.

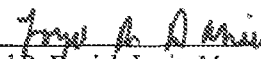
WITNESS:

OCEAN 22 DEVELOPMENT, LLC

By: Ocean 22 Holdings, LLC, a Delaware limited liability
Company, its Sole Member

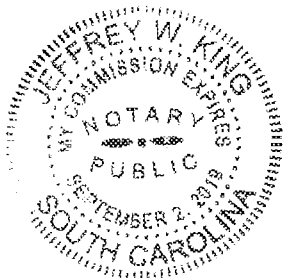
By: SCG 2200, LLC, a South Carolina limited liability
Company, its Administrative Member

By: 
Loyd R. Daniel, Jr., its Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, the undersigned notary, do hereby certify that the above subscribed Ocean 22 Development, LLC, by Ocean 22 Holdings, LLC, its Sole Member, by SCG 2200, LLC, its Administrative Member, by Loyd R. Daniel, Jr., its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 28th day of February, 2014.



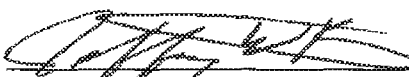

Notary Public for South Carolina
My Commission Expires: 9/2/19

EXHIBIT A

PHASE 1

LEGAL DESCRIPTION, SITE PLAN, AND FLOOR PLANS

Legal Description

Tower Parcel:

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly shown and described as "Parcel A, 22,200 sqft, 0.51 acres" on that certain Combination and Alley Relocation Plat of Parcel "A", Tax Parcels 181-04-18-003, 004 and 20' Alley prepared by Castles Consulting Engineers, Inc. dated August 29, 2013, and recorded October 21, 2013, in Plat Book 259, at Page 229, records of Horry County, South Carolina, said plat being incorporated herein for reference.

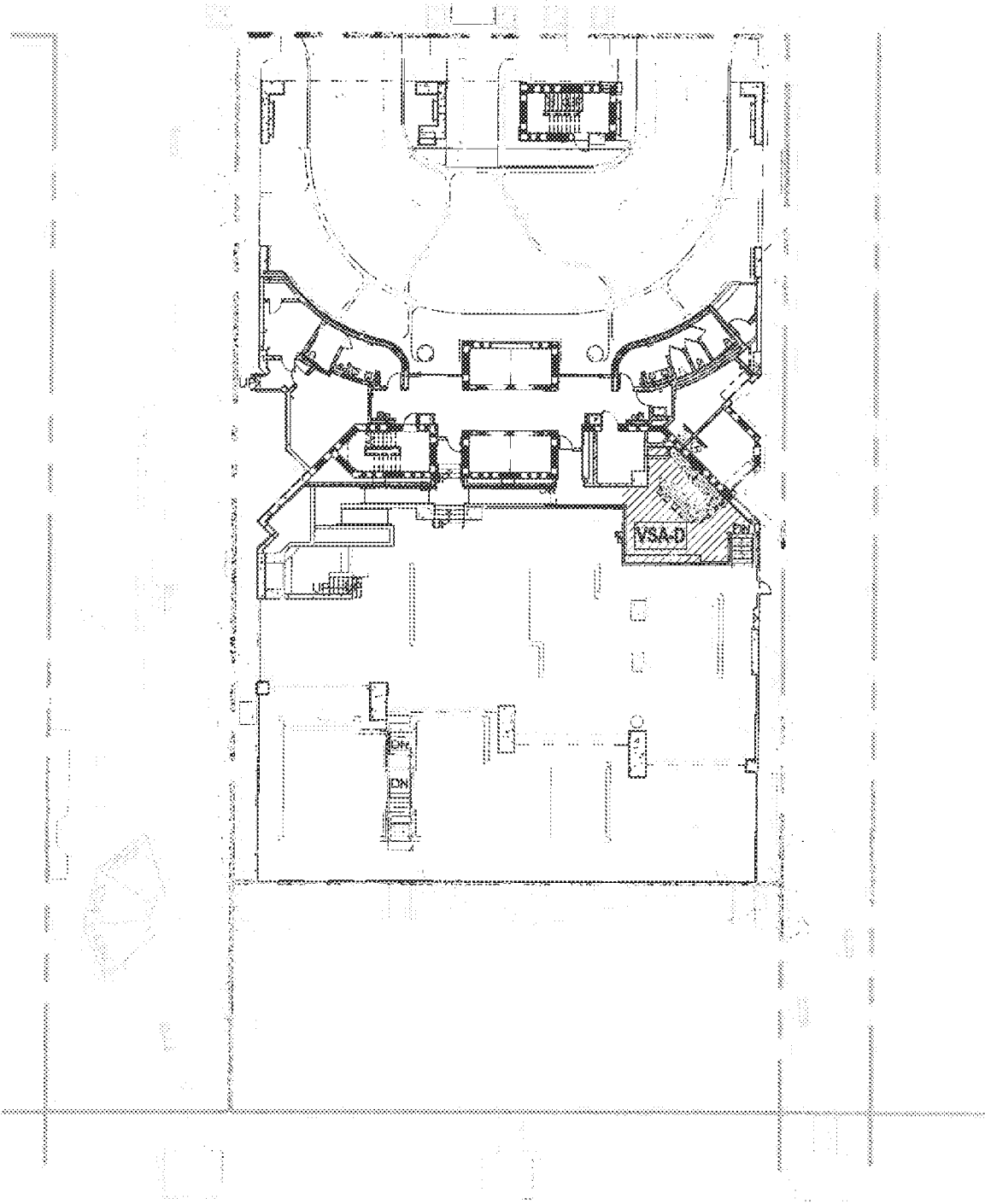
Garage Parcel:

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly shown and described as "Garage Parcel, 43,224 sqft, 0.99 acres" on that certain Combination Plat of Garage Parcel, Tax Parcels 181-03-31-003, 003, 004 & 181-04-08-001 prepared by Castles Consulting Engineers, Inc. dated August 29, 2013, and recorded October 22, 2013, in Plat Book 259, at Page 232, records of Horry County, South Carolina, said plat being incorporated herein for reference.

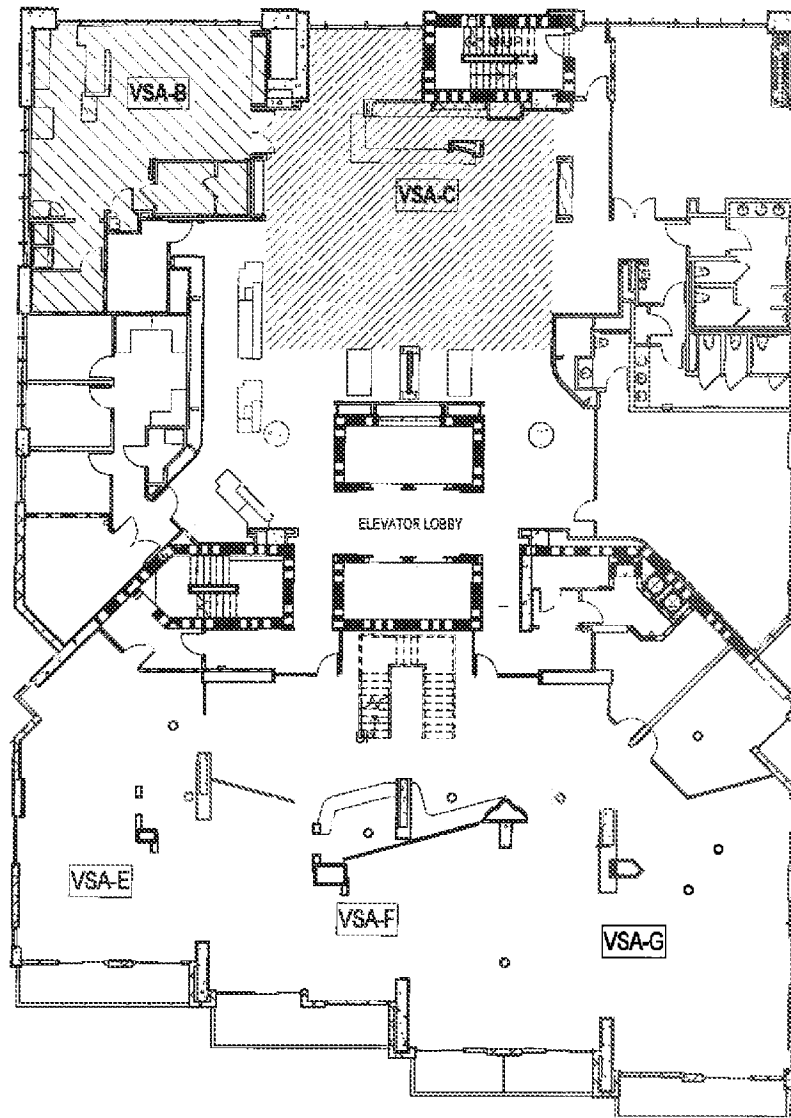
RESERVING, however, unto the Declarant, its successors and assigns, an easement over, under, through and across the Common Areas being herewith submitted for the purpose of the location and construction of buildings, Suites, Vacation Support Areas, Common Areas, additional parking facilities or other improvements which may be constructed by the GRANTOR, its successors and assigns, whether or not submitted as an additional phase or phases of Ocean 22 Vacation Suites, together with any and all easements incidental for the foregoing. GRANTOR further reserves the right to relocate existing parking facilities and to temporarily close parking, pool or other facilities during construction of such improvements. Provided, however, that GRANTOR must provide temporary or permanent parking or other facilities sufficient to meet all applicable governmental regulations required to maintain the uninterrupted operation and use of the Project. Specifically, without limitation, Declarant hereby reserves the right and all easements necessary or convenient to construct additional levels of parking upon the Garage Parcel, which additional parking shall be for the sole use of Declarant, its successors and assigns.

SUBJECT TO easements, covenants and restrictions of record.

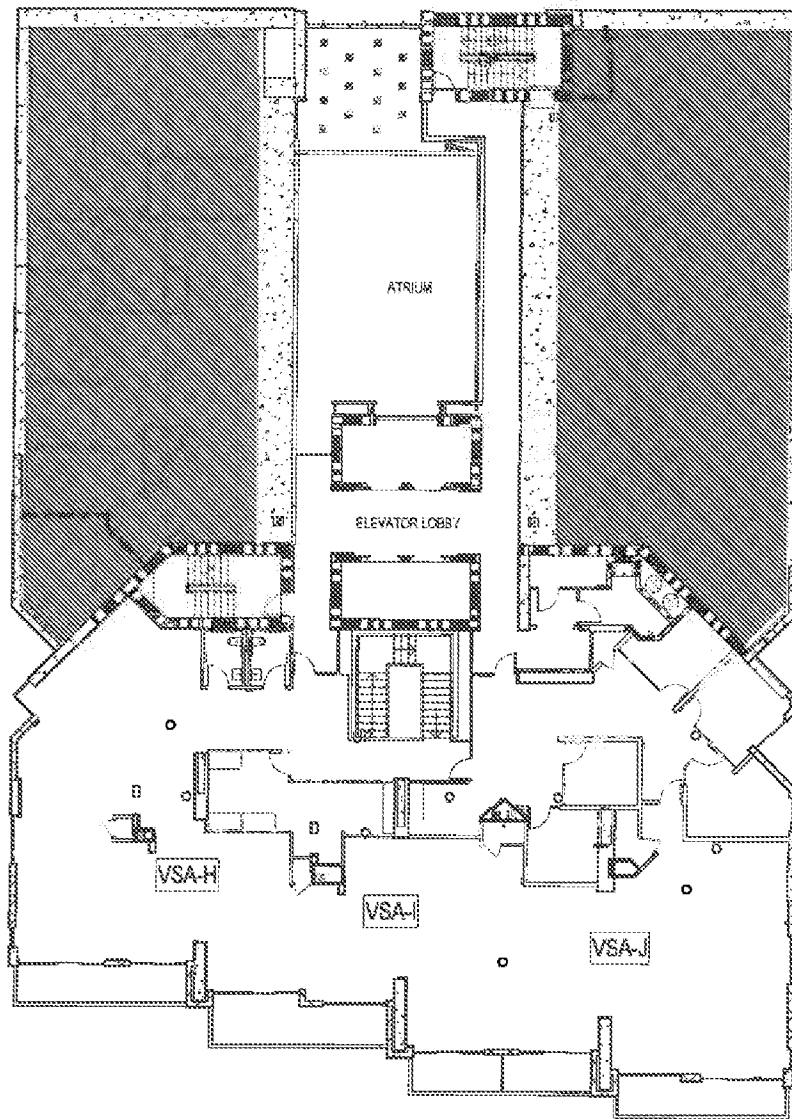
[ATTACH SITE PLAN AND FLOOR PLANS]



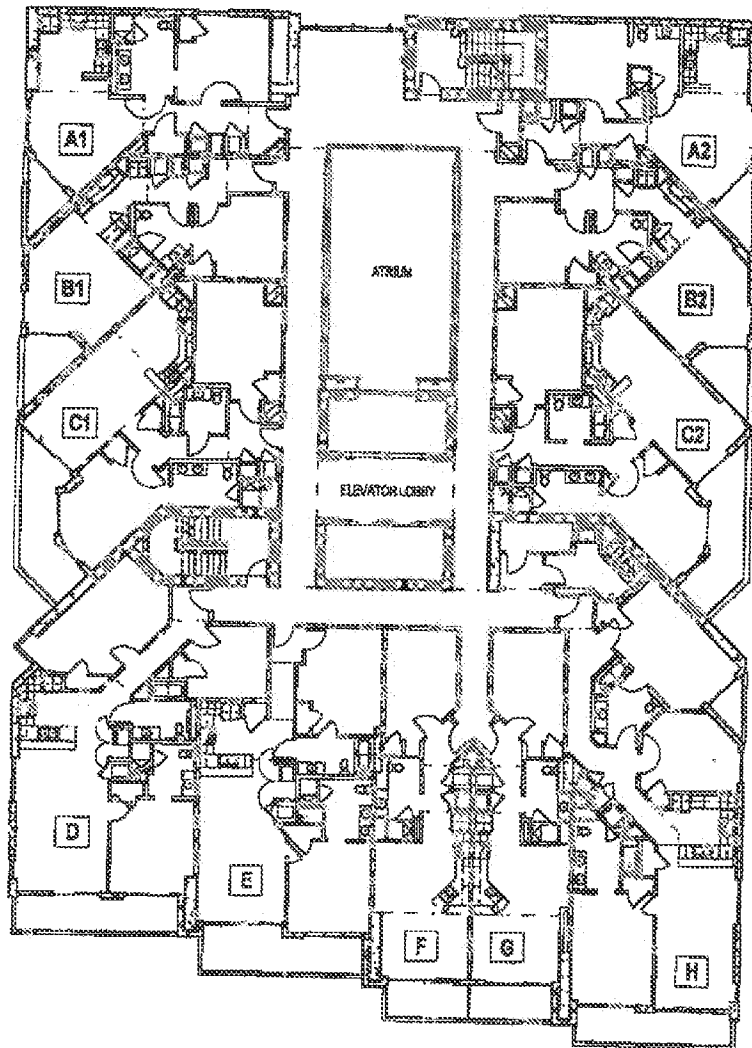
HGVC - GROUND LEVEL SITE PLAN



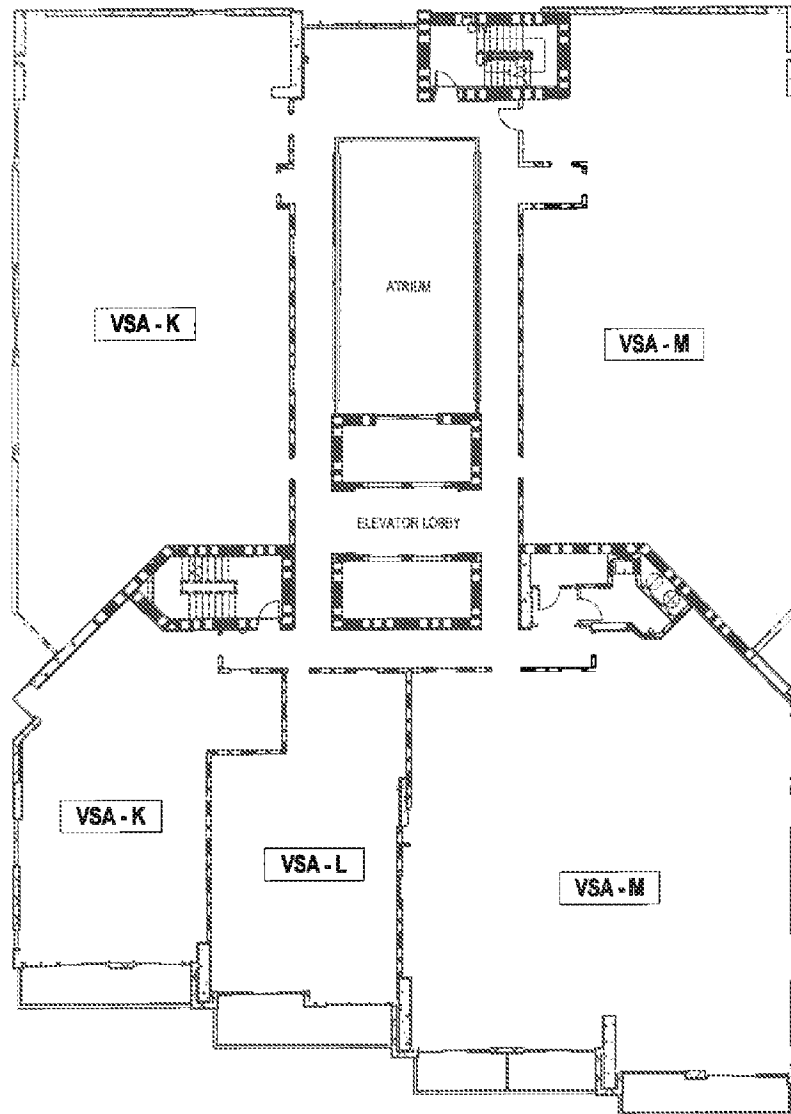
HGVC - LOBBY LEVEL



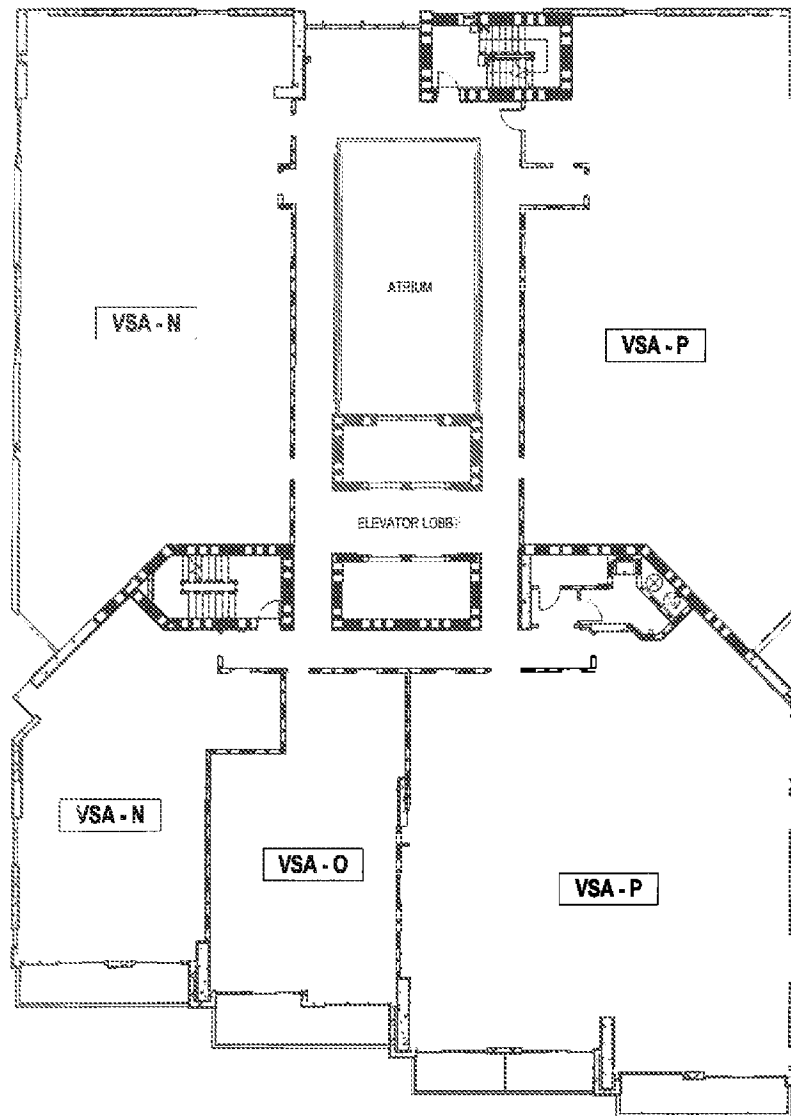
HGVC - MEZZANINE 3RD LEVEL



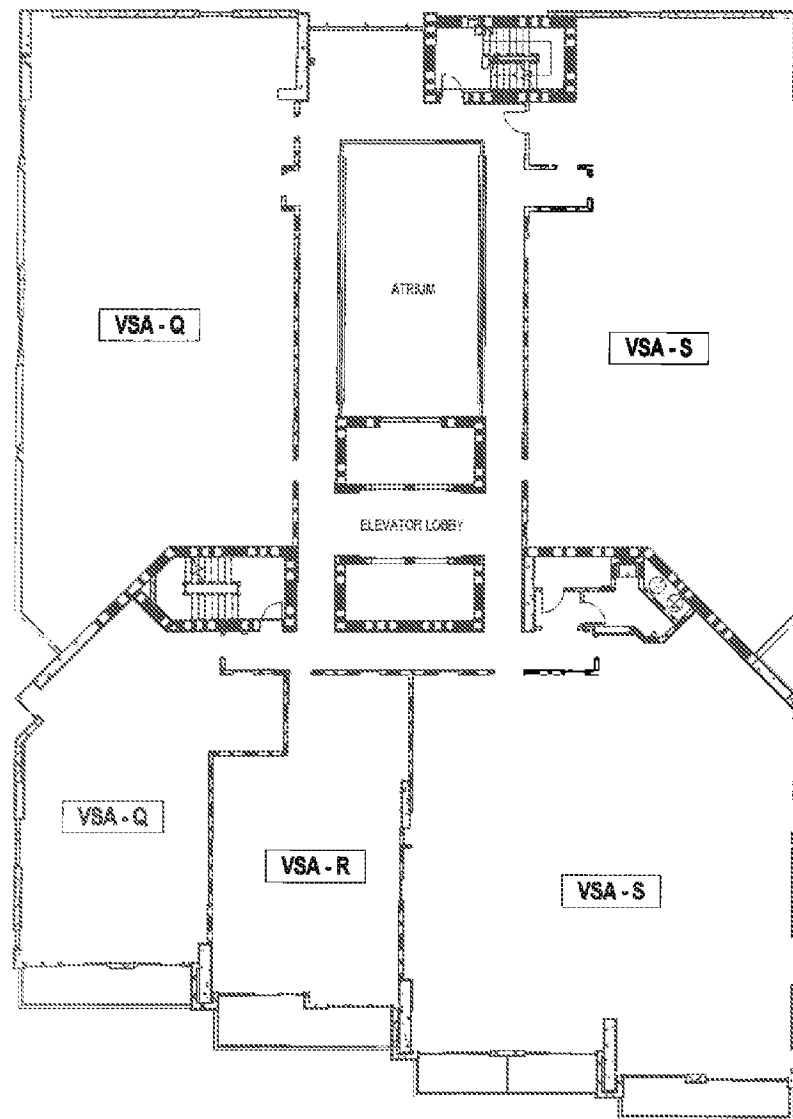
HGVC - LEVELS 4-6



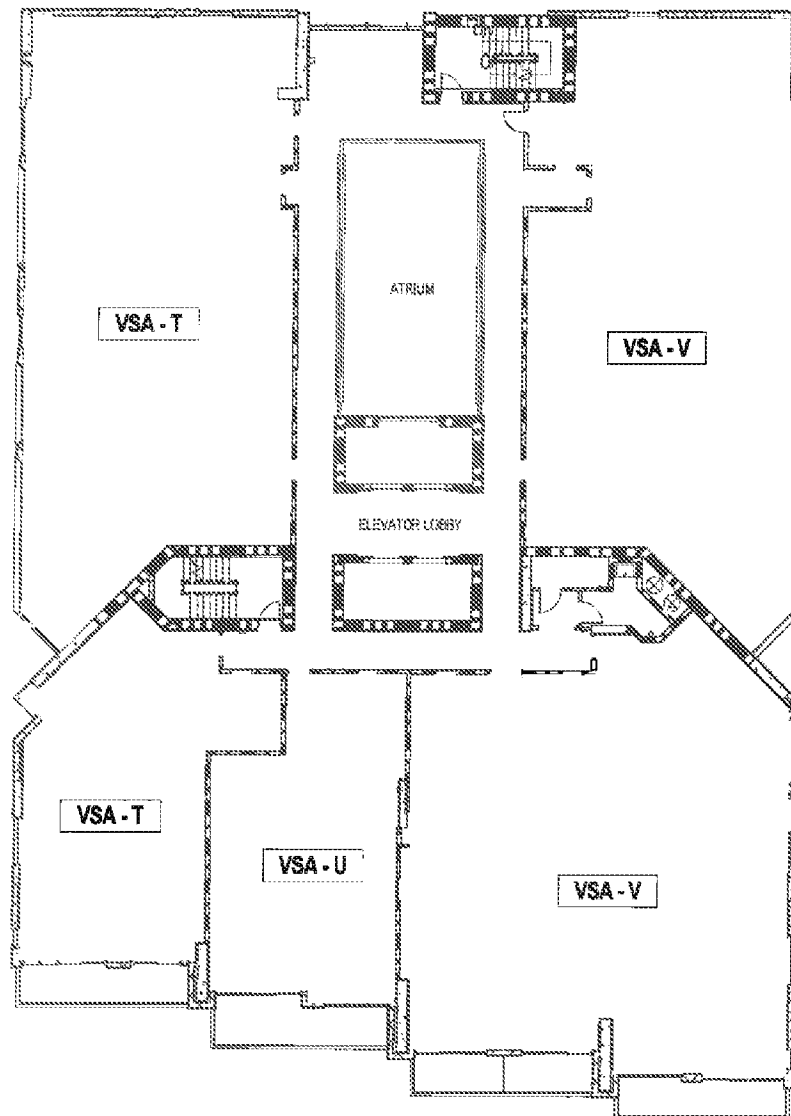
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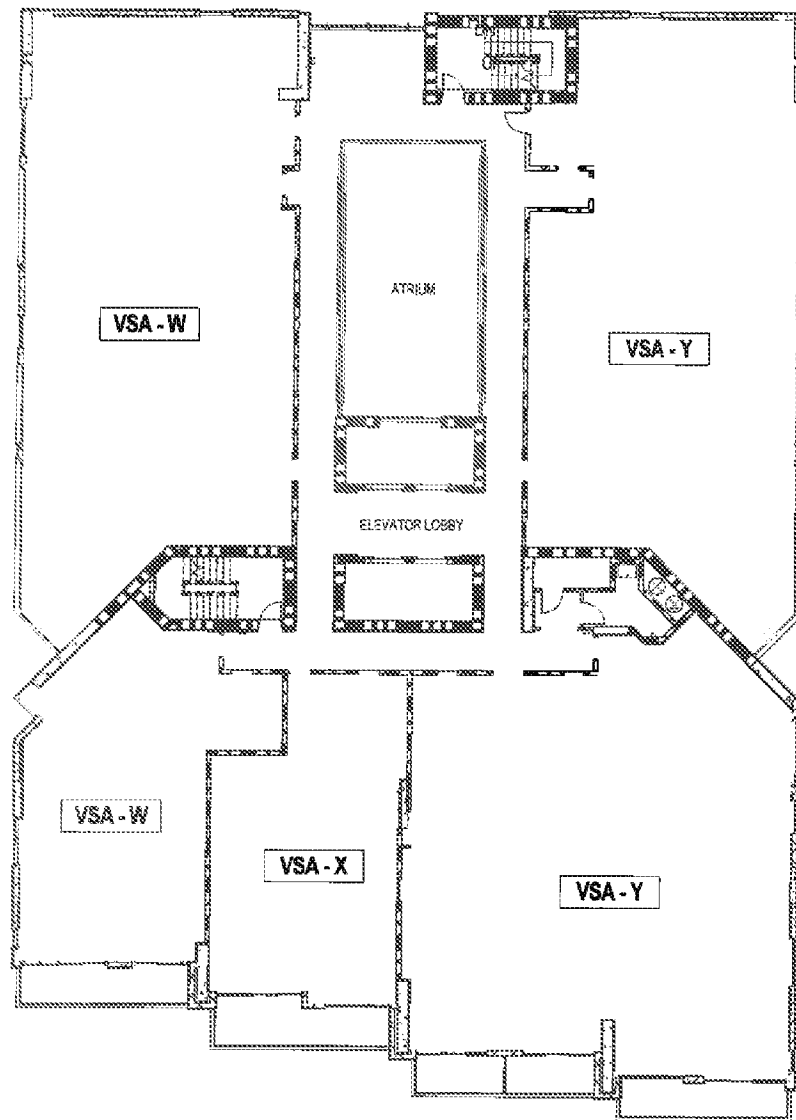
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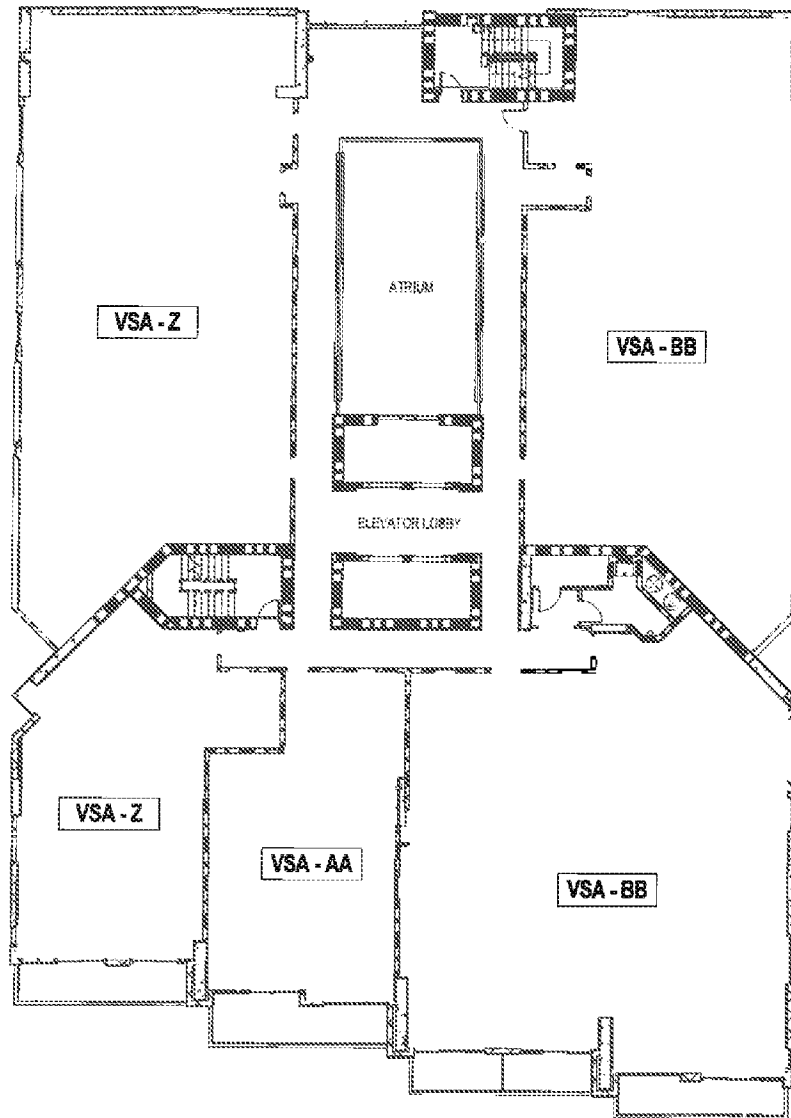
HGVC - LEVEL 9



