THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

RECEIVED
JUN 13 2018
SC Court of Appeals

Case No. 2016-CP-26-00673
Case No. 2016-CP-26-00674
Case No. 2016-CP-26-00743
Case No. 2016-CP-26-00744
Appellate Case No. 2018-000041

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

v.

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

And

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

v.

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

And

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

v.

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

And

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

v.

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

Of whom Mark Dos Santos is the Appellant,

And

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

RECORD ON APPEAL VOLUME I

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

ORDER DENYING PLAINTIFFS' MOTIONS TO RECONSIDER

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

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The Court has reviewed Plaintiffs' Motions and Amended Motions (together with the Exhibits thereto), as well as Defendants' filings opposing Plaintiffs' Motions and Amended Motions. The Court also is familiar with the facts, legal issues, procedural history, and pleadings on file in the Actions.

For the reasons set forth below, the Court **DENIES** Plaintiffs' Motions and Amended Motions for reconsideration of the Court's September 21, 2017, Order Granting Defendants' Motion to Enforce Settlement Agreement.

A. Findings of Fact.[1]

1. On May 1, 2017, all parties and their counsel attended and participated in (either in person or via telephone)[2] the Court-mandated mediation conference in the Actions, which was facilitated by Mediator Karl A. Folkens, Esq.—one of the most experienced and well-respected mediators in South Carolina.

2. Plaintiffs Mark Dos Santos and Jeff Richardson attended and participated in the mediation conference via telephone.

3. After a full-day mediation, involving extensive arms-length negotiations between the parties and their counsel, the parties reached a resolution of all claims in the Actions and a related matter.

4. In accordance with Rule 6(f), SCADR, Mediator Folkens ensured that the parties reduced their settlement to writing in an agreement that accurately captured the terms of the

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[1] These same facts have been central to Defendants' original Consolidated Motion for Preliminary Approval of Settlement Agreement filed July 3, 2017, and Plaintiffs' Motions and Amended Motions for reconsideration of the Order granting Defendants' Motion. Plaintiffs have never disputed the accuracy of any of these facts.

[2] Of the eight (8) named plaintiffs in the Actions, six (6) were physically present at the mediation, and two (2)—Mark Dos Santos and Jeffrey Richardson—were present via telephone.

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negotiated resolution and that all parties named in the Agreement signed—the Settlement Agreement in the Actions ("Agreement").[3]

5. Due to Plaintiffs Mark Dos Santos and Jeff Richardson not being physically present, Plaintiffs' counsel executed the Agreement on their behalf as their duly-authorized agent.

6. Plaintiffs' counsel presented the Agreement to Mediator Folkens and Defendants' counsel, signed by or on behalf of all of the named Plaintiffs.

7. Due to individual Defendants Ray Coghill, Bill Cameron, and Stanley Jordan not being physically present, Defendants' counsel executed the Agreement on their behalf as their duly-authorized agent.

8. Due to the inability of the organization Defendants—Ocean Front Spa Horizontal Property Regime, Inc., and The Myrtle Beach Resort Homeowners Association, Inc.—to execute the Agreement on their own behalf, Defendants' counsel executed the Agreement on their behalf as their duly-authorized agent.

9. Based on the parties' negotiated settlement, memorialized in the Agreement, Mediator Folkens filed an Amended Proof of ADR form in each of the Actions making clear that all parties were present and that each of the Actions were "[f]ully settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties."

10. After the mediation, three of the named Plaintiffs (Nancy Moore, Steven Dame and Jim Perkins) expressly ratified the Agreement by (a) official written notification to all members of the OFS community that they successfully "resolve[d the] five lawsuits"; and (b) notices posted in the OFS building informing all residents that "[t]he recent state court litigation between various

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[3] The record also contains a copy of the Settlement Agreement memorializing the resolution of a separate but related action (*K.A. Diehl and Associates, Inc. v. Perkins et al.*, C.A. No. 2015-CP-26-05573) that all named parties to that agreement (all named Plaintiffs plus K.A. Diehl and Associates, Inc.) signed at the conclusion of the global mediation conference.

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homeowners in the Ocean Front Spa and its management company and others has been resolved between the parties to their mutual satisfaction via alternative dispute resolution that occurred on May 1."

B. Regardless of whether Rule 43(k) Applies to the Agreement, the Agreement Fully Satisfies the Requirements of Rule 43(k).

Rule 43(k), SCRCP, contemplates several ways in which an agreement covered by the Rule becomes binding. One way is where the agreement is "reduced to writing and signed by the parties and their counsel." That has occurred here, regardless of whether Rule 43(k) applies, fully satisfying the requirements of the Rule:

- The parties' negotiated resolution was "reduced to writing" in the form of the Agreement;
- Each of the named parties to the Agreement signed the Agreement, either personally or through the actions of their duly-authorized agents; and
- The Agreement shows that counsel for the parties signed the agreement:
    - "A. Preston Brittain"—counsel for Plaintiffs—signed the Agreement twice (once in an agency capacity for Plaintiff Santos, and once in an agency capacity for Plaintiff Richardson both of whom were present at the mediation via telephone), and
    - "Phillip A. Kilgore"—counsel for all Defendants who were party to the Agreement—signed the Agreement five times (in an agency capacity for two corporate Defendants and the three individual Defendants who were present at the mediation via telephone).

Plaintiffs acknowledge the truth of each of these facts. This acknowledgement leaves no room to argue that Rule 43(k) was not satisfied.

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1. Counsel for All Named Parties to the Agreement Signed the Agreement.

Plaintiffs' first contention is that the signatures of Plaintiffs' counsel and Defendants' counsel on the Agreement should be disregarded because counsel did not sign in their individual capacity. The Rule has no such capacity requirement. Moreover, any signature by counsel in the course of the representation of a party would, by definition, be in an agency capacity.

The purpose of Rule 43(k) is to promote certainty with respect to the terms of agreements between counsel and to remove the Court from such disputes. *See Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). Rule 43(k) was amended in 2009, adding another way in which to accomplish this purpose—by allowing the enforcement of an "agreement between counsel" (1) that is in writing, (2) to which the parties acknowledge their assent by signing the document, and (3) of which the attorneys confirm their review and approval by signing the document.

The obvious purpose of the attorney signature requirement is to ensure that the document accurately conveys the terms of the deal the parties have reached. It is certainly not to signal counsel's agreement to be bound individually, as the attorney essentially never has affirmative obligations or rights under the agreement.

Here, counsel for Plaintiffs and counsel for Defendants signed the Agreement as agents of their clients. In other words, it is beyond dispute that the parties' attorneys did indeed sign the Agreement. Applying the most fundamental statutory interpretation principles, this fact plainly satisfies Rule 43(k), which merely requires that the document be "signed by . . . counsel." *See State v. Muldrow*, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2002) ("[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."). To the extent Rule 43 applies, it would require counsel to sign the agreement, and they did so.

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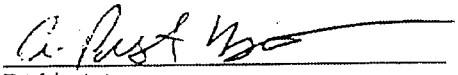
Moreover, by signing the Agreement as agents/attorneys for their principals/clients, both counsel clearly indicated that they fulfilled their duties to their clients, having reviewed the Agreement and confirmed that it accurately set forth the relevant terms of settlement. Moreover, their signatures constitute representations that their clients gave them express permission to sign in their stead. Neither attorney would have signed the Agreement as the agent of his client unless these facts were true. Therefore, the Agreement satisfies the attorney signature requirement under Rule 43(k).

2. Plaintiffs Santos and Richardson signed the Agreement for purposes of Rule 43(k) by directing their agent/counsel to sign on their behalf.

Plaintiffs have also contended that a party does not actually sign an agreement for purposes of Rule 43(k), even when the party has expressly directed his agent/attorney to sign the agreement on his behalf and the attorney has done so in a manner making clear that the attorney is signing in the place of the party.[4] This argument fails based on well-established agency principles.

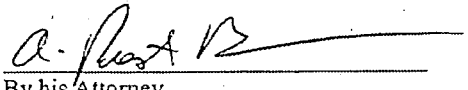
Below are the actual signatures from the Agreement with which Plaintiffs apparently take issue:

Mark Dos Santos



By his Attorney

Jeffrey Richardson



By his Attorney

[4] Plaintiffs raised this argument in opposition to Defendants' Motion to Approve Settlement, but Plaintiffs' Motions to Reconsider appear to have abandoned this argument. Plaintiffs' Motions to Reconsider focus instead on the isolated issue addressed in Section A.1 above—their contention that Plaintiffs' counsel and Defendants' counsel did not "sign" the agreement for purposes of Rule 43(k). The Court includes Section A.2 to address all issues potentially before the Court and to explain why Rule 43(k) has been satisfied fully.

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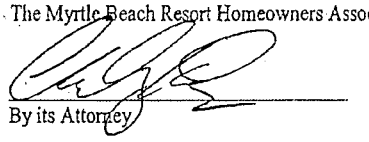
The Myrtle Beach Resort Homeowners Association, Inc., ("MBRHOA")

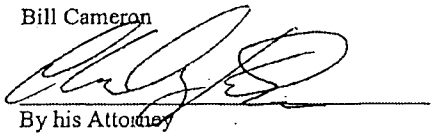


By its Attorney

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

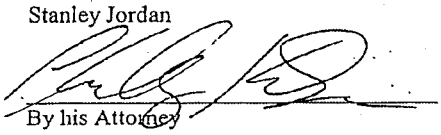
By its Attorney

Bill Cameron



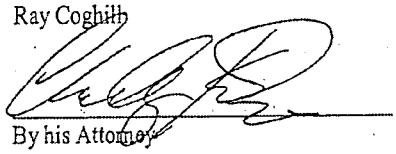
By his Attorney

Stanley Jordan



By his Attorney

Ray Coghill



By his Attorney

All of these signature blocks demonstrate that the parties/principals have signed the Agreement, and that the attorneys are merely putting pen to paper as the agents of the principals.

An agent with express authority to contract is able to bind the principal by signing on the principal's behalf. *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 183, 348 S.E.2d 617, 624 (Ct. App. 1986) ("An agent contracting with the authority of his principal binds him to the same extent as if the principal personally made the contract. The principal's liability to the third party is contractual and direct." (emphasis added)). Thus, through the actions of their agents/attorneys, all of the principals/parties effectively signed the Agreement.

To accept Plaintiffs' argument, corporate defendants (which always sign through their agents) and other parties who are forced to sign agreements through their agents (due to incapacity, absence, or otherwise) would never be able to enter into a binding agreement under Rule 43(k). This would be an absurd interpretation—one the Legislature could not have intended. *Duke*

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Energy Corp. v. S.C. Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("If possible, the Court will construe a statute so as to escape the absurdity and carry the intention into effect." (citing *Kiriakides v. United Artist Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994))).

There is no dispute that the Agreement was in writing. The Court finds that the signature-based requirements of the applicable provision of Rule 43(k) have similarly been satisfied for the reasons discussed above. Thus, the Agreement fully satisfies Rule 43(k) regardless of whether that Rule applies to the Agreement, mandating enforcement of the Agreement.

C. <u>The Plain Language of Rule 43(k)—as Emphasized by the Supreme Court—Renders the Rule Inapplicable to the Agreement</u>.

Despite the fact that the Agreement complies with Rule 43(k), the plain language of the Rule 43(k) demonstrates that it is inapplicable to the Agreement. The Rule provides as follows:

> **(k) Agreements of Counsel.** No agreement *<u>between counsel</u>* affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

SCRCP Rule 43(k) (emphasis added). "'In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.'" *Farnsworth*, 367 S.C. at 638, 627 S.E.2d at 726 (quoting *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003)). "[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Muldrow*, 348 S.C. at 268, 559 S.E.2d at 849. Applying this basic rule of statutory interpretation demonstrates Rule 43(k)'s inapplicability to the Agreement.

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The Agreement is not an "agreement between counsel." It is an agreement between the parties. A Rule 43(k) "agreement between counsel" contemplates an agreement negotiated by attorneys, as to which the attorneys must later take overt action, identified in the Rule, before it becomes enforceable. One of these actions can be where the "agreement between counsel" is later "reduced to writing and signed by the parties and their counsel." SCRCP Rule 43(k). To satisfy this Rule, lawyers must memorialize their agreements with other counsel, consult with their clients about the terms, and ensure that their clients sign the agreement. The obvious purpose of the Rule is to protect parties in connection with agreements negotiated and entered into by their attorneys. The Rule is not designed to replace the basic law of contract pertaining to agreements into which the parties themselves enter.

A recent Court of Appeals opinion recognized as much. According to SCRCP Rule 43(k), "*lawyers* have been required . . . to reduce *their* agreements to a written document." *Inglese v. Beal*, 403 S.C. 290, 742 S.E.2d 687, 694 (Ct. App. 2013) (Pieper, J., concurring in part and dissenting in part) (emphasis added). Likewise, the Supreme Court recognized the importance of the two words, "between counsel," in the introductory clause, emphasizing them when quoting and construing the Rule. *See Farnsworth*, 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRCP Rule 43(k)).

The *Farnsworth* Court went a step further, noting that "Rule 43(k) plainly applies to all settlement agreements signed by counsel." *Id.* at 638, 627 S.E.2d at 726 (emphasis added). If the Court interpreted Rule 43(k) as applying to all settlement agreements, including those entered into by parties themselves, the Court's use of the wording "signed by counsel" was superfluous. A fair reading of this language is that the Court intended to distinguish between "all settlement agreements," and "all settlement agreements signed by counsel." By including this qualifying

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language, the Court demonstrated that not all settlement agreements are covered by Rule 43(k)—only those that are "agreement[s] between counsel," as the language of the Rule makes clear.

The history of Rule 43(k) further demonstrates its inapplicability to the Agreement. The predecessor to Rule 43(k), Circuit Court Rule 14, provided as follows: "No agreement or consent between parties, or their attorneys, in respect to the proceedings in a cause, shall be binding, unless . . . ." *Farnsworth*, 367 S.C. at 638 n.3, 627 S.E.2d at 726 n.3 (emphasis added). The *Farnsworth* Court compared Circuit Court Rule 14 to SCRCP 43(k) to point out that language included in the old rule but omitted in the new rule rendered the agreement at issue unenforceable. *Id.* ("Under [the old] rule, Davis and Farnsworth's agreement would be enforceable simply because it is in writing. Unlike Rule 43(k), Circuit Court Rule 14 did not contain the additional requirement that written agreements be entered into the record.").

Similarly, new SCRCP Rule 43(k) omits other language present in old Circuit Court Rule 14, and that omission is directly relevant in this dispute. SCRCP Rule 43(k) makes no reference to "agreement[s] . . . between parties" and retains only the reference to "agreement[s] . . . between counsel." It is fair to conclude that this omission was intentional, has meaning, and cannot be overlooked.

The Legislature clearly intended for old Circuit Court Rule 14 to apply to all litigation agreements, whether between the parties or their attorneys. In devising Rule 43(k), the Legislature must have contemplated the possibility of including agreements between parties, but elected to omit any reference to such agreements. Such omission in the new Rule, on the same subject, demonstrates the Legislature's clear intent to limit the requirements of the Rule to only agreements "between counsel."

To hold otherwise would require the Court to assume that the Legislature committed an oversight, simply forgot to retain the reference to agreements between parties when drafting Rule 43(k), and has allowed the error to remain in place for decades. There is no basis for such assumptions, and the Court must give meaning to the Legislature's intentional omission of "agreements between parties" from Rule 43(k).

Plaintiffs rely on *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (1995), in an attempt to overcome the above interpretation of Rule 43(k). *Ashfort* appears distinguishable, as that case involved (1) the attorneys vaguely "advis[ing] the circuit court that the case had been settled" without providing any details as to the terms, and (2) some undescribed, purported agreement between a party and the other party's insurer. *Id.* at 493, 495, 458 S.E.2d at 534-35. There was no evidence of the terms or form of the purported agreement between the party and the other party's insurer or how it was entered. Thus, the *Ashfort* Court was left with nothing more than representations by counsel that a purported agreement had been reached. These circumstances are what placed *Ashfort* neatly within the parameters of Rule 43(k), as the Court was relying exclusively on information from counsel.

The facts are far different here. This Court is not relying on the representations of counsel that a deal has been reached, or even the terms of the deal. The record is replete with evidence of the deal and its actual terms: (1) all of the parties (with the assistance of counsel and a seasoned and well-respected mediator) actively participated in, negotiated, and reached terms on a settlement during a full-day mediation conference, (2) the parties reduced those terms to writing in the Agreement, (3) all parties named in the Agreement signed the Agreement before leaving the mediation, and (4) the mediator filed a notice with the Court confirming each of the above facts.

