

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Larry B. Hyman, Jr.  
Circuit Court Judge

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**RECEIVED**

JUN 26 2017

Unpublished Opinion No. 17-UP-118  
Heard November 3, 2016 – Filed March 8, 2017  
Petition for Rehearing Denied May 19, 2017

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**S.C. SUPREME COURT**

Skydive Myrtle Beach, Inc. (f/k/a Skydive Myrtle Beach, LLC)..... Petitioner

v.

Horry County, Horry County Department of Airports, H.  
Randolph Haldi, Pat Apone, Tim Jackson and Jack Teal,  
Defendants

Of whom, H. Randolph Haldi, Pat Apone, Tim Jackson  
and Jack Teal are ..... Respondents

Appellate Case No. 2014-002491

---

**APPENDIX VOLUME I**

---

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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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JUN 22 2017

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S.C. SUPREME COURT

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~~Appellant~~

v.

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*Attorneys for Petitioner*

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22033

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Jr., Circuit County Judge

**RECEIVED**

JUL 24 2015

SC Court of Appeals

Case No, 2014-CP-26-1193  
Appellate Case No. 2014-002491

Skydive Myrtle Beach, Inc. (f/k/a Skydive Myrtle Beach, LLC), .....Appellant,

v.

Horry County, Horry County Department of Airports,  
H. Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal,  
Defendants,

Of whom H. Randolph Haldi, Pat Apone, Tim Jackson,  
and Jack Teal are ..... Respondents.

**RECORD ON APPEAL**

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Order of October 13, 2014

Record on Appeal -003-

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Record on Appeal -004-

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2014-CP-26-1193

Skydive Myrtle Beach, Inc., )  
(f/k/a Skydive Myrtle Beach, LLC), )  
Plaintiff, )

vs. )

Horry County, Horry County )  
Department of Airports, )  
H. Randolph Haldi, Pat Apone, )  
Tim Jackson and Jack Teal, )  
Defendants. )

**ORDER**

FILED  
HORRY COUNTY  
2014 OCT 17 PM 2:50  
MELANIE HUGGINS-WARD  
CLERK OF COURT

This matter comes before this court upon a Motion to Dismiss filed on behalf of Defendants H. Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal. A hearing to dispose of said motion was conducted by the undersigned on the morning of June 2, 2014 in the Horry County Court of Common Pleas. Present on behalf of the moving Defendants was Samuel F. Arthur, III, Esquire, of the Florence law firm of Aiken, Bridges, Elliott, Tyler & Saleeby, P.A. Robert Eastman, Esquire appeared on behalf of Plaintiff.

The primary grounds presented on behalf of the moving Defendants in support of their Motion to Dismiss were that Plaintiff's claims, as set forth in the Complaint, are subject to the *South Carolina Tort Claims Act* ("SCTCA") and the individually named moving Defendants are therefore entitled to dismissal pursuant to a provision of the SCTCA that affords immunity to employees of governmental entities for actions taken in their capacities as employees.

In response to the arguments offered by the moving Defendants, Plaintiff's counsel argued that the claims set forth in the Complaint against the individually named Defendants state claims of fraud, actual malice, or intent to harm and therefore qualify for the exception noted in § 15-78-70(b)

of the SCTCA.

Upon careful consideration of the various arguments presented by the parties to this litigation and a review of the allegations set forth in Plaintiff's Complaint, this court finds that the allegations set forth in Plaintiff's Complaint describe conduct on the part of the individually named Defendants that falls squarely within the official duties of the individually named Defendants. Therefore, for the reasons more fully set forth below, this court finds that the individually named Defendants are entitled to the immunity provided by the SCTCA and should be dismissed from this action.

When considering the various arguments presented by the parties to this particular motion, this court finds the South Carolina Court Appeals decision in the case of *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003) particularly instructive. Similar to this case, the individually named defendants in *Flateau* moved for dismissal on the grounds that they were entitled to immunity pursuant to the provisions of the SCTCA for conduct that occurred within the scope of their official duties as employees of a governmental entity.

First, the Court of Appeals acknowledged the following standard of review applicable to a motion dismiss:

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Bergstrom v. Palmetto Health Alliance*, 352 S.C. 221, 573 S.E.2d 805 (Ct.App.2002). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Bergstrom*, 352 S.C. at 233, 573 S.E.2d at 811; see also *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); *Williams*, 347 S.C. at 233, 553 S.E.2d at 499 (trial court's ruling on 12(b)(6) motion must be bottomed and



premised solely upon allegations set forth by plaintiff).

*Flateau*, at 201, 584 S.E.2d 415.

Next, the Court of Appeals addressed the exclusivity provisions of the SCTCA, the immunity afforded individual employees, the exception to the immunity provision, and the overall purpose of the SCTCA - stating:

The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. *See Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998). "The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available *for any tort* committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." S.C.Code Ann. § 15-78-20(b) (Supp.2002) (emphasis added). "[The Tort Claims Act] constitutes the exclusive remedy *for any tort* committed by an employee of a governmental entity." S.C.Code Ann. § 15-78-70(a) (Supp.2002) (emphasis added). According to the Act, "[n]otwithstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy *for any tort* committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C.Code Ann. § 15-78-200 (Supp.2002) (emphasis added).

Section 15-78-70(a) provides in part that "[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)." S.C.Code Ann. § 15-78-70(a) (Supp.2002). Subsection (b) declares: "Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is \*204 proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C.Code Ann. § 15-78-70(b) (Supp.2002).

The Act defines a "[g]overnmental entity" as "the State and its political subdivisions." S.C.Code Ann. § 15-78-30(d) (Supp.2002). The State "means the State of South Carolina" and includes its commissions. S.C.Code Ann. § 15-78-30(e) (Supp.2002). In the present case, the Act's definition of an "employee" refers to "any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty." S.C.Code Ann. § 15-78-30(c) (Supp.2002). " 'Scope of official duty' or 'scope of state employment' means (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C.Code Ann. § 15-

78-30(i) (Supp.2002).

The Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. "The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C.Code Ann. § 15-78-20(f) (Supp.2002); *see also Wade v. Berkeley County*, 330 S.C. 311, 498 S.E.2d 684 (Ct.App.1998) (noting that § 15-78-20(f) \*\*417 limits coverage to employees acting within the scope of official duty).

*Flateau*, at 203, 584 S.E.2d 416.

Here, as in *Flateau*, none of the parties dispute that the individually named Defendants are employees of a "governmental entity" as defined by the SCTCA. Therefore, also like *Flateau*, the primary issue that controls the disposition of this motion is a determination of whether the alleged inappropriate conduct was "outside the scope of their official duties."

In *Flateau*, the Court of Appeals relied on the specific allegations set forth in the complaints of the plaintiffs and found that "despite the contention in the brief of *Flateau* and *Fielding*, nowhere in their complaints do *Flateau* and *Fielding* allege that the Board members' actions were outside the scope of their official duty." *Flateau*, at 204, 584 S.E.2d 417. The Court of Appeals further stated:

The complaints assert tort claims against Commission board members who acted on behalf of the Commission in commanding Commission employees, including *Flateau* and *Fielding*, to attend a hearing for the purpose of being interviewed by the Board. The pleadings clearly and unequivocally allege that the Board members were meeting and acting together as the South Carolina Commission for the Blind, discussing matters in executive session, and voting in their capacity as Commissioners to take the actions in question—all official duties and actions that are about the official business of the Commission, which is a public body established by the General Assembly. *See* S.C.Code Ann. § 43-25-10 (1985) (creating the South Carolina Commission for the Blind; stating that chairman of Commission may call meeting whenever he deems it necessary); S.C.Code Ann. § 30-4-20 (1991) (defining "public body" to include state commissions). Requiring *Flateau* and *Fielding* to attend a hearing and holding them there, as *Flateau* and *Fielding* maintain in their complaints, may be argued to go beyond the *authority* of the Commission, but it does not bring the Commissioners' actions outside the

scope of their official duty. *See Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 341 S.E.2d 385 (Ct.App.1986) (distinguishing scope of servant's employment from scope of servant's authority and holding acts outside servant's authority are still within his scope of duty if done in furtherance of master's business).

*Flateau*, at 205, 584 S.E.2d 417.

In *Flateau*, the Court of Appeals concluded that the causes of action alleged by the plaintiffs against the individually named defendants constituted conduct within the scope of the individuals' official duties and therefore there could be no liability attached to the individuals. In so doing, the Court of Appeals stated: "[t]he statutory dialectic reveals that a governmental employee acting within the scope of official duty is exempt from personal liability." *Flateau*, at 206, 584 S.E.2d 417. The Court of Appeals added "that the efficacy of the Tort Claims Act is protection of governmental employees acting in the scope of official duties." *Id.* Finally, the Court of Appeals noted: "The remedy mandated in the Act is legal action initiated against the governmental entity rather than the individual governmental employee." *Id.*

In this case, Plaintiff's Complaint, at paragraph 2, alleges "Defendant Horry County (Defendant County) is a body politic and political subdivision of the State of South Carolina." Plaintiff's Complaint, at paragraph 3, alleges "Defendant Horry County Department of Airports (Defendant Airport) is a body politic and corporate and political subdivision of the State of South Carolina that owns, manages, and operates property in Horry County, South Carolina." Therefore, it is clear that Plaintiff recognizes Defendant County and Defendant Airport as governmental entities of South Carolina.

Paragraph 8 of the Complaint specifically states: "At all relevant times Defendants Haldi, Apone, Jackson and Teal were acting as agents of Defendants County and Airport." This language, like that in the *Flateau* pleadings, appears to be an unequivocal allegation that

Defendants Haldi, Apone, Jackson and Teal, if they acted at all, were doing so on behalf of Defendant County and/or Defendant Airport within the scope of their official duties. It is axiomatic that actions taken by an agent for the benefit of the master are not actions taken for the independent benefit of the individual actor.

At the hearing of the instant motion, counsel for Plaintiff argued that the Complaint should be liberally interpreted and the facts viewed in the light most favorable to the Plaintiff. Plaintiff's counsel further argued that the nature of the causes of action against the individual Defendants and the elements of proof somehow suggest Plaintiff intended to assert that the individual Defendants acted outside the scope of their duties, or fraudulently, or with malice, or intent to harm that would take their respective actions outside the scope of their official duties. Upon reviewing Plaintiff's Complaint, this court is not persuaded by such an argument.

A review of the specific causes of action levied against the individually named Defendants reveals: (1) that each cause of action contains a preamble paragraph that "reincorporates and realleges each of the foregoing allegations fully as if repeated herein verbatim," including, presumably, paragraph 8 discussed above; (2) that the allegations relating to multiple causes of action contain specific allegations that the individually named Defendant(s) at issue acted as the agent(s) of Defendant County or Defendant Airport or both<sup>1</sup>; (3) that the Complaint contains no causes of action that are directed solely to one or more of the individually named Defendants; (4) that the prayer for relief set forth in the Complaint requests the assessment of joint and several liability among the Defendants identified in each cause of action without distinction between the governmental entities and the individuals; and most importantly, (5) that the entire Complaint is devoid of any allegation that any individually named Defendant acted outside the scope of his or her official duties.

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<sup>1</sup> See Complaint at ¶¶ 70, 75, 76, 85, 118.

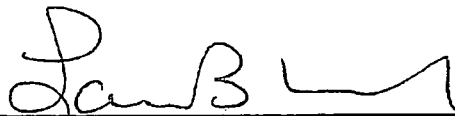
Furthermore, while this court acknowledges the second prong of the exception set forth at § 15-78-70(b) of the SCTCA for acts that are proven to constitute actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, this court is simply not satisfied that Plaintiff's complaint, on its face, satisfies the requirements of the exception. This court acknowledges that Plaintiff's Complaint contains causes of action for constructive fraud, defamation, fraud and misrepresentation. However, this court also notes that each of these three causes of action contain a reiteration of Plaintiff's allegations that the individual defendants named therein were acting as agents of Defendant County and/or Defendant Airport at "all relevant times." The cause of action for "constructive" fraud clearly does not satisfy the *actual* fraud requirement. The cause of action for defamation can be interpreted to contain an allegation that Defendant Jackson's statements were made "with actual or implied malice;" however, Defendants County and Airport are included in the cause of action and the first paragraph thereof reiterates, in part, that Defendant Jackson was acting as agent of Defendant County and/or Defendant Airport at "all relevant times." The cause of action for fraud and misrepresentation appears to relate to alleged representations of Defendant Airport made by Defendant Jackson as an agent for Defendant Airport. Therefore, none of the allegations set forth in the three causes of action that could possibly qualify for the second prong of the exception set forth at § 15-78-70(b) of the SCTCA appear to suggest that the individually named Defendants acted on their own with sufficient intent to take their actions outside the protections afforded by the SCTCA.

For these reasons, and following the guidance provided by the South Carolina Court of Appeals in *Flateau*, this court finds that Plaintiff's Complaint clearly attempts to assert tort claims against individually named employees of Defendant County and/or Defendant Airport that relate to conduct performed by said individuals that, even if presumed true for purposes of this motion only,

was within the course and scope of their official duties as employees of said entities. Furthermore, it is simply an inequitable interpretation of the allegations of the Complaint to allow Plaintiff to assert responsibility on the part of Defendants County and Airport for the actions of the individually named Defendants to the extent it serves Plaintiff's interest - and then accept Plaintiff's argument at the hearing that the causes of action set forth in the Complaint somehow suggest alternate allegations that Defendants Haldi, Apone, Jackson, and Teal acted outside the scope of their official duties for the sake of conveniently exposing said individuals to personal liability. Therefore, this court finds that the Complaint, on its face, fails to properly set forth any allegations that are not subject to the limitations of the South Carolina Tort Claims Act and the individually named Defendants are entitled to the protections set forth therein, including immunity from personal liability.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that for all the foregoing reasons, Plaintiff's Complaint in this matter is hereby dismissed with prejudice as to all claims alleged against Defendants Haldi, Apone, Jackson, and Teal.

**IT IS SO ORDERED!**



The Honorable Larry B. Hyman, Jr.  
Fifteenth Judicial Circuit

Conway, South Carolina

July 13, 2014.  
Der

Order of June 3, 2014

Record on Appeal -013-

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Record on Appeal -014-



## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY  
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP2601193

Skydive Myrtle Beach Inc Skydive Myrtle Beach LLC

Horry County

Department of Airports

H Randolph Haldi  
Tim JacksonHorry County  
Pat Apone  
Jack Teal

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CLERK OF COURT

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);  
☐ Rule 43(k), SCRCP (Settled); ☐ Other: \_\_\_\_\_
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☒ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

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

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

Motion to dismiss taken under advisement. Proposed orders forthcoming from both attorneys within 10 days.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A                                          | N/A                                      | N/A                                                      |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge Larry B. Hyman, Jr.      2152      6/3/2014  
Judge Code      Date

**For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

**Robert Gerry Eastman** 3980 South Tropical Trail Merritt  
Island, FL 32952

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**Michael Warner Battle** PO Box 530 Conway, SC 29528-  
0530  
**Samuel F. Arthur III** PO Drawer 1931 Florence, SC 29506

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter** Ronda Cummings

Melanie Huggins-Ward - Clerk of Court

Complaint

Record on Appeal -017-

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Record on Appeal -018-

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP - 26-1193

SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL

Defendants.

COMPLAINT  
Jury Trial Demanded

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CLERK OF COURT

COMES NOW, the Plaintiff, SKYDIVE MYRTLE BEACH, INC., complaining of the Defendants, and alleges as follows:

**JURISDICTION AND VENUE**

1. Plaintiff, Skydive Myrtle Beach, Inc. ("DSMB" or "Plaintiff"), is a corporation organized and existing under the laws of the State of North Carolina and does business in Horry County, South Carolina through its agents, servants and/or employees.

2. Defendant Horry County (Defendant County) is a body politic and political subdivision of the State of South Carolina.

3. Defendant Horry County Department of Airports (Defendant Airport) is a body politic and corporate and political subdivision of the State of South Carolina that owns, manages, and operates property in Horry County, South Carolina.

4. Plaintiff is informed and believes that Defendant, H. Randolph Haldi (Defendant Haldi), is a citizen and resident of Horry County, South Carolina.

5. Plaintiff is informed and believes that Defendant, Pat Apone (Defendant Apone), is a citizen and resident of Horry County, South Carolina.

6. Plaintiff is informed and believes that Defendant, Tim Jackson (Defendant Jackson), is a citizen and resident of Horry County, South Carolina.

7. Plaintiff is informed and believes that Defendant, Jack Teal (Defendant Teal), is a citizen and resident of Horry County, South Carolina.

8. At all relevant times Defendants Haldi, Apone, Jackson and Teal were acting as agents of Defendants County and Airport.

9. Upon information and belief, Defendants Haldi, Apone, Jackson, and Teal are neither minors nor incompetent.

10. That as a direct and proximate result of the conduct of Defendants, the Plaintiffs have sustained substantial compensable losses including certain consequential damages, attorney fees and costs.

11. This Honorable Court has jurisdiction of the parties and the subject matter herein as set forth in S.C. Code Ann. § 36-2-803.

12. Venue is proper in this Honorable Court pursuant to S.C. Code Ann. §§ 15-7-20; 15-7-30.

### **STATEMENT OF FACTS**

13. An at all relevant time, Ramp 66, LLC, (Ramp 66), a South Carolina Limited Liability Corporation, was acting as an agent of the County managing of Grand Strand Airport in North Myrtle Beach (CRE).

14. From April to May 2012 (Preliminary Period), SDMB gained access from Ramp 66 to the Hanger and began to make the hanger accessible for its aircraft and equipment.

15. During the Preliminary Period, SDMB expended over 936 man hours, \$1,000.00 in supplies, power washing, clearing animal residue, abandoned parts, rubbish, and other unidentified refuse that had accumulated inside the Hanger from 17 years of nonuse.

16. In or about September 2013, SDMB was issued a citation for violations to the City of North Myrtle Beach fire code, notably, electrical concerns.

17. On or about February 5, 2014, Defendant Jack Teal entered Hanger 7 by force without notice or permission for no reasonable purpose.

18. On or about February 7, 2014, a meeting between SDMB, the Airport, representatives of the Air Traffic Control Tower (ATC) for CRE, and Defendants Jackson and Teal (Resolution Meeting) took place in the FBO Training Room.

19. During the Resolution Meeting, Defendant Jackson represented that he personally ensures he handles all maintenance requests for Airport tenants and that no requests from SDMB had been received.

20. On or about February 17, 2014, SDMB requested repairs to the Hanger via email to Defendant Jackson.

21. On or about February 19, 2014, SDMB together with Defendants Haldi, Apone, and Jackson, *inter alios*, attended a the Regional FAA Safety Day at Myrtle Beach International Airport (MYR),

22. On or about February 19, 2014, Defendant Haldi hand delivered a self-styled "[L]etter of [E]xplanation" and new Space Use Permit.

23. On or about February 19, 2014, Deputy County Attorney tendered a 72 hour eviction notice, *sua sponte* and without justification, to SDMB, if SDMB refused to agree to the new non-negotiable Space Use Permit, stating, "If [SDMB] declines to sign and return this Permit within [72 hours], you will need to vacate the premises immediately, as [the Airport] will change the locks and deny access to the premises as of the close of business on Saturday, February 22[, 2014]. See Exhibit 1.

24. On or about February 23, 2014, CRE FBO denied SDMBs initial request for aviation fuel at Defendant Jackson's written instruction. See Exhibit 2.

25. On or about February 23, 2014, CRE FBO contacted Defendant Jackson via phone for explanation or reconsideration.

26. On or about February 23, 2014, Defendant Jackson authorized refueling for SDMB. The delay was 30 minutes and disrupted SDMBs operations.

**FOR A FIRST CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT**  
**(Breach of Contract)**

27. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

28. On or about April 1, 2012, SDMB entered into an agreement to rent Hanger 7, 2800 Terminal Street, North Myrtle Beach, SC 29582, (Hanger) with Bob McGroarty, Owner, Ramp 66 and Manager CRE, whereby in exchange for 19% of Revenue (less internet sales), 25% of the probable 6,000 square feet hanger was available to SDMB for aircraft storage and business offices. The terms of the agreement were Ramp 66 would provide:

- a. One airplane parking in Hanger;
- b. Fuel discount;
- c. Period of 8 years (the expiration of the Ramp 66/County term (Term)).

In exchange for the above, SDMB would agree to:

- a. Non-competition with other business entities on the airport; and
- b. Payment of nineteen percent (19%) of its Gross (non-internet) revenue.

29. From May 15, 2012, to August 1, 2013, SDMB and Ramp 66 performed their obligations of the contract without incident.

30. On or about August 1, 2013, the County resumed control of CRE.

31. On or about August 1 2013, Robert Wernersbach, representing the County, initiated discussions relating to a lease between the County and SDMB.

32. Mr. Wernersbach represented to SDMB that \$1,500 was required immediately to continue business operations at CRE for a six month "Operating Permit" or SDMB would be removed from CRE premises.

33. SDMB paid the Operating Permit fees to the Airport.

34. In addition to an Operating Permit, Mr. Wernersbach represented to SDMB that an additional \$2,500 per month Space Use Permit (Permit) was necessary or SDMB would be required to vacate the Hanger.

35. In or about September 2013, the Airport represented to SDMB that a lease was not possible until the County had "three readings before the County Council and voted upon" (or words to that effect) and the terms of the Permit would in effect become the terms of the longer term lease once approved by the County. In effect the Permit was an interim lease.

36. During the Negotiation Period, SDMB indicated that the condition of the Hanger was unserviceable in many respects, that repairs were needed, and in its current condition, required City/County/State requirements for business activities, i.e., insurance, fire inspection, electrical access, etc. were unobtainable.

37. During the Negotiation Period, the Airport represented to SDMB it would address the flooding, leaking roof, unserviceable doors (security), electrical deficiencies, lighting receptacle defects (2/9 lights functioning), animal and bird infestation, and other public safety issues identified by SDMB in its negotiation meeting.

38. On or about September 5, 2013, an electrical engineer company and Airport Maintenance personnel inspected the Hanger for the purpose of a service order.

39. During the inspection, the Airport indicated that the identified issues would be addressed and presented to the County for authorization to repair and remedy.

40. On or about September 10, 2013, (Negotiation Period), the Airport and SDMB tentatively agreed that in exchange for Hanger 7, SDMB would pay the Airport \$1,200 per month.

41. On or about September 10, 2012, Airport acknowledged and accepted SDMBs earlier payments totalling \$4,800 for \$2,400 security deposit and \$2,400 rent through September 30, 2013.



42. On or about September 13, 2013, SDMB executed an undated Space Use Permit whereby SDMB agreed to pay \$1,200 per month for the Hanger until the County met its three readings and requested a copy of the fully executed Permit.

43. On or about September 13, 2013, the Airport acknowledged receipt of the SDMB executed agreement and indicated that it needed "a few weeks" to get a copy of the fully executed Permit returned to SDMB.

44. At all relevant times, SDMB has tendered paid a security deposit for \$2,400 and \$1,200 rent for the Hanger and the Airport has accepted the \$1,200 checks, depositing same into its account.

45. At all relevant times, Defendants Airport and County have not answered SDMBs repair requests.

46. At all relevant times, neither the County nor the Airport have made any repairs to the Hanger.

47. At all relevant times, neither the Airport nor the County have presented SDMB with either an executed copy of the original Permit or a long-term Lease.

48. On or about September 2013, SDMB notified Defendants Airport and Jackson of the need for repairs and remedy without reply.

49. In or about September 2013, SDMB after fruitless attempts at remediating the identified fire and safety hazards with the Airport, initiated remedial steps to correct the problem and rectified the hazards.

50. In or about December 2013, SDMB expended \$2,000 rectifying the issues identified in the fire report and paid the \$215 fine.

51. At all times herein, SDMB reasonably relied on the Airport's assurances that a forthcoming long term-lease containing the essential terms of the Permit (i.e., \$1,200/month, electric, parking, etc.), repairs to secure the hanger, electric access, lighting, *inter alia*, and paid its rent in a timely manner.

52. At all times relative herein, Defendant Jackson was an agent of the Airport, the Airport manager in charge of CRE, as well as the point of contact between the Airport and SDMB.

53. A contract for a leasehold interest exists through the actions of the parties; SDMBs occupations, repair, and use of Hanger 7, and the Airport's acceptance of rent and the County and Airport are estopped from denying a Lease exists.

54. Defendants County, Airport, and Haldi's actions amounted to a retaliatory eviction notice.

55. Defendants County, Airport, Apone, and Jackson's refusal to respond to SDMBs reasonable maintenance requests and other correspondence, are a breach of the duty to act in good faith while performing public duties and are a breach of material terms.

56. Defendants Airport and Jackson's refusal to make repairs to the hanger or allow SDMB to make repairs violate the implied duty of fair dealing.

57. Defendant Teal's unauthorized entry served no reasonable purpose as electrical outlets were easily accessible in the vacant adjoining hanger, less than 50 feet away, and the Defendant Teal and the Airport have unfettered access (the adjacent hanger is vacant and secured by an Airport lock its hanger door).

58. Defendant County, Airport, Haldi, Jackson's conduct, and actions are in breach of an implied agreement through course of conduct, the executed Permit, or both.

59. Defendants County, Airport, Haldi, Apone, Jackson, and Teal's breaches have damaged SDMB financially and operationally.

**FOR A SECOND CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT**  
**(Breach of Contract Accompanied by Fraudulent Act)**

60. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

61. Defendant Airport and SDMB entered into an Agreement on or about September 13, 2013, where the Airport would present the terms of a Space Use Permit to the County for three readings, bring back a long-term lease with similar terms, negotiate a new Letter of Agreement for Non-emergency parachute operations at CRE, make or allow repairs to the Hanger in exchange for SDMBs execution of a short term "Space Use Permit", \$2,400 security deposit and \$1,200 per month rent.

62. On information and belief, Defendants Airport, Apone, and Jackson intentionally, recklessly, and knowingly misrepresented the procedures for leasing Airport property.

63. On information and belief, Defendants Airport, Apone, and Jackson accepted SDMBs rent payments for the month of January, and February 2014.

64. Defendants represented to SDMB that a lease would be forthcoming.

65. Defendants continued failure to respond to SDMB multiple requests combined with its attempt to enforce regulations under the exclusive domain of the FAA as cover, failure to accept mail, respond to SDMBs allegations, or make any investigation constitute dishonesty in fact and unfair dealing.

66. Defendant's fraudulent acts occurred prior to, during and after the Permit period and breach of contract set forth herein.

**FOR A THIRD CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT, HALDI, APONE, AND JACKSON**  
**(Breach of Fiduciary Duty)**

67. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

68. SDMB and Airport entered into a fiduciary relationship whereby the Airport in consideration for a temporary Space Use Permit, the Airport would act as a Broker with the County and secure a long term lease for SDMB.

69. SDMB reasonably relied on the representations of the Airport and Defendant Jackson that a deal with the county would be brokered.

70. Defendants Apone and Jackson are public servants and employees of the Airport, which accepts federal grant monies from the Department of Transportation and FAA.

71. Public official reposes special confidence in another so that the latter, in equity and good conscious, is bound to act in good faith with due regard to the interests of one reposing the confidence.

72. As a fiduciary, the Airport and its agents induced the confidence placed in it by SDMB.

73. The continued combined actions and inactions by Defendants County, Airport, Haldi, Apone, Jackson, and Teal, are a breach of fiduciary duty to be fair, reasonable, negotiate in good faith, and deal honestly with SDMB.

**FOR A FOURTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, JACKSON, AND TEAL**  
**(Civil Conspiracy)**

74. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

75. At all relevant times herein, Defendant Haldi acted as an agent of the County as its Property Manager.

76. At all relevant times herein, Defendant's Apone, Jackson, and Teal operated as agents of the Airport.

77. Upon information and belief, Defendants Haldi, Apone, Jackson, and Teal collectively acted to remove SDMB from CRE and interfere with its legitimate right to conduct aeronautical activities.

78. Defendants Jackson and Teal directly interfered with SDBMs parcel and mail delivery. Defendant Jackson left directions with his employees not to receive any parcels for Plaintiff; Defendant Teal received packages and locked them in a closet without informing Plaintiff, in effect wrongfully concealing them from Plaintiff.

79. The acts complained of herein satisfy the requisite "proof showing concert of action from which the natural or reasonable inferences arise that the acts were in furtherance of the common design of the alleged conspirators, is sufficient; at least to establish a *prima facie* case of conspiracy." See *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 344 S.E. 2d 150, 153 (Ct.App. 1987).

80. The combined acts of Defendants County, Airport, Haldi, Apone, Jackson and Teal, including, *inter alia*, failure to answer SDBMs repeated multiple requests for repair, to permit repairs, to answer correspondence or email, concealment of packages and mail, failure to disclose the terms of the Letter of Agreement (LOA) between CRE ACT and the Airport, unauthorized entry into its place of business, refusal to refuel without clearance (unlike other business on site), interference with parking and day to day activities were designed to ruin or damage the business of SDBM.

81. SDBMs business was closed to repair/inspect plane following unauthorized entry, equipment damage, loss of customers due to fuel issues, loss of business profit, fire department violations, wiring the hanger with electric, repairing doors, removing trash, water damage, etc. have resulted in Defendants combined malicious actions and omissions under cloak of state authority.

**FOR A FIFTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, AND JACKSON**  
**(Constructive Fraud)**

82. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

83. Airport agents and Defendant Jackson misrepresented that three readings before the County council are required to secure a lease.

84. County Property Attorney and Defendant Haldi make no reference to this need in its letter as this is not a condition precedent to a lease with the County.

85. Defendant Jackson as Defendant Airport's manager, knew or ought to have known of the falsity.

86. This representation was material and played a role in SDBMs negotiations and agreement.

87. Defendants Airport and Jackson intended that the representation be acted upon.

88. SDMB had no knowledge or was ignorant of the falsity of this representation as it had never conducted business with Defendants prior to the allegations set forth herein.

89. SDMB reasonably relied on these representations as the truth.

90. SDMB had a right to rely upon a state politic organization operating under federal, state, and county charter to provide accurate, truthful statements with regard to leasing policies and procedures.

91. Together the acts of the Defendants have caused consequent and proximate injury to SDMBs business interests, its ability to lawfully operate, and conduct federally recognized aeronautical activities at an airport in receipt of federal grant block funding.

**FOR A SIXTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, AND JACKSON**  
**(Defamation)**

92. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

93. Defendant Jackson has intentionally and with reckless disregard to its falsity, informed other tenant businesses in both Myrtle Beach International (MYR) and Grand Strand Regional (CRE) airports false statements that were intended to impeach the honesty, integrity, virtue, or reputation, that exposed SDMB to public hatred, contempt, ridicule or to cause him to be shunned or avoided, or to injure SDMB in its office, business, or occupation.

94. On multiple times, Defendant Jackson did state:

- a. that SDMB violates federal rules, regulations and statutes in wanton disregard, or words to that effect;
- b. SDMB has been so egregious with regard to parking and Airport security measures, new parking prohibitions and security measures are necessary for the entire Airport jurisdiction, or words to that effect;
- c. SDMB is a rogue operator that does not follow any rules relating to the ATC operations at CRE, or words to that effect; and
- d. SDMB illegally conducts parachute operations, or words to that effect.

95. Defendant published these statements with actual or implied malice, knowing that they were false.

96. The statements themselves or the intent of the statements or words to that effect, concerns SDMB and its business interest.

**FOR A SEVENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, AND JACKSON**  
**(Fraud and Misrepresentation)**

97. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

98. Defendant's Airport and Jackson represented to SDMB that a lease and repairs require county approval with three readings at the council meetings.

99. Defendants Airport and Jackson knew that statement was false or acted with reckless disregard for the truth intending that SDMB would be in a weaker bargaining position as a result.

100. SDMB did not know of the falsity, reasonably relied on the truth that a government organization would conduct itself properly and has been injured by this conduct.

**FOR AN EIGHTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, JACKSON AND TEAL**  
**(Interference with Contractual Relationship)**

101. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

102. Defendants County, Airport, Haldi, Jackson, and Teal know about the Letter of Agreement (LOA) between MYR ATC, CRE ATC, SDMB, and the Airport for parachute operations and the Permit.

103. Defendant's County, Airport, Haldi, Apone, Jackson, and Teal are additionally aware of a LOA between Robinson Aviation, LLC d/b/a CRE ATC and the Airport (CRELOA) concerning and providing for exclusive jurisdiction of defined "Active Areas" of CRE airport.

104. Defendants County, Airport, Haldi, Apone, Jackson, and Teal did willfully, wantonly or with reckless disregard to the adverse impact of SDMB, conceal the terms of the CRELOA from SDMB in breach of the LOA terms.

105. Defendants' acts were intentional and effectively procured an unknowing breach of the Permit by SDMB, in that SDMB did not follow unpublished CRE protocol although at no time did SDMB violate any published Federal Regulation under Title 14.

106. There is no justification for Defendant's conduct; this appears designed in furtherance of a well-orchestrated plan to have SDMB removed from the CRE and Airport property.

107. This conduct has severely limited SDMB ability to safely operate at CRE, effectively blocked communication with the Airport, prevented SDMB from obtaining a lease, and caused damage to its pecuniary business interests.

**FOR A NINTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, AND JACKSON**  
**(Negligence)**

108. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

109. As body politics, Defendants County and Airport owe a duty not to permit tortious conduct under the color of state authority from its administrators, management, executive, and staff employees to the public in general and SDMB in particular.

110. Defendants County, Airport, Apone, and Jackson violated this duty of care owed to SDMB by County, Airport, in that:

- a. County Deputy Attorney/Property Manager attempted to interfere with SDMB legitimate right to conduct business on CRE and effectively coerce SDMB into executing a predatory lease within a 72 hour time frame; and
- b. Airport Manager misconduct, includes but is not limited to: directly ordered SDMB mail and parcel delivery to be returned to sender, secretly stored in Airport property, failed to answer legitimate maintenance requests, slanderously spoke about SDMB conduct, interfered with SDMB business by limiting public access, refused to provide for published Airport Rules or Regulations, instructed line staff to illegally enter SDMBs business for no reasonable purpose.

111. Defendants County, Airport, Apone and Jackson actions and inactions and were a breach of its duty to properly supervise subordinates.

112. Defendants breach caused SDMB pecuniary loss, loss of good will, customers, caused additional expense for necessary inspections, and prevented the reasonable expectation of mail and parcel delivery at a leased commercial unit.

**FOR A TENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, AND JACKSON**  
**(Negligent Misrepresentation)**

113. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

114. Defendant Jackson falsely represented to SDMB that three readings of the terms in the Permit would be a necessary condition precedent of a long term lease to induce SDMB into accepting the Permit terms.

115. False representations by Property Manager echoing those of Airport manager and that the County will not negotiate a lease until SDMB executes a new nonnegotiable terms in order to increase the revenue to 24% of SDMBs gross receipts.

116. That Defendants County, Airport, Haldi, Apone, and Jackson unilaterally attempted to increase the revenue generated by the Hanger in bad faith.

117. Defendants County, Airport, Haldi, Apone, and Jackson possess special information and expertise with regard to letting County and Airport property and it was reasonable for SDMB to rely on the County and Airport officials with regard to County and Airport renting procedures.

118. Defendants County, Airport, Haldi, Apone, and Jackson, as state officials, had a duty of truthfulness and fair dealing owed to SDMB in all business transactions.

119. Defendants breached the duties of truthfulness and fair dealing by failing to exercise due care by concealing or distorting the procedures or steps necessary to secure a lease of Airport property.

120. SDMB justifiably relied on these representations and has suffered pecuniary loss as a direct and proximate result of reliance on these representations.

**FOR AN ELEVENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, APONE AND JACKSON**  
**(Negligent Supervision)**

121. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

122. Defendant Teal intentionally entered SDMB business premises and caused the Hanger doors to be injured, made unpermitted electric use, and caused a shutdown SDMBs business, as unauthorized access to skydiving equipment requires full re inspection of al parachutes in the Hanger.

123. Defendant Jackson has harmed SDMB by slanderously publishing false statements about SDMB.

124. Defendants Airport, Apone, and Jackson each knew or had reason to know of the ability to control the Defendants Jackson and Teal.

125. Defendant Teal admitted that the unauthorized conduct had been done in the past. Defendant Jackson was also aware of this.

126. Defendant Airport and County should have known unsupervised activity could cause harm to SDMB.



**FOR A TWELFTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT**  
**(Promissory Estoppel)**

127. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

128. Defendant Airport, through its agent, and Defendant County, through its Property Manager, promised to enter into a long term lease with SDMB. The promise was unambiguous in its terms.

129. SDMB reasonably relied on this promise.

130. SDMB reliance was expected and foreseeable by the County and Airport (party that made the promise).

131. SDMB did not pursue other opportunities for alternate accommodations at CRE for its business based on these representations and spent considerable amounts of money and time repairing the unit.

132. SDMB has been financially injured as a result of its reasonable reliance on the promises of Defendants.

**FOR THE THIRTEENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT**  
**(Quantum Meruit)**

133. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

134. Plaintiff has spent a considerable amount of time and money repairing Hanger 7, and has conferred a substantial benefit upon Defendant Airport.

135. Realization of that benefit by the defendant is evidences by virtue of an unserviceable hanger, vacant for 17 years and without value, now generating monthly rent.

136. Retention by the Defendant Airport of the benefit under conditions that make it unjust to retain it without paying its value given the fact that repairs were required to bring the premises up to code.

**FOR THE FOURTEENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, APONE, JACKSON, AND TEAL**  
**(Trespass)**

137. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

138. Plaintiff has been in legal possession of Hanger 7 since May 2012, paid all rent monies timely, attempted to negotiate a lease in good faith and Defendant Airport, has at all times cashed SDBMs prepaid rent payments before the expiration of the month.

139. On or about February 5, 2012, Defendant Teal voluntarily and without permission, entered SDBMs business location in Hanger 7

140. Unauthorized access required SDBM to inspect all gear and equipment, and shut down operations for a business day.

**FOR THE FIFTEENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, JACKSON, AND TEAL**  
**(Unfair Trade Practice Act Violation)**

141. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

142. Defendants County, Airport, Haldi, Apone, Jackson, and Teal violated the South Carolina Unfair Trade Practice Act by offending established public policy of government to operate openly with published rules and policies, equal treatment, and with conduct that offends established public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious to customers.

143. The actions identified in this Complaint proximately caused injury and damages to the Plaintiff.

**WHEREFORE**, Plaintiffs pray that this Honorable Court grant them judgment as follows:

a. For the First Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action;

b. For the Second Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

c. For the Third Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

d. For the Fourth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual

and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action and punitive damages as the jury may award;

e. For the Fifth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

f. For the Sixth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action and punitive damages as the jury may determine;

g. For the Seventh Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

h. For the Eighth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

i. For the Ninth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

j. For the Tenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

k. For the Eleventh Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

l. For the Twelfth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

m. For the Thirteenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor,

materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

n. For the Fourteenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

o. For the Fifteenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, treble damages, and attorney fees and costs of this action;

p. That the Defendants be enjoined and restrained from future tortious interference with SDMBs legitimate right to conduct non-emergency parachute operations;

q. That the a Writ of Mandamus issue against Defendant Airport requiring it to negotiate in good faith the reasonable terms of a renewal CRE LOA with SDMB, Jacksonville, FL ATC (ZIX), MYR ATC, and CRE ATC as required by applicable federal regulations in order for SDMB to continue its aeronautical activity as defined by federal regulations;

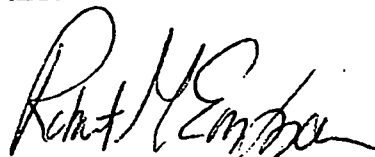
r. That Defendants properly outfit, maintain, and repair the subject Hanger;

s. That the costs of this action be taxed against Defendants;

t. That pre- and post-judgment interest at the legally applicable rate be awarded Plaintiff;

u. For any such other and further relief as may be just and proper;

RESPECTFULLY SUBMITTED



Robert G. Eastman, Esquire  
SC Bar No. 75900  
Attorney for the Plaintiff  
Eastman & Associates, LLC  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657  
Fax: (843) 723-0005

Charleston, South Carolina  
February 27, 2014

*Skydive Myrtle Beach, Inc. v. Horry County, et. al.*

# **Exhibit 1**

140225.sdmb.v.hoda.et.al

**Record on Appeal -035-**

**HORRY COUNTY  
ATTORNEY'S OFFICE**

H. Randolph Haldi  
Deputy County Attorney/  
Property Manager  
1301 Second Avenue  
Conway, South Carolina 29526  
[HaldiR@HorryCounty.org](mailto:HaldiR@HorryCounty.org)



Post Office Box 1236  
Conway, South Carolina  
29528-1236

Phone: (843) 915-5270  
Fax: (843) 915-6270

---

*Via Hand Delivery, First Class Mail, and Email transmission:*

*Aaron Holly: [aholly@me.com](mailto:aholly@me.com)*

*Robert G. Eastman: [robertgeastman@msn.com](mailto:robertgeastman@msn.com)*

*Skydive Myrtle Beach: [mbskydiving@aol.com](mailto:mbskydiving@aol.com)*

February 19, 2014

Skydive Myrtle Beach, LLC  
Attn: Mr. Aaron S. Holly  
P.O. Box 2478  
Wilmington, NC 28402

**Re:    *Space Use Permit  
Grand Strand Airport***

Dear Mr. Holly,

This Office has recently been made aware of serious issues that have arisen regarding your business operations at Grand Strand Airport (CRE), causing several violations of the Space Use Permit dated September 13, 2013, which will be more fully addressed below. However, that Space Use Permit itself expired on January 31, 2014, and as such, you are currently occupying County property without any right or authorization.

As indicated above, during just the course of the prior Space Use Permit, Skydive Myrtle Beach has engaged in a pattern of incidents raising significant concerns as to the advisability of continuing to allow Skydive Myrtle Beach the use of County facilities, including:

- Weekend of October 18, 2013—Skydive Myrtle Beach hosted a poorly-controlled large crowd event, where numerous vehicles were parked inside the security fence and which event included food sales and alcohol consumption on County property;
- Weekend of October 18, 2013—motor home observed parked overnight inside the security fence adjacent to hangar used by Skydive Myrtle Beach;
- October 20, 2013—skydiver landed on taxiway, requiring medical assistance and emergency transport;

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**Record on Appeal -036-**

- October 21, 2013—tower reports to Horry County Department of Airports (HCDA) that over the weekend there were two “uncertified” night jumps, two jumps through clouds, and a jumper landing in the Barefoot Resort area that necessitated dispatch of emergency responders;
- October 27, 2013—HCDA informed that Aaron Holly improperly questioned tower protocol on an open ATCT frequency;
- November 13, 2013—incursion onto active runway when jumper who missed landing zone walked across runway, requiring FAA reporting and investigation;
- November 27, 2013—HCDA sends certified letter to Skydive Myrtle Beach to address issues regarding Skydive Myrtle Beach staff residing in hangar overnight and unrestrained dog seen repeatedly in ramp area, hangar space, and FBO building;
- December 23, 2013—tower informs HCDA that in a recent jump of 14 total jumpers, 11 ended up well outside the landing zone, with jumpers landing on various parts of the runway, taxiways, and Highway 31;
- January 20, 2014—tower informs HCDA that in a recent jump of 10 total jumpers, 4 ended up well outside the landing zone, with jumpers landing on various parts of the runway, taxiways, and the Barefoot golf course;
- January 20, 2014—tower informs HCDA that a GA aircraft was recently forced to make a 360-degree turn on short final approach after an errant skydiver flew over the runway;
- January 26, 2014—incursion onto active runway when Skydive Myrtle Beach personnel drive vehicle across runway without contacting the tower, requiring FAA reporting and investigation;
- February 9, 2014—HCDA personnel witness operation of two large propane grills in hangar and the sale of food for public consumption;
- Ongoing—HCDA personnel informed of jumps from helicopters with landings on public beach areas, in violation of designated landing zone and other terms set out in existing Letter of Agreement;
- Ongoing—continued bypassing of HCDA safety protocol by allowing unauthorized vehicles access to the airfield inside the security fence;
- Ongoing—violation of terms of the Space Use Agreement by making unauthorized modifications to the premises, including the installation of unapproved interior and exterior signage, removing electrical conduit from inside the hangar, installing unapproved flexible conduit and electrical outlets within the hangar, and other unauthorized and unapproved modifications to the premises.

This Office is also in receipt of a North Myrtle Beach Police Crime Report, dated February 7, 2014, the subject matter being stated as “Burglary/2800 Terminal St Hangar 7/Skydive Myrtle Beach,” and detailing two alleged offenses – Burglary Third Degree and Utilities/Theft of electric current. We are also in receipt of an email from Robert G. Eastman, in which the following is stated, “...Mr. Jack Teal entered SDMB Hanger 7 without notice or authorization in effect committing criminal trespass. As indicated in the meeting the police would be contacted for insurance purposes....[A] Notice of Trespass

citation will be issued next week and any further unauthorized trespass's will be prosecuted and result in a trespass and burglary charge."

As indicated above, the prior Space Use Permit expired on January 31, 2014 and thus, at the time of the alleged burglary/trespass, Skydive Myrtle Beach was occupying Hangar 7 without any right or authorization. Even under the previous Space Use Permit, which provides a mere license to the user, the County retained the right to enter the Space (County-owned property) at any time for any reasonable purpose. The previous Space Use Permit also provided a fixed charge for electricity of \$100.00 per month, regardless of usage, a utility in the name of, and paid by, the County. As you are aware, the complained entry was made to facilitate work being performed adjacent to the Hangar and undertaken to accommodate a request made by Skydive Myrtle Beach. Under these circumstances, the allegations made with respect to the Police Crime Report are untrue and baseless, and the assertions made by Mr. Eastman with respect to the allegations of criminal trespass represent either a misunderstanding or misuse of criminal law.

In light of the foregoing, Horry County is unwilling to offer Skydive Myrtle Beach a leasehold interest in the CRE hangar facility at this time. As an alternative, Horry County is willing to enter into a new, short term Space Use Permit, with the understanding that a violation of any of the terms contained in such Space Use Permit will result in Skydive Myrtle Beach being required to vacate the premises after 24-hour notice. Please understand that the new Space Use Permit will require:

- All jumps will be made in compliance with that Letter of Agreement between HCDA, Myrtle Beach ATCT, Strand FCT ATCT, and Skydive Myrtle Beach dated 5/11/12, and any subsequent amendments thereto as agreed to in writing by all parties;
- No unauthorized vehicles will be permitted inside the security fence;
- No overnight occupancy of any space subject to the agreement is permitted;
- Skydive Myrtle Beach will provide at least 10 days notice to HCDA of any events planned in which a crowd of more than 25 people would reasonably be expected;
- No outside vendors will be allowed without consent of HCDA, and will be subject to any restrictions or location requirements HCDA deems appropriate;
- No flammable substances permitted in any space subject to the agreement, including but not limited to, propane grills and alcohol;
- No modifications will be made to the space, and any modifications previously made without authorization or approval of HCDA will be removed and the premises returned to their condition prior to the modification;
- Fees for use of the space will be \$1,200.00/month or 24% of gross revenues, whichever is greater; and
- Any breach of the agreement by Skydive Myrtle Beach will provide grounds for immediate termination and Skydive Myrtle Beach will vacate the premises within 24 hours after being provided written notice of such termination.

These terms are non-negotiable, and a copy of the new Space Use Permit is enclosed for your review and acceptance. If Skydive Myrtle Beach agrees to abide by these terms and there are no further incidents during the term of the agreement, the County will re-visit the potential to enter into a lease agreement with Skydive Myrtle Beach prior to expiration of the new Space Use Permit this summer. In



light of the fact that Skydive Myrtle Beach is currently occupying County property without authorization, the new Space Use Permit must be signed and returned to HCDA within 72 hours from the time it is delivered. If Skydive Myrtle Beach declines to sign and return this Permit within the time set forth, you will need to vacate the premises immediately, as HCDA will change the locks and deny access to the premises as of the close of business on Saturday, February 22.

We certainly hope to be able to maintain an on-going relationship with your skydiving operation, as we believe that such a properly conforming business is a welcome and beneficial use of the County's Grand Strand Airport. We also understand that based upon recent measures on your part, you have attempted to address and correct some conditions that have led to certain of these prior incidents at the airport. The County is appreciative of these efforts, but requires your full commitment in order to continue to allow Skydive Myrtle Beach the use of County-owned property.

Sincerely,



H. Randolph Haldi

Encl.

Cc: Chris Eldridge, Horry County Administrator  
Arrigo Carotti, Horry County Attorney  
Pat Apone, Horry County Director of Airports

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Record on Appeal -039-

**GRAND STRAND AIRPORT  
SPACE USE PERMIT**

**THIS SPACE USE PERMIT** ("Permit") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2014, by and between HORRY COUNTY, SOUTH CAROLINA, ACTING BY AND THROUGH ITS DEPARTMENT OF AIRPORTS ("County") and SKYDIVE MYRTLE BEACH, LLC ("Company"), a business entity formed and existing under the laws of the State of South Carolina, and authorized to do business in Horry County, South Carolina.

**WITNESSETH**

**WHEREAS**, County is the operator of the Grand Strand Airport ("Airport" or "CRE"): and

**WHEREAS**, Company desires to occupy and use space in Hangar #7 located on Grand Strand Airport property, to conduct its "Skydiving and Non-Emergency Parachute Operation" business; and

**WHEREAS**, County is willing to permit Company to occupy and use space in Hangar #7 at Grand Strand Airport, subject to the restrictions and terms provided herein:

**NOW, THEREFORE**, County and Company agree as follows:

1. **Space Use.** County hereby permits Company to occupy and use space in Hangar #7 consisting of approximately 6,800 square feet of space, together with any surrounding curtilage and parking ("Space") to be utilized for Company's "Skydiving and Non-Emergency Parachute Operation" business.
2. **Term.** The term of this Permit shall commence on February 1, 2014, and it shall continue in force and effect until July 31, 2014, but no longer than, six (6) months from the date of commencement unless otherwise earlier terminated. Prior to actual physical occupancy of Space by Company, either party may terminate this Permit for any reason upon the giving at least five (5) days written notice to the other party. After actual physical occupancy of the Space by Company, either party may terminate this Permit for any reason by giving at least thirty (30) days written notice to the other party. Any act of default hereunder, including without limitation failure to pay fees when due, shall terminate any right, license or permission for use of Space immediately upon event of default, and Company will vacate the premises within 24 hours after receiving written notice of such default. This Permit shall not be renewed or extended, nor shall another such Permit be entered into between the same parties within twelve (12) months from the date of expiration of this Permit, without prior approval of Horry County Council.
3. **Use.** During the term hereof, Company shall occupy and use Space permitted by County solely in connection with its "Skydiving and Non-Emergency Parachute Operation" business at the Grand Strand Airport to the extent permitted by and fully in compliance with all applicable rules, regulations, and requirements of any Federal, State, City or County

regulatory agency having jurisdiction over the Company's operations, subject to all terms and conditions of this agreement. All skydiving operations will be made in compliance with that Letter of Agreement between the Horry County Department of Airports, Myrtle Beach ATCT, Strand FCT ATCT, and Skydive Myrtle Beach dated 5/11/12, and any subsequent amendments thereto, as agreed to in writing by all parties. Company's employees and customers will have reasonable access to and from and the right to use and occupy Space for the sole purpose of engaging in or furthering Company's business. Company's employees must be well groomed and neat in appearance at all times. The Director of Airports must approve all signs and displays to be erected on the Space. Company shall fully comply with all safety and security policies/directives as established by the Airport.

**RESTRICTIONS/LIMITATIONS:**

Only vehicles operated by staff members based at CRE and are employed *directly* for the Company and have been approved by the Director of Airports are permitted to park on the interior of the security fence (i.e. on the ramp). Company is limited to two (2) employee vehicles on Airport Property at one time and must park adjacent to the Space described in this Agreement.

Company will notify Horry County Department of Airports at least ten (10) days in advance of any events that could reasonably be expected to draw a crowd of more than twenty-five (25) people, and such events must be approved by the County Administrator or Director of Airports. Non-disclosure of any such planned event is a breach of this Agreement.

Overnight occupancy of any space described in this Agreement is strictly prohibited and will be considered an immediate violation of the Agreement.

No outside vendors will be allowed on Horry County property without the consent of the Horry County Department of Airports, and any allowed vendors will be subject to any restrictions, requirements, or locations that Horry County Department of Airports deems appropriate.

No flammable substances are permitted in any space subject to this Agreement, including but not limited to, propane grills and alcohol.

Company will not alter any portion of the Space, and any modifications previously made without authorization or approval of the Horry County Department of Airports will be removed and the premises returned to their condition prior to such modification. Any fees for repair of unapproved modifications or alterations will be the responsibility of the Company.

Company will abide by all HCDA rules, policies, and procedures for Grand Strand Airport (CRE), as may be adopted or amended from time to time.

4. Fee; Default Interest; Late Payment; Security Deposit.

A. Fee. As the Fee for occupancy and use of the Space, Company shall pay County monthly payments of One Thousand Two Hundred and No/100 dollars (\$1,200.00) per month. Company shall pay said amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof. In the event this Permit commences or terminates on other than the last day of any particular month, the Fee shall be prorated. County reserves the right to adjust such rate from time to time upon thirty (30) days written notice to the Company.

B. Gross Sales Percentage Fee. For each month during the term hereof and in addition to the monthly base occupancy and use of the Space fee, Company shall pay County, as additional fee, a monthly adjustment amount which shall be the difference, if any, between the monthly occupancy and use of the Space base fee to be paid during said month and twenty-four (24%) percent of the gross sales during each such occupancy month, whichever is greater.

Gross sales include, without limitation, the gross selling price of all merchandise, services, concessions, or privileges that occur in whole or in part, on the Space, or as a result of activities on or associated with the Space, during the term of this Permit including the gross charges of all services to customers or patrons performed by Company or any other person, entity, firm or corporation, in, upon, or through any part of the Space during the term of this Permit and all sales/services that are subject to the South Carolina amusement, sales, use or excise tax set forth in Title 12 of the South Carolina Code of Laws, 1976, as amended. Notwithstanding anything herein to the contrary, gross sales shall not include the amount of any amusement, sales, use or excise taxes paid by Company during such term of this Permit.

C. Payment of Fee and Gross Sales Percentage Fee. The Fee shall be paid in aid amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof from and after the Commencement Date. The Gross Sales Percentage Fee, if due, shall be paid within ten (10) days of each month following a calendar month occurring from and after the Commencement Date through the expiration or termination of this Agreement, at which time Lessee shall provide Lessor, without demand, a statement of Gross Receipts for the prior calendar month together with the amount, if any, by which the Gross Sales Percentage Fee due for the previous calendar year exceeds the Fee.

D. Default Interest. If Company shall default in its payment of Fees or other charges required to be paid pursuant to this Permit, such unpaid amounts shall bear interest from the date of default at the rate of 1 ½ % per month.

E. Late Payment. Company acknowledges that the late payment by Company of any monthly installment of fees or other charges will cause County to incur certain costs and expenses not contemplated under this Permit, the exact amount of which are

difficult or impracticable to determine. Therefore, if any such amount owing is not received by county within ten (10) days following the due date thereof, Company shall immediately pay to County a late charge equal to 1 ½ % per month of such amount owing, in addition to any default interest which may be due as provided above. To the extent that any late charge provided for hereunder is determined to constitute interest, in no event shall such late charges, plus any other interest due on sums owed to County hereunder, ever exceed the maximum interest rate permitted by law.

- F. Security Deposit. To assure the faithful performance of Company's obligations hereunder, Company shall remit a deposit in the form of cash, a letter of credit, or a payment bond issued by a reputable company licensed to issue such bonds in the State of South Carolina, in an amount equal to two (2) months of all applicable Fees to the County, which shall be remitted to the County prior to the Company's occupancy of the Space. In no event shall this security deposit be used as payment for any fee set forth in A, above, without the express written authorization of the Director of the Horry County Department of Airports.
5. Utilities and Services. County shall supply access to water, natural gas and electricity to the extent and capacity of the currently existing mains, lines, transformers, and panels. Company shall be solely responsible for the payment of all utility charges, telephone, trash removal, hazardous waste removal and other services used by Company in or on the Space, to include hook-up fees, advanced deposits or other such costs, regardless of whether the utility charge is incurred in the name of Company or County. Company shall accept transfer of all applicable utility meters to Company's name when so tendered by County. In the event Company incurs any utility charge in the name of County, Company shall reimburse County for the full amount of the charge within five (5) calendar days of the date of written notice to Company of the amount of the charge. County assumes no responsibility for interruption of such services for any reason whatsoever. Company agrees to pay County One Hundred & 00/100 Dollars (\$100.00) per month as an additional fee, which may be adjusted periodically by the County for utilities. The utility fee is included in the monthly fee specified in paragraph 4A.
6. Cleaning and Maintenance. Company, at its sole cost and expense, shall keep the Space in a clean, neat and orderly condition at all times, and shall be responsible for maintaining all non-structural elements, including without limitation plumbing and HVAC. Company understands that it is responsible for the conduct of its guests, permittees, invitees, and licensees on the premises. Company shall not store any personal property exterior to the building on the unimproved premises associated with the building. Company is prohibited from taking any action which would negate or void the warranty on the roofs of any building within its Space.
7. Alterations. Company may not make any alteration, addition, or improvement to the Space without the prior written approval of the Director of Airports. Company shall submit a

written request for permission to perform such alterations, which shall include a description of the improvements, a site plan, and any other documentation requested by the Director of Airports to demonstrate the suitability of the improvements or alterations. Unless County elects otherwise, all permanent alterations, additions, or improvements to the Space shall become the property of County upon termination. In the event County so elects, such permanent alterations shall be removed by Company at its own cost and expense prior to date of termination. Company shall repair any damage to Space caused by such removal at its own cost. All agreed upon improvements must be made in a workmanlike manner, in accordance with all applicable statutes, ordinances, rules and regulations, including without limitation applicable building codes, and may be made only upon written approval of County's department of Airports after review of complete plans for such improvements.

8. **Right of Entry.** County shall have the right to enter the Space at any time for any reasonable purpose.

9. **Compliance with Law.**

A. **General Compliance.** Company will comply with all applicable statutes, ordinances, rules, regulations, orders and directives of any governmental authority, including County, in its occupancy and use of the Space.

B. **Acceptance of Premises.** **Company accepts the Space in its "as-is" condition and County has no obligation to improve, repair, restore, or alter any portion of the Space.**

Company acknowledges that neither County nor any agent, employee, director or official of County has made any representation or warranty, except as otherwise expressly provided in this Permit, with respect to the Space including, without limitation, any representation or warranty with respect to the suitability or fitness of the building or any portion thereof for the conduct of Company's business. Important: Initial here to acknowledge \_\_\_\_\_

C. **Jurisdiction of Other Agencies.** If Company's activities and operations shall in any way fall within the jurisdiction or regulatory authority of other governmental agencies, including without limitation the South Carolina Department of Health and Environmental Control ("DHEC"), Company must secure and produce evidence of such agency's final approval of such operations or occupancy of Space. If such activities and operations fall outside DHEC's jurisdiction, Company shall procure and submit to County the statement of an appropriately authorized DHEC representative to that effect. Company acknowledges that its representations and warranties pursuant to this subsection are material to the County's agreement to permit the Company's use of the Space.

10. **Release and Indemnity.**

A. **Release.** Company hereby releases County from any liability to Company for any loss or damage to any property of Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, and for the death or injury of any officers, directors, employees, agents, customers, concessionaires, vendors,

contractors or invitees of Company, occasioned by theft, fire, acts of God, public enemy, injunction, riot, strike, insurrection, war, governmental body or authority including County, or any other matter beyond the control of County, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Space, or failure to make repairs, or for any cause whatsoever, except the sole negligence or willful misconduct of County.

