

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No.: 2012-CP-26-5610

Appellate Case No. 2013-000650

Shaul Levy and Meir Levy Appellants,

vs.

Carolinian,LLC.....Respondent.

RECORD ON APPEAL

Counsel of Record:

R. Wayne Byrd
Mark B. Goddard
Turner Padget Graham & Laney, P.A.
2311 N. Oak Street, Suite 301
Myrtle Beach, SC 29577
(843)213-5500

R. Hawthorne Barrett
Turner Padget Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200

Attorneys for the Appellants

Carlyle Cromer
PO Box 2116
Myrtle Beach SC 29578

Benjamin A. Baroody
Bellamy, Rutenburg, Copeland, Epps
Gravely & Bowers, P.A.
Post Office Box 357
Myrtle Beach, SC 29578
(843) 448-2400

Attorneys for the Respondent

RECEIVED
SEP 17 2013

SC Court of Appeals

INDEX

I. ORDERS AND JUDGMENTS

Order granting Plaintiffs' Motion for Temporary Restraining Order and Rule to Show Cause filed July 30, 2012	0001
Consent Order granting Plaintiffs' Motion for Temporary Restraining Order and Injunction filed August 17, 2012.....	0003
Order from Trial filed January 28, 2013	0005
Order denying Plaintiffs' Motion for Reconsideration and Motion for Stay of Proceedings to Enforce Judgment filed on February 22, 2013	0016
Consent Order granting Motion to Restore Temporary Restraining Order and Injunction Pending Appeal Pursuant to Rule 62(c) SCRCP filed on April 4, 2013	0017

II. PLEADINGS AND MOTIONS

Summons, Complaint and Petition for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction and exhibits filed on July 23, 2012	0020
Plaintiffs' Motion for Temporary Restraining Order, Temporary Injunction and Rule to Show Cause filed on July 31, 2012.....	0053
Summons, Answer and Counterclaim filed on August 17, 2012.....	0056
Reply to Answer and Counterclaim filed on August 31, 2012	0063
Plaintiffs' Motion to Reconsider filed on February 4, 2013	0066
Plaintiffs' Motion for Stay of Proceedings to Enforce Judgment Pursuant to Rule 62(b) SCRCP filed on February 4, 2013	0079
Defendant's Motion in Opposition to Plaintiffs' Motion to Reconsider and Motion to Stay filed on February 15, 2013	0082
Plaintiffs' Motion to Restore Temporary Restraining Order and Injunction Pursuant to Rule 62(c) SCRCP filed March 22, 2013	0093
Notice of Appeal filed on March 24, 2013	0096

III. TRANSCRIPTS

Transcript of January 8, 2013 Trial.....	0111

IV. OTHER MATERIALS

Plaintiffs' Trial Brief	0147
Defendant's Trial Brief.....	0160
Stipulation of Facts	0174
Stipulation of Facts Exhibit 1	0180
Stipulation of Facts Exhibit 2	0181
Stipulation of Facts Exhibit 3	0215
Stipulation of Facts Exhibit 4	0217
Stipulation of Facts Exhibit 5	0221
Stipulation of Facts Exhibit 6	0222
Stipulation of Facts Exhibit 7	0224
Stipulation of Facts Exhibit 8	0228
Stipulation of Facts Exhibit 9	0232
Stipulation of Facts Exhibit 10	0233
Stipulation of Facts Exhibit 11	0235
Stipulation of Facts Exhibit 12	0237
Stipulation of Facts Exhibit 13	0239

V. CERTIFICATION

Appellants' Rule 210(g) Certification	0348

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

2012 JUL 30

AM 8:05

FILED
JUL 30 2012
IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-26-

5610

MELANIE HUGGINS-WARD
CLERK OF COURT

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

**ORDER GRANTING MOTION FOR
TEMPORARY RESTRAINING ORDER
AND RULE TO SHOW CAUSE**

This matter comes before the Court upon the Motion of Plaintiffs Shaul Levy and Meir Levy, seeking an Order issuing a temporary restraining order pursuant to Rule 65 of the South Carolina Rules of Civil Procedure.

After a review of the pleadings, including the Verified Complaint, Plaintiffs' Motion is GRANTED.

IT IS THEREFORE ORDERED that Defendant Carolinian, LLC shall be restrained from:

- a. Maintaining unauthorized sole dominion and control over the distributional interests allegedly belonging to Plaintiffs;
- b. Making unauthorized distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;

- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

IT IS FURTHER ORDERED that Defendant, Carolinian, LLC appear at a hearing ^{to be} scheduled ~~for~~ within 10 days at _____ to show cause why Plaintiffs should not be granted the temporary injunction as requested in their Motion.

AND IT IS SO ORDERED.

Margaret Culbertson
Presiding Judge
Fifteenth Judicial Circuit

Georgetown,
~~Conway,~~ South Carolina

Dated: July 27, 2012
at 2:05 pm.

IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire in 10 days unless sooner ruled upon by the Court.

Margaret Culbertson

COPIES
MAILED

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Shaul Levy and Meir Levy,)

Plaintiffs,)

v.)

Carolinian, LLC,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-26-005610

**ORDER GRANTING MOTION FOR
TEMPORARY RESTRAINING
ORDER AND INJUNCTION**

HORRY COUNTY
12 AUG 17 PM 4:17
JELANIE HARRIS-WARD
CLERK OF COURT

This matter comes before the Court upon a Rule to Show Cause Hearing as required by the Order Granting Plaintiff's Motion for a Temporary Restraining Order pursuant to Rule 65 of the South Carolina Rules of Civil Procedure signed by the Honorable Benjamin Culbertson on July 27, 2012.

During the hearing, all parties agreed to allow the Temporary Restraining Order issued by Judge Culbertson to remain in effect until such time as there is a final ruling issued related to allegations in the Complaint in consideration for the final hearing in this matter being expedited and scheduled within 90 days. The parties agreed to submit a Consent Scheduling Order to the Chief Administrative Judge to effectuate the same.

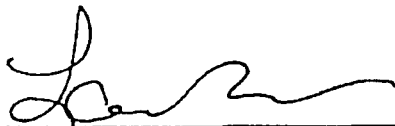
IT IS THEREFORE ORDERED that Defendant Carolinian, LLC shall be restrained from:

- a. Maintaining unauthorized sole dominion and control over the distributional interests allegedly belonging to Plaintiffs;
- b. Making unauthorized distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;

- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;
- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

IT IS FURTHER ORDERED that the temporary restraining order remain in effect until such time as there is a final ruling on the merits of the allegations within Plaintiffs' Complaint and that the parties shall immediately execute and submit a Consent Scheduling Order to the Chief Administrative Judge scheduling the final hearing in this matter to a date within ninety (90) days of entry.

AND IT IS SO ORDERED.



Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

Dated: 4-16-2012
8th

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Shaul Levy and Meir Levy,)

Plaintiffs,)

vs.)

Carolinian, LLC,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-5610

ORDER

FILED
HORRY COUNTY
13 JAN 28 PM 3:39
MELANIE HUGHES-WARD
CLERK OF COURT

On January 8, 2013, the trial of this case was held before the undersigned presiding Judge in the Horry County Court of Common Pleas. Present at the hearing were Mark B. Goddard, Esq. and Carlyle Cromer, Esq., for the Plaintiffs and Benjamin A. Baroody, Esq. for the Defendant. The record before me consists of Plaintiffs' Verified Complaint, Defendant's Answer and Counterclaim, the parties' Stipulation of Fact and its attached exhibits, and the trial briefs submitted by counsel for the parties.¹ Based upon the record before me, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Shaul Levy and Meir Levy ("the Levys") are residents of the States of Florida and New York, respectively, who conduct business in Horry County, South Carolina and have extensive experience in real estate investment.

2. Carolinian, LLC ("Carolinian") is the owner of certain real property located in Horry County, South Carolina. This real property consists of the Best Western Carolinian

¹ While counsel represented to the Court that the parties were present to offer testimony upon one issue of fact, the proffered testimony was determined to be irrelevant to the conclusions reached in this case and, therefore, denied presentation.

Resort, a ten-story high-rise oceanfront building that contains a total of 102 hotel units and certain commercial units located within the adjacent 129-unit twenty-story condominium tower.

3. Carolinian also holds the rental management rights over 112 managed condominium units.

4. Carolinian is a closely-held company consisting of nine members.

5. Bhupendra Patel ("Patel") is one of the nine members of Carolinian.

6. The rights of the members of Carolinian are established in the Operating Agreement for Carolinian, last revised on January 1, 2003 (hereinafter the "Operating Agreement").

7. Patel is the owner of a 23.35% Membership Share in Carolinian, LLC, which is defined in Section 2.1(r) of the Operating Agreement as "all of the rights of a member under this Agreement and under the Act, but not limited to a member's Financial Rights and Voting Rights."

8. On February 10, 2010, the Levys caused a Confession of Judgment (the "Judgment") in the amount of Two Million Five Hundred Thousand and no/100 (\$2,500,000.00) Dollars to be filed in the Horry County public index against Patel, Arkadiusz Grabara, and Harry Pavilack².

9. As a result of Plaintiffs' collection efforts on the Judgment, by Order dated August 12, 2011 in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against Patel's distributional interests in four limited liability companies, including Carolinian (collectively the "Patel Distributional Interests").

² The Judgment served as security for a loan made by the Levys to Pier View Resort Development, LLC and personally guaranteed by Patel, Grabara, and Pavilack jointly and severally.

10. Counsel for the Levys sent a Certified letter dated August 30, 2011, to the Registered Agent for Carolinian, giving it notice of the Order of the Horry County Master in Equity dated August 12, 2011 creating the charging lien against Patel's distributional interest in Carolinian.

11. The Levys filed a Petition to foreclose the aforementioned charging liens of Patel's Distributional Interests on September 26, 2011 with the Horry County Master in Equity and a hearing was held on February 9, 2012 on the Levys' Petition to foreclose their charging liens.

12. Prior to the hearing, Loyd Daniel, on behalf of Carolinian, and Meir Levy, on behalf of the Levys, together with their counsel, discussed the Levys' action against Patel. Daniel expressed interest in Carolinian acquiring the Levys' interest in Carolinian, and the parties agreed to discuss a possible business deal without counsel present. The parties did not reach an agreement.

13. By Order dated March 14, 2012, the Horry County Master in Equity ordered the foreclosure and sale of Patel's Distributional Interests at public auction, with the proceeds thereof being applied toward the satisfaction of the Levys' Judgment secured thereby.

14. Prior to the foreclosure sale, Plaintiffs, by and through their counsel, were provided a copy of the Operating Agreement for Carolinian by counsel for Patel and/or counsel for Carolinian, and financial information of Carolinian, including tax returns of 2007 - 2011, Balances Sheets and Income Statements for 2008 - 2011, and an Appraisal of April 4, 2011 from counsel for Carolinian, LLC.

15. At no time after receiving notice of the charging lien and prior to the foreclosure sale did Carolinian redeem Patel's distributional interest pursuant to the terms of the Operating Agreement.

16. Each of Patel's Distributional Interests were sold separately at a public auction held April 2, 2012, with Plaintiffs being the high bidder on each of the four Patel Distributional Interests, including Patel's distributional interest in Carolinian, which was purchased at the winning bid of \$215,000.

17. Carolinian's legal counsel attended the public auction and bid \$190,000 on behalf of Carolinian and/or Southwestern Equities, LLC, a member of Carolinian, for Patel's Distributional Interest in the company.

18. Neither Patel nor the Levys requested or were given permission by Carolinian or its members to transfer Patel's distributional interest to the Levys prior to the foreclosure hearing or subsequent sale.

19. By Order dated April 10, 2012, the Horry County Master in Equity confirmed the sale of Patel's Distributional Interests to the Levys.

20. Pursuant to the Order Confirming Sale, the proceeds of the \$215,000 high bid for Patel's distributional interests in Carolinian, LLC at the foreclosure sale were applied towards the satisfaction of the Levys' Judgment.³

21. At no time after the foreclosure sale or prior to being served with the Order Confirming Sale did Carolinian redeem Patel's distributional interest pursuant to the terms of the Operating Agreement.

³ According to the Order, the Levys' Judgment as of April 2, 2012 totaled \$2,900,290.80.

22. By letter dated April 16, 2012, a copy of the Order Confirming Sale was served on Carolinian, through its registered agent Loyd Daniel requesting "that any and all distributions to be made by the Company be properly allocated and distributed to my clients."

23. By letter dated June 11, 2012, counsel for Carolinian responded to the letter dated April 16, 2012 and asserted that Carolinian was exercising its right to purchase the Levys' distributional interest in Carolinian pursuant to Section 11.2 of the Operating Agreement. The letter set forth Carolinian's calculation of the purchase price pursuant to the terms of the Operating Agreement and an offer to purchase the distributional interest for \$100,000.

24. By letter dated June 18, 2012, through counsel, the Levys denied that Carolinian had the right to purchase the distributional interest from the Levys, stating "[t]he Levys are not subject to any of the terms of the Operating Agreement" and "The Levys have no desire to sell their distributional interests...."

25. By letter, dated June 27, 2012, counsel for Carolinian asserted that the Levys were subject to the terms of Carolinian Operating Agreement, and that the company was obtaining an appraisal and purchasing the Patel Distributional Interest held by Levys pursuant to the terms of the Operating Agreement.

26. On July 23, 2012, Plaintiffs filed a Verified Complaint and Petition for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

27. On July 27, 2012, the Honorable Benjamin H. Culbertson entered an Order Granting Motion for Temporary Restraining Order and Rule to Show Cause, which Order was filed and served upon Carolinian on July 30, 2012.

28. On August 1, 2012, a hearing was held on the Order and Rule to Show Cause, at which hearing counsel for the parties consented to the extension of the Temporary Restraining

Order. On August 16, 2012, the Honorable Larry B. Hyman entered an Order Granting Motion for Temporary Restraining Order and Injunction, which Order was filed August 17, 2012.

DISCUSSION

The primary issue in this case is whether Carolinian may, pursuant to the terms of the Operating Agreement, compel the purchase and sale of the Levys' distributional interest in Carolinian, which the Levys acquired from Patel following the foreclosure sale.

The Levys seek a declaratory judgment that Carolinian's right to purchase their distributional interest pursuant to the Operating Agreement terminated upon the sale on April 2, 2012. Further, that, following the sale, the Levys were not subject to the Operating Agreement and that Carolinian cannot force the Levys to sell their distributional interest. The Levys also seek a permanent injunction prohibiting Carolinian from attempting to force the sale of their distributional interest in Carolinian as was discussed in Carolinian's letter of June 27, 2012.

Carolinian seeks a declaratory judgment that, upon the sale of Patel's distributional interest on April 2, 2012, the Levys became transferees of Patel's interest who were subject to the terms of the Operating Agreement and that the sale constituted a transfer that triggered Carolinian's right to buy the Patel distributional interest pursuant to Article XI of the Operating Agreement. Further, that the Levys' interest cannot exceed the value of Patel's interest as of the date of transfer, April 2, 2012. Also, that Carolinian's offer to purchase as set forth in its correspondence following the sale complied with the provisions of the Operating Agreement and that Carolinian's letter dated September 6, 2012, detailing the result of the appraisal and valuation process set forth in the Operating Agreement, is valid and binding upon the Levys.

For the reasons set forth below, I conclude that to reach the conclusion sought by the Levys would force upon the parties a result neither bargained for by the parties nor required by South Carolina law. As such, this Court will deny the Levys' action for an Injunction and Declaratory Judgment, and grant Carolinian's request for a Declaratory Judgment.

CONCLUSIONS OF LAW

1. With regard to the aforementioned civil action commenced by Levys against Patel before the Honorable Cindy Graham Howe, Horry County Master in Equity:

a. The Levys commenced the action as judgment creditors of Patel and not of Carolinian;

b. Carolinian was not a party to that civil action;

c. The Levys were in possession of the Operating Agreement and various financial information of and concerning Carolinian prior to the sale of Patel's distributional interest;

d. The April 2, 2012 sale of Patel's distributional interest to the Levys was proper;

e. Carolinian has not challenged the foreclosure sale of Patel's distributional interest in Carolinian to the Levys.

2. The April 2, 2012 sale resulted in a transfer of Patel's interest in Carolinian to the Levys.⁴

⁴ Pursuant to the Order of Judge Howe entered April 10, 2012, the Patel Distributional Interests "have now been transferred and conveyed to the Plaintiffs."

3. The transfer changed the Levys' status from that of a judgment creditor of Patel to transferees of Patel's distributional interest in Carolinian. See S.C. Code Ann. Section 33-44-504(b) ("... A purchaser at the foreclosure sale has the rights of a transferee.").
4. As transferees, the Levys became owners of the distributional interest in Carolinian subject to the Carolinian Operating Agreement.
5. The transfer of Patel's interest in Carolinian to the Levys was governed by and subject to the Operating Agreement of Carolinian.
6. Pursuant to Section 12.4 thereof, the Carolinian Operating Agreement "shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996 ... and other applicable laws of the State of South Carolina."
7. South Carolina law permits an Operating Agreement to restrict the rights of both a company's members and the transferees of a member's distributional interest. See S.C. Code Ann. Section 33-44-103(b)(7) ("The operating agreement may not restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest....").
8. As a transferee of Patel's distributional interest in Carolinian subject to and governed by the Operating Agreement of Carolinian's members, Plaintiffs cannot, through contract law or statute, have greater rights than the transferor, Patel, an original member of Carolinian, had at the time of the transfer.
9. The Operating Agreement of Carolinian is clear and unambiguous.
10. Section 3.5 of the Operating Agreement sets forth the manner in which a member's distributional interest that is subjected to a charging order may be redeemed.

However, this section, in conjunction with S.C. Code Ann. Section 33-44-504, does not affect any other legal rights of the members of Carolinian that are set forth in the Operating Agreement.

11. Because no evidence exists to show that the Levys or Patel obtained the consent to the transfer from Carolinian or its members, the April 2, 2012 sale constituted a transfer falling under the category of "all other transfers" pursuant to Section 11.1 "Restrictions on Transfer" of the Operating Agreement.

12. Article XI of the Operating Agreement, therefore, governs the transfer of Patel's interest to the Levys, and Carolinian may exercise its "Right to Buy" pursuant to Section 11.2 and Article XI of the Operating Agreement.⁵

13. The "Right to Buy" in Section 11.2 is not a redemption under S.C. Code Ann. Section 33-34-504, but a separate right created by the Operating Agreement.

14. Carolinian's June 11, 2012 letter to the Levys, in which Carolinian offered \$100,000.00 to purchase the Patel's interest, constituted a timely exercise of Carolinian's right to purchase the distributional interest pursuant to Section 11.2(a) and 11.2 (c) of the Operating Agreement.⁶

should not apply

⁵ Pursuant to Section 11.2(b) of the Operating Agreement, "[i]f a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, ... such Member is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3, and upon the terms contained in SECTION 11.4."

⁶ Pursuant to Section 11.2(a) and Section 11.2(c), Carolinian had sixty (60) days from the date it received written notice of the transfer, April 16, 2012, to accept a discounted offer from Patel or the Levys to purchase the Patel distributional interest at the discounted rate set forth in Section 11.2(a).

15. The Levys' June 18, 2012 letter to Carolinian rejected Carolinian's offer to purchase, thereby causing the Levys and Carolinian to appoint appraisers to appraise the value of the interest to be purchased as of transfer.⁷

16. Carolinian notified the Levys of its intent to appoint an appraiser to appraise the value of the interest to be purchased by letter dated June 27, 2012 in accordance with the terms of the Operating Agreement.

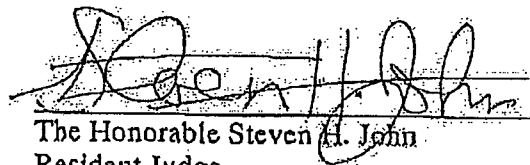
All actions by both parties thereafter regarding their rights under the agreement were restrained and are now of no effect. The parties may now exercise their rights under the agreement in accordance with this Order. Therefore, it is

ORDERED that the Order of the Honorable Larry B. Hyman dated August 16, 2012 and filed on August 17, 2012 is hereby terminated. It is further

ORDERED that Plaintiffs' action for a Permanent Injunction is hereby denied. It is further

ORDERED that Plaintiffs' action for a Declaratory Judgment is hereby denied. It is further

ORDERED that Defendant's action for a Declaratory Judgment is hereby granted as set forth in this Order.


The Honorable Steven A. John
Resident Judge
Fifteenth Judicial Circuit

January 23, 2013
Conway, South Carolina

⁷ Pursuant to Section 11.3 "Purchase Price" of the Operating Agreement, if the parties cannot agree upon a purchase price, then the purchase price shall be the "Appraised Value" set forth therein.

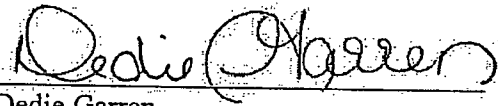
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NO. 2012-CP-26-05610
Shaul Levy and Meir Levy,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CERTIFICATE OF MAILING
	)	
Carolinian, LLC,	)	
	)	
Defendant,	)	
_____	)	

I, Dedie Garren, as an employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., counsel for Defendant, Carolinian, LLC, in the above-entitled action, certify that I have this day submitted, via *ELECTRONIC TRANSMISSION ONLY*, a copy of the document(s) listed below, as follows:

Mark B. Goddard, Esquire
 Audra M. Byrd, Esquire
 R. Wayne Byrd, Esquire
 Turner Padgett Graham & Laney
 2411 N. Oak Street, Suite 301
 Myrtle Beach, South Carolina 29577

DOCUMENT(S):

1. A filed copy of the Order signed by Judge John and filed January 28, 2013.


 Dedie Garren

Myrtle Beach, South Carolina

January 28, 2013

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2012-CP-26-5610

FILED
HORRY COUNTY
13 FEB 22 PM 12:45
MEANIE HUGGINS-WARD
CLERK OF COURT

Shaul Levy and Meir Levy

vs.

Carolinian, LLC

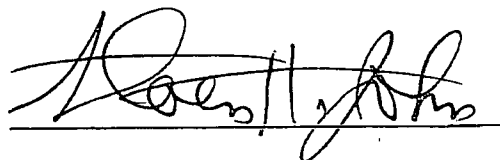
PLAINTIFF(S)

DEFENDANT(S)

ORDER

The Court entered an Order in this matter on January 23, 2013, filed January 28, 2013. The Court has reviewed the Plaintiffs' Motion for Reconsideration and Motion for Stay of Proceedings to Enforce Judgment, as well as the Defendant's Motion in Opposition to Plaintiffs' Motion to Reconsider and Motion for Stay. The Court finds that oral arguments would not assist it in this matter and that any additional hearing would be redundant and unnecessary. Therefore, the Court denies both Motions.

IT IS SO ORDERED.



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

February 21, 2013
CONWAY, SC

Mark B. Goddard, Esq.

Benjamin A. Baroody, Esq.

ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26561

**CONSENT ORDER GRANTING MOTION
TO RESTORE TEMPORARY
RESTRAINING ORDER AND
INJUNCTION PENDING APPEAL
PURSUANT TO RULE 62(C) SCRPC**

HORRY COUNTY
13 APR 25 PM 3:50
CLERK OF COURT
JUDICIAL SERVICES - WARD

This matter comes before the Court upon the Motion of Plaintiffs Shaul Levy and Meir Levy (collectively referred to as "the Levys") seeking to restore the Temporary Restraining Order and Injunction signed by the Honorable Larry B. Hyman on August 16, 2012 and filed with the Horry County Clerk of Court on August 17, 2012 during the pendency of the Levys' appeal of the Order of the Honorable Steven John's Order dated January 23, 2013 pursuant to Rule 62(c), SCRPC.

All parties consent to this motion. All parties specifically agree that they will not move forward with the appraisal process for the valuation of the distributional interest per § 11.3 of the applicable Operating Agreement, until such time the parties receive a final ruling on the appeal. For the reasons set forth herein, the Motion to restore the Honorable Larry B. Hyman's Temporary Restraining Order and Injunction pursuant to Rule 62(c), SCRPC, is granted.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant Carolinian, LLC, shall be restrained from:

mtc

- a. Maintaining unauthorized sole dominion and control over the distributional interests allegedly belonging to Plaintiffs;
- b. Making unauthorized distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian specifically including any attempts to move forward with appraisal process outlined in § 11.3 of the Carolinian, LLC Operating Agreement;
- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

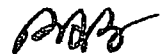
IT IS FURTHER ORDERED, that the Temporary Restraining Order and Injunction remain in effect until such time as there is a final ruling on the Plaintiffs' appeal.

AND IT IS SO ORDERED.


THE HONORABLE BENJAMIN H. CULBERTSON
Circuit Court Judge for the
Fifteenth Judicial Circuit.

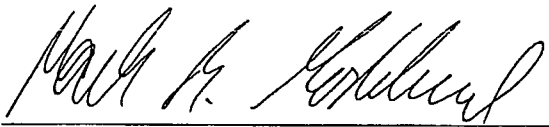
Dated this 2nd day of April, 2013.

Conway, South Carolina



WE SO MOVE:

TURNER PADGET GRAHAM AND LANEY, P.A.



Wayne Byrd [S.C. Bar # 1068]

E-mail: wbyrd@turnerpadget.com

Mark B. Goddard [S.C. Bar # 73965]

E-mail: mgoddard@turnerpadget.com

Carlyle R. Cromer, Esquire (SC BAR #100058)

E-Mail: ccromer@turnerpadget.com

Post Office Box 2116

Myrtle Beach, South Carolina 29578

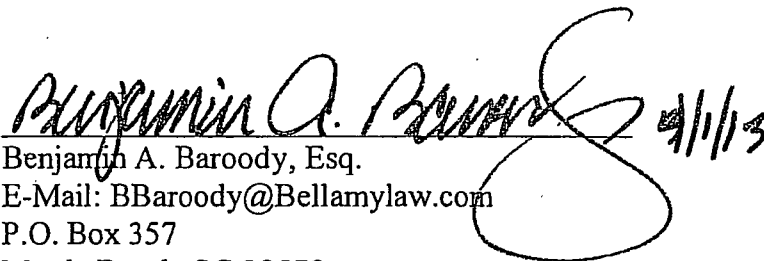
Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

WE CONSENT:

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



Benjamin A. Baroody, Esq.

E-Mail: BBaroody@Bellamylaw.com

P.O. Box 357

Myrtle Beach, SC 29578

Telephone: (843) 916-7167

ATTORNEYS FOR DEFENDANT
CAROLINIAN, LLC

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-_____

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

SUMMONS

FILED
HORRY COUNTY
2012 JUL 23 AM 9:18
JELANE HUGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon its subscribers at Turner Padget Graham & Laney, P.A., Post Office Box 2116, Myrtle Beach, South Carolina, 29578 within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TURNER PADGET GRAHAM & LANEY P.A.

By:

Audra M. Byrd

R. Wayne Byrd [S.C. Bar # 1068]

Mark B. Goddard [S.C. Bar # 73965]

Audra M. Byrd [S.C. Bar # 76719]

Post Office Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

July 23, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	Civil Action No. 2012-CP-26-_____
	)	
Shaul Levy and Meir Levy,	)	
	)	
Plaintiffs,	)	VERIFIED COMPLAINT AND PETITION
	)	FOR TEMPORARY RESTRAINING
vs.	)	ORDER, TEMPORARY INJUNCTION,
	)	AND PERMANENT INJUNCTION
Carolinian, LLC,	)	
	)	
Defendant.	)	[NON-JURY MATTER]
	)	

FILED
 HORRY COUNTY
 2012 JUL 23 AM 9:18
 CLERK OF COURT
 DELANIE HUGGINS-WARD

Plaintiffs Shaul Levy and Meir Levy, complaining of Defendant Carolinian, LLC would show and allege unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiffs Shaul Levy and Meir Levy are residents of the States of Florida and New York, respectively. Plaintiffs conduct business in Horry County, South Carolina.
2. Defendant Carolinian, LLC (hereinafter "Carolinian") is a limited liability company organized and existing under the laws of the State of South Carolina. Carolinian owns real properties and regularly transacts business in Horry County, South Carolina.
3. This action involves a dispute regarding distributional interests in Carolinian.
4. This Honorable Court maintains personal jurisdiction over the parties hereto and jurisdiction over the subject matter of this action.
5. Venue is proper in the Court of Common Pleas for Horry County, South Carolina.

FIRST CAUSE OF ACTION
 (Declaratory Judgment)

6. Plaintiffs incorporate each and every allegation in the previous Paragraphs as if set forth herein verbatim.

7. On February 10, 2010, Plaintiffs caused a Confession of Judgment (the "Confession") in the amount of \$2.5 million to be filed in the Horry County public records. A true and accurate copy of the Confession is attached hereto and incorporated herein by reference as **Exhibit A**.

8. As a result of Plaintiff's collection efforts on the Confession, by Order dated August 12, 2011 in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against Bhupendra Patel's ("Patel") interest in four limited liability companies, including Carolinian (collectively the "Patel Distributional Interests"). A true and accurate copy of the Order is attached hereto and incorporated herein by reference as **Exhibit B**.

9. By Order dated March 14, 2012, the Horry County Master in Equity ordered the Patel Distributional Interests be sold at public auction, with the proceeds thereof being applied against the amounts due Plaintiffs on the Confession.

10. Each of the Patel Distributional Interests were sold separately at the public auction held April 2, 2012, with Plaintiffs being the high bidder on each of the four Patel Distributional Interests, including Patel's distributional interest in Carolinian which was purchased at the winning bid of \$215,000.

11. Carolinian's legal counsel attended the public auction and bid on behalf of Carolinian, to no avail.

12. By Order dated April 10, 2012, the Horry County Master in Equity confirmed the sale of the Patel Distributional Interests to Plaintiffs. A true and accurate copy of the Order Confirming Sale is attached hereto and incorporated herein by reference as **Exhibit C**.

13. By letter dated April 16, 2012, a copy of the Order Confirming Sale was served on the Carolinian. The letter also instructed that any and all distributions Patel was entitled be distributed to Plaintiffs. A true and accurate copy of the letter is attached hereto and incorporated herein by reference as **Exhibit D**.

14. Carolinian did not object to the Order Confirming Sale and did not respond to the April 16, 2012 letter.

15. By letter, dated June 11, 2012, the attorney for Carolinian asserted that Carolinian and/or its members were exercising their right to purchase Plaintiffs' distributional interests in Carolinian pursuant to its Operating Agreement. The letter set forth an offer to purchase the distributional interest for \$100,000. A true and accurate copy of the letter is attached hereto and incorporated herein by reference as **Exhibit E**.

16. By letter dated June 18, 2012, Plaintiffs rejected Carolinian's and/or its members' offer to purchase the distributional interests from Plaintiffs. A true and accurate copy of the letter is attached hereto and incorporated herein by reference as **Exhibit F**.

17. By letter, dated June 27, 2012, the attorney for Carolinian asserted that Plaintiffs were subject to the terms of Carolinian's Operating Agreement and that it was unilaterally moving forward with obtaining an appraisal and purchasing the distributional interests held by Plaintiffs pursuant to such appraisal. A true and accurate copy of the letter is attached hereto and incorporated herein by reference as **Exhibit G**.

18. Plaintiffs now bring this claim pursuant to S.C. Code Ann. § 15-53-20, et seq., as a result of Carolinian's acts.

19. The South Carolina Uniform Limited Liability Company Act (the "Act") provides:
"A purchaser at the foreclosure sale [of a distributional interest] has the rights of a transferee."
S.C. Code Ann. § 33-44-504(b).

20. Section 33-44-503(e) of the Acts sets forth the rights of a transferee, which include the rights to:

- 1) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- 2) receive, upon dissolution, and winding up of the limited liability company's business: (i) in accordance with the transfer, the net amount otherwise distributable to the transferor; (ii) a statement of account only from the date of the latest statement of account agreed to by all the members...

21. A controversy exists between the parties regarding Plaintiffs' distributional interests in Carolinian, including Plaintiffs' rights as transferees of such interests.

22. Plaintiffs are entitled to an Order declaring that:

- a. Plaintiffs are the current, true and lawful owners of Patel's distributional interests in Carolinian as confirmed by the Horry County Master in Equity in its Order Confirming Sale;
- b. Any right to purchase the subject distributional interests pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interests to Plaintiffs at the public auction held April 2, 2012;
- c. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its members can force Plaintiffs to sell their distributional interests in Carolinian;
- d. Plaintiffs, as "non-member transferees" of Carolinian, are not parties to Carolinian's Operating Agreement; and
- e. Carolinian must abide by the requirements set forth in the Act with regards to the rights of Plaintiffs as transferees of the subject distributional interests, including right to receive distributions as more specifically set forth in Section 33-44-503(e).

23. Plaintiffs are entitled to an award of costs and fees incurred in prosecuting this action based upon S.C. Code Ann. §15-53-100.

SECOND CAUSE OF ACTION

(Temporary Restraining Order and Temporary and Permanent Injunction)

24. Plaintiffs incorporate each and every allegation in the previous Paragraphs as if set forth herein verbatim.

25. Carolinian has asserted that it will proceed with obtaining an appraisal for the purpose of forcing the sale of Plaintiffs' distributional interest despite Plaintiffs' objection Plaintiffs rights as transferees as set forth under the Act, including the right to receive distributions as more specifically set forth in S.C. Code Ann. § 33-44-503(e).

26. Plaintiffs will suffer irreparable harm if the injunction is not granted.

27. Plaintiffs are likely to succeed on the merits of this case.

28. There exists no adequate remedy of law for the harm to be caused by Carolinian's continued unilateral actions.

29. Plaintiffs are entitled to a Temporary Restraining Order, as well as a Temporary and Permanent Order enjoining and restraining Carolinian and/or its members from:

- a. Maintaining unauthorized sole dominion and control over the distributional interests rightfully belonging to Plaintiffs;
- b. Making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent to or adverse to the distributional interests of Plaintiffs;
- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;

- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Shaul Levy and Mier Levy pray for judgment as follows:

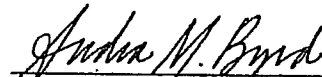
- A. An Order declaring that:
 - a. Plaintiffs are the current, true and lawful owners of Patel's distributional interests in Carolinian as confirmed by the Horry County Master in Equity in its Order Confirming Sale;
 - b. Any right to purchase the subject distributional interests pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interests to Plaintiffs at the public auction held April 2, 2012;
 - c. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its members can force Plaintiffs to sell their distributional interests in Carolinian;
 - d. Plaintiffs, as "non-member transferees" of Carolinian, are not parties to Carolinian's Operating Agreement; and
 - e. Carolinian must abide by the requirements set forth in the Act with regards to the rights of Plaintiffs as transferees of the subject distributional interests, including right to receive distributions as more specifically set forth in Section 33-44-503(e).
- B. A temporary restraining order, a temporary and permanent injunction, which would enjoin Carolinian and/or its members from:
 - a. Maintaining unauthorized sole dominion and control over the distributional interests rightfully belonging to Plaintiffs;
 - b. Making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent to or adverse to the distributional interests of Plaintiffs;

- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;
 - d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
 - e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.
- C. Attorney fees and costs incurred in prosecuting this action as permitted under S.C. Code Ann. §15-53-100; and
- D. Such other and further relief that this Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



R. Wayne Byrd [S.C. Bar # 1068]

E-mail: wbyrd@turnerpadget.com

Mark B. Goddard [S.C. Bar # 73965]

E-mail: mgoddard@turnerpadget.com

Audra M. Byrd [S.C. Bar # 76719]

E-mail: abyrd@turnerpadget.com

Post Office Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

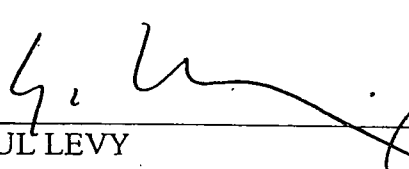
July 23, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

VERIFICATION

PERSONALLY appeared before me, the undersigned, who, after being duly sworn, deposes and says that the allegations contained in the foregoing Verified Complaint and Petition for Temporary Restraining Order, Temporary Injunction and Permanent Injunction are true and of his own knowledge, except those allegations stated to be upon information and belief, and as to those, deponent believes them to be true.


SHAUL LEVY

SWORN TO AND SUBSCRIBED before me

this 19 day of July, 2012.

Linda Krasner (L.S.)
Notary Public for New York

My Commission Expires: December 3, 2015

LINDA KRASNER
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01KR6178515
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES DECEMBER 3, 20 15

FILED
HORRY COUNTY
2012 JUL 23 AM 9:18
MELANIE HUGGINS-WARD
CLERK OF COURT

Exhibit A

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Shaul Levy and Meir Levy,)
Plaintiffs,)

vs.)

Arkaduisz Grabara, Bhupendra)
Patel and Harry Pavilack,)
Defendants.)

CONFESSIOIN OF JUDGMENT

FILED
HORRY COUNTY
2010 FEB 10 PM 4:22
MELANIE HUGGINS-MARR
CLERK OF COURT

The above named Defendants, Arkaduisz Grabara, Bhupendra Patel and Harry Pavilack (hereinafter collectively "Defendants"), pursuant to that certain Promissory Note made by Pier View Resort Development, LLC and personally guaranteed by said Defendants, hereby jointly and severally confess judgment in favor of the above named Plaintiffs, Shaul Levy and Meir Levy (hereinafter collectively "Plaintiffs") in the principal amount of Two Million Five Hundred Thousand and No/100 (\$2,500,000.00) Dollars, together with interest, as set forth below.

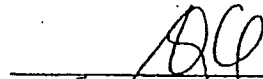
This Confession of Judgment may be filed against each of the above named Defendants unless payment is made to Plaintiffs as set forth below. Failure to make payment shall entitle Plaintiffs to file this Confession of Judgment with the Clerk of Court for Horry County, South Carolina, or any other jurisdiction, and any other jurisdiction where said Plaintiffs deem appropriate for an entry of judgment against each Defendant. Payment shall be made as follows:

1. First interest payment due June 1, 2008.
2. First principal payment in the amount of One Million Two Hundred Fifty Thousand and No/100 (\$1,250,000.00) Dollars due December 1, 2008, with the second interest payment due contemporaneously therewith.
3. Third interest payment due June 1, 2009.
4. Final payment in the amount of One Million Two Hundred Fifty Thousand and No/100 (\$1,250,000.00) Dollars together with all accrued interest, due December 1, 2009.

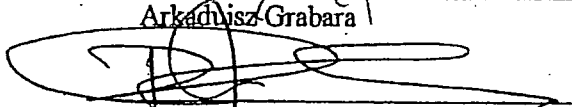
The above named Defendants hereby agree that this Confession of Judgment shall be filed by the above named Plaintiffs in the appropriate jurisdiction in the event payment is not made as set forth above.

SIGNATURE PAGE TO FOLLOW

Dated this 10th day of January, 2008.



Arkadiusz Grabara



Bhupendra Patel



Harry Pavilack

STATE OF SOUTH CAROLINA)

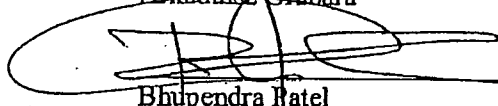
COUNTY OF HORRY)

VERIFICATION OF STATEMENT)

The Defendants above named, being duly sworn, affirm that the above statements and Confession of Judgment and the facts therein mentioned are true to the best of their own knowledge.



Arkadiusz Grabara



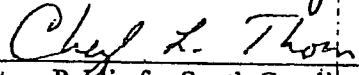
Bhupendra Patel



Harry Pavilack

SWORN TO BEFORE ME THIS

10th day of January, 2008



Cheryl L. Thom

Notary Public for South Carolina

My Commission Expires: 10-09-08

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Shaul Levy and Meir Levy,
Plaintiffs,

v.

Arkaduisz Grabara, Bhupendra Patel
and Harry Pavilack,
Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) JUDGMENT NO. 2010-CP-26-1161

ORDER CREATING CHARGING LIENS
ON PATEL'S INTERESTS IN CERTAIN
LLC's AND
ORDER OF SALE OF ROLEX

This matter came before me on August 8, 2011 to hear the Motion to Sell Assets filed June 21, 2011 by the Plaintiffs Shaul Levy and Meir Levy.

This Court has jurisdiction to rule upon this motion, and all other motions necessary to dispose of this matter, pursuant to the Order of Reference and Order for Supplemental Proceedings dated January 27, 2011 and filed February 1, 2011 in the above referenced matter.

Based upon the evidence and arguments of counsels, and the applicable statutory authority, I hereby find the following:

1. Plaintiffs are judgment creditors of the Defendant Bhupendra Patel (hereinafter "Patel") by virtue of the Confession of Judgment (the "Judgment") filed February 10, 2010 against Patel in the principal sum of Two Million Five Hundred Thousand and NO/100 (\$2,500,000.00) Dollars, plus interest at the statutory rate.
2. No payment has been made towards the Judgment since its filing and delivery on Patel and the Judgment remains unsatisfied.
3. At the hearing, Mr. DesChamps represented to the Court that Patel does not have any interests of any kind in the condominium unit known as Dwelling No. 4, Floor No. 23, Building 1 in Maisons-Sur-Mer located in Myrtle Beach, South Carolina and bearing TMS No. 166-06-23-004. As such, Plaintiffs withdrew their request to sell this asset.
4. Patel has ownership interest in each of the following companies: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) Hospitality Lodging, Inc.; (iv) OP, LLC;

(v) P & P Development, LLC; and (vi) Patel Management, LLC.

- 2
GHH
5. Patel is the owner of a certain man's gold Rolex watch (the "Rolex") which was delivered to the Court at the hearing. This Rolex watch has a diamond bezel. This watch is currently in the possession of William DesChamps, Patel's attorney, and he shall maintain possession until Sales Day when he will present the watch at the time of its sale.
 6. S.C. Code Ann. § 33-44-504(a) provides: "On application by a judgment creditor of a member of a limited liability company...a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment...and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order."
 7. I find that the Plaintiffs are entitled to Charging Orders, also known as Charging Liens, pursuant to S.C. Code Ann. § 33-44-504(a) against Patel's distributional interest in the following companies: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) P & P Development, LLC; and (iv) Patel Management, LLC. As such, Plaintiffs, or their attorneys, may request information and/or documentation from the respective companies in order to determine Plaintiffs' entitlement or rights to distributions. To the extent the companies refuse to provide such information or documents, Plaintiffs may request this Court for an Order specifically ordering the production of such information or documents from the companies. The Plaintiffs may foreclose any of these charging liens by the filing of a petition pursuant to S.C. Code Ann. § 33-44-504(b). Nothing herein may be construed as prohibiting Plaintiffs from seeking foreclosure of the aforesaid charging liens.
 8. The Plaintiffs requested that this Court order the sale of Patel's gold Rolex man's watch which has a diamond bezel. S.C. Code Ann. § 15-39-420 provides: "The judge may order any property of the judgment creditor, not exempt from execution, in the hands of either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment..."
 9. The Rolex shall be sold at foreclosure upon the terms set forth below with the proceeds thereof, less the exemption amount of \$1,000.00, to be applied towards satisfaction of Plaintiffs' Judgment as authorized by S.C. Code Ann. § 15-39-420.

NOW THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Sell Assets filed by the Plaintiffs is hereby GRANTED as follows:

- A. Pursuant to S.C. Code Ann. § 33-44-504(a), a lien is hereby charged against Patel's interest in each of the following companies: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) P & P Development, LLC; and (iv) Patel Management, LLC.

Accordingly, Plaintiffs shall have the right to obtain any and all of the LLC's distributions made to or on behalf of Patel with the distribution amounts being applied against the balance of the Judgment. Plaintiffs shall have the right to make any and all demands, instructions and/or inquiries to each of these companies that Patel could have made as a member, or which the circumstances may require, to give effect to this Order.

- B. The Man's gold Rolex with a diamond bezel shall be sold by the Master-in-Equity at public auction at the regularly scheduled foreclosure sale to be held ~~Tuesday~~, *Monday*, October ~~4~~, 2011 pursuant to the following terms: *GH*

- 3*
GH
- (a) The Master-in-Equity will require a deposit of 10% on the amount of the bid in cash or equivalent (unless Plaintiffs are the successful bidders) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and then Plaintiffs' debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at the time of bid or comply with the other terms of the bid within 30 days, then the watch may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder;
 - (b) The sale shall be subject to S.C. Code Ann. § 33-44-504(b) which provides that the purchaser at the foreclosure sale has the rights of a transferee only;
 - (c) The purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount;
 - (d) The purchaser shall pay for the preparation of the transfer documents and costs relating thereto;
 - (e) The purchaser shall be entitled to the rights of a transferee only after the purchaser fully complies with the bid amount and after the sale is confirmed by this Court by Court Order or otherwise.
 - (f) The bidding will close the date of sale and the sale shall be final upon that date;
 - (g) The Plaintiffs may become a purchaser at such sale with their bid amount, after the \$1000.00 exemption amount, being applied against the Judgment, but Plaintiffs shall not pay any monies for their bid. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Master-in-Equity may advertise the Rolex

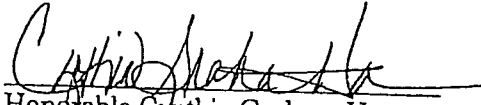
watch for resale on the next, or some other subsequent Sales Day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

(h) The Master-in-Equity will apply the proceeds of the sale as follows:

1. FIRST, to the payment of the amount of the costs and expenses of the Sale;
2. NEXT, to the payment to the Plaintiffs or their attorney, of the amount due on the Judgment, plus Plaintiffs costs of enforcing its judgment lien, including attorney fees, or so much thereof as the purchase money will pay on the same; and
3. NEXT, any surplus shall be held pending further Order of this Court.

Plaintiffs shall be responsible for giving notice of the date, time, and place of such sale and, furthermore, shall follow the requirements set forth in S.C. Code Ann. §§ 15-41-10 and 15-41-20 regarding exempt property which, in this case, is a total of \$1,000.00 of the value of the Rolex.

IT IS SO ORDERED.


Honorable Cynthia Graham Howe
Horry County Master-in-Equity


Date: August 12, 2011
Conway, South Carolina

Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Arkadiusz Grabara, Bhupendra Patel
and Harry Pavilack,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) JUDGMENT NO. 2010-CP-26-1161

**ORDER CONFIRMING SALE
AND
MASTER'S REPORT ON SALE AND
DISBURSEMENTS**

2012 APR 11 AM 8:45
CLERK OF COURT
Horry County

Plaintiffs are judgment creditors of the Defendant Bhupendra Patel (hereinafter, "Patel") by virtue of the Confession of Judgment filed February 10, 2010 in the original principal sum of Two Million Five Hundred Thousand and NO/100 (\$2,500,000.00) Dollars, plus interest at the legal interest rate of 7.25%, compounded annually.

By Order dated August 12, 2011, this Court created charging liens on Patel's distributional interest in each of the following entities (collectively the "LLCs"):

- C & P Partnership, LLC, of which Patel is a 45.00 % member;
- Carolinian, LLC, of which Patel is a 23.35 % member;
- P & P Development, LLC, of which Patel is a 50.00 % member; and
- Patel Management, LLC, of which Patel is a 50.00 % member.

On September 26, 2011, Plaintiffs filed a Petition to foreclose the charging liens and to sell Patel's distributional interests in each of the four (4) LLCs, with the proceeds thereof used towards satisfaction of Plaintiffs' judgment. By Order of Foreclosure and Sale, dated and filed March 14, 2012 in the above titled matter, this Court granted Plaintiffs' Petition to foreclose the charging liens and sell the distributional interests.

UNDER AUTHORITY of the Order of Foreclosure and Sale, and after due and proper notice and advertisement of the sales, this Court offered for sale, on the 2nd day of April, 2012, to

the highest bidder at public auction, each of the following described personal properties, separately, to the highest bidder (each an "LLC Distributional Interest"):

Forty-Five (45.00 %) percent distributional interest in C & P Partnership, LLC, a South Carolina limited liability company;

Twenty-Three and 35/100 (23.35 %) percent distributional interest in Carolinian, LLC, a South Carolina limited liability company;

Fifty (50.00 %) percent distributional interest in P & P Development, LLC, a South Carolina limited liability company; and

Fifty (50.00 %) percent distributional interest in Patel Management, LLC, a South Carolina limited liability company.

High and final bids were received from Plaintiffs Shaul Levy and Meir Levy on each of the above LLC Distributional Interest, as follows:

<u>LLC Distributional Interest</u>	<u>Final Bid</u>
45.00 % distributional interest in C & P Partnership, LLC:	100.00
50.00 % distributional interest in P & P Development, LLC:	100.00
50.00 % distributional interest in Patel Management, LLC:	76,000.00
23.35 % distributional interest in Carolinian, LLC:	<u>215,000.00</u>
TOTAL	291,200.00

After the required costs were duly and timely paid, I executed and delivered a good and sufficient Bill of Sale transferring each of the above described LLC Distributional Interests to Shaul Levy and Meir Levy.

I received and disbursed the bid funds as follows:

TOTAL HIGH BIDS	\$ 291,200.00
CREDIT AGAINST PLAINTIFFS' JUDGMENT	\$ <u>(291,200.00)</u>
NET BID	\$ 0.00

RECEIPTS

Master's Fee (1% of High Bid up to \$2,500)	\$ 2,500.00
TOTAL Receipts	\$ 2,500.00

DISBURSEMENTS

Horry County Master-in-Equity – Master's Fee	\$ 2,500.00
TOTAL Disbursements	\$ 2,500.00

<u>BALANCE</u>	\$ 0.00

After application of the Total High Bids towards satisfaction of Plaintiffs' Judgment, the current balance on Plaintiffs' Judgment is as follows: ~

Plaintiffs' Judgment as of April 2, 2012:	\$ 2,900,290.80
Credit Against Plaintiffs' Judgment:	- 291,200.00
Current Balance on Plaintiffs' Judgment:	\$ 2,609,090.80

The current balance on Plaintiffs' Judgment will continue to accrue interest at the rate of 7.25%, compounded annually.

3
QW
WHEREAS, all the funds regarding the sale of the LLC Distributional Interests being received, credited and disbursed, this Court finds the sale of the LLC Distributional Interests proper and authorized by the Order of Reference and Order for Supplemental Proceedings dated January 27, 2011 and filed February 1, 2011 in the above referenced matter and, furthermore, consistent with statutory and common law and, as such, should be confirmed.

NOW THEREFORE, it is hereby

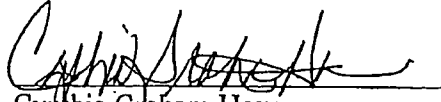
ORDERED, ADJUDGED AND DECREED that the sale of each of the above-described LLC Distributional Interests to the Plaintiffs Shaul and Meir Levy, as high bidders at the duly-held foreclosure sale, is hereby CONFIRMED, with all rights of redemption set forth in 33-44-504(c) being forfeited hereunder.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon receipt of a filed

copy of this Order by each of the above-named LLCs, said LLCs shall honor the new ownership of the applicable distributional interests by Plaintiffs Shaul and Meir Levy and that Bhupendra Patel no longer has any rights to any distributional interests in each of the above-named LLCs in that such rights have now been transferred and conveyed to the Plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have the right to make any and all demands, instructions and/or inquiries to each of above named LLCs that may relate to their distributional interests in each LLC and to otherwise give effect to this Order.

AND IT IS ORDERED.


Cynthia Graham Howe
Master-in-Equity for Horry County

Date: April 10, 2012
Conway, South Carolina

H
CONF

Exhibit D

M C N A I R
ATTORNEYS

April 16, 2012

Dan V. Butler

Via Certified Mail/Return Receipt Requested

dbutler@mcnair.net
T (843) 444-1107
F (843) 444-4729

Carolinian, LLC
Attn: Loyd R. Daniel, Jr., Registered Agent
1002 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

Re: Shaul Levy et al. v. Grabara, et al
Case No. 2010-CP-26-1161
Our File 048247.1

Mr. Daniel:

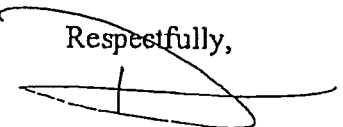
Enclosed please find a copy of the Order Confirming Sale and Bill of Sale regarding the public sale of Bhupendra Patel's distributional interest in various LLCs, including Mr. Patel's distributional interests in Carolinian, LLC (the "Company").

Please forward this letter, with enclosures, to the appropriate officer and/or principal of the Company to ensure that the Company's records reflect Shaul and Meir Levy as the owners of a Twenty-Three and 35/100 percent (23.35%) distributional interest in the Company and that any and all distributions to be made by the Company be properly allocated and distributed to my clients.

To the extent distributions have been made by the Company since August 12, 2011, please forward any and all documents relating to such distributions, including but not limited to, any and all distributions made to Bhupendra Patel. In addition, please forward any information regarding anticipated future distributions by the Company.

Should you have any questions regarding the above, please do not hesitate to contact me at my office. Thank you.

Respectfully,


Dan V. Butler

McNair Law Firm, P. A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

Enclosures

cc: William W. DesChamps, Esq. (via email only)
Bhumi A Patel, Esq. (via email only)

ROA-043

Exhibit E

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

ATTORNEYS AT LAW

1000 29TH AVENUE NORTH

P.O. Box 857

MYRTLE BEACH, SOUTH CAROLINA 29578

TELEPHONE (843) 448-2400

TELECOPIER (843) 448-8022

Writer's Direct Line: 843-916-7166

E-Mail: Jking@BellamyLaw.com

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY*
EDWARD B. BOWERS, JR.
BRADLEY D. KING
M. EDWIN HINDS, JR.
JILL F. GRIFFITH
DAVID B. MILLER***

C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
JEFFREY W. KING**
MARTIN C. DAWSEY***
ROBERT S. SHELTON***
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III**
W. JOSEPH CUNNINGHAM**
BENJAMIN A. BAROODY**
PHILLIP H. ALBERGOTTI**

*FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

**ALSO MEMBER OF NORTH CAROLINA BAR

***CERTIFIED MEDIATOR

June 11, 2012

Dan V. Butler, Esq.
McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 205
Myrtle Beach, SC 29577

Re: Transfer of Bhupendra Patel's Distributional Interest in Carolinian, LLC to
Shaul and Meir Levy pursuant to Order Confirming Sale and Master's Report
on Sale and Disbursements dated April 10, 2012.

Dear Dan,

I am writing regarding the transfer by foreclosure sale of Bhupendra Patel's ("Patel") interest in Carolinian, LLC ("Company") to your clients, Shaul and Meir Levy ("Transferee"). As explained below, this letter shall serve as notice per Section 11.2(c) of the Operating Agreement for Carolinian, LLC, dated January 1, 2003, of the Company's acceptance of the offer to purchase the Patel's interest mandated pursuant to Section 11.2(b) of the Operating Agreement.

The transfer of all of Patel's economic interests in the Company is in direct violation of the express provisions regarding restrictions on transfer imposed by Section 11.1 of the Operating Agreement. As such, the transfer is an event of wrongful dissociation pursuant to the Uniform Limited Liability Company Act of 1996, SC Code of Laws Section 33-44-101, et. seq. In accordance with Article XI of the Operating Agreement, the purchase price for Patel's interest is set at 67% of the Appraised Value as defined in Section 11.3. In an effort to avoid the potentially costly appraisal process provided for in the Operating Agreement, we would prefer to reach an agreement regarding the value of Patel's interest. While your client, as a Transferee, is not necessarily entitled to participate in this process, given that they will be the recipients of any distributions paid by the Company to purchase the interest we believe it desirable to if possible reach an agreement with them as to this matter.

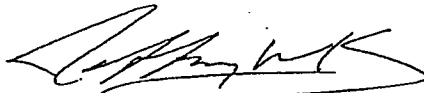
We have valued Patel's interests in the Company at \$150,000. This figure was arrived at by an analysis of the net value of the company's assets versus liabilities, with such net figure multiplied by Patel's 23.35% interest therein. This figure is significantly above the most recent appraisal of the entity and does not consider minority interest or marketability discounts. Applying the discounted percentage of 67% under the Operating Agreement, this would result in the purchase price for the interest being \$100,000. The terms of payment are set forth in Section 11.4 of the Operating Agreement, which provides for twenty (20) equal and consecutive quarterly installments of principal and interest. The interest rate is set at the greater of Wall Street Journal Prime Rate or the rate set by Section 1274 of the Internal Revenue Code as of the date of the sale.

We would appreciate an acceptance or counter-offer regarding the proposed purchase price set forth above within ten (10) days. In the event your clients do not respond, or simply wish to proceed with the appraisal process required by the Operating Agreement, we will engage an appraiser to begin the process. The Operating Agreement requires both sides to appoint an appraiser, and if the two appraisers cannot agree on the value, a third will be appointed, with the final value being the average of the three. As stated above, we think it in the best interests of all parties to avoid the costs associated with this process.

Thank you, and please contact me if you have any questions.

Best regards,

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



Jeffrey W. King

cc:
Bhupendra Patel
c/o William DesChamps, Esq.
1357 21st Avenue North, Suite 102
Myrtle Beach, SC 29577

Loyd Daniel
1000 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

Exhibit F

MCNAIR
ATTORNEYS

June 18, 2012

VIA EMAIL AND U.S. MAIL

Jeffrey W. King, Esq.
Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578
Email: JKing@bellamylaw.com

Dan V. Butler

dbutler@mcnair.net
T (843) 444-1107
F (843) 444-4728

Re: Carolinian, LLC
23.35% Distributional Interest Owned by Shaul and Meir Levy
Our File No. 048247.1

Dear Jeff:

Please accept this letter as a response to your letter dated June 1, 2012. After reviewing your letter, the Operating Agreement for the Carolinian, LLC (the "LLC") and the applicable provisions of the South Carolina Uniform Limited Liability Company Act (the "Act"), we respectfully disagree with your interpretation of the Operating Agreement and its effect on the involuntary transfer of Bhupendra Patel's ("Patel") distributional interest in the Carolinian (the "Patel Interest") to the Levy's as a result of the foreclosure sale of the charging liens held April 2, 2012.

First, up through the date of the foreclosure sale, the LLC and its members had the right to redeem the Patel Interests. Neither the LLC nor its members exercised this right. Furthermore, you attended the foreclosure sale held April 2, 2012 and made bids to purchase Patel Interest on behalf of the LLC and/or its members. You were not successful as the Levy's were the winning bidders of the Patel Interests at the high bid of \$ 215,000.00.

As a direct result of the foreclosure sale, the Levy's have "the rights of a transferee"¹, which include the right to "receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled."² The Levy's are not subject to any of the terms of the Operating Agreement. Thus, your clients' attempt to enforce the provisions of the Operating Agreement against the Levy's is improper and without legal support.

In light of the above and the Act, my clients specifically object to your clients' attempt to force the sale of the Patel Interests pursuant to provisions of the Operating Agreement. The Levy's have no desire to sell their distributional

McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

¹ See S.C. Code § 33-44-504(b)

² See S.C. Code § 33-44-503(e)

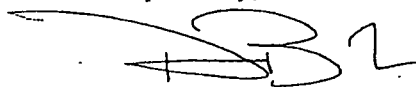
ROA-048

June 18, 2012
Page 2

MENAIR
ATTORNEYS

interests and, based on the Act, neither the LLC nor its members can force them to sell the Patel Interests that they lawfully obtained.

Respectfully,

A handwritten signature in black ink, appearing to be 'D. Butler', with a stylized flourish extending to the left.

Dan V. Butler

cc: Clients (via email only)

Exhibit G

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

ATTORNEYS AT LAW

1000 29TH AVENUE NORTH

P.O. Box 357

MYRTLE BEACH, SOUTH CAROLINA 29578

TELEPHONE (843) 448-2400

TELECOPIER (843) 448-8022

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE M. EPPS, JR. ****
DAVID R. GRAVELY*
EDWARD B. BOWERS, JR. *****
BRADLEY D. KING
M. EDWIN HINDS, JR.
JILL F. GRIFFITH
DAVID B. MILLER***

C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
JEFFREY W. KING**
MARTIN C. DAWSEY*****
ROBERT S. SHELTON***
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III**
W. JOSEPH CUNNINGHAM**
BENJAMIN A. BAROODY**
PHILLIP H. ALBERGOTTI** *****
HAYES K. STANTON

*FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
**ALSO MEMBER OF NORTH CAROLINA BAR
***CERTIFIED MEDIATOR
****RETIRED
*****LAW TAXATION

Writer's Direct Line: 843-916-7166
E-Mail: jking@BellamyLaw.com

June 27, 2012

Dan V. Butler, Esq.
McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 205
Myrtle Beach, SC 29577

Re: Transfer of Bhupendra Patel's Distributional Interest in Carolinian, LLC to
Shaul and Meir Levy pursuant to Order Confirming Sale and Master's Report
on Sale and Disbursements dated April 10, 2012.

Dear Dan,

Thank you for your responsive letter dated June 18, 2012. We of course disagree with your interpretation of the Act and the Operating Agreement for Carolinian, LLC. The Levy's are in fact subject to the Operating Agreement, even if indirectly. That being said, they have little if any rights under the Operating Agreement.

First, the right to redeem that the LLC and its members had is just that, a right. The fact that we bid at the foreclosure sale, just as any other person could have, has no bearing on the interest or rights of your client.

Section 33-44-103 of the Act governs the effect of an Operating Agreement. Subsection (a) states that "To the extent the operating agreement does not otherwise provide, this chapter governs the relations among the members, managers, and company." The Act therefore sets out the default provisions in the event no operating agreement exists. Subsection (b) sets forth the limited areas that are nonwaivable by such an agreement, and Sub-subsection (b)(7) states that an operating agreement may not "restrict the rights of a person, other than a manager, member, and transferee of a member's distributional interest. . ." (emphasis added). The clear intent of this provision is that the rights of a transferee can be altered by an operating agreement. Section 33-44-504 of the Act governs the rights of a creditor pursuant to a charging order. Subsection (b) provides that "A purchaser at the foreclosure sale has the rights of a transferee." Therefore, once your client foreclosed and purchase the interest of Mr. Patel, they became a transferee.

June 27, 2012

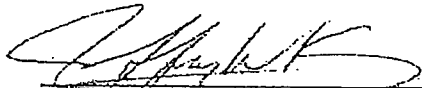
Page 2

I have outlined in my earlier letter the provisions of the Operating Agreement that govern my client's right to purchase Mr. Patel's interest, and you have a copy of the Operating Agreement, so I will not go into that again. As I stated in my first letter, your client actually has no right to participate in the process, but we are extending the opportunity to them due to the fact that we anticipate that Mr. Patel has little reason to do so. Your clients, pursuant to Section 33-44-503 of the Act only have the right to receive distributions to which the transferor would otherwise be entitled. In accordance with the Act and the Operating Agreement, we are moving forward with obtaining our appraisal. If your clients do not wish to participate, we will forward the resulting distributions that otherwise would have gone to Mr. Patel to them and consider the matter completed.

Thank you, and please contact me if you have any questions.

Best regards,

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


Jeffrey W. King

cc:

Bhupendra Patel
c/o William DesChamps, Esq.
1357 21st Avenue North, Suite 102
Myrtle Beach, SC 29577

Loyd Daniel
1000 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

As grounds for this Motion, Plaintiffs would assert that it is clearly shown on the face of the Verified Complaint that immediate and irreparable loss, injury and damage will result to Plaintiffs if a restraining order is not granted. A restraining order and temporary injunction will not unduly burden Defendant and will be consistent with the public policy of this State and applicable law. In support of this Motion, Plaintiff relies upon the Verified Complaint, the attachments thereto, and any other affidavits that may be submitted to the Court, along with any supporting memorandum, as well as the substantive and procedural law of the State of South Carolina.

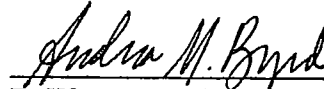
WHEREFORE, Shaul Levy and Meir Levy, the plaintiffs herein, would request unto this Honorable Court that a Rule to Show Cause be issued requiring Carolinian, LLC to show cause, if any it can, why the temporary restraining order and temporary injunction requested should not be granted, and for such other and further relief as this Honorable Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



R. Wayne Byrd [S.C. Bar # 1068]

E-mail: wbyrd@turnerpadget.com

Mark B. Goddard [S.C. Bar # 73965]

E-mail: mgoddard@turnerpadget.com

Audra M. Byrd [S.C. Bar # 76719]

E-mail: abyrd@turnerpadget.com

Post Office Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

July 23, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Carolinian, LLC,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2012-CP-26-005610

SUMMONS

HORRY COUNTY
12 AUG 17 AM 9:53
CLERK OF COURT
MELANIE B. WARD

TO: R. WAYNE BYRD, MARK B. GODDARD, AND AUDRA M. BYRD, ATTORNEYS
FOR THE PLAINTIFFS

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

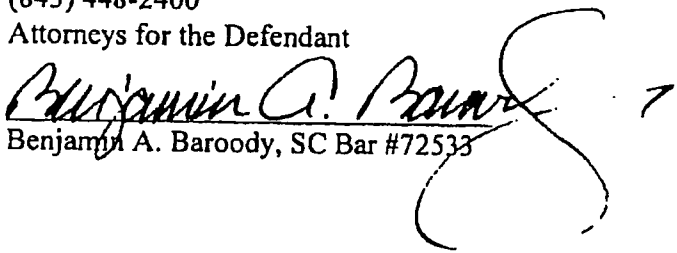
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

Post Office Box 357

Myrtle Beach, SC 29578-0357

(843) 448-2400

Attorneys for the Defendant


Benjamin A. Baroody, SC Bar #72533

Myrtle Beach, South Carolina

August 16, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Carolinian, LLC,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2012-CP-26-005610

DEFENDANT CAROLINIAN, LLC'S
ANSWER AND COUNTERCLAIM

FILED
12 AUG 17 AM 9:54
CLERK OF COURT
HARRIS COUNTY

TO: R. WAYNE BYRD, MARK B. GODDARD, AND AUDRA M. BYRD, ATTORNEYS
FOR THE PLAINTIFFS

Defendant Carolinian, LLC, answering the Verified Complaint of Plaintiffs' Shaul Levy and
Meir Levy, which shall allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE BY WAY OF ANSWER

1. All allegations in Plaintiffs' Complaint not specifically admitted are denied.
2. The allegations within paragraph 1 are admitted upon information and belief.
3. The allegations within paragraphs 2, 3, 4, and 5 are admitted.
4. Paragraph 6 requires no response. Defendant incorporates its prior responses herein by reference.
5. The allegations within paragraphs 7, 8, 9, and 10 are admitted.
6. The allegations within paragraph 11 are denied. Defendant avers that counsel for an entity by the name of Southwest Equities, LLC was present at the auction and submitted a bid on behalf of that entity.
7. The allegations within paragraphs 12 and 13 are admitted.

8. With regard to the allegations within paragraph 14, Defendant admits it did not immediately respond to the referenced letter of April 16, 2012 until its letter dated June 11, 2012. Except as admitted herein, the allegations within paragraph 14 are denied.
9. The allegations within paragraphs 15 and 16 are admitted.
10. With regard to the allegations within paragraph 17 of the Complaint, the Defendant admits the attorney for Carolinian sent a letter dated June 27, 2012 to counsel for Plaintiffs, the terms and conditions of which speak for themselves, and that a true and accurate copy is attached to the Complaint as Exhibit G. Except as specifically admitted herein, the allegations within paragraph 17 are denied.
11. The allegations within paragraph 18 require neither an admission nor a denial.
12. The allegations within paragraphs 19, 20, and 21 are admitted.
13. Defendant denies the allegations within paragraphs 22 and 23.
14. Paragraph 24 requires no response. Defendant incorporates its prior responses herein by reference.
15. With regard to the allegations within paragraph 25, Defendant admits so much of the allegations which are consistent with the statements made by counsel for Carolinian by letter dated June 27, 2012, a true and accurate copy is attached to the Complaint as Exhibit G. Except as specifically admitted herein, the allegations within paragraph 25 are denied.
16. The allegations within paragraphs 26, 27, 28, and 29 are denied.