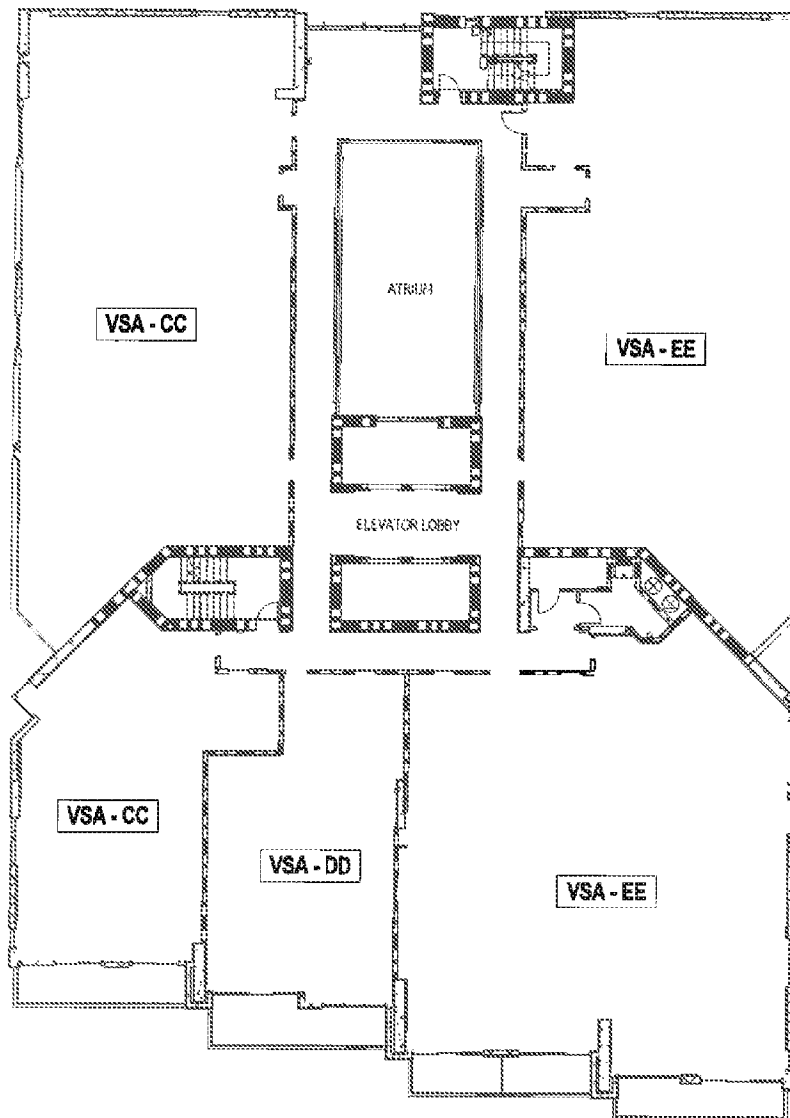
HGVC - LEVEL 10



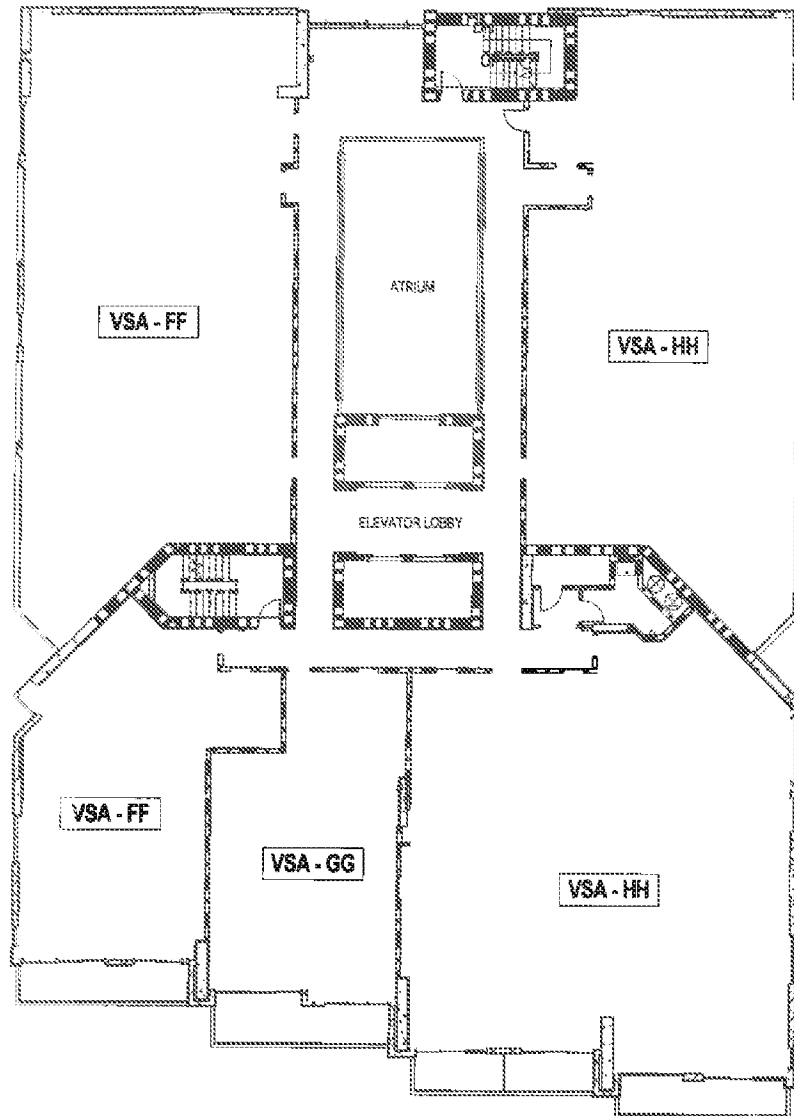
HGVC - LEVEL 11



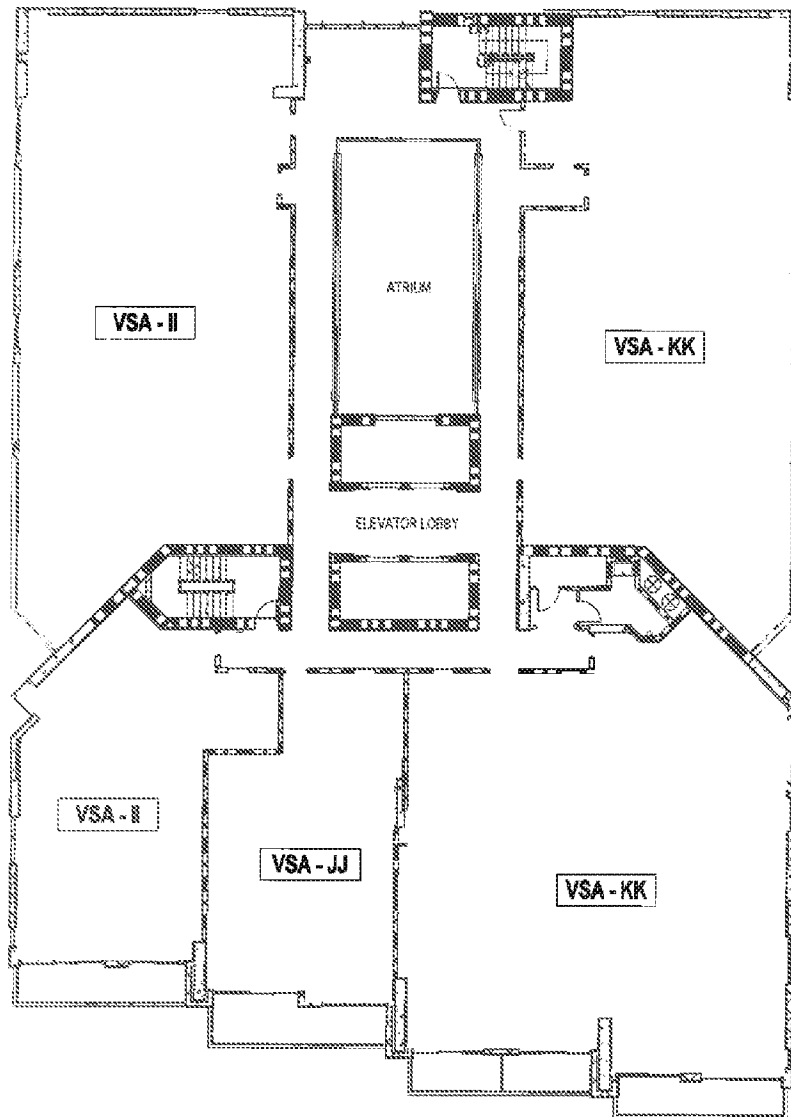
HGVC - LEVEL 12



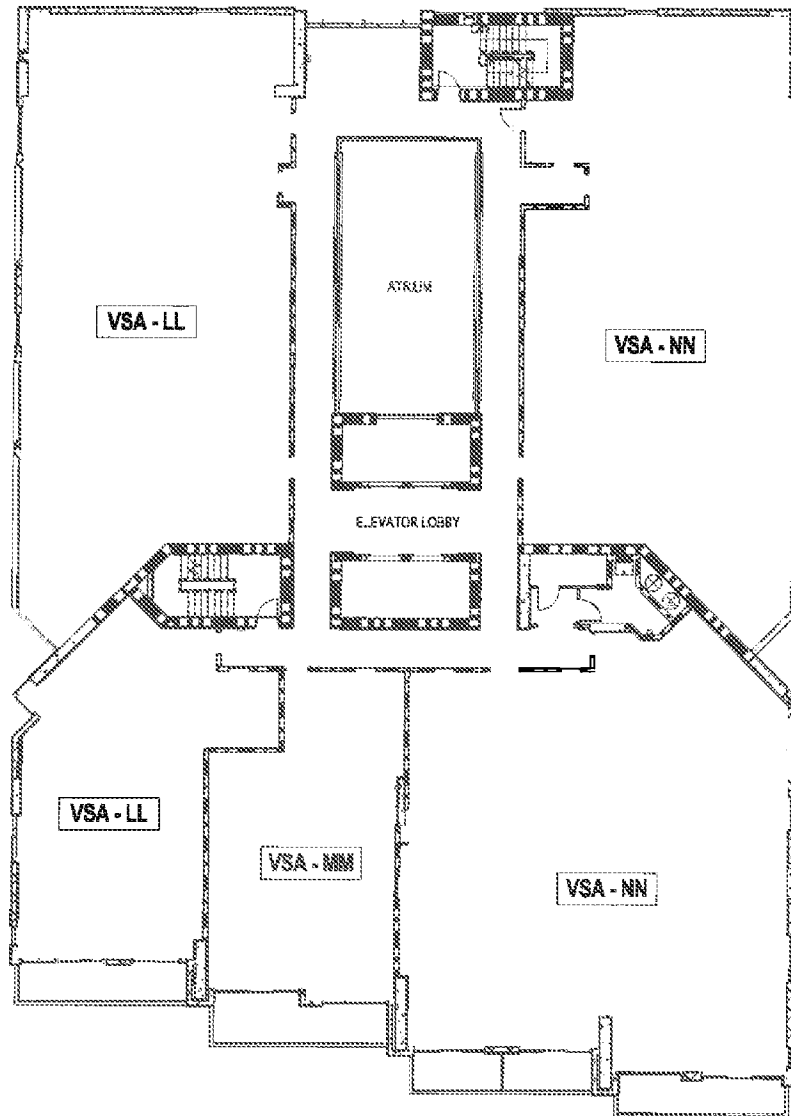
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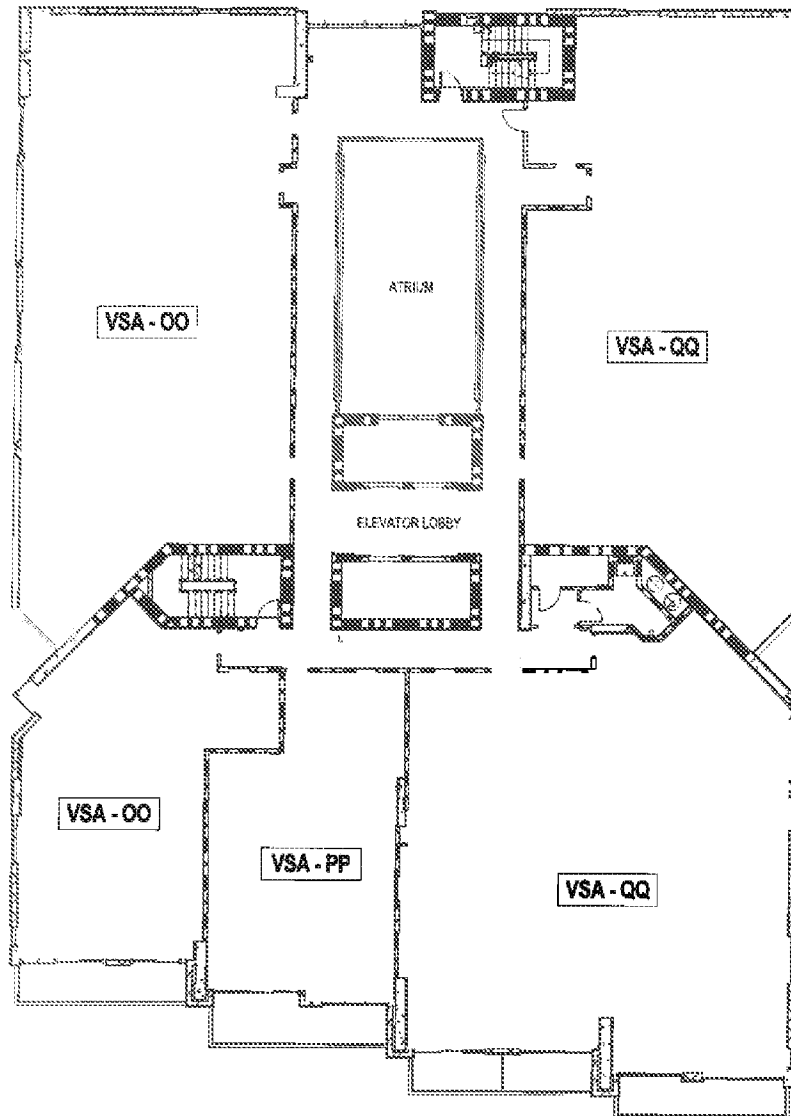
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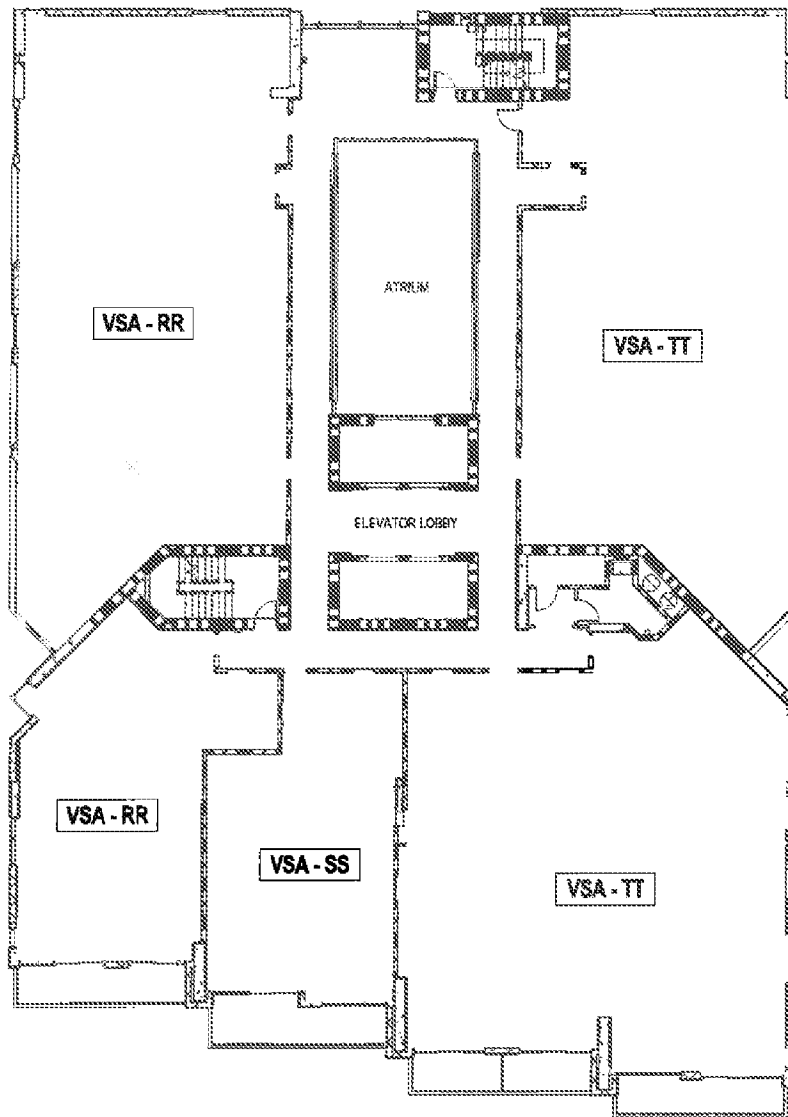
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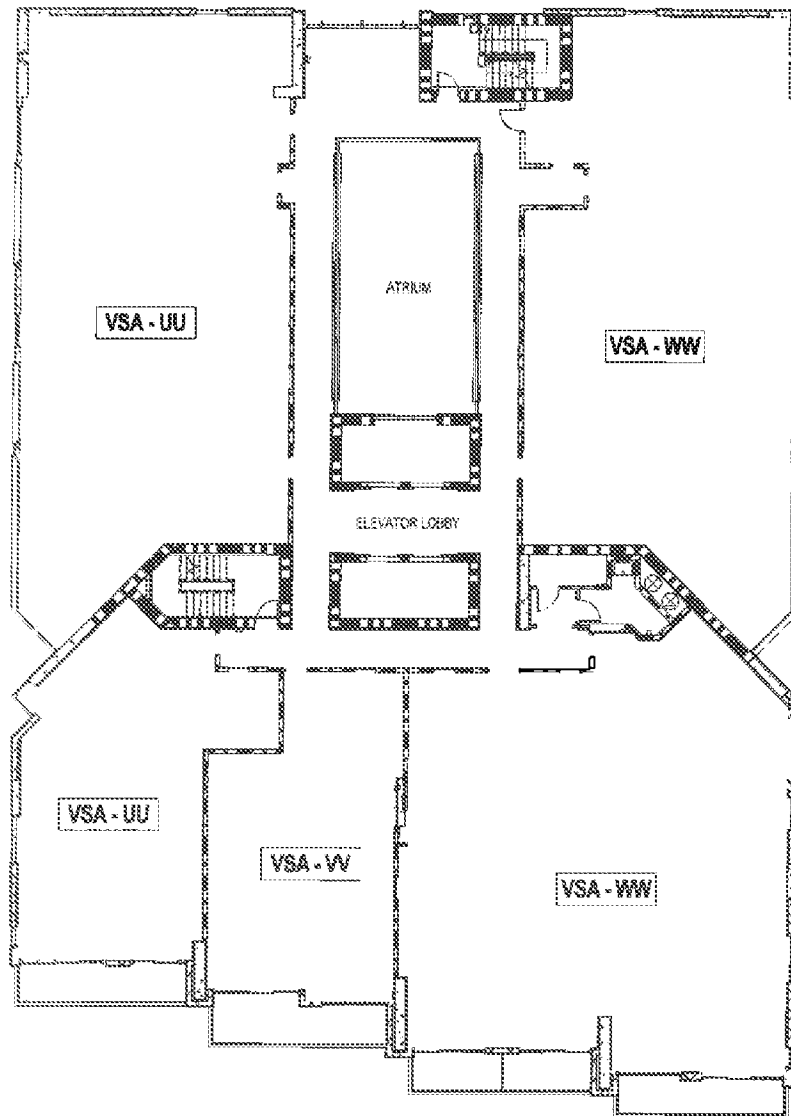
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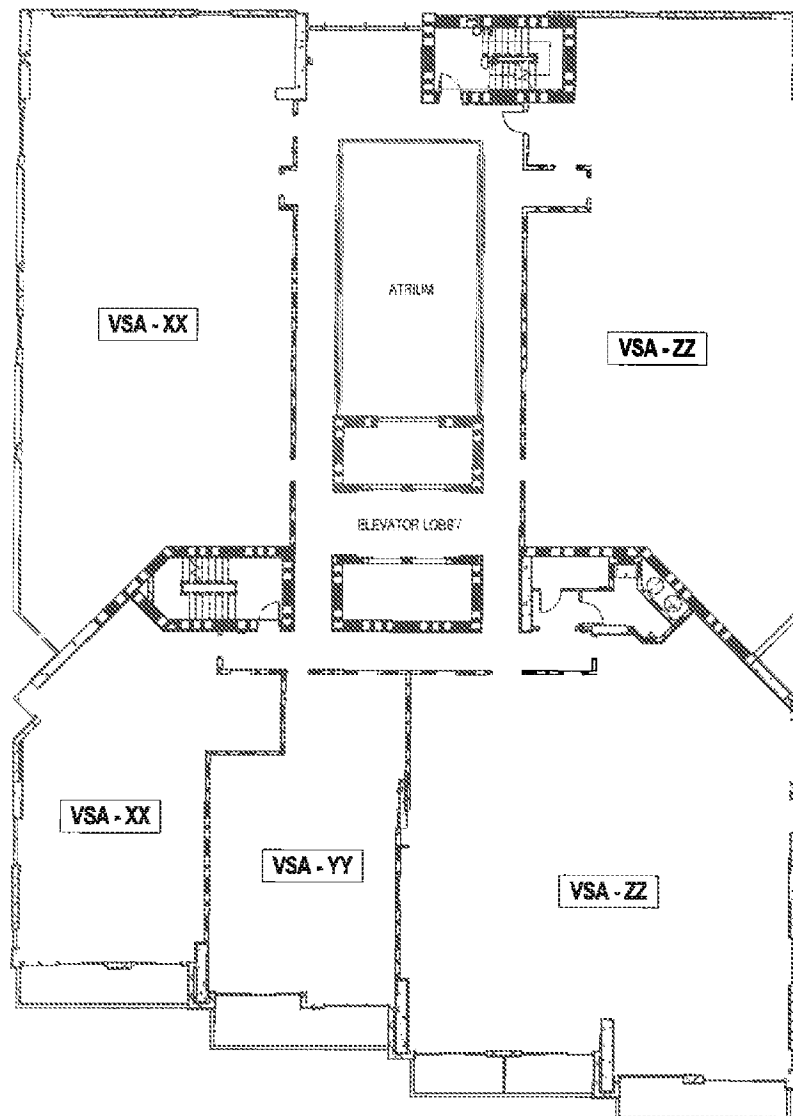
HGVC - LEVEL 18



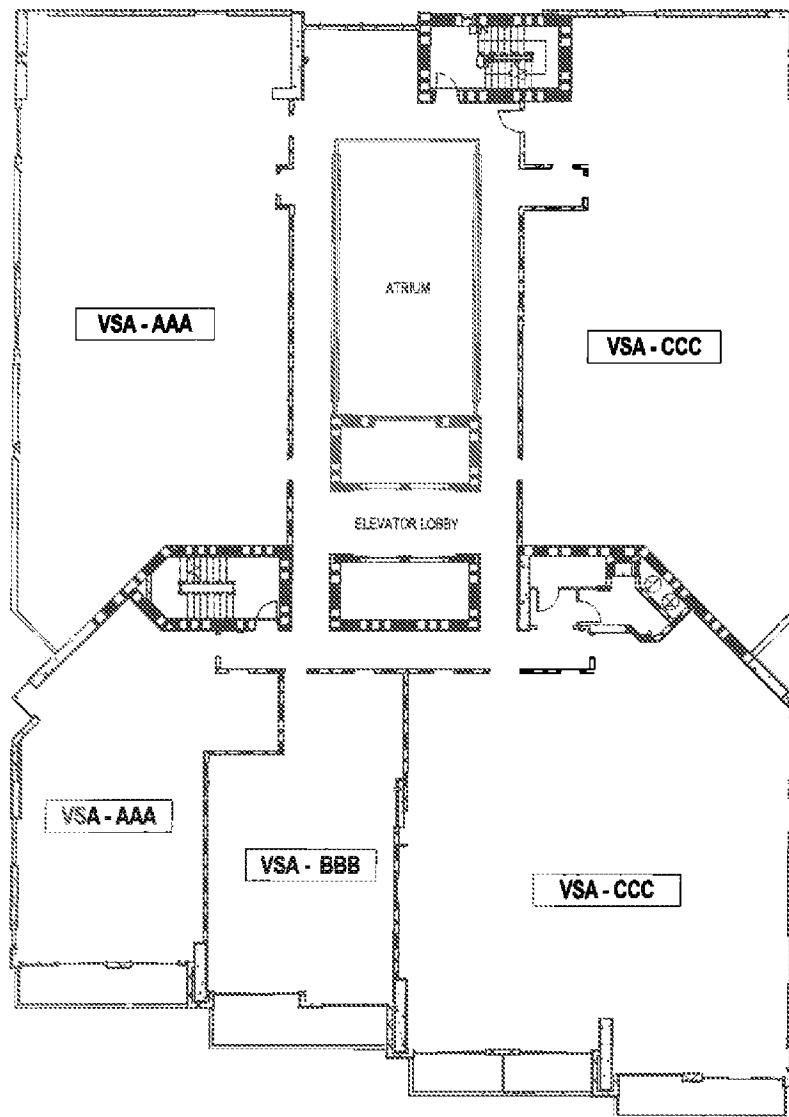
HGVC - LEVEL 19



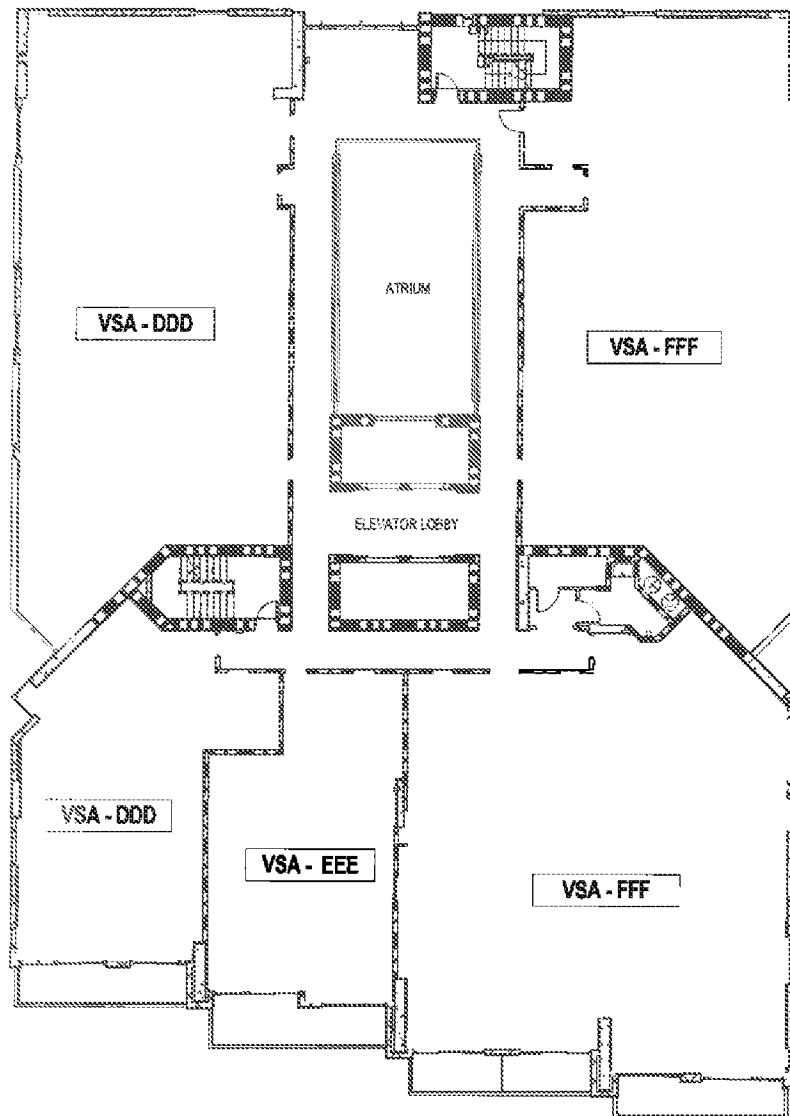
HGVC - LEVEL 20



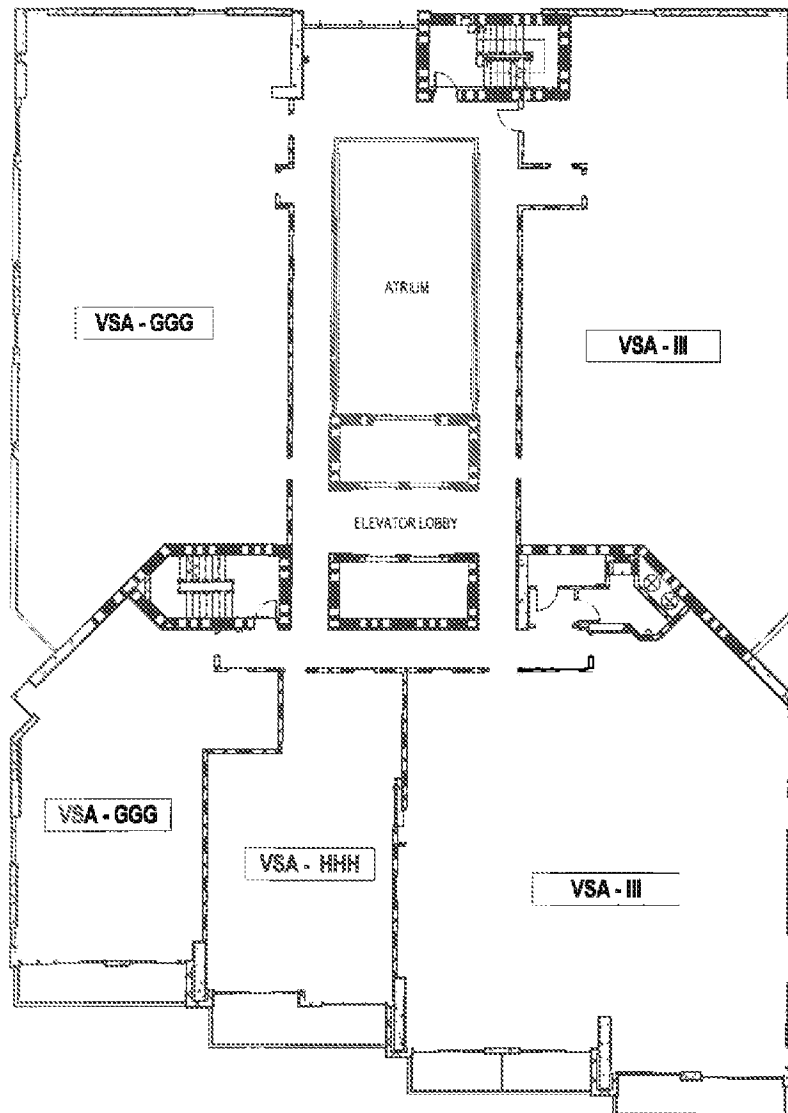
HGVC - LEVEL 21



HGVC - LEVEL 22



HGVC - LEVEL 23



HGVC - LEVEL 24

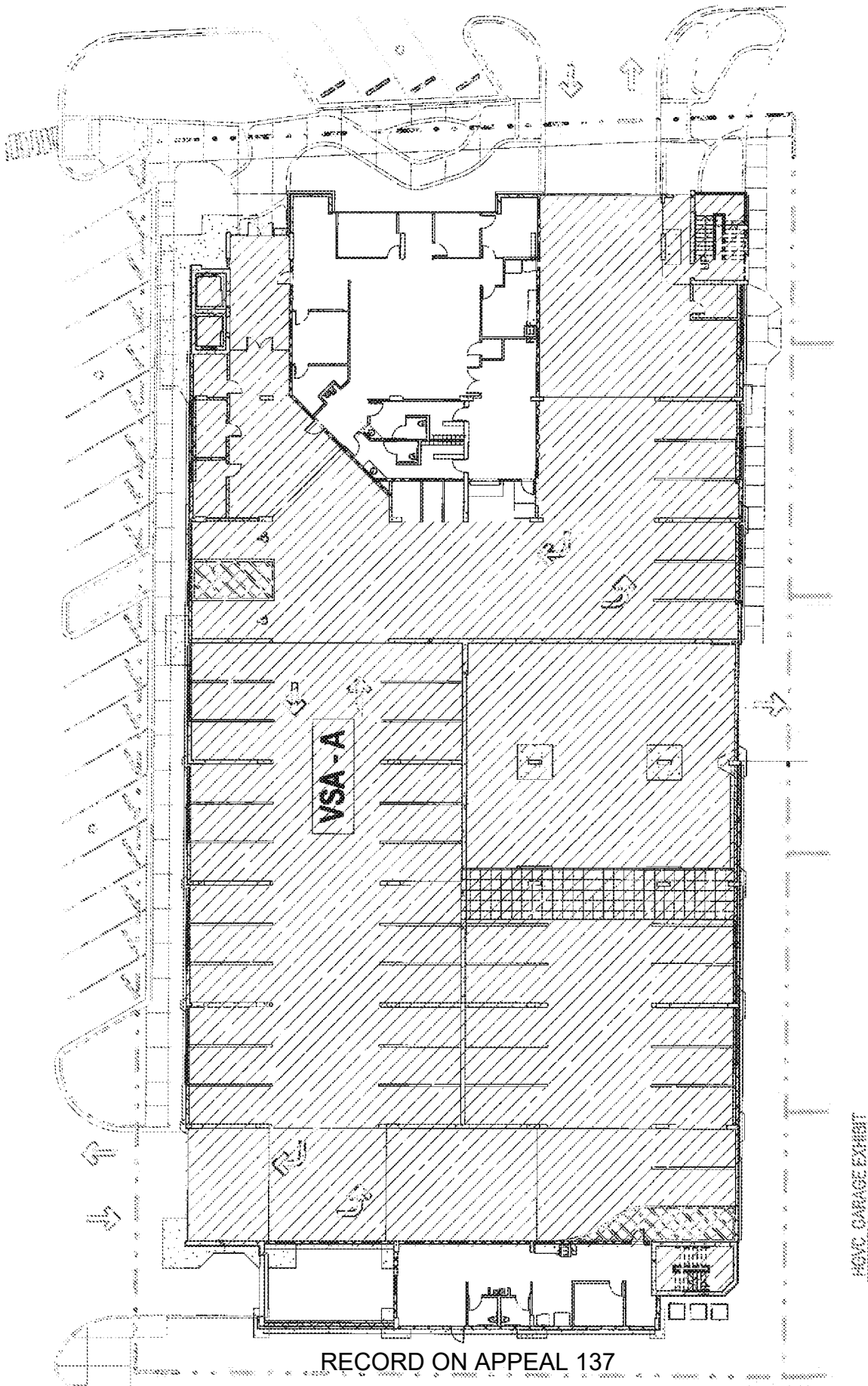


EXHIBIT B

PHASE I
PERCENTAGE UNDIVIDED OWNERSHIP INTEREST
BY SUITE CONFIGURATION

Suite Configuration	Percentage Undivided Ownership Interest (Annual Occupancy)	Percentage Undivided Ownership Interest (Biennial Occupancy)
One Bedroom	0.006364817294661970%	0.003182408647330990%
One Bedroom Plus	0.006364817294661970%	0.003182408647330990%
Two Bedroom	0.009639106506614060%	0.004819553253307030%
Two Bedroom Plus	0.009639106506614060%	0.004819553253307030%
Three Bedroom Plus	0.012186703980199200%	0.006093351990099620%

EXHIBIT B-1

**PHASE 1
VACATION OWNERS' AND VACATION SUPPORT OWNERS'
OWNERSHIP INTEREST PERCENTAGES IN THE PROJECT**

Suites / Vacation Support Area ("VSA")	Average Square Footage	Undivided Ownership Interest of Suites	Undivided Ownership Interest Percentage in the Project Based on Total Project Square Footage *
Phase 1 Declared Suites (including Common Area)	136,821	40.94%	27.78%
Phase 1 VSA Suites (VSA E – VSA ZZZ)	197,376	59.06%	40.07%
Total Suites (Declared and VSA)	334,197	100.00%	67.85%
Phase 1, VSA A: parking garage	155,812	N/A	31.64%
Phase 1, VSA B: deli	826	N/A	0.17%
Phase 1, VSA C: lobby bar	1,130	N/A	0.23%
Phase 1, VSA D: pool bar	548	N/A	0.11%
* Total Project Square Footage	492,513		100.00%

ELECTRONICALLY FILED - 2021 Oct 15 11:18 AM - HORRY - COMMON PLEAS - CASE#2021CP2605377

HORRY COUNTY REGISTER OF DEEDS TRANSMITTAL SHEET

****Retain the transmittal sheet as it is the first page of your filed instrument. The book/page number will be required for future related filings of satisfactions, partial releases, amendments, and other instruments related to this filing.****

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Amendment Deed Book

DATE OF INSTRUMENT: 04/04/2014

DOCUMENT SHALL BE RETURNED TO:

NAME: King Cunningham, LLC

ADDRESS:

1000 2nd. Avenue S., Suite 325

North Myrtle Beach, SC 29582

TELEPHONE: (843) 249-0777

FAX: (843) 249-0777

E-MAIL ADDRESS: jking@kingcunningham.com

Related Document(s): book **3717** , page **3380**

PURCHASE PRICE / MORTGAGE AMOUNT: \$

BRIEF PROPERTY DESCRIPTION: NA

TAX MAP NUMBER (TMS #) NA / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. OCEAN 22 DEVELOPMENT LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. OCEAN 22 VACATION SUITES

This instrument prepared by
and return to:

King Cunningham, LLC
1000 2nd Avenue South, Suite 325
North Myrtle Beach, SC 29582
Att: Jeffrey W. King, Esq.
(843) 249-0777

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT OF OCEAN 22 VACATION SUITES ("First Amendment") is made and executed by Ocean 22 Development, LLC, a South Carolina limited-liability company, ("Declarant"), and is intended to amend that certain Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites recorded on February 28, 2014, in Deed Book 3717, Page 3380, and re-recorded March 14, 2014, in Deed Book 3720, Page 2860, in the public records of Horry County, South Carolina (the "Declaration").

Pursuant to Section 21.3 of the Declaration, Declarant may amend the Declaration prior to transfers of any Ownership Interests in the Project. The Declarant desires to amend the Declaration to remove therefrom the Garage Parcel and replace said property with the parking easement referenced in the revised Exhibit A attached hereto, and remove the reference to the parking garage as a Vacation Support Area on Exhibit B-1

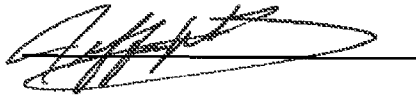
Exhibit A of the Declaration is hereby deleted in its entirety and replaced with the Exhibit A attached hereto, which exhibit sets forth the legal description of the real property subject to the Declaration.

Exhibit B-1 of the Declaration is hereby deleted in its entirety and replaced with the Exhibit B-1 attached hereto, which sets forth the ownership percentage interests in the Project for Vacation Owners and Vacation Support Owners.

All other provisions of the Declaration shall remain in full force and effect as previously set forth therein except as modified by this First Amendment to the Declaration.

IN WITNESS WHEREOF, Ocean 22 Development, LLC has caused these presents to be executed in
its behalf by its undersigned authorized officer this 4th day of April, 2014.

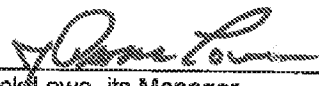
WITNESS:



OCEAN 22 DEVELOPMENT, LLC

By: Ocean 22 Holdings, LLC, a Delaware limited liability
Company, its Sole Member

By: SCG 2200, LLC, a South Carolina limited liability
Company, its Administrative Member

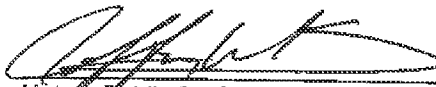
By: 
J. Patrick Lowe, its Manager

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

I, the undersigned notary, do hereby certify that the above subscribed Ocean 22 Development,
LLC, by Ocean 22 Holdings, LLC, its Sole Member, by SCG 2200, LLC, its Administrative Member, by J.
Patrick Lowe, its Manager, personally appeared before me this day and acknowledged the due execution
of the foregoing instrument.

Witness my hand and seal this 4th day of April, 2014.



Notary Public for South Carolina

My Commission Expires: 9/12/17

EXHIBIT A

**PHASE I
LEGAL DESCRIPTION, SITE PLAN, AND FLOOR PLANS**

Legal Description

Tower Parcel:

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly shown and described as "Parcel A, 22,200 sqft, 0.51 acres" on that certain Combination and Alley Relocation Plat of Parcel "A", Tax Parcels 181-04-18-003, 004 and 20' Alley prepared by Castles Consulting Engineers, Inc. dated August 29, 2013, and recorded October 21, 2013, in Plat Book 259, at Page 229, records of Horry County, South Carolina, said plat being incorporated herein for reference.

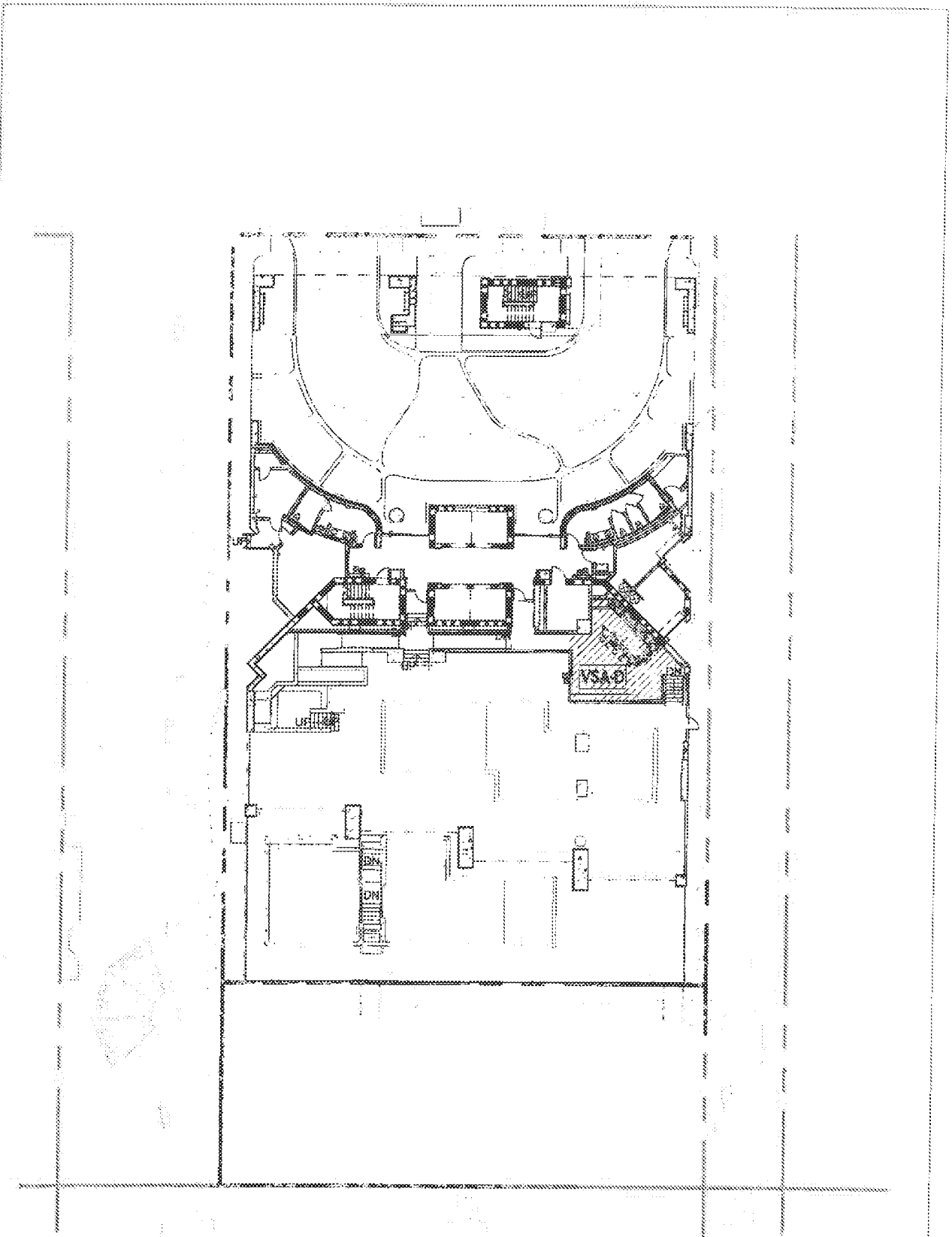
Parking Easement:

Rights and obligations pursuant to that certain Parking Easement Agreement by and between Declarant and the Association, having an effective date of February 28, 2014, whereby Declarant granted certain parking rights to the Association for the use and benefit of Vacation Owners and Vacation Support Owners.

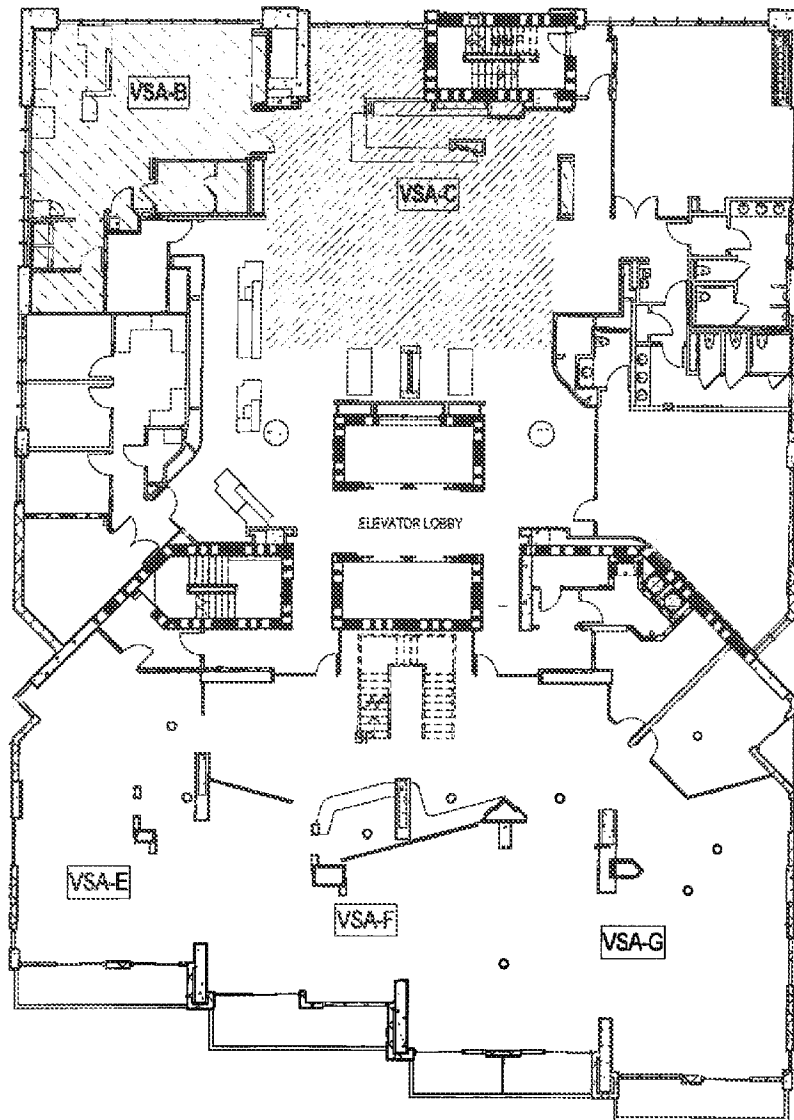
RESERVING, however, unto the Declarant, its successors and assigns, an easement over, under, through and across the Common Areas being herewith submitted for the purpose of the location and construction of buildings, Suites, Vacation Support Areas, Common Areas, additional parking facilities or other improvements which may be constructed by the GRANTOR, its successors and assigns, whether or not submitted as an additional phase or phases of Ocean 22 Vacation Suites, together with any and all easements incidental for the foregoing. GRANTOR further reserves the right to relocate existing parking facilities and to temporarily close parking, pool or other facilities during construction of such improvements. Provided, however, that GRANTOR must provide temporary or permanent parking or other facilities sufficient to meet all applicable governmental regulations required to maintain the uninterrupted operation and use of the Project. Specifically, without limitation, Declarant hereby reserves the right and all easements necessary or convenient to construct additional levels of parking upon the property subject to the Parking Easement, which additional parking shall be for the sole use of Declarant, its successors and assigns.

SUBJECT TO easements, covenants and restrictions of record.

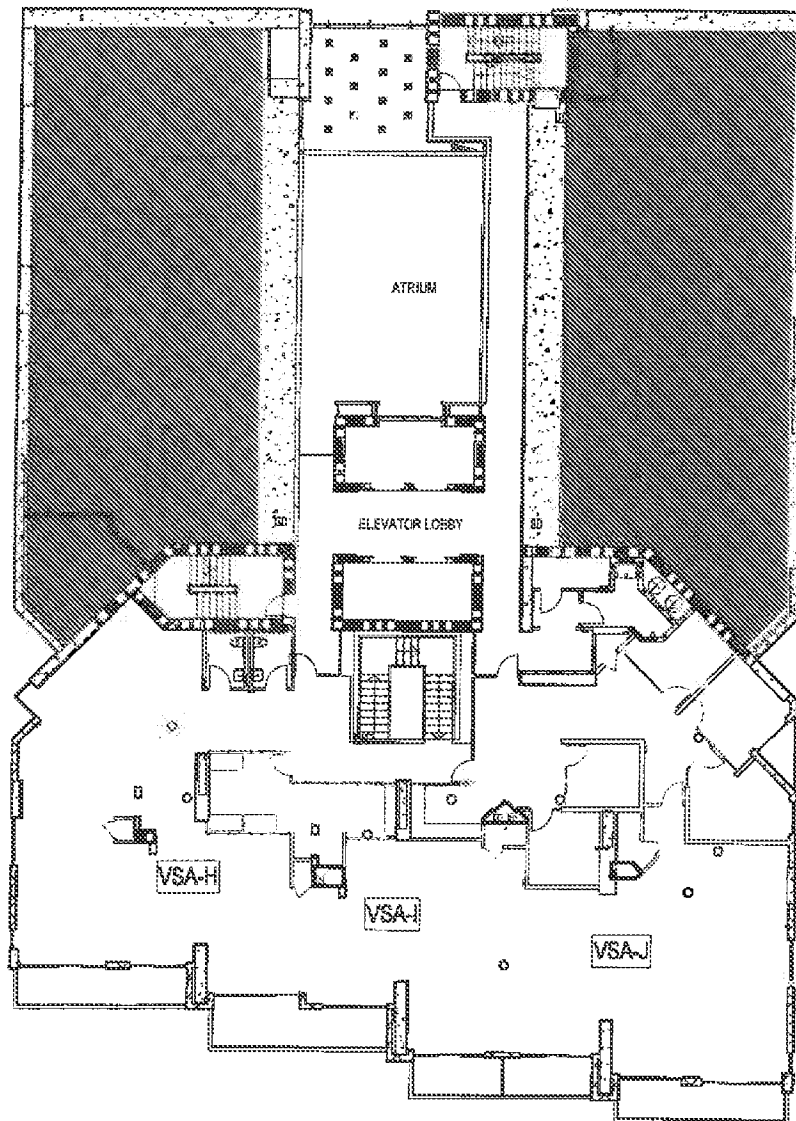
[ATTACH SITE PLAN AND FLOOR PLANS]