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Additionally, the Court must review *Ashfort* through the lens of *Farnsworth*, in which the Supreme Court expressly accounted for its prior holding. In *Farnsworth*, the Supreme Court has clarified that Rule 43(k) applies only to "'agreements *between counsel*,'" 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRCP Rule 43(k)) (emphasis in original), including those which are "settlement agreements *signed by counsel*," *id.* at 638, 627 S.E.2d at 726 (emphasis added). This is consistent with the historical backdrop of Rule 43(k) and the plain language of the Rule, and this Court sees no reason to hold otherwise.

The Agreement in this case was not an "agreement between counsel," as contemplated in Rule 43(k). The Agreement was negotiated, memorialized, and executed by all of the parties named in the Agreement, after a full day of mediation in which all actively participated. Thus, notwithstanding the Agreement's full satisfaction of Rule 43(k), the Court finds the Rule inapplicable to the Agreement.

D. Plaintiffs' "New Evidence" Argument does not Impact the Enforceability of the Agreement.

Plaintiffs' Motions to Reconsider present what they refer to as "new evidence," which they argue demonstrates that one of the individual Defendants breached the Agreement. They say that an email sent by Defendant Walter Jordan violated the Agreement's non-disparagement clause. This new argument, which was not raised before the Order was entered, fails for several reasons.

First, by asking the court to enforce a certain provision of the Agreement in their favor, Plaintiffs have effectively conceded the enforceability of the entire Agreement. For Defendant Walter Jordan to be in breach of the Agreement's non-disparagement clause as alleged in Plaintiffs' "new evidence" argument, there must first be a valid and enforceable non-disparagement clause. Thus, Plaintiffs rely on the binding and enforceable nature of the Agreement as a means of repudiating the Agreement.

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If Plaintiffs believe that there has been a breach of the Agreement, they are free to pursue their rights under the Agreement accordingly, at a different time and in a different forum. The alleged breach—on which the Court makes no findings whatsoever—has no bearing on whether the Agreement is binding and enforceable. That is the only issue before the Court.

Additionally, the email does not constitute "new evidence" under Rule 60(b)(2). Evidence is "newly discovered" if it was not known to the party or in his possession at the time of hearing. *See Lanier v. Lanier*, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005). The Plaintiffs received the email in July 2016, several weeks before the hearing on Defendants' Motion to enforce the Agreement. Since the email is not new evidence under Rule 60(b)(2), Plaintiffs' only recourse would be Rule 59(e). But since this issue was not previously raised and preserved under Rule 59(e), it is barred as new argument. *See Fields v. Reg'l Med. Ctr.*, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005).

E. Plaintiffs' Contentions regarding the Application of the Agreement to K.A. Diehl or its Successor in Interest are Premature.

Plaintiffs argue that the Court erred (1) "in ruling that this agreement releases KA Diehl and Associates, Inc.", and (2) in ruling that "First Services Residential is released from liability." Plaintiffs' argument is premature, as the Order of which they are seeking reconsideration makes no mention whatsoever of First Services Residential, nor does it specifically address the release of K.A. Diehl and Associates, Inc. The Order simply finds that the Agreement is enforceable. Thus, Plaintiffs' arguments with respect to the release of claims against K.A. Diehl and Associates, Inc., and First Services Residential are not yet ripe for adjudication.

F. Conclusion.

Plaintiffs' Motions and Amended Motions have never questioned the accuracy of the Agreement's terms. Nor have Plaintiffs challenged the fact that all parties to the Agreement and their respective counsel signed the Agreement at the conclusion of mediation (either personally or through their duly-authorized agents). Instead, Plaintiffs rely on untenable interpretations of Rule 43(k) that are not supported by principles of statutory construction or existing precedent. The Court rejects those interpretations of Rule 43(k) and **DENIES** Plaintiffs' Motions for reconsideration of the September 21, 2017 Orders enforcing the Agreement.

IT IS SO ORDERED on this _____ of _____, 2017.

_____
The Honorable William H. Seals, Jr.

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Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS Ocean Front Spa Horizontal Property Regime Inc , defendant, et al

Case Number: 2016CP2600673

Type: Order/Other

IT IS SO ORDERED

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

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

ORDER DENYING PLAINTIFFS' MOTIONS TO RECONSIDER

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

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The Court has reviewed Plaintiffs' Motions and Amended Motions (together with the Exhibits thereto), as well as Defendants' filings opposing Plaintiffs' Motions and Amended Motions. The Court also is familiar with the facts, legal issues, procedural history, and pleadings on file in the Actions.

For the reasons set forth below, the Court **DENIES** Plaintiffs' Motions and Amended Motions for reconsideration of the Court's September 21, 2017, Order Granting Defendants' Motion to Enforce Settlement Agreement.

A. Findings of Fact.[1]

1. On May 1, 2017, all parties and their counsel attended and participated in (either in person or via telephone)[2] the Court-mandated mediation conference in the Actions, which was facilitated by Mediator Karl A. Folkens, Esq.—one of the most experienced and well-respected mediators in South Carolina.

2. Plaintiffs Mark Dos Santos and Jeff Richardson attended and participated in the mediation conference via telephone.

3. After a full-day mediation, involving extensive arms-length negotiations between the parties and their counsel, the parties reached a resolution of all claims in the Actions and a related matter.

4. In accordance with Rule 6(f), SCADR, Mediator Folkens ensured that the parties reduced their settlement to writing in an agreement that accurately captured the terms of the

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[1] These same facts have been central to Defendants' original Consolidated Motion for Preliminary Approval of Settlement Agreement filed July 3, 2017, and Plaintiffs' Motions and Amended Motions for reconsideration of the Order granting Defendants' Motion. Plaintiffs have never disputed the accuracy of any of these facts.

[2] Of the eight (8) named plaintiffs in the Actions, six (6) were physically present at the mediation, and two (2)—Mark Dos Santos and Jeffrey Richardson—were present via telephone.

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negotiated resolution and that all parties named in the Agreement signed—the Settlement Agreement in the Actions ("Agreement").[3]

5. Due to Plaintiffs Mark Dos Santos and Jeff Richardson not being physically present, Plaintiffs' counsel executed the Agreement on their behalf as their duly-authorized agent.

6. Plaintiffs' counsel presented the Agreement to Mediator Folkens and Defendants' counsel, signed by or on behalf of all of the named Plaintiffs.

7. Due to individual Defendants Ray Coghill, Bill Cameron, and Stanley Jordan not being physically present, Defendants' counsel executed the Agreement on their behalf as their duly-authorized agent.

8. Due to the inability of the organization Defendants—Ocean Front Spa Horizontal Property Regime, Inc., and The Myrtle Beach Resort Homeowners Association, Inc.—to execute the Agreement on their own behalf, Defendants' counsel executed the Agreement on their behalf as their duly-authorized agent.

9. Based on the parties' negotiated settlement, memorialized in the Agreement, Mediator Folkens filed an Amended Proof of ADR form in each of the Actions making clear that all parties were present and that each of the Actions were "[f]ully settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties."

10. After the mediation, three of the named Plaintiffs (Nancy Moore, Steven Dame and Jim Perkins) expressly ratified the Agreement by (a) official written notification to all members of the OFS community that they successfully "resolve[d the] five lawsuits"; and (b) notices posted in the OFS building informing all residents that "[t]he recent state court litigation between various

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[3] The record also contains a copy of the Settlement Agreement memorializing the resolution of a separate but related action (*K.A. Diehl and Associates, Inc. v. Perkins et al.*, C.A. No. 2015-CP-26-05573) that all named parties to that agreement (all named Plaintiffs plus K.A. Diehl and Associates, Inc.) signed at the conclusion of the global mediation conference.

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homeowners in the Ocean Front Spa and its management company and others has been resolved between the parties to their mutual satisfaction via alternative dispute resolution that occurred on May 1."

B. Regardless of whether Rule 43(k) Applies to the Agreement, the Agreement Fully Satisfies the Requirements of Rule 43(k).

Rule 43(k), SCRCP, contemplates several ways in which an agreement covered by the Rule becomes binding. One way is where the agreement is "reduced to writing and signed by the parties and their counsel." That has occurred here, regardless of whether Rule 43(k) applies, fully satisfying the requirements of the Rule:

- The parties' negotiated resolution was "reduced to writing" in the form of the Agreement;
- Each of the named parties to the Agreement signed the Agreement, either personally or through the actions of their duly-authorized agents; and
- The Agreement shows that counsel for the parties signed the agreement:
    - "A. Preston Brittain"—counsel for Plaintiffs—signed the Agreement twice (once in an agency capacity for Plaintiff Santos, and once in an agency capacity for Plaintiff Richardson both of whom were present at the mediation via telephone), and
    - "Phillip A. Kilgore"—counsel for all Defendants who were party to the Agreement—signed the Agreement five times (in an agency capacity for two corporate Defendants and the three individual Defendants who were present at the mediation via telephone).

Plaintiffs acknowledge the truth of each of these facts. This acknowledgement leaves no room to argue that Rule 43(k) was not satisfied.

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1. Counsel for All Named Parties to the Agreement Signed the Agreement.

Plaintiffs' first contention is that the signatures of Plaintiffs' counsel and Defendants' counsel on the Agreement should be disregarded because counsel did not sign in their individual capacity. The Rule has no such capacity requirement. Moreover, any signature by counsel in the course of the representation of a party would, by definition, be in an agency capacity.

The purpose of Rule 43(k) is to promote certainty with respect to the terms of agreements between counsel and to remove the Court from such disputes. *See Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). Rule 43(k) was amended in 2009, adding another way in which to accomplish this purpose—by allowing the enforcement of an "agreement between counsel" (1) that is in writing, (2) to which the parties acknowledge their assent by signing the document, and (3) of which the attorneys confirm their review and approval by signing the document.

The obvious purpose of the attorney signature requirement is to ensure that the document accurately conveys the terms of the deal the parties have reached. It is certainly not to signal counsel's agreement to be bound individually, as the attorney essentially never has affirmative obligations or rights under the agreement.

Here, counsel for Plaintiffs and counsel for Defendants signed the Agreement as agents of their clients. In other words, it is beyond dispute that the parties' attorneys did indeed sign the Agreement. Applying the most fundamental statutory interpretation principles, this fact plainly satisfies Rule 43(k), which merely requires that the document be "signed by . . . counsel." *See State v. Muldrow*, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2002) ("[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."). To the extent Rule 43 applies, it would require counsel to sign the agreement, and they did so.

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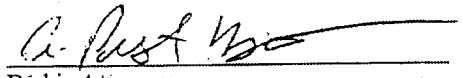
Moreover, by signing the Agreement as agents/attorneys for their principals/clients, both counsel clearly indicated that they fulfilled their duties to their clients, having reviewed the Agreement and confirmed that it accurately set forth the relevant terms of settlement. Moreover, their signatures constitute representations that their clients gave them express permission to sign in their stead. Neither attorney would have signed the Agreement as the agent of his client unless these facts were true. Therefore, the Agreement satisfies the attorney signature requirement under Rule 43(k).

2. Plaintiffs Santos and Richardson signed the Agreement for purposes of Rule 43(k) by directing their agent/counsel to sign on their behalf.

Plaintiffs have also contended that a party does not actually sign an agreement for purposes of Rule 43(k), even when the party has expressly directed his agent/attorney to sign the agreement on his behalf and the attorney has done so in a manner making clear that the attorney is signing in the place of the party.[4] This argument fails based on well-established agency principles.

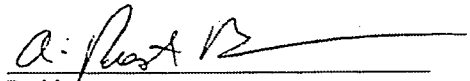
Below are the actual signatures from the Agreement with which Plaintiffs apparently take issue:

/Mark Dos Santos



By his Attorney

Jeffrey Richardson



By his Attorney

[4] Plaintiffs raised this argument in opposition to Defendants' Motion to Approve Settlement, but Plaintiffs' Motions to Reconsider appear to have abandoned this argument. Plaintiffs' Motions to Reconsider focus instead on the isolated issue addressed in Section A.1 above—their contention that Plaintiffs' counsel and Defendants' counsel did not "sign" the agreement for purposes of Rule 43(k). The Court includes Section A.2 to address all issues potentially before the Court and to explain why Rule 43(k) has been satisfied fully.

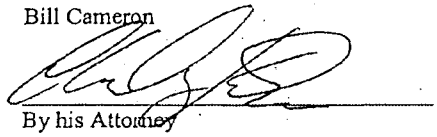
The Myrtle Beach Resort Homeowners Association, Inc., ("MBRHOA")

By its Attorney

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

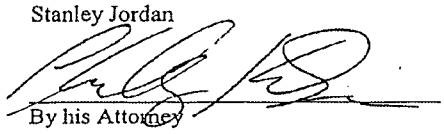
By its Attorney

Bill Cameron



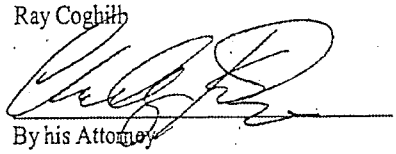
By his Attorney

Stanley Jordan



By his Attorney

Ray Coghill



By his Attorney

All of these signature blocks demonstrate that the parties/principals have signed the Agreement, and that the attorneys are merely putting pen to paper as the agents of the principals.

An agent with express authority to contract is able to bind the principal by signing on the principal's behalf. *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 183, 348 S.E.2d 617, 624 (Ct. App. 1986) ("An agent contracting with the authority of his principal binds him to the same extent as if the principal personally made the contract. The principal's liability to the third party is contractual and direct." (emphasis added)). Thus, through the actions of their agents/attorneys, all of the principals/parties effectively signed the Agreement.

To accept Plaintiffs' argument, corporate defendants (which always sign through their agents) and other parties who are forced to sign agreements through their agents (due to incapacity, absence, or otherwise) would never be able to enter into a binding agreement under Rule 43(k). This would be an absurd interpretation—one the Legislature could not have intended. *Duke*

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Energy Corp. v. S.C. Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("If possible, the Court will construe a statute so as to escape the absurdity and carry the intention into effect." (citing *Kiriakides v. United Artist Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994))).

There is no dispute that the Agreement was in writing. The Court finds that the signature-based requirements of the applicable provision of Rule 43(k) have similarly been satisfied for the reasons discussed above. Thus, the Agreement fully satisfies Rule 43(k) regardless of whether that Rule applies to the Agreement, mandating enforcement of the Agreement.

C. <u>The Plain Language of Rule 43(k)—as Emphasized by the Supreme Court—Renders the Rule Inapplicable to the Agreement</u>.

Despite the fact that the Agreement complies with Rule 43(k), the plain language of the Rule 43(k) demonstrates that it is inapplicable to the Agreement. The Rule provides as follows:

> **(k) Agreements of Counsel.** No agreement <u>*between counsel*</u> affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

SCRCP Rule 43(k) (emphasis added). "'In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.'" *Farnsworth*, 367 S.C. at 638, 627 S.E.2d at 726 (quoting *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003)). "[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Muldrow*, 348 S.C. at 268, 559 S.E.2d at 849. Applying this basic rule of statutory interpretation demonstrates Rule 43(k)'s inapplicability to the Agreement.

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The Agreement is not an "agreement between counsel." It is an agreement between the parties. A Rule 43(k) "agreement between counsel" contemplates an agreement negotiated by attorneys, as to which the attorneys must later take overt action, identified in the Rule, before it becomes enforceable. One of these actions can be where the "agreement between counsel" is later "reduced to writing and signed by the parties and their counsel." SCRCP Rule 43(k). To satisfy this Rule, lawyers must memorialize their agreements with other counsel, consult with their clients about the terms, and ensure that their clients sign the agreement. The obvious purpose of the Rule is to protect parties in connection with agreements negotiated and entered into by their attorneys. The Rule is not designed to replace the basic law of contract pertaining to agreements into which the parties themselves enter.

A recent Court of Appeals opinion recognized as much. According to SCRCP Rule 43(k), "*lawyers* have been required . . . to reduce *their* agreements to a written document." *Inglese v. Beal*, 403 S.C. 290, 742 S.E.2d 687, 694 (Ct. App. 2013) (Pieper, J., concurring in part and dissenting in part) (emphasis added). Likewise, the Supreme Court recognized the importance of the two words, "between counsel," in the introductory clause, emphasizing them when quoting and construing the Rule. *See Farnsworth*, 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRCP Rule 43(k)).

The *Farnsworth* Court went a step further, noting that "Rule 43(k) plainly applies to all settlement agreements signed by counsel." *Id.* at 638, 627 S.E.2d at 726 (emphasis added). If the Court interpreted Rule 43(k) as applying to all settlement agreements, including those entered into by parties themselves, the Court's use of the wording "signed by counsel" was superfluous. A fair reading of this language is that the Court intended to distinguish between "all settlement agreements," and "all settlement agreements signed by counsel." By including this qualifying

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language, the Court demonstrated that not all settlement agreements are covered by Rule 43(k)—only those that are "agreement[s] between counsel," as the language of the Rule makes clear.