FOR A SECOND DEFENSE
South Carolina Uniform Limited Liability Act

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

18. The Defendant asserts all relevant provisions within the South Carolina Uniform Liability Act, S.C. Code Ann. § 33-44-101, et. seq. as a complete and affirmative defense to the allegations set forth in Plaintiffs' Complaint.

FOR A THIRD DEFENSE
Operating Agreement

19. Each and every allegation above is realleged as if repeated verbatim herein.
20. Defendant asserts the relevant provisions within the Operating Agreement of Carolinian, LLC as revised effective January 1, 2003 as a complete and affirmative defense to the allegations set forth in Plaintiffs' Complaint.

FOR A FOURTH DEFENSE
BY WAY OF COUNTERCLAIM
Declaratory Judgment

21. Each and every allegation above is realleged as if repeated verbatim herein.
22. Carolinian, LLC is the owner of certain real property located in Horry County, South Carolina.
23. Bhupendra Patel is one of ten (10) members of Carolinian, LLC.
24. Bhupendra Patel is the owner of 23.35% Membership Share in Carolinian, LLC, which is defined in Section 2.1(r) of that certain Operating Agreement of Carolinian, LLC revised-effective January 1, 2003 as **"all of the rights of a member under this Agreement and under the Act, including, but not limited to a member's Financial Rights and Voting Rights."**
25. Plaintiffs are judgment creditors of Bhupendra Patel and not Carolinian, LLC.
26. Plaintiffs obtained a Charging Lien against Bhupendra Patel's distributional interest in Carolinian, LLC by Order of the Master in Equity entered August 12, 2011.

27. Plaintiff filed a Petition to foreclose the aforementioned Charging Lien on September 26, 2011, which was subsequently granted by Order of Foreclosure entered by the Master in Equity on March 14, 2012.
28. On April 2, 2012, a judicial sale of Bhupendra Patel's distributional interest was conducted, at which Plaintiffs submitted the winning bid of \$215,000.00.
29. The Master in Equity thereafter executed a Bill of Sale transferring Bhupendra's distributional interest in Carolinian, LLC to Plaintiffs and confirmed the sale by Order entered April 12, 2012.
30. Prior to delivery of the Bill of Sale, Plaintiffs were in possession of the Operating Agreement of Carolinian, LLC revised-effective January 1, 2003 and represented by counsel.
31. Upon delivery of the Bill of Sale and confirmation of the Sale by Order entered April 12, 2012, Plaintiff became transferees of the Distributional Interest of Bhupendra Patel and thereby subject to the provisions of the Operating Agreement of Carolinian, LLC and the South Carolina Uniform Limited Liability Act governing Bhupendra Patel's Distributional Interest.
32. As transferees of Bhupendra Patel's distributional interest in Carolinian, LLC, Plaintiffs' interest in Carolinian, LLC cannot exceed the interest of Bhupendra Patel, nor can the value of Plaintiffs' distributional interest in Carolinian, LLC exceed the value of Bhupendra Patel's interest in Carolinian, LLC prior to Plaintiffs foreclosing their Charging Lien upon his distributional interest.
33. Pursuant to Article XI, Restrictions on Transfer and Buy-Sell Provisions, Section 11.1, Restrictions on Transfer" within the aforementioned Operating Agreement, Bhupendra Patel

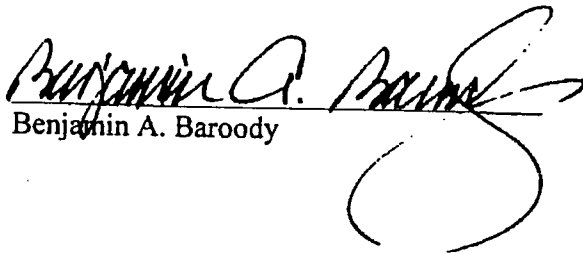
- was prohibited from "involuntarily ... transfer[ring] ... any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than sixty-seven percent (67%) of the Voting Rights in the Company."
34. Pursuant to 11.1 of the Operation Agreement, "any intended conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect."
35. The April 12, 2012 Order of the Master in Equity caused or constituted an involuntary transfer of Bhupendra Patel's distributional interest of his Membership Share.
36. Bhupendra Patel's involuntary transfer of his distributional interest of his Membership Share in Carolinian, LLC triggered the right of Carolinian, LLC to exercise its option to purchase the entire Membership Share of Bhupendra Patel in Carolinian, LLC for its Appraised Value in accordance with the terms and conditions set forth in Article XI of the Operating Agreement.
37. Bhupendra Patel's involuntary transfer of all of his distributional interest of his Membership Share in Carolinian, LLC also constituted an event of dissociation pursuant to Section 33-44-601 of the South Carolina Uniform Limited Liability Act.
38. Pursuant to Section 33-44-603 and Article 7 of the Act, Carolinian, LLC is entitled to purchase the distributional interest of Bhupendra Patel for its fair value as of the date of disassociation, in this case April 12, 2012.
39. Defendant Carolinian, LLC has complied with each and every provision of Article XI of the Operating Agreement and Article 7 of the Act toward purchasing the distributional interest

of Bhupendra Patel from Plaintiffs as is set forth in more detail in the correspondence exchanged between counsel for the parties attached to the Plaintiffs' Complaint.

40. Plaintiffs have refused to comply with both the terms and conditions of the Operating Agreement and the applicable provisions of the Act by denying Carolinian, LLC its right to purchase the distributional interest of Bhupendra Patel from them.
41. As such, a dispute now exists between the parties regarding their respective rights, duties, and obligations existing under the South Carolina Limited Liability Act and the Operating Agreement referenced herein.
42. Defendant Carolinian, LLC hereby requests this Honorable Court enter an Order declaring that Carolinian, LLC may purchase the distributional interest of Bhupendra Patel from Plaintiffs in accordance with either the applicable provisions of the Operating Agreement, or with Article 7 of the Act, or both.

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, SC 29578-0357
843-448-2400
Attorneys for the Defendant


Benjamin A. Baroody

Myrtle Beach, South Carolina

August 16, 2012

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

FILED
HORRY COUNTY
2012 AUG 31 PM 2:04
MELANIE HUGGINS-WARD
CLERK OF COURT

THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-005610

**PLAINTIFFS' REPLY TO DEFENDANT'S
ANSWER AND COUNTERCLAIM**

Plaintiffs Shaul Levy and Meir Levy, replying to the Answer and Counterclaim of Defendant Carolinian, LLC, would show and allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Answer and Counterclaim not specifically admitted herein is denied.
2. Plaintiff realleges all allegations contained in the Complaint and incorporates the allegations herein as if fully repeated.
3. The allegations of Paragraphs 1 – 20 of the Answer and Counterclaim do not require affirmative responses from Plaintiff. However, to the extent said allegations could be construed so as to form affirmative allegations against Plaintiff, the allegations are denied and strict proof is demanded thereof.
4. Responding to Paragraph 21 of the Answer and Counterclaim, Plaintiff craves reference to and incorporates herein all allegations of the Complaint and denies all allegations inconsistent therewith.
5. Plaintiff admits, upon current information and belief, the allegations of Paragraphs 22 of the Answer and Counterclaim.

6. Plaintiff is without current knowledge or information sufficient to form a belief as to the truthfulness of the allegations of Paragraphs 23 and 24 of the Answer and Counterclaim, and therefore deny the same and requires strict proof thereof.

7. Responding to Paragraphs 25 - 30 of the Answer and Counterclaim, Plaintiff craves reference to and incorporates herein the Complaint and denies all allegations inconsistent therewith.

8. Plaintiff denies, upon current information and belief, the allegations of Paragraphs 31 - 42 of the Answer and Counterclaim and requires strict proof thereof.

FOR A SECOND DEFENSE
(S.C. UNIFORM LIMITED LIABILITY ACT)

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

10. Plaintiff asserts all relevant portions within the South Carolina Uniform Limited Liability Act, S.C. Code Ann. § 33-44-101, et. seq. as a complete and affirmative defense to the allegations set forth in Defendant's Answer and Counterclaim.

FOR A THIRD DEFENSE
(ESTOPPEL AND LACHES)

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

12. Defendant cannot recover because Defendant's claims, if any, are barred by estoppel and laches.

FOR A FOURTH DEFENSE
(WAIVER)

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

14. Defendant has waived any right to recovery under the causes of action contained in the Counterclaim.

PRAYER FOR RELIEF

WHEREFORE, having fully replied to the Answer and Counterclaim of Defendant, Plaintiff prays that the same be dismissed with prejudiced, with all costs assessed against Defendant and for such other and further relief the Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



R. Wayne Byrd [S.C. Bar # 1068]
E-mail: wbyrd@turnerpadget.com
Mark B. Goddard [S.C. Bar # 73965]
E-mail: mgoddard@turnerpadget.com
Audra M. Byrd [S.C. Bar # 76719]
E-mail: abyrd@turnerpadget.com
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

August 30, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-5610

**PLAINTIFFS' MOTION FOR
RECONSIDERATION**

FILED
HORRY COUNTY
2013 FEB -4 PM 3:48
JANIE HUGGINS-WARD
CLERK OF COURT

Pursuant to Rules 52 and 59, SCRCP, Plaintiffs Shaul Levy and Meir Levy, (the Levys") hereby file this Motion for Reconsideration and move this Court to alter and/or amend its Order entered in this matter dated January 23, 2013, filed January 28, 2013, and received by the Levys on January 28, 2013 (the "January 23rd Order").

The Levys respectfully request that the Court reconsider the Order on the ground that it relies upon incorrect facts, misconstrues the facts, and misapplies applicable South Carolina law. As specific grounds for this motion, Plaintiffs would ask the court to consider the following issues:

**THE TRANSFER OF PATEL'S INTEREST AT THE APRIL 2, 2012
FORECLOSURE SALE**

The Court's January 23rd Order incorrectly holds that the April 2, 2012 foreclosure sale transferred Patel's interest in the Carolinian, LLC to the Levys. The April 10, 2012 Order signed by the Honorable Cindy Graham Howe, Horry County Master in Equity, indicates that only Patel's distributional interest in Carolinian, LLC was transferred and conveyed to the Levys. In other words, the Levys only purchased Patel's distributional interest, not Patel's voting rights.

Patel retained his voting rights in the company, and therefore, the foreclosure sale did not transfer all of Patel's interests in the Carolinian, LLC, to the Levys.

THE "RIGHT TO BUY" IN SECTIONS 11.2 AND 11.3 OF THE OPERATING AGREEMENT IS INAPPLICABLE TO THE LEVYS

The January 23rd Order correctly holds that the "Right to Buy" in Section 11.2 is not a redemption under S.C. Code Ann. § 33-34-504, but a separate right created by the Operating Agreement. However, the Court incorrectly applies the "Right to Buy" under Section 11.2 to transferees of a Member's "Financial Rights." The right provided in Section 11.2 only applies to Members as expressed in the Operating Agreement. The Levys never have become members. The Court's findings are inconsistent and misapply the terms of the Operating Agreement and applicable state law, as is discussed below:

I. Patel did not attempt to transfer the distributional interest

The January 23rd Order holds that the April 2, 2012, sale constituted a "transfer falling under the category of 'all other transfers' pursuant to Rule 11.1 'Restrictions on Transfers' of the Operating Agreement." The Order then makes the quantum leap to the conclusion that because 11.1 applies the provisions of 11.2(b) controls.

Section 11.2(b) of the Operating Agreement is only applicable if a **Member** attempts "to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, a member wrongfully dissociates under Section 11.2(a), or if a member properly dissociates ... [under] Article X. Patel never attempted a "conveyance or encumbrance of all or a portion of a membership share" as described in the last sentence of Section 11.1 relied upon by the Court. The distributional interest was conveyed by Order of the Master-In-Equity for Horry County. It is undisputed that the transfer of Patel's Distributional Interest occurred at a foreclosure sale on April 2, 2012, and the distributional interest was

conveyed by Order of the Honorable Cindy Graham Howe, Horry County Master in Equity. Judge Howe was the transferor, not Patel. It is also undisputed that Patel neither wrongfully dissociated nor properly dissociated under the terms of Section 11.2(a) or Article X.

Section 11.2(b) of the Operating Agreement discusses the Company's right to purchase a Member's Membership Share if the Member *attempts* to transfer all or a portion of his Membership Share without obtaining the consent of 67% of the Voting Rights of the Company. Paragraph 1(d) of the Conclusions of Law section of the Court's Order, specifically concluded that the April 2, 2012, sale of the distributional interest to the Levys was proper. Paragraph 2, thereof, concluded that the April 2, 2012 sale resulted in a transfer of Patel's distributional interest. At that point, the sale was finalized and there was no longer an *attempted* sale, but rather a *completed* sale. Since Defendant is not challenging the foreclosure sale, then Section 11.2 would be inapplicable as the sale was a *completed* sale rather than *attempted* as is described in the Operating Agreement.

The Court's Order is inconsistent in concluding that the April 2, 2012 sale was proper, but, then concluding the last sentence of Section 11.1 is applicable. Section 11.1 says any attempted conveyance is NULL, VOID and WITHOUT AFFECT (*Emphasis added*). An operating agreement cannot declare a court order of the Master-in-Equity "null, void and without affect." A provision of an operating agreement simply cannot contravene a statute or court order.

II. The Levys are not "Members" under the express terms of the Operating Agreement

Section 11.2 of the Operating Agreement discusses the Carolinian, LLC's right to purchase the membership share of a member who attempts to transfer his Membership Share without the consent of the other Members of Carolinian, LLC. Section 11.2(b) states:

...if a member attempts to transfer all or a portion of his Membership Share without obtaining the other Member's consent as required in SECTION 11.1... such **MEMBER** is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3 and upon the terms contained in SECTION 11.4. (*Emphasis added*)

Section 11.3 of the Operating Agreement discusses the Purchase Price for the membership share.

It states:

...the price to be paid for a Withdrawn [sic] or Withdrawing Member's Membership Share shall be the purchase price agreed upon by the **Withdrawn or Withdrawing Member** and the Company....Appraised value shall mean the value obtained....by agreement of two (2) appraisers, one appointed by the Company....and one appointed by the **Withdrawing or Withdrawn Member**. (*emphasis added*).

Sections 11.2(b) and 11.3 of the Operating Agreement discuss Carolinian, LLC's right to purchase from the *withdrawing member*, but these sections are silent as to the right to purchase from a transferee.

A "Member" is defined in the Operating Agreement as "the parties to this Agreement from time to time. For purposes of ARTICLES IX, X, XI, the term 'Member' includes any Member who has withdrawn or dissociated from the Company." The Levys, as transferees, do not fall within the definition of a member in the Operating Agreement. Therefore, Sections 11.2 and 11.3 of the Operating Agreement are silent as to Carolinian, LLC's right to purchase the membership share from non-members, who hold a Distributional Interest legally acquired pursuant to a court order.

Further, Section 12.12 of the Operating Agreement specifically addresses the parties that are bound by the terms of Operating Agreement. It states, "[t]his Agreement shall be binding upon, and inure to the benefit of, and shall be enforceable by and against all the parties and their respective *heirs, legal representation, personal representatives, successors, and permitted assigns*." (*Emphasis added*) Operating Agreement § 12.12. The Levys, as non-member

transferees, are not the heirs, legal representatives, personal representatives, successors, or permitted assigns of Patel. Therefore, the Court's attempt to bind the Levys to the terms of Section 11.2 of the Operating Agreement is without merit pursuant to the express terms of the Operating Agreement.

III. The rights of the Levys do not exceed the rights of Patel

The January 23rd Order holds that the Levys, as a transferee of Patel's distributional interest in Carolinian, LLC, are subject to and governed by the Operating Agreement of Carolinian, LLC's members, and their rights cannot, through contract law or statute, exceed the rights of the transferor. As is discussed above, Patel was not a transferor of his interest. Instead, Judge Howe was the transferor of Patel's distributional interest. However, even if the Court rules Patel was the transferor, the Levys' rights as transferees do not exceed the rights of its members.

The rights of the transferee are established in South Carolina Code §33-44-503. This statute holds that the rights of a non-member transferee are limited to (1) receiving the distributions owed to the member; (2) at the dissolution of the company, receiving the distributions owed to the member; and, (3) the ability to seek judicial dissolution of the company under South Carolina Code Ann. § 33-44-801(5). These rights are further limited by Section 3.4 of the Carolinian, LLC's operating agreement whereby the transferee's right to seek judicial dissolution of the company by statute is restricted. Therefore, the only rights the Levys have as transferees are the rights to receive the distributions owed to Patel during the term of the company, and the right to receive the net distributions owed Patel upon the dissolution of the company. The Levys, as transferees, have no other rights. These rights do not exceed the rights

of Patel, as a member, as the Order indicates: Members of the Carolinian, LLC have multiple other rights that are not afforded to a transferee.

Paragraph 8 of the Court's Conclusion of Law, provides that "Plaintiffs cannot...have greater rights than the Transferor." However, the Court does not specifically describe the right or rights which are perceived to be "greater" than those of Patel¹. It might be that the Court is suggesting that because the Transferees cannot be forced to sell their interest back to Carolinian, their rights are greater than Patel. However, none of the provisions of the operating agreement address rights where there has been a judicial sale. The Levys as transferees have the very same, but not greater, rights as any other member whose distributional rights have been transferred by a court pursuant to statute.

Although the transferee steps into the shoes of the transferor, his rights are still limited to the rights of the transferee. South Carolina Code Ann. §§ 33-44-502 and 33-44-503 expressly discuss the rights of a transferee. South Carolina Code Ann. § 33-44-502 states "a transfer of distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled." South Carolina Code Ann. § 33-44-503(b) applies to transferees that become a member and states that "a transferee that has become a member, to the extent transferred, has the rights and powers, and is **subject to the restrictions and liabilities**, of a member under the operating agreement." (*Emphasis added*). These statutes provide that the transferee cannot take advantage of other rights afforded to the members, even though he steps into the member's shoes. Therefore, the company cannot enforce rights against a transferee that it does not possess and that are applicable only to a member. In our case, it is undisputed that the Levys were not admitted as members, so their rights would be limited to the

¹ Patel is not a transferor.

rights of a non-member transferee, and the company cannot enforce rights that it only has against its members.

**CAROLINIAN, LLC CANNOT ENFORCE ITS RIGHT TO PURCHASE PATEL'S
DISTRIBUTIONAL INTERESTS FROM THE LEVYS WITHOUT VOIDING
THE FORECLOSURE SALE**

This Court's Order holds that the Carolinian, LLC has the right to force the sale of Patel's distributional interest from the Levys under §11.2 of the Operating Agreement. The Order further finds that this enforced sale can occur without voiding the foreclosure sale where the Levys were the purchaser of Patel's distributional interests. As noted above, these findings and conclusions are inconsistent with the terms of the Operating Agreement and applicable state law, as discussed more fully below.

I. The Levys only own Patel's distributional interest, not his entire "Membership Share"

The Operating Agreement defines a "Membership Share" to be "all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights² and Voting Rights." Operating Agreement § 2.1(r). By purchasing Patel's distributional interest at the foreclosure sale, the Levys acquired only Patel's Financial Rights, not his entire membership share.

This distinction is important because Section 11.2 of the Operating Agreement clearly states that any attempted transfer of all or a portion of a Member's Membership Share will result in such Member offering his entire Membership share at a price determined in accordance with the other sections of the Operating Agreement. First, the provision refers to a "member offering his entire interest. The Levys are not "members." Also, since the Levys only own Patel's "Financial Rights", they would be unable to sell Patel's entire Membership Share as discussed in

² Per the Operating Agreement, "Financial Rights" have the same meanings as "Distributional Interest."

the Operating Agreement. Article XI of the Operating Agreement is silent as to the Company's ability to purchase less than the entire Membership Share; and it gives no procedure for separate purchases of a member's "Voting Rights" and "Financial Rights". The Levys cannot transfer or convey something which they do not own.

Since the Levys do not own the entire membership share, they would be unable to transfer the entire membership share as is required under Sections 11.2 and 11.3 of the Operating Agreement. There is absolutely no provision in the Operating Agreement that permits the Company or its members to purchase any interests from anyone but the Member. More problematic is how the apportionment of value between the "Voting Rights" and "Distributional Rights" could be accomplished.

The last sentence of Section 11.1 of the Operating Agreement, which the Court relies upon, says that any attempted sale is "null, void and without effect." This provision makes sense and works in a situation where a Member attempts to sell all or a portion of his interest because the attempted transaction is "void." Therefore, the entire interest is left intact. However, in the case before the Court, there was a judicial sale which cannot be voided. The Operating Agreement cannot abrogate a state statute or court order. Without voiding the sale, Carolinian, LLC would only be purchasing the distributional interests and not the entire membership share from the Levys.

Under the Court's rationale, it would be necessary to declare the sale null and void. Section 11.1 allows the company to void the sale and purchase the entire membership share from the member. This is impermissible under the law.

- II. Section 11.1 of the Operating Agreement requires that all other transfers done without the consent of Sixty Seven (67%) percent of the voting share of the company be null and void.

The last sentence of Section 11.1 of the Operating Agreement is absolute. It provides that all other transactions shall be null, void and without effect. The Court's Order is directly at odds with the express terms of 11.1 of the Operating Agreement by holding that the company is not attempting to challenge the foreclosure sale. Section 11.1 of the Operating Agreement states:

No member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than Sixty Seven (67%) percent of the Voting Rights in the company...With regard to all other transfers, Article XI shall control, *and* any attempted conveyance or encumbrance of all or a portion of a membership share in contravention of this Article XI shall be null, void, and without effect. (emphasis added)

This section of the Operating Agreement is unequivocal and requires any such transfer to be null and void. This provision of the Operating Agreement cannot void a judicial sale.

- III. A determination that the foreclosure sale of Patel's distributional interest is null and void is necessary to implicate the terms of Section 11.2(b) of the Operating Agreement.

Section 11.2(b) of the Operating Agreement discusses the company's ability to purchase a Member's Membership share from the Member when a Member attempts a sale or transfer. The Court has erroneously applied Section 11.1 of the Operating Agreement to the Master's sale. There was no attempted sale or transfer of Patel's Distributional Interest, if the Master's sale is not "null and void." If it is "null and void," there was no transfer under Section 11.1. Without voiding the transfer, it is not an attempted sale, it is a completed sale, and Section 11.2, does not apply.

The terms of section 11.1 of the Operating Agreement is used to put all parties back into the position they would have been before the alleged attempted improper sale or transfer of the Membership Share occurred, and then allow the Company the ability to purchase the entire Membership Share from that member pursuant to the terms of Section 11.2. Section 11.2 of the

Operating Agreement cannot be enforced without applying the terms of Section 11.1 to void any voluntary or involuntary transfer of any portion of the Membership share.

ANY ATTEMPT TO VOID THE FORECLOSURE SALE OF PATEL'S DISTRIBUTIONAL INTEREST IS IMPROPER AND CANNOT BE ENFORCED

As is discussed above and as is discussed in great detail in Plaintiffs' trial brief, the company cannot enforce its right to force the sale of Patel's Distributional Interests without attempting to treat the foreclosure sale as "null and void." Any attempt to void the foreclosure sale would be improper as it would directly contravene the South Carolina statutes dealing with a creditor's exclusive remedy to collect on its charging lien. *See* S.C. Code Ann. § 33-44-504(e). The South Carolina Uniform Limited Liability Company Act is clear that the Operating Agreement cannot affect the rights of a creditor. *See* S.C. Code Ann. § 33-44-103(b)(7). By requiring a potential judgment creditor to obtain the consent of Sixty Seven (67%) percent of the voting rights of the other members of the company before foreclosing on its charging lien, the Carolinian, LLC's Operating Agreement directly restricts the rights of these creditors. This would be in direct contravention of the statute and also requires the Court to void a valid judicial sale.

THE APPLICATION OF THE COURT'S ORDER RESULTS IN A DISPARATE IMPACT ON THE PURCHASER OF A DISTRIBUTIONAL INTEREST AS COMPARED TO ANY OTHER TRANSFER

The application of the January 23rd Order would have a disparate impact on purchasers at a foreclosure sale when compared to a purchaser of a voluntary transfer. In arm's length transactions in which a Member attempts a transfer or sale of all or a portion of the Member's Membership Share, the sale is void under 11.1 of the Operating Agreement. and the Company or other Members can then purchase the entire Membership Share from the member under 11.2 of the Operating Agreement. Under such a scenario, any potential discount that would be applied

to the purchase price of the membership share under Sections 11.2 or 11.3 of the Operating Agreement would be applied in determining the price paid to the Member for his Membership Share. If the transfer was null and void, the transferee would be entitled to receive full value from the member for the amount he paid for the distributional interest. However, in the case before the Court, where the company is attempting to force the sale of the distributional interest directly from the transferee, the pricing discounts for the Member's alleged wrongful transfer is going to be applied against the transferee, and the member who made the alleged improper transfer will receive the full value. The transferee will not be entitled to receive his full purchase price for the distributional interest from the member since the sale was not voided. Clearly, this was not the intent of this section of the Operating Agreement as its application punishes the transferee rather than the member. More importantly, it is contrary to the statutory framework related to Charging Liens.

**DECISION OF THE COURT IS INCONSISTENT WITH THE STATUTORY
SCHEME ENACTED BY THE LEGISLATURE**

The Legislature in enacting the limited liability laws determined that a creditor can attach a member's interest in a limited liability company by providing for the charging lien. The legislature then provided a mechanism for the company and the Members to have the first right to purchase the member's distributional interest before a foreclosure. The statute does not prevent the company or a Member from bidding on the distributional interest at the foreclosure sale. Nowhere does the legislature provide another bite at the apple once the distributional interest is sold at foreclosure. The legislature left the Member with the voting rights, but not financial interest. Therefore, the Member has not lost all interest in the limited liability company and as such has not dissociated from the limited liability company.

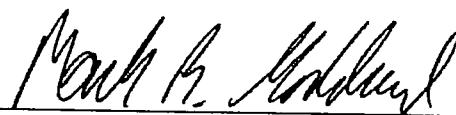
To interpret the Operating Agreement as the Court has changes the debtor creditor law and creditor's rights as it relates to interests in a Limited Liability Company. The Court's Order provides the Members of a limited liability company greater rights than the South Carolina Legislature intended. A reading of Section 11.3 of the Operating Agreement speaks of appraisals and appraisers being chosen by the Withdrawing Member. Patel is not a "Withdrawing Member." Patel still has a vote and the Levys are not Members. There is no Withdrawing Member. The provision goes on to provide the Appraised Value shall mean the value taking into account the applicable minority, lack of marketability and other discounts, etc. The application of this provision could result in a creditor who purchased said interest at a foreclosure sale receiving less than the fair market value paid at the judicial foreclosure sale. The Legislature made clear the debtor creditor law applicable in the foreclosure sale of an interest in a Limited Liability Company. The purchaser at the foreclosure sale purchases the distributional interest. That sale cannot be voided or otherwise altered by an operating agreement.

CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully request the Court reconsider its previous ruling and alter or amend the January 23rd Order so as to address the issues detailed above. In support of this motion, Plaintiffs will rely upon the pleadings, Plaintiffs' Trial Brief, South Carolina case law, as well as other information and/or authorities Plaintiffs might bring to the Court's attention.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: 

R. Wayne Byrd [S.C. Bar # 1068]
E-mail: wbyrd@turnerpadget.com
Mark B. Goddard [S.C. Bar # 73965]
E-mail: mgoddard@turnerpadget.com
Audra Byrd [S.C. Bar # 76719]
E-mail: abyrd@turnerpadget.com
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

February 4, 2013

FILED
MYRTLE BEACH COUNTY
2013 FEB - 4 PM 3:48
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-26-5610

Shaul Levy and Meir Levy,
Plaintiffs,
vs.
Carolinian, LLC,
Defendant.

**MOTION FOR STAY OF PROCEEDINGS
TO ENFORCE JUDGMENT, PURSUANT
TO RULE 62(B), SCRC**

FILED
Horry County
2013 FEB - 14 PM 3:49
MELANIE HUBBARD
CLERK OF COURT

PLEASE TAKE NOTICE that Plaintiffs Shaul Levy and Meir Levy, by and through their undersigned counsel, hereby move for an Order, under Rule 62(b), SCRC, to stay proceedings to enforce the judgment granted in the Court's Order dated January 23, 2013 (the January 23rd Order), while Plaintiffs' Motion to Reconsider is pending. The Motion to Reconsider is being filed herewith. Rule 62(b), SCRC, states as follows:

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

Plaintiffs request that the Court stay any and all proceedings by Defendant Carolinian, LLC, to enforce the judgment granted in the January 23rd Order, including, but not limited to, the following actions:

- a. Maintaining sole dominion and control over the distributional interests held by Plaintiffs;

- b. Making distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;
- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

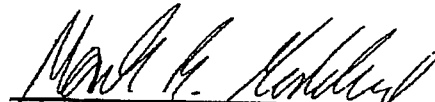
Plaintiffs also wish to point out that if this stay is not granted, then while their Motion to Reconsider is pending, it is possible that they will expend substantial time and money as part of the forced sale of their distributional interest. If the Court ultimately chooses to grant the Motion to Reconsider and to rule that Defendant cannot force a sale of the interest, Plaintiffs will have permanently lost any such money spent. It is desirable that the parties have finality before being required to engage in the sale process, due to the irreparable harm that might occur. In support of this Motion, Plaintiffs rely upon the Verified Complaint, the attachments thereto, and any other affidavits that may be submitted to the Court, along with any supporting memorandum, as well as the substantive and procedural law of the State of South Carolina.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



R. Wayne Byrd [S.C. Bar # 1068]

E-mail: wbyrd@turnerpadget.com

Mark B. Goddard [S.C. Bar # 73965]

E-mail: mgoddard@turnerpadget.com

Audra M. Byrd [S.C. Bar # 76719]

E-mail: abyrd@turnerpadget.com

Post Office Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

February 4, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2012-CP-26-005610
Shaul Levy and Meir Levy,	)	
	)	
Plaintiffs,	)	CAROLINIAN, LLC'S MOTION IN
	)	OPPOSITION TO PLAINTIFFS'
v.	)	MOTION TO RECONSIDER
	)	AND MOTION FOR STAY
Carolinian, LLC,	)	
	)	
Defendant.	)	

Defendant/Third Party Plaintiff Carolinian, LLC ("Carolinian") hereby responds in opposition to Plaintiffs Shaul Levy and Meir Levy's ("the Levys") Motion for Reconsideration, filed February 4, 2013. This brief will address each issue the Levys raised in their Motion, each of which attempts to construe the Carolinian operating agreement.

**THE CAROLINIAN OPERATING AGREEMENT GOVERNS THE
LEVYS' DISTRIBUTIONAL INTEREST IN CAROLINIAN, LLC**

"The operating agreement is the essential contract that governs the affairs of a limited liability company." S.C. Code Ann. 33-44-103, Official Reporter's Comments (Supp. 2010). Operating agreements are "superior to statutory authority where they are in place and address a matter." Clary v. Borrell, 398 SC 287, 297, 727 SE2d 773, 778 (Ct. App. 2012).

Operating agreements may restrict the rights of not only the company's members, but also the transferees of the members' distributional interests in the company. S.C. Code Ann. 33-44-103(b)(7) ("the operating agreement may ... restrict rights of a ... transferee of a member's distributional interest.").

FILED
Horry County
2013 FEB 15 PM 12:17
MELANIE HUGGINS-WARD
CLERK OF COURT

**A COURT MUST CONSTRUE THE CAROLINIAN OPERATING AGREEMENT
TO ASCERTAIN THE INTENT OF THE MEMBERS WHO SIGNED IT.**

In construing an operating agreement as a contract, a court must seek to "ascertain the intention of the parties and that intention must be gathered from the entire agreement and not from any one particular phrase thereof." Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime, 329 SC 206, 212, 494 SE2d 465, 468 (Ct. App. 1997).

"Documents will be interpreted so as to give effect to all of their provisions if practical." Id.

**THE MEMBERS OF CAROLINIAN INTENDED TO RESTRICT
THE TRANSFER OF THEIR INTERESTS AND ESTABLISH
A PROCESS TO BUY ANY INTEREST SO TRANSFERRED.**

At issue in this case is the construction of Article XI of the Carolinian operating agreement, entitled "Restrictions on Transfer and Buy-Sell Provisions." This Article, read in its entirety and construed with the rest of the operating agreement, serves two plain purposes: 1) to restrict the transferability of members' interests in the Company and 2) to allow the company or its members a "first right of refusal" or opportunity to buy back the interest in the event of such a transfer.

11.1, "Restrictions on Transfer" is clear and unambiguous:

No member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company.

Based upon the plain meaning of the foregoing provision, the members of Carolinian agreed to prohibit one another from transferring any part of their interest without a super-majority vote of the company in favor.

The second portion of 11.1 is also clear and unambiguous:

If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control....

The plain meaning of 11.1 remains that Article XI applies to unapproved transfers, and contains a right to buy, and that Article III applies to approved transfers, and contains no right to buy. Under no circumstance is either transfer declared void.

The last phrase of 11.1, which is relied upon heavily by the Levys, is also plain and unambiguous:

...and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

Plaintiffs ask this Court to construe this phrase to void any unapproved transfer, such as Patel's involuntary, unapproved transfer to the Levys. Neither this Court nor Carolinian relied upon such a construction in reaching its conclusion. This phrase instead operates to prohibit any unapproved transfer and prevent the company and its members from exercising their contractual right to buy that interest pursuant to Sections 11.2 – 11.4. Only then would such a transfer run afoul of Article XI and become void.

In this case, the transfer of Patel's distributional interest to the Levys without the consent of Carolinian's members was not void, but merely triggered the Company's and its members' right to buy that interest. Since title to Patel's distributional interest had passed to the Levys via Bill of Sale, both Patel, as owner of his voting interest, and the Levys, as owner of Patel's distributional interest via transfer, became the proper parties from which to buy the entire

interest. Carolinian's exercise of its right to buy Patel's voting interest is being handled outside of this action without litigation, and is not at issue in this case.

ARGUMENTS ADDRESSED BY THE LEVYS

1. **The Transfer of Patel's Interest at the April 2, 2012 Foreclosure Sale**

RESPONSE: Carolinian agrees that any reference to the "interest" that Patel transferred to the Levys at the foreclosure sale refers to Patel's distributional interest in Carolinian and nothing more. Footnote 4 of the Court's Order specifically references "Patel's Distributional Interest."

2. **The "Right to Buy" in Sections 11.2 and 11.3 of the Operating Agreement is Inapplicable to the Levys.**

I. Patel did not attempt to transfer the distributional interest.

II. The Levys are not "Members" under the express terms of the Operating Agreement.

III. The rights of the Levys do not exceed the rights of Patel.

RESPONSE: Sections 11.2 and 11.3 of the Operating Agreement apply to the Levys as transferees of Patel's interest.

First, this Court has already held that the Carolinian operating agreement governs the Levys' distributional interest in Carolinian, which would include all articles thereof.

The basis for this finding is that the Levys' legal status changed from that of judgment creditors to transferees of Patel's distributional interest following their successful purchase of said interest at the foreclosure sale by operation of law. See S.C. Code Ann. Section 33-44-504(b) ("... a purchaser at the foreclosure sale has the rights of a transferee). Transferees have

the same legal rights as assignees. See Moore v. Weinberg, 373 SC 209, 219, 644 SE2d 740, 745 (Ct. App. 2007) (“an assignment is the act of transferring to another all or part of one’s property”). In South Carolina, it is well settled that “an assignee ... stands in the shoes of its assignor.” Id.

No order of the Master in Equity recites, states, alludes to, or operates to transfer Patel’s distributional interest in Carolinian to the Levys free and clear from its operating agreement. The Levys cite to no legal authority to support such a theory, nor is there any evidence or proof of a novation or other operation of law that would do so.

Second, the Levys appear to be taking specific words and phrases out of context to confuse the Court and misconstrue the plain and unambiguous language of the Carolinian operating agreement. The Levys argue that the Section 11.2(b) only applies to an attempted transfer, and not to a completed transfer. The argument is based on picking out one word, “attempts,” in this section of the operating agreement and arguing that it controls over all other language in Article XI. Such a construction is contrary to the rules of contract construction requiring the language to be read as a whole to ascertain the intent of the parties.

Without the prior written consent of sixty-seven percent (67%) of Carolinian’s members, Patel was prohibited from transferring or “otherwise convey[ing],” whether “voluntarily or involuntarily,” “any portion or all” of his Membership Share. The foreclosure sale may be characterized either as an involuntary transfer or another conveyance that Section 11.1 “Restrictions on Transfer” was unambiguously intended to restrict.

When Patel’s interest was conveyed or transferred by foreclosure sale to the Levys without the prior written consent of Carolinian’s members, the “Right to Buy” of Section 11.2

was triggered. Had the Levys elected to obtain such consent to the transfer, Article III would have applied, which contains no "Right to Buy" provision.

11.2(b) provides the following:

If a Member attempts to transfer all or a portion of his membership share without obtaining the other Members' consent as required in SECTION 11.1, ... such Member is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3 and upon the terms contained in SECTION 11.4.

11.3 provides:

The purchase price as determined herein shall be conclusive and binding on the parties, their ... successors and assigns."

Based upon the foregoing, the plain intent of the parties, the Members of Carolinian, was to restrict the right of a member to transfer any part of his interest in Carolinian to anyone without their consent or an opportunity to buy the interest. There can be no other construction of Article XI.

The Levys also argue Article XI does not apply to them since they are not "Members," again trying to use one word to misconstrue the plain intent of the parties to the operating agreement. Carolinian agrees that the Levys are not members of the company. However, this has no bearing on the Court's Order. When the transfer occurred, the Levys stepped into the shoes of Patel by operation of law, thereby causing the term "Member" to apply to them as transferees of the distributional interest they obtained at the sale from Patel.

The Levys' argument ignores the nature of what the Levys acquired at the foreclosure sale. Section 33-44-101(5) defines a Distribution as a "transfer of money. . . to a member in the

member's capacity as a member or to a transferee of the member's distributional interest." (emphasis added).

The Levys acquired only the rights of Patel to distributions, and, pursuant to Article XI of the Operating Agreement, the only distribution Patel was entitled to receive was the final liquidating distribution in consideration for the entire Membership Share. Carolinian attempted to exercise its right to buy Patel's entire Membership Share as is set forth in its letter to the Levys and Patel dated June 11, 2012 addressed to both. Once Patel's entire interest is appraised, an allocation will be made between Patel's voting interest and the distributional interest transfer now held by the Levy, and the proceeds applied accordingly.

Under the theory espoused by the Levys, they acquired a 23.35% distributional interest in Carolinian at the foreclosure sale that was not subject to the operating agreement or any other governance. A distributional interest subject to the restrictions of an operating agreement is less than a distributional interest subject to no such restrictions. It is the operating agreement that created and defined Patel's distributional interest, which will govern whether any distributions can or will be made to its members and their transferees, how those distributions are to be calculated, and what rights the holder of a distributional interest has in the Company. If the operating agreement does not govern the Levys' interest in Carolinian, then they did not acquire that which their transferor- Patel-had upon transfer.

3. **Carolinian, LLC Cannot Enforce Its Right to Purchase Patel's Distributional Interests From the Levys Without Voiding the Foreclosure Sale**

I. **The Levys only own Patel's distributional interest, not his entire "Membership Share"**

II. Section 11.1 of the Operating Agreement requires that all other transfers done without the consent of Sixty Seven (67%) percent of the voting share of the company are null and void.

III. A determination that the foreclosure sale of Patel's distributional interest is null and void is necessary to implicate the terms of Section 11.2(b) of the Operating Agreement.

4. **Any Attempt to Void the Foreclosure Sale of Patel's Distributional Interest is Improper and Cannot Be Enforced.**

RESPONSE: The enforcement of Article XI will not void the foreclosure sale.

First, as discussed above, either the Carolinian operating agreement governs the Levys' distributional interest or it does not. There can be no middle ground on this issue. To rule that the operating agreement does not govern the interest would give the Levys something vastly different than that which Patel had upon transfer, which would be contrary to law.

Second, as stated above, Carolinian does not contest the fact that the Levys only own Patel's distributional interest in Carolinian.

Third, 11.1 does not "void" the transfer of Patel's distributional interest to the Levys, nor did the Court rely upon that language in its order. Rather, 11.1 only serves to void any transfer in violation of Article XI's prohibition of a transfer without giving the Company or its members the opportunity to buy the interest, which is discussed above.

Fourth, Section 12.7 of the Operating Agreement trumps any attempted construction of 11.1 purporting to void the sale. This section, entitled "Severability", provides:

"If any provision of this Agreement shall, to any extent, be held . . . unenforceable, in whole or in part, the . . . enforceability of the remaining part of such provision, and the . . . enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law."

Based upon this provision, even the construction of 11.1 sought by the Levys would lead to the severance of the "null and void" phase.

5. The Application of the Court's Order Results in a Disparate Impact on the Purchaser of a Distributional Interest as Compared to any other Transfer.
6. Decision of the Court is Inconsistent with the Statutory Scheme Enacted by the Legislature.

RESPONSE: The application of the Court's order does not result in a disparate impact on the purchaser of a distributional interest as compared to any other transferee.

The Levys' argument takes the absurd example of an arm's length purchaser who buys a member's interest either without looking at the operating agreement to determine what is being purchased or ignoring the plain language governing such a transfer, and uses that example to claim that the operating agreement contravenes the statutory framework governing charging liens.

First, The argument ignores the fact that both the arm's length buyer and a purchaser at foreclosure undertake the purchase voluntarily and should understand what they are buying or not undertake the transaction. Such an arm's length buyer would have no rights against the selling member absent a misrepresentation or fraud

Second, the Levys are sophisticated real estate investors who were represented by competent counsel and in possession of the Carolinian operating agreement during the supplemental proceedings against Patel. When they discovered Patel's interests in various LLCs, they requested and obtained orders placing charging liens against Patel's distributional interest in each. The order specifically gave the Levys the right to receive any and all future distributions out of each entity. Rather than awaiting those distributions and remaining judgment creditors,

the Levys instead chose to foreclose their liens for an unknown reason. At this point, they knew or should have known that a successful foreclosure would result in a transfer of Patel's distributional interest.

The Levys had the opportunity to request the consent of sixty-seven percent (67%) of Carolinian's members prior to the transfer, but did not. Doing so would have resulted in Article III of the Operating Agreement governing the transfer instead of Article XI. Article III contains no "Right to Buy" restriction. Alternatively, if they sought to avoid the provisions of the Carolinian operating agreement and its Article XI restriction and right to buy, they could have added Carolinian as a party to the supplemental proceedings in order to litigate the issue of whether, upon transfer, the Patel's distributional interest would be subject to or free from the Carolinian operating agreement. They did not.

Rather than remain judgment creditors entitled to future distributions, rather than seek the consent of the Carolinian Members to the anticipated transfer, and rather than raising this issue in that proceeding, they chose, instead, to foreclose, assuming the risk that Carolinian could exercise its right to buy Patel's interest, including that interest they would acquire as transferees thereof.

Third, and perhaps most importantly, the Levys' argument ignores that the purchaser at the foreclosure sale is not a creditor of the member at all, whether the purchaser is the foreclosing creditor or not. If the creditor purchases the distributional interest at the sale, it ceases to be a creditor and is, as the court found, a transferee. The court's ruling is consistent with the statutory framework governing creditors, for the statute makes a distinction between a creditor holding a charging lien and a purchaser of a foreclosed charging lien. See S.C. Code §

33-44-601(3) (providing that a "transfer of all of a member's distributional interest, other than . . . a court order charging the member's distributional interest which has not been foreclosed" is an event of dissociation) (emphasis added). See also S.C. Code § 33-44-504(b) (providing that a purchaser at a foreclosure sale of a charging lien has the rights of a transferee).

MOTION FOR STAY

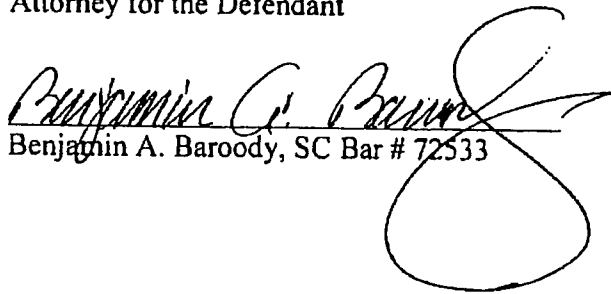
Carolinian requests this Court deny a stay of proceedings on the ground no evidence exists to show that Carolinian has or will take any action to harm or prejudice the Levys prior to this Court ruling upon the Levys' Motion for Reconsideration. No evidence has been submitted into the record demonstrating the need for a stay, nor any basis for an injunction.

CONCLUSION

Based upon the foregoing, Carolinian respectfully requests this Court to uphold its previous Order.

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578-0357
843-448-2400
Attorney for the Defendant


Benjamin A. Baroody, SC Bar # 72533

Myrtle Beach, South Carolina

February 15, 2013

PAID

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Shaul Levy and Meir Levy,)
)
Plaintiffs,)
)
vs.)
)
Carolinian, LLC,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-5610

**MOTION TO RESTORE TEMPORARY
RESTRAINING ORDER AND
INJUNCTION PURSUANT TO RULE 62(C),
SCRCP**

(EXPEDITED HEARING REQUESTED)

2012 MAR 22

PLEASE TAKE NOTICE that Plaintiffs Shaul Levy and Meir Levy, by and through their undersigned counsel, hereby move for an Order, under Rule 62(c), SCRCP, to restore the Honorable Larry B. Hyman's Order Granting Motion for Temporary Restraining Order and Injunction dated August 16, 2012, and filed with the court on August 17, 2012, while the appeal in the case is pending. The Notice of Appeal is being filed herewith the Court of Appeals.

Plaintiffs request that the Court restore the Honorable Larry B. Hyman's Temporary Restraining Order and Injunction to stay any and all actions by Defendant Carolinian, LLC, in this matter including, but not limited to, the following actions:

- a. Maintaining sole dominion and control over the distributional interests held by Plaintiffs;
- b. Making distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;

- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

Plaintiffs also wish to point out that if their request is not granted, then while their appeal is pending, it is possible that they will expend substantial time and money as part of the forced sale of their distributional interest. If the Court of Appeals ultimately rules that Defendant cannot force a sale of the interest, Plaintiffs will have permanently lost any such money spent. Further, it is desirable that the parties have finality before being required to engage in the sale process, due to the irreparable harm that might occur. In support of this Motion, Plaintiffs rely upon the Verified Complaint, the attachments thereto, and any other affidavits that may be submitted to the Court, along with any supporting memorandum, as well as the substantive and procedural law of the State of South Carolina.

Plaintiffs further request an expedited hearing, pursuant to Rule 65, SCRCP, in connection with this Motion. An expedited hearing is necessary because Plaintiffs may suffer immediate and irreparable harm, as discussed above.

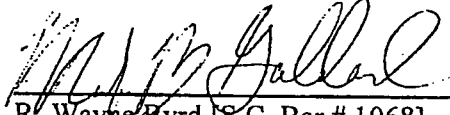
Based on the foregoing, Plaintiffs respectfully request an expedited hearing in order to present this Motion.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



R. Wayne Byrd [S.C. Bar # 1068]

E-mail: wbyrd@turnerpadget.com

Mark B. Goddard [S.C. Bar # 73965]

E-mail: mgoddard@turnerpadget.com

Carlyle R. Cromer [S.C. Bar # 100058]

E-mail: ccromer@turnerpadget.com

Post Office Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

March 22, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court Of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No: 2012-CP-26-5610

RECEIVED
MAR 25 2013
SC COURT OF APPEALS

Shaul Levy and Meir Levy,.....Appellants.

v.

Carolinian, LLC,.....Respondent.

NOTICE OF APPEAL

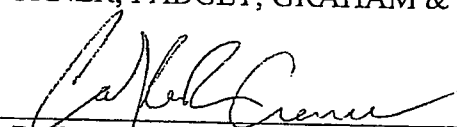
Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Appellants Shaul Levy and Meir Levy ("Appellants") hereby appeal the attached order signed by the Honorable Steven H. John on January 23, 2013 and filed with the Horry County Clerk of Court on January 28, 2013, as well as the attached order signed by the Honorable Steven H. John on February 21, 2013 and filed with the Horry County Clerk of Court on February 22, 2013, denying Appellants' Motion to Alter, Amend and Reconsider and Motion to Stay Proceedings, Pursuant to Rule 62(b), SCRCP. Appellants' Motion to Alter, Amend and Reconsider Order and Motion to Stay Proceedings were timely filed with the trial court on February 4, 2013. On March 4, 2013, Appellants received written notice of entry of the order denying their Motion to Alter, Amend and Reconsider and their Motion to Stay Proceedings Pursuant to Rule 62(b), SCRCP.

[SIGNATURE PAGE FOLLOWS]

TURNER, PADGET, GRAHAM & LANEY, P.A.

March 22, 2013

By:


R. Wayne Byrd, Esquire (SC BAR #01068)
Mark B. Goddard, Esquire (SC BAR #73965)
Carlyle R. Cromer, Esquire (SC BAR #100058)
Post Office Box 2116
Myrtle Beach, SC 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5504

ATTORNEYS FOR APPELLANTS

OTHER COUNSEL OF RECORD:

Benjamin A. Barooddy, Esq.
Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A.
P.O. Box 357
Myrtle Beach, SC 29578

ATTORNEY FOR CAROLINIAN, LLC

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2012-CP-26-561

FILED
HORRY COUNTY
13 FEB 22 PM 12:45
MEAGAN HUGGINS-WARD
CLERK OF COURT

Shaul Levy and Meir Levy

vs.

Carolinian, LLC

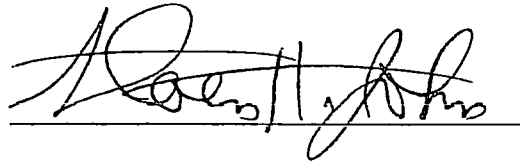
PLAINTIFF(S)

DEFENDANT(S)

ORDER

The Court entered an Order in this matter on January 23, 2013, filed January 28, 2013. The Court has reviewed the Plaintiffs' Motion for Reconsideration and Motion for Stay of Proceedings to Enforce Judgment, as well as the Defendant's Motion in Opposition to Plaintiffs' Motion to Reconsider and Motion for Stay. The Court finds that oral arguments would not assist it in this matter and that any additional hearing would be redundant and unnecessary. Therefore, the Court denies both Motions.

IT IS SO ORDERED.



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

February 21, 2013
CONWAY, SC

Mark B. Goddard, Esq.

Benjamin A. Baroody, Esq.

ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Shaul Levy and Meir Levy,
Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-5610

ORDER

FILED
HORRY COUNTY
13 JAN 28 PM 3:39
MELANIE HUGHES-WARD
CLERK OF COURT

On January 8, 2013, the trial of this case was held before the undersigned presiding Judge in the Horry County Court of Common Pleas. Present at the hearing were Mark B. Goddard, Esq. and Carlyle Cromer, Esq., for the Plaintiffs and Benjamin A. Baroody, Esq. for the Defendant. The record before me consists of Plaintiffs' Verified Complaint, Defendant's Answer and Counterclaim, the parties' Stipulation of Fact and its attached exhibits, and the trial briefs submitted by counsel for the parties.¹ Based upon the record before me, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Shaul Levy and Meir Levy ("the Levys") are residents of the States of Florida and New York, respectively, who conduct business in Horry County, South Carolina and have extensive experience in real estate investment.

2. Carolinian, LLC ("Carolinian") is the owner of certain real property located in Horry County, South Carolina. This real property consists of the Best Western Carolinian

¹ While counsel represented to the Court that the parties were present to offer testimony upon one issue of fact, the proffered testimony was determined to be irrelevant to the conclusions reached in this case and, therefore, denied presentation.

Resort, a ten-story high-rise oceanfront building that contains a total of 102 hotel units and certain commercial units located within the adjacent 129-unit twenty-story condominium tower.

3. Carolinian also holds the rental management rights over 112 managed condominium units.

4. Carolinian is a closely-held company consisting of nine members.

5. Bhupendra Patel ("Patel") is one of the nine members of Carolinian.

6. The rights of the members of Carolinian are established in the Operating Agreement for Carolinian, last revised on January 1, 2003 (hereinafter the "Operating Agreement").

7. Patel is the owner of a 23.35% Membership Share in Carolinian, LLC, which is defined in Section 2.1(r) of the Operating Agreement as "all of the rights of a member under this Agreement and under the Act, but not limited to a member's Financial Rights and Voting Rights."

8. On February 10, 2010, the Levys caused a Confession of Judgment (the "Judgment") in the amount of Two Million Five Hundred Thousand and no/100 (\$2,500,000.00) Dollars to be filed in the Horry County public index against Patel, Arkadiusz Grabara, and Harry Pavilack².

9. As a result of Plaintiffs' collection efforts on the Judgment, by Order dated August 12, 2011 in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against Patel's distributional interests in four limited liability companies, including Carolinian (collectively the "Patel-Distributional Interests").

² The Judgment served as security for a loan made by the Levys to Pier View Resort Development, LLC and personally guaranteed by Patel, Grabara, and Pavilack jointly and severally.

10. Counsel for the Levys sent a Certified letter dated August 30, 2011, to the Registered Agent for Carolinian, giving it notice of the Order of the Horry County Master in Equity dated August 12, 2011 creating the charging lien against Patel's distributional interest in Carolinian.

11. The Levys filed a Petition to foreclose the aforementioned charging liens of Patel's Distributional Interests on September 26, 2011 with the Horry County Master in Equity and a hearing was held on February 9, 2012 on the Levys' Petition to foreclose their charging liens.

12. Prior to the hearing, Loyd Daniel, on behalf of Carolinian, and Meir Levy, on behalf of the Levys, together with their counsel, discussed the Levys' action against Patel. Daniel expressed interest in Carolinian acquiring the Levys' interest in Carolinian, and the parties agreed to discuss a possible business deal without counsel present. The parties did not reach an agreement.

13. By Order dated March 14, 2012, the Horry County Master in Equity ordered the foreclosure and sale of Patel's Distributional Interests at public auction, with the proceeds thereof being applied toward the satisfaction of the Levys' Judgment secured thereby.

14. Prior to the foreclosure sale, Plaintiffs, by and through their counsel, were provided a copy of the Operating Agreement for Carolinian by counsel for Patel and/or counsel for Carolinian, and financial information of Carolinian, including tax returns of 2007 - 2011, Balances Sheets and Income Statements for 2008 - 2011, and an Appraisal of April 4, 2011 from counsel for Carolinian, LLC.

15. At no time after receiving notice of the charging lien and prior to the foreclosure sale did Carolinian redeem Patel's distributional interest pursuant to the terms of the Operating Agreement.

16. Each of Patel's Distributional Interests were sold separately at a public auction held April 2, 2012, with Plaintiffs being the high bidder on each of the four Patel Distributional Interests, including Patel's distributional interest in Carolinian, which was purchased at the winning bid of \$215,000.

17. Carolinian's legal counsel attended the public auction and bid \$190,000 on behalf of Carolinian and/or Southwestern Equities, LLC, a member of Carolinian, for Patel's Distributional Interest in the company.

18. Neither Patel nor the Levys requested or were given permission by Carolinian or its members to transfer Patel's distributional interest to the Levys prior to the foreclosure hearing or subsequent sale.

19. By Order dated April 10, 2012, the Horry County Master in Equity confirmed the sale of Patel's Distributional Interests to the Levys.

20. Pursuant to the Order Confirming Sale, the proceeds of the \$215,000 high bid for Patel's distributional interests in Carolinian, LLC at the foreclosure sale were applied towards the satisfaction of the Levys' Judgment.³

21. At no time after the foreclosure sale or prior to being served with the Order Confirming Sale did Carolinian redeem Patel's distributional interest pursuant to the terms of the Operating Agreement.

³ According to the Order, the Levys' Judgment as of April 2, 2012 totaled \$2,900,290.80.

22. By letter dated April 16, 2012, a copy of the Order Confirming Sale was served on Carolinian, through its registered agent Loyd Daniel requesting "that any and all distributions to be made by the Company be properly allocated and distributed to my clients."

23. By letter dated June 11, 2012, counsel for Carolinian responded to the letter dated April 16, 2012 and asserted that Carolinian was exercising its right to purchase the Levys' distributional interest in Carolinian pursuant to Section 11.2 of the Operating Agreement. The letter set forth Carolinian's calculation of the purchase price pursuant to the terms of the Operating Agreement and an offer to purchase the distributional interest for \$100,000.

24. By letter dated June 18, 2012, through counsel, the Levys denied that Carolinian had the right to purchase the distributional interest from the Levys, stating "[t]he Levys are not subject to any of the terms of the Operating Agreement" and "The Levys have no desire to sell their distributional interests...."

25. By letter, dated June 27, 2012, counsel for Carolinian asserted that the Levys were subject to the terms of Carolinian Operating Agreement, and that the company was obtaining an appraisal and purchasing the Patel Distributional Interest held by Levys pursuant to the terms of the Operating Agreement.

26. On July 23, 2012, Plaintiffs filed a Verified Complaint and Petition for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

27. On July 27, 2012, the Honorable Benjamin H. Culbertson entered an Order Granting Motion for Temporary Restraining Order and Rule to Show Cause, which Order was filed and served upon Carolinian on July 30, 2012.

28. On August 1, 2012, a hearing was held on the Order and Rule to Show Cause, at which hearing counsel for the parties consented to the extension of the Temporary Restraining

Order. On August 16, 2012, the Honorable Larry B. Hyman entered an Order Granting Motion for Temporary Restraining Order and Injunction, which Order was filed August 17, 2012.

DISCUSSION

The primary issue in this case is whether Carolinian may, pursuant to the terms of the Operating Agreement, compel the purchase and sale of the Levys' distributional interest in Carolinian, which the Levys acquired from Patel following the foreclosure sale.

The Levys seek a declaratory judgment that Carolinian's right to purchase their distributional interest pursuant to the Operating Agreement terminated upon the sale on April 2, 2012. Further, that, following the sale, the Levys were not subject to the Operating Agreement and that Carolinian cannot force the Levys to sell their distributional interest. The Levys also seek a permanent injunction prohibiting Carolinian from attempting to force the sale of their distributional interest in Carolinian as was discussed in Carolinian's letter of June 27, 2012.

Carolinian seeks a declaratory judgment that, upon the sale of Patel's distributional interest on April 2, 2012, the Levys became transferees of Patel's interest who were subject to the terms of the Operating Agreement and that the sale constituted a transfer that triggered Carolinian's right to buy the Patel distributional interest pursuant to Article XI of the Operating Agreement. Further, that the Levys' interest cannot exceed the value of Patel's interest as of the date of transfer, April 2, 2012. Also, that Carolinian's offer to purchase as set forth in its correspondence following the sale complied with the provisions of the Operating Agreement and that Carolinian's letter dated September 6, 2012, detailing the result of the appraisal and valuation process set forth in the Operating Agreement, is valid and binding upon the Levys.

For the reasons set forth below, I conclude that to reach the conclusion sought by the Levys would force upon the parties a result neither bargained for by the parties nor required by South Carolina law. As such, this Court will deny the Levys' action for an Injunction and Declaratory Judgment, and grant Carolinian's request for a Declaratory Judgment.

CONCLUSIONS OF LAW

1. With regard to the aforementioned civil action commenced by Levys against Patel before the Honorable Cindy Graham Howe, Horry County Master in Equity:

- a. The Levys commenced the action as judgment creditors of Patel and not of Carolinian;
- b. Carolinian was not a party to that civil action;
- c. The Levys were in possession of the Operating Agreement and various financial information of and concerning Carolinian prior to the sale of Patel's distributional interest;
- d. The April 2, 2012 sale of Patel's distributional interest to the Levys was proper;
- e. Carolinian has not challenged the foreclosure sale of Patel's distributional interest in Carolinian to the Levys.

2. The April 2, 2012 sale resulted in a transfer of Patel's interest in Carolinian to the Levys.⁴

⁴ Pursuant to the Order of Judge Howe entered April 10, 2012, the Patel Distributional Interests "have now been transferred and conveyed to the Plaintiffs."

3. The transfer changed the Levys' status from that of a judgment creditor of Patel to transferees of Patel's distributional interest in Carolinian. See S.C. Code Ann. Section 33-44-504(b) ("... A purchaser at the foreclosure sale has the rights of a transferee.").
4. As transferees, the Levys became owners of the distributional interest in Carolinian subject to the Carolinian Operating Agreement.
5. The transfer of Patel's interest in Carolinian to the Levys was governed by and subject to the Operating Agreement of Carolinian.
6. Pursuant to Section 12.4 thereof, the Carolinian Operating Agreement "shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996 ... and other applicable laws of the State of South Carolina."
7. South Carolina law permits an Operating Agreement to restrict the rights of both a company's members and the transferees of a member's distributional interest. See S.C. Code Ann. Section 33-44-103(b)(7) ("The operating agreement may not restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest....").
8. As a transferee of Patel's distributional interest in Carolinian subject to and governed by the Operating Agreement of Carolinian's members, Plaintiffs cannot, through contract law or statute, have greater rights than the transferor, Patel, an original member of Carolinian, had at the time of the transfer.
9. The Operating Agreement of Carolinian is clear and unambiguous.
10. Section 3.5 of the Operating Agreement sets forth the manner in which a member's distributional interest that is subjected to a charging order may be redeemed.

However, this section, in conjunction with S.C. Code Ann. Section 33-44-504, does not affect any other legal rights of the members of Carolinian that are set forth in the Operating Agreement.

11. Because no evidence exists to show that the Levys or Patel obtained the consent to the transfer from Carolinian or its members, the April 2, 2012 sale constituted a transfer falling under the category of "all other transfers" pursuant to Section 11.1 "Restrictions on Transfer" of the Operating Agreement.

12. Article XI of the Operating Agreement, therefore, governs the transfer of Patel's interest to the Levys, and Carolinian may exercise its "Right to Buy" pursuant to Section 11.2 and Article XI of the Operating Agreement.⁵

13. The "Right to Buy" in Section 11.2 is not a redemption under S.C. Code Ann. Section 33-34-504, but a separate right created by the Operating Agreement.

14. Carolinian's June 11, 2012 letter to the Levys, in which Carolinian offered \$100,000.00 to purchase the Patel's interest, constituted a timely exercise of Carolinian's right to purchase the distributional interest pursuant to Section 11.2(a) and 11.2 (c) of the Operating Agreement,⁶

⁵ Pursuant to Section 11.2(b) of the Operating Agreement, "[i]f a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, ... such Member is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3, and upon the terms contained in SECTION 11.4."

⁶ Pursuant to Section 11.2(a) and Section 11.2(c), Carolinian had sixty (60) days from the date it received written notice of the transfer, April 16, 2012, to accept a discounted offer from Patel or the Levys to purchase the Patel distributional interest at the discounted rate set forth in Section 11.2(a).

15. The Levys' June 18, 2012 letter to Carolinian rejected Carolinian's offer to purchase, thereby causing the Levys and Carolinian to appoint appraisers to appraise the value of the interest to be purchased as of transfer.⁷

16. Carolinian notified the Levys of its intent to appoint an appraiser to appraise the value of the interest to be purchased by letter dated June 27, 2012 in accordance with the terms of the Operating Agreement.

All actions by both parties thereafter regarding their rights under the agreement were restrained and are now of no effect. The parties may now exercise their rights under the agreement in accordance with this Order. Therefore, it is

ORDERED that the Order of the Honorable Larry B. Hyman dated August 16, 2012 and filed on August 17, 2012 is hereby terminated. It is further

ORDERED that Plaintiffs' action for a Permanent Injunction is hereby denied. It is further

ORDERED that Plaintiffs' action for a Declaratory Judgment is hereby denied. It is further

ORDERED that Defendant's action for a Declaratory Judgment is hereby granted as set forth in this Order.


The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

January 23, 2013
Conway, South Carolina

⁷ Pursuant to Section 11.3 "Purchase Price" of the Operating Agreement, if the parties cannot agree upon a purchase price, then the purchase price shall be the "Appraised Value" set forth therein.

Defendant,

CERTIFICATE OF MAILING

ROA-109

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court Of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No: 2012-CP-26-5610

Shaul Levy and Meir Levy,.....Appellants.

v.

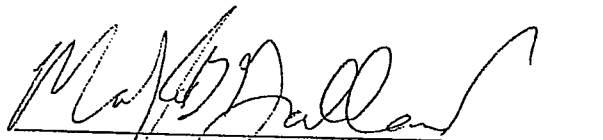
Carolinian, LLC,.....Respondent.

PROOF OF SERVICE

I, Mark B. Goddard, hereby certify that on this 22 day of March, 2013, that I have
served a copy of the above and foregoing NOTICE OF APPEAL by depositing a copy of it in the
United States Mail, postage prepaid, and properly addressed as follows:

Benjamin A. Baroody, Esq.
Bellamy, Rutenberg, Copeland, Epps, Gravely, & Bowers, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578

ATTORNEY FOR RESPONDENT


Mark B. Goddard

RECEIVED
MAR 25 2013

SC COURT OF APPEALS

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS NONJURY
2 COUNTY OF HORRY) (2012-CP-26-05610)
3)
4 SHAUL LEVY and)
MEIR LEVY)
5 VERSUS) TRANSCRIPT OF RECORD
6)
7 CAROLINIAN, LLC) January 8, 2013
8) Connway, S. C.
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge.

A P P E A R A N C E S:

MARK B. GODDARD, ESQ.
CARLYLE R. CROMER, ESQ.
ATTORNEYS FOR PLAINTIFFS

BENJAMIN A. BAROODY, ESQ.
JEFFREY W. KING, ESQ.
ATTORNEYS FOR DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Stipulation of Facts		4
P-2	Plaintiffs' Trial Brief		4
D-1	Brief of Defendant		5

1 (THE FOLLOWING TAKES PLACE ON JANUARY 8, 2013.)

2 THE COURT: This is (2012-CP-26-005601) (SIC) (2012-CP-
3 26-05610). It's labeled Shaul Levy and Meir Levy, Plaintiffs,
4 versus Carolinian, LLC.

5 As I understand it, counsel, the parties have come to
6 some agreements as to some stipulations, and do y'all need to
7 put those on the record at this time?

8 MR. GODDARD: Yes, Your Honor. We have prepared ---

9 THE COURT: And first, if you would, probably be best
10 if you state your name and who you represent, just all counsel
11 do that.

12 MR. GODDARD: My name is Mark Goddard, and this is
13 Carlyle Cromer. We represent Shaul and Meir Levy who are the
14 Plaintiffs in this action.

15 THE COURT: Very good.

16 MR. BAROODY: Your Honor, Ben Baroody, for the
17 Defendant, and also would be Jeff King for the Defendant.

18 THE COURT: All right. Very good.

19 All right, go ahead, sir.

20 MR. GODDARD: Your Honor, we have prepared a notebook
21 and I think without -- that has a copy of both our Pre-Trial
22 Briefs, but also of the Stipulation of Facts ---

23 THE COURT: Okay.

24 MR. GODDARD: ---And all previously-admitted exhibits.

25 THE COURT: Great.

1 MR. GODDARD: May I approach, Your Honor?

2 THE COURT: Yes sir.

3 MR. BARODY: Your Honor, Mr. Goddard's notebook has
4 his Pre-Trial Brief, and has that Stipulation of Facts inside
5 it.

6 THE COURT: Okay.

7 MR. BARODY: We also have a copy of the Defendant's
8 Brief that we've marked as Defendant's Exhibit 1.

9 THE COURT: Okay.

10 MR. BARODY: The Court Reporter mentioned, before we
11 got started, that it might be a good idea for that Stipulation
12 of Facts, which we've marked as a separate exhibit, just to go
13 through real quick on the record and identify each of the
14 exhibits to it.