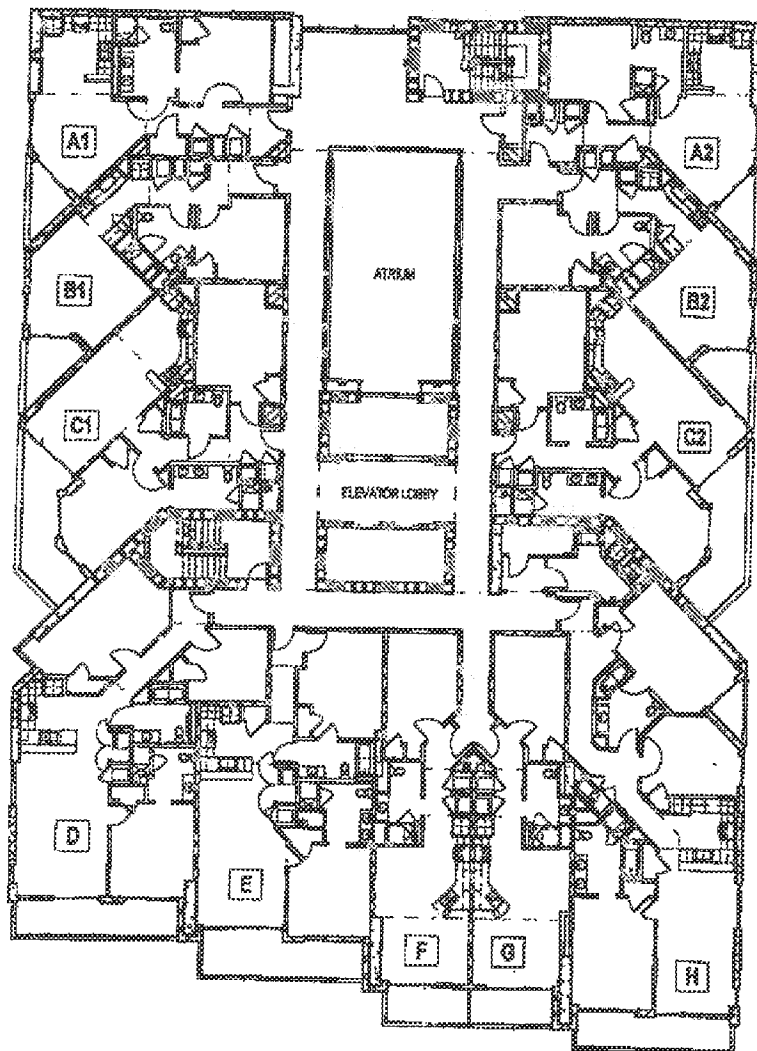
HGVC - GROUND LEVEL SITE PLAN



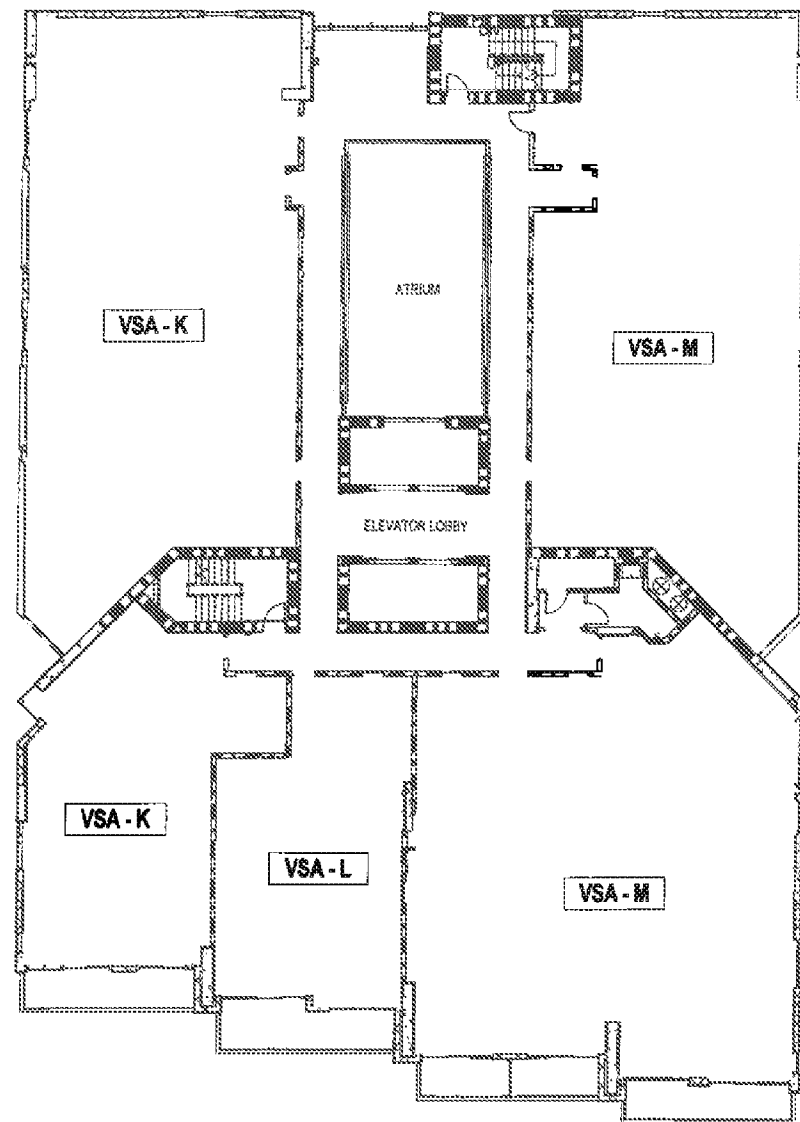
HGVC - LOBBY LEVEL



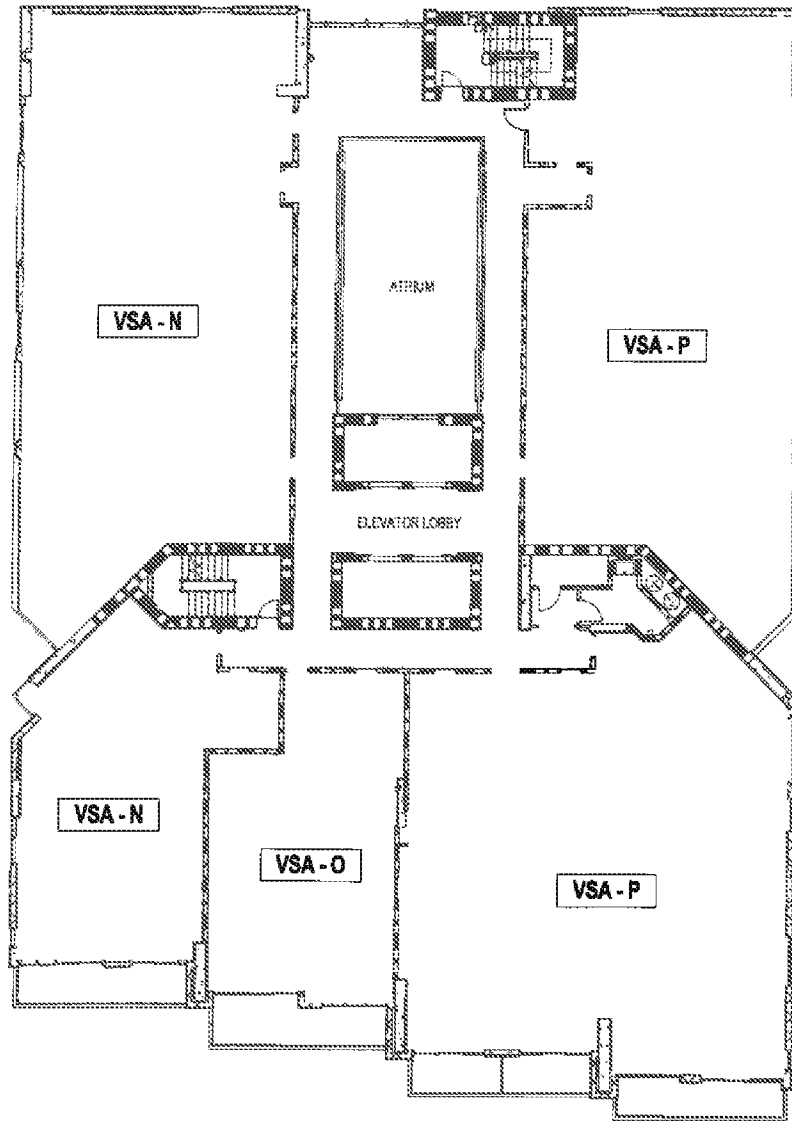
HGVC - MEZZANINE 3RD LEVEL



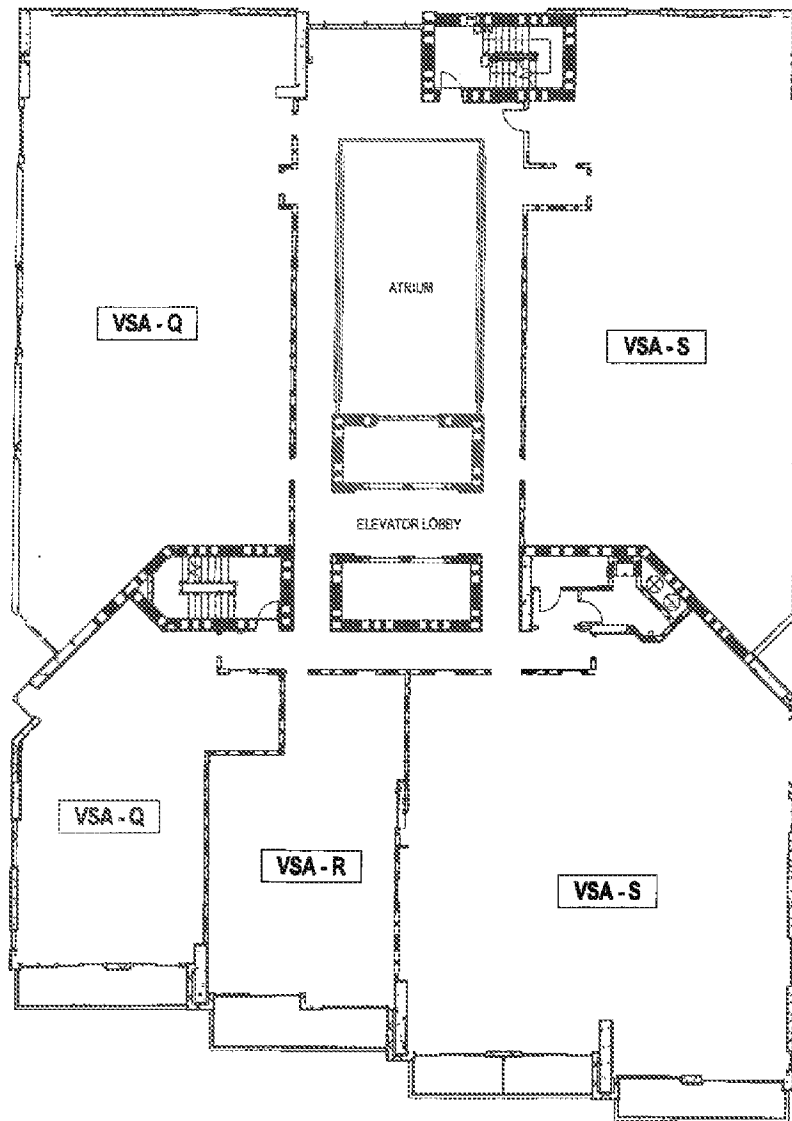
HGVC - LEVELS 4-6



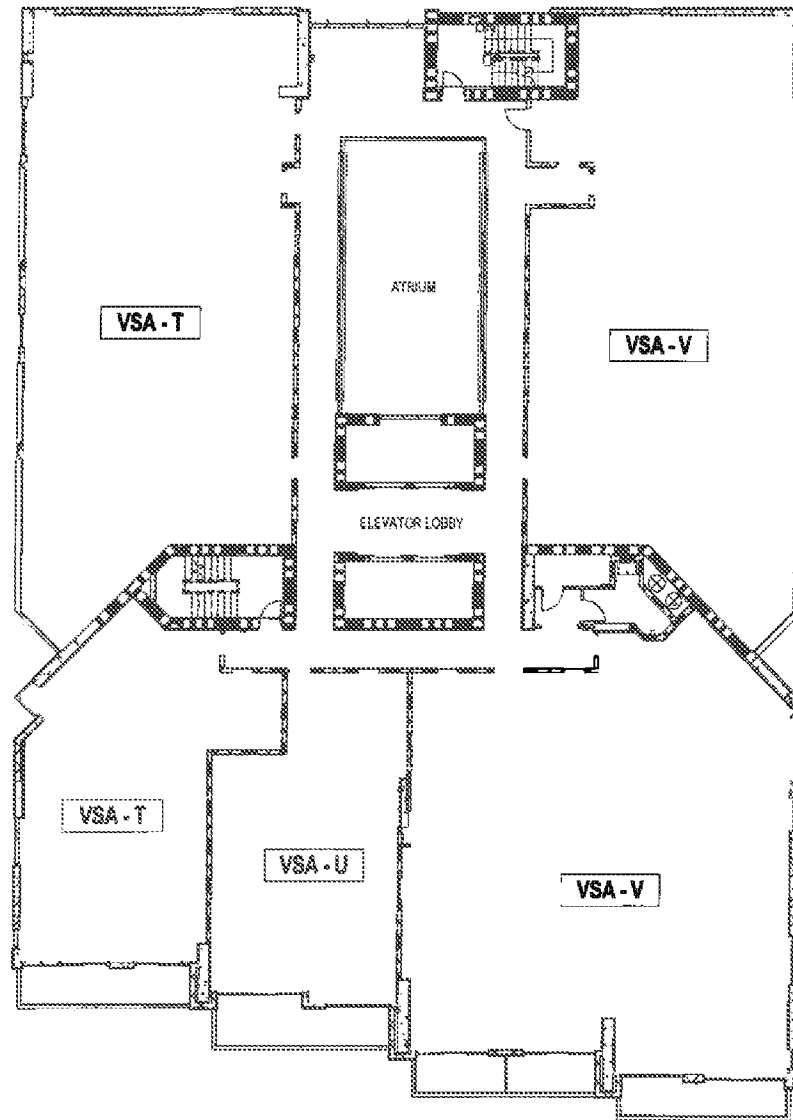
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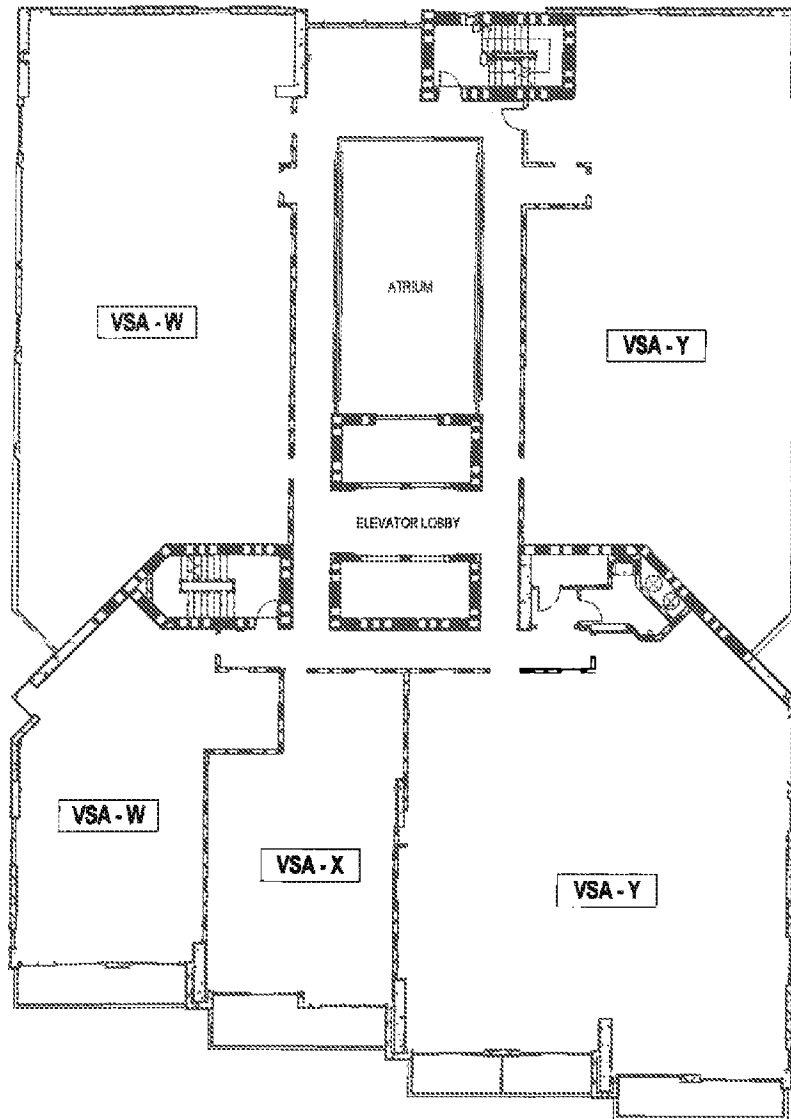
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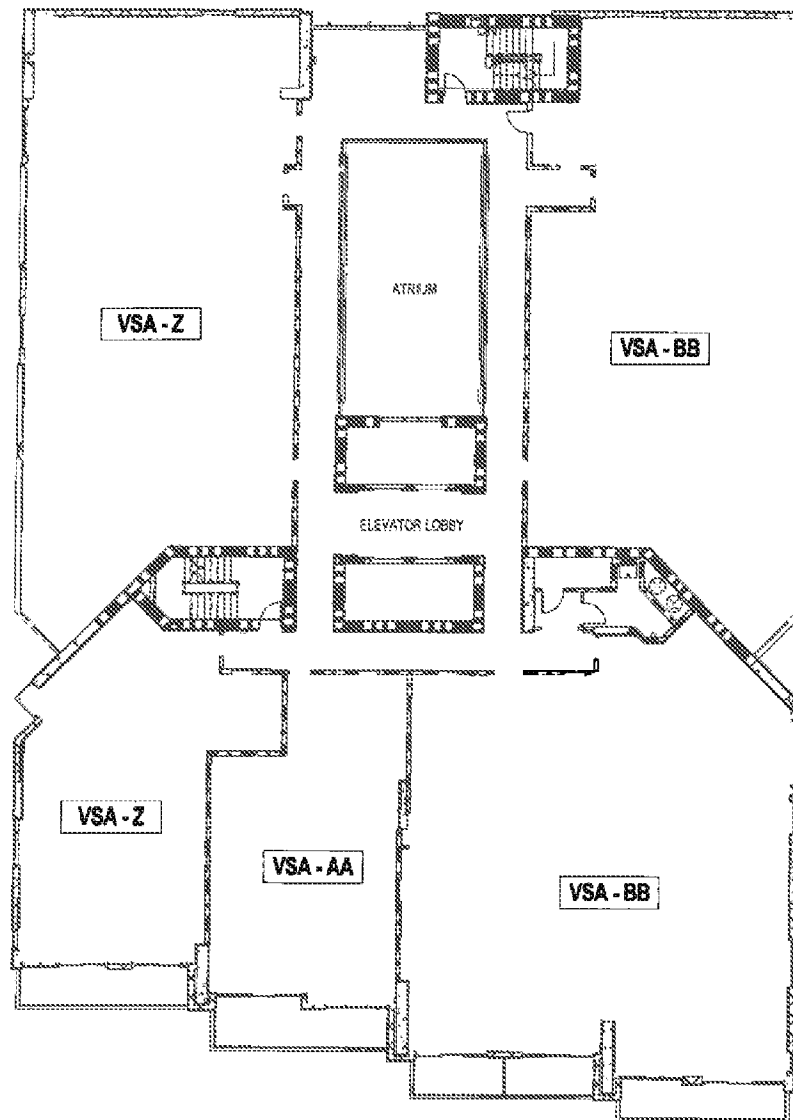
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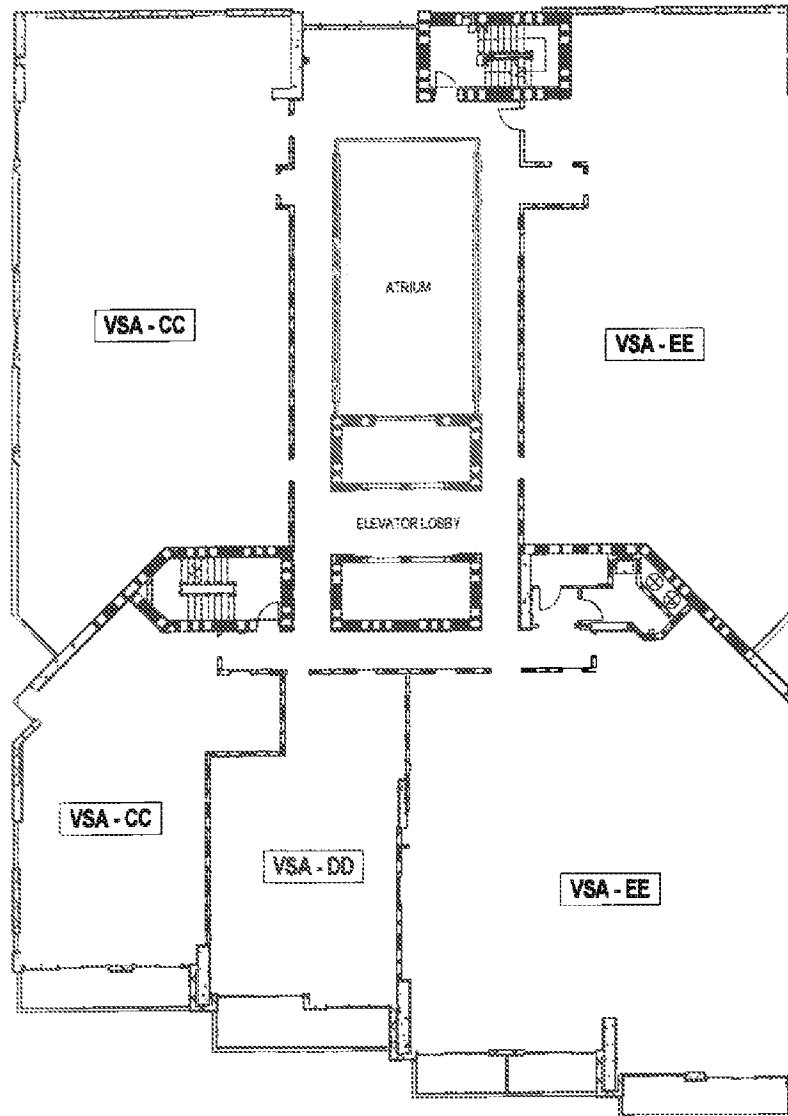
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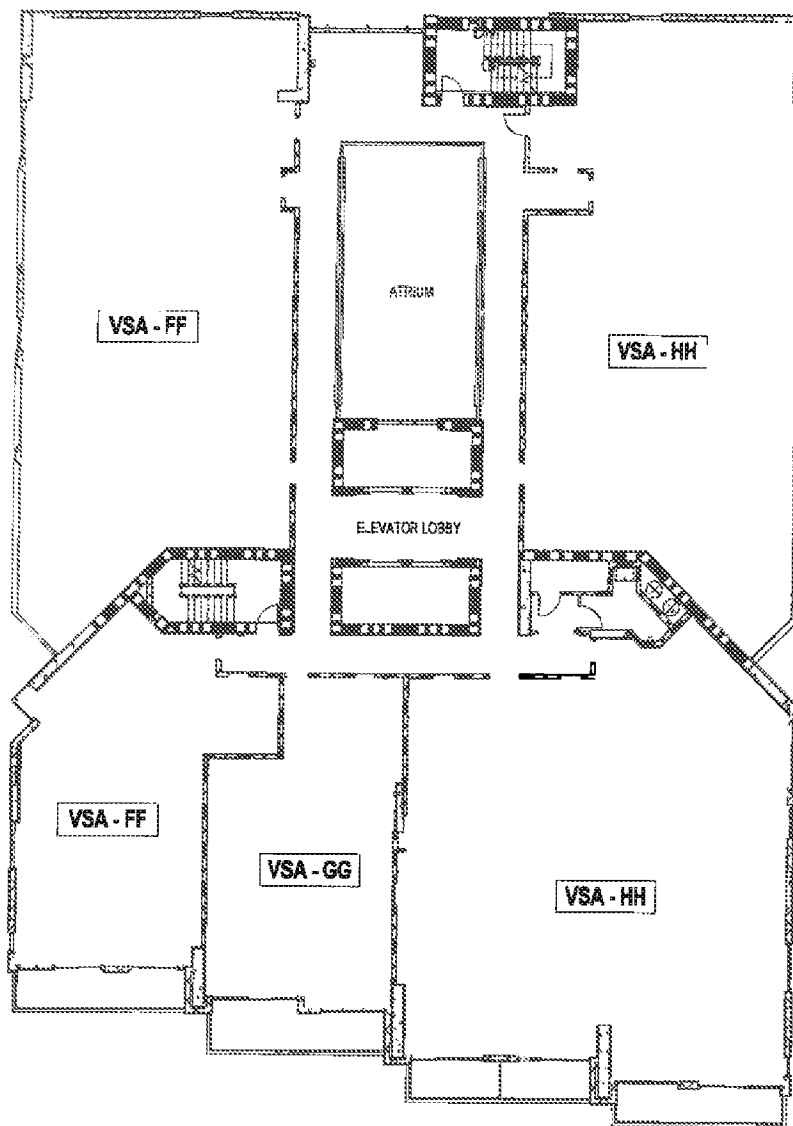
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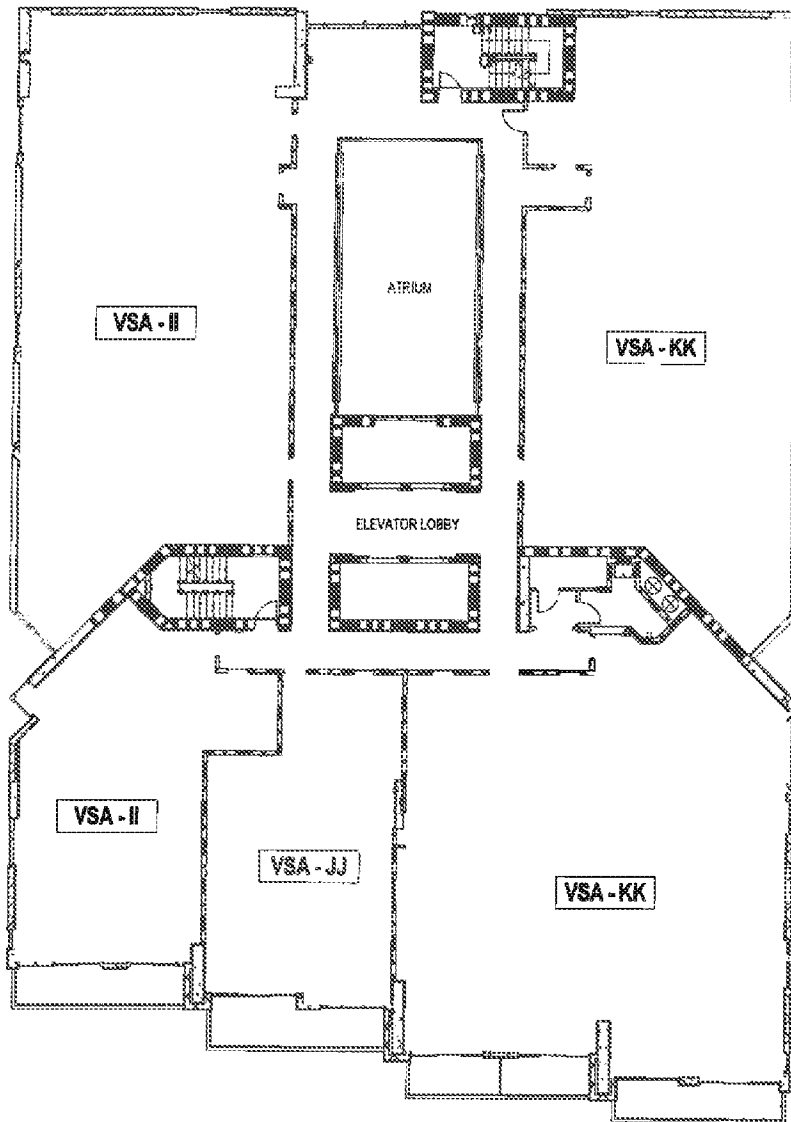
HGVC - LEVEL 12



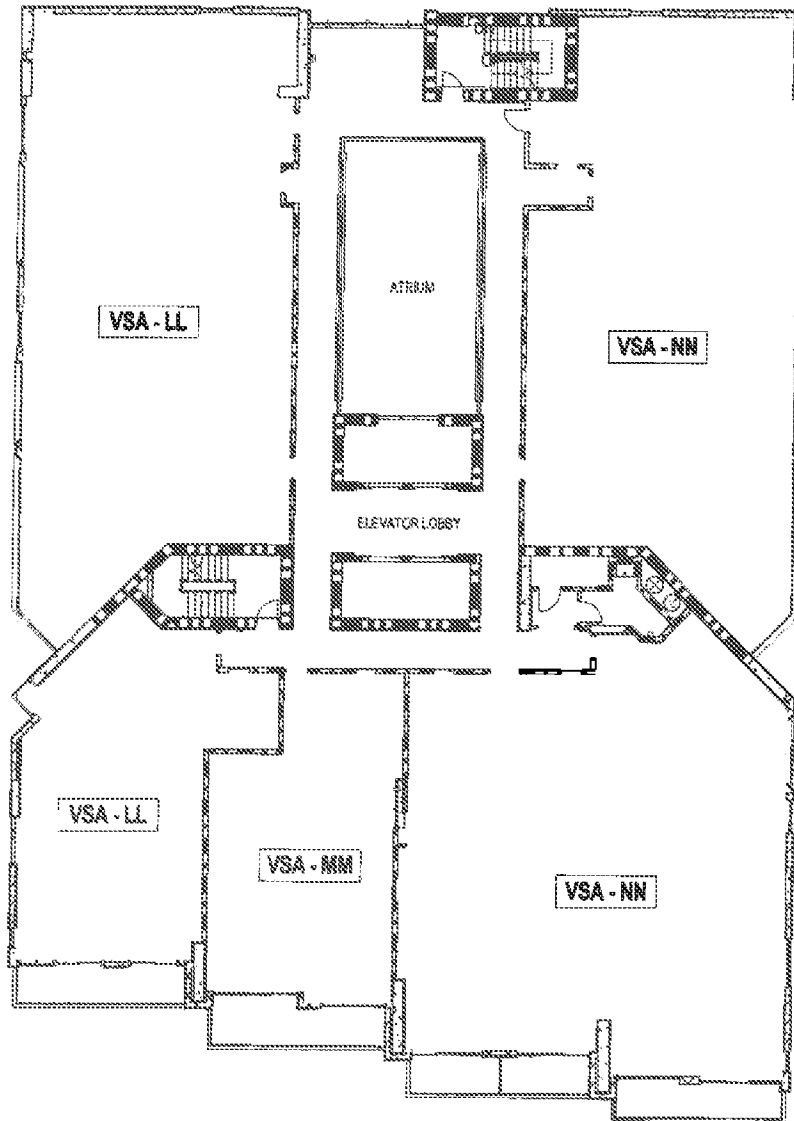
HGVC - LEVEL 14



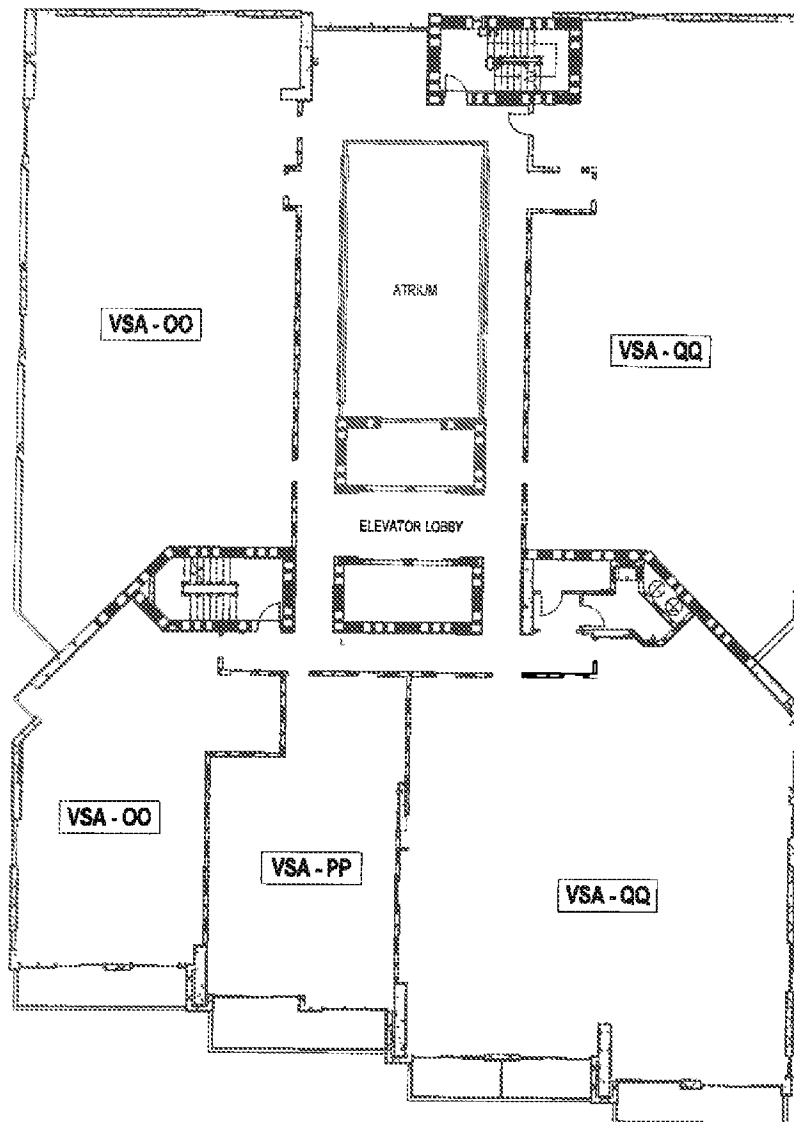
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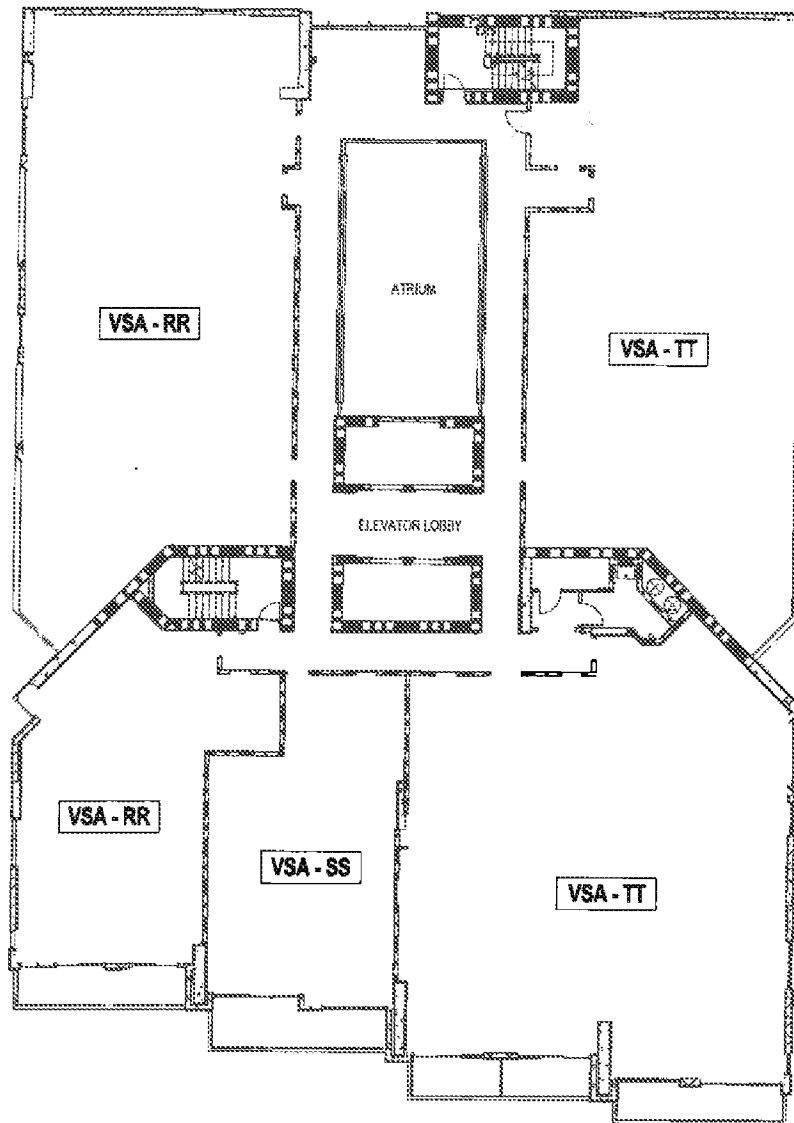
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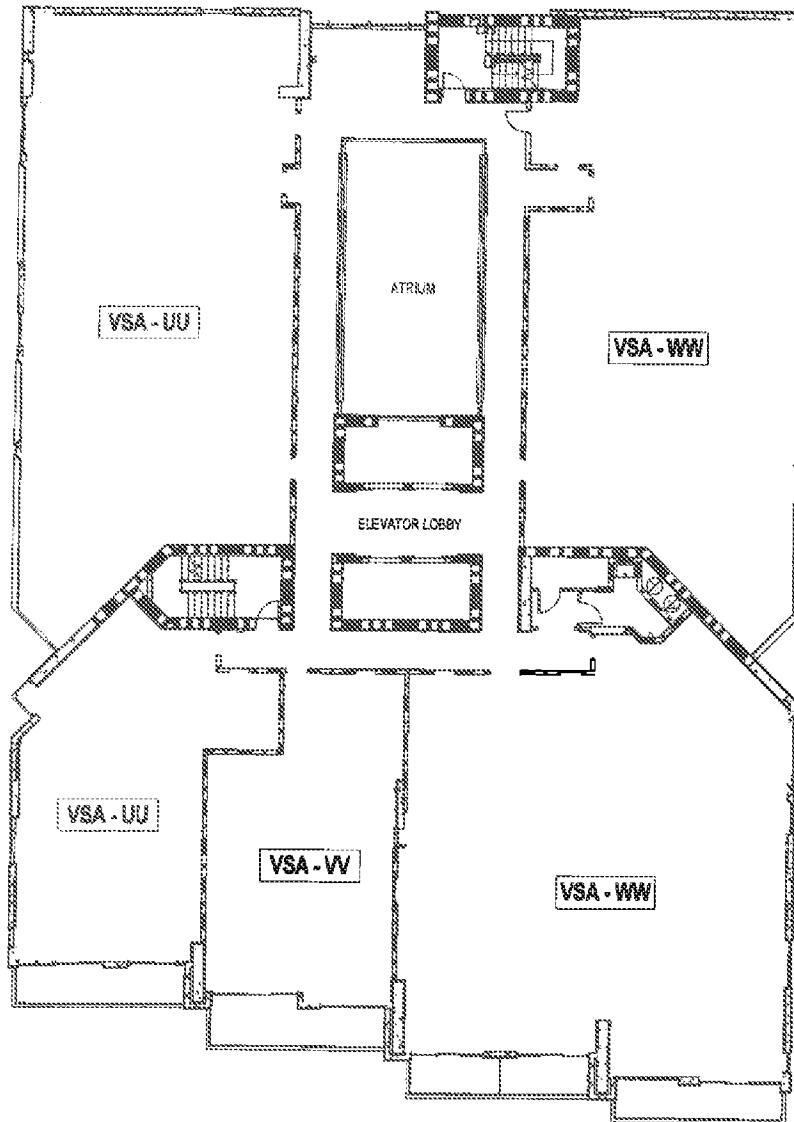
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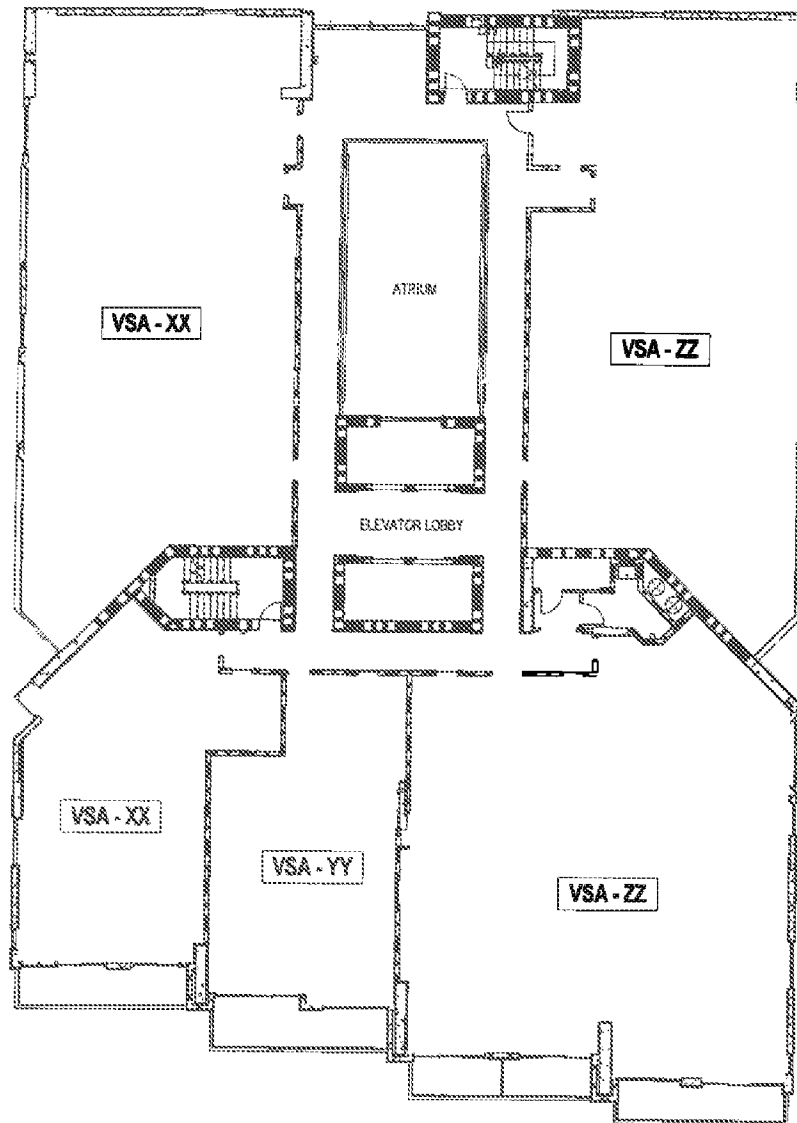
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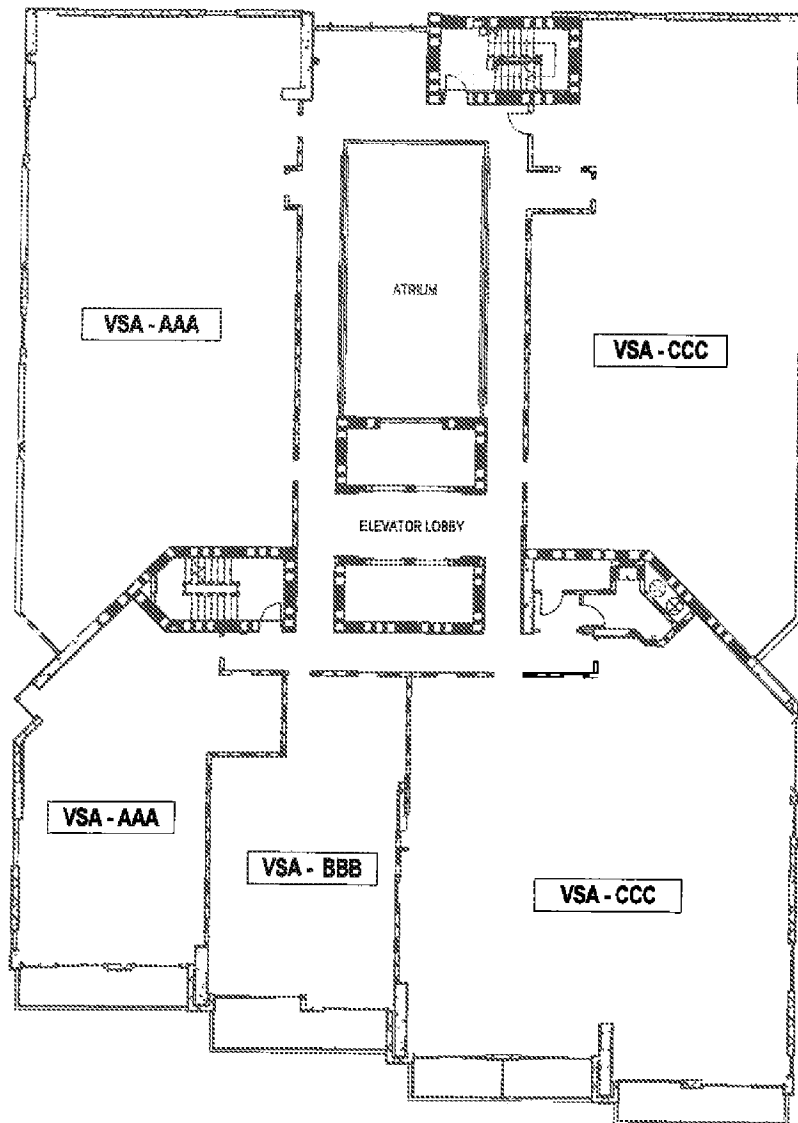
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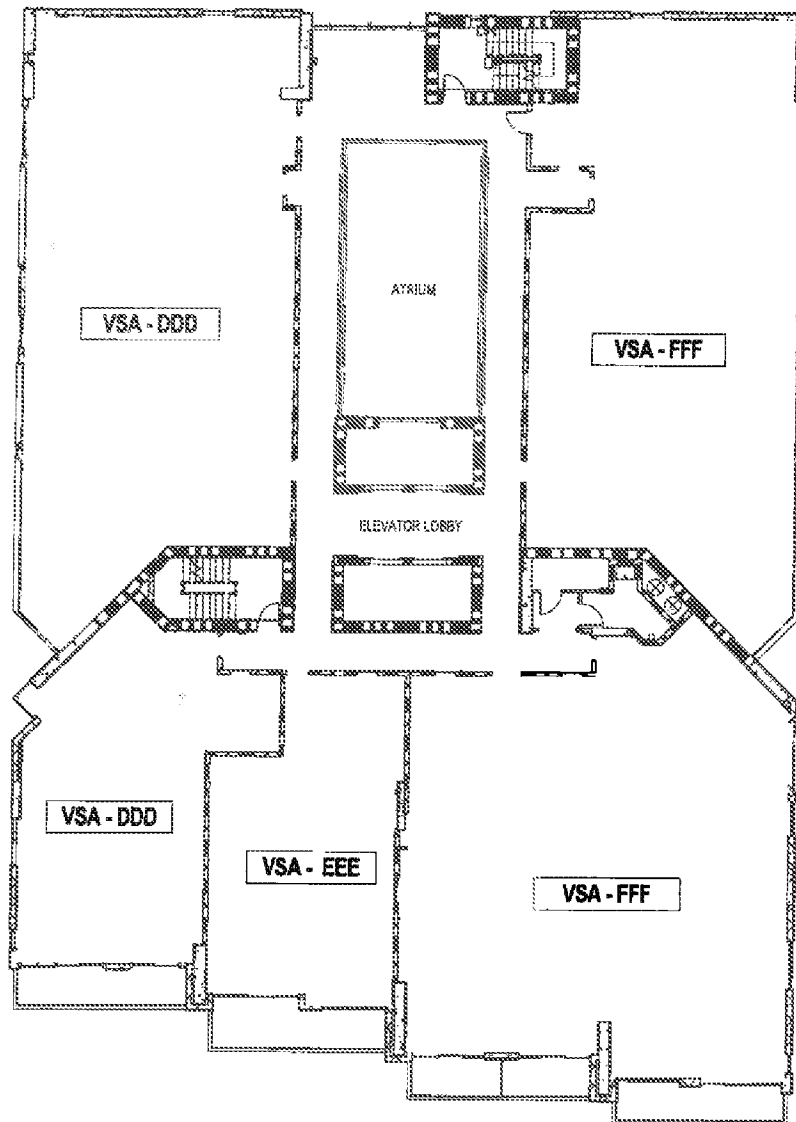
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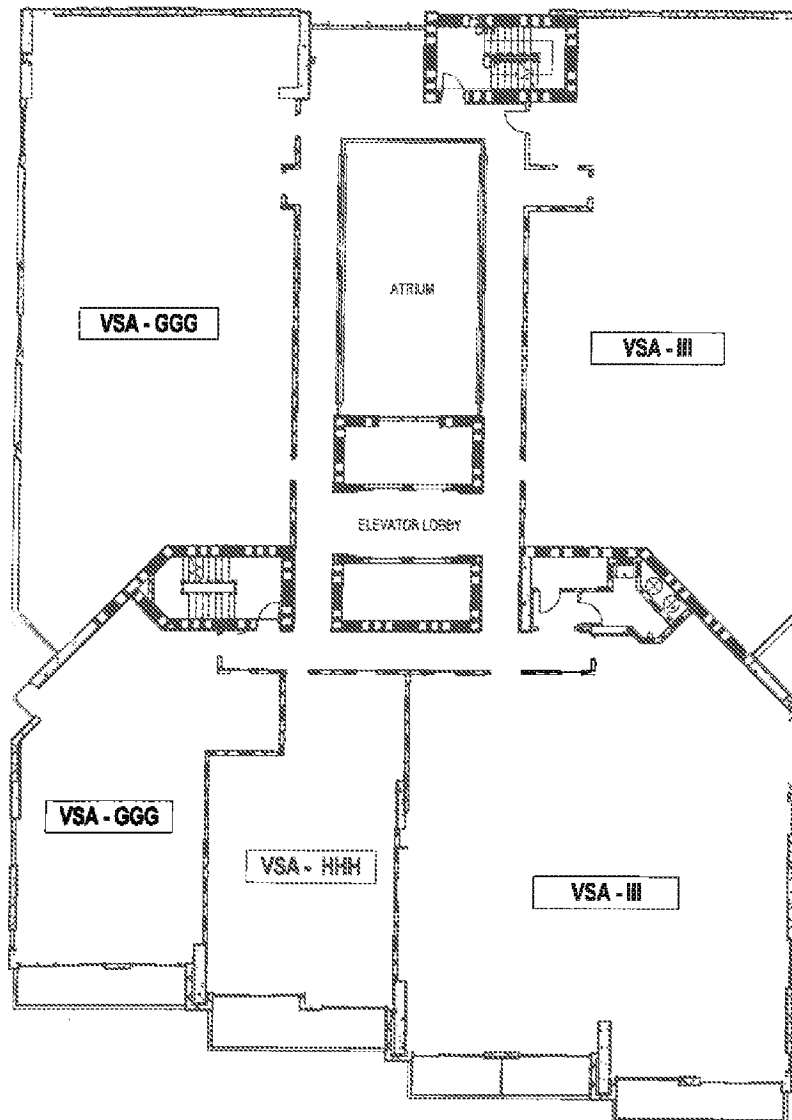
HGVC - LEVEL 21



HGVC - LEVEL 22



HGVC - LEVEL 23



HGVC - LEVEL 24

EXHIBIT B-1

PHASE I
VACATION OWNERS' AND VACATION SUPPORT OWNERS'
OWNERSHIP INTEREST PERCENTAGES IN THE PROJECT

Suites / Vacation Support Area ("VSA")	Average Square Footage	Undivided Ownership Interest of Suites	Undivided Ownership Interest Percentage in the Project Based on Total Project Square Footage *
Phase 1 Declared Suites (including Common Area)	136,821	40.94%	40.64%
Phase 1 VSA Suites (VSA E – VSA ZZZ)	197,376	59.06%	58.62%
Total Suites (Declared and VSA)	334,197	100.00%	99.26%
Phase 1, VSA B: deli	826	N/A	0.24%
Phase 1, VSA C: lobby bar	1,130	N/A	0.34%
Phase 1, VSA D: pool bar	548	N/A	0.16%
* Total Project Square Footage	336,701		100.00%

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HORRY COUNTY REGISTER OF DEEDS TRANSMITTAL SHEET

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**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Amendment Deed Book

DATE OF INSTRUMENT: 06/13/2014

DOCUMENT SHALL BE RETURNED TO:

NAME: King Cunningham, LLC

ADDRESS:

1000 2nd. Avenue S., Suite 325

North Myrtle Beach, SC 29582

TELEPHONE: (843) 249-0777

FAX: (843) 249-0777

E-MAIL ADDRESS: jking@kingcunningham.com

Related Document(s): book **3717** , page **3380**

PURCHASE PRICE / MORTGAGE AMOUNT: \$

BRIEF PROPERTY DESCRIPTION: NA

TAX MAP NUMBER (TMS #) NA / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. OCEAN 22 DEVELOPMENT LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. OCEAN 22 VACATIONS SUITES

This instrument prepared by
and return to:

King Cunningham, LLC
1000 2nd Avenue South, Suite 325
North Myrtle Beach, SC 29582
Att: Jeffrey W. King, Esq.
(843) 249-0777

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT OF OCEAN 22 VACATION SUITES ("Second Amendment") is made and executed by Ocean 22 Development, LLC, a South Carolina limited-liability company, ("Declarant"), and is intended to amend that certain Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites (the "Declaration") recorded on February 28, 2014 in the Deed Book 3717, Page 3380, and re-recorded March 14, 2014, in Deed Book 3720, Page 2860, as amended by First Amendment to Declaration recorded April 17, 2014, in Deed Book 3727, Page 2787, in the public records of Horry County, South Carolina (the "Declaration").