The history of Rule 43(k) further demonstrates its inapplicability to the Agreement. The predecessor to Rule 43(k), Circuit Court Rule 14, provided as follows: "No agreement or consent between parties, or their attorneys, in respect to the proceedings in a cause, shall be binding, unless . . . ." *Farnsworth*, 367 S.C. at 638 n.3, 627 S.E.2d at 726 n.3 (emphasis added). The *Farnsworth* Court compared Circuit Court Rule 14 to SCRCP 43(k) to point out that language included in the old rule but omitted in the new rule rendered the agreement at issue unenforceable. *Id.* ("Under [the old] rule, Davis and Farnsworth's agreement would be enforceable simply because it is in writing. Unlike Rule 43(k), Circuit Court Rule 14 did not contain the additional requirement that written agreements be entered into the record.").

Similarly, new SCRCP Rule 43(k) omits other language present in old Circuit Court Rule 14, and that omission is directly relevant in this dispute. SCRCP Rule 43(k) makes no reference to "agreement[s] . . . between parties" and retains only the reference to "agreement[s] . . . between counsel." It is fair to conclude that this omission was intentional, has meaning, and cannot be overlooked.

The Legislature clearly intended for old Circuit Court Rule 14 to apply to all litigation agreements, whether between the parties or their attorneys. In devising Rule 43(k), the Legislature must have contemplated the possibility of including agreements between parties, but elected to omit any reference to such agreements. Such omission in the new Rule, on the same subject, demonstrates the Legislature's clear intent to limit the requirements of the Rule to only agreements "between counsel."

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To hold otherwise would require the Court to assume that the Legislature committed an oversight, simply forgot to retain the reference to agreements between parties when drafting Rule 43(k), and has allowed the error to remain in place for decades. There is no basis for such assumptions, and the Court must give meaning to the Legislature's intentional omission of "agreements between parties" from Rule 43(k).

Plaintiffs rely on *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (1995), in an attempt to overcome the above interpretation of Rule 43(k). *Ashfort* appears distinguishable, as that case involved (1) the attorneys vaguely "advis[ing] the circuit court that the case had been settled" without providing any details as to the terms, and (2) some undescribed, purported agreement between a party and the other party's insurer. *Id.* at 493, 495, 458 S.E.2d at 534-35. There was no evidence of the terms or form of the purported agreement between the party and the other party's insurer or how it was entered. Thus, the *Ashfort* Court was left with nothing more than representations by counsel that a purported agreement had been reached. These circumstances are what placed *Ashfort* neatly within the parameters of Rule 43(k), as the Court was relying exclusively on information from counsel.

The facts are far different here. This Court is not relying on the representations of counsel that a deal has been reached, or even the terms of the deal. The record is replete with evidence of the deal and its actual terms: (1) all of the parties (with the assistance of counsel and a seasoned and well-respected mediator) actively participated in, negotiated, and reached terms on a settlement during a full-day mediation conference, (2) the parties reduced those terms to writing in the Agreement, (3) all parties named in the Agreement signed the Agreement before leaving the mediation, and (4) the mediator filed a notice with the Court confirming each of the above facts.

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Additionally, the Court must review *Ashfort* through the lens of *Farnsworth*, in which the Supreme Court expressly accounted for its prior holding. In *Farnsworth*, the Supreme Court has clarified that Rule 43(k) applies only to "'agreements *between counsel*,'" 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRCP Rule 43(k)) (emphasis in original), including those which are "settlement agreements *signed by counsel*," *id.* at 638, 627 S.E.2d at 726 (emphasis added). This is consistent with the historical backdrop of Rule 43(k) and the plain language of the Rule, and this Court sees no reason to hold otherwise.

The Agreement in this case was not an "agreement between counsel," as contemplated in Rule 43(k). The Agreement was negotiated, memorialized, and executed by all of the parties named in the Agreement, after a full day of mediation in which all actively participated. Thus, notwithstanding the Agreement's full satisfaction of Rule 43(k), the Court finds the Rule inapplicable to the Agreement.

D. Plaintiffs' "New Evidence" Argument does not Impact the Enforceability of the Agreement.

Plaintiffs' Motions to Reconsider present what they refer to as "new evidence," which they argue demonstrates that one of the individual Defendants breached the Agreement. They say that an email sent by Defendant Walter Jordan violated the Agreement's non-disparagement clause. This new argument, which was not raised before the Order was entered, fails for several reasons.

First, by asking the court to enforce a certain provision of the Agreement in their favor, Plaintiffs have effectively conceded the enforceability of the entire Agreement. For Defendant Walter Jordan to be in breach of the Agreement's non-disparagement clause as alleged in Plaintiffs' "new evidence" argument, there must first be a valid and enforceable non-disparagement clause. Thus, Plaintiffs rely on the binding and enforceable nature of the Agreement as a means of repudiating the Agreement.

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If Plaintiffs believe that there has been a breach of the Agreement, they are free to pursue their rights under the Agreement accordingly, at a different time and in a different forum. The alleged breach—on which the Court makes no findings whatsoever—has no bearing on whether the Agreement is binding and enforceable. That is the only issue before the Court.

Additionally, the email does not constitute "new evidence" under Rule 60(b)(2). Evidence is "newly discovered" if it was not known to the party or in his possession at the time of hearing. *See Lanier v. Lanier*, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005). The Plaintiffs received the email in July 2016, several weeks before the hearing on Defendants' Motion to enforce the Agreement. Since the email is not new evidence under Rule 60(b)(2), Plaintiffs' only recourse would be Rule 59(e). But since this issue was not previously raised and preserved under Rule 59(e), it is barred as new argument. *See Fields v. Reg'l Med. Ctr.*, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005).

E. Plaintiffs' Contentions regarding the Application of the Agreement to K.A. Diehl or its Successor in Interest are Premature.

Plaintiffs argue that the Court erred (1) "in ruling that this agreement releases KA Diehl and Associates, Inc.", and (2) in ruling that "First Services Residential is released from liability." Plaintiffs' argument is premature, as the Order of which they are seeking reconsideration makes no mention whatsoever of First Services Residential, nor does it specifically address the release of K.A. Diehl and Associates, Inc. The Order simply finds that the Agreement is enforceable. Thus, Plaintiffs' arguments with respect to the release of claims against K.A. Diehl and Associates, Inc., and First Services Residential are not yet ripe for adjudication.

F. Conclusion.

Plaintiffs' Motions and Amended Motions have never questioned the accuracy of the Agreement's terms. Nor have Plaintiffs challenged the fact that all parties to the Agreement and their respective counsel signed the Agreement at the conclusion of mediation (either personally or through their duly-authorized agents). Instead, Plaintiffs rely on untenable interpretations of Rule 43(k) that are not supported by principles of statutory construction or existing precedent. The Court rejects those interpretations of Rule 43(k) and **DENIES** Plaintiffs' Motions for reconsideration of the September 21, 2017 Orders enforcing the Agreement.

IT IS SO ORDERED on this _____ of _____, 2017.

_____
The Honorable William H. Seals, Jr.

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Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS Myrtle Beach Resort Homeowners Association Inc , defendant, et al

Case Number: 2016CP2600674

Type: Order/Other

IT IS SO ORDERED

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

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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ELECTRONICALLY FILED - 2017 Dec 07 12:52 PM - HORRY - COMMON PLEAS - CASE#2016CP2600743

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

ORDER DENYING PLAINTIFFS' MOTIONS TO RECONSIDER

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

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The Court has reviewed Plaintiffs' Motions and Amended Motions (together with the Exhibits thereto), as well as Defendants' filings opposing Plaintiffs' Motions and Amended Motions. The Court also is familiar with the facts, legal issues, procedural history, and pleadings on file in the Actions.

For the reasons set forth below, the Court **DENIES** Plaintiffs' Motions and Amended Motions for reconsideration of the Court's September 21, 2017, Order Granting Defendants' Motion to Enforce Settlement Agreement.

A. Findings of Fact.[1]

1. On May 1, 2017, all parties and their counsel attended and participated in (either in person or via telephone)[2] the Court-mandated mediation conference in the Actions, which was facilitated by Mediator Karl A. Folkens, Esq.—one of the most experienced and well-respected mediators in South Carolina.

2. Plaintiffs Mark Dos Santos and Jeff Richardson attended and participated in the mediation conference via telephone.

3. After a full-day mediation, involving extensive arms-length negotiations between the parties and their counsel, the parties reached a resolution of all claims in the Actions and a related matter.

4. In accordance with Rule 6(f), SCADR, Mediator Folkens ensured that the parties reduced their settlement to writing in an agreement that accurately captured the terms of the

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[1] These same facts have been central to Defendants' original Consolidated Motion for Preliminary Approval of Settlement Agreement filed July 3, 2017, and Plaintiffs' Motions and Amended Motions for reconsideration of the Order granting Defendants' Motion. Plaintiffs have never disputed the accuracy of any of these facts.

[2] Of the eight (8) named plaintiffs in the Actions, six (6) were physically present at the mediation, and two (2)—Mark Dos Santos and Jeffrey Richardson—were present via telephone.

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negotiated resolution and that all parties named in the Agreement signed—the Settlement Agreement in the Actions ("Agreement").[3]

5. Due to Plaintiffs Mark Dos Santos and Jeff Richardson not being physically present, Plaintiffs' counsel executed the Agreement on their behalf as their duly-authorized agent.

6. Plaintiffs' counsel presented the Agreement to Mediator Folkens and Defendants' counsel, signed by or on behalf of all of the named Plaintiffs.

7. Due to individual Defendants Ray Coghill, Bill Cameron, and Stanley Jordan not being physically present, Defendants' counsel executed the Agreement on their behalf as their duly-authorized agent.

8. Due to the inability of the organization Defendants—Ocean Front Spa Horizontal Property Regime, Inc., and The Myrtle Beach Resort Homeowners Association, Inc.—to execute the Agreement on their own behalf, Defendants' counsel executed the Agreement on their behalf as their duly-authorized agent.

9. Based on the parties' negotiated settlement, memorialized in the Agreement, Mediator Folkens filed an Amended Proof of ADR form in each of the Actions making clear that all parties were present and that each of the Actions were "[f]ully settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties."

10. After the mediation, three of the named Plaintiffs (Nancy Moore, Steven Dame and Jim Perkins) expressly ratified the Agreement by (a) official written notification to all members of the OFS community that they successfully "resolve[d the] five lawsuits"; and (b) notices posted in the OFS building informing all residents that "[t]he recent state court litigation between various

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[3] The record also contains a copy of the Settlement Agreement memorializing the resolution of a separate but related action (*K.A. Diehl and Associates, Inc. v. Perkins et al.*, C.A. No. 2015-CP-26-05573) that all named parties to that agreement (all named Plaintiffs plus K.A. Diehl and Associates, Inc.) signed at the conclusion of the global mediation conference.

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homeowners in the Ocean Front Spa and its management company and others has been resolved between the parties to their mutual satisfaction via alternative dispute resolution that occurred on May 1."

B. Regardless of whether Rule 43(k) Applies to the Agreement, the Agreement Fully Satisfies the Requirements of Rule 43(k).

Rule 43(k), SCRCP, contemplates several ways in which an agreement covered by the Rule becomes binding. One way is where the agreement is "reduced to writing and signed by the parties and their counsel." That has occurred here, regardless of whether Rule 43(k) applies, fully satisfying the requirements of the Rule:

- The parties' negotiated resolution was "reduced to writing" in the form of the Agreement;
- Each of the named parties to the Agreement signed the Agreement, either personally or through the actions of their duly-authorized agents; and
- The Agreement shows that counsel for the parties signed the agreement:
    - "A. Preston Brittain"—counsel for Plaintiffs—signed the Agreement twice (once in an agency capacity for Plaintiff Santos, and once in an agency capacity for Plaintiff Richardson both of whom were present at the mediation via telephone), and
    - "Phillip A. Kilgore"—counsel for all Defendants who were party to the Agreement—signed the Agreement five times (in an agency capacity for two corporate Defendants and the three individual Defendants who were present at the mediation via telephone).

Plaintiffs acknowledge the truth of each of these facts. This acknowledgement leaves no room to argue that Rule 43(k) was not satisfied.

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1. Counsel for All Named Parties to the Agreement Signed the Agreement.

Plaintiffs' first contention is that the signatures of Plaintiffs' counsel and Defendants' counsel on the Agreement should be disregarded because counsel did not sign in their individual capacity. The Rule has no such capacity requirement. Moreover, any signature by counsel in the course of the representation of a party would, by definition, be in an agency capacity.

The purpose of Rule 43(k) is to promote certainty with respect to the terms of agreements between counsel and to remove the Court from such disputes. *See Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). Rule 43(k) was amended in 2009, adding another way in which to accomplish this purpose—by allowing the enforcement of an "agreement between counsel" (1) that is in writing, (2) to which the parties acknowledge their assent by signing the document, and (3) of which the attorneys confirm their review and approval by signing the document.

The obvious purpose of the attorney signature requirement is to ensure that the document accurately conveys the terms of the deal the parties have reached. It is certainly not to signal counsel's agreement to be bound individually, as the attorney essentially never has affirmative obligations or rights under the agreement.

Here, counsel for Plaintiffs and counsel for Defendants signed the Agreement as agents of their clients. In other words, it is beyond dispute that the parties' attorneys did indeed sign the Agreement. Applying the most fundamental statutory interpretation principles, this fact plainly satisfies Rule 43(k), which merely requires that the document be "signed by . . . counsel." *See State v. Muldrow*, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2002) ("[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."). To the extent Rule 43 applies, it would require counsel to sign the agreement, and they did so.

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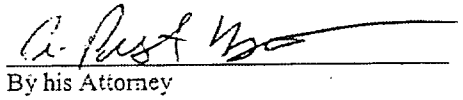
Moreover, by signing the Agreement as agents/attorneys for their principals/clients, both counsel clearly indicated that they fulfilled their duties to their clients, having reviewed the Agreement and confirmed that it accurately set forth the relevant terms of settlement. Moreover, their signatures constitute representations that their clients gave them express permission to sign in their stead. Neither attorney would have signed the Agreement as the agent of his client unless these facts were true. Therefore, the Agreement satisfies the attorney signature requirement under Rule 43(k).

2. Plaintiffs Santos and Richardson signed the Agreement for purposes of Rule 43(k) by directing their agent/counsel to sign on their behalf.

Plaintiffs have also contended that a party does not actually sign an agreement for purposes of Rule 43(k), even when the party has expressly directed his agent/attorney to sign the agreement on his behalf and the attorney has done so in a manner making clear that the attorney is signing in the place of the party.[4] This argument fails based on well-established agency principles.

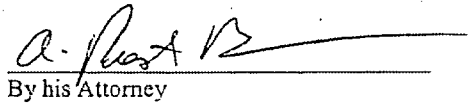
Below are the actual signatures from the Agreement with which Plaintiffs apparently take issue:

/Mark Dos Santos



By his Attorney

Jeffrey Richardson



By his Attorney

[4] Plaintiffs raised this argument in opposition to Defendants' Motion to Approve Settlement, but Plaintiffs' Motions to Reconsider appear to have abandoned this argument. Plaintiffs' Motions to Reconsider focus instead on the isolated issue addressed in Section A.1 above—their contention that Plaintiffs' counsel and Defendants' counsel did not "sign" the agreement for purposes of Rule 43(k). The Court includes Section A.2 to address all issues potentially before the Court and to explain why Rule 43(k) has been satisfied fully.

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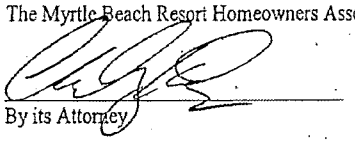
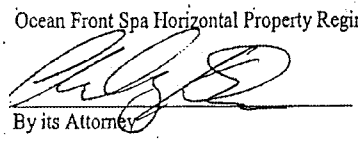
The Myrtle Beach Resort Homeowners Association, Inc., ("MBRHOA")



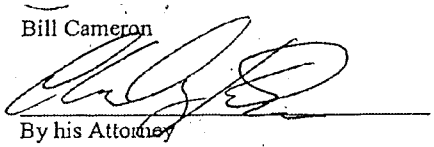
By its Attorney

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



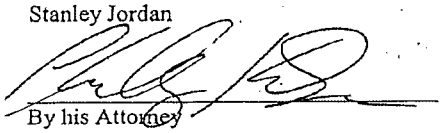
By its Attorney

Bill Cameron



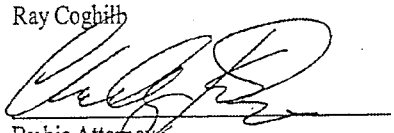
By his Attorney

Stanley Jordan



By his Attorney

Ray Coghill



By his Attorney

All of these signature blocks demonstrate that the parties/principals have signed the Agreement, and that the attorneys are merely putting pen to paper as the agents of the principals.