15 MR. GODDARD: Yes. And I was planning to do that, Your
16 Honor.

17 THE COURT: I was going to say that you said
18 previously-admitted exhibits. Obviously there aren't any
19 admitted exhibits at this point.

20 MR. GODDARD: Agreed-upon exhibits I should have said.

21 THE COURT: All right. Very good.

22 All right. Go ahead.

23 (STIPULATION OF FACTS MARKED PLAINTIFF'S EXHIBIT NUMBER
24 1.)

25 (PLAINTIFFS' PRE-TRIAL BRIEF MARKED PLAINTIFF'S EXHIBIT

1 NUMBER 2.)

2 (BRIEF OF THE DEFENDANT MARKED DEFENDANT'S EXHIBIT
3 NUMBER 1.)

4 MR. GODDARD: Yes, Your Honor. And just -- what we
5 have done is, we have agreed to a Stipulation of Facts almost
6 to every issue. There's only really one issue that we plan to
7 potentially call testimony in today. Other than that, Your
8 Honor, we do plan to move forward with the legal arguments in
9 the case based on the Stipulation of Facts, if that's at your
10 pleasure.

11 THE COURT: That's fine.

12 MR. GODDARD: Thank you, Your Honor.

13 All right, this case involves, Your Honor, a -- this
14 lawsuit was filed as a Declaratory Judgment action by the
15 Plaintiffs against the Carolinian, LLC, to try to establish
16 the rights of a distributional interest the Levys purchased at
17 a foreclosure sale.

18 The Carolinian, LLC, the Defendant in this case, is the
19 owner of the real property located in Horry County, South
20 Carolina, which consists of the Best Western Carolinian
21 Resort, which is a ten-story oceanfront building containing a
22 hundred and two hotel units and commercial units, and within -
23 - and commercial units located with an adjacent hundred and
24 twenty-nine unit twenty story condo tower.

25 The Carolinian, LLC, also holds the management rights

1 over the hundred and twelve managed condominium units..

2 Carolinian, LLC is a closely-held corporation consisting
3 of nine members. Exhibit 1 of our stipulated facts is the
4 Evolution of Financial Rights detailing the nine members and
5 their current percentage interest of Carolinian, LLC. One of
6 the members of that Carolinian, LLC is Bhupendra Patel. Mr.
7 Patel, per the most recent Evolution of Financial Rights in
8 Carolinian owns twenty-three point three-five percent
9 membership share in Carolinian, LLC.

10 The Plaintiffs, Shaul and Meir Levy, are residents of
11 Florida and New York, and they conduct business here in Horry
12 County, South Carolina. They ---

13 MR. BAROODY: Your Honor, if I may.

14 THE COURT: Yes sir.

15 (CONSULTATION AMONG COUNSEL.)

16 MR. GODDARD: It was my understanding you wanted us to
17 go through the Stipulation, Your Honor; is that correct; or
18 just the exhibits?

19 THE COURT: I didn't indicate anything.

20 MR. GODDARD: Okay.

21 THE COURT: All right. I was leaving it to you to make
22 a short presentation and what you wanted to ---

23 MR. GODDARD: Just as -- and I can go through and
24 identify, Your Honor. Exhibit 1 of the Stipulation of Facts
25 is the Evolution of Financial Rights, Exhibit 2 is the

1 Operating Agreement of Carolinian, LLC that is controlling at
2 the time, Exhibit 3 is the Confession of Judgment filed
3 February 10, 2010, by the Levys against Eric Grabera,
4 Bhupendra Patel and Harry Pavilack, Exhibit 4 is the Order
5 creating charging liens on the Patel's interest and debt and
6 LLC -- in the LLCs, and Order of the sale of Rolex filed with
7 the Horry County Clerk of Court's Office on August 24th, 2011,
8 Exhibit 5 is a copy of a letter from Dan Butler to the
9 registered agent for Carolinian, LLC dated August 30th, 2011,
10 Exhibit 6 is a copy of the Petition to foreclose on the
11 charging liens and self-distributional interests filed with
12 the Horry County Clerk of Court September 26, 2011. The
13 Exhibit 7 is a copy of the Order of Foreclosure and Sale filed
14 with the Horry County Clerk of Court March 14, 2012, Exhibit 8
15 is an Order Confirming Sale and Master's Report on Sale and
16 Disbursements filed with the Horry County Clerk of Court on
17 April 11, 2012, Exhibit 9 is a copy of a letter from Dan
18 Butler to the registered agent for Carolinian, LLC, Lloyd
19 Daniels, dated April 16th, 2012, Exhibit 10 is a copy of a
20 letter from counsel for -- Jeff King for the Carolinian to Dan
21 Butler, a counsel for the Levys, dated June 11, 2012, Exhibit
22 11 is a copy of a letter from Dan Butler, counsel for the
23 Levys, to Jeff King, counsel for the Defendant, dated June 18,
24 2012, 13 is -- Exhibit 13 -- I'm sorry -- Exhibit 12 is a copy
25 of a letter, again, from Jeff King to Dan Butler dated June

1 27, 2012, and 13 is a copy of a letter from counsel, Ben
2 Baroody, to myself, dated September 6, 2012, that we will
3 stipulate had a copy of an Appraisal attached to it, but we do
4 not stipulate as to the value of that Appraisal.

5 MR. GODDARD: Anything else you want to add as to the
6 exhibit today?

7 MR. BAROODY: That's all, Your Honor.

8 THE COURT: All right. Very good. You may continue.

9 MR. GODDARD: Yes, Your Honor. I'm just going to
10 continue, and I'm not going to go through verbatim, but I
11 think it's important to understand the background of this
12 case, Your Honor.

13 What this case involves -- what happened was, the Levys
14 filed a Confession of Judgment against, like I said, Eric
15 Grabera, Harry Pavilack and Bhupendra Patel for Two Point Five
16 Million Dollars. Unfortunately the terms of the Confession
17 did not -- were not met and that Confession of Judgment was
18 filed on February 10, 2010, for a total of Two Million Five
19 Hundred Thousand Dollars.

20 The Plaintiffs moved forward with the collection efforts
21 and eventually received a charging lien from the Horry County
22 dated August 12, 2011. That Charging Lien was in four
23 separate limited liability companies. The one in interest
24 here is the twenty-three point three five percent interest Mr.
25 Patel had in the Carolinian, LLC.

1 Once they received a copy of that Charging Lien counsel
2 for the Plaintiffs notified the Defendants per their
3 registered agent by letter that they received a copy of the --
4 the -- received the Charging Lien. That was -- first notice
5 of the Charging Lien was sent on August 30th, 2011.

6 Plaintiff filed a Petition to Foreclose the Charging
7 Lien on September 26, 2011. The Judge allowed that. That
8 Order was eventually signed -- or a hearing was held in
9 February 9, 2012, and the Order was eventually signed to allow
10 the Plaintiffs to foreclose on that Charging Lien in March
11 14th of 2012.

12 Prior to the -- Mr. Daniels was present at the -- or a
13 representative of the Defendant was present at the foreclosure
14 hearing, and there was discussions of trying to -- I will term
15 them as settlement negotiations between the Defendant and the
16 Plaintiff during this time. Obviously those negotiations did
17 not occur.

18 The foreclosure sale went forward, or prior to the
19 foreclosure sale there were some corporate documents
20 exchanged, including the Operating Agreement, between the
21 parties and the most recent Balance Sheets. The foreclosure
22 sale eventually went forward on April 2nd, 2012, and the
23 Plaintiffs were the high bidder at the auction, bidding Two
24 Hundred Fifteen Thousand Dollars for the Patel's
25 distributional interest.

1 Carolinian, LLC's legal counsel attended this public
2 auction and actually bid a Hundred and Ninety Thousand Dollars
3 on behalf of the Carolinian, LLC or one of it's members for
4 the Patel distributional interest, but this -- they were not
5 the high bidder.

6 At no time, admittedly, did the Patels nor the Levys
7 request or give permission by the Carolinian, LLC or it's
8 members to transfer Patel's distributional interest to
9 Plaintiffs prior to the foreclosure hearing or sale.

10 The Horry County Master-in-Equity confirmed the sale on
11 April 10, 2012, and the -- by letter of April 16, 2012 notice
12 of the sale was sent to the registered agent, or -- I'm
13 sorry -- counsel for the Defendants. The Defendants did not
14 respond until June 11, 2012, and June 11, 2012 counsel for the
15 Defendant indicated that they were exercising it's right to
16 purchase the Plaintiffs' distributional interest pursuant to
17 the Operating Agreement. They offered a price of One Hundred
18 Thousand Dollars at that time.

19 Obviously that led to this litigation. On June 18, 2012
20 our counsel responded that we don't think they have the right
21 to purchase this, purchase the distributional interest, and
22 eventually this action was commenced. This action is
23 commenced as a declaratory judgment action seeking the Court
24 to declare that the Levys are the true and rightful owners of
25 the twenty-three point three-five percent distributional

1 interest in the Patels, and that the Defendants have no right
2 to force what the -- Bhupendra Patel, I should say -- I'm
3 sorry -- to force the sale of this interest, except at the
4 dissolution of the company.

5 Your Honor, this case is governed by both the South
6 Carolina Limited Liability Company Act, 1996, which is found
7 in 33-44-101, and also pursuant to the Operating Agreement of
8 the Carolinian, LLC.

9 The important issue in this case is the timing of the
10 Plaintiffs' Right of Redemption -- I mean -- I'm sorry -- the
11 Defendant's Right of Redemption. Pursuant to both the Act and
12 the Operating Agreement it is -- the Defendants had an
13 absolute right to redeem this distributional interest prior to
14 the foreclosure sale. The -- the statute directly says that
15 they have the -- if the operating agreement allows it that the
16 company may use company proceeds to purchase this prior to the
17 foreclosure sale. Section 3.4, I believe, of the Operating
18 Agreement has the -- mirrors the same language, giving them
19 the right to purchase this distributional interest before the
20 foreclosure sale.

21 Your Honor, it's important that this -- that we look at
22 the time line of this -- for this case, because this -- their
23 first notice of this was August 30th, 2011. This foreclosure
24 sale happened on April 2nd, 2012. Between that time there is
25 no question in -- no debate that they had the right to try to

1 redeem this distributional interest.

2 THE COURT: And what section is that of the Operating
3 Agreement?

4 MR. GODDARD: It is Section 3.5 of the Operating
5 Agreement.

6 THE COURT: Page eight? Page eight of the Agreement?

7 MR. GODDARD: Your Honor, I'm sorry.

8 MR. BAROODY: That's correct, Your Honor.

9 THE COURT: All right. Thank you.

10 Go ahead.

11 MR. GODDARD: Page eight of the Operating Agreement.

12 THE COURT: Okay.

13 MR. GODDARD: What's important here is, Your Honor,
14 they had this Charging -- the Charging Lien was established,
15 and they had notice of the Charging Lien since August 30th of
16 2011. The act says that the charging order, or Charging Lien,
17 is the exclusive remedy by which a judgment creditor of a
18 member or a transferee may satisfy a judgment out of the
19 judgment debtor's distributional interest. It is the
20 exclusive remedy, and the pers -- it goes on to say that the
21 Court, to order a foreclosure on the lien on a distributional
22 interest it may order the foreclosure at any time, and the
23 purchaser of the foreclosure sale has the rights of a
24 transferee.

25 Also it's important to notice that the Court, in their

1 Order for the Order -- ordering the foreclosure sale -- I'm
2 sorry -- Ordering the Charging Liens, direct -- Judge Howe
3 directly says that the Plaintiffs may foreclose on any of
4 these Charging Liens by filing a petition pursuant to the Act;
5 nothing herein may be construed as prohibiting the Plaintiff
6 from seeking foreclosure of the aforesaid Charging Liens.

7 The Act goes on to say that, at any time before the
8 foreclosure hearing the LLC may be redeemed. The timing of
9 the redemption is the central issue. Once -- per the terms
10 of the Operating Agreement and the terms of Act, once the
11 foreclosure sale occurs the ability to redeem that interest is
12 extinguished, Your Honor, and it's important to realize the --
13 what is trying to occur here. What the Defendants are trying
14 to do is say, after the foreclosure hearing occurs and the
15 Levys own the distributional interest, that they then have the
16 right to come and purchase this distributional interest from
17 them. What they are trying to use is the Operating Agreement,
18 in Section 11.1 of Operating Agreement that comes on to say
19 that it is any involuntary transfer of members' share, or
20 membership share, which includes the distributional interest,
21 without the consent of the sixty-seven percent of the
22 membership is void, null and void. So what they are trying to
23 do is null and void the foreclosure sale.

24 Your Honor, what this has the effect of doing is
25 affecting, not just the rights of the Levys, but they affect

1 the rights of any creditors. It is important to realize that
2 the Section 33-44-103 of the Acts gives the LLC the right to
3 have an operating agreement, and have provisions in that
4 operating agreement that further restrict the rights of a
5 member, manager, or a transferee. Per the terms of the
6 operating agreement in the Act, when the Levys purchased the
7 distributional interest at the foreclosure sale they did
8 become a transferee, a non-member transferee. The opera --
9 the Act specifically lays out the rights of the transferee who
10 is not a member. And what those rights are is to receive the
11 distributional interest owed to the member, in this case, Mr.
12 Patel, and also gives them, under the Act, the right to seek
13 judicial dissolution of the company.

14 THE COURT: Is that under 3.4?

15 MR. GODDARD: 33-44- --- of the Act, it's 33-44 ---

16 THE COURT: How about in the Agreement?

17 MR. GODDARD: The Agreement it is in -- Your Honor,
18 it ---

19 THE COURT: The Section 3.4?

20 MR. GODDARD: 33 -- 3.4, yes. He shall be entitled to
21 receive only the distributions to which the transfer would
22 otherwise be entitled. The transferee shall not have any
23 voting rights, and shall not be entitled to participate in the
24 management of the company, or to exercise any rights of the
25 management. The Act specifically, in 33-504 -- excuse me --

1 33-44-503(E), the Act specifically illustrates the rights of
2 the transferee who is not a member, and like I said, it is to
3 receive in accordance with the transfer distributions to which
4 the transfer would otherwise be entitled, or upon the
5 dissolution and winding up of the company, the net amount
6 otherwise due to the transfer in the statement of account, and
7 the ability to seek this determination from the Court to
8 dissolve the company.

9 And the 10 -- 33-44-103 has non-waivable provisions, and
10 the rights of a transferee are not non-waivable provisions, so
11 we admit they can restrict the rights of a transferee;
12 however, they can only restrict them -- restrict the rights of
13 the transferee to the extent the transferee has those rights,
14 and in this case the only rights the transferee has is, as
15 I've already walked through, is either to receive
16 distributions while the term is still going, at the end of the
17 term receive the distribution that is owed, or per the Act to
18 seek judicial dissolution.

19 Well, the Defendant's Operating Agreement does restrict
20 the rights of a transferee; it comes right out and says you
21 don't have the right to seek judicial dissolution. What it
22 doesn't do is say, you have to sell this at any indefinite
23 time, because what's important here is, the Defendants are
24 trying to rely on the Operating Agreement and Act when it
25 benefits them. 11.1 of the Operating Agreement seeks to

1 nullify any foreclosure sale, which would be the involuntary
2 transfer. Your Honor, what that is, it is not an effect of
3 the right of the transferee; that is a direct effect on the
4 rights of a creditor, and they have no right to affect the
5 rights of a creditor. By making -- by saying you have to have
6 sixty-seven percent consent from the other members before you
7 can even have an involuntary transfer would require every
8 creditor to go get that consent before the foreclosure can
9 happen. That is directly -- contravenes the statute, and
10 directly contravenes the -- usurps the power from the statute,
11 and it's important, they cannot do that; they cannot affect
12 the rights of a creditor by the Operating Agreement.

13 The ---

14 THE COURT: Let me ask you a question.

15 MR. GODDARD: Yes, Your Honor.

16 THE COURT: The creditor can only have what the person
17 had that it's foreclosed upon, correct? I mean, they can't
18 have anything greater than that person had?

19 MR. GODDARD: Correct.

20 THE COURT: All right. So all your clients can have is
21 what Mr. Patel had, correct?

22 MR. GODDARD: They had the twenty-three point three
23 five percent.

24 THE COURT: Okay. Now what Mr. Patel had was an
25 interest in Carolinian, LLC, which is -- and he was bound by

1 the terms of the Agreement, correct; Mr. Patel can't do
2 anything that the Operating Agreement doesn't give him
3 permission to do, correct?

4 MR. GODDARD: Correct.

5 THE COURT: All right. So all your client can do is
6 exactly what Mr. Patel could do under the Operating Agreement,
7 correct?

8 MR. GODDARD: Correct.

9 THE COURT: All right, now, I admit -- I mean, you've
10 just handed this to me so I haven't read completely through
11 the Operating Agreement. I've just picked a couple of
12 Sections and tried to read those. My question though is, if
13 the Operating Agreement restricts anybody's interest in it
14 then you can't go around that, can you?

15 MR. GODDARD: Well, Your Honor, I think one of the
16 things you can, is because that's an unenforceable provision.
17 Section 33-44-103 directly says you can restrict the rights of
18 a member, manager or transferee by the operating agreement.

19 THE COURT: Okay.

20 MR. GODDARD: What it does not say is, you can restrict
21 the rights of a creditor. Okay. And it's important to
22 realize, Your Honor, their ---

23 THE COURT: But a creditor can't have anything more
24 than what that person had; they can't have greater rights than
25 anybody else, can it? How can that be? That would be --

1 throw out contract law from it's inception.

2 MR. GODDARD: It can't have any greater rights than
3 they would -- than the -- than the member, but what it can do,
4 per the terms of the Act, is have a charging lien. Okay.

5 THE COURT: But -- so it means, I have the interest of
6 Mr. Patel ---

7 MR. GODDARD: I have the interest ---

8 THE COURT: ---And I am bound by what Mr. Patel had.

9 MR. GODDARD: And per the statute, and per the
10 Operating Agreement, their right of redemption, or their right
11 to purchase the creditor's charging lien, occurs from the
12 notice they have charging lien up until it's sold.

13 THE COURT: Okay. So that's what you are saying the
14 Agreement says?

15 MR. GODDARD: Yes, up until when it's sold.

16 THE COURT: All right. So the dispute here seems to
17 be, you think it's restricted.

18 And you correct me if I'm wrong, Mr. Baroody, you
19 believe, by the terms of the Agreement, you can force the sale
20 of some members' interests?

21 MR. BAROODY: Absolutely, Your Honor.

22 THE COURT: All right. That's the question here,
23 correct?

24 MR. GODDARD: Correct, Your Honor.

25 THE COURT: All right. So, what I need from both of

1 you then is, you tell me the Sections of the Operating
2 Agreement you are relying upon regarding your argument.

3 And Mr. Baroody, you tell me the Sections of the
4 Operating Agreement you are relying upon, and I look at those,
5 and you are asking me to make a decision, which one is
6 enforceable and which one is proper. That's the question
7 here, correct? I mean, is it anything more than that?

8 MR. GODDARD: The ultimate question, Your Honor, is if
9 they have the ability to purchase this even after the
10 foreclosure sale.

11 THE COURT: Well, the ultimate question is, can they
12 force the sale of it ---

13 MR. GODDARD: Correct.

14 THE COURT: ---Can they force the sale of some members'
15 interest. Okay. You have what Mr. Patel had. I don't think
16 there's any question about that. You got it through the
17 foreclosure; you have what Mr. Patel had. Okay. No -- just
18 can't be argument about that. What Mr. Patel had is an
19 interest in this Carolinian, LLC, and that is bound by the
20 terms of the Operating Agreement. All right. So, we have to
21 look at the Operating Agreement, that is, what the parties
22 agreed to, and Mr. Goddard, you need to tell me, under the
23 terms of the Agreement, pursuant to these Sections, and tell
24 me what the Sections are; the other members of Carolinian, LLC
25 cannot force the sale of the interest that the Levys now have.

1 Okay.

2 And Mr. Baroody, what you need to see, and tell me is,
3 according to the Operating Agreement the other members of the
4 Carolinian, LLC, pursuant to the written terms of the
5 Agreement, can force the sale of the interest that the Levys
6 had. All right.

7 You gentlemen look at that, you find those Sections.
8 We'll take a short break, and when I come back you tell me
9 what they are.

10 Thank you very much.

11 MR. BAROODY: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (THE FOLLOWING TAKES PLACE AFTER A BREAK.)

14 THE COURT: All right, Mr. Goddard, let me hear from
15 you.

16 MR. GODDARD: Your Honor, I think we need to go -- it's
17 important to go back and look at the statute that establishes
18 the statutory process for the foreclosure of the
19 distributional interest, and what that does is establish, in
20 33-50 -- 44-504(C), at any time before ---

21 THE COURT: All right. Start -- start from the
22 beginning. What Section was that?

23 MR. GODDARD: 33-44-504(C).

24 THE COURT: Okay.

25 MR. GODDARD: Okay. That at any time before

1 foreclosure the distributional interest in a limited liability
2 company which is charged may be redeemed by the judgment
3 debtor, 2), with property other than the company property by
4 one or more other members, or 3), the company's property, but
5 only if permitted by the operating agreement.

6 THE COURT: Okay.

7 MR. GODDARD: Okay. It's important to go back and see
8 at any time before the foreclosure ---

9 THE COURT: Okay.

10 MR. GODDARD: Okay. That's what happens, and then ---

11 THE COURT: And I appreciate that. The statute
12 governs, in general, if you have an agreement that covers
13 things specifically, then that's what governs; you can't
14 contravene -- you can't contravene State Law by your
15 agreement; you can't agree to do a wrongful act, but just
16 because the statute says, in general this is what will happen,
17 does not mean, when it comes to a particular fact pattern, or
18 a particular situation where you have a specific agreement,
19 that the statute overrides what the parties have specifically
20 agreed to as long as they have not agreed to do something that
21 is a wrongful act. Okay.

22 MR. GODDARD: I understand.

23 THE COURT: It's fine that that statute says that.

24 MR. GODDARD: And 33-44-504(C) mirrors three point --
25 the Section 3.5 of the Operating Agreement.

1 **THE COURT:** Great. So let's talk about the Operating
2 Agreement.

3 **MR. GODDARD:** Well, Your Honor, but then you have to
4 look at 33-44-503, and I think this is important, and I
5 understand the Operating Agreement, but when you look at -- or
6 I'm sorry -- 504(B), the last sentence, the purchaser at the
7 foreclosure sale has the rights of a transferee. The language
8 of that statute is important because it does not say they are
9 a transferee; it says they have the rights of a transferee.
10 Okay. And what 33-44-503 does is lay out the rights of a
11 transferee. It doesn't say ---

12 **THE COURT:** Again ---

13 **MR. GODDARD:** And I'm ---

14 **THE COURT:** Again, you can't have any more than what
15 Mr. Patel had. No matter what the statute says, you step in
16 the shoes of Mr. Patel.

17 **MR. GODDARD:** Well, Your Honor ---

18 **THE COURT:** You can't have any more than what Mr. Patel
19 has; you can't do anything that Mr. Patel cannot do.

20 **MR. GODDARD:** Our position though, Your Honor, is that
21 once the foreclosure sale occurred, and they purchased these,
22 they have the rights ---

23 **THE COURT:** They've got his rights.

24 **MR. GODDARD:** They have his rights; they have his
25 distributional interest.

1 **THE COURT:** Correct.

2 **MR. GODDARD:** They have the rights, and the rights are
3 established by statute, and the Operating Agreement does not
4 apply. 11.1 does not apply to them, because at that time they
5 are not a member; they are not a transferee. What they are is
6 a judgment creditor that has the rights of a transferee ---

7 **THE COURT:** You know, to me all it says is that the
8 members cannot prevent a foreclosure of the interest, okay,
9 that's all it says, okay, and that's correct; you have a
10 proper foreclosure, the Court orders the transfer of the
11 interest, then the interest is transferred and the other
12 members can't override the Court's Order. That's all it says.

13 **MR. GODDARD:** And I think it's important to go look at
14 11.2 and 11.3 as to the language. It talks about redeeming
15 from the member. There is no -- there is no language in 11.2
16 or 11.3 that discusses purchasing the -- the distributional
17 interest from the judgment creditor, or the person who has the
18 rights of a transferee. It talks about purchasing it from the
19 member. Well, at that time the member no longer owns those
20 rights, and there is nowhere in 11.2 or 11.3 that discusses
21 purchasing these from the transferee, and that's why it's
22 important to go back and look what the statute says as to the
23 foreclosure, and what the rights are, because nowhere -- you
24 will not find in the Operating Agreement ---

25 **THE COURT:** So you go back to 3.4, transferee not

1 admitted as a member.

2 MR. GODDARD: Correct. And at that point 3.4 mirrors -
3 --

4 THE COURT: That's what I'm asking you. Refer to the
5 Agreement, please, okay.

6 MR. GODDARD: We've got a 3.4 lays out the rights of a
7 transferee, and the rights of the transferee mirror the
8 statute, and all that -- those transferee's rights are, is to
9 receive the distribution, or to -- during the term, or to
10 receive a distribution at the end of the term when winding up
11 with the company.

12 THE COURT: Okay.

13 MR. GODDARD: Okay. And they cannot restrict the
14 rights -- just like we don't have any more rights, they can't
15 restrict the rights of the transferee by any more than what
16 our rights are, and we only have those two rights.

17 THE COURT: Unless they follow the Agreement. I mean,
18 if there is some -- and I -- and again ---

19 MR. GODDARD: I understand, but the Agreement ---

20 THE COURT: You know, they could get together, pursuant
21 to the Agreement, and now change the rights of the transferee
22 if they want to, if that's what the Agreement says.

23 MR. GODDARD: If they wanted to change -- Your Honor, I
24 -- and this is where I think it's important ---

25 THE COURT: Anyway, we don't need to talk about that.

1 That's something for a future ---

2 MR. GODDARD: Once they purchased that foreclosure they
3 have no additional rights other than what the statute
4 provides, and what -- other than what 3.4 provides.

5 THE COURT: They have no further rights other than what
6 the Agreement gives to them.

7 MR. GODDARD: Well, I'll ---

8 THE COURT: The statute cannot give you more than what
9 Mr. Patel had; that is not possible.

10 MR. GODDARD: But, Your Honor, if you go back and ---

11 THE COURT: The statute cannot do that, and any
12 interpretation of the statute that would indicate that is not
13 proper.

14 MR. GODDARD: If there's a 33-44-103 that directly says
15 -- that is a non-waivable provision to restrict the rights of
16 anyone other than the member, manager or transferee, then I
17 would say the statute would control, that you cannot say that
18 a judgment creditor cannot foreclosure without the consent of
19 the parties.

20 THE COURT: I don't hear any argument about that.

21 MR. GODDARD: Well, what they are trying to do is null
22 and void that sale, saying they did not get the consent.

23 THE COURT: Mr. Baroody, are you saying because they
24 didn't get the consent the foreclosure is not proper; is that
25 what you are telling me?

1 MR. BAROODY: Absolutely not, Your Honor.

2 THE COURT: What?

3 MR. BAROODY: Absolutely not, Your Honor.

4 THE COURT: Okay.

5 MR. GODDARD: What they are backdooring it, Your Honor,
6 is trying to say, we have the right to redeem indefinitely.

7 THE COURT: If some other provision gives them the
8 right to do so they may very well have that right.

9 MR. GODDARD: Your Honor, we would go on to argue if,
10 in the event there is some allowance per the Operating
11 Agreement to purchase this indefinitely the equity of the
12 situation prevents that in this case. The Defendant in this -
13 - the Defendant in this case had notice of this Charging Lien
14 for August -- since August 30th of 2011, and the April -- and
15 the sale did not occur till April 2nd, 2012. During that time
16 they made no formal attempt, per the terms of the Operating
17 Agreement, to redeem this interest. During that time, Your
18 Honor, they were in the -- they discussed this offer, they are
19 aware of it the entire time, their -- either their client or
20 counsel for the client was -- was at the foreclosure hearing,
21 was at the foreclos -- I'm sorry -- the motion for the
22 hearing, was actually at the foreclosure, for the Charging
23 Lien, for the foreclosure hearing, and at the sale. They
24 actually bid a Hundred and Ninety Thousand Dollars at the
25 sale. They were not the high bidder. They then waited sixty-

1 two days after receiving confirmation and notice of the sale
2 to try and do any rights during the -- and at that time they
3 offered a Hundred Thousand Dollars, when they had already bid
4 a Hundred and Ninety Thousand Dollars, and knew our client bid
5 at Two Fifteen. We agree they had the absolute right to try
6 and redeem this before the foreclosure sale, but delaying
7 that, and then on the back side trying to enforce these rights
8 at the detriment and prejudice of my client would be
9 completely improper.

10 THE COURT: Okay. All right, Mr. Baroody, let me hear
11 from you.

12 MR. BAROODY: Thank you, Your Honor.

13 Your Honor, prior to the break your question was, asked
14 to point to the Sections of the Operating Agreement which
15 governs. I'm happy to go through and contest all of the
16 redemption arguments and so forth that Mr. Goddard has raised,
17 but let's start here.

18 Section 11.1 of the Operating Agreement, which is found
19 on page twenty-five, states very clearly, no member may
20 voluntarily or involuntarily transfer or otherwise convey all
21 or any portion of his membership share to any person without
22 the prior written consent of those members who own more than
23 sixty-seven percent of the voting rights in the company. That
24 did not happen; that's stipulated that it did not happen.

25 It goes on to state, if such consent is obtained then no

1 provision of Article 11 shall apply.

2 And the provisions of Article 3, which Mr. Goddard is
3 talking about, shall govern the rights of the transferror and
4 transferee; however, with regard to all other transfers, such
5 as what occurred here, Your Honor, with a conditional
6 foreclosure sale, with no consent of the membership, of the
7 other members, Article 11 shall control, and any attempt in
8 conveyance or encumbrance of all or a portion of a membership
9 share in contravention of this Article shall be null, void,
10 and without effect. That's step one.

11 Your Honor, if you turn to page -- page twenty-six,
12 under Section 11.2 of the Agreement, which is entitled -- I
13 apologize, Your Honor, still on page twenty-five, under Right
14 to Buy. So step two is right to buy, and in Sub-section (B),
15 which is on page twenty-six it says, if a member attempts to
16 transfer all or a portion of his membership share without
17 obtaining the other members' consent, as required in Section
18 11.1, or if a member wrongfully associates under 11.2(A), or
19 if a member properly disassociates from the company within the
20 meaning of Article 10 such member is deemed to have offered to
21 the company all of his membership share at the price
22 determined in accordance with 11.2(A), 11.3, and upon the
23 terms contained in Section 11.4.

24 Now, Your Honor, what those Sections, in essence,
25 discuss is, that the company has the ability to buy back the

1 membership interest that was wrongfully transferred by
2 Bhupendra Patel pursuant to an appraised value. We have
3 followed each of those provisions and Sections to the "T",
4 we've obtained an appraisal, we submitted the appraisal to the
5 other side. The other side chose to disregard the appraisal,
6 not to get it's own appraisal, and in turn they are stuck with
7 the appraised value pursuant to an independent appraisal
8 conducted by E.F. Hucks and Associates, which we served by
9 letter in September, and that -- and Your Honor, this is an
10 entity that was valued at Five and a Half Million Dollars,
11 with Five Million Two Hundred Thousand Dollars in debt, and so
12 you can do the math and ascertain from that point in time what
13 the twenty-three point three five percent distributional
14 interest of Mr. Patel would be worth.

15 Your Honor, this is a pretty simple case. Your Honor
16 honed in right off the bat on the critical point, which is
17 that what happened prior to the foreclosure sale, quite
18 frankly, is irrelevant. We do not -- we are not trying to
19 reverse what occurred at the foreclosure sale; we are not, in
20 any way, contesting the foreclosure sale. We weren't a party
21 to the foreclosure sale; we didn't have any standing or any
22 rights to raise anything at the foreclosure sale, quite
23 frankly, but all -- our entire position in this case is
24 centered around the very simple fact that when Bhupendra
25 Patel's interest was transferred at foreclosure to the Levys

1 they took that interest subject to the Operating Agreement of
2 Carolinian, LLC, period, and that Operating Agreement, which
3 governs their rights as transferees, and it's -- and it's
4 allowed to do so by Law that, quite simply states that, in
5 this case they took it subject to a right to buy by the
6 company.

7 The Levys, if they wanted to -- if they wanted to -- if
8 the Levys wanted to remain creditors then they never should
9 have foreclosed upon the interest. Upon foreclosure they
10 became transferees subject to the Operating Agreement. They
11 could have maintained a Charging Lien only, and in which case
12 any distribution to which Bhupendra Patel would be entitled
13 to, they would take. When they took the additional step to
14 foreclose, at that point in time they became subject to the
15 Operating Agreement. They cannot now, at this point in time,
16 have their cake and eat it too, and say, we want Bhupendra
17 Patel's distributional interest but we don't want it subject
18 to your Operating Agreement or anything else. That's not
19 fair, and quite frankly, that's contrary to the law.

20 Your Honor, I'm happy to address any other issues or
21 concerns the Court has, but I think that that's as far as we
22 need to go, quite frankly, at this point.

23 **THE COURT:** Mr. Goddard, any reply?

24 **MR. GODDARD:** Briefly, Your Honor. Eleven point --
25 he's relying on, primarily, Article 11 of the Operating

1 Agreement. It's important to look at -- directly at the
2 language. 11.1 directly says, no member may voluntarily or
3 involuntarily sell, transfer, gift or assign. The only remedy
4 under 11.1 is exactly what we said, null and void the
5 foreclosure sale, okay. 11.2 is important to say -- 11.2(B),
6 which is the company's right to buy, if a member attempts to
7 transfer all or a portion of his membership interest. It --
8 and nowhere does it mirror the language of 11.1 and say, no
9 member may -- any voluntarily -- voluntary or involuntarily,
10 and I think that's important because 11.2 does not say an
11 involuntary transfer allows them the right to purchase. It is
12 said, 11.1 gives them the right to null and void the sale, but
13 11.2 does not allow them to purchase for an involuntary sale.
14 If -- the language -- if that language is included in 11.1
15 then it would need to be included in 11.2 for it to also give
16 them the right to purchase in that scenario.

17 Also, Your Honor, just to contest some of the other
18 arguments of counsel, he said they've followed everything they
19 have done, and I will say I disagree with that in it's
20 entirety. First and foremost, Your Honor, if they are going
21 to follow in it's entirety the appraiser should have
22 received -- then received thirty days from the -- from the day
23 or attempt to transfer. The attempt to transfer allegedly
24 would have been April 2nd, 2012. We did not receive the
25 appraisal till September 6, 2012. The first attempt to

1 respond to the sale after receiving notice of it was still
2 sixty-two days later, so I will say, they did not -- be within
3 the thirty days following the attempt to transfer to make
4 their appraisal controlling.

5 Also I would say, Your Honor, we do not believe it is
6 proper while litigation is pending where we do not believe
7 they have any right to purchase for us to be required to
8 have -- to go through the cost of the appraisal when we do not
9 think they have the right to even require us to follow that
10 appraisal process under 11.3.

11 I beg the Court's indulgence one moment.

12 **THE COURT:** Yes sir.

13 **MR. GODDARD:** Once again, Your Honor, we would say --
14 and just to reiterate, we don't believe 11.2(B) contemplates a
15 foreclosure sale. We believe that contemplates another
16 transferee, not an involuntary transferee.

17 We would also say, Your Honor, that 11.2 applies to the
18 member, and does not apply to somebody who has the rights of a
19 transferee. It does not -- at no -- it is directly in the
20 Operating Agreement that we are not a member, and take us to
21 the transferee's rights, so just as if we cannot have any more
22 than they had, they cannot enforce any more than what the
23 Operating Agreement. What the Operating Agreement says, they
24 have the rights of a transferee. 11.2 deals with buying from
25 the member. The member, in this case, no longer owns the

1 distributional interest, so unless they are trying to void the
2 foreclosure sale, they cannot get to where they want to do,
3 and as we've already said, the voiding the foreclosure sale
4 contravenes the statute, and places additional restrictions on
5 non-members.

6 **THE COURT:** All right, sir.

7 **MR. GODDARD:** Your Honor, also 3.3 of the Operating
8 Agreement, the second paragraph, notwithstanding anything
9 herein to the contrary, no creditor of other member who
10 obtains any portion of a membership share, including financial
11 rights, by charging order, pursuant to the Act or otherwise,
12 or any person or entity, including any creditor or receiver,
13 or bankruptcy estate that attains any rights in the company by
14 reason of a security interest pledge for the filing of an
15 action of foreclosure, bankruptcy, divorce, or anything
16 similar proceedings may become a full member in the company
17 without the unanimous written consent -- they are -- obtained
18 after the transferred; they are only a transferee; they only
19 have the rights that's established in 3.4.

20 **THE COURT:** All right, sir. Thank you.

21 All right, gentlemen, the booklet that you supplied, I
22 understood there was a Defendant's Brief?

23 **MR. BAROODY:** That's correct, Your Honor.

24 **THE COURT:** All right. And that's an exhibit?

25 **MR. BAROODY:** Yes sir.

1 **THE COURT:** All right. Very good.

2 All right. What I'm going to do, gentlemen, is I want
3 to read thoroughly the Plaintiff's Trial Brief, the
4 Defendant's Brief, again, review the Agreement, and the
5 particular terms of the Agreement, so I'm going to take it
6 under advisement. I will advise the parties by e-mail. At
7 the same time probably a direction to one side or the other to
8 prepare a proposed order.

9 I do not see it necessary to receive any testimony
10 regarding the interpretation of the Agreement; the Agreement
11 is what the Agreement is; the parties, by their testimony,
12 cannot vary the terms of the Agreement, so I don't see the
13 necessity for any testimony at this point in time.

14 Mr. Goddard.

15 **MR. GODDARD:** And Your Honor, I am fine with that. I
16 don't believe the testimony was as to the interpretation of
17 the Operating Agreement, and I'm fine with no testimony.

18 **MR. BARODY:** Your Honor, may I address that briefly?

19 **THE COURT:** Yes sir.

20 **MR. BARODY:** The entire -- the entire point of having
21 testimony today would be in the event that the Court was
22 requiring any testimony about Mr. Goddard's argument that
23 Carolinian should have attempted to redeem the interest of Mr.
24 Patel prior to the sale. Now, again, we don't believe that
25 that's relevant one way or another, but because that all

1 occurred prior to the sale, we are not contesting the sale, we
2 are not trying to overturn the sale, but we had testimony from
3 Mr. Daniel, who is one of the managing members of Carolinian,
4 who -- who will testify that he did, in fact, attempt to do
5 so, but was denied to ability to do so.

6 THE COURT: I don't think that that is necessary.

7 MR. BAROODY: Okay. Thank you, Your Honor.

8 THE COURT: All right. All right, gentlemen, thank you
9 very much. I appreciate it.

10 MR. BAROODY: Thank you, Your Honor.

11 MR. GODDARD: Thank you, Your Honor.

12 MR. BAROODY: Thank you very much for hearing us this
13 week.

14 THE COURT: Absolutely. Not a problem.

15 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the **MOTION HEARING** of the captioned case, relative to appeal, in the **COURT OF COMMON PLEAS NON-JURY** for **HORRY COUNTY, SOUTH CAROLINA**, on the 8th day of January, 2013.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

April 26, 2013


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	Civil Action No. 2012-CP-26-5610
Shaul Levy and Meir Levy,	)	
	)	
Plaintiffs,	)	
	)	PLAINTIFFS' TRIAL BRIEF
vs.	)	
	)	
Carolinian, LLC,	)	
	)	
Defendant.	)	
	)	

Plaintiffs, Shaul Levy and Meir Levy, by and through their undersigned counsel, hereby submits this Trial Brief. For the reasons set forth below, Plaintiffs are entitled to the relief requested in their Complaint.

ARGUMENT

PLAINTIFFS ARE THE CURRENT, TRUE AND LAWFUL OWNERS OF PATEL'S DISTRIBUTIONAL INTEREST IN CAROLINIAN, LLC, AND ANY RIGHT OF CAROLINIAN, LLC, TO REDEEM PATEL'S DISTRIBUTIONAL INTEREST TERMINATED UPON THE SALE OF THE DISTRIBUTIONAL INTEREST TO PLAINTIFFS AT THE PUBLIC AUCTION HELD APRIL 2, 2012

I. Defendant's Right to Redeem the Distributional Interest of Patel Expired upon the Foreclosure Sale

The South Carolina Uniform Limited Liability Act, S.C. Code Ann. §33-44-101, ("the Act") is the statutory framework for LLCs in South Carolina. The Act allows members of LLCs to enter into an operating agreement to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. See S.C. Code Ann. § 33-44-103. Plaintiffs in this action were judgment creditors of a member of Carolinian, LLC, Mr. Bhupendra Patel. As is explained in detail in the Stipulation of Facts between the parties, Plaintiffs obtained a

charging lien on the distributional interest of Mr. Patel by order of the Horry County Master-In-Equity. The Order creating the Charging lien was executed on August 12, 2011, and notice of the charging lien was mailed to the registered agent for Carolinian, LLC, on August 30, 2011.

Pursuant to the Act, a charging order is “the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor’s distributional interest in a limited liability company.” S.C. Code Ann. §33-44-504(e) (emphasis added). The Act allows the court to “order a foreclosure of a lien on a distributional interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.” S.C. Code Ann. §33-44-504(b). Judge Cynthia Graham Howe’s Order Creating Charging Liens on Patel’s Interest in Certain LLCs and Order of Sale of Rolex, dated August 12, 2011, and filed with the Horry County Clerk of Court’s office on August 24, 2011, states “[t]he Plaintiffs may foreclose any of these charging liens by filing of a petition pursuant to S.C. Code Ann. § 33-44-504(b). Nothing herein may be construed as prohibiting Plaintiffs from seeking foreclosure of the aforesaid charging liens.”

The Act also provides that “at any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed: (1) by the judgment debtor; (2) with property other than the company’s property, by one or more of the other members; or (3) with the company’s property, but only if permitted by the operating agreement.” S.C. Code Ann. §33-44-504 (c) (emphasis added). The Carolinian, LLC’s Operating Agreement states “[i]n the event a Member’s Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the

Management Committee may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with Section 33-44-504(c) of the Act." Operating Agreement § 3.5 (emphasis added).

The timing of the attempted redemption of the distributional interest subject to the charging lien is the central issue in this case. There is no dispute that Carolinian, LLC, had the right to redeem the distributional interest prior to the foreclosure sale pursuant to the Act and Carolinian, LLC's Operating Agreement. However, once the foreclosure sale occurred, Carolinian, LLC's right to redeem expired per the express terms of the Act and the Operating Agreement. By being the high bidder at the foreclosure sale, Plaintiffs became the rightful owner of Patel's distributional interest.

II. Defendant's Operating Agreement Puts Improper Restrictions on the Rights of Creditors and Non-Member Transferees

Pursuant to the Act, by purchasing the Patel's distributional interest at the foreclosure sale, the Plaintiffs have the rights of a transferee. S.C. Code Ann. § 33-44-504. The Carolinian, LLC's Operating Agreement specifies that a transferee may not "become a full Member in the Company without the unanimous written consent of the Members obtained after the transfer." Operating Agreement § 3.3. Under the Carolinian, LLC's Operating Agreement, a nonmember transferee "shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any right of a member." Operating Agreement § 3.4

The Act specifies that the rights of a transferee who does not become a member of the LLC are limited to “(1) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled; (2) receive, upon dissolution, and winding up of the limited liability company’s business: (i) in accordance with the transfer, the net amount otherwise distributable to the transferor; (ii) a statement of account only from the date of the latest statement of account agreed to by all the members; (3) seek under Section 33-44-801(5) a judicial determination that it is equitable to dissolve and wind up the company’s business.” S.C. Code Ann. § 33-44-503(e).

The language found in Section 33-44-103 of the Act allows an Operating Agreement to restrict the rights of a manager, member, and transferee. However, the Operating Agreement can only restrict the rights held by the transferee pursuant to the terms of the Operating Agreement and the Act. Carolinian, LLC’s Operating Agreement limits the rights of a transferee from the transferee’s rights under the Act by preventing a transferee from exercising “the right to seek a judicial determination that it is equitable to dissolve and wind up the Company’s business.” Operating Agreement §3.4. Since Plaintiffs are non-member transferees, Carolinian, LLC’s ability to further restrict the transferee’s rights are limited to restricting the express rights found in the Act and the Operating Agreement, and Plaintiffs are not subject to the remaining terms of the Operating Agreement

In this case, Defendant relies on Section 11.1 of the Operating Agreement to attempt to void the transfer of Patel’s distributional interest. This section states “[n]o Member may voluntarily or involuntarily sell, transfer, gift assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion of all of his Membership

Share to any Person without the prior written consent of those Members who own sixty-seven (67%) percent of the Voting Rights in the company (without regard to the transferor Member). [If no consent is obtained] any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this Article shall be null, void and without effect.” Therefore, Defendant is trying to establish that the Foreclosure Sale held on April 2, 2012, should be null and void.

Defendant’s attempt to make the foreclosure sale null and void directly contravenes the Act and eliminates the creditor’s exclusive remedy to satisfy a judgment out of the judgment debtor’s distributional interest in a limited liability company. Section 33-44-504 of the Act does not require the consent of the other members with regards to the transfer of a distributional interest by and through the foreclosure of a charging lien on a distributional interest, thus, in effect, Section 11.1 attempts to usurp and/or modify the express requirements found in Section 33-44-504 of the Act.

The Act does not require a creditor to receive the consent of any other members before foreclosing on the charging lien, and the Act specifically prevents the Operating Agreements from affecting the rights of a creditor. However, by the terms of Carolinian, LLC’s Operating Agreement, the creditor now must obtain the consent of 67% of the other Members of the LLC to foreclose on the charging lien on the member’s distributional interest or such transfer would be null and void. Since the foreclosure of the charging lien is the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor’s distributional interest in a limited liability company, the requirement of receiving the consent of other Members before an involuntary transfer of the distributional interest rights makes it impossible for

the creditor to foreclose on the charging lien. If the Operating Agreement is interpreted as the Defendant would indicate, then the Operating Agreement has the effect of preventing the foreclosure of any of its members' charging liens without the express consent of the other members. This interpretation would have a significant impact on the rights of the creditors.

Further, 11.3 (b) of the Operating Agreement discusses the process the Company must follow when attempting to purchase the Membership Share of the members. The section specifies that "if a Member **attempts** to transfer all of a portion of his membership share without obtaining the other Member's consent.....such Member is deemed to have offered the Company all of his Membership Share at the price determined in accordance with Section 11.2(a), 11.3 and upon the terms contained in Section 11.4" 11. 3 Operating Agreement (emphasis added). The section explains how the Company shall price any redemption request for the distributional share prior to the actual transfer. It is clear from the facts that Defendant's made no such effort to formally redeem the distributional interest pursuant to the terms of the Operating Agreement.

Since Section 11.1 of the Operating Agreement attempts to make the foreclosure sale null and void and places restrictions on creditors that directly contravene the terms of the Act, this section of the Operating Agreement is void, and the Plaintiff's purchase of the charging lien on the Patel's distributional interest at the foreclosure sale must be valid. The Plaintiffs' rights as a transferee should be in accordance with Section 3.4 of the Operating agreement.

**III. The Foreclosure Sale of Patel's Distributional Interest does not Qualify as
an Event of Wrongful Dissociation**

Defendant's counsel argued in his letter to Plaintiffs dated June 11, 2012 (Exhibit 10 to the Stipulation of Facts) that the transfer of Patel's distributional interest violated Section 11.1 of the Operating Agreement, and the transfer was an event of wrongful dissociation pursuant to the Act. The Act does list events causing a member's dissociation. *See* S.C. Code Ann. § 33-44-601. These events include "(2) an event agreed to in the operating agreement as causing the members dissociation; (3) upon transfer of all of a member's distributional interests, other than a transfer for security purposes or a court order charging the members distributional interest which has not been foreclosed." S.C. Code Ann. § 33-44-601.

The Act specifically allows a member to dissociate at any time either rightfully or wrongfully. *See* S.C. Code Ann. § 33-44-602. The Act defines events that cause a member's dissociation to be considered wrongful as "(1) [the dissociation] is in breach of an express provision of the agreement; (2) before the expiration of the specified term of a term company: (i) the member withdraws by express will; (ii) the member is expelled by judicial determination under Section 33-44-601(6); (iii) the member is dissociated by becoming a debtor in bankruptcy. *Id.* In this case, the foreclosure of the charging lien does not meet any of the requirements for wrongful dissociation pursuant to the Act. Mr. Patel did not withdraw by express will, he has not been expelled by judicial determination, and he is not a debtor in bankruptcy.

If the court only examined the facts under the Act, then it could be argued that Patel dissociated as a member when the foreclosure of his distributional interest occurred. However, since the members specifically addressed Dissociation in Article X of the Operating Agreement, and since events of dissociation are not found in the nonwaivable

provisions described in Section 33-44-103 of the Act, the Court must examine the direct language of the Operating Agreement to determine whether a member dissociated.

Pursuant to the Operating Agreement, events of proper dissociation of a member include "(a) the death of a Member, unless the Member's interest is transferred to a Family Member as hereinafter defined; (b) withdrawing, retiring or resigning from the Company with the consent of those Members who own sixty-seven (67%) percent of the Voting Rights in the Company." Operating Agreement § 10.1. The Operating Agreement defines events of wrongful dissociation of a member as

(a) the voluntary withdrawal, retirement or resignation of any Member other than as permitted in SECTION 10.1; or
(b) on application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member: (1) engaged in wrongful conduct that adversely and materially affected the Company business; or willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or to the other Members under Section 33-44-409 of the Act; or engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the member." *Id.*

Patel's actions in this matter do not meet any of the requirements for dissociation in either Sections 10.1 or 10.3 of the Operating Agreement. Patel did not die, withdraw retire or resign with the consent of 67% of other members to qualify as an event of Proper Dissociation, nor did he voluntarily withdraw, retire or resign, and no action has been filed by any other member to expel Patel by judicial determination, to qualify as an event of Wrongful Dissociation.

The fact that Patel did not formally dissociate under the express terms of the Operating Agreement is important as to the Defendant's rights. Since no dissociation

occurred, Sections 33-44-603 and 33-44-701 of the Act do not apply. Section 33-44-603 of the Act, states that "[u]pon a member's dissolution: ... (2) in a term company, if the company: ... (b) does not dissolve and wind up its business on or before the expiration of its specified term, the company must cause the dissociated member's distributional interest to be purchased under Article 7 of the date of the expiration of term specified at the time of the member's dissociation." The official comments to this statute further explain: "dissociation from a term company that does not dissolve the company does not cause the dissociated members distributional interest to be purchased under Article 7 until the expiration of the specified term that existed on the date of the dissociation." Even if an event of dissociation were to occur under Defendant's theory, the right to purchase the distributional interest occurs at the expiration of the term for the Company, or June 30, 2050 pursuant to the Operating Agreement.

Article 7 of the Act further provides that "[a] limited liability company shall purchase a distributional interest of a: ... (2) member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under Section 33-44-801." S.C. Code Ann. § 33-44-701. Again this provision only applies should an event of dissociation occur. However, since Patel did not dissociate pursuant to the express terms of the Operating Agreement, this statute is not applicable to this case.

Since there is no wrongful dissolution pursuant to the controlling provisions of the Operating Agreement, Defendant is further precluded from trying to offset any damages caused by Patel's alleged dissolution from any distributions owed to the Levys' by virtue

of the purchase of Patel's distributional interests in the Company as discussed in Section 11.2 (a) of the Operating Agreement.

IV. Defendant's Attempt to Redeem the Membership Rights of Patel after the Foreclosure Sale Is Inequitable under the Doctrines of Laches, Estoppel and Waiver

Even in the event that the Operating Agreement and the Act can be construed to allow Defendant to purchase Patel's distributional interest from the Levys, the equitable doctrines of laches, estoppel and waiver prevent the court from allowing such sale to occur. Plaintiffs have asserted these defenses in their Reply to Defendant's Answer and Counterclaims and these defenses are properly before the Court.

"Laches is an equitable doctrine defined as neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. In order to establish laches as a defense, [the party asserting the defense] must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the [party]. *Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007). In this matter, Defendant had knowledge of Plaintiff's charging order on Patel's distributional interest since August 30, 2011, a representative of the Defendant attended the hearing to foreclose Patel's distributional interest on February 9, 2012, representatives of the Defendant were aware of the Order of Foreclosure signed March 14, 2012, and counsel for the Defendant attended and bid at the foreclosure sale on April 2, 2012, and were aware Plaintiffs were the high bidder.

From August 30, 2011 through April 2, 2012, Defendant had the right to redeem Patel's distributional interest pursuant to the express terms of the Act and the Operating Agreement. However, representatives of the Defendant never attempted to enforce these

rights. Even after the foreclosure sale, but prior to the judge's Order confirming the sale, representatives of the Defendant took no action to enforce its redemption rights. Counsel for the Defendant waited 62 days after the Order of Foreclosure Sale was signed and filed with the court to try to purchase the distributional interest.

There is no reasonable explanation for the Defendant's delay in asserting its right to purchase Patel's distributional interest from Plaintiffs. The Defendant's delay from August 30, 2011 through June 11, 2012, caused significant prejudice to the Plaintiffs as they purchased the distributional rights at a price of \$215,000. This purchase price was applied to the judgment outstanding of Patel. Defendant now asserts that they should be allowed to purchase the distributional interest at a price of \$51,000. Therefore, the Defendant's unreasonable delay in asserting its rights would cost Plaintiff's \$164,000 under the Defendant's calculations.

"A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or all of the material facts upon which they depended. The doctrine of waiver does not imply that the party asserting the waiver has been misled to his prejudice or into an altered position." *Janasik v. Fairway Oaks Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992). The stipulated facts of this case clearly show that the Defendant was aware of its rights to redeem Patel's distributional interest, yet took no action to do so until well after the foreclosure sale occurred. Due to the Defendant's inaction in attempting to purchase Patel's distributional interest prior to the foreclosure hearing,

~~Defendant voluntarily and intentionally abandoned its right to redeem and took the risk of~~

trying to purchase the distributional interest at the foreclosure sale for a lesser price. In failing to take any action to purchase the distributional interest prior to the foreclosure sale, Defendant waived its ability to redeem.

"The law is clear that equitable estoppel may be enforced in a court of law as well in equity matters. Equitable estoppel is the inhibition to assert such right by reason of mischief following one's own fault and may arise even though there was no intention on the part of the party estopped to relinquish or change any existing right. Prejudice to the party is an essential element of equitable estoppel." *Id.* The doctrine of laches and estoppel may be indistinct at times. For example, one who delays unreasonably could be said to be estopped from asserting a claim if another has relied on that delay to his detriment." *Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007). As is explained in detail above, Defendant's own delay caused the Plaintiffs' to move forward with the purchase of Patel's distributional interest at the foreclosure sale. Defendant is clearly at fault for the delay that caused significant potential prejudice to the Plaintiffs. Plaintiffs are not required to show Defendant had any intention to relinquish its right.

For the reasons explained above, even if the Operating Agreement and the Act allow the Defendant to purchase the Patel's distributional interest from Plaintiffs, doing so would be inequitable to the Plaintiffs under the doctrines of laches, waiver and estoppel and cannot be allowed.

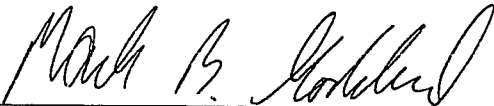
V. Conclusions

For the foregoing reasons, the Plaintiffs request the following from the court:

1. Plaintiffs be declared the current, true and lawful owners of Patel's distributional interest in Carolinian, LLC, as confirmed by the Horry County Master in Equity in its Order Confirming Sale;
2. Any right of the Defendant to purchase Patel's distributional interest pursuant to the Operating Agreement terminated upon the sale of the distributional interest to Plaintiffs at the public auction held April 2, 2012;
3. Other than dissolution and wind-up of Carolinian, LLC's business, neither Carolinian, LLC, or its members can force Plaintiffs to sell their distributional interests in Carolinian, LLC;
4. Carolinian, LLC, must abide by the requirements set forth in the Act with regards to the rights of Plaintiffs as transferees of the subject distributional interest, including the right to receive distributions as more specifically set forth in Section 33-44-503(e) of the Act; and
5. Plaintiffs are entitled to an award of costs and fees incurred in prosecuting this action based upon S.C. Code Ann. § 15-53-100.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: 

Mark B. Goddard (S.C. Bar # 73965)
MGoddard@TurnerPadget.com
2411 North Oak Street, Suite 301 (29577)
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFF

1/8/13

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Civil Action No. 2012-CP-26-5610

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

BRIEF OF DEFENDANT

Carolinian, LLC,

Defendant.

BACKGROUND

This case involves a dispute about the rights and responsibilities of a judgment creditor following the judgment creditor's acquisition of the judgment debtor's distributional interest in an entity. Shaul and Meir Levy ("the Levys") are the judgment creditors of Bhupendra Patel ("Patel"), a Member of Carolinian, LLC ("Carolinian").

The judgment arose out of a loan from the Levys to Pier View Resort Development, LLC. The Levys are residents of New York and Florida who have extensive experience in real estate investment. [Stipulation, para. 5]. The underlying Promissory Note was personally guaranteed by Harry Pavilak, Arkadiusz Grabara, and Patel. [Stipulation of Facts, Exhibit 1]. The three guarantors executed a Confession of Judgment in the amount of \$2,500,000.00 in favor of the Levys as security for repayment of the Note. [Id.] Following a default under the note, the Levys filed the Confession of Judgment on February 10, 2010 and thereafter pursued the collection thereof against the three guarantors. [Stipulation, Paragraphs 8-9].

Bhupendra "Bhupi" Patel ("Patel") at the time was a member of several entities that did business in Horry County, including Carolinian. [Stipulation, Para. 4]. Carolinian owns the Best Western Carolinian Resort, an oceanfront, high-rise resort located in Myrtle Beach. [Stipulation, paras. 1-2]. Carolinian is a closely-held company consisting of nine members. [Stipulation, para. 3]. Patel owned a 23.35% Membership Share in Carolinian. [Stipulation, para. 7].

On or about January 27, 2011, the Levys commenced supplemental proceedings against Patel. [Stipulation, Exhibit 7]. Carolinian was not a party to that case. [Id.]. The Levys then pursued Patel's interests in four limited liability companies, among them Carolinian. By letter dated June 14, 2011, Patel provided the Levys with a copy of the current Operating Agreement for Carolinian. [Stipulation, paras 6 and 15; *Deschamps Letter 6.14.11*] By Order of the Master in Equity dated August 12, 2011, the Levys obtained a Charging Lien in the amount of \$2,500,000.00 plus statutory interest against Patel's distributional interests in the companies, including Carolinian. [Stipulation, para. 9 and Exhibit 4]. The Order established the Levys' right to receive any distributions to which Patel would be entitled from any of the four entities until the satisfaction of the judgment. [Id.].

On September 26, 2011, the Levys filed a Petition to foreclose the \$2,500,000.00 lien against Patel's distributional interests in each entity. [Stipulation, para. 11]. *No notice of the Motion or Hearing was provided to Carolinian.* On February 9, 2012, a hearing was held on the Levys' Petition. [Stipulation, para. 12]. As of February 10, 2012, the lien, with interest, had increased to a total of \$2,875,640.63. [Stipulation, Exhibit 7]. By Order filed March 14, 2012, the Master in Equity ordered the foreclosure and sale of Patel's distributional interests in the four companies, including Carolinian. [Stipulation, para. 14 and Exhibit 7]. The Order recites, "Plaintiffs' Judgment is secured by the charging liens against Patel's distributional

interests in each of the LLCs up to the amount of the Judgment, including accrued interest at the legal rate of interest.” [Stipulation, Exhibit 7]. *No notice of the sale was provided to Carolinian.*

On April 2, 2012, Patel’s distributional interests in each of the four companies were sold at public auction. [Stipulation, para. 16]. On the date of the sale, the Levys’ lien upon the Patel distributional interests totaled \$2,900,290.80. [Stipulation, Exhibit 8]. The Levys submitted the winning bids upon each of the four distributional interests, which bids totaled \$291,200.00. [Stipulation, Exhibit 8]. The Levys’ winning bid for Patel’s distributional interest in Carolinian was \$215,000.00. [Stipulation, para. 16]. The Master in Equity confirmed the sale by Order filed April 11, 2012. [Stipulation, para. 19, Exhibit 8].

Carolinian received notice of the establishment of the charging liens against Patel’s distributional interest therein by letter dated August 30, 2011 from the Levys’ counsel. [Stipulation, para. 10]. Prior to the February 9, 2012 foreclosure hearing, Carolinian offered to negotiate the purchase of Patel’s distributional interest in Carolinian from the Levys. [Stipulation, para. 13]. Carolinian intended to pay the Levys, as lienholders, a price to release their lien and, in turn, acquire Patel’s interest. Loyd Daniel telephoned Meir Levy on behalf of Carolinian, LLC to discuss a purchase of Patel’s distributional interest prior to the hearing. [Testimony of Loyd Daniel]. Levy informed Daniel that the Levys were not interested in negotiating the release of their lien upon Patel’s distributional interest in Carolinian for a price because they did not need the money and, instead, wanted to be “part of the deal.” [Testimony of Loyd Daniel]. Daniel also informed counsel for the Levys, Dan Butler, on several occasions both prior to the foreclosure hearing and prior to the sale that he was interested in negotiating such a release/sale of the lien, but was never informed that the Levys were interested in such a

negotiation. [*Testimony of Loyd Daniel*]. Due to the Levys' unwillingness to discuss the release/sale, Carolinian and one of its members, Southwestern Equities, LLC had their counsel attend the sale to bid upon Patel's distributional interest in Carolinian. [Stipulation, para. 17]. Counsel bid up to \$190,000.00. [Id.]. Carolinian and Southwestern Equities, LLC did not authorize a higher bid on the ground that a higher bid would not reflect the fair market value of the interest. [*Testimony of Loyd Daniel*]. Neither Patel nor the Levys requested or were given permission by Carolinian or its members to transfer Patel's distributional interest at the sale. [Stipulation, para. 18].

By letter dated April 16, 2012, the Levys provided Carolinian with a copy of the Order Confirming Sale and requested that any distributions be made to the Levys. [Stipulation, para. 22]. By letter dated June 11, 2012, Carolinian notified the Levys that the involuntary transfer of Patel's distributional interest in Carolinian without the prior consent of its members was a violation of the Operating Agreement that triggered Carolinian's right to purchase Patel's former distributional interest from them pursuant to the terms of the Operating Agreement. [Stipulation, para. 23 and Exhibit 10]. Carolinian set forth a calculation of a purchase price pursuant to the terms of Article XI of the Operating Agreement and offered the sum of \$100,000.00. [Stipulation, para. 23]. By letter dated June 18, 2012, the Levys denied that Carolinian had the right to purchase Patel's former distributional interest from them, contending "**[t]he Levy's are not subject to any of the terms of the Operating Agreement.**" [Stipulation, para. 24]. By letter dated June 27, 2012, Carolinian responded by saying the Levys, as transferees, were subject to the Operating Agreement, were moving forward with obtaining an appraisal of the interest, and would purchase it pursuant to the terms of the Operating Agreement. [Stipulation, para. 25]. This action followed.

PROCEDURAL POSTURE

On July 23, 2012, the Levys filed a Summons and Verified Complaint for a Declaratory Judgment and a Permanent Injunction. The Levys assert that a controversy exists between them and Carolinian regarding their rights as transferees of Patel's distributional interest in Carolinian. [Complaint, para. 21]. The following declaratory relief sought by the Levys is at issue and disputed:

b. Any right to purchase the subject distributional interests pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interest to Plaintiffs at the public auction held April 2, 2012;

c. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its members can force Plaintiffs to sell their distributional interests in Carolinian;

d. Plaintiffs, as "non-member transferees" of Carolinian, are not parties to Carolinian's Operating Agreement....

With regard to their action for an injunction, the Levys' claims are based upon the same basic foundation as their claim for declaratory relief, and the following injunctive relief sought by the Levys is at issue and disputed:

c. ...[A]ttempting to force the sale of Plaintiffs' distributional interest in Carolinian....

Carolinian timely filed an Answer on August 17, 2012 denying the relief sought in the Levys' Complaint and asserting the defense that the Levys, as transferees, were subject to the Operating Agreement of Carolinian. Carolinian also filed a Summons and Counterclaim requesting a Declaratory Judgment that, in sum:

a) Upon the April 2, 2012 sale of Patel's distributional interest, the Levys became transferees who were subject to the terms of the Carolinian Operating Agreement;

b) the Levys' interest cannot exceed that which Patel had prior to the foreclosure sale;

c) the value of the distributional interest cannot exceed the value of Patel's distributional interest at the time of the foreclosure;

d) Carolinian has the right to purchase Patel's entire interest in Carolinian, including his distributional interest that was transferred to the Levys, pursuant to Article XI of the Operating Agreement; that

e) Carolinian has complied with each and every provision of Article XI toward executing its purchase of Patel's entire interest and, in turn, that

f) the Levys must accept Carolinian's offer to purchase as is set forth in that certain letter dated September 6, 2012. [Counterclaim, paras. 31-42; Stipulation, para. 26].

The Levys timely filed a Reply to the Counterclaims, denying the material allegations therein and asserting the affirmative defenses of Estoppel and Laches and Waiver.

ANALYSIS

I. The Operating Agreement of Carolinian, LLC Lawfully Restricts the Rights of the Levys to Accept Carolinian's Offer to Purchase the Distributional Interest of Patel from the Levys for its Appraised Value.

A. An Operating Agreement may restrict the rights of its members and their transferees.

The South Carolina General Assembly enacted the South Carolina Uniform Limited Liability Act in 1996. "The act is intended to be flexible with a comprehensive set of default rules.... The act is flexible in the sense that the vast majority of its provisions **may be modified by the owners in a private agreement**. To simplify, those nonwaivable provisions are set forth in a single subsection. Thus, **sophisticated parties will negotiate their own deal.**" 1996 South Carolina Act No. 343, Section 1 (emphasis added). All provisions within an Operating Agreement subject to South Carolina law are permissible so long as they do not run afoul of the seven mandatory, non-waivable rules set forth in S.C. Code Ann. Section 33-44-103(b). An

Operating Agreement in South Carolina may restrict the rights of both a member of an LLC **and a transferee of a distributional interest** of a member. See S.C. Code Ann. Section 33-44-103(b)(7) (“The operating agreement may not restrict rights of a person, **other than a manager, member, and transferee of a member’s distributional interest...**”)(emphasis added).

Upon their purchase of Patel’s distributional interest at the foreclosure sale, the Levys became transferees who were subject to the operating Agreement of Carolinian, LLC (“The Agreement”). See S.C. Code Ann. Section 33-44-504(b) (“... A purchaser at the foreclosure sale has the rights of a **transferee.**”)(emphasis added).

The Agreement provides that the company “shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101, et. seq... except as otherwise provided or modified by this Agreement.” [Stipulation, Exhibit 1, p.2]. Article XI of the Agreement, entitled “Restrictions on Transfer and Buy-Sell Provisions,” restricts certain transfers of a member’s “Membership Share.” A “Membership Share” is defined in the Agreement as “**all of the rights of a Member under this Agreement and under the Act, but not limited to a member’s Financial Rights and Voting Rights.**” Operating Agreement, Section 2.1(r). “Financial Rights” are defined in the Agreement as “**the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions ... and shall have the same meaning ... as the phrase “Distributional Interest” as used in the Act.**”

B. Article XI, and not Article III, of the Operating Agreement controls the transfer from Patel to the Levys.

Because neither the Levys nor Patel obtained the consent of Carolinian's members to the foreclosure sale of Patel's distributional interest, Article XI, and not Article III, of the Operating Agreement governs the transfer. Such a non-consensual transfer triggered Carolinian's right to buy the interest from the Levys.