Pursuant to Section 5.6 of the Declaration, Declarant has reserved the Option to Convert Vacation Support Areas in the Project without the prior consent of the Owners of the Association, and by this Second Amendment to the Declaration Declarant desires to exercise that Option to Convert by converting the Vacation Support Area on Level 7 of Phase 1 into additional Suites as described on Exhibit "A" attached hereto. Such improvements include eleven (11) Suites, (572 Vacation Ownership Interests) consisting of four (4) one-bedroom Suites, two (2) one-bedroom plus Suites, two (2) two-bedroom Suites, one (1) two-bedroom plus Suites, and two (2) three-bedroom plus Suites.

With the filing of this Second Amendment the Project will consist of forty-four (44) Suites comprised of sixteen (16) one-bedroom Suites, eight (8) one-bedroom plus Suites, eight (8) two-bedroom Suites, four (4) two-bedroom plus Suites, and eight (8) three-bedroom plus Suites. The average square footage of the one bedroom Suites is approximately 762 square feet, the average square footage of the two bedroom Suites is approximately 1,154 square feet, and the average square footage of the three bedroom Suites is approximately 1,459 square feet.

Level 7 of Exhibit "A" of the Declaration is hereby replaced with Exhibit "A" attached hereto, which exhibit sets forth the floor plan of the additional Suites declared by this Second Amendment to the Declaration.

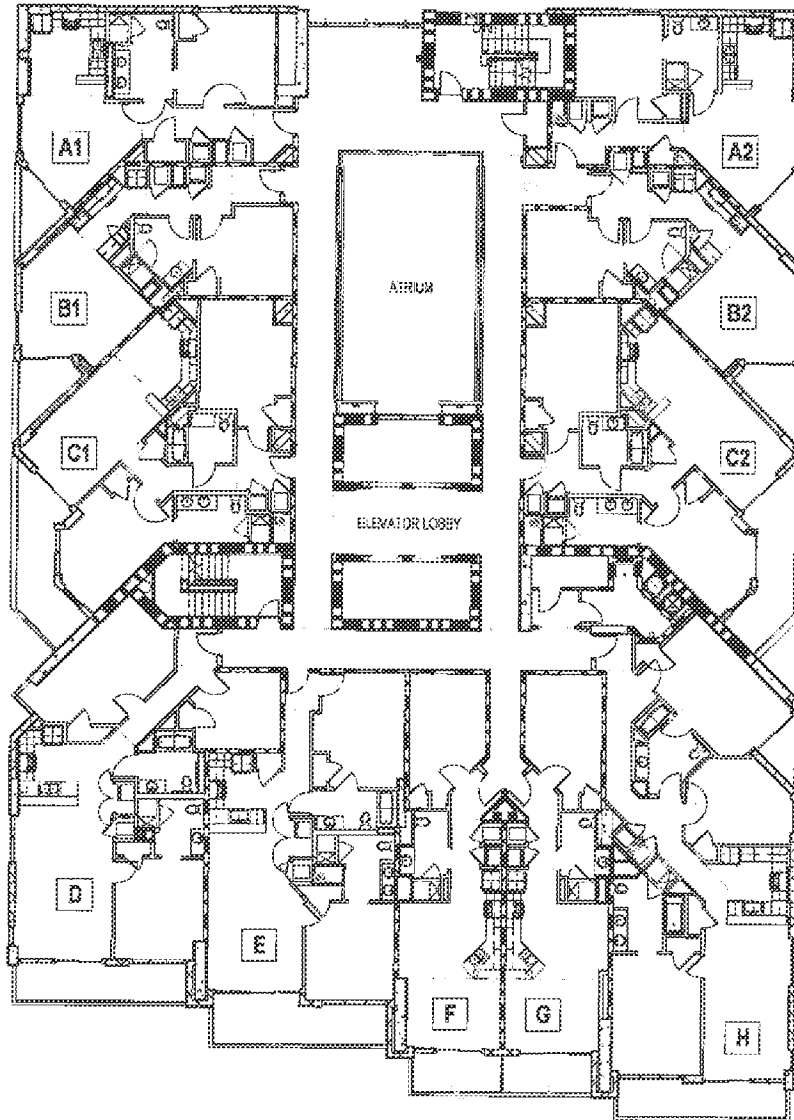
Exhibit "B-1" of the Declaration is hereby replaced with Exhibit B-1 attached hereto, which clarifies Owners' total undivided interest in the Project as a whole, including that portion attributable to the Vacation Support Areas currently owned by the Declarant as the result of converting portions of the Vacation Support Area in Phase 1 into additional Suites.

All other provisions of the Declaration shall remain in full force and effect as originally set forth therein except as modified by this Second Amendment to the Declaration.

{OR037152.DOC; 1}

RECORD ON APPEAL 168

"EXHIBIT - A"



HGVC - LEVEL 7

EXHIBIT B-I

VACATION OWNERS' AND VACATION SUPPORT OWNERS'
OWNERSHIP INTEREST PERCENTAGES IN THE PROJECT

Suites / Vacation Support Area ("VSA")	Average Square Footage	Undivided Ownership Interest of Suites	Undivided Ownership Interest Percentage in the Project Based on Total Project Square Footage*
Phase 1 Declared Suites (including Common Area)	147,773	44.22%	43.89%
Phase 1 VSA Suites (VSA E – J and VSA N - III)	186,424	55.78%	55.37%
Total Suites (Declared and VSA)	334,197	100.00%	99.26%
Phase 1, VSA B: deli	826	N/A	0.24%
Phase 1, VSA C: lobby bar	1,130	N/A	0.34%
Phase 1, VSA D: pool bar	548	N/A	0.16%
* Total Project Square Footage	336,701		100.00%

HORRY COUNTY REGISTER OF DEEDS TRANSMITTAL SHEET

****Retain the transmittal sheet as it is the first page of your filed instrument. The book/page number will be required for future related filings of satisfactions, partial releases, amendments, and other instruments related to this filing.****

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Amendment Deed Book

DATE OF INSTRUMENT: 07/28/2014

DOCUMENT SHALL BE RETURNED TO:

NAME: King Cunningham, LLC

ADDRESS:

1000 2nd. Avenue S., Suite 325

North Myrtle Beach, SC 29582

TELEPHONE: (843) 249-0777

FAX: (843) 249-0777

E-MAIL ADDRESS: jking@kingcunningham.com

Related Document(s): book **3717** , page **3380**

PURCHASE PRICE / MORTGAGE AMOUNT: \$

BRIEF PROPERTY DESCRIPTION: NA

TAX MAP NUMBER (TMS #) NA / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. OCEAN 22 DEVELOPMENT LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. OCEAN 22 VACATION SUITES

This instrument prepared by
and return to:

King Cunningham, LLC
1000 2nd Avenue South, Suite 325
North Myrtle Beach, SC 29582
Att: Jeffrey W. King, Esq.
(843) 249-0777

**THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT OF OCEAN 22 VACATION SUITES ("Third Amendment") is made and executed by Ocean 22 Development, LLC, a South Carolina limited-liability company, ("Declarant"), and is intended to amend that certain Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites (the "Declaration") recorded on February 28, 2014 in the Deed Book 3717, Page 3380, and re-recorded March 14, 2014, in Deed Book 3720, Page 2860, as amended by First Amendment to Declaration recorded April 17, 2014, in Deed Book 3727, Page 2787, in the public records of Horry County, South Carolina (the "Declaration") and amended by Second Amendment to Declaration recorded June 13, 2014, in Deed Book 3740, Page 2969, in the public records of Horry County, South Carolina (the "Declaration")

Pursuant to Section 5.6 of the Declaration, Declarant has reserved the Option to Convert Vacation Support Areas in the Project without the prior consent of the Owners of the Association, and by this Third Amendment to the Declaration Declarant desires to exercise that Option to Convert by converting the Vacation Support Area on Levels 8 through 11 of Phase 1 into additional Suites as described on Exhibit "A" attached hereto. Such improvements include forty-four (44) Suites, (2,288 Vacation Ownership Interests) consisting of sixteen (16) one-bedroom Suites, eight (8) one-bedroom plus Suites, eight (8) two-bedroom Suites, four (4) two-bedroom plus Suites, and eight (8) three-bedroom plus Suites.

With the filing of this Third Amendment the Project will consist of eighty-eight (88) Suites comprised of thirty-two (32) one-bedroom Suites, sixteen (16) one-bedroom plus Suites, sixteen (16) two-bedroom Suites, eight (8) two-bedroom plus Suites, and sixteen (16) three-bedroom plus Suites. The average square footage of the one bedroom Suites is approximately 762 square feet, the average square footage of the two bedroom Suites is approximately 1,154 square feet, and the average square footage of the three bedroom Suites is approximately 1,459 square feet.

Levels 8 through 11 of Exhibit "A" of the Declaration is hereby replaced with Exhibit "A" attached hereto, which exhibit sets forth the floor plan of the additional Suites declared by this Third Amendment to the Declaration.

Exhibit "B-1" of the Declaration is hereby replaced with Exhibit B-1 attached hereto, which clarifies Owners' total undivided interest in the Project as a whole, including that portion attributable to the Vacation Support Areas currently owned by the Declarant as the result of converting portions of the Vacation Support Area in Phase 1 into additional Suites.

(OR037152.DOC; 2)

All other provisions of the Declaration shall remain in full force and effect as originally set forth therein except as modified by this Second Amendment to the Declaration.

IN WITNESS WHEREOF, Ocean 22 Development, LLC has caused these presents to be executed in its behalf by its undersigned authorized officer this 28th day of July, 2014.

WITNESS

"Developer"

OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company

By:

J. Patrick Lowe, Vice President

Print name Robert R. Stancil

Print name Jeffrey W King

STATE OF SOUTH CAROLINA)
) SS.
COUNTY OF HORRY)

BEFORE ME, the undersigned authority authorized to take acknowledgments in the state and county aforesaid, appeared J. Patrick Lowe, known to me to be the Vice President of OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company, and he acknowledged that he executed the foregoing instrument on behalf of the limited-liability company pursuant to due authority therefrom. He is personally known to me.

WITNESS my hand and seal this 28th day of July, 2014.

(Notary Signature)

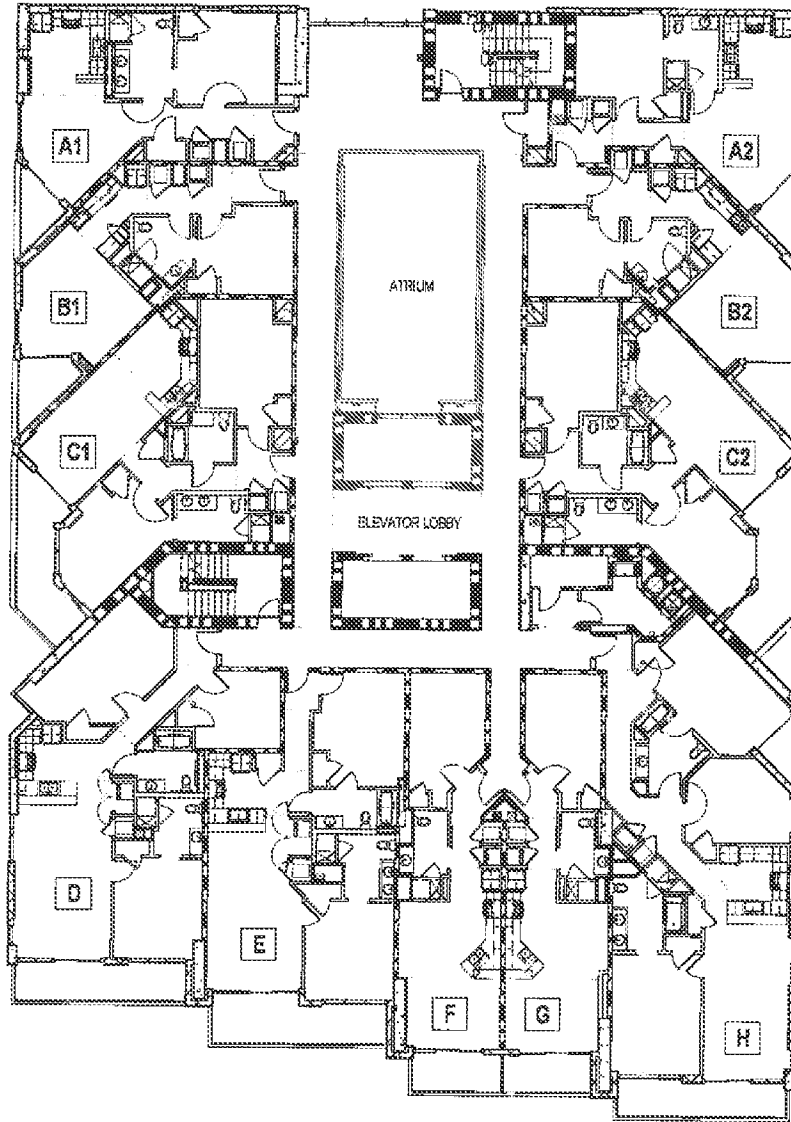
(Notary Seal)

Jeffrey W. King
(Notary Name Printed)

NOTARY PUBLIC

Commission No. Expire: 9/2/19

EXHIBIT - A



HGVC-LEVEL 8, 9, 10, 11

EXHIBIT B-1

VACATION OWNERS' AND VACATION SUPPORT OWNERS'
OWNERSHIP INTEREST PERCENTAGES IN THE PROJECT

Suites / Vacation Support Area ("VSA")	Average Square Footage	Undivided Ownership Interest of Suites	Undivided Ownership Interest Percentage in the Project Based on Total Project Square Footage*
Phase 1 Declared Suites (including Common Area)	191,581	57.33%	56.90%
Phase 1 VSA Suites (VSA E – J and VSA Z - III)	142,616	42.67%	42.36%
Total Suites (Declared and VSA)	334,197	100.00%	99.26%
Phase 1, VSA B: deli	826	N/A	0.24%
Phase 1, VSA C: lobby bar	1,130	N/A	0.34%
Phase 1, VSA D: pool bar	548	N/A	0.16%
* Total Project Square Footage	336,701		100.00%

Horry REGISTER OF DEEDS

TRANSMITTAL SHEET

TO BE FILED WITH EACH INSTRUMENT PRESENTED FOR RECORDING.
Horry REGISTER OF DEEDS,

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Amendment Deed Book

DATE OF INSTRUMENT: 04/09/2015

DOCUMENT SHALL BE RETURNED TO:

Name: King Cunningham LLC,
Address: 1000 2nd Avenue S. Suite 325, North Myrtle, SC 29582
TELEPHONE NUMBER:
FAX NUMBER:
E_MAIL ADDRESS:

RELATED DOCUMENT(S): LIST THE PREVIOUS BOOK AND PAGE NUMBER(S) THIS DOCUMENT PERTAINS TO IF APPLICABLE:
THIS INFORMATION MUST ALSO APPEAR CONSPICUOUSLY ON THE FIRST PAGE OF ALL SUBSEQUENT DOCUMENTS.

Book: 3717

Page: 3380

PURCHASE PRICE / MORTGAGE
AMOUNT: \$

BRIEF PROPERTY DESCRIPTION:

TAX MAP NUMBER (TMS/PIN#)

LIST ALL PARTIES TO BE INDEXED IN THIS TRANSACTION: ALL NAMES ARE TO BE BOLDDED, UNDERLINED, CAPITALIZED

GRANTOR / MORTGAGOR / OBLIGOR / MAKER(FROM WHO):

LAST NAME

FIRST NAME

MIDDLE NAME

FULL BUSINESS NAME

OCEAN 22 DEVELOPMENT LLC

GRANTEE / MORTGAGEE / OBLIGEE / (FROM WHOM):

LAST NAME

FIRST NAME

MIDDLE NAME

FULL BUSINESS NAME

OCEAN 22 VACATION SUITES

This instrument prepared by
and return to:

King Cunningham, LLC
1000 2nd Avenue South, Suite 325
North Myrtle Beach, SC 29582
Att: Jeffrey W. King, Esq.
(843) 249-0777

**FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

THIS FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT OF OCEAN 22 VACATION SUITES ("Fourth Amendment") is made and executed by Ocean 22 Development, LLC, a South Carolina limited-liability company, ("Declarant"), and is intended to amend that certain Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites (the "Declaration") recorded on February 28, 2014 in the Deed Book 3717, Page 3380, and re-recorded March 14, 2014, in Deed Book 3720, Page 2860, as amended by First Amendment to Declaration recorded April 17, 2014, in Deed Book 3727, Page 2787, in the public records of Horry County, South Carolina (the "Declaration"), as amended by Second Amendment to Declaration recorded June 13, 2014, in Deed Book 3740, Page 2969, in the public records of Horry County, South Carolina (the "Declaration"), and amended by Third Amendment to Declaration recorded July 28, 2014, in Deed Book 3751, Page 314, in the public records of Horry County, South Carolina (the "Declaration").

Pursuant to Section 5.6 of the Declaration, Declarant has reserved the Option to Convert Vacation Support Areas in the Project without the prior consent of the Owners of the Association, and by this Fourth Amendment to the Declaration Declarant desires to exercise that Option to Convert by converting the Vacation Support Area on Levels 12 through 16 of Phase 1 into additional Suites as described on Exhibit "A" attached hereto. Such improvements include forty-four (44) Suites, (2,288 Vacation Ownership Interests) consisting of sixteen (16) one-bedroom Suites, eight (8) one-bedroom plus Suites, eight (8) two-bedroom Suites, four (4) two-bedroom plus Suites, and eight (8) three-bedroom plus Suites.

With the filing of this Fourth Amendment the Project will consist of one hundred thirty-two (132) Suites comprised of forty-eight (48) one-bedroom Suites, twenty-four (24) one-bedroom plus Suites, twenty-four (24) two-bedroom Suites, twelve (12) two-bedroom plus Suites, and twenty-four (24) three-bedroom plus Suites. The average square footage of the one bedroom Suites is approximately 762 square feet, the average square footage of the two bedroom Suites is approximately 1,154 square feet, and the average square footage of the three bedroom Suites is approximately 1,459 square feet.

Levels 12 through 16 of Exhibit "A" of the Declaration is hereby replaced with Exhibit "A" attached hereto, which exhibit sets forth the floor plan of the additional Suites declared by this Fourth Amendment to the Declaration.

Exhibit "B-1" of the Declaration is hereby replaced with Exhibit B-1 attached hereto, which clarifies Owners' total undivided interest in the Project as a whole, including that portion attributable to the Vacation {OR037152.DOC; 3}

Support Areas currently owned by the Declarant as the result of converting portions of the Vacation Support Area in Phase 1 into additional Suites.

All other provisions of the Declaration shall remain in full force and effect as originally set forth therein except as modified by this Second Amendment to the Declaration.

IN WITNESS WHEREOF, Ocean 22 Development, LLC has caused these presents to be executed in its behalf by its undersigned authorized officer this 9th day of April, 2015.

WITNESS

"Developer"

Cheryl Holloway
Print name

JOANNE M. COLLIER
Print name

OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company

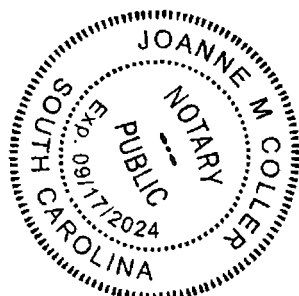
By: J. Patrick Lowe
J. Patrick Lowe, Vice President

STATE OF SOUTH CAROLINA)
) SS.
COUNTY OF HORRY)

BEFORE ME, the undersigned authority authorized to take acknowledgments in the state and county aforesaid, appeared J. Patrick Lowe, known to me to be the Vice President of OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company, and he acknowledged that he executed the foregoing instrument on behalf of the limited-liability company pursuant to due authority therefrom. He is personally known to me.

WITNESS my hand and seal this 9th day of April, 2015.

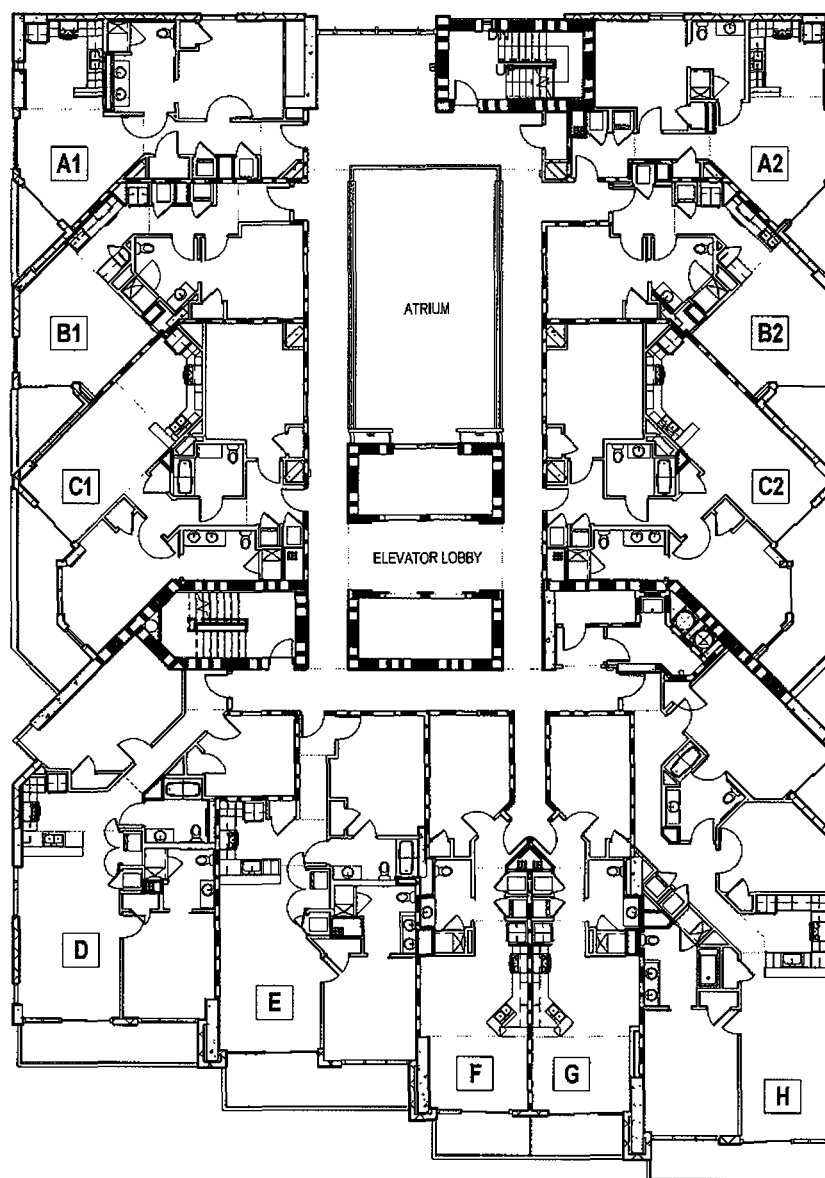
(Notary Seal)



Joanne M. Collier
(Notary Signature)

JOANNE M. COLLIER
(Notary Name Printed)
NOTARY PUBLIC
Commission No. _____

"EXHIBIT - A"



HGVC - LEVEL 12, 14, 15, 16

EXHIBIT B-1

**VACATION OWNERS' AND VACATION SUPPORT OWNERS'
OWNERSHIP INTEREST PERCENTAGES IN THE PROJECT**

Suites / Vacation Support Area ("VSA")	Average Square Footage	Undivided Ownership Interest of Suites	Undivided Ownership Interest Percentage in the Project Based on Total Project Square Footage*
Phase 1 Declared Suites (including Common Area)	235,389	70.43%	69.91%
Phase 1 VSA Suites (VSA E – J and VSA LL - III)	98,808	29.57%	29.35%
Total Suites (Declared and VSA)	334,197	100.00%	99.26%
Phase 1, VSA B: deli	826	N/A	0.24%
Phase 1, VSA C: lobby bar	1,130	N/A	0.34%
Phase 1, VSA D: pool bar	548	N/A	0.16%
* Total Project Square Footage	336,701		100.00%

ELECTRONICALLY FILED - 2021 Oct 15 11:18 AM - Horry - COMMON PLEAS - CASE#2021CP2605377

HORRY COUNTY REGISTER OF DEEDS TRANSMITTAL SHEET

****Retain the transmittal sheet as it is the first page of your filed instrument. The book/page number will be required for future related filings of satisfactions, partial releases, amendments, and other instruments related to this filing.****

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Amendment Deed Book

DATE OF INSTRUMENT: 02/29/2016

DOCUMENT SHALL BE RETURNED TO:

NAME: King Cunningham, LLC

ADDRESS:

1000 2nd. Avenue S., Suite 325
North Myrtle Beach, SC 29582

TELEPHONE: (843) 249-0777

FAX: (843) 249-0777

E-MAIL ADDRESS: jking@kingcunningham.com

Related Document(s): book **3717** , page **3380**

PURCHASE PRICE / MORTGAGE AMOUNT: \$

BRIEF PROPERTY DESCRIPTION: OCEAN 22 VACATION SUITES

TAX MAP NUMBER (TMS #) / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. OCEAN 22 DEVELOPMENT LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. OCEAN 22 VACATION SUITES

This instrument prepared by
and return to:

King Cunningham, LLC
1000 2nd Avenue South, Suite 325
North Myrtle Beach, SC 29582
Att: Jeffrey W. King, Esq.
(843) 249-0777

**FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

THIS FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT OF OCEAN 22 VACATION SUITES ("Fourth Amendment") is made and executed by Ocean 22 Development, LLC, a South Carolina limited-liability company, ("Declarant"), and is intended to amend that certain Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites (the "Declaration") recorded on February 28, 2014 in the Deed Book 3717, Page 3380, and re-recorded March 14, 2014, in Deed Book 3720, Page 2860, as amended by First Amendment to Declaration recorded April 17, 2014, in Deed Book 3727, Page 2787, in the public records of Horry County, South Carolina (the "Declaration"), as amended by Second Amendment to Declaration recorded June 13, 2014, in Deed Book 3740, Page 2969, in the public records of Horry County, South Carolina (the "Declaration"), as amended by Third Amendment to Declaration recorded July 28, 2014, in Deed Book 3751, Page 314, in the public records of Horry County, South Carolina (the "Declaration"), and as amended by Fourth Amendment to Declaration recorded on April 15, 2015 in Deed Book 3813, Page 1137, in the public records of Horry County, South Carolina (the "Declaration").

Pursuant to Section 5.6 of the Declaration, Declarant has reserved the Option to Convert Vacation Support Areas in the Project without the prior consent of the Owners of the Association, and by this Fourth Amendment to the Declaration Declarant desires to exercise that Option to Convert by converting the Vacation Support Area on Levels 17 through 20 of Phase 1 into additional Suites as described on Exhibit "A" attached hereto. Such improvements include forty-four (44) Suites, (2,288 Vacation Ownership Interests) consisting of sixteen (16) one-bedroom Suites, eight (8) one-bedroom plus Suites, eight (8) two-bedroom Suites, four (4) two-bedroom plus Suites, and eight (8) three-bedroom plus Suites.

With the filing of this Fifth Amendment the Project will consist of one hundred seventy-six (176) Suites comprised of sixty-four (64) one-bedroom Suites, thirty-two (32) one-bedroom plus Suites, thirty-two (32) two-bedroom Suites, sixteen (16) two-bedroom plus Suites, and thirty-two (32) three-bedroom plus Suites. The average square footage of the one bedroom Suites is approximately 762 square feet, the average square footage of the two bedroom Suites is approximately 1,154 square feet, and the average square footage of the three bedroom Suites is approximately 1,459 square feet.

Levels 17 through 20 of Exhibit "A" of the Declaration is hereby replaced with Exhibit "A" attached hereto, which exhibit sets forth the floor plan of the additional Suites declared by this Fourth Amendment to the Declaration.

{OR037152.DOC; 3}

Exhibit "B-1" of the Declaration is hereby replaced with Exhibit B-1 attached hereto, which clarifies Owners' total undivided interest in the Project as a whole, including that portion attributable to the Vacation Support Areas currently owned by the Declarant as the result of converting portions of the Vacation Support Area in Phase 1 into additional Suites.

All other provisions of the Declaration shall remain in full force and effect as originally set forth therein except as modified by this Second Amendment to the Declaration.

IN WITNESS WHEREOF, Ocean 22 Development, LLC has caused these presents to be executed in its behalf by its undersigned authorized officer this 29th day of February, 2016.

WITNESS

"Developer"

OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company

Witness 1 Signature

Witness 2 Signature

By:

J. Patrick Lowe, Vice President

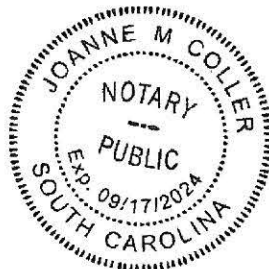
STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

BEFORE ME, the undersigned authority authorized to take acknowledgments in the state and county aforesaid, appeared J. Patrick Lowe, known to me to be the Vice President of OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company, and he acknowledged that he executed the foregoing instrument on behalf of the limited-liability company pursuant to due authority therefrom. He is personally known to me.

WITNESS my hand and seal this 29th day of Feb., 2016.

(Notary Seal)



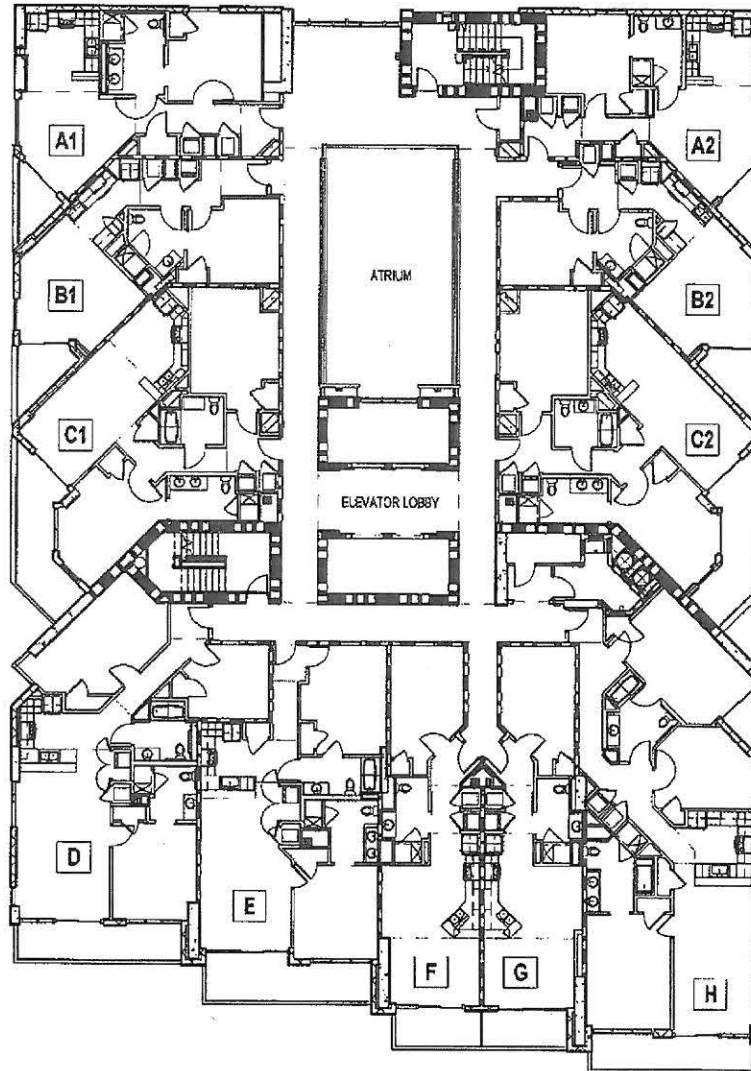
(Notary Signature)

(Notary Name Printed)

NOTARY PUBLIC

Commission No. _____

"EXHIBIT - A"



HGVC - LEVEL 17, 18, 19, 20

EXHIBIT B-1

VACATION OWNERS' AND VACATION SUPPORT OWNERS' OWNERSHIP INTEREST PERCENTAGES IN THE PROJECT

Suites / Vacation Support Area ("VSA")	Average Square Footage	Undivided Ownership Interest of Suites	Undivided Ownership Interest Percentage in the Project Based on Total Project Square Footage*
Phase I Declared Suites (including Common Area)	279,197	83.54%	82.92%
Phase I VSA Suites (VSA E - J and VSA LL - III)	55,000	16.46%	16.34%
Total Suites (Declared and VSA)	334,197	100.00%	99.26%
Phase 1, VSA B: deli	826	N/A	0.24%
Phase 1, VSA C: lobby bar	1,130	N/A	0.34%
Phase 1, VSA D: pool bar	548	N/A	0.16%
* Total Project Square Footage	336,701		100.00%

HORRY COUNTY REGISTER OF DEEDS TRANSMITTAL SHEET

****Retain the transmittal sheet as it is the first page of your filed instrument. The book/page number will be required for future related filings of satisfactions, partial releases, amendments, and other instruments related to this filing.****

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Amendment Deed Book

DATE OF INSTRUMENT: 08/24/2016

DOCUMENT SHALL BE RETURNED TO:

NAME: King Cunningham, LLC

ADDRESS:

1000 2nd. Avenue S., Suite 325

North Myrtle Beach, SC 29582

TELEPHONE: (843) 249-0777

FAX: (843) 249-0777

E-MAIL ADDRESS: jking@kingcunningham.com

Related Document(s): book **3717** , page **3380**

PURCHASE PRICE / MORTGAGE AMOUNT: \$

BRIEF PROPERTY DESCRIPTION: OCEAN 22 VACATION SUITES

TAX MAP NUMBER (TMS #) 1810418003 / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. **OCEAN 22 DEVELOPMENT LLC**

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. **OCEAN 22 VACATION SUITES**

This instrument prepared by
and return to:

King Cunningham, LLC
1000 2nd Avenue South, Suite 325
North Myrtle Beach, SC 29582
Att: Jeffrey W. King, Esq.
(843) 249-0777

**SIXTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

THIS SIXTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT OF OCEAN 22 VACATION SUITES ("Sixth Amendment") is made and executed by Ocean 22 Development, LLC, a South Carolina limited-liability company, ("Declarant"), and is intended to amend that certain Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites recorded on February 28, 2014, in Deed Book 3717, Page 3380, and re-recorded March 14, 2014, in Deed Book 3720, Page 2860, in the public records of Horry County, South Carolina (the "Declaration"), as amended by First Amendment to Declaration recorded April 17, 2014, in Deed Book 3727, Page 2787, in the public records of Horry County, South Carolina (the "Declaration"), as amended by Second Amendment to Declaration recorded June 13, 2014, in Deed Book 3740, Page 2969, in the public records of Horry County, South Carolina (the "Declaration"), as amended by Third Amendment to Declaration recorded July 28, 2014, in Deed Book 3751, Page 314, in the public records of Horry County, South Carolina (the "Declaration"), and as amended by Fourth Amendment to Declaration recorded on April 15, 2015 in Deed Book 3813, Page 1137, in the public records of Horry County, South Carolina (the "Declaration"), and as amended by Fifth Amendment to Declaration recorded on March 1, 2016, in Deed Book 3896, Page 1932, in the public records of Horry County, South Carolina (the "Declaration").

Pursuant to Section 21.3(d) of the Declaration, Declarant may amend the Declaration to submit additional Suites or exercise any of Declarant's Rights under the Declaration. The Declarant now desires to amend the Declaration by committing the Garage Parcel as Common Area for Ocean 22 Vacation Suites and replacing the current legal description in Exhibit A attached to the Declaration with revised legal description in Exhibit A attached hereto, and thereby also adding the parking garage as a Common Area on Exhibit B-1.

Exhibit A of the Declaration is hereby amended to replace the legal description on the first page thereof with the legal description in the Exhibit A attached hereto, which exhibit sets forth the legal description of the real property subject to the Declaration, and the Parking Garage Exhibit, attached hereto, shall become the last page to Exhibit A as it appears in the Declaration.

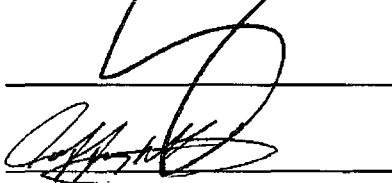
Exhibit B-1 of the Declaration is hereby deleted in its entirety and replaced with the Exhibit B-1 attached hereto, which sets forth the ownership percentage interests in the Project for Vacation Owners and Vacation Support Owners.

All other provisions of the Declaration shall remain in full force and effect as previously set forth therein except as modified by this Sixth Amendment to the Declaration.

{OR029442.DOC; 4}

IN WITNESS WHEREOF, Ocean 22 Development, LLC has caused these presents to be executed in
its behalf by its undersigned authorized officer this 24th day of August, 2016.

WITNESS:

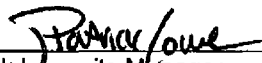


OCEAN 22 DEVELOPMENT, LLC

By: Ocean 22 Holdings, LLC, a Delaware limited liability
Company, its Sole Member

By: SCG 2200, LLC, a South Carolina limited liability
Company, its Administrative Member

By:

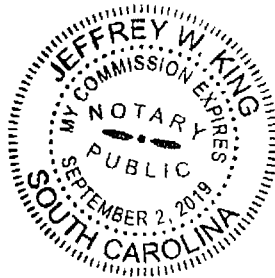

J. Patrick Lowe, its Manager

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

I, the undersigned notary, do hereby certify that the above subscribed Ocean 22 Development,
LLC, by Ocean 22 Holdings, LLC, its Sole Member, by SCG 2200, LLC, its Administrative Member, by J.
Patrick Lowe, its Manager, personally appeared before me this day and acknowledged the due execution
of the foregoing instrument.

Witness my hand and seal this 24th day of August, 2016.