An agent with express authority to contract is able to bind the principal by signing on the principal's behalf. *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 183, 348 S.E.2d 617, 624 (Ct. App. 1986) ("An agent contracting with the authority of his principal binds him to the same extent as if the principal personally made the contract. The principal's liability to the third party is contractual and direct." (emphasis added)). Thus, through the actions of their agents/attorneys, all of the principals/parties effectively signed the Agreement.

To accept Plaintiffs' argument, corporate defendants (which always sign through their agents) and other parties who are forced to sign agreements through their agents (due to incapacity, absence, or otherwise) would never be able to enter into a binding agreement under Rule 43(k). This would be an absurd interpretation—one the Legislature could not have intended. *Duke*

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Energy Corp. v. S.C. Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("If possible, the Court will construe a statute so as to escape the absurdity and carry the intention into effect." (citing *Kiriakides v. United Artist Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994))).

There is no dispute that the Agreement was in writing. The Court finds that the signature-based requirements of the applicable provision of Rule 43(k) have similarly been satisfied for the reasons discussed above. Thus, the Agreement fully satisfies Rule 43(k) regardless of whether that Rule applies to the Agreement, mandating enforcement of the Agreement.

C. The Plain Language of Rule 43(k)—as Emphasized by the Supreme Court—Renders the Rule Inapplicable to the Agreement.

Despite the fact that the Agreement complies with Rule 43(k), the plain language of the Rule 43(k) demonstrates that it is inapplicable to the Agreement. The Rule provides as follows:

> **(k) Agreements of Counsel.** No agreement *between counsel* affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

SCRCP Rule 43(k) (emphasis added). "'In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.'" *Farnsworth*, 367 S.C. at 638, 627 S.E.2d at 726 (quoting *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003)). "[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Muldrow*, 348 S.C. at 268, 559 S.E.2d at 849. Applying this basic rule of statutory interpretation demonstrates Rule 43(k)'s inapplicability to the Agreement.

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The Agreement is not an "agreement between counsel." It is an agreement between the parties. A Rule 43(k) "agreement between counsel" contemplates an agreement negotiated by attorneys, as to which the attorneys must later take overt action, identified in the Rule, before it becomes enforceable. One of these actions can be where the "agreement between counsel" is later "reduced to writing and signed by the parties and their counsel." SCRCP Rule 43(k). To satisfy this Rule, lawyers must memorialize their agreements with other counsel, consult with their clients about the terms, and ensure that their clients sign the agreement. The obvious purpose of the Rule is to protect parties in connection with agreements negotiated and entered into by their attorneys. The Rule is not designed to replace the basic law of contract pertaining to agreements into which the parties themselves enter.

A recent Court of Appeals opinion recognized as much. According to SCRCP Rule 43(k), "*lawyers* have been required . . . to reduce *their* agreements to a written document." *Inglese v. Beal*, 403 S.C. 290, 742 S.E.2d 687, 694 (Ct. App. 2013) (Pieper, J., concurring in part and dissenting in part) (emphasis added). Likewise, the Supreme Court recognized the importance of the two words, "between counsel," in the introductory clause, emphasizing them when quoting and construing the Rule. *See Farnsworth*, 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRCP Rule 43(k)).

The *Farnsworth* Court went a step further, noting that "Rule 43(k) plainly applies to all settlement agreements signed by counsel." *Id.* at 638, 627 S.E.2d at 726 (emphasis added). If the Court interpreted Rule 43(k) as applying to all settlement agreements, including those entered into by parties themselves, the Court's use of the wording "signed by counsel" was superfluous. A fair reading of this language is that the Court intended to distinguish between "all settlement agreements," and "all settlement agreements signed by counsel." By including this qualifying

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language, the Court demonstrated that not all settlement agreements are covered by Rule 43(k)—only those that are "agreement[s] between counsel," as the language of the Rule makes clear.

The history of Rule 43(k) further demonstrates its inapplicability to the Agreement. The predecessor to Rule 43(k), Circuit Court Rule 14, provided as follows: "No agreement or consent between parties, or their attorneys, in respect to the proceedings in a cause, shall be binding, unless . . . ." *Farnsworth*, 367 S.C. at 638 n.3, 627 S.E.2d at 726 n.3 (emphasis added). The *Farnsworth* Court compared Circuit Court Rule 14 to SCRCP 43(k) to point out that language included in the old rule but omitted in the new rule rendered the agreement at issue unenforceable. *Id.* ("Under [the old] rule, Davis and Farnsworth's agreement would be enforceable simply because it is in writing. Unlike Rule 43(k), Circuit Court Rule 14 did not contain the additional requirement that written agreements be entered into the record.").

Similarly, new SCRCP Rule 43(k) omits other language present in old Circuit Court Rule 14, and that omission is directly relevant in this dispute. SCRCP Rule 43(k) makes no reference to "agreement[s] . . . between parties" and retains only the reference to "agreement[s] . . . between counsel." It is fair to conclude that this omission was intentional, has meaning, and cannot be overlooked.

The Legislature clearly intended for old Circuit Court Rule 14 to apply to all litigation agreements, whether between the parties or their attorneys. In devising Rule 43(k), the Legislature must have contemplated the possibility of including agreements between parties, but elected to omit any reference to such agreements. Such omission in the new Rule, on the same subject, demonstrates the Legislature's clear intent to limit the requirements of the Rule to only agreements "between counsel."

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To hold otherwise would require the Court to assume that the Legislature committed an oversight, simply forgot to retain the reference to agreements between parties when drafting Rule 43(k), and has allowed the error to remain in place for decades. There is no basis for such assumptions, and the Court must give meaning to the Legislature's intentional omission of "agreements between parties" from Rule 43(k).

Plaintiffs rely on *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (1995), in an attempt to overcome the above interpretation of Rule 43(k). *Ashfort* appears distinguishable, as that case involved (1) the attorneys vaguely "advis[ing] the circuit court that the case had been settled" without providing any details as to the terms, and (2) some undescribed, purported agreement between a party and the other party's insurer. *Id.* at 493, 495, 458 S.E.2d at 534-35. There was no evidence of the terms or form of the purported agreement between the party and the other party's insurer or how it was entered. Thus, the *Ashfort* Court was left with nothing more than representations by counsel that a purported agreement had been reached. These circumstances are what placed *Ashfort* neatly within the parameters of Rule 43(k), as the Court was relying exclusively on information from counsel.

The facts are far different here. This Court is not relying on the representations of counsel that a deal has been reached, or even the terms of the deal. The record is replete with evidence of the deal and its actual terms: (1) all of the parties (with the assistance of counsel and a seasoned and well-respected mediator) actively participated in, negotiated, and reached terms on a settlement during a full-day mediation conference, (2) the parties reduced those terms to writing in the Agreement, (3) all parties named in the Agreement signed the Agreement before leaving the mediation, and (4) the mediator filed a notice with the Court confirming each of the above facts.

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Additionally, the Court must review *Ashfort* through the lens of *Farnsworth*, in which the Supreme Court expressly accounted for its prior holding. In *Farnsworth*, the Supreme Court has clarified that Rule 43(k) applies only to "'agreements *between counsel*,'" 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRCP Rule 43(k)) (emphasis in original), including those which are "settlement agreements *signed by counsel*," *id.* at 638, 627 S.E.2d at 726 (emphasis added). This is consistent with the historical backdrop of Rule 43(k) and the plain language of the Rule, and this Court sees no reason to hold otherwise.

The Agreement in this case was not an "agreement between counsel," as contemplated in Rule 43(k). The Agreement was negotiated, memorialized, and executed by all of the parties named in the Agreement, after a full day of mediation in which all actively participated. Thus, notwithstanding the Agreement's full satisfaction of Rule 43(k), the Court finds the Rule inapplicable to the Agreement.

D. Plaintiffs' "New Evidence" Argument does not Impact the Enforceability of the Agreement.

Plaintiffs' Motions to Reconsider present what they refer to as "new evidence," which they argue demonstrates that one of the individual Defendants breached the Agreement. They say that an email sent by Defendant Walter Jordan violated the Agreement's non-disparagement clause. This new argument, which was not raised before the Order was entered, fails for several reasons.

First, by asking the court to enforce a certain provision of the Agreement in their favor, Plaintiffs have effectively conceded the enforceability of the entire Agreement. For Defendant Walter Jordan to be in breach of the Agreement's non-disparagement clause as alleged in Plaintiffs' "new evidence" argument, there must first be a valid and enforceable non-disparagement clause. Thus, Plaintiffs rely on the binding and enforceable nature of the Agreement as a means of repudiating the Agreement.

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If Plaintiffs believe that there has been a breach of the Agreement, they are free to pursue their rights under the Agreement accordingly, at a different time and in a different forum. The alleged breach—on which the Court makes no findings whatsoever—has no bearing on whether the Agreement is binding and enforceable. That is the only issue before the Court.

Additionally, the email does not constitute "new evidence" under Rule 60(b)(2). Evidence is "newly discovered" if it was not known to the party or in his possession at the time of hearing. *See Lanier v. Lanier*, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005). The Plaintiffs received the email in July 2016, several weeks before the hearing on Defendants' Motion to enforce the Agreement. Since the email is not new evidence under Rule 60(b)(2), Plaintiffs' only recourse would be Rule 59(e). But since this issue was not previously raised and preserved under Rule 59(e), it is barred as new argument. *See Fields v. Reg'l Med. Ctr.*, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005).

E. Plaintiffs' Contentions regarding the Application of the Agreement to K.A. Diehl or its Successor in Interest are Premature.

Plaintiffs argue that the Court erred (1) "in ruling that this agreement releases KA Diehl and Associates, Inc.", and (2) in ruling that "First Services Residential is released from liability." Plaintiffs' argument is premature, as the Order of which they are seeking reconsideration makes no mention whatsoever of First Services Residential, nor does it specifically address the release of K.A. Diehl and Associates, Inc. The Order simply finds that the Agreement is enforceable. Thus, Plaintiffs' arguments with respect to the release of claims against K.A. Diehl and Associates, Inc., and First Services Residential are not yet ripe for adjudication.

F. Conclusion.

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Plaintiffs' Motions and Amended Motions have never questioned the accuracy of the Agreement's terms. Nor have Plaintiffs challenged the fact that all parties to the Agreement and their respective counsel signed the Agreement at the conclusion of mediation (either personally or through their duly-authorized agents). Instead, Plaintiffs rely on untenable interpretations of Rule 43(k) that are not supported by principles of statutory construction or existing precedent. The Court rejects those interpretations of Rule 43(k) and **DENIES** Plaintiffs' Motions for reconsideration of the September 21, 2017 Orders enforcing the Agreement.

IT IS SO ORDERED on this _____ of _____, 2017.

_____
The Honorable William H. Seals, Jr.

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Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS KA Diehl And Associates Inc , defendant, et al

Case Number: 2016CP2600743

Type: Order/Other

IT IS SO ORDERED

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

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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ELECTRONICALLY FILED - 2017 Dec 07 12:50 PM - HORRY - COMMON PLEAS - CASE#2016CP260744

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

ORDER DENYING PLAINTIFFS' MOTIONS TO RECONSIDER

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

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The Court has reviewed Plaintiffs' Motions and Amended Motions (together with the Exhibits thereto), as well as Defendants' filings opposing Plaintiffs' Motions and Amended Motions. The Court also is familiar with the facts, legal issues, procedural history, and pleadings on file in the Actions.

For the reasons set forth below, the Court **DENIES** Plaintiffs' Motions and Amended Motions for reconsideration of the Court's September 21, 2017, Order Granting Defendants' Motion to Enforce Settlement Agreement.

A. Findings of Fact.[1]

1. On May 1, 2017, all parties and their counsel attended and participated in (either in person or via telephone)[2] the Court-mandated mediation conference in the Actions, which was facilitated by Mediator Karl A. Folkens, Esq.—one of the most experienced and well-respected mediators in South Carolina.

2. Plaintiffs Mark Dos Santos and Jeff Richardson attended and participated in the mediation conference via telephone.

3. After a full-day mediation, involving extensive arms-length negotiations between the parties and their counsel, the parties reached a resolution of all claims in the Actions and a related matter.

4. In accordance with Rule 6(f), SCADR, Mediator Folkens ensured that the parties reduced their settlement to writing in an agreement that accurately captured the terms of the

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[1] These same facts have been central to Defendants' original Consolidated Motion for Preliminary Approval of Settlement Agreement filed July 3, 2017, and Plaintiffs' Motions and Amended Motions for reconsideration of the Order granting Defendants' Motion. Plaintiffs have never disputed the accuracy of any of these facts.

[2] Of the eight (8) named plaintiffs in the Actions, six (6) were physically present at the mediation, and two (2)—Mark Dos Santos and Jeffrey Richardson—were present via telephone.

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negotiated resolution and that all parties named in the Agreement signed—the Settlement Agreement in the Actions ("Agreement").[3]

5. Due to Plaintiffs Mark Dos Santos and Jeff Richardson not being physically present, Plaintiffs' counsel executed the Agreement on their behalf as their duly-authorized agent.

6. Plaintiffs' counsel presented the Agreement to Mediator Folkens and Defendants' counsel, signed by or on behalf of all of the named Plaintiffs.

7. Due to individual Defendants Ray Coghill, Bill Cameron, and Stanley Jordan not being physically present, Defendants' counsel executed the Agreement on their behalf as their duly-authorized agent.

8. Due to the inability of the organization Defendants—Ocean Front Spa Horizontal Property Regime, Inc., and The Myrtle Beach Resort Homeowners Association, Inc.—to execute the Agreement on their own behalf, Defendants' counsel executed the Agreement on their behalf as their duly-authorized agent.

9. Based on the parties' negotiated settlement, memorialized in the Agreement, Mediator Folkens filed an Amended Proof of ADR form in each of the Actions making clear that all parties were present and that each of the Actions were "[f]ully settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties."

10. After the mediation, three of the named Plaintiffs (Nancy Moore, Steven Dame and Jim Perkins) expressly ratified the Agreement by (a) official written notification to all members of the OFS community that they successfully "resolve[d the] five lawsuits"; and (b) notices posted in the OFS building informing all residents that "[t]he recent state court litigation between various

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[3] The record also contains a copy of the Settlement Agreement memorializing the resolution of a separate but related action (*K.A. Diehl and Associates, Inc. v. Perkins et al.*, C.A. No. 2015-CP-26-05573) that all named parties to that agreement (all named Plaintiffs plus K.A. Diehl and Associates, Inc.) signed at the conclusion of the global mediation conference.

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homeowners in the Ocean Front Spa and its management company and others has been resolved between the parties to their mutual satisfaction via alternative dispute resolution that occurred on May 1."

B. Regardless of whether Rule 43(k) Applies to the Agreement, the Agreement Fully Satisfies the Requirements of Rule 43(k).

Rule 43(k), SCRCP, contemplates several ways in which an agreement covered by the Rule becomes binding. One way is where the agreement is "reduced to writing and signed by the parties and their counsel." That has occurred here, regardless of whether Rule 43(k) applies, fully satisfying the requirements of the Rule:

- The parties' negotiated resolution was "reduced to writing" in the form of the Agreement;
- Each of the named parties to the Agreement signed the Agreement, either personally or through the actions of their duly-authorized agents; and
- The Agreement shows that counsel for the parties signed the agreement:
    - "A. Preston Brittain"—counsel for Plaintiffs—signed the Agreement twice (once in an agency capacity for Plaintiff Santos, and once in an agency capacity for Plaintiff Richardson both of whom were present at the mediation via telephone), and
    - "Phillip A. Kilgore"—counsel for all Defendants who were party to the Agreement—signed the Agreement five times (in an agency capacity for two corporate Defendants and the three individual Defendants who were present at the mediation via telephone).

Plaintiffs acknowledge the truth of each of these facts. This acknowledgement leaves no room to argue that Rule 43(k) was not satisfied.

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1. Counsel for All Named Parties to the Agreement Signed the Agreement.

Plaintiffs' first contention is that the signatures of Plaintiffs' counsel and Defendants' counsel on the Agreement should be disregarded because counsel did not sign in their individual capacity. The Rule has no such capacity requirement. Moreover, any signature by counsel in the course of the representation of a party would, by definition, be in an agency capacity.

The purpose of Rule 43(k) is to promote certainty with respect to the terms of agreements between counsel and to remove the Court from such disputes. *See Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). Rule 43(k) was amended in 2009, adding another way in which to accomplish this purpose—by allowing the enforcement of an "agreement between counsel" (1) that is in writing, (2) to which the parties acknowledge their assent by signing the document, and (3) of which the attorneys confirm their review and approval by signing the document.

The obvious purpose of the attorney signature requirement is to ensure that the document accurately conveys the terms of the deal the parties have reached. It is certainly not to signal counsel's agreement to be bound individually, as the attorney essentially never has affirmative obligations or rights under the agreement.