1. Section 11.1 of the Agreement "Restrictions on Transfer" provides:

No Member may voluntarily or involuntarily ... transfer, ... or otherwise convey ... any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company....

If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control, and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void, and without effect.

2. Section 11.2 of the Agreement "Right to Buy" provides:

(b) Company and Members Right to Buy If a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, if a Member wrongfully dissociates under SECTION 11.2(a), or if a Member properly dissociates from the Company within the meaning of ARTICLE X ..., such Member is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3 and upon the terms contained in SECTION 11.4.

3. Section 11.2(a) provides, in pertinent part, that "the purchase price to be paid for a wrongfully dissociating Member's Membership Share shall be sixty-seven (67%) percent of the 'Appraised Value' of such Member's Membership Share as determined pursuant to SECTION 11.3."

4. Section 11.3 provides, in pertinent part, that if the parties cannot agree upon a purchase price within thirty (30) days following the attempted transfer or that event of dissociation, then the purchase price shall be the "Appraised Value" of the Membership Share. "Appraised Value" is the value assigned to the Share by the agreement of two appraisers, one of which is appointed by the Company and the other appointed by the Withdrawing Member within thirty (30) days of transfer. **"If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their ... successors, and assigns."**

Carolinian is the only party that has obtained an appraisal of Carolinian, LLC and Patel's Membership Share. That appraisal, served upon counsel for the Levys by letter dated September 6, 2012, assigns a discounted value of \$51,000.00 to the Membership Share of Patel. [Stipulation, Exhibit 13].

C. The Levys Purchased a Distributional Interest that was Subject to and Restricted by a known Operating Agreement.

When the Levys purchased Patel's distributional interest at the sale, they purchased an interest that was created by, defined in, and subject to the Carolinian Operating Agreement, and was not an unrestricted piece of personal property. The Levys had notice of the terms of the Operating Agreement and all financial information regarding Carolinian, LLC prior to the sale. A judgment creditor, as a transferee of Patel's "Financial Rights" or "distributional interest" as defined in the Operating Agreement, cannot take more than what the transferor had.

The Levys are sophisticated real estate investors who were in possession of the Carolinian Operating Agreement and represented by competent counsel prior to and at the time of the sale.

They knew at that time that their acquisition of the distributional interest of Patel could not yield more than that which Patel already had, and what he had was an interest that was subject to a buy-out upon terms set forth in the Operating Agreement, section XI. The Levys could have elected to obtain the consent of Carolinian to the transfer prior to the sale and, in turn, acquired the interest subject to Article III of the Operating Agreement instead of Article XI, yielding a different result. When they elected not to do so, they elected to purchase the interest subject to the "Right to Buy" provisions of Article XI.

II. The Levys Denied Carolinian's Good Faith Attempt to Negotiate a Release of their Lien from Patel's Distributional Interest for its Fair Market Value.

The right to redeem the distributional interest of a member is a right, not an obligation. "A judgment creditor of a member ... may charge the distributional interest of the judgment debtor to satisfy the judgment." S.C. Code Ann. Section 33-44-504(a). "A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. Prior to foreclosure, the member/judgment debtor, a fellow member of the LLC, or the LLC **"may"** redeem that member/judgment debtor's distributional interest. 33-44-504(c).

Such a redemption of the member/judgment debtor's distributional interest requires full satisfaction of the judgment creditor's lien upon the distributional interest. See 51 Am. Jur. 2d Limited Liability Companies Section 23 (explaining the meaning of redemption under 33-44-504(c), "a limited liability company or one or more members whose transferable interests are not subject to the charging order may **pay to the judgment creditor the full amount due under the judgment** and thereby succeed to the rights of the judgment creditor, including the charging order.") The South Carolina Uniform Commercial Code also provides that a redemption of

collateral requires payment in full satisfaction of the security. See S.C. Code Ann. Section 36-9-623(b) "Right to Redeem Collateral" ("To redeem collateral, a person shall tender: 1) fulfillment of all obligations secured by the collateral...."). The South Carolina law governing the redemption of real property following a tax sales also confirms the fact that full satisfaction of the tax lien is required to redeem the property. See S.C. Code Ann. Section 12-51-90 (A) (providing that a defaulting taxpayer, any grantee from the owner, or any mortgage or judgment creditor may redeem the real estate by paying all delinquent taxes in full).

In the event the member, another member, or the company is unable to pay the judgment in full satisfaction of the lien, the member, other member, or company may attempt to negotiate a release of the lien from the distributional interest for an amount less than the full amount of the judgment. See 47 Am. Jur. 2d Judgments Section 823 ("A judgment creditor and debtor can agree to compromise and settle a judgment for less than the full amount of an award.... [A] **judgment debtor cannot require its creditor to accept a lesser or alternative performance than that to which it is entitled.**").

In this case, Carolinian was not a party to the underlying foreclosure action, and as such had no legal standing to exercise any legal redemption right or argue against a foreclosure of the Levys' lien.

The Levys' lien upon Patels' collective distributional interests was \$2,900,290.80 at the time of the foreclosure sale, thereby causing the redemption of Patel's distributional interest in Carolinian to be not only impractical, but grossly negligent. At the time, the Levys and Carolinian were in possession of the April 4, 2011 Appraisal of the assets of Carolinian, LLC by E.F. Hucks & Associates, which valued the assets of Carolinian at 5,500,000.00. The appraisal

did not consider Carolinian's outstanding indebtedness to its lender or other liabilities, which were \$5,200,000.00 as of September of 2012 [Stipulation, Exhibit 26].

As such, Carolinian was left only with the option to negotiate a release of the lien for an amount less than the amount of the judgment. Loyd Daniel attempted to do so on behalf of Carolinian on several occasions, and was informed by the Levys that they had no interest in settling for a lesser amount, and an interest only in becoming members. This tactic by the Levys left Carolinian and its members with no other choice but to attend the sale and submit a bid for the fair market value of the interest. Carolinian was not a party to the pending foreclosure action, nor was it provided any actual notice of the foreclosure hearing or subsequent sale by counsel or the Court. Carolinian had no standing to contest the foreclosure hearing. When they attempted to bid for the purchase of Patel's distributional interest, the Levys bid in excess of the fair market value of the interest. At that time, Carolinian was left with its final option, which was to exercise its rights under Article XI of the Operating Agreement to purchase Patel's Membership Share following his involuntary transfer of all of his distributional interest to the Levys.

CONCLUSION

If the position taken by the Levys is accepted by the Court, the result will be grossly inequitable and contrary to the spirit and purpose of the LLC Act and Operating Agreement. The Levys will have been deemed to acquire a distributional interest not subject to anything- an unrestricted piece of personal property. The very Operating Agreement that created the interest will be deemed inapplicable, in spite of the fact that the Act, itself, allows Operating Agreements to restrict the rights of transferees of distributional interests. Meanwhile, Patel will have effectively lost his Voting Rights, thus frustrating the Company.

The precedent established from this case will be that the only remedy available to a closely-held company or its members to rid the company of a charging lien against a member's interest is to pay-off the lien in-full, no matter the amount. In this case, that amount exceeded \$2.9 million in a company with \$500,000.00 in equity. The Levys refused to negotiate a release of their lien for a lesser amount for the sole purpose of attempting to strong-arm their way to becoming full members in the company. This Court should not reward such conduct, particularly when the language of Article XI of the Operating Agreement is so clear that a transferee of a member's interest in the company, who did not first obtain the consent of the membership, takes subject to Article XI's buy out provision.

If the position taken by Carolinian prevails, the interests of all will be served: 1) the Operating Agreement will be enforced; 2) the Levys will receive the proceeds from the purchase of Patel's Membership Share by Carolinian for its appraised value in partial satisfaction of its Judgment; 3) the core purpose and spirit of the LLC statute will be served by allowing the enforcement of the Members' Operating Agreement; and 4) the Members of Carolinian to remain whole and intact. Patel's interest will have been purchased and he expelled from the company.

Thus, for the foregoing reasons, Carolinian respectfully requests this honorable Court deny Plaintiffs' request for a permanent injunction and declare the following:

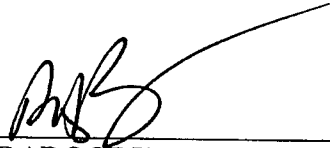
- 1) that the Levys became transferees of Patel's Distributional Interest upon the April 2, 2012 sale;
- 2) that since the sale, the Carolinian Operating Agreement has governed the Levys' Distributional Interest in Carolinian;

- 3) that because sixty-seven percent (67%) of the members did not consent to the transfer, Carolinian or its members has the right to purchase Patel's entire interest in Carolinian, LLC, including his Financial Rights so transferred to the Levys, pursuant to Article XI of the Carolinian Operating Agreement;
- 4) that Carolinian has complied with each and every provision of Article XI toward executing its purchase of Patel's entire interest;
- 5) that the Levys must accept Carolinian's offer to purchase as is set forth in that certain letter dated September 6, 2012; and
- 6) that Defendant shall be reimbursed all attorneys fees and costs incurred in the defense of this action pursuant to applicable law and the Operating Agreement.

Respectfully submitted,

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

Post Office Box 357
Myrtle Beach, South Carolina 29578-0357
(843) 448-2400
Attorney for Plaintiff



BENJAMIN A. BARODY

Myrtle Beach, South Carolina

January 8, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Shaul Levy and Meir Levy,)

Plaintiffs,)

vs.)

Carolinian, LLC,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-5610

COPY

STIPULATION OF FACTS

Counsel for Plaintiffs and Defendant hereby stipulate as to the following undisputed facts:

1. Carolinian, LLC is the owner of certain real property located in Horry County, South Carolina. This real property consists of the Best Western Carolinian Resort, a 10-story high-rise oceanfront building that contains a total of 102 hotel units and certain commercial units located within the adjacent 129-unit 20-story condominium tower..

2. Carolinian, LLC also holds the rental management rights over 112 managed condominium units.

3. Carolinian, LLC is a closely-held company consisting of nine members. A copy of the Evolution of Financial Rights of Carolinian, LLC, is appended hereto as Exhibit 1 and incorporated herein by reference.

4. Bhupendra Patel is one of nine members of Carolinian, LLC.

5. Shaul Levy and Meir Levy are residents of the States of Florida and New York, respectively, who conduct business in Horry County, South Carolina and have extensive experience in real estate investment.

6. The rights of the members of Carolinian, LLC, are established in the Operating Agreement for Carolinian, LLC, last revised on January 1, 2003 (hereinafter "Operating Agreement"). A copy of the Operating Agreement is appended hereto as Exhibit 2 and incorporated herein by reference.

7. Bhupendra Patel is the owner of a 23.35% Membership Share in Carolinian, LLC, which is defined in Section 2.1(r) of the Operating Agreement as "all of the rights of a member under this Agreement and under the Act, but not limited to a member's Financial Rights and Voting Rights."

8. On February 10, 2010, Plaintiffs caused a Confession of Judgment (the "Confession") in the amount of Two Million Five Hundred Thousand and no/100 (\$2,500,000.00) Dollars to be filed in the Horry County public index against Bhupendra Patel, Arkadiusz Grabara, and Harry Pavilack. A true and accurate copy of the Confession is appended hereto as Exhibit 3 and incorporated herein by reference.

9. As a result of Plaintiffs' collection efforts on the Confession, by Order dated August 12, 2011 in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against Bhupendra Patel's ("Patel") distributional interests in four limited liability companies, including Carolinian, LLC (collectively the "Patel Distributional Interests"). A true and accurate copy of the Order is appended hereto as Exhibit 4 and incorporated herein by reference.

10. Counsel for Plaintiffs sent a Certified letter dated August 30, 2011, to the Registered Agent for Carolinian, LLC giving it notice of the Order of the Horry County Master in Equity dated August 12, 2011 creating the charging lien against Patel's distributional interest in the

Carolinian, LLC. A true and correct copy of the letter is appended hereto as Exhibit 5 and incorporated herein by reference.

11. Plaintiffs filed a Petition to foreclose the aforementioned charging liens of Patel's Distributional Interests on September 26, 2011 with the Horry County Master in Equity. A true and accurate copy of the Petition is appended hereto as Exhibit 6 and incorporated herein by reference.

12. On February 9, 2012, a hearing was held on Plaintiffs' Petition to foreclose their charging liens.

13. Prior to the hearing, Lloyd Daniel, on behalf of the Defendant, and Meir Levy on behalf of Plaintiffs, together with their counsel, discussed Plaintiffs' action against Patels. Lloyd Daniel expressed interest in the Defendant acquiring the Plaintiffs' interest in Carolinian, LLC, and the parties agreed to discuss a possible business deal without counsel present. The parties did not reach an agreement.

14. By Order dated March 14, 2012, the Horry County Master in Equity ordered the foreclosure and sale of Patel's Distributional Interests at public auction, with the proceeds thereof being applied against the amounts due Plaintiffs on the Confession. A true and accurate copy of the Order of Foreclosure is appended hereto as Exhibit 7 and incorporated herein by reference.

15. Prior to the foreclosure sale, Plaintiffs, by and through their counsel, were provided a copy of the Operating Agreement for Carolinian, LLC by counsel for Patel and/or counsel for Carolinian, LLC and financial information of Carolinian, LLC, including tax returns of 2007 – 2011, Balances Sheets and Income Statements for 2008 – 2011, and Appraisal of April 4, 2011 from counsel for Carolinian, LLC.

16. Each of Patel's Distributional Interests were sold separately at the public auction held April 2, 2012, with Plaintiffs being the high bidder on each of the four Patel Distributional Interests, including Patel's distributional interest in Carolinian, LLC, which was purchased at the winning bid of \$215,000.

17. Carolinian, LLC's legal counsel attended the public auction and bid \$190,000 on behalf of Carolinian, LLC and/or Southwestern Equities, LLC, a member of Carolinian, LLC, for Patel's Distributional Interest in the company.

18. Neither Patel nor Plaintiffs requested or were given permission by Carolinian, LLC or its members to transfer Patel's distributional interest to Plaintiffs prior to the foreclosure hearing or subsequent sale.

19. By Order dated April 10, 2012, the Horry County Master in Equity confirmed the sale of Patel's Distributional Interests to Plaintiffs. A true and accurate copy of the Order Confirming Sale is appended hereto as Exhibit 8 and incorporated herein by reference.

20. Pursuant to the Order Confirming Sale, the proceeds of the \$215,000 high bid for Patel's distributional interests in Carolinian, LLC at the foreclosure sale were applied towards the satisfaction of the Plaintiffs' Judgment.

21. At no time after receiving notice of the charging lien and prior to the foreclosure sale did Carolinian, LLC redeem Patel's distributional interest per the terms of the operating agreement. At no time after the foreclosure sale but prior to being served with the Order Confirming Sale did Carolinian, LLC redeem Patel's distributional interest pursuant to the terms of the Operating Agreement.

22. By letter dated April 16, 2012, a copy of the Order Confirming Sale was served on Carolinian, LLC, through its registered agent Lloyd Daniel requesting "that any and all

distributions to be made by the Company be properly allocated and distributed to my clients.” A true and accurate copy of the letter is appended hereto as Exhibit 9 and incorporated herein by reference.

23. By letter dated June 11, 2012, counsel for Carolinian, LLC responded to the letter dated April 16, 2012 and asserted that Carolinian, LLC was exercising its right to purchase Plaintiffs’ Distributional Interest in Carolinian, LLC pursuant to its Operating Agreement. The letter set forth Carolinian, LLC’s calculation of the purchase price pursuant to the terms of the Operating Agreement and an offer to purchase the distributional interest for \$100,000. A true and accurate copy of the letter is appended hereto as Exhibit 10 and incorporated herein by reference.

24. By letter dated June 18, 2012, through counsel, Plaintiffs denied that Carolinian, LLC had the right to purchase the Distributional Interest from Plaintiffs, stating “[t]he Levy’s are not subject to any of the terms of the Operating Agreement.” A true and accurate copy of the letter is appended hereto as Exhibit 11 and incorporated herein by reference.

25. By letter, dated June 27, 2012, counsel for Carolinian, LLC asserted that Plaintiffs were subject to the terms of Carolinian, LLC’s Operating Agreement and that the company was obtaining an appraisal and purchasing the Patel Distributional Interest held by Plaintiffs pursuant to the terms of the Operating Agreement. A true and accurate copy of the letter is appended hereto as Exhibit 12 and incorporated herein by reference.

26. On July 23, 2012, Plaintiffs commenced this action.

27. By letter dated September 6, 2012, Defendant, through counsel, served a letter upon Plaintiffs’ counsel enclosing an appraisal of the Distributional Interest in Carolinian, LLC, and

assigning a value thereto of \$51,000.00. A true and accurate copy of the letter is appended hereto as Exhibit 13 and incorporated herein by reference.

With the approval of the parties to this action, the undersigned counsel so stipulates to the above undisputed facts:

Benjamin A. Barody
Bellamy Law Firm, P.A.

Counsel for Defendant

Date: _____

Mark B. Goddard
Turner Padget Graham & Laney, PA

Counsel for Plaintiffs

Date: _____

Evolution of Financial Rights

	2006	2007	2008	2009	2010	2011	2012
	Financial Rights						
Nick Patel	23.35%	23.35%	23.35%	23.35%	23.35%	23.35%	23.35%
Bupi Patel	23.35%	23.35%	23.35%	23.35%	23.35%	23.35%	23.35%
Southwest Equities, LLC	23.35%	25.84%	25.84%	25.84%	25.84%	25.84%	33.50%
M. Bert Anderson	15.31%	15.31%	15.31%	15.31%	15.31%	15.31%	
Larry W. Brumfield	3.32%						
J. Patrick Lowe	3.32%	4.15%	4.15%	4.15%	4.15%	4.15%	11.81%
Bay Watch, LLC	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Quinter Corporation	1.98%	1.98%	1.98%	1.98%	1.98%	1.98%	1.98%
Thomas Barrier - IRA	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%
Ellen Barrier - IRA	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%
Jerry Cooper - IRA	0.42%	0.42%	0.42%	0.42%	0.42%	0.42%	0.42%
	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>

000001

ROA-180
Carolinian, LLC's Discovery Responses

CAROLINIAN, LLC

OPERATING AGREEMENT

REVISED – EFFECTIVE JANUARY 1, 2003

CAROLINIAN, LLC

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 1st day of January 2003, by and among Bhupendra Patel, Pradipkumar Patel, Southwest Equities, LLC, an North Carolina Limited Liability Company, M. Bert Anderson, Larry W. Brumfield, J. Patrick Lowe, Bay Watch, LLC, a South Carolina Limited Liability Company, Quinter Corporation, Lexington State Bank – Trustee for Thomas E. Barrier-Roth IRA, Lexington State Bank – Trustee for Ellen G. Barrier-Roth IRA, Lexington State Bank – Trustee for Jerry D. Cooper-Roth IRA (collectively referred to as the "Members" and individually as a "Member").

WITNESSETH:

WHEREAS, the parties desire to form a limited liability company under South Carolina law for the limited purposes hereinafter set forth.

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I

Formation, Purposes and Powers

1.1 Formation. The parties to this Agreement hereby form a limited liability company under the laws of the State of South Carolina, and agree to and adopt the terms and conditions set forth in this Agreement. This Operating Agreement shall supercede any and all previous Operating Agreements and Resolutions up to the date of this Agreement. The limited liability company ("Company") shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et seq. of the Code of Laws of South Carolina (1976), as amended (the "Act"), except as otherwise provided or modified by this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

1.2 Name. The name of the Company shall be Carolinian, LLC.

1.3 Articles of Organization. The Company shall file Articles of Organization with the South Carolina Secretary of State, and shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

1.4 Annual Report. Beginning with the first full calendar year following the year in which the Company is organized, between January 1 and April 1 of each year during the Company's existence, the Management Committee shall prepare and file with the South Carolina Secretary of State an annual report as required by Section 33-44-211 of the Act.

1.5 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with Section 33-44-108(a) of the Act. The designated office shall be at 1601 North Oak Street, Suite 204, Myrtle Beach, SC 29577. The Management Committee may from time to time change the location of the Company's designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company shall be Loyd R. Daniel. The street address of the registered agent for service of process on the Company shall be 1601 North Oak Street, Suite 204, Myrtle Beach, SC 29577. The Management Committee may change the registered agent's street address or designate a new agent for service of process by filing with the Secretary of State a Statement of Change, in compliance with Section 33-44-109 of the Act.

1.7 Term Company. The Company shall be a term Company, as that term is defined in the Act. The Company's existence and business shall commence on the date Articles of Organization are filed with the South Carolina Secretary of State unless a later effective date is specified in said Articles of Organization, and shall terminate on June 30, 2050; unless earlier terminated as provided in the Act or herein.

1.8 Statement of Company; Fictitious Name Certificates. The Members shall execute and file in the proper offices such statement of the Company and such assumed or fictitious name certificates as may be required by law.

1.9 Income Tax Election. The Company shall be taxed as a partnership for state and federal income tax purposes, and the Management Committee shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the Company and the Members.

1.10 Purposes. The character of business and purposes of the Company shall be owning and operating a hotel, and all services ancillary to such ownership and operation of a hotel, including but not limited to managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Management Committee deems necessary or appropriate to the foregoing purposes.

1.11 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds,

and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligation; by a mortgage on or a security interest in any of its property, franchises, or income;

(f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

(i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;

(j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;

(k) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;

(m) Perform any act and execute and deliver any documents required by any governmental authority; and

(n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

1.12 Company Accounts. The Company shall maintain such separate bank accounts as appropriate for the conduct of the Company's business, in the name of the Company, at such bank or banks as from time to time may be designated by the Management Committee.

1.13 Foreign Qualification. Prior to the Company doing any business in a state other than South Carolina, the Management Committee shall determine if the Company is required to "qualify to do business" in that state, and if so, the Management Committee shall take all steps necessary to qualify the Company in that state before conducting any business there.

1.14 Construction. If and to the extent the provisions of this Agreement conflict with the Act, the Act shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Agreement shall control.

1.15 Minimum Insurance Requirements. Unless otherwise determined by the Management

Committee, the Company shall carry and maintain in force, or cause to be carried and maintained in force, insurance insuring the Company for the fair market value of the Company Property (other than land), including without limitation, insurance for all insurable improvements owned or leased by the Company against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and public liability insurance against claims for bodily injury, death or property damage. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved by the Management Committee. If the Company renders professional services within the meaning of Section 33-19-103(7) of the Code of Laws of South Carolina (1976), as amended, the Company shall acquire and maintain such additional insurance or segregated funds as may be required by the applicable licensing authority.

ARTICLE II

Definitions

2.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) "Act" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) "Action of the Company" and any reference to an action taken, or to be taken, by the Company shall mean any action properly approved by the Management Committee in accordance with ARTICLES V and VI.

(c) "Agreement" shall mean this Operating Agreement and any amendments made thereto from time to time.

(d) "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act.

(e) "Capital Account" shall mean the account established and maintained for each Member on the books of the Company pursuant to ARTICLES VII and VIII hereof.

(f) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.

(g) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(h) "Company" shall mean Carolinian, LLC, a South Carolina limited liability company.

- (i) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.
- (j) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.
- (k) "Disinterested" shall mean with respect to any Member or Manager, a Member or Manager who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.
- (l) "Family" shall mean the spouse, lineal descendants or ancestors of a Member, or any estate of a Member, spouse, lineal descendant or ancestor of a Member, or any trust whose primary beneficiary is a Member, spouse, lineal descendant or ancestor of a Member.
- (m) "Financial Rights" shall mean the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions. The phrase "Financial Rights" shall have the same meaning, and describe the same rights, as the phrase "Distributional Interest" as used in the Act.
- (n) "Losses" shall mean the losses of the Company as determined under SECTION 8.3 hereof.
- (o) "Management Committee" shall mean the Management Committee elected from time to time pursuant to ARTICLE V.
- (p) Intentionally omitted.
- (q) "Member" shall mean the parties to this Agreement from time to time. For purposes of ARTICLES IX, X and XI, the term "Member" includes any Member who has withdrawn or otherwise dissociated from the Company.
- (r) "Membership Share" shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights.
- (s) "Person" shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.
- (t) "Profits" shall mean the profits of the Company as determined under SECTION 8.3 hereof.

(u) "S.C. Code" shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(v) "Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member's Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) "Voting Rights in the Company" shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided for herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members, or the total Voting Rights represented at a meeting of the Members at which a quorum exists.

ARTICLE III Membership and Capitalization

3.1 Initial Members. Upon transfer of the property and/or cash constituting each Member's initial Capital Contribution to the Company, the Financial Rights and Voting Rights of the Members shall be in the percentages shown on EXHIBIT B attached hereto.

3.2 Admission of New Members. Except in the case of transfers of all or any part of a Membership Share, who shall be subject to SECTION 3.3, additional Members may be admitted to the Company only with the consent of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company. Members shall indicate their consent to the admission of a new Member by executing a memorandum to be attached to this Agreement setting forth the names and addresses of all the Members, the amount of cash or fair market value of property being contributed by the new Member (if applicable), and the percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission. In addition, no Person shall become a Member unless such Person:

(a) Agrees in writing to assume and to be bound by all the obligations and subject to all the restrictions of this Agreement and any further agreement with respect to the Company;

(b) Executes and acknowledges, as required, a certificate amending the fictitious name certificate or assumed name certificate of the Company in order to reflect the Member's admittance and to take any other action that may be required in connection therewith;

(c) Notifies the Company of his current address and provides his federal and state tax identification numbers and such other information as the Management Committee may deem appropriate.

(d) Any transfer shall be effective as of the date that the Member executes an assignment document so long as the other requirements for Membership under this Agreement are completed within six (6) months of said assignment.

3.3 Effect of Transfer of Membership Share - Transferee Admitted as a Member. A transferee of all or any part of a Membership Share who is not already a Member may only become a Member if (a) the Members who own the percentage of Voting Rights in the Company required by SECTION 3.2 consent to the transferee's admission (without regard to the Voting Rights of the transferor or transferee) and (b) such transferee meets all the qualification requirements for Members contained in this Agreement, including but not limited to, all requirements of SECTION 3.2. If the transferee becomes a Member, he shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member, including the transferor's obligations to make contributions to the Company.

Notwithstanding anything herein to the contrary, no creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the Act, or otherwise, or any person or entity, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a full Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

3.4 Transferee not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member. The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change a Member's rights and consequently affect the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under Section 33-44-801(b)(6) of the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the Management Committee may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with Section 33-44-504(c) of the Act. Nothing in this SECTION 3.5 shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with Section

33-44-504(c) of the Act.

3.6 Ceasing to be a Member. A Member shall cease to be a Member and shall have no power to exercise any rights of a Member if such Member:

- (a) Transfers his entire Membership Share; or
- (b) Is expelled from the Company by judicial determination under Section 33-44-601(6) of the Act.

3.7 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or executed by the Member giving such a power of attorney, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be general or may be limited to certain acts or instruments, may contain conditions and restrictions, and may be changed or revoked at any time by the Member who gave such power giving notice of its change or revocation to the Company.

3.8 Capital Calls - Deficit Loans. The Company, after approval of sixty-seven (67%) percent of the Voting Members, may request that the Members make additional Contributions to Capital by delivering notice of the request to each Member. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this SECTION 3.8, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred. In the event any Member shall fail to contribute his proportionate amount ("Defaulting Member"), the amount which the Defaulting Member fails to contribute shall be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable only out of any distributions otherwise payable to the Defaulting Member. Said loan shall bear interest at the rate of five (5%) percent above the prime rate as published in the Wall Street Journal at the date of the loan or, if greater, the rate of interest applicable under Section 1274 of the Code. The Defaulting Member shall not be entitled to withdraw any amounts from his Capital Account or receive any distributions from the Company until all Deficit Loans to the Defaulting Member have been paid in full.

If a Defaulting Member has transferred his Financial Rights to a transferee who has not been admitted as a Member, then the provisions of this SECTION 3.8 shall apply to the rights of the transferee.

ARTICLE IV

Member Meetings

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Quorum; Voting Requirement. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than fifty (50%) percent of the Voting Rights in the Company constitutes a quorum. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of those Members who own more than fifty (50%) percent of the Voting Rights represented at the meeting shall constitute a valid decision of the Members, unless the matter being voted on is one which requires a different vote pursuant to the Act or this Agreement.

4.4 Proxies. Members may vote by proxy appointed by an instrument in writing.

4.5 Action without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each Member.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

ARTICLE V

Management and Control

5.1 General Authority. Except as otherwise expressly provided by this Agreement or required by any nonwaivable provisions of applicable law, the business and affairs of the Company shall be managed by a majority decision of the Management Committee. The Management Committee shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, any Member, after proper approval of the Management Committee shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other persons on such terms as the Company deems appropriate and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
- (c) Purchase liability and other insurance to protect the Company/Property and business;
- (d) Hold and own any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, interests in general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature;
- (e) Invest and reinvest any Company funds in time deposits, short-term governmental obligations, commercial paper or other investments including real estate, stocks, options, general and limited partnerships, limited liability companies, common trust funds, mutual funds, futures, rights, warrants, puts, calls, contracts, public and private bonds, debentures, securities, and other debt and equity interests and to actively trade, speculate on and manage the same;
- (f) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (g) Employ accountants, legal counsel, managing agents money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them from Company funds;
- (h) Screen, interview, and examine staff and personnel to be employed by the Company;
- (i) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (j) Maintain the assets of the Company in good order;
- (k) Collect sums due the Company;
- (l) Pay debts and obligations of the Company to the extent that Company funds are available;
- (m) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber, develop, improve, subdivide, or otherwise deal with any property, including Company

Property;

(n) Bring suit on the Company's behalf or defend the Company in any such action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;

(o) File on behalf of the Company a voluntary petition for bankruptcy, or to bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding;

(p) Invest and reinvest in any kind of property, real, personal, tangible and intangible, including, but not limited to, common trust funds, stocks, bonds, notes, mortgages, general or limited partnerships, limited liability companies, savings accounts and certificates of deposit, mutual funds, and real estate; and

(q) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Members' Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the approval of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the consent of those Disinterested Members in the Company who own more than sixty-seven (67%) percent of the Voting Rights of all Disinterested Members in the Company.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of substantially all of the Company Property without the approval of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company. For purposes of this paragraph, all or substantially all of the Company Property shall mean more than sixty-seven (67%) percent of such property by value.

(d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the approval of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company.

(e) The Company shall not hire anyone who is a member of a Member's Family on a full

time basis without the approval of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company.

5.3 Liability for Certain Acts. A Member who performs his duties in good faith and in a manner he reasonably believes to be in the best interests of the Company shall not have any liability solely by reason of being or having been a Manager of the Company. A Member shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of such Member's fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a knowing violation of the law.

5.4 Compensation. The Members shall be entitled to reasonable compensation for the performance of their duties. The amount of such compensation shall be determined by the Management Committee, subject to the approval of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company.

5.5 Management Committee Meetings - Place, Time and Notice. All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by more than sixty-seven (67%) percent of the Members. Meetings of the Management Committee may be called at any time by any Member of the Company, by delivery to all Managers of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting. Each Member shall be entitled to one (1) vote. Sixty-seven (67%) percent of the Members constitutes a quorum. Except as provided in SECTION 5.7, in order for any vote of the Members to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of more than sixty-seven (67%) percent of the Members represented at the meeting shall constitute a valid decision of the Management Committee. Members may vote by proxy appointed by an instrument in writing.

5.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

5.7 Action without Meeting. The Management Committee may take action without notice and a meeting if sixty-seven (67%) all of the Members consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each Member.

5.8 Management Committee. The Company shall be Managed by a Management Committee which shall consist of five (5) Members. Each Member shall agree to be bound by the provisions of this Agreement as they relate to Members. The number of Members on the Management Committee may be changed from time to time by the affirmative vote of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company. The Management Committee shall be elected by the affirmative vote of those Members who own more than sixty-seven (67%) of the Voting Rights in the Company. Following his election, each Member will serve until (a) his removal, (b) his resignation, or (c) the election of a successor, whichever occurs first. The initial Members of the Management Committee shall be Bhupendra Patel, Pradipkumar Patel, Loyd R. Daniel, Larry W. Brumfield and M. Bert Anderson.

5.9 Removal of Members from the Management Committee. A Member may be removed at any time, with or without cause, by those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company.

5.10 Resignation of Members. Any Member may resign at any time by giving written notice to the Company. The resignation shall be effective upon receipt of such written notice by the Company. The resignation of a Member shall not affect the Member's rights as a Member and shall not constitute a withdrawal from the Company by the Member.

5.11 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

5.12 Ratification. The Management Committee may ratify and adopt any and all acts of a Member done on behalf of the Company.

5.13 Delegation of Powers. From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.

ARTICLE VI

Fiduciary Duties; Right to Rely; Indemnification.

6.1 Duties of Members. A Member who is not also a Member of the Management Committee owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Member of the Management Committee in the management and conduct of the Company's business is held to the standards of conduct applicable to Members who are Members of the Management Committee under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Member of the Management Committee by this

Agreement or the Act.

6.2 Duty of Loyalty. A Member's duty of loyalty to the Company and the Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager Member in the conduct or winding up of the Company's business or derived from a use by the Member of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

Any of the Members may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable. Any of the Members may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

6.3 Duty of Care. A Member's duty of care to the Company and the Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.4 Fiduciary Duties. Each Member shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing, which he owes to the Company and the Members. Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Member are the same as those of a Person who is not a Member who is a Member of the Management Committee, subject to other applicable law.

6.5 Duty of Confidentiality. Each Member hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

6.6 Right to Rely. The Members of the Company who are also Members of the Management Committee shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the Members, attorneys, accountants, agents, advisors or

any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Members of the Company who are also Members of the Management Committee reasonably believe are within such other Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts relevant to the existence or amount of assets from which distributions to Members might properly be made.

6.7 Indemnification of Managers. To the fullest extent allowed by law, the Members of the Company who are also Members of the Management Committee shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, intentional misconduct, or knowing violation of the law.

6.8 Remedies. Each Member of the Company who is also a member of the Management Committee acknowledges and represents that irreparable damage and harm could be done to the Company if there is a breach of the covenants contained herein, and that in the event of a breach, each Member of the Company who is also a member of the Management Committee agrees that the Company shall be entitled to injunctive relief (both temporary and/or permanent), without posting bond, as well as monetary damages and reasonable attorney's fees for the enforcement of this Agreement. Each Member of the Company who is also a member of the Management Committee agrees to return all documents and copies of documents upon request by the Company.

6.9 Scope of Duties. A Member of the Company who is also a member of the Management Committee is relieved of liability imposed by law or this Agreement for violation of the standards prescribed by this ARTICLE VI to the extent of the managerial authority delegated to the Members by this Agreement.

ARTICLE VII

Capital Accounts and Accounting

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

- (a) Each Member's Capital Account shall be credited with the following:
 - (1) Such Member's Capital Contributions;
 - (2) Such Member's distributive share of Profits;
 - (3) The amount of any Company Liabilities that are assumed by such Member or that are secured by any property distributed to such Member; and
 - (4) With respect to a transferee Member, a pro rata portion of the Capital Account

of the transferor Member.

(b) Each Member's Capital Account shall be debited by the following:

(1) The amount of cash and the net fair market value of any property distributed to such Member (as of the date of the distribution);

(2) Such Member's distributive share of Losses;

(3) The amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company; and

(4) With respect to a transferor Member, a pro rata portion of the Capital Account of the transferee Member.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Management Committee.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to SECTION 7.6 hereof, all elections required or permitted to be made by the Company under the Code shall be made by the Management Committee.

7.4 Tax Returns. Not later than the time required by law, the Management Committee shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.5 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

(1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense; and

(2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code.

(b) In the event of a distribution of Company Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

7.6 Compliance with Section 704(b) of the Code. The provisions of this Agreement as

they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to ARTICLE VIII to have substantial economic effect within the meaning of the Treasury Regulations promulgated under § 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.7 Tax Matters Partner Loyd R. Daniel (Manager of Southwest Equities, LLC) is designated the tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time.

ARTICLE VIII Interim Distributions and Allocations

8.1 Interim Distributions. From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the business, including, but not limited to, operating expenses, debt service, acquisitions, reserves, amounts owed as payments under Section 707(c) of the Code, and all amounts necessary to preserve, maintain and repair any Company Property. Company Cash shall be applied first to payment of all Company Liabilities and expenses that are due and owing, retention of all amounts necessary for the aforementioned Company Liabilities, expenses or reserves, and the Company shall retain all amounts deemed necessary for the conduct of the Company's business. Subject to SECTION 8.2, any remaining Company Cash may be distributed to the Members. All such distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights with respect to the property and cash distributed to all the Members. Any Person who holds Financial Rights in the Company but who is not otherwise a Member shall be allocated distributions only if such Person has provided a current address to the Management Committee, and has given notice and proof of his Financial Rights satisfactory to the Management Committee.

8.2 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this SECTION 8.2.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) (organizational expenditures which the Company elects not to amortize under Code Section 709(b)) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Share, distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution. In the event the Company uses the "Traditional Method with Curative Allocations"

under Treasury Regulations Section 1.704-3(c) to correct for distortions caused by the "ceiling rule" (as defined therein) in making allocations pursuant to Section 704(c) of the Code, the Company may make curative allocations in any given year to offset the effects of the "ceiling rule" for prior taxable years. Any such allocations shall be made over a reasonable period of time, such as over the property's economic life, in compliance with Treasury Regulations Section 1.704-3(c)(3)(ii). If cost recovery deductions with respect to an item of contributed property have been limited by the "ceiling rule", the general limitation on the character of any curative allocation, contained in Treasury Regulations Section 1.704-3(c)(3)(iii)(A), shall not apply to income from disposition of the contributed property.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members' Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member's Nonrecourse Liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company's taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of Company Minimum Gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member Nonrecourse Debt Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or

wholly a nonrecourse liability. The amount that would otherwise be subject to the Member Nonrecourse Minimum Gain chargeback is added to the Member's share of Company Minimum Gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This SECTION 8.9 will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. All distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX

Dissolution, Winding Up, and Termination

9.1 Dissolution. The Company shall dissolve, its affairs shall be wound up, and the Company shall terminate upon the first to occur of the following:

(a) The written consent of the Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this section;

(c) On application by a Member or a dissociated Member, upon entry of a judicial decree that:

(1) The economic purpose of the Company is likely to be unreasonably frustrated;

(2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;

(3) It is not otherwise reasonably practical to carry on the Company's business in conformity with the Articles of Organization and this Agreement;

(4) The Company failed to purchase the petitioner's Financial Rights as required

by Section 33-44-701 of the Act; or

(5) The Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial the petitioner.

(d) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to Section 33-44-810 of the Act.

(e) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company extend the term of the Company.

9.2. Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under Section 33-44-804(a) of the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Following the dissolution of the Company, if the Members do not continue the Company's business under SECTION 9.1 or SECTION 9.2, the Management Committee shall appoint one or more Members or Managers or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs, and may preserve the Company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets of the Company pursuant to SECTION 9.6, settle disputes by mediation or arbitration, and perform other necessary acts. In winding up the Company's affairs, the liquidator shall:

(a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in Section 33-44-807 of the Act;

(b) Publish notice of the Company's dissolution as provided in Section 33-44-808 of the Act;

(c) Make final liquidating distributions as provided in SECTION 9.6, and distribute any Company Property discovered after any such final liquidating distributions in accordance with SECTION 9.6; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with Section 33-44-805 of the Act.

9.4 Sale of Company Property. Unless otherwise determined by the Management Committee, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, or such other period of time determined by the Management Committee, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in accordance with SECTION 9.5.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire two (2) independent appraisers to appraise the asset(s) in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors including the liquidator if the liquidator is not a Member for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this SECTION 9.6.

9.7 Deficit Capital Account Balances. Notwithstanding anything herein to the contrary, and notwithstanding any custom or rule of law to the contrary, any deficit in a Member's Capital Account upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this ARTICLE IX

shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

ARTICLE X

Dissociation

10.1 Events of Proper Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a proper dissociation:

(a) The death of the Member, unless the Member's interest is transferred to a Family Member as hereinafter defined;

(b) Withdrawing, retiring or resigning from the Company with the consent of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company (without regard to the Voting Rights of the withdrawing, retiring or resigning Member).

10.2 Effect of Member's Proper Dissociation. Unless otherwise agreed between the Company and the other Members, the rights of a properly dissociating Member shall be governed by ARTICLE XI.

10.3 Events of Wrongful Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a wrongful dissociation:

(a) The voluntary withdrawal, retirement or resignation of any Member other than as permitted in SECTION 10.1; or

(b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

(1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or

(2) Wilfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or

(3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

10.4 Effect of Member's Wrongful Dissociation. A wrongfully dissociating Member is liable to the Company and to the other Members for all costs, expenses (including reasonable attorneys' fees) and damages caused by the wrongful dissociation, including the reasonable costs of obtaining replacement of the services the wrongfully dissociating Member was obligated to perform. The Company may offset such costs, expenses and damages against any distributions to which the wrongfully dissociating Member may be entitled in addition to pursuing any remedies provided for in

this Agreement or otherwise available under applicable law. The parties to this Agreement agree that a wrongfully dissociating Member's sole entitlement upon wrongfully dissociating from the Company shall be receipt of the purchase price for his Membership Share, as determined in SECTION 11.2(a) and SECTION 11.3 upon the terms set forth in SECTION 11.4. The parties to this Agreement agree that the purchase price as so determined and reduced shall constitute fair value for the Membership Share of a wrongfully dissociating Member within the meaning of Sections 33-44-701 and 33-44-702 of the Act, and that payment of the purchase price upon the terms contained in SECTION 11.4 is permissible, authorized and in compliance with all provisions of the Act. The parties waive any right they may have to assert that the provisions of this Agreement regarding the rights of a wrongfully dissociating Member are inconsistent with, or in contravention of the Act.

10.5 Character of Payments. To the extent permitted by the Code and all applicable Treasury Regulations, all payments made to any dissociating Member (whether proper or wrongful), including those which relate to unrealized receivables and the goodwill of the Company, shall be treated as payments described in Section 736(a) of the Code.

10.6 Statement of Dissociation. A dissociated Member or the Company may file a Statement of Dissociation in accordance with Section 33-44-704 of the Act.

ARTICLE XI

Restrictions on Transfer and Buy-Sell Provisions

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company (without regard to the transferor Member). If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control, and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

11.2 Right to Buy.

(a) Wrongful Dissociation of a Member. If a Member wrongfully dissociates from the Company within the meaning of SECTION 10.3 (the "Withdrawing Member"), he shall be deemed to have immediately offered to sell all of the Withdrawing Member's Membership Share at the price determined under SECTION 11.2, SECTION 11.3, and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, the purchase price to be paid for a wrongfully dissociating Member's Membership Share shall be sixty-seven (67%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3.

(b) Company and Members Right to Buy. If a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Member's consent as required in SECTION 11.1, if a Member wrongfully dissociates under SECTION 11.2 (a), or if a Member properly dissociates from the Company within the meaning of ARTICLE X (the "Withdrawing Member"), such Member is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2 (a), SECTION 11.3 and upon the terms contained in SECTION 11.4.

(c) If the Company does not accept the offer mandated by Subparagraph (a) or Subparagraph (b) above within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Withdrawing Member, the Withdrawing Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members"). If the Company and/or the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by the Company and/or said Remaining Members. In the event more than one offeree accepts the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Withdrawing Member's Membership Share within sixty (60) days after their offer period begins, then a Withdrawing Member may offer his Membership Share for sale to any other Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

In the event any sale of a Membership Share to a third person shall not be consummated within sixty (60) days after the expiration of the Remaining Members' option to purchase, the Withdrawing Member shall have no right to sell said Membership Share or any portion thereof unless the same shall be offered again to the Company and the Remaining Members in the manner and in accordance with the terms herein provided.

(d) Death. Notwithstanding anything herein to the contrary, upon the death of a Member, the deceased Member's Interest in the Company will be purchased by the Company. The purchase price of such Member Interest sold hereunder will be computed in accordance with the provisions of SECTION 11.3 and paid in accordance with the provisions of SECTION 11.4.

11.3 Purchase Price. Subject to SECTION 11.2(a), the price to be paid for a Withdrawing or Withdrawing Member's Membership Share shall be the purchase price agreed upon by the Withdrawn or Withdrawing Member and the Company, or the Remaining Members who have elected to buy, as the case may be. If the parties do not agree upon the purchase price of the Membership Share within thirty (30) days following death, attempted transfer or the event of dissociation, then the purchase price shall be the "Appraised Value" (as defined in the next sentence) of the Membership Share. Appraised Value shall mean the value obtained, taking into account all applicable minority, lack of marketability and other discounts, by agreement of two (2) appraisers, one appointed by the Company, or a majority of the Remaining Members who wish to purchase the

offered Membership Share and who have not previously agreed upon the purchase price, and one appointed by the Withdrawing or Withdrawing Member. Both appraisers must have at least five (5) years experience valuing businesses similar to the business of the Company. If the two (2) appraisers cannot agree on an Appraised Value within thirty (30) days after they have both been selected, they shall appoint a third appraiser. The third appraiser shall determine the Appraised Value within thirty (30) days after his appointment. Appraised Value shall be the average of all three (3) appraisals. The seller and the purchaser(s) shall each pay the costs of the appraiser appointed by them, and one-half (1/2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

11.4 Payment of Purchase Price. The closing of the purchase shall take place at the principal place of business of the Company, or at such other place as the parties may agree, and at a time and date designated by the parties. Unless the parties mutually agree otherwise, the purchase price shall be paid in twenty (20) equal and consecutive quarterly installments of principal and interest beginning ninety (90) days after the death, attempted transfer or event of dissociation, and the determination of the purchase price has been made. The purchase price shall be evidenced by a promissory note made by the purchaser(s) to the order of the seller and shall bear interest at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon default of any payment of interest or principal, the note shall become due and payable immediately, at the option of the holder of the note. Upon payment of the purchase price, the Withdrawing Member's Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the purchase price is paid in full, the seller's Membership Share shall be held by the seller as collateral security for payment of the note.

Any closing adjustments which are then usual and customary shall be made between the seller and the purchaser(s) on and as of the date of closing. The seller shall pay any transfer, gains or similar taxes arising out of or in connection with the sale and transfer of his Membership Share. Except as specifically provided in this Agreement, such sale shall be subject to all liabilities and obligations of the Company, matured and unmatured, absolute or contingent. All Members agree to execute and deliver all certificates and other instruments reasonably necessary to effectuate any transaction contemplated herein. Without limiting the foregoing, any Member transferring his Membership Share shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party and shall execute or cause to be executed any and all documents required to fully transfer good and clear title to such Membership Share to the purchaser(s), including, but not limited to, any documents required to release any interest of a Member's spouse or any other party who may claim an interest in such Member's Membership Share.

11.5 Transfer to Family. Notwithstanding anything in this Agreement to the contrary, a Member may freely transfer all or any part of his Membership Share at any time to a member of his

Family, whether or not for adequate consideration, by gift, assignment, sale, will, joint tenancy with right of survivorship, bequest, devise, intestacy or otherwise. Such transfer may be made outright or in trust, in fee or lesser estate, or held under a guardianship, conservatorship, or custodian arrangement. The Members hereby consent to the admission of any such Family member transferee as a full Member in the Company, provided such Family member transferee complies with all provisions of SECTION 3.2, and this provision shall be binding on all future transfers which comply with this provision and this provision shall override all restriction on transfer of this Agreement, including specifically the provisions of Article III and Article XI.

ARTICLE XII

Miscellaneous Provisions

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, the Management Committee and the Company, at the Company's principal place of business, and to a Member at the address on EXHIBIT B attached hereto, or to such other address as may hereafter be designated by any amendment or addendum to this Agreement. All notices, consents or other communications shall be deemed given when actually hand delivered, or three (3) days after mailing in accordance with this Section.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

12.5 Consent to Jurisdiction. The parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business, regardless of the residence, now or in the future, of any party hereto. The parties consent to venue in the County of the Registered Office of the Company, in the State of South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this

Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinafter", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement.

12.15 Equitable Remedies. The rights and remedies of the Members, the Company hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

12.16 Memorandum of Company. If the Management Committee deems it appropriate, the Management Committee shall cause the Company to file and record either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

12.17 Exhibits. The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

12.18 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

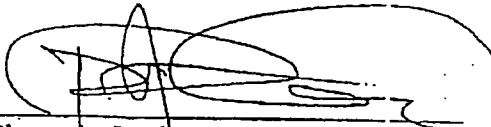
12.19 Attorney's Representations. The parties all acknowledge that the law firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P. A., 1000 29th Avenue North, Myrtle Beach, South Carolina 29577 prepared this Agreement on behalf of and in the course of its representation of the Company and that:

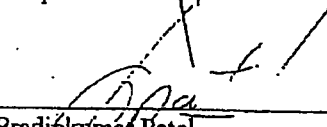
(a) The parties have been advised by Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P. A. that a conflict exists among their individual interests; and

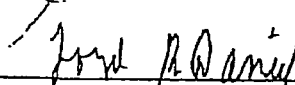
(b) The parties have been advised by Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P. A. to seek the advice of independent counsel; and

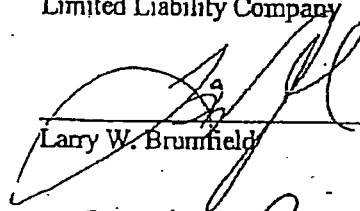
(c) The parties have had the opportunity to seek the advice of independent counsel.

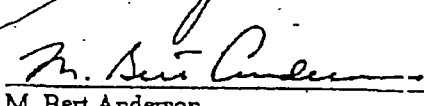
IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

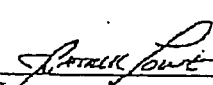

Bhupendra Patel

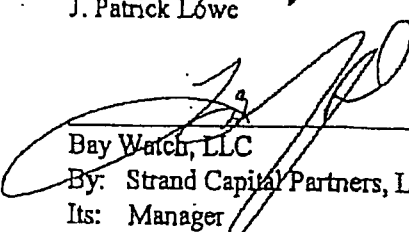

Pradipkumar Patel


Southwest Equities, LLC, a North Carolina
Limited Liability Company


Larry W. Brumfield


M. Bert Anderson


J. Patrick Lowe


Bay Watch, LLC

By: Strand Capital Partners, LLC

Its: Manager

By: Larry W. Brumfield

Its: Manager

Quinter Corporation

By: Gene Barrier

Its: President

IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

Bhupendra Patel

Pradipkumar Patel

John R. Daniel
Southwest Equities, LLC, a North Carolina
Limited Liability Company

Larry W. Brumfield

M. Bert Anderson
M. Bert Anderson

J. Patrick Lowe
J. Patrick Lowe

Bay Watch, LLC

By: Strand Capital Partners, LLC

Its: Manager

By: Larry W. Brumfield

Its: Manager

Quinter Corporation

By: Gene Barrier

Its: President

Lexington State Bank as Trustee for Thomas E.
Barrier - Roth Individual Retirement Account

By: R. Paul DeTouze - V.P. F.T.O.
Trustee

Lexington State Bank as Trustee for Ellen G.
Barrier - Roth Individual Retirement Account

By: R. Paul DeTouze - V.P. F.T.O.
Trustee

Lexington State Bank as Trustee for Jerry D.
Cooper - Roth Individual Retirement Account

By: R. Paul DeTouze - V.P. F.T.O.
Trustee

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Shaul Levy and Meir Levy,)
Plaintiffs,)

vs.)

Arkadiusz Grabara, Bhupendra)
Patel and Harry Pavilack,)
Defendants.)

CONFESSON OF JUDGMENT

FILED
HORRY COUNTY
2010 FEB 10 PM 4:22
MELANIE HUGGINS-WARD
CLERK OF COURT

The above named Defendants, Arkadiusz Grabara, Bhupendra Patel and Harry Pavilack (hereinafter collectively "Defendants"), pursuant to that certain Promissory Note made by Pier View Resort Development, LLC and personally guaranteed by said Defendants, hereby jointly and severally confess judgment in favor of the above named Plaintiffs, Shaul Levy and Meir Levy (hereinafter collectively "Plaintiffs") in the principal amount of Two Million Five Hundred Thousand and No/100 (\$2,500,000.00) Dollars, together with interest, as set forth below.

This Confession of Judgment may be filed against each of the above named Defendants unless payment is made to Plaintiffs as set forth below. Failure to make payment shall entitle Plaintiffs to file this Confession of Judgment with the Clerk of Court for Horry County, South Carolina, or any other jurisdiction, and any other jurisdiction where said Plaintiffs deem appropriate for an entry of judgment against each Defendant. Payment shall be made as follows:

1. First interest payment due June 1, 2008.
2. First principal payment in the amount of One Million Two Hundred Fifty Thousand and No/100 (\$1,250,000.00) Dollars due December 1, 2008, with the second interest payment due contemporaneously therewith.
3. Third interest payment due June 1, 2009.
4. Final payment in the amount of One Million Two Hundred Fifty Thousand and No/100 (\$1,250,000.00) Dollars together with all accrued interest, due December 1, 2009.

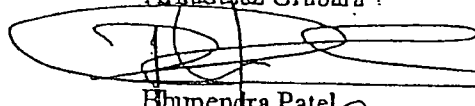
The above named Defendants hereby agree that this Confession of Judgment shall be filed by the above named Plaintiffs in the appropriate jurisdiction in the event payment is not made as set forth above.

SIGNATURE PAGE TO FOLLOW

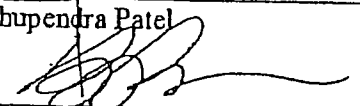
Dated this 10th day of January, 2008.



Arkadiusz Grabara



Bhupendra Patel



Harry Pavilack

STATE OF SOUTH CAROLINA)

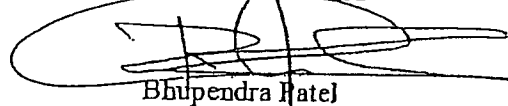
COUNTY OF HORRY)

) VERIFICATION OF STATEMENT

The Defendants above named, being duly sworn, affirm that the above statements and Confession of Judgment and the facts therein mentioned are true to the best of their own knowledge.



Arkadiusz Grabara



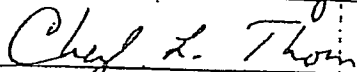
Bhupendra Patel



Harry Pavilack

SWORN TO BEFORE ME THIS

10th day of January, 2008



Cheryl L. Thom

Notary Public for South Carolina

My Commission Expires: 10-09-08

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Arkadiusz Grabara, Bhupendra Patel
and Harry Pavilack,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) JUDGMENT NO. 2010-CP-26-1161

ORDER CREATING CHARGING LIENS
ON PATEL'S INTERESTS IN CERTAIN
LLC's AND
ORDER OF SALE OF ROLEX

CLERK OF COURT
AUG 24 11
AM 10:00

This matter came before me on August 8, 2011 to hear the Motion to Sell Assets filed June 21, 2011 by the Plaintiffs Shaul Levy and Meir Levy.

This Court has jurisdiction to rule upon this motion, and all other motions necessary to dispose of this matter, pursuant to the Order of Reference and Order for Supplemental Proceedings dated January 27, 2011 and filed February 1, 2011 in the above referenced matter.

Based upon the evidence and arguments of counsels, and the applicable statutory authority, I hereby find the following:

1. Plaintiffs are judgment creditors of the Defendant Bhupendra Patel (hereinafter "Patel") by virtue of the Confession of Judgment (the "Judgment") filed February 10, 2010 against Patel in the principal sum of Two Million Five Hundred Thousand and NO/100 (\$2,500,000.00) Dollars, plus interest at the statutory rate.
2. No payment has been made towards the Judgment since its filing and delivery on Patel and the Judgment remains unsatisfied.
3. At the hearing, Mr. DesChamps represented to the Court that Patel does not have any interests of any kind in the condominium unit known as Dwelling No. 4, Floor No. 23, Building 1 in Maisons-Sur-Mer located in Myrtle Beach, South Carolina and bearing TMS No. 166-06-23-004. As such, Plaintiffs withdrew their request to sell this asset.
4. Patel has ownership interest in each of the following companies: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) Hospitality Lodging, Inc.; (iv) OP, LLC;

(v) P & P Development, LLC; and (vi) Patel Management, LLC.

- 2
GHH
5. Patel is the owner of a certain man's gold Rolex watch (the "Rolex") which was delivered to the Court at the hearing. This Rolex watch has a diamond bezel. This watch is currently in the possession of William DesChamps, Patel's attorney, and he shall maintain possession until Sales Day when he will present the watch at the time of its sale.
 6. S.C. Code Ann. § 33-44-504(a) provides: "On application by a judgment creditor of a member of a limited liability company...a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment...and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order."
 7. I find that the Plaintiffs are entitled to Charging Orders, also known as Charging Liens, pursuant to S.C. Code Ann. § 33-44-504(a) against Patel's distributional interest in the following companies: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) P & P Development, LLC; and (iv) Patel Management, LLC. As such, Plaintiffs, or their attorneys, may request information and/or documentation from the respective companies in order to determine Plaintiffs' entitlement or rights to distributions. To the extent the companies refuse to provide such information or documents, Plaintiffs may request this Court for an Order specifically ordering the production of such information or documents from the companies. The Plaintiffs may foreclose any of these charging liens by the filing of a petition pursuant to S.C. Code Ann. § 33-44-504(b). Nothing herein may be construed as prohibiting Plaintiffs from seeking foreclosure of the aforesaid charging liens.
 8. The Plaintiffs requested that this Court order the sale of Patel's gold Rolex man's watch which has a diamond bezel. S.C. Code Ann. § 15-39-420 provides: "The judge may order any property of the judgment creditor, not exempt from execution, in the hands of either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment..."
 9. The Rolex shall be sold at foreclosure upon the terms set forth below with the proceeds thereof, less the exemption amount of \$1,000.00, to be applied towards satisfaction of Plaintiffs' Judgment as authorized by S.C. Code Ann. § 15-39-420.

NOW THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Sell Assets filed by the Plaintiffs is hereby GRANTED as follows:

- A. Pursuant to S.C. Code Ann. § 33-44-504(a), a lien is hereby charged against Patel's interest in each of the following companies: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) P & P Development, LLC; and (iv) Patel Management, LLC.

Accordingly, Plaintiffs shall have the right to obtain any and all of the LLC's distributions made to or on behalf of Patel with the distribution amounts being applied against the balance of the Judgment. Plaintiffs shall have the right to make any and all demands, instructions and/or inquiries to each of these companies that Patel could have made as a member, or which the circumstances may require, to give effect to this Order.

- B. The Man's gold Rolex with a diamond bezel shall be sold by the Master-in-Equity at public auction at the regularly scheduled foreclosure sale to be held ~~Tuesday~~, Monday, October ~~4~~³, 2011 pursuant to the following terms: GH #

GH

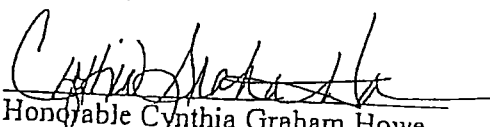
- (a) The Master-in-Equity will require a deposit of 10% on the amount of the bid in cash or equivalent (unless Plaintiffs are the successful bidders) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and then Plaintiffs' debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at the time of bid or comply with the other terms of the bid within 30 days, then the watch may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder;
- (b) The sale shall be subject to S.C. Code Ann. § 33-44-504(b) which provides that the purchaser at the foreclosure sale has the rights of a transferee only;
- (c) The purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount;
- (d) The purchaser shall pay for the preparation of the transfer documents and costs relating thereto;
- (e) The purchaser shall be entitled to the rights of a transferee only after the purchaser fully complies with the bid amount and after the sale is confirmed by this Court by Court Order or otherwise.
- (f) The bidding will close the date of sale and the sale shall be final upon that date.
- (g) The Plaintiffs may become a purchaser at such sale with their bid amount, after the \$1000.00 exemption amount, being applied against the Judgment, but Plaintiffs shall not pay any monies for their bid. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Master-in-Equity may advertise the Rolex

watch for resale on the next, or some other subsequent Sales Day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

- (h) The Master-in-Equity will apply the proceeds of the sale as follows:
1. FIRST, to the payment of the amount of the costs and expenses of the Sale;
 2. NEXT, to the payment to the Plaintiffs or their attorney, of the amount due on the Judgment, plus Plaintiffs costs of enforcing its judgment lien, including attorney fees, or so much thereof as the purchase money will pay on the same; and
 3. NEXT, any surplus shall be held pending further Order of this Court.

Plaintiffs shall be responsible for giving notice of the date, time, and place of such sale and, furthermore, shall follow the requirements set forth in S.C. Code Ann. §§ 15-41-10 and 15-41-20 regarding exempt property which, in this case, is a total of \$1,000.00 of the value of the Rolex.

IT IS SO ORDERED.


Honorable Cynthia Graham Howe
Horry County Master-in-Equity

4
GAH
Date: August 12, 2011
Conway, South Carolina

MCNAIR
ATTORNEYS

August 30, 2011

Dan Butler

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

dbutler@mcnair.net

T (843) 444-1107
F (843) 444-4729

Carolinian, LLC
Attn: Loyd R. Daniel, Jr., Registered Agent
1000 2nd Avenue South
Myrtle Beach, SC 29582

Re: Levy v. Grabara et al.
Judgment No. 2010-CP-26-1161
Our File No. 048247.1



Mr. Daniel:

This firm serves as legal counsel to Shaul Levy and Meir Levy, the Plaintiffs in the above-referenced matter. Mr. Bhupendra Patel is the owner of 23.35% membership interest in Carolinian, LLC (the "Company"), including rights to distributions from the Company. Enclosed please find an Order signed by the Horry County Master-in-Equity and filed August 24, 2011 in the above referenced matter, creating a charging lien against Mr. Patel's distributional interest in the Company. Therefore, with regards to any distributions, in any kind or form, intended to be made to Mr. Patel, please make them payable to Shaul Levy and Meir Levy and mail the check and/or other document(s) of distribution to the following address:

McNair Law Firm, P.A.
Attn: Dan V. Butler
2411 Oak Street, Suite 206
Myrtle Beach, South Carolina 29577.

This charging lien also applies to any and all distributions made to Mr. Patel, directly or indirectly, for his personal expenses (gas, utilities, mortgage payments, etc.). This includes payments made to third parties for services for the benefit of Mr. Patel or reimbursements to Mr. Patel for the payment of the same.

Should you have any questions regarding this letter, please do not hesitate to contact me at my office. Thank you.

Respectfully,



Dan V. Butler

McNair Law Firm, P. A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

cc: Clients (via email only)
William W. DesChamps, Jr. (via email only)(wwd@deschampsllaw.com)
Bhumi Patel (via email only)(bap@deschampsllaw.com)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) JUDGMENT NO. 2010-CP-26-1161

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Arkaduisz Grabara, Bhupendra Patel
and Harry Pavilack,

Defendants.

**PETITION TO FORECLOSE
CHARGING LIENS
AND SELL DISTRIBUTIONAL
INTERESTS**

11 SEP 26 PM 1:56
CLERK OF COURT

The Plaintiffs Shaul Levy and Meir Levy, by and through their undersigned attorneys, hereby petition this Honorable Court, pursuant to S.C. Code Ann. § 33-44-504 and the Order Creating Charging Liens on Patel's Interest in Certain LLCs, dated August 12, 2011 and filed August 24, 2011 in the above referenced matter, to foreclose on the charging liens issued on, and to sell, the Defendant Bhupendra Patel's distributional interests in the following limited liability companies, with the proceeds thereof used towards satisfaction of Plaintiffs' judgment:

- i. C & P Partnership, LLC;
- ii. Carolinian, LLC;
- iii. P & P Development, LLC; and
- iv. Patel Management, LLC.

This Petition is based upon the following:

1. Plaintiffs are judgment creditors of the Defendant Bhupendra Patel (hereinafter "Patel") by virtue of the Confession of Judgment (the "Judgment") filed February 10, 2010 in the principal sum of Two Million Five Hundred Thousand and NO/100 (\$2,500,000.00) Dollars, plus interest at the statutory rate. The Judgment remains unsatisfied.

2. On August 12, 2011, the Honorable Cynthia Graham Howe issued the Order Creating Charging Liens on Patel's Interest in Certain LLCs (the "Order"), which Order was filed August 24, 2011 in the above-entitled action. The Order created a charging lien against Patel's distributional interest in each of the following entities: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) P & P Development, LLC; and (iv) Patel Management, LLC.

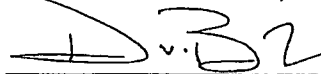
3. S.C. Code Ann. § 33-44-504(b) provides: "...The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time."

4. In addition, the Order authorizes the Plaintiffs to foreclose the charging liens by the filing of a petition pursuant to S.C. Code Ann. § 33-44-504(b).

WHEREFORE pursuant to S.C. Code Ann. § 33-44-504 and the Order Creating Charging Liens on Patel's Interest in Certain LLCs, the Plaintiffs seek an order foreclosing the charging liens on, and selling, the Defendant Bhupendra Patel's interests in each of the following entities: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) P & P Development, LLC; and (iv) Patel Management, LLC, with the proceeds thereof used towards satisfaction of Plaintiffs' judgment:

RESPECTFULLY SUBMITTED,

McNAIR LAW FIRM, P.A.



Henrietta U. Golding, S.C. Bar No. 2173

Dan V. Butler, S.C. Bar No. 72791

2411 N. Oak Street, Suite 206 (29577)

P.O. Box 336

Myrtle Beach, South Carolina 29578

Ph: (843) 444-1107

Fax: (843) 444-4729

Email: hgolding@mcnair.net

dbutler@mcnair.net

Attorneys for the Plaintiffs

Myrtle Beach, South Carolina

Dated: September 26, 2011

CERTIFICATE OF SERVICE

I, Colleen D'Argenio, an employee of McNair Law Firm, P.A., certify the foregoing document was served via Electronic Mail (email) and by personal delivery to the following persons on this 26 day of September, 2011, as follows:

Addressee(s):

William W. DesChamps, Jr., Esq.

Bhumi A. Patel

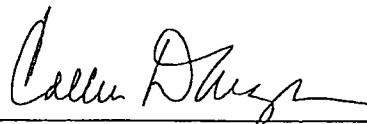
1357 21st Avenue North, Suite 102

Myrtle Beach, SC 29578

Email: wwd@deschampsllaw.com

bap@deschampsllaw.com

Attorneys for the Defendant Bhupendra Patel



Colleen D'Argenio

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) JUDGMENT NO. 2010-CP-26-1161

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Arkadiusz Grabara, Bhupendra Patel
and Harry Pavilack,

Defendants.

**ORDER OF FORECLOSURE
AND SALE**

FILED
COUNTY
CLERK OF COURT
MELANIE HUGHES-WARD
2012 MAR 14 PM 3:58

This matter came before me on February 9, 2012 on Plaintiffs' Petition filed September 26, 2011. Plaintiffs seek to foreclose the charging liens on, and to sell, the Defendant Bhupendra Patel's distributional interests in four (4) limited liability companies, with the proceeds thereof used towards satisfaction of Plaintiffs' judgment.

This Court has jurisdiction to rule upon this Petition, and all other motions necessary to dispose of this matter, pursuant to the Order of Reference and Order for Supplemental Proceedings dated January 27, 2011 and filed February 1, 2011 in the above referenced matter.

Based upon the evidence presented at the hearing, the pleadings and the applicable statutory authority, I hereby find the following:

1. Plaintiffs are judgment creditors of the Defendant Bhupendra Patel (hereinafter "Patel") by virtue of the Confession of Judgment filed February 10, 2010 in the principal sum of Two Million Five Hundred Thousand and NO/100 (\$2,500,000.00) Dollars, plus interest at the legal rate of interest.
2. No payment has been made towards the amount due on the Confession of Judgment since its filing and the amount due on the Confession of Judgment remains unsatisfied.
3. As of February 10, 2012, legal interest has accrued on the amount due on the Confession of Judgment in the amount of \$ 375,640.63. Therefore, as of February 10, 2012, the total amount due on Plaintiffs' Confession of Judgment is \$

2,875,640.63 (hereinafter the "Judgment"). Interest continues to accrue on the Judgment at the legal rate of interest of 7.25%, compounded annually.