- B. Indemnity. Company hereby releases and will defend, indemnify and hold harmless County, its departments, agencies, boards, commissions, committees, officers, directors, employees, and agents and assigns of any of them ("Indemnified Parties") from and against any and all liability, claims, penalties, fines, causes of action, suits, liens, losses, loss of use, damages, costs and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, be charged to or be recoverable from the Indemnified Parties by reason of:

- (1) any occurrence, in, upon, or at the Space, however caused, or any cause of action of any nature whatsoever, in law or equity, arising out of or incidental to this Permit or the use or occupancy of the Space; and/or
- (2) any occupancy, use, or misuse of the Space, or the areas surrounding the Space, or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Space, by Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, including without limitation uses or misuses which may render the premises subject to the Americans with Disabilities Act in whole or in part; and/or
- (3) any violation of any law, regulation or ordinance by Company or its employees, officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees; and/or
- (4) any occurrence arising in whole or in part out of the negligent act, or negligent failure to act, of Company, its officers, directors, employees, agents, customers, vendors, contractors or invitees.

The provisions of this section shall survive the expiration or early termination of this Permit.

- C. Environmental Indemnification. Company shall also indemnify, defend (with counsel satisfactory to County), and hold County, its departments, agencies, council, boards, commissions, committees, members, officers, directors, employees, and agents and assigns of any of them harmless from and against any and all loss, cost, damage, expense, claim, cause of action, judgment, penalty, fine or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling or presence of Hazardous Materials on, under, or about the Space or the

Airport in violation of Company's obligations under this Permit ("Hazardous Materials Release"). This indemnification shall include, without limitation, (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Space, or any building included therein, or any other property at the Airport, (d) damages for the loss or restriction on use of the Space or the Airport, (e) sums paid in settlement of claims, (f) actual attorneys' fees, consulting fees, court costs, and expert fees, (g) the cost of any investigation of site conditions, (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authority or deemed necessary in County's reasonable judgment, (i) and any fines associated with Company's activities. County shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or action initiated in connection with the Hazardous Materials Release. County may also negotiate, defend, approve, and appeal any action taken or issued by any applicable governmental authority with regard to a Hazardous Materials Release. Any costs or expenses incurred by County for which Company is responsible under this Paragraph or this Permit and has indemnified County, (i) shall be paid to County on demand, during the term of this Permit as additional fees; and (ii) from and after the expiration or earlier termination of the Permit shall be reimbursed by Company on demand. Company's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Permit and shall bind Company's successors and assignees and inure to the benefit of County's successors and assigns.

11. **Insurance Required.** Company agrees to purchase and keep in force and maintain at all times during the term of this Permit, at its own expense, for the benefit of itself and County as additional named insured, a policy or policies of insurance, issued by an insurance company of generally recognized responsibility and licensed to do business in the State of South Carolina insuring against: (A) all liability for damage to or loss of Company's and its customer's property located on the Space, (B) liability for property damage and personal injury or death arising from acts or omissions of Company, its agents and employees, (C) liability for any damage or harm resulting from any release of any hazardous material, as that term is defined by the United States Environmental Protection Agency, including, but not limited to, costs of remediation or mitigation of such release of hazardous materials, and (D) Workers Compensation claims to the limits required by the State of South Carolina. Said insurance shall be maintained throughout the term of this Permit with an insurance company acceptable to County with liability limits of at least \$2,000,000.00. The policy or policies shall contain a contractual liability endorsement expressly covering the indemnification provisions of Section 10 of this Permit. Company shall also purchase, at its own cost and in its sole discretion, such business interruption or other insurance to protect Company's interest in the event of major or minor damage or disaster to the Space.

This Permit shall not become effective until User shall provide to the HCDA a copy of certificate(s) evidencing the above insurance. The certificate of insurance shall provide that no material alteration, reduction, or termination of coverage shall occur without the



insurance carrier giving County at least thirty (30) days' written notice prior to such alteration, reduction, or termination.

12. **Subuse and Assignment.** Company shall not allow any other entity to occupy or use any of the Space without the written consent of the Horry County Department of Airports and no attempted assignment of this Permit by Company shall be effective.
13. **GOVERNING LAW.** THIS Permit SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA. This Permit is not subject to alternative dispute resolution except where ordered by a court of competent jurisdiction or required by operation of law. The forum for any action or claim brought as a result of this contract shall be the Court of Common Pleas, Horry County, South Carolina.
14. **Entire Agreement/Amendment.** This Permit constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether written or oral. The provisions of the Permit may be modified, amended or waived only by a written instrument executed by County and Company.
15. **Termination of Permit.** In the event of termination of this Permit by either Party, Company shall promptly cause to be removed all personal property from the Space. Any property left on Airport premises by Company and remaining there after the date on which Company either vacated the Space or should have vacated the Space according to the notice of termination sent by the terminating party, may be deemed, at the sole and exclusive option of the Airport, abandoned. Once so deemed, such property shall become the exclusive property of the County and may be disposed of as such in accordance with applicable statutes, ordinances, and County procedures. Alternatively, County may have such property removed, at Company's sole expense.
16. **Operating Permit.** The terms and conditions for both the "Space Use Permit" and the "Operating Permit" must be adhered to without default to either agreement. Default of any terms or conditions by either agreement, constitutes default on both the "Space Use Permit" and the "Operating Permit".
17. **Notices.** Any notices required or sent hereunder shall be in writing and shall be sent as follows:

As to County:

Horry County Department of Airports  
1100 Jetport Road  
Myrtle Beach, SC 29577  
ATTN: Director of Airports

As to Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party from time to time may change its address by written notice to the other party. Notices hereunder shall be deemed effective when delivered by hand delivery or overnight courier, or three days after deposit in the United States mail, first class, postage prepaid.

18. **License.** This Space Use Permit is intended by the parties, and shall be interpreted as, a license to use the designated Space, and shall under no circumstances be deemed or construed as a lease of real property, nor shall the relationship between the parties, as to the designated Space, be deemed that of landlord and tenant. This Permit is not a contract and does not give, assign, or otherwise transfer from the County to the Company any interest in real property, but is a mere license, revocable at the will of the County.

WITNESS the signatures of the parties as of the date first written above.

ATTEST:

\_\_\_\_\_

HORRY COUNTY

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

SKYDIVE MYRTLE BEACH, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

*Skydive Myrtle Beach, Inc. v. Horry County, et. al.*

## **Exhibit 2**

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
) Case No. 2014-CP

SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL

Defendants.

JURY TRIAL DEMANDED

**AFFIDAVIT OF BEN AUKER**

BEFORE ME, the undersigned authority, duly authorized by law to take oaths and acknowledgments, on this day personally appeared BEN AUKER, to me well known, who being first duly sworn, deposes and says:

1. My name is Ben Auker, I am over the age of 18, and I have personal knowledge of the matters contained herein.

2. Your Affiant works for Skydive Myrtle Beach, Inc. (SDMB), as its pilot for parachute operations.

3. Your Affiant routinely personally requests for refueling services from Grand Strand Regional Airport (CRE) through its FBO.

4. For the first time, your Affiant was told by CRE FBO staff that the plane would not be refueled without Tim Jackson's approval because SDMB refused to execute a new Space Use Permit (direction from a note left inside the FBO).

5. Your Affiant informed SDMB management and the plane was subsequently refueled approximately 30 minutes following the initial request.

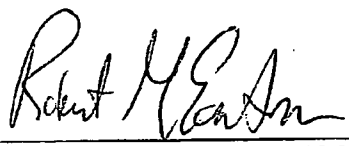
6. Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.

  
BEN AUKER

STATE OF SOUTH CAROLINA )  
 ) SS  
COUNTY OF HORRY )

BEFORE ME, the undersigned authority, personally appeared BEN AUKER who is personally known to me or who presented personally known as identification and who swears and deposes that he has read the Affidavit and that the same is true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me this 26<sup>th</sup> day of February, 2014.

  
ROBERT G. EASTMAN, ESQ.  
Delaware Attorney ID 3356  
Authorized by Statute  
Uniform Law on Notarial Acts

EASTMAN & ASSOCIATES, LLC  
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Skydive Myrtle Beach, Inc.

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Record on Appeal -052-

Amended Complaint

Record on Appeal -053-

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Record on Appeal -054-



STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
) Case No. 2014-CP-1193

SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
ARRIGO CAROTTI, H. RANDOLPH  
HALDI, PAT APONE, CHARLES BREE,  
KIRK LOVELL, TIM JACKSON, JACK  
TEAL, DOE BUSINESS ENTITIES 1-10,  
and DOE INDIVIDUALS 1-10,

Defendants.

**AMENDED COMPLAINT**  
**Jury Trial Demanded**

COMES NOW, the Plaintiff, SKYDIVE MYRTLE BEACH, INC., complaining of the Defendants, and alleges as follows:

**JURISDICTION AND VENUE**

1. Plaintiff, Skydive Myrtle Beach, Inc. ("SDMB" or "Plaintiff"), is a corporation organized and existing under the laws of the State of North Carolina and does business in Horry County, South Carolina through its agents, servants and/or employees.

2. Defendant Horry County ("Defendant County" or "County") is a body politic and political subdivision of the State of South Carolina.

3. Defendant Horry County Department of Airports ("Defendant Airport," "Airport," or "HCDA") is a body politic and corporate and political subdivision of the State of South Carolina that owns, manages, and operates property in Horry County, South Carolina.

4. Plaintiff is informed and believes that Defendant Arrigo Carotti ("Defendant Carotti" or "Carotti"), is a citizen and resident of Horry County, South Carolina.

5. Plaintiff is informed and believes that Defendant, H. Randolph Haldi ("Defendant Haldi" or "Haldi"), is a citizen and resident of Horry County, South Carolina.

6. Plaintiff is informed and believes that Defendant, Pat Apone ("Defendant Apone" or "Apone"), is a citizen and resident of Horry County, South Carolina.

7. Plaintiff is informed and believes that Defendant, Charles Bree ("Defendant Bree" or "Bree"), is a citizen and resident of Horry County, South Carolina.

8. Plaintiff is informed and believes that Defendant, Kirk Lovell ("Defendant Lovell" or "Lovell"), is a citizen and resident of Horry County, South Carolina.

9. Plaintiff is informed and believes that Defendant, Tim Jackson ("Defendant Jackson" or "Jackson"), is a citizen and resident of Horry County, South Carolina.

10. Plaintiff is informed and believes that Defendant, Jack Teal ("Defendant Teal," or "Teal"), is a citizen and resident of Horry County, South Carolina.

11. At all relevant times, unless otherwise stated, Defendants Carotti, Haldi, Apone, Bree, Lovell, Jackson, and Teal were acting as agents or employees of Defendants County and Airport.

12. Upon information and belief, Defendants Carotti, Haldi, Apone, Bree, Lovell, Jackson, and Teal are neither minors nor incompetent.

13. Doe Business Entities 1-10, were or are business entities or political subdivisions organized and existing under the laws of the State of South Carolina, or some other state, which are in some way legally and proximately responsible, in part, for the Plaintiff's damages, but not yet specifically identified by Plaintiffs. When these Defendants are identified, they will be more specifically identified as such in this action and named as Defendants.

14. Doe Individual Defendants 1-10, were or are individual persons, estates, and/or business entities, which are in some way legally and proximately responsible, in part, for the Plaintiff's damages, but not yet specifically identified by the Plaintiff. When these Defendants are identified, they will be more specifically identified as such in this action and named as Defendants.

15. That as a direct and proximate result of the conduct of Defendants, the Plaintiffs have sustained substantial compensable losses including certain consequential damages, attorney fees and costs.

16. This Honorable Court has jurisdiction of the parties and the subject matter herein as set forth in S.C. Code Ann. § 36-2-803.

17. Venue is proper in this Honorable Court pursuant to S.C. Code Ann. §§ 15-7-20; 15-7-30.

### **STATEMENT OF FACTS**

18. The Federal Aviation Administration ("FAA") has exclusive jurisdiction to develop plans and policies for the use of navigable airspace pursuant to 42 U.S.C. § 40103.

19. The FAA has exclusive sovereignty over airspace and is the final arbiter of "aviation safety and will make the determination regarding the reasonableness of the sponsor's [HCDA] proposed measures that restrict limit, or deny access to the airport." FAA Order 5190.6B (Sept. 30, 2009); FAA Grant Assurance 22.

20. FAA has no jurisdiction to determine state law issues. 42 U.S.C. § 47107.
21. HCDA receives federal grants from the FAA.
22. HCDA is governed by FAA Grant Assurance 22 as a recipient of FAA grant money.
23. The Anti-Head Tax Act (“AHTA”) prohibits a State or political subdivision from levying or collecting a “[t]ax, fee, head charge, or other charge on – an individual traveling in air commerce; . . . or the gross receipts from that air commerce or transportation.” 49 U.S.C. § 40116(b)(1), (4) (emphasis supplied); *Hill v. National Transportation Safety Board*, 886 F.2d 1275, 1279 (10<sup>th</sup> Cir. 1989) (a flight supporting a skydive drop or operation exclusively within one state does not alter this conclusion).
24. Aircraft operations carrying skydivers fall under the definition of “air commerce” because those operations use aircraft that directly “affect or endanger safety in interstate air commerce.” 49 U.S.C. § 40102(a)(3); 14 C.F.R. § 1.1.
25. The FAA regulates skydiving in Part 105 of Title 14, Code of Federal Regulations and describes skydiving operations and applicable laws in AC 105-2e “Sport Parachute Jumping” (Dec. 31, 2013).
26. Landing on a taxiway, runway, or other active area on an airport is not prohibited by federal law, regulation, or FAA order.
27. Grand Strand Airport (“GSA”) is a general aviation airport, owned by the County and currently operated by the Airport.
28. SDMB operates a sport parachuting operation conducting a federally recognized aeronautical activity, skydiving. FAA AC 105-2e, page 2, at ¶ 4.a.
29. Until August 2013, Grand Strand Aviation Inc., (“Ramp 66”), a South Carolina Corporation, was acting as an agent of the County and HCDA pursuant to an agreement with HCDA to manage and operate GSA which expired in July 2020.
30. At all relevant times, GSA has an aircraft control tower (“CRE”) independently owned and privately operated by Robinson Aviation, Inc., an Oklahoma Corporation, with its principle place of business located at 1601 Northwest Expressway, Suite 850, Oklahoma City, Oklahoma 73118.
31. Since approximately 1995, Hangar 7, also known as the “Bird Hangar,” had been vacant, not maintained, open to the elements, and utilized as a storage space for junk.
32. From April to May 2012 (“Preliminary Period”), SDMB gained access from Ramp 66 to Hangar 7 and began to make it accessible for its aircraft, equipment, and parachute operations.
33. During the Preliminary Period, SDMB:

a. Agreed with Ramp 66 to rent all usable space in Hangar 7 as it was the only suitable available hangar space for parachute operations at GSA;

b. Agreed that SDMB could use the entire space available in Hangar 7 provided SDMB cleared the area of junk;

c. Agreed that SDMB would have access to Hangar 7 and not pay rent until such time as Hangar 7 had a minimum of 2,500 square feet of usable space.

d. Expended over 936 man hours power washing, clearing animal residue, abandoned parts, rubbish, and other unidentified refuse that had accumulated inside the Hangar from 17 years of nonuse; and

e. Spent in excess of \$1,000.00 in supplies.

34. On May 10, 2012, SDMB and Ramp 66 entered into an eight (8) year, long-term lease agreement for the "a minimum of 2,500 square feet" of the "Bird Hanger" (Hangar 7) located at GSA ("Original Lease"). See Exhibit 1.

35. Sometime in August 2013, HCDA paid Ramp 66 approximately \$800,000.00 for the remaining term of the management lease between Ramp 66 and HCDA.

36. In August 2013, HCDA resumed primary control of GSA from Ramp 66.

37. In August, HCDA informed SDMB that:

a. the Original Lease could not be located;

b. a new lease between HCDA and SDMB was necessary for SDMB to continue occupation of Hangar 7 and parachute operations at GSA;

c. a lease with HCDA required County approval, must be written in a County-approved format, and typically takes at least three months to accomplish; and

d. During the County approval process, a County approved short-term permit was required and would contain the same material terms as the final County approved long-term lease.

38. During period Ramp 66 was in managing GSA, SDMB conducted several thousand skydives without incident or complaints.<sup>1</sup>

39. In September 2013, a meeting finalizing the material terms for Hangar 7 and discussing parachute operations in Myrtle Beach, South Carolina took place. ("September Meeting")

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<sup>1</sup> In late spring 2013, HCDA investigated a taxi crossing by a skydiver authorized to cross active areas pursuant to Part 105 of Title 14 Code of Federal Regulations after receiving a report from its proxy, the local privately operated Aircraft Control Tower ("CRE"). No action by FAA was initiated against SDMB for this incident.

40. At the September Meeting,

a. SDMB and HCDA agreed to:

i. Articulate the material terms of the Original Lease and reflective of the current agreement and course of dealing between SDMB and Ramp 66 into the newly drafted County-approved format, namely:

a) Monthly rent of the entire recently cleared hangar, or 6,800 square feet of the newly cleared area, for \$1,200.00 in compliance with the AHTA and course of dealing between SDMB and Ramp 66;

b) Twenty-four hour, unlimited, exclusive access to Hangar 7 in compliance with federal regulations governing parachute equipment;

b. SDMB informed HCDA, that it intended to increase its fall skydiving operations with a kick-off weekend event scheduled for October 17-20, 2013 (Kick-off Event); and

c. HCDA demanded proof of compliance with all state and local governmental organizations (permits, security plans, crowd control, etc.).

41. After the September Meeting, SDMB drafted a multipage "Operation Order" addressing HCDA's stated concerns and contacted North Myrtle Beach fire inspector to inspect Hangar 7 pursuant to SDMB's application for a local business license.

42. In or about September 2013, SDMB was issued a citation for violations to the City of North Myrtle Beach fire code, notably, electrical concerns inside Hangar 7.

43. In September 2013, after the fire inspection, SDMB requested HCDA to correct the electrical and other safety repairs identified on the North Myrtle Beach fire inspection.

44. On September 18, 2013, SDMB executed a 90-day Space Use Permit with HCDA intending it to be a temporary good-faith suspension of its original May 10, 2012, long-term lease with Ramp 66 in order for HCDA to present a county-approved long-term replacement lease for Hangar 7 under terms and conditions reflecting the course of dealing between SDMB and Ramp 66, i.e., \$1,200.00 per month for the entire hangar.

45. On or about October 11, 2013, the North Myrtle Beach Fire Department inspected Hangar 7 and identified multiple code violations.

46. On or about October 11, 2013, SDMB notified HCDA of the code violations identified in the fire inspection.

47. In early October 2013, SDMB:

a. made the required electrical repairs to Hangar 7 (after repeated unsuccessful attempts to have the Airport make the necessary repairs or respond to maintenance requests);

b. obtained all necessary permits and licenses for Hangar 7;

c. notified FAA, North Myrtle Beach, HCDA, and local neighbors that increased customer traffic was expected for Kick-off Event; and

d. contracted a food truck and live band.

48. On October 17-20, 2013, Horry County Sheriffs attended and remained at the Kick-off Event at HCDA's or the County's direction.

49. At the Kick-off event, the Sheriff directed SDMB:

a. to use a vehicular gate access to the hangar;

b. to have its customers use street parking and vacate the available Fixed Base Operator ("FBO") public parking area;

c. to remove a contracted food cart from County property due to County ordinance or regulation prohibiting "open flames" on County or Airport property;

d. to stop its customers from smoking due to County ordinance or regulation prohibiting smoking on County or Airport property; and

e. to enforce a County ordinance or regulation prohibiting open container on County or Airport property.

50. On November 27, 2013, by certified mail,<sup>2</sup> HCDA accused SDMB:

a. of prohibited overnight occupancy in Hangar 7;

b. of having an unrestrained dog on Airport property that created a safety concern in violation of HCDA rules; and

c. informed SDMB that any future violation would result in immediate removal from GSA.

51. On January 6, 2014, after receiving the certified letter from HCDA dated November 27, 2013, by hand that same day, SDMB denied unauthorized overnight occupancy, requested copies of Airport rules or policies, admitted an contractor's dog was unrestrained<sup>3</sup> at times like

<sup>2</sup> HCDA had instructed GSA to refuse mail for SDMB, and the certified letter was not received by SDMB until January 6, 2014, when it was delivered by hand.

<sup>3</sup> Unrestrained pets walking on active areas of the airport are common at GSA as private plane owners often are observed with unrestrained pets from the aircraft to the FBO. Wild coyotes and other wildlife are also routinely observed on the runways.

other dogs at GSA, indicated that all dogs would be restrained in the future, and requested that mail and parcel delivery disruption cease.

52. On January 6, 2015, SDMB paid a \$205.00 fine to North Myrtle Beach for the code violations identified in the fire inspection report.

53. On February 5, 2014, during business hours (approximately 11:00 a.m.) for no reasonable or authorized purpose, Defendant Jack Teal entered Hanger 7 by force without notice or permission.

54. On February 5, 2014, SDMB requested a meeting with HCDA and CRE to discuss the unauthorized entry, Hangar 7 repairs, Airport complaints and parachute operations and regulations.

55. On February 7, 2014, a meeting between SDMB, the Airport, representatives of the Air Traffic Control Tower (ATC) for CRE, and Defendants Jackson and Teal ("Resolution Meeting") took place in the GSA Training Room.

56. At the Resolution Meeting, Defendant Jackson represented:

- a. he personally ensures and handles all maintenance requests for Airport tenants and no maintenance requests from SDMB had ever been received; and
- b. Defendant Teal's unauthorized entry to Hangar 7 "could not be discussed and was under investigation."

57. At the Resolution Meeting, SDMB:

- a. raised concerns about repeated unauthorized entries (trespassing) into Hangar 7 by HCDA personnel;
- b. stated it would have to file a police report for aircraft and liability insurance purposes since parachutes and the jump aircraft are required to be secure from unauthorized personnel;
- c. raised concerns for allegations of undocumented regulatory violations by HCDA relating to parachutists operating in compliance with federal skydiving regulations articulated in Part 105, 14 Code of Federal Regulations (CFR), FAA Advisory Circulars, recommendations and guidance;
- d. learned of an existing Letter of Agreement ("LOA") between HCDA and CRE that regulates pedestrian and vehicular traffic in "active" areas of GSA; and
- e. requested a copy of the LOA.

58. On February 7, 2014, SDMB filed a police report for trespass to Hangar 7 but did not prosecute, stating it only wanted the unauthorized routine entries by HCDA to stop.

59. On February 10, 2014, HCDA Defendant Jackson arrived at Hangar 7, instructed SDMB customers to stop using the vehicle gate as instructed by the County police at the Kick-off Event, complained of a propane grill operation,<sup>4</sup> overtly followed skydivers to a helicopter, and took pictures of customers during operating hours.

60. On February 11, 2014, CRE provided SDMB the LOA between it and HCDA.

61. On or about February 17, 2014, SDMB requested repairs to Hanger 7 from HCDA via email to Defendant Jackson.

62. On or about February 19, 2014, SDMB together with Defendants Haldi, Apone, and Jackson, *inter alios*, attended the Regional FAA Safety Day at Myrtle Beach International Airport (MYR).

63. On or about February 19, 2014, Defendant Haldi hand delivered a self-styled "[L]etter of [E]xplanation" and new Space Use Permit.

64. On or about February 19, 2014, Deputy County Attorney tendered a 72-hour eviction notice, *sua sponte* and without justification, to SDMB, if SDMB refused to agree to the new non-negotiable Space Use Permit, stating, "If [SDMB] declines to sign and return this Permit within [72 hours], you will need to vacate the premises immediately, as [the Airport] will change the locks and deny access to the premises as of the close of business on Saturday, February 22[, 2014]. See Exhibit 2.

65. On February 21, 2014, SDMB requested copies of any Airport or County rules or regulations alleged to have been violated and informed the County that SDMB was operating within the rules and regulations promulgated by the FAA that *has exclusive jurisdiction to regulate skydiving operations*.

66. On February 23, 2014, HCDA significantly delayed fuel delivery for SDMB's aircraft by initially refusing to refuel, causing approximately a 30-minute delay because, according to FBO staff, SDMB had refused to sign the newly presented Space Use Permit (SPU).

67. On February 23, 2014, GSA FBO staff contacted Defendant Jackson via phone for explanation or reconsideration denial of fuel service to SDMB for its aircraft.

68. On February 23, 2014, Defendant Jackson authorized refueling for SDMB after a 30-minute delay and disruption of SDMB's operations.

69. On February 24, 2014, SDMB filed a formal Part 16 Complaint with the FAA alleging prohibited discriminatory conduct in violation of FAA Grant Assurance 22.

70. On February 25, 2014, HCDA GSA employees refused to accept and returned a parcel addressed to SDMB from Mirage Container, Inc., a Florida corporation.

<sup>4</sup> A propane grill is often used by CRE and HCDA staff at the GSA tower and FBO.



71. On February 28, 2014, SDMB filed its original Complaint with the Horry County Circuit Court in this action.

72. On March 4, 2014, HCDA, through its Boston, Massachusetts, attorneys, moved to dismiss the Part 16 Complaint without prejudice since SDMB's Complaint did not contain the required certification that good faith efforts were made to resolve the matter informally.

73. On March 8, 2014, SDMB discovered that the Hangar 7 door lock, located within the GSA fence-line, had been tampered with during the night (a foreign object was broken off into the locking mechanism).

74. On March 12, 2014, the Horry County Airport Advisory Committee passed regulations relating to GSA.

75. On March 18, 2014, FAA dismissed SDMB's Part 16 Formal Complaint without prejudice due to "incompleteness" for failure to certify "good faith" and to include supporting documentation.

76. On March 18, 2014, Horry County filed an Answer to SDMB's Complaint without filing any counter-claims against SDMB.

77. On March 18, 2014, the Horry County Airport Advisory Committee passed newly drafted regulations (Illegal Regulations) governing conduct at the Grand Strand Airport (GSA) in North Myrtle Beach, South Carolina. The Illegal Regulations included formal rules which supported the "serious concerns" of the County and denial of a lease as articulated by the County in Defendant Haldi's February 19, 2014, correspondence.

78. On March 20, 2014, HCDA issued a notice cancelling the acceptance of tenant mail at the GSA FBO and announced a driver training class for GSA.<sup>5</sup>

79. On March 25, 2014, SDMB staff reported to the GSA FBO for HCDA required training and, after a thirty-minute wait, were informed that the driver training classes were cancelled. *HCDA has never rescheduled the classes.*

80. On March 27, 2014, SDMB staff again reported to the GSA FBO for HCDA required training and, after a thirty-minute wait, were informed that the driver training classes were cancelled. *HCDA has never rescheduled the classes.*

81. On April 1, 2014, HCDA dumped a truckload of peat moss into the staff parking area adjacent to Hangar 7 used by SDMB.

82. On April 3, 2014, HCDA sent a memo to Horry County Council that recommended passage of Illegal Regulations.

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<sup>5</sup> The purpose of this class was to instruct tenants about the LOA and SOPs relating to active runway areas and unrestricted areas at GSA.

83. On April 4, 2014, HCDA and Defendant Carotti stated that no rules existed for GSA and were urgently needed since HCDA "was now involved in litigation," and presented Illegal Regulations regulating the activities at GSA to the County Administration Committee.

84. On April 15, 2014, the Horry County Council passed a motion approving the first reading of County Ordinance 36-14 (Illegal Regulations)<sup>6</sup>.

85. On April 28, 2014, HCDA, through its Boston attorneys, issued a "Notice of Termination" and threatened removal procedures if SDMB did not execute HCDA's newly minted "standard lease." See Exhibit 3.

86. On May 6, 2014, Horry County Council passed a motion approving the second reading of Ordinance 36-14 and held a "public hearing"<sup>7</sup> at which no one participated or spoke to the council (HCDA did not attend).

87. On May 14, 2014, HCDA reported to FAA "incursions" involving skydivers crossing taxiway and SDMB's refusal to attend a HCDA required driving class.<sup>8</sup>

88. On May 15, 2014, HCDA began recording "Unusual Incident" (violations) for parachute operations per unpublished pending Illegal Regulations.

89. On May 20, 2014, Horry County enacted Horry County Ordinance 36-14, Illegal Regulations, effective immediately.

90. On June 5, 2014, the County filed a Writ of Ejectment against SDMB in the Myrtle Beach Magistrate's Court, styled *Horry County v. Skydive Myrtle Beach*, CA No. 2014CV261092444 ("Ejectment Action").

91. On June 13, 2014, in lieu of a responsive pleading, SDMB contested the jurisdiction of the Magistrate's Court to determine the Writ of Ejectment and filed a Motion to Remove the action per Rule 12(b)(8), SCRCF and S.C. Code Ann. § 22-3-30 (1997) in the Magistrate's Court and a Motion to Consolidate in the Circuit Court pursuant to Rules 12(b)(8) and 42(a), SCRCF and S.C. Code Ann. § 22-3-30 in this action.

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<sup>6</sup> Illegal Regulations prohibit conduct within the exclusive jurisdiction of FAA, and were complained of by the Airport and in the County's February 19, 2014, letter to SDMB.

March 2, 2015, SDMB filed a detailed memorandum relating to the Illegal Regulations in this action and argued that: (1) the regulations were: unconstitutional; (2) *ex post facto*; (3) preempted by federal law; (4) were promulgated in violation of the South Carolina Administrative Procedures Act; and (5) promulgated in violation of Horry County Ordinances.

<sup>7</sup> Contrary to Horry County Ordinance 2-21 (fifteen (15 day notice), the SC Administrative Procedure Act (APA) (30 day notice), and FAA guidance on minimum standards promulgation (participation of aeronautical activities in drafting), no notice was provided to SDMB, an interested party, or the public generally. At least forty eight (48) hours' notice of the Agenda is required by County Ordinance 2-21(a).

<sup>8</sup> But see March 25 and 27, 2014, *supra* (HCDA personnel did not attend and no make-up was scheduled).

92. On June 24, 2014, SDMB's president testified at deposition that he did not have a copy of its long-term lease with Ramp 66 for Hangar 7.

93. On June 27, 2014, HCDA employees followed skydivers from the landing zone (LZ) to the hangar and surreptitiously took pictures of inside Hangar 7 from behind bushes.

94. On June 29, 2014, HCDA employees were observed following skydivers during drops from the LZ to the hangar.

95. On July 1, 2014, SDMB filed a formal Part 16 Complaint with the required certification and supporting documentation alleging HCDA's attempt to require SDMB to execute a newly drafted lease for Hangar 7 and HCDA's enforcement of unpublished *ultra vires* regulations is prohibited discriminatory conduct within the exclusive jurisdiction of FAA.

96. On July 2, 2014, the Myrtle Beach Magistrate's Court denied SDMB's motion to remove Horry County's Application for Ejectment to the Circuit Court and consolidate the Ejectment Action with this action.

97. On July 8, 2014, SDMB requested production of documents to HCDA including, *inter alia*, rules and regulations pertaining to GSA, and all commercial leases at GSA.

98. In early July 2014, Horry County zoning officials entered SDMB's private pilot lounge (located atop of a warehouse directly across the street from GSA) and took pictures of the lounge.

99. On July 18, 2014, SDMB requested the Magistrate's court to reconsider concurrent jurisdiction with the Circuit Court and thirty days to file an answer, counter-claim, conduct discovery and to have a jury trial should the Magistrate deny SDMB's reconsideration request.

100. On July 23, 2014, the Myrtle Beach Magistrate's Court denied SDMB's:

- a. motion to remove the Eviction Complaint to the Circuit Court;
- b. request for jury trial; and
- c. request for leave to file an answer, counter claim and conduct discovery.

101. On July 23, 2014, approximately thirty minutes after ruling on SDMB's motion to remove, a bench trial was held, the Magistrate ruled SDMB failed to prove it had any leasehold interest in Hangar 7, and a Writ of Ejectment issued against SDMB.

102. On July 25 2014, SDMB appealed the Myrtle Beach Magistrate's Court decision and filed a date-stamped copy of the Appeal styled as *Skydive Myrtle Beach, Inc. v. Horry County*, 2014-CP-26-4965 (Appeal) with the Myrtle Beach Magistrate's Court.

103. On July 28, 2014, FAA docketed SDMB's FAA Part 16 Formal Complaint styled as *Skydive Myrtle Beach, Inc. v. Horry County Department of Airports*, FAA Docket No. 16-14-05.

104. On July 29, 2014, the Myrtle Beach Magistrate's Court issued a Summons for a Rule to Show Cause hearing on August 1, 2014, and denied SDMB's counsel's request for rescheduling or telephonic appearance although he was in Florida and unavailable on such short notice.

105. On August 1, 2014, SDMB (its President) appeared *pro se* before the Myrtle Beach Magistrate's Court hearing.

106. On August 1, 2014, the Magistrate's Court issued a Bond to Stay Execution on Appeal authorizing SDMB to remain in Hangar 7 pending the decision on appeal provided SDMB continued monthly payments of \$1,200.00 on the first of each month.

107. On August 16, 2014, the North Myrtle Beach Police department generated a police report about skydiver beach landings in response to an anonymous complaint, but no arrests were made.

108. On August 22, 2014, HCDA, through its Boston attorneys, moved to dismiss SDMB's Part 16 Complaint alleging that all issues before the FAA were matters of South Carolina law and therefore FAA had no jurisdiction.

109. On September 1, 2014, SDMB was required to vacate its pilot lounge after receipt of a zoning violation.

110. On September 8, 2014, SDMB filed a Statement of Material Facts in opposition to HCDA's Motion to Dismiss with FAA.

111. On September 16, 2014, HCDA, through its Boston attorneys, argued that SDMB's Statement of Material Facts was an "illegal filing," should be ignored, and HCDA's motion to dismiss with prejudice should be granted by FAA.

112. On September 19, 2014, SDMB requested to supplement its Part 16 FAA record to include HCDA's failure to respond to its discovery requests in this action.

113. On September 30, 2014, a hearing before the Circuit Court on SDMB's motion to consolidate was denied as moot since the Ejectment Action had been litigated in the Magistrate's Court and appealed to the Circuit Court.

114. On September 30, 2014, SDMB's request for injunctive relief relating to its allegations of HCDA harassment was denied.

115. On October 7, 2014, HCDA advised SDMB that it would not be able to utilize Hangar 7 during a rehabilitation project scheduled for the fall and that SDMB would be required to execute a "Space Use Permit" in order to operate and park its aircraft on the tarmac at GSA during the construction period.

116. On October 8, 2014, SDMB advised HCDA that it had authorization to use Hangar 7 to store its aircraft per the Stay Order, advised HCDA that it was required to hangar its

aircraft under a lease agreement, and could store its aircraft in Hangar 1, provided HCDA consented.

117. On October 8, 2014, HCDA rejected SDMB's alternative hangar storage request and advised SDMB that hangaring its aircraft was "not HCDA's responsibility."

118. On October 14, 2014, SDMB filed a Request for Emergency Hearing, Motion to Compel and Injunctive relief.

119. On October 22, 2014,<sup>9</sup> HCDA, through its Boston attorneys, produced 187 pages of documentation which included a copy of the Original Lease.

120. On October 25, 2014, SDMB's leased aircraft was removed by the owner due to anticipated loss of use of Hangar 7.

121. On October 28, 2014, HCDA sent SDMB a copy of "proposed" Illegal Regulations ("Amended Illegal Regulations") and invited SDMB to a "town hall" meeting for a discussion of the Amended Illegal Regulations.

122. On October 30, 2014, at the "Town Hall Meeting," HCDA reiterated that GSA had no regulations or rules in effect and "noted" SDMB's objections to penalties and skydiving restrictions in the Amended Illegal Regulations.

123. On November 3, 2014, SDMB sent HCDA comments and objections to the Amended Illegal Regulations as related to skydiving operations and penalties.

124. On November 13, 2014, HCDA's Boston attorneys provided "Minutes" from the County Council and, for the first time, identified County Ordinance 36-14 enacting the Illegal Regulations for GSA in its Rebuttal in Support of its Answer and Affirmative Defenses to Complainant SDMB's Part 16 Formal Complaint and Statement of Material Facts.

125. On December 5, 2014, the County Administration Committee approved an ordinance amending the Illegal Regulations.

126. On December 8, 2014, at its regular meeting, Horry County Council unanimously passed a motion for the first reading of Ordinance 115-14, the Amended Illegal Regulations.

127. On Christmas week, Horry County and HCDA's first submission of requested documents were produced. The bulk of documents requested, including regulations or other rules relating to conduct and operations at GSA, was not produced.

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<sup>9</sup> In footnote 2 of HCDA's Answer to SDMB's Part 16 Formal Complaint, for the first time, SDMB learned of this Honorable Court's October 13, 2014, Order dismissing the individually named defendants in the Primary Action. See footnote 2 of HCDA's *FAA Answer* dated October 22, 2014.

128. On December 30, 2014, SDMB's independent investigation revealed Horry County Council's official online minutes and agenda documents containing the Illegal Regulations.<sup>10</sup>

129. On January 6, 2015, Horry County Council held a "public review" of County Ordinance 115-14 amending the Illegal Regulations and passed a motion approving the second reading. No public input relating to the Amended Illegal Regulations was received and no representative from HCDA attended.

130. On January 9, 2015, through its Boston attorneys, HCDA objected to SDMB's supplementation of the record (inclusion of County Council minutes).

131. On January 20, 2014, Horry County Council enacted Ordinance 115-14, approving the Amended Illegal Regulations<sup>11</sup>, effective immediately.

132. On January 30, 2015, CCP Motions Calendar scheduled a hearing for SDMB's Motion to Compel and Injunctive Relief on March 2, 2015.

133. On February 3, 2015, the County filed a motion to increase the appeal bond by \$358,000.00 – nearly six (6) months after Horry County Magistrate issued the Stay – erroneously claiming that the GSA Ramp Renovation project requires work in front of Hangar 7 to commence on February 16, 2015. This was the first written notice of the start date for Phase 2 Ramp Rehabilitation received by SDMB.

134. On February 4, 2015, the County filed a Motion for a Protective Order to prohibit SDMB from requesting documents pursuant to the South Carolina Freedom of Information Act.

135. On February 10, 2015, the Horry County Magistrate denied County's motion to increase bond on the grounds that it lacked jurisdiction to make an adjustment to a Bond determination of an appealed matter.

136. On February 10, 2015, the County filed a Motion for Temporary Restraining Order and Temporary Injunction in the Appeal.

137. On February 11, 2015, counsel for the County filed a Motion for Modification of Bond Amount in the Appeal action.

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<sup>10</sup> On July 8, 2014, SDMB requested HCDA to "[l]ist all policies, rules, memoranda, or procedures relating to tenant conduct and training on all Horry County airport property for the last seven (7) years (including but not limited to all operational activity at Conway, Loris, CRE and MYR airports)." Pl. Interrog. No. 14. On Oct. 16, 2014, HCDA's and County's response to SDMB's Interrogatory No. 14 was, "[t]he answers will be provided in accordance with Rule 33 (c) SCRPC Option to Produce Business records." To date, no regulations have been produced in the Circuit Court action. A hearing on SDMB's Motion to Compel was scheduled on Apr. 22, 2015.

<sup>11</sup> The Amended Illegal Regulations include selective and discretionary power to enforce the Illegal Regulations at GSA together with the power to fine and ban violators from operating at any Horry County Airport (any law enforcement officer has authority to enforce the rules).

138. On February 17, 2015, in the Appeal, the Circuit Court denied Horry County's request for bond increase, Temporary Restraining Order and Injunctive Relief holding that the *status quo ante* should be preserved, SDMB should execute a Space Use Permit (without affecting its legal objections), be permitted to use Hangar 7 during the rehabilitation period, and keep its aircraft on the tarmac during the construction period.

139. On March 2, 2015, the Circuit Court stayed a hearing on the Appeal and directed the County and SDMB to discuss the complexities of separate actions with the Horry County Administrative Judge due to common issues of fact, law, and judicial economy.

140. On March 13, 2015, the County filed a Verified Petition and Rule to Show Cause for alleged violations of an Order preserving the *status quo ante* between the parties during the rehabilitation at GSA.

141. On March 14, 2015, HCDA instructed Greenwald Construction to stop any effort to allow Hangar 7 aircraft access (by building a temporary bridge) since SDMB was illegally occupying Hangar 7.

142. On March 25, 2015, SDMB filed a request for Joint Status Conference pursuant to SCRCF Rule 16 in this action and the Appeal action for consolidation pursuant to SCRCF Rule 42 due to common issue of fact, law, and judicial economy.

143. On March 30, 2015, HCDA threatened a SDMB mechanic for performing routine maintenance in Hangar 7 with a trespass citation and an ordinance violation pursuant to the Amended Illegal Regulations.

144. On April 20, 2015, the Rehabilitation Project was completed except for minor landscaping and Hangar 7 was again fully accessible.

145. On May 6, 2015, a hearing on SDMB's appeal was held and a Form 4 denying SDMB's Appeal was issued.

146. On May 13, 2015, HCDA Assistant Director, Defendant Lovell, sent a letter threatening SDMB's mechanic with a trespassing and ordinance citation if he continued working on SDMB's aircraft without HCDA "approval." See Exhibit 4.

147. On May 19, 2015, the Form 4 dismissing the Appeal was sent to SDMB counsel by the Circuit Court clerk's office.

148. On May 29, 2015, a formal Order denying the appeal was sent by the County's counsel to counsel for SDMB electronically and by the U.S. Postal Service.

149. On June 2, 2015, the County, through its local counsel, contacted SDMB counsel about alleged missing May and June 2015, and payments for rent of Hangar 7 according to the magistrate's bond.

150. On June 2, 2015, a motion for leave of court to file a motion for relief from judgment of the Magistrate's Court based on the newly discovered long-term lease was filed with the Circuit Court in the Appeal.

151. On June 3, 2015, a motion for reconsideration of the May 6, 2015, Form 4, and the May 29, 2015, formal order was filed with the Circuit Court.

152. On June 4, 2015, the County was advised that payments were mailed to HCDA on April 28, 2015, and May 27, 2015, for the May and June monthly rent payments and that the checks had not been cashed.

153. On June 5, 2015, SDMB's bookkeeper signed an affidavit that two checks, properly addressed to the Airport at 2800 Terminal Street, North Myrtle Beach, SC 29582 for the May and June 2015, rental amounts of \$1,200.00 each were placed into the US postal service as had been done monthly without incident since 2012.

154. SDMB has and continues to maintain that it operates in strict compliance with all federal regulations and published state and local rules and regulations.

155. Since resuming control of GSA in August 2014, HCDA through its proxy, GSA Air Traffic Control (CRE), has initiated over 100 documented complaints relating to the federally regulated aeronautical activity, principally landing outside of an undefined primary skydiving landing zone (LZ).

**FOR A FIRST CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT**  
**(Declaratory Relief from *ultra vires* Regulations)**

156. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

157. County Ordinance 36-14 promulgating the Illegal Regulations, was passed without any drafting period, comment period, or statutory authorization as required in the South Carolina Administrative Procedures Act ("APA").

158. The Illegal Regulations include sections governing parachute operations in contravention of federal law and regulations under the exclusive jurisdiction of the FAA and are unconstitutional under the supremacy clause of the United States Constitution.

159. The Illegal Regulations were promulgated to retroactively proscribe conduct parachute operations and activities permissible under federal regulations (14 C.F.R., Part 105) that was complained of by the County three months earlier in its February 19, 2014, letter and in response to this action.

160. The Illegal Regulations enforcement mechanisms are discretionary, arbitrary and capricious and an abuse of agency authority.



161. The Illegal Regulations were passed in violation of Article 1, section 22 of the South Carolina Constitution and amount to an illegal attempt to deprive plaintiff's liberty and property rights to operate a business in South Carolina.

162. The Illegal Regulations were amended in violation of the South Carolina APA without notice and a comment period.

163. The Illegal Regulations were promulgated without the required notice as set forth in County Code §2-22(e).

**FOR A SECOND CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, CAROTTI, HALDI, APONE, LOVELL,**  
**BREE, JACKSON, AND TEAL**  
**(Civil Conspiracy)**

164. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

165. At all relevant times herein, unless otherwise stated, Defendants Carotti and Haldi acted as agents of the County.

166. At all relevant times herein, unless otherwise stated, Defendant's Apone, Lovell, Bree, Jackson, and Teal operated as agents of the Airport.

167. In August 2013, as the property manager for the County, Defendant Haldi knew or should have known of a long-term lease between Ramp 66 and SDMB for Hangar 7.

168. In August 2013, Defendants Carotti, Apone, Lovell, and Bree knew or should have known of a long-term lease between Ramp 66 and SDMB for Hangar 7.

169. Between August 2013 and February 19, 2014, Defendants Carotti, Haldi, Apone, Lovell, and Bree, in their individual capacities and all acting outside the course and scope of their employment created a plan to deprive SDMB of its existing long-term lease by refusing to provide a copy of the fully-executed lease to SDMB, issuing an adhesion temporary permit under threat of eviction, and accusing SDMB of unpublished and non-existent rule, regulation, and ordinance violations amounting to a plan to illegally shut down and permanently remove SDMB from GSA.

170. Between April and May 2014, Defendants Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal, in their individual capacities and all acting outside the course and scope of their employment continued a plan to deprive SDMB of its business lease by drafting, presenting and having Illegal Regulations enacted by the County Council, reporting violations of the Illegal Regulations to FAA as grounds for federal violations, harassing SDMB customers, and interfering with its customers.

171. On December 6, 2013, County Administration Committee approved temporary short-term permit for SDMB to remain in Hangar 7. Relevant minutes state that a resolution would:

authorize the approval of the four space use permits at Grand Strand Airport. It would allow them six months of additional time to finalize the long-term lease agreements with those tenants. Mr. Lazarus explained that this was just short-term until they got the long-term, which Mr. Lovell would be bringing those leases before them. Mr. Lovell said yes, sir. They were not able to accomplish that in the first six months, so they needed an additional six months. Mr. Worley said they were just moving in up there, and they needed a little more time. County Administration Committee Minutes, page 14 (Dec. 6 2013).

172. In January 2014, Defendants Carotti, Haldi, Apone, Lovell, and Bree knew or should have known of grant application and approval by the FAA to release funding and pay for the rehabilitation of GSA.

173. Upon information and belief, Defendants Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal, in their individual capacities and all acting outside the course and scope of their employment and official duties, collectively acted to remove SDMB from CRE and interfere with its legitimate right to conduct aeronautical activities.

174. Defendants Jackson and Teal directly interfered with SDMB's parcel and mail delivery. Defendant Jackson left directions with his employees not to receive any parcels for Plaintiff; Defendant Teal received packages and locked them in a closet without informing Plaintiff, in effect wrongfully concealing them from Plaintiff.

175. Upon information and belief Defendants Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal, in their individual capacities and all acting outside the course and scope of their employment, collectively acted to harass SDMB utilizing any means possible including the enforcement of the *ultra vires* and unconstitutional Illegal Regulations as part of a scheme to force SDMB out of business.

176. The acts complained of herein satisfy the requisite "proof showing concert of action from which the natural or reasonable inferences arise that the acts were in furtherance of the common design of the alleged conspirators; is sufficient; at least to establish a *prima facie* case of conspiracy." See *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 344 S.E. 2d 150, 153 (Ct.App. 1987).

177. The combined acts of Defendants County, Airport, Haldi, Apone, Jackson and Teal, including, *inter alia*, failure to answer SDMB's multiple Hangar 7 maintenance requests, to permit SDMB permission to make Hangar 7 repairs at its expense, to answer correspondence or email, concealment of SDMB packages and mail, failure to disclose the terms of the Letter of Agreement (LOA) between CRE ACT and the Airport, unauthorized entry into its place of business, refusal to refuel without clearance (unlike other business on site), interference with parking and day-to-day activities were designed to ruin or damage the business of SDMB.

178. Defendants combined malicious actions and omissions under cloak of state authority have caused SDMB's business to be closed for unnecessary aircraft repairs and skydiving equipment inspections following unauthorized forced entry during business hours, equipment damage, loss of customers due to fuel issues and harassment, loss of business profit, fire

department violations, Hangar 7 electrical repairs, door repairs, trash removal, water damage, etc. and have resulted in material losses and unnecessary legal expenses.

**FOR A THIRD CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, CAROTTI, HALDI, APONE, LOVELL,**  
**BREE AND JACKSON**  
**(Fraud and Misrepresentation)**

179. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

180. In August 2013, Ramp 66 and HCDA, represented to SDMB that a new eight-year lease in a County approved format had to be signed by SDMB before HCDA and Horry County resumed control of CRE or SDMB would be required to vacate Hangar 7.

181. In August 2013, Ramp 66 was acting as an agent of HCDA and County. Alternatively, Ramp 66 and HCDA were acting outside the course and scope of their employment and official duties in representing that a new "County approved lease was needed to continue occupancy of Hangar 7" or words to that effect.

182. In August 2013 Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, and Jackson knew that a new long-term lease was not necessary for SDMB to remain in Hangar 7 when HCDA and Horry County resumed control of CRE since HCDA had in its possession a copy of the fully executed, long-term lease for Hangar 7 between its agent Ramp 66 and SDMB or had constructive possession of the lease through its agent Ramp 66.

183. In August 2013, Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, and Jackson knew that HCDA and County intended to rehabilitate CRE and that this rehabilitation would require all tenants of CRE to re-locate or vacate the hangar area, thus interfering with SDMB's enjoyment of its Hangar 7 leasehold interest and otherwise interfere with SDMB's commercial operations during the periods of rehabilitation.

184. In September 2013, HCDA represented to SDMB that the Space Use Permit terms would become a new long-term lease after being presented to Horry County Counsel for "three readings and approval."

185. In September 2013, HCDA intended SDMB to rely on its representations that a new long-term lease would be approved with the same material terms relative to course of dealing and the Original Lease for Hangar 7, e.g., \$1,200.00 per month.

186. In 2013, Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, and Jackson knew that or planned for Hangar 7 to be demolished and replaced as part of the overall long-term rehabilitation

187. Defendant's Airport and Jackson represented to SDMB that Hangar 7 repairs require county approval with three readings at the council meetings.

188. Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, and Jackson knew that these statements about a forthcoming long-term lease were false or acted with reckless disregard for the truth intending that SDMB would be in a weaker position in its effort to remain in business at GSA.

189. SDMB did not know of the falsity of the Defendants representations, reasonably relied on the truth that government organizations and their representatives would conduct themselves lawfully and otherwise properly, and SDMB has been injured by this disingenuous conduct.

**FOR A FOURTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, CAROTTI, HALDI, APONE, LOVELL,**  
**BREE, AND JACKSON**  
**(Constructive Fraud)**

190. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

191. Airport agents and Defendant Jackson misrepresented that three readings before the County council are required to secure a lease for Hangar 7's continued occupancy.

192. From 2012 to May 20, 2014, Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal knew or should have known that GSA had no published rules of conduct governing GSA.

193. In August 2013, Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal knew or should have known that the planned GSA rehabilitation project would require Hangar 7 to be vacated or blocked during part of the project and eventually vacated during the plan to fully renovate GSA.

194. In August 2013, Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal knew or should have known that the planned GSA rehabilitation project would require Hangar 7 to eventually be demolished years before the expiration of SDMB's long-term lease with Defendants County's and HCDA's agent, Ramp 66.

195. In August 2013, Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal knew or should have known that a fully executed long-term lease was executed between SDMB and its agent Ramp 66 and that Ramp 66 kept a copy as part of its regular course of business.

196. In August 2013, Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal knew or should have known that a long-term lease was never intended to be presented to County Council, rather a short-term (six months) lease that becomes a month-to-month lease in order to minimize County liability during the rehabilitation plan for GSA.

197. On February 17, 2014, Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal knew or should have known that SDMB did not violate any state, federal, County or HCDA published rules, policies, ordinances, or regulations.

198. Defendants County, HCDA, Carotti, Apone, Lovell, Bree, Jackson, and Teal knew or should have known of the falsity of the facts relating to the GSA rehabilitation project and Hangar 7 availability.

199. These representations were material and played a role in SDMB's negotiations and agreement.

200. Defendants County, HCDA, Carotti, Apone, Lovell, Bree, Jackson, and Teal intended that the representation be acted upon.

201. SDMB had no knowledge or was ignorant of the falsity of these representations as it had never conducted business with Defendants prior to the allegations set forth herein and reasonably relied on the integrity of government workers to act in accordance with the law and in good faith.

202. SDMB reasonably relied on these representations as the truth.

203. SDMB had a right to rely upon a state politic organization operating under federal, state, and county charter to provide accurate, truthful statements with regard to leasing policies and procedures.

204. Together the acts of the Defendants have caused consequent and proximate injury to SDMB's business interests, its ability to lawfully operate, and conduct federally recognized aeronautical activities at an airport in receipt of federal grant block funding.

**FOR A FIFTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, CAROTTI, HALDI, APONE, LOVELL,**  
**BREE, AND JACKSON**  
**(Defamation)**

205. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

206. Defendants Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal have intentionally and with reckless disregard to its falsity, informed other tenant businesses in both Myrtle Beach International (MYR) and Grand Strand Regional (CRE) airports and made false statements intended to impeach the honesty, integrity, virtue, or reputation, and also exposed SDMB to public hatred, contempt, ridicule or to caused SDMB to be shunned or avoided, or injured in SDMB's office, business, or occupation.

207. On multiple times, Defendants did state:

a. that SDMB violates federal rules, regulations and statutes in wanton disregard, or words to that effect;

b. that SDMB actions and conduct have been so egregious with regard to parking and Airport security measures; new parking prohibitions and security measures were necessary for the entire Airport's jurisdiction, or words to that effect;

c. SDMB is a rogue operator that does not follow any rules relating to the ATC operations at CRE, or words to that effect; and

d. SDMB illegally conducts parachute operations, or words to that effect.

208. Defendant published these statements with actual or implied malice, knowing that they were false.

209. Defendants Carotti, Haldi, Apone, Lovell, and Bree, in their individual capacities and all acting outside the course and scope of their employment made these statements.

210. The statements themselves or the intent of the statements or words to that effect, concerns SDMB and its business interest.

**FOR THE SIXTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, JACKSON, AND TEAL**  
**(Unfair Trade Practice Act Violation)**

211. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

212. Defendants County, Airport, Haldi, Apone, Jackson, and Teal violated the South Carolina Unfair Trade Practice Act by offending established public policy of government to operate openly with published rules and policies, equal treatment, and with conduct that offends established public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious to customers.

213. The actions identified in this Complaint proximately caused injury and damages to the Plaintiff.

**FOR A SEVENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT**  
**(Breach of Contract)**

214. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

215. On or about May 10, 2012, SDMB and Bob McGroarty, Owner, Grand Strand Aviation, Inc., d/b/a Ramp 66, (Manager of GSA for HCDA and the County) entered into an agreement to lease Hanger 7's (at GSA, 2800 Terminal Street, North Myrtle Beach, SC 29582) usable space in exchange for 16% of Revenue (less internet sales). The terms further stated that:

- a. SDMB would have airplane parking inside Hanger 7;
- b. SDMB would receive a fuel discount of \$.25 below posted price
- c. SDMB would receive a labor discount of \$5.00 below posted rate;

- d. SDMB would receive an aircraft part discount of cost plus 20% and freight;
- e. Ramp 66 would pay HCDA 5% of any revenue it received from SDMB;
- f. The term was for 8 years "unless both parties agree to any changes in writing;" and
- g. SDMB had an option to renew the lease, if Ramp 66 extended its management lease with HCDA.

216. May 17, 2012, to August 1, 2013, the period before HCDA resumed management of GSA, SDMB and Ramp 66 performed their obligations of the contract without incident.

217. At all relevant times, the County, HCDA and its agents represented to SDMB that no fully executed, long-term lease for Hangar 7 between SDMB and Ramp 66 existed and SDMB had no legitimate right to continue to occupy Hangar 7 without a "county approved" lease.

218. At all relevant times, the County and HCDA had in its possession a copy of the fully executed, long-term lease between SDMB and Ramp 66 in its possession or constructive possession through its agent, Ramp 66.

219. On or about August 1, 2013, the County resumed control of CRE.

220. On or about August 1 2013, Robert Wernersbach, representing the County, initiated discussions relating to a lease in county-approved format between the County and SDMB.

221. Mr. Wernersbach represented to SDMB that an additional \$1,500.00 permit fee was required immediately to continue business operations at CRE for a six month "Operating Permit" or SDMB would be removed from CRE premises.

222. SDMB paid the Operating Permit fee to the Airport.

223. In addition to an Operating Permit, Mr. Wernersbach represented to SDMB that an additional \$2,500 per month Space Use Permit (Permit) was necessary or SDMB would be required to vacate the Hanger.

224. In or about September 2013 ("Negotiation Period"), the Airport represented to SDMB that a lease was not possible until the County had "three readings before the County Council and voted upon" (or words to that effect) and the terms of the Permit would become the terms of the longer term lease once approved by the County. In effect the Permit was an interim lease.

225. During the Negotiation Period, SDMB indicated that the condition of the Hanger was unserviceable in many respects, that repairs were needed, and in its current condition,

required City/County/State requirements for business activities, i.e., insurance, fire inspection, electrical access, etc. were unobtainable.

226. During the Negotiation Period, the Airport represented to SDMB it would address the flooding, leaking roof, unserviceable doors (security), electrical deficiencies, lighting receptacle defects (2/9 lights functioning), animal and bird infestation, and other public safety issues identified by SDMB in its negotiation meeting.

227. During the inspection, the Airport indicated that the identified issues would be addressed and presented to the County for authorization to repair and remedy.

228. On or about September 5, 2013, an electrical engineering company and Airport Maintenance personnel inspected the Hanger for the purpose of a service order.

229. On or about September 10, 2013, the Airport and SDMB tentatively agreed that in exchange for Hanger 7, SDMB would pay the Airport \$1,200.00 per month.

230. On or about September 10, 2012, Airport acknowledged and accepted SDMB's earlier payments totalling \$4,800 for \$2,400 security deposit and \$2,400 rent through September 30, 2013.

231. On or about September 13, 2013, SDMB executed an undated Space Use Permit whereby SDMB agreed to pay \$1,200 per month for the Hanger until the County met its three readings and requested a copy of the fully executed Permit.

232. On or about September 13, 2013, the Airport acknowledged receipt of the SDMB executed agreement and indicated that it needed "a few weeks" to get a copy of the fully executed Permit returned to SDMB.

233. SDMB has paid a security deposit for \$2,400.00 and \$1,200.00 monthly rent for Hanger 7 and the Airport has accepted the \$1,200.00 checks, depositing same into its account since resuming control of GSA.

234. At all relevant times, Defendants Airport and County have not answered SDMB's repair requests.

235. At all relevant times, neither the County nor the Airport have made any repairs to Hanger 7.

236. On or about September 2013, SDMB notified Defendants Airport and Jackson of the need for repairs and remedy without reply.

237. On or about September 2013, SDMB, after fruitless attempts at remediating the identified fire and safety hazards with the Airport, initiated remedial steps to correct the problems and rectified the hazards identified in the North Myrtle Beach Fire Inspection Report.



238. In or about December 2013, SDMB expended \$2,000.00 rectifying the issues identified in the fire report and paid the \$215.00 fine.

239. At all relevant times herein, SDMB reasonably relied on the Airport's assurances that a forthcoming long term-lease containing the essential terms of the Permit (i.e., \$1,200.00/month, electric, parking, etc.), repairs to secure the hanger, electric access, lighting, *inter alia*, and SDMB paid its rent in a timely manner.

240. At all times relative herein, Defendant Jackson was an agent of the Airport, the Airport manager in charge of CRE, as well as the point of contact between the Airport and SDMB.

241. A contract for a leasehold interest exists in writing (*see* Exhibit 1) and was modified through the course of dealings between the parties, SDMB's occupation, repair, and use of Hanger 7, and the Airport's acceptance of rent and the County and Airport are estopped from denying a Lease exists.

242. Defendants County, Airport, and Haldi's actions amounted to a retaliatory eviction notice.

243. Defendants County, Airport, Apone, and Jackson's refusal to respond to SDMB's reasonable maintenance requests and other correspondence, are a breach of the duty to act in good faith while performing public duties and are a breach of material terms.

244. Defendants Airport and Jackson's refusal to make repairs to the hanger or allow SDMB to make repairs violate the implied duty of fair dealing.

245. Defendant Teal's unauthorized entry served no reasonable purpose as electrical outlets were easily accessible in the vacant adjoining hanger, less than 50 feet away, and the Defendant Teal and the Airport had unfettered access (the adjacent hanger was vacant and secured by an Airport lock on its hanger door).

246. Defendant County, Airport, Haldi, Jackson's conduct, and actions are in breach of an implied agreement through course of conduct, the executed Permit, or both.

247. Defendants County, Airport, Haldi, Apone, Jackson, and Teal's breaches have damaged SDMB financially and operationally.