Here, counsel for Plaintiffs and counsel for Defendants signed the Agreement as agents of their clients. In other words, it is beyond dispute that the parties' attorneys did indeed sign the Agreement. Applying the most fundamental statutory interpretation principles, this fact plainly satisfies Rule 43(k), which merely requires that the document be "signed by . . . counsel." *See State v. Muldrow*, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2002) ("[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."). To the extent Rule 43 applies, it would require counsel to sign the agreement, and they did so.

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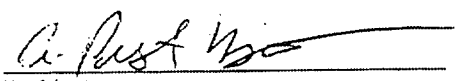
Moreover, by signing the Agreement as agents/attorneys for their principals/clients, both counsel clearly indicated that they fulfilled their duties to their clients, having reviewed the Agreement and confirmed that it accurately set forth the relevant terms of settlement. Moreover, their signatures constitute representations that their clients gave them express permission to sign in their stead. Neither attorney would have signed the Agreement as the agent of his client unless these facts were true. Therefore, the Agreement satisfies the attorney signature requirement under Rule 43(k).

2. Plaintiffs Santos and Richardson signed the Agreement for purposes of Rule 43(k) by directing their agent/counsel to sign on their behalf.

Plaintiffs have also contended that a party does not actually sign an agreement for purposes of Rule 43(k), even when the party has expressly directed his agent/attorney to sign the agreement on his behalf and the attorney has done so in a manner making clear that the attorney is signing in the place of the party.[4] This argument fails based on well-established agency principles.

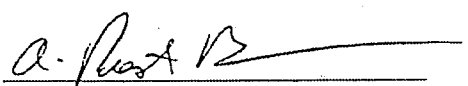
Below are the actual signatures from the Agreement with which Plaintiffs apparently take issue:

/Mark Dos Santos



By his Attorney

Jeffrey Richardson



By his Attorney

[4] Plaintiffs raised this argument in opposition to Defendants' Motion to Approve Settlement, but Plaintiffs' Motions to Reconsider appear to have abandoned this argument. Plaintiffs' Motions to Reconsider focus instead on the isolated issue addressed in Section A.1 above—their contention that Plaintiffs' counsel and Defendants' counsel did not "sign" the agreement for purposes of Rule 43(k). The Court includes Section A.2 to address all issues potentially before the Court and to explain why Rule 43(k) has been satisfied fully.

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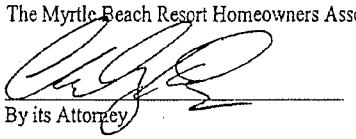
The Myrtle Beach Resort Homeowners Association, Inc., ("MBRHOA")

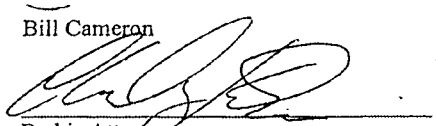


By its Attorney

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

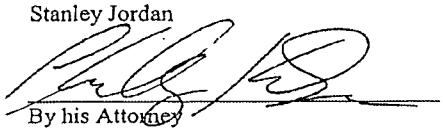
By its Attorney

Bill Cameron



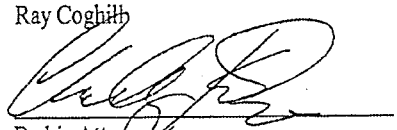
By his Attorney

Stanley Jordan



By his Attorney

Ray Coghill



By his Attorney

All of these signature blocks demonstrate that the parties/principals have signed the Agreement, and that the attorneys are merely putting pen to paper as the agents of the principals.

An agent with express authority to contract is able to bind the principal by signing on the principal's behalf. *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 183, 348 S.E.2d 617, 624 (Ct. App. 1986) ("An agent contracting with the authority of his principal binds him to the same extent as if the principal personally made the contract. The principal's liability to the third party is contractual and direct." (emphasis added)). Thus, through the actions of their agents/attorneys, all of the principals/parties effectively signed the Agreement.

To accept Plaintiffs' argument, corporate defendants (which always sign through their agents) and other parties who are forced to sign agreements through their agents (due to incapacity, absence, or otherwise) would never be able to enter into a binding agreement under Rule 43(k). This would be an absurd interpretation—one the Legislature could not have intended. *Duke*

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Energy Corp. v. S.C. Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("If possible, the Court will construe a statute so as to escape the absurdity and carry the intention into effect." (citing *Kiriakides v. United Artist Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994))).

There is no dispute that the Agreement was in writing. The Court finds that the signature-based requirements of the applicable provision of Rule 43(k) have similarly been satisfied for the reasons discussed above. Thus, the Agreement fully satisfies Rule 43(k) regardless of whether that Rule applies to the Agreement, mandating enforcement of the Agreement.

C. The Plain Language of Rule 43(k)—as Emphasized by the Supreme Court—Renders the Rule Inapplicable to the Agreement.

Despite the fact that the Agreement complies with Rule 43(k), the plain language of the Rule 43(k) demonstrates that it is inapplicable to the Agreement. The Rule provides as follows:

> **(k) Agreements of Counsel.** No agreement *between counsel* affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

SCRCP Rule 43(k) (emphasis added). "'In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.'" *Farnsworth*, 367 S.C. at 638, 627 S.E.2d at 726 (quoting *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003)). "[T]he words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Muldrow*, 348 S.C. at 268, 559 S.E.2d at 849. Applying this basic rule of statutory interpretation demonstrates Rule 43(k)'s inapplicability to the Agreement.

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The Agreement is not an "agreement between counsel." It is an agreement between the parties. A Rule 43(k) "agreement between counsel" contemplates an agreement negotiated by attorneys, as to which the attorneys must later take overt action, identified in the Rule, before it becomes enforceable. One of these actions can be where the "agreement between counsel" is later "reduced to writing and signed by the parties and their counsel." SCRCP Rule 43(k). To satisfy this Rule, lawyers must memorialize their agreements with other counsel, consult with their clients about the terms, and ensure that their clients sign the agreement. The obvious purpose of the Rule is to protect parties in connection with agreements negotiated and entered into by their attorneys. The Rule is not designed to replace the basic law of contract pertaining to agreements into which the parties themselves enter.

A recent Court of Appeals opinion recognized as much. According to SCRCP Rule 43(k), "*lawyers* have been required . . . to reduce *their* agreements to a written document." *Inglese v. Beal*, 403 S.C. 290, 742 S.E.2d 687, 694 (Ct. App. 2013) (Pieper, J., concurring in part and dissenting in part) (emphasis added). Likewise, the Supreme Court recognized the importance of the two words, "between counsel," in the introductory clause, emphasizing them when quoting and construing the Rule. *See Farnsworth*, 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRCP Rule 43(k)).

The *Farnsworth* Court went a step further, noting that "Rule 43(k) plainly applies to all settlement agreements signed by counsel." *Id.* at 638, 627 S.E.2d at 726 (emphasis added). If the Court interpreted Rule 43(k) as applying to all settlement agreements, including those entered into by parties themselves, the Court's use of the wording "signed by counsel" was superfluous. A fair reading of this language is that the Court intended to distinguish between "all settlement agreements," and "all settlement agreements signed by counsel." By including this qualifying

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language, the Court demonstrated that not all settlement agreements are covered by Rule 43(k)—only those that are "agreement[s] between counsel," as the language of the Rule makes clear.

The history of Rule 43(k) further demonstrates its inapplicability to the Agreement. The predecessor to Rule 43(k), Circuit Court Rule 14, provided as follows: "No agreement or consent between parties, or their attorneys, in respect to the proceedings in a cause, shall be binding, unless . . . ." *Farnsworth*, 367 S.C. at 638 n.3, 627 S.E.2d at 726 n.3 (emphasis added). The *Farnsworth* Court compared Circuit Court Rule 14 to SCRCP 43(k) to point out that language included in the old rule but omitted in the new rule rendered the agreement at issue unenforceable. *Id.* ("Under [the old] rule, Davis and Farnsworth's agreement would be enforceable simply because it is in writing. Unlike Rule 43(k), Circuit Court Rule 14 did not contain the additional requirement that written agreements be entered into the record.").

Similarly, new SCRCP Rule 43(k) omits other language present in old Circuit Court Rule 14, and that omission is directly relevant in this dispute. SCRCP Rule 43(k) makes no reference to "agreement[s] . . . between parties" and retains only the reference to "agreement[s] . . . between counsel." It is fair to conclude that this omission was intentional, has meaning, and cannot be overlooked.

The Legislature clearly intended for old Circuit Court Rule 14 to apply to all litigation agreements, whether between the parties or their attorneys. In devising Rule 43(k), the Legislature must have contemplated the possibility of including agreements between parties, but elected to omit any reference to such agreements. Such omission in the new Rule, on the same subject, demonstrates the Legislature's clear intent to limit the requirements of the Rule to only agreements "between counsel."

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To hold otherwise would require the Court to assume that the Legislature committed an oversight, simply forgot to retain the reference to agreements between parties when drafting Rule 43(k), and has allowed the error to remain in place for decades. There is no basis for such assumptions, and the Court must give meaning to the Legislature's intentional omission of "agreements between parties" from Rule 43(k).

Plaintiffs rely on *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (1995), in an attempt to overcome the above interpretation of Rule 43(k). *Ashfort* appears distinguishable, as that case involved (1) the attorneys vaguely "advis[ing] the circuit court that the case had been settled" without providing any details as to the terms, and (2) some undescribed, purported agreement between a party and the other party's insurer. *Id.* at 493, 495, 458 S.E.2d at 534-35. There was no evidence of the terms or form of the purported agreement between the party and the other party's insurer or how it was entered. Thus, the *Ashfort* Court was left with nothing more than representations by counsel that a purported agreement had been reached. These circumstances are what placed *Ashfort* neatly within the parameters of Rule 43(k), as the Court was relying exclusively on information from counsel.

The facts are far different here. This Court is not relying on the representations of counsel that a deal has been reached, or even the terms of the deal. The record is replete with evidence of the deal and its actual terms: (1) all of the parties (with the assistance of counsel and a seasoned and well-respected mediator) actively participated in, negotiated, and reached terms on a settlement during a full-day mediation conference, (2) the parties reduced those terms to writing in the Agreement, (3) all parties named in the Agreement signed the Agreement before leaving the mediation, and (4) the mediator filed a notice with the Court confirming each of the above facts.

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Additionally, the Court must review *Ashfort* through the lens of *Farnsworth*, in which the Supreme Court expressly accounted for its prior holding. In *Farnsworth*, the Supreme Court has clarified that Rule 43(k) applies only to "'agreements *between counsel*,'" 367 S.C. at 637, 627 S.E.2d at 725 (quoting SCRCP Rule 43(k)) (emphasis in original), including those which are "settlement agreements *signed by counsel*," *id.* at 638, 627 S.E.2d at 726 (emphasis added). This is consistent with the historical backdrop of Rule 43(k) and the plain language of the Rule, and this Court sees no reason to hold otherwise.

The Agreement in this case was not an "agreement between counsel," as contemplated in Rule 43(k). The Agreement was negotiated, memorialized, and executed by all of the parties named in the Agreement, after a full day of mediation in which all actively participated. Thus, notwithstanding the Agreement's full satisfaction of Rule 43(k), the Court finds the Rule inapplicable to the Agreement.

D. Plaintiffs' "New Evidence" Argument does not Impact the Enforceability of the Agreement.

Plaintiffs' Motions to Reconsider present what they refer to as "new evidence," which they argue demonstrates that one of the individual Defendants breached the Agreement. They say that an email sent by Defendant Walter Jordan violated the Agreement's non-disparagement clause. This new argument, which was not raised before the Order was entered, fails for several reasons.

First, by asking the court to enforce a certain provision of the Agreement in their favor, Plaintiffs have effectively conceded the enforceability of the entire Agreement. For Defendant Walter Jordan to be in breach of the Agreement's non-disparagement clause as alleged in Plaintiffs' "new evidence" argument, there must first be a valid and enforceable non-disparagement clause. Thus, Plaintiffs rely on the binding and enforceable nature of the Agreement as a means of repudiating the Agreement.

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If Plaintiffs believe that there has been a breach of the Agreement, they are free to pursue their rights under the Agreement accordingly, at a different time and in a different forum. The alleged breach—on which the Court makes no findings whatsoever—has no bearing on whether the Agreement is binding and enforceable. That is the only issue before the Court.

Additionally, the email does not constitute "new evidence" under Rule 60(b)(2). Evidence is "newly discovered" if it was not known to the party or in his possession at the time of hearing. *See Lanier v. Lanier*, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005). The Plaintiffs received the email in July 2016, several weeks before the hearing on Defendants' Motion to enforce the Agreement. Since the email is not new evidence under Rule 60(b)(2), Plaintiffs' only recourse would be Rule 59(e). But since this issue was not previously raised and preserved under Rule 59(e), it is barred as new argument. *See Fields v. Reg'l Med. Ctr.*, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005).

E. Plaintiffs' Contentions regarding the Application of the Agreement to K.A. Diehl or its Successor in Interest are Premature.

Plaintiffs argue that the Court erred (1) "in ruling that this agreement releases KA Diehl and Associates, Inc.", and (2) in ruling that "First Services Residential is released from liability." Plaintiffs' argument is premature, as the Order of which they are seeking reconsideration makes no mention whatsoever of First Services Residential, nor does it specifically address the release of K.A. Diehl and Associates, Inc. The Order simply finds that the Agreement is enforceable. Thus, Plaintiffs' arguments with respect to the release of claims against K.A. Diehl and Associates, Inc., and First Services Residential are not yet ripe for adjudication.

F. Conclusion.

Plaintiffs' Motions and Amended Motions have never questioned the accuracy of the Agreement's terms. Nor have Plaintiffs challenged the fact that all parties to the Agreement and their respective counsel signed the Agreement at the conclusion of mediation (either personally or through their duly-authorized agents). Instead, Plaintiffs rely on untenable interpretations of Rule 43(k) that are not supported by principles of statutory construction or existing precedent. The Court rejects those interpretations of Rule 43(k) and **DENIES** Plaintiffs' Motions for reconsideration of the September 21, 2017 Orders enforcing the Agreement.

IT IS SO ORDERED on this _____ of _____, 2017.

_____
The Honorable William H. Seals, Jr.

ELECTRONICALLY FILED - 2017 Dec 07 12:50 PM - HORRY - COMMON PLEAS - CASE#2016CP260744

ELECTRONICALLY FILED - 2017 Dec 07 12:50 PM - HORRY - COMMON PLEAS - CASE#2016CP2600744

Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS Ocean Front Spa Horizontal Property Regime Inc , defendant, et al

Case Number: 2016CP2600744

Type: Order/Other

IT IS SO ORDERED

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

Electronically signed on 2017-12-07 11:50:15 page 18 of 18

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 21 1:05 PM - HORRY - COMMON PLEAS - CASE#2016CP2600673

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 21 1:05 PM - HORRY - COMMON PLEAS - CASE#2016CP260673

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 21 1:05 PM - HORRY - COMMON PLEAS - CASE#2016CP260673

ELECTRONICALLY FILED - 2017 Sep 21 1:05 PM - HORRY - COMMON PLEAS - CASE#2016CP2600673

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

ORDER GRANTING DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT

THIS MATTER IS BEFORE THE COURT upon the Motion of the Defendants in each of the above-captioned cases (C.A. Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-00743, and 2016-CP-26-00744) (collectively, the "Actions"). Defendants move for enforcement of the Settlement Agreement in the Actions ("Settlement Agreement").[1]

[1] Defendants also seek preliminary approval of the proposed class settlement described in the Settlement Agreement. The Court will issue a subsequent, separate order regarding such approval as described below.

ELECTRONICALLY FILED - 2017 Sep 21 1:05 PM - HORRY - COMMON PLEAS - CASE#2016CP2600673

The Court has reviewed the Settlement Agreement (**Exhibit A** to Defendants' Motion), has held a hearing on the Motion, has considered Plaintiffs' opposition to the Motion, and is familiar with the facts, legal issues, and procedural history of the Actions.

The Court finds that the Settlement Agreement is the result of extensive negotiations following a lengthy period of contested litigation between the Parties. The Court further finds that all Parties and their counsel attended and participated in the mediation conference resulting in the Settlement (in person or via telephone, by agreement of the Parties), which concluded with all Parties signing the Settlement Agreement (personally or through their designated agents).[2] Based on these findings, and for good cause shown,

IT IS ORDERED that Defendants' Motion to enforce the Settlement Agreement is **GRANTED**. Any party desiring to seek reconsideration of this Order shall file a motion explaining the basis for such reconsideration within ten (10) days after his/her/its counsel has received written notice of the entry of this Order. If such a motion for reconsideration is filed, the Court will resolve such motion before entering a subsequent order regarding the Court's approval of the proposed class settlement.

IT IS SO ORDERED on this _____ of _____, 2017.

_____
The Honorable William H. Seals, Jr.

[2] The Court concludes that SCRCP Rule 43(k) is inapplicable to the Settlement Agreement, as the Settlement Agreement did not involve an agreement between counsel. Moreover, even if Rule 43(k) did apply, the Court finds that the Settlement Agreement complies with Rule 43(k) in that all Parties signed the Settlement Agreement (personally or through their designated agents), as did their attorneys.