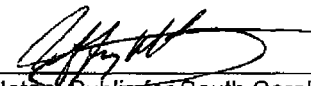

Notary Public for South Carolina
My Commission Expires: 9/2/19

EXHIBIT A

PHASE 1

LEGAL DESCRIPTION, SITE PLAN, AND FLOOR PLANS

Legal Description

Tower Parcel:

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly shown and described as "Parcel A, 22,200 sqft, 0.51 acres" on that certain Combination and Alley Relocation Plat of Parcel "A", Tax Parcels 181-04-18-003, 004 and 20' Alley prepared by Castles Consulting Engineers, Inc. dated August 29, 2013, and recorded October 21, 2013, in Plat Book 259, at Page 229, records of Horry County, South Carolina, said plat being incorporated herein for reference.

TMS: 181-04-18-003

Garage Parcel:

ALL AND SINGULAR, that certain piece, parcel or lot of land lying, situate and being in the City of Myrtle Beach, County of Horry, State of South Carolina, and being more particularly shown and described as "Garage Parcel, 43,224 sqft, 0.99 acres" on that certain Combination Plat of Garage Parcel, Tax parcels 181-03-31-003, 003, 004, & 181-04-08-001 prepared by Castles Consulting Engineers, Inc. dated August 29, 2013 and recorded October 22, 2013, in Plate Book 259, at Page 232, records of Horry County, South Carolina, said plat being incorporated herein for reference.

TMS: 181-03-31-012

RESERVING, however, unto the Declarant, its successors and assigns, an easement over, under, through and across the Common Areas being herewith submitted for the purpose of the location and construction of buildings, Suites, Vacation Support Areas, Common Areas, additional parking facilities or other improvements which may be constructed by the GRANTOR, its successors and assigns, whether or not submitted as an additional phase or phases of Ocean 22 Vacation Suites, together with any and all easements incidental for the foregoing. GRANTOR further reserves the right to relocate existing parking facilities and to temporarily close parking, pool or other facilities during construction of such improvements. Provided, however, that GRANTOR must provide temporary or permanent parking or other facilities sufficient to meet all applicable governmental regulations required to maintain the uninterrupted operation and use of the Project. Specifically, without limitation, Declarant hereby reserves the right and all easements necessary or convenient to construct additional levels of parking upon the property subject to the Parking Easement, which additional parking shall be for the sole use of Declarant, its successors and assigns.

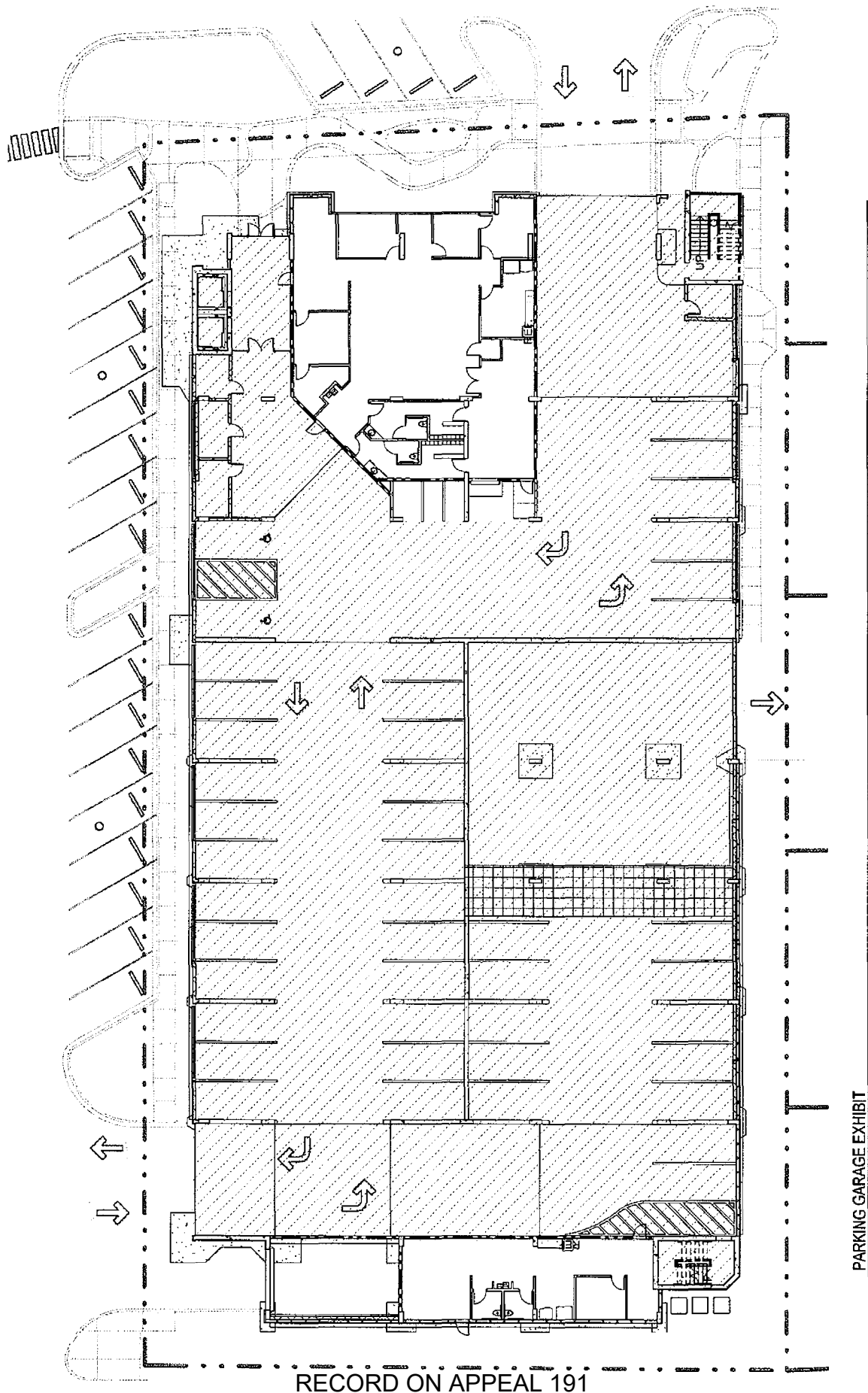
SUBJECT TO easements, covenants and restrictions of record.

EXHIBIT B-1

**PHASE 1
VACATION OWNERS' AND VACATION SUPPORT OWNERS'
OWNERSHIP INTEREST PERCENTAGES IN THE PROJECT**

Suites / Vacation Support Area ("VSA")	Average Square Footage	Undivided Ownership Interest of Suites	Undivided Ownership Interest Percentage in the Project Based on Total Project Square Footage *
Phase 1 Declared Suites (including Common Area)	435,009	88.78%	88.32%
Phase 1 VSA Suites (VSA E – J and VSA LL - III)	55,000	11.22%	11.17%
Total Suites (Declared and VSA)	490,009	100.00%	99.49%
Phase 1, VSA B: deli	826	N/A	0.17%
Phase 1, VSA C: lobby bar	1,130	N/A	0.23%
Phase 1, VSA D: pool bar	548	N/A	0.11%
* Total Project Square Footage	492,513		100.00%

ELECTRONICALLY FILED - 2021 Oct 15 11:18 AM - HORRY - COMMON PLEAS - CASE#2021CP2605377



HORRY COUNTY REGISTER OF DEEDS TRANSMITTAL SHEET

****Retain the transmittal sheet as it is the first page of your filed instrument. The book/page number will be required for future related filings of satisfactions, partial releases, amendments, and other instruments related to this filing.****

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Amendment Deed Book

DATE OF INSTRUMENT: 01/30/2017

DOCUMENT SHALL BE RETURNED TO:

NAME: King Cunningham, LLC

ADDRESS:

1000 2nd. Avenue S., Suite 325

North Myrtle Beach, SC 29582

TELEPHONE: (843) 249-0777

FAX: (843) 249-0777

E-MAIL ADDRESS: jking@kingcunningham.com

Related Document(s): book **3717** , page **3380**

PURCHASE PRICE / MORTGAGE AMOUNT: \$

BRIEF PROPERTY DESCRIPTION: OCEAN 22 VACATION SUITES

TAX MAP NUMBER (TMS #) 1810418003 / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. **OCEAN 22 DEVELOPMENT LLC**

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. **OCEAN 22 VACATION SUITES**

This instrument prepared by
and return to:

King Cunningham, LLC
1000 2nd Avenue South, Suite 325
North Myrtle Beach, SC 29582
Att: Jeffrey W. King, Esq.
(843) 249-0777

**SEVENTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

THIS SEVENTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT OF OCEAN 22 VACATION SUITES ("Seventh Amendment") is made and executed by Ocean 22 Development, LLC, a South Carolina limited-liability company, ("Declarant"), and is intended to amend that certain Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites (the "Declaration") recorded on February 28, 2014 in the Deed Book 3717, Page 3380, and re-recorded March 14, 2014, in Deed Book 3720, Page 2860, as amended by First Amendment to Declaration recorded April 17, 2014, in Deed Book 3727, Page 2787, as amended by Second Amendment to Declaration recorded June 13, 2014, in Deed Book 3740, Page 2969, as amended by Third Amendment to Declaration recorded July 28, 2014, in Deed Book 3751, Page 314, as amended by Fourth Amendment to Declaration recorded on April 15, 2015 in Deed Book 3813, Page 1137, as amended by Fifth Amendment to Declaration recorded March 1, 2016, in Deed Book 3896, Page 1932, and as amended by Sixth Amendment to Declaration recorded September 28, 2016, in Deed Book 3952, Page 1032, all in the public records of Horry County, South Carolina (the "Declaration").

Pursuant to Section 5.6 of the Declaration, Declarant has reserved the Option to Convert Vacation Support Areas in the Project without the prior consent of the Owners of the Association, and by this Seventh Amendment to the Declaration Declarant desires to exercise that Option to Convert by converting the Vacation Support Area on Levels 21 and 22 of Phase 1 into additional Suites as described on Exhibit "A" attached hereto. Such improvements include twenty-two (22) Suites, (1,144 Vacation Ownership Interests) consisting of eight (8) one-bedroom Suites, four (4) one-bedroom plus Suites, four (4) two-bedroom Suites, two (2) two-bedroom plus Suites, and four (4) three-bedroom plus Suites.

With the filing of this Seventh Amendment the Project will consist of one hundred ninety-eight (198) Suites comprised of seventy-two (72) one-bedroom Suites, thirty-six (36) one-bedroom plus Suites, thirty-six (36) two-bedroom Suites, eighteen (18) two-bedroom plus Suites, and thirty-six (36) three-bedroom plus Suites. The average square footage of the one bedroom Suites is approximately 762 square feet, the average square footage of the two bedroom Suites is approximately 1,154 square feet, and the average square footage of the three bedroom Suites is approximately 1,459 square feet.

Levels 21 and 22 of Exhibit "A" of the Declaration is hereby replaced with Exhibit "A" attached hereto, which exhibit sets forth the floor plan of the additional Suites declared by this Seventh Amendment to the Declaration.

{OR037152.DOC; 3}

Exhibit "B-1" of the Declaration is hereby replaced with Exhibit B-1 attached hereto, which clarifies Owners' total undivided interest in the Project as a whole, including that portion attributable to the Vacation Support Areas currently owned by the Declarant as the result of converting portions of the Vacation Support Area in Phase 1 into additional Suites.

All other provisions of the Declaration shall remain in full force and effect as originally set forth therein except as modified by this Second Amendment to the Declaration.

IN WITNESS WHEREOF, Ocean 22 Development, LLC has caused these presents to be executed in its behalf by its undersigned authorized officer this 30th day of January, 2017.

WITNESS

"Developer"

Maggie Stancil
Witness 1 Signature

OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company

Joanne M. Collier
Witness 2 Signature

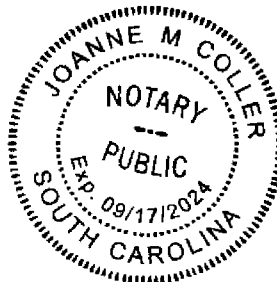
By: J. Patrick Lowe
J. Patrick Lowe, Vice President

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BEFORE ME, the undersigned authority authorized to take acknowledgments in the state and county aforesaid, appeared J. Patrick Lowe, known to me to be the Vice President of OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company, and he acknowledged that he executed the foregoing instrument on behalf of the limited-liability company pursuant to due authority therefrom. He is personally known to me.

WITNESS my hand and seal this 30th day of Jan, 2017.

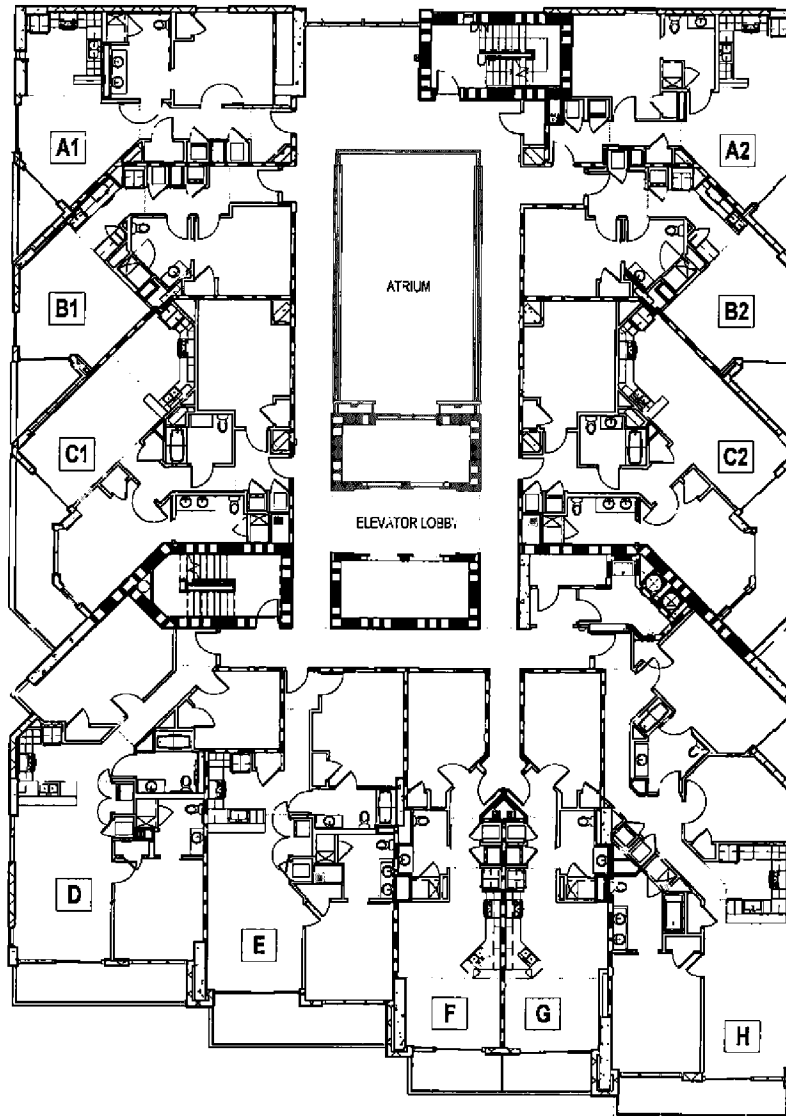
(Notary Seal)



Joanne M. Collier
(Notary Signature)

JOANNE M. COLLIER
(Notary Name Printed)
NOTARY PUBLIC
Commission No. _____

"EXHIBIT - A"



HGVC - LEVEL 21, 22

EXHIBIT B-1

VACATION OWNERS' AND VACATION SUPPORT OWNERS'
OWNERSHIP INTEREST PERCENTAGES IN THE PROJECT

Suites / Vacation Support Area ("VSA")	Average Square Footage	Undivided Ownership Interest of Suites	Undivided Ownership Interest Percentage in the Project Based on Total Project Square Footage *
Phase 1 Declared Suites (including Common Area)	456,913	93.25%	92.77%
Phase 1 VSA Suites (VSA E – J and VSA DDD - III)	33,096	6.75%	6.72%
Total Suites (Declared and VSA)	490,009	100.00%	99.49%
Phase 1, VSA B: deli	826	N/A	0.17%
Phase 1, VSA C: lobby bar	1,130	N/A	0.23%
Phase 1, VSA D: pool bar	548	N/A	0.11%
* Total Project Square Footage	492,513		100.00%

ELECTRONICALLY FILED - 2021 Oct 15 11:18 AM - HORRY - COMMON PLEAS - CASE#2021CP2605377

HORRY COUNTY REGISTER OF DEEDS TRANSMITTAL SHEET

****Retain the transmittal sheet as it is the first page of your filed instrument. The book/page number will be required for future related filings of satisfactions, partial releases, amendments, and other instruments related to this filing.****

TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.

HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY, SOUTH CAROLINA 29526

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Amendment Deed Book

DATE OF INSTRUMENT: 09/05/2017

DOCUMENT SHALL BE RETURNED TO:

NAME: King Cunningham, LLC

ADDRESS:

1000 2nd. Avenue S., Suite 325

North Myrtle Beach, SC 29582

TELEPHONE: (843) 249-0777

FAX: (843) 249-0777

E-MAIL ADDRESS: jking@kingcunningham.com

Related Document(s): book **4041** , page **24**

PURCHASE PRICE / MORTGAGE AMOUNT: \$

BRIEF PROPERTY DESCRIPTION: OCEAN 22 VACATION SUITES

TAX MAP NUMBER (TMS #) 1810418003 / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. **OCEAN 22 DEVELOPMENT LLC**

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. **OCEAN 22 VACATION SUITES**

Instrument#: 2017000105613, DEED BK: 4041 PG: 3149 DOCTYPE: 069 09/11/2017 at 09:03:19 AM, 2 OF 6 MARION D. FOXWORTH III, HORRY COUNTY, SC REGISTRAR OF DEEDS

Instrument#: 2017000104303, DEED BK: 4041 PG: 24 DOCTYPE: 069 09/07/2017 at 10:38:33 AM, 1 OF 5 MARION D. FOXWORTH III, HORRY COUNTY, SC REGISTRAR OF DEEDS

Re-recorded to correct transmittal sheet (**GRANTEE**)

HORRY COUNTY REGISTER OF DEEDS TRANSMITTAL SHEET

****Retain the transmittal sheet as it is the first page of your filed instrument. The book/page number will be required for future related filings of satisfactions, partial releases, amendments, and other instruments related to this filing.****

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HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470, CONWAY,
SOUTH CAROLINA 29526

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1000 2nd. Avenue S., Suite 325
North Myrtle Beach, SC 29582

TELEPHONE: (843) 249-0777

FAX: (843) 249-0777

E-MAIL ADDRESS: jking@kingcunningham.com

Related Document(s): book **3717**, page **3380**

PURCHASE PRICE / MORTGAGE AMOUNT: \$

BRIEF PROPERTY DESCRIPTION: OCEAN 22 VACATION SUITES

TAX MAP NUMBER (TMS #) 1810418003 / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. OCEAN 22 DEVELOPMENT LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

LAST NAME

FIRST NAME

MIDDLE NAME

1. SUITES

OCEAN 22

VACATION

This instrument prepared by
and return to:

King Cunningham, LLC
1000 2nd Avenue South, Suite 325
North Myrtle Beach, SC 29582
Att: Jeffrey W. King, Esq.
(843) 249-0777

**EIGHTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT
FOR
OCEAN 22 VACATION SUITES**

THIS EIGHTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND VACATION OWNERSHIP INSTRUMENT OF OCEAN 22 VACATION SUITES ("Eighth Amendment") is made and executed by Ocean 22 Development, LLC, a South Carolina limited-liability company, ("Declarant"), and is intended to amend that certain Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites (the "Declaration") recorded on February 28, 2014 in the Deed Book 3717, Page 3380, and re-recorded March 14, 2014, in Deed Book 3720, Page 2860, as amended by First Amendment to Declaration recorded April 17, 2014, in Deed Book 3727, Page 2787, as amended by Second Amendment to Declaration recorded June 13, 2014, in Deed Book 3740, Page 2969, as amended by Third Amendment to Declaration recorded July 28, 2014, in Deed Book 3751, Page 314, as amended by Fourth Amendment to Declaration recorded on April 15, 2015 in Deed Book 3813, Page 1137, as amended by Fifth Amendment to Declaration recorded March 1, 2016, in Deed Book 3896, Page 1932, as amended by Sixth Amendment to Declaration recorded September 28, 2016, in Deed Book 3952, Page 1032, and as amended by Seventh Amendment to Declaration recorded January 31, 2017, in Deed Book 3983, Page 2792, all in the public records of Horry County, South Carolina (the "Declaration").

Pursuant to Section 5.6 of the Declaration, Declarant has reserved the Option to Convert Vacation Support Areas in the Project without the prior consent of the Owners of the Association, and by this Eighth Amendment to the Declaration Declarant desires to exercise that Option to Convert by converting the Vacation Support Area on Levels 23 and 24 of Phase 1 into additional Suites as described on Exhibit "A" attached hereto. Such improvements include twenty-two (22) Suites, (1,144 Vacation Ownership Interests) consisting of eight (8) one-bedroom Suites, four (4) one-bedroom plus Suites, four (4) two-bedroom Suites, two (2) two-bedroom plus Suites, and four (4) three-bedroom plus Suites.

With the filing of this Eighth Amendment the Project will consist of two hundred twenty (220) Suites comprised of eighty (80) one-bedroom Suites, forty (40) one-bedroom plus Suites, forty (40) two-bedroom Suites, twenty (20) two-bedroom plus Suites, and forty (40) three-bedroom plus Suites. The average square footage of the one bedroom Suites is approximately 762 square feet, the average square footage of the two bedroom Suites is approximately 1,154 square feet, and the average square footage of the three bedroom Suites is approximately 1,459 square feet.

Levels 23 and 24 of Exhibit "A" of the Declaration is hereby replaced with Exhibit "A" attached hereto, which exhibit sets forth the floor plan of the additional Suites declared by this Eighth Amendment to the Declaration.

{OR037152.DOC; 6}

Exhibit "B-1" of the Declaration is hereby replaced with Exhibit B-1 attached hereto, which clarifies Owners' total undivided interest in the Project as a whole, including that portion attributable to the Vacation Support Areas currently owned by the Declarant as the result of converting portions of the Vacation Support Area in Phase 1 into additional Suites.

All other provisions of the Declaration shall remain in full force and effect as originally set forth therein except as modified by this Eighth Amendment to the Declaration.

IN WITNESS WHEREOF, Ocean 22 Development, LLC has caused these presents to be executed in its behalf by its undersigned authorized officer this 5th day of September, 2017.

WITNESS

"Developer"

Witness 1 Signature

Witness 2 Signature

OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company

By:

J. Patrick Lowe, Vice President

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BEFORE ME, the undersigned authority authorized to take acknowledgments in the state and county aforesaid, appeared J. Patrick Lowe, known to me to be the Vice President of OCEAN 22 DEVELOPMENT, LLC, a South Carolina limited-liability company, and he acknowledged that he executed the foregoing instrument on behalf of the limited-liability company pursuant to due authority therefrom. He is personally known to me.

WITNESS my hand and seal this 5th day of September, 2017.



(Notary Signature)

(Notary Name Printed)

NOTARY PUBLIC

Commission No. NA

EXHIBIT B-1

VACATION OWNERS' AND VACATION SUPPORT OWNERS'
OWNERSHIP INTEREST PERCENTAGES IN THE PROJECT

Suites / Vacation Support Area ("VSA")	Average Square Footage	Undivided Ownership Interest of Suites	Undivided Ownership Interest Percentage in the Project Based on Total Project Square Footage *
Phase 1 Declared Suites (including Common Area)	478,817	97.72%	97.22%
Phase 1 VSA Suites (VSA E – J)	11,192	2.28%	2.27%
Total Suites (Declared and VSA)	490,009	100.00%	99.49%
Phase 1, VSA B: deli	826	N/A	0.17%
Phase 1, VSA C: lobby bar	1,130	N/A	0.23%
Phase 1, VSA D: pool bar	548	N/A	0.11%
* Total Project Square Footage	492,513		100.00%

**BYLAWS
OF
OCEAN 22 VACATION OWNERS ASSOCIATION, INC.**

The administration of the Ocean 22 Vacation Owners Association, Inc. (the "Association") shall be governed by the Timeshare Act, the Declaration, the Articles and these Bylaws. Terms which are capitalized in these Bylaws and which are not otherwise defined herein shall have the meaning set forth in the Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites, dated _____, 2013, and recorded in the public records of Horry County, State of South Carolina.

**ARTICLE I
APPLICATION OF BYLAWS**

All present and future Owners, Mortgagees, lessees and occupants of Ownership Interests and their employees, and any other persons who may use the facilities of the Project in any manner are subject to the Project Documents, including the Declaration, these Bylaws and all rules made pursuant hereto and any amendments thereof. The acceptance of a deed or conveyance of an Ownership Interest by an Owner or an Owner's occupancy of any Suite shall constitute an agreement to the provisions of the Project Documents, and such Project Documents are accepted, ratified and shall be complied with by said Owners.

**ARTICLE II
ASSOCIATION MEMBERSHIP**

2.1 **Membership.** All Owners of Ownership Interests in the Project, including the Declarant so long as it is the Owner of any Ownership Interests in the Project, shall constitute members of the Association and shall remain members of the Association until he/she ceases to be an Owner. Transfer of an Ownership Interest, whether voluntarily or by operation of law, shall immediately and automatically terminate the transferor's membership in the Association, except to the extent such transferor retains an interest in any other Ownership Interest. Upon transfer of an Ownership Interest and the occurrence of all the events set forth in Sections 5.3 and 11.2 of the Declaration, as applicable to such transfer, the transferee shall immediately and automatically become a member of the Association.

2.2 **Organizational Meeting.** The first meeting of the Association shall be held within one (1) year after the closing of the sale of the first Ownership Interest sold in the Project.

2.3 **Annual Meeting.** The Association shall hold an annual meeting of the Association during a month, day, and time as may be designated by written notice by the Board. Said meeting shall be held at a reasonable place in the Project or some other location that is readily accessible at reasonable cost to the largest possible number of Owners, or at such other reasonable time not more than ninety (90) days before or after such date as may be designated by written notice by the Board. Notwithstanding the foregoing, so long as Declarant owns at least seventy-five percent (75%) of the Ownership Interests in the Project, the Board may designate the annual meeting of the Association be held at the corporate office of said Declarant or some other location readily accessible to the Declarant. Notice of the annual meeting shall be delivered to the Owners by mail not less than ten (10) days and no more than fifty (50) days prior to the date set for said meeting, and shall specify the place, day and hour of the meeting and shall include a brief statement of the matters on the agenda which the Board intends to present or which other Owners have indicated, in writing, that they will present for action. Notwithstanding the preceding sentence, but subject to Section 2.5, any Association matters may be conducted at an annual meeting of Owners, whether or not specifically stated in the notice. If the statement is submitted in connection with the election of a new Board member, the statement may include the name, address and a brief biographical summary (limited to a reasonable length as determined by the Board), if available, of each Owner who has announced his or her intention to stand for election to the Board. In accordance with the provisions of Sections 9.1 and 9.2 hereof, but no later than the time of the annual meeting, the Board shall furnish to the members (i) a budget for the coming fiscal year which shall itemize the estimated Total Expenses and capital contributions for the coming fiscal year with the estimated allocation thereof to each member; and (ii) an audited

statement of the Total Expenses and capital contributions itemizing receipts and disbursements for the previous fiscal year, together with the allocation thereof to each Owner.

2.4 **Special Meetings.** Special meetings of the Association may be called by the Declarant, the President, a majority of the Board, or Owners other than Declarant representing at least five percent (5%) or more of the Total Votes of the Association. Such meetings may be held at a reasonable place in the Project, or at such other reasonable place as may be designated which is readily accessible at reasonable cost to the largest possible number of Owners, for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Owners or for any other reasonable purpose. Written notice for any special meeting shall be sent to all Owners by way of hand delivery, electronic transmission or by United States mail, prepaid, to the mailing or email address designated in writing by the Owner in the records of the Association, not less than ten (10) days nor more than fifty (50) days prior to the date fixed for said meeting. Such notice shall specify the place, day and hour of the meeting, and a brief statement of the items on the agenda, including, without limitation, the general nature of any proposed amendment to the Declaration or Bylaws, any budgetary changes and any proposal to remove an officer or member of the Board. Only those matters described in the meeting notice may be conducted at a special meeting of Owners.

2.5 **Quorum.** The presence in person or by proxy of Owners holding fifteen percent (15%) or more of the Total Votes of the Association at any meeting of the Association held in response to notice to all Owners of record properly given shall constitute a quorum. In the absence of a quorum at an Association meeting, no business shall be conducted and the presiding officer shall adjourn the meeting until further notice. If a quorum is obtained, but less than one-third (1/3) of the Total Votes of the Association is in attendance, in person or by proxy, at a regular meeting of the Association, only those matters of business, the general nature of which was given in the notice of the meeting, may be voted upon by the Owners. At any special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the special meeting, may be voted upon by the Owners. If a meeting is adjourned for lack of a quorum, new notice must be given in accordance with Section 2.3 or 2.4, as the case may be, before another meeting is held. Except when a higher percentage vote is required by law, the Declaration or any other provision of these Bylaws, when a quorum is present at any meeting, the concurring vote of more than fifty percent (50%) of the Owners present at the meeting including the Declarant, shall be valid and binding upon the Association.

In the event that a quorum is present at the commencement of a meeting, but, as a result of the departure of some Owners, less than a quorum remains, the remaining Owners present may still transact business if their number is equal to at least a majority of the quorum which existed at the commencement of the meeting.

2.6 **Conduct of Meetings.** Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the Declaration or these Bylaws.

2.7 **Action of Association Without Meeting by Written Consent.** Notwithstanding anything to the contrary contained in the foregoing, the Association may take actions without a meeting if all of the Owners and directors (i) sign a consent in writing setting forth the action to be taken; and (ii) are entitled to vote on the subject matters set forth in the consent. Such consent shall have the force and effect of a unanimous vote and may be stated as such in any articles or documents.

2.8 **Voting.** At each meeting of the Owners, or whenever the consent or vote of the Owners is required or called for under the Declaration, these Bylaws or otherwise, each Owner shall be entitled to cast the number of votes assigned and permitted to be cast by such Owner in accordance with the Declaration. The votes allocated to an Ownership Interest owned by more than one (1) person or entity shall be cast as one (1) vote and fractional votes shall not be allowed. If only one (1) of several Owners of an Ownership Interest is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Ownership Interest. If more than one (1) of the Owners of an Ownership Interest is present, the vote allocated to that Ownership Interest may be cast only in accordance with the agreement of a majority in interest of such Owners. There is majority agreement if any one of the Owners casts the vote allocated to that Ownership Interest without protest by any of

the other Owners of such Ownership Interest, which protest must be made to the person presiding over the meeting immediately after such vote is cast.

(a) **Proxy Voting.** The right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the member or by such member's duly authorized agent in writing. The instrument authorizing the proxy shall be delivered to the Secretary of the Association, or such other officer or person who may be acting as the Secretary at the meeting, prior to the commencement of the meeting at which the proxy is to be exercised. Unless otherwise required or prohibited under South Carolina law, the Board may establish and provide on the form of proxy distributed to each Owner that such proxy must be received by a certain date and time to be duly delivered to the Secretary of the Association or such other person who may be acting as the Secretary at the meeting. The Secretary of the meeting shall enter a record of all such proxies, timely received, in the minutes of the meeting. A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the Owner executing it, before the vote cast pursuant to that proxy, by a writing delivered to the Association stating that the proxy is revoked by a subsequent proxy executed by such Owner, or by personal attendance and voting at a meeting by such Owner, or (ii) if written notice of the death or incapacity of the maker of the proxy is received by the Association before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy (unless otherwise provided in the proxy), if it is not dated or if it purports to be revocable without notice. In any election of directors, any form of proxy that is marked by an Owner "withhold," or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld, shall not be voted either for or against the election of a director. Failure to comply with this paragraph shall not invalidate any election taken, but may be the basis for challenging the proxy at a meeting.

2.9 **Other Voting Rights.**

(a) **Pledges.** An Owner may confer upon or pledge to another person the authority to represent, act and vote for such Owner through a provision in a mortgage, agreement of sale or any other lawful document relating to such Owner's Ownership Interest, or may have this authority pledged to any other party through an order or judgment of a court of competent jurisdiction. If a certified copy of any pledge is filed with the Secretary of the Association as of the record date, only the person named in the pledge ("pledgee") may vote in person or by proxy on that matter. The appurtenant Ownership Interest need not be transferred to pledgee, and such pledgee retains the right to vote in person or by proxy until the pledge is released or terminated in a writing filed with the Secretary of the Association. If, however, the pledge is not duly filed with the Secretary of the Association as of the record date, the claim of a pledge shall be invalid, and the Owner shall have the right to cast the vote.

(b) **Personal Representatives, Guardians and Trustees.** Personal representatives, guardians and trustees of an Owner may vote, in person or by proxy, for each Ownership Interest held by such party in this special capacity even if the Ownership Interest has not been transferred to such personal representative, guardian or trustee. However, a certified copy of the document showing that such party is the personal representative, guardian or trustee of the Owner must be filed with the Secretary of the Association before the record date.

(c) **Corporations, Partnerships and Limited Liability Companies.** If an Ownership Interest is owned by a corporation, partnership, or limited liability company, an officer, partner, member, manager or employee thereof entitled to cast a vote for such entity shall be designated in a certificate that is signed by the president, vice president, manager or member of said entity and filed with the Manager or the Secretary of the Association. Such certificate shall be valid until revoked or superseded by a subsequent certificate, or such Ownership Interest is transferred, whichever occurs earlier. Votes or proxies purportedly cast or given under any such authority presented at or before the meeting will be presumed to be validly voted or given.

2.10 **Record Date.** The term "record date" shall mean the date used to determine which persons are entitled to notice of, and to vote at, any meeting or any action without a meeting. The record date also determines who may object to, waive lack of notice and exercise other rights for or as an Owner.

(a) **Fixed By The Board.** The Board may fix the record dates; provided, however, that the date may not be more than seventy (70) days nor less than fifteen (15) days before the date set for the meeting, or if action is without a meeting, not more than twenty (20) days nor less than ten (10) days before the request for written consent is sent.

(b) **Not Fixed By The Board.** If a record date is not fixed by the Board, the following rules shall apply:

- (1) For meetings, the record date will be the close of business the day before notice is sent;
- (2) For objections to, and waivers of, notice, it will be the close of business on the day before the meeting; and
- (3) For actions without a meeting, it will be the day before the first request for written consent or ballot is sent.

(c) **Rights As Of The Record Date.** Only Owners or persons entitled to act for Owners as shown on the Association's records on the record date shall have the rights described in this Article II. Any person who becomes an Owner of record or whose right to act for an Owner is made a matter of record after an established record date shall not have these rights.

ARTICLE III BOARD OF DIRECTORS

3.1 **Number.** The initial Board consisting of five (5) Directors shall be appointed by Declarant and they shall hold office until expiration of the Declarant Control Period as set forth in section 3.3 below. Thereafter, the Association shall be managed and controlled by a Board of not less than three (3) nor more than seven (7) Directors, and until the Association shall otherwise determine, the Board shall consist of three (3) Directors. The number of Directors shall be fixed each year by the Association at its annual meeting, or at any other meeting called for that purpose.

3.2 **Term.** Directors of the Board elected by Owners shall serve for staggered terms. At the first annual meeting where Owners elect Directors to the Board, the term of office of the Director receiving the highest number of votes shall be fixed at three (3) years (whose term shall commence upon election and terminate on the date of the third annual meeting thereafter). To provide for staggered terms, the term of office of the Director receiving the second highest number of votes shall be fixed at two (2) years (whose term shall commence upon election and terminate on the date of the second annual meeting thereafter). The term of office of the remaining Directors shall be fixed at one (1) year (whose term(s) shall commence upon election and terminate upon the first annual meeting thereafter). Each successor Director shall be elected for three-year terms and serve a maximum of two (2) consecutive full terms of office and shall serve until a successor has been appointed or elected, or until his or her death or resignation or removal from office.

Any Director of the Board who fails to attend three (3) consecutive Board meetings or fails to attend at least twenty-five percent (25%) of the Board meetings held during any fiscal year shall be deemed to have tendered his or her resignation and, upon acceptance by the Board, his or her position shall be vacant.

3.3 **Period of Declarant Control, Election of Board.** The period of Declarant control of the Association is the period in which the Declarant, or persons designated by it, shall have the authority to appoint and remove the officers of the Association and Directors of the Board. The period of Declarant control shall terminate upon the conveyance of eighty percent (80%) of the total Ownership Interests, including Ownership Interests which Declarant retains the right to create by submission of additional Phases or Conversion Phases. Upon termination of the Declarant control period, Owners, other than the Declarant, shall elect Directors to the Board in accordance with and in the manner set forth in this Article III. The Directors and officers of the Board

shall take office upon election. Notwithstanding the foregoing, so long as Declarant holds for sale, in the ordinary course of business, Ownership Interests representing at least three percent (3%) of the aggregate undivided Ownership Interests in the Project, Declarant shall be entitled to appoint at least one Director to the Board.

3.4 **Voting.** Voting for the Directors of the Board shall be by secret written ballot. At any meeting of the Association, each Owner of an Ownership Interest, either in person or by proxy, shall be entitled to one vote for each Ownership Interest owned and each Biennial Ownership Interest Owner shall have a one-half (1/2) vote for each Even or Odd Year Biennial Ownership Interest owned subject to sections 2.8 and 2.9 of these Bylaws. The initial Directors of the Board shall be the following persons and each shall hold the office indicated:

K. Robert Kreiger	President
Neil Hutchinson	Vice President
Neil Peraza	Treasurer
Marc Neu	Secretary
J. Patrick Lowe	

3.5 **Resignation and Removal of Directors.** Any director of the Board may resign at any time by giving written notice to the President of the Association or to the remaining Board members. Directors may be removed with or without cause by the Owners, including Declarant, at any annual meeting, or at any special meeting called for that purpose, by a two-thirds (2/3) vote of all persons present and entitled to vote at such meeting at which a quorum is present; provided that the Director to be removed was elected by the votes of both Owners and Declarant and is not a Director appointed by Declarant. A Director elected by the Owners, excluding Declarant, may only be removed by a two-thirds (2/3) vote of all Owners other than Declarant.

3.6 **Vacancies.** If vacancies shall occur in the Board by reason of the death or resignation of a Director, the remaining Directors then in office shall continue to act, and such vacancies shall be filled by a vote of a majority of the remaining directors then in office, even though the majority is less than a quorum of the Board. Any vacancy in the Board occurring by reason of removal of a Director by the Association may be filled by election at the meeting at which such Director is removed, or any subsequent regular or special meeting of the Association called for that purpose. A vacancy resulting from a removal of a Director shall only be filled by the vote or written consent of a majority of the voting power of the Association. Any Director elected by the Owners or appointed by a majority of the remaining Board in the foregoing manner shall serve for the remaining unexpired term of the Director being replaced in respect of which the vacancy occurred. The unexpired term being filled and any remaining re-election term of the removed Director shall be deemed a full term.

3.7 **Compensation of Director; Other Employment.** The Directors of the Board shall receive no compensation for their services unless expressly approved by the vote or written assent of a majority of the voting power residing in Owners other than Declarant, except that Directors of the Board shall be reimbursed by the Association for transportation expenses actually incurred and a reasonable per diem payment for attendance at regular and special meetings of the Board. Any Director of the Board may be employed by the Association in another capacity and receive compensation for such employment; provided, however, that such employment shall be approved by vote or in writing by all Directors of the Board not including the Director to be employed.

3.8 **Powers and Duties of the Board.** The Board, for the benefit of the Project and the Association, shall manage and control the business, property and affairs of the Project and the Association, and shall exercise all of the powers of the Association including without limitation, all of the powers of the Association as set forth in the Declaration, these Bylaws and the rules and regulations governing the Project, except such as are expressly reserved for or may from time to time be conferred upon the Owners by law, the Declaration, these

Bylaws, or any such rules. The Board is authorized to adopt rules and regulations governing the use and operation of the Project, which shall become effective thirty (30) days after adoption by the Board.

(a) **Purchases.** The Board shall have the power to purchase any materials, supplies, furniture, labor and services, to make repairs and structural alterations, and to pay all insurance premiums, taxes and assessments and other expenses which the Board is required to secure, make or pay pursuant to these Bylaws or by law, or which in its opinion shall be necessary or proper for the operation of the Association, or the enforcement of these Bylaws; provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are required as a result of the particular actions or negligence of particular Owners, the cost thereof shall be specially assessed to and the sole liability of said Owners.

(b) **Levying Assessments.** In addition to the assessments levied by the Manager in accordance with the Declaration, the Board shall have the power to levy and collect regular or special assessments and other charges payable by the Owners.

(c) **Penalties and Fines.** The Board shall have the power to establish such penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Declaration, these Bylaws and any rules and regulations promulgated for the Project, including penalties and fines for failure or refusal to pay to the Association or the Manager on demand all costs and expenses required to be paid thereunder; provided such penalties and fines are not inconsistent with law or the provisions herein or in the Declaration. The unpaid amount of such penalties and fines against any Owner shall constitute a lien against the Ownership Interest of such Owner which may be foreclosed in the same manner as provided in the Declaration; provided, however, that the said lien for such penalties and fines shall be subordinate to any liens for taxes and assessments lawfully imposed by a governmental authority against the Ownership Interest. The Board shall annually make available by posting on the Managers website or by Owners request to all Owners within sixty (60) days prior to the beginning of the fiscal year a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against Owners interests in the Project.

(d) **Bank Accounts.** The Board shall have the power to open any and all bank accounts on behalf of the Association and designate the signatories required therefore.

(e) **Custody and Control of Funds.** The Board shall have custody and control of all funds of the Association, shall maintain full and accurate books of account and records of such funds, and shall prepare regular financial reports thereof.

(f) **Records.** The Board shall cause to be kept a complete record of all of its acts and corporate affairs, which records shall be accessible to all Owners as set forth in Section 9.3 herein, provided however Owners personal and private information shall not be accessible to other Owners.

(g) **Other.** The Board shall have the power and duty to do all other things necessary or appropriate to manage, operate or maintain the Association, including the power to delegate as it sees fit any of the duties and obligations of the Board to the Manager as set forth in the Declaration to the extent such duties and obligations are delegable.

3.9 **Regular Meetings of the Board.** Regular meetings of the Board shall be held at least semi-annually at such times and places within the Project, or some other reasonable and suitable location in Myrtle Beach, South Carolina, unless a meeting at another location would significantly reduce the cost to the Association and/or the inconvenience to Directors, as the Board shall determine. A majority of the Board shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board. To the extent permitted by South Carolina law, and so long as all Directors present in person or by phone can hear each other, regular meetings of the Board may be held by telephone. The Board shall annually elect all of the officers of the Association. The election of officers shall be conducted no later than the first meeting of the Board

held subsequent to the annual meeting of the Association.

3.10 **Notice.** Written notice of the time and place of all regular Board meetings shall be posted at a prominent place or places within the Project not less than forty-eight (48) hours prior to the scheduled date of the meeting. Notices of all regular Board meetings shall also be given in writing to each Director of the Board not less than thirty (30) days prior to the meeting; provided that this requirement shall not apply to any Director of the Board who has signed a waiver of notice or a written consent to the holding of a meeting. The presence of any Director at a meeting shall be the equivalent of a waiver by said Director of notice of the meeting.