**FOR AN EIGHTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, CAROTTI, HALDI, APONE, LOVELL,**  
**BREE, JACKSON, AND TEAL**  
**(Interference with Contractual Relationship)**

248. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

249. Defendants County, Airport, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal know about the Letter of Agreement (LOA) between MYR ATC, CRE ATC, SDMB, and the Airport for parachute operations and the Permit.

250. Defendants County, Airport, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal are additionally aware of a LOA between Robinson Aviation, LLC d/b/a CRE ATC and the Airport (CRELOA) concerning and providing for exclusive jurisdiction of defined "Active Areas" of CRE airport.

251. Defendants County, Airport, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal know about the Original Lease between SDMB and Ramp 66 for Hangar 7.

252. Defendants County, Airport, Haldi, Apone, Jackson, and Teal did willfully, wantonly or with reckless disregard to the adverse impact of SDMB, conceal the terms of the CRE LOA from SDMB in breach of the LOA terms.

253. Defendants County, Airport, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal did willfully, wantonly or with reckless disregard to the adverse impact of SDMB, conceal the fully executed copy of the Original Lease.

254. Defendants' acts were intentional and effectively procured an unknowing breach of the Permit by SDMB, in that SDMB did not follow unpublished CRE protocol although at no time did SDMB violate any published federal regulation or Title 14, C.F.R.

255. There is no justification for Defendant's conduct; this appears designed in furtherance of a well-orchestrated plan to have SDMB removed from the CRE and Airport property.

256. This conduct has severely limited SDMB ability to safely operate at CRE, effectively blocked communication with the Airport, prevented SDMB from obtaining a replacement lease in a county-approved format, and caused damage to its pecuniary business interests.

**FOR A NINTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT**  
**(Breach of Contract Accompanied by Fraudulent Act)**

257. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

258. Defendant Airport and SDMB entered into an Agreement on or about September 13, 2013, where the Airport would present the terms of a Space Use Permit to the County for three readings, bring back a long-term lease with similar terms, negotiate a new Letter of Agreement for Non-emergency parachute operations at CRE, make or allow repairs to the Hanger in exchange for SDMB's execution of a short term "Space Use Permit", \$2,400 security deposit and \$1,200.00 per month rent.

259. On information and belief, Defendants Airport, Apone, and Jackson intentionally, recklessly, and knowingly misrepresented the procedures for leasing Airport property.

260. On information and belief, Defendants Airport, Apone, and Jackson accepted SDMB's rent payments for the months of January and February 2014.

261. Defendants represented to SDMB that a county-approved replacement lease would be forthcoming.

262. Defendants continued failure to respond to SDMB's multiple requests combined with its attempt to enforce regulations under the exclusive domain of the FAA, failure to accept mail, respond to SDMB's allegations, or make any investigation constitute dishonesty in fact and unfair dealing.

263. Defendant's fraudulent acts occurred prior to, during and after the Negotiation Period and breach of contract set forth herein.

**FOR A TENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT, CAROTTI, HALDI, APONE,**  
**LOVELL, BREE, AND JACKSON**  
**(Breach of Fiduciary Duty)**

264. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

265. SDMB and HCDA entered into a fiduciary relationship whereby the Airport, in consideration for a temporary Space Use Permit, would act as a broker for the County and secure a county-approved, long-term, replacement lease for Hangar 7.

266. SDMB reasonably relied on the representations of the Airport and Defendant Jackson that a deal with the county would be brokered.

267. Defendants Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal are public servants and employees of the Airport, which accepts federal grant monies from the Department of Transportation and FAA.

268. Public officials repose special confidence in another so that they, in equity and good conscious, are bound to act in good faith with due regard to the interests of one reposing the confidence in the public official.

269. Defendants County, Carotti, Haldi, Apone, Lovell, and Bree each continue to charge SDMB for conduct styled as violations of *ultra vires* regulations, permissible under federal law, and FAA regulations, to further interfere with the business of SDMB and remove it from GSA.

270. As a fiduciary, the County, Airport and its agents induced the confidence placed in it by SDMB.

271. The continued combined actions and inactions by Defendants County, Airport, Carotti, Haldi, Apone, Lovell, Bree, Jackson, and Teal, are a breach of fiduciary duty to be fair, reasonable, negotiate in good faith, and deal honestly with SDMB.

**FOR A ELEVENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, CAROTTI, HALDI, APONE, LOVELL,**  
**BREE, AND JACKSON**  
**(Negligence)**

272. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

273. As body politics, Defendants County and Airport owe a duty not to permit tortious conduct under the color of state authority from its administrators, management, executive, and staff employees to the public in general and SDMB in particular.

274. Defendants County, Airport, Apone, and Jackson violated this duty of care owed to SDMB by County, Airport, in that:

a. County Deputy Attorney/Property Manager attempted to interfere with SDMB's legitimate right to conduct business on CRE and effectively coerce SDMB into executing a predatory lease within a 72-hour time frame; and

b. Airport Manager misconduct, includes but is not limited to: directly ordered SDMB mail and parcel delivery to be returned to sender, concealed mail and packages inside Airport property, failed to answer legitimate maintenance requests, slanderously spoke about SDMB conduct, interfered with SDMB business by limiting public access, refused to provide published Airport rules or regulations, instructed line staff to illegally enter SDMB's business for no reasonable purpose.

275. Defendants County, Airport, Carotti, Haldi, Apone, Lovell, Bree, and Jackson actions and inactions, and were a breach of their duty to properly supervise subordinates.

276. Defendants breach caused SDMB pecuniary loss, loss of good will, customers, caused additional expense for necessary inspections, and prevented the reasonable expectation of mail and parcel delivery at a leased commercial unit.

**FOR A TWELFTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, CAROTTI, HALDI, APONE, LOVELL,**  
**BREE, AND JACKSON**  
**(Negligent Misrepresentation)**

277. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

278. Defendant Jackson falsely represented to SDMB that three readings of the terms in the Permit would be a necessary condition precedent to obtain a replacement county-approved long-term lease in an attempt to induce SDMB into accepting the Permit terms.

279. False representations by Property Manager echoing those of Airport manager and that the County will not negotiate a lease until SDMB executes new nonnegotiable terms in order to increase the revenue to 24% of SDMB's gross receipts and illegally deny SDMB its leasehold interest in Hangar 7.

280. Defendants County, Airport, Carotti, Haldi, Apone, Lovell, Bree, and Jackson unilaterally attempted to increase the revenue generated by Hangar 7 and illegally deny SDMB its leasehold interest in Hangar 7 in bad faith.

281. Defendants County, Airport, Carotti, Haldi, Apone, Lovell, Bree, and Jackson possess special information and expertise with regard to letting County and Airport property, and it was reasonable for SDMB to rely on the County and Airport officials with regard to County and Airport renting procedures.

282. Defendants County, Airport, Carotti, Haldi, Apone, Lovell, Bree, and Jackson, as state officials, had a duty of truthfulness and fair dealing owed to SDMB in all business transactions.

283. Defendants breached the duties of truthfulness and fair dealing by failing to exercise due care by concealing or distorting the procedures or steps necessary to secure a replacement lease of Airport property.

284. SDMB justifiably relied on these representations and has suffered pecuniary loss as a direct and proximate result of reliance on these representations.

**FOR AN THIRTEENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, CAROTTI, APONE AND JACKSON**  
**(Negligent Supervision)**

285. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

286. Defendant Teal intentionally entered SDMB's business premises and caused the Hangar 7 doors to be injured, made unpermitted electric use, and caused a shutdown of SDMB's business as unauthorized access to skydiving equipment required full re-inspection of all parachutes in the Hangar.

287. Defendant Jackson has harmed SDMB by slanderously publishing false statements about SDMB.

288. At all relevant times, Defendants Carotti, Apone, Haldi, and Jackson knew or should have known that there were no formal written or published regulations or policies governing GSA.

289. Defendant Haldi's February 19, 2014, letter identifying the "serious concerns" justifying the County's denial of a replacement long-term county-approved lease, amounted to an illegal attempt to strong-arm SDMB into relinquishing its existing long-term lease for no compensation and put SDMB out of business.

290. Defendants Airport, Carotti, Apone, and Jackson each knew or had reason to know of the ability to control the Defendants Haldi, Jackson, and Teal.

291. Defendant Teal admitted that the unauthorized conduct had been done in the past. Defendant Jackson was also aware of the unauthorized conduct.

292. Defendants Airport, County, Carotti, and Apone should have known their subordinate's unsupervised activity could cause harm to SDMB.

**FOR A FOURTEENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT**  
**(Promissory Estoppel)**

293. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

294. Defendant Airport, through its agent, and Defendant County, through its Property Manager, promised to enter into a long term lease with SDMB. The promise was unambiguous in its terms.

295. SDMB reasonably relied on this promise.

296. SDMB's reliance was expected and foreseeable by the County and Airport (party that made the promise).

297. SDMB did not pursue other opportunities for alternate accommodations at GSA for its business based on these representations and spent considerable amounts of money and time repairing the Hangar 7.

298. SDMB has been financially injured as a result of its reasonable reliance on the promises of Defendants.

**FOR THE FIFTEENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY AND AIRPORT**  
**(Quantum Meruit)**

299. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

300. Plaintiff has spent a considerable amount of time and money repairing Hangar 7, and has conferred a substantial benefit upon Defendant Airport.

301. Realization of that benefit by the defendant is evidences by virtue of an unserviceable hanger, vacant for 17 years and without value, now generating monthly rent.

302. Retention by the Defendant Airport of the benefit of these repairs without compensation to SDMB is unjust since these repairs were required to bring the premises up to code.

**FOR THE SIXTEENTH CAUSE OF ACTION**  
**AS TO DEFENDANTS COUNTY, AIRPORT, APONE, JACKSON, AND TEAL**  
**(Trespass)**

303. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

304. Plaintiff has been in legal possession of Hanger 7 since May 2012, paid all rent monies timely, attempted to negotiate a replacement lease in a county-approved format in good faith and Defendant Airport, has at all times cashed SDMB's prepaid rent payments before the expiration of the month.

305. On or about February 5, 2012, Defendant Teal voluntarily and without permission, entered SDMB's business location in Hanger 7

306. Unauthorized access required SDMB to inspect all gear and equipment, and shut down operations for a business day:

**WHEREFORE**, Plaintiffs pray that this Honorable Court grant them judgment as follows:

a. For the First Cause of Action against Defendants County, HCDA, Carotti, Haldi, and Apone, jointly and severally, for all actual damages incurred by Plaintiff, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action;

b. For the Second Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, lost profits, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action, and punitive damages as the jury may award;

c. For the Third Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, lost profits, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action, and punitive damages as the jury may award;

d. For the Fourth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, lost profits, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action, and punitive damages as the jury may award;

e. For the Fifth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, lost profits, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action, and punitive damages as the jury may award;

f. For the Sixth Cause of Action against Defendants, jointly and severally, treble damages, for all actual damages incurred by Plaintiff, for the reasonable value of the labor,

materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

g. For the Seventh Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, lost profits, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action;

h. For the Eighth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, lost profits, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action, and punitive damages as the jury may award;

i. For the Ninth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, lost profits, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action, and punitive damages as the jury may award;

j. For the Tenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, lost profits, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action, and punitive damages as the jury may award;

k. For the Eleventh Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

l. For the Twelfth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

m. For the Thirteenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

n. For the Fourteenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

o. For the Fifteenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;



p. For the Sixteenth Cause of Action against Defendants, jointly and severally, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

q. That the Defendants be enjoined and restrained from future tortious interference with SDMB's legitimate right to conduct non-emergency parachute operations;

r. That the court issue a Writ of Mandamus against Defendant Airport requiring it to execute a renewal LOA with SDMB authorizing SDMB to continue its parachute operations at GSA in accordance with FAA regulations;

s. That Defendants properly outfit, maintain, and repair the subject Hanger;

t. That the costs of this action be taxed against Defendants;

u. That pre- and post-judgment interest at the legally applicable rate be awarded Plaintiff;

v. For any such other and further relief as may be just and proper;

RESPECTFULLY SUBMITTED

---

Robert G. Eastman, Esquire  
Eastman & Associates, LLC  
3980 South Tropical Trail  
Merritt Island, FL 32952  
(843) 329-9657  
Fax: (843) 723-0005  
robertgeastman@msn.com

and

Robert B. Varnado, Esquire  
Alexis M. Wimberly, Esquire  
Brown & Varnado, LLC  
103 Church Street  
PO Box 1127  
Mt. Pleasant, SC 29465  
(843) 737-7300  
(843) 654-5109 fax  
rvarnado@brown-varnado.com

*Co-Council for Plaintiff*

Merritt Island, Florida  
June \_\_, 2015

# Exhibit 1

150316.sdm.b.v.hcda.et.al.amended.

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**SkyDive Myrtle Beach, LLC  
P.O. Box 2478  
Wilmington, NC 28402**

**May 10, 2012**

**This letter constitutes the complete agreement between SkyDive Myrtle Beach, LLC (SkyDive MB) and Grand Strand Aviation, Inc. dba Ramp 66. The agreement is for SkyDive Myrtle Beach, LLC to provide tandem parachute jumps from the Grand Strand Airport.**

**All jumpers will check in and pay at the Ramp 66 front desk, except those jumpers who have registered and previously paid SkyDive Myrtle Beach, LLC directly online. Personal checks will not be accepted. The paid invoice will constitute the ticket for the jumpers. The invoice number will provide priority of who is next in line for the jump. Schedules will be monitored and maintained by SkyDive MB. Jumpers will pay for their jump prior to the jump. SkyDive MB will establish and publish rates for all jumps.**

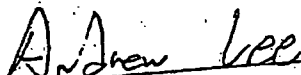
1. ✓ It is agreed that Ramp 66 will sell fuel to SkyDive MB at \$.25 cents below the price posted for JetA fuel.
2. Any aircraft maintenance labor requested by SkyDive MB will be charged at the rate of \$5.00 below the posted labor rate.
3. Any aircraft parts purchased through Ramp 66 will be charged at the rate of cost plus 20% + freight.
4. There will be no Tie Down fees, or other fees, charged to SkyDive MB.
5. There will be no packing fees or any other fees charged to SkyDive MB. SkyDive MB shall be provided with a minimum of 2,500 square feet in the "bird hanger" for use during daylight hours without fee seven days a week, including holidays, 365 days a year.
6. Ramp 66 shall pay SkyDive MB 86% of the income shown on the invoice (internet sales and merchandise sales are excluded as they shall be paid directly to SkyDive MB), less the Airport fee, for all jumps. Payment shall be remitted to SkyDive MB on a daily basis.
7. Ramp 66 will pay Horry County Department of Airports 5% of the gross income it receives directly from jumpers on all jumps.
8. Ramp 66 will assume all credit card charges without fee to SkyDive MB.
9. Ramp 66 will assume business license costs unless the city of North Myrtle Beach changes their current position that parachute operations falls under the business license of Ramp 66.
10. SkyDive MB will maintain a minimum of \$1,000,000 Airport Liability Insurance in effect and name Grand Strand Aviation, Inc. and Horry County Department of Aviation as additional insured. A copy of the Certificate of Insurance will be provided to Ramp 66.
11. Ramp 66 agrees to charge fuel and other services to SkyDive MB LLC. This bill will be paid weekly.
12. SkyDive MB agrees to comply with all applicable federal statutes and all regulations and all regulations including, but not limited to, those promulgated by the Federal Aviation Administration while conducting all parachute jumps.
13. SkyDive MB agrees to comply with all applicable local, state and local statutes, rules and regulations including, but not limited to, those relating to tax, fire, building and safety matters.

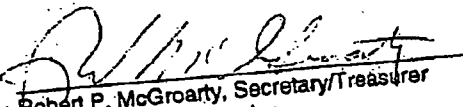
HCDA-000001

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14. SkyDive MB agrees to comply with all applicable local, state and federal environmental statutes and regulations, including but not limited to, requirements for the disposal of waste oil and other potentially hazardous substances.
15. At the end of each year Ramp 66 will provide SkyDive MB a Form 1099 showing the gross income directly paid to Ramp 66, excluded internet sales and merchandise sales paid directly to SkyDive MB are its separate responsibility to report to Internal Revenue Service.
16. Grand Strand Aviation and Horry County hereby expressly disclaim any and all liability for the parachute operation. SkyDive MB hereby waives any and all claims it may have against Grand Strand Aviation and Horry County, its shareholders, officers, directors or other agents for any and all personal injury, property damage or other damages it may incur by virtue of utilizing Grand Strand Aviation's leased property or the Grand Strand Airport.
17. SkyDive MB hereby agrees to indemnify and hold harmless from and against all claims, actions, causes of action, damages, costs, and other requests for compensation, arising out of, or caused by, SkyDive MB actions. This indemnity specifically includes, but is not limited to, damages to Grand Strand Aviation's leased property.
18. This agreement remains in effect through Grand Strand Aviation's lease with Horry County Department of Airports through July 2020 unless both parties agree to any changes in writing. Should the Grand Strand Aviation lease be extended, renewed, or otherwise modified beyond July 2020, SkyDive MB has the right to extend this agreement on these terms to that lease at SkyDive MB's option.
19. Grand Strand Aviation reserves the right to cancel this agreement if SkyDive MB does not materially comply with the terms of this agreement. Likewise, SkyDive MB reserves the right to cancel this agreement should Grand Strand Aviation does not materially comply with the terms of this agreement.
20. Grand Strand Aviation, Inc., its officers, directors, employees and shareholders agree not to directly nor indirectly compete with SkyDive MB, and shall not operate any competing parachute jumping or similar operation anywhere within the county in which Myrtle Beach and North Myrtle Beach are located for a period of eight years after this agreement expires, is not extended, or is cancelled by either party. In the event this noncompete clause and agreement are litigated, the prevailing party shall recover its attorney fees.

Agreed May 16, 2012, by Grand Strand Aviation, Inc. dba Ramp 66 and SkyDive Myrtle Beach, LLC by the parties below who are authorized to enter into this agreement.

  
 Andrew E.R. Lee, Officer  
 SkyDive Myrtle Beach, LLC

  
 Robert P. McGroarty, Secretary/Treasurer  
 Grand Strand Aviation, Inc.

HCDA-000002

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# Exhibit 2

150316.sdm.b.v.hcda.et.al.amended

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**HORRY COUNTY  
ATTORNEY'S OFFICE**

H. Randolph Haldi  
Deputy County Attorney/  
Property Manager  
1301 Second Avenue  
Conway, South Carolina 29526  
[HHaldiR@HorryCounty.org](mailto:HHaldiR@HorryCounty.org)



Post Office, Box 1236  
Conway, South Carolina  
29528-1236

Phone: (843) 915-5270  
Fax: (843) 915-6270

*Via Hand Delivery, First Class Mail, and Email transmission:*

*Aaron Holly: [aholly@me.com](mailto:aholly@me.com)*

*Robert G. Eastman: [robertgeastman@msn.com](mailto:robertgeastman@msn.com)*

*Skydive Myrtle Beach: [mbskydiving@aol.com](mailto:mbskydiving@aol.com)*

February 19, 2014

Skydive Myrtle Beach, LLC  
Attn: Mr. Aaron S. Holly  
P.O. Box 2478  
Wilmington, NC 28402

**Re: Space Use Permit  
Grand Strand Airport**

Dear Mr. Holly,

This Office has recently been made aware of serious issues that have arisen regarding your business operations at Grand Strand Airport (CRE), causing several violations of the Space Use Permit dated September 13, 2013, which will be more fully addressed below. However, that Space Use Permit itself expired on January 31, 2014, and as such, you are currently occupying County property without any right or authorization.

As indicated above, during just the course of the prior Space Use Permit, Skydive Myrtle Beach has engaged in a pattern of incidents raising significant concerns as to the advisability of continuing to allow Skydive Myrtle Beach the use of County facilities, including:

- Weekend of October 18, 2013—Skydive Myrtle Beach hosted a poorly-controlled large crowd event, where numerous vehicles were parked inside the security fence and which event included food sales and alcohol consumption on County property;
- Weekend of October 18, 2013—motor home observed parked overnight inside the security fence adjacent to hangar used by Skydive Myrtle Beach;
- October 20, 2013—skydiver landed on taxiway, requiring medical assistance and emergency transport;

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- October 21, 2013—tower reports to Horry County Department of Airports (HCDA) that over the weekend there were two "uncertified" night jumps, two jumps through clouds, and a jumper landing in the Barefoot Resort area that necessitated dispatch of emergency responders;
- October 27, 2013—HCDA informed that Aaron Holly improperly questioned tower protocol on an open ATCT frequency;
- November 13, 2013—incursion onto active runway when jumper who missed landing zone walked across runway, requiring FAA reporting and investigation;
- November 27, 2013—HCDA sends certified letter to Skydive Myrtle Beach to address issues regarding Skydive Myrtle Beach staff residing in hangar overnight and unrestrained dog seen repeatedly in ramp area, hangar space, and FBO building;
- December 23, 2013—tower informs HCDA that in a recent jump of 14 total jumpers, 11 ended up well outside the landing zone, with jumpers landing on various parts of the runway, taxiways, and Highway 31;
- January 20, 2014—tower informs HCDA that in a recent jump of 10 total jumpers, 4 ended up well outside the landing zone, with jumpers landing on various parts of the runway, taxiways, and the Barefoot golf course;
- January 20, 2014—tower informs HCDA that a GA aircraft was recently forced to make a 360-degree turn on short final approach after an errant skydiver flew over the runway;
- January 26, 2014—incursion onto active runway when Skydive Myrtle Beach personnel drive vehicle across runway without contacting the tower, requiring FAA reporting and investigation;
- February 9, 2014—HCDA personnel witness operation of two large propane grills in hangar and the sale of food for public consumption;
- Ongoing—HCDA personnel informed of jumps from helicopters with landings on public beach areas, in violation of designated landing zone and other terms set out in existing Letter of Agreement;
- Ongoing—continued bypassing of HCDA safety protocol by allowing unauthorized vehicles access to the airfield inside the security fence;
- Ongoing—violation of terms of the Space Use Agreement by making unauthorized modifications to the premises, including the installation of unapproved interior and exterior signage, removing electrical conduit from inside the hangar, installing unapproved flexible conduit and electrical outlets within the hangar, and other unauthorized and unapproved modifications to the premises.

This Office is also in receipt of a North Myrtle Beach Police Crime Report, dated February 7, 2014, the subject matter being stated as "Burglary/2800 Terminal St Hangar 7/Skydive Myrtle Beach," and detailing two alleged offenses – Burglary Third Degree and Utilities/Theft of electric current. We are also in receipt of an email from Robert G. Eastman, in which the following is stated, "...Mr. Jack Teal entered SDBM Hangar 7 without notice or authorization in effect committing criminal trespass. As indicated in the meeting the police would be contacted for insurance purposes....[A] Notice of Trespass

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citation will be issued next week and any further unauthorized trespass's will be prosecuted and result in a trespass and burglary charge."

As indicated above, the prior Space Use Permit expired on January 31, 2014 and thus, at the time of the alleged burglary/trespass, Skydive Myrtle Beach was occupying Hangar 7 without any right or authorization. Even under the previous Space Use Permit, which provides a mere license to the user, the County retained the right to enter the Space (County-owned property) at any time for any reasonable purpose. The previous Space Use Permit also provided a fixed charge for electricity of \$100.00 per month, regardless of usage, a utility in the name of, and paid by, the County. As you are aware, the complained entry was made to facilitate work being performed adjacent to the Hangar and undertaken to accommodate a request made by Skydive Myrtle Beach. Under these circumstances, the allegations made with respect to the Police Crime Report are untrue and baseless, and the assertions made by Mr. Eastman with respect to the allegations of criminal trespass represent either a misunderstanding or misuse of criminal law.

In light of the foregoing, Horry County is unwilling to offer Skydive Myrtle Beach a leasehold interest in the CRE hangar facility at this time. As an alternative, Horry County is willing to enter into a new, short term Space Use Permit, with the understanding that a violation of any of the terms contained in such Space Use Permit will result in Skydive Myrtle Beach being required to vacate the premises after 24-hour notice. Please understand that the new Space Use Permit will require:

- All jumps will be made in compliance with that Letter of Agreement between HCDA, Myrtle Beach ATCT, Strand FCT ATCT, and Skydive Myrtle Beach dated 5/11/12, and any subsequent amendments thereto as agreed to in writing by all parties;
- No unauthorized vehicles will be permitted inside the security fence;
- No overnight occupancy of any space subject to the agreement is permitted;
- Skydive Myrtle Beach will provide at least 10 days notice to HCDA of any events planned in which a crowd of more than 25 people would reasonably be expected;
- No outside vendors will be allowed without consent of HCDA, and will be subject to any restrictions or location requirements HCDA deems appropriate;
- No flammable substances permitted in any space subject to the agreement, including but not limited to, propane grills and alcohol;
- No modifications will be made to the space, and any modifications previously made without authorization or approval of HCDA will be removed and the premises returned to their condition prior to the modification;
- Fees for use of the space will be \$1,200.00/month or 24% of gross revenues, whichever is greater; and
- Any breach of the agreement by Skydive Myrtle Beach will provide grounds for immediate termination and Skydive Myrtle Beach will vacate the premises within 24 hours after being provided written notice of such termination.

These terms are non-negotiable, and a copy of the new Space Use Permit is enclosed for your review and acceptance. If Skydive Myrtle Beach agrees to abide by these terms and there are no further incidents during the term of the agreement, the County will re-visit the potential to enter into a lease agreement with Skydive Myrtle Beach prior to expiration of the new Space Use Permit this summer. In

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light of the fact that Skydive Myrtle Beach is currently occupying County property without authorization, the new Space Use Permit must be signed and returned to HCDA within 72 hours from the time it is delivered. If Skydive Myrtle Beach declines to sign and return this Permit within the time set forth, you will need to vacate the premises immediately, as HCDA will change the locks and deny access to the premises as of the close of business on Saturday, February 22.

We certainly hope to be able to maintain an on-going relationship with your skydiving operation, as we believe that such a properly conforming business is a welcome and beneficial use of the County's Grand Strand Airport. We also understand that based upon recent measures on your part, you have attempted to address and correct some conditions that have led to certain of these prior incidents at the airport. The County is appreciative of these efforts, but requires your full commitment in order to continue to allow Skydive Myrtle Beach the use of County-owned property.

Sincerely,



H. Randolph Haldi

Encl.

Cc: Chris Eldridge, Horry County Administrator  
Arrigo Carotti, Horry County Attorney  
Pat Apone, Horry County Director of Airports

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**GRAND STRAND AIRPORT  
SPACE USE PERMIT**

**THIS SPACE USE PERMIT** ("Permit") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Horry County, South Carolina, acting by and through its Department of Airports ("County") and Skydive Myrtle Beach, LLC ("Company"), a business entity formed and existing under the laws of the State of South Carolina, and authorized to do business in Horry County, South Carolina.

**WITNESSETH**

**WHEREAS**, County is the operator of the Grand Strand Airport ("Airport" or "CRE"); and

**WHEREAS**, Company desires to occupy and use space in Hangar #7 located on Grand Strand Airport property, to conduct its "Skydiving and Non-Emergency Parachute Operation" business; and

**WHEREAS**, County is willing to permit Company to occupy and use space in Hangar #7 at Grand Strand Airport, subject to the restrictions and terms provided herein:

**NOW, THEREFORE**, County and Company agree as follows:

1. **Space Use.** County hereby permits Company to occupy and use space in Hangar #7 consisting of approximately 6,800 square feet of space, together with any surrounding curtilage and parking ("Space") to be utilized for Company's "Skydiving and Non-Emergency Parachute Operation" business.
2. **Term.** The term of this Permit shall commence on February 1, 2014, and it shall continue in force and effect until July 31, 2014, but no longer than, six (6) months from the date of commencement unless otherwise earlier terminated. Prior to actual physical occupancy of Space by Company, either party may terminate this Permit for any reason upon the giving at least five (5) days written notice to the other party. After actual physical occupancy of the Space by Company, either party may terminate this Permit for any reason by giving at least thirty (30) days written notice to the other party. Any act of default hereunder, including without limitation failure to pay fees when due, shall terminate any right, license or permission for use of Space immediately upon event of default, and Company will vacate the premises within 24 hours after receiving written notice of such default. This Permit shall not be renewed or extended, nor shall another such Permit be entered into between the same parties within twelve (12) months from the date of expiration of this Permit, without prior approval of Horry County Council.
3. **Use.** During the term hereof, Company shall occupy and use Space permitted by County solely in connection with its "Skydiving and Non-Emergency Parachute Operation" business at the Grand Strand Airport to the extent permitted by and fully in compliance with all applicable rules, regulations, and requirements of any Federal, State, City or County

regulatory agency having jurisdiction over the Company's operations, subject to all terms and conditions of this agreement. All skydiving operations will be made in compliance with that Letter of Agreement between the Horry County Department of Airports, Myrtle Beach ATCT, Strand FCT ATCT, and Skydive Myrtle Beach dated 5/11/12, and any subsequent amendments thereto, as agreed to in writing by all parties. Company's employees and customers will have reasonable access to and from and the right to use and occupy Space for the sole purpose of engaging in or furthering Company's business. Company's employees must be well groomed and neat in appearance at all times. The Director of Airports must approve all signs and displays to be erected on the Space. Company shall fully comply with all safety and security policies/directives as established by the Airport.

**RESTRICTIONS/LIMITATIONS:**

Only vehicles operated by staff members based at CRE and are employed *directly* for the Company and have been approved by the Director of Airports are permitted to park on the interior of the security fence (i.e. on the ramp). Company is limited to two (2) employee vehicles on Airport Property at one time and must park adjacent to the Space described in this Agreement.

Company will notify Horry County Department of Airports at least ten (10) days in advance of any events that could reasonably be expected to draw a crowd of more than twenty-five (25) people, and such events must be approved by the County Administrator or Director of Airports. Non-disclosure of any such planned event is a breach of this Agreement.

Overnight occupancy of any space described in this Agreement is strictly prohibited and will be considered an immediate violation of the Agreement.

No outside vendors will be allowed on Horry County property without the consent of the Horry County Department of Airports, and any allowed vendors will be subject to any restrictions, requirements, or locations that Horry County Department of Airports deems appropriate.

No flammable substances are permitted in any space subject to this Agreement, including but not limited to, propane grills and alcohol.

Company will not alter any portion of the Space, and any modifications previously made without authorization or approval of the Horry County Department of Airports will be removed and the premises returned to their condition prior to such modification. Any fees for repair of unapproved modifications or alterations will be the responsibility of the Company.

Company will abide by all HCDA rules, policies, and procedures for Grand Strand Airport (CRE), as may be adopted or amended from time to time.

4. Fee; Default Interest; Late Payment; Security Deposit.

A. Fee. As the Fee for occupancy and use of the Space, Company shall pay County monthly payments of One Thousand Two Hundred and No/100 dollars (\$1,200.00) per month. Company shall pay said amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof. In the event this Permit commences or terminates on other than the last day of any particular month, the Fee shall be prorated. County reserves the right to adjust such rate from time to time upon thirty (30) days written notice to the Company.

B. Gross Sales Percentage Fee. For each month during the term hereof and in addition to the monthly base occupancy and use of the Space fee, Company shall pay County, as additional fee, a monthly adjustment amount which shall be the difference, if any, between the monthly occupancy and use of the Space base fee to be paid during said month and twenty-four (24%) percent of the gross sales during each such occupancy month, whichever is greater.

Gross sales include, without limitation, the gross selling price of all merchandise, services, concessions, or privileges that occur in whole or in part, on the Space, or as a result of activities on or associated with the Space, during the term of this Permit including the gross charges of all services to customers or patrons performed by Company or any other person, entity, firm or corporation, in, upon, or through any part of the Space during the term of this Permit and all sales/services that are subject to the South Carolina amusement, sales, use or excise tax set forth in Title 12 of the South Carolina Code of Laws, 1976, as amended. Notwithstanding anything herein to the contrary, gross sales shall not include the amount of any amusement, sales, use or excise taxes paid by Company during such term of this Permit.

C. Payment of Fee and Gross Sales Percentage Fee. The Fee shall be paid in aid amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof from and after the Commencement Date. The Gross Sales Percentage Fee, if due, shall be paid within ten (10) days of each month following a calendar month occurring from and after the Commencement Date through the expiration or termination of this Agreement, at which time Lessee shall provide Lessor, without demand, a statement of Gross Receipts for the prior calendar month together with the amount, if any, by which the Gross Sales Percentage Fee due for the previous calendar year exceeds the Fee.

D. Default Interest. If Company shall default in its payment of Fees or other charges required to be paid pursuant to this Permit, such unpaid amounts shall bear interest from the date of default at the rate of 1 ½ % per month.

E. Late Payment. Company acknowledges that the late payment by Company of any monthly installment of fees or other charges will cause County to incur certain costs and expenses not contemplated under this Permit, the exact amount of which are

difficult or impracticable to determine. Therefore, if any such amount owing is not received by county within ten (10) days following the due date thereof, Company shall immediately pay to County a late charge equal to 1 1/2 % per month of such amount owing, in addition to any default interest which may be due as provided above. To the extent that any late charge provided for hereunder is determined to constitute interest, in no event shall such late charges, plus any other interest due on sums owed to County hereunder, ever exceed the maximum interest rate permitted by law.

F. Security Deposit. To assure the faithful performance of Company's obligations hereunder, Company shall remit a deposit in the form of cash, a letter of credit, or a payment bond issued by a reputable company licensed to issue such bonds in the State of South Carolina, in an amount equal to two (2) months of all applicable Fees to the County, which shall be remitted to the County prior to the Company's occupancy of the Space. In no event shall this security deposit be used as payment for any fee set forth in A. above, without the express written authorization of the Director of the Horry County Department of Airports.

5. Utilities and Services. County shall supply access to water, natural gas and electricity to the extent and capacity of the currently existing mains, lines, transformers, and panels. Company shall be solely responsible for the payment of all utility charges, telephone, trash removal, hazardous waste removal and other services used by Company in or on the Space, to include hook-up fees, advanced deposits or other such costs, regardless of whether the utility charge is incurred in the name of Company or County. Company shall accept transfer of all applicable utility meters to Company's name when so tendered by County. In the event Company incurs any utility charge in the name of County, Company shall reimburse County for the full amount of the charge within five (5) calendar days of the date of written notice to Company of the amount of the charge. County assumes no responsibility for interruption of such services for any reason whatsoever. Company agrees to pay County One Hundred & 00/100 Dollars (\$100.00) per month as an additional fee, which may be adjusted periodically by the County for utilities. The utility fee is included in the monthly fee specified in paragraph 4A.

6. Cleaning and Maintenance. Company, at its sole cost and expense, shall keep the Space in a clean, neat and orderly condition at all times, and shall be responsible for maintaining all non-structural elements, including without limitation plumbing and HVAC. Company understands that it is responsible for the conduct of its guests, permittees, invitees, and licensees on the premises. Company shall not store any personal property exterior to the building on the unimproved premises associated with the building. Company is prohibited from taking any action which would negate or void the warranty on the roofs of any building within its Space.

7. Alterations. Company may not make any alteration, addition, or improvement to the Space without the prior written approval of the Director of Airports. Company shall submit a

written request for permission to perform such alterations, which shall include a description of the improvements, a site plan, and any other documentation requested by the Director of Airports to demonstrate the suitability of the improvements or alterations. Unless County elects otherwise, all permanent alterations, additions, or improvements to the Space shall become the property of County upon termination. In the event County so elects, such permanent alterations shall be removed by Company at its own cost and expense prior to date of termination. Company shall repair any damage to Space caused by such removal at its own cost. All agreed upon improvements must be made in a workmanlike manner, in accordance with all applicable statutes, ordinances, rules and regulations, including without limitation applicable building codes, and may be made only upon written approval of County's department of Airports after review of complete plans for such improvements.

8. Right of Entry. County shall have the right to enter the Space at any time for any reasonable purpose.

9. Compliance with Law.

A. General Compliance. Company will comply with all applicable statutes, ordinances, rules, regulations, orders and directives of any governmental authority, including County, in its occupancy and use of the Space.

B. Acceptance of Premises. Company accepts the Space in its "as-is" condition and County has no obligation to improve, repair, restore, or alter any portion of the Space. Company acknowledges that neither County nor any agent, employee, director or official of County has made any representation or warranty, except as otherwise expressly provided in this Permit, with respect to the Space including, without limitation, any representation or warranty with respect to the suitability or fitness of the building or any portion thereof for the conduct of Company's business. Important: Initial here to acknowledge \_\_\_\_\_

C. Jurisdiction of Other Agencies. If Company's activities and operations shall in any way fall within the jurisdiction or regulatory authority of other governmental agencies, including without limitation the South Carolina Department of Health and Environmental Control ("DHEC"), Company must secure and produce evidence of such agency's final approval of such operations or occupancy of Space. If such activities and operations fall outside DHEC's jurisdiction, Company shall procure and submit to County the statement of an appropriately authorized DHEC representative to that effect. Company acknowledges that its representations and warranties pursuant to this subsection are material to the County's agreement to permit the Company's use of the Space.

10. Release and Indemnity.

A. Release. Company hereby releases County from any liability to Company for any loss or damage to any property of Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, and for the death or injury of any officers, directors, employees, agents, customers, concessionaires, vendors.

contractors or invitees of Company, occasioned by theft, fire, acts of God, public enemy, injunction, riot, strike, insurrection, war, governmental body or authority including County, or any other matter beyond the control of County, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Space, or failure to make repairs, or for any cause whatsoever, except the sole negligence or willful misconduct of County.

- B. Indemnity. Company hereby releases and will defend, indemnify and hold harmless County, its departments, agencies, boards, commissions, committees, officers, directors, employees, and agents and assigns of any of them ("Indemnified Parties") from and against any and all liability, claims, penalties, fines, causes of action, suits, liens, losses, loss of use, damages, costs and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, be charged to or be recoverable from the Indemnified Parties by reason of:

(1) any occurrence, in, upon, or at the Space, however caused, or any cause of action of any nature whatsoever, in law or equity, arising out of or incidental to this Permit or the use or occupancy of the Space; and/or

(2) any occupancy, use, or misuse of the Space, or the areas surrounding the Space, or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Space, by Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, including without limitation uses or misuses which may render the premises subject to the Americans with Disabilities Act in whole or in part; and/or

(3) any violation of any law, regulation or ordinance by Company or its employees, officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees; and/or

(4) any occurrence arising in whole or in part out of the negligent act, or negligent failure to act, of Company, its officers, directors, employees, agents, customers, vendors, contractors or invitees.

The provisions of this section shall survive the expiration or early termination of this Permit.

- C. Environmental Indemnification. Company shall also indemnify, defend (with counsel satisfactory to County), and hold County, its departments, agencies, council, boards, commissions, committees, members, officers, directors, employees, and agents and assigns of any of them harmless from and against any and all loss, cost, damage, expense, claim, cause of action, judgment, penalty, fine or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling or presence of Hazardous Materials on, under, or about the Space or the

Airport in violation of Company's obligations under this Permit ("Hazardous Materials Release"). This indemnification shall include, without limitation: (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Space, or any building included therein, or any other property at the Airport, (d) damages for the loss or restriction on use of the Space or the Airport, (e) sums paid in settlement of claims, (f) actual attorneys' fees, consulting fees, court costs, and expert fees, (g) the cost of any investigation of site conditions, (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authority or deemed necessary in County's reasonable judgment, (i) and any fines associated with Company's activities. County shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or action initiated in connection with the Hazardous Materials Release. County may also negotiate, defend, approve, and appeal any action taken or issued by any applicable governmental authority with regard to a Hazardous Materials Release. Any costs or expenses incurred by County for which Company is responsible under this Paragraph or this Permit and has indemnified County, (i) shall be paid to County on demand, during the term of this Permit as additional fees; and (ii) from and after the expiration or earlier termination of the Permit shall be reimbursed by Company on demand. Company's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Permit and shall bind Company's successors and assignees and inure to the benefit of County's successors and assigns.

11. **Insurance Required.** Company agrees to purchase and keep in force and maintain at all times during the term of this Permit, at its own expense, for the benefit of itself and County as additional named insured, a policy or policies of insurance, issued by an insurance company of generally recognized responsibility and licensed to do business in the State of South Carolina insuring against: (A) all liability for damage to or loss of Company's and its customer's property located on the Space, (B) liability for property damage and personal injury or death arising from acts or omissions of Company, its agents and employees, (C) liability for any damage or harm resulting from any release of any hazardous material, as that term is defined by the United States Environmental Protection Agency, including, but not limited to, costs of remediation or mitigation of such release of hazardous materials, and (D) Workers Compensation claims to the limits required by the State of South Carolina. Said insurance shall be maintained throughout the term of this Permit with an insurance company acceptable to County with liability limits of at least \$2,000,000.00. The policy or policies shall contain a contractual liability endorsement expressly covering the indemnification provisions of Section 10 of this Permit. Company shall also purchase, at its own cost and in its sole discretion, such business interruption or other insurance to protect Company's interest in the event of major or minor damage or disaster to the Space.

This Permit shall not become effective until User shall provide to the HCDA a copy of certificate(s) evidencing the above insurance. The certificate of insurance shall provide that no material alteration, reduction, or termination of coverage shall occur without the



insurance carrier giving County at least thirty (30) days' written notice prior to such alteration, reduction, or termination.

12. **Subuse and Assignment.** Company shall not allow any other entity to occupy or use any of the Space without the written consent of the Horry County Department of Airports and no attempted assignment of this Permit by Company shall be effective.
13. **GOVERNING LAW.** THIS Permit SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA. This Permit is not subject to alternative dispute resolution except where ordered by a court of competent jurisdiction or required by operation of law. The forum for any action or claim brought as a result of this contract shall be the Court of Common Pleas, Horry County, South Carolina.
14. **Entire Agreement/Amendment.** This Permit constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether written or oral. The provisions of the Permit may be modified, amended or waived only by a written instrument executed by County and Company.
15. **Termination of Permit.** In the event of termination of this Permit by either Party, Company shall promptly cause to be removed all personal property from the Space. Any property left on Airport premises by Company and remaining there after the date on which Company either vacated the Space or should have vacated the Space according to the notice of termination sent by the terminating party, may be deemed, at the sole and exclusive option of the Airport, abandoned. Once so deemed, such property shall become the exclusive property of the County and may be disposed of as such in accordance with applicable statutes, ordinances, and County procedures. Alternatively, County may have such property removed, at Company's sole expense.
16. **Operating Permit.** The terms and conditions for both the "Space Use Permit" and the "Operating Permit" must be adhered to without default to either agreement. Default of any terms or conditions by either agreement, constitutes default on both the "Space Use Permit" and the "Operating Permit".
17. **Notices.** Any notices required or sent hereunder shall be in writing and shall be sent as follows:

As to County:

Horry County Department of Airports  
1100 Jetport Road  
Myrtle Beach, SC 29577  
ATTN: Director of Airports

As to Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party from time to time may change its address by written notice to the other party. Notices hereunder shall be deemed effective when delivered by hand delivery or overnight courier, or three days after deposit in the United States mail, first class, postage prepaid.

18. License. This Space Use Permit is intended by the parties, and shall be interpreted as, a license to use the designated Space, and shall under no circumstances be deemed or construed as a lease of real property, nor shall the relationship between the parties, as to the designated Space, be deemed that of landlord and tenant. This Permit is not a contract and does not give, assign, or otherwise transfer from the County to the Company any interest in real property, but is a mere license, revocable at the will of the County.

WITNESS the signatures of the parties as of the date first written above.

ATTEST:

\_\_\_\_\_

HORRY COUNTY

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

SKYDIVE MYRTLE BEACH, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

# Exhibit 3

150316.sdm.b.v.hcda.et.al.amended

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April 28, 2014

Via Certified Mail and Email (robertgeastman@msn.com)

Robert G. Eastman, Esq.  
Eastman & Associates, LLC  
P.O. Box 180  
Charleston, SC 29402

Re: Operating Permit and Space Use Permit

Dear Mr. Eastman:

Your client, Skydive Myrtle Beach, Inc. ("SDMB"), has been unlawfully occupying Hangar No. 7 at Grand Strand Airport ("CRE") since January 31, 2014, in violation of the terms of the Operating Permit dated August 1, 2013 (the "Operating Permit") between SDMB and Horry County, South Carolina (the "County"), acting by and through the Horry County Department of Airports ("HCDA") and the County's policies. HCDA has offered SDMB commercially reasonable terms to continue to use the space under a standard Space Use Permit. SDMB has rejected the terms of the Space Use Permit. By the terms of the Operating Permit, it may be terminated by either SDMB or the County upon at least thirty days' notice.

This letter shall serve as a notice of termination of the Operating Permit. The County has previously notified SDMB that if SDMB did not execute HCDA's standard form of Space Use Permit by April 15, 2014, HCDA would be forced to take legal action to remove your client from Hangar No. 7. Your letter dated April 18, 2014 stated that SDMB "cannot agree to the material change of the Space Use Permit," without identifying the suggested "material change". As SDMB has refused to execute a Space Use Permit in the County's standard form and thereby remains the only commercial enterprise operating at CRE without a valid agreement, SDMB has violated, and continues to violate, the terms of its Operating Permit. Unless SDMB executes a Space Use permit in the form provided by HCDA's Director of Airports, with the reduced percentage rent of ten percent (10%) as set forth in my letter to you dated April 7, 2014, the Operating Permit will terminate on May 27, 2014 and the County will bring legal action to eject your client from CRE.

If SDMB is not a party to a valid Space Use Permit and Operating Permit, SDMB may not base its aircraft or its skydiving operations at CRE. However, as long as SDMB operates in accordance with all applicable laws, including the letter of agreement among SDMB, the Federal Aviation Administration ("FAA"), the CRE tower and HCDA, SDMB may continue to use the aeronautical facilities at CRE, including the landing zone, as a transient operator. However, without a valid Space Use Permit, SDMB must vacate Hangar No. 7 and may not base its aircraft at CRE.

You have also requested that HCDA schedule a meeting among SDMB, the FAA and other relevant parties to finalize the terms of a revised Letter of Agreement ("LOA") relating to SDMB's skydiving operations at CRE. HCDA has communicated with the FAA regarding the status of a revised LOA and has been informed by appropriate FAA staff that a revised and updated LOA is undergoing review by FAA, but that as SDMB's requested scope of operations has changed, the FAA's Jacksonville Center must also review

BOSTON  
BRUSSELS  
CHICAGO  
DETROIT

JACKSONVILLE  
LOS ANGELES  
MADISON  
MIAMI

MILWAUKEE  
NEW YORK  
ORLANDO  
SACRAMENTO

SAN DIEGO  
SAN FRANCISCO  
SHANGHAI  
SILICON VALLEY

TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

4832-7024-8474.2

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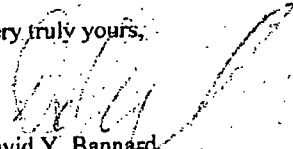


Robert G. Eastman, Esq.  
April 28, 2014  
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and approve the current draft of the LOA. I understand that the Jacksonville Center is expected to complete their review relatively soon. Once that review is complete, I further understand that the local FAA staff and HCDA will contact you and your client to attempt to resolve any open issues. In the meantime, SDMB should continue to operate under the existing LOA.

As Ms. Apone's letter stated, it is the County's policy that no one may occupy space at the HCDA's airports unless they have entered into a Space Use Permit or a lease agreement with HCDA. SDMB's Space Use Permit expired January 31, 2014. If your client chooses not to execute HCDA's standard form of Space Use Permit, HCDA will not negotiate a lease with your client. However, HCDA remains ready, willing and able to enter into its standard form of Space Use Permit with your client and, following that, to negotiate in good faith with the goal of entering into a mutually acceptable lease of Hangar No. 7 at Grand Strand Airport.

Very truly yours,



David Y. Bannard

DYB:

Cc: Patricia Apone, Arrigo Carotti, Esq., H. Randolph Haldi, Esq.

4832-7024-8474.2

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# Exhibit 4

150316.sdm.b.v.hoda.et.al.amended

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Mr. Ethan Hauser  
[REDACTED]

Certified Mail

Little River, SC 29566

May 13, 2015

RE: Ordinance Violation and Trespassing

Mr. Hauser;

This letter is notice that no person or business is permitted to operate/conduct business within the Horry County airport system (Grand Strand Airport, Myrtle Beach International Airport, Conway Horry County Airport or Loris Twin Cities Airport) without approval (i.e., agreement, operating permit, etc.) by Horry County Department of Airports (HCDA). A person and/or a business conducting business at one of the said airports, without approval, will be issued an ordinance summons and cited for trespassing.

On many occasions you have been observed performing unauthorized aircraft maintenance at the Grand Strand Airport (CRE). On a couple of different occasions you have been verbally notified by HCDA of the process required for applying for approval to conduct business at the airport; the most recent verbal notification was given in March 2015. Currently you do not have an agreement with HCDA, thus are not permitted to operate/conduct business at any of the airports in the Horry County airport system. The Horry County Police Department has been instructed to issue you an ordinance summons and citation for trespassing upon the next occurrence.

Respectfully,

Kirk Lovell

Enclosure: GA Minimum Standards (Mr. Hauser)

CC: Arrigo Carrotti – Horry County Attorney; Randy Haldi – Horry County Attorney; Pat Apone; Director of Airports; Jason Terreri – Assistance Director of Airports; File

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Horry County and Horry County Department of Airport's Answer

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Skydive Myrtle Beach, Inc,

Plaintiff,

vs.

Horry County, Horry County Department of  
Airports, H. Randolph Haldi, Pat Apone, Tim  
Jackson and Jack Teal,

Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS  
CASE NO.: 2014-CP-26-01193

**DEFENDANTS HORRY COUNTY &  
HORRY COUNTY DEPARTMENT OF  
AIRPORTS' ANSWER TO  
COMPLAINT**

**TO PLAINTIFFS AND THEIR ATTORNEYS:**

Defendants Horry County and Horry County Department of Airports, ("County"), by and through its undersigned counsel, hereby responds to Plaintiff's Complaint and would show this Honorable Court as follows:

**AS A FIRST DEFENSE**  
**(Failure to State a Claim)**

1. Plaintiff's Complaint, in its entirety or in part, fails to state a claim or constitute a cause of action against the County upon which relief may be granted, and therefore, the Complaint should be denied in its entirety or in part.

**FOR A SECOND DEFENSE**  
**(Qualified General Denial)**

2. Each and every allegation of the Complaint not hereinafter specifically and expressly admitted is hereby denied.
3. Responding to the allegations in paragraph 1 through 9, County admits same on information and belief.
4. County denies the allegations of paragraph 10.

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5. Paragraphs 11 and 12 call for legal conclusions and do not require a response, to the extent that a response is required, County denies the same.
6. County denies the allegations of Paragraph 13.
7. Answering the allegations in paragraphs 14 and 15 of the complaint, County is without sufficient information to form a belief as to the allegations contained therein and therefore denies the same.
8. Answering the allegations in paragraphs 16 of the complaint, County would refer to the actual documents issued by the City of North Myrtle Beach for an accurate representation of what documents were issued and the reasons why those documents were issued.
9. County denies the allegations in paragraph 17.
10. Answering the allegations in paragraph 18 of the complaint, County is informed and believes a meeting between SDMB and airport representatives occurred on February 7, 2014 at the FBO Training Room.
11. County denies the allegations of Paragraphs 19 and 20.
12. County admits the allegations in Paragraph 21 and 22.
13. Answering the allegations in paragraph 23 of the complaint, County denies the same and would refer to Exhibit 1 for a true and accurate representation of its contents.
14. County denies the allegations of Paragraphs 24 through 26.
15. Answering the allegations in paragraph 27 of the complaint, County repeats and realleges the responses set forth hereinabove.
16. County denies the allegations in Paragraph 28 and would further show that the actual agreement dated April 1, 2012, would be a more accurate representation of any alleged agreement between the parties.

17. Answering the allegations in paragraph 29 of the complaint, County is without sufficient information to form a belief as to the allegations contained therein and therefore County denies the same.
18. County admits the allegations in Paragraph 30.
19. Answering the allegations in paragraphs 31 through 40 of the complaint, County is without sufficient information to form a belief as to the allegations contained therein and therefore denies the same.
20. Answering the allegations in paragraph 41 of the complaint, County is informed and believes the same are true.
21. Answering the allegations in paragraph 42 of the complaint, County admits that SDMB signed a space use permit but County would refer to the actual permit for an accurate representation of its contents.
22. Answering the allegations in paragraph 43 of the complaint, County denies the same.
23. Answering the allegations in paragraph 44 of the complaint, County is without sufficient information to form a belief as to the allegations contained therein and therefore denies the same.
24. Answering the allegations in paragraphs 45 through 69 of the complaint, County denies the same.
25. Answering the allegations in paragraph 70 of the complaint, County admits the same.
26. County denies the allegations in Paragraphs 71 through 74.
27. County admits the allegations in Paragraphs 75 through 76.
28. County denies the allegations in Paragraphs 77 through 143.

**FOR A THIRD DEFENSE**  
**(Tort Claims Act)**

29. County realleges each and every allegation as set forth hereinabove verbatim.

30. County is a governmental entity of the State of South Carolina, immune from suit except to the extent immunity has been waived by the S.C. Tort Claims Act, the provisions of which must be strictly construed in favor of limiting liability of the County according to S.C. Code Ann. Sec. 15-78-20(f), and the County is immune and exempt from liability for the losses alleged by Plaintiffs, which are denied, pursuant to the provisions of S.C. Code Ann. §15-78-20(a), and §15-78-60 and, in the event the case is submitted to a trier of fact, the County is entitled to a special verdict apportioning liability of joint tortfeasors, as provided in S.C. Code Ann. §15-78-100; and, if damages are recoverable, which is denied, the County is entitled to the statutory limits and exclusions on damages provided in S.C. Code Ann. §15-78-120, and, to set-off for any damages paid or payable to Plaintiff or Plaintiff's assigns from any other source.

31. The County pleads said immunities, exemptions from liability, limitations and exclusions on damages, entitlement to special verdict, and set-off as set forth above, as a defense to Plaintiff's claims which should be dismissed, denied, limited and/or set-off accordingly.

**FOR A FOURTH DEFENSE**  
**(Comparative Negligence)**

32. The allegations contained in the previous paragraphs are herein realleged as if set out verbatim.

33. If there was any negligent, careless, reckless, willful, wanton, or grossly negligent, act or omission, which is expressly denied, any injuries or damages allegedly sustained by the Plaintiff, which are also denied, were due to and caused by the Plaintiffs own acts of negligence, carelessness, recklessness, willfulness, wantonness, or gross negligence. These acts or omissions

more proximately and directly caused any alleged injuries and damages to Plaintiff and Defendant pleads the Plaintiffs' comparative negligence, carelessness, recklessness, willfulness, wantonness, and gross negligence as a complete bar or limit to Plaintiff's claim, and Defendant pleads the superseding and intervening fault of other persons as a bar or limit to Plaintiff's claim.

**FOR A FIFTH DEFENSE**  
**(Statute of Frauds)**

34. The allegations contained in the previous paragraphs are herein realleged as if set out verbatim.
35. Pursuant to S.C. Code Ann. § 32-3-10 (4), all tenement contracts must be signed and in writing in order to bring an action.
36. Any contract between the County and Plaintiff expired on January 21, 2014.
37. No new contract was signed and approved by the County.
38. Promissory Estoppel may not be used to circumvent the writing requirements of the Statute of Frauds.
39. As a consequence, all claims based on contractual obligations of the parties should be dismissed.

**AS A SIXTH DEFENSE**  
**(Failure to Exhaust Administrative Remedies)**

40. The allegations of the preceding defenses are restated as if set forth verbatim.
41. The Plaintiff has administrative remedies under state law and federal law, which it has not exhausted prior to bringing this action, and therefore, one or more of their claims should be dismissed.

**AS A SEVENTH DEFENSE**  
**(Intra-Corporate Conspiracy Doctrine)**

42. The allegations of the preceding defenses are restated as if set forth verbatim.

43. All other Defendants are agents or subsidiaries of Horry County and were acting within the scope of their employment at all times.

44. There can be no civil conspiracy amongst these individuals. As a result these claims should be dismissed.

**AS AN EIGHTH DEFENSE**  
**(Privilege)**

45. The allegations of the preceding defenses are restated as if set forth verbatim.

46. Any act or delict of Defendant, whether a statement, communication or otherwise, was committed in the scope of its office and duty as a municipal government, and in good faith, and therefore conditionally or qualifiedly privileged and not actionable, and the Complaint should therefore be dismissed.

**AS A TENTH DEFENSE**  
**(Authorized to be on Premises)**

47. The allegations of the preceding defenses are restated as if set forth verbatim.

48. At all times County owned the property in question and as the owner County had an owner's rights in connection with the property. As a consequence, Plaintiff's claim for trespass should be barred.

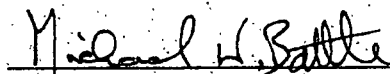
**AS AN ELEVENTH DEFENSE**  
**(Equitable Defenses)**

49. The allegations of the preceding defenses are restated as if set forth verbatim.

50. Plaintiff's claims for breach of contract, breach of contract accompanied by a fraudulent act, quantum meruit, fraud and misrepresentation, constructive fraud and promissory estoppel are barred by the doctrines of unclean hands, waiver, estoppel and/or laches.



WHEREFORE, having fully answered the Complaint, it is prayed that the same be dismissed,  
for costs, and for such other relief as may be just and proper.

  
Michael Warner Battle SC Bar # 00584  
M. Kirk Battle SC Bar # 79699  
THE BATTLE LAW FIRM, LLC  
1200 Main St.  
PO Box 530  
Conway, SC 29528  
(843)248-4321

Mach. 18, 2013

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that  
a true copy of the foregoing pleading  
has been served upon opposing counsel  
by mailing a copy properly addressed  
with sufficient postage, affixed thereto,  
this 18 day of March, 2013.

Secretary to:  
Battle Law Firm, LLC  
P.O. Box 530  
Conway, SC 29528  
Attorney's for: HC & HC Airports

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Record on Appeal -120-

Defendant H. Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal's Motion to Dismiss

Record on Appeal -121-

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**Record on Appeal -122-**

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

Skydive Myrtle Beach, Inc., )  
(f/k/a Skydive Myrtle Beach, LLC), )

Plaintiff, )

vs. )

Horry County, Horry County )  
Department of Airports, )  
H. Randolph Haldi, Pat Apone, )  
Tim Jackson and Jack Teal, )

Defendants. )

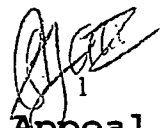
IN THE COURT OF COMMON PLEAS  
C/A NO.: 2014-CP-26-1193

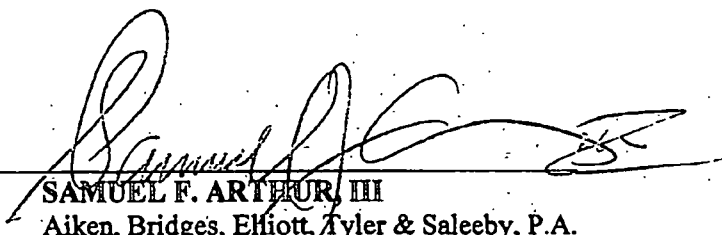
**MOTION TO DISMISS OF  
DEFENDANTS HALDI, APONE,  
JACKSON, AND TEAL**

CLERK OF COURT  
HARRIS WARD  
2014 MAR 27 PM 3:07

TO: ROBERT G. EASTMAN, COUNSEL FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, Samuel F. Arthur, III, as attorney for Defendants H. Randolph Haldi, Pat Apone, Tim Jackson and Jack Teal will move before the Resident or Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Courthouse located at Conway, South Carolina, not less than ten (10) days hence, or at such time as may be scheduled by the court, for an order dismissing the Plaintiff's Complaint against Defendants H. Randolph Haldi, Pat Apone, Tim Jackson and Jack Teal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure on the grounds that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action inasmuch as the individually named Defendants are not proper Defendants pursuant to S.C. Code Ann. § 15-78-70. This motion may further be supported by affidavits and/or a supporting memorandum of law that may be submitted at or prior to the hearing of this motion.