ELECTRONICALLY FILED - 2017 Sep 21 1:05 PM - HORRY - COMMON PLEAS - CASE#2016CP2600673

Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS Ocean Front Spa Horizontal Property Regime Inc , defendant, et al

Case Number: 2016CP2600673

Type: Order/Other

IT IS SO ORDERED

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

Electronically signed on 2017-09-21 12:44:07 page 6 of 6

ELECTRONICALLY FILED - 2017 Sep 21 1:02 PM - HORRY - COMMON PLEAS - CASE#2016CP260674

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 21 1:02 PM - HORRY - COMMON PLEAS - CASE#2016CP2600674

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
	)	
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
	)	
Defendants.	)	
	)	

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 21 1:02 PM - HORRY - COMMON PLEAS - CASE#2016CP260674

ELECTRONICALLY FILED - 2017 Sep 21 1:02 PM - HORRY - COMMON PLEAS - CASE#2016CP2600674

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

ORDER GRANTING DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT

THIS MATTER IS BEFORE THE COURT upon the Motion of the Defendants in each of the above-captioned cases (C.A. Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-00743, and 2016-CP-26-00744) (collectively, the "Actions"). Defendants move for enforcement of the Settlement Agreement in the Actions ("Settlement Agreement").[1]

[1] Defendants also seek preliminary approval of the proposed class settlement described in the Settlement Agreement. The Court will issue a subsequent, separate order regarding such approval as described below.

ELECTRONICALLY FILED - 2017 Sep 21 1:02 PM - HORRY - COMMON PLEAS - CASE#2016CP2600674

The Court has reviewed the Settlement Agreement (**Exhibit A** to Defendants' Motion), has held a hearing on the Motion, has considered Plaintiffs' opposition to the Motion, and is familiar with the facts, legal issues, and procedural history of the Actions.

The Court finds that the Settlement Agreement is the result of extensive negotiations following a lengthy period of contested litigation between the Parties. The Court further finds that all Parties and their counsel attended and participated in the mediation conference resulting in the Settlement (in person or via telephone, by agreement of the Parties), which concluded with all Parties signing the Settlement Agreement (personally or through their designated agents).[2] Based on these findings, and for good cause shown,

IT IS ORDERED that Defendants' Motion to enforce the Settlement Agreement is **GRANTED**. Any party desiring to seek reconsideration of this Order shall file a motion explaining the basis for such reconsideration within ten (10) days after his/her/its counsel has received written notice of the entry of this Order. If such a motion for reconsideration is filed, the Court will resolve such motion before entering a subsequent order regarding the Court's approval of the proposed class settlement.

IT IS SO ORDERED on this _____ of _____, 2017.

_____
The Honorable William H. Seals, Jr.

[2] The Court concludes that SCRCP Rule 43(k) is inapplicable to the Settlement Agreement, as the Settlement Agreement did not involve an agreement between counsel. Moreover, even if Rule 43(k) did apply, the Court finds that the Settlement Agreement complies with Rule 43(k) in that all Parties signed the Settlement Agreement (personally or through their designated agents), as did their attorneys.

ELECTRONICALLY FILED - 2017 Sep 21 1:02 PM - HORRY - COMMON PLEAS - CASE#2016CP2600674

Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS Myrtle Beach Resort Homeowners Association Inc , defendant, et al

Case Number: 2016CP2600674

Type: Order/Other

IT IS SO ORDERED

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

Electronically signed on 2017-09-21 12:43:57 page 6 of 6

ELECTRONICALLY FILED - 2017 Sep 21 1:04 PM - HORRY - COMMON PLEAS - CASE#2016CP2600743

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 21 1:04 PM - HORRY - COMMON PLEAS - CASE#2016CP2600743

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 21 1:04 PM - HORRY - COMMON PLEAS - CASE#2016CP2600743

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 21 1:04 PM - HORRY - COMMON PLEAS - CASE#2016CP2600743

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

ORDER GRANTING DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT

THIS MATTER IS BEFORE THE COURT upon the Motion of the Defendants in each of the above-captioned cases (C.A. Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-00743, and 2016-CP-26-00744) (collectively, the "Actions"). Defendants move for enforcement of the Settlement Agreement in the Actions ("Settlement Agreement").[1]

[1] Defendants also seek preliminary approval of the proposed class settlement described in the Settlement Agreement. The Court will issue a subsequent, separate order regarding such approval as described below.

ELECTRONICALLY FILED - 2017 Sep 21 1:04 PM - HORRY - COMMON PLEAS - CASE#2016CP260743

The Court has reviewed the Settlement Agreement (**Exhibit A** to Defendants' Motion), has held a hearing on the Motion, has considered Plaintiffs' opposition to the Motion, and is familiar with the facts, legal issues, and procedural history of the Actions.

The Court finds that the Settlement Agreement is the result of extensive negotiations following a lengthy period of contested litigation between the Parties. The Court further finds that all Parties and their counsel attended and participated in the mediation conference resulting in the Settlement (in person or via telephone, by agreement of the Parties), which concluded with all Parties signing the Settlement Agreement (personally or through their designated agents).[2] Based on these findings, and for good cause shown,

IT IS ORDERED that Defendants' Motion to enforce the Settlement Agreement is **GRANTED**. Any party desiring to seek reconsideration of this Order shall file a motion explaining the basis for such reconsideration within ten (10) days after his/her/its counsel has received written notice of the entry of this Order. If such a motion for reconsideration is filed, the Court will resolve such motion before entering a subsequent order regarding the Court's approval of the proposed class settlement.

IT IS SO ORDERED on this _____ of _____, 2017.

_____
The Honorable William H. Seals, Jr.

[2] The Court concludes that SCRCP Rule 43(k) is inapplicable to the Settlement Agreement, as the Settlement Agreement did not involve an agreement between counsel. Moreover, even if Rule 43(k) did apply, the Court finds that the Settlement Agreement complies with Rule 43(k) in that all Parties signed the Settlement Agreement (personally or through their designated agents), as did their attorneys.

ELECTRONICALLY FILED - 2017 Sep 21 1:04 PM - HORRY - COMMON PLEAS - CASE#2016CP2600743

Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS KA Diehl And Associates Inc , defendant, et al

Case Number: 2016CP2600743

Type: Order/Other

IT IS SO ORDERED

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

Electronically signed on 2017-09-21 12:43:37 page 6 of 6

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
	)	
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.	)	
	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 29 11:53 AM - HORRY - COMMON PLEAS - CASE#2016CP2600744

ELECTRONICALLY FILED - 2017 Sep 29 11:53 AM - HORRY - COMMON PLEAS - CASE#2016CP260744

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Sep 29 11:53 AM - HORRY - COMMON PLEAS - CASE#2016CP2600744

ELECTRONICALLY FILED - 2017 Sep 29 11:53 AM - HORRY - COMMON PLEAS - CASE#2016CP2600744

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

ORDER GRANTING DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT

THIS MATTER IS BEFORE THE COURT upon the Motion of the Defendants in each of the above-captioned cases (C.A. Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-00743, and 2016-CP-26-00744) (collectively, the "Actions"). Defendants move for enforcement of the Settlement Agreement in the Actions ("Settlement Agreement").[1]

[1] Defendants also seek preliminary approval of the proposed class settlement described in the Settlement Agreement. The Court will issue a subsequent, separate order regarding such approval as described below.

ELECTRONICALLY FILED - 2017 Sep 29 11:53 AM - HORRY - COMMON PLEAS - CASE#2016CP2600744

The Court has reviewed the Settlement Agreement (**Exhibit A** to Defendants' Motion), has held a hearing on the Motion, has considered Plaintiffs' opposition to the Motion, and is familiar with the facts, legal issues, and procedural history of the Actions.

The Court finds that the Settlement Agreement is the result of extensive negotiations following a lengthy period of contested litigation between the Parties. The Court further finds that all Parties and their counsel attended and participated in the mediation conference resulting in the Settlement (in person or via telephone, by agreement of the Parties), which concluded with all Parties signing the Settlement Agreement (personally or through their designated agents).[2] Based on these findings, and for good cause shown,

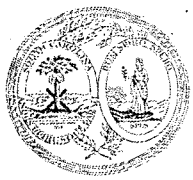
IT IS ORDERED that Defendants' Motion to enforce the Settlement Agreement is **GRANTED**. Any party desiring to seek reconsideration of this Order shall file a motion explaining the basis for such reconsideration within ten (10) days after his/her/its counsel has received written notice of the entry of this Order. If such a motion for reconsideration is filed, the Court will resolve such motion before entering a subsequent order regarding the Court's approval of the proposed class settlement.

IT IS SO ORDERED on this _____ of _____, 2017.

_____
The Honorable William H. Seals, Jr.

[2] The Court concludes that SCRCP Rule 43(k) is inapplicable to the Settlement Agreement, as the Settlement Agreement did not involve an agreement between counsel. Moreover, even if Rule 43(k) did apply, the Court finds that the Settlement Agreement complies with Rule 43(k) in that all Parties signed the Settlement Agreement (personally or through their designated agents), as did their attorneys.

ELECTRONICALLY FILED - 2017 Sep 29 11:53 AM - HORRY - COMMON PLEAS - CASE#2016CP2600744



Horry Common Pleas

Case Caption: Jim Perkins , plaintiff, et al VS Ocean Front Spa Horizontal Property Regime Inc , defendant, et al

Case Number: 2016CP2600744

Type: Order/Other

IT IS SO ORDERED

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

ORIGINAL

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	)	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00673**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated, Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., Defendants.	)	**AMENDED SUMMONS** (Class Action) (JURY TRIAL REQUESTED)

2016 FEB 25 AM 11:02

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiffs' attorneys, Thomas C. Brittain and A. Preston Brittain, The Brittain Law Firm, P.A., at 4614 Oleander Drive, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina, on the 26th day of February, 2016.

RESPECTFULLY SUBMITTED BY:

THE BRITTAIN LAW FIRM, P.A.

A. Preston Brittain, Esq.
SC Bar #73707
Thomas C. Brittain, Esq
SC Bar # 00893
4614 Oleander Drive
Myrtle Beach, SC 29577
843-449-8562 (O)
843-449-6148 (F)

On behalf of Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson.

ORIGINAL

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00673**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated, Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., Defendants.	**AMENDED COMPLAINT** (Class Action) (JURY TRIAL REQUESTED)

NOW COMES THOMAS C. BRITTAIN AND PRESTON BRITTAIN, on behalf of the Plaintiffs, Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson (hereinafter referred to as "Plaintiffs" collectively), seeking a class action against Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Stanley Jordan, Ralph Jump, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc. (hereinafter "Defendants" collectively).

FACTUAL ALLEGATIONS

1. That Plaintiff Nancy Moore, ("Nancy Moore") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
2. That Plaintiff William Moore, ("William Moore") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
3. That Plaintiff Steven Dame, ("Dame") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
4. That Plaintiff Mark Dos Santos, ("Mark Dos Santos") is a resident of the State of Georgia and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
5. That Plaintiff Jim Perkins, ("Perkins") is a resident of the State of Nevada and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
6. That Plaintiff Colleen Franke, ("Franke") is a resident of the State of Nevada and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
7. That Plaintiff Errol Dos Santos, ("Errol Dos Santos") is a resident of the State of New York and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
8. That Plaintiff Jeffrey Richardson, ("Richardson") is a resident of the State of South Carolina and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.

9. The Defendant, Ocean Front Spa Horizontal Property Regime, Inc. (hereinafter "OFSHOA" OR "OFS"), is a non-profit corporation, organized and existing under the laws of the State of South Carolina and doing business in Horry County, South Carolina.

10. The Defendant Ocean Front Spa Horizontal Property Regime is charged with administering the affairs of Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, a condominium resort within Horry County, South Carolina.

11. That, upon information and belief, Defendant Bill Cameron served until his recent resignation, as Director of the Ocean Front Spa and the MBRHOA, and is a citizen and resident of the State of South Carolina, County of Horry.

12. That Defendant Walter Jordan currently serves in his capacity as President of the MBRHOA and Ocean Front Spa and is a citizen and resident of the State of Virginia.

13. That, upon information and belief, Defendant Ralph Jump currently serves in his capacity as Vice President of Ocean Front Spa Board of Directors, and is a citizen and resident of the State of Kentucky.

14. That, upon information and belief, Defendant Ray Coghill previously served on the Ocean Front Spa Board of Directors, and is a citizen and resident of the State of Kentucky.

15. That, upon information and belief, Defendant Stanley Jordan previously served on the Ocean Front Spa Board of Directors, and is a citizen and resident of the State of Florida.

16. The John Doe Defendants include past Board of Directors of Ocean Front Spa Horizontal Property Regime, Inc. That Plaintiffs anticipate discovering the identity of relevant John Doe past board members of OFS.

17. Plaintiffs Nancy and William Moore own Units 403, 106, and 511 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

18. That Plaintiff Nancy Moore serves as Treasurer on the Ocean Front Spa HOA.

19. Plaintiffs Jim Perkins and Colleen Franke own Units 109, 201, 251, 301, 304, 305, 421 and 546 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

20. That Plaintiff Jim Perkins serves as a director on the Ocean Front Spa HOA.

21. Plaintiff Steven Dame owns Units 328 and 330 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common

areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

22. Plaintiff Mark Dos Santos owns Unit #101 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

23. Plaintiff Errol Dos Santos owns Unit 322 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

24. Jeffrey Richardson owns Units 210, 308, and 245 at Ocean Front Spa and is, pursuant to the Master Deed and/or ByLaws, a member of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

25. Plaintiff Jeffrey Richardson owns Units 2211, 1406, 315, 203, 302, 311, 501, 604 and 314 at Renaissance Tower, and is, pursuant to the Master Deed and/or ByLaws, a member of the Renaissance Tower Horizontal Property Regime, which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

26. That Plaintiff, Jeffrey Richardson is currently serving as President of Renaissance Tower Horizontal Property Regime.

27. That jurisdiction and venue is proper in County of Horry, State of South Carolina.

28. By virtue of their ownership of a condominium unit, and pursuant to the South Carolina Non-profit Corporation Act, the common law of South Carolina, and the OFS master deed and by-laws OFS and its board of directors owes to the individual Plaintiffs a fiduciary duty, which must be heeded in conducting affairs on behalf of the individual homeowners.

29. That hereinafter the term "Defendants" shall refer to Ocean Front Spa Horizontal Property Regime, Inc., the named individual defendants who served on the board of directors for OFS, and the unidentified or John Doe defendants who served on the board of directors for OFS.

30. That South Carolina courts recognize that a fiduciary relationship exists between homeowner associations and the individual homeowners. As a result, the homeowner association boards are yoked with the responsibility to conduct business using sound business judgment that is loyal to the homeowner.

31. That South Carolina courts impose a duty of loyalty which extends to the association board and to individual board members.

32. That upon information and belief, the duty of loyalty creates a broad obligation that empowers the homeowner and requires thoughtful conduct from those entrusted with the power of governance.

33. That the Plaintiffs, by virtue of their membership OFS HOA, are members of a non-profit corporation.

34. Upon information and belief, the homeowners possess these units for various purposes including: 1) full-time residence; 2) part-time residence; or 3) rental / investment. That as a result of these various purposes of ownership, the owners are particularly susceptible to unfair dealings.

CLASS ALLEGATIONS

35. That Plaintiffs incorporate each and every allegation set forth above as if specifically reiterated herein.

36. Upon information and belief, one or more homeowners have brought concerns to the OFS HOA and MBRHOA and various board members regarding the OFS HOA and board of directors' failure to use ordinary business judgment in conducting affairs.

37. Upon information and belief, one or more homeowners have brought concerns to the OFS HOA and various board members regarding the OFS HOA and board of directors' failure to abide by the Master Deed and ByLaws.

38. Upon information and belief, one or more homeowners have brought concerns of nature described herein, to the attention of the OFS HOA, individual board of directors, their

managers, and their agents, and through them, have demanded that corrective action be taken and/or that the improprieties be corrected.

39. The demand of the homeowners have been ignored or rejected in that the OFS individual board of directors have failed to take action other than to deny matters and threaten to retaliate with legal action.

40. On May 28, 2015, numerous homeowners enumerated concerns regarding actions by the HOA and certain board of directors for the purposes of seeking to discover the truth about the following: (1) undisclosed conflicts of interest between board members and vendors; (2) failure to bill Allegiant Food and Beverage, LLC utilities for a period of three years; (3) failing to procure competitive bids for contracts; (4) MBRV giving preferential treatment to board members based on voting record; (5) negligent hiring of managers by K.A. Diehl; (6) charging homeowners overtime for Services staff in contravention of contract provisions; (7) failing to properly monitor or account funds paid to Watchmen Services; (8) interested parties involved in the election process; (9) failing to properly report proxy votes prior to election; (10) failing to provide homeowners their due portion of commission from real estate sales; (11) failing to notify homeowners of compromised unit privacy; and (12) failing to abide by the master deed and by-laws as relates to providing board members with information and other such protocol.