3.11 **Special Meetings.** Special meetings of the Board may be called by written notice signed by any two (2) Directors of the Board. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Special meetings shall be held within the Project or some other reasonable location in South Carolina, unless a meeting at another location would significantly reduce the cost to the Association and/or inconvenience to the Directors of the Board as determined by the Board. To the extent permitted by South Carolina law, and so long as all Directors present in person or by phone can hear each other, special meetings of the Board may be held by telephone. Written notice of any special meeting shall also be posted in a manner prescribed for notice of regular meetings of the Board and shall be sent to all Directors of the Board not less than fifteen (15) days prior to the scheduled time of the meeting; provided, however, that notice of such meeting need not be given to any member signing a waiver of notice or a written consent to the holding of such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail, with first-class postage thereon prepaid. If an agenda is prepared for a special meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

3.12 **Board Action; Attendance of a Board Meeting; Executive Session.** The Directors shall act only as a Board, and individual Directors shall have no powers to act as such. Regular and special meetings of the Board shall be open to all Owners of the Association; provided, however, that the Association Owners who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of the Board in which a quorum is obtained. If any meeting is being conducted by telephone conference, each Owner, upon request, must be connected to such meeting by telephone. If the number of Owners requesting this connection renders such a meeting by telephone conference impractical or impossible, the Board may not meet by telephone conference. The Board may, with the approval of a majority of a quorum of its Directors, adjourn the meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. Before adjourning to executive session, however, the Board must announce the general nature of any and all business to be considered in executive session. The Board need not give general notice of its meetings to the Owners, but notice must be given to any Owner, as if such Owner were a Director, if such Owner requests notice in writing, but if and only if, there is sufficient time after such Owner's request is received to do so.

3.13 **Action By Board Without Meeting.** Notwithstanding anything to the contrary contained in the foregoing, the Board may take actions without a meeting if all of its Directors sign a written consent which sets forth the action to be taken. An explanation of the action to be taken shall be posted at a prominent place within the Project within three (3) days after the written consents of all the Directors have been obtained. Such consent shall have the force and effect of a unanimous vote and may be stated as such in any articles or documents.

3.14 **Acts of the Board.** Unless otherwise expressly required or permitted by law, the Declaration or any other part of these Bylaws, the acts and decisions of a majority of Directors present at any meeting at which a quorum exists will prevail, and shall be deemed to constitute the acts and decisions of the Board.

(a) A director is deemed to be "present" only if such Director attends a meeting in person or by telephone as stated in Sections 3.11, 3.12 and 3.13.

(b) Each Director present at a meeting is presumed to have approved all actions taken at the meeting unless such Director's dissent is entered in the minutes of the meeting; or such Director files with the Secretary a written dissent within five (5) days after the meeting.

3.15 **Fiscal Year.** The fiscal year of the Association shall be determined by the Board.

3.16 **Distribution of Minutes.** Minutes of each Board meeting shall be made available to all Owners within sixty (60) days after the meeting.

3.17 **Liability of Directors.** Each Director shall perform such Director's duties in good faith and in a manner such Director believes to be in the best interests of the Association. Each Director shall exercise the care, including reasonable inquiry that an ordinarily prudent person in a like position would exercise in similar circumstances. No Director shall be liable for any act or omission unless such Director is guilty of gross negligence or misconduct.

3.18 **Indemnification of Board of Directors.** When a Director of the Board is sued for liability for actions undertaken in his or her role as a Director of the Board, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, in accordance with the provisions of the Declaration. Directors of the Board are not personally liable to the victims of crimes or accidents or for injury to persons or property occurring at or within the Project.

ARTICLE IV OFFICERS

4.1 **Number.** The officers of the Association shall be a President, one or more Vice Presidents as determined by the Board, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be held by the same individual. The Board may appoint such other officers as it may deem necessary; who shall be appointed in such manner, hold their offices in such terms, and have such authority and duties as may be determined by the Board. No officer shall be required to be an Owner. The Board shall require that officers (and other employees of the Association) be subject to fidelity bond coverage.

4.2 **President.** The President shall be the chief executive of the Board, shall preside at all meetings of the Association at which the President is present and shall be an "ex-officio" member of all committees. The President shall exercise general supervision over the management and conduct of the affairs and business of the Association, including the appointment of committees. The President shall sign, and the Secretary shall witness, on behalf of the Association, all conveyances, mortgages and contracts of material importance to its business. The President shall do and perform all acts which the Board may require.

4.3 **Vice President.** The Vice President, or if more than one shall have been appointed, the Vice Presidents in order of priority of appointment, shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of the President is vacant. Each Vice President shall have such other powers and duties as may be given to him or her by law or in these Bylaws and as may be assigned to him or her from time to time by the Board or by the President.

4.4 **Secretary.** As required by law and the Project Documents, the Secretary shall have charge of the Ownership ledger, all documents pertaining to the title to all real property owned or held by the Association, and all rules, regulations and other documents required to be filed with the Association by the Declaration or these Bylaws, an original or duplicate of each of which shall at all times during the usual hours of business be open to the examination by every Owner, subject to section 3.8 and 9.4 hereof, at the principal office or place of business of the Association. The Secretary shall record all proceedings of the meetings of the Directors and all committees (and for this purpose, shall be a member of all committees) by using whatever method, media or program selected by the Board (e.g., a particular computer program), which shall be the property of the Association to be kept for that purpose at the office of the Association, and shall have such other duties as shall be assigned to the Secretary. In the absence of the Secretary from any such meeting, a temporary Secretary

shall be chosen who shall record the proceedings of such meeting as aforesaid. Notwithstanding the foregoing, the Secretary may delegate the daily handling of minutes and books and records to the Manager or managing company.

4.5 **Treasurer.** As required by law and the Project Documents, and subject to the direction and under the supervision of the Board, the Treasurer shall be the chief financial officer of the Association and shall have the care and custody of the funds and valuable papers of the Association, shall have the power to endorse for deposit or collection all notes, checks, drafts and other obligations for the payment of money to the Association or its order, and shall keep or cause to be kept accurate financial books and accounts of the Association and shall render statements of the same in such form and as often as required by the Board. Notwithstanding the foregoing, the Treasurer may delegate the daily handling of funds and the keeping of records to the Manager or managing company.

4.6 **Amendments.** Any officer may prepare, execute, certify and record amendments to the Declaration on behalf of the Association, following approval of such amendments pursuant to the terms of the Declaration.

4.7 **Compensation.** The officers of the Association shall not receive any compensation for their services; provided, however, that the Association, by resolution of the Board, may reimburse the officers for reasonable expenses incurred by the officers in connection with the performance of their authorized duties as officers. Notwithstanding the foregoing, the Board shall have power in its discretion to contract for and pay to officers rendering unusual or exceptional services to the Association special compensation appropriate to the value of such services.

4.8 **Removals, Resignations and Vacancies.** The Board may at any meeting called for the purpose, by vote of a majority of their entire number, remove from office any officer of the Association, for or without cause. Unless required by its terms, the Board need not accept a resignation in order for it to be effective, and such resignation will be effective at the time stated, or, if no time is stated, as soon as it is given to the Board. A required office may become vacant due to death, resignation, removal or change in the status of such officer so that such officer is no longer qualified, or for any other reason. Any vacancy occurring in the office of the President, Vice President, Secretary, Treasurer or any other office shall be filled by the Board, and the officer(s) so chosen shall hold office for the unexpired term, and any remaining re-election terms, in respect of which the vacancy occurred, and until their successors shall be duly elected and qualified.

4.9 **Indemnification of Officers.** When an officer of the Association is sued for liability for actions undertaken in his role as an officer of the Association, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, in accordance with the provisions of the Declaration. Officers of the Association are not personally liable to the victims of crimes or accidents or for injury to persons or property occurring at or within the Project.

ARTICLE V DISSOLUTION OF CORPORATION

5.1 **Procedure.** The Association may be dissolved as a nonprofit corporation in the manner set forth in South Carolina law, as may be amended, or any successor in law thereof; provided that upon dissolution, the Association shall continue to function and operate as an unincorporated entity to the extent permitted by law in accordance with the Declaration and these Bylaws if there is any common property which is the responsibility of the Association to maintain, repair, replace, restore and improve. The Association may dissolve and shall not be required to function and operate as an unincorporated entity upon the prior written unanimous vote of all Owners and the dedication of all common property to appropriate governmental agencies or private businesses which shall continue to provide services to the Project.

ARTICLE VI TOTAL EXPENSES; ASSESSMENTS

6.1 **Compliance With Declaration.** All Assessments shall be made in accordance with Article X of the Declaration, the provisions of which are hereby incorporated herein.

6.2 **Total Expenses.** The Board shall approve or disapprove the estimated Total Expenses and capital contributions for the coming fiscal year. The estimated capital contributions may include such amounts as the Board may deem proper for general working capital, for the general operating reserve, and shall take into account any expected income, surplus or deficit in the Assessments for any prior year. The estimated capital contributions and Assessments shall be assessed on a monthly, quarterly or annual basis, at the election of the Board, to Owners of Ownership Interests, as applicable, based upon the Total Expenses. If the sums collected for estimated Total Expenses prove inadequate for any reason, including nonpayment of any Owner's Assessments, the Board may, by resolution duly adopted, make additional special assessments, which shall be assessed to the Owners in the same manner as the estimated Total Expenses; provided that such additional special assessments are also approved by the vote or written assent of a majority of the Total Votes of the Association residing in Owners other than Declarant unless such special assessments (a) do not exceed five percent (5%) of the budgeted gross expenses of the Association for the calendar year; or (b) are for the repair or rebuilding of the Project which does not exceed ten percent (10%) of the budgeted gross expenses of the Association for the calendar year in which the assessment is levied; or (c) are against an Owner or Owners for the purpose of reimbursing the Association for costs incurred in bringing the Owner(s) into compliance with provisions of the governing instruments for the Project. Each Owner shall be obligated to pay Assessments made pursuant to this paragraph to the Association on or before the first day of the assessment period if assessed on a monthly or quarterly basis, or, if assessed on an annual basis, by January 1 of any year. The funds received by the Association from Assessments shall be kept in capital accounts or in the Expense Fund and shall be expended by the Association only in accordance with the provisions of the Timeshare Act, the Declaration and these Bylaws. For Total Expenses, two (2) separate and distinct funds shall be created and maintained hereunder, one (1) for operating expenses and one (1) for capital expenses. Further, the Association shall also have authority to assess each Owner the annual membership dues of the Club and/or Hilton Club pursuant to the provisions of the Declaration. Such annual dues shall be counted as part of the estimated Total Expenses.

6.3 **No Waiver or Modification.** Notwithstanding anything herein contained, the failure by the Board before the expiration of any fiscal year to estimate the Total Expenses as required herein shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or these Bylaws, or a release of the Owners from the obligation to pay any past or future Assessments, and in such case the estimated Total Expenses fixed for the previous and current year shall continue until a new estimate is made for the new fiscal year. Further, no Owner may exempt themselves from liability for Total Expenses by waiver of the use or enjoyment of any of the Project or by abandonment of their Ownership Interest.

6.4 **Records of Receipts and Expenditures.** The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. In accordance with the actions of the Board in assessing Total Expenses against the Ownership Interests and Owners, the Treasurer shall keep an accurate record of such Assessments and of the payments thereof by each Owner.

6.5 **Assessments: Personal Liability.** All Assessments shall be a separate, distinct and personal liability of the Owners at the time each Assessment is made. The Board shall have the rights and remedies contained in the Timeshare Act and in the Declaration to enforce the collection of Assessments.

6.6 **Unpaid Assessments.**

a) **Statement for New Purchaser.** Any person who shall have entered into a written agreement to purchase an Ownership Interest shall, by written request directed to the Board, be entitled to obtain a written statement from the Treasurer setting forth the amount of the monthly, quarterly, annual or other periodic Assessment and the amount of unpaid Assessments charged against the Ownership Interest

and its current Owner or Owners at such time. If the statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Ownership Interest shall be liable for the payment of an amount in excess of the unpaid Assessments shown thereon or for any past Assessments, provided that the former Owner shall remain so liable. Any such excess which cannot be promptly collected from the former Owner-grantor shall be reassessed by the Board as a Total Expense, as applicable, to be collected from all of the members, including, without limitation, the purchaser of the Ownership Interest, his successors and assigns. The new Owner shall, and the former Owner shall not, be liable for any Assessments made after the date of transfer of title of an Ownership Interest, even though the expenses incurred or the advances made by the Board for which the Assessment is made relate in whole or in part to any period prior to that date. The Board is authorized to require a reasonable fee for furnishing such statements, as determined by the Board. In addition, the Board shall, upon ten (10) days prior written request therefore, provide to the Owner, to any person who shall have entered into a binding agreement to purchase an Ownership Interest and to any Mortgagee on request at reasonable intervals, a current statement of unpaid Assessments for the Total Expense allocation, capital contributions, and for any expenses of and advances by the Board with respect to the Ownership Interest. The Board is authorized to require a reasonable fee for furnishing such statements. Furthermore, Owners who do not pay their Assessments when due shall be subject to a fifty dollar (\$50.00) late fee adjustable from time to time at the discretion of the Board pursuant to the Cost of Living Index.

b) **Total Expense.** In all cases where all or part of any Assessments for Total Expenses and capital contributions and for any expenses of and advances by the Board cannot be promptly collected from the persons or entities liable therefore under the Timeshare Act, the Declaration or these Bylaws, the Board shall reassess the same as a Total Expense, as applicable, without prejudice to its right of collection against such persons or entities, or without prejudice to its lien for such Assessments.

c) **Policies and Practices.** The Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of regular and special assessments, including the recording and foreclosing of liens against Owners' interests in the Project, are set forth in the Declaration, as amended and supplemented from time to time.

6.7 **Suspension of Right to Occupy.** If an Owner of an Ownership Interest is delinquent in the payment of Assessments, Club and/or Hilton Club charges, or other charges duly levied by the Association of more than sixty (60) days, in addition to any other remedies afforded by the Declaration, Bylaws, and the Timeshare Act, the Board or its duly authorized Manager acting on its behalf, may suspend such Owner's right to occupy a Suite and may suspend all related rights and privileges as an Owner during the period of time such Owner is delinquent in the said payment, provided the Board or Manager shall give such Owner prior written notice of such suspension of his or her rights and privileges pursuant to the provisions of the Declaration. Furthermore, Owners who have had their right to occupy a Suite suspended pursuant to this section 6.7, shall be subject to a fifteen dollar (\$15.00) lock out fee adjustable from time to time at the discretion of the Board pursuant to the Cost of Living Index.

ARTICLE VII LITIGATION

7.1 **Expenses of Litigation.** If any action is brought by a Director of the Board on behalf of the Association, the expenses of suit, including reasonable attorneys' fees, shall be made part of the Total Expense. Except as otherwise provided by the Timeshare Act or Declaration, if any action is brought against the Directors or against the Board or the officers, employees or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Owners, the expenses of suit, including attorneys' fees, shall be a Total Expense. If any action is brought against one or more, but less than all Owners, with the result that the ultimate liability would, if proved, be borne solely by such Owners, the expenses of suit, including attorneys' fees, shall not be a Total Expense, but shall be solely borne by such Owners.

7.2 **Actions Against the Board or Association.** Except as otherwise provided by the Timeshare Act, any action brought against the Association, the Board or the officers, employees or agents thereof, in their

respective capacities as such, or the Project as a whole, shall be directed to the Board, which shall promptly give written notice thereof to the Owners and any Mortgagees and shall be defended by the Board; and the Owners and Mortgagees shall have no right to participate in such defense other than through the Board. Actions against one or more, but less than all Owners, shall be directed to such Owner(s), who shall promptly give written notice thereof to the Board and to the Mortgagees of such Suites, and shall be defended by such Owner(s).

ARTICLE VIII ABATEMENT AND ENJOINMENT OF VIOLATIONS BY OWNERS

8.1 **Board Remedies.** The violation of any rules or regulations adopted by the Board, the breach of any provision contained herein or the breach of any provision of the Declaration shall give the Board or the Manager the right, in addition to any other rights set forth in these Bylaws or other Project Documents:

(a) To enter the Suite in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner or Owners, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, as determined by the Board in its reasonable discretion, and the Board shall not thereby be deemed guilty in any manner of trespass; and/or

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

8.2 **Remedies are Cumulative.** These remedies are cumulative to other remedies provided in the Timeshare Act, the Declaration and these Bylaws or in any other applicable laws.

ARTICLE IX ACCOUNTING

9.1 **Budget.** A budget for each fiscal year consisting of at least the following information shall be made available to all Owners not less than forty-five (45) days prior to the beginning of the fiscal year to which the budget applies:

(a) Estimated revenue and expenses on an accrual basis.

(b) The amount of the total cash reserves of the Association currently available for replacement or major repair of the furniture and other common property of the Project and for contingencies.

(c) An itemized estimate of the remaining life of, and the methods of funding to defray the costs of repair, replacement or additions to major components of the Project for which the Association is responsible.

(d) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Project for which the Association is responsible.

9.2 **Independent Audit.** At the close of each fiscal year, the Board shall obtain an independent audit of the financials of the Association, which shall be available to Owners upon request. The audit shall be performed by an independent certified public accountant licensed in the State of South Carolina and must be prepared on an accrual basis using fund accounting and presented in accordance with generally accepted accounting principals. A copy of the audit must be forwarded to the Board and officers of the Association no later than five (5) calendar months after the end of the timeshare plan's fiscal year.

9.3 **Inspection of Books and Records.** The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer. The books and records of the Association shall be made available for inspection and copying by any Owner or his duly

appointed representative at any reasonable time, if the request is in good faith and for a proper purpose, at the office where the records are maintained or as otherwise directed by the Board. Upon receipt of an authenticated written request from a Owner along with the fee prescribed by the Board to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Owner a copy of any and all records requested.

Every Director of the Board shall have the absolute right at any time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Director agree in writing not to use, or allow the use of, the information from the Association Documents for commercial or other purposes not reasonably related to the business of the Association and the Directors interest in such Association.

9.4 **Ownership Register.** The Ownership register, books of account and minutes of meetings and related documents of the Association, of the Board and of committees of the Board and all other records of the Project (collectively "Association Documents") maintained by the Association, Manager or managing company shall be made available for inspection and copying by any Owner or his or her duly appointed representative at any reasonable time, if the request is in good faith and for a proper purpose, at the office where the Association Documents are maintained or as otherwise directed by the Board. Upon receipt of an authenticated written request from an Owner along with the fee prescribed by the Board to defray the costs of reproduction, the Manager or other custodian of the Association Documents shall prepare and transmit to the Owner a copy of any and all Association Documents requested in accordance with this Section 9.4. No person may use the Association Documents or any part thereof for any purpose unrelated to an Owner's interest as an Owner. The Board may, as a condition to permitting an Owner to inspect the Association Documents or to its furnishing such information, require that the Owner agree in writing not to use, or allow the use of information from the Association Documents for commercial or other purposes not reasonably related to the regular business of the Association and the Owner's interest in the Association. The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Owner desiring to make the inspection or obtain copies;
- (b) Hours and days of the week when such an inspection may be made; and
- (c) Payment of the cost of reproducing copies of documents requested by an Owner.

Names, addresses, telephone numbers and other personal information of the Owners shall be maintained by the Manager and shall be kept private and confidential, except to the extent disclosure is required by law. Accordingly, all mailings to Owners, including mailings from other Owners, for legitimate Association matters, including, but not limited to, the solicitation of votes and proxies shall be facilitated by the Manager. Any costs associated with mailings made on behalf of an Owner shall be borne by the requesting Owner.

9.5 **Reports.** A report consisting of the following shall be distributed to all Owners within one hundred-twenty (120) days after the close of the fiscal year:

- (a) A balance sheet as of the end of the fiscal year.
- (b) An operating (income) statement for the fiscal year.
- (c) A statement of the net changes in the financial position of the project during the fiscal year.
- (d) For any fiscal year in which the gross income to the Association exceeds \$75,000.00,

a copy of the review of the annual report prepared in accordance with generally accepted accounting principles.

(e) A list of the names, mailing addresses and telephone number of the Directors of the Board.

ARTICLE X SPECIAL COMMITTEES

10.1 **Appointment to Committee.** The Board, by a resolution adopted by a majority of the Directors in office, may designate one or more special committees, each committee to consist of three (3) or more members, which to the extent provided in said resolution shall have and may exercise the powers set forth in said resolution; provided that, in no event may any such committee be authorized to execute or otherwise undertake any of the actions prohibited to be delegated to a committee of the Board under applicable law. Such special committee or committees shall have such name or names as may be determined from time to time by the Board in its sole discretion. All special committees shall keep regular minutes of their proceedings and report the same to the Board when required. The members of such special committee or committees designated shall be appointed by the Board or the President. The Board may appoint members to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time, or may delegate its authority to make such an appointment to the President.

10.2 **Authority of Committees.** Each committee appointed as stated in subsection (a) may (but is not obligated to) be granted all powers and authorities of the Board, except the power or authority to:

- (a) Adopt, amend or repeal these Bylaws, the Declaration or the Articles;
- (b) Fill vacancies on the Board or any committee;
- (c) Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (d) Create any other special committee or appoint any additional members to any special committee;
- (e) Approve any transaction: (i) between the Association and one or more of its Directors; or (ii) between the Association and any entity in which one or more of its Directors own or control material financial interest in excess of ten percent (10%);
- (f) Prescribe the compensation of officers and Directors, if any;
- (g) Incur any debt or other obligation in excess of \$5,000 individually or in the aggregate during the term of the committees existence without express prior authorization of a majority of the Board; or
- (h) Take any other action which by the express terms of the Declaration, or any other provision of these Bylaws may be taken only upon the vote or approval of the members, or the Board itself, or which is otherwise prohibited by the South Carolina Nonprofit Corporation Act.

10.3 **Conduct of Committees.** Each committee shall govern itself in the same manner as the Board is governed by the provisions of these Bylaws.

ARTICLE XI RENTAL OR LEASE OF OWNERSHIP INTERESTS

11.1 **Rental Agreement.** Any Owner who rents or leases his Ownership Interest (or Occupancy Period) shall file with the Board or Manager a copy of the rental or lease agreement affecting the applicable Ownership Interest. The provisions of Article VIII of these Bylaws shall apply with equal force to renters or lessees of Ownership Interests.

11.2 **Responsibility of Owner.** Any Owner who rents or leases or otherwise permits any other person to utilize his Ownership Interest (or Occupancy Period) shall be responsible for the conduct of his tenants or occupants, and upon written notice from the Board or the Manager, said Owner shall be responsible for correcting violations of the Declaration, Bylaws or rules and regulations committed by such tenants or occupants.

11.3 **Actions Against Owner.** If a Owner fails to correct violations by tenants upon its receipt of such written notice, the Board or Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take; provided, however, that the reasonable costs of such action, including but not limited to fees and costs paid to third parties, shall be assessed to the Owner and shall be payable within thirty (30) days of said Assessment. Such costs shall be collected and enforced in the same manner as Assessments under Article VI of these Bylaws.

11.4 **Owner Consent.** The power of the Board or Manager hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of South Carolina. Any Owner by the act of renting or leasing or otherwise permitting any other person to utilize his Ownership Interest (or Occupancy Period) shall be deemed to have consented to these procedures and shall indemnify and save harmless the Board and the Manager from and against any and all liability therefore. It is expressly understood that the remedies available to the Board or Manager shall include, but not be limited to, the right to seek eviction of the tenant without any liability to the Owner.

ARTICLE XII AMENDMENT OF BYLAWS

The Bylaws shall be adopted by the Board and may be altered, amended or rescinded by not less than two-thirds (2/3rds) of all the Directors until the first election of a majority of Directors by Owners other than the Developer. Thereafter, the Bylaws may be altered, amended or rescinded by not less than two-thirds (2/3rds) of all the Directors and by not less than a majority vote of the members of the Association, other than the Declarant, present at a duly called meeting of the Association.

ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 **Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision herein.

13.2 **Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

13.3 **Effective Date.** These Bylaws shall take effect upon adoption by the Board.

13.4 **Seal.** The Board may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation and the words "Corporate Seal."

13.5 **Qualifications.** An officer, employee, agent or director of a corporate Owner of an Ownership Interest, a trustee or designated beneficiary of a trust that owns an Ownership Interest, a partner of a partnership that owns an Ownership Interest, and a fiduciary of an estate that owns an Ownership Interest may be an officer or Director of the Board. In all events where the person serving or offering to serve as an officer or Director of the Board is not the record Owner, they shall file proof of authority in the records of the Association.

CERTIFICATION

K. Robert Kreiger, President of OCEAN 22 Vacation Owners Association, Inc., a South Carolina nonprofit corporation, hereby certifies that the foregoing is a true copy of the Bylaws of said Association, and that said Bylaws were adopted by the Board on the 24th day of October, 2013, and are in force and effect as of the day and year indicated below.

Witness the hand of the undersigned, this 20 day of December, 2013.



President

Execution Version

TIMESHARE MANAGEMENT AGREEMENT
OCEAN 22

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of October 25, 2013 (the "Effective Date") by and between Ocean 22 Vacation Owners Association, Inc., a South Carolina non-profit corporation ("Association"), and Hilton Grand Vacations Management, LLC, a Nevada limited liability company ("Management Firm" or "Manager"), the terms of which shall extend to and be binding upon the legal representatives, successors and assigns of the Parties. Management Firm and the Association are sometimes referred to collectively in this Agreement as the "**Parties**" and individually as a "**Party**."

WITNESSETH:

WHEREAS, 2200 Development, LLC, a South Carolina limited liability company (together with its successors and assigns, "Developer" or "Declarant") has established or will establish a project which is subject to a timeshare plan ("Vacation Ownership Plan") which is or will be known as OCEAN 22 VACATION SUITES, located at 2200 North Ocean Blvd., Myrtle Beach, South Carolina ("Property" or "Resort"), pursuant to the Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suites ("Declaration") and which will consist of 230 purpose-built timeshare units, common areas, recreational and commercial amenities and off-site parking; and

WHEREAS, the Association is the entity created to operate, manage and maintain the Vacation Ownership Plan, Suites (as defined in the Declaration), Common Area (as defined in the Declaration) and any other areas of the Property which the Association has the right to use or maintain (collectively, the "Project"); and

WHEREAS, the Declaration and the Bylaws of the Association (the "Bylaws") set forth the duties, powers, obligations, maintenance responsibilities and functions of Association and further provide that the Board of Directors of the Association (the "Board") shall manage the affairs of Association; and

WHEREAS, the Bylaws of the Association provide that the Association is authorized to engage the services of a person, firm or entity as its manager to assist it in fulfilling or carrying out certain duties, powers, obligations, maintenance responsibilities and functions of the Association and to manage and administer the Project; and

WHEREAS, the Association wishes to enter into this Agreement with Management Firm for Management Firm to manage and administer the Project on the Association's behalf and perform such other services, as more particularly described in this Agreement; and

WHEREAS, Management Firm wishes to provide such services and perform such functions pursuant to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Association and Management Firm agree as follows:

1. Defined Terms. Unless the context clearly indicates otherwise and unless otherwise defined herein, the terms used in this Agreement shall have the meanings as set forth in the Declaration, which is incorporated herein by reference.

2. Engagement; Right to Delegate; Project Name; Conditions Precedent.

(a) Engagement; Authority and Duty of Management Firm. Management Firm shall have the sole and exclusive right and obligation to operate the Project and the Association governance

according to the Operating Standards (as defined in Section 4(b)) and pursuant to the terms of this Agreement. The Association does so hereby engage Management Firm, and Management Firm hereby accepts and assumes such obligation, upon the terms, conditions, restrictions and provisions set out in this Agreement, and subject to the provisions contained in the Declaration. Subject to the Operating Standards, Management Firm shall have the sole authority and responsibility to: (a) determine operating policy, standards of operation, quality of service, the maintenance and physical appearance of the Project and any other matters affecting operations and management; (b) supervise and direct all phases of advertising, sales, reservations and business promotion for the Project; and (c) carry out all programs consistent with the annual budgets for the Association; provided that Management Firm shall be excused from its performance of any obligation under this Agreement to the extent prevented by Association's breach of its covenants under this Agreement.

(b) Right to Delegate. Management Firm shall be entitled to delegate and subcontract all or any part of its obligations hereunder: (i) to an Affiliate (as defined below) without the approval of the Association or its Board of Directors, or (ii) an unrelated third-party, subject to the reasonable approval of the Association's Board of Directors. Such delegation may be to any of Management Firm's Affiliates or any other third parties of comparable reputation, as Management Firm deems desirable, and shall be without prejudice to Management Firm's ultimate responsibility for its obligations hereunder or its right to receive its full compensation under this Agreement, provided that the Association shall incur no additional cost as a result of such delegation or subcontracting. For purposes of this Agreement, "Affiliate" shall mean, as to a Party, the parent or subsidiaries of such Party or an entity controlling, controlled by or under common control with such Party, or an entity acquiring by purchase, merger or operation of law a majority of the value of either Party's assets, but only to the extent that the transferee entity has assets and resources not materially less than those of the transferor. As used herein, a person shall be deemed to "control" another by virtue of its direct or indirect ownership of more than 50% of the ownership interests therein, or such person's ability directly or indirectly to direct or cause the direction of the management and control of the applicable entity, by contract or otherwise.

(c) Intellectual Property; Trademarks; Project Name.

i. Intellectual Property. Association acknowledges that Management Firm or one of its Affiliates is the licensee of certain intellectual property (collectively, "Intellectual Property") including its: (a) software to be used at the Project and all source and object code versions thereof and all related documentation, flow charts, user manuals, listing, and service/operator manuals and any enhancements, modifications or substitutions thereof (the "Management Firm Software"); (b) trade secrets, know-how and other proprietary information relating to the operating methods, procedures and policies distinctive to the Project; and (c) the Trademarks (as defined below). Management Firm shall utilize the Intellectual Property in connection with the operation of the Project to the extent Management Firm deems appropriate for the purpose of carrying out its agreements and obligations hereunder. Any use by Management Firm shall be strictly on a non-exclusive basis, and neither the use nor anything contained in this Agreement shall confer any proprietary license or other rights in the Intellectual Property upon the Association or any third parties.

ii. Trademarks.

(1) Ownership of Trademarks. Management Firm represents that it has the right to use the Trademarks in connection with the operation of the Project. Association shall not contest the rights of Management Firm or its Affiliates in respect of the Trademarks, including any additions or improvements to the Trademarks by whomever developed. "Trademarks" means the trademarks, trade names, service marks and copyrights associated with the Tradename (as defined below) and the related marks that include the word "Hilton" (including "Hilton Grand Vacations," the "Hilton Grand Vacations" mark and the "Hilton Grand Vacations" logo or symbol, together with the right to use any and all slogans, derivations, trade secrets, know-how and trade dress and all other proprietary rights associated with such names, marks and slogans).

(2) Use of Trademarks. As part of the management services to be

provided under the terms of this Agreement, the following provisions shall also apply to the use of the Trademarks:

(a) Association may not itself use the Trademarks or apply for international, United States federal or state or territorial registration of any rights in the Trademarks. Without Management Firm's prior consent, Association may not use any of the Trademarks as all or part of its legal name or any other trade or assumed name under which Association does business, and Association shall disclose in any trade or assumed name filing that the Project is independently operated. Except as provided in Section 2(c)(iii), no other letter, word, design, symbol or other matter of any kind shall be superimposed on, associated with or shown in such proximity to the Trademarks so as to alter or dilute them and Association shall not combine any of the Trademarks with any other trademark, service mark or logo, nor shall it use any of the Trademarks in association with any of its other businesses or ventures without first obtaining Management Firm's consent.

(b) Management Firm reserves the sole right and discretion to:

(i) set reasonable minimum operating standards associated with the Trademarks for the Project which must be met as a condition of continued association with the Tradename;

(ii) determine how and on what materials the Trademarks may be used;

(iii) set standards for and designate approved third-party suppliers of products bearing any of the Trademarks, and receive third-party commissions, fees or royalty payments; and

(iv) handle disputes and control actual or threatened litigation with third parties relating to any part of the Trademarks.

iii. Project Name. Management Firm will brand the Project with the "Hilton Grand Vacations Club" name or other such tradename or trade mark agreed to by Management Firm and Developer (collectively, "Tradename") in connection with the management of the Project in accordance with this Agreement. Use of the Tradename shall be a non-exclusive limited license to be used during the Term only for management of the Project. This license shall terminate if this Agreement is terminated.

(1) Association shall cause all offering plans and disclosure statements to clearly disclose to consumers that the Tradename is used at the Project pursuant to a license that may be terminated upon termination of this Agreement and that the Association remains responsible for all representations and warranties made to consumers by either of their employees, contractors or in their written collateral.

(2) Association will not make any independent use of the Tradename without the prior written consent of Management Firm, it being acknowledged by Association that these rights are reserved exclusively to Management Firm in connection with its management services obligations.

(3) Association will, as reasonably directed by Management Firm and to the extent permitted by the Project Documents and applicable law, and at Association's sole cost, Management Firm may affix the Tradename to the internal and external signage of the Project and such other locations as are designated by Management Firm and approved in writing by the Board of Directors of the Association (minutes of any meeting of such board or board consent being sufficient for such purposes).

(4) At no cost to the Association, the Association will comply with Management Firm's reasonable directions relating to the Tradename, including in terms of the Tradename to be used, style, size, placement, color, materials or otherwise, and will include in all collateral or in-room material any notices relating to Hilton's ownership of the Tradename specified by Management Firm from time to time. Directions given by Management Firm in terms of the Tradename will accord in all material respects with the brand identity guidelines issued by Management Firm or its

Affiliates from time to time in connection with resorts owned or operated by Management Firm or its Affiliates. the Association will not deface, obscure, remove or otherwise tamper with the Tradename once affixed. Other than the Tradename and those tradenames and logos affixed to any branded items, such as toiletries, by the relevant manufacturer at source, the Association will not (and will not cause) any other trademark or logo to be affixed to or otherwise used in relation to any such branded items.

(5) The Association will not represent to any person or entity that it holds any title or rights in the Tradename beyond those expressly granted to the Association herein; use any other trademark or services mark, domain name, words, logos or symbols similar to or so resembling the Tradename as to be likely to cause deception or confusion and will not use the Tradename or any word confusingly similar to the Tradename as or as part of its corporate or trading name; use the Tradename in any way which would tend to allow it to become generic, lose its distinctiveness, prejudice any future registrations of the Tradename, reduce the commercial value of the Tradename or be materially detrimental to or inconsistent with the good name, goodwill, reputation or image of Management Firm or Hilton Worldwide, Inc. ("Hilton") or any of their Affiliates; use the Tradename in any improper or illegal way or in any other way other than for the purposes of, and strictly in accordance with, this Agreement; register or seek to register the Tradename or any other similar service mark, trade names, commercial slogans or any other intellectual property rights owned by Management Firm or its Affiliates; or do or omit to do anything that the Association is required to do under this Agreement which impairs the rights of Management Firm or its Affiliates in any of the tradename or similar registrations or applications relating to any Hilton name, including the Tradename or which prejudices, dilutes or reduces the commercial value, reputation or goodwill of or in any of any Hilton name, including the Tradename. Nothing herein shall preclude the Association from using the words "Strand," "Sequel" or "Resort" in its name.

(6) Association also acknowledges that any goodwill arising from the use of the Tradename inures to Management Firm and its Affiliates.

(7) Upon the termination or expiration of this Agreement, the license to use the Tradename granted to the Association under this Agreement will immediately terminate, whereupon the Association shall promptly remove or obliterate the Tradename from any use or arrange for immediate destruction of the same as may be instructed by Management Firm and take all other actions reasonably necessary or desirable or required by Management Firm to preclude any possibility of confusion on the part of the public that the Association is still associated or connected with Management Firm or Hilton. Management Firm shall bear the cost of all such actions, unless this Agreement was terminated as a result of the Association's material breach of its obligations hereunder.

(8) Management Firm represents and warrants that it has the right to grant to Association the rights to the Tradename licensed under this Agreement.

(d) Conditions Precedent. Management Firm shall have no obligation to provide the management services until the following conditions ("Conditions") have been completed unless otherwise agreed by the parties in writing:

(i) Approvals.

1. The Board of Directors of the Association must have provided approval of this Agreement; and
2. Developer must have obtained approval of this Agreement from its governing body and entities, including its Board of Directors, parent companies, lenders or associations, lenders, interest holders, and mortgage holders, if required and as applicable.

(ii) Sales & Marketing Agreement. Developer and Hilton Resorts Corporation must have entered into the Sales & Marketing Agreement (the

"Sales & Marketing Agreement").

(iii) Sales & Marketing Agreement Conditions Precedent. The conditions precedent set forth in Section 1.3 of the Sales & Marketing Agreement (except Section 1.3(c) of the Sales & Marketing Agreement) must have been satisfied or waived in writing by the Management Firm's affiliate that is party to that Agreement.

3. Term. The term of this Agreement shall commence as of the Effective Date hereof and shall remain in effect for an initial period of three (3) years ("Initial Term"). Upon the expiration of said Initial Term, this Agreement shall be automatically renewed for additional and successive three (3) year periods upon the same terms and conditions set forth in this Agreement (each a "Renewal Term" and together with the Initial Term, the "Term"), unless earlier terminated pursuant to Section 24 of this Agreement.

4. Powers and Duties of Management Firm; Services. Management Firm shall manage and operate the Project in accordance with the same practices and standards utilized in management of other Hilton Grand Vacation Club projects generally and consistent with the best interests of the Association and in accordance with the Operating Standards, subject to any budget limitation. Management Firm, as agent for, on behalf of, and at the sole expense of the Association, shall furnish the Tradename Services (as defined below), Other Tradename Services (as defined below), Consolidated Services (as defined below), Additional Services (as defined below) and Resort Services (as defined below) (collectively, the "Services"), through employees, experts, subcontractors and/or other service or material providers engaged or retained by Management Firm. Association acknowledges that the Services are an integral part of Management Firm's operation of the Project and resorts under the Tradename, and Management Firm requires the flexibility to modify the Services to respond to market trends, competitive conditions, customer demands, economic conditions, technological advances and other factors affecting the operation of Projects under the Tradename (including the costs associated with maintaining and upgrading such Services), as they may change from time to time. Accordingly, Association agrees that Management Firm shall have the right to: (a) modify the structure, scope, delivery, fees, costs and terms of any Services; (b) add new, or discontinue existing Services; or (c) make mandatory Services optional, or make optional Services mandatory, as Management Firm deems advisable from time to time, each such change to be implemented upon no less than sixty days' notice to Association and such change is consistent with that implemented or utilized generally at other resorts managed under the Tradename and such changes do not have a material adverse impact on the budget for the calendar year in which the change is to occur or a material adverse effect on the quality of the services or the operation of the Resort without the express authorization of the Association. Subject to the terms and conditions of this Agreement, Association agrees to reimburse Management Firm for any and all reasonable costs incurred by Management Firm in providing the Services. The Services include the following services, which shall be provided on a continuing basis as required, unless otherwise specifically provided herein:

(a) Employment of Personnel. Management Firm shall employ, compensate and supervise all persons necessary to manage, maintain, administer and operate the Project. Such persons shall be employees of Management Firm and not of the Association. All matters pertaining to employment, interviewing and screening process, supervision, compensation, promotion, and discharge of employees of Management Firm are the responsibility of Management Firm. Management Firm shall pay all payroll taxes and other benefits and administrative costs for all of its employees and Association shall reimburse Management Firm for all such taxes, benefits, costs and any other reasonable costs of compensation of all of Management Firm's employees who provide service at the Project or an equitable pro rata portion thereof if such employees are providing shared services with another project managed by Management Firm. The Association shall pay all expenses, or a pro rata share thereof, associated with the licensure of all on-site employees required to be licensed under South Carolina law.

(b) First Class Resort Standard; Operating Standards.

i. Subject to and in accordance with Section 4(b)(ii) of this Agreement, Management Firm shall maintain and repair the Project to a first class resort standard. Resort properties

operated by Management Firm such as RL Vacation Suites and Tuscany Village Vacation Suites located in Orlando, Florida shall constitute first class resorts for purposes of this definition.

ii. Operating Standards. Association acknowledges that the Project's compliance with Operating Standards is critical to the success of the Project. Association shall, at its sole expense, take all such reasonable actions as are necessary to enable the Project to comply with Operating Standards (including any quality assurance program that may apply to the Project), unless Association requests, and Management Firm consents in writing to, an exception, including without limitation providing all capital and operating funds. Any such exception granted by Management Firm shall only apply to the specific instance for which the exception was granted. In no event shall Management Firm be required to comply with any resolution or direction of the Board which, in Management Firm's sole discretion, would require Management Firm to deviate from the then-current Operating Standards. "Operating Standards" means the standards of operation, service, furnishing, equipping and maintenance applicable to substantially all of the "Hilton Grand Vacations" branded properties managed by Management Firm, including the written specifications, standards and requirements issued from time to time by Management Firm or its Affiliates for constructing, designing, equipping, furnishing, supplying, operating, maintaining and marketing timeshare resorts under the Tradename which includes using a consultant engaged by Management Firm to conduct a survey of the Project and common areas of the Project from time to time to ensure the continued compliance with the Americans with Disabilities Act ("ADA"). Association acknowledges and understands that the Operating Standards are confidential and proprietary to Management Firm and its Affiliates, and should be treated as such. Notwithstanding anything in this Agreement to the contrary, for a period of two (2) years following the commencement of operations at the Project, the Project shall not be required to comply with any changes to the Operating Standards in effect as of the Effective Date unless such changes are required for Developer, Association or Manager to comply with applicable law.

(c) Compliance with ADA. Developer has agreed that the Project will be constructed in accordance with ADA requirements which shall be confirmed by an ADA consultant prior to first occupancy. Association shall ensure that the Project, including all associated parking facilities, continues to comply with the ADA and that any future renovation of the Project comply with ADA standards.

(d) Compliance with Laws. Management Firm shall take such actions as may be necessary to operate and manage the Project in compliance in all material respects with all applicable federal, state and local laws, statutes, ordinances, orders, rules, regulations and other requirements including, but not limited to any requirements of the Timeshare Act (as defined in the Declaration). Management Firm further agrees to do everything reasonable within its powers to operate the Project in accordance with the terms and conditions of the Declaration and Bylaws. The Association or Management Firm, with the consent of a majority of the Board, shall have the right to contest any such governmental law, statute, ordinance, order, rule, regulation or other requirement unless failure to comply promptly with any such requirement is reasonably likely to expose either the Association, Management Firm or Declarant to criminal liability or to substantial civil penalty, unless the Party affected thereby consents to such action.

(e) Utility Services. To the extent not provided by the Association, Management Firm shall provide or cause to be provided to all Suites and Common Areas all utility services (public or private, including, but not limited to, water, gas, electricity, cable television, telephone and other telecommunication services, refuse collection and sewage disposal), repairs and other services necessary for the management, maintenance, administration and operation of the accommodations and facilities constituting the Project. Any contracts and purchases with respect to the provision of such services may be either in the name of the Association or Management Firm, as Management Firm may elect.

(f) Equipment Purchases and Leases. Management Firm shall purchase, lease or rent, as agent for and on behalf of the Association, equipment, tools, vehicles, appliances, computer hardware, software, goods, supplies, furnishings, furniture, materials, other items of personal property and real property as shall be reasonably necessary for the performance of its duties and obligations herein as deemed necessary or appropriate by Management Firm, including, without limitation, the front desk property management services, communication and data processing for the Project and arrange for provision and

maintenance of such systems. Such transactions may be either in the name of Management Firm or the Association, as Management Firm shall elect.