  
Record on Appeal -123-

By: 

**SAMUEL F. ARTHUR, III**

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

SC Bar # 13618

PO Drawer 1931

Florence, SC 29503

Telephone: 843.669.8787

Fax: 843.664.0097

[SFA@AIKENBRIDGES.COM](mailto:SFA@AIKENBRIDGES.COM)

**ATTORNEYS FOR DEFENDANTS**

**H. RANDOLPH HALDI, PAT APONE,**

**TIM JACKSON AND JACK TEAL**

Florence, South Carolina

March 26, 2014.

Skydive Myrtle Beach, Inc.'s Motion to Consolidate

Record on Appeal -125-

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Record on Appeal -126-



STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
) Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL

Defendants.

JURY TRIAL DEMANDED

FILED  
HORRY COUNTY  
2014 JUN 24 AM 10:49  
MELANIE HUGGINS-WARD  
CLERK OF COURT

**MOTION FOR CONSOLIDATION REQUEST FOR INJUNCTIVE RELIEF, AND  
EMERGENCY HEARING**

1. On or about June 5, 2014, Defendant Horry County filed an Application for Eviction against Plaintiff, Skydive Myrtle Beach, Inc. (SDMB), in Myrtle Beach Magistrate's Court, *Horry County v. Skydive Myrtle Beach, Inc.*, C.A. 2014-CV-26-109-2444, (Eviction Complaint) a copy of which is attached hereto as Exhibit 1.
2. On or about June 7, 2014, Federal Aviation Administration (FAA) inspectors inspected SDMB and revealed that FAA had received multiple unsubstantiated complaints relating to federal aviation regulations. See Exhibit 2, Affidavit of Aaron Holly.
3. FAA investigations took place during working hours and caused SDMB operations several hours delay and financial harm.
4. This Honorable Court has subject matter jurisdiction relating to all allegations of fact presented by Defendant in its Eviction Complaint, Defendants have been served in this action, have answered Plaintiff's fifteen count Complaint alleging, *inter*

*alia*, the existence of a long-term lease, breach of contract and facts that are contradictory to Defendant's allegations identified in its Eviction Complaint, and this Honorable Court has exercised its jurisdiction in this matter.

5. Plaintiff has requested a jury trial in this Honorable Court to determine all contested facts and has continued to present payments to Defendant for Hangar No. 7 since Defendant prematurely resumed control of the Grand Strand Airport in August 2013; and deliberating the veracity of contested underlying facts relating to any eviction identified by Defendant's Eviction Complaint is the purview of a jury in this Honorable Court.

6. Piecemeal litigation in multiple venues as Defendant is currently attempting to pursue by filing an Application for Ejectment in Magistrate's Court and reporting unsubstantiated allegations to the FAA is causing judicial waste, excessive attorney fees and expenses, and has no legitimate purpose other than to harass Plaintiff in its proper exercise of legal remedies and business pursuits.

7. Plaintiff has moved (in Myrtle Beach Magistrate's Court) to Remove Defendant Horry County's Eviction Complaint to this Honorable Court pursuant to S.C. Code Ann. § 22-3-30, judicial economy, and constitutional reasons. See Exhibit 3.

8. Defendant's repeated allegations and complaints in multiple venues are a waste of judicial economy, continuous, improper, without merit, unduly burdensome, and causing Plaintiff irreparable harm.

9. Plaintiff has no adequate remedy at law to prevent Defendant's actions in other forums and will suffer and continue to suffer irreparable harm unless this Honorable Court grants injunctive relief.

10. This motion may further be supported by affidavits and/or a supporting memorandum of law that may be submitted at or prior to the hearing of this motion.

WHEREFORE, Plaintiff, respectfully request this Honorable Court to:

- A. Grant Plaintiff's Request for an Emergency Hearing;
- B. Enjoin Defendants Horry County and Horry County Department of Airports from filing future Complaints to FAA or other state venues;
- C. Remove the Eviction Complaint from Myrtle Beach Magistrate's Court to this Honorable Court;
- D. Award Plaintiff, reasonable attorney fees together with costs associated with this motion; and
- E. Such other further relief as this Honorable Court deems necessary.

BY:



**ROBERT G. EASTMAN**  
Eastman & Associates, LLC  
SC Bar # 75900  
PO Box 180  
Charleston, SC 29402  
Tel.: (843) 329-9657  
Fax: (843) 723-0005  
robertgeastman@msn.com

Merritt Island, FL

June 18, 2014

## **EXHIBIT 1**

Horry County  
Myrtle Beach Summary Court  
1201 21<sup>st</sup> Avenue North  
Myrtle Beach, SC 29577  
(843) 915-5293

COPY

## CASE INFORMATION SHEET

## EVICTION

CASE: \_\_\_\_\_

DATE FILED: 6-5-14

2014 JUN -5 PM 4:26  
 DISTRICT #6  
 MYRTLE BEACH  
 MAGISTRATE'S OFFICE

## PLAINTIFF (YOU)

NAME/ADDRESS: Horry County

HOME PHONE: \_\_\_\_\_

P.O. Box 1236  
Conway, SC 29526

email  
 EMPLOYER: mbattle@battlelawsc.com

FAX #: 248-4512WORK PHONE: 248-4321ATTORNEY: Michael W. Battle

CELL PHONE: \_\_\_\_\_

## DEFENDANT (THEM)

NAME/ADDRESS: Skydive MB, Inc

HOME PHONE: \_\_\_\_\_

North MB Aviation, Hangar #7  
2800 Terminal St.  
NMB, SC 29528

email  
 EMPLOYER: Robertgeestman@msn.com

FAX #: 843-723-0005WORK PHONE: 843-329-9657ATTORNEY: Robert G. Eastman

CELL PHONE: \_\_\_\_\_

AMOUNT OF LAWSUIT: \$ Ejectment

Reason/Explanation of suit:

The term of tenancy has ended &  
tenant refuses to leave.

\*\*RETURN THIS AND ALL ATTACHED FORMS TO CIVIL CLERK\*\*

Record on Appeal -131-

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HORRY COUNTY

PLAINTIFF(S)

VS.

SKYDIVE MYRTLE BEACH, INC.

DEFENDANT(S)

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR  
EJECTMENT  
(Eviction)

I, HORRY COUNTY, plaintiff in this action, state that I am the landlord-lessor of premises within the jurisdiction of Magistrate Christopher J. Arakas which is described as: (address and description of premises – apartment, house, etc.)

North Myrtle Beach Aviation

Hangar #7

2800 Terminal Street

North Myrtle Beach, SC, 29528

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between myself and the defendant SKYDIVE MYRTLE BEACH, INC., the tenant-lessee, as evidenced by the following. (Attach lease papers or other written proof.)

See attached.

Grounds for this ejectment are one or more of the following:

- ☐ The tenant fails or refuses to pay the rent when due or when demanded; or
- ☒ The term of tenancy or occupancy has ended; or
- ☐ The terms or conditions of the lease have been violated as follows:

Sworn to before me

this 5th day of June, 2014.

[Signature]  
Magistrate or Notary Public for South Carolina

My Commission expires

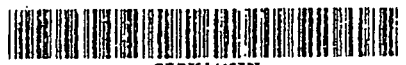
7-1-2023

[Signature]  
PLAINTIFF (or his attorney)

2014 JUN -5 PM 4:26  
MYRTLE BEACH  
MAGISTRATE'S OFFICE  
DISTRICT #5

SCCA/732 (Amended 05/2008)

Record on Appeal -132-

|                                                                                                                                                   |  |                                                                                                                                                                    |  |                                                                      |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------|--|
| Article Number<br><br>7196 9006 9111 0404 9096                   |  | COMPLETE THIS SECTION ON DELIVERY<br>A. Received by (Please Print Clearly) <u>M. EASTMAN</u>                                                                       |  | B. Date of Delivery <u>5/2/14</u>                                    |  |
| 3. Service Type <b>CERTIFIED MAIL™</b>                                                                                                            |  | C. Signature<br><u>x M. Eastman</u>                                                                                                                                |  | <input type="checkbox"/> Agent<br><input type="checkbox"/> Addressee |  |
| 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes                                                                                  |  | D. Is delivery address different from item 1?<br>If YES, enter delivery address below:                                                                             |  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No          |  |
| 1. Article Addressed to:<br><br>Robert G. Eastman, Esquire<br>Eastman S. ... Associates, LLC<br>Post Office Box 185<br>Charleston, SC 29402<br>US |  | 103141-0104-9617-8annard-David<br>D16 (0x67) 103141-0101<br><br><br>CERT00419735 |  |                                                                      |  |

PS Form 3811, January 2005

Domestic Return Receipt

Record on Appeal -133-

**FOLEY**  
FOLEY & LARDNER LLP

ATTORNEYS AT LAW  
111 HUNTINGTON AVENUE  
BOSTON, MASSACHUSETTS 02199  
617.342.4000 TEL  
617.342.4001 FAX  
WWW.FOLEY.COM

WRITER'S DIRECT LINE  
617.342.4033  
dbannerd@foley.com EMAIL

CLIENT/MATTER NUMBER  
103341-0104

April 28, 2014

Via Certified Mail and Email (robertgeastman@msa.com)

Robert G. Eastman, Esq.  
Eastman & Associates, LLC  
P.O. Box 180  
Charleston, SC 29402

Re: Operating Permit and Space Use Permit

Dear Mr. Eastman:

Your client, Skydive Myrtle Beach, Inc. ("SDMB"), has been unlawfully occupying Hangar No. 7 at Grand Strand Airport ("CRE") since January 31, 2014, in violation of the terms of the Operating Permit dated August 1, 2013 (the "Operating Permit") between SDMB and Horry County, South Carolina (the "County"), acting by and through the Horry County Department of Airports ("HCDA") and the County's policies. HCDA has offered SDMB commercially reasonable terms to continue to use the space under a standard Space Use Permit. SDMB has rejected the terms of the Space Use Permit. By the terms of the Operating Permit, it may be terminated by either SDMB or the County upon at least thirty days' notice.

This letter shall serve as a notice of termination of the Operating Permit. The County has previously notified SDMB that if SDMB did not execute HCDA's standard form of Space Use Permit by April 15, 2014, HCDA would be forced to take legal action to remove your client from Hangar No. 7. Your letter dated April 18, 2014 stated that SDMB "cannot agree to the material change of the Space Use Permit," without identifying the suggested "material change". As SDMB has refused to execute a Space Use Permit in the County's standard form and thereby remains the only commercial enterprise operating at CRE without a valid agreement, SDMB has violated, and continues to violate, the terms of its Operating Permit. Unless SDMB executes a Space Use permit in the form provided by HCDA's Director of Airports, with the reduced percentage rent of ten percent (10%) as set forth in my letter to you dated April 7, 2014, the Operating Permit will terminate on May 27, 2014 and the County will bring legal action to eject your client from CRE.

If SDMB is not a party to a valid Space Use Permit and Operating Permit, SDMB may not base its aircraft or its skydiving operations at CRE. However, as long as SDMB operates in accordance with all applicable laws, including the letter of agreement among SDMB, the Federal Aviation Administration ("FAA"), the CRE tower and HCDA, SDMB may continue to use the aeronautical facilities at CRE, including the landing zone, as a transient operator. However, without a valid Space Use Permit, SDMB must vacate Hangar No. 7 and may not base its aircraft at CRE.

You have also requested that HCDA schedule a meeting among SDMB, the FAA and other relevant parties to finalize the terms of a revised Letter of Agreement ("LOA") relating to SDMB's skydiving operations at CRE. HCDA has communicated with the FAA regarding the status of a revised LOA and has been informed by appropriate FAA staff that a revised and updated LOA is undergoing review by FAA, but that as SDMB's requested scope of operations has changed, the FAA's Jacksonville Center must also review

BOSTON  
BRUSSELS  
CHICAGO  
DETROIT

JACKSONVILLE  
LOS ANGELES  
MADISON  
MIAMI

MILWAUKEE  
NEW YORK  
ORLANDO  
SACRAMENTO

SAN DIEGO  
SAN FRANCISCO  
SHANGHAI  
SILICON VALLEY

TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

4832-7024-8474.2

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FOLEY & LARDNER LLP

Robert G. Eastman, Esq.

April 28, 2014

Page 2

and approve the current draft of the LOA. I understand that the Jacksonville Center is expected to complete their review relatively soon. Once that review is complete, I further understand that the local FAA staff and HCDA will contact you and your client to attempt to resolve any open issues. In the meantime, SDMB should continue to operate under the existing LOA.

As Ms. Apone's letter stated, it is the County's policy that no one may occupy space at the HCDA's airports unless they have entered into a Space Use Permit or a lease agreement with HCDA. SDMB's Space Use Permit expired January 31, 2014. If your client chooses not to execute HCDA's standard form of Space Use Permit, HCDA will not negotiate a lease with your client. However, HCDA remains ready, willing and able to enter into its standard form of Spaced Use Permit with your client and, following that, to negotiate in good faith with the goal of entering into a mutually acceptable lease of Hangar No. 7 at Grand Strand Airport.

Very truly yours,

David Y. Bannard

DYB:

Cc: Patricia Apone, Arrigo Carotti, Esq., H. Randolph Haldi, Esq.

4832-7024-8474 2

Record on Appeal -135-

CRE  
SDMB

GRAND STRAND AIRPORT  
SPACE USE PERMIT

THIS SPACE USE PERMIT ("Permit") is made and entered into as of the 18<sup>th</sup> day of ~~September~~ 2013, by and between HORRY COUNTY, SOUTH CAROLINA, ACTING BY AND THROUGH ITS DEPARTMENT OF AIRPORTS ("County") and SKYDIVE MYRTLE BEACH, LLC ("Company"), a business entity formed and existing under the laws of the State of North Carolina, and authorized to do business in Horry County, South Carolina.

WITNESSETH

WHEREAS, County is the operator of the Grand Strand Airport ("Airport"); and

WHEREAS, Company desires to occupy and use space in Hangar #7 located on Grand Strand Airport property, to conduct its "Skydiving and Non-Emergency Parachute Operation" business; and

WHEREAS, County is willing to permit Company to occupy and use space in Hangar #7 at Grand Strand Airport subject to the restrictions and terms provided herein:

NOW, THEREFORE, County and Company agree as follows:

1. Space Use. County hereby permits Company to occupy and use space in Hangar #7 consisting of approximately 6,800 square feet of space, together with any surrounding curtilage and parking ("Space") to be utilized for Company's "Skydiving and Non-Emergency Parachute Operation" business.
2. Term. The term of this Permit shall commence on August 1, 2013, and it shall continue in force and effect until January 31, 2014, but no longer than, six (6) months from the date of commencement unless otherwise earlier terminated. Prior to actual physical occupancy of Space by Company, either party may terminate this Permit for any reason upon the giving at least five (5) days written notice to the other party. After actual physical occupancy of the Space by Company, either party may terminate this Permit for any reason by giving at least thirty (30) days written notice to the other party. Any act of default hereunder, including without limitation failure to pay fees when due, shall terminate any right, license or permission for use of Space immediately upon event of default. This Permit shall not be renewed or extended, nor shall another such Permit be entered into between the same parties within twelve (12) months from the date of expiration of this Permit, without prior approval of Horry County Council.
3. Use. During the term hereof, Company shall occupy and use Space permitted by County solely in connection with its "Skydiving and Non-Emergency Parachute Operation" business at the Grand Strand Airport to the extent permitted by and fully in compliance with all applicable rules, regulations, and requirements of any Federal, State, City or County regulatory agency having jurisdiction over the Company's operations, subject to all terms and conditions of this agreement. Company's employees and customers will have reasonable access to and from and

Record on Appeal -136-

the right to use and occupy Space for the sole purpose of engaging in or furthering Company's business. Company's employees must be well groomed and neat in appearance at all times. The Director of Airports must approve all signs and displays to be erected on the Space. Company shall fully comply with all safety and security policies/directives as established by the Airport.

4. Fee; Default Interest; Late Payment; Security Deposit.

- A. Fee. As the Fee for occupancy and use of the Space, Company shall pay County monthly payments of One Thousand Two Hundred & 00/100 (\$1,200.00) dollars per month. Company shall pay said amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof. In the event this Permit commences or terminates on other than the last day of any particular month, the Fee shall be prorated. County reserves the right to adjust such rate from time to time upon thirty (30) days written notice to the Company.
- B. Default Interest. If Company shall default in its payment of Fees or other charges required to be paid pursuant to this Permit, such unpaid amounts shall bear interest from the date of default at the rate of 1 ½ % per month.
- C. Late Payment. Company acknowledges that the late payment by Company of any monthly installment of fees or other charges will cause County to incur certain costs and expenses not contemplated under this Permit, the exact amount of which are difficult or impracticable to determine. Therefore, if any such amount owing is not received by county within ten (10) days following the due date thereof, Company shall immediately pay to County a late charge equal to 1 ½ % per month of such amount owing, in addition to any default interest which may be due as provided above. To the extent that any late charge provided for hereunder is determined to constitute interest, in no event shall such late charges, plus any other interest due on sums owed to County hereunder, ever exceed the maximum interest rate permitted by law.
- D. Security Deposit. To assure the faithful performance of Company's obligations hereunder, Company shall remit a deposit in the form of cash, a letter of credit, or a payment bond issued by a reputable company licensed to issue such bonds in the State of South Carolina, in an amount equal to two (2) months of all applicable Fees to the County, which shall be remitted to the County prior to the Company's occupancy of the Space. In no event shall this security deposit be used as payment for any fee set forth in A, above, without the express written authorization of the Director of the Horry County Department of Airports.

5. Utilities and Services. County shall supply access to water, natural gas and electricity to the extent and capacity of the currently existing mains, lines, transformers, and panels. Company shall be solely responsible for the payment of all utility charges, telephone, trash removal, hazardous waste removal and other services used by Company in or on the Space, to include hook-up fees, advanced deposits or other such costs, regardless of whether the utility charge is

incurred in the name of Company or County. Company shall accept transfer of all applicable utility meters to Company's name when so tendered by County. In the event Company incurs any utility charge in the name of County, Company shall reimburse County for the full amount of the charge within five (5) calendar days of the date of written notice to Company of the amount of the charge. County assumes no responsibility for interruption of such services for any reason whatsoever. Company agrees to pay County One Hundred & 00/100 Dollars (\$100.00) per month as an additional fee, which may be adjusted periodically by the County for utilities. The utility fee is included in the monthly fee specified in paragraph 4A.

4. **Cleaning and Maintenance.** Company, at its sole cost and expense, shall keep the Space in a clean, neat and orderly condition at all times, and shall be responsible for maintaining all non-structural elements, including without limitation plumbing and HVAC. Company understands that it is responsible for the conduct of its guests, permittees, invitees, and licensees on the premises. Company shall not store any personal property exterior to the building on the unimproved premises associated with the building. Company is prohibited from taking any action which would negate or void the warranty on the roofs of any building within its Space.
5. **Alterations.** Company may not make any alteration, addition, or improvement to the Space without the prior written approval of the Director of Airports. Company shall submit a written request for permission to perform such alterations, which shall include a description of the improvements, a site plan, and any other documentation requested by the Director of Airports to demonstrate the suitability of the improvements or alterations. Unless County elects otherwise, all permanent alterations, additions, or improvements to the Space shall become the property of County upon termination. In the event County so elects, such permanent alterations shall be removed by Company at its own cost and expense prior to date of termination. Company shall repair any damage to Space caused by such removal at its own cost. All agreed upon improvements must be made in a workmanlike manner, in accordance with all applicable statutes, ordinances, rules and regulations, including without limitation applicable building codes, and may be made only upon written approval of County's department of Airports after review of complete plans for such improvements.
6. **Right of Entry.** County shall have the right to enter the Space at any time for any reasonable purpose.
9. **Compliance with Law.**
  - A. **General Compliance.** Company will comply with all applicable statutes, ordinances, rules, regulations, orders and directives of any governmental authority, including County, in its occupancy and use of the Space.
  - B. **Acceptance of Premises.** Company accepts the Space in its "as-is" condition and County has no obligation to improve, repair, restore, or alter any portion of the Space. Company acknowledges that neither County nor any agent, employee, director or official of County has made any representation or warranty, except as otherwise expressly provided in this Permit, with respect to the Space including, without limitation, any representation or warranty with

respect to the suitability or fitness of the building or any portion thereof for the conduct of Company's business.

C. Jurisdiction of Other Agencies. If Company's activities and operations shall in any way fall within the jurisdiction or regulatory authority of other governmental agencies, including without limitation the South Carolina Department of Health and Environmental Control ("DHEC"), Company must secure and produce evidence of such agency's final approval of such operations or occupancy of Space. If such activities and operations fall outside DHEC's jurisdiction, Company shall procure and submit to County the statement of an appropriately authorized DHEC representative to that effect. Company acknowledges that its representations and warranties pursuant to this subsection are material to the County's agreement to permit the Company's use of the Space.

10. Release and Indemnity.

A. Release. Company hereby releases County from any liability to Company for any loss or damage to any property of Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, and for the death or injury of any officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees of Company, occasioned by theft, fire, acts of God, public enemy, injunction, riot, strike, insurrection, war, governmental body or authority including County, or any other matter beyond the control of County, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Space, or failure to make repairs, or for any cause whatsoever, except the sole negligence or willful misconduct of County.

B. Indemnity. Company hereby releases and will defend, indemnify and hold harmless County, its departments, agencies, boards, commissions, committees, officers, directors, employees, and agents and assigns of any of them ("Indemnified Parties") from and against any and all liability, claims, penalties, fines, causes of action, suits, liens, losses, loss of use, damages, costs and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, be charged to or be recoverable from the Indemnified Parties by reason of:

(1) any occurrence, in, upon, or at the Space; however caused, or any cause of action of any nature whatsoever, in law or equity, arising out of or incidental to this Permit or the use or occupancy of the Space; and/or

(2) any occupancy, use, or misuse of the Space, or the areas surrounding the Space, or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Space, by Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, including without limitation uses or misuses which may render the premises subject to the Americans with Disabilities Act in whole or in part; and/or

(3) any violation of any law, regulation or ordinance by Company or its employees,

SKY DIVE MYRTLE BEACH LLC

BS. (919) 782-0743  
3032 FALLS RIVER AVE.  
RALEIGH, NC 27614

1332

ES 112/531

DATE

8/9/13

PAY TO THE ORDER OF

Myrtle Beach Aviation

Four thousand and eight hundred

\$ 4800.00

00.00 DOLLARS



GRANITE BANKING AND TRUST COMPANY  
1000 BANK ST. BOSTON, MA 02111

FOR

rent

Carson Huff

⑈00001332⑈ ⑆053101121⑆0005109990630⑈

CRE - SKY DIVER MB

THIS CHECK REFLECTS:

- o SECURITY DEPOSIT (2 MONTHS x \$1,200) = \$2,400.-
- o PERMIT FEE FOR AUGUST 2012 (\$1,200) = \$1,200.-
- o PERMIT FEE FOR SEPTEMBER 2012 (\$1,200) = \$1,200.-
- \$4,800.-

DEPOSIT TO CRE FOR SECURITY & PERMIT PAYMENTS

- END -

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

**OPERATING PERMIT TO PROVIDE SKYDIVING  
AND NON-EMERGENCY PARACHUTE  
OPERATIONS TO THE GENERAL PUBLIC AT THE  
GRAND STRAND AIRPORT**

**THIS OPERATING PERMIT**, made and entered into this 15<sup>th</sup> day of AUGUST, 2013, by and between Horry County, a body politic ("County"), owner and operator of the Grand Strand Airport ("Airport") in North Myrtle Beach, South Carolina and Skydive Myrtle Beach, LLC a corporation organized and existing under the laws of North Carolina ("Company"), shall govern the relationship of the parties, wherein County agrees to permit Company to perform "Skydiving and Non-Emergency Parachute Operations" at the Grand Strand Airport as to the terms and conditions set forth below:

**WITNESSETH:**

**WHEREAS**, County is the owner and operator of the Airport, located in North Myrtle Beach, South Carolina; and

**WHEREAS**, Company is engaged to perform "Skydiving and Non-Emergency Parachute Operations" at the Grand Strand Airport based on the terms and conditions set forth below; and

**WHEREAS**, Company wishes to use the aeronautical facilities of the Grand Strand Airport in connection with its "Skydiving and Non-Emergency Parachute Operations" at the Grand Strand Airport; and

**WHEREAS**, the terms and conditions for both the "Space Use Permit" for the space in Hangar #7 at the Grand Strand Airport and the "Operating Permit" must be adhered to without default to either agreement. Default of any terms or conditions by either agreement, constitutes default on both the "Space Use Permit" or lease and the "Operating Permit".

**NOW, THEREFORE**, in consideration of the promises hereinafter contained, County and Company agree as follows:

1. **Term of Permit.** The term of this Permit shall be a period of six (6) months, and shall run from August 1, 2013 through January 31, 2014. Thereafter, this Permit shall automatically be extended/renewed on a month-to-month basis upon the same terms and conditions contained herein, with the exception of fee payment as set forth below, unless terminated under the provisions of this paragraph. Either party may terminate this Permit at any time by serving written notice upon the other party at least thirty (30) days in advance of the effective date of termination.
2. **Permit Area; Use.** Company may use the permitted facilities at the Airport solely in connection with its business of providing "Skydiving and Non-Emergency Parachute Operations" at the Grand Strand Airport.

3. **Permit Fee.** Company will pay County a non-refundable annual fee of Three Thousand (\$3,000.00) Dollars, which will be pro-rated for six (6) months in the amount of Fifteen Hundred Dollars (\$1,500.00), which allows Company to operate, which will be at the discretion of the Airport Director, payable on or before August 1, 2013. After the initial term, this Permit will continue on a month-to-month basis unless otherwise terminated, Company to pay to County 1/12<sup>th</sup> of the annual fee set forth above without demand, and without set-off or deduction, in advance, of or before the first day of each month the Permit may continue. County reserves the right to adjust such fee from time to time upon thirty (30) days written notice to the Company. In the event the Permit terminates on other than the last day of any particular month, the fee shall be prorated. Failure to pay by the first of each month shall constitute an event of default. Late payment charges of one and one-half percent (1½ %) will be assessed on all overdue accounts after the tenth (10<sup>th</sup>) day of each month, payment of which will not excuse default.
4. **Space Use Premises.** The County hereby permits Company to occupy and use space in Hangar #7 consisting of approximately Two Thousand-Five Hundred (2,500) square feet, together with any surrounding curtilage and parking ("Space") to be utilized for Company's "Skydiving and Non-Emergency Parachute Operations to the General Public".
5. **Laws, Rules, Regulations and Procedures.** Company shall observe and comply with all Federal, State and local laws, rules, and regulations, all County and City ordinances, and business license requirements, and all directives of the Horry County Department of Airports, which now exist or which may be hereinafter be enacted or adopted. Company will obtain, and provide upon request copies to the County, through its Department of Airports, all licenses, permits and authorizations, as may be necessary and proper, at Company's sole cost.
6. **Hold Harmless and Indemnification.** Company shall protect, defend (with counsel satisfactory to County), indemnify, and hold County, its Council members, advisory board members, officers, agents, employees and assignees harmless from and against any and all claims, debts, liabilities, losses, judgments, penalties, fines, costs, damages, expenses (including reasonable attorney fees, court costs and expert fees), or demands arising by reason of injury or death of any person or damage to any property, or any cause of action of any nature whatsoever, in law or equity, arising out of or incidental to this Permit or the use of the Airport, or the acts or omissions of Company or Company's directors, officers, agents, employees, contractors, subcontractors or licensees; however, said indemnity shall not apply to any injury, death, or damage caused by the sole negligence or willful misconduct of County. The provisions of this section shall survive the expiration or early termination of this Permit.
7. **Environmental Indemnification.** Company shall indemnify, defend (with counsel satisfactory to County), and hold County, its council members, officers, employees, agents, assigns, and any successors to County's interest in the Airport, harmless from and against any and all loss, cost, damage, expense (including reasonable attorney fees), claim, cause of action, judgment, penalty, fine or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about the Airport in violation of Company's obligations under this Permit ("Hazardous Materials Release"). This indemnification shall include without limitation (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Airport, (d) damages for the loss or restriction on use of the Airport, (e) sums paid in settlement of claims, (f) actual attorneys' fees, consulting fees, and expert



fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in County's reasonable judgment. County shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or action initiated in connection with the Hazardous Materials Release. County may also negotiate, defend, approve, and appeal any action taken or issued by any applicable governmental authorities with regard to a Hazardous Materials Release. Any costs or expenses incurred by County for which Company is responsible under this Paragraph or for which Company has indemnified County, (i) shall be paid to County on demand, during the term of this Permit as an additional fee; and, (ii) from and after the expiration or earlier termination of the Permit shall be reimbursed by Company on demand. Company's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Permit and shall bind Company's successors and assignees and inure to the benefit of County's successors and assignees.

8. **Insurance.** Company agrees to carry and keep in force a policy or policies of public liability insurance throughout the term of this Permit, with an insurance company or companies of recognized responsibility and acceptable to the County, covering the bodily injury and property damage liability that Company has agreed by this Permit to hold the County, its Council members, directors, agents, officers, and employees harmless against and to indemnify. Company agrees to carry and keep in force such insurance with limits of liability for death, personal injury and property damage in an aggregate sum equal to not less than two million (\$2,000,000.00) Dollars. Said policy or policies shall name the County as an additional insured to the extent of the indemnification obligation hereunder. A certificate or certificates evidencing such insurance coverage shall be filed with the County prior to the date Company commences use of the Airport and said certificate or certificates shall provide that such insurance coverage will not be canceled, reduced or materially changed without at least thirty (30) days prior written notice to the County. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the County. If such coverage is canceled, reduced or materially changed, Company shall, within ten (10) days after receipt of written notice, file with the County a certificate or certificates showing that the required insurance has been reinstated or provided through another insurance company or companies.

9. **Non-Discrimination.**

A. Company warrants that it will undertake an affirmative action program in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment, contracting, or leasing activities covered in 14 CFR Part 152, Subpart E. Company assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Company further agrees that it will require that its covered sub-organizations provide assurances to Company that they similarly will undertake affirmative action programs and that they will require like assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E.

B. Company agrees to comply with any affirmative action plan or steps or equal employment opportunity required by 14 CFR part 152, subpart E, as part of the affirmative action program, and by any Federal, State, or local agency or court, including those resulting from a conciliation.

may be modified, amended or waived only by a written instrument executed by County and Company.

14. **Notice.** Whenever any notice is required by this Permit to be made, given or transmitted to the parties hereto, such notice shall be deemed to have been given if enclosed in an envelope with sufficient postage attached, and sent by certified mail and deposited in the United States Mail addressed to:

A. As to Horry County:

Horry County Department of Airports  
1100 Jetport Road  
Myrtle Beach, SC 29577  
Attention: Director of Airports

B. As to Company:

Skydive Myrtle Beach LLC  
P.O. Box 2478 3092 FALLS RIVER AVE.  
Wilmington, NC 28402 RALEIGH, NC 27614  
Attn: Aaron S. Holly

15. **No Possessory Interest in Premises.** Company is not granted any possessory interest or license in any premises at the Grand Strand Airport under this Permit.

IN WITNESS THEREOF, the parties have caused this Permit to be executed by their duly authorized officers the day and year first above-written.

ATTEST:

Cynthia Aye

HORRY COUNTY

By: [Signature]

Its: 8/22/2013

ATTEST:

SKYDIVE MYRTLE BEACH

By: Aaron Holly

Its: OWNER

## **EXHIBIT 2**

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
) Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL

Defendants.

JURY TRIAL DEMANDED

**AFFIDAVIT OF AARON HOLLY**

BEFORE ME, the undersigned authority, duly authorized by law to take oaths and acknowledgments, on this day personally appeared AARON HOLLY, to me well known, who being first duly sworn, deposes and says:

1. My name is Aaron Holly, I am over the age of 18, and I have personal knowledge of the matters contained herein.
2. Your Affiant owns Skydive Myrtle Beach, Inc. (SDMB).
3. On or about Saturday, June 7, 2014, two representatives from the Federal Aviation Administration (FAA) conducted its second compliance inspection of our business Skydive Myrtle Beach, Inc.
4. FAA inspects our equipment and aircraft annually.

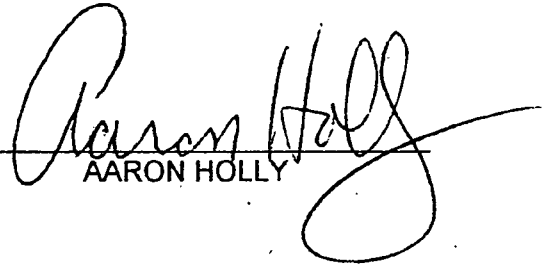
5. During this inspection, FAA inspectors revealed that its office had received multiple complaints and has an in-box "full of complaints", or words to that effect, from Grand Strand Airport (CRE) Aircraft Control Tower (Act).

6. CRE ACT is operated by Robinson Aviation, Inc., under contract with Defendants Horry County Department of Airports (HCDA).

7. Upon information and belief HCDA employees and CRE ACT employees maintain close communications on ground-to-air radio, email, or telephone lines observing SDMB parachute operations.

8. HCDA and ACT personnel actively report alleged violations of unpublished rules and file baseless complaints e.g., pedestrian crossing without ACT authorization, landing off field, etc., to the FAA causing hours of needless work on the part of SDMB employees.

9. Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.

  
AARON HOLLY

STATE OF SOUTH CAROLINA )  
 ) SS  
COUNTY OF HORRY )

BEFORE ME, the undersigned authority, personally appeared AARON HOLLY who is personally known to me or who presented personally known as identification and who swears and deposes that he has read the Affidavit and that the same is true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me this 14th day of June, 2014.



ROBERT G. EASTMAN, ESQ.  
Delaware Attorney ID 3356  
Authorized by Statute  
Uniform Law on Notarial Acts

EASTMAN & ASSOCIATES, LLC  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657  
Fax (843) 723-0005  
Attorney for Plaintiff  
Skydive Myrtle Beach, Inc.

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 14<sup>th</sup> day of June 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503



ROBERT G. EASTMAN  
SC Bar No. 75900  
Attorney for Plaintiff  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

## **EXHIBIT 3**



STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE MAGISTRATE'S COURT

Case No.

2014-CV-26-109-  
2444

HORRY COUNTY

Plaintiff,

vs.

SKYDIVE MYRTLE BEACH, INC.,

Defendants.

MOTION TO REMOVE

MYRTLE BEACH  
MAGISTRATE'S OFFICE  
2014 JUN 13 PM 1:18  
DISTRICT #6

TO: MICHAEL W. BATTLE, COUNSEL FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE, that the undersigned, Robert G. Eastman, as attorney for Defendant, Skydive Myrtle Beach, Inc., will move before the Magistrate, Christopher J. Arakas, or Presiding Judge or Magistrate of the Horry County Magistrate, located in Conway, South Carolina, not less than ten (10) days, or at such time as may be scheduled by the court, for an order dismissing the Plaintiff's Application for Ejectment against Defendant Skydive Myrtle Beach, Inc., pursuant to S.C Code Ann. § 22-3-30, on the grounds that Defendant filed an action on or about February 28, 2014, in the Court of Common Pleas, *Skydive Myrtle Beach, Inc. v. Horry County, et. al.* Case No. 2014-CP-26-1193, alleging *inter alia*, breach of contract with an existing lease in which Plaintiff has privity of contract, damages exceeding the jurisdictional limit of this Honorable Court, that this action in Common Pleas is active, Plaintiff, Horry County has accepted service and jurisdiction of Horry County Court of Common Pleas, the underlying facts are in dispute and rejected as characterized by Defendant Skydive Myrtle Beach, Inc., discovery is ongoing, and this matter should be removed to Horry County Court of Common Pleas.



**ROBERT G. EASTMAN**  
SC Bar No. 75900  
Attorney for Plaintiff  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657  
robertgeastman@msn.com

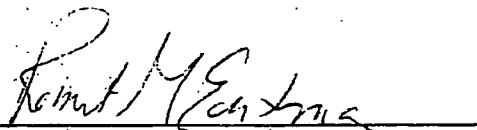
**ATTORNEY FOR DEFENDANT  
SKYDIVE MYRTLE BEACH, INC.**

Charleston, South Carolina  
June 13, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Plaintiff Horry County by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 13<sup>th</sup> day of June 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528



**ROBERT G. EASTMAN**  
SC Bar No. 75900  
Attorney for Plaintiff  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Request for Production to Horry County and Horry County Department of Airports

Record on Appeal -153-

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Record on Appeal -154-

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

**Case No. 2014-CP-26-1193**

REQUEST FOR PRODUCTION TO  
DEFENDANTS HORRY COUNTY AND  
HORRY COUNTY DEPARTMENT

## OF AIRPORTS FROM

PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).

) ) ) )

)

**TO THE DEFENDANT AND DEFENDANT'S ATTORNEY:**

**YOU WILL PLEASE TAKE NOTICE** that you are hereby requested, pursuant to Rules 26 and 34, SCRPC, to produce or to permit the undersigned, or someone acting on his behalf, to inspect and/or copy the following documents and materials and/or produce at issue within thirty (30) days from the date of request, at EASTMAN & ASSOCIATES, LLC., PO Box 180, Charleston, SC 29402, the following documents and things:

1. Any and all statements listed in response to Plaintiff's Interrogatory No. 1, served herewith.
2. Any and all photographs, plats, bills, records, invoices, contracts, sketches, emails, or other document or documents listed in response to Plaintiff's First Set of Interrogatories, served herewith.

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Record on Appeal -155-

3. Any and all documents referred to in Defendant's Answer to Plaintiff's Complaint.

4. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or documents which relate to Defendant's defenses to Plaintiff's claims against all Defendants.

5. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or other documents which Defendant intends to produce in the trial of the above captioned lawsuit.

6. Any and all reports, logs, requests for, conclusions drawn, proposed actions, actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on Grand Strand Airport (CRE) property.

7. Any and all lease agreements, operating permits and space use permits between Horry County or Horry County Department of Airports (HCDA) and any HCDA or Horry County Tenant on all Horry County owned real property or hanger space within the control of the HCDA, including but not limited to Conway, Loris Grand Strand (CRE) and Myrtle Beach International (MYR) airports.

8. Any and all policy or policies, rules, memoranda, or procedures relating to training tenants on HCDA policies, rules or regulations relating to all Horry County airport property located at the Conway, Loris, CRE, or MYR airports.

9. Any and all records relating to training operating personnel, tenants, staff, employees, independent contractors or guests pursuant to Title 14 Code of Federal Regulations, Parts 91 (Air Traffic and General Operating Rules) and 139 (Certification of Airports).

10. All Federal Aviation Administration (FAA) Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, HCDA Unusual Activity Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach filed pursuant to federal, state, local, Horry County, or HCDA statute, rule, regulation, or policy and their responses thereto.

11. HCDA Annual Audit Reports submitted to FAA pursuant to Single Audit Act of 1984 since 2010.

12. HCDA Annual Budget Reports for fiscal years 2010, 2011, 2012, 2013, and 2014.

13. HCDA Annual Reports filed with the FAA pursuant to Terms and Conditions of Accepting Airport Improvement Program Grants.

14. All contract or operating agreements between Horry County or HCDA and Robinson Aviation, Inc.

15. All notes, records, emails, memoranda of communication, between Robinson Aviation, Inc., its agents and employees, and Horry County or HCDA, its agents, and employees relating to Plaintiff.

16. Copies of any and all statements given by the Plaintiff, Defendant and/or any witnesses which are in the possession or control of Defendant or Defendant's counsel, whether written, recorded digitally, or on a tape recording, or otherwise.

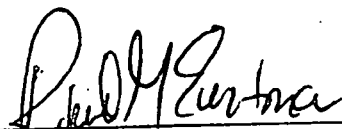
17. Any and all reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' reports.

18. Complete records of all actions in any Courts of law or equity which have been brought by HCDA or against HCDA within the past ten (10) years, including records of disposition thereof.

19. Any and all documents referenced or utilized in answering Plaintiff's First Set of Interrogatories to Defendant.

The foregoing request to produce for inspection and copying are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization of your behalf, which will augment or otherwise modify any responses given to the foregoing Request to Produce between the time the responses are served and the time of trial.

Eastman & Associates, LLC

  
Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 8 July, 2014

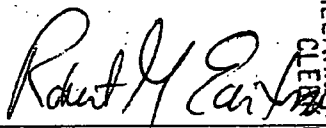


**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 8<sup>th</sup> day of July 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503

  
ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

HORRY COUNTY  
14 JUL 10 PM 1:41  
MELANIE HIGGINS-WARD  
CLERK OF COURT

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Record on Appeal -160-

Request for Production to H. Randolph Haldi

Record on Appeal -161-

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Record on Appeal -162-

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No. 2014-CP-26-1193

1) REQUEST FOR PRODUCTION TO  
2) DEFENDANT H. RANDOLPH HALDI FROM  
3) PLAINTIFF SKYDIVE MYRTLE BEACH,  
4) INC., (f/k/a Skydive Myrtle Beach, LLC).

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3. Any and all documents referred to in Defendant's Answer to Plaintiff's Complaint.

4. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or documents which relate to Defendant's defenses to Plaintiff's claims against all Defendants.

5. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or other documents which Defendant intends to produce in the trial of the above captioned lawsuit.

6. Any and all reports, logs, requests for, conclusions drawn, proposed actions, actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on Grand Strand Airport (CRE) property.

7. All Federal Aviation Administration (FAA) Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, Horry County Department of Airports (HCDA) Unusual Activity Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach filed pursuant to federal, state, local, Horry County, or HCDA statute, rule, regulation, or policy and their responses thereto.

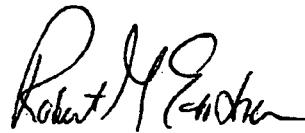
8. Copies of any and all statements given by the Plaintiff, Defendant and/or any witnesses which are in the possession or control of Defendant or Defendant's counsel, whether written, recorded digitally, or on a tape recording, or otherwise.

9. Any and all reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' reports.

10. Any and all documents referenced or utilized in answering Plaintiff's First Set of Interrogatories to Defendant.

The foregoing request to produce for inspection and copying are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization of your behalf, which will augment or otherwise modify any responses given to the foregoing Request to Produce between the time the responses are served and the time of trial.

Eastman & Associates, LLC



---

Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

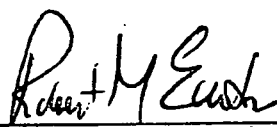
Dated: 8/16, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 8<sup>th</sup> day of July 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503

  
ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

HORRY COUNTY  
14 JUL 10 PM 1:41  
MELANIE HUGGINS-WARD  
CLERK OF COURT



Request for Production to Pat Apone

Record on Appeal -167-

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Record on Appeal -168-

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC., )  
(f/k/a Skydive Myrtle Beach, LLC), )

Plaintiff, )

vs. )

HORRY COUNTY, HORRY COUNTY )  
DEPARTMENT OF AIRPORTS, )  
H. RANDOLPH HALDI, PAT APONE, )  
TIM JACKSON and JACK TEAL )

Defendants. )

REQUEST FOR PRODUCTION TO  
DEFENDANT PAT APONE FROM  
PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).

HORRY COUNTY  
14 JUL 10 PM 1:41  
MELANIE HUGGINS-WARD  
CLERK OF COURT

TO THE DEFENDANT AND DEFENDANT'S ATTORNEY:

YOU WILL PLEASE TAKE NOTICE that you are hereby requested, pursuant to Rules 26 and 34, SCRCP, to produce or to permit the undersigned, or someone acting on his behalf, to inspect and/or copy the following documents and materials and/or produce at issue within thirty (30) days from the date of request, at EASTMAN & ASSOCIATES, LLC., PO Box 180, Charleston, SC 29402, the following documents and things:

1. Any and all statements listed in response to Plaintiff's Interrogatory No. 1, served herewith.
2. Any and all photographs, plats, bills, records, invoices, contracts, sketches, emails, or other document or documents listed in response to Plaintiff's First Set of Interrogatories, served herewith.

3. Any and all documents referred to in Defendant's Answer to Plaintiff's Complaint.

4. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or documents which relate to Defendant's defenses to Plaintiff's claims against all Defendants.

5. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or other documents which Defendant intends to produce in the trial of the above captioned lawsuit.

6. Any and all reports, logs, requests for, conclusions drawn, proposed actions, actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on Grand Strand Airport (CRE) property.

7. Any and all lease agreements, operating permits and space use permits between Horry County or Horry County Department of Airports (HCDA) and any HCDA or Horry County Tennant on all Horry County owned real property or hanger space within the control of the HCDA, including but not limited to Conway, Loris Grand Strand (CRE) and Myrtle Beach International (MYR) airports.

8. Any and all policy or policies, rules, memoranda, or procedures relating to training tenants on HCDA policies, rules or regulations relating to all Horry County airport property located at the Conway, Loris, CRE, or MYR airports.

9. Any and all records relating to training operating personnel, tenants, staff, employees, independent contractors or guests pursuant to Title 14 Code of Federal Regulations, Parts 91 (Air Traffic and General Operating Rules) and 139 (Certification of Airports).

10. All Federal Aviation Administration (FAA) Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, HCDA Unusual Activity Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach filed pursuant to federal, state, local, Horry County, or HCDA statute, rule, regulation, or policy and their responses thereto.

11. HCDA Annual Audit Reports submitted to FAA pursuant to Single Audit Act of 1984 since 2010.

12. HCDA Annual Budget Reports for fiscal years 2010, 2011, 2012, 2013, and 2014.

13. HCDA Annual Reports filed with the FAA pursuant to Terms and Conditions of Accepting Airport Improvement Program Grants.

14. All contract or operating agreements between Horry County or HCDA and Robinson Aviation, Inc.

15. All notes, records, emails, memoranda of communication, between Robinson Aviation, Inc., its agents and employees, and Horry County or HCDA, its agents, and employees relating to Plaintiff.

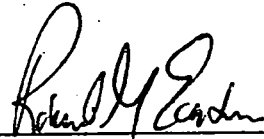
16. Copies of any and all statements given by the Plaintiff, Defendant and/or any witnesses which are in the possession or control of Defendant or Defendant's counsel, whether written, recorded digitally, or on a tape recording, or otherwise.

17. Any and all reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' reports.

18. Any and all documents referenced or utilized in answering Plaintiff's First Set of Interrogatories to Defendant.

The foregoing request to produce for inspection and copying are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization of your behalf, which will augment or otherwise modify any responses given to the foregoing Request to Produce between the time the responses are served and the time of trial.

Eastman & Associates, LLC



---

Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 8 Jul, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 8th day of April 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503



ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

HORRY COUNTY  
14 JUL 10 PM 1:41  
MELANIE HUBBINS-WARD  
CLERK OF COURT

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Record on Appeal -174-



Request for Production to Tim Jackson

Record on Appeal -175-

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Record on Appeal -176-

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

**Case No. 2014-CP-26-1193**

REQUEST FOR PRODUCTION TO  
DEFENDANT TIM JACKSON FROM  
PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).

**Plaintiff,**

**vs.**

**HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL**

**Defendants.**

HORRY COUNTY  
JUL 10 PM 1:41  
MELANIE HUGGINS-WARD  
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that you are hereby requested, pursuant to  
26 and 34, SCRPC, to produce or to permit the undersigned, or someone acting  
s behalf, to inspect and/or copy the following documents and materials and/or  
ce at issue within thirty (30) days from the date of request, at EASTMAN &  
CIATES, LLC., PO Box 180, Charleston, SC 29402, the following documents and

1. Any and all statements listed in response to Plaintiff's Interrogatory No. 1, served herewith.
2. Any and all photographs, plats, bills, records, invoices, contracts, sketches, emails, or other document or documents listed in response to Plaintiff's First Set of Interrogatories, served herewith.

3. Any and all documents referred to in Defendant's Answer to Plaintiff's Complaint.

4. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or documents which relate to Defendant's defenses to Plaintiff's claims against all Defendants.

5. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or other documents which Defendant intends to produce in the trial of the above captioned lawsuit.

6. Any and all reports, logs, requests for, conclusions drawn, proposed actions, actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on Grand Strand Airport (CRE) property.

7. Any and all policies, rules, memoranda, or procedures relating to training tenants on Horry County Department of Airports (HCDA) policies, rules or regulations relating to all Horry County airport property located at the Conway, Loris, CRE, or MYR airports.

8. Any and all records relating to training operating personnel, tenants, staff, employees, independent contractors or guests pursuant to Title 14 Code of Federal Regulations, Parts 91 (Air Traffic and General Operating Rules) and 139 (Certification of Airports).

9. All Federal Aviation Administration (FAA) Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, HCDA Unusual Activity Reports, or other written or electronic

reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach filed pursuant to federal, state, local, Horry County, HCDA statute, rule, regulation, or policy and responses thereto.

10. All notes, records, emails, memoranda of communication, between you and Robinson Aviation, Inc., its agents and employees relating to Plaintiff.

11. Copies of any and all statements given by the Plaintiff, Defendant and/or any witnesses which are in the possession or control of Defendant or Defendant's counsel, whether written, recorded digitally, or on a tape recording, or otherwise.

12. Any and all reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' reports.

13. Any and all documents referenced or utilized in answering Plaintiff's First Set of Interrogatories to Defendant.

The foregoing request to produce for inspection and copying are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization of your behalf, which will augment or otherwise modify any responses given to the foregoing Request to Produce between the time the responses are served and the time of trial.

---

Eastman & Associates, LLC

*(signature page to follow)*



Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

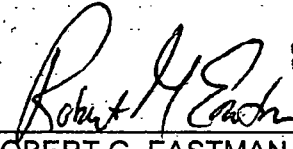
Dated: 5/11, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 5<sup>th</sup> day of July 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503

  
ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

14 JUL 10 PM 1:11  
MELANIE HUGGINS-WARD  
CLERK OF COURT  
HORRY COUNTY

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Record on Appeal -182-



Request for Production to Jack Teal

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Record on Appeal -183-

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Record on Appeal -184-

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
) Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL

Defendants.

REQUEST FOR PRODUCTION TO  
DEFENDANT JACK TEAL FROM  
PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).

HORRY COUNTY  
14 JUL 10 PM 1:41  
MELANIE HUGGINS-WARD  
CLERK OF COURT

TO THE DEFENDANT AND DEFENDANT'S ATTORNEY:

YOU WILL PLEASE TAKE NOTICE that you are hereby requested, pursuant to Rules 26 and 34, SCRCP, to produce or to permit the undersigned, or someone acting on his behalf, to inspect and/or copy the following documents and materials and/or produce at issue within thirty (30) days from the date of request, at EASTMAN & ASSOCIATES, LLC., PO Box 180, Charleston, SC 29402, the following documents and things:

1. Any and all statements listed in response to Plaintiff's Interrogatory No. 1, served herewith.
2. Any and all photographs, plats, bills, records, invoices, contracts, sketches, emails, or other document or documents listed in response to Plaintiff's First Set of Interrogatories, served herewith.

3. Any and all documents referred to in Defendant's Answer to Plaintiff's Complaint.

4. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or documents which relate to Defendant's defenses to Plaintiff's claims against all Defendants.

5. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or other documents which Defendant intends to produce in the trial of the above captioned lawsuit.

6. Any and all reports, logs, requests for, conclusions drawn, proposed actions, actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on Grand Strand Airport (CRE) property.

7. All Federal Aviation Administration (FAA) Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, Horry County Department of Airports (HCDA) Unusual Activity Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach filed by you pursuant to federal, state, local, Horry County, or HCDA statute, rule, regulation, or policy and responses thereto.

8. All notes, records, emails, memoranda of communication, between you and Robinson Aviation, Inc., its agents and employees, relating to Plaintiff.

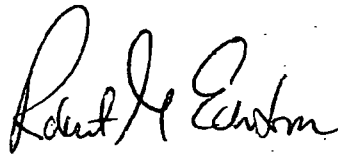
9. Copies of any and all statements given by the Plaintiff, Defendant and/or any witnesses which are in the possession or control of you or your counsel, whether written, recorded digitally, or on a tape recording, or otherwise.

10. Any and all reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' reports.

11. Any and all documents referenced or utilized in answering Plaintiff's First Set of Interrogatories to Defendant.

The foregoing request to produce for inspection and copying are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization of your behalf, which will augment or otherwise modify any responses given to the foregoing Request to Produce between the time the responses are served and the time of trial.

Eastman & Associates, LLC



---

Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 8/26, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 5<sup>th</sup> day of July 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503

  
ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

HORRY COUNTY  
14 JUL 10 PM 1:49  
MELANIE J. JACINS-WARD  
CLERK OF COURT

Interrogatories to Horry County and Horry County Department of Airports

Record on Appeal -189-

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Record on Appeal -190-



IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No. 2014-CP-26-1193

) INTERROGATORIES TO DEFENDANTS  
 ) Horry County and Horry County  
 ) Department of Airports from  
 ) Plaintiff Skydive Myrtle Beach,  
 ) Inc., (f/k/a Skydive Myrtle Beach, LLC).

**vs.**

**Defendants.**

HOKRY COUNTY  
JUL 10 PM 1:41  
MELANIE HUGGINS-WARD  
CLERK OF COURT

1. Give the names and addresses of persons known to Defendants or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

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192

3. List the names, current addresses, and phone numbers of any expert witnesses whom the Defendants propose to use as a witness in the trial of the case and for each state:

- a. the specialty or sub-specialty in which it is claimed they are an expert;
- b. the subject matter on which the expert is expected to testify;
- c. the substance of the facts and opinions to which the expert is expected to testify; and
- d. a summary of the grounds for each opinion.

4. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

5. If any Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. List all tickets, citations, administrative reports, investigation reports, recordings, photographs or video (whether electronic or physical) relating to any airport conduct, safety, or Federal Aviation Administration (FAA) breaches or violations that have warranted reports by the Defendants against Plaintiff since 2011.

7. List all inspections, requests for repair, reports of damage to, inquiry, information, invoice, estimates, reports, or communications, whether written, oral, or electronic, relating to repairs or the physical condition of Hangar 7 within the last seven (7) years.

8. List all repairs made to Hangar 7 within the last seven (7) years and for each state:

- a. date of request or notice of condition requiring repair;
- b. name, address, and phone number of individual or firm making such repair;  
and
- c. whether the repair was complete or additional repair was needed to meet all safety and federal, state, and local regulatory compliance, to ensure safety to the public and tenant.

9. List the name of each employee of the Defendant who has visited or worked at Hangar 7 in the last seven (7) years.

10. List the name of each employee of the Defendant involved in the lease negotiations with Plaintiff.

11. Identify the authority for "three readings" by Horry County Council as a prerequisite to a lease agreement between Horry County Department of Airports (HCDA) or Horry County and prospective tenants of, including but not limited to any airport or county property within the jurisdiction of Horry County or Horry County Department of Airports (Conway, Loris, Grand Strand (CRE) and Myrtle Beach International (MYR) airports).

12. List all lease agreements between Horry County and any Airport Tennant on all County owned, operated, or managed real property or hanger space within the control of the HDCA, including but not limited to Conway, Loris, CRE and MYR airports.

13. List any and all reports, logs, requests for, conclusions drawn, proposed actions, or actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on CRE property.

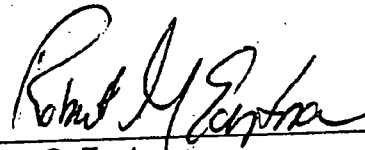
14. List all policies, rules, memoranda, or procedures relating to tenant conduct and training on all Horry County airport property for the last seven (7) years (including but not limited to all operational activity at Conway, Loris, CRE, and MYR airports).

15. List all FAA Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, Unusual Incident Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC filed pursuant to federal, state, or local laws, regulations, or policies and the responses thereto.

16. List all notes, records, emails, memoranda of communication, photographs, videos, or recordings between Robinson Aviation, Inc., its agents and employees, and Horry County Department of Airports, its agents, and employees relating to Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC.

The foregoing Interrogatories are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization on your behalf, which will augment or otherwise modify any responses given to the foregoing Interrogatories between the time the responses are served and the time of trial.

*(Signature page to follow)*



Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL  
Dated: 8 July, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 8<sup>th</sup> day of July 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503



ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

HORRY COUNTY  
14 JUL 10 PM 1:01  
MELANIE HUGGINS-WARD  
CLERK OF COURT

Interrogatories to H. Randolph Haldi

Record on Appeal -197-

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Record on Appeal -198-



IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

**Case No. 2014-CP-26-1193**

## INTERROGATORIES TO DEFENDANT H. RANDOLPH HALDI FROM

**PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).**

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3. List the names, current addresses, and phone numbers of any expert witnesses whom the Defendant propose to use as a witness in the trial of the case and for each state:

- a. the specialty or sub-specialty in which it is claimed they are an expert;
- b. the subject matter on which the expert is expected to testify;
- c. the substance of the facts and opinions to which the expert is expected to testify; and
- d. a summary of the grounds for each opinion.

4. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

5. If any Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. List all tickets, citations, administrative reports, investigation reports, recordings, photographs or video (whether electronic or physical) relating to any airport conduct, safety, or Federal Aviation Administration (FAA) breaches or violations that have warranted reports by the Defendants against Plaintiff you examined.

7. List the name of each individual interviewed by you relating to the allegations in your letter to Plaintiff dated, February 19, 2014.

8. List all lease agreements between Horry County and any Airport Tennant on all County owned, operated, or managed real property or hanger space within the

control of the HDCA, including but not limited to Conway, Loris, Grand Strand (CRE) and Myrtle Beach International (MYR) airports.

9. List any and all reports, logs, requests for, conclusions drawn, proposed actions, or actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on CRE property reviewed by you on or before February 19, 2014.

10. List all FAA Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, Unusual Incident Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC filed pursuant to federal, state, or local laws, regulations, or policies and the responses thereto reviewed by you on or before February 19, 2014 and responses thereto.

11. List all notes, records, emails, memoranda of communication, photographs, videos, or recordings between Robinson Aviation, Inc., its agents and employees, and Horry County Department of Airports, its agents, and employees relating to Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC reviewed by you on or before February 19, 2014 and responses thereto.

The foregoing Interrogatories are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization on your behalf, which will augment or otherwise modify any responses given to the foregoing Interrogatories between the time the responses are served and the time of trial.

*(signature page to follow)*



---

Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 8/6/14, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 8th day of July 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A  
PO Box 1931  
Florence, SC 29503



ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

HORRY COUNTY  
14 JUL 10 PM 1:41  
MELANIE HUGGINS-WARD  
CLERK OF COURT

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Record on Appeal -204-

Interrogatories to Pat Apone

Record on Appeal -205-

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Record on Appeal -206-



IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

**Case No. 2014-CP-26-1193**

INTERROGATORIES TO DEFENDANT  
PAT APONE FROM

) PLAINTIFF SKYDIVE MYRTLE BEACH,  
) INC., (f/k/a Skydive Myrtle Beach, LLC).

1

1

1

HOBBS COUNTY  
14 JUL 10 PM 1:41  
MELANIE HUGGINS - WARD  
CLERK OF COURT

**TO THE DEFENDANT AND DEFENDANT'S ATTORNEY:**

**YOU WILL PLEASE TAKE NOTICE** that you are hereby requested, pursuant to Rules 26 and 33, SCRCP, to answer in writing the following Interrogatories, within thirty (30) days from the date of service hereof upon you:

1. Give the names and addresses of persons known to Defendant or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of Defendant that relate to the claim or defense in the case.

3. List the names, current addresses, and phone numbers of any expert witnesses whom the Defendant propose to use as a witness in the trial of the case and for each state:

- a. the specialty or sub-specialty in which it is claimed they are an expert;
- b. the subject matter on which the expert is expected to testify;
- c. the substance of the facts and opinions to which the expert is expected to testify; and
- d. a summary of the grounds for each opinion.

4. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

5. If any Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. List all tickets, citations, administrative reports, investigation reports, recordings, photographs or video (whether electronic or physical) relating to any airport conduct, safety, or Federal Aviation Administration (FAA) breaches or violations that have warranted reports by the Defendants against Plaintiff since 2011.

7. List the name of each employee of the Defendant involved in the lease negotiations with Plaintiff.

8. List any and all reports, logs, requests for, conclusions drawn, proposed actions, or actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on CRE property made at your direction.

9. List all FAA Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, Unusual Incident Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC filed pursuant to federal, state, or local laws, regulations, or policies and the responses thereto.