4. On August 12, 2011, this Court issued an order creating charging liens on Patel's distributional interest in the following entities (collectively the "LLCs"):
 - a. C & P Partnership, LLC, of which Patel is a 45.00 % member;
 - b. Carolinian, LLC, of which Patel is a 23.35 % member;
 - c. P & P Development, LLC, of which Patel is a 50.00 % member; and
 - d. Patel Management, LLC, of which Patel is a 50.00 % member.
5. S.C. Code Ann. § 33-44-504(b) specifically authorizes this Court to: "...order a foreclosure of a lien on a distributional interest subject to the charging order at any time." In addition, this Court's order of August 12, 2011 specifically authorizes Plaintiffs to foreclose on the charging liens issued against Patel's distributional interests in the LLCs.
6. I find that the Plaintiffs are entitled to the foreclosure of the aforesaid charging liens and to sell Patel's distributional interests in each of the LLCs, with the proceeds thereof used towards satisfaction of the Plaintiffs' Judgment.

NOW THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiffs' Petition to

Foreclose Charging Liens and To Sell Distributional Interests is hereby GRANTED as follows:

- 2
CAH
- A. Plaintiffs' Judgment is secured by the charging liens against Patel's distributional interests in each of the LLCs up to the amount of the Judgment, including accrued interest at the legal rate of interest, which shall be reduced by any amounts actually received by Plaintiffs as a result of the sale of said LLC interests.
 - B. As of February 10, 2012, the total amount of the Judgment is \$ 2,875,640.63, and interest continues to accrue on the Judgment at the legal rate of interest of 7.25%, compounded annually;
 - C. Patel's distributional interests in each of the four (4) LLCs shall be sold, separately, by the undersigned Master-in-Equity for Horry County at public auction at the regularly scheduled public auction to be held no later than sixty (60) days from the date of this Order (the "Sale Day").
 - D. The Terms of the Sale shall be as follows:
 - i. For each LLC distributional interest sold, the Master-in-Equity will require a deposit of 10% on the amount of the high bid in cash or equivalent (unless Plaintiffs are the successful bidders), to be paid to the Master-in-Equity no later

than 5:00 p.m. on the Sale Day, with the same to be applied to the high bid upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and then Plaintiffs' debt;

- ii. Each sale shall be subject to S.C. Code Ann. § 33-44-504(b) which provides that the purchaser of an LLC interest at the foreclosure sale has the rights of a transferee only in that LLC;
- iii. The purchaser of an LLC interest shall pay for any statutory commission on sale from the proceeds of the final bid amount for that particular LLC interest;
- iv. The purchaser of an LLC interest shall pay for the preparation of the transfer documents and costs relating to that particular LLC interest;
- v. The bidding will close, and be final, on the Sale Day;
- vi. The Plaintiffs may become a purchaser at the sale of each LLC interest, with Plaintiffs' bid amount(s) being credited against the Judgment. Plaintiffs shall not be required to pay any monies for their bid(s).
- vii. Should a successful bidder fail or refuse to either make the required deposit or comply with the other Terms of Sale within ten (10) days of the Sale Day, then that LLC interest may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, at the risk of the defaulting bidder;
- viii. For each LLC interest sold, the Master-in-Equity will apply the proceeds of the sale as follows:
 - 1. FIRST, to the payment of the amount of the costs and expenses of the Sale;
 - 2. NEXT, to the payment to the Plaintiffs or their attorney, of the amount due on the Judgment, or so much thereof as the purchase money will pay on the same; and
 - 3. NEXT, any surplus shall be held pending further Order of this Court.

E. The Notice of Sale shall be prepared by Plaintiffs' counsel and shall set forth date, time, and place of the sale of the four (4) LLC interests. The Notice shall be advertised at least one day a week for three (3) consecutive weeks prior to the Sale Day in a newspaper of general circulation in Horry County.

IT IS SO ORDERED.


Honorable Cynthia Graham Howe
Horry County Master-in-Equity

Date: ~~February~~ ^{March} 14, 2012
Conway, South Carolina

Q
/ ~~GA~~

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) JUDGMENT NO. 2010-CP-26-1161

Shaul Levy and Meir Levy,
Plaintiffs,

v.

Arkadiusz Grabara, Bhupendra Patel
and Harry Pavilack,
Defendants.

ORDER CONFIRMING SALE
AND
MASTER'S REPORT ON SALE AND
DISBURSEMENTS

2012 APR 11 AM 11:45
CLERK OF COURT
SOUTH CAROLINA
JUDICIAL CIRCUIT
FIFTEENTH JUDICIAL CIRCUIT

Plaintiffs are judgment creditors of the Defendant Bhupendra Patel (hereinafter "Patel") by virtue of the Confession of Judgment filed February 10, 2010 in the original principal sum of Two Million Five Hundred Thousand and NO/100 (\$2,500,000.00) Dollars, plus interest at the legal interest rate of 7.25%, compounded annually.

By Order dated August 12, 2011, this Court created charging liens on Patel's distributional interest in each of the following entities (collectively the "LLCs"):

- C & P Partnership, LLC, of which Patel is a 45.00 % member;
- Carolinian, LLC, of which Patel is a 23.35 % member;
- P & P Development, LLC, of which Patel is a 50.00 % member; and
- Patel Management, LLC, of which Patel is a 50.00 % member.

On September 26, 2011, Plaintiffs filed a Petition to foreclose the charging liens and to sell Patel's distributional interests in each of the four (4) LLCs, with the proceeds thereof used towards satisfaction of Plaintiffs' judgment. By Order of Foreclosure and Sale, dated and filed March 14, 2012 in the above titled matter, this Court granted Plaintiffs' Petition to foreclose the charging liens and sell the distributional interests.

UNDER AUTHORITY of the Order of Foreclosure and Sale, and after due and proper notice and advertisement of the sales, this Court offered for sale, on the 2nd day of April, 2012, to

the highest bidder at public auction, each of the following described personal properties, separately, to the highest bidder (each an "LLC Distributional Interest"):

Forty-Five (45.00 %) percent distributional interest in C & P Partnership, LLC, a South Carolina limited liability company;

Twenty-Three and 35/100 (23.35 %) percent distributional interest in Carolinian, LLC, a South Carolina limited liability company;

Fifty (50.00 %) percent distributional interest in P & P Development, LLC, a South Carolina limited liability company; and

Fifty (50.00 %) percent distributional interest in Patel Management, LLC, a South Carolina limited liability company.

High and final bids were received from Plaintiffs Shaul Levy and Meir Levy on each of the above LLC Distributional Interest, as follows:

<u>LLC Distributional Interest</u>	<u>Final Bid</u>
45.00 % distributional interest in C & P Partnership, LLC:	100.00
50.00 % distributional interest in P & P Development, LLC:	100.00
50.00 % distributional interest in Patel Management, LLC:	76,000.00
23.35 % distributional interest in Carolinian, LLC:	<u>215,000.00</u>
TOTAL	291,200.00

After the required costs were duly and timely paid, I executed and delivered a good and sufficient Bill of Sale transferring each of the above described LLC Distributional Interests to Shaul Levy and Meir Levy.

I received and disbursed the bid funds as follows:

TOTAL HIGH BIDS	\$ 291,200.00
CREDIT AGAINST PLAINTIFFS' JUDGMENT	<u>\$ (291,200.00)</u>
NET BID	\$ 0.00

RECEIPTS

Master's Fee (1% of High Bid up to \$2,500)	\$ 2,500.00
TOTAL Receipts	\$ 2,500.00

DISBURSEMENTS

Horry County Master-in-Equity – Master's Fee	\$ 2,500.00
TOTAL Disbursements	\$ 2,500.00

<u>BALANCE</u>	\$ 0.00

After application of the Total High Bids towards satisfaction of Plaintiffs' Judgment, the current balance on Plaintiffs' Judgment is as follows:

Plaintiffs' Judgment as of April 2, 2012:	\$ 2,900,290.80
Credit Against Plaintiffs' Judgment:	- 291,200.00
Current Balance on Plaintiffs' Judgment:	\$ 2,609,090.80

The current balance on Plaintiffs' Judgment will continue to accrue interest at the rate of 7.25%, compounded annually.

WHEREAS, all the funds regarding the sale of the LLC Distributional Interests being received, credited and disbursed, this Court finds the sale of the LLC Distributional Interests proper and authorized by the Order of Reference and Order for Supplemental Proceedings dated January 27, 2011 and filed February 1, 2011 in the above referenced matter and, furthermore, consistent with statutory and common law and, as such, should be confirmed.

NOW THEREFORE, it is hereby

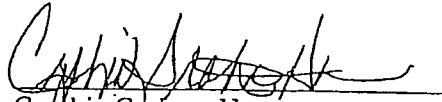
ORDERED, ADJUDGED AND DECREED that the sale of each of the above-described LLC Distributional Interests to the Plaintiffs Shaul and Meir Levy, as high bidders at the duly-held foreclosure sale, is hereby CONFIRMED, with all rights of redemption set forth in 33-44-504(c) being forfeited hereunder.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon receipt of a filed

copy of this Order by each of the above-named LLCs, said LLCs shall honor the new ownership of the applicable distributional interests by Plaintiffs Shaul and Meir Levy and that Bhupendra Patel no longer has any rights to any distributional interests in each of the above-named LLCs in that such rights have now been transferred and conveyed to the Plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have the right to make any and all demands, instructions and/or inquiries to each of above named LLCs that may relate to their distributional interests in each LLC and to otherwise give effect to this Order.

AND IT IS ORDERED.


Cynthia Graham Howe
Master-in-Equity for Horry County

Date: April 10, 2012
Conway, South Carolina

M C N A I R
ATTORNEYS

April 16, 2012

Dan V. Butler

Via Certified Mail/Return Receipt Requested

dbuller@mcnair.net
T (843) 444-1107
F (843) 444-4729

Carolinian, LLC
Attn: Loyd R. Daniel, Jr., Registered Agent
1002 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

Re: Shaul Levy et al. v. Grabara, et al
Case No. 2010-CP-26-1161
Our File 048247.1

Mr. Daniel:

Enclosed please find a copy of the Order Confirming Sale and Bill of Sale regarding the public sale of Bhupendra Patel's distributional interest in various LLCs, including Mr. Patel's distributional interests in Carolinian, LLC (the "Company").

Please forward this letter, with enclosures, to the appropriate officer and/or principal of the Company to ensure that the Company's records reflect Shaul and Meir Levy as the owners of a Twenty-Three and 35/100 percent (23.35%) distributional interest in the Company and that any and all distributions to be made by the Company be properly allocated and distributed to my clients.

To the extent distributions have been made by the Company since August 12, 2011, please forward any and all documents relating to such distributions, including but not limited to, any and all distributions made to Bhupendra Patel. In addition, please forward any information regarding anticipated future distributions by the Company.

Should you have any questions regarding the above, please do not hesitate to contact me at my office. Thank you.

Respectfully,

Dan V. Butler

Enclosures

cc: William W. DesChamps, Esq. (via email only)
Bhumi A Patel, Esq. (via email only)

McNair Law Firm, P. A.
 Founders Centre
 2411 Oak Street, Suite 206
 Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29576

ကဏ္ဍပုံ,၇၈၁

ROA-232

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

ATTORNEYS AT LAW
1000 29TH AVENUE NORTH
P.O. Box 367

MYRTLE BEACH, SOUTH CAROLINA 29578

TELEPHONE (843) 448-2400

TELECOPIER (843) 448-8022

Writer's Direct Line: 843-916-7166

E-Mail: Jking@BellamyLaw.com

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY**
EDWARD B. BOWERS, JR.
BRADLEY D. KING
M. EDWIN HINDS, JR.
JILL F. GRIFFITH
DAVID B. MILLER***

C. WINFIELD JOHNSON, III
DOUGLAS M. ZAVICEK
JEFFREY W. KING**
MARTIN C. DAWSEY
ROBERT S. SHELTON***
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III**
W. JOSEPH CUNNINGHAM**
BENJAMIN A. BAROODY**
PHILLIP H. ALBERGOTTI**

*FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
**ALSO MEMBER OF NORTH CAROLINA BAR
***CERTIFIED MEDIATOR

June 11, 2012

Dan V. Butler, Esq.
McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 205
Myrtle Beach, SC 29577

Re: Transfer of Bhupendra Patel's Distributional Interest in Carolinian, LLC to Shaul and Meir Levy pursuant to Order Confirming Sale and Master's Report on Sale and Disbursements dated April 10, 2012.

Dear Dan,

I am writing regarding the transfer by foreclosure sale of Bhupendra Patel's ("Patel") interest in Carolinian, LLC ("Company") to your clients, Shaul and Meir Levy ("Transferee"). As explained below, this letter shall serve as notice per Section 11.2(c) of the Operating Agreement for Carolinian, LLC, dated January 1, 2003, of the Company's acceptance of the offer to purchase the Patel's interest mandated pursuant to Section 11.2(b) of the Operating Agreement.

The transfer of all of Patel's economic interests in the Company is in direct violation of the express provisions regarding restrictions on transfer imposed by Section 11.1 of the Operating Agreement. As such, the transfer is an event of wrongful dissociation pursuant to the Uniform Limited Liability Company Act of 1996, SC Code of Laws Section 33-44-101, et. seq. In accordance with Article XI of the Operating Agreement, the purchase price for Patel's interest is set at 67% of the Appraised Value as defined in Section 11.3. In an effort to avoid the potentially costly appraisal process provided for in the Operating Agreement, we would prefer to reach an agreement regarding the value of Patel's interest. While your client, as a Transferee, is not necessarily entitled to participate in this process, given that they will be the recipients of any distributions paid by the Company to purchase the interest we believe it desirable to if possible reach an agreement with them as to this matter.

June 11, 2012
Page 2

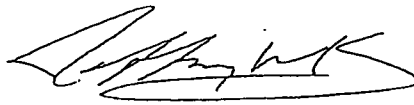
We have valued Patel's interests in the Company at \$150,000. This figure was arrived at by an analysis of the net value of the company's assets versus liabilities, with such net figure multiplied by Patel's 23.35% interest therein. This figure is significantly above the most recent appraisal of the entity and does not consider minority interest or marketability discounts. Applying the discounted percentage of 67% under the Operating Agreement, this would result in the purchase price for the interest being \$100,000. The terms of payment are set forth in Section 11.4 of the Operating Agreement, which provides for twenty (20) equal and consecutive quarterly installments of principal and interest. The interest rate is set at the greater of Wall Street Journal Prime Rate or the rate set by Section 1274 of the Internal Revenue Code as of the date of the sale.

We would appreciate an acceptance or counter-offer regarding the proposed purchase price set forth above within ten (10) days. In the event your clients do not respond, or simply wish to proceed with the appraisal process required by the Operating Agreement, we will engage an appraiser to begin the process. The Operating Agreement requires both sides to appoint an appraiser, and if the two appraisers cannot agree on the value, a third will be appointed, with the final value being the average of the three. As stated above, we think it in the best interests of all parties to avoid the costs associated with this process.

Thank you, and please contact me if you have any questions.

Best regards,

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



Jeffrey W. King

cc:
Bhupendra Patel
c/o William DesChamps, Esq.
1357 21st Avenue North, Suite 102
Myrtle Beach, SC 29577

Loyd Daniel
1000 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

M C N A I R
ATTORNEYS

June 18, 2012

VIA EMAIL AND U.S. MAIL

Jeffrey W. King, Esq.
Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578
Email: JKing@bellamylaw.com

Dan V. Butler

dbutler@mcnair.net
T (843) 444-1107
F (843) 444-4729

Re: Carolinian, LLC
23.35% Distributional Interest Owned by Shaul and Meir Levy
Our File No. 048247.1

Dear Jeff:

Please accept this letter as a response to your letter dated June 1, 2012. After reviewing your letter, the Operating Agreement for the Carolinian, LLC (the "LLC") and the applicable provisions of the South Carolina Uniform Limited Liability Company Act (the "Act"), we respectfully disagree with your interpretation of the Operating Agreement and its effect on the involuntary transfer of Bhupendra Patel's ("Patel") distributional interest in the Carolinian (the "Patel Interest") to the Levy's as a result of the foreclosure sale of the charging liens held April 2, 2012.

First, up through the date of the foreclosure sale, the LLC and its members had the right to redeem the Patel Interests. Neither the LLC nor its members exercised this right. Furthermore, you attended the foreclosure sale held April 2, 2012 and made bids to purchase Patel Interest on behalf of the LLC and/or its members. You were not successful as the Levy's were the winning bidders of the Patel Interests at the high bid of \$ 215,000.00.

As a direct result of the foreclosure sale, the Levy's have "the rights of a transferee"¹, which include the right to "receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled."² The Levy's are not subject to any of the terms of the Operating Agreement. Thus, your clients' attempt to enforce the provisions of the Operating Agreement against the Levy's is improper and without legal support.

McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

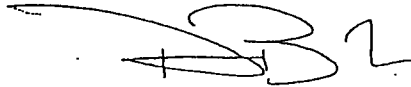
mcnair.net

In light of the above and the Act, my clients specifically object to your clients' attempt to force the sale of the Patel Interests pursuant to provisions of the Operating Agreement. The Levy's have no desire to sell their distributional

¹ See S.C. Code § 33-44-504(b)
² See S.C. Code § 33-44-503(e)

interests and, based on the Act, neither the LLC nor its members can force them to sell the Patel Interests that they lawfully obtained.

Respectfully,

A handwritten signature in black ink, appearing to be 'D. Butler', with a stylized flourish at the end.

Dan V. Butler

cc: Clients (via email only)

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

ATTORNEYS AT LAW

1000 29TH AVENUE NORTH

P.O. Box 357

MYRTLE BEACH, SOUTH CAROLINA 29578

TELEPHONE (843) 448-2400

TELECOPIER (843) 448-8022

C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
JEFFREY W. KING***
MARTIN C. DAWSEY*****
ROBERT S. SHELTON***
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III**
W. JOSEPH CUNNINGHAM**
BENJAMIN A. BARODDY**
PHILLIP H. ALBERGOTTI** *****
HAYES K. STANTON

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE M. EPPS, JR. ****
DAVID R. GRAVELY*
EDWARD B. BOWERS, JR. *****
BRADLEY D. KING
M. EDWIN HINDS, JR.
JILL F. GRIFFITH
DAVID B. MILLER***

*FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
**ALSO MEMBER OF NORTH CAROLINA BAR
***CERTIFIED MEDIATOR
****RETIRED
*****LITIGATION

Writer's Direct Line: 843-916-7166

E-Mail: Jking@BellamyLaw.com

June 27, 2012

Dan V. Butler, Esq.
McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 205
Myrtle Beach, SC 29577

Re: Transfer of Bhupendra Patel's Distributional Interest in Carolinian, LLC to Shaul and Meir Levy pursuant to Order Confirming Sale and Master's Report on Sale and Disbursements dated April 10, 2012.

Dear Dan,

Thank you for your responsive letter dated June 18, 2012. We of course disagree with your interpretation of the Act and the Operating Agreement for Carolinian, LLC. The Levy's are in fact subject to the Operating Agreement, even if indirectly. That being said, they have little if any rights under the Operating Agreement.

First, the right to redeem that the LLC and its members had is just that, a right. The fact that we bid at the foreclosure sale, just as any other person could have, has no bearing on the interest or rights of your client.

Section 33-44-103 of the Act governs the effect of an Operating Agreement. Subsection (a) states that "To the extent the operating agreement does not otherwise provide, this chapter governs the relations among the members, managers, and company." The Act therefore sets out the default provisions in the event no operating agreement exists. Subsection (b) sets forth the limited areas that are nonwaivable by such an agreement, and Sub-subsection (b)(7) states that an operating agreement may not "restrict the rights of a person, other than a manager, member, and transferee of a member's distributional interest. . ." (emphasis added). The clear intent of this provision is that the rights of a transferee can be altered by an operating agreement. Section 33-44-504 of the Act governs the rights of a creditor pursuant to a charging order. Subsection (b) provides that "A purchaser at the foreclosure sale has the rights of a transferee." Therefore, once your client foreclosed and purchase the interest of Mr. Patel, they became a transferee.

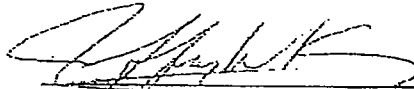
June 27, 2012
Page 2

I have outlined in my earlier letter the provisions of the Operating Agreement that govern my client's right to purchase Mr. Patel's interest, and you have a copy of the Operating Agreement, so I will not go into that again. As I stated in my first letter, your client actually has no right to participate in the process, but we are extending the opportunity to them due to the fact that we anticipate that Mr. Patel has little reason to do so. Your clients, pursuant to Section 33-44-503 of the Act only have the right to receive distributions to which the transferor would otherwise be entitled. In accordance with the Act and the Operating Agreement, we are moving forward with obtaining our appraisal. If your clients do not wish to participate, we will forward the resulting distributions that otherwise would have gone to Mr. Patel to them and consider the matter completed.

Thank you, and please contact me if you have any questions.

Best regards,

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



Jeffrey W. King

cc:

Bhupendra Patel
c/o William DesChamps, Esq.
1357 21st Avenue North, Suite 102
Myrtle Beach, SC 29577

Loyd Daniel
1000 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

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

ATTORNEYS AT LAW

1000 29TH AVENUE NORTH

P.O. Box 357

MYRTLE BEACH, SOUTH CAROLINA 29578

TELEPHONE (843) 448-2400

TELECOPIER (843) 448-3022

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE M. EPPS, JR. ****
DAVID R. GRAVELY*
EDWARD B. BOWERS, JR. *****
BRADLEY D. KING
M. EDWIN HINDS, JR.
JILL F. GRIFFITH
DAVID B. MILLER***

*FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
**ALSO MEMBER OF NORTH CAROLINA BAR
***CERTIFIED MEDIATOR
****RETIRED
*****LLM TAXATION

Writer's Direct Line: 843-916-7167

E-Mail: Bbaroody@BellamyLaw.com

September 6, 2012

VIA EMAIL ONLY - mgoddard@turnerpadget.com

Mark B. Goddard, Esquire

Turner Padgett Graham & Laney, PA

Post Office Box 2116

Myrtle Beach, SC 29578

Re: Shaul Levy and Meir Levy v Carolinian, LLC
Civil Action No.: 2012-CP-26-005610
Our File No.: 14736-87034

Dear Mark:

This letter follows our conversation and subsequent telephone conversations late last week, during which we briefly discussed settlement of this case. Those discussions and a review of your clients'. Reply indicate that your clients have no interest in negotiating the sale of their distributional interest in Carolinian, LLC.

As such, I am writing to provide your clients with the appraisal of Carolinian, LLC, which was recently prepared by E. F. Hucks & Associates, Inc., which is enclosed. While my client understands that the ultimate issue of whether it is able to purchase your clients' Distributional Interest in the entity pursuant to the Operating Agreement will be determined by the Court, my client wishes not to run afoul of its provisions in the event it prevails at trial.

The appraisal values the combined fee simple market value of the subject hotel units and commercial units together with the going concern interest of the management of 112 condominium units owned by third parties at \$5,700,000.00. The company has debt of approximately \$5,200,000.00, leaving equity of \$500,000.00.

Taking the values from the appraisal, and applying the Operating Agreement's provisions regarding the purchase price to be paid, my client calculates the 23.35% interest to be worth \$51,000.00. My client arrived at this figure as follows:

Appraised Value	\$	5,700,000.00
Less: Debt		<u>(5,200,000.00)</u>
	\$	500,000.00
Less: Minority Discount of 35%		<u>(175,000.00)</u>
	\$	325,000.00
Less: Wrongful Dissociation discount of 33%		<u>(107,000.00)</u>
	\$	218,000.00
Times % of ownership (23.35%)	x	<u>0.2335</u>
Value	\$	<u><u>51,000.00</u></u>

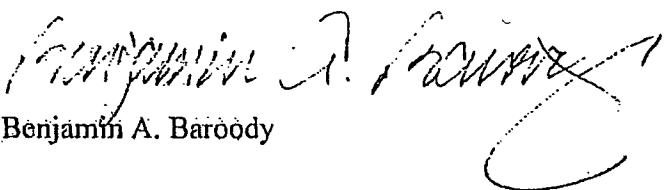
The Operating Agreement states that the purchase price would be paid in twenty equal and consecutive quarterly installments of principal and interest. The interest rate would be the Wall Street Journal prime rate at date of sale or, if greater, the rate of interest applicable under Section 1274 of the Internal Revenue Code.

Again, this letter is being sent subject to a favorable ruling by the trial Court. Upon my client prevailing at trial, it will expect your client to accept payment in accordance with the foregoing terms. For notice purposes, I assume you will provide this letter to your clients. If you require that my client provide them with direct notice, please advise.

With kindest regards, I am

Very truly yours,

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


Benjamin A. Baroody

BAB:dg

Enclosure as noted

cc: Client (w/encl.)

Restricted-Use Report

**Best Western Carolinian Resort
2506 North Ocean Boulevard
Myrtle Beach, South Carolina
Our File #C12-0151**

For:
Mr. Lloyd Daniel
Strand Capital Group
1000 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

As of
August 3, 2012

By
Amit G. Patel
and
Edward F. Hucks, MAI, SRA
E. F. Hucks & Associates, Inc.
2411 North Oak Street, Suite 403
Myrtle Beach, S.C. 29577

Copyright © 2012
E.F. Hucks & Associates, Inc.

All rights reserved. No part of this document may be reproduced in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage and retrieval system without permission in writing from E.F. Hucks & Associates, Inc.



E. F. HUCKS & ASSOCIATES, INC.

Real Estate Appraisers & Consultants

E.F. "BUDDY" HUCKS, MAI, SRA
President

August 6, 2012

Mr. Lloyd Daniel
Strand Capital Group
1000 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

Re: Appraisal of the Best Western Carolinian Resort
2506 North Ocean Boulevard, Myrtle Beach, South Carolina
Our File #C12-0151

Dear Mr. Daniel:

At your request, we inspected the above referenced property for the purpose of completing a Restricted-Use appraisal report as of August 3, 2012. The Best Western Carolinian Resort is currently a hi-rise oceanfront building that contains a total of 102 hotel units and 129 condominium units. The subject of this report consists of the Commercial Unit located within the Best Western Carolinian Resort. The Commercial Unit is comprised of the 102 hotel units and lobby areas, a laundry facility, vending areas, storage rooms and other support facilities. The Commercial Unit, through its "front desk," also has management rights over 112 of the 129 condominium units located within the Best Western Carolinian Resort (via Management Contracts). In addition to the oceanfront property, there is also a 2nd row and 3rd row garage that the Best Western Carolinian and Bluegreen Resort shares. The scope of this assignment is to estimate the combined Fee Simple market value of the subject Hotel Units and the Going Concern interest that the owner of the Commercial Units has over 112 managed units within the Best Western Carolinian Resort, based on "As Is" condition, as of August 3, 2012. It is to be noted that the value indication provided is subject to the terms, restrictions and limitations of the Best Western Carolinian HPR Master Deed.

This Restricted-Use Report was prepared in accordance with the suggestions as detailed in Advisory Opinions AO-11 of the *Uniform Standards of Professional Appraisal Practice*, 2007 Edition, published by The Appraisal Foundation. AO-11 concerns the content of the Appraisal Reporting Options of Standard Rule 2.

The results of our findings and analyses are contained in the attached appraisal report that is intended to meet the minimum requirements for the Uniform Standards of Professional Appraisal Practice and Federal Regulation 12 CFR Part 34 (Title IX of FIRREA).

MYRTLE BEACH
2411 North Oak Street
Suite 403
Myrtle Beach, SC 29577
Phone (843) 497-9192
Fax (843) 497-9542
website: efhucks.com



The attached report sets forth the identification of the property and the assumptions and limiting conditions, pertinent facts about the area and the subject property, comparable data, the results of the investigations and analyses, and the reasoning leading to this conclusion. The appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

Based upon the investigations and analyses undertaken, we have formed the opinion that the combined Fee Simple market value of the subject hotel units and commercial units, and the **Going Concern interest that the owner of the Commercial Unit has over 112 managed units** within the Best Western Carolinian Resort, based on "As Is" condition, as of August 3, 2012 (including FF&E valued at \$388,952) is estimated at:

FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS

(\$5,700,000)

Overall "As Is" Market Value

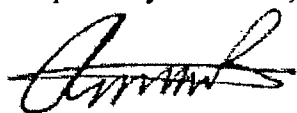
102 Owned Hotel Units & 112 Managed Condominium Units

Per the client's request, we have allocated the hotel units from the managed units. Below are our estimated allocations for each of the components.

Overall Value and Allocation Values		
Hotel and Management Rights	Market Value "As Is" Overall	\$ 5,700,000
Hotel Component Only	Estimated Market Value "As Is"	- \$ 4,600,000
	Management Rights Component Only	\$ 1,100,000

If we can be of any further assistance, please do not hesitate to contact us.

Respectfully submitted,



Amit G. Patel

Certified General RE Appraiser #CG5077



Edward F. Hucks, MAI, SRA

Certified General RE Appraiser #CG138

MISSION STATEMENT



E. F. HUCKS
& ASSOCIATES, INC.

Real Estate Appraisers & Consultants

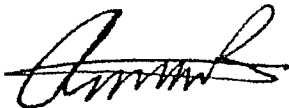
E.F. Hucks & Associates, Inc. is committed to providing our clients with realistic, reliable residential and commercial appraisal services and development consulting services that will enable our clients to make informed decisions that are vital to their success in the accomplishment of their goals.

We will provide our services to owners, lenders, investors and developers in a professional manner for fees that are both reasonable and profitable.

Certificate of the Appraisers

We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial and unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- Amit G. Patel and Edward F. Hucks have made an inspection of the subject property. Amit G. Patel made an interior and exterior inspection of the property. Edward F. Hucks has only made an exterior inspection of the property.
- No one provided significant real property appraisal assistance to the persons signing this certification. Per USPAP guidelines, E. F. Hucks & Associates, Inc. stipulates that we **have** appraised the subject property within the last 36 months prior to accepting this assignment. Our previous employment has no influence on the value conclusions contained herein.
- As of the date of this report, Amit G. Patel has completed the requirements of the continuing education program of the State of South Carolina and is a Certified General Real Estate Appraiser, #CG 5077 by the State of South Carolina.
- As of the date of this report, Edward F. Hucks, MAI, SRA has completed the requirements of the continuing education program of the Appraisal Institute. Edward F. Hucks, MAI, SRA is a Certified General Real Estate Appraiser #CG138 by the State of South Carolina, and a Certified General Real Estate Appraiser #A394 by the State of North Carolina.

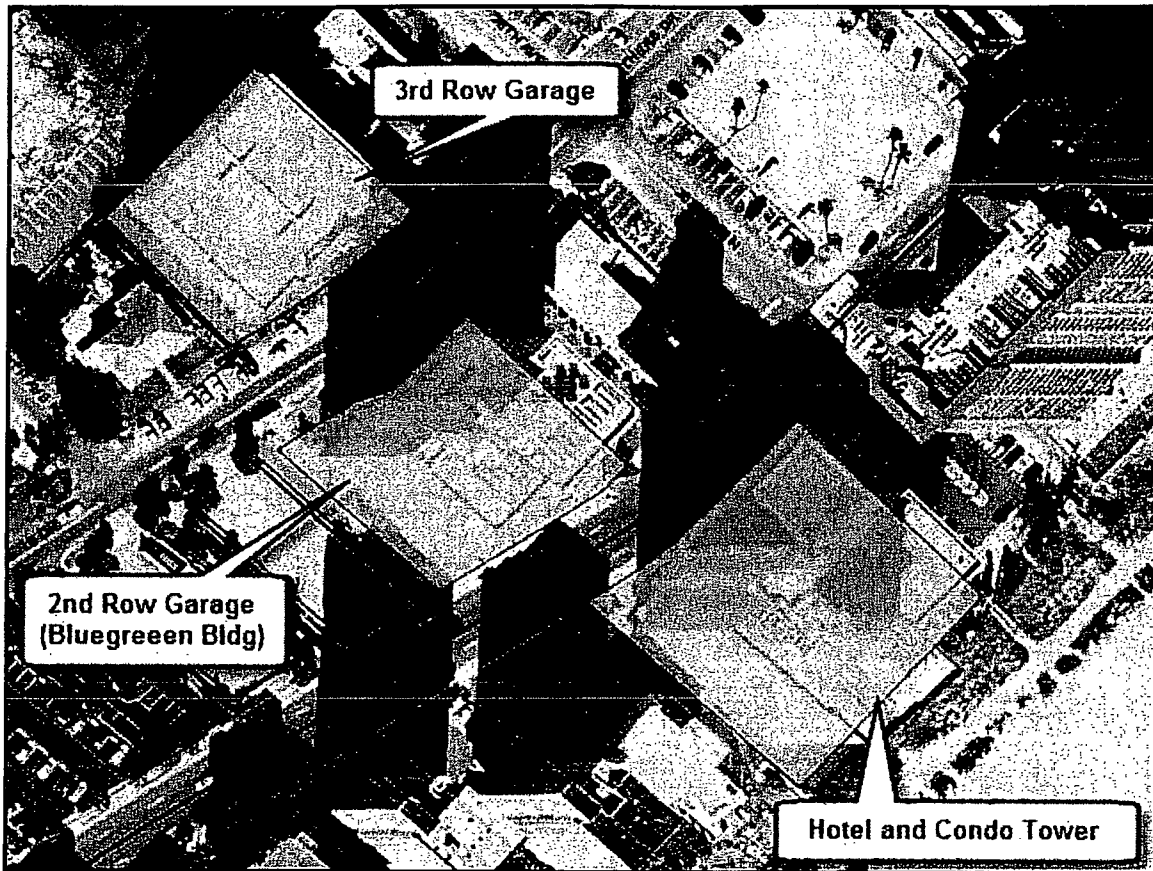


Amit G. Patel
Certified General RE Appraiser CG5077



Edward F. Hucks, MAI, SRA
Certified General RE Appraiser CG138

Summary of Salient Facts and Conclusions



Property Identification	Best Western Carolinian Resort Hotel and Condo Management Rights	
Property Address	2506 North Ocean Boulevard Myrtle Beach, South Carolina	
Tax Map Numbers	Motel Building	181-04-16-241
	Commercial Unit C-2	181-04-16-241
	Commercial Unit C-3	181-04-16-243
	Parking Deck	181-04-04-005
Owner of Record	Carolinian, LLC	
Date of Appraisal	August 6, 2012	
Date of Value	August 3, 2012	
Purpose	Estimate the Fee Simple interest in the subject motel unit and Commercial Unit, along with the Going Concern interest the owner of the Commercial Unit has over 112 managed units within the Best Western Resort.	

Land Size

Portions of the subject are Commercial Units located within the Best Western Condo Tower HPR. For this reason, there is no land physically attributable to the subject Commercial Units. The resort shares land with a combined hotel building and a condo-hotel building. Best Western Carolinian Resort is situated on a 28,350± SF site that has approximately 155± feet of frontage along the Atlantic Ocean. The resort also has shares access to 2nd and 3rd row parking garage with Bluegreen Timeshares.

Improvements

The subject is comprised of two buildings (1) Hotel building containing 102 units and (2) Management rights in all the Commercial Units located within the Best Western Carolinian Resort condominium tower. The Commercial Unit is comprised of 102 hotel units, as well as a lobby area, laundry area, vending areas, and other support facilities. The subject also includes Commercial Units (C-1, C-2 and C-3) within the Best Western Carolinian Tower. The commercial units are essentially the management rights over 112 condominium units located within the resort.

Zoning

The oceanfront parcel that contains the subject property is zoned PUD by the City of Myrtle Beach.

**Highest and Best Use
"As Improved"**

Continued Accommodations & Rental Management Use

Marketing Period

One Year (12 Months) or less.

Exposure Period

One Year (12 Months) or less.

Indicated Values

Sales Comparison Approach	\$ 5,700,000
Income Approach	\$ 5,700,000

FINAL MARKET VALUE:

\$ 5,700,000

Overall Value and Allocation Values		
Hotel and Management Rights	Market Value "As Is" Overall	\$ 5,700,000
Hotel Component Only	Estimated Market Value "As Is"	\$ 4,600,000
	Management Rights Component Only	\$ 1,100,000

Assumptions and Limiting Conditions

This appraisal report has been made with the following general assumptions:

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
3. Responsible ownership and competent property management are assumed.
4. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
5. All engineering is assumed to be correct. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
7. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless nonconformity has been stated, defined, and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

This appraisal report has been made with the following general limiting conditions:

1. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
2. Possession of this report, or a copy thereof, does not carry with it the right of publication.
3. The appraisers, by reason of this appraisal, are not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.

4. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers, or the firms with which the appraisers are connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraisers.
5. That the appraisers have personally inspected the subject property and finds no obvious evidence of structural deficiencies except as stated in this report; however, no responsibility for hidden defects or conformity to specific governmental requirements, such as fire, building and safety, earthquake, or occupancy codes, can be assumed without provision of specific professional or governmental inspections.
6. That no termite inspection report was available, and the appraiser assumed the improvements to be free of infestation or damage caused by termites or other wood boring insects.
7. Hazardous Waste: Unless otherwise stated in this report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyls, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, or other environmental conditions, were not called to the attention of nor did the appraiser become aware of such during the appraisers' inspection. The appraisers have no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraisers, however, are not qualified to test such substances or conditions. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation, or other hazardous substances or environmental conditions, may affect the value of the property, the value estimated is predicated on the assumption that there is no such condition on or in the property or in such proximity thereto that it would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them.
8. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. I (we) have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider possible non-compliance with the requirements of the ADA in estimating the value of the property.
9. Wetlands legislation is ever changing and interpretations of their whereabouts are beyond the appraiser's expertise. If wetlands exist and their impact on the value of the subject property are not discussed in this report, the value estimate for the subject will need to be reconsidered by the appraiser and the value conclusions contained herein are not applicable.

10. We have noted in this appraisal report any significant adverse conditions (such as needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) discovered during the data collection process in performing the appraisal. Unless otherwise stated in this appraisal report, we have no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, mold existence, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and have assumed that there are no such conditions and make no guarantees or warranties, express or implied. We will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because we are not experts in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property. We obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable public and/or private sources that we believe to be true and correct.

Extraordinary Hypothetical Conditions

There were no hypothetical conditions necessary for the completion of this assignment.

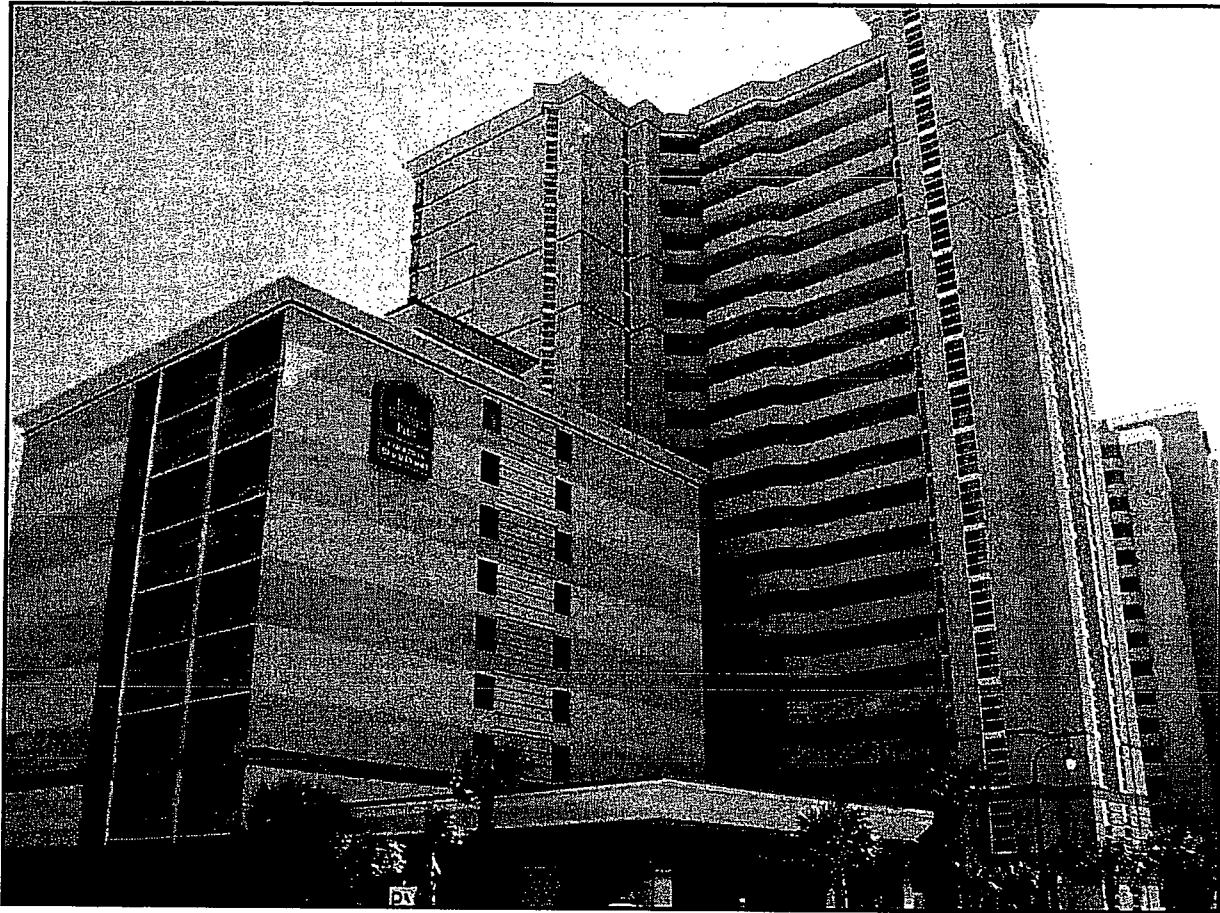
Extraordinary Assumptions

There were no extraordinary assumptions necessary for the completion of this assignment.

Appraisal Development and Reporting Options

This appraisal assignment was intended to be a **Restricted-Use Report**.

Identification of the Subject Property



The subject is comprised of two buildings (1) Hotel building containing 102 units and (2) Management rights in all the Commercial Units located within the Best Western Carolinian Resort condominium tower. The Commercial Unit is comprised of 102 hotel units, as well as a lobby area, laundry area, vending areas, and other support facilities. The subject also includes Commercial Units (C-1, C-2 and C-3) within the Best Western Carolinian Tower. The commercial units are essentially the management rights over 112 condominium units located within the resort.

As of the date of inspection, there were 112 condominiums participating within the management agreement located within the resort. The management rights are inclusive of fee simple ownership of the C-1, C-2 and C-3 units within the condominium tower. The management company operates/rents the condominiums from the hotel building located adjacent to the high-rise condo tower. The management contracts allow the owner of the Commercial Unit to rent the condominium units on behalf of the owner of the individual condominium unit. In exchange for the rental services, the owner of the Commercial Unit charges a fee of 45% on the room revenues generated. On the next page we have provided a chart showing the room types and condominium types.

Hotel	Room Type	View	Total	Ending Room #
	AC	OF EFF	40	03, 04, 06, 07
	BC	OF	19	02, 08
	CC	OF	10	5
	DC	OV	8	10
	EC	NO View	8	1
	GC	NO View	7	0
	HC	OV	9	9
	KC	OV	1	1000
Total			102	
Condos	Room Type	View	Total	Ending Room #
1 Bed	1C	OF	20	31, 932, 1432
	FC	OV	36	35
	JC	OV	15	34
2 Bed	2C	OF	36	32, 33
	IC	OF	20	30, 1032, 1533
3 Bed	3C	OF	2	933, 1433
Total			129	

Of the total 129 units in the entire building as of the date of inspection 112 units are participating in the rental management program or 87%. Below is a chart showing the units that are participating currently.

Participating Condos	
Type	# of Units
1 BR	
1C	20
FC	30
JC	15
	65
2 BR	
2C	28
IC	17
	45
3 BR	
3C	2
	2
Total	112

Legal Descriptions

The Commercial Unit is described in the Master Deed as follows:

XXXVI

DEFINITIONS

A. The term "UNIT" or "UNITS" shall be synonymous with the term "Apartment" or "Apartments" as those terms are used under the Horizontal Property Act of the 1976 Code of Laws of South Carolina, as amended.

B. "COMMERCIAL UNIT" means the three (3) separately designated UNITS on which and through which commercial activities may be conducted as set forth in this Master Deed. Without limiting the commercial activities reserved in favor of the COMMERCIAL UNIT as set forth in this Master Deed, the COMMERCIAL UNIT may be used for all legal commercial or business purposes including, but not limited to, purposes of general rentals, management, offices, shops, stores, sales, meeting rooms, restaurant, lounge, game room, health spa, night clubs or any combination of such uses.

C. "Building" means a structure or structures containing in the aggregate two or more apartments or UNITS, or containing COMMON ELEMENTS comprising a part of the Condominium.

D. "CO-OWNER" or "OWNER" means a person, firm, corporation, partnership, association, trust, or other legal entity or any combination thereof, who owns a UNIT within the Condominium.

E. "Assessment" means a UNIT OWNER'S prorata share of the common expenses which from time to time is assessed against a UNIT OWNER by the ASSOCIATION.

F. "ASSOCIATION" means council of CO-OWNERS as defined by the Horizontal Property Act and also means Carolinian Resort Homeowners' Association, Inc., the corporate form by which the council of CO-OWNERS shall operate Carolinian Resort Horizontal Property Regime.

G. "Common Expense" means the expenses for which the UNIT OWNERS are liable to the ASSOCIATION and include without limitation:

1. Expenses of administration, management, maintenance, insurance, operation, repair or replacement of the COMMON ELEMENTS and of the portions of UNITS which are the responsibility of the ASSOCIATION.

2. Expenses declared common expenses by provisions of this Master Deed;

3. Any valid charges against the Condominium as a whole, including but not limited to any utilities for the Condominium as a whole.

4. Expenses for taxes, maintenance, upkeep, repair and replacement of facilities located upon the easement property, including without limitation the parking garage and surface parking areas.

CAROLINIAN RESORT
HORIZONTAL PROPERTY REGIME

EXHIBIT "B"
TO
MASTER DEED

NOTE: Exhibit "B" are two surveys prepared by Huntley & Associates, Inc. dated April 12, 2004, and April 7, 2004, (said surveys are hereinafter referred to as the "Survey"), which shows the location of the building and other improvements located on the property submitted hereto and upon the property subject to the easement submitted hereto, and a set of floor plans prepared by Timbes Architectural Group dated April 12, 2004, consisting of 25 sheets numbered as Sheets A1.01 through A1.12, A1.14 through A1.21, A3.01, A2.01, A2.02, A4.01 and A4.02 (the "Plans"), which shows graphically the dimensions, area and location of each UNIT therein, and the dimensions, area and location of the COMMON ELEMENTS affording access to each UNIT. Both the Survey and Plans are recorded in Condominium Plat Book E at Page 6, records of Horry County, South Carolina and are incorporated herein by this reference. Said Exhibit further includes the following:

The Condominium consists of one hundred twenty-nine (129) residential UNITS and five (5) COMMERCIAL UNITS, together with surface parking, pools and other amenities on the parcel of property containing the buildings. The fee simple title to the land subject to the easement set forth in Exhibit A is not hereby submitted. The COMMERCIAL UNITS are designated as UNIT C-1, C-2, C-3, C-4 and C-5. The UNITS are located within two attached buildings, one containing ten (10) levels and one containing twenty (20) levels, including the ground level. The building containing ten levels is designated as a 10 Story Hotel on the Plans and comprises COMMERCIAL UNIT C-1, portions of COMMERCIAL UNIT C-2, and COMMERCIAL UNIT C-3. COMMERCIAL UNIT C-4 AND C-5 are located within the twenty-story building. All residential UNITS are located on levels two (2) through twenty (20) of the twenty story building, as shown on the Plans. Access to the UNITS is by way of stairs and elevators which are accessed from the ground level as shown on the Plans and which stairs and elevators are COMMON ELEMENTS. The elevators and stairs exit onto corridors or passageways on each level which provide access to each UNIT.

All residential UNIT designations consist of a UNIT number as designated on the Plans. On all floors, the first digit (if the UNIT number consists of only three digits) or the first two digits (if the UNIT number consists of four digits) indicates the floor on which the UNIT is located. There is no level designated thirteen (13) and consequently no UNIT number designations begin with the number thirteen (13). The UNIT type as shown on the Plans is not part of the Unit designation.

The location of each UNIT and its UNIT number designation, its square footage and dimensions are as shown on the Plans. Further, each residential UNIT is accessed through a door opening onto a passageway which is a COMMON ELEMENT.

All built-in kitchen appliances, counters, cabinets, refrigerators, heating, ventilation and air-conditioning systems serving each of the UNITS are a part of the UNIT that they serve and are not COMMON ELEMENTS. The balcony (if any) adjacent to a UNIT, including the railing thereof,

which is accessible by normal means from that UNIT, is a LIMITED COMMON ELEMENT for the exclusive use of that UNIT.

The Survey shall control over the Plans as to the actual location of the building upon the ground.

COMMERCIAL UNIT C-1 consists of all areas designated as such on the Plans, including without limitation the ten levels of the 10 Story Hotel as designated on the Plans, less areas designated as part of COMMERCIAL UNIT C-2 or C-3.

COMMERCIAL UNIT C-2 consists of all areas designated as such on the Plans, including without limitation the areas designated as Lobby and Check In on the ground level.

LIMITED COMMON ELEMENTS appurtenant to COMMERCIAL UNIT C-2 include without limitation the trash, chemical storage, HVAC, elevator lobby, parking areas, and pool decks on the Ground Level, the telephone, mechanical, electrical, and fire command areas on the Second Level, and the electrical rooms on the Third through Twentieth Levels.

COMMERCIAL UNIT C-3 consists of all areas designated as such on the Plans, including without limitation the elevators, hallways and stairways located on all floors within the 10 story hotel building.

COMMERCIAL UNIT C-4 consists of all areas designated as such on the Plans, including without limitation the areas designated as Maids and Vending on levels two through 21.

COMMERCIAL UNIT C-5 consists of all areas designated as such on the Plans, including without limitation the areas designated as Breakfast Room, Telephone, Women's and Men's Restroom on the second level.

Furthermore, a perpetual, appurtenant, exclusive easement for advertising is hereby reserved over the corridors, passageways, elevators, building exterior, parking garage and other COMMON ELEMENTS, which easement is a LIMITED COMMON ELEMENT for the exclusive use and benefit of COMMERCIAL UNIT C-2 and the owner thereof. The Owner of COMMERCIAL UNIT C-2 has the right to maintain and control any movable type of signs that may be located on the COMMON ELEMENTS. Further, an exclusive, perpetual, appurtenant easement is hereby reserved for the benefit of C-2 and the OWNER thereof on the roof of the buildings containing the UNITS for the installation, maintenance and repair of antennas, satellite dishes, cell towers and other receiving, transmitting and communication devices, which easement includes the right to lease space for such facilities to third parties. Notwithstanding that the areas containing mechanical, electrical, fire or other systems servicing the Condominium are designated as a portion of COMMERCIAL UNIT C-2, said systems are COMMON ELEMENTS and the ASSOCIATION is hereby granted a non-exclusive easement through said areas as is reasonably necessary to utilize, repair, maintain and replace said COMMON ELEMENTS.

References to areas as COMMON ELEMENTS and LIMITED COMMON ELEMENTS in this Exhibit shall be in addition to and read in conjunction with the further designations of COMMON ELEMENTS and LIMITED COMMON ELEMENTS as set out in other portions of this Master Deed and the Survey and Plans making up the balance of this Exhibit "B".

The commercial units are also identified by the tax records of Horry County as map numbers:

Commercial Unit C-3	181-04-16-243
Commercial Unit C-2	181-04-16-241
Parking Deck	181-04-04-005

The management contracts that are a part of the subject do not have a legal description. The 112 units that the owner of the Commercial Unit has "management rights" over are identified as follows:

Participating Condos		
Type		# of Units
1 BR		
	1C	20
	FC	30
	JC	15
		65
2 BR		
	2C	28
	IC	17
		45
3 BR		
	3C	2
		2
	Total	112

Scope of the Appraisal

Scope of work is the amount and type of information researched and the analysis applied in the assignment. Scope of work includes, but is not limited to, the following:

- The degree to which the property was inspected or identified;
- The extent of research into physical or economic factors that could affect the property;
- The extent of data research; and
- The type and extent of analysis applied to arrive at opinions or conclusions.

Inspection of Property: The subject property was inspected on August 3, 2012, which is the date of value for this property. Pictures of the property were taken and the interior and exteriors of the building were inspected.

Research of Market Data: We investigated appropriate market data for utilization in the Sales Comparison and Income approaches to value for the subject property. Our investigations included research of public records through the used of commercial sources of data such as printed comparable data services, computerized databases, etc. Search parameters such as dates of sales, lease, locations, sizes, types of properties and distances from the subject started with relatively narrow constraints, and have been expanded until we retrieved sufficient data to estimate market value, or until we reasonably exhausted the available pool of data. We viewed the researched sales, and if deemed appropriated, we verified the data with people directly involved in the transactions such as buyers, seller, brokers, or agents.

We may have used, at our discretion some data that we were unable to verify, but in our opinion appeared to be correct. We also considered any appropriate listings of properties that we found through observation during our data collection process. We reported on the data that we deemed to be pertinent to the valuation problem.

Research of Easements or Restrictions: We investigated and analyzed pertinent easements or restriction, on the fee simple ownership of the subject property. A title report was not available to us therefore we relied on a visual inspection to identify any readily apparent easements or restrictions.

Analysis of Data: We analyzed the data that we found and arrived at conclusions regarding the market value, as defined in the report, of the subject property as of the date of value using appropriate valuation approaches identified above

Compliance with Appraisal Standards: We completed the appraisal report in compliance with appraiser's interpretation of the Uniform Standards of Profession Appraisal Practice as promulgated by The Appraisal Foundation and the Code of Professional Ethics and Certification Standard of the Appraisal Institute

Responsibility for Contamination: We were not responsible for ascertaining the existence of any toxic waste or other contamination present on or off the site. We reported any indications of toxic waste or contaminants that may affect value if they were readily apparent to us during our investigations. We caution the user of the report that we are not expert in such matters and that we may have overlooked contamination that might have been readily apparent to others.

Preparation of Appraisal Report: We prepared a report which included photographs of the subject parcel, descriptions of the subject neighborhood, the site, any improvements on the site, a description of the zoning, a highest and best use analysis, a summary of the most important sales used in our valuation, a reconciliation and conclusion, and other data that we deemed relevant to the report. Pertinent data and analyses not included in the report are retained in our files.

Objective of the Appraisal & Property Rights Appraised

The objective or purpose of this appraisal was to provide an estimate of the combined Fee Simple market value of the subject Commercial Unit and the Going Concern interest that the owner of the Commercial Unit has over 112 managed units within the Best Western Carolinian Resort, based on "As Is" condition, as of August 3, 2012, the date of our last inspection. It is to be noted that the value indication provided is subject to the terms, restrictions and limitations of the Carolinian Resort HPR Master Deed.

Market Value as defined by The Federal Register (volume 55 number 163, August 22, 1990, pages 34228 and 34229), and as found in *The Appraisal of Real Estate, Thirteenth Edition*, is: "The most probable price a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- A. Buyer and seller are typically motivated;
- B. Both parties are well informed or well advised, and each acting in what he considered his own best interest;
- C. A reasonable time is allowed for exposure in the open market;

- D. *Payment is made in terms of cash in US Dollars or in terms of financial arrangements comparable thereto; and,*
- E. *The price represents a normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."*

Fee Simple Interest: The Fee Simple Interest is described in *The Appraisal of Real Estate, Thirteenth Edition*, as follows: *"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."*

Leasehold Estate: The Leasehold Estate is described in *The Appraisal of Real Estate, Thirteenth Edition*, as *"The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions."*

Going-Concern Value: According to *The Appraisal of Real Estate, Thirteenth Edition*, going-concern value is defined as, *"An established and operating business with an indefinite future life. For certain types of properties (e.g., hotels and motels, restaurants, bowling alleys, manufacturing enterprises, athletic clubs, landfills), the physical real estate assets are integral parts of an ongoing business. The market value of such a property (including all tangible and intangible assets of the going concern, as if sold in aggregate) is commonly called its going-concern value."*

Condominium: According to *The Appraisal of Real Estate, Thirteenth Edition*, a condominium is a *"form of fee ownership of separate units or portions of multiunit buildings that provides for formal filing and recording of a divided interest in real property."*

Function of the Appraisal

This appraisal will aid in loan underwriting of the asset by the Strand Capital Group. It is our understanding that the appraisal will be utilized for mortgage underwriting purposes. Any other use of this report is forbidden without the written consent of the appraiser.

Date of Value

The subject property was physically inspected on several occasions, however, the effective date of this appraisal is August 3, 2012, the date of our last inspection.

Ownership and History of the Property

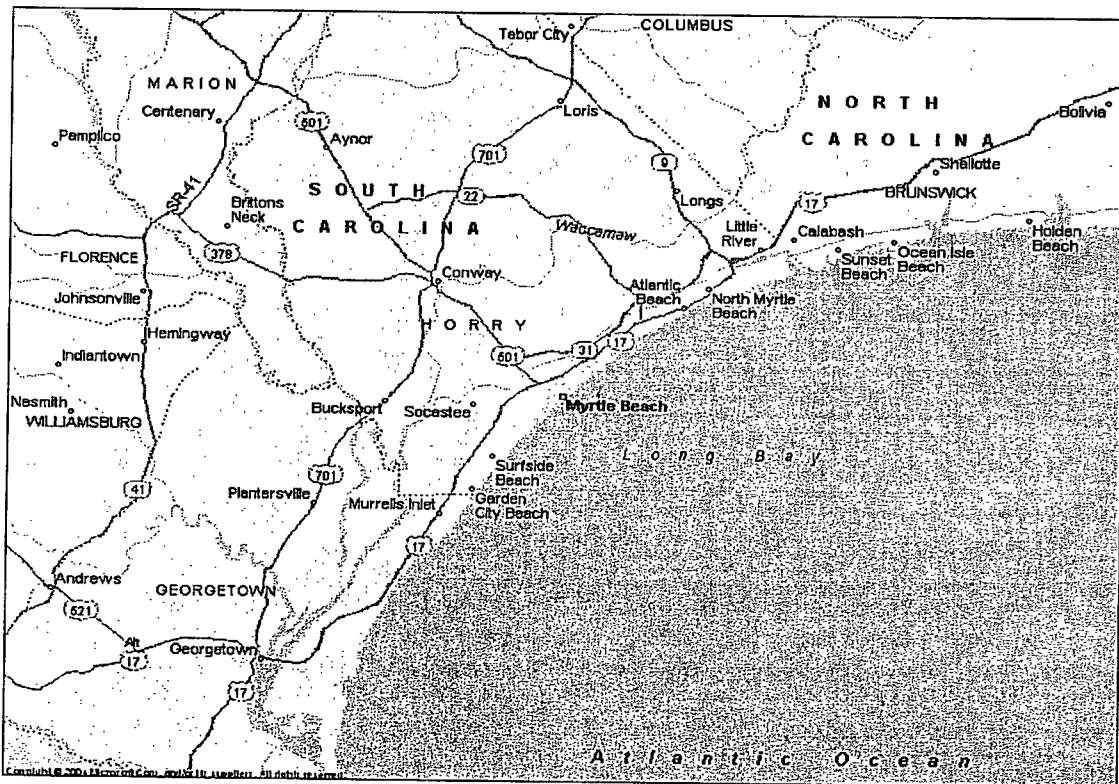
The subject hotel units and the Commercial Units and are under the ownership of Carolinian, LLC. There have been no ownership transfers of these two properties within the past three years. The 112 units that are being managed by the owner of the Commercial Unit (Carolinian, LLC) have individual owners.

Regional Data

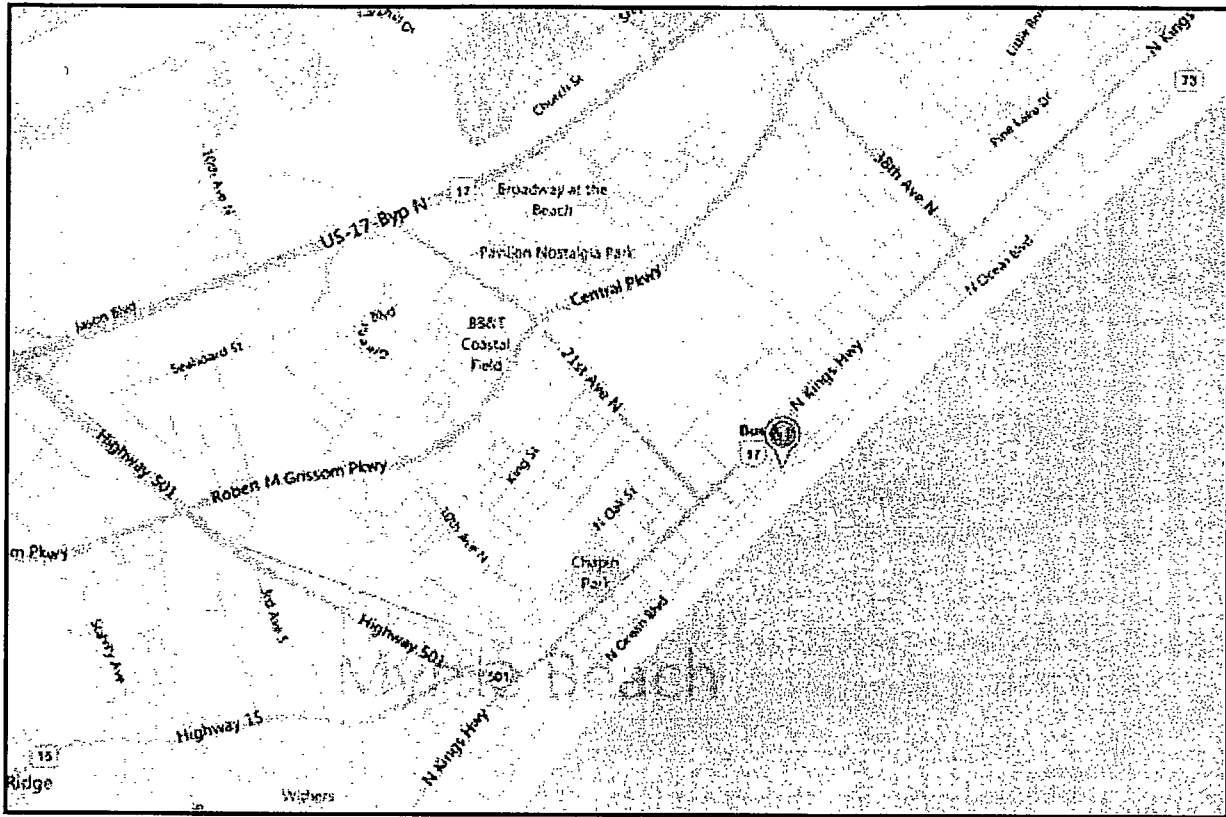
Grand Strand Area, Myrtle Beach, Horry County, South Carolina

Location

Myrtle Beach is located in Horry County, South Carolina; and is the center of the Grand Strand region, an internationally recognized vacation destination. This region includes the coastal areas of Horry and Georgetown Counties in northeastern South Carolina and Brunswick County in southeastern North Carolina. All three Counties are bounded on the southeast by the Atlantic Ocean.



Neighborhood Data



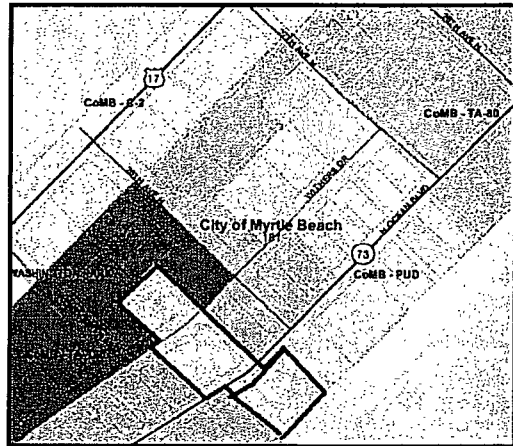
The subject property is located on the oceanfront at 2506 North Ocean Boulevard in Myrtle Beach, SC. The subject neighborhood is generally defined as the areas between the Atlantic Ocean (Eastern Boundary), near the Intracoastal Waterway (Western Boundary), 29th Avenue North (Northern Boundary) and the Springmaid Pier (Southern Boundary). Major traffic arteries that serve the neighborhood are Ocean Boulevard, Highway 17 Business, Highway 17 Bypass and Grissom Parkway. The neighborhood encompasses several different land uses, including, but not limited to, motels, hotels, condominiums, retail establishments, restaurants, single and multi-family homes and apartments.

Zoning

The subject is part of a larger Planned Unit Development District known as the 26th Avenue North. PUD's are typically designed on a per development basis. The standards for PUD vary depending on the developer and the governing authority's intent.

Typically speaking the intent is to design a plan that fits the benefits of the developer and the governing authority. Per our definition of a PUD per City of Myrtle Beach Zoning documents we discovered the following language... *"This section is intended to provide the method by which tracts of land may be developed as a unit rather than on a lot-by-lot basis as provided in the zoning ordinance. It is intended to*

provide a maximum of design freedom by permitting the developer an opportunity to more fully utilize the physical characteristics of the site through the reduction of lot sizes, yards, height and bulk restrictions and the planned mixing of uses. Through the requirement of the development plan, it is the intention that property under the PUD title will be developed through a unified design providing continuity among the various elements causing a better environment...".



The property is zoned PUD by the City of Myrtle Beach. This district is established to provide the development by which tracts of land may be developed as a unit rather than on a lot-by-lot basis as provided in the zoning ordinance. It is intended to provide a maximum of design freedom by permitting the developer an opportunity to more fully utilize the physical characteristics of the site through the reduction of lot sizes, yards, height and bulk restrictions and the planned mixing of uses. Through the requirement of the development plan, it is the intention that property under the PUD title will be developed through a unified design providing continuity among the various elements causing a better environment.

The applicable regulations are summarized below:

PUD

Minimum Site Area:	4 and 1/2 Acres
Maximum Building Height:	Dependent upon planning commissions requirements for the PUD. Common building height restrictions in the area are either 80 ft or 120 ft.
Minimum Front Yard:	Dependent upon planning commissions requirements for the PUD, unless in a residential PUD where the current rule reads - when the front wall of a building faces the front wall or rear wall of another building, the distance between the two buildings shall not be less than 20 feet.
Minimum Rear Yard:	Dependent upon planning commissions requirements for the PUD, unless in a residential PUD where the current rule reads - when the rear of a building faces the rear wall of another building, the distance shall not be less than 15 feet.
Minimum Side Yard:	Dependent upon planning commissions requirements for the PUD

We are not experts in the interpretation of complex zoning ordinances but the development appears to be a legal conforming use.

We know of no deed restrictions, private or public, that further limit the subject property's use. The research required to determine whether or not such restrictions exist, however, is beyond the scope of this appraisal assignment. Deed restrictions are a legal matter and only a title examination by an attorney or a title company can usually uncover such restrictive covenants. Thus, we recommend a title search to determine if any such restrictions exist.

We further assume that all necessary permits and appeals were been secured (including an appropriate liquor license), and that the subject property is otherwise in conformance with local building codes and all other applicable regulations.

Assessment and Taxes

The subject of this report is responsible for personal property and real estate taxes for the Hotel units and Commercial Unit.