41. In the same letter, Plaintiffs reiterated that their past attempts to bring to light these various issues were not only fruitless but met with threats of suit.

42. That rather than engage the homeowners, the boards turned over the letter to KA Diehl which became the basis for suit against the individual homeowners.

43. On July 23, 2015, K.A. Diehl, in fact, filed suit against individual homeowners alleging defamation, amongst other claims, containing information from said letter.

44. That upon information and belief, such suit was an attempt to prevent the homeowners from disseminating the truth about K.A. Diehl's handling of the insurance contracts and failure to invoice Allegiant for utilities. That upon information and belief it was a SLAPP suit.

45. That Plaintiffs sent an additional letter on August 21, 2015 seeking OFS to address a myriad of issues, but that Plaintiffs received no response.

46. That OFS board members and K.A. Diehl representatives have precluded OFS director and treasurer Nancy Moore from obtaining information pertinent to the performance of her duties as a treasurer claiming that the parties are "in litigation" and therefore she is not entitled to the information. That given this position, it is abundantly clear that any additional efforts to reconcile would be futile.

47. That counsel for Plaintiffs sent an email on January 20, 2016 notifying OFS of its intention to file a class action law suit and received no response.

48. Upon information and belief, further or additional demand upon OFS and the individual defendants to bring an action or to seek alternative remedy would be futile and would serve no useful purpose.

49. Accordingly, the Plaintiffs bring this action pursuant to Rule 23(b)(1) SCRCP on behalf of themselves and all those similarly situated, being any and all persons and or entities owning a unit within the OFS HOA and thereby owning an undivided interest in the common elements, and business activity of the OFSHOA (hereinafter the "Class").

50. As representatives of the Class defined herein, the Plaintiffs (hereinafter "class" or "members") seek to recover injunctive relief and monetary relief from OFS HOA breach of fiduciary duties with respect to the OFS HOA's and its named directors' failure regarding acts and omissions of business conduct.

51. The Class does not include any former owner of a unit in the Regime.

52. The Class is sufficiently numerous that joinder of all members is impractical.

53. Plaintiffs will fairly and adequately protect the interests of the Class as Class Representatives. The interests of the Class Representatives are coincident with and not antagonist to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

54. There are questions of law and fact common to the Class. Common questions of law include the liability of OFS and named board directors for, among other things as more particularly described below, breach of fiduciary duty, and whether these wrongful acts or omissions of all such parties caused or will cause the Class to suffer damages.

55. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant hereto, were charged with duties as members of the board of directors. Each Class member has been or will be similarly injured by OFS HOA and the individual named defendants' wrongful and/or negligent acts or omissions in breach of fiduciary duties, such that the interest of the Plaintiffs' as Class representative, are consistent with those of the members of the Class.

56. Plaintiffs envision no unusual difficulty in the management of this derivative shareholder action. Certification of this action as a class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

INSURANCE ALLEGATIONS

57. The OFS master deed and bylaws requires OFSHOA to procure insurance bids in three year increments.

58. Upon information and belief, OFS has a duty to procure competitive insurance bids for the obvious purpose of providing competitive insurance and rates.

59. Upon information, for a period of several years, OFS and KA Diehl failed to seek competitive bids for insurance brokers.

60. Upon information, Defendants' failure to procure competitive bids obligated homeowners to pay higher premiums, higher annual assessments, and brokerage rates.

61. As a result of the failure to acquire competitive bids Defendants' have accessed the individual OFS homeowners annually in an amount exceeding $1000.00. That upon information and belief, such assessment has damaged each individual OFS homeowner approximately $130.00 per year for more than four years, and further as discovery may reveal.

62. Upon information, OFS entered into an agreement with KA Diehl that permitted KA Diehl to utilize ADP Barlow as the insurance broker responsible for obtaining competitive bids, OFS having knowledge that K.A. Diehl's CEO, Robert Barlow is married to Robin Barlow, the owner of ADP Barlow.

63. That upon information and belief, KA Diehl never utilized any other brokers nor sought insurance in the proper three year increment, and thereby subjected OFS homeowners to higher brokerage fees and more costly insurance.

64. That upon information, the amount of economic harm of such failure is apparent through another MBR regimes' procurement of insurance. That upon information and belief, Renaissance Tower's board of directors broke off the relationship with ADP Barlow, bid brokers competitively, and received comparable insurance paying approximately $35,000.00 less for insurance and brokerage services.

65. That upon information and belief, KA Diehl and OFS, had knowledge of the Renaissance Tower savings, but chose to employ ADP Barlow instead.

66. That upon information and belief, the Master Board and OFS board entered into new agreements in 2014 which modify the insurance language and clearly require multiple broker bids.

67. That upon information and belief, Defendants would have failed to obtain legitimate multiple bids for the OFS regime if not for the conduct of Mark Dos Santos and board members Jim Perkins and Nancy Moore who contacted CWS Insurance themselves to procure bids.

68. That CWS Insurance presented a bid that ultimately saved OFS homeowners $41,812.00. (Please see Attachment "A" - Email).

69. That upon information and belief, KA Diehl has not provided the Five Seasons Regime or Myrtle Beach Resort Horizontal Property Regime with additional bids or shared with the respective boards the potential savings.

70. Upon information and belief, the property management contracts (dating back to 2007) between OFS and KA Diehl contain varying language regarding K.A. Diehl's obligation to seek competitive bids for insurance, and further that to the extent that OFS and its board of directors contracted with K.A. Diehl in a manner that permitted K.A. Diehl to refrain from seeking competitive bids such action is adverse to the interest of OFS homeowners, and actionable.

GATEPASS ALLEGATIONS

71. That Myrtle Beach Resorts is comprised of four independent regimes, including the Ocean Front Spa HOA.

72. That the four independent regimes own property contiguous to one another, and share a common main road, which allows for ingress and egress to the buildings and parking areas.

73. That there exists a gate house upon the entry of the property situated upon the common road which is used for ingress and egress by all MBR homeowners.

74. That the MBRHOA maintains the gate house and has arranged for K.A. Diehl's affiliated security services to man the gate house and has further implemented a gate pass or parking pass policy.

75. That upon information and belief, the MBRHOA has caused economic injury to the individual homeowners by requiring the homeowners to pay a gate pass fee in contravention of the OFS master deed and bylaws.

76. The OFS master deed, Article III paragraph 5 states: parking spaces shall not reserve solely for the use of occupants or any particular apartment nor shall they be numbered. Further, common Declarant hereby reserves unto itself (including the right to grant to

others) and grants to all Occupants and visitors of the regime an easement for vehicle parking, upon the parking spaces within the regime, together with an easement for ingress and egress for access to such parking.

77. The OFS individual homeowners are required to pay an arbitrary and capricious $10.00 per gate pass or parking pass for occupants/visitors.

78. That payment of the gate pass fee is mandatory as Occupants are not permitted entry unless a pass has been pre-purchased and any violators of the gate pass policy face ticketing and towing by the MBRHOA and Watchmen Services.

79. That Defendants have failed to uphold their fiduciary duty to enforce the OFS master deed and prevent MBRHOA from taxing its' members improperly.

80. That Defendants breached their/its fiduciary duty by failing to uphold the master deed and protect the Class's absolute right to unfettered access of parking spaces, ingress and egress.

81. That upon information and belief, the gate pass fee is an improper tax upon all homeowners, including OFS unit owners.

82. That upon information and belief, Defendants breached their/its fiduciary duty in one or more of the following particulars: (1) failing to prevent the gate pass fee; (2) failing to enforce the OFS master deed and bylaws; (3) failing to require MBRHOA to abide OFS master deed and bylaws; (4) failing to seek return of gate pass funds to the individual OFS unit owners.

83. That upon information and belief, both the association and the individual unit owners have suffered financial harm as a result of the breach of fiduciary duty.

84. Upon information and belief, the individual unit owners have suffered financial harm by the way of having to pay for gate pass fees per Occupant.

85. Upon information and belief, the association has been financially harmed by failing to collect from MBRHOA a portion of the improper fee. That further, upon information and belief, the stated purpose of the gate pass fee was to lower regime budgets and assessments but that such has not occurred.

86. Plaintiffs, with this action, seek to recover the individual economic harm suffered per Class member and do not seek to recover the association damages.

87. That the Association's damages will be sought in a companion derivative shareholder suit brought on behalf of the company against MBRHOA.

FOR A FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty against Defendants)

88. Plaintiffs, the Class, hereby incorporates each and every allegation of the complaint as if set forth herein verbatim.

89. That OFS Association and its board of directors owe to the OFS unit owners (or OFS homeowners) a duty of care and loyalty. That OFS Association and its board of directors owe to the OFS unit owners the exercise of business judgment and compliance with the OFS master deed and bylaws.

90. That upon information and belief, Defendants breached their/its fiduciary duty to the individual homeowners in one or more of the following particulars: (1) failing to require K.A. Diehl and Associates, Inc. to procure competitive bids for insurance; (2) failing to prevent the gate pass fee; (3) failing to enforce the OFS master deed and bylaws; (4)

failing to require MBRHOA to abide OFS master deed and bylaws; (5) failing to seek return of gate pass funds to the individual OFS unit owners.

91. That the above listed breach of fiduciary duty has proximately caused economic harm to the individual OFS unit owners to include by way of annual $1000.00 insurance assessment and gate pass fees.

92. That upon information and belief, the damages exceed $1000.00 per unit owner.

93. Upon information and belief, the Defendants' actions or omissions, as more fully stated above, violate the standards set forth in South Carolina Non-profit Corporation Act, S.C. Code Ann. 33-31-830, such that the conduct of the individual directors may be characterized as reckless.

94. That the individual unit owners are entitled to an award of actual damages, punitive damages and such other and further damages as may be proven at a trial.

PRAYER FOR RELIEF

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

WHEREFORE, Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson hereby pray unto this honorable court for the following relief: (1) approval of the class action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure to include the recognition of Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson as representatives for the purpose of bringing said class action on behalf of the individuals owning a unit(s) in OFS; (2) for an award of damages against above listed Defendants to include actual

damages, punitive damages, attorney fees, costs; and (3) for injunctive relief to include an accounting; (4) for such other and further relief as the justice may require.

RESPECTFULLY SUBMITTED BY:

THE BRITTAIN LAW FIRM, P.A.

A. Preston Brittain, Esq.
SC Bar #73707
Thomas C. Brittain, Esq.
SC Bar # 00893
4614 Oleander Drive
Myrtle Beach, SC 29577
843-449-8562 (O)
843-449-6148 (F)

On behalf of Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos and Jeffery Richardson.

February 26, 2016

Myrtle Beach, SC

ATTACHMENT "A"

Myrtle Beach Resort Ocean Front Spa
4/15/2015 to 4/15/2018

	WITH FLOOD - NFIP				WITH FLOOD - NFIP		OPTIONAL FLOOD non NFIP		OPTIONAL FLOOD w/ NFIP	
PROPERTY COVERAGE	Westchester Surplus	$166,250.00	Westchester Surplus	$162,500.00	ICAT	$170,500.00	Westchester Surplus	$162,500.00	Lloyds of London	$337,346.06
	Arch Specialty	$53,600.00	Arch Specialty						Allerra Excess	
									Celony	
									James River	
	All Non-Admitted		All Non-Admitted		All Non-Admitted		All Non-Admitted		All Non-Admitted	
Equipment Breakdown										$ 1,089.00
Total Insured Value	$30,401,460		$30,401,460		$30,401,460		$30,401,460		$31,000,000	
Blanket or Per Building	Per Building		Per Building		Per Building		Per Building		TIV	
Agreed Amount	Yes		Yes		Yes		Yes		Yes	
Co-insurance	None		None		None		None		None	
Building Ordinance & Law	A Included		A Included		A Included		A Included		A Included	
	B&C $2,500,000 sublimit		B&C $2,500,000 sublimit		B & C $2,500,000 sublimit		B&C $2,500,000 sublimit		B&C $2,500,000 sublimit	
Wind driven rain sublimit	$250,000		1000000 sublimit		1000000 sublimit		1,000,000 sublimit		$250,000	
Earthquake limit	$30,401,460		$30,401,460		$30,401,460		$30,401,460		$31,000,000	
DEDUCTIBLES:	All perils $5,000 except		All perils $5,000 except		All perils $5,000 except		All perils $5,000 except		All Perils $5,000	
	Named storm wind/hail include WDR 1%		Named storm wind/hail include WDR 1%		Wind/hail including WDR 1%		Named storm wind/hail include WDR 1%		Named storm wind/hail 1%	
	Minimum of $150,000		Minimum of $150,000		Minimum of $150,000		Minimum of $150,000			
									$250,000 sublimit -Wind Driven Rain (WDR) 2%	
	All other wind/hail $50,000		All other wind/hail $50,000		All other wind/hail $50,000		All other wind/hail $50,000		All other wind/hail $25,000	
	Earthquake $25,000		Earthquake $25,000		Earthquake $25,000		Earthquake $25,000		Earthquake is $25,000	
FIDELITY BOND	Philadelphia Ins.	Included	Philadelphia Ins.	Included	Philadelphia Ins.	Included	Philadelphia Ins.	Included	Philadelphia Ins.	Included
Employee Dishonesty	$1,000,000		$1,000,000		$1,000,000		$1,000,000		$1,000,000	
Forgery & Alteration	$50,000		$50,000		$50,000		$50,000		$50,000	
Computer Fraud	$50,000		$50,000		$50,000		$50,000		$50,000	
Deductible	$500		$500		$500		$500		$500	
GENERAL LIABILITY	Philadelphia Ins.	$10,475.00	Philadelphia Ins.	$9,500.00	Philadelphia Ins.	$9,500.00	Philadelphia Ins.	$9,500.00	Philadelphia Ins.	$9,970.00
Coverage Limits	$1,000,000 per occurrence		$1,000,000 per occurrence		$1,000,000 per occurrence		$1,000,000 per occurrence		$1,000,000 per occurrence	
Coverage Limits	$2,000,000 aggregate		$2,000,000 aggregate		$2,000,000 aggregate		$2,000,000 aggregate		$2,000,000 aggregate	
Hired & Non-owned Auto	$1,000,000		$1,000,000		$1,000,000		$1,000,000		$1,000,000	
Damage to Premises Rented	$1,000,000		$1,000,000		$1,000,000		$1,000,000		$1,000,000	
Medical Expense	$5,000		$5,000		$5,000		$5,000		$5,000	
UMBRELLA	Greenwich Ins. Co.	$4,377.00	Firemans Fund	$4,250.00	Greenwich Ins. Co.	$4,250.00	Greenwich Ins. Co.	$4,250.00	Greenwich Ins. Co.	$3,785.00
Coverage Limits	$15,000,000		$15,000,000		$15,000,000		$15,000,000		$15,000,000	
Retention	$0		$0		$0		$0		$0	
Follow Form GL & O&O	Yes		Yes		Yes		Yes		Yes	
D & O	Federal Ins. Co.	$2,661.90	Federal Ins. Co.	$2,661.90	Federal Ins. Co.	$2,662.00	Federal Ins. Co.	$2,661.90	Federal Ins. Co.	$2,261.00
Coverage Limits	$1,000,000		$1,000,000		$1,000,000		$1,000,000		$1,000,000	
Retention	$5,000		$5,000		$5,000		$5,000		$5,000	
Full Prior Acts	Yes		Yes		Yes		Yes		Yes	
Property Manager Included	Yes		Yes		Yes		Yes		Yes	
Defense Outside the Limits	Yes		Yes		Yes		Yes		Yes	
FLOOD COVERAGE	Travelers Flood Ins.	$191,983.00	Travelers Flood Ins.	$220,796.00	Travelers Flood Ins.	$220,796.00	Ace/Arch/RSUI	$210,500.00	Travelers Flood Ins.(Included- except the	$11,550.00
Limit	$29,315,000		$29,315,000		$29,315,000		$30,401,460		31000000 Lapse	
Deductible	$5,000		$5,000		$5,000		$500,000		$5,000	
WORKERS COMP	Handover Ins. Co	$675.00	Handover Ins. Co	$675.00	Handover Ins. Co	$675.00	Handover Ins. Co	$675.00	Handover Ins. Co	$570.00
Limits	500,000/500,000/500,000		500,000/500,000/500,000		500,000/500,000/500,000		500,000/500,000/500,000		500,000/500,000/500,000	
TOTAL PREMIUM		$430,001.90		$420,382.90		$408,383.00		$410,058.90		$366,571.06

ORIGINAL

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00674**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all others similarly situated, Plaintiffs, vs. The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	**AMENDED SUMMONS** (Class Action) (JURY TRIAL REQUESTED)

2016 FEB 25 AM 11:02

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiffs' attorneys, Thomas C. Brittain and A. Preston Brittain, The Brittain Law Firm, P.A., at 4614 Oleander Drive, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina, on the 26th day of February, 2016.