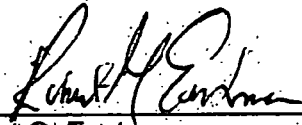
10. List all notes, records, emails, memoranda of communication, photographs, videos, or recordings between Robinson Aviation, Inc., its agents and employees, and Horry County Department of Airports, its agents, and employees relating to Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC.

11. Identify all HCDA employees directed to draft commercial tenant leases and the procedure for approving leases for HCDA.

12. Identify the HCDA employee responsible to present space use permits to Horry County Council for reading and approval.

The foregoing Interrogatories are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization on your behalf, which will augment or otherwise modify any responses given to the foregoing Interrogatories between the time the responses are served and the time of trial.

*(signature page to follow)*



Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

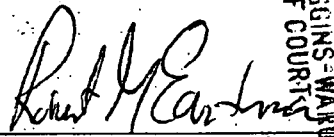
Merritt Island, Fla  
Dated: 8/1/14, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 8th day of July 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503



ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

HORRY COUNTY  
JUL 10 PM 1:41  
CLERK OF COURTS  
KELANIE HUGGINS-WARD

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**Record on Appeal -212-**

Interrogatories to Tim Jackson

Record on Appeal -213-

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Record on Appeal -214-



STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
) Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL

Defendants.

) INTERROGATORIES TO DEFENDANT  
) TIM JACKSON FROM  
) PLAINTIFF SKYDIVE MYRTLE BEACH,  
) INC., (f/k/a Skydive Myrtle Beach, LLC).

HORRY COUNTY  
14 JUL 10 PM 1:51  
MELANIE HUGGINS-WARD  
CLERK OF COURT

TO THE DEFENDANT AND DEFENDANT'S ATTORNEY:

YOU WILL PLEASE TAKE NOTICE that you are hereby requested, pursuant to Rules 26 and 33, SCRCP, to answer in writing the following Interrogatories; within thirty (30) days from the date of service hereof upon you:

1. Give the names and addresses of persons known to Defendant or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of Defendant that relate to the claim or defense in the case.

3. List the names, current addresses, and phone numbers of any expert witnesses whom the Defendant propose to use as a witness in the trial of the case and for each state:

- a. the specialty or sub-specialty in which it is claimed they are an expert;
- b. the subject matter on which the expert is expected to testify;
- c. the substance of the facts and opinions to which the expert is expected to testify; and
- d. a summary of the grounds for each opinion.

4. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

5. If any Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. List all tickets, citations, administrative reports, investigation reports, recordings, photographs or video (whether electronic or physical) relating to any airport conduct, safety, or Federal Aviation Administration (FAA) breaches or violations that have warranted reports by the Defendant against Plaintiff since 2011.

7. List all inspections, requests for repair, reports of damage to, inquiry, information, invoice, estimates, reports, or communications, whether written, oral, or electronic, relating to repairs or the physical condition of Hangar 7 received or filed by you to Defendant Horry County Department of Airports.

8. List the name of each employee of the Defendant who has visited or worked at Hangar 7 since 2011.

9. List all personnel that you directed to enter Hangar 7 without prior approval from Plaintiff.

10. List any and all reports, logs, requests for, conclusions drawn, proposed actions, or actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on CRE property.

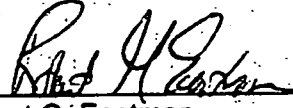
11. List each person to whom you filed any report or investigation relating to Plaintiff's non-emergency parachute operation or its occupancy of Hangar 7.

12. List all FAA Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, Unusual Incident Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC filed pursuant to federal, state, or local laws, regulations, or policies and the responses thereto.

13. List all notes, records, emails, memoranda of communication, photographs, videos, or recordings between Robinson Aviation, Inc., its agents and employees, and you relating to Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC.

The foregoing Interrogatories are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization on

your behalf, which will augment or otherwise modify any responses given to the foregoing Interrogatories between the time the responses are served and the time of trial.



Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL  
Dated: June, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 5th day of July 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tylee &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503

HORRY COUNTY  
JUL 10 PM 1:21  
CLERK OF COURT  
CLARENCE HUGGINS-WARD



ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

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Record on Appeal -220-

Interrogatories to Jack Teal

Record on Appeal -221-

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Record on Appeal -222-



IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

**Case No. 2014-CP-26-1193**

**SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),**

**Plaintiff,**

**vs.**

**HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL**

**Defendants.**

**INTERROGATORIES TO DEFENDANT  
JACK TEAL FROM  
PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).**

HOBBS COUNTY  
14 JUL 10 PM 1:41  
MELANIE HUGGINS-WARD  
CLERK OF COURT

**TO THE DEFENDANT AND DEFENDANT'S ATTORNEY:**

**YOU WILL PLEASE TAKE NOTICE** that you are hereby requested, pursuant to Rules 26 and 33, SCRCP, to answer in writing the following Interrogatories, within thirty (30) days from the date of service hereof upon you:

1. Give the names and addresses of persons known to Defendant or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of Defendant that relate to the claim or defense in the case.

3. List the names, current addresses, and phone numbers of any expert witnesses whom the Defendant proposes to use as a witness in the trial of the case and for each state:

- a. the specialty or sub-specialty in which it is claimed they are an expert;
- b. the subject matter on which the expert is expected to testify;
- c. the substance of the facts and opinions to which the expert is expected to testify; and
- d. a summary of the grounds for each opinion.

4. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

5. If any Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

6. List all tickets, citations, administrative reports, investigation reports, recordings, photographs or video (whether electronic or physical) relating to any airport conduct, safety, or Federal Aviation Administration (FAA) breaches or violations that have warranted reports by the Defendant against Plaintiff since 2011.

7. List all inspections, requests for repair, reports of damage to, inquiry, information, invoice, estimates, reports, or communications, whether written, oral, or electronic, relating to repairs or the physical condition of Hangar 7 within the last seven (7) years filed by you.

8. List any and all reports, logs, requests for, conclusions drawn, proposed actions, or actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on CRE property filed by you.

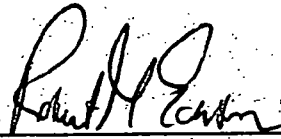
9. List the names and addresses of any Horry County or Horry County Department of Airports employee(s) authorizing you to enter Hangar 7, without the prior permission of Skydive Myrtle Beach, Inc.

10. List all FAA Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, Unusual Incident Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC filed pursuant to federal, state, or local laws, regulations, or policies filed by you and the responses thereto.

11. List all notes, records, emails, memoranda of communication, photographs, videos, or recordings between you and Robinson Aviation, Inc., its agents and employees, relating to Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC.

The foregoing Interrogatories are to be regarded as continuing and you are requested to provide, by way of supplementary responses thereto, additional information or documentation as may hereafter be obtained by you or any person or organization on your behalf, which will augment or otherwise modify any responses given to the foregoing Interrogatories between the time the responses are served and the time of trial.

*(signature page to follow)*



---

Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: Sept, 2014

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 5<sup>th</sup> day of July 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A  
PO Box 1931  
Florence, SC 29503



ROBERT G. EASTMAN  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

HORRY COUNTY  
14 JUL 10 PM 1:51  
MELANIE HUGGINS-WARD  
CLERK OF COURT

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Record on Appeal -228-

Request for Admissions to Horry County

Record on Appeal -229-

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Record on Appeal -230-



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
) Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL

Defendants.

REQUEST FOR ADMISSIONS TO  
DEFENDANT HORRY COUNTY FROM  
PLAINTIFF SKYDIVE MYRTLE BEACH  
INC., (f/k/a Skydive Myrtle Beach, LLC)

HORRY COUNTY  
JUL 14 PM 2:26  
JANIE HUGGINS-WARD  
CLERK OF COURT

**TO THE DEFENDANT AND DEFENDANT'S ATTORNEY:**

**YOU WILL PLEASE TAKE NOTICE** that you are hereby requested, pursuant to Rules 26 and 36, SCRCP, to admit the truth of the following matters and the genuineness of the documents described in the request within thirty (30) days from the date of request, at EASTMAN & ASSOCIATES, LLC., PO Box 180, Charleston, SC 29402:

1. Each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014, included investigation reports or other documents representing a verification of the facts alleged.
2. Horry County independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014.
3. You approve HCDA leases.

4. You have access to or maintain copies of all leases for Horry County and HCDA real property, either physically or electronically.

5. The leases or space use permits identified as Exhibits A, B, and C are approved County Form leases or space use permits.

6. Each HCDA long-term lease is on Horry County-approved form lease.

7. All HCDA long-term leases require Horry County approval.

8. All HCDA executed Space Use Permits are sent to Horry County Council for approval before the expiration of the term.

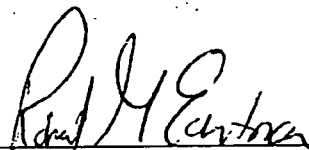
9. Exhibit A, was sent to Horry County Council for approval between August 2013, and January 2014.

10. Robinson Aviation, Inc. (CRE), is an independent contractor hired by HCDA as an Aircraft Traffic Control Tower operator at Grand Strand Airport in North Myrtle Beach, SC.

11. You learned Hangar 7, doors cannot be repaired before August 2013.

12. You learned clients and members of the public of Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB) routinely enter Hangar 7 before August 2013.

Eastman & Associates, LLC



Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 10 June, 2014

Request for Admissions to Horry County Department of Airports

Record on Appeal -233-

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Record on Appeal -234-

**COUNTY OF HORRY**

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No. 2014-CP-26-1193

**Plaintiff,**

**vs.**

HORRY COUNTY, HORRY COUNTY )  
DEPARTMENT OF AIRPORTS, )  
H. RANDOLPH HALDI, PAT APONE, )  
TIM JACKSON and JACK TEAL )

**Defendants.**

**REQUEST FOR ADMISSIONS TO  
DEFENDANT HORRY COUNTY  
DEPARTMENT OF AIRPORTS FROM  
PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).**

HORRY COUNTY  
JUL 14 PM 2:26  
MELANIE HUGGINS, WARD  
CLERK OF COURT

**TO THE DEFENDANT AND DEFENDANT'S ATTORNEY:**

**YOU WILL PLEASE TAKE NOTICE** that you are hereby requested, pursuant to Rules 26 and 36, SCRPC, to admit the truth of the following matters and the genuineness of the documents described in the request within thirty (30) days from the date of request, at EASTMAN & ASSOCIATES, LLC., PO Box 180, Charleston, SC 29402:

1. Each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014, included investigation reports or other documents representing a verification of the facts alleged.

2. You independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014.

3. You directed Chad Cox and Ed Dingley to observe and report Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB) parachute operations during several weekends.
4. You tentatively approve Horry County Department of Airports (HCDA) leases for submission and final approval by Horry County or Horry County Council for the county.
5. You have access to or maintain copies of all leases HCDA real property, either physically or electronically.
6. The leases or space use permits identified as Exhibits A, B, and C are approved Horry County or HCDA Form leases.
7. All HCDA long term leases require temporary space use permits before long-term leases are finalized.
8. Each HCDA long-term lease is on Horry County approved form lease.
9. All HCDA long-term leases require Horry County approval.
10. All HCDA executed Space Use Permits are sent to Horry County for approval before the expiration of the term.
11. Exhibit A, was sent to Horry County Council for approval between August 2013, and January 2014.
12. Robinson Aviation, Inc. (CRE), is an independent contractor hired by HCDA as an Aircraft Traffic Control Tower operator at Grand Strand Airport in North Myrtle Beach, SC.
13. CRE has been directed by HCDA to report all parachute landing locations to HCDA.

14. CRE was directed to report all parachute landing locations to HCDA after August 2013.

15. SDMB presented repair requests to HCDA.

16. HCDA repair requests from SDMB were processed.

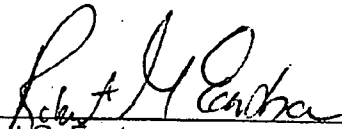
17. HCDA learned Hangar 7 doors cannot be repaired before August 2013.

18. HCDA learned Hangar 7 required electrical repairs before August 2013.

19. HCDA learned clients and members of the public of SDMB routinely enter Hangar 7 before August 2013.

20. Hangar 7 doors were temporarily repaired by Overhead Doors in 2013 and 2014.

Eastman & Associates, LLC



Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 10 June, 2014

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Record on Appeal -238-



Request for Admissions to H. Randolph Haldi

Record on Appeal -239-

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Record on Appeal -240-

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No. 2014-CP-26-1193

REQUEST FOR ADMISSIONS TO  
DEFENDANT H. RANDOLPH HALDI FROM  
PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).

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MORRIS COUNTY  
 JUL 14 PM 2:26  
 MELANIE HUGGINS-WARD  
 CLERK OF COURT

1. The letter attached as Exhibit D, dated February 19, 2014, is a true and correct copy of the letter you gave to Skydive Myrtle Beach, Inc. by hand at Myrtle Beach International Airport.
2. The letter attached as Exhibit D, dated February 19, 2014, was authored by you alone.

3. Each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014, included investigation reports or other documents representing a verification of the facts alleged.

4. You independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014.

5. You reviewed this letter with Horry County Administrator Chris Eldridge, Attorney Arrigo Carotti, and Director of Airports Pat Apone before delivery to Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB).

6. You directed Chad Cox and Ed Dingley, or other Horry County Department of Airports employees (HCDA) to observe and report on SDMB parachute operations during several weekends.

7. You or your office approve(s) HCDA leases for Horry County.

8. You have access to or maintain copies of all leases for Horry County and HCDA real property, either physically or electronically.

9. The leases identified as Exhibits A, B, and C are approved Horry County or HCDA Form leases.

10. Every HCDA long-term lease is on County approved form lease.

11. All HCDA long-term leases require Horry County approval.

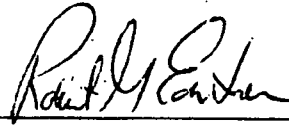
12. All HCDA executed Space Use Permits are sent to Horry County for approval before the expiration of the term.

13. The Space Use Permit in Exhibit A is a true and correct copy.

14. Exhibit A, was sent to Horry County Council for approval between August 2013, and January 2014.

*(signature page to follow)*

Eastman & Associates, LLC



---

Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 10/20/14, 2014

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Record on Appeal -244-

Request for Admissions to Pat Apone

Record on Appeal -245-

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Record on Appeal -246-



IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No. 2014-CP-26-1193

) REQUEST FOR ADMISSIONS TO  
 ) DEFENDANT PAT APONE FROM  
 ) PLAINTIFF SKYDIVE MYRTLE BEACH,  
 ) INC., (f/k/a Skydive Myrtle Beach, LLC).

**vs.**

**Defendants.**

HORRY COUNTY  
JUL 14 PM 2:26  
MELANIE HUGGINS-WARD  
CLERK OF COURT

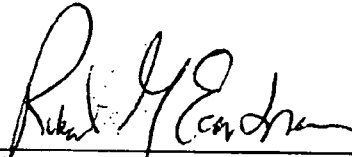
**YOU WILL PLEASE TAKE NOTICE** that you are hereby requested, pursuant to Rules 26 and 36, SCRPC, to admit the truth of the following matters and the genuineness of the documents described in the request within thirty (30) days from the date of request, at EASTMAN & ASSOCIATES, LLC., PO Box 180, Charleston, SC 29402:

2. You or Horry County Department of Airports (HCDA) independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014.

3. You directed Chad Cox and Ed Dingley to observe and report Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC, (SDMB) parachute operations during several weekends.
4. You or your office approve HCDA leases for HCDA.
5. You have access to or maintain copies of all leases HCDA real property, either physically or electronically.
6. The leases or space use permits identified as Exhibits A, B, and C are approved Horry County or HCDA Form leases.
7. All HCDA long term leases require temporary space use permits before long-term leases are finalized.
8. Each HCDA long-term lease utilizes Horry County approved form lease.
9. All HCDA long-term leases require Horry County approval.
10. All HCDA executed Space Use Permits are sent to Horry County for approval before the expiration of the term.
11. Exhibit A, was sent to Horry County Council for approval between August 2013, and January 2014.
12. Grand Strand Airport Air Traffic Control, Robinson Aviation, Inc., (CRE) is an independent contractor hired by HCDA.
13. CRE has been directed (by me) to report all parachute landing locations to HCDA.
14. CRE was directed to report all parachute landing locations to HCDA after August 2013.

15. SDMB presented repair requests relating to Hangar 7, Grand Strand Airport, to HCDA.
16. SDMB repair requests were completed by HCDA or its agents.
17. HCDA learned Hangar 7 doors cannot be repaired before August 2013.
18. HCDA learned Hangar 7 required electrical repairs before August 2013.
19. HCDA was first aware that SDMB clients and members of the public routinely enter Hangar 7 before August 2013.
20. Hangar 7 doors were temporarily repaired by Overhead Doors in 2013 and 2014.

Eastman & Associates, LLC



---

Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 10 JUL, 2014

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Record on Appeal -250-

Request for Admissions to Tim Jackson

Record on Appeal -251-

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Record on Appeal -252-

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No. 2014-CP-26-1193

**Case No. 2014-CP-26-1193**

REQUEST FOR ADMISSIONS TO  
DEFENDANT TIM JACKSON FROM  
PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).

**PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).**

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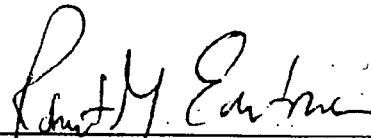
HORRY COUNTY  
JUL 14 PM 2:28  
MELANIE HUGGINS-WARD  
CLERK OF COURT

4. You have entered Hangar 7 without Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB) prior approval
5. You entered Hangar 7 with HCDA approval on February 5, 2014.
6. You entered Hangar 7 with HCDA approval on all other occasions.
7. Each HCDA long-term lease is on County approved form lease.
8. All HCDA long-term leases require Horry County approval.
9. All HCDA executed Space Use Permits are sent to Horry County for approval before the expiration of the term.
10. The Space Use Permit in Exhibit A is a true and correct copy.
11. Exhibit A, was sent to Horry County Council for approval between August 2013, and January 2014.
12. Robinson Aviation, Inc. (CRE), is an independent contractor hired by HCDA as an Aircraft Traffic Control Tower operator at Grand Strand Airport in North Myrtle Beach, SC and has been directed (by me) to report all parachute landing locations to HCDA.
13. CRE was directed to report all parachute landing locations to HCDA after August 2013.
14. SDMB presented repair requests to HCDA.
15. HCDA repair requests from SDMB were processed.
16. HCDA learned Hangar 7 doors cannot be repaired before August 2013.
17. HCDA learned Hangar 7 required electrical repairs before August 2013.
18. HCDA learned clients and members of the public of SDMB routinely enter Hangar 7 before August 2013.



19. Hangar 7 doors were temporarily repaired by Overhead Doors in 2013 and 2014.

Eastman & Associates, LLC



Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 10 JUL, 2014

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Request for Admissions to Jack Teal

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Record on Appeal -258-

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC., )  
(f/k/a Skydive Myrtle Beach, LLC), )

Plaintiff, )

vs. )

HORRY COUNTY, HORRY COUNTY )  
DEPARTMENT OF AIRPORTS, )  
H. RANDOLPH HALDI, PAT APONE, )  
TIM JACKSON and JACK TEAL )

Defendants. )

REQUEST FOR ADMISSIONS TO  
DEFENDANT JACK TEAL FROM  
PLAINTIFF SKYDIVE MYRTLE BEACH,  
INC., (f/k/a Skydive Myrtle Beach, LLC).

HORRY COUNTY  
14 JUL 14 PM 2:26  
MELANIE HUGGINS-WARD  
CLERK OF COURT

TO THE DEFENDANT AND DEFENDANT'S ATTORNEY:

YOU WILL PLEASE TAKE NOTICE that you are hereby requested, pursuant to Rules 26 and 36, SCRCP, to admit the truth of the following matters and the genuineness of the documents described in the request within thirty (30) days from the date of request, at EASTMAN & ASSOCIATES, LLC., PO Box 180, Charleston, SC 29402:

1. You entered Hangar 7 without permission from Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC, (SDMB) on or about February 5, 2014, during daylight hours.
2. You have entered Hangar 7 without SDMB prior approval
3. You entered Hangar 7 with Horry County Department of Airports (HCDA) approval on February 5, 2014.
4. You entered Hangar 7 with HCDA approval on all other occasions.

5. You signed for packages addressed to Hangar 7 and placed them in a storage closet in the Grand Strand Airport Fixed Base Operator (FBO) building without notice to SDMB.

Eastman & Associates, LLC



Robert G. Eastman  
Attorney for Plaintiff  
SC Attorney ID 75900  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

Merritt Island, FL

Dated: 10/01, 2014

Request for Admissions Exhibits A-D

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# **Exhibit A**

**Record on Appeal -263-**

CRE  
SDMB

GRAND STRAND AIRPORT  
SPACE USE PERMIT

C-17

THIS SPACE USE PERMIT ("Permit") is made and entered into as of the 18<sup>th</sup> day of ~~September~~ 2013, by and between HORRY COUNTY, SOUTH CAROLINA, ACTING BY AND THROUGH ITS DEPARTMENT OF AIRPORTS ("County") and SKYDIVE MYRTLE BEACH, LLC ("Company"), a business entity formed and existing under the laws of the State of North Carolina, and authorized to do business in Horry County, South Carolina.

WITNESSETH

WHEREAS, County is the operator of the Grand Strand Airport ("Airport"); and

WHEREAS, Company desires to occupy and use space in Hangar #7 located on Grand Strand Airport property, to conduct its "Skydiving and Non-Emergency Parachute Operation" business; and

WHEREAS, County is willing to permit Company to occupy and use space in Hangar #7 at Grand Strand Airport subject to the restrictions and terms provided herein:

NOW, THEREFORE, County and Company agree as follows:

1. Space Use. County hereby permits Company to occupy and use space in Hangar #7 consisting of approximately 6,800 square feet of space, together with any surrounding curtilage and parking ("Space") to be utilized for Company's "Skydiving and Non-Emergency Parachute Operation" business.
2. Term. The term of this Permit shall commence on August 1, 2013, and it shall continue in force and effect until January 31, 2014, but no longer than, six (6) months from the date of commencement unless otherwise earlier terminated. Prior to actual physical occupancy of Space by Company, either party may terminate this Permit for any reason upon the giving at least five (5) days written notice to the other party. After actual physical occupancy of the Space by Company, either party may terminate this Permit for any reason by giving at least thirty (30) days written notice to the other party. Any act of default hereunder, including without limitation failure to pay fees when due, shall terminate any right, license or permission for use of Space immediately upon event of default. This Permit shall not be renewed or extended, nor shall another such Permit be entered into between the same parties within twelve (12) months from the date of expiration of this Permit, without prior approval of Horry County Council.
3. Use. During the term hereof, Company shall occupy and use Space permitted by County solely in connection with its "Skydiving and Non-Emergency Parachute Operation" business at the Grand Strand Airport to the extent permitted by and fully in compliance with all applicable rules, regulations, and requirements of any Federal, State, City or County regulatory agency having jurisdiction over the Company's operations, subject to all terms and conditions of this agreement. Company's employees and customers will have reasonable access to and from and

Exhibit A

Record on Appeal -264-

the right to use and occupy Space for the sole purpose of engaging in or furthering Company's business. Company's employees must be well groomed and neat in appearance at all times. The Director of Airports must approve all signs and displays to be erected on the Space. Company shall fully comply with all safety and security policies/directives as established by the Airport.

4. Fee; Default Interest; Late Payment; Security Deposit.

- A. Fee. As the Fee for occupancy and use of the Space, Company shall pay County monthly payments of One Thousand Two Hundred & 00/100 (\$1,200.00) dollars per month. Company shall pay said amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof. In the event this Permit commences or terminates on other than the last day of any particular month, the Fee shall be prorated. County reserves the right to adjust such rate from time to time upon thirty (30) days written notice to the Company.
  - B. Default Interest. If Company shall default in its payment of Fees or other charges required to be paid pursuant to this Permit, such unpaid amounts shall bear interest from the date of default at the rate of 1 1/2 % per month.
  - C. Late Payment. Company acknowledges that the late payment by Company of any monthly installment of fees or other charges will cause County to incur certain costs and expenses not contemplated under this Permit, the exact amount of which are difficult or impracticable to determine. Therefore, if any such amount owing is not received by county within ten (10) days following the due date thereof, Company shall immediately pay to County a late charge equal to 1 1/2 % per month of such amount owing, in addition to any default interest which may be due as provided above. To the extent that any late charge provided for hereunder is determined to constitute interest, in no event shall such late charges, plus any other interest due on sums owed to County hereunder, ever exceed the maximum interest rate permitted by law.
  - D. Security Deposit. To assure the faithful performance of Company's obligations hereunder, Company shall remit a deposit in the form of cash, a letter of credit, or a payment bond issued by a reputable company licensed to issue such bonds in the State of South Carolina, in an amount equal to two (2) months of all applicable Fees to the County, which shall be remitted to the County prior to the Company's occupancy of the Space. In no event shall this security deposit be used as payment for any fee set forth in A, above, without the express written authorization of the Director of the Horry County Department of Airports.
5. Utilities and Services. County shall supply access to water, natural gas and electricity to the extent and capacity of the currently existing mains, lines, transformers, and panels. Company shall be solely responsible for the payment of all utility charges, telephone, trash removal, hazardous waste removal and other services used by Company in or on the Space, to include hook-up fees, advanced deposits or other such costs, regardless of whether the utility charge is

incurred in the name of Company or County. Company shall accept transfer of all applicable utility meters to Company's name when so tendered by County. In the event Company incurs any utility charge in the name of County, Company shall reimburse County for the full amount of the charge within five (5) calendar days of the date of written notice to Company of the amount of the charge. County assumes no responsibility for interruption of such services for any reason whatsoever. Company agrees to pay County One Hundred & 00/100 Dollars (\$100.00) per month as an additional fee, which may be adjusted periodically by the County for utilities. The utility fee is included in the monthly fee specified in paragraph 4A.

4. **Cleaning and Maintenance.** Company, at its sole cost and expense, shall keep the Space in a clean, neat and orderly condition at all times, and shall be responsible for maintaining all non-structural elements, including without limitation plumbing and HVAC. Company understands that it is responsible for the conduct of its guests, permittees, invitees, and licensees on the premises. Company shall not store any personal property exterior to the building on the unimproved premises associated with the building. Company is prohibited from taking any action which would negate or void the warranty on the roofs of any building within its Space.
5. **Alterations.** Company may not make any alteration, addition, or improvement to the Space without the prior written approval of the Director of Airports. Company shall submit a written request for permission to perform such alterations, which shall include a description of the improvements, a site plan, and any other documentation requested by the Director of Airports to demonstrate the suitability of the improvements or alterations. Unless County elects otherwise, all permanent alterations, additions, or improvements to the Space shall become the property of County upon termination. In the event County so elects, such permanent alterations shall be removed by Company at its own cost and expense prior to date of termination. Company shall repair any damage to Space caused by such removal at its own cost. All agreed upon improvements must be made in a workmanlike manner, in accordance with all applicable statutes, ordinances, rules and regulations, including without limitation applicable building codes, and may be made only upon written approval of County's department of Airports after review of complete plans for such improvements.
6. **Right of Entry.** County shall have the right to enter the Space at any time for any reasonable purpose.
9. **Compliance with Law.**
  - A. **General Compliance.** Company will comply with all applicable statutes, ordinances, rules, regulations, orders and directives of any governmental authority, including County, in its occupancy and use of the Space.
  - B. **Acceptance of Premises.** Company accepts the Space in its "as-is" condition and County has no obligation to improve, repair, restore, or alter any portion of the Space. Company acknowledges that neither County nor any agent, employee, director or official of County has made any representation or warranty, except as otherwise expressly provided in this Permit, with respect to the Space including, without limitation, any representation or warranty with

respect to the suitability or fitness of the building or any portion thereof for the conduct of Company's business.

C. Jurisdiction of Other Agencies. If Company's activities and operations shall in any way fall within the jurisdiction or regulatory authority of other governmental agencies, including without limitation the South Carolina Department of Health and Environmental Control ("DHEC"). Company must secure and produce evidence of such agency's final approval of such operations or occupancy of Space. If such activities and operations fall outside DHEC's jurisdiction, Company shall procure and submit to County the statement of an appropriately authorized DHEC representative to that effect. Company acknowledges that its representations and warranties pursuant to this subsection are material to the County's agreement to permit the Company's use of the Space.

10. Release and Indemnity.

- A. Release. Company hereby releases County from any liability to Company for any loss or damage to any property of Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, and for the death or injury of any officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees of Company, occasioned by theft, fire, acts of God, public enemy, injunction, riot, strike, insurrection, war, governmental body or authority including County, or any other matter beyond the control of County, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Space, or failure to make repairs, or for any cause whatsoever, except the sole negligence or willful misconduct of County.
- B. Indemnity. Company hereby releases and will defend, indemnify and hold harmless County, its departments, agencies, boards, commissions, committees, officers, directors, employees, and agents and assigns of any of them ("Indemnified Parties") from and against any and all liability, claims, penalties, fines, causes of action, suits, liens, losses, loss of use, damages, costs and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, be charged to or be recoverable from the Indemnified Parties by reason of:
- (1) any occurrence, in, upon, or at the Space, however caused, or any cause of action of any nature whatsoever, in law or equity, arising out of or incidental to this Permit or the use or occupancy of the Space; and/or
  - (2) any occupancy, use, or misuse of the Space, or the areas surrounding the Space, or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Space, by Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, including without limitation uses or misuses which may render the premises subject to the Americans with Disabilities Act in whole or in part; and/or
  - (3) any violation of any law, regulation or ordinance by Company or its employees,

officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees; and/or

(4) any occurrence arising in whole or in part out of the negligent act, or negligent failure to act, of Company, its officers, directors, employees, agents, customers, vendors, contractors or invitees.

The provisions of this section shall survive the expiration or early termination of this Permit.

C. **Environmental Indemnification** Company shall also indemnify, defend (with counsel satisfactory to County), and hold County, its departments, agencies, council, boards, commissions, committees, members, officers, directors, employees, and agents and assigns of any of them harmless from and against any and all loss, cost, damage, expense, claim, cause of action, judgment, penalty, fine or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling or presence of Hazardous Materials on, under, or about the Space or the Airport in violation of Company's obligations under this Permit ("Hazardous Materials Release"). This indemnification shall include, without limitation, (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Space, or any building included therein, or any other property at the Airport, (d) damages for the loss or restriction on use of the Space or the Airport, (e) sums paid in settlement of claims, (f) actual attorneys' fees, consulting fees, court costs, and expert fees, (g) the cost of any investigation of site conditions, (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authority or deemed necessary in County's reasonable judgment, (i) and any fines associated with Company's activities. County shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or action initiated in connection with the Hazardous Materials Release. County may also negotiate, defend, approve, and appeal any action taken or issued by any applicable governmental authority with regard to a Hazardous Materials Release. Any costs or expenses incurred by County for which Company is responsible under this Paragraph or this Permit and has indemnified County, (i) shall be paid to County on demand, during the term of this Permit as additional fees; and (ii) from and after the expiration or earlier termination of the Permit shall be reimbursed by Company on demand. Company's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Permit and shall bind Company's successors and assigns and inure to the benefit of County's successors and assigns.

11. **Insurance Required**. Company agrees to purchase and keep in force and maintain at all times during the term of this Permit, at its own expense, for the benefit of itself and County as additional named insured, a policy or policies of insurance, issued by an insurance company of generally recognized responsibility and licensed to do business in the State of South Carolina insuring against: (A) all liability for damage to or loss of Company's and its customer's property located on the Space; (B) liability for property damage and personal injury or death

arising from acts or omissions of Company, its agents and employees, (C) liability for any damage or harm resulting from any release of any hazardous material, as that term is defined by the United States Environmental Protection Agency, including, but not limited to, costs of remediation or mitigation of such release of hazardous materials, and (D) Workers Compensation claims to the limits required by the State of South Carolina. Said insurance shall be maintained throughout the term of this Permit with an insurance company acceptable to County with liability limits of at least \$2,000,000.00. The policy or policies shall contain a contractual liability endorsement expressly covering the indemnification provisions of Section 10 of this Permit. Company shall also purchase, at its own cost and in its sole discretion, such business interruption or other insurance to protect Company's interest in the event of major or minor damage or disaster to the Space.

This Permit shall not become effective until User shall provide to the HCDCA a copy of certificate(s) evidencing the above insurance. The certificate of insurance shall provide that no material alteration, reduction, or termination of coverage shall occur without the insurance carrier giving County at least thirty (30) days' written notice prior to such alteration, reduction, or termination.

12. **Subuse and Assignment.** Company shall not allow any other entity to occupy or use any of the Space without the written consent of the Horry County Department of Airports and no attempted assignment of this Permit by Company shall be effective.
13. **GOVERNING LAW.** THIS PERMIT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA. This Permit is not subject to alternative dispute resolution except where ordered by a court of competent jurisdiction or required by operation of law. The forum for any action or claim brought as a result of this contract shall be the Court of Common Pleas, Horry County, South Carolina.
14. **Entire Agreement/Amendment.** This Permit constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether written or oral. The provisions of the Permit may be modified, amended or waived only by a written instrument executed by County and Company.
15. **Termination of Permit.** In the event of termination of this Permit by either Party, Company shall promptly cause to be removed all personal property from the Space. Any property left on Airport premises by Company and remaining there fifteen days after the date on which Company either vacated the Space or should have vacated the Space according to the notice of termination sent by the terminating party, may be deemed, at the sole and exclusive option of the Airport, abandoned. Once so deemed, such property shall become the exclusive property of the County and may be disposed of as such in accordance with applicable statutes, ordinances, and County procedures. Alternatively, County may have such property removed, at Company's sole expense.
16. **Operating Permit.** The terms and conditions for both the "Space Use Permit" and the "Operating Permit" must be adhered to without default to either agreement. Default of any

terms or conditions by either agreement, constitutes default on both the "Space Use Permit" and the "Operating Permit".

17. Notices. Any notices required or sent hereunder shall be in writing and shall be sent as follows:

As to County:

Horry County Department of Airports  
11 00 Jetport Road  
Myrtle Beach, SC 29577  
ATTN: Director of Airports

As to Company:

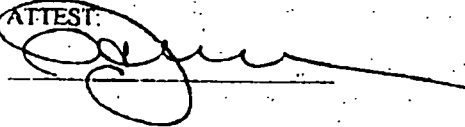
Skydive Myrtle Beach LLC  
P.O. Box 2478  
Wilmington, NC 28402  
Attn: Aaron S. Holly

Either party from time to time may change its address by written notice to the other party. Notices hereunder shall be deemed effective when delivered by hand delivery or overnight courier, or three days after deposit in the United States mail, first class, postage prepaid.

18. License. This Space Use Permit is intended by the parties, and shall be interpreted as, a license to use the designated Space, and shall under no circumstances be deemed or construed as a lease of real property, nor shall the relationship between the parties, as to the designated Space, be deemed that of landlord and tenant. This Permit is not a contract and does not give, assign, or otherwise transfer from the County to the Company any interest in real property, but is a mere license, revocable at the will of the County.

WITNESS the signatures of the parties as of the date first written above.

ATTEST:



HORRY COUNTY

By:

Its: AS ST. AIRPORT DIRECTOR

ATTEST:



SKYDIVE MYRTLE BEACH, LLC

By:

Its: owner

Exhibit A

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SKY DIVE MYRTLE BEACH LLC  
 BS (019) 792-0743  
 3032 FALLS RIVER AVE  
 FALMOUTH, NC 27514

1332  
 08-112531

DATE 8/9/13

PAY TO THE ORDER OF Myrtle Beach Aviation

Four thousand and eight hundred <sup>00</sup>/<sub>100</sub> \$ 4800.00  
 DOLLARS

FOR Rent

BBST  
 BRANCH BANKING AND TRUST COMPANY  
 100 BANK ST. BBT.COM

Arnon Huf

⑈00001332⑈ ⑆053101121⑆0005109990630⑈

CRE - SKY DIVER MB

THIS CHECK REFLECTS:

0 SECURITY DEPOSIT (2 MONTHS X \$1,200) = \$2,400.-  
 0 PERMIT FEE FOR AUGUST 2012 (\$1,200) = \$1,200.-  
 0 PERMIT FEE FOR SEPTEMBER 2012 (\$1,200) = \$1,200.-  
\$4,800.-

DEPOSIT TO CRE FOR SECURITY & PERMIT PAYMENTS  
 - END -

Exhibit A

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## CERTIFICATE OF INSURANCE

This certificate is given as a matter of information only and confers no rights upon the certificate holder.

Date: September 6, 2013

This is to certify to:

To Whom It May Concern

that the policy listed below is issued to the following for the period indicated by Lloyd's Underwriters:

Skydive Myrtle Beach, LLC  
2800 Terminal Street  
North Myrtle Beach, SC  
29582

### PREMISE LIABILITY INSURANCE

Policy No. BA-13-09-00067

Policy Period: from September 5, 2013 to September 5, 2014

#### Coverage's

#### Limits of Liability

General Aggregate Limit

\$ 2,000,000 Aggregate

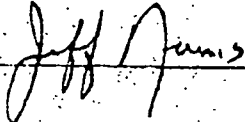
Each Occurrence Limit

\$ 1,000,000

### REMARKS

City of North Myrtle Beach and The City of Myrtle Beach and Myrtle Beach Aviation are included as additional insured's.

Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy. This certificate does not amend, extend or otherwise alter the coverage's afforded by the policy described herein. Limits may have been reduced by paid claims.

By: 

Certificate No. 1

Certificate Effective Date: 9-5-2013

AVIATION INSURANCE REPRESENTATIVES, INC.  
3975 VANNS TAVERN ROAD  
GAINESVILLE, GEORGIA 30506  
(678) 947-1780 FAX: (678) 947-1781

Exhibit A

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# **Exhibit B**

**Record on Appeal -273-**

**GRAND STRAND AIRPORT  
SPACE USE PERMIT**

THIS SPACE USE PERMIT ("Permit") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Horry County, South Carolina, acting by and through its Department of Airports ("County") and SKYDIVE MYRTLE BEACH, L.L.C. ("Company"), a business entity formed and existing under the laws of the State of South Carolina, and authorized to do business in Horry County, South Carolina.

**WITNESSETH**

WHEREAS, County is the operator of the Grand Strand Airport ("Airport" or "CRE"); and

WHEREAS, Company desires to occupy and use space in Hangar #7 located on Grand Strand Airport property, to conduct its "Skydiving and Non-Emergency Parachute Operation" business; and

WHEREAS, County is willing to permit Company to occupy and use space in Hangar #7 at Grand Strand Airport, subject to the restrictions and terms provided herein:

NOW, THEREFORE, County and Company agree as follows:

1. **Space Use.** County hereby permits Company to occupy and use space in Hangar #7 consisting of approximately 6,300 square feet of space, together with any surrounding curtilage and parking ("Space") to be utilized for Company's "Skydiving and Non-Emergency Parachute Operation" business.
2. **Term.** The term of this Permit shall commence on February 1, 2014, and it shall continue in force and effect until July 31, 2014, but no longer than six (6) months from the date of commencement unless otherwise earlier terminated. Prior to actual physical occupancy of Space by Company, either party may terminate this Permit for any reason upon the giving at least five (5) days written notice to the other party. After actual physical occupancy of the Space by Company, either party may terminate this Permit for any reason by giving at least thirty (30) days written notice to the other party. Any act of default hereunder, including without limitation failure to pay fees when due, shall terminate any right, license or permission for use of Space immediately upon event of default, and Company will vacate the premises within 24 hours after receiving written notice of such default. This Permit shall not be renewed or extended, nor shall another such Permit be entered into between the same parties within twelve (12) months from the date of expiration of this Permit, without prior approval of Horry County Council.
3. **Use.** During the term hereof, Company shall occupy and use Space permitted by County solely in connection with its "Skydiving and Non-Emergency Parachute Operation" business at the Grand Strand Airport to the extent permitted by and fully in compliance with all applicable rules, regulations, and requirements of any Federal, State, City or County.

regulatory agency having jurisdiction over the Company's operations, subject to all terms and conditions of this agreement. All skydiving operations will be made in compliance with that Letter of Agreement between the Horry County Department of Airports, Myrtle Beach ATCT, Strand FCT ATCT, and Skydive Myrtle Beach dated 5/11/12, and any subsequent amendments thereto, as agreed to in writing by all parties. Company's employees and customers will have reasonable access to and from and the right to use and occupy Space for the sole purpose of engaging in or furthering Company's business. Company's employees must be well groomed and neat in appearance at all times. The Director of Airports must approve all signs and displays to be erected on the Space. Company shall fully comply with all safety and security policies/directives as established by the Airport.

**RESTRICTIONS/LIMITATIONS:**

Only vehicles operated by staff members based at CRE and are employed *directly* for the Company and have been approved by the Director of Airports are permitted to park on the interior of the security fence (i.e. on the ramp). Company is limited to two (2) employee vehicles on Airport Property at one time and must park adjacent to the Space described in this Agreement.

Company will notify Horry County Department of Airports at least ten (10) days in advance of any events that could reasonably be expected to draw a crowd of more than twenty-five (25) people, and such events must be approved by the County Administrator or Director of Airports. Non-disclosure of any such planned event is a breach of this Agreement.

Overnight occupancy of any space described in this Agreement is strictly prohibited and will be considered an immediate violation of the Agreement.

No outside vendors will be allowed on Horry County property without the consent of the Horry County Department of Airports, and any allowed vendors will be subject to any restrictions, requirements, or locations that Horry County Department of Airports deems appropriate.

No flammable substances are permitted in any space subject to this Agreement, including but not limited to, propane grills and alcohol.

Company will not alter any portion of the Space, and any modifications previously made without authorization or approval of the Horry County Department of Airports will be removed and the premises returned to their condition prior to such modification. Any fees for repair of unapproved modifications or alterations will be the responsibility of the Company.

Company will abide by all HCDAA rules, policies, and procedures for Grand Strand Airport (CRE), as may be adopted or amended from time to time.

4. Fee; Default Interest; Late Payment; Security Deposit.

- A. Fee. As the fee for occupancy and use of the Space, Company shall pay County monthly payments of One Thousand Two Hundred and No/100 dollars (\$1,200.00) per month. Company shall pay said amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof. In the event this Permit commences or terminates on other than the last day of any particular month, the Fee shall be prorated. County reserves the right to adjust such rate from time to time upon thirty (30) days written notice to the Company.
- B. Gross Sales Percentage Fee. For each month during the term hereof and in addition to the monthly base occupancy and use of the Space fee, Company shall pay County, as additional fee, a monthly adjustment amount which shall be the difference, if any, between the monthly occupancy and use of the Space base fee to be paid during said month and twenty-four (24%) percent of the gross sales during each such occupancy month, whichever is greater.
- Gross sales include, without limitation, the gross selling price of all merchandise, services, concessions, or privileges that occur in whole or in part, on the Space, or as a result of activities on or associated with the Space, during the term of this Permit including the gross charges of all services to customers or patrons performed by Company or any other person, entity, firm or corporation, in, upon, or through any part of the Space during the term of this Permit and all sales/services that are subject to the South Carolina amusement, sales, use or excise tax set forth in Title 12 of the South Carolina Code of Laws, 1976, as amended. Notwithstanding anything herein to the contrary, gross sales shall not include the amount of any amusement, sales, use or excise taxes paid by Company during such term of this Permit.
- C. Payment of Fee and Gross Sales Percentage Fee. The Fee shall be paid in aid amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof from and after the Commencement Date. The Gross Sales Percentage Fee, if due, shall be paid within ten (10) days of each month following a calendar month occurring from and after the Commencement Date through the expiration or termination of this Agreement, at which time Lessee shall provide Lessor, without demand, a statement of Gross Receipts for the prior calendar month together with the amount, if any, by which the Gross Sales Percentage Fee due for the previous calendar year exceeds the Fee.
- D. Default Interest. If Company shall default in its payment of Fees or other charges required to be paid pursuant to this Permit, such unpaid amounts shall bear interest from the date of default at the rate of 1 1/2 % per month.
- E. Late Payment. Company acknowledges that the late payment by Company of any monthly installment of fees or other charges will cause County to incur certain costs and expenses not contemplated under this Permit, the exact amount of which are

difficult or impracticable to determine. Therefore, if any such amount owing is not received by county within ten (10) days following the due date thereof, Company shall immediately pay to County a late charge equal to 1 1/2 % per month of such amount owing, in addition to any default interest which may be due as provided above. To the extent that any late charge provided for hereunder is determined to constitute interest, in no event shall such late charges, plus any other interest due on sums owed to County hereunder, ever exceed the maximum interest rate permitted by law.

- F. Security Deposit. To assure the faithful performance of Company's obligations hereunder, Company shall remit a deposit in the form of cash, a letter of credit, or a payment bond issued by a reputable company licensed to issue such bonds in the State of South Carolina, in an amount equal to two (2) months' of all applicable Fees to the County, which shall be remitted to the County prior to the Company's occupancy of the Space. In no event shall this security deposit be used as payment for any fee set forth in A, above, without the express written authorization of the Director of the Horry County Department of Airports.

5. Utilities and Services. County shall supply access to water, natural gas and electricity to the extent and capacity of the currently existing mains, lines, transformers, and panels. Company shall be solely responsible for the payment of all utility charges, telephone, trash removal, hazardous waste removal and other services used by Company in or on the Space, to include hook-up fees, advanced deposits or other such costs, regardless of whether the utility charge is incurred in the name of Company or County. Company shall accept transfer of all applicable utility meters to Company's name when so tendered by County. In the event Company incurs any utility charge in the name of County, Company shall reimburse County for the full amount of the charge within five (5) calendar days of the date of written notice to Company of the amount of the charge. County assumes no responsibility for interruption of such services for any reason whatsoever. Company agrees to pay County One Hundred & 00/100 Dollars (\$100.00) per month as an additional fee, which may be adjusted periodically by the County for utilities. The utility fee is included in the monthly fee specified in paragraph 4A.

6. Cleaning and Maintenance. Company, at its sole cost and expense, shall keep the Space in a clean, neat and orderly condition at all times, and shall be responsible for maintaining all non-structural elements, including without limitation plumbing and HVAC. Company understands that it is responsible for the conduct of its guests, permittees, invitees, and licensees on the premises. Company shall not store any personal property exterior to the building on the unimproved premises associated with the building. Company is prohibited from taking any action which would negate or void the warranty on the roofs of any building within its Space.

7. Alterations. Company may not make any alteration, addition, or improvement to the Space without the prior written approval of the Director of Airports. Company shall submit a

written request for permission to perform such alterations, which shall include a description of the improvements, a site plan, and any other documentation requested by the Director of Airports to demonstrate the suitability of the improvements or alterations. Unless County elects otherwise, all permanent alterations, additions, or improvements to the Space shall become the property of County upon termination. In the event County so elects, such permanent alterations shall be removed by Company at its own cost and expense prior to date of termination. Company shall repair any damage to Space caused by such removal at its own cost. All agreed upon improvements must be made in a workmanlike manner, in accordance with all applicable statutes, ordinances, rules and regulations, including without limitation applicable building codes, and may be made only upon written approval of County's department of Airports after review of complete plans for such improvements.

8. Right of Entry. County shall have the right to enter the Space at any time for any reasonable purpose.

9. Compliance with Law.

A. General Compliance. Company will comply with all applicable statutes, ordinances, rules, regulations, orders and directives of any governmental authority, including County, in its occupancy and use of the Space.

B. Acceptance of Premises. Company accepts the Space in its "as-is" condition and County has no obligation to improve, repair, restore, or alter any portion of the Space. Company acknowledges that neither County nor any agent, employee, director or official of County has made any representation or warranty, except as otherwise expressly provided in this Permit, with respect to the Space including, without limitation, any representation or warranty with respect to the suitability or fitness of the building or any portion thereof for the conduct of Company's business. Important: Initial here to acknowledge \_\_\_\_\_

C. Jurisdiction of Other Agencies. If Company's activities and operations shall in any way fall within the jurisdiction or regulatory authority of other governmental agencies, including without limitation the South Carolina Department of Health and Environmental Control ("DHEC"), Company must secure and produce evidence of such agency's final approval of such operations or occupancy of Space. If such activities and operations fall outside DHEC's jurisdiction, Company shall procure and submit to County the statement of an appropriately authorized DHEC representative to that effect. Company acknowledges that its representations and warranties pursuant to this subsection are material to the County's agreement to permit the Company's use of the Space.

10. Release and Indemnity.

A. Release. Company hereby releases County from any liability to Company for any loss or damage to any property of Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, and for the death or injury of any officers, directors, employees, agents, customers, concessionaires, vendors,



contractors or invitees of Company, occasioned by theft, fire, acts of God, public enemy, injunction, riot, strike, insurrection, war, governmental body or authority, including County, or any other matter beyond the control of County, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Space, or failure to make repairs, or for any cause whatsoever, except the sole negligence or willful misconduct of County.

- B. Indemnity. Company hereby releases and will defend, indemnify and hold harmless County, its departments, agencies, boards, commissions, committees, officers, directors, employees, and agents and assigns of any of them ("Indemnified Parties") from and against any and all liability, claims, penalties, fines, causes of action, suits, liens, losses, loss of use, damages, costs and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, be charged to or be recoverable from the Indemnified Parties by reason of:

(1) any occurrence, in, upon, or at the Space, however caused, or any cause of action of any nature whatsoever, in law or equity, arising out of or incidental to this Permit or the use or occupancy of the Space; and/or

(2) any occupancy, use, or misuse of the Space, or the areas surrounding the Space, or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Space, by Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, including without limitation uses or misuses which may render the premises subject to the Americans with Disabilities Act in whole or in part; and/or

(3) any violation of any law, regulation or ordinance by Company or its employees, officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees; and/or

(4) any occurrence arising in whole or in part out of the negligent act, or negligent failure to act, of Company, its officers, directors, employees, agents, customers, vendors, contractors or invitees.

The provisions of this section shall survive the expiration or early termination of this Permit.

- C. Environmental Indemnification. Company shall also indemnify, defend (with counsel satisfactory to County), and hold County, its departments, agencies, council, boards, commissions, committees, members, officers, directors, employees and agents and assigns of any of them harmless from and against any and all loss, cost, damage, expense, claim, cause of action, judgment, penalty, fine or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling or presence of Hazardous Materials on, under, or about the Space or the

Airport in violation of Company's obligations under this Permit ("Hazardous Materials Release"). This indemnification shall include, without limitation, (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Space, or any building included therein, or any other property at the Airport, (d) damages for the loss or restriction on use of the Space or the Airport, (e) sums paid in settlement of claims, (f) actual attorneys' fees, consulting fees, court costs, and expert fees, (g) the cost of any investigation of site conditions, (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authority or deemed necessary in County's reasonable judgment, (i) and any fines associated with Company's activities. County shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or action initiated in connection with the Hazardous Materials Release. County may also negotiate, defend, approve, and appeal any action taken or issued by any applicable governmental authority with regard to a Hazardous Materials Release. Any costs or expenses incurred by County for which Company is responsible under this Paragraph or this Permit and has indemnified County, (i) shall be paid to County on demand, during the term of this Permit as additional fees; and (ii) from and after the expiration or earlier termination of the Permit shall be reimbursed by Company on demand. Company's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Permit and shall bind Company's successors and assignees and inure to the benefit of County's successors and assigns.

11. **Insurance Required.** Company agrees to purchase and keep in force and maintain at all times during the term of this Permit, at its own expense, for the benefit of itself and County as additional named insured, a policy or policies of insurance, issued by an insurance company of generally recognized responsibility and licensed to do business in the State of South Carolina insuring against: (A) all liability for damage to or loss of Company's and its customer's property located on the Space, (B) liability for property damage and personal injury or death arising from acts or omissions of Company, its agents and employees, (C) liability for any damage or harm resulting from any release of any hazardous material, as that term is defined by the United States Environmental Protection Agency, including, but not limited to, costs of remediation or mitigation of such release of hazardous materials, and (D) Workers Compensation claims to the limits required by the State of South Carolina. Said insurance shall be maintained throughout the term of this Permit with an insurance company acceptable to County with liability limits of at least \$2,000,000.00. The policy or policies shall contain a contractual liability endorsement expressly covering the indemnification provisions of Section 10 of this Permit. Company shall also purchase, at its own cost and in its sole discretion, such business interruption or other insurance to protect Company's interest in the event of major or minor damage or disaster to the Space.

This Permit shall not become effective until User shall provide to the HCD a copy of certificate(s) evidencing the above insurance. The certificate of insurance shall provide that no material alteration, reduction, or termination of coverage shall occur without the

insurance carrier giving County at least thirty (30) days' written notice prior to such alteration, reduction, or termination.

12. **Subuse and Assignment.** Company shall not allow any other entity to occupy or use any of the Space without the written consent of the Horry County Department of Airports and no attempted assignment of this Permit by Company shall be effective.
13. **GOVERNING LAW.** THIS Permit SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA. This Permit is not subject to alternative dispute resolution except where ordered by a court of competent jurisdiction or required by operation of law. The forum for any action or claim brought as a result of this contract shall be the Court of Common Pleas, Horry County, South Carolina.
14. **Entire Agreement/Amendment.** This Permit constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether written or oral. The provisions of the Permit may be modified, amended or waived only by a written instrument executed by County and Company.
15. **Termination of Permit.** In the event of termination of this Permit by either Party, Company shall promptly cause to be removed all personal property from the Space. Any property left on Airport premises by Company and remaining there after the date on which Company either vacated the Space or should have vacated the Space according to the notice of termination sent by the terminating party, may be deemed, at the sole and exclusive option of the Airport, abandoned. Once so deemed, such property shall become the exclusive property of the County and may be disposed of as such in accordance with applicable statutes, ordinances, and County procedures. Alternatively, County may have such property removed, at Company's sole expense.
16. **Operating Permit.** The terms and conditions for both the "Space Use Permit" and the "Operating Permit" must be adhered to without default to either agreement. Default of any terms or conditions by either agreement, constitutes default on both the "Space Use Permit" and the "Operating Permit".
17. **Notices.** Any notices required or sent hereunder shall be in writing and shall be sent as follows:

As to County:

Horry County Department of Airports  
1100 Jetport Road  
Myrtle Beach, SC 29577  
ATTN: Director of Airports

As to Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party from time to time may change its address by written notice to the other party. Notices hereunder shall be deemed effective when delivered by hand delivery or overnight courier, or three days after deposit in the United States mail, first class, postage prepaid.

18. License. This Space Use Permit is intended by the parties, and shall be interpreted as, a license to use the designated Space, and shall under no circumstances be deemed or construed as a lease of real property, nor shall the relationship between the parties, as to the designated Space, be deemed that of landlord and tenant. This Permit is not a contract and does not give, assign, or otherwise transfer from the County to the Company any interest in real property, but is a mere license, revocable at the will of the County.

WITNESS the signatures of the parties as of the date first written above.

ATTEST:

\_\_\_\_\_

HORRY COUNTY

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

SKYDIVE MYRTLE BEACH, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

9

Exhibit B

9

Record on Appeal -282-

# **Exhibit C**

**Record on Appeal -283-**

**GRAND STRAND AIRPORT  
SPACE USE PERMIT**

**THIS SPACE USE PERMIT** ("Permit") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2014, by and between HORRY COUNTY, SOUTH CAROLINA, ACTING BY AND THROUGH ITS DEPARTMENT OF AIRPORTS ("County") and SKYDIVE MYRTLE BEACH, LLC ("Company"), a business entity formed and existing under the laws of the State of South Carolina, and authorized to do business in Horry County, South Carolina.

**WITNESSETH**

**WHEREAS**, County is the operator of the Grand Strand Airport ("Airport"); and

**WHEREAS**, Company desires to occupy and use space in Hangar #7 located on Grand Strand Airport property, to conduct its "Skydiving and Non-Emergency Parachute Operation" business; and

**WHEREAS**, County is willing to permit Company to occupy and use space in Hangar #7 at Grand Strand Airport, subject to the restrictions and terms provided herein:

**NOW, THEREFORE**, County and Company agree as follows:

1. **Space Use.** County hereby permits Company to occupy and use space in Hangar #7 consisting of approximately 6,800 square feet of space, together with any surrounding curtilage and parking ("Space") to be utilized for Company's "Skydiving and Non-Emergency Parachute Operation" business.
2. **Term.** The term of this Permit shall commence on February 1, 2014, and it shall continue in force and effect until July 31, 2014, but no longer than, six (6) months from the date of commencement unless otherwise earlier terminated. Prior to actual physical occupancy of Space by Company, either party may terminate this Permit for any reason upon the giving at least five (5) days written notice to the other party. After actual physical occupancy of the Space by Company, either party may terminate this Permit for any reason by giving at least thirty (30) days written notice to the other party. Any act of default hereunder, including without limitation failure to pay fees when due, shall terminate any right, license or permission for use of Space immediately upon event of default. This Permit shall not be renewed or extended, nor shall another such Permit be entered into between the same parties within twelve (12) months from the date of expiration of this Permit, without prior approval of Horry County Council.
3. **Use.** During the term hereof, Company shall occupy and use Space permitted by County solely in connection with its "Skydiving and Non-Emergency Parachute Operation" business at the Grand Strand Airport to the extent permitted by and fully in compliance with all applicable rules, regulations, and requirements of any Federal, State, City or County regulatory agency having jurisdiction over the Company's operations, subject to all terms

and conditions of this agreement. Company's employees and customers will have reasonable access to and from and the right to use and occupy Space for the sole purpose of engaging in or furthering Company's business. Company's employees must be well groomed and neat in appearance at all times. The Director of Airports must approve all signs and displays to be erected on the Space. Company shall fully comply with all safety and security policies/directives as established by the Airport.

4. **Fee; Default Interest; Late Payment; Security Deposit.**

A. **Fee.** As the Fee for occupancy and use of the Space, Company shall pay County monthly payments of One Thousand Two Hundred and No/100 dollars (\$1,200.00) per month. Company shall pay said amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof. In the event this Permit commences or terminates on other than the last day of any particular month, the Fee shall be prorated. County reserves the right to adjust such rate from time to time upon thirty (30) days written notice to the Company.

B. **Gross Sales Percentage Fee.** For each month during the term hereof and in addition to the monthly base occupancy and use of the Space fee, Company shall pay County, as additional fee, a monthly adjustment amount which shall be the difference, if any, between the monthly occupancy and use of the Space base fee to be paid during said month and twenty-four (24%) percent of the gross sales during each such occupancy month, whichever is greater.

Gross sales include, without limitation, the gross selling price of all merchandise, services, concessions, or privileges that occur in whole or in part, on the Space, or as a result of activities on or associated with the Space, during the term of this Permit including the gross charges of all services to customers or patrons performed by Company or any other person, entity, firm or corporation, in, upon, or through any part of the Space during the term of this Permit and all sales/services that are subject to the South Carolina amusement, sales, use or excise tax set forth in Title 12 of the South Carolina Code of Laws, 1976, as amended. Notwithstanding anything herein to the contrary, gross sales shall not include the amount of any amusement, sales, use or excise taxes paid by Company during such term of this Permit.

C. **Payment of Fee and Gross Sales Percentage Fee.** The Fee shall be paid in aid amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof from and after the Commencement Date. The Gross Sales Percentage Fee, if due, shall be paid within ten (10) days of each month following a calendar month occurring from and after the Commencement Date through the expiration or termination of this Agreement, at which time Lessee shall provide Lessor, without demand, a statement of Gross Receipts for the prior calendar month together with the amount, if any, by which the Gross Sales Percentage Fee due for the previous calendar year exceeds the Fee.