(g) Insurance.

i. Required Insurance Coverage. The Association shall obtain and maintain insurance in accordance with the terms of this Agreement.

ii. Specific Requirements. The Association shall maintain insurance coverage of the following types continuously throughout the term of this Agreement:

1. Commercial General Liability insurance including coverage for premises and operations, contractual liability, bodily injury, personal injury, advertising injury and property damage with a minimum policy limit of \$75,000,000 USD in the annual aggregate.
2. Business Automobile Liability insurance with coverage for any auto or vehicle whether owned, non-owned, hired, leased or otherwise used in the performance of this Agreement with limits of \$75,000,000 combined single limit each accident.
3. Crime, Employee Dishonesty insurance with coverage for loss arising out of or in connection with any fraudulent or dishonest acts committed by the employees, acting alone or in collusion with others, in an amount of at least \$2,000,000 USD.
4. Employment Practice Liability Insurance shall be obtained in an amount no less than \$2,000,000 USD. Such insurance shall include coverage for "mass"/class action multi-party claims, and shall specifically amend the definition of "Employer" to include both Owner and Manager, regardless of who is the statutory employer.
5. Commercial Property Insurance:
 - a. Property damage and business interruption insurance on a special causes of loss policy form ("**all-risk**"), covering 100% of the insurable replacement value of the building(s) and its contents, and for full recovery of the net profits and continuing expenses for the Project (including rental value) for a twelve (12) month period must be carried. The policy must include coverage for the peril of windstorm, earthquake, and flood in the amount of no less than seventy five percent (75%) of the insurable replacement value, and for ordinance and law. Manager and its Affiliates now or hereafter existing must be included as additional insureds with respect to their interest in business interruption insurance.
 - b. Broad form boiler and machinery insurance, including business interruption coverage, against loss from accidental damage to, or from the explosion of, boilers, air conditioning systems, including without limitation refrigeration and heating apparatus, pressure vessels and pressure pipes in an amount equal to one hundred percent (100%) of the actual replacement value of such items plus full recovery of the net profits and continuing expenses of the Project.

- c. Terrorism coverage shall be obtained and maintained for both first party damage and third party liability either stand-alone, through a government operated or mandated pool, or as part of the GL coverage and the property damage/business interruption coverage.

All insurance policies shall name Management Firm and its Affiliates identified to The Association in writing as an additional insured or co-insured.

iii. Responsibility of Maintaining Insurance. The Association is responsible for maintaining insurance meeting the requirements of this Section 4(g). In accordance with Section 4(a), Manager will employ all persons necessary to operate the Project. Notwithstanding the requirements of Section 4(g)(ii) to the contrary, if Manager is the statutory employer of the employees of the Association, Manager must procure and maintain, at the Association's expense, crime insurance for employee dishonesty, employment practices liability insurance, workers' compensation and employer's liability coverage and such insurance will be comparable to the amount of insurance carried with respect to other Hilton locations, taking into account the size and location of the Project. If the Association or such other party is the statutory employer of the employees of the Association, then The Association or such other party must obtain workers' compensation and employer's liability coverage in satisfaction of the requirements of this Section 4(g)(iii). The Association may request Management Firm, at the expense of the Association, to procure and maintain the other types of required insurance. If the Association so requests the following shall apply:

1. Manager shall not be obligated to purchase insurance programs on behalf of the Association that meet the Association's insurance requirements under this Agreement.
2. Upon termination or assignment of this Agreement, or material breach by the Association that is not cured by the Association within sixty (60) days following written notice thereof from Manager, insurance coverage under any and all Manager-purchased insurance programs shall terminate with respect to the Association and the Association's property and the Association's insurance risks in the same manner as if the insurance risks in the same manner as if the insurance had expired on the date of such termination, assignment or breach.
3. Participation in a Manager-purchased insurance program shall require a commitment of at least three annual policy periods by the Association, after with the Association shall again have the option to purchase its own insurance or continue in the Manager-purchased insurance program, subject to the terms of paragraphs (1) and (2) above. However, if the Association obtains financing under the terms of which a lender requires insurance of a type or quality which a Manager-purchased insurance program does not satisfy in whole or part, then Owner shall be relieved from its three year commitment hereunder. The Association shall provide Manager notice of decision at least (90) days prior to the next renewal date of coverage under the Manager's program.
4. Manager will not be required to provide the Association with copies of the applicable policy(ies). If the Association signs a confidentiality agreement in a form acceptable to Management Firm policies will be made available at Managers home office. However, Manager will provide the Association with evidence of such insurance program(s), including without limitation, certificates of insurance and insurance program summaries.

5. Manager-purchased insurance programs, if any, maintained by Manager under this Section 4(g)(iii) may, at Manager's option, be effected under policies of blanket insurance which also cover other the Associations. Manager shall have the right to charge the Association a share of the total cost paid by Manager, such share to be allocated to the Association using the same methodology or formula as use to allocate to other participating Associations or properties. The "total cost" will include all costs associated with the procurement and maintenance of that insurance program, including premiums, taxes, assessments, agent/broker fees, agent/broker commissions, claims within deductibles, administrative costs of risk management and claims personnel of Manager, actuarial fees, collateral costs, and claims administration fees.
6. Manager-purchased insurance programs, if any, maintained by Manager under this Section 4(g)(iii) may contain deductible or retention provisions for which the Association shall be entirely responsible. If such a deductible or retention expense is incurred, Manager may either invoice the Association with the payment to be made directly by the Association or Manager may initially pay the expense on behalf of the Association and then charge the cost back to the Association either directly or through the allocation of costs as provided in paragraph (5) above.
7. Manager-purchased insurance programs, if any, maintained by Manager under this Section 4(g)(iii) may use elements of self-insurance or self-assumption including the use of captives or other forms of alternative risk financing.
8. Manager does not warrant that the insurance programs it purchases, if any, will be more advantageous or competitive relative to the alternatives the Association may be able to procure; however, such programs will be provided to the Association on the same terms as any other developer.

iv. Liability of Claims. The insurance requirements contained herein shall not be construed in any manner to replace, relieve or limit the Association's indemnity obligations for any loss or Claims arising out of this Agreement or otherwise.

v. Ability of Manager to 'Force Place' Insurance. If the Association does not obtain and continuously maintain in force the insurance and policy limits set forth in Sections 4(g)(i) and (ii), Manager may (but is not obligated to) obtain and maintain such insurance for the Association. The Association shall reimburse Manager for premiums and other costs incurred by Manager in force placing such insurance.

vi. Changes in Insurance. Manager shall have the right to raise the minimum amount of insurance to be maintained with respect to the Association to make such insurance comparable to the amount of insurance carried with respect to other Hilton locations, taking into account the size and location of the Project. In addition, supported by relevant evidence, such minimum limits of insurance be lowered on the basis that such insurance cannot be obtained in such amounts, or can be obtained only at a prohibitive cost.

vii. Named Insured. Any insurance policies obtained by Manager shall show Manager or Manager's Affiliate as the principal or first named insured and the Association as an additional insured. Any insurance policies obtained by the Association shall show the Association as the principal or first named insured and Manager an insured, along with other Affiliates identified to the Association in writing. If appropriate property insurance that is obtained on the Association's behalf by Manager shall include a mortgagee endorsement clause in favor of mortgagees, as their interests may appear.

viii. Schedule of Insurance. Upon request, either Party shall make available to the other a schedule of insurance obtained by such party pursuant to this Section 4(g), listing the policy numbers of insurance obtained, the names of the companies issuing the policies, the brokers or agents used, the names of the parties insured, the amounts of coverage, the expiration date, and the risks covered.

ix. Waiver of Subrogation. Neither Manager nor the Association shall assert against the other, and both Manager and the Association hereby waive respect to each other or against any related entity or person, and on behalf of their insurers, any claims for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the ownership, development, construction, completion, operation or maintenance of the Association's property, to the extent that the same are covered by the insurance required under this Section 4(g). Each policy of insurance shall contain a waiver of subrogation reflecting the provisions of this Section 4(g).

x. Business Interruption Insurance. Business interruption and/or contingent business interruption coverage shall include the fair value of Manager's expected compensation under this Agreement and other fees ordinarily paid to Manager by the Association. Business interruption proceeds shall be allocated between the Association and Manager in proportion to the net income to Owner and fees to Manager that would have been earned during the period to which the proceeds relate.

(h) Maintenance of Financial Records. Management Firm shall keep and maintain or cause to be kept and maintained full and adequate financial records, books, accounts and other records of the Association reflecting the results of operation of the Project, as provided by the Association's Bylaws and applicable law and, as necessary, issue certificates of account to Owners or their authorized representatives. All books and financial records shall be maintained at the office of Management Firm in accordance with applicable laws. Such books and financial records shall be sufficient to describe any and all of Management Firm's services hereunder in accordance with prevailing accounting standards sufficient to identify the source of all funds collected by Management Firm on behalf of the Association, and the disbursement thereof. The books, financial records and other records relating to the Project, including the minutes of the Board and Association meetings, shall be available at all reasonable times for examination, inspection and transcription by Owners and their authorized representatives at a place designated by the Board as provided by applicable law or the Bylaws. It is understood that any such inspection shall be conducted without cost to Management Firm, and without unreasonable disruption to the employees and operation of Management Firm. Management Firm may charge a reasonable fee for any transcription or reproduction of any and all records of the Association. All books and financial records of the Association shall be made available by Management Firm to the South Carolina Real Estate Commission for inspection upon request at the Association's expense. Moreover, Management Firm shall mail to any Owner, upon such Owner's request, a copy of the meeting minutes and the financial statements of the Association; provided, however, that Management Firm may charge a reasonable fee to defray any administrative costs in connection therewith.

(i) Audits. Management Firm shall arrange for an annual audit of the financial statements of the Association by a certified public accountant approved by the Association, in accordance with generally accepted auditing standards. The cost of such annual audit shall be a cost of the Association. The financial statements required by this section must be prepared on an accrual basis, using fund accounting, and must be presented in accordance with generally accepted accounting principles. The Management Firm shall provide a certified copy of the audit to the Association upon completion and, shall also upon request provide a copy of the audit to any member of the Association.

(j) Prepare a Budget. Management Firm shall prepare an itemized proposed annual budget for the Association including all receipts and expenditures (including taxes if appropriate). The budget shall be the final budget adopted by the Association or its Board, as applicable, for the current fiscal year. The itemized annual budget for the Association shall include, without limitation:

- i. the estimated revenues and operating expenses of the Association;

- ii. information as to whether the budget has been prepared on a cash or accrual basis;
- iii. the total replacement reserves of the Association as of the date of the budget;
- iv. the estimated replacement reserves the Association will be required to maintain the Project based on a reserve study performed by the Association;
- v. a general explanation of how the estimated replacement reserves are computed;
- vi. the amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
- vii. information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a percent funded or cash flow plan.

Should the Management Firm determine that an increase in Assessments (as defined in the Declaration) is required during any fiscal year because the Assessments collected are insufficient to pay the costs and expenses of the Association during such fiscal year, the Management Firm shall not be required to pay such costs and expenses out of its own funds, but shall prepare and submit to the Board for review and approval a revised budget. The proposed annual budget prepared by the Management Firm shall be submitted to the Board not less than 60 days prior to the commencement of the applicable fiscal year. The Board shall promptly review said proposed budget, discuss issues with the Management Firm and forthwith adopt an annual budget and authorize Assessments upon its members sufficient to fund the budget (or any revised budget) in accordance with its Bylaws.

A copy of the proposed and/or final adopted budget shall be provided to the Commission upon request in accordance with Section 27-32-20 of the Timeshare Act.

A copy of the annual budget, and any revised budget, shall be provided to each Owner. Management Firm, in its sole discretion, shall have the responsibility to prioritize the payment of bills in the event Association funds are insufficient, provided that the Management Firm shall prioritize taxes, insurance and utilities.

(k) Special Assessments. By the most efficient means available, Management Firm shall determine whether or not special assessments may be required from time to time and, promptly upon making a determination that a special assessment is required, submit a recommendation to the Board that a special assessment be levied in the manner prescribed by the Bylaws, including, but not limited to, the collection of an annual fee for lobbying and legislative efforts beneficial to the Association.

(l) General Assessments. By the most efficient means available, Management Firm shall bill for and collect the Assessments (including applicable late fees, finance charges and other applicable charges) on behalf of the Association and enforce payment of such amounts by causing to be prepared and mailed to any delinquent Owner a notice of delinquency and, by using its best efforts, at the expense of the Association, collect delinquent Assessments as provided in the Project Documents (as defined in the Declaration). Management Firm may: (i) deny use rights to those Owners who default in the payment of such obligations in the manner set forth in the Project Documents and in accordance with applicable law, and (ii) impose reasonable lockout charges related the administration of such lockout. Subject to and in accordance with the Project Documents and applicable law, Management Firm has the sole authority for establishing the procedures for billing, payment and facilitating/administering collection of Assessments, including, without limitation, the ability of Management Firm (or any Affiliate thereof) to determine the acceptable forms of payment for Assessments and any other charges, which shall specifically include the

right to accept payment by credit card. Any fees incurred by Management Firm or Association in connection with the collection of Assessments or any other fees or charges, including, without limitation, any credit card transaction fees, shall be included in the Assessments. Notwithstanding anything to the contrary herein, Management Firm's responsibility to bill and facilitate/administer the collection of Assessments shall end upon any termination of this Agreement. Assessments will at all times be maintained so that the amount produced thereby shall be sufficient to provide the monies necessary to pay all items set forth in the Declaration and this Agreement, and to realize a sum sufficient to meet the requirement of the annual budget adopted pursuant to the provisions of the Declaration.

Management Firm may, in its sole discretion and at its own cost (including all costs of employee time), include flyers and other inserts with maintenance fee billings for the purpose of marketing such products and services as Management Firm (or its Affiliates) desires from time to time (whether or not related to the Vacation Ownership Interests (as defined in the Declaration) being sold by the Developer, or its Affiliates, independent contractors or agents). Such products and services may include, but shall not be limited to, rental programs, travel insurance, life insurance, mortgage-equity loans, and/or other real estate and hospitality related products and services, including, without limitation, vacation ownership interests or other real property interests in this Project or other projects and resorts.

(m) Assessments to Support Maintenance of Operating Standards. Management Firm's ability to maintain and operate the Project in accordance with the Operating Standards is in large part dependent on the approval by Association of the annual budget for the Association which is adequate both in terms of operating and reserve assessments to support such efforts by Management Firm. In this regard, Management Firm shall take such factors into account in the preparation of its recommended annual budget for the Board. Association may be requested by Management Firm on occasion to approve a special assessment against the Owners with respect to an item of operating expense in order for the Project to continue to conform with the first class standard and the Operating Standards, which item of operating expense is so immediate in nature that a delay in assessment of same until the next Association fiscal year is not practicable. Failure by Association or its members to reasonably approve either a recommended annual budget or a requested special assessment in this regard may result in termination of this Agreement by Management Firm and/or loss of the use of the Marks and Tradename. Association acknowledges that the right to use the Marks or Tradename is subject to termination, among other things, for failure to operate the Project in accordance with the first class standard and the Operating Standards and for a variety of customary business grounds, including Association's bankruptcy or insolvency, improper use of the Marks or Tradename, or dissolution or liquidation of the Association.

(n) Bank Accounts. Management Firm shall establish and maintain the Association's bank accounts as provided for in the Declaration and Bylaws, and shall receive and deposit or invest all funds collected from the Owners and all other amounts collected by Management Firm in connection with the performance of its duties hereunder, in the appropriate bank account or accounts of Management Firm to be maintained in the Association's name for the purposes set forth in the Declaration. Such accounts shall indicate the custodial nature thereof, in banks, savings and loan associations and/or other appropriate financial institutions which are insured by an agency of the United States. To the extent funds of the Association are available, Management Firm shall withdraw from the aforementioned account(s) such funds as needed to satisfy authorized obligations of the Association pursuant to the applicable budget and any other agreements or arrangements of the Association, including this Agreement.

(o) Repair and Maintenance of the Project. Management Firm shall cause the Project to be maintained, repainted and furnished in accordance with the Declaration and Bylaws and in a manner consistent with the operation of a first class resort, in accordance with the Operating Standards, and in a manner consistent with the reserves established for such purpose, and maintain and replace the personal property within the Project. Management Firm shall have sole discretion in determining whether to replace personal property located within the Project, in making any and all judgments as to decor, and in all other judgments relating to the Project. Notwithstanding the foregoing, all replacements shall be such as to maintain the standard of quality of the furniture, other personal property and decor contained in the Project at the time construction was completed and the Project was made available for occupancy. Further,

Management Firm shall determine the costs of repairing and restoring loss or damage to the Project from any reason other than casualty, condemnation or ordinary wear and tear, and assess the costs of repairing the Project.

(p) Association Meetings. Management Firm shall cause a representative to attend the meetings of the Owners and of the Board. Unless otherwise agreed in writing by Management Firm, the minutes of all the Association's meetings shall be taken by Management Firm, and possession of the Association minute book shall remain in the custody of Management Firm. Management Firm shall also be responsible for preparing and furnishing notices of all meetings to the required parties, in a manner as may be established by the Board.

(q) Promulgation of Rules. Management Firm shall suggest, promulgate, adopt and amend rules and regulations as it deems advisable, subject to the approval of the Board, for the use and occupancy of the Project.

(r) Alterations and Additions. Management Firm shall cause such alterations and/or additions to be made to the Project as authorized by the Board and when required, the Owners.

(s) Engagement of Professionals and Experts. Management Firm shall retain or employ attorneys-at-law, tax consultants, certified public accountants and other such experts and professionals reasonably approved by the Board, at the sole expense of the Association, whose services Management Firm may reasonably require to effectively perform its duties and obligations and exercise its power hereunder. Management Firm shall retain such professionals and experts as it may hire on such basis as it deems most beneficial. The foregoing shall not be a limitation upon the right of the Association to engage other such professionals and experts on its own account as it may desire. However, the engagement of the same by the Association shall neither affect Management Firm's rights to engage and continue the engagement of the professionals and experts, nor relieve the Association of its obligation to pay for the cost of professionals and experts retained by Management Firm, as herein provided. Management Firm shall assist the Association's accountants in preparation of all required tax returns for the Association.

(t) Contract for Use of Facilities or Services. Management Firm shall contract, upon such terms and conditions and for such purpose as Management Firm may deem necessary, and grant concessions and licenses, subject to the approval of Board, for the providing of facilities and services to and within the Project, and purchase, rent or cause to be installed coin vending machines and coin operated equipment and pay telephones within the Project. The Manager shall not sell any property of the Association except as permitted by the Timeshare Act or except as approved by the Board. All income from the foregoing shall inure to the benefit of the Association, and all expenses pertaining thereto shall likewise be borne by the Association.

(u) File Claim of Lien on Behalf of Association. Management Firm shall act as agent for and on behalf of the Association, as Management Firm deems it appropriate, and as permitted by the Project Documents and the applicable law and in particular, act as agent of the Association, to file a claim of lien against any Ownership Interest of the Project whose Owner has failed to pay Assessments, real property taxes or special assessments. Management Firm may, but is not obligated unless requested otherwise by the Association, to pursue collection of the amount due represented by said claim of lien, including interest and attorneys' fees and other costs, through a collection action and/or foreclosure consistent with applicable law. Management Firm may confer freely with legal counsel for such purposes. Further, Management Firm, as agent of the Association, may execute a satisfaction of lien upon the full payment of the amount represented due by the claim of lien, but Management Firm may not compromise a lien unless specifically authorized by the Board. The Association shall aid and assist Management Firm in collecting Assessments and charges in any reasonable manner requested by Management Firm. Management Firm, as agent of the Association, may enter into an agreement with a collection agency in order for such agency to pursue on behalf of the Association collection of delinquent Assessments or other charges, the cost of such collection to be borne by the Association.

(v) Compliance with Timeshare Act and Project Documents. Management Firm shall

exercise such powers and rights as are reasonably necessary to fulfill its obligations under the Timeshare Act and the terms of this Agreement and as otherwise required under the terms and provisions of the Declaration and the Bylaws.

(w) Maintain Roster. Maintain among its records and deliver to the Board from time to time upon request a complete list of the names and addresses of all of the Owners, which list shall be updated no less frequently than quarterly. The Management Firm may not publish this list or provide a copy of it to any purchaser or to any third party; however, the Management Firm is authorized to use the owners' list from time to time for the mailing of various promotional materials provided that the same shall be at the sole cost and expense of Management Firm, including the cost of all employees' time.

(x) Reservation System. Management Firm shall provide directly, or cause to be provided through subcontracts, the reservation system for the management and scheduling of occupancy of the Suites for the Owners in accordance with the applicable Project Documents, rules and regulations, and laws governing the reservation system. Management Firm shall advise the Declarant or the Board, as appropriate, regarding any suggestions or modifications to the rules and regulations governing the reservation system of the Project. The Association specifically acknowledges that all of Management Firm's personal and intellectual property related to the scheduling of occupancy for the Owners, including, without limitation, all computer software, is and shall always be Management Firm's personal property, and that the Association shall claim no right, title or interest in or to such property. In the event this Agreement is terminated Management Firm shall provide Association with the then current reservation schedule for the Project through electronic media.

(y) Exchange Services. Management Firm shall manage, on behalf of the Association, all appropriate matters relating to any exchange program or club reservation system or the like doing business at or affiliated with the Project.

(z) Preparation of Annual Tax Returns. The Management Firm shall ensure that competent, professional assistance is engaged, as necessary, for the preparation of any tax returns or forms or other filings required by any local, state, or federal agency, and the Management Firm will provide any assistance necessary or requested in the compilation of financial data from the books and records of the Association required for the completion of these filings and returns. Services to be performed pursuant to this subparagraph shall be performed annually and from time to time as may be required in order to satisfy additional tax filing requirements.

(aa) Technology and Data

i. Operating Systems, Software and Equipment. The Management Firm shall select the systems, software and equipment necessary to provide the Services, including administering the Vacation Ownership Plan and operating the Project. In doing so, Management Firm may purchase, lease or otherwise provide the operating systems, including using intellectual property and operating systems proprietary to or licensed by Management Firm or its Affiliates.

ii. Other Technology. Utilize Internet, web-based or similar technologies, including future developed or evolving technologies, in providing the Services. Management Firm or any of its Affiliates, may implement new technologies and processes for the Project for the benefit of the Association as they become available. Certain costs incurred by Management Firm or its Affiliates in the implementation of such new technology for the benefit of one or more projects managed by Management Firm or its Affiliates may be passed on to the Association on an equitable prorata basis if the Association benefits from the new technology.

iii. Ownership. The Association and Management Firm specifically acknowledge that all of Management Firm's personal and intellectual property, including internet, network and data systems used for back-of-house operations, timeshare owner lists and HGVCclub member lists, including all personal and intellectual property related to the quality assurance programs, surveys, property management and central reservation systems, including, without limitation, all related computer software, is

and shall always be Management Firm's personal property, and that Association shall not claim any right, title or interest in or to such property. Notwithstanding the foregoing, (i) Management Firm and the Association shall share in the ownership of the timeshare owner lists for the Resort, to the extent permitted by applicable laws, and (ii) Management Firm and Developer shall jointly own all Guest Data in the performance of any hotel-related services on behalf of the Developer. During the Term hereof, Association shall not disclose, distribute, or otherwise share timeshare owner lists or Guest Data with any competitor of Management Firm without the express written permission of Management Firm. For purposes hereof, "Guest Data" shall mean the information obtained or collected by Management Firm in the ordinary course of the performance of its hotel-related services related to inventory owned by the Developer (collectively, the "Hotel Component") from guests of the Hotel Component (including any such information relating specifically to such guests' stay at the Resort that Management Firm tracks from his or her folio, including, for example, guest name, address, telephone numbers, e-mail address, frequency of visit to the Resort, room type, room rate, amenities and/or in-room services purchased, restaurant, nightclub and/or spa appointments) that is recorded on the Hotel Component's books and records.

(bb) Settlements. Management Firm shall, without the consent of the Association, in its sole and absolute discretion, settle any third-party claims brought against: (i) the Association for less than \$100,000 (including where such claim is covered by insurance), or (ii) unless Management firm will seek indemnification therefor, Management Firm.

(cc) Other Duties. Management Firm shall perform such other duties as may be required of a managing entity under the Timeshare Act and/or the Project Documents, or as may be permitted, reasonably necessary or appropriate in connection with its functioning as the manager of the Project.

5. Other Services. Other than the services which Management Firm will provide to Association under this Agreement, Management Firm or its Affiliates may furnish Tradename Services (as defined below), Other Tradename Services (as defined below), Additional Services (as defined below) and Resort Services (as defined below) to the Association or the Project's Owners and guests. Such services and their correlating fees will be negotiated and agreed to in writing by the Parties.

(a) Tradename Services. Management Firm shall furnish Tradename Services to the Association in exchange for a fee. "Tradename Services" means the mandatory programs and services provided by Management Firm and its Affiliates to substantially all timeshare resorts (whether developed or managed) operating under the Tradename.

(b) Other Tradename Services. Management Firm shall furnish Other Tradename Services to the Association, subject to: (i) a fee payable to Management Firm, as determined by Management Firm or its Affiliates from time to time, and (ii) reimbursement of Management Firm's expenses related thereto. Such fee may be increased by Management Firm or its Affiliates during the Term so long as similar fees at other resorts managed by Management Firm are similarly increased at substantially all resorts operating under the Tradename. "Other Tradename Services" means collectively: (a) the mandatory programs and services provided by Management Firm and its Affiliates to substantially all resorts (whether owned, operated, leased, or franchised) operating under the Tradename (but excluding the Tradename Services); and (b) all optional programs and services offered to substantially all resorts (whether owned, operated, leased, or franchised) operating under the Tradename, which Management Firm determines are beneficial for the Project's operations.

(c) Consolidated Services. The Association recognizes that Management Firm and its employees and agents may be performing services similar to the services performed hereunder for other associations, entities, resorts and timesharing plans (collectively, the "Consolidated Services"). Accordingly, Management Firm is authorized to provide or cause to be provided such Consolidated Services as appropriate on a consolidated basis whereby such Consolidated Services are provided to more than one association, entity, resort or time sharing plan. To require Management Firm to strictly cost account with regard to each association, entity, resort or timesharing plan and between the Association and other persons in interest as to other properties managed by Management Firm, would substantially increase the

administrative costs borne by the Association hereunder. Accordingly, Management Firm is hereby granted the power to equitably allocate to the Association its appropriate and fair share of such costs and expenses as are general, and as to those which are not general, to charge the same to the appropriate party(ies) on such basis (weighted or not) as Management Firm deems fair and equitable.

(d) Additional Services. Management Firm shall furnish Additional Services agreed to by the Association, subject to: (i) a fee payable to Management Firm, as determined by Management Firm or its Affiliates from time to time, and (ii) reimbursement of Management Firm's expenses related thereto. Such fee may be increased by Management Firm or its Affiliates during the Term so long as similar fees at other resorts managed by Management Firm are similarly increased at substantially all resorts operating under the Tradename. "Additional Services" means collectively: (a) all mandatory programs and services provided to all or substantially all resorts managed by Management Firm under the Tradename; (b) consultation with respect to all optional programs and services offered to all or substantially all resorts managed by Management Firm under the Tradename, which Management Firm determines are beneficial for the Project's operations; and (c) special projects which are outside the purview of the budget ("Special Projects") Examples of such a Special Project include: (x) a renovation project such as large-scale replacement of interior furniture, a re-roofing, or resurfacing of roads or parking lots whereby Management Firm would have certain responsibilities in overseeing the bidding and letting of contracts and/or supervising and coordinating the actual work; and (y) additional accounting services required of Management Firm to implement special assessments, including, without limitation, separate accounting when separate checking accounts are required, special billings which are not included with regular billings, and analysis and feasibility studies for special assessments.

(e) Resort Services for the Timeshare Units. Developer, Association and Management Firm intend that the Resort will provide the timeshare owners with certain Resort services (the "Resort Services"). The Resort shall generally make available to timeshare owners the services and amenities that it makes available to Resort guests from time to time upon terms and for fees no less favorable than that afforded Resort guests. The cost of the Resort Services shall be charged and paid to the Resort either through assessments charged to the Association and paid by the timeshare owners as part of the annual maintenance fee assessment pursuant to the Project Documents or billed directly to the timeshare owners. The provision of any Resort Services shall be conditioned upon the execution by Association of a separate Resort services agreement with Developer, in a form acceptable to Developer and Management Firm.

6. Association Retains Power to Make Assessments. Notwithstanding the delegation by the Association to Management Firm of its power to prepare the budget and collect Assessments and charges during the Term, the Association retains the power to approve the budget and, should it so elect to do so, to levy any Assessment or other charges specified in the Declaration in the place of Management Firm.

7. Association to Assist in Collection of Assessments; Sufficiency of Assessments. The Association shall aid and assist Management Firm in collecting Assessments and charges in any reasonable manner requested by Management Firm. Management Firm, as agent of the Association, may enter into an agreement with a collection agency in order for such agency to pursue on behalf of the Association collection of delinquent Assessments or other charges, the cost of such collection to be borne by the Association.

8. Management Fee, Financial Services Fees and Management License Fee.

(a) Management Fee. Management Firm shall receive as compensation for the performance of its obligations hereunder an annual management fee ("Management Fee") equal to ten percent (10%) of all Assessments, including real estate taxes, attributable to all Timeshare Units in the Project which are released for sales by the Developer and the Sales Agent. Developer shall be responsible for all Assessments associated with Developer unsold inventory or in lieu thereof for any approved subsidy of the Assessments. The Management Fee calculation shall include operating fees and replacement reserve contributions that Management Firm is required to collect pursuant to the budget and special assessments or other charges levied against Owners for such period; provided, however, that the Management Fee, real

estate taxes and club dues/fees shall be excluded from the Assessments for purposes of the calculation. The Management Fee shall be a net fee, free from all charges and expenses. The Management Fee shall be payable by Association to Management Firm for each calendar month in immediately available funds within twenty (20) days after receipt of an invoice following the end of such calendar month.

(b) Financial Services Fee. In accordance with Section 5 of this Agreement, for the provision of the Financial Services (as defined below), Management Firm shall receive as compensation, a fee for 2013 equal to Thirteen Dollars and Fifty Cents (\$13.50) per timeshare interval ("Financial Services Fee"). In every succeeding year after 2013 that this Agreement may be in effect, including all renewals, the Financial Services Fee, at the discretion of Management Firm, may increase five percent (5%) or the Consumer Price Index, whichever is less. The consumer price adjustment will be based on the December to December twelve month percentage of change in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, all items, unadjusted. The Financial Services Fee shall be payable by Association to Management Firm monthly in immediately available funds within thirty (30) days after the end of each calendar month for such calendar month. "Financial Services" are the consolidated financial and accounting services provided by Management Firm, including without limitation those services described or anticipated in Sections 4(j), 4(h), 4(k), 4(l), 4(m), 4(n) and 28 and includes without limitation, preparing the Association's annual budget, establishing and maintaining Association bank accounts, billing and collecting assessments, recommending and facilitating special assessments, facilitating audits, hiring auditors, preparing and distributing financial statements, and paying Association expenses.

(c) Management License Fee – Throughout the Term, and as a condition to the license granted in Section 2 of this Agreement, Association shall pay Management Firm a license fee equal to five percent (5%) of the Assessments (the "Management License Fee"), in addition to any other fees and payments to which Management Firm may be entitled. Notwithstanding the foregoing, any Developer subsidy amounts, Assessments payable with respect to unsold Inventory and real estate taxes will not be subject to the Management License Fee. The Management License Fee shall be payable by Association to Management Firm monthly in immediately available funds within thirty (30) days of receipt of an invoice from Management Firm for the previous calendar month.

(d) Interest. All unpaid fees, costs and expenses payable to Manager pursuant to this Agreement shall bear interest, from the date such fee, cost or expense becomes due until fully paid, at the lesser of one and one-half percent (1.5%) per month, prorated daily, or the maximum rate permitted by law; provided that, if Association does not pay such fees, costs and expenses because of a dispute under this Agreement: (a) any payment of such fees, costs and expenses that were unpaid but, as a result of a resolution by way of a mediation, are thereafter payable to Management Firm, shall bear interest from the date such fee, cost or expense was otherwise due until fully paid at such interest rate, and (b) any payment of such fees, costs and expenses that were unpaid but, as a result of a resolution by way of an arbitration, are thereafter payable to Manager, shall bear interest if and as awarded by the arbitrator.

9. [INTENTIONALLY DELETED]

10. Interference with Management Firm. The Association shall neither interfere with nor permit, allow or cause any of its officers, directors or members to interfere with Management Firm in the performance of its duties or the exercise of any of its powers hereunder. The Association shall designate an individual who shall be authorized to confer with Management Firm on any matter relating to this Agreement, and Management Firm may rely upon the representations made by such designee of the Association. In the absence of any such designation, the President of the Association shall have such authority. Management Firm will designate a corporate level individual to be the primary representative for the Association to contact and otherwise communicate with on any matter relating to this Agreement.

11. Spending Authority. Although Management Firm shall use its best efforts, it shall not be responsible for obtaining the best price available as to any service, material or purchase, but rather, shall purchase or contract for same with such person or party as it deems advisable and in the best interest of

the Association without the necessity of searching for the best price, unless otherwise directed by the Board. Unless contained in the applicable approved annual budget for the Association, for any unbudgeted services or one item of repair, replacement or refurbishing to any area of the Project, the expense incurred shall not exceed the sum of \$5,000.00, unless specifically authorized by the Board. However, in the event of an emergency involving risk of injury or death or material damage to other property, Management Firm is authorized to expend any sum reasonably necessary to protect and preserve the Project, or property owned by Association. Any goods or services obtained from any Affiliate of Management Firm shall be on fair and reasonable terms, which shall not be less advantageous to the Association than if such goods or services were obtained based on an arms-length transaction with a third party.

12. [INTENTIONALLY DELETED]

13. No Liability of Management Firm for Association Expenses. It is specifically understood that Management Firm will not pay expenses from its own funds and shall only be required to perform the Services and make disbursements to the extent that, and so long as, payments received from Assessments or other revenue of the Association, if any, are sufficient to pay the costs and expenses of such Services and the amounts of such disbursements. If it appears to Management Firm that Assessments and other revenue of the Association are insufficient, Management Firm shall determine what additional assessment is required and advise the Board. It is further understood and agreed that Management Firm shall perform all of the Services required of it hereunder at no cost and expense whatsoever to itself, but solely at the cost and expense of the Association and its members. However, in the event of an emergency constituting imminent danger to any portion of the Project or to the health or safety of the Owners or other persons, Management Firm is authorized to expend from its own funds for the protection of said property or persons a sum not to exceed \$10,000.00, which the Association agrees to reimburse promptly to Management Firm. The Association shall indemnify and hold the Management Firm harmless from and against all liability for damages, costs and expenses which may arise from any claim or controversy asserting the personal liability or obligation of the Management Firm for any matter or conduct undertaken in its capacity as managing entity or agent of the Association, other than such items related to the gross negligence or willful misconduct of Management Firm, its employees, officers, directors or agents.

14. Limitation on Liability for Actions of Management Firm. Except to the extent caused by Management Firm's own gross negligence, willful misconduct or breach of this Agreement, Management Firm shall not be liable to the Association, its members, Affiliates, employees, officers, directors, agents, contractors, representatives, invitees, licensees and/or trespassers for any loss or damage and the Association will and does hereby indemnify and save harmless Management Firm, its Affiliates, employees, officers, directors, agents, representatives and contractors (collectively, the "Management Firm Indemnitees") from any such liability for damages, costs and expenses arising from injury to any person or property in, about and in connection with the Suites, Common Areas, or other Association property from any cause whatsoever, or for any matter or conduct undertaken in its capacity as managing entity or agent of the Association in accordance with this Agreement.

15. Discounts. All discounts, rebates or commissions or like items which pertain to purchases of goods or services by Management Firm on behalf of the Association shall inure to the benefit of the Association.

16. Assignment. This Agreement may be assigned by Management Firm, provided that the Association consents in writing prior to such assignment and the assignee agrees in writing to assume all of the duties and obligations of Management Firm under this Agreement. Notwithstanding the foregoing, any assignment of this Agreement to an Affiliate of Management Firm may be accomplished without the prior written consent of the Association, provided that the assignee agrees in writing to assume all of the duties and obligations of Management Firm under this Agreement, and provided that such assignee remains an Affiliate of Management Firm. Any delegation or assignment of Management Firm's rights or obligations hereunder shall be to an entity that has the same or better financial wherewithal, access to Hilton intellectual property and brand names, employees, expertise and reputation. Following any

permitted assignment hereunder, Management Firm shall be released from the terms and conditions of this Agreement. Association shall not assign or transfer its interest in, or rights or obligations under, this Agreement without the prior written consent of Management Firm. Any attempted assignment or transfer in violation of the foregoing prohibition shall be void and unenforceable.

17. Indemnification.

(a) The Association will, and does hereby, indemnify, defend, save, and hold the Management Firm Indemnitees (which includes the Management Firm) harmless from and against any liability for any loss, damages, liabilities, claims, costs and expenses, including attorneys' and other professionals' fees, arising out of or in any way related to administration and performance of (i) Management Firm's duties under this Agreement; or (ii) any other matter related to, or in connection with the Project from any cause whatsoever, unless, in each case, such loss or injury shall be solely caused by the gross negligence or willful misconduct of, or breach of this Agreement by, the Management Firm, its employees, officers, directors or agents. Subject to and in accordance with Section 4(f) of this Agreement, the Management Firm shall be designated as an additional insured in the comprehensive public liability policy obtained by or for the benefit of the Association, and any additional premium therefor shall be the responsibility of the Association. Without in any way limiting the generality of the foregoing, upon expiration or earlier termination of this Agreement, Association will indemnify, defend, and hold Management Firm (and its officers, directors, shareholders, employees and affiliates) free and harmless of from and against any liability, except to the extent due to the gross negligence or willful misconduct of, or breach of this Agreement by, Management Firm, its employees, officers, directors or agents for any loss, damages, liabilities, claims, costs and expenses arising out of or relating to any of the provisions of the Employee Retirement Income Security Act of 1974, the Multi-Employer Pension Plan Amendments Act of 1980 ("MEPPA"), the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), and the Workers Adjustment Retraining and Notification Act ("WARN"), all as amended, with respect to (i) any withdrawal liability (as described in Section 4201 of MEPPA) incurred in connection with the discontinuance of contributions to any Multi-Employer Pension Plan to which Management Firm may make contributions on behalf of persons employed at the Project but only to the extent such withdrawal liability is attributable to benefits accrued by employees of Management Firm in respect of Services performed pursuant to this Agreement; (ii) any other funding obligations arising under the foregoing; (iii) any costs, expenses, liabilities, or losses incurred by Management Firm in connection with compliance, after the date of expiration or earlier termination of this Agreement, with COBRA obligations in respect of the Project in excess of employee premiums; (iv) any fines, interest, excise taxes or penalties which may be assessed against Management Firm in respect to the operation and administration of any employee benefit plan to the extent attributable to such plans having been made available to employees of Management Firm for the Project; or (v) liabilities, costs, expenses, claims, or damages payable under WARN with respect to the termination of employment of employees by Management Firm in connection with the expiration or earlier termination of this Agreement.

(b) The Management Firm will, and does hereby, indemnify, defend, save, and hold the Association, its Affiliates, employees, officers, directors, agents, representatives and contractors (collectively, the "Association Indemnitees") harmless from and against any liability for any loss, damages, liabilities, claims, costs and expenses, including attorneys' and other professionals' fees, arising out of or in any way related to administration and performance of any matter related to, or in connection with the Project to the extent caused by the gross negligence or willful misconduct of, or breach of this Agreement by, the Management Firm, its employees, officers, directors or agents.

(c) In the event and whenever the Management Firm shall be subject to any tax, irrespective of its designation (including a fee, charge or other imposition for the issuance of a license, permit or the privilege to conduct a business or occupation), imposed, levied or assessed by the United States, the State of South Carolina, the County of Horry, any subdivision or agency of the foregoing or any other governmental body, which tax is measured, in whole or in part, by reference to the reimbursements to the Management Firm for compensation, employment taxes or any fringe benefits paid or payable to or in respect of employees, then the Association will indemnify and hold the Management Firm harmless from and against any and all liability for such taxes to the extent so measured. At the Association's request, the Management Firm will resist, by appropriate proceedings, any liability for any tax which is the subject of the foregoing

indemnification, in which case all costs and expenses, including without limitation, reasonable attorneys' fees and legal costs, incurred by Management Firm in resisting or defending itself against such liability shall be borne and paid for by the Association. Notwithstanding anything herein to the contrary, the Management Firm shall be responsible for paying all of its own income taxes.

18. Errors and Omissions Insurance. If available, Management Firm, if so requested by the Board, shall obtain errors and omission insurance in a form and amount acceptable to the Board, at the Association's sole cost and expense.

19. Authority of Management Firm to Enter Project. Management Firm shall have the authority to enter the Project (including the Suites) to fulfill its duties under this Agreement and for the purposes set forth in the Declaration, including without limitation cleaning, maid service, maintenance and repair, including emergency repairs, for abating a nuisance or dangerous, unlawful, or prohibited activity; provided that, to the extent possible, and except in the case of an emergency, Management Firm shall give Owner or the occupant of a Suite twenty-four (24) hours prior notice of its intention to enter said Suite, and limits its inspection of the Suite to daylight hours and otherwise use reasonable efforts to minimize interference with occupants.

Notwithstanding anything in this Agreement to the contrary, Management Firm may, from time to time, at its sole cost and expense, including the cost of employee time, for itself or for any of its Affiliates, market and sell, within any portion of the Project, such products and services as Management Firm or its Affiliates desires from time to time (whether or not related to any Vacation Ownership Interests being sold by the Developer or any Affiliate of Management Firm). Products and services may include, but shall not be limited to, travel insurance, mortgage-equity loans, and/or other real estate and hospitality related products and services, including, without limitation, vacation ownership interests or other property interests in the Project or other projects and resorts. Association agrees to Management Firm's right hereunder and the Board and the Association shall render Management Firm their full cooperation in connection with Management Firm and its Affiliates offering such products and services at the Project.

20. Default in Performance by Association. If the Association interferes with Management Firm in the performance of its duties and exercise of its powers hereunder, or, subject to Section 28, if the Association fails promptly to do any of the things required of it hereunder, Management Firm, within forty-five (45) days after delivering written notice to a designated officer of the Association with a copy to Developer, of such default, may declare this Agreement as being in default, and Management Firm may terminate this Agreement in accordance with Section 24, unless such default is cured by the Association or the Developer within forty-five (45) days after said officer and Developer receive such notice. Management Firm may bring an action against the Association for damages and/or specific performance, and may assert such other rights and remedies as it may have under this Agreement and/or the Project Documents, at law or in equity, and the non-prevailing Party shall be liable for the prevailing Party's reasonable attorneys' fees and costs incurred in connection with such action. All of the rights of Management Firm upon default shall be cumulative, and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other or additional remedy.

21. Default in Performance by Management Firm. Failure by Management Firm to substantially perform its duties and obligations under this Agreement for forty-five (45) days after receiving written notice of default from the Association specifying the default complained of shall be grounds for the Association's cancellation of this Agreement, subject to Sections 24(a) and 28 herein. The Association may, in addition to any other remedy available to the Association by way of agreement, at law or in equity, bring an action against Management Firm for damages and/or specific performance and/or such other rights and remedies as it may have under this Agreement and/or the Project Documents, at law or in equity, and the non-prevailing Party shall be liable for the prevailing Party's reasonable attorneys' fees and costs incurred in connection with such action. The rights or remedies of the Association upon default shall be cumulative, and the exercise of one or more rights or remedies shall not be deemed to exclude or constitute a waiver of any other right or remedy.

22. Right to Enforce Rules and Regulations. Association delegates to Management Firm the

right to enforce all rules and regulations, restrictions and other provisions of the Project Documents in accordance with the provisions for enforcement set out in the Declaration, the rules and regulations, applicable law or elsewhere.

23. Right to Enforce Payment. If an Owner fails to pay any general or special assessment as required, Management Firm may enforce all the rights and remedies available to the Association under the Project Documents, this Agreement and/or applicable law.

24. Termination of Agreement

(a) Neither the Association nor Management Firm shall have any right to terminate this Agreement except for cause and then only as specifically provided in this Agreement. Notwithstanding the foregoing, if there is cause, the Management Firm may terminate this Agreement upon ninety (90) days written notice to the Association. The Association expressly acknowledges that the Board shall not have the authority to terminate this Agreement without a majority vote of all Owners in the Project, other than the Declarant unless Declarant is a party not affiliated with Developer or Management Firm.

(b) Either the Association (upon appropriate majority vote of Owners other than the Developer as required by South Carolina law and this Agreement) or the Manager may elect not to renew this Management Agreement at the time of renewal.