Real Estate Taxes: Below, we have provided the assessments for the subject parcels:

2011 Property Taxes					
Improvement	Tax Map #	Tax Assesor MV	Assesed Value	Taxes	Status
Motel Building (C-1)	181-04-16-241	\$3,640,000	\$131,700	\$31,805.55	Paid
Commercial Unit (C-2)	181-04-16-241	\$1,000	\$60	\$14.49	Paid
Commercial Unit (C-3)	181-04-16-243	\$1,040	\$62	\$14.49	Paid
Commercial Unit (C-4)	181-04-16-244	\$1,000	\$60	\$14.49	Paid
Parking Deck (HOA)	181-04-04-005	\$2,000	\$120	\$28.98	Paid
Total		\$3,645,040	\$132,002	\$31,878	

2011 FF&E Taxes					
Account Number	Tax Assesor MV	Assesed Value	Taxes	Status	
4142166-04-0001	\$139,905	\$14,690	\$3,547.64	Paid	
Total		\$139,905	\$14,690	\$3,548	

Personal Property Taxes: A copy of the property's most recent personal property tax bill was provided. The 2011 FF&E component of the property was valued at \$139,905. Personal property is assessed at a 10.5% ratio of the current market value of the property. Its FF&E taxes were \$14,690±.

Personal property taxes do not remain level from year to year, and fluctuate based on the depreciation schedules of the various types of property purchased.

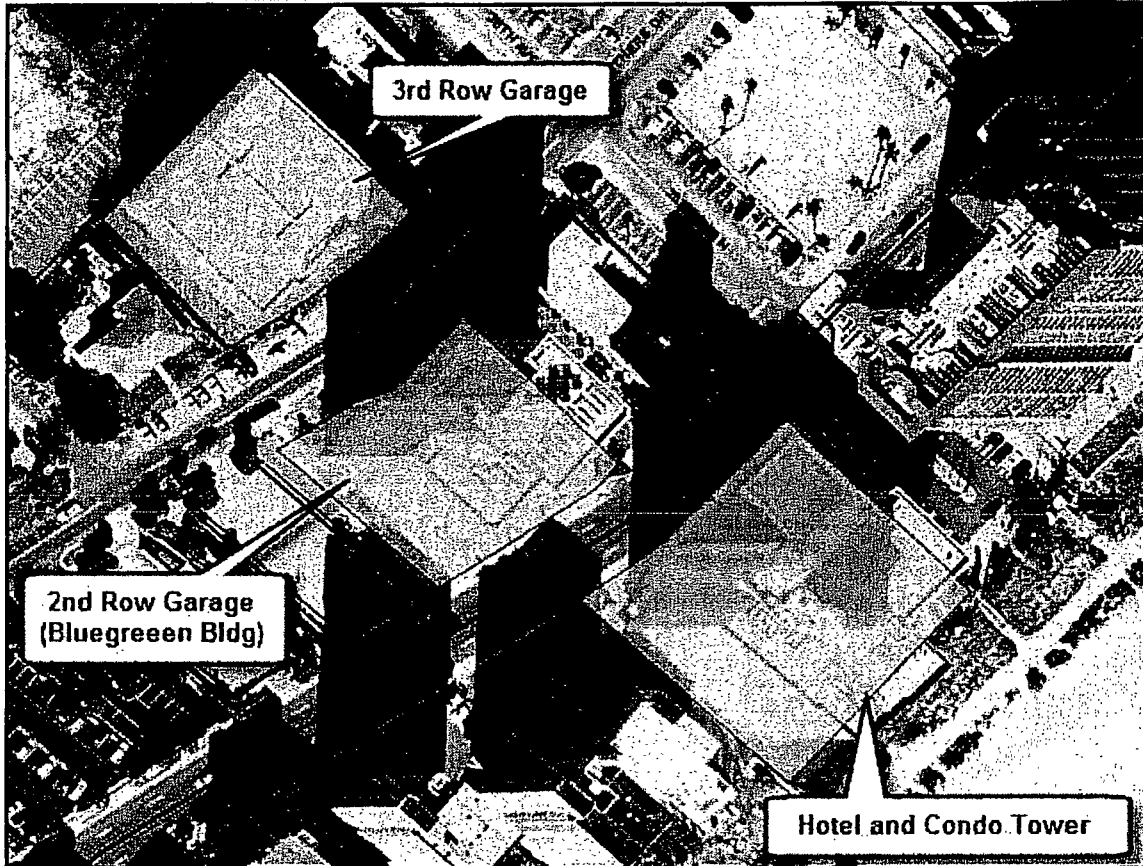
Total Taxes

2010 Property Taxes	
Real Estate Taxes	\$31,878
FF&E Taxes	\$3,547.64
Total	\$35,425.64

The total tax liability for the subject property in 2011 was \$35,425.64.

Site Data

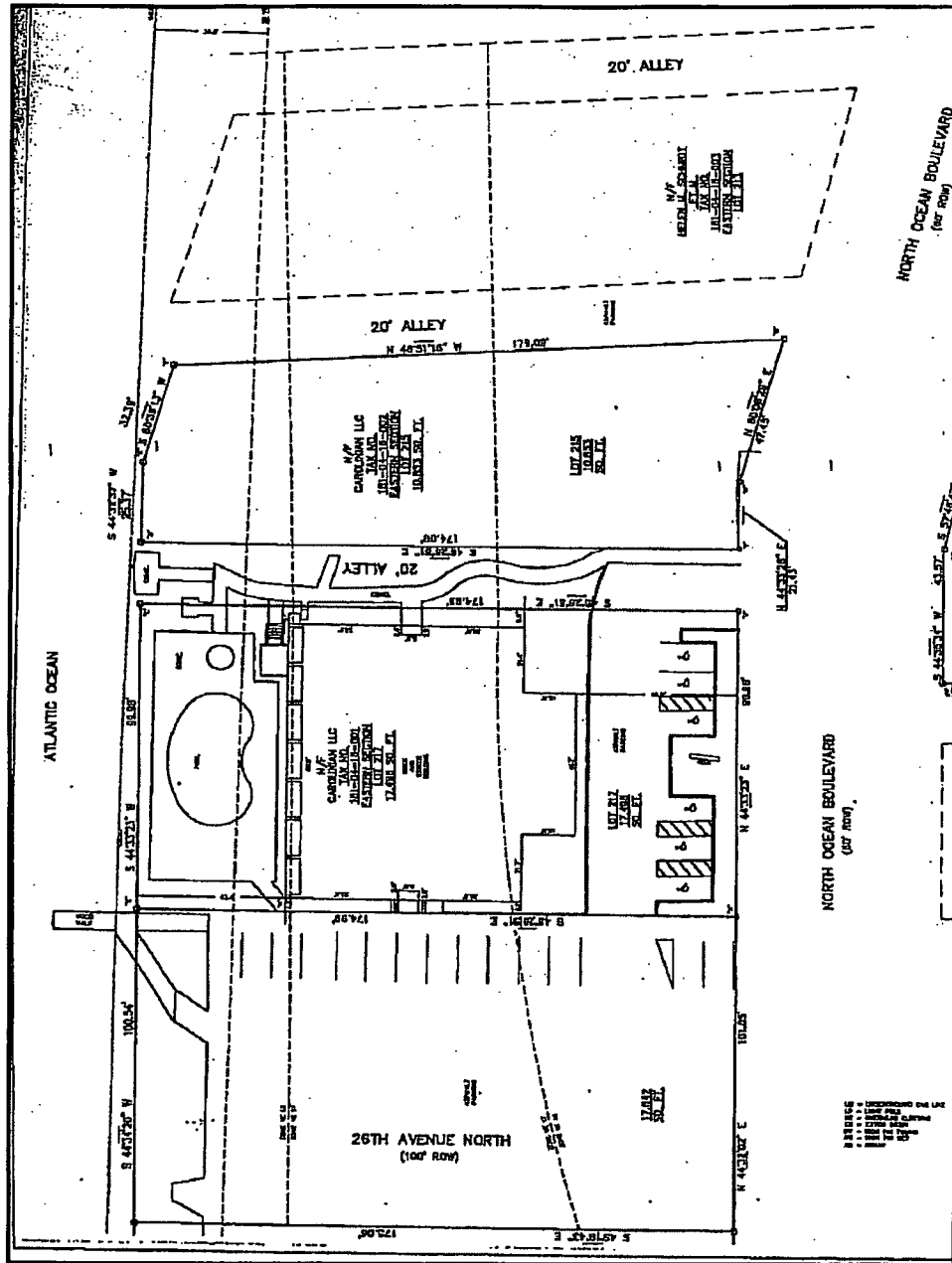
As stated earlier in the report, there is no land attributable solely to the subject of this report. The subject consists of hotel units and condominium "management rights." Below, we have provided the Site Data for the site that encompasses the Best Western Carolinian Resort. The data is provided for descriptive purposes only.

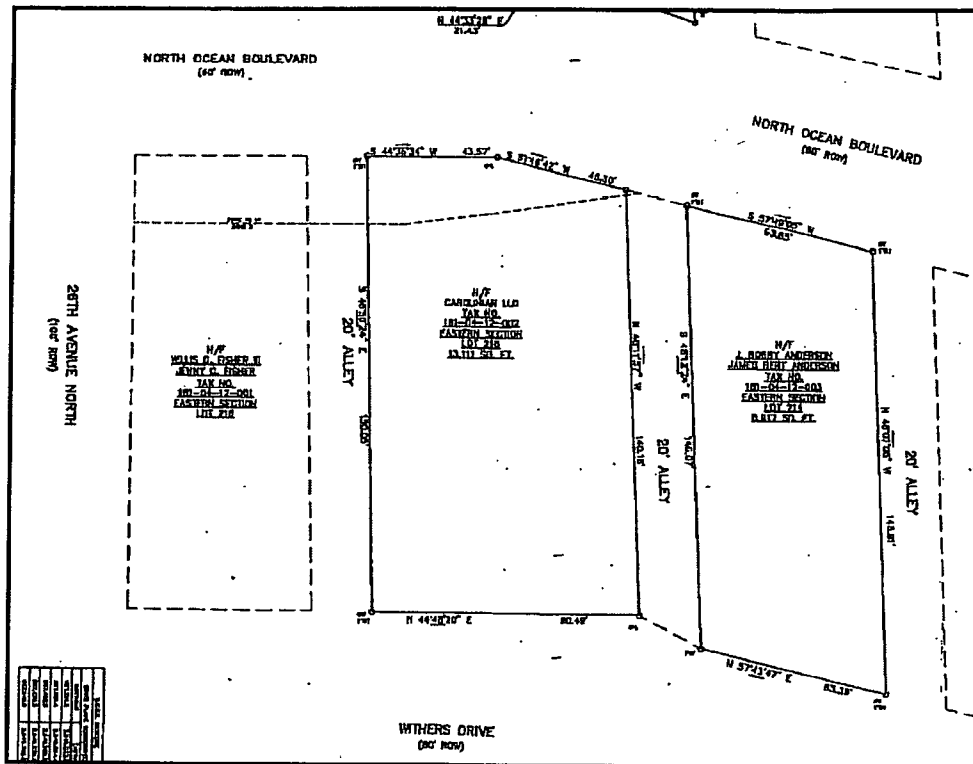
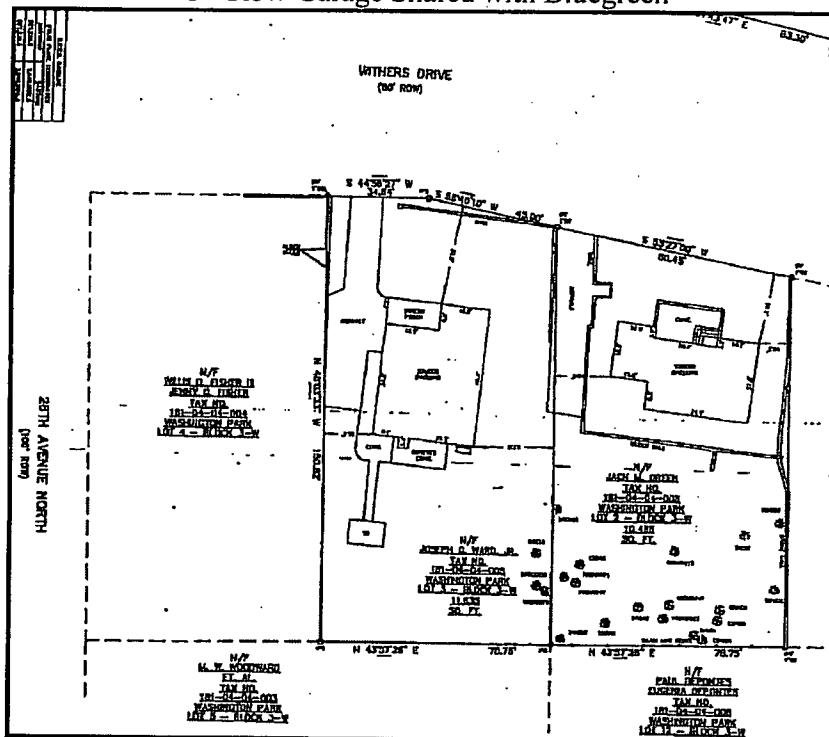


Location: The Best Western Carolinian Resort is situated on an oceanfront site located at 2506 North Ocean Boulevard in Myrtle Beach, SC. The 2nd row and 3rd row parking garages are utilized for parking by Best Western Carolinian Resort, is located between 25th & 26th Avenues North, on Ocean Boulevard.

Size, Shape and Frontage:

Portions of the subject are Commercial Units located within the Best Western Condo Tower HPR. For this reason, there is no land physically attributable to the subject Commercial Units. The resort shares land with a combined hotel building and a condo-hotel building. Best Western Carolinian Resort is situated on a 28,350± SF site that has approximately 155± feet of frontage along the Atlantic Ocean. The resort also has shares access to 2nd and 3rd row parking garage with Bluegreen Timeshares.



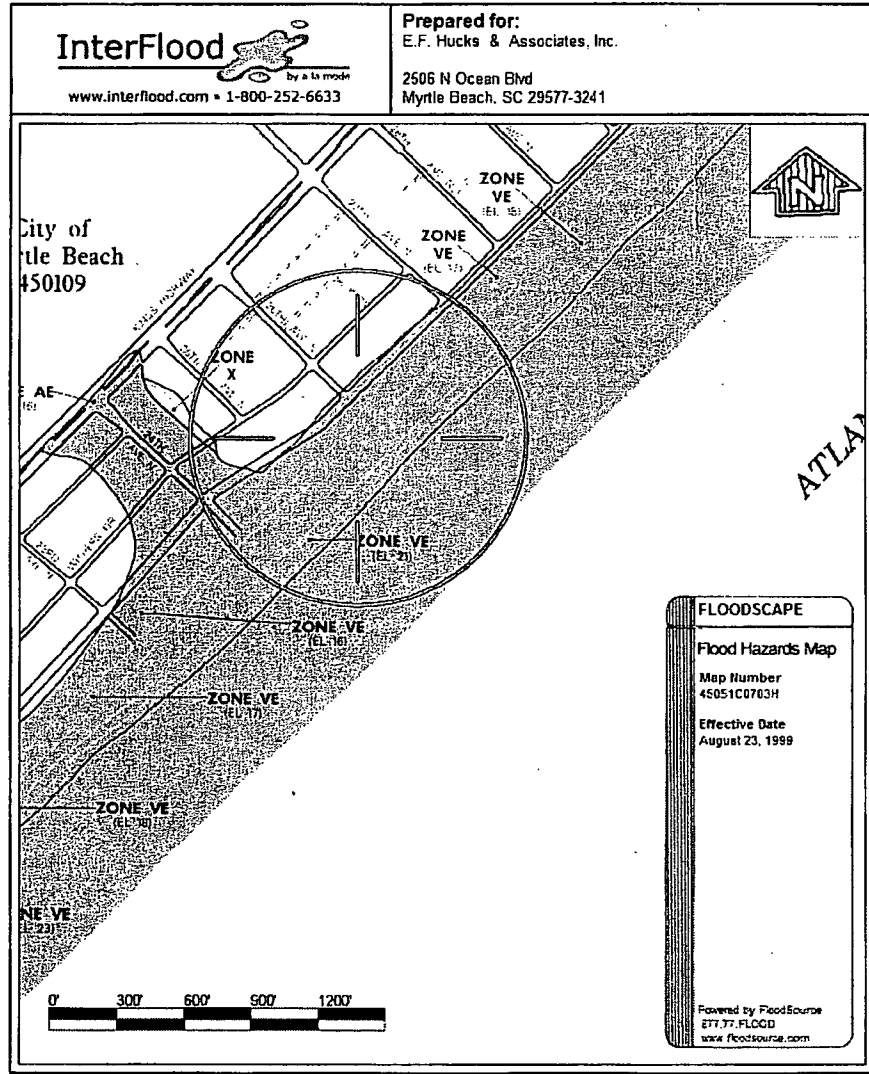
2nd Row Garage Parcel (Shared Garage below Bluegreen Tower)3rd Row Garage Shared with Bluegreen

Topography: Both the oceanfront and 2nd row sites are generally level at street grade. Both parcels have a slight west to east slope towards the ocean. This is considered typical of properties located in close proximity to the Atlantic Ocean.

Easements and Encroachments: Normal utility easements are located on the parcels that comprise the Best Western Carolinian Resort. According to our knowledge, there are no adverse easements or encroachments that would negatively affect the marketability of the site.

Flood Plain: According to FEMA flood map #45051C0703H, dated August 23, 1999, the oceanfront tract appears to be located on Flood Zones VE, AE, X500 and X. The 2nd row lot appears to be located in Zone X. Zones VE, AE and X500 are considered flood hazard areas. These zones, however, are considered typical of properties located in close proximity to the Atlantic Ocean.

Utilities: All public utilities including sewage are available to the oceanfront, 2nd and 3rd row parcels.



Description of the Improvements

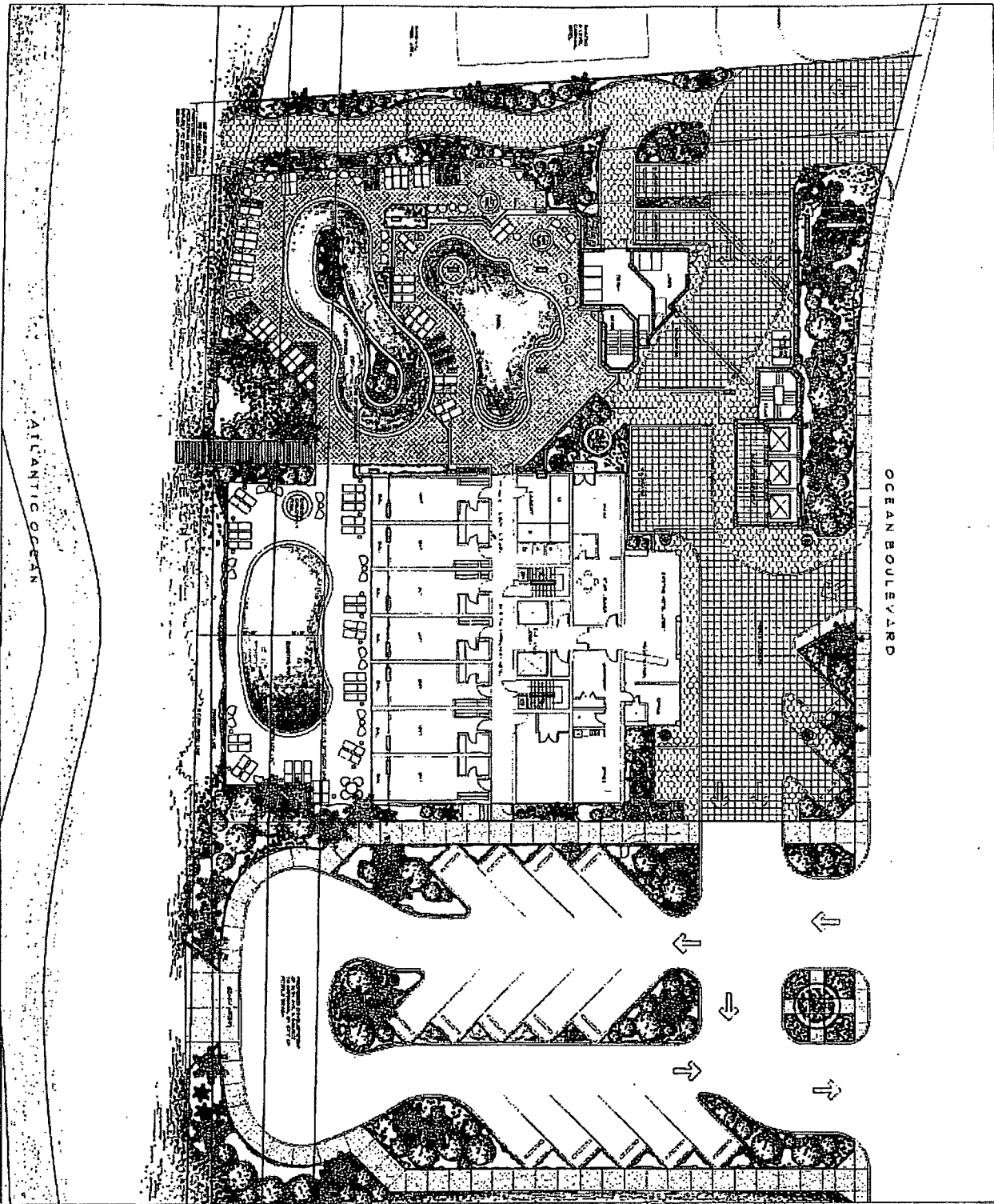
The following details are descriptions of the Hotel Building.

The hotel building consists of 102± limited service hotel units. The public space including the guest registration and lobby, business center and sales administrative office are located on the 1st floor. Additionally, some guestrooms are located on the 1st floor. The exercise room, game room and guest laundry are located on the third floor. Floors two through ten include the hotel's remaining guest rooms. Overall, the subject property physical improvements are functionally laid out and in average condition.

The following chart shows the breakdown of the type of units contained within the 10-story hotel building.

Hotel	Room Type	View	Total	Ending Room #
	AC	OF EFF	40	03, 04, 06, 07
	BC	OF	19	02, 08
	CC	OF	10	5
	DC	OV	8	10
	EC	NO View	8	1
	GC	NO View	7	0
	HC	OV	9	9
	KC	OV	1	1000
	Total		102	

On the following page we have provided a brief description of the building materials used in the subject hotel.



Please Note: All ocean views, maps, plans, landscaping, elevations, and interior views herein are based on artist renderings or computer generations for illustration purposes and are not guaranteed. The developer/builder reserves the right in his sole discretion to make changes or modifications to maps, plans, specifications, materials, features, and colors without notice. Product type is subject to availability.



THE CAROLINIAN RESORT HOTEL
MYRTLE BEACH, SOUTH CAROLINA, 2600 NORTH OCEAN BOULEVARD



SITE PLAN

Construction Detail

Year Built: 1989

Gross Building Area: ±50,826 square feet

Building Height: Ten-stories

Foundation: Concrete

Structural Frame: Steel frame, concrete and concrete block

Floors: Concrete

Exterior Walls: Dryvit, stucco

Roof: Flat deck roof with waterproof membrane cover

Windows: Single pane glass panel with aluminum casing

Doors: Safety glass in aluminum frames in public areas and wood guestroom doors

Mechanical Detail

Heating and Cooling: Package units for public spaces, individual electric heat pumps for guest rooms.

Electrical Service: Electrical service is provided by public utility and is assumed to be adequate.

Vertical Transportation: A total of two elevators provide transportation for the subject. There is an also one passenger elevator in the six story parking garage.

Fire Protection: Hardwired smoke detectors in the guestrooms and common areas. The building is fully sprinklered. Emergency lighting is located throughout the property.

Interior Detail:

Layout: Functionally efficient guestrooms and public areas

Floor Covering: Ceramic tile in the lobby and public lavatories; ceramic tile in guest bathroom areas; carpeting in guestrooms and other public areas; and quarry tile in back-of-the-house areas.

Walls: Typically vinyl wall covering with areas of painted drywall.

Ceilings: Painted drywall and acoustic tiles.

Lighting: Fluorescent and incandescent.

Bathrooms: Typically, guestroom bathrooms contain tub/shower, sink, and commode. Tub/shower and floors are ceramic tiled. The sinks are corian. A portion of the rooms have new granite countertops in the bathrooms.

Condominium Tower

The Best Western Carolinian Resort Condo tower is a 20-story hi-rise building located on the oceanfront at 2506 North Ocean Boulevard in Myrtle Beach, SC. The property was constructed in 2004±. The property originally contained 129 condominium units and various support facilities (pools, storage rooms, laundry rooms, etc.). The property also has a shared access parking with two garages located off the 2nd and 3rd row.

Below, we have provided a summary of the units that comprise the subject:

Condos	Room Type	View	Total	Ending Room #
1 Bed	1C	OF	20	31, 932, 1432
	FC	OV	36	35
	JC	OV	15	34
2 Bed	2C	OF	36	32, 33
	IC	OF	20	30, 1032, 1533
3 Bed	3C	OF	2	933, 1433
Total			129	

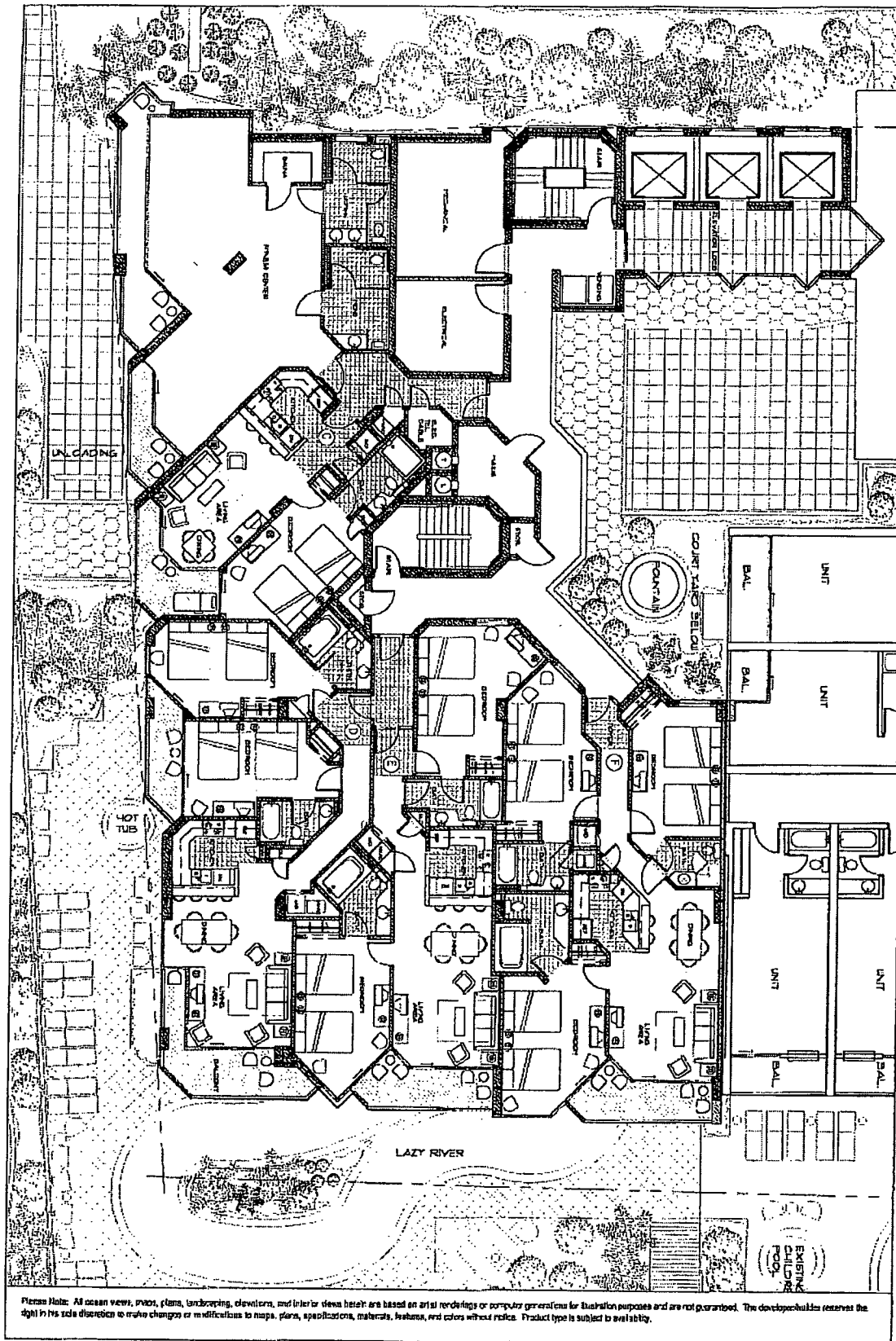
The exterior of the building is of reinforced concrete construction, with a stucco façade. The property was constructed on a concrete slab, with elevated slabs for the upper floors. The roof is flat and assumed to be in good condition. The property has exterior corridors that are carpeted.

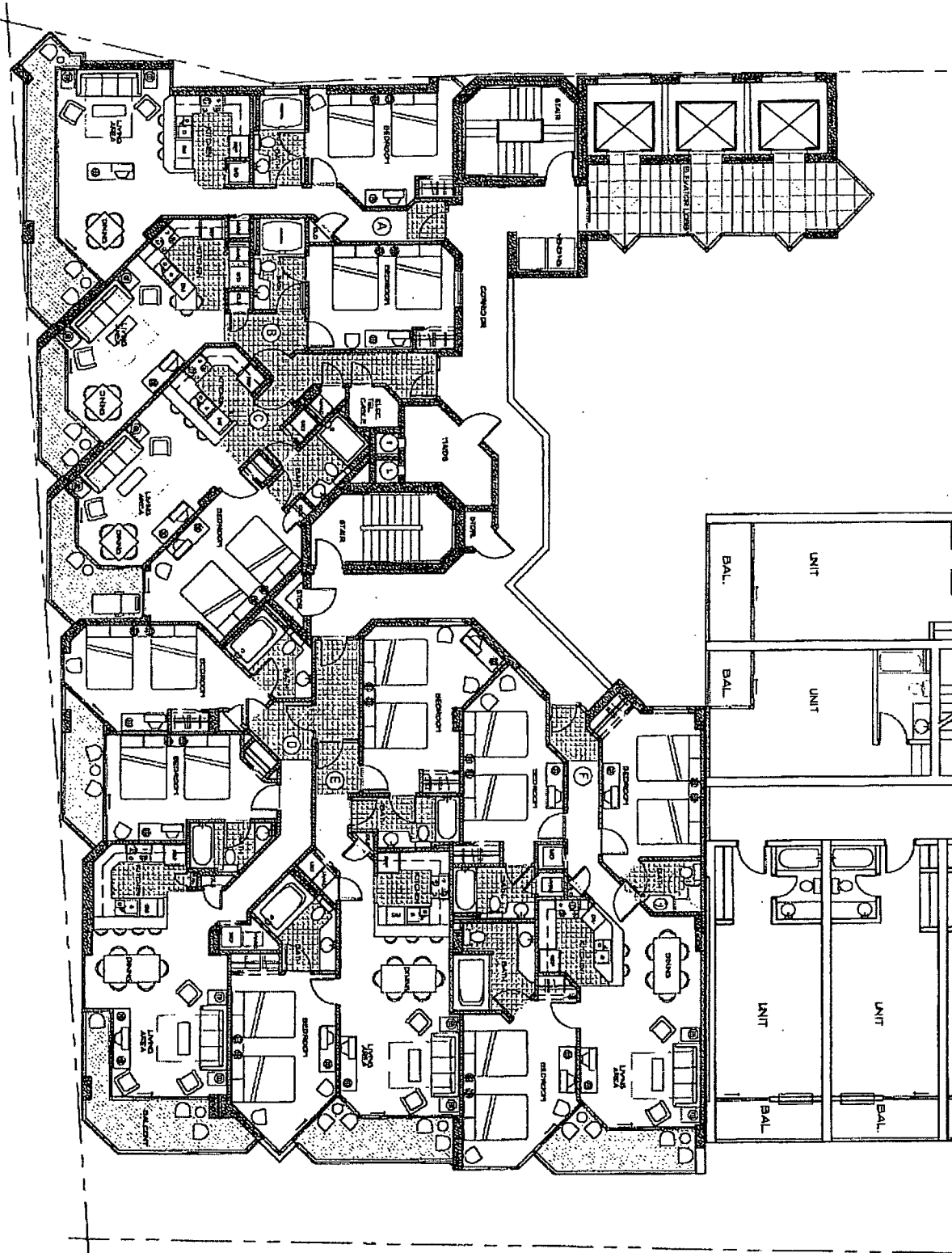
The interiors of several units were inspected. Condition and quality varied, as some units had recently been renovated, while others had not. All units have access via a solid wood or metal door with an electronic lock. For the most part, the subject units had tile and carpet floors, "knock down" wall surfaces, average quality FF&E, and average quality kitchen cabinets and appliances. Bathrooms have tile floors, good fixtures and a tub/shower unit.

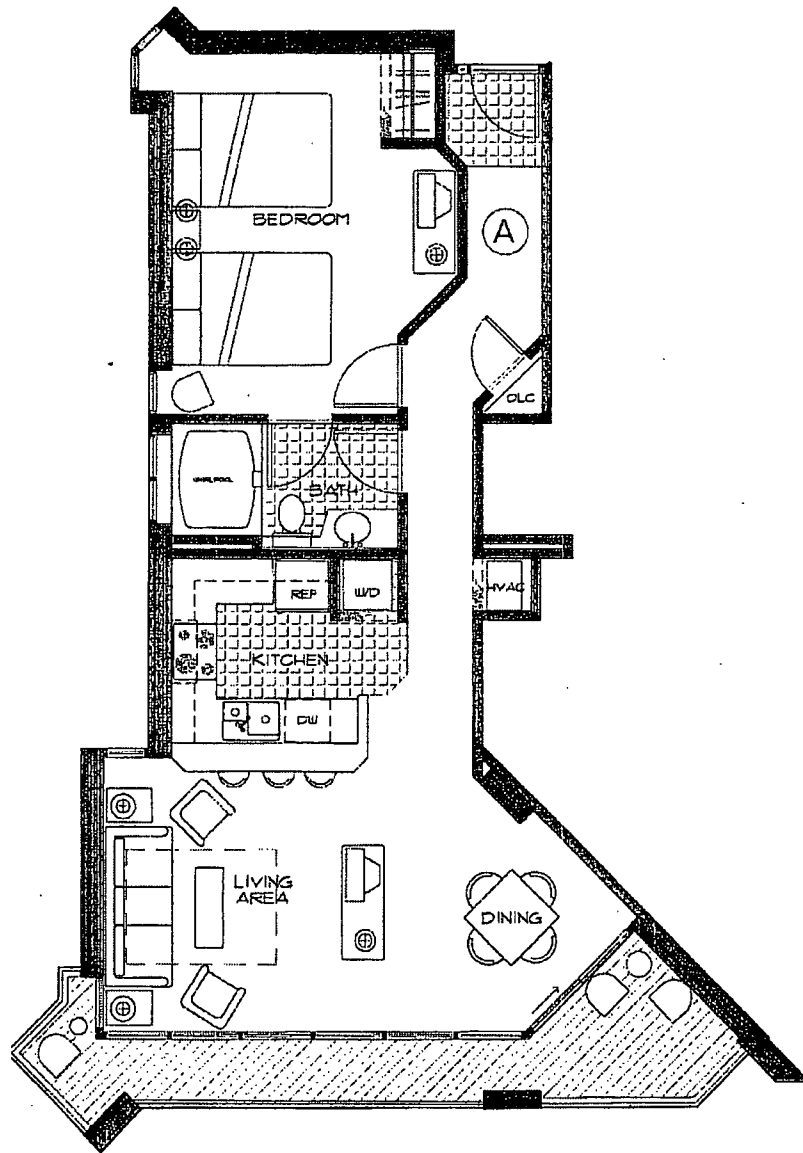
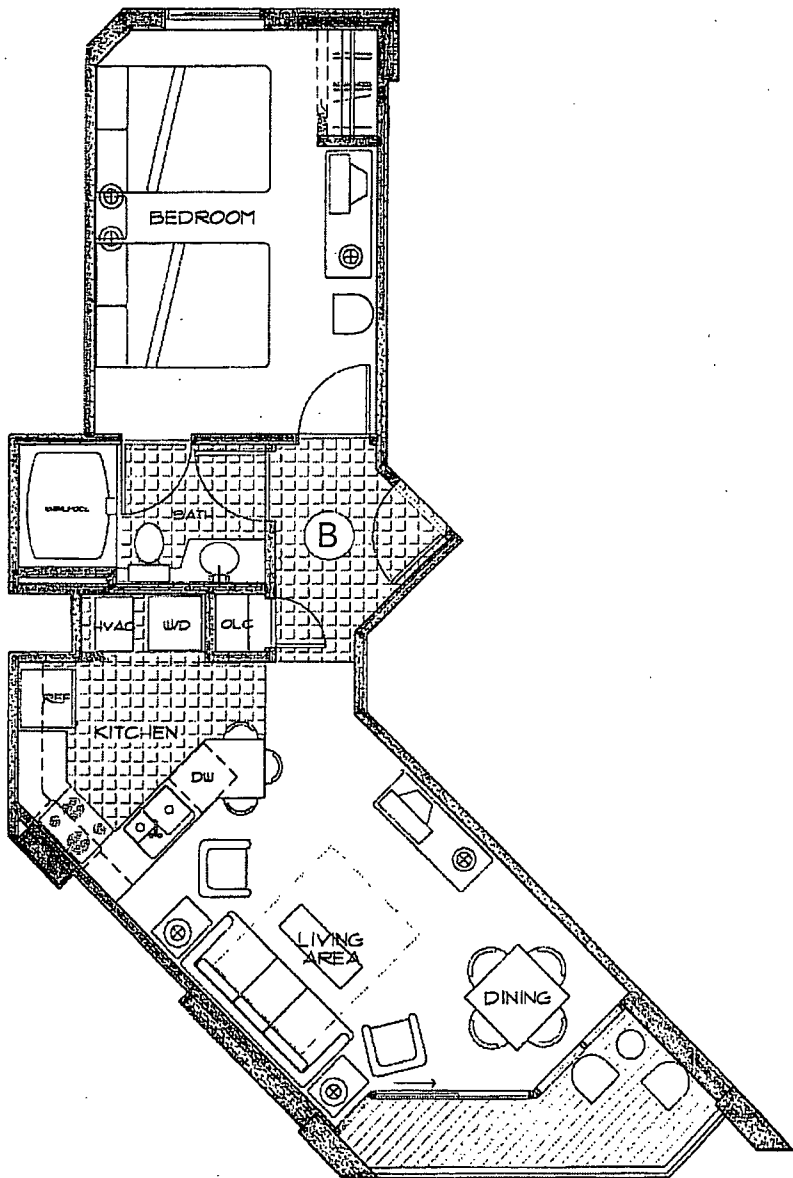
Amenities at the resort include an indoor pool, indoor kiddie pool, indoor spa, outdoor spa and outdoor pool. There is also a sundeck, a business center and an exercise room.

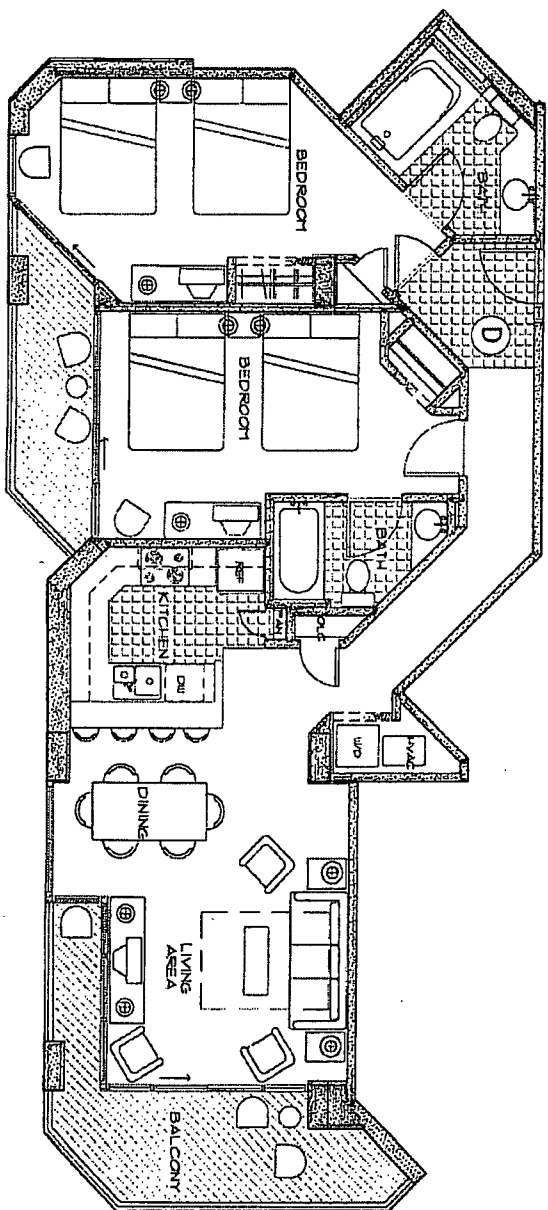
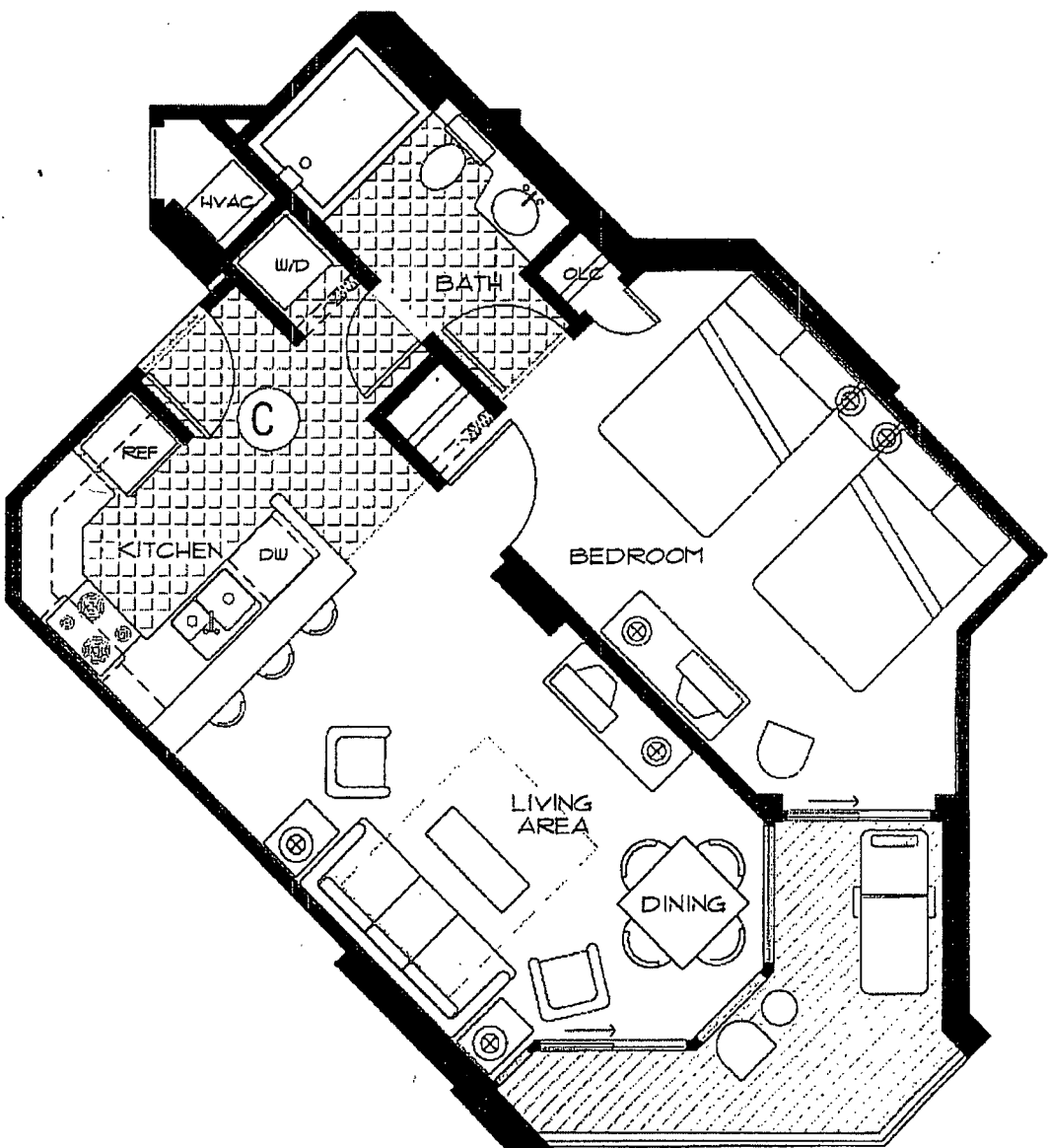
Overall, the property is in average condition. With the routine renovations management has done in the past has kept the subject in similar condition to other larger hotels in the area.

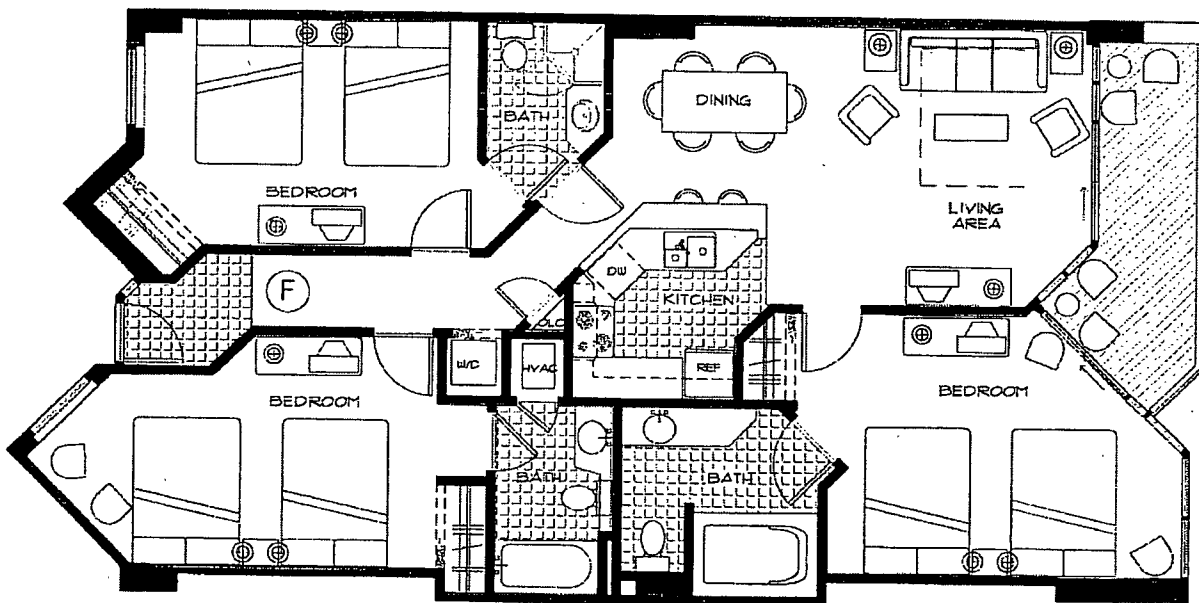
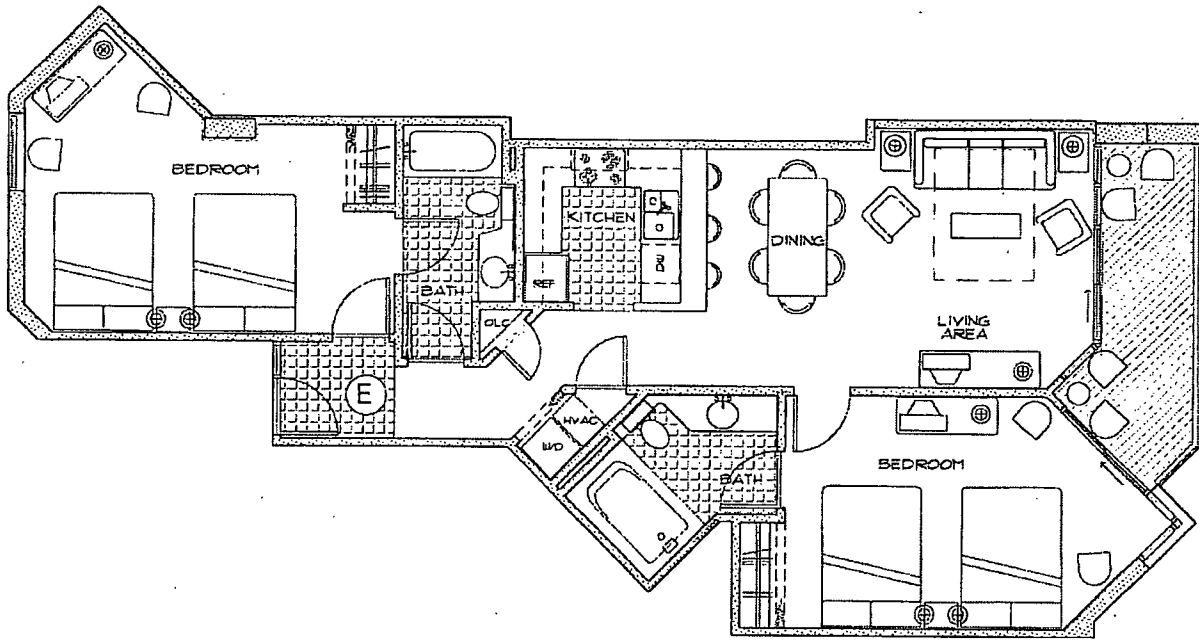
Floor Plans













VIEW FROM BOULEVARD



VIEW FROM BOULEVARD



OCEANSIDE VIEW



OCEANSIDE VIEW

Highest and Best Use - As Improved

Physically Possible: As stated, the subject is considered to be a portion of a larger condominium building. The subject contains a Hotel component and Commercial Units within the Best Western Carolinian Resort. The Hotel Units are comprised of 102 rentable hotel units, along with other support facilities conducive for a hotel/rental operation. As they are currently situated, the existing improvements are physically possible. The Commercial Management Rights Unit which is also operated out of the Hotel building has the management rights for 112 units within the adjacent /existing Condominium Tower.

Legally Permissible: As stated, the subject property is located on an oceanfront site that is zoned PUD by the City of Myrtle Beach. The Best Western Carolinian Resort has shared parking arrangements with Bluegreen Resort on the 2nd and 3rd row for parking purposes. These 2nd 3rd row sites are also zoned PUD by the City of Myrtle Beach. According to our knowledge, the subject improvements constitute a legally conforming use.

Financially Feasible: The hotel building component property has been in operation as the Best Western Carolinian Resort since 2000±. The condominium tower was constructed approximately 2004±. The subject's operating statements, and operating statements for comparative properties, reflect positive net operating income in the recent past, and this trend is expected to continue in the coming years. As income levels increase, so will the profitability of the overall enterprise. The existing hotel unit rentals, as well as the rental management operations for the 112 condominium units, indicates a feasible use for these improvements given current market conditions in the Grand Strand accommodations market.

Maximally Productive: The subject Hotel Units and Commercial Units are adequately maintained and appear to continually undergo routine maintenance and upkeep. Profitability has been acceptable and similar to that of other accommodations facilities in the area, both hotel and condotel. Based upon these observations, the existing use as of the subject property as rental for 102 hotel units, in conjunction with condominium management for overnight accommodations for 112 condominium units located within the Best Western Carolinian Resort, represents the highest and best use of the subject property.

Valuation Process

There are three commonly accepted approaches used in valuing real estate, the (1) Cost, (2) Sales Comparison, and (3) Income approaches. Based on the fifth edition of The Dictionary of Real Estate Appraisal the three approaches are described as follows:

1) Cost Approach

That approach in appraisal analysis in which the value is derived by estimating the current cost to build a replacement or a reproduction of the subject improvement, deducting all accrued depreciation and adding the land value estimate. This approach is particularly applicable when the property being appraised is a relatively new improvement, which represents the highest and best use of the land.

2) Income Approach

That procedure in appraisal analysis that converts anticipated benefits (dollar income through rentals) of property into a value estimate. The Income Approach is widely applied in appraising income-producing properties. Anticipated future income and/or reversions are discounted to a present worth figure through the capitalization process.

3) Sales Comparison Approach

That approach in appraisal analysis in which the value estimate is derived by comparison with similar properties that have sold. A unit of comparison is identified and the dissimilarities between the subject and the sales are adjusted.

Approaches Used in Valuation of the Subject Property

We used only the Sales Comparison and Incomes approaches to value for our analysis. For the Sales Comparison approach, we have looked to the market for hotel and "condominium management rights" sales, both locally and regionally, and compared them to the subject. For the Income Approach, we have utilized the Direct Capitalization method.

Sales Comparison Approach

The Sales Comparison Approach is based upon the assumption that an informed purchaser will pay no more for a property than the cost of acquiring an existing property with the same utility. Using this approach, market value is estimated by comparing the sales prices of recent transactions involving properties similar to the properties being appraised. The reliability of the Sales Comparison Approach depends upon the availability of comparable sales data and the degree of comparability between the subject and the comparable properties.

As stated, the subject is a mixture of owned hotel units and "management rights" on 112 condominium units. In order to estimate the market value of the subject property using the Sales Comparison Approach, we have located "mom and pop" motel sales, larger resort hotel sales and regional hotel sales, along with sales of "management rights" in order to arrive at a "blended" Gross Income Multiplier (the method utilized via the Sales Comparison approach).

Gross Income Multiplier Method

Hotel Sales

An acceptable and commonly used method in completing the Sales Comparison Approach is by using a gross income multiplier. A gross income multiplier shows the relationship between gross revenues and value. The relationship between net income and value is the subject of the income section of this report. A gross income multiplier can be derived by either using gross income which includes all sources of revenues or gross room revenues. The method used in this report is a gross income multiplier based on room revenues alone.

Summary of Sales Utilized

Gross Income Multiplier & Gross Room Income Multiplier Methods

An acceptable and commonly used method in completing the Sales Comparison Approach is by using a gross income multiplier. A gross income multiplier shows the relationship between gross revenues and value. The relationship between net income and value is the subject of the income section of this report. A gross income multiplier can be derived by either using gross income; which includes all sources of revenues or gross room revenues. The method used in this report is a gross income multiplier based on room revenues alone.

Name	City	State	Date	Adjusted Sale Price	Units	Adj Price/ Unit	Room Revenue	Room Rev/Unit	GRIM
Radisson Hotel	New London	CT	Jul-11	\$3,750,000	120	\$31,250	\$2,163,466	\$18,029	1.73
Comfort Inn	Dublin	VA	Jan-10	\$1,627,538	58	\$28,061	\$611,030	\$10,535	2.66
Super 8	Morgantown	WV	Jan-10	\$3,955,000	58	\$68,190	\$1,101,536	\$18,992	3.59
Comfort Inn	Charleston	SC	Feb-10	\$7,300,000	129	\$56,589	\$2,441,325	\$18,925	2.99
Country Inn & Suites	Rosford	OH	Apr-10	\$4,800,000	80	\$60,000	\$1,388,640	\$17,358	3.46
Country Inn and Suites	Anderson	SC	Jun-10	\$2,125,000	55	\$38,636	\$901,461	\$16,390	2.36
Country Inn and Suites	Douglasville	GA	Jun-10	\$4,350,000	91	\$47,802	\$1,397,521	\$15,357	3.11
Best Western	Tapon Springs	FL	Jul-10	\$2,900,000	111	\$26,126	\$1,162,725	\$10,475	2.49
Best Western	Myrtle Beach	SC	Sep-10	\$3,050,000	90	\$33,889	\$1,000,000	\$11,111	3.05
Fairfield Inn by Marriott	Beckley	WV	Oct-10	\$4,600,000	89	\$51,685	\$1,886,750	\$21,199	2.44
Courtyard by Marriott	Yorktown	VA	May-11	\$4,200,000	90	\$46,667	\$1,354,781	\$15,053	3.10
Holiday Inn Surside	Surfside Beach	SC	Jun-11	\$7,500,000	133	\$56,391	\$2,950,000	\$22,180	2.54
Quality Inn	Woodbridge	VA	Dec-11	\$4,050,000	94	\$43,085	\$1,274,245	\$13,556	3.18
Sportsman Motel	Myrtle Beach	SC	Jan-12	\$925,000	25	\$37,000	\$250,000	\$10,000	3.70
Hampton Inn Northwoods	Myrtle Beach	SC	Jul-12	\$6,478,750	122	\$53,105	\$2,200,000	\$18,033	2.94
Average				\$4,107,419	90	\$45,232	\$1,472,232	\$15,813	2.89

Although the subject property is an oceanfront property, we have located some local and regional hotel sales that share similar per unit revenues as what is estimated for the subject. The sales above are from Regional areas and three are recent local sales. As can be seen the range of GRIM's were from 1.73 to 3.70, with a mean of 2.89.

The "local" motel sales and larger Resort hotels indicate average Net Operating Income ratios between 25% - 40%. The Net Operating Income Ratio (as estimated in the Income Approach section of the report) for the combined hotel units and management rights operation is 20±%, which is much lower than the local sales analyzed. Typically, properties with lower Net Operating Income ratios have lower Gross Income Multipliers. Given that the operator pays dividends to the individual unit owners it reasonable to assume that the NOI ratio attributable to the hotel units revenues would also be much lower than the local sales analyzed. Based on these various sales, as well as the inefficiencies related to a mix hotel units/condominium unit management operation, we have utilized a Gross Income Multiplier of 3.00 for the owned hotel units portion of the property.

Summary of "Management Right" Sales

Sale 1: We interviewed a market participant which has been involved in the purchase of several condo management rights. This market participant has been involved with the purchase of several hundreds of units under management agreement, including one transaction having 425± unit condotel management rights within the last three to four years. Based on our discussions with the active participant, it was noted that typical buyers and sellers of condotel management rights based decisions on formals as will be explained further. In this transaction, the purchase price for the commercial units and managements rights was for \$2,335,000 for 425± units or \$5,161 per unit. The estimated gross room revenue at the time of sale was approximately \$18,000± per unit. The buyer of this transaction was particularly aware of the Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). The market has typically seen buyers and sellers in the 5x range of EBITDA. This equates to an effective capitalization rate of 20% of Net Operating Income (NOI). This sale indicates a 0.30 Gross Income Multiplier. The condotel buildings are shown below:



Sale 2: We are aware of a sale which occurred in 2008 that was a buyout of management right interests. The purchaser of the subject commercial unit purchased the management rights of approximately 203 condominium units at the Prince Resort. The purchase price was \$5,225,000. The stabilized net operating income is estimated to be \$795,616. This indicates a capitalization rate of 15.01%. In hindsight, this sale appears well above market due to the downturn in the accommodations market in 2008 and 2009. This sale indicates an estimated 0.76 Gross Income Multiplier, which likewise appears to be above market.



Sale 3: The Bayview Resort, in further support of the capitalization rate, we are aware of a for a condominium management operation. The Option to Purchase "Price", according to a confidential source (partner), the option to purchase was exercised at 5 times EBITA which translates into a 20.0% cap rate on the 5th year's Net Operating Income. We were unable to obtain a gross income multiplier for this pending sale.



Historical Local Sales: As additional support, we compared the recent data to older in data we have in file. We believe this data is still a valid indicator of how market participants view the value of management rights. The fundamentals of purchasing condo hotel management rights have stayed consistent and are valid in our opinion for current comparison purpose. Our older local sales indicate capitalization rates ranging from 10.00% to 14.6%, with EGRIMs (effective gross room income multipliers) ranging from .34 to .63.

The sales shown include the commercial property and the going concern interest related to handling the management of the units within each of the condotels. As shown, the sales indicate a Gross Income Multiplier range from .30 to .50. Based on these various sales, we have utilized a Gross Income Multiplier of 0.50 and 0.30 for the managed units portion of the property.

The final step in this method of valuation is multiplying the Gross Income by the Gross Income Multiplier. As stated, the subject is a mixture of hotel units operations, as well as "management rights," or condotel operations. A "blended" Gross Income Multiplier is considered to be the most reliable method to estimating a Gross Income Multiplier. In order to do this, we have calculated the multiplier as follow:

<u>Revenue Type</u>	<u>Amount</u>	<u>%</u>
Owned Units Revenue	\$ 1,530,000	35.86%
Managed Units Revenue	\$ 2,736,000	64.14%
Total Revenues	\$ 4,591,000	100.00%

Based on our data presented above as can be seen the trend of lower NOI Ratios for condo management operations that are now more similar to the trends in the early 90's. Although the data is older, the reliability and usefulness of this data is applicable in today's market. In our analysis we estimated the GIM based on two scenarios 1) on a 0.50 GIM for the Managed Units and the 2) on a 0.30 GIM for the Managed Units. On the next page you will find both scenarios.

<u>Revenue Stream</u>	<u>GIM</u>	<u>x</u>	<u>% of Total Revenues</u>	<u>=</u>	<u>Indicated GIM</u>
Owned Units	3.00	x	35.86%	=	1.08
Managed Units	0.5	x	64.14%	=	0.32
					1.40

<u>Revenue Stream</u>	<u>GIM</u>	<u>x</u>	<u>% of Total Revenues</u>	<u>=</u>	<u>Indicated GIM</u>
Owned Units	3.00	x	35.86%	=	1.08
Managed Units	0.4	x	64.14%	=	0.26
					1.33

<u>Revenue Stream</u>	<u>GIM</u>	<u>x</u>	<u>% of Total Revenues</u>	<u>=</u>	<u>Indicated GIM</u>
Owned Units	3.00	x	35.86%	=	1.08
Managed Units	0.3	x	64.14%	=	0.19
					1.27

For purposes of our analysis, we have reconciled between both GIM's for a blended Gross Income Multiplier.

According to information shown later in the Income Approach section of this report, gross revenues are estimated at \$4,266,000. By using a blended effective gross income multiplier of 1.33, the value of the subject property is calculated as follows:

<u>Gross Room Income</u>	x	<u>GIM</u>	<u>Equals</u>	<u>Value</u>
\$4,266,000	x	1.40	=	\$5,958,000
<u>Gross Room Income</u>	x	<u>GIM</u>	<u>Equals</u>	<u>Value</u>
\$4,266,000	x	1.33	=	\$5,684,400
<u>Gross Room Income</u>	x	<u>GIM</u>	<u>Equals</u>	<u>Value</u>
\$4,266,000	x	1.27	=	\$5,410,800

Summary of Sales Comparison Approach

After completing the Gross Income Multiplier method, the indicated value for the subject via the sales comparison approach appears to be well supported at \$5,700,000.

VALUE VIA SALES COMPARISON APPROACH: \$ 5,700,000

Income Capitalization Approach

The Income Capitalization Approach converts anticipated future benefits of property ownership (dollar income) into an estimate of present value. The Income Capitalization Approach is generally the preferred technique for appraising income properties because it most closely reflects the investment rationale and strategies of typical buyers of income producing properties. This is particularly true in appraising hotel and motel properties where the risk is translated into motivation for investment purposes based on the cash flows of the property and ultimately the net proceeds from the sale of the property.

The data used in the income approach has already been adjusted by market factors and reduces subjectivity, thereby eliminating the need for adjustments. The steps in the income approach are:

1. Project net income for a specified number of years.
2. Select an appropriate discount factor or capitalization rate.
3. Apply the discount and/or capitalization rate to the appropriate income stream to indicate a value estimate for the subject.

Income Estimates

In order to estimate the effective gross income for the subject property, we have looked to the historical operating statements provided by the owner of the property. We have also looked to the market in order to locate comparable oceanfront hotels/condotels and analyzed their incomes.

Subject's Historical Performance

On the following page, we have provided the operating statements for the subject for 2008, 2009, 2010, 2011 and YTD June 2012. We were not able to "break out" revenues attributable to the hotel units versus the managed condominium units. We have analyzed the property as one "whole" property (hotel units and managed condominium units).

Reconstructed Operating Statement					
Best Western Carolinian, 2506 North Ocean Blvd., Myrtle Beach					
		2008	\$ / Occ.	% of Total	\$ / Per
Revenue			Room Night	Revenue	Room/ Yr
Room		4,014,569	\$100.31	91.01%	18,760
Food		0	\$0.00	0.00%	0
Beverage		0	\$0.00	0.00%	0
Telephone		49,536	\$1.24	1.12%	231
Misc		112,092	\$2.80	2.54%	524
Resort and Access Fee		235,001	\$5.87	5.33%	1,098
Total Revenue		4,411,197	\$110.22	100.00%	20,613
Allocated Expenses				% of Dept. Rev.	
Rooms		968,701	\$24.20	24.13%	4,527
Food		0	\$0.00	0.00%	0
Beverage		0	\$0.00	0.00%	0
Telephone		17,948	\$0.45	36.23%	84
Misc		0	\$0.00	0.00%	0
Other		0	\$0.00	0.00%	0
Total Allocated Expenses		986,649	\$24.65	22.37%	4,611
Operating Profit		3,424,548	\$85.57	77.63%	16,003
Unallocated and Fixed Expenses				% of Total Rev.	
Administrative & General		238,645	\$5.96	5.41%	1,115
Marketing		271,853	\$6.79	6.16%	1,270
Property Operations & Maintenance		141,900	\$3.55	3.22%	663
Energy Costs		91,519	\$2.29	2.07%	428
Franchise Fees		90,044	\$2.25	2.04%	421
Management Fees		183,446	\$4.58	4.16%	857
Equipment Lease		66,438	\$1.66	1.51%	310
Dividend To Unit Owner (45-55 Split of Condo Rev)		1,461,605	\$36.52	33.13%	6,830
Reserves		0	\$0.00	0.00%	0
HOA Dues		113,208	\$2.83	2.57%	529
Taxes		45,791	\$1.14	1.04%	214
Insurance		37,397	\$0.93	0.85%	175
Total Unallocated and Fixed Expenses		2,741,846	\$68.51	62.16%	12,812
Total Expenses		3,728,495	\$93.16	84.52%	17,423
Operating Profit/Loss		682,702	\$17.06	15.48%	3,190
Rooms Available/Occupied					
Room Nights Available	79,375				
Room Nights Occupied	40,022				
Total Rooms	214				
Occupancy %	50.42%				

As shown, overall revenue for 2008 was \$4,441,197.

Reconstructed Operating History Best Western Carolinian, 2506 North Ocean Blvd., Myrtle Beach				
Revenue	2009	\$ / Occ. Room Night	% of Total Revenue	\$ / Per Room/ Yr
Room	3,355,079	\$92.56	88.01%	15,678
Food	0	\$0.00	0.00%	0
Beverage	0	\$0.00	0.00%	0
Telephone	49,912	\$1.38	1.31%	233
Misc	137,752	\$3.80	3.61%	644
Resort and Access Fee	269,361	\$7.43	7.07%	1,259
Total Revenue	3,812,104	\$105.17	100.00%	17,814
Allocated Expenses			% of Dept. Rev.	
Rooms	817,291	\$22.55	24.36%	3,819
Food	0	\$0.00	#DIV/0!	0
Beverage	0	\$0.00	#DIV/0!	0
Telephone	14,754	\$0.41	29.56%	69
Misc	0	\$0.00	0.00%	0
Other	0	\$0.00	0.00%	0
Total Allocated Expenses	832,044	\$22.95	21.83%	3,888
Operating Profit	2,980,059	\$82.22	78.17%	13,926
Unallocated and Fixed Expenses			% of Total Rev.	
Administrative & General	227,479	\$6.28	5.97%	1,063
Marketing	163,881	\$4.52	4.30%	766
Property Operations & Maintenance	115,363	\$3.18	3.03%	539
Energy Costs	87,319	\$2.41	2.29%	408
Franchise Fees	112,614	\$3.11	2.95%	526
Management Fees	200,131	\$5.52	5.25%	935
Equipment Lease	28,490	\$0.79	0.75%	133
Dividend To Unit Owner (45-55 Split of Condo Rev)	1,234,399	\$34.06	32.38%	5,768
Reserves	0	\$0.00	0.00%	0
HOA Dues	140,969	\$3.89	3.70%	659
Taxes	38,823	\$1.07	1.02%	181
Insurance	15,596	\$0.43	0.41%	73
Total Unallocated and Fixed Expenses	2,365,063	\$65.25	62.04%	11,052
Total Expenses	3,197,108	\$88.20	83.87%	14,940
Operating Profit/Loss	614,996	\$16.97	16.13%	2,874
Rooms Available/Occupied				
Room Nights Available	78,009			
Room Nights Occupied	36,247			
Total Rooms	214			
Occupancy %	46.47%			

Overall revenue in 2009 was \$3,812,104.