- D. Default Interest. If Company shall default in its payment of Fees or other charges required to be paid pursuant to this Permit, such unpaid amounts shall bear interest from the date of default at the rate of 1 ½ % per month.
- E. Late Payment. Company acknowledges that the late payment by Company of any monthly installment of fees or other charges will cause County to incur certain costs and expenses not contemplated under this Permit, the exact amount of which are difficult or impracticable to determine. Therefore, if any such amount owing is not received by county within ten (10) days following the due date thereof, Company shall immediately pay to County a late charge equal to 1 ½ % per month of such amount owing, in addition to any default interest which may be due as provided above. To the extent that any late charge provided for hereunder is determined to constitute interest, in no event shall such late charges, plus any other interest due on sums owed to County hereunder, ever exceed the maximum interest rate permitted by law.
- F. Security Deposit. To assure the faithful performance of Company's obligations hereunder, Company shall remit a deposit in the form of cash, a letter of credit, or a payment bond issued by a reputable company licensed to issue such bonds in the State of South Carolina, in an amount equal to two (2) months of all applicable Fees to the County, which shall be remitted to the County prior to the Company's occupancy of the Space. In no event shall this security deposit be used as payment for any fee set forth in A. above, without the express written authorization of the Director of the Horry County Department of Airports.
5. Utilities and Services. County shall supply access to water, natural gas and electricity to the extent and capacity of the currently existing mains, lines, transformers, and panels. Company shall be solely responsible for the payment of all utility charges, telephone, trash removal, hazardous waste removal and other services used by Company in or on the Space, to include hook-up fees, advanced deposits or other such costs, regardless of whether the utility charge is incurred in the name of Company or County. Company shall accept transfer of all applicable utility meters to Company's name when so tendered by County. In the event Company incurs any utility charge in the name of County, Company shall reimburse County for the full amount of the charge within five (5) calendar days of the date of written notice to Company of the amount of the charge. County assumes no responsibility for interruption of such services for any reason whatsoever.
6. Cleaning and Maintenance. Company, at its sole cost and expense, shall keep the Space in a clean, neat and orderly condition at all times, and shall be responsible for maintaining all non-structural elements, including without limitation plumbing and HVAC. Company understands that it is responsible for the conduct of its guests, permittees, invitees, and licensees on the premises. Company shall not store any personal property exterior to the building on the unimproved premises associated with the building. Company is prohibited from taking any action which would negate or void the warranty on the



roofs of any building within its Space.

7. **Alterations.** Company may not make any alteration, addition, or improvement to the Space without the prior written approval of the Director of Airports. Company shall submit a written request for permission to perform such alterations, which shall include a description of the improvements, a site plan, and any other documentation requested by the Director of Airports to demonstrate the suitability of the improvements or alterations. Unless County elects otherwise, all permanent alterations, additions, or improvements to the Space shall become the property of County upon termination. In the event County so elects, such permanent alterations shall be removed by Company at its own cost and expense prior to date of termination. Company shall repair any damage to Space caused by such removal at its own cost. All agreed upon improvements must be made in a workmanlike manner, in accordance with all applicable statutes, ordinances, rules and regulations, including without limitation applicable building codes, and may be made only upon written approval of County's department of Airports after review of complete plans for such improvements.
8. **Right of Entry.** County shall have the right to enter the Space at any time for any reasonable purpose.
9. **Compliance with Law.**
  - A. **General Compliance.** Company will comply with all applicable statutes, ordinances, rules, regulations, orders and directives of any governmental authority, including County, in its occupancy and use of the Space.
  - B. **Acceptance of Premises.** Company accepts the Space in its "as-is" condition and County has no obligation to improve, repair, restore, or alter any portion of the Space. Company acknowledges that neither County nor any agent, employee, director or official of County has made any representation or warranty, except as otherwise expressly provided in this Permit, with respect to the Space including, without limitation, any representation or warranty with respect to the suitability or fitness of the building or any portion thereof for the conduct of Company's business. Important: Initial here to acknowledge \_\_\_\_\_
  - C. **Jurisdiction of Other Agencies.** If Company's activities and operations shall in any way fall within the jurisdiction or regulatory authority of other governmental agencies, including without limitation the South Carolina Department of Health and Environmental Control ("DHEC"), Company must secure and produce evidence of such agency's final approval of such operations or occupancy of Space. If such activities and operations fall outside DHEC's jurisdiction, Company shall procure and submit to County the statement of an appropriately authorized DHEC representative to that effect. Company acknowledges that its representations and warranties pursuant to this subsection are material to the County's agreement to permit the Company's use of the Space.
10. **Release and Indemnity.**

A. Release. Company hereby releases County from any liability to Company for any loss or damage to any property of Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, and for the death or injury of any officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees of Company, occasioned by theft, fire, acts of God, public enemy, injunction, riot, strike, insurrection, war, governmental body or authority including County, or any other matter beyond the control of County, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Space, or failure to make repairs, or for any cause whatsoever, except the sole negligence or willful misconduct of County.

B. Indemnity. Company hereby releases and will defend, indemnify and hold harmless County, its departments, agencies, boards, commissions, committees, officers, directors, employees, and agents and assigns of any of them ("Indemnified Parties") from and against any and all liability, claims, penalties, fines, causes of action, suits, liens, losses, loss of use, damages, costs and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, be charged to or be recoverable from the Indemnified Parties by reason of:

(1) any occurrence, in, upon, or at the Space, however caused, or any cause of action of any nature whatsoever, in law or equity, arising out of or incidental to this Permit or the use or occupancy of the Space; and/or

(2) any occupancy, use, or misuse of the Space, or the areas surrounding the Space, or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Space, by Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, including without limitation uses or misuses which may render the premises subject to the Americans with Disabilities Act in whole or in part; and/or

(3) any violation of any law, regulation or ordinance by Company or its employees, officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees; and/or

(4) any occurrence arising in whole or in part out of the negligent act, or negligent failure to act, of Company, its officers, directors, employees, agents, customers, vendors, contractors or invitees.

The provisions of this section shall survive the expiration or early termination of this Permit.

C. Environmental Indemnification. Company shall also indemnify, defend (with counsel satisfactory to County), and hold County, its departments, agencies, council, boards, commissions, committees, members, officers, directors, employees,

and agents and assigns of any of them harmless from and against any and all loss, cost, damage, expense, claim, cause of action, judgment, penalty, fine or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling or presence of Hazardous Materials on, under, or about the Space or the Airport in violation of Company's obligations under this Permit ("Hazardous Materials Release"). This indemnification shall include, without limitation, (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Space, or any building included therein, or any other property at the Airport, (d) damages for the loss or restriction on use of the Space or the Airport, (e) sums paid in settlement of claims, (f) actual attorneys' fees, consulting fees, court costs, and expert fees, (g) the cost of any investigation of site conditions, (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authority or deemed necessary in County's reasonable judgment, (i) and any fines associated with Company's activities. County shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or action initiated in connection with the Hazardous Materials Release. County may also negotiate, defend, approve, and appeal any action taken or issued by any applicable governmental authority with regard to a Hazardous Materials Release. Any costs or expenses incurred by County for which Company is responsible under this Paragraph or this Permit and has indemnified County, (i) shall be paid to County on demand, during the term of this Permit as additional fees; and (ii) from and after the expiration or earlier termination of the Permit shall be reimbursed by Company on demand. Company's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Permit and shall bind Company's successors and assignees and inure to the benefit of County's successors and assigns:

11. **Insurance Required.** Company agrees to purchase and keep in force and maintain at all times during the term of this Permit, at its own expense, for the benefit of itself and County as additional named insured, a policy or policies of insurance, issued by an insurance company of generally recognized responsibility and licensed to do business in the State of South Carolina insuring against: (A) all liability for damage to or loss of Company's and its customer's property located on the Space, (B) liability for property damage and personal injury or death arising from acts or omissions of Company, its agents and employees, (C) liability for any damage or harm resulting from any release of any hazardous material, as that term is defined by the United States Environmental Protection Agency, including, but not limited to, costs of remediation or mitigation of such release of hazardous materials, and (D) Workers Compensation claims to the limits required by the State of South Carolina. Said insurance shall be maintained throughout the term of this Permit with an insurance company acceptable to County with liability limits of at least \$2,000,000.00 per occurrence. The policy or policies shall contain a contractual liability endorsement expressly covering the indemnification provisions of Section 10 of this Permit. Company shall also purchase, at its own cost and in its sole discretion, such business interruption or other insurance to protect Company's interest in the event of major or minor damage or disaster to the Space.

This Permit shall not become effective until User shall provide to the HCDA a copy of certificate(s) evidencing the above insurance. The certificate of insurance shall provide that no material alteration, reduction, or termination of coverage shall occur without the insurance carrier giving County at least thirty (30) days' written notice prior to such alteration, reduction, or termination.

12. **Subuse and Assignment.** Company shall not allow any other entity to occupy or use any of the Space without the written consent of the Horry County Department of Airports and no attempted assignment of this Permit by Company shall be effective.
13. **GOVERNING LAW.** THIS Permit SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA. This Permit is not subject to alternative dispute resolution except where ordered by a court of competent jurisdiction or required by operation of law. The forum for any action or claim brought as a result of this contract shall be the Court of Common Pleas, Horry County, South Carolina.
14. **Entire Agreement/Amendment.** This Permit constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether written or oral. The provisions of the Permit may be modified, amended or waived only by a written instrument executed by County and Company.
15. **Termination of Permit.** In the event of termination of this Permit by either Party, Company shall promptly cause to be removed all personal property from the Space. Any property left on Airport premises by Company and remaining there fifteen days after the date on which Company either vacated the Space or should have vacated the Space according to the notice of termination sent by the terminating party, may be deemed, at the sole and exclusive option of the Airport, abandoned. Once so deemed, such property shall become the exclusive property of the County and may be disposed of as such in accordance with applicable statutes, ordinances, and County procedures. Alternatively, County may have such property removed, at Company's sole expense.
16. **Operating Permit.** The terms and conditions for both the "Space Use Permit" and the "Operating Permit" must be adhered to without default to either agreement. Default of any terms or conditions by either agreement, constitutes default on both the "Space Use Permit" and the "Operating Permit".
17. **Notices.** Any notices required or sent hereunder shall be in writing and shall be sent as follows:

As to County:

Horry County Department of Airports  
1100 Jetport Road  
Myrtle Beach, SC 29577

ATTN: Director of Airports

As to Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party from time to time may change its address by written notice to the other party. Notices hereunder shall be deemed effective when delivered by hand delivery or overnight courier, or three days after deposit in the United States mail, first class, postage prepaid.

18. **License.** This Space Use Permit is intended by the parties, and shall be interpreted as, a license to use the designated Space, and shall under no circumstances be deemed or construed as a lease of real property, nor shall the relationship between the parties, as to the designated Space, be deemed that of landlord and tenant. This Permit is not a contract and does not give, assign, or otherwise transfer from the County to the Company any interest in real property, but is a mere license, revocable at the will of the County.

WITNESS the signatures of the parties as of the date first written above.

ATTEST:

\_\_\_\_\_

HORRY COUNTY

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

SKYDIVE MYRTLE BEACH, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

# Exhibit D

Record on Appeal -292-

**HORRY COUNTY  
ATTORNEY'S OFFICE**

H. Randolph Haldi  
Deputy County Attorney/  
Property Manager  
1301 Second Avenue  
Conway, South Carolina 29526  
HaldiR@HorryCounty.org



Post Office Box 1236  
Conway, South Carolina  
29528-1236

Phone: (843) 915-5270  
Fax: (843) 915-6270

*Via Hand Delivery, First Class Mail, and Email transmission:*  
Aaron Holly: [aholly@me.com](mailto:aholly@me.com)  
Robert G. Eastman: [robertgeastman@aol.com](mailto:robertgeastman@aol.com)  
Skydive Myrtle Beach: [mbskydivinga@aol.com](mailto:mbskydivinga@aol.com)

February 19, 2014

Skydive Myrtle Beach, LLC  
Attn: Mr. Aaron S. Holly  
P.O. Box 2478  
Wilmington, NC 28402

**Re: Space Use Permit  
Grand Strand Airport**

Dear Mr. Holly,

This Office has recently been made aware of serious issues that have arisen regarding your business operations at Grand Strand Airport (CRE), causing several violations of the Space Use Permit dated September 13, 2013, which will be more fully addressed below. However, that Space Use Permit itself expired on January 31, 2014, and as such, you are currently occupying County property without any right or authorization.

As indicated above, during just the course of the prior Space Use Permit, Skydive Myrtle Beach has engaged in a pattern of incidents raising significant concerns as to the advisability of continuing to allow Skydive Myrtle Beach the use of County facilities, including:

- Weekend of October 18, 2013---Skydive Myrtle Beach hosted a poorly-controlled large crowd event, where numerous vehicles were parked inside the security fence and which event included food sales and alcohol consumption on County property;
- Weekend of October 18, 2013 --motor home observed parked overnight inside the security fence adjacent to hangar used by Skydive Myrtle Beach;
- October 20, 2013---skydiver landed on taxiway, requiring medical assistance and emergency transport;

Exhibit D

1

**Record on Appeal -293-**

- October 21, 2013—tower reports to Horry County Department of Airports (HCDA) that over the weekend there were two "uncertified" night jumps, two jumps through clouds, and a jumper landing in the Barefoot Resort area that necessitated dispatch of emergency responders;
- October 27, 2013—HCDA informed that Aaron Holly improperly questioned tower protocol on an open ATIS frequency;
- November 13, 2013—incursion onto active runway when jumper who missed landing zone walked across runway, requiring FAA reporting and investigation;
- November 27, 2013—HCDA sends certified letter to Skydive Myrtle Beach to address issues regarding Skydive Myrtle Beach staff residing in hangar overnight and unrestrained dog seen repeatedly in ramp area, hangar space, and FBO building;
- December 23, 2013—tower informs HCDA that in a recent jump of 14 total jumpers, 11 ended up well outside the landing zone, with jumpers landing on various parts of the runway, taxiways, and Highway 31;
- January 20, 2014—tower informs HCDA that in a recent jump of 10 total jumpers, 4 ended up well outside the landing zone, with jumpers landing on various parts of the runway, taxiways, and the Barefoot golf course;
- January 20, 2014—tower informs HCDA that a GA aircraft was recently forced to make a 360-degree turn on short final approach after an errant skydiver flew over the runway;
- January 26, 2014—incursion onto active runway when Skydive Myrtle Beach personnel drive vehicle across runway without contacting the tower, requiring FAA reporting and investigation;
- February 9, 2014—HCDA personnel witness operation of two large propane grills in hangar and the sale of food for public consumption;
- Ongoing—HCDA personnel informed of jumps from helicopters with landings on public beach areas, in violation of designated landing zone and other terms set out in existing Letter of Agreement;
- Ongoing—continued bypassing of HCDA safety protocol by allowing unauthorized vehicles access to the airfield inside the security fence;
- Ongoing—violation of terms of the Space Use Agreement by making unauthorized modifications to the premises, including the installation of unapproved interior and exterior signage, removing electrical conduit from inside the hangar, installing unapproved flexible conduit and electrical outlets within the hangar, and other unauthorized and unapproved modifications to the premises.

This Office is also in receipt of a North Myrtle Beach Police Crime Report, dated February 7, 2014, the subject matter being stated as "Burglary/2800 Terminal St Hangar 7/Skydive Myrtle Beach," and detailing two alleged offenses - Burglary Third Degree and Utilities/Theft of electric current. We are also in receipt of an email from Robert G. Eastman, in which the following is stated: "Mr. Jack Lead entered SDMB Hangar 7 without notice or authorization in effect committing criminal trespass. As indicated in the meeting the police would be contacted for insurance purposes.. [A] Notice of Trespass



citation will be issued next week and any further unauthorized trespass's will be prosecuted and result in a trespass and burglary charge."

As indicated above, the prior Space Use Permit expired on January 31, 2014 and thus, at the time of the alleged burglary/trespass, Skydive Myrtle Beach was occupying Hangar 7 without any right or authorization. Even under the previous Space Use Permit, which provides a mere license to the user, the County retained the right to enter the Space (County-owned property) at any time for any reasonable purpose. The previous Space Use Permit also provided a fixed charge for electricity of \$100.00 per month, regardless of usage, a utility in the name of, and paid by, the County. As you are aware, the complained entry was made to facilitate work being performed adjacent to the Hangar and undertaken to accommodate a request made by Skydive Myrtle Beach. Under these circumstances, the allegations made with respect to the Police Crime Report are untrue and baseless, and the assertions made by Mr. Eastman with respect to the allegations of criminal trespass represent either a misunderstanding or misuse of criminal law.

In light of the foregoing, Horry County is unwilling to offer Skydive Myrtle Beach a leasehold interest in the CRE hangar facility at this time. As an alternative, Horry County is willing to enter into a new, short term Space Use Permit, with the understanding that a violation of any of the terms contained in such Space Use Permit will result in Skydive Myrtle Beach being required to vacate the premises after 24-hour notice. Please understand that the new Space Use Permit will require:

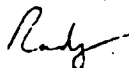
- All jumps will be made in compliance with that Letter of Agreement between HCDA, Myrtle Beach ATCT, Strand FCT ATCT, and Skydive Myrtle Beach dated 5/11/12, and any subsequent amendments thereto as agreed to in writing by all parties;
- No unauthorized vehicles will be permitted inside the security fence;
- No overnight occupancy of any space subject to the agreement is permitted;
- Skydive Myrtle Beach will provide at least 10 days notice to HCDA of any events planned in which a crowd of more than 25 people would reasonably be expected;
- No outside vendors will be allowed without consent of HCDA, and will be subject to any restrictions or location requirements HCDA deems appropriate;
- No flammable substances permitted in any space subject to the agreement, including but not limited to, propane grills and alcohol;
- No modifications will be made to the space, and any modifications previously made without authorization or approval of HCDA will be removed and the premises returned to their condition prior to the modification;
- Fees for use of the space will be \$1,200.00/month or 24% of gross revenues, whichever is greater; and
- Any breach of the agreement by Skydive Myrtle Beach will provide grounds for immediate termination and Skydive Myrtle Beach will vacate the premises within 24 hours after being provided written notice of such termination.

These terms are non-negotiable, and a copy of the new Space Use Permit is enclosed for your review and acceptance. If Skydive Myrtle Beach agrees to abide by these terms and there are no further incidents during the term of the agreement, the County will re-evaluate the potential to enter into a lease agreement with Skydive Myrtle Beach prior to expiration of the new Space Use Permit this summer. To

light of the fact that Skydive Myrtle Beach is currently occupying County property without authorization, the new Space Use Permit must be signed and returned to HCDA within 72 hours from the time it is delivered. If Skydive Myrtle Beach declines to sign and return this Permit within the time set forth, you will need to vacate the premises immediately, as HCDA will change the locks and deny access to the premises as of the close of business on Saturday, February 22.

We certainly hope to be able to maintain an on-going relationship with your skydiving operation, as we believe that such a properly conforming business is a welcome and beneficial use of the County's Grand Strand Airport. We also understand that based upon recent measures on your part, you have attempted to address and correct some conditions that have led to certain of these prior incidents at the airport. The County is appreciative of these efforts, but requires your full commitment in order to continue to allow Skydive Myrtle Beach the use of County-owned property.

Sincerely,



H. Randolph Haldi

Encl.

Cc: Chris Eldridge, Horry County Administrator  
Arrigo Carotti, Horry County Attorney  
Pat Apone, Horry County Director of Airports

**GRAND STRAND AIRPORT  
SPACE USE PERMIT**

THIS SPACE USE PERMIT ("Permit") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between HORRY COUNTY, SOUTH CAROLINA, ACTING BY AND THROUGH ITS DEPARTMENT OF AIRPORTS ("County") and SKYDIVE MYRTLE BEACH, LLC ("Company"), a business entity formed and existing under the laws of the State of South Carolina, and authorized to do business in Horry County, South Carolina.

**WITNESSETH**

WHEREAS, County is the operator of the Grand Strand Airport ("Airport" or "CRE"); and

WHEREAS, Company desires to occupy and use space in Hangar #7 located on Grand Strand Airport property, to conduct its "Skydiving and Non-Emergency Parachute Operation" business; and

WHEREAS, County is willing to permit Company to occupy and use space in Hangar #7 at Grand Strand Airport, subject to the restrictions and terms provided herein;

NOW, THEREFORE, County and Company agree as follows:

1. Space Use. County hereby permits Company to occupy and use space in Hangar #7 consisting of approximately 6,800 square feet of space, together with any surrounding curtilage and parking ("Space") to be utilized for Company's "Skydiving and Non-Emergency Parachute Operation" business.
2. Term. The term of this Permit shall commence on February 1, 2014, and it shall continue in force and effect until July 31, 2014, but no longer than six (6) months from the date of commencement unless otherwise earlier terminated. Prior to actual physical occupancy of Space by Company, either party may terminate this Permit for any reason upon the giving at least five (5) days written notice to the other party. After actual physical occupancy of the Space by Company, either party may terminate this Permit for any reason by giving at least thirty (30) days written notice to the other party. Any act of default hereunder, including without limitation failure to pay fees when due, shall terminate any right, license or permission for use of Space immediately upon event of default, and Company will vacate the premises within 24 hours after receiving written notice of such default. This Permit shall not be renewed or extended, nor shall another such Permit be entered into between the said parties within twelve (12) months from the date of expiration of this Permit without prior approval of Horry County Council.
3. Use. During the term hereof, Company shall occupy and use Space permitted by County solely in connection with its "Skydiving and Non-Emergency Parachute Operation" business at the Grand Strand Airport to the extent permitted by and fully in compliance with all applicable rules, regulations, and requirements of any Federal, State, City or County.

regulatory agency having jurisdiction over the Company's operations, subject to all terms and conditions of this agreement. All skydiving operations will be made in compliance with that Letter of Agreement between the Horry County Department of Airports, Myrtle Beach ATCT, Strand FCT ATCT, and Skydive Myrtle Beach dated 8/11/12, and any subsequent amendments thereto, as agreed to in writing by all parties. Company's employees and customers will have reasonable access to and from and the right to use and occupy Space for the sole purpose of engaging in or furthering Company's business. Company's employees must be well groomed and neat in appearance at all times. The Director of Airports must approve all signs and displays to be erected on the Space. Company shall fully comply with all safety and security policies/directives as established by the Airport.

#### RESTRICTIONS/LIMITATIONS:

Only vehicles operated by staff members based at CRE and are employed *directly* for the Company and have been approved by the Director of Airports are permitted to park on the interior of the security fence (i.e. on the ramp). Company is limited to two (2) employee vehicles on Airport Property at one time and must park adjacent to the Space described in this Agreement.

Company will notify Horry County Department of Airports at least ten (10) days in advance of any events that could reasonably be expected to draw a crowd of more than twenty-five (25) people, and such events must be approved by the County Administrator or Director of Airports. Non-disclosure of any such planned event is a breach of this Agreement.

Overnight occupancy of any space described in this Agreement is strictly prohibited and will be considered an immediate violation of the Agreement.

No outside vendors will be allowed on Horry County property without the consent of the Horry County Department of Airports, and any allowed vendors will be subject to any restrictions, requirements, or locations that Horry County Department of Airports deems appropriate.

No flammable substances are permitted in any space subject to this Agreement, including but not limited to, propane grills and alcohol.

Company will not alter any portion of the Space, and any modifications previously made without authorization or approval of the Horry County Department of Airports will be removed and the premises returned to their condition prior to such modification. Any fees for repair of unapproved modifications or alterations will be the responsibility of the Company.

Company will abide by all HCDCA rules, policies, and procedures for Grand Strand Airport (CRE), as may be adopted or amended from time to time.

4. Fee; Default Interest; Late Payment; Security Deposit.

- A. Fee. As the Fee for occupancy and use of the Space, Company shall pay County monthly payments of One Thousand Two Hundred and No/100 dollars (\$1,200.00) per month; Company shall pay said amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof. In the event this Permit commences or terminates on other than the last day of any particular month, the Fee shall be prorated. County reserves the right to adjust such rate from time to time upon thirty (30) days written notice to the Company.
- B. Gross Sales Percentage Fee. For each month during the term hereof and in addition to the monthly base occupancy and use of the Space fee, Company shall pay County, as additional fee, a monthly adjustment amount which shall be the difference, if any, between the monthly occupancy and use of the Space base fee to be paid during said month and twenty-four (24%) percent of the gross sales during each such occupancy month, whichever is greater.
- Gross sales include, without limitation, the gross selling price of all merchandise, services, concessions, or privileges that occur in whole or in part, on the Space, or as a result of activities on or associated with the Space, during the term of this Permit including the gross charges of all services to customers or patrons performed by Company or any other person, entity, firm or corporation, in, upon, or through any part of the Space during the term of this Permit and all sales/services that are subject to the South Carolina amusement, sales, use or excise tax set forth in Title 12 of the South Carolina Code of Laws, 1976, as amended. Notwithstanding anything herein to the contrary, gross sales shall not include the amount of any amusement, sales, use or excise taxes paid by Company during such term of this Permit.
- C. Payment of Fee and Gross Sales Percentage Fee. The Fee shall be paid in full amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof from and after the Commencement Date. The Gross Sales Percentage Fee, if due, shall be paid within ten (10) days of each month following a calendar month occurring from and after the Commencement Date through the expiration or termination of this Agreement. At which time Lessee shall provide Lessor, without demand, a statement of Gross Receipts for the prior calendar month together with the amount, if any, by which the Gross Sales Percentage Fee due for the previous calendar year exceeds the Fee.
- D. Default Interest. If Company shall default in its payment of Fees or other charges required to be paid pursuant to this Permit, such unpaid amounts shall bear interest from the date of default at the rate of 1 1/2 % per month.
- E. Late Payment. Company acknowledges that the late payment by Company of any monthly installment of fees or other charges will cause County to incur certain costs and expenses not contemplated under this Permit, the exact amount of which are

difficult or impracticable to determine. Therefore, if any such amount owing is not received by County within ten (10) days following the due date thereof, Company shall immediately pay to County a late charge equal to 1 1/2 % per month of such amount owing, in addition to any default interest which may be due as provided above. To the extent that any late charge provided for hereunder is determined to constitute interest, in no event shall such late charges, plus any other interest due on sums owed to County hereunder, ever exceed the maximum interest rate permitted by law.

- F. Security Deposit. To assure the faithful performance of Company's obligations hereunder, Company shall remit a deposit in the form of cash, a letter of credit, or a payment bond issued by a reputable company licensed to issue such bonds in the State of South Carolina, in an amount equal to two (2) months of all applicable Fees to the County, which shall be remitted to the County prior to the Company's occupancy of the Space. In no event shall this security deposit be used as payment for any fee set forth in A. above, without the express written authorization of the Director of the Horry County Department of Airports.

5. Utilities and Services. County shall supply access to water, natural gas and electricity to the extent and capacity of the currently existing mains, lines, transformers, and panels. Company shall be solely responsible for the payment of all utility charges, telephone, trash removal, hazardous waste removal and other services used by Company in or on the Space, to include hook-up fees, advanced deposits or other such costs, regardless of whether the utility charge is incurred in the name of Company or County. Company shall accept transfer of all applicable utility meters to Company's name when so tendered by County. In the event Company incurs any utility charge in the name of County, Company shall reimburse County for the full amount of the charge within five (5) calendar days of the date of written notice to Company of the amount of the charge. County assumes no responsibility for interruption of such services for any reason whatsoever. Company agrees to pay County One Hundred & 00/100 Dollars (\$100.00) per month as an additional fee, which may be adjusted periodically by the County for utilities. The utility fee is included in the monthly fee specified in paragraph 4A.
6. Cleaning and Maintenance. Company, at its sole cost and expense, shall keep the Space in a clean, neat and orderly condition at all times, and shall be responsible for maintaining all non-structural elements, including without limitation plumbing and HVAC. Company understands that it is responsible for the conduct of its guests, permittees, invitees, and licensees on the premises. Company shall not store any personal property exterior to the building on the unimproved premises associated with the building. Company is prohibited from taking any action which would negate or void the warranty on the roofs of any building within its Space.
7. Alterations. Company may not make any alteration, addition, or improvement to the Space without the prior written approval of the Director of Airports. Company shall submit a

written request for permission to perform such alterations, which shall include a description of the improvements, a site plan, and any other documentation requested by the Director of Airports to demonstrate the suitability of the improvements or alterations. Unless County elects otherwise, all permanent alterations, additions, or improvements to the Space shall become the property of County upon termination. In the event County so elects, such permanent alterations shall be removed by Company at its own cost and expense prior to date of termination. Company shall repair any damage to Space caused by such removal at its own cost. All agreed upon improvements must be made in a workmanlike manner, in accordance with all applicable statutes, ordinances, rules and regulations, including without limitation applicable building codes, and may be made only upon written approval of County's department of Airports after review of complete plans for such improvements.

8. Right of Entry. County shall have the right to enter the Space at any time for any reasonable purpose.

9. Compliance with Law.

A. General Compliance. Company will comply with all applicable statutes, ordinances, rules, regulations, orders and directives of any governmental authority, including County, in its occupancy and use of the Space.

B. Acceptance of Premises. Company accepts the Space in its "as-is" condition and County has no obligation to improve, repair, restore, or alter any portion of the Space. Company acknowledges that neither County nor any agent, employee, director or official of County has made any representation or warranty, except as otherwise expressly provided in this Permit, with respect to the Space including, without limitation, any representation or warranty with respect to the suitability or fitness of the building or any portion thereof for the conduct of Company's business. Important: initial here to acknowledge \_\_\_\_\_

C. Jurisdiction of Other Agencies. If Company's activities and operations shall in any way fall within the jurisdiction or regulatory authority of other governmental agencies, including without limitation the South Carolina Department of Health and Environmental Control ("DHEC"), Company must secure and produce evidence of such agency's final approval of such operations or occupancy of Space. If such activities and operations fall outside DHEC's jurisdiction, Company shall procure and submit to County the statement of an appropriately authorized DHEC representative to that effect. Company acknowledges that its representations and warranties pursuant to this subsection are material to the County's agreement to permit the Company's use of the Space.

10. Release and Indemnity.

A. Release. Company hereby releases County from any liability to Company for any loss or damage to any property of Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, and for the death or injury of any officers, directors, employees, agents, customers, concessionaires, vendors,

contractors or invitees of Company, occasioned by theft, fire, acts of God, public enemy, injunction, riot, strike, insurrection, war, governmental body or authority, including County, or any other matter beyond the control of County, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Space, or failure to make repairs, or for any cause whatsoever, except the sole negligence or willful misconduct of County.

- B. Indemnity. Company hereby releases and will defend, indemnify and hold harmless County, its departments, agencies, boards, commissions, committees, officers, directors, employees, and agents and assigns of any of them ("Indemnified Parties") from and against any and all liability, claims, penalties, fines, causes of action, suits, liens, losses, loss of use, damages, costs and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, be charged to or be recoverable from the Indemnified Parties by reason of:

(1) any occurrence, in, upon, or at the Space, however caused, or any cause of action of any nature whatsoever, in law or equity, arising out of or incidental to this Permit or the use or occupancy of the Space; and/or

(2) any occupancy, use, or misuse of the Space, or the areas surrounding the Space, or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Space, by Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, including without limitation uses or misuses which may render the premises subject to the Americans with Disabilities Act in whole or in part; and/or

(3) any violation of any law, regulation or ordinance by Company or its employees, officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees; and/or

(4) any occurrence arising in whole or in part out of the negligent act, or negligent failure to act, of Company, its officers, directors, employees, agents, customers, vendors, contractors or invitees.

The provisions of this section shall survive the expiration or early termination of this Permit.

- C. Environmental Indemnification. Company shall also indemnify, defend (with counsel satisfactory to County), and hold County, its departments, agencies, council, boards, commissions, committees, members, officers, directors, employees, and agents and assigns of any of them harmless from and against any and all loss, cost, damage, expense, claim, cause of action, judgment, penalty, fine or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling or presence of Hazardous Materials on, under, or about the Space or the



Airport in violation of Company's obligations under this Permit ("Hazardous Materials Release"). This indemnification shall include, without limitation, (a) personal injury claims; (b) the payment of liens; (c) diminution in the value of the Space, or any building included therein, or any other property at the Airport; (d) damages for the loss or restriction on use of the Space or the Airport; (e) sums paid in settlement of claims; (f) actual attorneys' fees, consulting fees, court costs, and expert fees; (g) the cost of any investigation of site conditions; (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authority or deemed necessary in County's reasonable judgment; (i) and any fines associated with Company's activities. County shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or action initiated in connection with the Hazardous Materials Release. County may also negotiate, defend, approve, and appeal any action taken or issued by any applicable governmental authority with regard to a Hazardous Materials Release. Any costs or expenses incurred by County for which Company is responsible under this Paragraph or this Permit and has indemnified County, (i) shall be paid to County on demand, during the term of this Permit as additional fees; and (ii) from and after the expiration or earlier termination of the Permit shall be reimbursed by Company on demand. Company's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Permit and shall bind Company's successors and assignees and inure to the benefit of County's successors and assigns.

11. **Insurance Required.** Company agrees to purchase and keep in force and maintain at all times during the term of this Permit, at its own expense, for the benefit of itself and County as additional named insured, a policy or policies of insurance, issued by an insurance company of generally recognized responsibility and licensed to do business in the State of South Carolina insuring against: (A) all liability for damage to or loss of Company's and its customer's property located on the Space; (B) liability for property damage and personal injury or death arising from acts or omissions of Company, its agents and employees; (C) liability for any damage or harm resulting from any release of any hazardous material, as that term is defined by the United States Environmental Protection Agency, including, but not limited to, costs of remediation or mitigation of such release of hazardous materials, and (D) Workers' Compensation claims to the limits required by the State of South Carolina. Said insurance shall be maintained throughout the term of this Permit with an insurance company acceptable to County with liability limits of at least \$2,000,000.00. The policy or policies shall contain a contractual liability endorsement expressly covering the indemnification provisions of Section 10 of this Permit. Company shall also purchase, at its own cost and in its sole discretion, such business interruption or other insurance to protect Company's interest in the event of major or minor damage or disaster to the Space.

This Permit shall not become effective until User shall provide to the HCDA a copy of certificate(s) evidencing the above insurance. The certificate of insurance shall provide that no material alteration, reduction, or termination of coverage shall occur without the

insurance carrier giving County at least thirty (30) days' written notice prior to such alteration, reduction, or termination.

12. **Subuse and Assignment.** Company shall not allow any other entity to occupy or use any of the Space without the written consent of the Horry County Department of Airports and no attempted assignment of this Permit by Company shall be effective.

13. **GOVERNING LAW.** THIS Permit SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA. This Permit is not subject to alternative dispute resolution except where ordered by a court of competent jurisdiction or required by operation of law. The forum for any action or claim brought as a result of this contract shall be the Court of Common Pleas, Horry County, South Carolina.

14. **Entire Agreement/Amendment.** This Permit constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether written or oral. The provisions of the Permit may be modified, amended or waived only by a written instrument executed by County and Company.

15. **Termination of Permit.** In the event of termination of this Permit by either Party, Company shall promptly cause to be removed all personal property from the Space. Any property left on Airport premises by Company and remaining there after the date on which Company either vacated the Space or should have vacated the Space according to the notice of termination sent by the terminating party, may be deemed, at the sole and exclusive option of the Airport, abandoned. Once so deemed, such property shall become the exclusive property of the County and may be disposed of as such in accordance with applicable statutes, ordinances, and County procedures. Alternatively, County may have such property removed, at Company's sole expense.

16. **Operating Permit.** The terms and conditions for both the "Space Use Permit" and the "Operating Permit" must be adhered to without default to either agreement. Default of any terms or conditions by either agreement, constitutes default on both the "Space Use Permit" and the "Operating Permit".

17. **Notices.** Any notices required or sent hereunder shall be in writing and shall be sent as follows:

As to County:

Horry County Department of Airports,  
1100 Jetport Road,  
Myrtle Beach, SC 29577  
ATTN: Director of Airports

As to Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party from time to time may change its address by written notice to the other party. Notices hereunder shall be deemed effective when delivered by hand delivery or overnight courier, or three days after deposit in the United States mail, first class, postage prepaid.

18. License. This Space Use Permit is intended by the parties, and shall be interpreted as, a license to use the designated Space, and shall under no circumstances be deemed or construed as a lease of real property, nor shall the relationship between the parties, as to the designated Space, be deemed that of landlord and tenant. This Permit is not a contract and does not give, assign, or otherwise transfer from the County to the Company any interest in real property, but is a mere license, revocable at the will of the County.

WITNESS the signatures of the parties as of the date first written above.

ATTEST:

\_\_\_\_\_

HORRY COUNTY

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

SKYDIVE MYRTLE BEACH, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

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Answers to Admissions from Horry County

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Skydive Myrtle Beach, Inc,

Plaintiff,

vs.

Horry County, Horry County Department of  
Airports, H. Randolph Haldi, Pat Apone, Tim  
Jackson and Jack Teal,

Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS  
CASE NO.: 2014-CP-26-1193

**HORRY COUNTY'S  
ANSWERS TO PLAINTIFF'S  
REQUEST FOR ADMISSION**

**TO: PLAINTIFF'S AND PLAINTIFF'S ATTORNEY**

1. Each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014, included investigation reports or other documents representing a verification of the facts alleged.

**Horry County takes the position that some of the complaints reported in Exhibit D identify complaints were supported by documents describing and substantiating details of the complaints mentioned while others were based upon verbal reports and eye witness reports of its employees. To the extent Plaintiff's Request to Admit differs from that statement, Horry County denies the same.**

2. Horry County independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014.

**Horry County takes the position that the complaints mentioned in Exhibit D were duly considered, evaluated and reported. Horry County further takes the position that it attempted to investigate the complaints through SDMB but SDMB rebuffed Horry County's attempts by refusing to respond to or cooperate with Horry County. To the extent Plaintiff's Request to Admit differs from that statement, Horry County denies the same.**

3. You approve HCDA leases.

**Horry County approves all leases it enters with third parties. Admitted.**

4. You have access to or maintain copies of all leases for Horry County and HCDA real property, either physically or electronically.

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**Admitted.**

5. The leases or space use permits identified as Exhibits A, B, and C are approved County Form leases or space use permits.

**Exhibits A, B, & C are space use permits based upon a template that was approved by Horry County Council Resolution 196-07. Each space use permit is drafted and modified to accommodate the intentions of the parties entering the lease. To the extent Plaintiff's Request to Admit differs from that statement, Horry County denies the same.**

6. Each HCDA long-term lease is on Horry County-approved form lease.

**Horry County approves long term leases for HCDA properties. To the extent Plaintiff's Request to Admit differs from that statement, Horry County denies the same.**

7. All HCDA long-term leases require Horry County approval.

**Horry County approves long term leases for HCDA properties. To the extent Plaintiff's Request to Admit differs from that statement, Horry County denies the same.**

8. All HCDA executed Space Use Permits are sent to Horry County Council for approval before the expiration of the term.

**Initial Space Use Permits for six months or less have been preapproved and do not require further approval from Horry County Council. Subsequent Space Use Permits do require Horry County Council approval. To the extent Plaintiff's Request to Admit differs from that statement, Horry County denies the same.**

9. Exhibit A, was sent to Horry County Council for approval between August 2013, and January 2014.

**Denied.**

10. Robinson Aviation, Inc. (CRE), is an independent contractor hired by HCDA as an Aircraft Traffic Control Tower operator at Grand Strand Airport in North Myrtle Beach, SC.

**Denied. Robinson Aviation, Inc. was not hired by HCDA.**

11. You learned Hangar 7, doors cannot be repaired before August 2013.

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**Denied. Horry County is informed and believes Hangar 7 Doors have been repaired.**

12. You learned clients and members of the public of Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB) routinely enter Hangar 7 before August 2013.

**Horry County was aware that clients and members of the public associated with Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB) entered Hangar 7 before August 2013. To the extent Plaintiff's Request to Admit differs from that statement, Horry County denies the same.**



Michael W. Battle

M. Kirk Battle

BATTLE LAW FIRM, LLC

PO Box 530

Conway, SC 29528

(843)248-4321

July 26, 2014

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 26 day of July, 2014

Secretary To:  
Battle Law Firm, LLC  
P.O. Box 530  
Conway, SC 29528  
Attorney's for Horry County

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Answers to Admissions from Horry County Department of Airports

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STATE OF SOUTH CAROLINA

COUNTY OF Horry

Skydive Myrtle Beach, Inc,

Plaintiff,

vs.

Horry County, Horry County Department of  
Airports, H. Randolph Haldi, Pat Apone, Tim  
Jackson and Jack Teal,

Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS  
CASE NO.: 2014-CP-26-1193

**HORRY COUNTY DEPARTMENT OF  
AIRPORTS ANSWERS TO  
PLAINTIFF'S REQUEST  
FOR ADMISSION**

**TO: PLAINTIFF'S AND PLAINTIFF'S ATTORNEY**

1. Each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014, included investigation reports or other documents representing a verification of the facts alleged.

Horry County Department of Airports (HCDA) takes the position that some of the complaints reported in Exhibit D identify complaints were supported by documents describing and substantiating details of the complaints mentioned while others were based upon verbal reports and eye witness reports of its employees. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.

2. You independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014.

HCDA takes the position that the complaints mentioned in Exhibit D were duly considered, evaluated and reported. HCDA further takes the position that it attempted to investigate the complaints through SDMB but SDMB rebuffed its attempts by refusing to respond to or cooperate with HCDA. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.

3. You directed Chad Cox and Ed Dingley to observe and report Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB) parachute operations during several weekends.

HCDA has directed its employees Chad Cox and Ed Dingley to observe and report on the operations of several tenants at its airports including the parachute

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operations of Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB).

4. You tentatively approve Horry County Department of Airports (HCDA) leases for submission and final approval by Horry County or Horry County Council for the county.

Part of the normal process for approval of leases of HCDA properties includes submission of approved or recommended leases to Horry County Council by HCDA or Horry County staff members. HCDA is not aware of a formal requirement that it must approve a lease before Horry County Council can take action to approve a lease. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.

5. You have access to or maintain copies of all leases HCDA real property, either physically or electronically.

**Admitted.**

6. The leases or space use permits identified as Exhibits A, B, and C are approved Horry County or HCDA Form leases.

Exhibits A, B, & C are space use permits based upon a template that was approved by Horry County Council Resolution 196-07. Each space use permit is drafted and modified to accommodate the intentions of the parties entering the lease. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.

7. All HCDA long term leases require temporary space use permits before long-term leases are finalized.

HCDA objects to this request to admit on the following grounds: The term "all" is too broad and may include past present and future leases. HCDA takes the position that the leases are based upon the individual circumstances and requirements attending each lease agreement. To the extent Plaintiff's Request to Admit differs from that statement, Horry County denies the same.

8. Each HCDA long-term lease is on Horry County approved form lease.

**Admitted.**

9. All HCDA long-term leases require Horry County approval. **Admitted.**

10. All HCDA executed Space Use Permits are sent to Horry County for approval before the expiration of the term.

**Initial Space Use Permits for six months or less have been preapproved and do not require further approval from Horry County Council. Subsequent Space Use Permits do require Horry County Council approval. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.**

11. Exhibit A, was sent to Horry County Council for approval between August 2013, and January 2014.

**Denied.**

12. Robinson Aviation, Inc. (CRE), is an independent contractor hired by HCDA as an Aircraft Traffic Control Tower operator at Grand Strand Airport in North Myrtle Beach, SC.

**Denied. Robinson Aviation, Inc. was not hired by HCDA.**

13. CRE has been directed by HCDA to report all parachute landing locations to HCDA.

**Robinson Aviation, Inc. has not been directed by HCDA to report all parachute landing locations to HCDA. The new proposed Letter of Agreement would require Robinson Aviation, Inc. to report all parachute landing locations to HCDA. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.**

14. CRE was directed to report all parachute landing locations to HCDA after August 2013.

**Robinson Aviation, Inc. has not been directed by HCDA to report all parachute landing locations to HCDA. The new proposed Letter of Agreement would require Robinson Aviation, Inc. to report all parachute landing locations to HCDA. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.**

15. SDMB presented repair requests to HCDA.

**HCDA admits that SDMB has requested repairs and modifications of Hangar 7 to employees of HCDA. The requests have been verbal.**

16. HCDA repair requests from SDMB were processed.

**SDMB repair requests to HCDA were duly considered by employees of HCDA. Some requests were completed and others have not been completed. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.**

17. HCDA learned Hangar 7 doors cannot be repaired before August 2013.

**Denied.**

18. HCDA learned Hangar 7 required electrical repairs before August 2013.

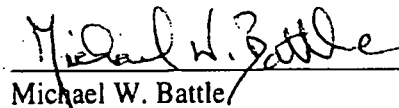
**Denied. HCDA learned that SDMB's attempted use of the Hangar 7 required certain modifications to the electrical outlets.**

19. HCDA learned clients and members of the public of SDMB routinely enter Hangar 7 before August 2013.

**HCDA was aware that clients and members of the public associated with Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB) entered Hangar 7 before August 2013. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.**

20. Hangar 7 doors were temporarily repaired by Overhead Doors in 2013 and 2014.

**HCDA is informed and believes the doors of Hangar 7 were repaired by Overhead Doors. To the extent Plaintiff's Request to Admit differs from that statement, HCDA denies the same.**



Michael W. Battle  
M. Kirk Battle  
BATTLE LAW FIRM, LLC  
PO Box 530  
Conway, SC 29528  
(843)248-4321

July 26, 2014

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 25 day of July, 2014

Secretary to:  
Battle Law Firm, LLC  
P.O. Box 530  
Conway, SC 29528  
Attorney's for \_\_\_\_\_

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Answers to Admissions from H. Randolph Haldi

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STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2014-CP-26-1193

Skydive Myrtle Beach, Inc., )  
(f/k/a Skydive Myrtle Beach, LLC), )

Plaintiff, )

vs. )

**RESPONSES OF H. RANDOLPH HALDI TO  
PLAINTIFF'S REQUEST FOR ADMISSIONS**

Horry County, Horry County )  
Department of Airports, )  
H. Randolph Haldi, Pat Apone, )  
Tim Jackson and Jack Teal, )

Defendants. )

TO: ROBERT G. EASTMAN, COUNSEL FOR PLAINTIFF:

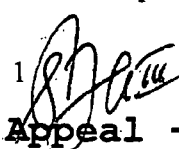
Defendant H Randolph Haldi, responds to Plaintiff's Request for Admissions as follows:

1. The letter attached as Exhibit D, dated February 19, 2014, is a true and correct copy of the letter you gave to Skydive Myrtle Beach, Inc. by hand at Myrtle Beach International Airport.

**RESPONSE:** Defendant Haldi admits the authenticity of the letter attached as Exhibit D, dated February 19, 2014. Defendant Haldi further admits that he hand delivered the original letter to Robert Eastman as a representative of Skydive Myrtle Beach, Inc. To the extent Request 1 is inconsistent with this response, said request is denied.

2. The letter attached as Exhibit D, dated February 19, 2014, was authored by you alone.

**RESPONSE:** Defendant Haldi objects to Request 2 on the grounds that it is vague with regard to the phrase "authored by you alone." Notwithstanding said objection and without waiving same, Defendant Haldi admits that he drafted the letter attached as Exhibit D, dated February 19, 2014 and signed same in his capacity as an employee of Defendant

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Horry County. However, Defendant Haldi denies that he personally compiled all of the information set forth in said letter. Furthermore, to the extent Request 2 is inconsistent with this response, said request is denied.

3. Each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014, included investigation reports or other documents representing a verification of the facts alleged.

**RESPONSE:** Defendant Haldi is not in a position to admit or deny Request 3. Defendant Haldi has limited personal knowledge of the allegations set forth within Exhibit D. Defendant Haldi is of the opinion and belief that some of the complaints reported in Exhibit D identify complaints that were supported by documents describing the events and circumstances surrounding the particular complaint and that others may have been based upon verbal reports or eye witness reports of HCDA employees. Furthermore, Defendant Haldi is of the opinion and belief that each of the incidents identified in Exhibit D were either witnessed, observed, or reported to HCDA personnel. Accordingly, Defendant Haldi is without sufficient information at this time so as to form a belief as to whether or not "each of the allegations identified in the letter ... included investigation reports or other documents representing a verification of the facts alleged." For these reasons, to the extent Plaintiff's Request to Admit differs from the above, Defendant Haldi denies same.

4. You independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2104.

**RESPONSE:** Defendant Haldi objects to Request 4 to the extent it is directed to the Horry County Department of Airports (HCDA) and defers to Defendant HCDA's response to a similar request directed to HCDA. Notwithstanding said objection and without waiving same,

Defendant Haldi denies that he independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014

5. You reviewed this letter with Horry County Administrator Chris Eldridge, Attorney Carotti, and Director of Airports Pat Apone before delivery to Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB).

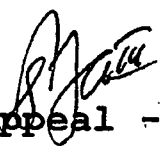
**RESPONSE:** Defendant Haldi admits so much of Request 5 as asserts that Exhibit D was reviewed with Attorney Carotti and Defendant Pat Apone prior to delivery to Skydive Myrtle Beach, Inc. f/k/a Skydive Myrtle Beach, LLC (SDMB). However, Defendant Haldi is without sufficient information at this time to form a belief as to Horry County Administrator Chris Eldridge's knowledge of said letter prior to delivery and therefore denies that portion of Request 5.

6. You directed Chad Cox and Ed Dingley, or other Horry County Department of Airports employees (HCDA) to observe and report on SDMB parachute operations during several weekends.

**RESPONSE:** Denied.

7. You or your office approve(s) HCDA leases for Horry County.

**RESPONSE:** Defendant Haldi objects to Request 7 on the grounds that it is overly broad and vague with regard to the phrase "HCDA leases." Defendant Haldi objects to Request 7 to the extent it seeks a response from or on behalf of Defendant HCDA and Defendant Haldi defers to Defendant HCDA's response to a similar request for admission (number 4) to the extent it may be responsive to this request. Notwithstanding said objection and without waiving same, Defendant Haldi states that he does not personally approve HCDA leases and therefore denies Request 7.

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8. You have access to or maintain copies of all leases for Horry County and HCDA real property, either physically or electronically.

**RESPONSE:** Admitted.

9. The leases identified as Exhibits A, B, and C are approved Horry County or HCDA Form Leases.

**RESPONSE:** Defendant Haldi objects to Request 9 on the grounds that it is overly broad and vague with regard to the phrase "approved Horry County or HCDA Form leases." Defendant Haldi further objects to Request 9 to the extent it appears to be seeking a response from or on behalf of Horry County or HCDA and defers to the responses of Horry County and HCDA to a similar request for admission. Notwithstanding said objection and without waiving same, Defendant Haldi states that he is not in a position to admit or deny Request 9. Defendant Haldi is of the opinion and belief that each space use permit is drafted and modified to accommodate the intentions of the respective parties entering the agreement. Therefore, while Exhibits A, B, and C may have originated from previously approved templates, it is possible that specific terms set forth in the previously approved templates have been modified by the parties to the documents.

10. Each HCDA long-term lease is on County approved form lease.

**RESPONSE:** Defendant Haldi objects to Request 10 on the grounds that it is overly broad and vague. Defendant Haldi further objects to Request 10 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Haldi, in his personal capacity, is not in a position to admit or deny Request 10.

11. All HCDA long-term leases require Horry County approval.

**RESPONSE:** Defendant Haldi objects to Request 11 on the grounds that it is overly

  
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broad and vague. Defendant Haldi further objects to Request 11 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Haldi, in his personal capacity, is not in a position to admit or deny Request 11.

12. All HCDA executed Space Use Permits are sent to Horry County for approval before the expiration of the term.

**RESPONSE:** Defendant Haldi objects to Request 12 on the grounds that it is overly broad and vague. Defendant Haldi further objects to Request 12 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Haldi, in his personal capacity, is not in a position to admit or deny Request 11.

13. The Space Use Permit in Exhibit A is a true and correct copy.

**RESPONSE:** Defendant Haldi, in his personal capacity, is not a party to Exhibit A and is not in a position to admit the authenticity of said document.

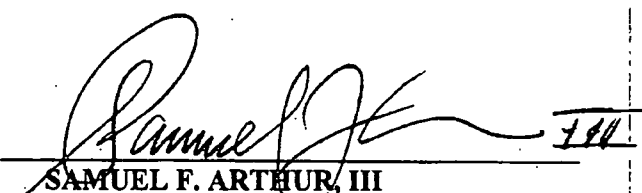
14. Exhibit A, was sent to Horry County Council for approval between August 2013 and January 2014.

**RESPONSE:** Defendant Haldi objects to Request 14 on the grounds that it is overly broad and vague. Notwithstanding said objection and without waiving same, Defendant Haldi states that he has no personal knowledge of Exhibit A being sent to Horry County Council for approval and therefore is not in a position to admit or deny Request 14.

*(Signature block on next page)*

5   
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By:

  
SAMUEL F. ARTHUR, III

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

SC Bar # 13618

PO Drawer 1931

Florence, SC 29503

Telephone: 843.669.8787

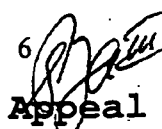
Fax: 843.664.0097

SFA@AIKENBRIDGES.COM

**ATTORNEYS FOR DEFENDANT  
H. RANDOLPH HALDI**

Florence, South Carolina

July 31, 2014.

  
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Answers to Admissions from Pat Apone

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STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2014-CP-26-1193

Skydive Myrtle Beach, Inc., )  
(f/k/a Skydive Myrtle Beach, LLC), )  
Plaintiff, )

vs. )

**RESPONSES OF PAT APONE TO  
PLAINTIFF'S REQUEST FOR ADMISSIONS**

Horry County, Horry County )  
Department of Airports, )  
H. Randolph Haldi, Pat Apone, )  
Tim Jackson and Jack Teal, )  
Defendants. )

TO: ROBERT G. EASTMAN, COUNSEL FOR PLAINTIFF:

Defendant Pat Apone, responds to Plaintiff's Request for Admissions as follows:

1. Each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014, included investigation reports or other documents representing a verification of the facts alleged.

**RESPONSE:** Defendant Apone is not in a position to admit or deny Request 1. Exhibit D was not prepared by Defendant Apone and she has limited personal knowledge of the allegation set forth therein. Defendant Apone is of the opinion and belief that some of the complaints reported in Exhibit D identify complaints that were supported by documents describing the events and circumstances surrounding the particular complaint and that others may have been based upon verbal reports or eye witness reports of HCDA employees. Accordingly, Defendant Apone is without sufficient information at this time so as to form a belief as to whether or not "each of the allegations identified in the letter ... included investigation reports or other documents representing a verification of the facts alleged." For

  
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these reasons, to the extent Plaintiff's Request to Admit differs from the above, Defendant Apone denies same.

2. You or Horry County Department of Airports (HCDA) independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014.

**RESPONSE:** Defendant Apone objects to Request 2 to the extent it is directed to the Horry County Department of Airports (HCDA) and defers to Defendant HCDA's response to a similar request directed to HCDA. Notwithstanding said objection and without waiving same, Defendant Apone denies that she independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014.

3. You directed Chad Cox and Ed Dingley to observe and report Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC, (SDMB) parachute operations during several weekends.

**RESPONSE:** Defendant Apone objects to Request 3 on the grounds that it is overly broad and vague. Notwithstanding said objection and without waiving same, Defendant Apone states that in her capacity as the Director of the Horry County Department of Airports, she has supervised the direction of HCDA employees Chad Cox and Ed Dingley to observe and report on the operations of several tenants at its airports including the parachute operations of Skydive Myrtle Beach, Inc. f/k/a Skydive Myrtle Beach, LLC, (SDMB).

4. You or your office approve HCDA leases for HCDA.

**RESPONSE:** Defendant Apone objects to Request 4 on the grounds that it is overly broad and vague with regard to the phrase "HCDA leases." Defendant Apone objects to Request 4 to the extent it seeks a response from or on behalf of Defendant HCDA and Defendant Apone defers to Defendant HCDA's response to a similar request for admission

(number 4) to the extent it may be responsive to this request. Notwithstanding said objection and without waiving same, Defendant Apone states that she does not personally approve HCDA leases.

5. You have access to or maintain copies of all leases HCDA real property, either physically or electronically.

**RESPONSE:** Admitted.

6. The leases or space use permits identified as Exhibits A, B, and C are approved Horry County or HCDA Form leases.

**RESPONSE:** Defendant Apone objects to Request 6 on the grounds that it is overly broad and vague with regard to the phrase "approved Horry County or HCDA Form leases." Defendant Apone further objects to Request 6 to the extent it appears to be seeking a response from or on behalf of Horry County or HCDA and defers to the responses of Horry County and HCDA to a similar request for admission. Notwithstanding said objection and without waiving same, Defendant Apone states that she is not in a position to admit or deny Request 6. Defendant Apone is of the opinion and belief that each space use permit is drafted and modified to accommodate the intentions of the respective parties entering the lease. Therefore, while Exhibits A, B, and C may have originated from previously approved templates, it is possible that specific terms set forth in the previously approved templates have been modified by the parties to the documents.

7. All HCDA long term leases require temporary space use permits before long-term leases are finalized.

**RESPONSE:** Defendant Apone objects to Request 7 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 7 on the grounds that it

appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 7.

8. Each HCDA long-term leases utilizes Horry County approved form lease.

**RESPONSE:** Defendant Apone objects to Request 8 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 8 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 8.

9. All HCDA long-term leases require Horry County approval.

**RESPONSE:** Defendant Apone objects to Request 9 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 9 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 9.

10. All HCDA executed Space Use Permits are sent to Horry County for approval before the expiration of the term.

**RESPONSE:** Defendant Apone objects to Request 10 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 10 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 10.

11. Exhibit A, was sent to Horry County Council for approval between August 2013 and January 2014.

**RESPONSE:** Defendant Apone objects to Request 11 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 11 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal

capacity, is not in a position to admit or deny Request 11.

12. Grand Strand Airport Air Traffic Control, Robinson Aviation, Inc., (CRE) is an independent contractor hired by HCDA.

**RESPONSE:** Defendant Apone objects to Request 12 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 12 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 12.

13. CRE has been directed (by me) to report all parachute landing locations to HCDA.

**RESPONSE:** Denied.

14. CRE was directed to report all parachute landing locations to HCDA after August 2013.

**RESPONSE:** Defendant Apone objects to Request 14 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 14 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 14.

15. SDMB presented repair requests relating to Hangar 7, Grand Strand Airport, to HCDA.

**RESPONSE:** Defendant Apone objects to Request 15 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 15 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 15.

16. SDMB repair requests were completed by HCDA or its agents.

**RESPONSE:** Defendant Apone objects to Request 16 on the grounds that it is overly

broad and vague. Defendant Apone further objects to Request 16 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 16.

17. HCDA learned Hangar 7 doors cannot be repaired before August 2013.

**RESPONSE:** Defendant Apone objects to Request 17 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 17 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 17.

18. HCDA learned Hangar 7 required electrical repairs before August 2013.

**RESPONSE:** Defendant Apone objects to Request 18 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 18 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 18.

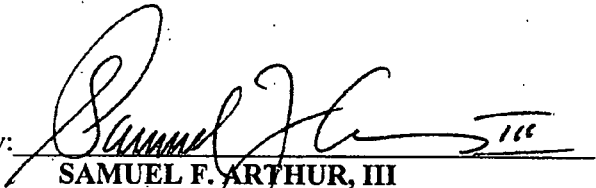
19. HCDA was first aware that SDMB clients and members of the public routinely enter Hangar 7 before August 2013.

**RESPONSE:** Defendant Apone objects to Request 19 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 19 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 19. Defendant Apone objects to Request 19 on the grounds that it is overly broad and vague. Defendant Apone further objects to Request 19 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Apone, in her personal capacity, is not in a position to admit or deny Request 19.

20. Hangar 7 doors were temporarily repaired by Overhead Doors in 2013 and 2014.



**RESPONSE:** Defendant Apone objects to Request 20 on the grounds that it is vague with regard to the phrase "temporarily repaired" and overly broad with regard to the timeframe set forth therein. Notwithstanding said objection and without waiving same, Defendant Apone states that she is informed and believes that the doors of Hangar 7 have been previously repaired by overhead doors. To the extent Plaintiff's Request to Admit differs from this statement, Defendant Apone denies same.

By: 

**SAMUEL F. ARTHUR, III**

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

SC Bar # 13618

PO Drawer 1931

Florence, SC 29503

Telephone: 843.669.8787

Fax: 843.664.0097

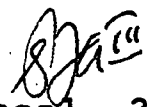
[SFA@AIKENBRIDGES.COM](mailto:SFA@AIKENBRIDGES.COM)

**ATTORNEYS FOR DEFENDANT**

**PAT APONE**

Florence, South Carolina

  
July 30, 2014.

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Answers to Admissions from Tim Jackson

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Record on Appeal -338-

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2014-CP-26-1193

Skydive Myrtle Beach, Inc., )  
(f/k/a Skydive Myrtle Beach, LLC), )  
 )  
Plaintiff, )

vs. )

**RESPONSES OF TIM JACKSON TO  
PLAINTIFF'S REQUEST FOR ADMISSIONS**

Horry County, Horry County )  
Department of Airports, )  
H. Randolph Haldi, Pat Apone, )  
Tim Jackson and Jack Teal, )  
 )  
Defendants. )

TO: ROBERT G. EASTMAN, COUNSEL FOR PLAINTIFF:

Defendant Tim Jackson, responds to Plaintiff's Request for Admissions as follows:

1. You independently investigated each of the allegations identified in the letter attached as Exhibit D, dated February 19, 2014.