(c) Either Party may terminate this Agreement in the event the other Party shall make an assignment for the benefit of its creditors or file a voluntary petition in bankruptcy or be adjudicated a bankrupt or insolvent or shall admit in writing its inability to meet its obligations as they mature, or if a permanent receiver of all or any portion of the property of either Party shall be appointed in any judicial proceeding, or there shall be entered against it an order adjudicating it a bankrupt or insolvent or an order appointing a liquidator, receiver or trustee for it or all or substantially all of its assets or approving as properly filed against it a petition seeking reorganization, arrangement or other proceeding under any bankruptcy or other law for the relief of debtors, which order shall continue unstayed and in effect for, or which proceeding shall not be terminated and such Party released from such proceeding within thirty (30) days, or if either Party shall, in violation of this Agreement, attempt to assign or encumber this Agreement or permit any other person, firm or corporation to conduct the business or Services provided hereunder.

(d) If the Project is destroyed or taken by the government, either Party may terminate the Management Agreement upon thirty (30) days written notice to the other.

(e) If this Agreement is terminated pursuant to any of the provisions herein, then all compensation owed to Management Firm and all outstanding charges or expenses incurred by Management Firm, under the terms of this Agreement, which are to be paid or reimbursed by the Association, but which are not yet paid at the time of termination, shall be paid to Management Firm by the Association. Any funds of the Association which are in excess of said outstanding charges or expenses shall be paid over by Management Firm within thirty (30) days after termination of this Agreement. Management Firm, within thirty (30) days after termination, shall supply a final statement of account and shall make available to the Association all office records, books and accounts, and such other information as the Association shall require to enable it to continue to maintain and operate the Project, except such information as may be the proprietary information of Management Firm, as set forth in this Agreement.

(f) If any material agreement between: (i) Developer or the Association, and (ii) Management Firm or any of its Affiliates, is terminated as a result of a default by the other Party, the non-defaulting Party may terminate this Agreement effective upon the termination of such other agreement.

(g) In accordance with Section 4(m) of this Agreement, if Association or its members fail to approve a recommended annual budget or a requested special assessment and as a result thereof, Management Firm is unable to maintain the Resort materially in accordance with the Operating Standards, Management Firm may immediately terminate this Agreement, provided that Developer shall have the right, but not the obligation, to make up any shortfall between Management Firm's requested

budget and/or special assessment by paying such amount into the Association's account, in which event Management Firm shall not have the right to terminate this Agreement as a result of such failure to approve the same.

(h) In accordance with Sections 2(c) and 4(m) of this Agreement, in the event Association improperly uses the Marks or Tradename, and fails to cease and desist within ten (10) business days following written demand, Management Firm may immediately terminate this Agreement.

(i) It is recognized by the Association that the management employees of Management Firm are essential to the success of Management Firm as a competitive management company. Accordingly, the Association agrees that it shall not offer employment or enter into an independent contractual relationship with any Management Firm employee in a management position for a period of two (2) years after termination of this Agreement without first obtaining Management Firm's prior written consent. Any violation of this provision may give rise to a suit for relief either at law or in equity. Nothing herein shall be deemed to preclude the Association from entering into an agreement for management services with any unrelated third party.

25. Arbitration. Except with respect to assessment liens and foreclosure thereof which shall be accomplished pursuant to the Declaration and applicable South Carolina law, any unresolved dispute, disagreement or controversy between the Parties may, upon mutual agreement of the Parties, be submitted to an arbitration board of at least three (3) members with one chosen by the Association, the other by Management Firm and a third by the other two arbitrators so chosen. The arbitrators shall act in accordance with the commercial Arbitration Rules then in effect of the American Arbitration Association. If the Parties agree to submit to Arbitration, the decision of the majority of such arbitrators shall be binding on the Association and Management Firm. Such decisions shall include the awarding of costs, including reasonable attorney's fees, as the arbitrators shall determine. The decision of the arbitrators shall be judicially enforceable as a judgment.

26. Anti-Money Laundering Laws; Specially Designated Nationals and Blocked Persons. The United States Department of the Treasury, Office of Foreign Assets Control ("OFAC"), prohibits either Party from engaging, directly or indirectly, in transactions with individuals or entities on OFAC's list of Specially Designated Nationals and Blocked Persons. OFAC also administers sanction and embargo programs involving certain designated countries. Each Party hereby represents its compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws and programs administered by OFAC, including without limitation, Executive Order 13224. Further, each Party covenants that it will continue to comply with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws and programs administered by OFAC, including without limitation, Executive Order 13224, during the Term.

27. Association Loans.

(a) If permitted by applicable law and the Project Documents, the Association may take out loans for any permitted purpose; provided, however, that (i) the Association must follow all necessary Association approval procedures prior to incurring such debt, and (ii) any such loan shall be subordinate to payment of the Management Fee, Financial Services Fee and any other fees due to Management Firm under this Agreement, and reimbursement of any costs incurred by Management Firm (or any of its Affiliates) hereunder.

(b) The Association shall not pledge the Association's reserves or operating accounts of the Project as collateral for a loan without the prior written consent of the Management Firm, which consent shall be granted if the documentation of such loan protects, in a commercially reasonable manner, the ongoing ability of Management Firm to use such reserves and operating accounts in accordance with the terms of this Agreement and the other Project Documents.

28. Force Majeure. In the event of a Force Majeure Event (as defined below), the obligations of the Parties and the time period for the performance of such obligations (other than an obligation to pay any

amount due hereunder) shall be extended for each day that such Party is prevented, hindered or delayed in such performance during the period of such Force Majeure Event, except as expressly provided otherwise in this Agreement. Upon the occurrence of a Force Majeure Event, the affected Party shall give prompt written notice of such Force Majeure Event to the other Party. "**Force Majeure Event**" shall mean any one or more events or circumstances beyond the reasonable control of the Party whose performance is affected thereby that, alone or in combination, materially adversely affects the satisfaction of one or more of the Conditions or the operation of the Project, whether or not such events or circumstances occur geographically in a location remote from the Project, including, without limitation, casualties, war, invasion, insurrection, acts of terrorism, sabotage, failure of transportation, outbreak of disease, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, actions of labor unions, actions of state real estate commissions and agencies and governmental actions (but excluding causes which can be controlled by the reasonable expenditure of money in accordance with commercially reasonable business practices).

29. Cooperation. To the extent that any right or power of Management Firm hereunder may, as a matter of law, only be exercised by the Board or the Association, the Board and the Association shall render Management Firm their reasonable cooperation in order to affect the same. The Association and the Management Firm shall cooperate in amending this Agreement as may be required in connection with the registration of the Project in any jurisdiction.

30. Web Sites. The Association hereby covenants and agrees that for any web site that it chooses to create, maintain, develop or otherwise implement or endorse without the use of Management Firm's or its Affiliates' services, the Association shall fully comply with the Management Firm's then-current website policy and Operating Standards.

31. Amendments. This Agreement may be amended in writing only upon approval of both Management Firm and the Board.

32. Complete Agreement. This Agreement constitutes the entire agreement between the Parties hereto, as of the date of execution hereof, and neither has been induced by the other by representations, promises or understandings not expressed herein. There are no collateral agreements, stipulations, promises or understandings whatsoever, in any way touching the subject matter of this instrument, or the instruments referred to herein, which are not expressly contained herein.

33. Savings Clause. The invalidity in whole or in part of any covenant, promise or undertaking, or any section, subsection, sentence, clause, phrase or word, or of any provision of this Agreement or of the Declaration, shall not affect the validity of the remaining portions thereof.

34. Governing Law. This Agreement shall be governed by the law of the State of South Carolina. It is the intent of the Parties that this Agreement comply in all respects with Title 27, Chapter 32 of the South Carolina Code of Laws (1976), as amended.

35. Counterparts; Facsimile or PDF Signatures. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which when taken together shall constitute a single document. Facsimile and PDF signatures or signatures delivered via email in "pdf" or similar format will be deemed to have the same force and effect as original signatures.

36. Headings. The article and section headings contained herein are for convenience and reference only, and are not intended to define, limit or describe the scope or intent of any provision of this Agreement. This Agreement shall be given a fair and reasonable construction in accordance with the intentions of the Parties.

37. Notices. All Notices shall be in writing, sent by certified first-class mail, postage prepaid, return receipt requested, or by facsimile transmission which confirms receipt or by courier service which provides proof of delivery, to the following addresses:

If to the Association: Ocean 22 Vacation Owners Association, Inc.
Attn: President
6355 MetroWest Boulevard, Suite 180
Orlando, Florida 32835

With a mandatory copy to: 2200 Development, LLC
c/o Strand Capital Group, LLC
1000 2nd Avenue South, Suite 310
North Myrtle Beach, South Carolina 29582

If to Management Firm: Hilton Grand Vacations Company, LLC
Attn: Vice President, Resort Operations
6355 MetroWest Boulevard, Suite 180
Orlando, Florida 32835

With a mandatory copy to: Hilton Grand Vacations Company, LLC
Attn: Legal Department
6355 MetroWest Boulevard, Suite 180
Orlando, Florida 32835

38. No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the Association and Management Firm.

39. Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.

40. Waiver. No waiver of any breach of any of the provisions of this Agreement shall constitute a waiver of any succeeding or preceding breach of the same, or of any other provision contained herein.

41. Attorney Fees. In the event of any controversy, claim or dispute between the Parties arising out of or relating to this Agreement or the breach thereof, the prevailing Party shall be entitled to recover from the losing Party reasonable expenses, attorneys' fees and costs.

42. Interpretation. Unless otherwise indicated in this Agreement:

(a) Reference to, and the definition of, any document (including this Agreement) shall be deemed a reference to such document as it may be amended or otherwise modified from time to time.

(b) All references to the Preamble, Recitals, Articles, Sections, exhibits or schedules are to the Preamble, Recitals, Articles or Sections hereof or to an exhibit or schedule attached hereto, each of which is incorporated herein by reference.

(c) Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders as the context requires.

(d) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) The headings in this Agreement are for the purpose of reference only and do not limit or affect its meaning.

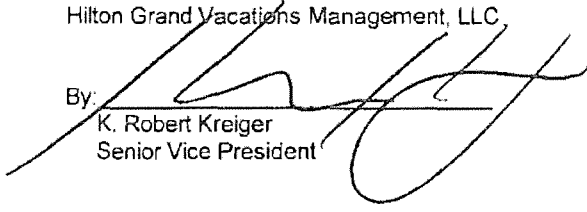
(f) The words "include," "included," and "including" shall be terms of enlargement and shall not imply any restriction or limitation unless the context clearly requires otherwise.

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IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized officers or agents on this 25 day of October, 2013.

MANAGEMENT FIRM

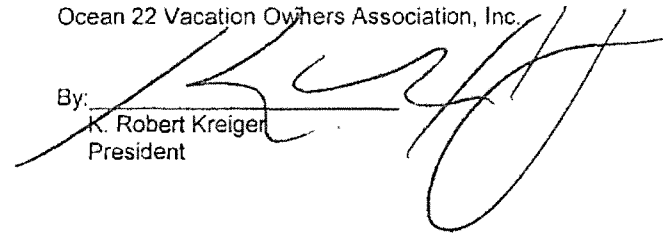
Hilton Grand Vacations Management, LLC

By: 

K. Robert Kreiger
Senior Vice President

ASSOCIATION

Ocean 22 Vacation Owners Association, Inc.

By: 

K. Robert Kreiger
President

Signature Page

Timeshare Management Agreement

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Terence Sullivan,

Plaintiff,

v.

Ocean 22 Vacation Owners'
Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-26-05377

**PLAINTIFF'S MOTION TO
RECONSIDER, ALTER, OR AMEND**

Pursuant to Rule 59(e), SCRPC, Terence Sullivan ("Plaintiff") files this motion requesting the Court reconsider, alter, or amend its September 2, 2022 ruling granting Defendant Ocean 22 Vacation Owners' Association, Inc.'s ("Defendant's") Motion to Dismiss pursuant to Rule 12(b)(1), SCRPC. As set out more fully below, reconsideration of that ruling is warranted because:

- 1) Plaintiff was not a statutory employee of Defendant at the time of the incident; and
- 2) Defendant failed to provide evidence that it carried workers' compensation insurance as required by law.

FACTS

Defendant is in the business of owning, developing, managing, maintaining, marketing, selling and operating a vacation ownership resort and rooms/units within the resort for use by owners and short-term rental customers. (See Compl. ¶2). On August 9, 2019, Plaintiff was working at Defendant's resort as an employee of Hilton Grand Vacations, Inc. While walking along a paved sidewalk on the property Plaintiff slipped and fell after stepping in a low spot on the sidewalk in which a small amount of water had

pooled and very slick algae/mold had also formed. (*Id.* ¶5). On August 16, 2021, Plaintiff filed a summons and complaint alleging that he was injured, permanently and temporarily, because of Defendant's negligence as a property owner and manager. (*Id.*).

Thereafter, on September 1, 2021, Defendant filed a motion to dismiss pursuant to Rule 12(b)(1) arguing that Plaintiff's sole remedy was pursuant to S.C. Code Ann. § 2–1–400, and that because Plaintiff was a statutory employee of Defendant, Plaintiff's claims were barred. (See Def.'s Mot. to Dismiss). At the hearing in this matter, Plaintiff's counsel argued that he was not a statutory employee because his employer's trade, business, or occupation was distinctly different from Defendant's. Furthermore, Plaintiff's counsel also argued that Defendant failed to provide evidence that it carried worker's compensation insurance, which would preclude dismissal. On September 2, 2021, the Court granted Defendant's motion finding that Plaintiff was a statutory employee, but not addressing the remaining arguments raised by Plaintiff. (See Sep. 2, 2022 Order).

LEGAL STANDARD

"A motion under Rule 59(e) has long been viewed as a 'motion for reconsideration' despite the absence of those words from the rule." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). A party may file such a motion "when [he or she] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780. "A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* (emphasis in original).

ARGUMENT

I. RECONSIDERATION IS WARRANTED BECAUSE PLAINTIFF WAS NOT A STATUTORY EMPLOYEE.

Plaintiff respectfully argues that both this Court's conclusion and its reliance on Defendant's citation to the Stormwater Management and Sediment Reduction Act ("Stormwater Act")¹ to support granting summary judgment are mistaken. Plaintiff did not allege any deficiency in Defendant's obtaining of a permit under the Stormwater Act.

Coverage under the Workers' Compensation Act depends on the existence of an employment relationship." *Edens v. Bellini*, 359 S.C. 433, 439, 597 S.E.2d 863, 866 (Ct. App. 2004). Whether or not an employer-employee relationship exists is a jurisdictional question." *Nelson v. Yellow Cab Co.*, 349 S.C. 589, 594, 564 S.E.2d 110, 112 (2002). The Workers' Compensation Act sets forth the circumstances that can give rise to a statutory employment relationship.

When any person, in this section and §§ 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is part of his trade, business or occupation and contracts with any other person (in this section and §§ 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

S.C. Code Ann. § 42-1-400 (1985). "If a worker is properly classified as a statutory employee, his sole remedy for work related injuries is to seek relief under the Workers' Compensation Act; he may not maintain a negligence cause of action against his direct employer or his statutory employer." *Neese v. Michelin Tire Corp.*, 324 S.C. 465, 472,

¹ S.C. Code Ann. §§ 48-14-10 to -170 (Supp. 2005).

478 S.E.2d 91, 94 (Ct. App. 1996), *overruled on other grounds by Abbott v. The Limited, Inc.*, 338 S.C. 161, 164 n. 1, 526 S.E.2d 513, 514 n. 1 (2000).

To determine whether an employee is engaged in an activity that is part of the owner's trade, business, or occupation as required under § 42-1-400, this Court has applied the following three tests: "(1) is the activity an important part of the owner's business or trade; (2) is the activity a necessary, essential, and integral part of the owner's business; or (3) has the activity previously been performed by the owner's employees?" *Meyer v. Piggly Wiggly No. 24, Inc.*, 338 S.C. 471, 473, 527 S.E.2d 761, 763 (2000). "Only one of these three tests need be met but there is no easily applied formula and each case must be decided on its own facts." *Id.* "[T]he guidepost is whether or not that which is being done is or is not a part of the general trade, business or occupation of the owner." *Hopkins v. Darlington Veneer Co.*, 208 S.C. 307, 311, 38 S.E.2d 4, 6 (1946).

In this case, Defendant argued that Plaintiff was a statutory employee because Defendant hired Hilton to manage, operate, and administer the resort. However, Defendant is in the timeshare ownership and vacation suite ownership business. The resort business – for which Hilton was hired to manage – is wholly separate and distinct from the ownership of timeshares.

In fact, Defendant's Declaration of Covenants, Conditions, and Restrictions states as follows:

Management of the Hotel Interests shall be independent of the management of the other Vacation Ownership Interests to the greatest extent practically and economically feasible, provided, however, this requirement does not contemplate any prohibition or restriction on the use of personnel hired to regularly furnish materials and services for the Hotel Interests in the Project and to furnish the same or similar services to the other Vacation Ownership Interests. **Such use of common personnel**

shall not imply that the Hotel Interests and Vacation Ownership Interests are under common management.

(See Def.'s Mot. Dismiss, Ex. 3, p. 10). Furthermore, Hilton's "Timeshare Management Agreement Ocean 22" with Defendant explicitly stated, "[Defendant] shall employee, compensate and supervise all persons necessary to manage, maintain, administer, and operate the Project. Such persons shall be employees of Management Firm and not of [Defendant.] (See Def.'s Mot. Dismiss, Ex. 5, p. 5).

Because of these facts, it is quite clear that Defendant's business – which is in the timeshare ownership business – was wholly distinct and separate from the resort operation business. In fact, Defendant's exhibits, declarations, and timeshare management contract with Hilton all confirmed the same. For those reasons, Plaintiff submits that the Court erred in determining that Plaintiff was a statutory employee of Defendant, and the Court's Order should be reconsidered and reversed.

II. RECONSIDERATION IS WARRANTED BECAUSE THE DEFENDANT FAILED TO ESTABLISH THAT IT WAS ENTITLED TO THE "STATUTORY EMPLOYER" IMMUNITY IN THAT IT FAILED TO PROVIDE ANY FORM OF WORKERS' COMPENSATION INSURANCE.

Even if Plaintiff was a statutory employee of Defendant, which is expressly denied, this Court's order warrants reconsideration because Defendant did not establish it was entitled to statutory employee immunity by failing to show it maintained insurance.

When an employee and his or her employer accept the provisions of the Act, the employee's remedies under the Act exclude all other rights and remedies of the employee. S.C. Code Ann. § 42-1-540 (1985). This section is known as the exclusive remedy provision, and it shrouds an employer with immunity from any actions at law

instituted by the employee. Such immunity is part of the broader quid pro quo arrangement imposed upon the employer and employee by the Act.

The employee "receives the right to swift and sure compensation" in exchange for giving up the right to sue in tort; the employer receives such tort immunity in exchange for complying with those provisions of the Act that insure swift and sure compensation for the employee. *Parker v. Williams and Madjanik, Inc.*, 275 S.C. 65, 70, 267 S.E.2d 524, 526 (1980) ("This quid pro quo approach to workmens' compensation has worked to the advantage of society as well as the employee and employer.").

The Act achieves such "swift and sure compensation" by requiring the employer to secure the payment of compensation under S.C. Code Ann. § 42-5-10 (1985). Section 42-5-10 provides: "Every employer who accepts the compensation provisions of this Title shall secure the payment of compensation to his employees in the manner provided in this chapter." S.C. Code Ann. § 42-5-10. The very next section of the Act, § 42-5-20, prescribes how an employer must secure such compensation:

Every employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization, or mutual insurance association formed by a group of employers so authorized or shall furnish to the commission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this title. The commission may, under such rules and regulations as it may prescribe, permit two or more employers in businesses of a similar nature to enter into agreements to pool their liabilities under the Workers' Compensation Law for the purpose of qualifying as self-insurers.

S.C. Code Ann. § 42-5-20 (Supp.1998).

An employer who refuses or neglects to secure such compensation becomes liable either under the Act or in an action at law. S.C. Code Ann. § 42-5-40 (1985). Thus, an

employer who fails to secure the payment of compensation as prescribed in § 42-5-20 loses its immunity under the Act's exclusive remedy provision. See 6 Arthur Larson, Workers' Compensation Law, § 67.22 (1998) ("A common exception to the exclusiveness of the compensation remedy is the right of suit against an employer who fails to secure his compensation liability by taking out insurance or qualifying as a self-insured.").

Defendant and the Court failed to address this requirement entirely. Thus, reconsideration is warranted for that reason alone. Essentially, the Court has permitted Defendant to put forth a defense that has allowed it to claim tort immunity without complying with the quintessential obligation imposed upon it by the Act — the duty to secure the payment of compensation. To accept that position would go against the clear mandates of the Act and overrule South Carolina precedent that have consistently interpreted statutory employer liability as providing "double protection" for employees. For these reasons, reconsideration is warranted, and the Court should reverse its previous decision so that discovery can at least be conducted on this issue.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this Court reconsider, alter, and amend its ruling granting Defendant's Motion to Dismiss.

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September 12, 2022

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2021-CP-26-05377
TERENCE SULLIVAN,	)	
	)	DEFENDANT’S MEMORANDUM
Plaintiff,	)	IN OPPOSITION TO
	)	PLAINTIFF’S MOTION TO
vs.	)	RECONSIDER, ALTER OR AMEND
	)	
OCEAN 22 VACATION OWNERS’	)	
ASSOCIATION, INC.,	)	
	)	
Defendant.	)	
	)	

TO: THE HONORABLE R. KEITH KELLY, Presiding Judge, and J. CLAY HOPKINS, ESQUIRE, HOPKINS LAW FIRM, LLC, and JASON P. BOAN, ESQUIRE, BOAN LAW FIRM, LLC, Attorneys for Plaintiff, Terence Sullivan (“Mr. Sullivan”)

By and through its undersigned counsel, Defendant, Ocean 22 Vacation Owners’ Association, Inc. (the “Association”), submits this memo in opposition to Plaintiff’s Motion to Reconsider, Alter, or Amend, filed September 12, 2022 (the “Subject Motion”).

The Subject Motion challenges the Court’s order, filed September 2, 2022 (the “Order of Dismissal”), granting Defendant’s Motion to Dismiss Pursuant to Rule 12(b)(1), SCRCP, filed October 15, 2021 (the “Association’s Motion to Dismiss”).

In dismissing this action, the Court correctly determined that Mr. Sullivan was a statutory employee of the Association at the time of the underlying work-related accident (the “Underlying Accident”) and thus cannot pursue the tort claims he asserts herein, because his exclusive remedy against the Association for all damages arising out of the Underlying Accident is under the South Carolina Workers’ Compensation Act (the “Act”).

Respectfully, Mr. Sullivan’s challenge to the Order of Dismissal is without merit, and the Subject Motion should be denied.

BACKGROUND

The Association is the owners association for a Hilton¹ branded timeshare resort in Myrtle Beach known as Ocean 22 (the “Project”). (See Ex. B to Association’s Motion to Dismiss [Aff. of Kelly Lodde] ¶¶ 2–7.) The timeshare structure of the Project is formalized in the recorded Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suits (the “Declaration”). (*Id.* at ¶ 6; *see also* Ex. C to Association’s Motion to Dismiss [Declaration].)

The Association has no direct employees. (Ex. B to Association’s Motion to Dismiss [Aff. of Kelly Lodde] ¶ 8.) In accordance with the Declaration, the Association’s duties and obligations are delegated to and carried out by a manager, namely, Hilton, pursuant to a written Timeshare Management Agreement (the “Management Agreement”). (*See Id.* ¶¶ 7–10; *see also* Ex. D to Association’s Motion to Dismiss [Management Agreement].)²

Under the terms of the Management Agreement, Hilton “manage[s] and operate[s] the Project in accordance with the same practices and standards utilized in the management of other

¹ “Hilton” refers to Hilton Grand Vacations, Inc.

² Technically, the Management Agreement is between the Association and Hilton Grand Vacations, Inc.’s wholly owned subsidiary Hilton Grand Vacations Management, LLC; however, for present purposes, the distinction between Hilton Grand Vacations, Inc., and Hilton Grand Vacations Management, LLC, is immaterial, because, as the Court correctly recognized in the Order of Dismissal (*see* Order of Dismissal p. 3 n.1), and, indeed, as Mr. Sullivan does not dispute in the Subject Motion (*see* Subject Motion), Hilton Grand Vacations, Inc., and Hilton Grand Vacations Management, LLC, are properly considered a single employer for workers’ compensation purposes. *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 374, 747 S.E.2d 757, 765 (2013) (“A holding company and its wholly owned subsidiary will be considered a single employer for workers’ compensation purposes if the two corporations are so integrated and commingled that neither can be realistically viewed as a separate economic entity.”) (quoting 1 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 43.80 (Supp. 2012)). Accordingly, for the sake of simplicity, the reference “Hilton” is sufficient to cover both Hilton Grand Vacations, Inc., and Hilton Grand Vacations Management, LLC, herein.

Hilton Grand Vacation Club projects;”³ “maintain[s] and repair[s] the Project to a first class resort standard;”⁴ and “employ[s], compensate[s] and supervise[s] all persons necessary to manage, maintain, administer and operate the Project.” (*Id.* at ¶ 12.)

Hilton employed Mr. Sullivan to serve as a bellperson at the Project. (*Id.* at ¶ 14.) The role of bellperson required Mr. Sullivan to assist owners and guests with transporting and/or securing their luggage; to provide instructions regarding the amenities of the room and property services and activities offered; and to deliver messages, express checkout folios, newspapers, and other requested items to the owners and guests. (*Id.* at ¶ 16.) The performance of this role was an important part of meeting Hilton’s obligations under the Management Agreement and a necessary, essential, and integral part of the operation of the Project on behalf of the Association. (*Id.* at ¶ 17.)

In this lawsuit, Mr. Sullivan alleges the Association is liable to him in tort for damages arising out of the Underlying Accident. (*See* Complaint.) In his complaint, Mr. Sullivan describes the Underlying Accident as follows: “On August 9, 2019, [Mr. Sullivan] was working at the Ocean 22 resort owned by [the Association] as an employee for [Hilton]. While walking along a paved sidewalk on the property [Mr. Sullivan] slipped and fell after stepping in a low spot on the sidewalk in which a small amount of water had pooled and very slick algae/mold had also formed.” (*Id.* at ¶ 5.) Prior to bringing this lawsuit, Mr. Sullivan sought and received workers’ compensation benefits through Hilton. (Ex. B to Association’s Motion to Dismiss [Aff. of Kelly Lodde] ¶ 18.)⁵

³ (Ex. B to Association’s Motion to Dismiss [Aff. of Kelly Lodde] ¶ 11.)

⁴ (*Id.*)

⁵ To be clear, Mr. Sullivan’s workers’ compensation claim has been fully resolved. (*Id.*; *see also* Ex. A to Association’s Motion to Dismiss [Workers’ Compensation Settlement Agreement and Release].)

As explained above, the Association responded to this lawsuit with the Association's Motion to Dismiss. (*See* Association's Motion to Dismiss.) The Court granted the Association's Motion to Dismiss via the Order of Dismissal, concluding that Mr. Sullivan was a statutory employee of the Association at the time of the Underlying Accident and, therefore, he cannot hold the Association liable in tort for damages arising out of the Underlying Accident, because his exclusive remedy against the Association for such damages is under the Act. (*See* Order of Dismissal.) The Subject Motion now challenges the Order of Dismissal. (*See* Subject Motion.)

Mr. Sullivan makes two arguments in support of the Subject Motion, i.e., two arguments why, according to him, the Court was wrong to issue the Order of Dismissal and should now reverse course and deny the Association's Motion to Dismiss instead. First, he argues that the Court was mistaken in finding that he was a statutory employee of the Association. (Subject Motion pp. 3–5.) Second, he argues that, even assuming the Court was not mistaken in finding the Association to be his statutory employer, i.e., even assuming that he was indeed a statutory employee of the Association, the Association still was not entitled to tort immunity under the Act, because the Association did not establish that it maintained workers' compensation insurance as required by the Act. (*Id.* at pp. 5–7.) As explained below, both arguments are without merit.

ARGUMENT

1. The Court correctly ruled that Mr. Sullivan was a statutory employee of the Association.

The correctness of this ruling is apparent from the Court's analysis of this issue in the Order of Dismissal. As the Court explained, "In assessing whether the Association qualifies as [Mr. Sullivan's] statutory employer for the purposes of workers' compensation exclusivity, the court must make two (2) determinations: First, the Association must qualify as a business under the Act. Second, the work contracted out to [Mr. Sullivan's] employer, [Hilton], must have constituted part

of the Association’s ‘trade, business, or occupation.’” (Order of Dismissal pp. 5–6 (citing *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 321, 523 S.E.2d 766, 770 (1999)).) The Court then correctly determined (1) that the Association qualifies as a business under the Act and (2) that the work in which Mr. Sullivan was engaged at the time of the Underlying Accident was an important part of the Association’s trade, business, or occupation. (*Id.* at pp. 6–7.)

In the Subject Motion, Mr. Sullivan does not even dispute the Court’s first determination, i.e., its determination that the Association qualifies as a business under the Act. (*See* Subject Motion.)

Mr. Sullivan’s criticism of the Court’s second determination, i.e., its determination that the work in which he was engaged at the time of the Underlying Accident was an important part of the Association’s trade, business, or occupation, is based on an erroneous (as in, nonexistent) distinction he attempts to draw between the business of the Association and that of his direct employer, Hilton. According to Mr. Sullivan, Hilton’s business is the “resort business,”⁶ or “resort operation business;”⁷ the Association’s business is the “timeshare ownership and vacation suite ownership business;”⁸ and the “resort business – for which Hilton was hired to manage – is wholly separate and distinct from the ownership of timeshares.” (*Id.*)

As an initial matter, the Association does not recall Mr. Sullivan having raised any argument based on this supposed distinction previously, and if the Association is correct that this is the first time Mr. Sullivan has raised such an argument, the argument must fail, because an argument cannot be raised for the first time in a motion under Rule 59(e), SCRCPP. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (“[A]

⁶ (Subject Motion p. 4.)

⁷ (*Id.* at p. 5.)

⁸ (*Id.*)

party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not.”) (citing *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990)); *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482 (same) (citing *Natural Resources Defense Council v. U.S. E.P.A.*, 705 F. Supp. 698, 701 (D.D.C. 1989), *vacated on other grounds*, 707 F. Supp. 3 (D.D.C. 1989) (“Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier.”); *Smith v. Stoner*, 594 F. Supp. 1091, 1118 (N.D. Ind. 1984) (“Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived.”); *Johnson v. City of Richmond*, 102 F.R.D. 623, 623 (E.D. Va. 1984) (“I do not conceive of Fed. R. Civ. P. 59(e) as serving the office of providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment.”).⁹ In any event, however, the argument is unavailing, as Mr. Sullivan is plainly mistaken in claiming that the “resort business” is separate from the Association’s business.

In support of this argument, Mr. Sullivan quotes the following language from the Declaration:

Management of the Hotel Interests shall be independent of the management of the other Vacation Ownership Interests to the greatest extent practically and economically feasible, provided, however, this requirement does not contemplate any prohibition or restriction on the use of personnel hired to regularly furnish materials and services for the Hotel Interests in the Project and to furnish the same or similar services to the other Vacation Ownership Interests. Such use of common personnel shall not imply that the Hotel Interests and Vacation Ownership Interests are under common management.

⁹ To be clear, this goes not only for this particular argument but also for any other new argument or issue that Mr. Sullivan might now try to raise that could have been raised prior to the filing of the Order of Dismissal.

(Subject Motion pp. 4–5 (quoting Ex. C to Association’s Motion to Dismiss [Declaration] p. 10 § 6.1) (emphasis added by Mr. Sullivan omitted).)¹⁰

It is clear from Mr. Sullivan’s reliance on the above-quoted language that he simply misunderstands the Declaration and, as a result, labors under the erroneous belief that the “resort” is only the “Hotel Interests” in the “Project,” with the “Vacation Ownership Interests” in the “Project” being somehow separate from the “resort.” What Mr. Sullivan fails to understand is that the “Project” is the “resort” and the “resort” is the “Project.” In other words, the “Project” and the “resort” are one and the same, and just as the “Vacation Ownership Interests” *in* the “Project” are, obviously, a part of the “Project,” so, too, are they a part of the “resort.” (*See* Ex. C to Association’s Motion to Dismiss [Declaration] p. 6 § 2.56 (defining the “Project” as all real property and improvements thereon submitted to the terms of the Declaration and the South Carolina Timeshare Act); *id.* at p. 7 § 4.1 (“Declarant hereby submits the Project, including but not limited to, the property, the buildings and all other improvements associated with the Project to the provisions of this Declaration and the Timeshare Act creating a Timeshare Plan. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a vacation ownership (timeshare) undivided interest project.”); *id.* at p. 6 § 2.53 (defining “Owner” as “[a]ny person or entity . . . owning an Ownership Interest within the Project.”); *id.* at p. 6 § 2.54 (defining “Ownership Interest” as “[a] Vacation Ownership Interest.”); *id.* at p. 6 § 2.68 (defining “Vacation Ownership Interest or Ownership Interest” as “[a]n undivided interest in a Phase of the Project together with (i) a membership in the Club, (ii) membership in

¹⁰ The Association would note that, in the Declaration, the language that Mr. Sullivan quotes is immediately preceded by the following language explaining what is meant by “Hotel Interests:” “Declarant shall have the right to use and operate the Vacation Support Areas and Vacation Ownership Interests it owns as a hotel available to the public for nightly occupancy (‘Hotel Interests’).” (Ex. C to Association’s Motion to Dismiss [Declaration] p. 10 § 6.1.)

the Association, and (iii) a recurring right (either annually or biennially) to occupy and use, on an exclusive basis as described hereinafter, a Suite in the Project in accordance with, and subject to, the terms of this Declaration and the Project Documents.”); *id.* at p. 2 § 2.14 (defining “Club Member” as “[a]n Owner at the Project and/or an Affiliated Resort”); *id.* at p. 4 § 2.37 (defining “Home Resort” as “[t]he Affiliated Resort at which a Club Member owns an ownership interest.”); *see also* Ex. B to Association’s Motion to Dismiss [Aff. of Kelly Lodde] ¶ 3 (“[Hilton] is a publically traded corporation which develops, manages, markets, and operates timeshare and vacation club ownership *resorts* whereby the [Hilton] properties are jointly owned by individual purchasers giving them use of the club properties for limited periods of time.”) (emphasis added); *id.* at ¶ 10 (“[T]he Association entered into a management agreement with [Hilton] on October 25, 2013.”); *id.* at ¶ 11 (“Under the terms of the management agreement, [Hilton] would ‘manage and operate the Project in accordance with the same practices and standards utilized in the management of other Hilton Grand Vacation Club projects’ and ‘maintain and repair the Project to a first class *resort* standard.’”) (emphasis added).)

As the Court duly recognized in the Order of Dismissal, “[t]he operation of the [Hilton] *Resort*, on behalf of the time-share owners, is the Association’s sole business, and the work being performed by [Hilton, i.e., Mr. Sullivan’s direct employer] was essential to its operation:”

Here, the business of the Association is governed by the Declarations and is performed in its entirety by [Mr. Sullivan’s] direct employer. The Association hired [Mr. Sullivan’s direct employer] to manage, operate, and administer the [Hilton] *Resort*. The Association instructed [Mr. Sullivan’s direct employer] to hire and employ all employees necessary for the operation of the [Hilton] *Resort* and empowered it to perform all necessary duties. The operation of the [Hilton] *Resort*, on behalf of the time-share owners, is the Association’s sole business, and the work being performed by [Mr. Sullivan’s direct employer] was essential to its operation. [Mr. Sullivan’s direct employer] acts in every respect on behalf of the Association, employing [Mr. Sullivan] to perform certain duties

essential to the operation of the [Hilton] *Resort*. Therefore, the Association is the [Mr. Sullivan's] statutory employer. Furthermore, as pointed out by authorities cited by the Association, the South Carolina Workers' Compensation Commission has held that *resort* subcontractors' work constitutes part of the *resort* operator's trade, business or occupation.

(Order of Dismissal p. 6 (emphasis added).)

Without question, the Court correctly ruled that Mr. Sullivan was a statutory employee of the Association at the time of the Underlying Accident, and Mr. Sullivan's challenge to that ruling via the Subject Motion is unavailing.

2. The Association did not fail to provide evidence that it carried workers' compensation insurance as required by law.

Mr. Sullivan's second argument in support of the Subject Motion is based on the erroneous legal premise that, to be immune from tort liability as Mr. Sullivan's statutory employer, the Association had to show that it maintained workers' compensation insurance. This is simply incorrect.

According to Mr. Sullivan, "South Carolina precedent . . . ha[s] consistently interpreted statutory employer liability as providing 'double protection' for employees." (Subject Motion p. 7.) While Mr. Sullivan is correct that there is precedent to this effect, *that precedent is out of date and is no longer good law* because of the legislature's enactment and subsequent amendment of S.C. Code Ann. § 42-1-415, as our Supreme Court made expressly clear in *Glover v. U.S.*, 337 S.C. 307, 523 S.E.2d 763 (1999):

[P]rior to the enactment and amendment of S.C. Code § 42-1-415 (Supp.1998), the fact that the immediate employer had properly secured the payment of compensation did not remove the statutory employer's obligation under the Act. As observed by this Court in Harrell, the Act imposed a scheme where the owner and the immediate employer were subjected to the requirements of the Act, and the employees received "double protection." See Long v.

Atlantic Homes, 311 S.C. 237, 428 S.E.2d 711 (1993); *Parker v. Williams and Madjanik, Inc.*, 275 S.C. 65, 267 S.E.2d 524 (1980).

Finally, we noted in *Harrell* that our conclusion on this point was supported by the enactment and subsequent amendment of S.C. Code Ann. § 42-1-415 (Supp.1998). *Under section 42-1-415, as amended, a statutory employer no longer needs to secure the payment of compensation to avail itself of tort immunity under the Act, if the requirements of section 42-1-415 are met.*

337 S.C. at 311, 523 S.E.2d at 764–65 (emphasis added).

As a practical matter, no further analysis is necessary, because Mr. Sullivan staked the entirety of his argument here on the false premise that the Association needed to secure the payment of workers' compensation to avail itself of tort immunity, without in any way addressing the change in the law effected by the enactment and amendment of § 42-1-415, and, thus, without in any way arguing that the requirements of § 42-1-215 are not met. And having raised no such argument prior to the filing of the Order of Dismissal, Mr. Sullivan can make no such argument now. *See Stevens & Wilkinson*, 409 S.C. at 567, 762 S.E.2d at 695; *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482. Out of abundance of caution, however, the Association would make clear that the requirements of § 42-1-415 are met here.

In pertinent part, § 42-1-415(A) provides as follows:

Notwithstanding any other provision of law, upon the submission of *documentation* to the commission *that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work*, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section.

(emphasis added).

The “documentation” referenced in § 42-1-415(A), i.e., “documentation . . . that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or

project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work," is present here in the form of the Management Agreement, which, in pertinent part, provides as follows:

4. Powers and Duties of Management Firm; Services.

(a) Employment of Personnel. [Hilton] shall employ, compensate and supervise all persons necessary to manage, maintain, administer and operate the Project. Such persons shall be employees of [Hilton] and not of the Association. All matters pertaining to employment, interviewing and screening process, supervision, compensation, promotion, and discharge of employees of [Hilton] are the responsibility of [Hilton].

(d) Compliance with Laws. [Hilton] shall take such actions as may be necessary to operate and manage the Project in compliance in all material respects with all applicable federal, state and local laws, statutes, ordinances, orders, rules, regulations and other requirements including, but not limited to any requirements of the Timeshare Act (as defined in the Declaration).

(Ex. D to Association's Motion to Dismiss [Management Agreement] pp. 5–6.)

The Management Agreement thus makes clear that Hilton is responsible for "employ[ing], compensate[ing] and supervis[ing] all persons necessary to manage, maintain, administer and operate the Project;" that Hilton is responsible for "[a]ll matters pertaining to employment, interviewing and screening process, supervision, compensation, promotion, and discharge of [such] employees," which necessarily includes securing required workers' compensation insurance; and, further, that Hilton expressly recognized and agreed that, in carrying out its responsibilities under the Management Agreement, it must comply with all applicable laws, which necessarily includes complying with the insurance requirements of the Act. And, of course, Hilton

did in fact comply with the insurance requirements of the Act, as undeniably shown by the workers' compensation settlement reached between Mr. Sullivan and Hilton and its workers' compensation insurance carrier, Starr Indemnity & Liability Company. (See Ex. A to Association's Motion to Dismiss [Workers' Compensation Settlement Agreement and Release].)

Mr. Sullivan's second argument in challenge to the Order of Dismissal is clearly unavailing. It is based solely on inapplicable, out of date legal authority that does not account for the change in the law effected by the legislature's enactment and subsequent amendment of § 42-1-415. And having raised no timely argument based on the applicable law, i.e., based on § 42-1-415, Mr. Sullivan cannot raise any such argument now. But even if he could, it would be without merit, because the requirements of § 42-1-415 are met here.

CONCLUSION

For the foregoing reasons, the Subject Motion should be denied.

Respectfully submitted,
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Charleston, South Carolina

October 14, 2022

RECEIVED

Jun 15 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly
Circuit Court Judge

Case Number 2021-CP-26-05377

Terence Sullivan, ...Appellant,

v.

Ocean 22 Vacation Owners' Association, Inc., ...Respondent.

NOTICE OF APPEAL

Terence Sullivan ("Appellant") appeals the Order of the Honorable R. Keith Kelly filed with the Horry County Court of Common Pleas on September 2, 2022, and the Order Denying Plaintiff's Motion to Reconsider, Alter or Amend filed with the Horry County Court of Common Pleas on May 17, 2023.

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Jun 15 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly
Circuit Court Judge

Case Number 2021-CP-26-05377

Terence Sullivan, ...Appellant,

v.

Ocean 22 Vacation Owners' Association, Inc., ...Respondent.

PROOF OF SERVICE

I, Kathy Roberts, a paralegal with the Hopkins Law Firm, LLC, do hereby certify that on June 15, 2023, I served a copy of the **Notice of Appeal** upon counsel for Respondent via email and U.S. Mail, postage prepaid, addressed as follows:

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RECEIVED

Jun 15 2023

SC Court of Appeals

J. CLAY HOPKINS

CHARLESTON OFFICE
171 CHURCH STREET, SUITE 160
CHARLESTON, SOUTH CAROLINA 29401

June 15, 2023

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

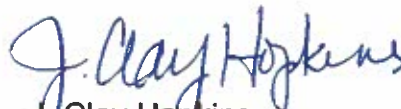
Re: Terence Sullivan v. Ocean 22 Vacation Owners' Association, Inc.
Civil Action No.: 2021-CP-26-05377

Dear Ms. Kitchings:

Please find enclosed Notice of Appeal, Judge Kelly's September 2, 2022 Order, the Order Denying Plaintiff's Motion to Reconsider, Alter or Amend filed May 17, 2023 and Proof of Service in the above referenced matter. I have also enclosed our firm's check in the amount of \$250 for the filing fee.

Sincerely,

HOPKINS LAW FIRM, LLC


J. Clay Hopkins

JCH/kyr
Enclosures

cc: Edward D. Buckley, Jr., Esquire (via email & US Mail)
Nicholas J. Rivera, Esquire (via email and US Mail)
Russell G. Hines, Esquire (via email and US Mail)
Jason P. Boan, Esquire (via email and US Mail)
Terence Sullivan

RECEIVED

Feb 06 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly
Circuit Court Judge

Appellant Case No.: 2023-000969

Terence Sullivan, ...Appellant,

v.

Ocean 22 Vacation Owners' Association, Inc., ...Respondent.

**CERTIFICATION OF COUNSEL REGARDING
RECORD ON APPEAL**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/ J. Clay Hopkins

J. Clay Hopkins (SC Bar No. 102053)

clay@hopkinsfirm.com

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Attorney for Appellant

February 6, 2024

Pawleys Island, South Carolina