Reconstructed Operating History Best Western Carolinian, 2506 North Ocean Blvd., Myrtle Beach				
Revenue	2010	\$ / Occ. Room Night	% of Total Revenue	\$ / Per Room/ Yr
Room	3,892,138	\$100.91	87.78%	18,188
Food	0	\$0.00	0.00%	0
Beverage	0	\$0.00	0.00%	0
Telephone	61,723	\$1.60	1.39%	288
Misc	181,944	\$4.72	4.10%	850
Resort and Access Fee	298,010	\$7.73	6.72%	1,393
Total Revenue	4,433,814	\$114.95	100.00%	20,719
Allocated Expenses			% of Dept. Rev.	
Rooms	851,108	\$22.07	21.87%	3,977
Food	0	\$0.00	0.00%	0
Beverage	0	\$0.00	0.00%	0
Telephone	21,040	\$0.55	34.09%	98
Misc	0	\$0.00	0.00%	0
Other	0	\$0.00	0.00%	0
Total Allocated Expenses	872,148	\$22.61	19.67%	4,075
Operating Profit	3,561,666	\$92.34	80.33%	16,643
Unallocated and Fixed Expenses			% of Total Rev.	
Administrative & General	217,036	\$5.63	4.90%	1,014
Marketing	199,400	\$5.17	4.50%	932
Property Operations & Maintenance	82,415	\$2.14	1.86%	385
Energy Costs	99,986	\$2.59	2.26%	467
Franchise Fees	112,784	\$2.92	2.54%	527
Management Fees	217,760	\$6.01	4.91%	1,018
Equipment Lease	972	\$0.03	0.02%	5
Dividend To Unit Owner (45-55 Split of Condo Rev)	1,375,085	\$37.94	31.01%	6,426
Reserves	0	\$0.00	0.00%	0
HOA Dues	146,404	\$4.04	3.30%	684
Taxes	43,074	\$1.12	0.97%	201
Insurance	16,855	\$0.44	0.38%	79
Total Unallocated and Fixed Expenses	2,511,771	\$65.12	56.65%	11,737
Total Expenses	3,383,918	\$87.73	76.32%	15,813
Operating Profit/Loss	1,049,896	\$27.22	23.68%	4,906
Rooms Available/Occupied				
Room Nights Available	75,290			
Room Nights Occupied	38,572			
Total Rooms	214			
Occupancy %	51.23%			

Overall revenue in 2010 was \$4,433,814.

Reconstructed Operating History Best Western Carolinian, 2506 North Ocean Blvd., Myrtle Beach				
Revenue	2011	\$ / Occ. Room Night	% of Total Revenue	\$ / Per Room/ Yr
Room	4,107,918	\$104.27	88.15%	19,196
Food	0	\$0.00	0.00%	0
Beverage	0	\$0.00	0.00%	0
Telephone	66,750	\$1.69	1.43%	312
Misc	150,211	\$3.81	3.22%	702
Resort and Access Fee	335,238	\$8.51	7.19%	1,567
Total Revenue	4,660,116	\$118.29	100.00%	21,776
Allocated Expenses			% of Dept. Rev.	
Rooms	943,193	\$23.94	22.96%	4,407
Food	0	\$0.00	#DIV/0!	0
Beverage	0	\$0.00	#DIV/0!	0
Telephone	23,025	\$0.58	34.50%	108
Misc	0	\$0.00	0.00%	0
Other	0	\$0.00	0.00%	0
Total Allocated Expenses	966,218	\$24.53	#DIV/0!	4,515
Operating Profit	3,693,898	\$93.76	79.27%	17,261
Unallocated and Fixed Expenses			% of Total Rev.	
Administrative & General	210,355	\$5.34	4.51%	983
Marketing	223,182	\$5.67	4.79%	1,043
Property Operations & Maintenance	100,237	\$2.54	2.15%	468
Energy Costs	98,768	\$2.51	2.12%	462
Franchise Fees	116,279	\$2.95	2.50%	543
Management Fees	310,631	\$8.57	6.67%	1,452
Equipment Lease	936	\$0.03	0.02%	4
Dividend To Unit Owner (45-55 Split of Condo Rev)	1,489,070	\$41.08	31.95%	6,958
Reserves	0	\$0.00	0.00%	0
HOA Dues	148,811	\$4.11	3.19%	695
Taxes	35,411	\$0.90	0.76%	165
Insurance	17,587	\$0.45	0.38%	82
Total Unallocated and Fixed Expenses	2,751,266	\$69.84	59.04%	12,856
Total Expenses	3,717,484	\$94.36	79.77%	17,371
Operating Profit/Loss	942,632	\$23.93	20.23%	4,405
Rooms Available/Occupied				
Room Nights Available	75,626			
Room Nights Occupied	39,396			
Total Rooms	214			
Occupancy %	52.09%			

Overall revenue in 2011 was \$4,660,116.

Reconstructed Operating History Best Western Carolinian, 2506 North Ocean Blvd., Myrtle Beach				
	YTD	\$ / Occ.	% of Total	\$ / Per
Revenue	JUNE 2012	Room Night	Revenue	Room/ Yr
Room	2,149,695	\$102.00	89.09%	10,045
Food	0	\$0.00	0.00%	0
Beverage	0	\$0.00	0.00%	0
Telephone	33,704	\$1.60	1.40%	157
Misc	59,611	\$2.83	2.47%	279
Resort and Access Fee	169,944	\$8.06	7.04%	794
Total Revenue	2,412,953	\$114.49	100.00%	11,275
Allocated Expenses			% of Dept. Rev.	
Rooms	511,197	\$24.25	23.78%	2,389
Food	0	\$0.00	#DIV/0!	0
Beverage	0	\$0.00	#DIV/0!	0
Telephone	13,648	\$0.65	40.49%	64
Misc	0	\$0.00	0.00%	0
Other	0	\$0.00	0.00%	0
Total Allocated Expenses	524,845	\$24.90	#DIV/0!	2,453
Operating Profit	1,888,108	\$89.59	78.25%	8,823
Unallocated and Fixed Expenses			% of Total Rev.	
Administrative & General	109,692	\$5.20	4.55%	513
Marketing	128,355	\$6.09	5.32%	600
Property Operations & Maintenance	39,994	\$1.90	1.66%	187
Energy Costs	41,997	\$1.99	1.74%	196
Franchise Fees	47,423	\$2.25	1.97%	222
Management Fees	147,900	\$7.02	6.13%	691
Equipment Lease	523	\$0.02	0.02%	2
Dividend To Unit Owner (45-55 Split of Condo Rev)	784,994	\$37.25	32.53%	3,668
Reserves	0	\$0.00	0.00%	0
HOA Dues	75,040	\$3.56	3.11%	351
Taxes	17,706	\$0.84	0.73%	83
Insurance	8,254	\$0.39	0.34%	39
Total Unallocated and Fixed Expenses	1,401,878	\$66.52	58.10%	6,551
Total Expenses	1,926,723	\$91.42	79.85%	9,003
Operating Profit/Loss	486,230	\$23.07	20.15%	2,272
Rooms Available/Occupied				
Room Nights Available	38,169			
Room Nights Occupied	21,076			
Total Rooms	214			
Occupancy %	55.22%			

The Year-to-Date June 2012 overall revenue was \$2,412,953.

Reconstructed Operating History

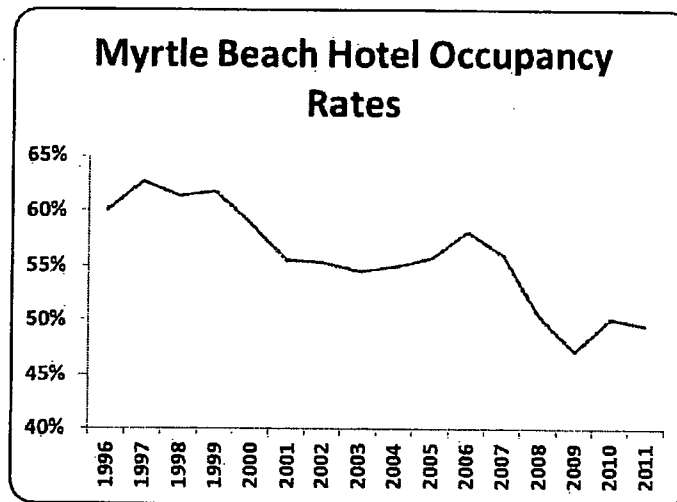
Best Western Carolinian, 2506 North Ocean Blvd., Myrtle Beach

	2008	2009	2010	2011	YTD 2012
Revenue					
Room	4,014,569	3,355,079	3,892,138	4,107,918	2,149,695
Food	0	0	0	0	0
Beverage	0	0	0	0	0
Telephone	49,536	49,912	61,723	66,750	33,704
Misc	112,092	137,752	181,944	150,211	59,611
Resort and Access Fee	235,001	269,361	298,010	335,238	169,944
Total Revenue	4,411,197	3,812,104	4,433,814	4,660,116	2,412,953
Allocated Expenses					
Rooms	968,701	817,291	851,108	943,193	511,197
Food	0	0	0	0	0
Beverage	0	0	0	0	0
Telephone	17,948	14,754	21,040	23,025	13,648
Misc	0	0	0	0	0
Other	0	0	0	0	0
Total Allocated Expenses	986,649	832,044	872,148	966,218	524,845
Operating Profit	3,424,548	2,980,059	3,561,666	3,693,898	1,888,108
Unallocated and Fixed Expenses					
Administrative & General	238,645	227,479	217,036	210,355	109,692
Marketing	271,853	163,881	199,400	223,182	128,355
Property Operations & Maintenance	141,900	115,363	82,415	100,237	39,994
Energy Costs	91,519	87,319	99,986	98,768	41,997
Franchise Fees	90,044	112,614	112,784	116,279	47,423
Management Fees	183,446	200,131	217,760	310,631	147,900
Equipment Lease	66,438	28,490	972	936	523
Dividend To Unit Owner (45-55 Split of Condo Rev)	1,461,605	1,234,399	1,375,085	1,489,070	784,994
Reserves	0	0	0	0	0
HOA Dues	113,208	140,969	146,404	148,811	75,040
Taxes	45,791	38,823	43,074	35,411	17,706
Insurance	37,397	15,596	16,855	17,587	8,254
Total Unalloc. & Fixed Exp.	2,741,846	2,365,063	2,511,771	2,751,266	1,401,878
Total Expenses	3,728,495	3,197,108	3,383,918	3,717,484	1,926,723
Operating Profit/Loss	682,702	614,956	1,049,896	942,632	486,230
NOI Ratio	15.48%	16.13%	23.68%	20.23%	20.15%
Rooms Available/Occupied					
Room Nights Available	79,375	78,009	75,290	75,626	38,169
Room Nights Occupied	40,022	36,247	38,572	39,396	21,076
Total Rooms	214	214	214	214	214
Occupancy %	50.42%	46.47%	51.23%	52.09%	55.22%

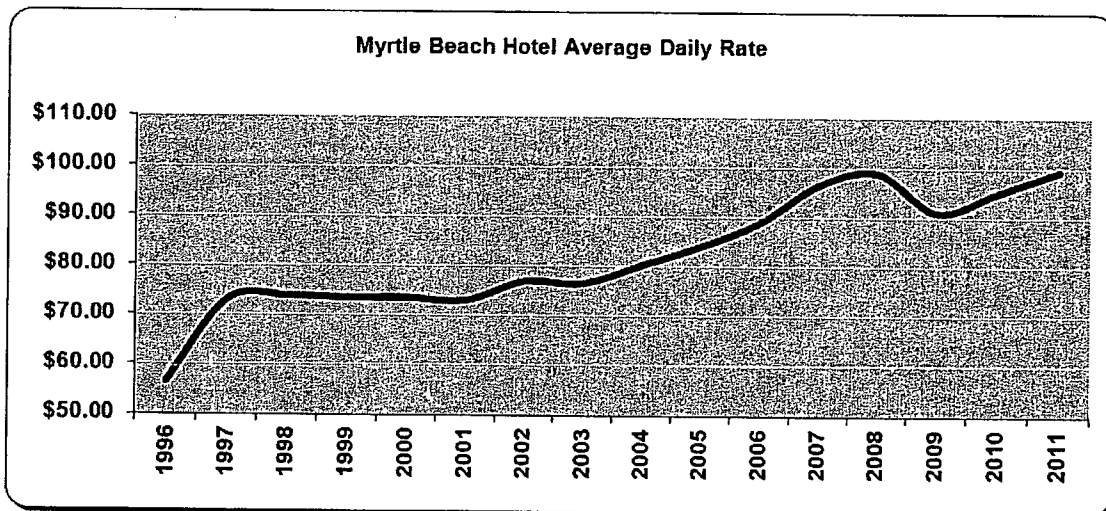
Local Lodging Overview

Horry County Lodging:

Following is a chart displaying Horry County lodging statistics, as provided by the South Carolina Parks, Recreation and Tourism Department (SCPRT). These statistics are derived from all lodging properties in Myrtle Beach area that report to SCPRT.

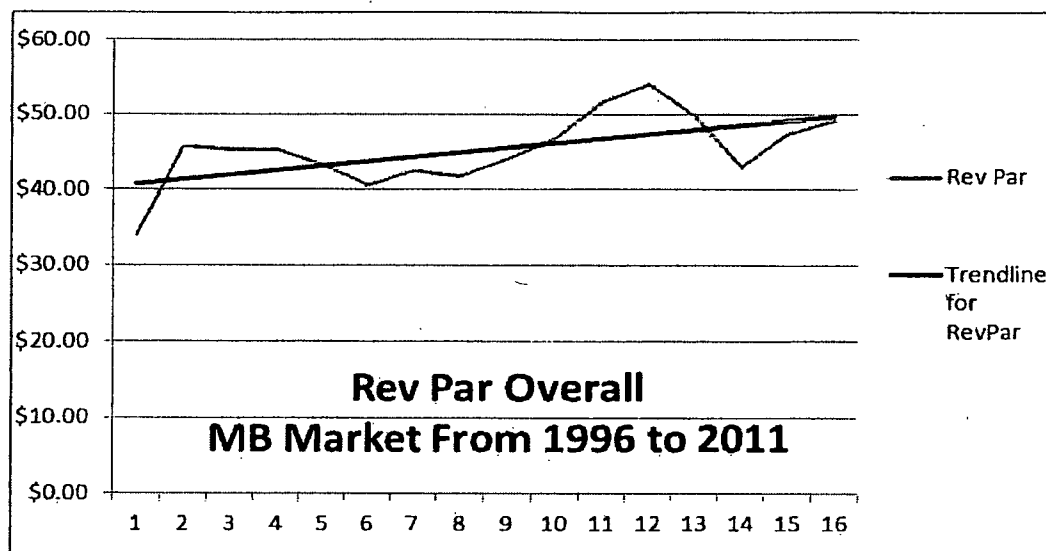


As shown on the chart, Occupancy reached an 8 year low in 2003, however, rebounded from 2003 to 2006. Occupancy figures dropped substantially between 2006-2009. The bottoming of the occupancy was indicated in 2009, however showed a gain in 2010.



Average Daily rates have been increasing since 2002 and 2010, through December, indicates an ADR of \$99.26. This indicates the subject ADR is well under the ADR for the "Grand Strand" in 2010.

Below you will find a 16 year RevPar chart for the reporting Myrtle Beach Market. RevPar's have grown from the mid-\$30's to mid-\$50's in the past 16 years. They show a close-fitting range between \$40 to \$50.



Subject Historical Summary

The information shown below via Smith Travel Research is the combined condominium and hotels unit stats. The snapshots below are directly from Smith Travel Report as of July 24, 2012. The Star Report published for the subject includes the properties listed below in conjunction with the subject's data.

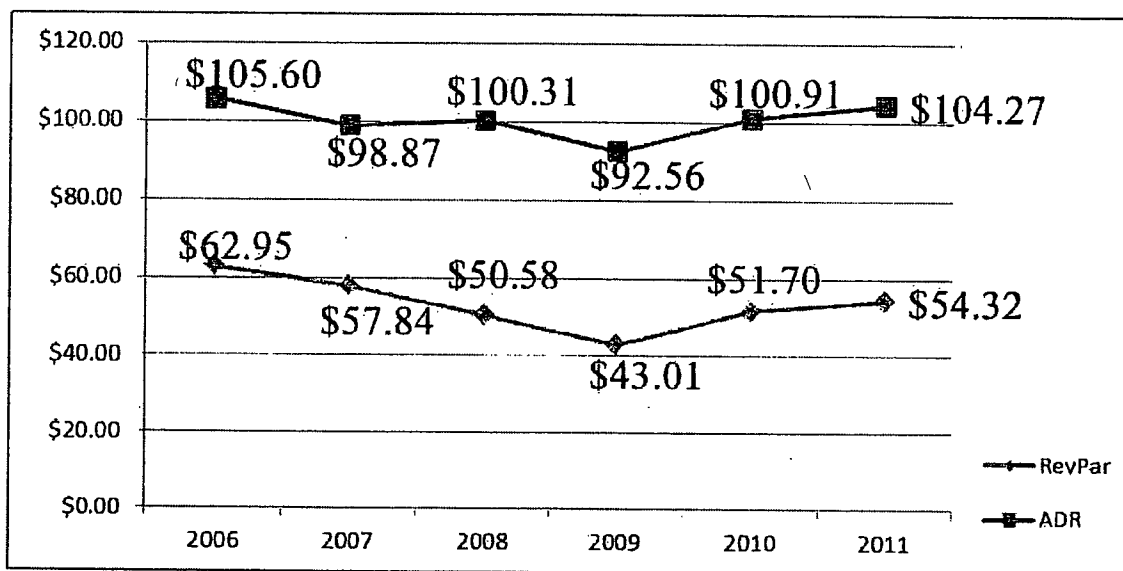
STR ID	Name	City, State	Zip	Phone	Rooms
31405	Best Western Plus The Carolinian Beach Resort	Myrtle Beach, SC	29577-3241	(843) 448-6861	223
528	Holiday Inn Oceanfront @ Surfside Beach	Surfside Beach, SC	29575-4238	(843) 238-5601	133
13339	Breakers Resort Hotel	Myrtle Beach, SC	29577-3222	(843) 626-5000	625
14238	Beach Colony Resort	Myrtle Beach, SC	29577-2537	(843) 449-4010	221
21422	Super 8 Myrtle Beach	Myrtle Beach, SC	29577-4848	(843) 448-1048	41
21936	Grand Shore Ocean Resort	Myrtle Beach, SC	29577-4242	(843) 449-7431	333
22905	Surfside Beach Resort	Surfside Beach, SC	29575-3633	(843) 238-4444	158
25205	Patricia Grand	Myrtle Beach, SC	29577-3052	(843) 448-8453	295
30156	Quality Inn & Suites Myrtle Beach	Myrtle Beach, SC	29577-4442	(843) 626-4656	65
30416	Best Western Plus Grand Strand Inn & Suites	Myrtle Beach, SC	29577-4634	(843) 448-1461	118
30420	Ocean Park Resort	Myrtle Beach, SC	29577-4635	(843) 448-1915	113
31389	Days Inn Myrtle Beach Beachfront	Myrtle Beach, SC	29577-4543	(843) 448-1636	53
42706	Sheraton Hotel Myrtle Beach Convention Center	Myrtle Beach, SC	29577-3119	(843) 918-5000	400
47532	Camelot By The Sea	Myrtle Beach, SC	29577-3222	(843) 916-4700	220
					2998

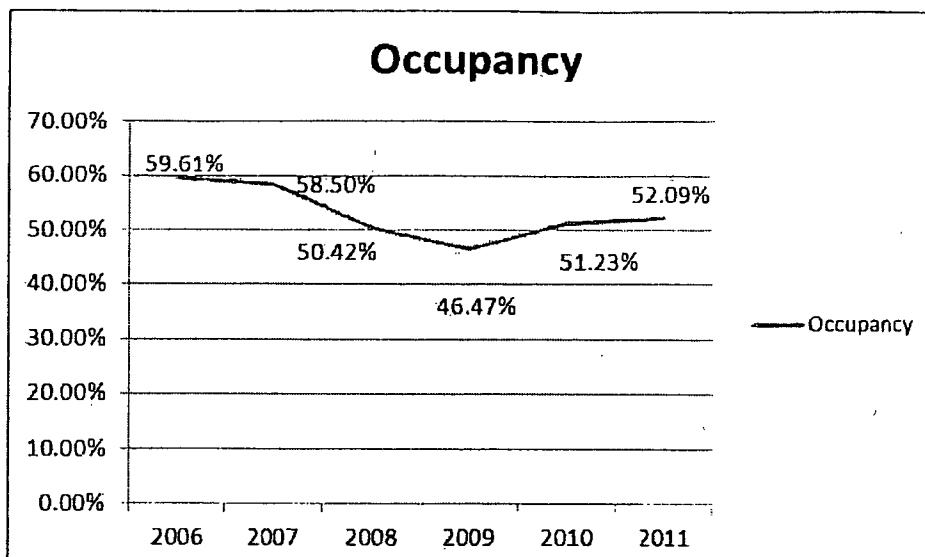
July 15, 2012 - July 21, 2012																	
		Sunday		Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		Total	
		% Chg		% Chg		% Chg		% Chg		% Chg		% Chg		% Chg		% Chg	
Occupancy	My Property	72.6%	-0.6	72.6%	-11.0	70.9%	-19.8	72.6%	-18.4	83.4%	-1.1	81.2%	-11.3	74.0%	-16.7	75.3%	-11.8
	Comp Set	77.9%	-1.9	86.4%	-5.4	82.8%	-2.4	81.5%	-4.3	85.7%	-1.5	88.5%	0.8	100.1%	2.2	81.8%	-1.7
	Index (MPI)	93.2	1.3	84.1	-5.9	76.4	-17.8	78.4	-15.8	87.1	0.4	82.4	-12.0	73.9	-18.5	82.0	-10.2
ADR	My Property	188.07	-2.2	180.77	-4.4	181.54	-4.0	186.81	0.2	188.47	-1.5	188.19	1.2	203.59	3.4	189.81	-0.9
	Comp Set	122.33	-11.0	128.24	-11.9	130.76	-11.5	134.60	-5.6	138.32	-8.0	152.71	-2.5	150.33	-4.5	137.48	-7.5
	Index (ARI)	153.7	9.8	141.0	8.5	138.8	8.5	138.8	6.1	138.3	7.1	129.8	3.8	135.4	8.3	138.1	7.1
RevPAR	My Property	136.62	-2.8	131.32	-14.9	128.63	-23.0	135.71	-19.2	157.20	-2.5	150.87	-10.2	150.64	-13.9	143.00	-12.6
	Comp Set	95.31	-12.7	110.78	-18.7	121.31	-13.6	123.21	-8.6	132.42	-9.3	150.48	-1.7	150.45	-2.4	128.28	-9.1
	Index (RGI)	143.3	11.3	118.6	2.1	106.0	-10.8	110.1	-10.7	118.7	7.5	106.9	-8.7	100.1	-11.7	113.2	-3.9

Running 28 Days (by Day of Week)																	
		Sunday		Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		Total	
		% Chg		% Chg		% Chg		% Chg		% Chg		% Chg		% Chg		% Chg	
Occupancy	My Property	57.3%	-15.8	64.0%	-5.0	67.0%	1.5	71.2%	2.3	70.5%	7.0	68.9%	-11.9	65.5%	-18.3	68.2%	-6.2
	Comp Set	78.0%	-5.8	84.3%	-0.3	80.0%	4.8	81.2%	5.2	80.4%	4.2	86.1%	5.8	87.4%	1.5	88.5%	2.3
	Index (MPI)	74.5	-10.8	78.0	-4.7	75.5	-3.2	78.0	-2.8	78.0	2.6	69.6	-16.8	67.2	-19.5	74.0	-8.4
ADR	My Property	195.47	-2.3	193.12	2.4	194.24	8.2	199.52	14.3	199.47	11.8	210.82	8.3	209.35	4.4	200.37	7.0
	Comp Set	127.97	-12.5	131.43	-8.4	134.10	-2.8	137.67	2.8	138.31	0.8	147.31	-1.8	145.39	-6.9	137.61	-4.1
	Index (ARI)	152.7	16.9	148.9	11.9	144.9	11.3	144.9	11.2	148.3	10.9	143.1	10.3	144.0	12.1	145.6	11.6
RevPAR	My Property	111.98	-13.8	123.62	-2.7	131.96	9.9	142.04	18.9	140.65	19.6	141.10	-4.6	137.08	-14.7	132.63	0.4
	Comp Set	98.45	-17.4	110.76	-8.7	120.84	-1.9	125.58	8.2	123.16	5.1	141.57	4.0	141.63	-5.5	123.11	-1.9
	Index (RGI)	113.7	4.3	111.6	6.5	109.4	7.8	113.1	8.1	114.2	13.9	99.7	-8.3	96.6	-8.7	107.7	2.3

The subjects performance overall has been shown below from 2006-2011. It should be noted that the stats shown do not include any other income (i.e. Resort Fee's). On the following page, we have provided charts and graphs representing the subject's historical data.

	2006	2007	2008	2009	2010	2011
RevPar	\$62.95	\$57.84	\$50.58	\$43.01	\$51.70	\$54.32
ADR	\$105.60	\$98.87	\$100.31	\$92.56	\$100.91	\$104.27
Occupancy	59.61%	58.50%	50.42%	46.47%	51.23%	52.09%





As shown above, the recession was noted to have been a direct impact to the subject's performance in the 2008-2009 dip. The subject shows signs of improvement from 2009 to 2011. The positive gain has been noted in all three categories (ADR, Occupancy and Rev Par). The estimates for 2012 have been favorable based on conversations-interviews with local hoteliers. The majority of the hoteliers interviewed have stated that advanced bookings and inquire volumes have seen noticeable increases within the past few months. In estimating our subject's performance, we were slightly optimistic based on our estimates we believe that a marginal increase in top line revenues is reasonable in our reconstructed statement. We weighted the past three year revenues and gave less weight the the 2009 revenues estimates due to our outlook of the 2012 and 2013 indicators.

Comparable 1 Bedroom/2 Bedroom/3 Bedroom

As stated, the subject has management rights over 112 other 1 bedroom, 2 bedroom and 3 bedroom units. Below, we have provided per unit revenue data for comparable unit types:

Unit #	Project/Section Code	Gross Annual Rental Income
534	Carolinian Beach Resort	\$14,000
535	Carolinian Beach Resort	\$14,363
1235	Carolinian Beach Resort	\$15,778
1807	Camelot By The Sea	\$15,961
1614	Camelot By The Sea	\$17,707
916	Camelot By The Sea	\$17,746
1802	Camelot By The Sea	\$19,000
1616	Camelot By The Sea	\$19,000
1209	Camelot By The Sea	\$19,438
1807	Camelot By The Sea	\$20,000
666	Long Bay Resort	\$20,138
605	ROXANNE TOWERS	\$20,391
1208	Camelot By The Sea	\$22,000
1225	Compass Cove North Tower	\$22,094
1432	Carolinian Beach Resort	\$22,109
1036	Carolinian Beach Resort	\$22,114
1206	Camelot By The Sea	\$22,471
1203	ROXANNE TOWERS	\$23,000
716	Camelot By The Sea	\$25,724
716	Camelot By The Sea	\$27,399
457	Long Bay Resort	\$27,559
Average		\$20,381

As shown from this sample set, 1 bedroom condominium units generate revenues between \$14,000 to \$27,000. The average revenue was \$21,381. We estimated the subject 1-bedroom oceanfront units at \$25,000 and the 1-bedroom ocean view unit at \$20,000 per unit.

Unit #	Project/Section Code	Gross Annual Rental Income
1051	Atlantica II	\$21,483
1251	Atlantica II	\$22,252
532	Carolinian Beach Resort	\$22,849
1830	Carolinian Beach Resort	\$25,307
432	Carolinian Beach Resort	\$25,501
401	ROXANNE TOWERS	\$26,555
806	ROXANNE TOWERS	\$29,132
806	ROXANNE TOWERS	\$29,133
511	Camelot By The Sea	\$32,428
506	ROXANNE TOWERS	\$33,225
1202	Caribbean Oceanfront Condo	\$33,929
906	ROXANNE TOWERS	\$34,000
Average		\$27,983

The range for 2 bedroom revenues was \$21,000 to \$34,000, with an average of \$27,983. We estimated the oceanfront 2-bedroom units (2C and IC) at \$28,000 per unit.

Unit #	Project/Section Code	Gross Annual Rental Income
1001	Camelot By The Sea	\$34,530
1401	Camelot By The Sea	\$35,700
1417	Camelot By The Sea	\$37,523
724	Compass Cove North Tower	\$37,532
905	Caribbean Oceanfront Condo	\$37,543
1103	SOUTHWIND	\$38,453
1103	SOUTHWIND	\$38,453
909	Caribbean Oceanfront Condo	\$38,758
1433	Carolinian Beach Resort	\$41,000
405	Caribbean Oceanfront Condo	\$41,115
Average		\$38,061

The 3 bedroom units in this sample generated revenues between \$34,530 to \$41,115. The average was \$38,061. We estimated the 3-bedroom oceanfront units at \$38,000.

Projection of Room Revenues: Based on the data provided on the preceding pages, gross room revenues are reasonable estimated as follows:

Type of Unit	No. of Units	Revenue Estimate/Unit	Estimated Total Revenue
Owned Hotel Units	102	\$15,000	\$1,530,000
Total Owned Units/Revenues	102	\$15,000	\$1,530,000

Type of Unit	No. of Units	Revenue Estimate/Unit	Estimated Total Revenue
Managed 1br Condo Unit (IC)	20	\$25,000	\$500,000
Managed 1br Condo Unit (JC)	45	\$20,000	\$900,000
Managed 2br Condo Units (2C & IC)	45	\$28,000	\$1,260,000
Managed 3br Condo Unit (3C)	2	\$38,000	\$76,000
Total Managed Units/Revenues	112		\$2,736,000

Other Income (Resort Fee, etc.)	\$325,000

TOTAL	214	\$21,453	\$4,591,000

The total owned and managed units' room is estimated to be \$4,591,000. In 2006, the total room revenues were \$5,387,571 and in 2007 were \$4,913,809 (*exclusive of other income*). Our estimate is considered to be reasonable based on the historical figures.

Telephone Revenue: Telephone revenue is generally negative given the fact that most hotels offer free local phone calls to all guests. However, the subject is evidently is charging guest within the telephone category for internet usage. Therefore the internet fee and cost were analyzed and based on our furnished data of the past three years the average cash flow (net) for this item has been approximately \$40,000. Based on this information, we have estimated Telephone/Internet Revenue to be 0.84% of Effective Gross Income.

Other (Net): Other revenues include, but are not limited to, access fees, ATM revenues, vending machines, guest laundry, etc. Below, we have provided the Other net income for comparable condominium projects in the area, based on Room Revenues:

<u>Baywatch</u>	<u>Carolinian</u>	<u>Patricia Grand</u>	<u>Camelot by the Sea</u>
5.07%	5.98%	6.64%	5.47%

For 2011, the subject had Other net revenues of 3.22% of Room Revenues (net). Based on the comparables, as well as the subject's historical figures, we have utilized a Other (net) revenue of 3.1% of Effective Gross Income or \$150,000.

Resort Fee: Recently, hotels have started charging Resort Fees to all guests. This fee is in addition to room rates and has started to become common practice for larger hotels similar to the subject in the Grand Strand. Based on our calculations of the total income received in 2010 for resort fees were \$298,009. The total number of room nights sold in 2010 was 38,572 or 51.23% occupancy. Therefore the average effective resort fee was \$7.72 per occupied night. Based on the subject historical data for resort fees/access fees, we estimated the resort fee would be reasonable at \$8.69 per night or \$335,000.

Resort, Access, Admin Fees	
Per Occupied Room Night	
Camelot By the Sea	\$15.79
Prince Resort	\$11.06
Horizon Resort	\$14.81
Avista Resort	\$11.71
Seaside Resort	\$11.06
Caravelle Resort	\$8.30

Subject's historical trend of Resort and Access Fees

Resort and Access Fee	2008	2009	2010	2011	YTD 2012
Per Occupied Room Night	\$5.87	\$7.43	\$7.73	\$8.51	\$8.06

The four year resort and access fees are summarized on a per occupied room night basis in the chart above. The forecast for Year 1 is estimated to have 38,559 occupied room nights. Based on the survey above and the subject's historical data, we estimate \$335,000 for Resort and Access. This estimate translates to \$8.69 per occupied room night, which is within range of the subject and comparable data.

Operating Expenses

In order to estimate the operating expenses relative to the subject, we have analyzed the adjusted historical operating expenses, as well as operating statements of similar facilities in the area. The financial statements reviewed were weighed along with support from Trends in the Hotel Industry, by PKF Consulting. Standard expense percentages in the industry as a whole may not accurately reflect the realities of certain expense ratios experienced in the Grand Strand area; therefore discretion was used in determining certain expense items.

The comparable expense data used in this analysis is contained within our appraisal file. On the next page we have provided 2 year historical record of the subject. We have also included industry average derived from Trends in Hotel Industry (2011 Edition) by Pannell Kerr Forster. The ratios used were based on a survey of limited service hotels with room rates between \$70.00 and \$100.00.

Departmental Costs

Departmental costs are expenditures necessary for the production of revenue in each of the previously discussed categories. Expense estimates for the subject are taken from operating statements from similar hotels in the area. It is sometimes difficult to differentiate between departmental cost classifications by one hotel versus the classification by another. However, we have made every attempt to be consistent.

Room Expense				
RATIO/UNIT	Subject 2010	Subject 2011	Subject 2-Year Mean	Ind. Avg. \$70 to \$100 ADR
Ratio to Room Revenue	21.87%	22.96%	22.42%	25.50%
Per Available Room	\$3,977	\$4,407	\$4,192	\$4,949

Administrative and General				
RATIO/UNIT	Subject 2010	Subject 2011	Subject 2-Year Mean	Ind. Avg. \$70 to \$100 ADR
Ratio to Room Revenue	4.90%	4.51%	4.71%	9.50%
Per Available Room	\$1,014	\$983	\$999	\$1,893

Marketing				
RATIO/UNIT	Subject 2010	Subject 2011	Subject 2-Year Mean	Ind. Avg. \$70 to \$100 ADR
Ratio to Room Revenue	4.50%	4.79%	4.65%	8.40%
Per Available Room	\$932	\$1,043	\$988	\$1,676

Property Operation and Maintenance				
RATIO/UNIT	Subject 2010	Subject 2011	Subject 2-Year Mean	Ind. Avg. \$70 to \$100 ADR
Ratio to Room Revenue	1.86%	2.15%	2.01%	5.30%
Per Available Room	\$385	\$468	\$427	\$1,066

Energy Costs				
RATIO/UNIT	Subject 2010	Subject 2011	Subject 2-Year Mean	Ind. Avg. \$70 to \$100 ADR
Ratio to Room Revenue	2.26%	2.12%	2.19%	5.70%
Per Available Room	\$467	\$462	\$465	\$1,139

Taxes				
RATIO/UNIT	Subject 2010	Subject 2011	Subject 2-Year Mean	Ind. Avg. \$70 to \$100 ADR
Ratio to Room Revenue	2.97%	0.76%	1.87%	5.10%
Per Available Room	\$445	\$165	\$305	\$1,026

HOA/Insurance				
RATIO/UNIT	Subject 2010	Subject 2011	Subject 2-Year Mean	Ind. Avg. \$70 to \$100 ADR
Ratio to Room Revenue	4.13%	3.19%	3.66%	1.50%
Per Available Room	\$763	\$777	\$770	\$302

Room Income Paid to Owners: The current management agreement indicates that 55% of gross room revenue is paid to individual owners of the 112 managed condominium units. We have utilized an expense of 55% of Managed Unit Revenues for our analysis.

On the following page is a reconstructed operating statement based on the previously discussed income and expenses.

Reconstructed Operating Statement			
Best Western Carolinian Resort, 2506 North Ocean Blvd., Myrtle Beach, SC			
Owned Units	Rev/Unit	# Units	
Hotel Units	\$15,000	102	\$1,530,000
Total Owned Units Room Revenues			\$1,530,000
Managed Units			
1 Bedroom Units	Rev/Unit	# Units	
1C (OF- \$25,000/Unit x 20 Units)	\$25,000	20	\$500,000
FC & JC (OV- \$20,000/Unit x 45 Units)	\$20,000	45	\$900,000
2 Bedroom Units			
2C & 1C (OF- \$28,000/Unit x 45 Units)	\$28,000	45	\$1,260,000
3 Bedroom Units			
3C (OF- \$38,000/Unit x 2 Units)	\$38,000	2	\$76,000
Total Managed Units Room Revenues			\$2,736,000
Revenue			
Room Income	89.04%		4,266,000
Telephone (Net)	0.83%		40,000
Other (Net)	3.13%		150,000
Resort Fee & Access Fee	6.99%		\$335,000
Total %	100%		
EFFECTIVE GROSS INCOME			4,791,000
Departmental Cost			
Rooms	24.00%		1,149,840
Other	0.00%		0
Total % of EGI	24.00%		1,149,840
GROSS OPERATING INCOME			3,641,160
Operating Expenses			
Admin. & General	6.00%		287,460
Marketing	5.00%		239,550
Management	3.00%		127,980
Operations/Maintenance	2.50%		119,775
Franchise Fee	3.00%		127,980
Energy	6.00%		91,800
Fixed Expenses			
Taxes & Licenses	2.61%		40,000
HOA Dues/Insurance Expense	3.13%		150,000
Replacements	2.00%		30,600
Amount Paid to Owners (based on Managed Unit Revenues)	55.00%		1,504,800
Total Operating & Fixed Expenses			2,719,945
TOTAL EXPENSES			3,869,785
Expense Ratio			80.77%
NET OPERATING INCOME			921,215
NOI Ratio			19.23%

Capitalization Rate Extraction

Given the fact that the subject operations are a mixture of owned hotel units and "management rights" for condominium unit rentals, we have looked to the market in order to locate sales of hotels and of other "management rights" operations in order to arrive at a "blended" capitalization rate for the subject property.

Hotel Capitalization Rates

The first method for deriving a capitalization rate is by the direct sales method. The overall rate selected for the subject property is based on the rates displayed by recent market transactions. The sales, which were also utilized in the Sales Comparison approach, are summarized below.

The first method for deriving a capitalization rate is by the direct sales method. The overall rate selected for the subject property is based on the rates displayed by recent market transactions. The sales are summarized as follows (the sales analyzed are the same as those used in the Sales Comparison Approach section):

Name	City	State	Date	Adjusted Sale Price	Units	Adj Price/ Unit	OAR
Radisson Hotel	New London	CT	Jul-11	\$3,750,000	120	\$31,250	8.76%
Comfort Inn	Dublin	VA	Jan-10	\$1,627,538	58	\$28,061	12.15%
Super 8	Morgantown	WV	Jan-10	\$3,955,000	58	\$68,190	13.64%
Comfort Inn	Charleston	SC	Feb-10	\$7,300,000	129	\$56,589	9.44%
Country Inn & Suites	Rosford	OH	Apr-10	\$4,800,000	80	\$60,000	9.63%
Country Inn and Suites	Anderson	SC	Jun-10	\$2,125,000	55	\$38,636	14.85%
Country Inn and Suites	Douglasville	GA	Jun-10	\$4,350,000	91	\$47,802	9.63%
Best Western	Tapon Springs	FL	Jul-10	\$2,900,000	111	\$26,126	11.23%
Best Western	Myrtle Beach	SC	Sep-10	\$3,050,000	90	\$33,889	9.84%
Fairfield Inn by Marriott	Beckley	WV	Oct-10	\$4,600,000	89	\$51,685	13.58%
Courtyard by Marriott	Yorktown	VA	May-11	\$4,200,000	90	\$46,667	8.18%
Holiday Inn Surside	Surfside Beach	SC	Jun-11	\$7,500,000	133	\$56,391	9.83%
Quality Inn	Woodbridge	VA	Dec-11	\$4,050,000	94	\$43,085	6.31%
Average				\$4,169,811	92	\$45,259	10.54%

As shown, the average capitalization rate for the sample motel sales was 10.54%.

National Indicators

Table 23 NATIONAL LIMITED-SERVICE MIDSCALE & ECONOMY LODGING SEGMENT First Quarter 2012					
	CURRENT	THIRD QUARTER 2011	1 YEAR AGO	2 YEARS AGO	3 YEARS AGO
DISCOUNT RATE (IRR)*					
Range	9.50% - 13.00%	10.00% - 14.00%	10.00% - 14.00%	10.00% - 15.00%	10.00% - 18.00%
Average	11.13%	11.38%	11.94%	12.75%	12.35%
Change (Basis Points)		-25	-81	-162	-122
OVERALL CAP RATE (OAR)*					
Range	8.00% - 12.00%	8.00% - 12.00%	8.00% - 12.00%	9.00% - 12.00%	6.50% - 14.00%
Average	9.75%	9.80%	9.80%	10.83%	9.58%
Change (Basis Points)		-5	-5	-108	+17
RESIDUAL CAP RATE					
Range	8.50% - 12.00%	8.50% - 12.00%	8.50% - 12.00%	9.00% - 12.50%	7.00% - 14.00%
Average	9.95%	10.00%	10.00%	11.25%	10.14%
Change (Basis Points)		-5	-5	-130	-9
AVERAGE DAILY RATE*					
Range	0.00% - 7.00%	(3.00%) - 8.00%	(3.00%) - 7.00%	(4.00%) - 3.00%	1.00% - 9.00%
Average	3.70%	3.20%	2.60%	(1.10%)	4.08%
Change (Basis Points)		+50	+110	+480	-38
OPERATING EXPENSE*					
Range	1.00% - 3.00%	1.00% - 3.00%	1.00% - 3.00%	1.00% - 5.00%	2.00% - 4.00%
Average	2.75%	2.70%	2.70%	2.85%	3.10%
Change (Basis Points)		+5	+5	-10	-35
MARKETING TIME*					
Range	2 - 12	2 - 12	2 - 12	4 - 12	3 - 10
Average	8.3	7.9	7.9	7.4	6.4
Change (▼, ▲, =)		▲	▲	▲	▲

a. Rate on unleveraged, all-cash transactions b. Initial rate of change c. In months

According to the Korpacz Real Estate Investor Survey, published by Pricewaterhouse Coopers (1st Quarter 2012), overall capitalization rates for limited service hotels have ranged from 8.0% to 12.0%, with averages around 9.75%. This is down from 9.80% average rate one year ago.

RealtyRates.com INVESTOR SURVEY - 2nd Quarter 2012*																									
CURRENT & HISTORICAL CAP RATE INDICES																									
Method: Weighted Property Category Indices																									
		Apts		Golf		Healthcare Senior Housing		Industrial		Lodging		MH/RV Park		Office		Retail		Restaurant		Self Storage		Special Purpose		Weighted Composite Indices	
	BP		BP		BP		BP		BP		BP		BP		BP		BP		BP		BP		BP		BP
Year	Rate	Chg	Rate	Chg	Rate	Chg	Rate	Chg	Rate	Chg	Rate	Chg	Rate	Chg	Rate	Chg	Rate	Chg	Rate	Chg	Rate	Chg	Rate	Chg	Rate
2012	8.40		12.06		8.88	-33	9.18		10.61		9.11		9.53		9.21		11.75		10.21		11.05				9.66
1st Qtr.	8.40	-14	12.06	-6	8.88	-2	9.18	-16	10.61	-7	9.11	-34	9.53	-5	9.21	-8	11.75	-14	10.21	-2	11.05	-8			9.66
2011	8.50	-29	12.00	-22	9.21	-40	9.49	-11	10.91	-24	9.48	-9	9.44	-10	9.28	-26	11.70	-14	10.69	-3	11.12	-17			9.81
4th Qtr.	8.54	26	12.13	34	9.50	-17	9.34	2	10.58	24	9.45	36	9.58	25	9.29	17	11.89	41	10.23	-27	11.13	17			9.77
2010	8.89	4	12.22	5	9.52	15	9.60	12	11.05	7	9.55	22	9.54	15	9.54	25	11.84	12	10.72	21	11.30	0			10.00
2009	8.85	8	12.17	16	9.47	10	9.48	10	10.98	-7	9.33	1	9.38	29	9.29	20	11.72	15	10.50	37	11.30	8			9.87
2008	8.77	-4	12.01	29	9.37	-16	9.38	-14	11.05	56	9.32	-5	9.03	-16	9.09	-11	11.57	-28	10.13	20	11.22	-7			9.74
2007	8.81	-45	11.72	-21	9.53	-65	9.62	-26	10.49	-28	9.37	-26	9.25	-47	9.20	-12	11.85	51	9.93	-38	11.29	-24			9.75
2006	9.26	12	11.93	47	10.18	15	9.77	35	10.77	27	9.63	41	9.72	26	9.32	30	11.24	18	10.31	27	11.53	8			10.03
2005	9.14	14	11.46	80	10.03	-16	9.42	-30	10.50	-21	9.22	19	9.46	6	9.02	16	11.06	5	10.04	13	11.44	-30			9.77
2004	9.00	-19	10.56	28	10.19	-37	9.72	19	10.71	-98	9.03	-48	9.40	-4	8.86	-19	11.01	-15	9.91	-13	11.74	-38			9.75
2003	9.19	-2	10.38	-32	10.56	64	9.53	33	11.63	56	9.51	-11	9.44	1	9.05	-18	11.16	8	10.04	-53	12.04	105	9.94	11	9.94
2002	9.21	-40	10.70	18	9.92	-39	9.20	-61	11.13	26	9.52	-60	9.43	-35	9.23	-52	11.09	-3	10.57	-12	10.99	-177	9.82	-41	9.82
2001	9.61	64	10.52	133	10.31	90	9.91	16	10.97	98	10.22	-59	9.78	-36	9.65	-53	11.11	47	10.69	13	12.76	32	10.23	21	10.23
2000	8.97		9.19		9.41		9.65		8.89		10.90		10.13		10.38		10.64		10.86		12.44				10.01
*Weighted by methodology: Band-of-Investment, DCR Technique, Sales Survey																									
*Further weighted by property category																									
*1st Quarter 2012 Data																									
Copyright 2012 RealtyRates.com																									

*Weighted by methodology: Band-of-Investment, DCR Technique, Sales Survey
 **Further weighted by property category

*1st Quarter 2012 Data

Copyright 2012 RealtyRates.com™

The overall capitalization rate for the Lodging Industry according to the 2ND Quarter 2012 survey by RealtyRates is 10.61% and the weighted Composite Index for all of the properties listed above was 10.00 at the same time.

RealtyRates.com INVESTOR SURVEY - 2nd Quarter 2012*						
LODGING FACILITIES - LIMITED SERVICE						
Item	Input					OAR
Minimum						
Spread Over 10-Year Treasury	1.35%	DCR Technique	1.25	0.068490	0.65	5.56
Debt Coverage Ratio	1.25	Band of Investment Technique				
Interest Rate	3.32%	Mortgage	65%	0.068490	0.044519	
Amortization	20	Equity	35%	0.088369	0.030929	
Mortgage Constant	0.068490	OAR				7.54
Loan-to-Value Ratio	65%	Surveyed Rates				7.17
Equity Dividend Rate	8.84%					
Maximum						
Spread Over 10-Year Treasury	11.25%	DCR Technique	3.00	0.153650	0.60	23.05
Debt Coverage Ratio	3.00	Band of Investment Technique				
Interest Rate	13.23%	Mortgage	50%	0.153650	0.076825	
Amortization	15	Equity	50%	0.209785	0.104892	
Mortgage Constant	0.153650	OAR				18.17
Loan-to-Value Ratio	50%	Surveyed Rates				17.26
Equity Dividend Rate	20.98%					
Average						
Spread Over 10-Year Treasury	6.31%	DCR Technique	1.62	0.108337	0.58	10.12
Debt Coverage Ratio	1.62	Band of Investment Technique				
Interest Rate	8.28%	Mortgage	58%	0.108337	0.062294	
Amortization	18	Equity	43%	0.143006	0.060778	
Mortgage Constant	0.108337	OAR				12.31
Loan-to-Value Ratio	58%	Surveyed Rates				11.76
Equity Dividend Rate	14.30%					

*1st Quarter 2012 Data

Copyright 2012 RealtyRates.com™

The average OAR indicated by the DCR Technique is 10.12% using 1.62 as the DCR. The OAR by the Band of Investment Technique with 58% mortgage and equity dividend rate of 14.30% indicates 12.31% OAR. The surveyed rate is 11.76%. Most sources indicate that OAR for motel properties have been on the decline; however, RealtyRates data does not show the decline that is shown in the Korpacz Real Estate Investor Survey.

Mortgage Equity Capitalization

The second method for developing an overall capitalization rate for the subject is based upon the mortgage equity method of capitalization using the band of investment technique. Support for the factors involved in this application of the approach to capitalization was based upon an analysis of market interest rates, economic conditions, and financing available to investors in the market as of the date of the appraisal. Based upon our investigations, an investor can obtain a 75% loan to value at an interest rate of 6.50% with a 15-year amortization schedule with a 5-year call. We estimated the investor for this type property would require a minimum yield of 20% on equity based on other yields for competitive investment alternatives. We estimated no appreciation for the holding period. The mortgage equity capitalization technique is illustrated below.

Mortgage-Equity Capitalization					
Holding Period (yrs)	=	5			
Equity Yield Rate	=	20.00%			
Loan Ratio	=	75.00%			
Loan Term (yrs)	=	15			
Loan Rate	=	6.50%			
Appreciation/Depreciation	=	0.00%			
Band of Investment Method					
Capital Source		Portion		Rate	Cap Rate
Mortgage Loan	=	75.00%		10.45%	7.8400%
Equity Funds	=	25.00%		20.00%	5.0000%
Overall Rate					= 12.8400%
Less Equity Buildup through Debt Reduction					
Debt Reduction %	=	23.28%			
Sinking Fund Factor	=	0.13438			
Loan Ratio	=	75.00%			2.3466%
Basic Rate					= 10.4934%
Less Equity Buildup through Appreciation/Depreciation					
Appreciation/Depreciation	=	0.00%			
Sinking Fund Factor	=	0.13438			0.0000%
Final Rate					= 10.4934%

The mortgage equity band of investment technique has an indicated capitalization rate of 10.49%.

Summary of Overall Hotel Capitalization Rates (R_o): By utilizing the direct sales method, the mortgage equity capitalization technique, as well as extracting a rate from a gross income multiplier, the indicated capitalization rates for the subject appear to be well supported between 9.80% to 11.82%. Based on the location and condition of the property, the current cost of funds, and the state of the economy, we have estimated a capitalization rate of 10.00% attributable to the owned units.

Management Rights Capitalization Rate Extraction

In extracting an overall capitalization rate for the managed condominium units, we have considered several sources of data. They are discussed as follows:

Direct Sales Method

Condotel management rights and the associated real estate seldom are offered for sale in the local and regional market. A search of MLS and Loop Net revealed that there are none available at the present time. Most of the condotels that are in existence today are operated by a small group of developers and operators here locally. They are not typically marketed on the open market via MLS, Loop Net or other sales channels. Therefore listing and sales data is very difficult to obtain. However after extensive research we have found reliable recent information indicating current arm's length transfers. Furthermore we have compared our recent data with historical local sales and also Realty Rates data.

Recent Local Sales Data

Sale 1: We interviewed a market participant which has been involved in the purchase of several condo management rights. This market participant has been involved with the purchase of several hundreds of units under management agreement, including one transaction having 425± unit condotel management rights within the last three to four years. Based on our discussions with the active participant it was noted that typical buyers and sellers of condotel management rights based decisions on formals as will be explained further. In this transaction, the purchase price for the commercial units and managements rights was for \$2,335,000 for 425± units or \$5,161 per unit. The estimated gross room revenue at the time of sale was approximately \$18,000± per unit. The buyer of this transaction was particularly aware of the Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). The market has typically seen buyers and sellers in the 5x range of EBITDA. This equates to an effective capitalization rate of 20% of Net Operating Income (NOI). The condotel building is shown to the right.



Sale 2: We are aware of a sale which occurred in 2008 that was a buyout of management right interests. The purchaser of the subject commercial unit purchased the management rights of approximately 203 condominium units at the Prince Resort. The purchase price was \$5,225,000. The stabilized net operating income is estimated to be \$795,616. This indicates a capitalization rate of 15.01%. In hindsight, this sale appears well above market due to the downturn in the accommodations market in 2008 and 2009.



Sale 3: The Bayview Resort, in further support of the capitalization rate, we are aware of a for a condominium management operation. The Option to Purchase "Price", according to a confidential source (partner), the option to purchase was exercised at 5 times EBITA which translates into a 20.0% cap rate on the 5th year's Net Operating Income. We were unable to obtain a gross income multiplier for this pending sale.



Historical Local Sales: As additional support, we compared the recent data to older in data we have in file. We believe this data is still a valid indicator of how market participants view the value of management rights. The fundamentals of purchasing condo hotel management rights have stayed

consistent and are valid in our opinion for current comparison purpose. Our older local sales indicate capitalization rates ranging from 10.00% to 14.6%, with EGRIMs (effective gross room income multipliers) ranging from .34 to .63. These cap rates are well below the more recent trends in the market. Tighter lending policies likely contribute to this trend.

Additional support from Realty Rates:

Shown at right is a chart that displays recent Lodging Facilities data. The chart indicates that the maximum Overall Rates studied was 17.26% for fee simple hotel properties. This shows evidence that the rate at very best should not be below 17.26% due to the scenario that the 17.26% transaction include the "Sale" of the real estate rather than intangible "rights to manage". Therefore, in our final conclusion we have used this as a basis for the lower end of the capitalization rate.

RealtyRates.com INVESTOR SURVEY - 2nd Quarter 2012*					
LODGING FACILITIES -ALL TYPES					
Item	Input				OAR
Minimum					
Spread Over 10-Year Treasury	1.75%	DCR Technique	100	0.051372	0.80
Debt Coverage Ratio	1.00	Band of Investment Technique			
Interest Rate	3.12%	Mortgage	80%	0.051372	0.041098
Amortization	30	Equity	20%	0.086369	0.017274
Mortgage Constant	0.051372	OAR			5.84
Loan-to-Value Ratio	80%	Surveyed Rates			5.55
Equity Dividend Rate	8.64%				
Maximum					
Spread Over 10-Year Treasury	11.26%	DCR Technique	100	0.153650	0.50
Debt Coverage Ratio	3.00	Band of Investment Technique			
Interest Rate	13.23%	Mortgage	80%	0.153650	0.076925
Amortization	15	Equity	80%	0.209785	0.104692
Mortgage Constant	0.153650	OAR			18.17
Loan-to-Value Ratio	50%	Surveyed Rates			17.26
Equity Dividend Rate	20.98%				
Average					
Spread Over 10-Year Treasury	3.89%	DCR Technique	154	0.081139	0.65
Debt Coverage Ratio	1.64	Band of Investment Technique			
Interest Rate	5.96%	Mortgage	65%	0.081139	0.053133
Amortization	22	Equity	35%	0.154248	0.053241
Mortgage Constant	0.081139	OAR			10.64
Loan-to-Value Ratio	55.5%	Surveyed Rates			11.36
Equity Dividend Rate	15.4%				

*1st Quarter 2012 Data

Copyright 2012 RealtyRates.com™

Conclusion: Each condominium management contract has its unique qualities of physical components, as well as management arrangements, some with small on site commercial units, others with larger commercial units, and others with no commercial units at all, only managed rights. As such, true sales comparables are scarce in the local market.

Due to the risks of condotel management, conditions of the current market and lack of financing for perspective buyers for management companies. The lack of control over many aspects of the project as a whole due to the existence of the HOA, and the low amount of real estate interest owned, we estimate a capitalization rate of 20.0% to be reasonable and supported. This rate is allocated to the Managed Units portion of the revenue stream.

Capitalization Process

The final step in this method of valuation is dividing net income by the overall capitalization rate to indicate the market value of the subject. As stated, the subject is a mixture of hotel units operations, as well as "management rights," or condotel operations. A "blended" capitalization rate is considered to be the most reliable method to estimating a capitalization rate. In order to do this, we have calculated the capitalization rate as follow:

<u>Revenue Type</u>	<u>Amount</u>	<u>%</u>			
Owened Units Revenue	\$ 1,530,000	35.86%			
Managed Units Revenue	\$ 2,736,000	64.14%			
Total Revenues	\$ 4,791,000	100.00%			

<u>Revenue Stream</u>	<u>Capitalization Rate</u>	x	<u>% of Total Revenues</u>	=	<u>Indicated Rate</u>
Owened Units	10.0%	x	35.86%	=	3.79%
Managed Units	20.0%	x	64.14%	=	15.53%
					16.41%

For purposes of our analysis, we have utilized a blended capitalization rate of 16.21%. The net income for the subject is estimated at \$817,735 final value estimate is calculated as follows:

Net Income	÷	Overall Rate	=	Value
\$921,215	÷	16.41%	=	\$ 5,683,004
Rounded to				\$ 5,700,000

Summary of the Income Approach

After completing a reconstructed income and expense statement for the subject property to derive a reasonably expected net operating income, the indicated value for the subject via the income approach appears to be well supported at \$5,700,000 for the subject property.

INDICATED VALUE VIA INCOME APPROACH: \$ 5,700,000

Reconciliation and Final Overall Estimate of Value

In estimating the combined Fee Simple market value of the subject Commercial Unit and the Going Concern interest that the owner of the Commercial Unit has over 112 managed units within the Best Western Carolinian Resort, we have utilized the Sales Comparison and Income Approaches to value. These approaches are applicable in appraising the subject property. Both approaches are felt to best represent the reactions of the typical market participants in the area, however, given the unique nature of the subject property being a mixture of hotel units and rental management for condominium units owned by other individuals, the value indication provided by the Income Approach is given more reliance. This approach is considered more applicable than the Sales Comparison approach. The typical buyer for this type of property would be more interested in the cash flow of the property, rather than typical units of comparison, such as prices per unit, Gross Income Multiplier, RevPar analysis, etc. The value estimates for each approach is listed below.

SALES COMPARISON APPROACH	\$ 5,700,000
INCOME CAPITALIZATION APPROACH	\$ 5,650,000

Based upon the investigations and analyses undertaken, we have formed the opinion that the combined **Fee Simple market value of the subject hotel units and commercial units**, and the **Going Concern** interest that the owner of the Commercial Unit has over 112 managed units within the Best Western Carolinian Resort, based on "**As Is**" condition, as of August 3, 2012 (including FF&E valued at \$388,952) is estimated at:

FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS
(\$5,700,000)

Allocation of Hotel Component Estimate of Value

Per the clients request we were asked to separate the hotel component from the overall value. We relied on the previous motel section (Sales Comparison Approach) to estimate the allocation of each of the components (Owned Units and Managed Units). This allocation will help with separating the business value from the hotel value. The operation of the overall subject is combined using economies of scale for the entire project (hotel and condo tower). The associated expenses of each of the components were not provided. Therefore, we estimated market expenses for the hotel component as a percentage of our estimated room revenue. As mentioned earlier the forecasted room revenue from the hotel (owned units) is estimated at \$1,530,000. Based on our research and the sales shown previously in this report a reasonable estimate of the lump sum operating expense ratio is 70±% of hotel room revenue. The remaining 30±% of the revenue would be allocated to the Net Operating Income (NOI) or \$459,000 ($\$1,530,000 \times 30\pm\%$). The capitalization rate applied to the net income was also supported by the sales shown previously in the report. Therefore, $\$459,000 / 10\% = \$4,590,000$ (\$4,600,000 rounded) is the estimated allocation for the hotel component. This estimate also indicates a 3.00 GRIM (Gross Room Income Multiplier) which is within range of the recent transactions locally and regionally as presented earlier.

The allocation of the condo management rights will be calculated from the overall value of both components and subtracting the hotel owned unit component. As shown below...

Overall Value and Allocation Values		
Hotel and Management Rights	Market Value "As Is" Overall	\$ 5,700,000
Hotel Component Only	Estimated Market Value "As Is"	- \$ 4,600,000
	Management Rights Component Only	\$ 1,100,000

Marketing and Exposure Period

The estimated marketing time for the property is twelve months. This marketing time is also estimated as the needed exposure time for the property.

REAL ESTATE QUALIFICATIONS AND EDUCATION

AMIT G. PATEL

FORMAL EDUCATION

Graduate of the University of South Carolina

Bachelor Science in Business Administration (double major Finance and Real Estate, 2004)

PROFESSIONAL APPRAISAL EDUCATION

University of South Carolina

• Finance 366	Introduction to Real Estate Urban Development
• Finance 367	Real Estate Market Analysis
• Finance 468	Real Estate Appraisal
• Finance 469	Real Estate Finance and Investments

Appraisal Institute Courses:

• Course 110	Principles
• Course 120	Procedures
• Course 310	Basic Income Capitalization
• Course 410	National USPAP Course 15-Hour
• Course 400	7-Hour National USPAP Update Course
• Course 520	Advanced Income Capitalization.
• Course 530	Advanced Sales Comparison and Cost Approach
• Residential Market Analysis and Highest & Best Use	

Seminars

- Evaluating Residential Construction
- Small Hotel/Motel Valuation
- Cost Approach to Commercial Appraising
- Business Practices and Ethics
- Appraising Distressed Commercial Real Estate: Here We Go Again
- Commercial Appraisal Engagement and Review Seminar for Bankers and Appraisers
- Appraising Convenience Stores
- A Debate On The Allocation Of Hotel Total Assets

The Spearmen Center for Professional Education

- Course C3 Applied Valuation Study (General Applications)

PROFESSIONAL ASSOCIATIONS & ACTIVITIES

South Carolina Certified General Real Estate Appraiser CG 5077

Appraisal Institute

Associate Member (August 2004 to Present)



(Continued from Preceding Page)**EXPERIENCE**

October 2003 – December 2005
Columbia, SC

Real Estate Appraisers and Consultants, LLC
Staff Appraiser

January 2006 - September 2010
Myrtle Beach, SC

Cox, Beall & Associates, LLC; Commercial-
Staff Appraiser

September 2010- Present
Myrtle Beach, SC

E. F. Hucks and Associates, Inc.; Commercial-
Staff Appraiser

PROPERTIES APPRAISED:

Office Complexes
Condominium Projects
Industrial Properties
Automobile Dealerships
Marinas
Churches
Land; Commercial & Residential
Development Sites, Subdivision Lots

Restaurants; Fast Food & Full Service
Warehouses & Mini-Warehouses
Golf Courses
Hotels/Motels
Shopping Centers
Single Family residential homes
Amphitheaters
Fitness Gymnasiums

Day Cares
Car Washes
Convenience Stores

APPRAISAL CLIENTS SERVED:

Numerous Banks, Savings & Loans Institutions throughout South Carolina and other parts of the U.S.
Mortgage Brokers
Attorneys
Accountants
Developers
Property Owners
City, State & Federal Government Agencies

ADDRESS:

E. F. HUCKS & ASSOCIATES, INC.
2411 North Oak Street, Suite 403
Myrtle Beach, SC 29577
Email: AmitP@EFHucks.com

Telephone: (843) 497-9192
Fax: (843) 497-9542
Website: www.efhucksinc.com

REAL ESTATE QUALIFICATIONS AND EDUCATION

EDWARD F. HUCKS, MAI, SRA



APPRAISAL CERTIFICATION:

Certified General Real Estate Appraiser - #A394 (North Carolina)

Certified General Real Estate Appraiser - #CG138 (South Carolina)

PROFESSIONAL EDUCATION:

Graduate, Francis Marion College, Florence, S. C. - 1981

B. S. in Business Administration

APPRAISAL COURSES COMPLETED: Appraisal Institute:

Courses:

8-1: Appraisal Principles - 1983
 8-2: Residential Valuation - 1982
 SPP: Standards of Professional Practice - 1983
 1BA: Capitalization - Theory & Techniques A - 1988
 1BB: Capitalization - Theory & Techniques B - 1988
 2-1: Case Studies in R. E. Valuation - 1989
 1A2: Basic Valuation Procedures - 1988
 2-2: Report Writing and Valuation Analysis - 1989
 SPP: Standards of Professional Practice - Parts A & B - 1996
 Standards of Professional Practice - Part C - 2000
 Business Practices and Ethics - Course 420 - 2006 & 2008
 The National USPAP Update, Course 400 - 2006, 2008, 2010 & 2012
 Appraisal Curriculum Overview (2-Day General) - 2011
 Fundamentals of Separating Real Property, Personal Property & Valuing Intangible Assets - 2012

Seminars:

Review Appraisal Seminar - 1986
 Computer Assisted Sales Comparison - 1986
 Subdivision Analysis - 1987
 Capitalization Overview - 1987
 Rates, Ratios & Reasonableness - 1989
 Valuation of Lease Interests - 1989
 Discounted Cash Flow Analysis - 1990
 Environmental Considerations for Real Property - 1990
 Rate Extraction - 1990
 Standards of Professional Practice Update - 1990
 Easement Valuation - 1990
 Real Estate Risk Analysis - 1991
 Appraising Troubled Properties - 1991
 Highest and Best Use - Non-Residential Properties - 1992
 Hotel/Motel Valuation - 1992
 Valuation Considerations: Appraising Nonprofit Properties - 1992
 Under The Microscope: The Cost Approach - 1992
 Power Line Easements & Electro Magnetic Fields-Effect on People & Value - 1993
 Appraisal Regulations of the Federal Banking Agencies From the Lenders' Perspective - 1994
 Fair Lending and the Appraiser - 1996
 The Internet and Appraising - 1996
 The High-Tech Appraisal Office - 1996
 Special Purpose Properties: The Challenges of Real Estate Appraising in Limited Markets - 1996
 Appraising High-Value and Historic Homes - 1998
 New Technologies for the Real Estate Appraiser - 1998

Seminars (continued):

USPAP in Cross Examination - 1999
 Cost Approach Applications - 2000
 Valuation of Detrimental Conditions in Real Estate - 2000
 Keeping Up-An Updated and Review for South Carolina Appraisers - 2000
 Supporting Sales Comparison Grid Adjustments for Residential Properties - 2001
 State of the Valuation Profession - 2001
 Appraisal Review - General - 2001
 Eminent Domain and Condemnation Appraising - 2001
 Appraisers and the Gramm-Leach-Bliley Act - 2002
 Introduction to Appraising and Analysis of Proposed Subdivisions and Condominiums - 2002
 Analyzing Distressed Real Estate - 2002
 Supporting Capitalization Rates - 2003
 Establishing the Worth of an Appraisal to Your Clients and the Community - 2003
 Appraisal Consulting: A Solutions Approach for Professionals - 2003
 Scope of Work - 2004
 National USPAP Update Equivalent - 2005
 How to Increase Profits Using Your Appraisal Skill - 2005
 What Clients Would Like Their Appraisers to Know - 2006
 Loss Prevention - 2006
 Litigation Skills for the Appraiser: An Overview - 2006
 Subdivision Valuation: A Comprehensive Guide to Valuing Improved Subdivisions - 2006
 Inverse Condemnation - 2007
 New Technologies for the Real Estate Appraiser: Cool Tools - 2007
 Analytics with the Site to do Business - 2007
 Introduction to Valuation for Financial Reporting - 2009
 Fannie Mae 2009 Selling Guide Updates - 2009
 Valuing High Performance Residential Properties - 2009
 Managing and Procuring Commercial Appraisal Reports - 2009
 Spotlight on USPAP: Agreement for Services - 2010
 A Debate on the Allocation of Hotel Total Assets - 2010
 Appraising Distressed Commercial Real Estate - 2010
 Appraisal Review: Income Capitalization Approach - 2010
 The Appraiser and the Site to Do Business: Location, Timing and Demographics - 2010
 Land, Condos & Subdivisions - Solutions to Hard Value Assets - 2010
 Commercial Appraisal Engagement and Review - 2010
 Understanding and Testing DCF Valuation Models - Pt. 1 - 2010
 The Lending World in Crisis: What Clients Need Their Appraisers to Know - 2011
 New Interagency Appraisal and Evaluation Guidelines: A Primer for Commercial Lenders and Appraisers - 2011
 Advanced Spreadsheet Modeling for Valuation Applications - 2011
 Appraising the Appraisal: Appraisal Review General - 2012
 Real Estate Finance, Value, and Investment Performance - 2012

CLE International - Eminent Domain Conference - 2003 & 2005

Fortune Academy of Real Estate - CE004035: Core Update - 2005
 Top Ten Ways to be Disciplined - 2010

The Center for American and International Law (Institute for Local Government Studies) -
 Planning, Zoning and Eminent Domain - 2003

American Society of Real Estate Appraisers -
 Income Producing Properties Seminar - 1985; "R-41-C" Seminar - 1987;
 BV201: Introduction to Business Valuation, Part 1 - 2001

American Society of Farm Managers and Rural Appraisers -
 Advanced Rural Appraisal - 1981; Report Writing - 1984; Eminent Domain/Condemnation - 1986

The Whitner Company -
 Comprehensive Exam Workshop - 1991; South Carolina Home Builder's Exam Preparation Course

PROFESSIONAL EXPERIENCE:

- Licensed Real Estate Broker and Appraiser in South Carolina - since 1980
- Partner in Real Estate Brokerage Firm - 1981 - 1984
- 30± years-experience in sales and appraising all types of properties including commercial, single family, multi-family, condos, office buildings, restaurants, mobile home parks, golf course developments, manufacturing facilities, hotels, motels, subdivisions, farms and other special purpose properties.
- Vice-President/Branch Manager - Bay State Appraisal Corporation - Myrtle Beach, S. C. - 1986 - 1991
- President - E. F. Hucks & Associates, Inc. - Myrtle Beach, S. C.