**RESPONSE:** Defendant Jackson is not in a position to admit or deny Request 1. Exhibit D was not prepared by Defendant Jackson and he has limited personal knowledge of the allegation set forth therein. Defendant Jackson is of the opinion and belief that some of the complaints reported in Exhibit D identify complaints that were supported by documents describing the events and circumstances surrounding the particular complaint and that others may have been based upon verbal reports or eye witness reports of HCDA employees. Accordingly, Defendant Jackson is without sufficient information at this time so as to form a belief as to whether or not "each of the allegations identified in the letter ... included investigation reports or other documents representing a verification of the facts alleged." For these reasons, to the extent Plaintiff's Request to Admit differs from the above, Defendant

1   
Record on Appeal -339-

Jackson denies same.

2. You have access to or maintain copies of all leases for Horry County and Horry County Department of Airports (HCDA) real property, either physically or electronically.

**RESPONSE:** Denied.

3. The leases or space use permits identified as Exhibits A, B, and C are approved County or HCDA Form leases.

**RESPONSE:** Defendant Jackson objects to Request 3 on the grounds that it is overly broad and vague with regard to the phrase "approved Horry County or HCDA Form leases." Defendant Jackson further objects to Request 3 to the extent it appears to be seeking a response from or on behalf of Horry County or HCDA and defers to the responses of Horry County and HCDA to a similar request for admission. Notwithstanding said objection and without waiving same, Defendant Jackson states that she is not in a position to admit or deny Request 3. Defendant Jackson is of the opinion and belief that each space use permit is drafted and modified to accommodate the intentions of the respective parties entering the lease. Therefore, while Exhibits A, B, and C may have originated from previously approved templates, it is possible that specific terms set forth in the previously approved templates have been modified by the parties to the documents.

4. You have entered Hangar 7 without Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC (SDMB) prior approval.

**RESPONSE:** Defendant Jackson objects to Request 4 on the grounds that it is overly broad. Notwithstanding said objection and without waiving same, Defendant Jackson denies Request 4.

5. You entered Hangar 7 with HCDA approval on February 5, 2014.

**RESPONSE:** Denied.

6. You entered Hangar 7 with HCDA approval on all other occasions.

**RESPONSE:** Defendant Jackson objects to Request 6 on the grounds that it is overly broad and vague. Notwithstanding said objection and without waiving same, Defendant Jackson states that any time he has entered Hangar 7 it has been with HCDA approval.

7. Each HCDA long-term lease is on County approved form lease.

**RESPONSE:** Defendant Jackson objects to Request 7 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 7 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 7.

8. All HCDA long-term leases require Horry County approval.

**RESPONSE:** Defendant Jackson objects to Request 8 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 8 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 8.

9. All HCDA executed Space Use Permits are sent to Horry County for approval before the expiration of the term.

**RESPONSE:** Defendant Jackson objects to Request 9 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 9 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 9.

10. The Space Use Permit in Exhibit A is a true and correct copy.

**RESPONSE:** Defendant Jackson, in his personal capacity, is not a party to Exhibit A

3 *gpa*  
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and is not in a position to admit the authenticity of said document.

11. Exhibit A was sent to Horry County Council for approval between August 2013 and January 2014.

**RESPONSE:** Defendant Jackson objects to Request 11 on the grounds that it is overly broad and vague. Notwithstanding said objection and without waiving same, Defendant Jackson states that he has no personal knowledge of Exhibit A being sent to Horry County Council for approval and therefore is not in a position to admit or deny Request 11.

12. Robinson Aviation, Inc. (CRE), is an independent contractor hired by HCDA as an Aircraft Traffic Control Tower operator at Grand Strand Airport in North Myrtle Beach, SC and has been directed (by m3) to report all parachute landing locations to HCDA.

**RESPONSE:** Defendant Jackson objects to Request 12 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 12 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 12.

13. CRE was directed to report all parachute landing locations to HCDA after August 2013.

**RESPONSE:** Defendant Jackson objects to Request 13 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 13 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 13.

14. SDMB presented repair requests to HCDA.

**RESPONSE:** Defendant Jackson objects to Request 14 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 14 on the grounds that it



appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 14.

15. HCDA repair requests from SDMB were processed.

**RESPONSE:** Defendant Jackson objects to Request 15 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 15 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 15.

16. HCDA learned Hangar 7 doors cannot be repaired before August 2013.

**RESPONSE:** Defendant Jackson objects to Request 16 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 16 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 16.

17. HCDA learned Hangar 7 required electrical repairs before August 2013.

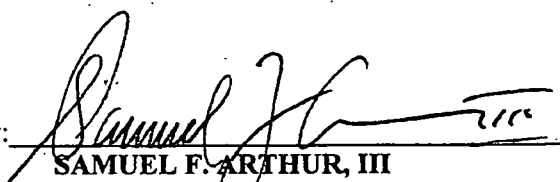
**RESPONSE:** Defendant Jackson objects to Request 17 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 17 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 17.

18. HCDA learned clients and members of the public of SDMB routinely enter Hangar 7 before August 2013.

**RESPONSE:** Defendant Jackson objects to Request 18 on the grounds that it is overly broad and vague. Defendant Jackson further objects to Request 18 on the grounds that it appears to be directed to Defendant HCDA. Accordingly, Defendant Jackson, in his personal capacity, is not in a position to admit or deny Request 18.

19. Hangar 7 doors were temporarily repaired by Overhead Doors in 2013 and 2014.

**RESPONSE:** Defendant Jackson objects to Request 19 on the grounds that it is vague with regard to the phrase "temporarily repaired" and overly broad with regard to the timeframe set forth therein. Notwithstanding said objection and without waiving same, Defendant Jackson states that he is informed and believes that the doors of Hangar 7 have been previously repaired by overhead doors. To the extent Plaintiff's Request to Admit differs from this statement, Defendant Jackson denies same.

By: 

**SAMUEL F. ARTHUR, III**

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

SC Bar # 13618

PO Drawer 1931

Florence, SC 29503

Telephone: 843.669.8787

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[SFA@AIKENBRIDGES.COM](mailto:SFA@AIKENBRIDGES.COM)

**ATTORNEYS FOR DEFENDANT  
TIM JACKSON**

Florence, South Carolina

July 31, 2014.

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Answers to Admissions from Jack Teal

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STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2014-CP-26-1193

Skydive Myrtle Beach, Inc., )  
(f/k/a Skydive Myrtle Beach, LLC), )  
Plaintiff, )

vs. )

**RESPONSES OF JACK TEAL TO  
PLAINTIFF'S REQUEST FOR ADMISSIONS**

Horry County, Horry County )  
Department of Airports, )  
H. Randolph Haldi, Pat Apone, )  
Tim Jackson and Jack Teal, )  
Defendants. )

TO: ROBERT G. EASTMAN, COUNSEL FOR PLAINTIFF:

Defendant Jack Teal, responds to Plaintiff's Request for Admissions as follows:

1. You entered Hangar 7 without permission from Skydive Myrtle Beach, Inc., f/k/a Skydive Myrtle Beach, LLC, (SDMB) on or about February 5, 2014, during daylight hours.

**RESPONSE:** Admitted.

2. You have entered Hangar 7 without SDMB prior approval.

**RESPONSE:** Defendant Teal objects to Request 2 on the grounds that it is overly broad and vague. Notwithstanding said objection and without waiving same, Defendant Teal admits that he has previously entered Hangar 7 without SDMB prior approval.

3. You entered Hangar 7 with Horry County Department of Airports (HCDA) approval on February 5, 2014.

**RESPONSE:** Admitted.

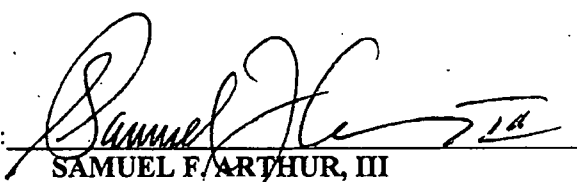
4. You entered Hangar 7 with HCDA approval on all other occasions.

**RESPONSE:** Admitted.

  
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5. You signed for packages addressed to Hangar 7 and placed them in a storage closet in the Grand Strand Airport Faxed Base Operator (FBO) building without notice to SDMB.

**RESPONSE:** Defendant Teal objects to Request 5 on the grounds that it is overly broad and vague. Notwithstanding said objection and without waiving same, Defendant Teal denies Request 5.

By: 

**SAMUEL F. ARTHUR, III**  
Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.  
SC Bar # 13618  
PO Drawer 1931  
Florence, SC 29503  
Telephone: 843.669.8787  
Fax: 843.664.0097  
SFA@AIKENBRIDGES.COM

**ATTORNEYS FOR DEFENDANT  
JACK TEAL**

Florence, South Carolina

July 30, 2014.

  
**Record on Appeal -348-**

Skydive Myrtle Beach, Inc.'s Motion to Compel

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STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
) Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC.,  
(f/k/a Skydive Myrtle Beach, LLC),

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS,  
H. RANDOLPH HALDI, PAT APONE,  
TIM JACKSON and JACK TEAL

Defendants.

JURY TRIAL DEMANDED

FILED  
HORRY COUNTY  
2014 OCT 20 AM 8:43  
KELANIE HUGGINS-WARD  
CLERK OF COURT

**REQUEST FOR EMERGENCY HEARING, INJUNCTIVE RELIEF, AND MOTION TO  
COMPEL PRODUCTION OF DOCUMENTS.**

1. On or about September 30, 2014, this Honorable Court heard arguments for Plaintiff's Motion for Injunctive relief and ruled that Plaintiff could renew its petition for injunctive relief if a pattern of harassment by the defendants continued.

2. Following the September 30, 2014, hearing, counsel for Plaintiff, Skydive Myrtle Beach, Inc., (SDMB) inquired about its Request for Production to Defendants Horry County, Horry County Department of Airports, H. Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal dated July 8, 2014, as the responses were more than seven weeks overdue. Counsel for the Defendants represented that a response would be forthcoming within two weeks.

3. On or about July 21, 2014, through counsel, Defendants Horry County (County) and Horry County Department of Airports (HCDA) represented to the Magistrates Court, via letter, and in open court on July 23, 2014, that continued

occupation of Hangar 7 "will frustrate Horry County's Rehabilitation project and cause significant financial damage to Horry County," and that Plaintiff should be immediately removed from Hangar 7. See Exhibit 1.

4. On August 1, 2014, Defendants again argued that continued occupancy of Hangar 7 would interfere with the planned airport rehabilitation project. The Magistrate's Court denied the County's request and issued a Stay of Execution on Appeal whereby Plaintiff, Skydive Myrtle Beach (SDMB) could continue occupancy of Hangar 7 pending appeal provided arrears were paid and rent is paid at the rate of \$1,200.00 per month on the first day of the month. See Exhibit 2.

5. On or about October 7-8, 2014, via email correspondence, HCDA Assistant Director of Airports, Jason Terreri, informed SDMB that "access from the Airfield to Hangar 7 (Skydive Myrtle Beach) will be blocked" thus SDMB will have only Ramp parking for its aircraft during the expected 160 day period of rehabilitation. See Exhibit 3.

6. SDMB has an existing lease agreement that requires its aircraft to be secured in a hangar<sup>1</sup> during non-use and the actions of HCDA will place SDMB in material breach of its lease agreement or prevent it from using its aircraft during the 160 day project rehabilitation period.<sup>2</sup> See Exhibit 4 at page 5.

7. A vacant hangar (Hangar 1) in the north end of the airport property has been available since October 2013, and offered to SDMB for use provided HCDA approve the transfer that would mitigate and remove the issues between the parties, but HCDA

<sup>1</sup> This will force SDMB to lose its aircraft or shut down for the entire project term. The contract was executed electronically.

<sup>2</sup> During last year's resurfacing of the northern half of Grand Strand Airport, HCDA and construction vehicles blocked plane access for all hangars in the affected area. Technically, it could be possible to access Hangar 7 during phase one of this project if HCDA and contractor vehicles do not block the hangar access. However, it is expected that hangar access will be blocked during the whole project period.

refuses to mitigate or offer an alternative vacant hangar for the period of the rehabilitation project.<sup>3</sup>

8. To date, no Defendant has responded to Plaintiff's Request for Production, in spite of counsel's assurances to the contrary following the hearing on September 30, 2014. These responses are eight weeks past the deadline imposed by South Carolina Rules of Civil Procedure (SCRCP) Rule 34(b) as of this Motion's drafting.

9. Defendant's repeated actions, conduct, and complaints are continuous, improper, without merit, unduly burdensome, and causing Plaintiff irreparable harm.

10. Plaintiff has no adequate remedy at law to prevent Defendant's actions in other forums and will suffer and continue to suffer irreparable harm unless this Honorable Court grants injunctive relief.

11. This motion may further be supported by affidavits and/or a supporting memorandum of law that may be submitted at or prior to the hearing of this motion.

WHEREFORE, Plaintiff, respectfully request this Honorable Court to:

A. Grant Plaintiff's Request for an Emergency Hearing;

---

<sup>3</sup> In support of its refusal to mitigate, HCDA states:

We would like to reinforce the fact that SDMB is occupying Hangar 7 without permission and may continue to access hangar [sic] 7 for the time being only as a result of their appeal of the Magistrate [sic] Court's eviction. HCDA will use diligent efforts to work with SDMB to permit SDMB to continue to operate its aeronautical activities at CRE during this temporary disruption.

Hangaring SDMB's leased aircraft is not HCDA's responsibility. HCDA has no obligation under South Carolina or federal law to provide SDMB with a replacement hangar during the short time that phase 2 of the apron reconstruction project is being undertaken.

See Exhibit 3.

B. Enjoin Defendants Horry County and Horry County Department of Airports from blocking access to and from Hangar 7;

C. Order HCDA to approve the assumption of Hangar 1 long term lease terms<sup>4</sup> by SDMB from the existing lease between Malcom Odem and HCDA;

D. Order Defendants to respond to and produce documents requested in Plaintiff's Request for Production of Documents dated July 8, 2013, within five (5) pursuant to SCRPC Rules 34(a) and 37(a);

E. Pursuant to SCRPC 37(a)(4), ward Plaintiff reasonable attorney fees together with costs associated with this motion; and

F. Such other further relief as this Honorable Court deems necessary.

BY:



ROBERT G. EASTMAN  
Eastman & Associates, LLC  
SC Bar # 75900  
PO Box 180  
Charleston, SC 29402  
Tel.: (843) 329-9657  
Fax: (843) 723-0005  
robertgeastman@msn.com

Merritt Island, FL

October 14, 2014

<sup>4</sup> Mr. Odem has a fully serviceable hangar with climate control and functioning doors that is ideal for SDMB operations and aircraft. It also is located close to an additional access point on the north end by the current landing area. It seems that moving to this location would remove all issues between the parties! However, HCDA has refused to entertain the idea citing unspecified "safety" and feasibility concerns! SDMB has been ready, willing, and able to relocate and Mr. Odem is amenable. The roadblock is with HCDA.

# Exhibit 1

141013.sdm.v.horrycounty.injunction.compel.production

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**BATTLE LAW FIRM, LLC**  
ATTORNEYS AND COUNSELORS AT LAW  
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July 21, 2014

The Honorable Christopher J. Arakas  
Horry County  
Myrtle Beach Magistrate's Court  
1201 21<sup>st</sup> Avenue North  
Myrtle Beach, SC 29577

RE: Horry County v. Skydrive Myrtle Beach, Inc.  
C/A NO: 2014CV-26-109244

Dear Judge Arakas:

Plaintiff Horry County opposes the requests contained in Skydrive of Myrtle Beach (SDMB) Attorney Robert G. Eastman's letter dated July 18, 2014, to delay the ejectment proceeding scheduled July 23, 2014. Horry County disputes all of the representations made by SDMB in Eastman's letter. Further, SDMB's representations are not relevant to the ejectment proceeding before the court. The sole question before the Court is whether SDMB has a legal right to occupy Hangar 7. Horry County contends SDMB does not have a legal right to occupy Hangar 7. SDMB's letter of July 18, 2014, does not contain anything to refute Horry County's contention.

The specific grounds for Horry County's opposition are:

1. SDMB's request for reconsideration.
  - a. SDMB's request should be denied because it is not a properly made motion pursuant to Rule 12 SC R MAG CT. The request does not identify any (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 19; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. SC R MAG CT Rule 12.
  - b. The Court ruled on July 2, 2014. The ejectment proceeding is scheduled for July 23, 2014. SDMB's request and exhibits have not been received by Horry County. Horry County's attorney did receive an e-mail version of only the letter at 6:45 pm on July 18, 2014. SDMB's motion was not made within a reasonable time from the date the order was entered on July 2, 2014.

- c. Further, in view of SDMB's failure to raise any pertinent grounds for reconsideration, SDMB's motion would not serve any purpose other than to delay the ejectment proceeding.
2. SDMB's request to file an Answer and Counterclaim.
- a. SDMB's request to file an Answer and Counterclaim should be denied because SDMB filed its responsive pleading on June 13, 2014. SDMB's time for filing counterclaims has lapsed under Rule 9 (a) SC R MAG Ct (within the time period specified in these rules for answering the complaint, the defendant may assert a counterclaim). Further, all the counterclaims which SDMB would file have previously been filed in Circuit Court and SDMB's counterclaims would subject to dismissal under Rule 12 (b) (8) SCRCP (another action is pending between the same parties for the same claim).
3. SDMB's request for a jury trial.
- a. SDMB's request for a jury trial should be denied because it is untimely under Rule 38 (b) SCRCP (Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party). SDMB's response to Horry County petition for ejectment was served and filed on June 13, 2014. SDMB did not request a jury trial in that pleading. Further, SDMB has not identified any factual issues that would be determined by a jury.

Horry County respectfully requests that the ejectment hearing proceed as scheduled. Horry County has planned a construction project for approximately Three Million Dollars for Ramp Rehabilitation which Horry County scheduled to begin on September 2, 2014. The rehabilitation project is expected to require anyone occupying Hangar 7 to vacate the premises while the rehabilitation of the ramp is being completed. Bids have been received and Horry County is prepared to award the bid as soon as it receives grant approval for the project from the Federal Aviation Administration. Approval is expected in the very near future. Horry County contends that SDMB's occupation of Hangar 7 and delaying tactics, if successful, will frustrate Horry County's Ramp Rehabilitation project and cause significant financial damage to Horry County. If SDMB has a valid defense, they should present it at the hearing scheduled for July 23, 2014.

Sincerely,



Michael W. Battle  
Attorney for Horry County &  
Horry County Department of Airports  
C: Robert Eastman  
Arrigo Carotti

# Exhibit 2

141013.sdmh.v.horrycounty.injunction.compel.production

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

2014CV261092444  
CIVIL CASE NUMBER  
MAGISTRATE'S COURT

BOND TO STAY EXECUTION  
ON APPEAL

Horry County  
Po Box 1236  
Conway, SC 29526

LANDLORD

Vs

Skydive Myrtle Beach, Inc.  
2800 Terminal Street  
Conway, SC 29528

TENANT(S)

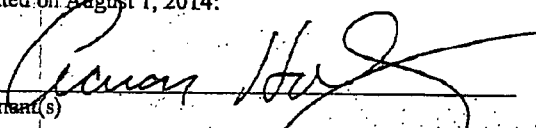
TO: Circuit Court

Now comes the Tenant(s) in the above entitled action and respectfully shows the Court that a Judgment of Execution was issued against the Tenant(s) and for the Landlord on July 23, 2014, by the Magistrate. Tenant(s) has appealed the Judgment to the Circuit Court.

Pursuant to the findings of the Magistrate, the Tenant(s) is obligated to pay rent in the amount of \$1,200.00 per month, due on the 1st day of each month. An initial payment of \$7200.00 was paid this date with monthly payments to follow.

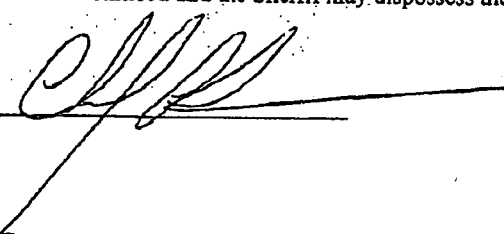
Tenant(s) hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the Court and moves the Circuit Court to stay execution on the Judgment for Ejectment until this matter is heard on appeal and decided by the Circuit Court.

Dated on August 1, 2014:

  
\_\_\_\_\_  
Tenant(s)

Upon execution of the above bond, execution on the Judgment of Ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If Tenant(s) fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant(s) to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Tenant(s).

Dated on August 1, 2014

  
\_\_\_\_\_  
JUDGE

Horry County  
Myrtle Beach Magistrate Court  
1201 21st Avenue North  
Myrtle Beach, SC 29577  
Phone: (843) 915-5293 Fax: (843) 444-6131

MV 125

Exhibit 2: 141013.sdmb.v.horrycounty.injunction.compel.production

Page 1

Record on Appeal -359-

# Exhibit 3

141013.edmb.v.horrycounty.injunction.compel.production

Record on Appeal -360-

robertgeastman@msn.com

---

**From:** Terreri, Jason <terreri@HorryCounty.org>  
**Sent:** Wednesday, October 8, 2014 8:38 PM  
**To:** aholly  
**Cc:** Robert Eastman; Apone, Pat  
**Subject:** Re: CRE Ramp Repair Project - Phase 2

Aaron,

There is no reason why this short term project should have any adverse impact on SDMB's business. If SDMB would simply work with HCDA, instead of seeking to litigate every issue, a workable solution to this temporary inconvenience can likely be found.

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Hangaring SDMB's leased aircraft is not HCDA's responsibility. HCDA has no obligation under South Carolina or federal law to provide SDMB with a replacement hangar during the short time that phase 2 of the apron reconstruction project is being undertaken. SDMB has consistently refused to sign a space use permit in the standard, commercially reasonable form offered by HCDA. Federal law does not mandate that every operator seeking a hangar be provided with such a facility under any circumstances.

SDMB's litigations will not intimidate HCDA into granting SDMB more favorable terms than any other tenant. It is not feasible, prudent or safe for SDMB to operate from Hangar 1.

I look forward to working with you on a solution to accommodate SDMB during the construction phase of our rehabilitation project.

Jason

Jason Terreri, IAP, A.A.E, ACE  
Assistant Director of Airports  
1100 Jetport Road, Myrtle Beach, SC 29577  
Main 843.448.1580 • FAX 843.626.9096  
www.FlyMyrtleBeach.com

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**From:** aholly  
**Sent:** Wednesday, October 8, 2014 9:47 AM  
**To:** IAP A. A. E ACE Jason Terreri  
**Cc:** Robert Eastman, Pat Apone

Also Jason,

Preventing us from using this hangar is another attempt to evict us. We have a court order giving us use of the hangar and access of the hangar until all of our issues are resolved. This action can only be construed as the County's continued pattern of harrassment in order to put Skydive Myrtle Beach out of business as part of the campaign to illegally remove us from the airport. We were just in court addressing this pattern of harrassment. All of this would be resolved if we were allowed to move to Hangar 1 or other suitable hangar. I have ccd my attorney on both emails and we will be going back to court to address this issue and protect my business.

Thanks

Aaron

On Oct 7, 2014, at 3:21 PM, Terrori, Jason <[terrori@HorryCounty.org](mailto:terrori@HorryCounty.org)> wrote:

Good Afternoon,

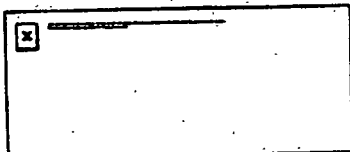
The Department of Airports will be kicking off the second phase of the Ramp Rehabilitation Project at Grand Strand Airport this fall. Our anticipated Notice to Proceed ("NTP") will be issued within the next few days. The project will be delivered in two phases and is expected to take approximately 160 days to complete. Attached is an aerial graphic of the project site and phasing plan. The first phase is scheduled for 110 days and during that time the aircraft on the tie-downs will be relocated to the tie-downs on the other side of the FBO. Also, during phase 1 the Bld Alternate, which is the area in front of Hangar 8 ("Barnstormers") will be completed. Phase two is scheduled to take 50 days.

During Phase 1, access from the Airfield to Hangar 8 ("Barnstormers") will be blocked. During Phase 2, access from the Airfield to Hangar 7 (Skydive Myrtle Beach) will be blocked. As was the case with the first phase of the Ramp Rehabilitation Project, all aircraft will be accommodated on the ramp until access to the hangars is possible, and all operators will continue to operate under their existing agreements with the County, except that their rent will be appropriately adjusted. Any operator with an expired agreement will be expected to enter into a new agreement with the County in its standard form. Also, the vehicle gate will be locked and taken out of service until the ramp work leading to the gate has been completed. Landside access will still be available, through the other vehicle gate and the FBO.

We will be scheduling individual meetings soon with the users affected by this project to minimize the impact of this project on your operations. Thank you for your understanding as we continue to improve the Grand Strand Airport.

Thanks,

Jason



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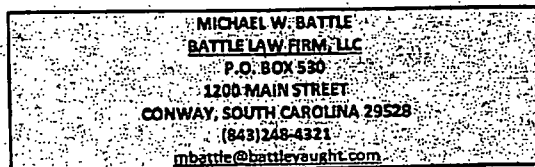
All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure <Schedule II Phasing with Aerial.pdf>

robertgeastman@msn.com

**From:** Mike Battle <MBattle@battlelawsc.com>  
**Sent:** Thursday, October 2, 2014 4:56 PM  
**To:** Robert Eastman; Robert Eastman  
**Cc:** Carotti, Arrigo; dbannard@foley.com; Carotti, Arrigo; dbannard@foley.com  
**Subject:** SDMB v Horry County  
**Attachments:** MEMO Skydive allegations 10-2-2014.docx

Please find attached the response to your client's allegations of intimidation, etc. Also, the airport is gathering the information you requested for this case and the FAA case. I ask that you wait until that information is produced before deciding whether to file a motion to compel. Thanks Mike Battle

*Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.*



robertgeastman@msn.com

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**From:** Aaron Holly <aholly@me.com>  
**Sent:** Wednesday, October 8, 2014, 10:04 PM  
**To:** Terreri, Jason  
**Cc:** Robert Eastman  
**Subject:** Re: CRE Ramp Repair Project - Phase 2

Jason,

Our business is run out of Hangar 7. We have been granted access by the courts to that hangar until our dispute is resolved. We have presented you with a viable solution, which you declined. You are determining what is an inconvenience with our business. We have always been willing to work things out. I hope you reconsider your position and allow us to move to Hangar 1. Litigation is a last resort with us as always, but it seems this is the only way the County wants to communicate with us.

Aaron

On Oct 8, 2014, at 8:37 PM, Terreri, Jason <[terreri@HorryCounty.org](mailto:terreri@HorryCounty.org)> wrote:

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Exhibit 3 141013.sdmb.v.horrycounty.injunction.compel.production.

Page 5

Record on Appeal -365-

Jason Terreri, IAP, A.A.E, ACE  
Assistant Director of Airports  
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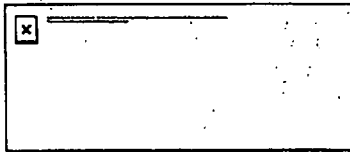


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# Exhibit 4

141013.edmb.v.horrycounty.injunction.compet.production

Record on Appeal -368-

## AIRCRAFT LEASE AGREEMENT

This Aircraft Lease Agreement (this "Agreement") is made and entered into as of August \_\_, 2014, by and between Clear Sky Holdings, LLC, a Nevada limited liability company with a mailing address of P.O. Box 256, Zephyr Cove, Nevada, 89448 ("Lessor"), and Skydive Myrtle Beach LLC, a North Carolina limited liability company with a mailing address of 3032 Falls River Avenue, Raleigh, North Carolina 27614 ("Lessee").

### RECITALS

A. WHEREAS, Lessor is the owner of that certain Pacific Aerospace Corporation Model 750XL aircraft N750SN, serial number 142 (the "Aircraft"), as more thoroughly described in the attached Exhibit A.

B. WHEREAS, Lessee desires to lease the Aircraft from Lessor under such terms and subject to the conditions as set forth herein.

Now, Therefore, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### SECTION 1. GENERAL

Lessor agrees to lease to the Lessee, for its exclusive use during the Term (as defined below) of this Agreement, the Aircraft. Lessor warrants that the Aircraft is warranted to be airworthy according to current Federal Aviation Administration standards. Lessor further warrants that it is the sole owner of the Aircraft and warrants that it has the right and authority to execute this Agreement to Lessee.

### SECTION 2. LEASE TERM

The Term of this Agreement shall commence on August 12, 2014, and continue through and including August 11, 2015 (the "Term"). If Lessor sells, assigns, or conveys the Aircraft to any party other than Lessee during the Term of this Agreement or any renewal of it, any such buyer, grantee, or assignee must accept or take ownership subject to Lessee's lease rights contained herein of which Lessor must inform such party.

### SECTION 3. AGREEMENT REQUIREMENTS

Lessor shall promptly deliver to Lessee the following items, after the execution of this Agreement and as a condition precedent to Lessee's obligation to make any payment hereunder:

- A. The equipment listed in Exhibit A to this Agreement.
- B. An airworthiness certificate from the Federal Aviation Administration indicating that the Aircraft is airworthy.
- C. Prior to acceptance, the Lessee will inspect, test, and flight check the Aircraft through its authorized agent(s). If such test or inspection reveals that the Aircraft is not equipped or the condition is not as stipulated, Lessee may decline acceptance, and this Agreement shall be null and void. However, Lessor shall be given the option to cure any purported deficiencies within 20 calendar days thereafter to ensure compliance with all applicable requirements of Lessee prior to cancellation of this Agreement. Once the Aircraft is accepted by Lessee, the right to declare this Agreement null and void, pursuant to this Section 3(C), shall terminate.
- D. A registration certificate from the appropriate United States agency indicating the Aircraft's Lessor is the legal owner.

#### SECTION 4. COMMERCIAL OPERATION RESTRICTION

Neither Lessee nor Lessor will make the Aircraft available for hire within the meaning of the Federal Aviation Regulations. The Aircraft is to be operated strictly in accordance with 14 C.F.R. Part 91. Lessor and Lessee hereby agree that Lessor shall have operational control of the Aircraft at all times while the Aircraft is operated under this Agreement.

#### SECTION 5. AIRCRAFT INSURANCE

A. To the extent not covered by insurance as set forth below, Lessee shall bear the risk of loss, damage, theft or destruction, partial or complete, of the Aircraft during the Term from whatsoever source arising, except such loss or damage caused by the gross negligence of Lessor. In the event that the Aircraft is damaged, Lessee agrees that the lease amounts with respect to the lease of such Aircraft shall not abate and that Lessee shall, at its sole cost and expense to the extent not covered by insurance, promptly and completely restore and repair the Aircraft in order that the Aircraft shall be placed in the same condition as it was prior to the damage. Lessor shall have the right to approve all repairs made by Lessee, and such repairs shall be performed only by FAA certified mechanics.

B. Lessor will maintain hull insurance in the amount deemed necessary by Lessor to cover the Aircraft. Lessee is responsible for the deductible amount of the insurance, which sum totals Twenty-Five Thousand Dollars and 00/100's (\$25,000.00). In addition, Lessor will maintain aircraft liability insurance in an amount not less than \$1,000,000.

C. In the event of an accident, where the Aircraft sustains substantial damage due to the negligent operation of the Aircraft by Lessee, or any of its representatives, this Agreement shall be terminated and the Aircraft immediately returned to Lessor unless Lessee promptly takes reasonable action, to the satisfaction of Lessor, to correct or prevent a similar negligent incident.

D. Lessee agrees to include Lessor in Lessee's waiver/release of liability documents and require all passengers and pilots to sign said waiver/release of liability before boarding aircraft. Upon the execution of this Agreement, Lessee shall provide to Lessor a copy of its form waiver/release of liability.

#### SECTION 6. FEES

A. Lessee guarantees a minimum cumulative utilization of Three Hundred (300) hours on the Aircraft from August 12, 2014 through August 11, 2015 according to the schedule depicted in Exhibit B. The number of hours is computed from the Prop TAC Hour Meter installed in the Aircraft. The time shall be reported on the Aircraft Daily Flight Logs and reported to Lessor on the first day of each week for the previous week's flights, prior to the first flight of the day that week. Fees due to the Lessor shall be at the rate of Five Hundred Fifty Dollars and 0/100's (\$550.00) per hour, less any time charged to inspections or maintenance as provided in Section 7 of this Agreement. At the end of each week, Lessee shall deliver to Lessor, via electronic means, daily flight sheets in .pdf format, or via facsimile, indicating the total hours in the Aircraft for the preceding week.

B. Lessee shall pay the sum of \$275.00 per flight hour, plus fuel and pilot costs for the ferry time, to and from Lessee's base location (Grand Strand Airport in Myrtle Beach, South Carolina). The ferry time does not count toward the 300 minimum hour requirement set forth in Section 6.A above.

C. Lessor has allowed Lessee to carryover \_\_\_\_\_ hours of flight (TAC) time which has been paid for, but not used, from the prior Aircraft Lease Agreement (the "Carryover Hours") These Carryover Hours may be used during the Term of this Agreement, but only after the aggregate minimum lease payments under this Agreement are paid in full.

D. Lessee shall pay Lessor the bi-weekly minimum payment as set forth in Exhibit B attached hereto in advance every two (2) weeks during the Term. Payment of the bi-weekly minimum payment shall be made to the Lessor on or before the first day of each bi-weekly period via check, wire transfer or other form of electronic or automatic payment. Each bi-weekly minimum payment due shall be based upon the number of minimum hours for the two (2) week period as set forth on Exhibit B, multiplied by the hourly rate. In the event that Lessee does not fly the minimum hours in any period, the minimum payment must still be made. The hours paid for but not flown will be credited towards future flight time, but not beyond the Term of this Agreement. In the event that Lessee's actual usage exceeds the cumulative bi-weekly minimum hours, then Lessee shall pay Lessor an additional payment equal to the \$550.00 multiplied by the number of actual hours in excess of the cumulative bi-weekly minimum hours. In such event, on a bi-weekly basis, Lessor will provide Lessee with an invoice clearly setting forth the hours of usage in excess of the cumulative bi-weekly minimum hours and the additional amount due which shall be immediately paid by Lessee to Lessor by check, wire transfer or other form of electronic or automatic payment. Once the 300 hours contract minimum is met, the Carryover Hours may be utilized by Lessee.

E. A late payment penalty in the amount of 5% of the amount due shall be added to the amount due if full payment is not made within 5 business days of the receipt of the statement indicating the amount due.

F. Lessee has submitted to Lessor a deposit in the amount of Ten Thousand Dollars (\$10,000.00). In the event that Lessee fails to pay Lessor any amounts due arising out of Lessee's use of the Aircraft, Lessor shall be entitled to payment of such fees from the deposit amount. In no circumstance may Lessee utilize or consider the deposit amount as a credit against any fees which become due under this Agreement. Upon expiration of this Agreement, Lessor shall return any unused portion of Lessee's deposit, minus any amounts necessary to conduct any repairs to the Aircraft for uninsured damages which occurred during Lessee's operation of the Aircraft during the Term of this Agreement, and costs associated with returning the Aircraft to Lessor, less and except ordinary wear and tear. In addition, said deposit may be used to offset any costs associated with Lessee's breach of this Agreement.

#### SECTION 7. INSPECTION, MAINTENANCE, AND CHARGES.

A. Lessor agrees to provide all scheduled maintenance (i.e. regular and periodic maintenance and inspections required by the FAA) and any parts necessary for such repairs of the Aircraft at its sole cost and expense. The Lessee agrees to release the Aircraft to Lessor to permit them to carry out their responsibilities under this Section 7. However, the Lessee will record all hour meter times expended in carrying out the maintenance responsibilities under this Section 7 to include, pre- and post-maintenance engine runs, ferry time to and from maintenance facilities, and functional check flights required to test aircraft performance and operation. The Lessor will not be compensated for hour meter time so recorded. However, Lessee must establish that any such hour meter time so recorded was necessary for such maintenance to the satisfaction of Lessor.

B. Lessee agrees to maintain the Aircraft, both interior and exterior, in a clean and neat condition. Lessee will provide any light maintenance necessary for normal operation of aircraft. Any item in question will be agreed upon and approved by Lessor prior to work being performed. Lessee agrees that such maintenance shall be performed only by FAA certified mechanics.

#### SECTION 8. OPERATION OF AIRCRAFT

A. The Aircraft provided pursuant to this Agreement will be the first and primary Aircraft used by Lessee. In the event that Lessee operates another or additional aircraft, such additional aircraft will only be used after the Aircraft is used to its capacity unless the Aircraft is flying in support of another event and with prior approval from Lessor.

B. Lessee agrees that the Aircraft will be based at Grand Strand Airport in Myrtle Beach, South Carolina. Lessee shall not operate the Aircraft at another location without the prior consent of Lessor.

C. The use and operation of the Aircraft by the Lessee shall be at the sole risk and expense of Lessee. Lessee agrees that the Aircraft will be used and operated in compliance with any and all local, state, and federal laws, ordinances, regulations, and standards or directives issued by any governmental agency applicable to the use or operation of the Aircraft. The use and operation of the Aircraft must comply with the airworthiness certificate, the flight manual, all manufacturer's suggested operating procedures, and all other licenses or registrations relating to the Aircraft issued by any agency and in a manner that does not modify or impair any existing warranties on the Aircraft or any part thereof.

D. Lessee shall operate the Aircraft predominantly in the conduct of its business and shall not operate or permit the Aircraft to be operated in a manner inconsistent with its principal business activities.

E. Lessee agrees that the Aircraft furnished under this Agreement will be operated only by FAA certified pilots with ratings of commercial pilot certificate and instrument rating, if required for flight, and any other certificate, rating, type rating or endorsement appropriate for the Aircraft, purpose of flight, condition or flight or as otherwise required by applicable aviation laws or regulations promulgated by any United States Agency. Lessee shall provide the pilot(s) for operation of the Aircraft; provided that, such pilots must be approved by Lessor prior to such pilot operating the Aircraft. Lessor shall have the right to require Lessee to dismiss any of Lessee's pilots for any reasonable reason, including, but not limited to, (i) performing aerobatic maneuvers; (ii) low flying and low passes over runways and skydiving landing areas; (iii) any other reckless operation of the Aircraft; (iv) running out of fuel; (v) damaging the Aircraft; and (vi) failing or refusing to take a requested drug or alcohol test. Lessee's failure to terminate a pilot as reasonably requested by Lessor under this Section 8.E shall constitute a Default by Lessee under Section 15 of this Agreement.

F. The minimum standards set forth by the insurer to act as PIC require the pilot to possess a current 2nd class medical certificate, a commercial pilot certificate, with an instrument rating, and have a minimum of 1,000 flight hours as PIC, with a minimum of 25 hours in type of aircraft and 25 hours flying skydivers. If these requirements differ from those set forth in any policy of insurance in effect for the Aircraft, now or at another time, the requirements set forth in the insurance policy will control. These prerequisites set forth above are only a reference to the minimum amount of experience necessary to operate the Aircraft.

G. Lessee shall hanger the Aircraft every night and during adverse weather conditions.

**SECTION 9.  
INSPECTION BY LESSOR**

Lessee agrees to permit Lessor or any authorized agent to inspect the Aircraft at any reasonable time and to furnish any information in respect to the Aircraft and its use that Lessor may reasonably request.

**SECTION 10.  
CUSTODY AND RETURN OF AIRCRAFT**

Lessee agrees that it will assume custody of the Aircraft after this Agreement has been executed by all parties to this Agreement. The Lessee further agrees that it will return said Aircraft clean inside and out, and in as good a condition as when received, normal wear and tear excepted. The Lessee will not be held liable for any diminution in value resulting from damage to the Aircraft, so long as it is repaired by Lessee as provided herein.

**SECTION 11.  
DELIVERY OF AIRCRAFT**

The delivery of the Aircraft under this Agreement took place at University Airport, Davis, CA 95616, under the prior Aircraft Lease Agreement. Lessee's obligation to pay any utilization fees under Section 6 shall commence upon delivery of the Aircraft and 24 hours after Lessee's acceptance of it as ready to fly. Return of the Aircraft by the Lessee to Lessor, or its authorized representative, will take place at University Airport, Davis, CA 95616. Lessee shall bear all costs associated with ferrying of the Aircraft from its airport of base operations to the location specified above.

**SECTION 12.  
LOCATION OF AIRCRAFT**

Lessor and Lessee understand that the site where the Aircraft is primarily based, and accessible thereto from public highways, are on lands subject to the jurisdiction of the United States and are governed by U.S. Federal Laws. Lessor and Lessee agree to obey all Federal, State and Local laws to the extent applicable to this Agreement, including all Federal Aviation Regulations.

**SECTION 13.  
LICENSES, TAXES, PERMITS, AND FEES**

Lessee is responsible for obtaining, at its own expense, all licenses and permits required for the use of the Aircraft in Lessee's business. Lessee is responsible for all sales, use, or similar excise taxes arising from or in connection with Lessor's lease of the Aircraft to Lessee and Lessee's use of the Aircraft under this Agreement. Lessee is responsible for all landing fees, fuel taxes and any other similar taxes or fees which may arise from Lessee's use of the Aircraft under this Agreement, including any specific flight by Lessee. Lessor is responsible for the payment of



any *ad valorem* property taxes, including personal property taxes, incurred by reason of Lessor's ownership of the Aircraft during the term of this Agreement.

#### SECTION 14. ACCIDENT AND CLAIM

Lessee shall immediately notify Lessor of each accident involving the Aircraft, which notification shall specify the time, place, and nature of the accident or damage, the names and addresses of parties involved, persons injured, witnesses, and owners of properties damaged, and such other information as may be known. Lessee shall advise Lessor of all correspondence, papers, notices, and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to the Aircraft or its operation, and shall aid in any investigation instituted by Lessor and in the recovery of damages from third persons liable therefor.

#### SECTION 15. DEFAULT

The term "Default" shall mean any of the following events under this Agreement: (a) Lessee shall fail to make any payment of "rent" or any other payment for the use of the Aircraft or other sum of money when due; (b) Lessee shall fail to comply with any and all insurance requirements in effect for the Aircraft; (c) Lessee shall attempt to remove, sell, transfer, encumber, part with possession of (except as expressly provided in this Agreement), assign or sublet the Aircraft, any engine or part thereof, use the Aircraft for any illegal purpose, or permit the same to occur, (d) Lessee shall generally fail to pay its debts as they become due or shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws or any answer admitted the material allegations of a petition filed against Lessee in any such proceeding, or Lessee shall, by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or liquidation of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; (e) a petition is filed against Lessee in a proceeding under applicable bankruptcy laws or other insolvency laws; (f) Lessee fails to take any reasonable corrective action, to the satisfaction of Lessor, for a period of fifteen (15) business days after written notice is received that any operation of the Aircraft conducted by Lessee, or its employees, affiliates or contractors in violation of any local, state or federal law, or in violation of any provisions of any Federal Aviation Regulation; (g) Lessee fails to take any reasonable corrective action, to the satisfaction of Lessor, for a period of five (5) business days after written notice is received of any negligent operation of the Aircraft by Lessee; or (h) Lessee shall fail to comply with any other requirements or obligations under this Agreement.

## **SECTION 16. REMEDIES**

Upon the occurrence of any Default, Lessor may, at its option, at any time thereafter, exercise one or more of the following remedies, as Lessor in its sole discretion shall lawfully elect: (a) demand the Lessee immediately pay all amounts due and owing for Lessee's failure to pay for use of the Aircraft; (b) demand the immediate return of the Aircraft as provided herein; (c) by notice in writing, immediately terminate this Agreement, whereupon all rights of Lessee to use of the Aircraft or any part thereof shall absolutely cease and terminate, and Lessee shall remain liable for any and all obligations pursuant to this Agreement; (d) request Lessee to return the Aircraft to a designated location; (e) enter the premises of any location where the Aircraft is believed to be and re-take possession of the Aircraft, all without resort to legal process.

The foregoing remedies are cumulative, and any or all thereof may be exercised in lieu of or in addition to each other or any remedies at law, in equity, or under statute. Waiver of any Default shall not be a waiver of any other or subsequent Default.

## **SECTION 17. INDEMNIFICATION**

Lessee hereby agrees to indemnify, defend, protect, save, keep and hold harmless Lessor, its successors, agents and assigns, from and against any and all claims, liabilities, demands, obligations, losses, damages, fines, penalties, claims (including without limitation, claims involving strict or absolute liability in tort), actions, suits, costs, expenses and disbursements (including, without limitation, reasonable legal fees and expenses) of any kind and nature whatsoever ("Claims") which may be imposed on, incurred by or asserted against Lessor, in any way relating to or arising out of (a) Lessee's use and operation of the Aircraft; (b) Lessee's business operations; and (c) Lessee's Default or breach of any term of this Agreement. Lessor shall have the opportunity, but not the obligation, to defend if Lessee fails to assert a defense in any such Claim hereunder, the cost of which defense shall be borne by Lessee. This Agreement is made upon the express condition that Lessor is to be free from, indemnified and held harmless by Lessee from, any Claim for damages by reason of any injury to or death of any person or persons, including Lessee, or property of any kind whatsoever and to whomsoever belonging, including Lessee, from any cause or causes whatsoever, except to the extent caused by Lessor's gross negligence. THE INDEMNITIES IN THIS SECTION SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE EXPIRATION OR OTHER TERMINATION OF THIS LEASE.

## **SECTION 18. WARRANTY OF AUTHORITY**

Each of the parties executing this Agreement warrants that they have the actual authority to execute this Agreement.

**SECTION 19.  
WAIVER**

In addition, Lessee agrees to waive, release and relinquish any claim against Lessor for loss of income, loss of use or any other consequential damages which Lessee claims was caused, contributed to or arose from any act or neglect of Lessor.

**SECTION 20.  
GOVERNING LAW AND FORUM SELECTION**

This Agreement is executed pursuant to the laws of the State of Nevada and shall be construed and governed by the laws of the State of Nevada. All actions and proceedings arising out of or relating to this Agreement shall be heard and determined in any Nevada state or federal court. Each of the parties to this Agreement (a) consents to submit itself to the personal jurisdiction of any Nevada state or federal court in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any action in relation of this Agreement in any court other than a Nevada state or federal court.

**SECTION 21.  
HEADINGS AND COUNTERPARTS**

The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. Facsimile copies hereof, and facsimile signatures thereon shall have the force and effect of originals.

**SECTION 22.  
ATTORNEYS' FEES AND COSTS**

The parties shall each bear their own attorneys' fees, if any, associated with negotiation of this Agreement. Should any party be required to bring suit to enforce any provisions of this Agreement, the prevailing party shall be entitled to an award of attorneys' fees and costs reasonably incurred in connection with such future litigation, including appeals and bankruptcy proceedings.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**LESSEE:**

Skydive Myrtle Beach LLC

By: \_\_\_\_\_

Aaron Holly, Manager

**LESSOR:**

Clear Sky Holdings, LLC

By: \_\_\_\_\_

Don Niemann, Manager

**EXHIBIT A**

**AIRCRAFT DESCRIPTION**

Pacific Aerospace Corporation Model 750XL aircraft N750SN, serial number 142 as described upon delivery and depicted in aircraft documentation to Clear Sky Holdings, LLC.

And,

As described and depicted in aircraft documentation at the aircraft tach hour of \_\_\_\_\_ upon the entry into this Aircraft Lease Agreement.

# EXHIBIT B

## SCHEDULE OF FEES/MINIMUMS

| <u>Date</u> | <u>Bi-Weekly Hours</u> | <u>Bi-Weekly Fees Due</u> | <u>Total Hours to Date</u> | <u>Total Fees to Date</u> |
|-------------|------------------------|---------------------------|----------------------------|---------------------------|
| Week #1     | 11.5                   | \$6,325.00                | 11.5                       | \$6,325.00                |
| Week #3     | 11.5                   | \$6,325.00                | 23                         | \$12,650.00               |
| Week #5     | 11.5                   | \$6,325.00                | 34.5                       | \$18,975.00               |
| Week #7     | 11.5                   | \$6,325.00                | 46                         | \$25,300.00               |
| Week #9     | 11.5                   | \$6,325.00                | 57.5                       | \$31,625.00               |
| Week #11    | 11.5                   | \$6,325.00                | 69                         | \$37,950.00               |
| Week #13    | 11.5                   | \$6,325.00                | 80.5                       | \$44,275.00               |
| Week #15    | 11.5                   | \$6,325.00                | 92                         | \$50,600.00               |
| Week #17    | 11.5                   | \$6,325.00                | 103.5                      | \$56,900.00               |
| Week #19    | 11.5                   | \$6,325.00                | 115                        | \$63,250.00               |
| Week #21    | 11.5                   | \$6,325.00                | 126.5                      | \$69,575.00               |
| Week #23    | 11.5                   | \$6,325.00                | 138                        | \$75,900.00               |
| Week #25    | 11.5                   | \$6,325.00                | 149.5                      | \$82,225.00               |
| Week #27    | 11.5                   | \$6,325.00                | 161                        | \$88,550.00               |
| Week #29    | 11.5                   | \$6,325.00                | 172.5                      | \$94,875.00               |
| Week #31    | 11.5                   | \$6,325.00                | 184                        | \$101,200.00              |
| Week #33    | 11.5                   | \$6,325.00                | 195.50                     | \$107,525.00              |
| Week #35    | 11.5                   | \$6,325.00                | 207                        | \$113,850.00              |
| Week #37    | 11.5                   | \$6,325.00                | 218.5                      | \$120,175.00              |
| Week #39    | 11.5                   | \$6,325.00                | 230                        | \$126,500.00              |
| Week #41    | 11.5                   | \$6,325.00                | 241.5                      | \$132,825.00              |
| Week #43    | 11.5                   | \$6,325.00                | 253                        | \$139,150.00              |
| Week #45    | 11.5                   | \$6,325.00                | 264.5                      | \$145,475.00              |
| Week #47    | 11.5                   | \$6,325.00                | 276                        | \$151,800.00              |
| Week #49    | 11.5                   | \$6,325.00                | 287.5                      | \$158,125.00              |
| Week #51    | 12.5                   | \$6,875.00                | 300                        | \$165,000.00              |

Horry County and Horry County Department of Airports Production Response

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STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Skydive Myrtle Beach, Inc.

Plaintiff,

vs.

Horry County, Horry County Department of  
Airports, H. Randolph Haldi, Pat Apone, Tim  
Jackson and Jack Teal,

Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS  
CASE NO.: 2014-CP-26-1193

**ANSWERS TO REQUEST FOR  
PRODUCTION FROM HORRY  
COUNTY, HORRY COUNTY  
DEPARTMENT OF AIRPORTS**

TO: PLAINTIFF'S AND PLAINTIFF'S ATTORNEY ROBERT EASTMAN

Defendants Horry County and Horry County Department of Airports (Horry  
County), responds to Plaintiffs' Requests for Production of Documents as follows:

In responding, Horry County does not waive any Attorney-Client, Work-Product  
or other applicable privileges or immunities from disclosure, which may attach to  
information called for herein or responsive to these Requests for Production of  
Documents, and thus, each and every Response given herein is offered subject to these  
privileges and immunities. Moreover, Horry County does not concede the relevance or  
materiality of the Requests for Production of Documents or the subject matters to which  
these Requests for Production refer. In responding to these Requests for Production of  
Documents, Horry County reserves:

- A. All questions regarding competency, relevancy, materiality, privilege and  
admissibility of evidence for any purpose of the documents referred to or  
responses given, or the subject matter thereof and any subsequent proceeding,  
or the trial of this action or any other action or proceeding;

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B. The right to object to other discovery procedures involving or relating to the subject matter of these Requests for Production of Documents; and

C. The right at any time to revise, correct, add to or clarify any of the responses herein set forth or documents which are herein referred.

Subject to the previously noted privileges, immunities, and reservations, Horry County's Responses to Plaintiffs' Requests for Production of Documents are as follows:

1. Any and all statements listed in response to Plaintiff's Interrogatory No. 1, served herewith.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

2. Any and all photographs, plats, bills, records, invoices, contracts, sketches, emails, or other document or documents listed in response to Plaintiff's First Set of Interrogatories, served herewith.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

3. Any and all documents referred to in Defendant's Answer to Plaintiff's Complaint.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

4. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or documents which relate to Defendant's defenses to Plaintiff's claims against all Defendants.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

5. Any and all photographs, plats, bills, records, invoices, contracts, sketches or other document or other documents which Defendant intends to produce in the trial of the above captioned lawsuit.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

6. Any and all reports, logs, requests for, conclusions drawn, proposed actions, actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on Grand Strand Airport (CRE) property.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

7. Any and all lease agreements, operating permits and space use permits between Harry County or Harry County Department of Airports (HCDA) and any HCDA or Harry County Tenant on all Harry County owned real property or hanger space within the control of the HCDA, including but not limited to Conway, Loris Grand Strand (CRE) and Myrtle Beach International (MYR) airports.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

8. Any and all policy or policies, rules, memoranda, or procedures relating to training tenants on HCDA policies, rules or regulations relating to all Harry County airport property located at the Conway, Loris, CRE, or MYR airports.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

9. Any and all records relating to training operating personnel, tenants, staff, employees, independent contractors or guests pursuant to Title 14 Code of Federal Regulations, Parts 91 (Air Traffic and General Operating Rules) and 139 (Certification of Airports).

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

10. All Federal Aviation Administration (FAA) Report of Violation reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, HCDA Unusual Activity Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach filed pursuant to federal, state, local, Harry County, or HCDA statute, rule, regulation, or policy and their responses thereto.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

11. HCDA Annual Audit Reports submitted to FAA pursuant to Single Audit Act of 1984 since 2010.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

12. HCDA Annual Budget Reports for fiscal years 2010, 2011, 2012, 2013, and 2014.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

13. HCDA Annual Reports filed with the FAA pursuant to Terms and Conditions of Accepting Airport Improvement Program Grants.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

14. All contract or operating agreements between Harry County or HCDA and Robinson Aviation, Inc.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

15. All notes, records, emails, memoranda of communication, between Robinson Aviation, Inc., its agents and employees, and Harry County or HCDA, its agents, and employees relating to Plaintiff.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

16. Copies of any and all statements given by the Plaintiff, Defendant and/or any witnesses which are in the possession or control of Defendant or Defendant's counsel, whether written, recorded digitally, or on a tape recording, or otherwise.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

17. Any and all reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' reports.

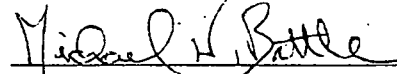
Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

18. Complete records of all actions in any Courts of law or equity which have been brought by HCDA or against HCDA within the past ten (10) years, including records of disposition thereof.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRCP.

19. Any and all documents referenced or utilized in answering Plaintiff's First Set of Interrogatories to Defendant.

Except for privileged documents, Horry County will produce the documents in electronic form or in the manner which complies with Rule 34(b), SCRPC.



M. Kirk Battle  
Michael W. Battle  
BATTLE LAW FIRM, P.A.  
PO Box 530  
Conway, SC 29528  
(843)248-4321

October 15, 2014

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto, this 15 day of October, 2014.

Secretary To:  
Battle Law Firm, LLC  
P.O. Box 530  
Conway, SC 29528  
Attorney's for Horry Co. + Horry  
County Department of  
Arts

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Horry County and Horry County Department of Airports Answers to Interrogatories

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STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Skydive Myrtle Beach, Inc,  
Plaintiff,

vs.

Horry County, Horry County Department of  
Airports, H. Randolph Haldi, Pat Apone, Tim  
Jackson and Jack Teal,  
Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS  
CASE NO.: 2014-CP-26-1193

**ANSWERS TO INTERROGATORIES  
FROM HORRY COUNTY, HORRY  
COUNTY DEPARTMENT OF  
AIRPORTS**

TO: PLAINTIFF'S AND PLAINTIFF'S ATTORNEY ROBERT EASTMAN

Defendants Horry County, Horry County Department of Airports, by and through their undersigned attorneys, answer Plaintiff's Interrogatories as follows.

In responding, Defendants Horry County, Horry County Department of Airports do not waive any Attorney-Client, Work-Product or other applicable privileges or immunities from disclosure, which may attach to information called for herein or responsive to these Interrogatories, and thus, each and every Response given herein is offered subject to these privileges and immunities. Moreover, Defendants Horry County, Horry County Department of Airports do not concede the relevance or materiality of the Interrogatories or the subject matters to which these Interrogatories refer. In responding to these Interrogatories, Horry County, Horry County Department of Airports reserve:

- A. All questions regarding competency, relevancy, materiality, privilege and admissibility of evidence for any purpose of the documents referred to or responses given, or the subject matter thereof and any subsequent proceeding, or the trial of this action or any other action or proceeding:

B. The right to object to other discovery procedures involving or relating to the subject matters of these Interrogatories; and

C. The right at any time to revise, correct, add to or clarify any of the response herein set forth or documents to which are herein referred.

Subject to the previously noted privileges, immunities, and reservations, Defendants Horry County and Horry County Airport's Answers to Plaintiff's Interrogatories are as follows:

1. Give the names and addresses of persons known to Defendants or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Pat Apone, Airport Director  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Randy Haldi, Assistant County Attorney  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Tim Jackson, Fixed Base Operations Manager  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Jack Teal, Flight Line Technician  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Jason Terreri, Assistant Director of Airports  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Charlie Bree  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

David Smith  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Heather Solomon, General Aviation Administration Analyst  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Sarah Glanders  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Kirk Lovell, Assistant Director of Airports  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Mike LaPier  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Jim Papadea, Former Property Manager for Horry County  
Columbia, South Carolina

Mike Illes  
Horry County Government  
1301 2nd Avenue, Conway, South Carolina 29526

Bob McGroarty  
North Myrtle Beach, S.C.

Bob Wernersbach  
Houston, Texas

Glen Ray, Head Controller  
North Myrtle Beach, S.C.

Fred Newby, Esq.  
P.O. Box 808  
Myrtle Beach, S.C. 29578

Joey Singleton, Esq.  
P.O. Box 1244  
Conway, S.C. 29528

Roy Williams  
Delta Airport Consultants  
To be supplied:

Frank Newton  
Newton Associates  
To be supplied.

Aaron Holly  
Skydive Myrtle Beach  
North Myrtle Beach, S.C.

Pilot  
Skydive Myrtle Beach  
North Myrtle Beach, S.C.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of Defendants that relate to the claim or defense in the case.

Photographs: Overhead photographs of CRE,  
Plats: Drawing prepared by Roy Williams Delta Airport Consultants  
E-mails and correspondence: Nonprivileged documents produced herewith or to be produced

3. List the names, current addresses, and phone numbers of any expert witnesses whom the Defendants propose to use as a witness in the trial of the case and for each state:

Defendants may use Roy Williams, Delta Airport Consultants, in the event an issue arises in connection with the landing zone for SDMB's customers and employees.

a) the specialty or sub-specialty in which it is claimed they are an expert;

Engineer & Airport Consultant

b) the subject matter on which the expert is expected to testify;

The proper landing zone for SDMB's customers and employees at CRE.

c) the substance of the facts and opinions to which the expert is expected to testify; and

Unknown. Mr. Williams has not been contacted or retained as an expert at this time.

d) a summary of the grounds for each opinion.

Unknown. Mr. Williams has not been contacted or retained as an expert at this time.

4. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

Pat Apone, Airport Director, will testify about operations of CRE and HCDA and the general issues and allegation in the above captioned lawsuit.

Randy Haldi, Assistant County Attorney, will testify about operations of CRE and HCDA and the general issues and allegation in the above captioned lawsuit.

Tim Jackson, Fixed Base Operations Manager, will testify about operations of CRE and HCDA and the general issues and allegation in the above captioned lawsuit.

Jack Teal, Flight Line Technician will testify about repair work done at CRE including the incident of the alleged trespass.

Jason Terreri, Assistant Director of Airports, will testify about operations of CRE and HCDA and the general issues and allegation in the above captioned lawsuit.