PROFESSIONAL ORGANIZATIONS:

South Carolina Real Estate Appraisers Board – 2001-2004
 Greater Horry County Board of Realtors
 South Carolina Association of Realtors
 National Association of Realtors
 SC Chapter 47 - Appraisal Institute
 Candidates Guidance Chairman - SRA's - 1991
 Board of Directors - 1991-1992
 Regional Representative - 1993-1994

SERVICES OFFERED:

- Independent fee appraisals and review appraisal services
- Consulting and counseling
- Testimony as expert witness in family courts of Lee and Horry Counties plus testimony in Horry County Master in Equity Court and Federal Bankruptcy Court - Columbia, SC

PROPERTIES APPRAISED:

Apartment Complexes
 Marina Facilities
 Motels
 Office Complexes
 Restaurants
 Shopping Centers
 Residential Subdivisions
 Condominium Projects
 Farms and Timberlands
 Churches and Funeral Homes
 Warehouse and Industrial Properties
 Miniature Golf Courses and Amusement Parks
 Golf Courses

APPRAISAL CLIENTS SERVED:

US Army Corps of Engineers
 Horry County
 Georgetown County
 Santee Cooper
 General Services Administration (GSA)
 SC Coastal Council
 SC Dept. of Highways & Public Transportation
 Municipalities-Conway, Surfside Beach, Bishopville & Lee Counties
 Resolution Trust Corporation
 Various Banks, Savings & Loans, and other Thrifts throughout South Carolina and other parts of the U.S.

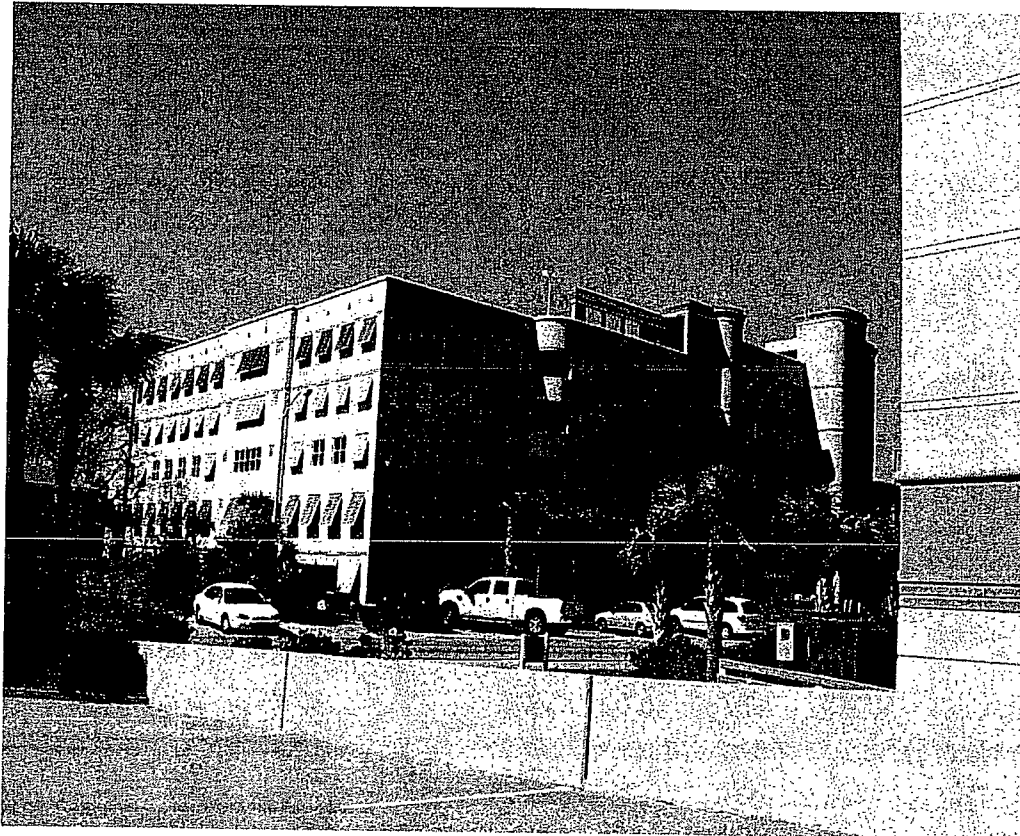
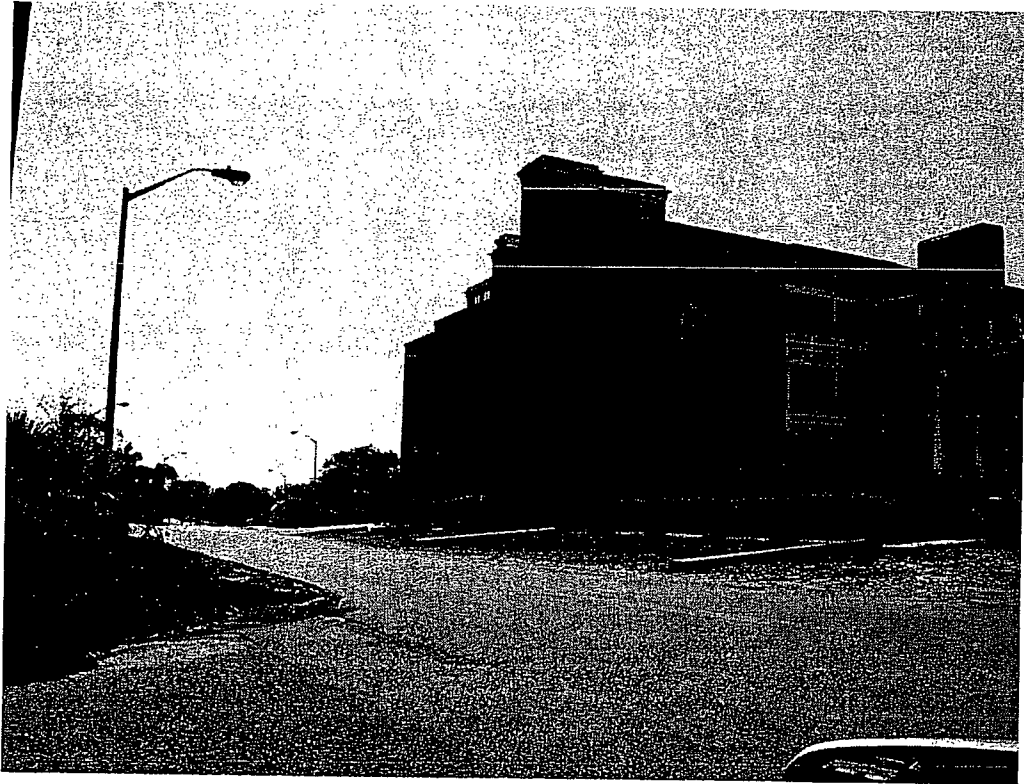
ADDRESS:

E. F. HUCKS & ASSOCIATES, INC.
 2411 North Oak Street, Suite 403
 Myrtle Beach, S. C. 29577

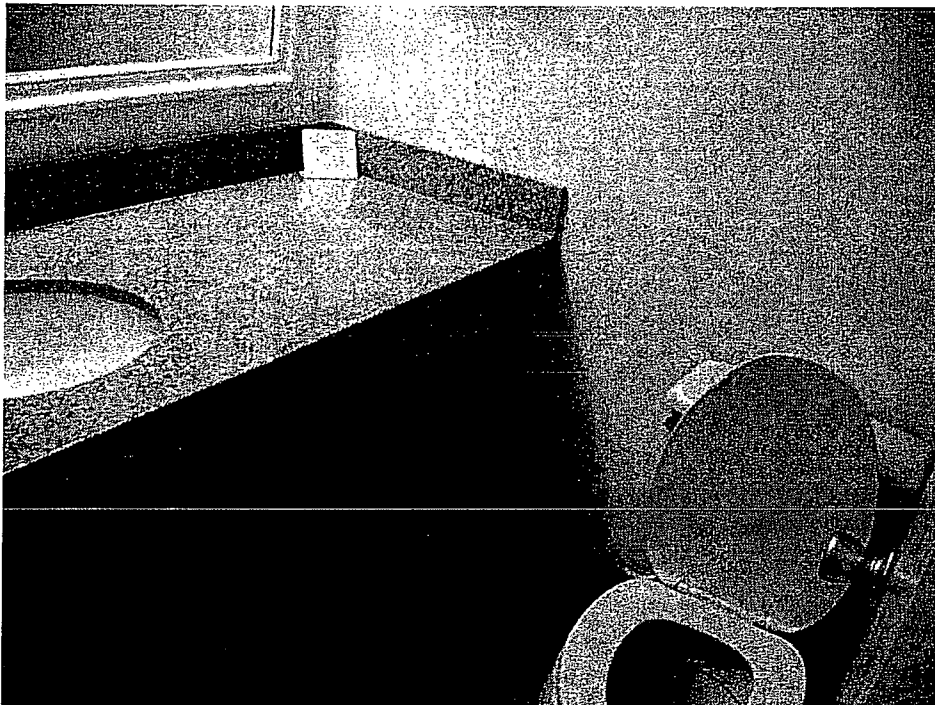
Telephone: (843) 443-3159
 Fax: (843) 448-1925
 website: efhucks.com
 email: efh@efhucks.com

Subject photos



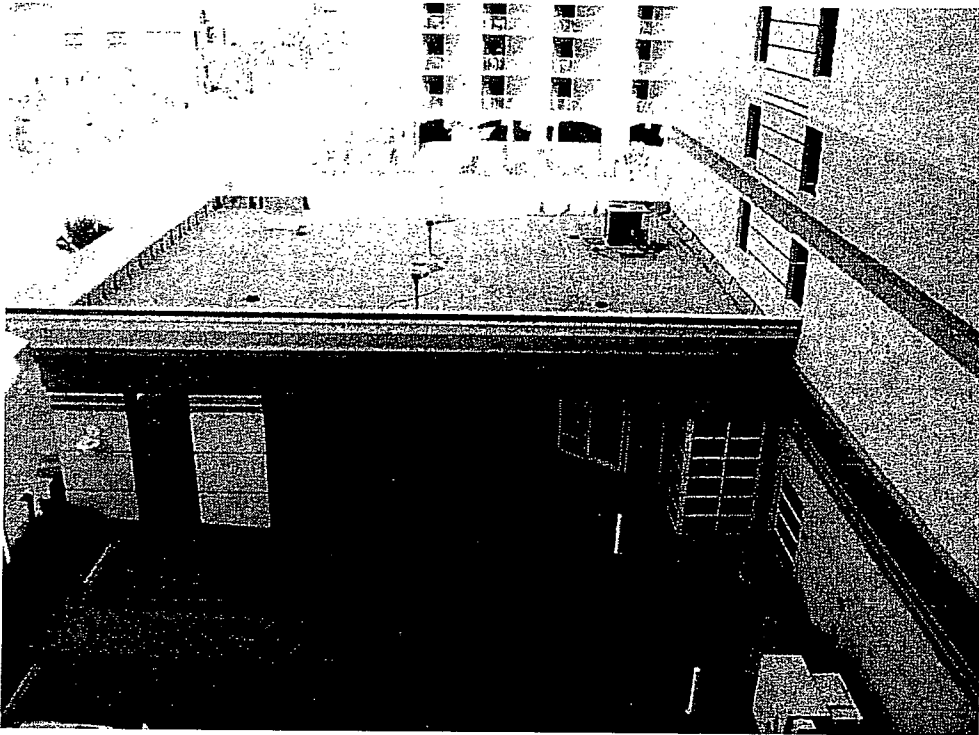


Hotel Units Photos

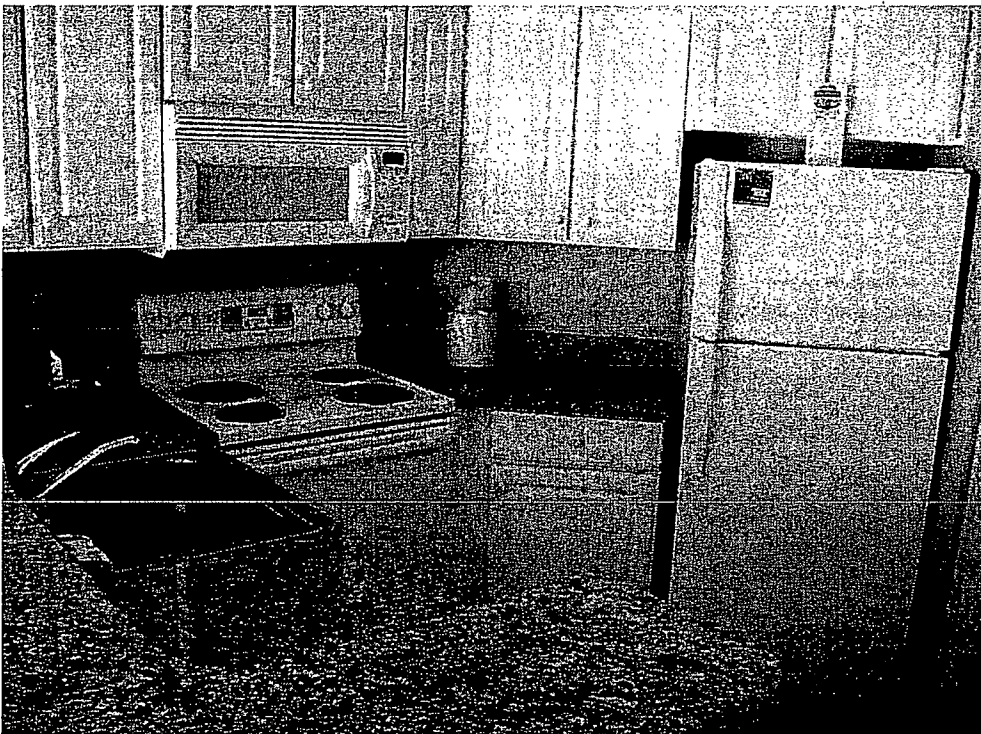


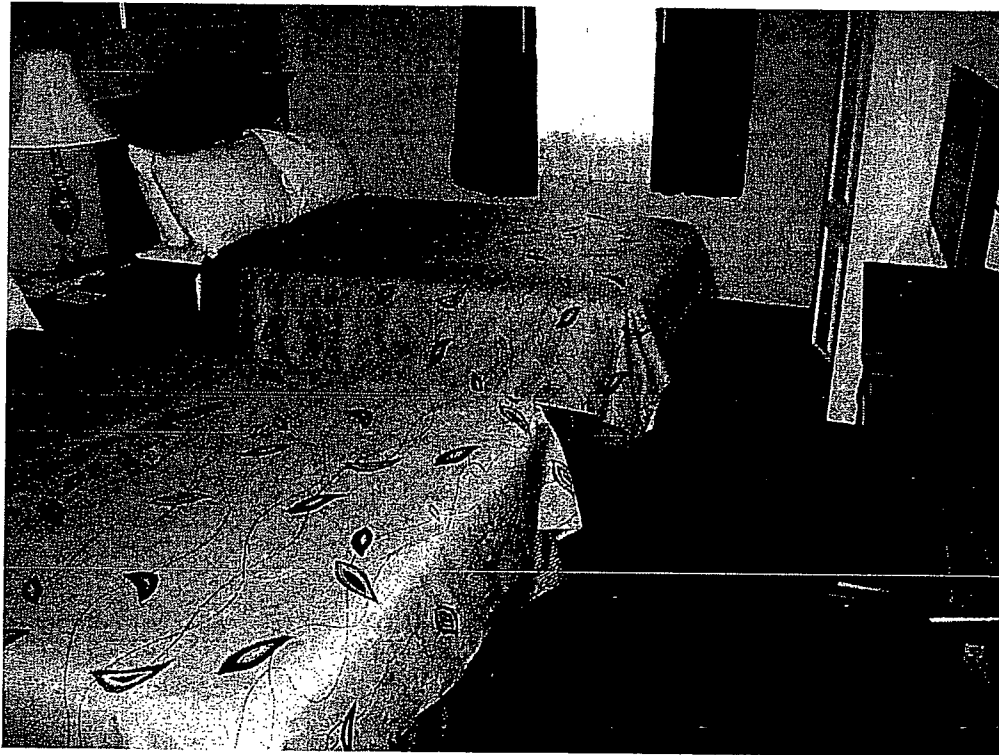
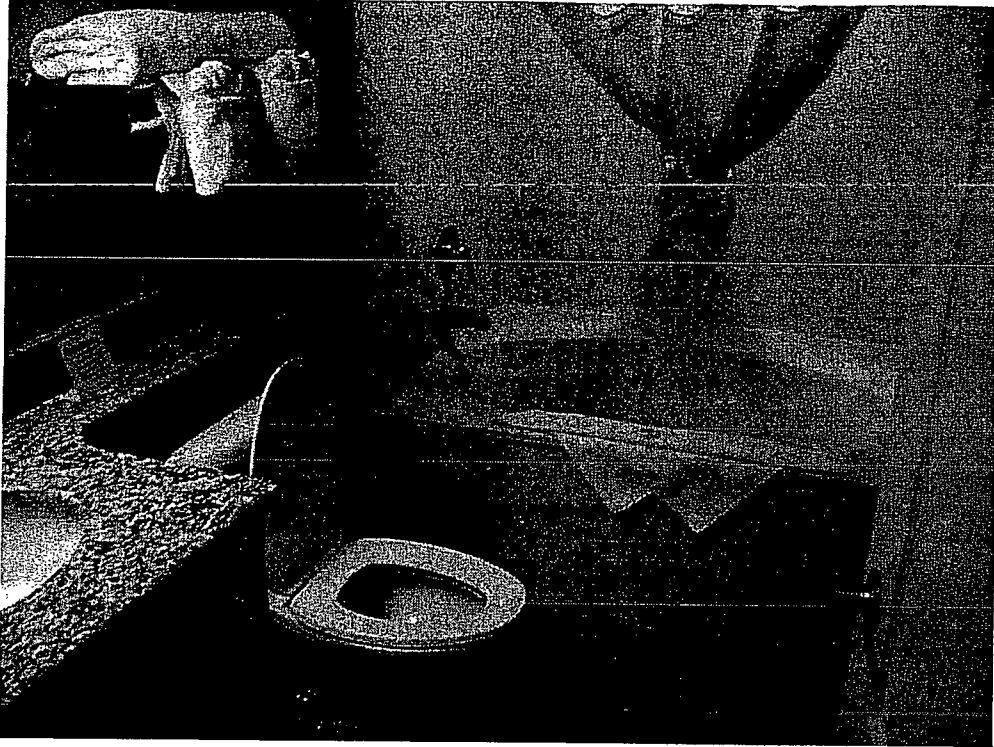


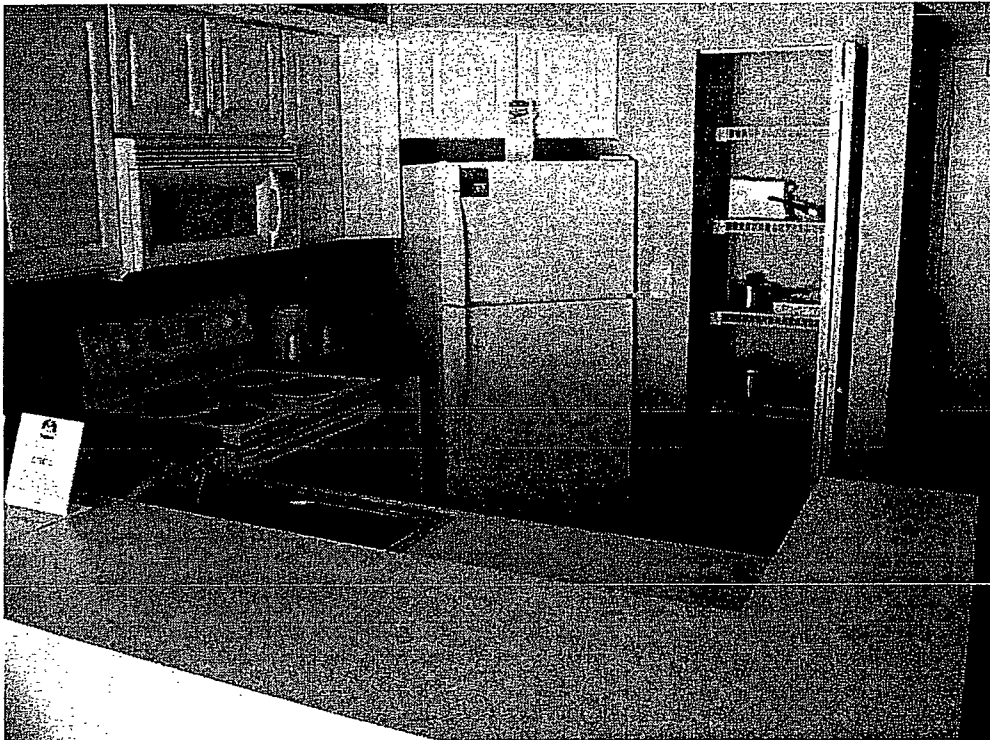


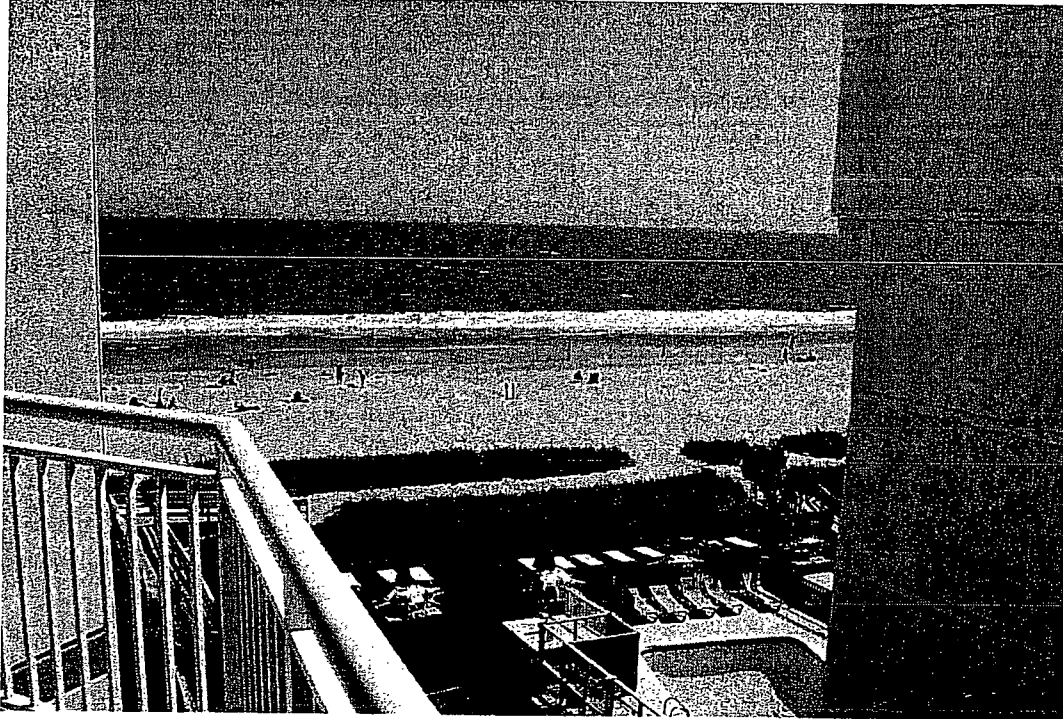


Condo tower photos









COMPANY OWNED UNITS ON PROGRAM

Room#	Type	Owner Billing	#BR
0103	AC	N	1BR
0104	AC	N	1BR
0105	CC	N	1BR
0106	AC	N	1BR
0107	AC	N	1BR
0108	BC	N	1BR
0200	GC	N	1BR
0201	EC	N	1BR
0202	BC	N	1BR
0203	AC	N	1BR
0204	AC	N	1BR
0205	CC	N	1BR
0206	AC	N	1BR
0207	AC	N	1BR
0208	BC	N	1BR
0209	HC	N	1BR
0210	DC	N	1BR
0302	BC	N	1BR
0303	AC	N	1BR
0304	AC	N	1BR
0305	CC	N	1BR
0306	AC	N	1BR
0307	AC	N	1BR
0308	BC	N	1BR
0309	HC	N	1BR
0310	DC	N	1BR
0400	GC	N	1BR
0401	EC	N	1BR
0402	BC	N	1BR
0403	AC	N	1BR
0404	AC	N	1BR
0405	CC	N	1BR
0406	AC	N	1BR
0407	AC	N	1BR
0408	BC	N	1BR
0409	HC	N	1BR
0410	DC	N	1BR
0500	GC	N	1BR
0501	EC	N	1BR
0502	BC	N	1BR
0503	AC	N	1BR
0504	AC	N	1BR
0505	CC	N	1BR
0506	AC	N	1BR
0507	AC	N	1BR
0508	BC	N	1BR
0509	HC	N	1BR
0510	DC	N	1BR
0600	GC	N	1BR
0601	EC	N	1BR

0602	AC	N	1BR
0603	AC	N	1BR
0604	AC	N	1BR
0605	CC	N	1BR
0606	AC	N	1BR
0607	AC	N	1BR
0608	BC	N	1BR
0609	HC	N	1BR
0610	DC	N	1BR
0700	GC	N	1BR
0701	EC	N	1BR
0702	BC	N	1BR
0703	AC	N	1BR
0704	AC	N	1BR
0705	CC	N	1BR
0706	AC	N	1BR
0707	AC	N	1BR
0708	BC	N	1BR
0709	HC	N	1BR
0710	DC	N	1BR
0800	GC	N	1BR
0801	EC	N	1BR
0802	BC	N	1BR
0803	AC	N	1BR
0804	AC	N	1BR
0805	CC	N	1BR
0806	AC	N	1BR
0807	AC	N	1BR
0808	BC	N	1BR
0809	HC	N	1BR
0810	DC	N	1BR
0900	GC	N	1BR
0901	EC	N	1BR
0902	BC	N	1BR
0903	AC	N	1BR
0904	AC	N	1BR
0905	CC	N	1BR
0906	AC	N	1BR
0907	AC	N	1BR
0908	BC	N	1BR
0909	HC	N	1BR
0910	DC	N	1BR
1000	KC	N	1BR
1001	EC	N	1BR
1002	BC	N	1BR
1003	AC	N	1BR
1004	AC	N	1BR
1005	CC	N	1BR
1006	AC	N	1BR
1007	AC	N	1BR
1008	BC	N	1BR
1009	HC	N	1BR

WINE UNITS CURRENTLY ON PROGRAM

Room#	Type	Owner Billing	#BR
0230	2C	Y	2BR
0234	JC	Y	1BR
0330	IC	Y	2BR
0331	1C	Y	1BR
0332	2C	Y	2BR
0333	2C	Y	2BR
0334	JC	Y	1BR
0430	IC	Y	2BR
0431	1C	Y	1BR
0432	2C	Y	2BR
0433	2C	Y	2BR
0434	FC	Y	1BR
0435	FC	Y	1BR
0436	FC	Y	1BR
0530	IC	Y	2BR
0531	1C	Y	1BR
0533	2C	Y	2BR
0534	JC	Y	1BR
0535	FC	Y	1BR
0536	FC	Y	1BR
0630	IC	Y	2BR
0631	1C	Y	1BR
0632	2C	Y	2BR
0633	2C	Y	2BR
0634	JC	Y	1BR
0635	FC	Y	1BR
0636	FC	Y	1BR
0730	IC	Y	2BR
0731	1C	Y	1BR
0732	2C	Y	2BR
0733	2C	Y	2BR
0734	JC	Y	1BR
0735	FC	Y	1BR
0831	1C	Y	1BR
0833	2C	Y	2BR
0834	JC	Y	1BR
0835	FC	Y	1BR
0930	IC	Y	2BR
0931	1C	Y	1BR
0932	1C	Y	1BR
0933	3C	Y	3BR
0934	FC	Y	1BR
0936	FC	Y	1BR
1031	1C	Y	1BR
1032	IC	Y	2BR
1033	2C	Y	2BR
1034	JC	Y	1BR
1035	FC	Y	1BR
1036	JC	Y	1BR
1131	1C	Y	1BR

1132			2BR
1133	2C	Y	2BR
1134	JC	Y	1BR
1135	FC	Y	1BR
1230	IC	Y	2BR
1231	1C	Y	1BR
1232	2C	Y	2BR
1233	2C	Y	2BR
1235	FC	Y	1BR
1236	FC	Y	1BR
1430	IC	Y	2BR
1431	1C	Y	1BR
1432	1C	Y	1BR
1433	3C	Y	3BR
1434	JC	Y	1BR
1435	FC	Y	1BR
1436	FC	Y	1BR
1530	IC	Y	2BR
1531	1C	Y	1BR
1532	2C	Y	2BR
1533	IC	Y	2BR
1534	JC	Y	1BR
1535	FC	Y	1BR
1536	FC	Y	1BR
1630	IC	Y	2BR
1631	1C	Y	1BR
1632	2C	Y	2BR
1633	2C	Y	2BR
1634	JC	Y	1BR
1635	FC	Y	1BR
1636	FC	Y	1BR
1730	IC	Y	2BR
1731	1C	Y	1BR
1732	2C	Y	2BR
1733	2C	Y	2BR
1735	FC	Y	1BR
1736	FC	Y	1BR
1830	IC	Y	2BR
1831	1C	Y	1BR
1832	2C	Y	2BR
1833	2C	Y	2BR
1834	JC	Y	1BR
1835	FC	Y	1BR
1836	FC	Y	1BR
1930	IC	Y	2BR
1931	1C	Y	1BR
1932	2C	Y	2BR
1933	2C	Y	2BR
1934	JC	Y	1BR
1935	FC	Y	1BR
1936	FC	Y	1BR
2030	IC	Y	2BR

2031	IC	Y	1BR
2032	2C	Y	2BR
2033	2C	Y	2BR
2035	FC	Y	1BR
2036	FC	Y	1BR
2130	IC	Y	2BR
2131	1C	Y	1BR
2132	2C	Y	2BR
2135	FC	Y	1BR
2136	JC	Y	1BR

CAROLINIAN ROOM ANALYSIS

Room#	Type	Owner Billing	#BR	GRD	SLP	MUR	VEW	W/D	BR1	BR2	BR3
Grand Count	234										
N/R Count	20										
0102	N/R	N									
0301	N/R	N									
0300	N/R	N									
0232	N/R	N	2BR	NSK	YES	NO	OF	YES	2D	2D	
0830	N/R	Y	2BR	A	YES	NO	OF	YES	1K	2D	
0736	N/R	Y	1BR	NSK	YES	NO	OV	YES	2D		
0532	N/R	Y	2BR	NSK	YES	NO	OF	YES	2D	2D	
0335	N/R	Y	1BR	NSK	YES	NO	OV	YES	2D		
0336	N/R	Y	1BR	NSK	YES	NO	OV	YES	2D		
2134	N/R	Y	1BR	NSK	YES	NO	OV	YES	1K		
0832	N/R	Y	2BR	NSK	YES	NO	OF	YES	2D	2D	
0836	N/R	Y	1BR	NSK	YES	NO	OV	YES	2D		
0935	N/R	Y	1BR	A	YES	NO	OV	YES	2D		
1030	N/R	Y	2BR	A	YES	NO	OF	YES	1K	2D	
1130	N/R	Y	2BR	NSK	YES	NO	OF	YES	1K	2D	
1136	N/R	Y	1BR	NSK	YES	NO	OV	YES	2D		
1234	N/R	N	1BR	NSK	YES	NO	OV	YES	1K		
1734	N/R	Y	1BR	NSK	YES	NO	OV	YES	1K		
2034	N/R	Y	1BR	A	YES	NO	OV	YES	1K		
2133	N/R	Y	2BR	A	YES	NO	OF	YES	2D	2D	
KC Count	1										
1000	KC	N	1BR	NSK	YES	NO	OV	YES	2Q		
JC Count	15										
2136	JC	Y	1BR	A	YES	NO	OV	YES	1K		
0734	JC	Y	1BR	A	YES	NO	OV	YES	1K		
0634	JC	Y	1BR	A	YES	NO	OV	YES	1K		
0234	JC	Y	1BR	A	YES	NO	OV	YES	1K		
0534	JC	Y	1BR	A	YES	NO	OV	YES	1K		
0334	JC	Y	1BR	A	YES	NO	OV	YES	1K		
0834	JC	Y	1BR	A	YES	NO	OV	YES	1K		
1034	JC	Y	1BR	A	YES	NO	OV	YES	1K		
1036	JC	Y	1BR	A	YES	NO	OV	YES	1K		
1134	JC	Y	1BR	A	YES	NO	OV	YES	1K		
1434	JC	Y	1BR	A	YES	NO	OV	YES	1K		
1534	JC	Y	1BR	A	YES	NO	OV	YES	1K		
1634	JC	Y	1BR	A	YES	NO	OV	YES	1K		
1834	JC	Y	1BR	A	YES	NO	OV	YES	1K		
1934	JC	Y	1BR	A	YES	NO	OV	YES	1K		
IC Count	17										
0730	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	
0630	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	
0530	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	
0430	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	
0330	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	
0930	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	
1032	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	
1230	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	
1430	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	
1530	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D	

1533	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D
1630	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D
1730	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D
1830	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D
1930	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D
2030	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D
2130	IC	Y	2BR	A	YES	NO	OF	YES	1K	2D
HC	Count	9								
0209	HC	N	1BR	NSK	NO	NO	NO	NO	1K	
0309	HC	N	1BR	NSK	NO	NO	NO	NO	1K	
0409	HC	N	1BR	NSK	NO	NO	NO	NO	1K	
0509	HC	N	1BR	NSK	NO	NO	NO	NO	1K	
0609	HC	N	1BR	NSK	NO	NO	NO	NO	1K	
0709	HC	N	1BR	NSK	NO	NO	NO	NO	1K	
0809	HC	N	1BR	NSK	NO	NO	NO	NO	1K	
0909	HC	N	1BR	NSK	NO	NO	NO	NO	1K	
1009	HC	N	1BR	NSK	NO	NO	NO	NO	1K	
GC	Count	7								
0400	GC	N	1BR	NSK	NO	NO	NO	NO	2Q	
0500	GC	N	1BR	NSK	NO	NO	NO	NO	2Q	
0600	GC	N	1BR	NSK	NO	NO	NO	NO	2Q	
0700	GC	N	1BR	NSK	NO	NO	NO	NO	2Q	
0800	GC	N	1BR	NSK	NO	NO	NO	NO	2Q	
0900	GC	N	1BR	NSK	NO	NO	NO	NO	2Q	
0200	GC	N	1BR	NSK	NO	NO	NO	NO	2Q	
FC	Count	30								
0735	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0636	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0635	FC	Y	1BR	A	YES	NO	OV	YES	2D	
2135	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0536	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0535	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0434	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0435	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0436	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0835	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0934	FC	Y	1BR	A	YES	NO	OV	YES	2D	
0936	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1035	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1135	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1235	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1236	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1435	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1436	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1535	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1536	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1635	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1636	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1735	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1736	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1835	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1836	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1935	FC	Y	1BR	A	YES	NO	OV	YES	2D	
1936	FC	Y	1BR	A	YES	NO	OV	YES	2D	
2035	FC	Y	1BR	A	YES	NO	OV	YES	2D	
2036	FC	Y	1BR	A	YES	NO	OV	YES	2D	

EC	Count	8									
0201	EC	N	1BR	NSK	NO	NO	NO	NO	NO	2D	
0401	EC	N	1BR	NSK	NO	NO	NO	NO	NO	2D	
0501	EC	N	1BR	NSK	NO	NO	NO	NO	NO	2D	
0601	EC	N	1BR	NSK	NO	NO	NO	NO	NO	2D	
0701	EC	N	1BR	NSK	NO	NO	NO	NO	NO	2D	
0801	EC	N	1BR	NSK	NO	NO	NO	NO	NO	2D	
0901	EC	N	1BR	NSK	NO	NO	NO	NO	NO	2D	
1001	EC	N	1BR	NSK	NO	NO	NO	NO	NO	2D	
DC	Count	8									
0210	DC	N	1BR	NSK	NO	NO	OV	NO	NO	2Q	
0310	DC	N	1BR	NSK	NO	NO	OV	NO	NO	2Q	
0410	DC	N	1BR	NSK	NO	NO	OV	NO	NO	2Q	
0510	DC	N	1BR	NSK	NO	NO	OV	NO	NO	2Q	
0610	DC	N	1BR	NSK	NO	NO	OV	NO	NO	2Q	
0710	DC	N	1BR	NSK	NO	NO	OV	NO	NO	2Q	
0810	DC	N	1BR	NSK	NO	NO	OV	NO	NO	2Q	
0910	DC	N	1BR	NSK	NO	NO	OV	NO	NO	2Q	
CC	Count	10									
0105	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
0205	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
0305	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
0405	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
0505	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
0605	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
0705	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
0805	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
0905	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
1005	CC	N	1BR	NSK	NO	NO	OF	NO	NO	1K	
BC	Count	19									
0902	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0802	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0702	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0602	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0502	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0402	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0302	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0202	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
1002	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0108	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0208	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0308	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0408	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0508	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0608	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0708	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0808	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0908	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
1008	BC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
AC	Count	40									
0507	AC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0407	AC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0307	AC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0207	AC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
0107	AC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	
1007	AC	N	1BR	NSK	NO	NO	OF	NO	NO	2Q	

0907	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0807	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0707	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0607	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0506	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0406	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0306	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0206	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0106	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
1006	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0906	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0806	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0706	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0606	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0504	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0404	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0304	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0204	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0104	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
1004	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0904	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0804	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0704	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0604	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0503	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0403	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0303	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0203	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0103	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
1003	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0903	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0803	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0703	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
0603	AC	N	1BR	NSK	NO	NO	OF	NO	2Q		
3C	Count	2									
0933	3C	Y	3BR	A	YES	NO	OF	YES	1K	2D	2D
1433	3C	Y	3BR	A	YES	NO	OF	YES	1K	2D	2D
2C	Count	28									
0233	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
0633	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
0632	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
0533	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
0733	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
0732	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
0432	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
0433	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
0332	2C	Y	2BR	B	YES	NO	OF	YES	2D	2D	
0333	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
0833	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
1033	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
1132	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
1133	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
1232	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
1233	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
1532	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	
1632	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D	

1633	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D
1732	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D
1733	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D
1832	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D
1833	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D
1932	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D
1933	2C	Y	2BR	B	YES	NO	OF	YES	2D	2D
2032	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D
2033	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D
2132	2C	Y	2BR	A	YES	NO	OF	YES	2D	2D
1C Count	20									
0831	1C	Y	1BR	A	YES	NO	OF	YES	2D	
0631	1C	Y	1BR	A	YES	NO	OF	YES	2D	
0531	1C	Y	1BR	B	YES	NO	OF	YES	2D	
0431	1C	Y	1BR	A	YES	NO	OF	YES	2D	
0331	1C	Y	1BR	A	YES	NO	OF	YES	2D	
0731	1C	Y	1BR	A	YES	NO	OF	YES	2D	
0931	1C	Y	1BR	A	YES	NO	OF	YES	2D	
0932	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1031	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1131	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1231	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1431	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1432	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1531	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1631	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1731	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1831	1C	Y	1BR	A	YES	NO	OF	YES	2D	
1931	1C	Y	1BR	B	YES	NO	OF	YES	2D	
2031	1C	Y	1BR	A	YES	NO	OF	YES	2D	
2131	1C	Y	1BR	A	YES	NO	OF	YES	2D	

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM
ARBITRATION ACT, CHAPTER 48, SECTION 15-48-10 ET SEQ OF THE
SOUTH CAROLINA CODE, AS AMENDED

OCEANA RESORTS, LLC
RENTAL MANAGEMENT AGREEMENT AND PROXY

This Agreement for the exclusive promoting, renting, operating and management of Unit _____ (the "Unit") made and entered into this _____ day of _____, 201_, by and between Oceana Resorts LLC (the "Company"), and the "Owner" (whether one or more).

WHEREAS, Owner is the record title holder of that certain real property being briefly described as Unit _____ of _____; and

WHEREAS, the Company is engaged in the business of promoting, renting, operating and managing units within Best Western Carolinian and elsewhere.

WHEREAS, Owner desires for the Company to be its exclusive agent for the promotion, rental, operation and management of the Unit.

NOW, THEREFORE, for and in consideration of the mutual covenants and responsibilities set forth herein, and for other good valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, Owner and Company do hereby covenant and agree as follows.

OWNER IDENTITY

NAME(S): _____

The Company agrees to act as the rental agent for Owner and the Owner makes the Company their mutually exclusive agent under the following terms and conditions:

COMPANY'S OBLIGATIONS:

1. The Company agrees to furnish the services of its organization for the promotion, renting, operating and management of Owner's Unit, pursuant to the terms and conditions set forth herein.
2. The Company will advertise and promote, the rental of all Units within its rental program.
3. The Company agrees to operate and maintain a Registration Desk and a Central Reservation Office through which all rental reservations are processed. The Company agrees to maintain an office, which shall have marketing information available to promote the rental property.
4. The Company agrees to operate an accounting system and central reservation office for all rental receipts and disbursements. The Company agrees to pay the Owner the rental from the Unit less applicable fees and expenses not later than the 20th of the month following the month during which the rental was earned. The Company further agrees to issue an annual report, which will conform with governmental requirements, which will assist owner in filing tax returns, and shall provide accounting information to Owner upon request.

5. The Company agrees to provide telephone service through its available telephone system, at applicable rates to guests for local and long distance charges. The Owner shall be required to pay a monthly switchboard fee (see Schedule of Fees), which such charges shall be reflected in the Owner's monthly statement as a charge against owner's net revenue. The Company agrees to maintain and/or replace the telephones within the Unit as required. The Company reserves the right to select the type of telephone and telephone systems in its sole discretion.

6. The Company agrees to maintain a housekeeping department to provide all routine and customary housekeeping and cleaning.

7. The Company agrees to inspect the premises and inventory all major furnishings, fixtures and equipment on an annual basis (or more frequently as needed). If corrective action is needed, in the Company's opinion, a report is to be made to the Owner with recommendations for the improvements of the premises, repair or replacement of the furniture or fixtures in question. (See Owner's Obligations Paragraph 4).

8. The Company agrees to maintain a maintenance department to provide emergency, routine and minor maintenance. No representations are made that the maintenance department shall be able to provide every type of repair on every type of appliance or fixture.

9. The Company will maintain a compliment of glasses, china, silverware, kitchen utensils and other equipment as specified in the "Basic Rental Equipment List", for immediate replacement of broken or missing items.

10. The Company will impose an annual fee each year, for the following year, to cover the cost of miscellaneous operating services, including, but not limited to, air conditioning filters, light bulbs, keys and an inventory of china, glass and silverware. This fee shall be deducted in September of each year and may be adjusted on an annual basis (see schedule of fees).

11. The Company, in its sole discretion, shall establish fair, reasonable and competitive rental, package and amenity rates, having due regard for the property's location and convenience, the size, furniture and bedding of the Unit, the property amenities and atmosphere. The Owner recognizes that a rate change may become necessary to meet changing market conditions. The Company may adjust the rates for promotional packages, commercial customers, trade discounts and the condition of the Unit to meet the customary competitive conditions in the resort and meeting markets.

12. Owner may request his/her unit to be designated a "non-smoking" unit and company will endeavor to retain such unit free of smoke or smoke particles. No assurance is given, however, that rental guest will abide by such restriction.

OWNER'S OBLIGATIONS

1. The Owner authorizes the Company to accept reservations for the Unit up to six (6) months in advance. Any request for reservations by the Owner must be received no later than fifteen (15) days prior to arrival date for periods from October through April. At least thirty (30) days notice shall be provided in the Owner intends to occupy his unit from May through September and will be confirmed subject to space availability. The Company will make every effort to accommodate any request for occupancy of the Unit by the Owner even though the Unit may already be on reservation.

2. Owner authorizes the Company, in an effort to promote operations, to use the Unit a maximum of four (4) complimentary nights per year. Such use is based solely on a space available basis. In the event that the Owner requests the use of the Unit during the time it has been reserved for complimentary use, the Owner will be given preference and the complimentary reservation moved. The Company will be responsible for cleaning after such complimentary use.

3. The Company reserves the right to reject the Owner's request for special restrictions in connection with reservations for rentals.

4. The Owner agrees to maintain the Unit in a satisfactory condition for rental occupancy as determined in the sole discretion of the Company. Basic equipment and furnishings, fixtures and standards may change to comply with the market conditions. The Company will conduct periodic inspections of the Unit. In the event the Company determines the Unit is not in a satisfactory condition for rental occupancy, the Company will immediately notify the Owner and may thereafter discount the rental, package and amenity rates or place the Unit in an "Out of Order" status. Owner specifically acknowledges and agrees the Company may, in its sole discretion, afford rental occupancy preference to those Units, which are maintained in the highest and best condition for rental occupancy.

5. Owner authorizes the manager to complete work on any service call costing up to an aggregate price of two hundred and fifty dollars (\$250.00) without prior approval of owner. Should any repair or service call be priced over \$250.00, owner will be contacted for prior approval unless emergency repair is evident or the stay of the guest is materially effected by the deficiency at which time owner will be advised as soon as practically possible.

6. Owner acknowledges and agrees that the Company is the exclusive rental agent and that any and all remuneration for rental is to be made through the Company.

7. Owner acknowledges and agrees that if Owner accepts payment for rental directly, Owner is subject to a 45% rental commission based on published daily rates, which such commission shall be reflected in the Owners monthly statement as a charge against Owner's net revenue. In addition, such action will be a breach of contract.

8. Owner agrees not to remove or alter the furnishings or any equipment of the condominium Unit without the approval of the rental Company and Company will not be held responsible for any items, furniture, fixtures or equipment placed in the unit by the owner.

9. Owner agrees not to enter the Unit or permit any person, whether family member, repairmen or renter to enter the Unit without checking in and out at the Company's registration desk. All Owner related occupancies shall be coordinated by the Company's reservation office.

10. The Owner agrees to notify the Company in writing in the event this Unit shall be listed for sale and shall further notify the Company of the closing attorney(s) and anticipated date of closing. Owner further agrees that Owner is responsible to pay all outstanding charges and fees and authorizes all such charges and fees to be deducted from the sale proceeds at closing and paid directly to the Company.

11. The Owner acknowledges that only the Company can put advertising, promotional information or other written materials in the rental Unit.

12. The Company, to its benefit, has the right to contract with outside vendors to provide services to the rental guest within the Unit, including but not limited to long distance telephone service, computer services, pay-per-view, room service, etc.

13. The rental program provides for a no pets policy and guests have been advised that the premises are off limits for pets.

COMMISSIONS AND FEES

1. Company shall receive a 45 percent commission on total net room revenue if the rental guest is accommodated on a nightly rate or package/amenity program of 27 days or less and 25% commission on monthly rentals of 28 days or more. Total net room revenue is the gross room rate less travel agent commissions, franchise fees, and credit card commissions. Credit Card commissions are averaged amongst all owners. The Company, in its sole discretion, shall establish the gross room rate in order to remain competitive in the market. In those instances when the Unit is offered as a component of a package/amenity program, the Company shall, in its sole discretion, establish the gross room rate in order to remain competitive in the package/amenity market, after which certain package and amenity features shall be added to the gross room rate including, but not limited to, package green fees, package transportation, package food and beverage, package purchase discounts, package sporting activities and the like, together with a \$3.00 fee per person per day to account for promotional items specific to the package (i.e. golf balls, towels, welcome reception and complimentary allowances).

2. The Company provides a variety of services for the convenience of the Owner including, without limitation, maintenance, repair, inventory replacement, annual deep cleaning and winter preventative maintenance. All charges for these services shall be reflected in the Owner's monthly statement as a charge against Owner's net revenue.

3. Company will arrange for business license application for owner and will pro-rate owners share of the expense and deduct from rental revenue.

4. In the event a guest fails to make payment on room rental fees, provided, the Company will exercise reasonable efforts to collect such sums from the guest and, if unsuccessful and the failure of payment is not directly attributable to the sole fault or neglect of the Company, the Company reserves the right to recover any revenue it was unable to collect and which was paid to the owner.

5. Deposit forfeitures shall accrue to the benefit of the Company as compensation for associated administrative expenses. Owner will receive owner's net revenue less the rental commission for any no show reservations, late departures, or Day use revenue.

6. When a Unit is utilized by Owner or Owner's guest, the Owner or Owner's guest will pay either a daily maid and linen service fee or a departure fee (see Schedule of Fees). These fees may be paid by Owner or Owner's guest at the time of departure or such charges shall be reflected in the Owner's monthly statement.

7. In case of delinquency in Homeowners Association dues, and after Owner is properly advised of such delinquency by certified or registered mail from the Association and upon specific request from the Homeowners Association Board of Directors; Owner agrees to have the Company deduct all delinquent fees from the net rental proceeds including a \$25.00 service charge per deduction charged by the Company. All such charges shall be reflected in the Owners monthly statement as a charge against Owner's net revenue.

8. The Company shall maintain all rental funds in an interest-bearing Trust Account, which such interest shall accrue to the benefit of the Company in exchange for the Company's administration and management of the trust account.

INDEMNITY

1. Owner covenants at Owner's expense, at all times during the term of the Agreement, to be responsible for, to defend and save the Company, its employees, or agents, free, harmless and to reimburse and/or indemnify it from any charges, fees, expenses, injury, loss or damage of any nature including reasonable attorney's fees and disbursements arising from or related to, or in connection with the use and occupancy of the Unit, except for such loss caused by the sole negligent action of the Company. The Company and its agents or employees shall not be liable for any charges, fees, expenses, injury, loss or damage except as specifically assumed by the Company herein. Owner agrees all such amounts may be reflected in the Owner's monthly statement as a charge against Owner's net revenue. In the event Owner's net revenue is insufficient to cover such amounts, Owner agrees to immediately reimburse the Company.

TERM

The Term of this Agreement is from _____, 201_ thru September 30, 2015. This Agreement may be cancelled by either party upon a (60) sixty-day written notice prior to September 30th of any calendar year.

ARBITRATION

1. If any dispute under this Agreement or any Ancillary Document arises and the Parties are unable to resolve such dispute, the unresolved dispute shall be resolved exclusively by arbitration in accordance herewith. Arbitration shall be conducted pursuant to the Uniform Arbitration Act, 15-48-10 et seq of the South Carolina Code, and any rules promulgated thereunder (collectively, the "Act"). Except as otherwise provided herein, the Act shall govern all proceedings; and in the case of conflict between the Act and this Agreement, the provisions of this Agreement shall govern.

2. Any Party may initiate arbitration by making a demand on the other relevant Party(s) and otherwise following the notice, demand or initiation requirements of the Act.

3. Any and all questions, controversies or claims arising under this agreement shall be subject to and interpreted in accordance with the laws and statutes of the State of South Carolina. The venue for arbitration shall be Horry County, South Carolina and all matters subject to the jurisdiction of the state of South Carolina.

4. The Parties shall be bound by the decision of the arbitrators and accept their decision as the final determination of the matter in dispute, subject to the Parties' respective rights to appeal the decision as provided for in the Act. The prevailing Party(s) shall be entitled to enter a judgment in any court upon any arbitration award. The arbitrators shall award the costs and expenses of the arbitration, including reasonable attorney's fees, disbursements, arbitration expenses and arbitrators' fees to the prevailing Party as shall be determined by the arbitrators. The dispute resolution procedure set forth herein shall be the sole procedure by which disputes between the Parties under this Agreement or any Ancillary Document shall be resolved.

CAPTIONS

The paragraph captions that are used herein are for the purpose of reference only and shall not be construed to modify terms thereof.

OTHER AGREEMENTS

This Agreement supersedes any and all other contracts or agreements between the parties. Parties agree and acknowledge that this Agreement constitutes the entire Agreement between the parties and there are no oral or written amendments, modifications, or other agreements or representations.

SEVERABILITY

Should any paragraph, subparagraph or clause herein contained be declared void, illegal, invalid or unenforceable by any court having jurisdiction over the subject matter thereof, such judgment shall not affect the other provisions hereof, which are hereby declared severable, and which other provisions remain in full force and effect.

NOTICES

Any and all notices required to be given hereunder or otherwise shall be addressed to the following entity/individual and shall be deemed effective upon placement in the regular mail to the addresses indicated below.

Company:

Oceana Resorts, I.I.C
601 19th Avenue North 2nd Floor
Myrtle Beach, SC 29577

Designated Owner for Receipt of Notices:
(One Owner Only):

Name: _____
Address: _____ City/State/Zip Code _____
Home Phone: _____ Work Phone: _____
Federal ID# : _____ S.S.#: _____
E-Mail Address: _____

ASSIGNMENT

It is specifically acknowledged and agreed the Company may assign this agreement without prior notice to or consent by Owner. Owner agrees this agreement may be assignable by Owner only upon the written consent of the Company, which consent shall not be unreasonably withheld.

PROXY FOR ANNUAL AND SPECIAL MEETINGS OF THE MEMBERS OF BEST WESTERN CAROLINIAN HOMEOWNERS ASSOCIATION, INC.

I/We the undersigned member(s) of Best Western Carolinian Homeowners Association, Inc., a non-profit corporation, do hereby constitute and appoint the Company or its designee as attorney and agent for me/us, and in my/our name, place and stead, to vote as my/our Proxy at the Annual and special meetings of the membership of Best Western Carolinian Homeowners Association, Inc. to be held from time to time pursuant to the notice, provisions of the regime documents of Best Western Carolinian Homeowners Association, Inc., for the purpose of voting all matters which may arise at such annual and special meeting. This Proxy shall remain in force and effect for three (3) years unless earlier terminated by notice of non-renewal as provided herein.

IN WITNESS WHEREOF THE UNDERSIGNED DO HEREBY GIVE THEIR HAND AND SEAL
THIS DAY AND DATE FIRST WRITTEN ABOVE, IT BEING SPECIFICALLY ACKNOWLEDGED
THAT BY EXECUTION HEREOF THIS DOCUMENT SHALL SUPERSEDE AND REPLACE ALL
PRIOR RENTAL MANAGEMENT AGREEMENTS AND/OR PROXIES, WHICH SHALL BE OF NO
FURTHER FORCE OR EFFECT.

OCEANA RESORTS, LLC

OWNER(S)

Frans N. Mustert, CHA
President & C.E.O.

By: _____

WITNESSES:

12/03

- 7 -

ROA-344

Owner Initial:
Oceana Rep Initial:

Carolina Resort HOA
Comparative Statement of Revenues and Expenses
Actual 2004 2005 2006 2007 2008 2009 2010 & Budget 2011

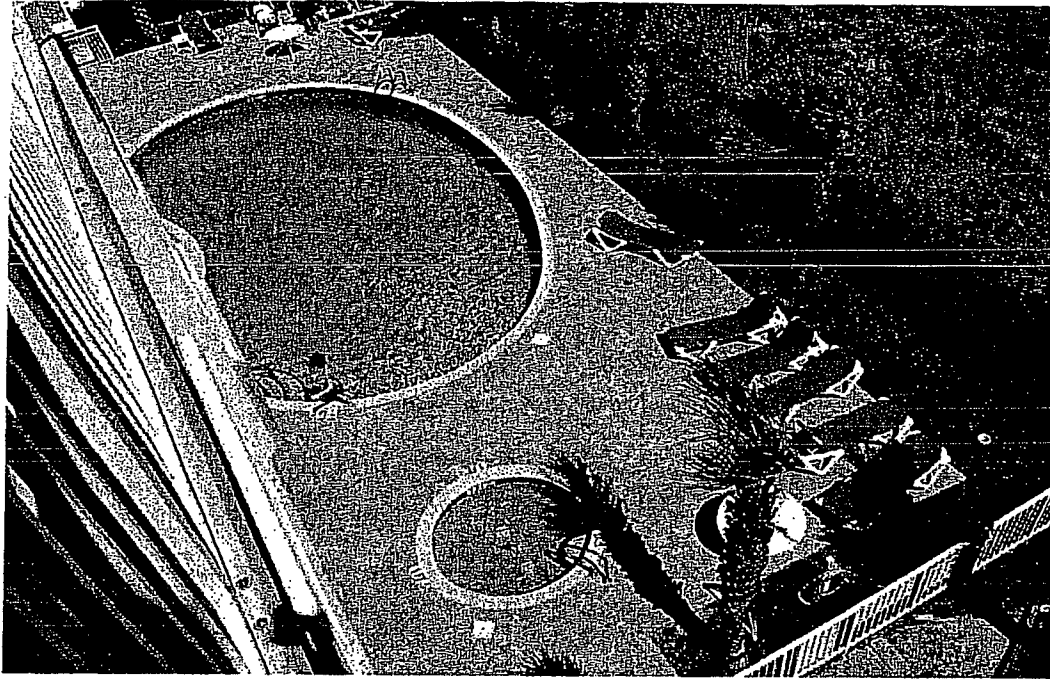
	ACTUAL 2004	ACTUAL 2005	ACTUAL 2006	ACTUAL 2007	ACTUAL 2008	ACTUAL 2009	ACTUAL 2010	BUDGET 2010	BUDGET 2011	VARIANCE EXPLANATION
REVENUE										
Member Assessments Operations:										
Condominium Units	378,346	547,819	620,175	795,148	755,772	800,892	847,825	847,846	865,851	
Commercial Units	-	96,568	109,320	-	-	-	-	-	-	
Special Assessments Insurance:										
Condominium Units	-	-	54,918	282,563	261,750	208,011	209,383	-	210,000	
Commercial Units	-	-	22,214	-	-	-	-	-	-	
Late Fee Revenue	425	1,375	2,950	2,925	5,650	7,575	4,975	9,000	6,000	
Interest Income	9	688	831	443	113	62	430	250	600	
Other Income	14	4,735	33	32	60	24	-	-	-	
TOTAL REVENUE	378,794	651,185	810,441	1,081,111	1,023,345	1,016,564	1,062,613	857,096	1,082,451	
EXPENSES										
Pool Maintenance Contracted	17,239	27,314	28,853	28,824	29,400	29,400	36,000	36,000	41,000	
Pool Supplies Pool Chemicals	4,105	11,381	21,210	31,925	43,776	36,570	24,780	24,000	17,100	
Pool Enclosure Expense	-	15,600	4,350	4,350	5,400	4,350	2,500	14,500	8,000	
Pool Maintenance Uncontracted	-	-	-	-	-	-	-	-	11,100	
General Maintenance - Contracted	3,778	5,400	5,400	5,400	5,800	7,200	7,200	7,200	7,500	
General Maintenance - Uncontracted	5,785	29,320	35,242	67,452	76,975	78,814	77,850	90,000	97,000	
Maintenance Supplies	-	-	-	-	3,000	4,000	4,000	4,000	5,000	
Grounds Maintenance - Contracted	16,788	27,925	29,844	29,772	30,360	30,360	25,740	-	13,500	
Grounds Maintenance - Uncontracted	144	4,427	1,872	1,284	4,224	2,696	1,271	4,500	1,400	
Pest Control	1,475	4,835	3,630	3,870	4,257	3,042	2,275	3,000	2,300	
Elevator Maintenance (Service Contracted)	136	15,929	25,996	21,236	22,511	23,861	17,820	24,000	17,700	
Elevator Repairs Uncontracted	-	-	-	357	3,921	442	-	2,000	2,000	
Locking Devices Maintenance	6,613	9,600	8,360	7,740	7,740	9,300	10,830	10,830	10,830	
Hallway and Corridor Maintenance	37,613	54,600	55,840	58,100	60,000	62,000	41,000	41,000	39,050	
Parking Lot / Decks Maintenance	-	-	-	-	-	-	-	13,740	13,740	
Landscaping	-	-	-	-	-	-	-	12,000	-	
Elevator and Pool Phones	-	-	-	-	-	-	900	900	900	
Telephone and High Speed Internet	-	-	-	-	-	-	62,390	62,390	66,680	
Exercise Room Leased	-	-	-	-	-	-	2,100	-	4,200	
Depreciation Expense	-	4,204	7,176	6,234	5,638	5,768	5,199	-	-	

ROA-343

Carolina Resort HOA
Comparative Statement of Revenues and Expenses
Actual 2004 2005 2006 2007 2008 2009 2010 & Budget 2011

	ACTUAL 2004	ACTUAL 2005	ACTUAL 2006	ACTUAL 2007	ACTUAL 2008	ACTUAL 2009	ACTUAL 2010	BUDGET 2010	BUDGET 2011	VARIANCE EXPLANATION
Telephone Services	1,487	2,652	6,476	4,118	4,441	4,597	3,208	3,900	3,400	
Accounting Services	-	2,745	2,795	3,060	3,600	3,700	4,000	3,800	4,000	
Taxes & License Fees	300	8,170	1,298	1,686	6,044	2,127	6,194	2,200	6,000	
Bank Charges	33	189	134	6	20	15	404	-	-	
Insurance Expense	96,252	151,305	238,558	318,620	262,296	206,009	207,356	-	210,000	
Office Supplies and Admin Expenses	1,365	1,887	1,911	2,532	2,361	2,295	2,241	1,550	1,550	
Miscellaneous Expenses (Admin)	-	618	1,220	1,672	235	1,179	735	1,200	800	
Postage								900	800	
Legal Fees						6,476	478	1,300	1,000	
Parking Deck Rent								2,918	3,000	
Parking Deck Contribution							12,000			
Property Management Services	21,222	28,296	28,296	29,148	29,736	29,736	29,736	29,736	30,479	
Insurance Financing Interest Expense	-	3,505	5,574	9,105	2,312	2,001	2,101	-	-	
Interest Expense	2,471	-	-	9,724	(536)		-		-	
Electric Power Expense	84,242	136,971	131,247	122,502	131,730	141,870	163,468	145,000	164,000	
Water and Sewer Expense	19,812	27,843	28,882	35,263	39,596	38,341	49,778	40,000	50,000	
Trash Removal Expense	2,338	6,880	4,492	4,785	7,377	4,703	16,383	7,500	17,000	
Natural Gas Expense	16,904	33,702	50,687	36,788	33,057	31,040	33,281	32,000	37,000	
Cable TV Expense	14,907	20,270	20,505	19,228	19,790	20,507	19,499	21,000	19,500	
Bad Debt Expenses					32,487	15,344	(3,483)	-	-	
Fire Protection Expense	935	2,018	725	638	4,749	6,546	5,408	6,500	6,500	
Security Services	35,206	78,580	85,348	84,064	82,601	78,921	43,197	79,000	42,000	
Pool Towel Services	-	-	3,600	3,800	3,800	6,000	10,310	10,310	11,200	
Parking Lot Attendant	-	-	12,000	12,500	13,500	15,000	15,000	15,000	15,000	
Uncollectible HOA Dues								10,000	7,000	
Major Repairs and Replacement Expense	-	-	2,500	17,000	24,020		20,771	-	-	
Operating Contingency	15,000	-	-	-	-			5,000	5,000	
Reserve for Replacement / Capital Improvement Expense	-	-	2,500	-				88,222	88,222	
TOTAL EXPENSE	406,150	716,166	856,521	982,783	1,006,218	914,210	963,920	857,096	1,082,451	
NET INCOME (LOSS)	(27,356)	(64,981)	(46,080)	98,328		102,354	98,693			

ROA:346



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No.: 2012-CP-26-5610

Appellate Case No. 2013-000650

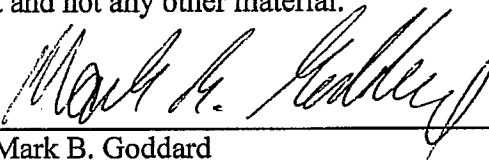
Shaul Levy and Meir Levy Appellants,

vs.

Carolinian, LLC.....Respondent.

APPELLANTS' RULE 210(G) CERTIFICATION

The undersigned, attorney for Appellants Shaul Levy and Meir Levy, certifies, pursuant to Rule 210(g), SCACR, that the Record on Appeal, served herewith, contains all of the materials proposed by Appellant and Respondent and not any other material.



Mark B. Goddard
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No.: 2012-CP-26-5610

Appellate Case No. 2013-000650

Shaul Levy and Meir Levy Appellants,

vs.

Carolinian, LLC.....Respondent.

PROOF OF SERVICE OF
RECORD ON APPEAL

I certify that I have served the Record on Appeal on the Respondent via hand-delivery,
on September 16, 2013, to its attorneys of record at the address listed below.

Benjamin A. Baroody Esq.
The Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, South Carolina 29577

[Signature page to follow.]

RECEIVED

SEP 17 2013

SC Court of Appeals

TURNER PADGET GRAHAM & LANEY P.A.



September 16, 2013

R. Wayne Byrd (S.C. Bar #01068)

WByrd@TurnerPadget.com

Mark B. Goddard (S.C. Bar #73965)

MGoddard@TurnerPadget.com

2411 North Oak Street, Suite 301 (29577)

Post Office Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR APPELLANT

Other Counsel of Record:

Benjamin A. Baroody Esq.

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

Post Office Box 357

Myrtle Beach, SC 29578

ATTORNEYS FOR RESPONDENTS