Charlie Bree, will testify about operations of CRE and HCDA and the general issues and allegation in the above captioned lawsuit.

David Smith will testify about operations of CRE and HCDA and the general issues and allegation in the above captioned lawsuit.

Heather Solomon, General Aviation Administration Analyst, will testify about SDMB incidents at CRE.

Sarah Glanders, General Aviation Administration Assistant at CRE, will testify about SDMB incidents at CRE.

Kirk Lovell, Assistant Director of Airports, will testify about operations of CRE and HCDA and the general issues and allegation in the above captioned lawsuit.

Mike Lapeir will testify about operations of CRE and HCDA and the general issues and allegation in the above captioned lawsuit.

Jim Papadeas, Former Property Manager for Horry County, will testify about the leasing operations and negotiations between Ramp 66 and Horry County.

Mike Illes

Bob McGoarity will testify about communications and agreements between Ramp 66 and SDMB.

Bob Wernersbach will testify about communications and agreements between HCDA and SDMB.

Glen Ray, Head Controller, will testify about the operations of the control tower at CRE and incidents involving SDMB at CRE.

Fred Newby, Esq. will testify about negotiations and the sale of CRE to Horry County.

Joey Singleton, Esq. will testify about negotiations and the sale of CRE to Horry County.

Roy Williams will testify about landing zone issues in the lawsuit.

Frank Newton

Aaron Holly is expected to testify about the issues in the above captioned lawsuit and on the subjects on which he testified in his deposition.

Pilot for SDMB will testify about SDMB incidents at CRE.

5. If any Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

Defendants Horry County, Horry County Department of Airports are properly identified.

6. List all tickets, citations, administrative reports, investigation reports, recordings, photographs or video (whether electronic or physical) relating to any airport conduct, safety, or Federal Aviation Administration (FAA) breaches or violations that have warranted reports by the Defendants against Plaintiff since 2011.

The answers will be provided in accordance with Rule 33 (c) SCRCP Option to Produce Business records.

7. List all inspections, requests for repair, reports of damage to, inquiry, information, invoice, estimates, reports, or communications, whether written, oral, or electronic, relating to repairs or the physical condition of Hangar 7 within the last seven (7) years.

The answers will be provided in accordance with Rule 33 (c) SCRCP Option to Produce Business records.

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8. List all repairs made to Hangar 7 within the last seven (7) years and for each

a. date of request or notice of condition requiring repair;

b. name, address, and phone number of individual or firm making such repair; and

c. whether the repair was complete or additional repair was needed to meet all safety and federal, state, and local regulatory compliance, to ensure safety to the public and tenant.

The answers will be provided in accordance with Rule 33 (c) SCRCP Option to Produce Business records.

9. List the name of each employee of the Defendant who has visited or worked at Hangar 7 in the last seven (7) years.

The answers will be provided in accordance with Rule 33 (c) SCRCP Option to Produce Business records.

10. List the name of each employee of the Defendant involved in the lease negotiations with Plaintiff.

Randy Haldi

Pat Apone

Jason Terreri

11. Identify the authority for "three readings" by Horry County Council as a prerequisite to a lease agreement between Horry County Department of Airports (HCDCA) or Horry County and prospective tenants of, including but not limited to any airport or county property within the jurisdiction of Horry County or Horry County Department of Airports (Conway, Loris, Grand Strand (CRE) and Myrtle Beach International (MYR) airports).

S.C. Code §4-9-120; Horry County Code of Ordinances §3-123; §2-26 & § 2-21(e) (1) (C).

12. List all lease agreements between Horry County and any Airport Tenant on all County owned, operated, or managed real property or hanger space within the control of the HCDCA, including but not limited to Conway, Loris, CRE and MYR airports.

The answers will be provided in accordance with Rule 33 (c) SCRCP Option to Produce Business records.

13. List any and all reports, logs, requests for, conclusions drawn, proposed actions, or actions taken for any investigation relating the Plaintiff's skydiving operation or business activity on CRE property.

The answers will be provided in accordance with Rule 33 (c) SCRCP Option to Produce Business records.

14. List all policies, rules, memoranda, or procedures relating to tenant conduct and training on all Horry County airport property for the last seven (7) years (including but not limited to all operational activity at Conway, Loris, CRE, and MYR airports).

The answers will be provided in accordance with Rule 33 (c) SCRCP Option to Produce Business records.

15. List all FAA Report of Violation, reports, citations, records, investigative reports, file memoranda, field notes, notes, external and internal emails relating to any report of violations, communications between FAA, its agents, CRE tower reports, Unusual Incident Reports, or other written or electronic reports, statements, recordings, photographs, notes or other information involving the Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC filed pursuant to federal, state, or local laws, regulations, or policies and the responses thereto.

The answers will be provided in accordance with Rule 33 (c) SCRCP Option to Produce Business records.

16. List all notes, records, emails, memoranda of communication, photographs, videos, or recordings between Robinson Aviation, Inc., its agents and employees, and Horry County Department of Airports, its agents, and employees relating to Plaintiff Skydive Myrtle Beach, Inc. or Skydive Myrtle Beach, LLC.

The answers will be provided in accordance with Rule 33 (c) SCRCP Option to Produce Business records.

Michael W. Battle

M. Kirk Battle

Michael W. Battle

BATTLE LAW FIRM, P.A.

Attorneys for Defendant

1200 Main Street

Post Office Box 530

Conway, South Carolina 29528-0530

Area Code (843) 248-4321

Conway, South Carolina  
October 16, 2014

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 16 day of October, 2014.

Secretary To:  
Battle Law Firm, LLC  
P.O. Box 530

Conway, SC 29528

Attorney's for Horry County  
Horry County Department  
of Airports

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Motion to Dismiss Hearing Transcript

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|                                 |   |                            |
|---------------------------------|---|----------------------------|
| STATE OF SOUTH CAROLINA         | ) |                            |
| COUNTY OF HORRY                 | ) | COURT OF COMMON PLEAS      |
|                                 | ) | CASE NO.: 2014-CP-26-01193 |
| SKYDIVE MYRTLE BEACH, INC.,     | ) |                            |
|                                 | ) |                            |
| PLAINTIFF,                      | ) |                            |
|                                 | ) |                            |
| vs.                             | ) | TRANSCRIPT OF RECORD       |
|                                 | ) |                            |
| HORRY COUNTY, HORRY COUNTY      | ) |                            |
| DEPARTMENT OF AIRPORTS, H.      | ) |                            |
| RANDOLPH HALDI, PAT APONE, TIM) | ) |                            |
| JACKSON, AND JACK TEAL,         | ) |                            |
|                                 | ) |                            |
| DEFENDANTS.                     | ) |                            |
|                                 | ) |                            |

June 2, 2014

Conway, South Carolina

B E F O R E:

HONORABLE LARRY B. HYMAN, JUDGE.

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

ROBERT G. EASTMAN, ESQ.  
Attorney for the Plaintiff

SAMUEL F. ARTHUR, III., ESQ.  
Attorney for the Defendants,  
H. Randolph Haldi, Pat Apone,  
Tim Jackson and Jack Teal

MICHAEL W. BATTLE, ESQ.  
Attorney for the Defendants,  
Horry County and Horry County Department of Airports

RONDA A. TAYLOR, CVR-M  
Official Court Reporter  
P.O. Box 2082  
Walterboro, SC 29488

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## EXHIBITS

None.

1       **THE COURT:** Skydive Myrtle Beach versus Horry County.  
2       It's a Motion to Dismiss. It's a 12(b)(6) motion?

3       **MR. ARTHUR:** That's correct, Your Honor.

4       **THE COURT:** And who is making the motion?

5       **MR. ARTHUR:** Your Honor, for the record, I'm Buddy  
6       Arthur. I'm from Florence. I practice with the Aiken,  
7       Bridges Firm, and I represent the individually named  
8       defendants in this case, Mr. H. Randolph Haldi, Pat Apone,  
9       Tim Jackson, and Jack Teal.

10       Mike Battle is also here. He represents Horry County  
11       and the Horry County Department of Airports.

12       **THE COURT:** Okay.

13       **MR. ARTHUR:** And this is a lawsuit filed, of course,  
14       by Skydive Myrtle Beach.

15       **THE COURT:** All right. Let me hear you.

16       **MR. ARTHUR:** Your Honor, as the -- as the name would  
17       suggest, Skydive Myrtle Beach, Inc., operates -- Skydive,  
18       Inc., operates a skydiving operation business at Myrtle  
19       Beach Airport. The Complaint alleges that over the course  
20       of a period of months, I think beginning in early 2014, --  
21       well, it also alleges some facts that predates 2014, but  
22       in any event, it alleges that Skydive Myrtle Beach had  
23       some disagreements with the county and the airport  
24       regarding their arrangement to operate, alleged  
25       arrangement to operate at the airport. And they have

1 filed this Complaint against the county and the Department  
2 of Airports that includes fifteen causes of action.

3 Fourteen -- no, excuse me, eleven of the causes of  
4 action set forth in the Complaint also name individuals  
5 who are employees of the county and the airport. And  
6 those are Mr. Haldi, Pat Apone, Tim Jackson, and Jack  
7 Teal.

8 Your Honor, we can go through each of the causes of  
9 action, if you would like, but the basis of our motion is  
10 that these individual defendants are not appropriate  
11 defendants to be named in this lawsuit against the county  
12 and the Department of Airports.

13 **THE COURT:** Are they employees of the county?

14 **MR. ARTHUR:** Yes, sir, Your Honor.

15 **THE COURT:** Were they commissioned?

16 **MR. ARTHUR:** Yes, sir, Your Honor. In fact, ---

17 **THE COURT:** How are they sueable under the Tort  
18 Claims Act?

19 **MR. ARTHUR:** Well, it's our position that they are  
20 not, Your Honor. They -- Paragraph Eight of the Complaint  
21 specifically states that at all relevant times, Defendant  
22 Haldi, Apone, Jackson, and Teal were acting as agents of  
23 defendants county and airport.

24 Your Honor, and as Your Honor is aware, I'm sure,  
25 Section 15-78-70(a) provides that the Tort Claims Act is

1 the exclusive remedy for any tort committed by an employee  
2 of a governmental entity. It also provides an exception.  
3 Well, it goes on to state that the employee ---

4 **THE COURT:** Except for gross negligence.

5 **MR. ARTHUR:** --- commits a tort while acting within  
6 the scope of his official duty is not liable, therefore,  
7 except as expressly provided for in Subsection (b).

8 And it does provide that if it's determined that and  
9 proven, in Subsection (b) it says if it's proven that the  
10 employee's conduct was not within the scope of his  
11 official duties or that it constituted actual fraud,  
12 actual malice, intent to harm, or a crime involving moral  
13 turpitude, they would not be allowed -- they would not be  
14 ---

15 **THE COURT:** Protected.

16 **MR. ARTHUR:** --- afforded the immunity that's  
17 provided by the act.

18 Your Honor, in this case, it's simply our position  
19 that the real defendants in this case are Horry County and  
20 the Department of Airports and that the Complaint on its  
21 face alleges that these individuals were acting all times  
22 -- at all times as agents of the governmental entity and  
23 that they're not appropriate defendants in this case.

24 **THE COURT:** Okay.

25 Counsel, tell me under what theory you name these

1 individuals as defendants.

2 **MR. EASTMAN:** Your Honor, Robert Eastman. South  
3 Carolina specifically provides an exception under the Tort  
4 Claims Act, Your Honor, for cases of fraud, as counsel  
5 correctly pointed out. Part of the allegations are that  
6 the individuals acted outside their scope of employment,  
7 in that they had, we're alleging, civil conspiracy,  
8 defamation, and some fraudulent intents, which take it  
9 outside the scope of employee. And those particular  
10 accounts, I can go through for the Court if you desire me  
11 to.

12 **THE COURT:** Well, let me just ask you to address  
13 that, Counsel.

14 **MR. ARTHUR:** Your Honor, I have reviewed the  
15 Complaint and causes of action set forth in the Complaint  
16 directly to the individuals, and I find nowhere in the  
17 Complaint where it alleges that these individuals acted  
18 outside the scope of their employment.

19 **THE COURT:** All right, now, this is a 12(b)(6)  
20 motion, Counsel. Tell me -- just, I mean, we're talking  
21 about pleadings. We're not talking about proof or  
22 anything of that nature. Point me to that portion of your  
23 Complaint that alleges that their acts were outside the  
24 scope of employment.

25 It sounds to me like you're alleging that they were,



1 I mean, acting within the scope of their employment.

2 Which is it?

3 **MR. EASTMAN:** Your Honor, under Counts Three, Four,  
4 Five, Six, Seven, Eight, Nine, Ten, Eleven, Fourteen, and  
5 Fifteen, we specifically made allegations of acts that  
6 aren't, by the Supreme Court of South Carolina,  
7 specifically precluded from Tort Claims Act protection, as  
8 set forth in a legal memorandum of law that we provided  
9 the Court and counsel last week. I could cite the cases,  
10 if the Court would like to indulge.

11 But specifically, the civil conspiracy is one count  
12 that provides for individual liability. And the  
13 allegations in the Complaint, when read in the light most  
14 favorable to the plaintiff, I believe constitute a scheme  
15 whereby these individuals had an intent to place my  
16 client, Skydive Myrtle Beach, out of business and also  
17 provided some allegations of fraud in the fraud claims.

18 They also committed defamation, which we would argue  
19 is defamation per se or slander per se, in that the county  
20 made certain representations under county attorney  
21 letterhead making accusations which were false on their  
22 face of violating the law when there isn't even a law that  
23 exists. Under Part One of ---

24 **THE COURT:** Well, I understand you were talking there  
25 about the county's actions.

1       **MR. EASTMAN:** Yes, sir.

2       **THE COURT:** What I'm concerned about is the actions  
3 of the individual defendants. Now, I do see here for the  
4 second cause of action that he -- you have alleged a  
5 breach of contract ---

6       **MR. EASTMAN:** Yes, sir.

7       **THE COURT:** --- accompanied by fraudulent act.

8       All right. What's your fraudulent act? What do you  
9 allege?

10       **MR. EASTMAN:** Sir, we're alleging that there was a  
11 contract to enter into a lease agreement that was reached.  
12 And specifically, Skydive Myrtle Beach concedes that the  
13 first cause of action and the second cause of action the  
14 twelfth cause of action and the thirteenth cause of action  
15 are not -- are protected by the Tort Claims Act. That's  
16 not at issue here, Your Honor.

17       **THE COURT:** They are or are not?

18       **MR. EASTMAN:** They are not. Skydive Myrtle Beach  
19 believes that those particular claims are just as --  
20 they're appropriate to name the county and the Airport  
21 Authority, Your Honor.

22       **THE COURT:** Okay. All right.

23       **MR. EASTMAN:** The employees in those particular cases  
24 should be protected with immunity under the Tort Claims  
25 Act.

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1           **THE COURT:** All right.. Point me specifically to your  
2 first cause where you are making allegations concerning  
3 the individual defendants.

4           **MR. EASTMAN:** Count Four, Your Honor. That's civil  
5 conspiracy. And Count Three, which is breach of fiduciary  
6 duty.

7           The plaintiff re-alleges all the statement of facts  
8 in the beginning of its Complaint and then alleges that  
9 the individuals worked together to ---

10          **THE COURT:** But don't you allege in both of those  
11 that they're acting as the agent -- I mean, in the fourth  
12 cause of action -- fourth cause of action that Haldi,  
13 Apone, Jackson, and Teal are agents of the county or the  
14 airport?

15          **MR. EASTMAN:** Your Honor, we're alleging that as  
16 employees, they acted individually and were outside of  
17 their scope, and that's the egregious nature and the acts.

18          **THE COURT:** But isn't ---

19          **MR. EASTMAN:** So under the color of state authority  
20 ---

21          **THE COURT:** That's what I want to know. In the  
22 fourth cause of action, ---

23          **MR. EASTMAN:** Yes, sir.

24          **THE COURT:** --- where do you allege that they acted  
25 outside the scope of their authority? I mean, you -- as I

1 read the fourth cause of action, civil conspiracy says  
2 that at all relevant times, all four of those defendants  
3 were acting as agents of the county or the airport.

4 **MR. EASTMAN:** That's correct, Your Honor.

5 **THE COURT:** Okay. If they were acting as agents of  
6 the county or airport, where have you in that cause  
7 alleged that they were acting outside the scope and course  
8 of their employment?

9 **MR. EASTMAN:** Well, in Paragraph Seventy-seven  
10 through Eighty, Your Honor, specifically when read in the  
11 light most favorable, it alleged conduct that constituted  
12 a fraudulent act and that together that constituted a  
13 civil conspiracy. As such, ---

14 **THE COURT:** Would a civil conspiracy -- would a civil  
15 conspiracy by a person acting or persons acting in concert  
16 -- you know, an entity can't conspire ---

17 **MR. EASTMAN:** That's correct, Your Honor.

18 **THE COURT:** --- with its agents. So, I guess the  
19 allegation is that they conspired -- how?

20 **MR. EASTMAN:** They conspired to get together to keep  
21 a lawful business owner -- to remove him from the airport,  
22 which we believe is illegal. They acted in concert,  
23 making false representations under color of state  
24 authority that if the individuals didn't leave, they were  
25 -- if they knew what was good for them, they would leave.

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1       **THE COURT:** Can you point me to that section of the  
2 Tort Claims Act that you rely upon?

3       **MR. EASTMAN:** Well, we believe that Paragraph  
4 Seventy-nine through Eighty, Your Honor, should satisfy  
5 that.

6       **THE COURT:** No, what portion of the Tort Claims Act  
7 would make this conduct -- I'm going to take it, you know,  
8 we're going to look at it in the light most favorable to  
9 your client. Where ---

10       **MR. EASTMAN:** Okay. One moment, please, sir.

11       **THE COURT:** --- were the actions of the agents of the  
12 county, when you say they're acting as agents of the  
13 county and the airport authority? I mean, ---

14       **MR. EASTMAN:** Well, Your Honor, we would cite 391 SC  
15 238 for the principle that allegations of civil conspiracy  
16 are outside the scope of protection for the civil -- for  
17 the act. And that's ---

18       **THE COURT:** Counsel, let me hear you address that.

19       **MR. ARTHUR:** Your Honor, essentially it's our  
20 position that the plaintiff is trying to have his cake and  
21 eat it, too, here. He wants to allege that they're acting  
22 as agents of the county, if it serves his purposes, and  
23 then he wants to act -- he wants to try to persuade you  
24 that if you read the Complaint in the light most favorable  
25 to the plaintiff, you have to say that -- you have to take

1 his civil conspiracy cause of action to mean that they  
2 were acting outside the scope of their employment. We  
3 take the position that he can't have it both ways.

4 The defendants, all of the defendants, would be  
5 entitled to the defense of intercorporate immunity for  
6 civil conspiracy. These individuals are employees of the  
7 entity.

8 And as you correctly stated, they can't conspire  
9 within themselves. As long as they're doing -- taking  
10 actions that falls within their authority as employees of  
11 the entity, there is no conspiracy.

12 **THE COURT:** Counsel, let me -- let me just ask you.  
13 Are you alleging that they were acting as agents of the  
14 county and the airport or not?

15 **MR. EASTMAN:** Your Honor, we're -- we're -- we're  
16 alleging in the alternative throughout the Complaint,  
17 which is permissible under South Carolina rules. And with  
18 regard to that specific claim, we believe that the acts of  
19 civil conspiracy are clearly outside the scope ---

20 **THE COURT:** I understand that you may plead  
21 alternatively. I understand that. Of course, that would  
22 be subject to a motion to make more definite and certain  
23 things or elections, but what I have to deal with here  
24 today is whether or not the Complaint, as drafted, taking  
25 the allegations as true, set forth a cause.

1           Now, your fourth cause of action and your fifth cause  
2 of action, at least, allege conspiracy or fraud, but they  
3 clearly say that the defendants were acting as agents, at  
4 all relevant times, were acting as agents of either the  
5 county or the airport. Now, it's not pled alternatively.  
6 And this motion is a 12(b)(6), which is directed only to  
7 the allegations of the Complaint and how it is pled.

8           Now, that -- that's where I'm having a problem. I  
9 don't see alternatively.

10           **MR. EASTMAN:** Your Honor, the allegations are that  
11 while they were on the clock, they were agents. And  
12 during periods while they were on the clock as agents,  
13 they acted outside of their scope of employment, which are  
14 specific ---

15           **THE COURT:** But it doesn't say that.

16           **MR. EASTMAN:** Your Honor, I believe -- I believe it  
17 was stated in there.

18           **THE COURT:** Okay. Let's look at the fourth cause of  
19 action. Where does it say it? It says at all relevant  
20 times.

21           **MR. EASTMAN:** Your Honor, it doesn't specifically say  
22 it that particular time. For example, in Paragraph  
23 Eighty, it does allege conduct sufficient to generate a  
24 civil conspiracy claim.

25           **THE COURT:** But it -- look at Seventy-five and

1 Seventy-six.

2 **MR. EASTMAN:** Yes, sir.

3 **THE COURT:** It says at all relevant times, the  
4 defendants were acting as agents.

5 **MR. EASTMAN:** Your Honor, we believe ---

6 **THE COURT:** I mean, that's what it says on its face.

7 **MR. EASTMAN:** Yes, sir, but Paragraph Eighty  
8 specifically alleges conduct that as they were working as  
9 employees, they specifically provided conduct that wasn't  
10 covered, and it was outside the scope of employment.

11 It's the same as if somebody goes for lunch. They're  
12 on the clock. At that point, they're still an employee or  
13 agent; however, their conduct during that period of  
14 lunchtime on their off-time on official time, it is --  
15 it's the conduct that's outside the scope of their  
16 employment, Your Honor.

17 So, although they were employees of the state during  
18 this twenty-four hour period or eight hour periods, or  
19 what have you, there was possibilities and potential for  
20 them to deviate from their official course of action and  
21 fall outside the scope of employment. And I believe that  
22 ---

23 **THE COURT:** How about we look at the fifth cause of  
24 action, which is defendant Jackson. As the defendant's  
25 airport manager knew or ought to have known. Paragraph



1 Eighty-four.

2 **MR. EASTMAN:** Yes, sir.

3 **THE COURT:** The county property attorney and  
4 defendant Haldi. We were talking about Jackson. Said  
5 that he -- he, acting as the defendant airport's manager,  
6 knew or ought to have known the falsity of the  
7 representations that were made. I mean, what ---

8 **MR. EASTMAN:** Well, that's -- that's the cause of  
9 action that referred to defamation and slander, Your  
10 Honor. That's -- Exhibit One is attached to the  
11 Complaint.

12 **THE COURT:** No, that would be ---

13 **MR. EASTMAN:** That's at the end of the Complaint.  
14 That was a letter making allegations of, you know,  
15 breaches of law coming from county attorney letterhead as  
16 the county attorney that were, in fact, not violations of  
17 any law. We're alleging that all of this conduct together  
18 constituted a fraudulent intent and it's outside the  
19 protection of the Tort Claims Act.

20 **THE COURT:** All right. Tell me what the Tort Claims  
21 Act says about fraudulent intent.

22 **MR. EASTMAN:** Well, if you look at Section (b), Your  
23 Honor, or Subsection (b), there's a specific exemption  
24 which permits for -- it's addressing the legal memorandum  
25 that I provided the Court. Subsection (b) states that the

1 immunity is -- they're not entitled to, when the alleged  
2 conduct of the defendants is outside of the scope of  
3 employment or constituted actual fraud, actual malice,  
4 intent to harm, or a crime involving moral turpitude. And  
5 that's under Section 15-78-70(b).

6 And the case that I cited earlier, Your Honor,  
7 clearly state -- they refer to the Tort Claims Act in the  
8 motion 12(b)(6).

9 **THE COURT:** Okay. Counsel like to respond?

10 **MR. ARTHUR:** Your Honor, we certainly acknowledge the  
11 existence of the exceptions set forth in Subsection (b) of  
12 15-78-70; however, our position simply is that the  
13 Complaint as stated does not satisfy that exception by  
14 containing allegations of intentional conduct or actual  
15 fraud or actual malice on the part of these individual  
16 defendants. It's simply an effort to keep them in the  
17 lawsuit to harass them personally for the actions that  
18 they have done as agents of the airport. And it's not  
19 permitted by the Tort Claims Act.

20 **THE COURT:** Okay. Each of you submit to me a  
21 proposed order within ten days. Okay?

22 **MR. ARTHUR:** Thank you, Your Honor.

23 **MR. EASTMAN:** Thank you, Your Honor.

24 **(END OF REQUESTED TRANSCRIPT OF RECORD.)**

25

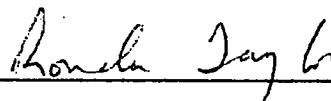
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

I, Ronda A. Taylor, Official Court Reporter for the  
Judicial Department of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate and  
complete Transcript of Record of the proceedings had and  
evidence introduced in the trial of the captioned case,  
relative to appeal, in the Court of Common Pleas for Horry  
County, South Carolina, on the 2nd day of June 2014.

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

January 6, 2015



Ronda A. Taylor, CVR-M  
Official Court Reporter

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Skydive Myrtle Beach, Inc.'s Memorandum of Law

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May 23, 2014

The Hon. Larry B. Hyman, Jr.  
1301 Second Avenue, Suite 3B76  
Horry County Courthouse  
Conway, SC 29526

Re: *Skydive Myrtle Beach, Inc., v. Horry County Department of Airports,*  
*et. al., 2014-CP26-1193*  
Plaintiff's Memorandum of Law in Opposition to Defendant's Motion  
to Dismiss

---

Dear Judge Hyman:

Pursuant to the local rules of practice, please consider Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss. A copy of this memorandum has been sent to opposing counsel for all defendants.

## Statement of the Case

Plaintiff, Skydive Myrtle Beach, Inc., (SDMB) filed a complaint against Defendant's Horry County, Horry County Department of Airports (HCDA), H. Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal on February 28, 2014, alleging fifteen causes of action arising from Defendant's conduct against Plaintiff. Discovery is ongoing. In lieu of an Answer, Defendants Haldi, Apone, Jackson, and Teal filed a Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) South Carolina Rules of Civil Procedure (SCRCP) "on the grounds that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action inasmuch as the individually named Defendants are not proper Defendants pursuant to S.C. Code Ann. § 15-78-70 [of the SC Tort Claims Act]." Plaintiff asserts that the named Defendants are not entitled to immunity under the SC Tort Claims Act as the alleged conduct of the Defendants is outside of the scope of employment or "constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude" under § 15-78-70(b), and thus Defendants not entitled to immunity under § 15-78-70(c).

140521.sdmb.hcda.et.al.12b6.lawmemo

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### Standard of Review

A 12(b)(6) motion must be based solely on the allegations set forth in the complaint and we must presume all well-pled facts to be true. *Gressett v. South Carolina Electric and Gas Co.*, 370 S.C. 377, 635 S.E.2d 538 (2006). "The 12(b)(6) motion may not be sustained if the facts alleged and the inferences therefrom would entitle the plaintiff to any relief on any theory." *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). A motion to dismiss "should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.'" *Slack v. James*, 356 S.C. 479, 589 S.E.2d 772 (Ct. App. 2003); *accord*, *Overcash v. S.C. Elect. & Gas Co.*, 356 S.C. 165, 588 S.E.2d 116, 118 (Ct. App. 2003) "Therefore, pleadings in a case should be construed liberally and the trial court and this Court must presume all well pled facts to be true so that substantial justice is done between the parties." *Overcash*, at 118. "The [12(b)(6)] motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. The question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any claim for relief." *Holy Loch Distributors, Inc. v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998).

### Argument

- I. *Tortious conduct is outside the scope of official duty and not entitled to immunity under the SC Tort Claims Act.*

Under § 15-78-70(c) of the SC Tort Claims Act, an employee individually named in a lawsuit must be substituted by the agency or political subdivision for which the employee was acting unless "it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. SC Code Ann. § 15-78-70(b), (c). Thus if the conduct articulated in Plaintiff's Complaint, when read in the light most favorable to the plaintiff, is outside the scope of official duties or constituted fraud, malice, intent to harm or a crime involving moral turpitude, and no immunity attaches under SCTCA.

In its Complaint, SDMB named Defendant Haldi in Counts 3, 4, 5, 8, 9, 10, and 15; Defendant Apone in Counts 4, 8, 9, 10, 11, 14, and 15; Defendant Jackson in Counts 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, and 15; and Defendant Teal in Counts 3, 4, 8, 14, and 15. Thus, the issue in this Motion, is whether the allegations of Plaintiff's Count 3, Breach of Fiduciary Duty; Count 4, Civil Conspiracy; Count 5, Constructive Fraud; Count 6, Defamation; Count 7, Fraud and Misrepresentation; Count 8, Interference with Contractual Relations; Count 9, Negligence; Count 10, Negligent Misrepresentation; Count 11 Negligent Supervision; Count 14, Trespass; and Count 15, Unfair Trade Practices Act are valid causes of action under SC State Law or protect the defendants from personal liability under the state's Tort Claims Act. Stated differently, if no cause



of action under SC law exists or the conduct is protected under the Tort Claims Act, Defendant's Haldi, Apone, Jackson, and Teal should be dismissed from the Complaint and the named political divisions should be substituted. The central issues for consideration are: I) Are the Counts naming the Defendants individually recognized in South Carolina?; and II) Are the recognized counts of action exempt under the South Carolina Tort Claims Act?

II. *South Carolina recognizes civil causes of action for Counts Breach of Fiduciary Duty, Civil Conspiracy, Constructive Fraud, Defamation, Fraud and Misrepresentation, Interference with Contractual Relations, Negligence, Negligent Misrepresentation, Trespass, and Unfair Trade Practices Act.*

a. Count 3, Breach of Fiduciary Duty

Courts in SC have recognized a cause of action for breach of fiduciary duty. *Kuznik v. Bees Ferry Assoc.*, 342 SC 579, 538 S.E.2d 15 (Ct. App. 2000). A fiduciary relationship exists when one "...reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of one reposing the confidence." *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789, 794 (1990); *Steele v. Victory Savings Bank*, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988); *Goddard v. Fairways Development General Partnership*, 310 S.C. 408, 426 S.E.2d 828 (Ct. App. 1993); *Hendricks v. Clemson Univ.*, 339 S.C. 552, 529 S.E.2d 293 (Ct. App. 2000). Plaintiff's Complaint alleges Defendants Haldi, Apone, and Jackson, as knowledgeable representatives of the Airport and County, that they would present SDMB a long-term lease to the County Council for endorsement provided special unpublished practices and procedures were followed by SDMB, and that this special knowledge and understanding of routine leasing processes and procedures unique to Horry County would be conducted in good-faith. Complaint ¶¶ 67-73. As such, a fiduciary relationship was created and the named individuals breached the created duty by failing to follow the represented procedures.

b. Count 4, Civil Conspiracy

Civil Conspiracy is recognized in South Carolina and the elements for this cause of action are: [1] Combination of two or more persons, [2] for the purpose of injuring the plaintiff [3] which causes special damages. *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988); *Future Group II v. NationsBank*, 324 S.C. 89, 478 S.E.2d 45 (1996); *Mendelsohn v. Whitfield*, 312 S.C. 17, 430 S.E.2d 524 (Ct. App. 1993) *affirmed* 312 S.C. 226, 439 S.E.2d 845 (1994); *Yeager v. Murphy*, 291 S.C. 485, 354 S.E.2d 393 (Ct. App. 1987); *Lee v. Chesterfield General Hospital, Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986); *First Union Nat'l Bank v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); *Robertson v. First Union National Bank*, 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002), *cert dis.*, 357 S.C. 592 S.E.2d 625 (2004). In its complaint,

Plaintiff alleged the requisite elements with respect to all defendants in ¶¶ 74-81 of its complaint.

c. Count 5, Constructive Fraud

Constructive Fraud is a valid cause of action in South Carolina. *Greene v. Brown*, 199 S.C. 218, 19 S.E.2d 114(1942); *Woods v. State*, 314 S.C. 501, 431 S.E.2d 260 (Ct. App. 2003); *Designer Showrooms, Inc. v. Kelley*, 304 S.C. 478, 405 S.E.2d 417 (Ct. App. 1991); *Giles v. Lanford & Gibson, Inc.*, 285 S.C.285, 328 S.E.2d 916 (Ct. App. 1985); see also, *Cheney Bros., Inc. v. Batesville Casket Co., Inc.*, 47 F.3d 111, (4<sup>th</sup> Cir. 1995). It is a breach of a legal or equitable duty that the law defines as fraudulent because it tends to deceive, violate public policy or private confidence, or injure public interest. *Greene v. Brown*, 199 S.C. 218, 19 S.E.2d 114(1942); *Woods v. State*, 314 S.C. 501, 431 S.E.2d 260 (Ct. App. 2003); *Giles v. Lanford & Gibson, Inc.*, 285 S.C.285, 328 S.E.2d 916 (Ct. App. 1985). "[M]isrepresentations by conduct, as well as by express words, will support an action for fraud." *Satcher v. Berry*, 299 S.C. 381, 385 S.E.2d 41 (Ct. App. 1990). As representatives of the Horry County and HCDA, defendant's Haldi, Apone, and Jackson are required to act in good faith and fair dealing to SDMB. Plaintiff's complaint alleges that the combined actions of Defendants amounted to actionable constructive fraud. Complaint at ¶¶ 82-91.

d. Count 6, Defamation

Defamation is a communication which tends to impeach the plaintiff's honesty, integrity, virtue, or reputation and expose him or her to public hatred, contempt, ridicule, or obloquy, or to cause the individual to be shunned or avoided, or to be injured in his or her business or occupation. *Smith v. Bradstreet*, 63 S.C. 525, 41 S.E.2d 763 (1902); *Timmons v. News & Press, Inc.*, 232 S.C. 639, 103 S.E.2d 277, 281; *Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118, 120 (1998). Defamation is actionable in South Carolina. *Id.* It may be spoken or written or even broadcast media. *Willhoit, v. WCSC, Inc.*, 293 S.C. 397, 358 S.E.2d 397 (Ct. App. 1987). In Plaintiff's Complaint, it alleged Defendant's Haldi and Jackson each made written and spoken statements that are arguably defamatory *per se* as they imputed Plaintiff's impropriety or inadequacy in performing its trade or profession. Complaint at ¶¶ 92-96. See *White v. Wilkerson*, 328 S.C 179, 493 S.E.2d 345 (1997); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (2001); *Moshtagi v. The Citadel*, 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994).

e. Count 7, Fraud and Misrepresentation

In South Carolina it is well settled that an action for fraud or misrepresentation exists when the plaintiff shows a false material representation made with either knowledge or reckless disregard of truth or falsity is made with the intent of relying on the statement and that the plaintiff was ignorant of the falsity, relied on its truth, was reasonable in its reliance and was injured thereby. *Kanh Construction Co. v. South*

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*Carolina National Bank of Charleston*, 275 S.C. 381, 271 S.E.2d 414 (1980); *Hooters of Am. v. Phillips*, 39 F. Supp. 2d 582 (D.S.C. 1998); *aff'd* 173 F.3d 933 (4<sup>th</sup> Cir. 1999); *Kiriakides v. Atlas food Sys. & Servs., Inc.*, 338 S.C. 572, 527 S.E.2d 371 (Ct. App. 2000), *modified* 343 S.C. 587, 541 S.E.2d 257 (2001). Plaintiff alleged Defendant Jackson's conduct amounted to fraud in its complaint. Complaint ¶¶ 97-100.

f. Count 8, Interference with Contractual Relations.

Interference with contractual relations is the interference with a contract by one with knowledge of the contract by the tortfeasor, an intentional procurement of a breach by tortfeasor of the contracts breach without justification and actual damages. *Chitwood v. McMillian*, 189 S.C. 262, 1 S.E.2d 162 (1939). Additionally, in South Carolina, there is a cause of action for intentional interference with prospective contracts. *Crandall Corp. v. Navistar Int'l Transp. Corp.*, 302 S.C.265, 395 S.E.2d 179 (1990). In its Letter of Agreement (LOA) between the SDMB, FAA, Robinson Aviation, and HCDA, SDMB is obligated to follow applicable rules and regulations relating to skydiving operations and airport procedures. In its Complaint, SDMB articulated facts demonstrating intentional concealment of unpublished rules (LOA between HCDA and Robinson Aviation) and regulations by HCDA that created a breach of the LOA by SDMB, in that although following published regulations in Title 14 of the Code of Federal Regulations (CFR), the failure to follow the terms of an LOA regulating an airport is a violation of Title 14. Complaint at ¶¶ 101-107.

g. Count 9, Negligence

An action for a breach of a duty of care owed to the plaintiff by a defendant and damages suffered by the plaintiff is negligence and actionable in South Carolina. *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (Ct. App. 2002); *Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 716 (Ct. App. 1989); *South Carolina Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 348 S.E. 2d 617 (Ct. App. 1986). In paragraphs 108-112 of Plaintiff's Complaint, it was alleged that Defendants Haldi, Apone, and Jackson violated a duty of care owed to plaintiff and as a result the plaintiff suffered damages.

h. Count 10, Negligent Misrepresentation

Negligent Misrepresentation is actionable in South Carolina when a defendant having a pecuniary interest, makes a false representation to the plaintiff and violates defendant's duty to ensure that the statement is truthful by failing to exercise due care and the plaintiff justifiably relies on the representation suffering a loss due to the statement. *Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). Plaintiff alleged that the conduct of defendants operating in concert made false representations to the Plaintiff relating to the conditions of the current Ramp 66 SDMB Long-term Lease and the new methods, procedures and procurement policies necessary to secure a new long-term lease in its place were false. Complaint at ¶¶ 113-120. Further, this attempt

to secure 24% of plaintiff's proceeds as non-negotiable and under threat of immediate eviction if not agreed upon was state coercion either intentionally or unintentionally and that this process of negligent misrepresentations caused Plaintiff significant harm. *Id.*

i. Count 11, Negligent Supervision

Negligent supervision assigns liability to an employer when an employee intentionally harms a plaintiff and is on employer's premises, the employer knows or has reason to know of the ability to control the employee and the employer knows or should know of the necessity and opportunity for exercising control and actionable in South Carolina. *Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495 (1992); *Moore v. Berkeley County School District*, 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997); *Brockington v. Pee Dee Mental Health Center*, 315 S.C. 214, 433 S.E.2d 16 (1993). Plaintiff alleged that Defendants Apone and Jackson knew Defendant Teal was entering airport tenant property under lease and failed to prevent or stop this causing injury to Plaintiff. Complaint at ¶¶121-126. This conduct amounted to negligent supervision causing damages to plaintiff.

j. Count 14, Trespass

In South Carolina, trespass is the interference with plaintiff's exclusive, peaceable possession by the defendant without plaintiff's permission. *Revan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993); *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993); see also Ralph King Anderson, Jr., SOUTH CAROLINA REQUEST TO CHARGE-CIVIL §4-43 (2002). In paragraphs 137-140, Plaintiff alleged that Defendant Jack Teal did unlawfully enter Plaintiff's premises without Plaintiff's permission stating a permissible claim for Trespass against Defendant Teal under South Carolina State Law.

k. Count 15, Unfair Trade Practices Act

Under the South Carolina Unfair Trade Practices Act, the South Carolina Legislature intended conduct that is unfair when it offends established public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers as interpreted by the Federal Trade Commission Act (FTCA), by the Federal Trade Commission and federal courts. SC Code § 39-5-20(b); see *Bessinger v. Food Lion, Inc.*, 305 F. Supp. 3d 574 (D.S.C. 2003). SC Courts have defined this to not restrict allegations to adverse impact on the public, it is sufficient to allege conduct that is "capable of repetition." *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (2000); *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998); *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986); *Sadighi v. Daghighfekr*, 36 F. Supp. 2d 279 (D.S.C. 1999). Plaintiff alleged that the actions and conduct of each defendant

when taken together were unethical, unscrupulous, and capable of repetition. Complaint at ¶¶141-143.

III. *Each of the counts against the individual defendants are not exempt from liability under the South Carolina Tort Claims Act.*

In South Carolina, the SCTCA "does not grant an employee 'immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.'" *Sanders v. Prince*, 403 S.E.2d 640, 643 (1991) quoting S.C. Code Ann. § 15-78-70(b); see also *McCall v. Williams*, 52 F.Supp.2d 611, 615 (D.S.C. 1999) (same).

There is no statutory immunity in SC for Civil Conspiracy, *Pridgen v. Ward* 391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2010); and interference with contractual relations, *Eldeco v. Charleston County School District*, 372 S.C. 470, 642 S.E.2d 726 (2007); . Additionally, plaintiff's claims for breach of fiduciary duty, defamation, negligence, negligent supervision, negligent misrepresentation, trespass and Unfair Trade Practices Act each included elements of defendant's intention to harm plaintiff in its ability to operate a legitimate aeronautical activity as defined by the federal Department of Transportation's Federal Aviation Administration. Finally Plaintiff's allegations of fraud, defamation, and constructive fraud include allegations of malice and are specifically excluded from the SCTCA individual immunity provisions. See *McCall* 52 F. Supp. 2d at 615.

### Conclusion

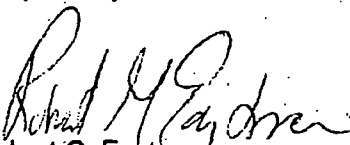
In its Motion to Dismiss Plaintiff's complaint, Defendants Haldi, Apone and Jackson, simply alleged Plaintiff failed to state a cause of action under South Carolina state law under SCRCP 12(b)(6) in that the defendants are "not proper Defendants pursuant to [SCTCA]." The issues here are: a) is there a state cause of action; and if so, are the defendants proper under the SCTCA? For the aforementioned reasons, each of the counts identifying individual defendants are legitimate causes of action in South Carolina and not exempt under the SCTCA. As such, the Defendants Motion to Dismiss should be denied.

The Hon. Larry B. Hyman  
May 23, 2014  
Page 8

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Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Respectfully submitted;

  
Robert G. Eastman

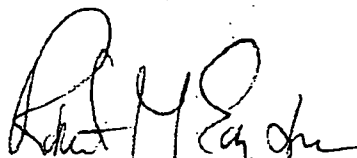
Encl.: (0)  
cc: Aaron Holly (via email)  
RGE/vub

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been furnished to attorneys for Defendants Horry County and Horry County Department of Airports, H. Randolph Aldi, Pat Apone, Tim Jackson, and Jack Teal, by personally depositing same in a United States Postal Service mail box, postage prepaid, addressed to the following persons on this 23<sup>rd</sup> day of May 2014.

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
PO Box 530  
Conway SC 29528

Samuel T. Arthur, III, Esq.  
Aiken, Bridges, Elliott, Tyler &  
Saleeby, P.A.  
PO Box 1931  
Florence, SC 29503

  
ROBERT G. EASTMAN  
Attorney for Plaintiff  
PO Box 180  
Charleston, SC 29402  
(843) 329-9657

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**Record on Appeal -428-**

Skydive Myrtle Beach, Inc.'s Proposed Order and Correspondence to Judge Hyman dated June 9, 2014

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Record on Appeal -430-



# EASTMAN & ASSOCIATES, LLC

Ilaslachstrasse 39  
79868 Feldberg-Falkau  
GERMANY

**ROBERT G. EASTMAN**  
ADMITTED IN DE, FL, GA, MD, NJ, PA, & SC

**ATTORNEYS AT LAW**  
POST OFFICE BOX 180  
CHARLESTON, SOUTH CAROLINA 29402  
USA

PHONE: (843) 329-9657  
FAX: (843) 723-0085  
robertgeastman@msn.com

June 9, 2014

The Hon. Larry B. Hyman, Jr.  
1301 Second Avenue, Suite 3B76  
Horry County Courthouse  
Conway, SC 29526

**Re: Skydive Myrtle Beach, Inc., v. Horry County Department of Airports,  
et. al., 2014-CP26-1193  
Proposed Order**

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Dear Judge Hyman:

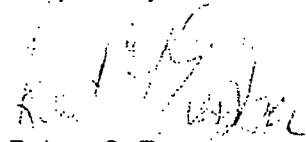
Pursuant to His Honor's Bench Ruling, I have enclosed herewith Respondent, Skydive Myrtle Beach, Inc.'s (SDMB) Proposed Order for your signature.

SDMB respectfully requests that it be granted leave of this Honorable Court to amend its Complaint should Petitioner's Motion to Dismiss be granted in full.

If this request meets with your approval, please sign the enclosed proposed Order granting in part and denying in part Petitioner's Motion to Dismiss and return it to me for filing in the enclosed return envelope.

Thank you for your consideration.

Respectfully submitted,



Robert G. Eastman

Encl.: (Proposed Order)

cc: Aaron Holly (via email)  
Samuel F. Arthur, II, Esq.  
Michael W. Rattle, Esq.

RGE/rub

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**Record on Appeal -431-**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC., )  
(f/k/a Skydive Myrtle Beach, LLC), )

Plaintiff, )

vs. )

HORRY COUNTY, HORRY COUNTY )  
DEPARTMENT OF AIRPORTS, )  
H. RANDOLPH HALDI, PAT APONE, )  
TIM JACKSON and JACK TEAL )

Defendants. )

#### ORDER

This action was heard on petitioners' motion to dismiss respondents, SKYDIVE MYRTLE BEACH, INC. for failing to state facts sufficient to constitute a cause of action pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6) inasmuch as the individually named Defendants are not proper Defendants pursuant to the South Carolina Tort Claims Act (SCTCA) and

IT IS ADJUDGED that:

1. Petitioners' Motion to Dismiss Count I, Breach of Contract; Count II, Breach of Contract Accompanied by a Fraudulent Act; Count XII, Promissory Estoppel; and Count XIII, Quantum Meruit as to Defendants Haldi, Apone, Jackson, and Teal is GRANTED and Defendants Horry County and Horry County Department of Airports are hereby substituted pursuant to S.C Code Ann. § 15-78-78(c) of the SCTCA as to the

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aforementioned counts of Respondent's Complaint;

2. Petitioners' Motion to Dismiss Count III, Breach of 5 Duty; Count IV Civil Conspiracy; Count V, Constructive Fraud; Count VI, Defamation; Count VII, Fraud and Misrepresentation; Count VIII, Interference with Contractual Relations; Count IX, Negligence; Count X, Negligent Misrepresentation; Count XI, Negligent Supervision; Count XIV, Trespass; and Count XV Unfair Trade Practices Act as to Defendants Haldi, Apone, Jackson, and Teal is DENIED pursuant to § 15-78-70(b) of the SCTCA; and

3. Petitioners Haldi, Apone, Jackson and Teal shall have thirty (30) days from the date of this Order within which to file an Answer to Plaintiff's Complaint.

ORDERED at Conway, South Carolina on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
County Judge

Copies to: Robert G. Eastman, Esq.  
Samuel F. Arthur, III, Esq.  
Michael W. Battle, Esq.

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Skvdive Myrtle Beach, Inc.'s Proposed Order and Correspondence to Judge Hyman dated  
August 15, 2014

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Record on Appeal -436-

# EASTMAN & ASSOCIATES, LLC

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79868 Feldberg-Falkau  
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ROBERT G. EASTMAN  
ADMITTED IN DE, FL, GA, MD, NJ, PA, & SC

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robertgeastman@msn.com

August 15, 2014

The Hon. Larry B. Hyman, Jr.  
1301 Second Avenue, Suite 3B76  
Horry County Courthouse  
Conway, SC 29526

Re: ***Skydive Myrtle Beach, Inc., v. Horry County Department of Airports,  
et. al., 2014-CP26-1193***  
**Proposed Order**

---

Dear Judge Hyman:

Pursuant to an email received from your law clerk, William Postal, enclosed please find a proposed Order addressing, *inter alia*, the *South Carolina Tort Claims Act* liability provisions relating to malice on behalf of state employees.

SDMB respectfully requests that it be granted leave of this Honorable Court to amend its Complaint should Petitioner's Motion to Dismiss be granted in full.

If this request meets with your approval, please sign the enclosed proposed Order granting in part and denying in part Petitioner's Motion to Dismiss and return it to me for filing in the enclosed return envelope.

Thank you for your consideration.

Respectfully submitted,



Robert G. Eastman

Encl.: (Brown v. Leonard)  
(Proposed Order)

cc: Aeron Holly (via email)  
Samuel F. Arthur, II, Esq.  
Michael W. Battle, Esq.

RGE/tub

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Record on Appeal -437-

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
) Case No. 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC., )  
(f/k/a Skydive Myrtle Beach, LLC), )

Plaintiff, )

vs. )

ORDER

HORRY COUNTY, HORRY COUNTY )  
DEPARTMENT OF AIRPORTS, )  
H. RANDOLPH HALDI, PAT APONE, )  
TIM JACKSON and JACK TEAL )

Defendants. )

The matter comes before this court upon a Motion to Dismiss filed on behalf of Defendants H. Randolph Haldi, Pat Apone, Time Jackson, and Jack Teal. A hearing to dispose of said motion was conducted by the undersigned on the morning of June 2, 2014, in the Horry County Court of Common Pleas. Present on behalf of the moving Defendants was Samuel F. Arthur, III, Esquire. Robert G. Eastman, Esquire appeared on behalf of Plaintiff.

#### Statement of the Case

Plaintiff, Skydive Myrtle Beach, Inc., (SDMB) filed a complaint against Defendant's Horry County, Horry County Department of Airports (HCDA), H. Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal on February 28, 2014, alleging fifteen causes of action arising from Defendant's conduct against Plaintiff. Discovery is ongoing. In lieu of an Answer, Defendants Haldi, Apone, Jackson, and Teal filed a Motion to Dismiss



Plaintiff's Complaint pursuant to Rule 12(b)(6) South Carolina Rules of Civil Procedure (SCRCP) "on the grounds that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action inasmuch as the individually named Defendants are not proper Defendants pursuant to S.C. Code Ann. § 15-78-70 [of the SC Tort Claims Act]." Plaintiff asserts that the named Defendants are not entitled to immunity under the SC Tort Claims Act as the alleged conduct of the Defendants is outside of the scope of employment or "constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude" under § 15-78-70(b), and thus Defendants not entitled to immunity under § 15-78-70(c).

#### **Standard of Review**

A 12(b)(6) motion must be based solely on the allegations set forth in the complaint and all well-pled facts are presumed to be true. *Gressett v. South Carolina Electric and Gas Co.*, 370 S.C. 377, 635 S.E.2d 538 (2006). "The 12(b)(6) motion may not be sustained if the facts alleged and the inferences therefrom would entitle the plaintiff to any relief on any theory." *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). A motion to dismiss "should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.'" *Slack v. James*, 356 S.C. 479, 589 S.E.2d 772 (Ct. App. 2003); accord, *Overcash v. S.C. Elect. & Gas Co.*, 356 S.C. 165, 588 S.E.2d 116, 118 (Ct. App. 2003) "Therefore, pleadings in a case should be construed liberally and the trial court and this Court must presume all well pled facts to be true so that substantial justice is done between the parties." *Overcash*, at 118. "The [12(b)(6)] motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. The question to be considered is whether in the light

most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any claim for relief." *Holy Loch Distributors, Inc. v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998).

#### Discussion

The main grounds for Defendants were that Plaintiff's claims are subject to the *South Carolina Tort Claims Act* (SCTCA) and the individually named Defendants are entitled to dismissal for torts committed while acting in his official duty as set forth in § 15-78-70(a) of the SCTCA. The lynchpin of Defendants arguments relates to the preamble language of Plaintiff's Complaint reincorporating the allegation that the individual Defendants were "acting as agents of Defendant County and Defendant Airport" for each cause of action.

In response, Plaintiff argued that when taken as a whole and read in the light most favorable to the Plaintiff, the Complaint alleged that the individually named Defendants included conduct that was not within the scope of their official duties or that it included actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

When considering the various arguments presented by the parties, this court finds the South Carolina Supreme Court's decisions in *Health Promotion Specialists, LLC and Palmetto Dental Care, LLC v. South Carolina Board of Dentistry*, 403 S.C. 623, 743 S.E.2d 808 (2013), *Frazier v. Badger*, 361 S.C. 94, 603 S.E.2d 587 (2004), *Brown v. County of Berkeley*, 366 S.C. 354, 622 S.E.2d 533 (2005), and *Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640 (1990) controlling. In *Sanders*, the court stated:

[C]ontrary to [Defendant's] assertions, the clear language of the [SCTCA] provides that [Defendants] may be sued individually. S.C. Code Ann. § 15-78-70(a) and (b) (Supp. 1989), provide that the [SCTA] is not the exclusive remedy for a tort committed by a government employee who acts with actual

malice; subsection (b) unequivocally states that when the employee's conduct constitutes actual malice, he is not entitled to immunity from suit and liability. Finally since these subsections expressly authorize recovery against [Defendants] apart from the limitations imposed by the [SCTCA], the monetary limits on recovery contained in the [SCTCA] are inapplicable. *Sanders*, at 240, 403 S.E.2d 643, *accord*, *Brown*, 622 S.E.2d at 537.

In *Brown*, the court stated:

[A] trial court's denial of the individual council members motion to dismiss does not preclude the individual council members from raising the issues presented in their motion at a later point in the case. See *Frazier v. Badger*, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) (stating that immunity under the Tort Claims Act is an affirmative defense that must be proved at trial); *Sanders v. Prince*, (stating that when a government employee's conduct involves actual malice, he is not entitled to immunity from suit).

\*\*\*

Were we to recognize that the individual members of the county council enjoyed absolute immunity from suit, [§ 15-78-70(b) of the SCTCA] would be meaningless. Additionally, the individual council members will be free to raise such issues as qualified immunity, qualified privilege, and the provisions of the Tort Claims Act, at later stages of this case. For these reasons, we hold that the denial of the individual council members' motion to dismiss is not presently reviewable.

*Brown*, 366 S.C. at \_\_\_, 622 S.E.2d 537-38.

In *Health Promotion Specialists, LLC*, the court recognized that the SCTCA "is the exclusive civil remedy available for any tort committed by a government entity, its employee, or its agents except as provided in § 15-78-70(b)". *Health Promotion Specialists, LLC*, at 635, 743 S.E.2d at 814 citing *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (1998) and § 15-78-40 (SCTCA "is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty."); *Fleteau v. Harrelson*, 355 S.C. 197, 594 S.E.2d 413 (Ct. App. 2003).

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Record on Appeal -442-

Email from Judge Hyman's Law Clerk dated July 9, 2014.

**Record on Appeal -443-**

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Record on Appeal -444-

**robertgeastman@msn.com**

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**From:** Hyman, Larry B: Law Clerk (William A. Postal) <lhymanlc@sccourts.org>  
**Sent:** Wednesday, July 9, 2014 10:58 AM  
**To:** robertgeastman@msn.com; SFA@aikenbridges.com  
**Subject:** Skydive vs. Horry County (2014-CP-26-1193)

Counselors,

Judge Hyman believes that the allegations are clear that these individuals acted within the scope of their official duty. Therefore, please resubmit proposed orders and specifically address actual malice, fraud and intent to do harm. Please send these proposals through U.S. mail.

Thanks,

Drew Postal  
*Law Clerk*  
The Honorable Larry B. Hyman Jr.  
1301 Second Avenue, Suite 3B71  
Conway, South Carolina 29526  
(843) 915-6706

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Email from Judge Hyman's Law Clerk dated August 13, 2014

**Record on Appeal -447-**

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Record on Appeal -448-

**robertgeastman@msn.com**

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**From:** Hyman, Larry B. Law Clerk (William A. Postal) <lhymanlc@sccourts.org>  
**Sent:** Wednesday, August 13, 2014 10:35 AM  
**To:** robertgeastman@msn.com; SFA@aikenbridges.com  
**Subject:** RE: Skydive vs. Horry County (2014-CP-26-1193)

I received an order from Mr. Arthur but I do not think that I have received one from Mr. Eastman. Please correct me if I am mistaken.

Thanks,

Drew Postal  
*Law Clerk*  
The Honorable Larry B. Hyman Jr.  
1301 Second Avenue, Suite 3B71  
Conway, South Carolina 29526  
(843) 915-6706

---

**From:** Hyman, Larry B. Law Clerk (William A. Postal)  
**Sent:** Wednesday, July 09, 2014 10:58 AM  
**To:** 'robertgeastman@msn.com'; 'SFA@aikenbridges.com'  
**Subject:** Skydive vs. Horry County (2014-CP-26-1193)

Counselors,

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Thanks,

Drew Postal  
*Law Clerk*  
The Honorable Larry B. Hyman Jr.  
1301 Second Avenue, Suite 3B71  
Conway, South Carolina 29526  
(843) 915-6706

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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Record on Appeal -450-

Email from Judge Hyman's Law Clerk dated August 14, 2014

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Record on Appeal -452-

**robertgeastman@msn.com**

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**From:** Hyman, Larry B. Law Clerk (William A. Postal) <lhymanlc@sccourts.org>  
**Sent:** Thursday, August 14, 2014 12:48 PM  
**To:** Robert Eastman; SFA@aikenbridges.com  
**Cc:** 'Aaron Holly'  
**Subject:** RE: Skydive vs. Horry County (2014-CP-26-1193)

Thank you Mr. Eastman. It was just a follow up. Please drop them in the mail to my address below when you are finished.

Drew Postal  
*Law Clerk*  
The Honorable Larry B. Hyman Jr.  
1301 Second Avenue, Suite 3B71  
Conway, South Carolina 29526  
(843) 915-6706

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**From:** Robert Eastman [mailto:robertgeastman@msn.com]  
**Sent:** Thursday, August 14, 2014 12:44 PM  
**To:** Hyman, Larry B. Law Clerk (William A. Postal); SFA@aikenbridges.com  
**Cc:** 'Aaron Holly'  
**Subject:** RE: Skydive vs. Horry County (2014-CP-26-1193)

Sir-

I have attached copies of correspondence sent to the Judge dated May 22, 2014, and June 9, 2014. I am preparing this afternoon an Order styled more along the lines of Mr. Arthurs as that appears the format for this jurisdiction but a simple Order was submitted in the June 9, 2014, correspondence.

I will have the Order prepared by close of business tomorrow that fully addresses the issues identified in your earlier email. As there was no due date, I assumed I had 30 days to address those concerns.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

*/s/ Robert G. Eastman*

P.O. Box 180  
Charleston, SC 29402  
USA

Cell: (843) 329-9657  
Fax: (843) 723-0005

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**From:** Hyman, Larry B. Law Clerk (William A. Postal) [<mailto:lhymanlc@sccourts.org>]

**Sent:** Wednesday, August 13, 2014 10:35 AM

**To:** [robertgeastman@msn.com](mailto:robertgeastman@msn.com); [SFA@aikenbridges.com](mailto:SFA@aikenbridges.com)

**Subject:** RE: Skydive vs. Horry County (2014-CP-26-1193)

I received an order from Mr. Arthur but I do not think that I have received one from Mr. Eastman. Please correct me if I am mistaken.

Thanks,

Drew Postal

*Law Clerk*

The Honorable Larry B. Hyman Jr.

1301 Second Avenue, Suite 3B71

Conway, South Carolina 29526

(843) 915-6706

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**From:** Hyman, Larry B. Law Clerk (William A. Postal)

**Sent:** Wednesday, July 09, 2014 10:58 AM

**To:** [robertgeastman@msn.com](mailto:robertgeastman@msn.com); [SFA@aikenbridges.com](mailto:SFA@aikenbridges.com)

**Subject:** Skydive vs. Horry County (2014-CP-26-1193)

Counselors,

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Judge Hyman believes that the allegations are clear that these individuals acted within the scope of their official duty. Therefore, please resubmit proposed orders and specifically address actual malice, fraud and intent to do harm. Please send these proposals through U.S. mail.

Thanks,

Drew Postal  
*Law Clerk*  
The Honorable Larry B. Hyman Jr.  
1301 Second Avenue, Suite 3B71  
Conway, South Carolina 29526  
(843) 915-6706

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Certificate of Counsel

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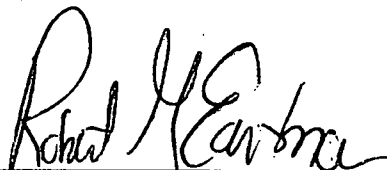
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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 12, 2015



Robert G. Eastman, Esquire  
3980 South Tropical Trail  
Merritt Island, Florida 32952  
(843) 329-9657  
Attorney for Appellant

**RECEIVED**

JUL 24 2015

SC Court of Appeals

Record on Appeal -459-