RESPECTFULLY SUBMITTED BY:

THE BRITTAIN LAW FIRM, P.A.

A. Preston Brittain, Esq.
SC Bar #73707
Thomas C. Brittain, Esq
SC Bar # 00893
4614 Oleander Drive
Myrtle Beach, SC 29577
843-449-8562 (O)
843-449-6148 (F)

On behalf of Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson.

ORIGINAL

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	)	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00674**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all others similarly situated, Plaintiffs, vs. The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	)	**AMENDED COMPLAINT** (Class Action) (JURY TRIAL REQUESTED)

2016 FEB 25 AM 11:02

NOW COMES THOMAS C. BRITTAIN AND PRESTON BRITTAIN, on behalf of the Plaintiffs, Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson (hereinafter referred to as "Plaintiffs" collectively), seeking a class action against Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., (hereinafter referred to as "Defendants" collectively).

PARTIES AND JURISDICTION

1. That Plaintiff Nancy Moore, ("Nancy Moore") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
2. That Plaintiff William Moore, ("William Moore") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
3. That Plaintiff Steven Dame, ("Dame") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
4. That Plaintiff Mark Dos Santos, ("Mark Dos Santos") is a resident of the State of Georgia and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
5. That Plaintiff Jim Perkins, ("Perkins") is a resident of the State of Nevada and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
6. That Plaintiff Colleen Franke, ("Franke") is a resident of the State of Nevada and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
7. That Plaintiff Errol Dos Santos, ("Errol Dos Santos") is a resident of the State of New York and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
8. That Plaintiff Jeffrey Richardson, ("Richardson") is a resident of the State of South Carolina and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.

9. The Defendant, The Myrtle Beach Resort Homeowners Association, Inc. (hereinafter "MBRHOA" OR "HOA"), is a non-profit corporation, organized and existing under the laws of the State of South Carolina and doing business in Horry County, South Carolina.

10. The Defendant MBRHOA, is an umbrella association comprised of a board of directors with one representative from each of the four independent regimes: Myrtle Beach Resort Horizontal Property Regime, Inc., Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc., and Renaissance Tower Horizontal Property Regime.

11. The MBRHOA was created as an umbrella or "Master Association" as evidenced by its filing with the S.C. Secretary of State on April 30, 1987 and as governed by Declaration of Covenants, Conditions and Restrictions filed April 25, 1991 in Deed Book 145 at Page 329 ("HOA Declaration").

12. That, upon information and belief, Defendant Phil Cox currently serves on the Master Board in his capacity as Secretary of the MBRHOA, and is a citizen and resident of the State of South Carolina, County of Horry.

13. That, upon information and belief, Defendant Bill Cameron served in his capacity as Vice President of the Ocean Front Spa and the MBRHOA until his recent resignation, and is a citizen and resident of the State of South Carolina, County of Horry.

14. That, upon information and belief, Defendant Stanley Jordan previously served on the MBRHOA, and is a citizen and resident of the State of Florida.

15. That, upon information and belief, Defendant Walter Jordan currently serves in his capacity as President of the MBRHOA and Ocean Front Spa and is a citizen and resident of the State of Virginia.

16. That, upon information and belief, Defendant Wayne Urban currently serves in his capacity as President of the MBRHOA, and is a citizen and resident of the State of Ohio.

17. That, upon information and belief, Defendant Ken Perkins, is a former Treasurer for MBRHOA, and is a citizen and resident of the State of West Virginia.

18. The John Doe Defendants include past Board of Directors for The Myrtle Beach Resort Homeowners Association, Inc. That Plaintiffs anticipate discovering the identity of relevant John Doe past board members of MBRHOA.

19. The following individuals are currently serving on the MBRHOA Master Board: Phil Cox, Wayne Urban, Walter Jordan, and Kay Gregor.

20. Plaintiffs Nancy and William Moore own Units 403, 106, and 511 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

21. That Plaintiff Nancy Moore serves as Treasurer on the Ocean Front Spa HOA.

22. Plaintiffs Jim Perkins and Colleen Franke own Units 109, 201, 251, 301, 304, 305, 421 and 546 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing

utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

23. That Plaintiff Jim Perkins serves as a director on the Ocean Front Spa HOA.

24. Plaintiff Steven Dame owns Units 328 and 330 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

25. Plaintiff Mark Dos Santos owns Unit #101 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

26. Plaintiff Errol Dos Santos owns Unit 322 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common

areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

27. Jeffrey Richardson owns Units 210, 308, and 245 at Ocean Front Spa and is, pursuant to the Master Deed and/or ByLaws, a member of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

28. Plaintiff Jeffrey Richardson owns Units 2211, 1406, 315, 203, 302, 311, 501, 604 and 314 at Renaissance Tower, and is, pursuant to the Master Deed and/or ByLaws, a member of the Renaissance Tower Horizontal Property Regime, which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

29. That Plaintiff, Jeffrey Richardson is currently serving as President of Renaissance Tower Horizontal Property Regime.

30. That jurisdiction and venue is proper in County of Horry, State of South Carolina.

31. Pursuant to the South Carolina Non-profit Corporation Act, the common law of South Carolina, the MBRHOA through its board of directors owes to the individual plaintiffs, and the class herein defined, a fiduciary duty, which must be heeded in conducting affairs on behalf of the individual homeowners.

32. That South Carolina courts recognize that a fiduciary relationship exists between homeowner associations and the individual homeowners. As a result, the homeowner association boards are yoked with the responsibility to conduct business using sound business judgment that is loyal to the homeowner.

33. That South Carolina courts impose a duty of loyalty which extends to the association board and to individual board members. Further, courts recognize that associations should act to protect the home owner from diminution in the value of their home and such other threats to the community as a whole. *Murphy v. Yacht Cove Homeowners' Association*, 345, S.E.2d 709 (1986).

34. That fundamental and paramount to boards and associations upholding fiduciary duty is abeyance to the covenant, deeds, and bylaws of the association thereof.

35. The duty of loyalty creates a broad obligation that empowers the homeowner and requires thoughtful conduct from those entrusted with the power of governance.

36. That the Plaintiffs, by virtue of their memberships in the MBRHOA, are members of a non-profit corporation.

37. Upon information and belief, there are over 950 units that comprise Myrtle Beach Resort.

38. Upon information and belief, the homeowners possess these units for various purposes including: 1) full-time residence; 2) part-time residence; or 3) rental / investment. That as a result of these various purposes of ownership, the owners are particularly susceptible to unfair dealings.

CLASS ALLEGATIONS

39. Upon information and belief, one or more homeowners have brought concerns to the MBRHOA and various board members regarding the MBRHOA and board of directors' failure to use ordinary business judgment in conducting affairs.

40. Upon information and belief, one or more homeowners have brought concerns to the MBRHOA and various board members regarding the MBRHOA and board of directors' failure to abide by the MBRHOA Master Deed and ByLaws.

41. Upon information and belief, one or more homeowners have brought concerns of the nature described in this pleading to the attention of the MBRHOA, individual board of directors, their managers, and their agents, and through them, have demanded that action be taken, including the return of improper fees, i.e. gate pass revenue.

42. That the plaintiffs, through counsel, sent a letter to the Master Board, dated May 28, 2015 seeking the board to investigate and address various concerns, many of which are part and parcel of a companion case brought in a derivative action. Please see Attachment "A".

43. That the homeowners, through counsel, sent another letter dated August 21, 2015 seeking redress of various issues including the gate pass fee. Please see Attachment "B".

44. That Plaintiff, Mark Dos Santos sent an email which demanded the master board return all of the accumulated gate pass fees including his portion of said gate pass fees. Please see Attachment "C".

45. MBRHOA has not addressed the concerns of the homeowners and has not returned any of the improperly collected gate pass funds.

46. The demand of the homeowners have been ignored or rejected in that the MBRHOA and Board of Directors have failed to take action other than to deny matters and threaten to retaliate with legal action.

47. Plaintiffs made sufficient efforts to attempt to resolve any and all issues with respect to the misconduct of defendants prior to the filing of this class action.

48. Upon information and belief, further or additional attempts of resolution with the Board and the Association would be futile and would serve no useful purpose.

49. Accordingly, Plaintiffs bring this class action pursuant to Rule 23(a)(1) SCRCP on behalf of themselves and all those similarly situated, being any and all persons and or entities owning a unit within the MBRHOA and thereby owning an undivided interest in the common elements, and business activity of the MBRHOA (hereinafter the "Class" or "Members").

50. The Class is properly and judiciously defined as those individuals owning a unit or units within the Myrtle Beach Resort or MBRHOA. Further, that the names, addresses, and email addresses of such individuals is information routinely kept by the defendant or its agent and is therefore readily accessible.

51. As representatives of the Class defined herein, the Plaintiffs seek to recover injunctive relief and monetary relief from the defendants for breach of fiduciary duty, negligence, gross negligence, breach of contract (master deed and bylaws) with respect to the MBRHOA and the named directors' acts and omissions relating to business conduct.

52. The Class does not include any former owner of a unit in the Regime.

53. The Class is sufficiently numerous that joinder of all members is impractical.

54. Plaintiffs will fairly and adequately protect the interests of the Class as Class Representatives. The interests of the Class Representatives are coincident with and not antagonist to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

55. There are questions of law and fact common to the Class.

56. Common questions of law and fact include the liability of MBRHOA and the named directors of MBRHOA for, among other things as more particularly described below, breach of fiduciary duty, and whether these wrongful acts or omissions of the MBRHOA and the named directors caused or will cause the Class to suffer damages.

57. Common questions of law include whether it was proper for the defendants to initiate a gate pass fee, and whether doing so violated the Class members' property rights and covenant of ownership.

58. Common questions of fact include manner of initiation of the gate pass fee, and determination of actual damages.

59. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant hereto, were charged with duties as members of the board of directors. Each Class member has been or will be similarly injured by the Defendants' wrongful and/or negligent acts or omissions in breach of fiduciary duties, such that the interest of the Plaintiffs as Class representatives, are consistent with those of the members of the Class.

60. Plaintiffs envision no unusual difficulty in the management of this litigation as a class action. Certification of this action as a class action under Rule 23(b)(1) of the South Carolina Rules of Civil Procedure is appropriate.

61. Plaintiffs and all class members have been and will continue to be harmed by such the conduct of the Defendants.

BACKGROUND/HISTORICAL ALLEGATIONS REGARDING MYRTLE BEACH RESORTS

62. Upon information and belief, Declarant envisioned Myrtle Beach Resorts (MBR) to include four independent apartment regimes, and various amenities.

63. Declarant through the four independent regimes together with their respective master deeds and bylaws, established the property rights and such other rights amongst the declarant and home owners and likewise, amongst the home owners, visa vie the various regimes.

64. Upon information and belief, the Declarant was first to control the common elements and limited common elements of the MBR and served as the de facto Board of Directors of the MBR.

65. Pursuant to each regimes Master Deed, Declarant granted non-exclusive easements and licenses of the pathways, streets and roads together with roadside and entrance areas, paved areas and recreational facilities of the resort.

66. Pursuant to each regimes' Master Deed, Declarant further granted an easement to all Occupants and visitors of the regime for vehicular parking upon the parking spaces within the resort together with an easement for ingress and egress for access to and from such parking.

67. That Declarant's creation of the regimes was primary, intentional, and specific as to the rights to the individual home owners and to the various regimes.

68. That it was vital to the value of ownership that all Occupants possess an easement to the roadways and parking.

69. That upon information and belief, several years after the creation of the four regimes, the Declarant was unable to complete the resort as envisioned and faced bankruptcy. Subsequent to the declarant's financial constraints, the four regimes purchased the common elements and limited common elements to avoid bank ownership of certain common areas and thereby formed the MBRHOA.

70. That the master deed and bylaws of MBRHOA set forth that it is an umbrella, i.e., that it shall furnish coverage for roadways, pathways and common elements not otherwise covered by the individual associations.

71. That the master deed and bylaws of the Association recognized the rights granted to the homeowners pursuant to each regimes master deed and bylaws, and established a method for the assessing members of the Association.

FACTUAL ALLEGATIONS REGARDING GATE PASS REVENUE

72. That plaintiffs incorporate each and every allegation of the complaint set forth above as if set forth herein verbatim.

73. That the MBRHOA has the responsibility to abide its master deed and bylaws, and to adhere to each regimes master deed and bylaws.

74. That upon information and belief, the MBRHOA has violated the property rights of the Class by charging a gate pass fee to the individual home owner per Occupant.

75. That the Association master deed and bylaws define *Occupant* to include visitors/renters of the units – not just owners. Further, upon information and belief, the term Occupant is defined similarly in each of the four regimes' master deed and bylaws.

76. That the master deed of each regime grants to each home owner the right to permit Occupants to utilize the roadway and access the parking areas without encumbrance or such other interference.

77. Upon information and belief, MBRHOA through its directors began a practice of charging a $5.00 gate pass fee per Occupant in violation of the individual home owners' rights.

78. That discovery will reveal the exact date of the initiation of the gate pass fee, but that known to Plaintiffs is that, in the Master Board meeting dated, November 3, 2013 the master board voted favorably to increase the gate pass fee from $5.00 to $10.00. Further, that the minutes reflect a discourse regarding the propriety of the fee increase.

79. At the meeting, counsel for MBRHOA Dan Patrick informed the board that there were issues with the legality of charging the fee and that "by doubling the gate pass fees [and thereby] generating additional revenue [the gate pass] could not be legally allocated toward expenses." Attorney Dan Patrick counseled against voting to increase the gate pass fee.

80. Upon information and belief, Attorney Dan Patrick advised against the practice of collecting any gate pass fee.

81. That the minutes reflect that the master board intended to utilize the gate pass revenue to pay for expenses associated with the lazy river because, as one board member stated, "[its] the only common element owned by the master."

82. Despite the board's acknowledgment that the maintenance of the lazy river would not support the increase, the board approved the increase of the gate pass fee claiming that it was for the purpose of "reduc[ing] each regimes budgets and in turn decreas[ing] their

HOA assessments." That the board indicated that they would reduce the expenses by using the funds to maintain the lazy river.

83. The MBRHOA gate pass policy states a contradictory purpose than that articulated in the November 3, 2013 meeting. Said gate pass reads: "Purpose: to generate funds to offset annual costs for security services and road and parking lot repairs."

84. That the Association master deed and bylaws set forth that common expenses including security and maintenance of the road and parking lots shall budgeted annually and assessed.

85. That upon information and belief, each regime has paid and continues to pay monthly assessments to for the cost of security services and road and parking lot repairs. Further upon information and belief, the board has not done any reserve studies or obtained any estimates for any major road and/or parking lot repairs.

86. That to the extent the Association intended the "gate pass fee" to serve as an assessment, the Association failed to adhere to its master deed and bylaws, and thereby created an improper tax upon the homeowners.

87. Upon information and belief, the board never reduced each regimes budgets and did not decrease their HOA assessments.

88. Upon information and belief, prior to 2014, the $5.00 gate pass fee generated approximately $120,000.00 annually. In 2014 MBRHOA reported collection of gate pass revenue in the amount of $285,145.00 and over $280,000.00 from January to November of 2015.

89. In the years of 2014 and 2015, the individual home owners, class members represented herein, suffered a loss of approximately $560.00 each.

90. That the Master Board, despite counsel advising against increasing the fee and despite its own recognition that there was not a viable justification for increasing the fee voted favorably to increase the fee.

91. That further, despite having clearly articulated the purpose for increasing the fee – that being to reduce each regimes' budget and in turn decrease their HOA assessments – the board has failed to reduce each regimes' budget and HOA assessment.

92. The MBRHOA established a policy, that "every vehicle must have a pass to enter MBR resort [and] [a]ll gate passes must be purchased in advance at the MBRHOA office." Further, that the MBRHOA office is located beyond the entry gate.

93. That the aforementioned policy requiring advance purchase insures that the unit owners, rather than visitors, incur the gate pass fee.

FOR A FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty against all defendants)

94. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

95. That "MBRHOA", "Board of Directors", "named and unnamed" directors, "Association" and "John Doe" defendants shall hereinafter be deemed collectively, "Defendants".

96. As the directors for the Association, the individual board members owed the plaintiffs, and all other unit owners, a fiduciary duty to place the interests of the Plaintiffs above other interests. This fiduciary duty includes a duty to abide by the MBRHOA master deed and bylaws, to adhere to the regime master deeds and bylaws, to heed the advice of counsel, to refrain from converting the individual home owner funds, and to make good

faith inquiries into the reasonableness of policies which materially affect the individual home owner.

97. By failing to heed the advice of attorney Dan Patrick, by failing to return to the individual home owner their funds, by failing to make a good faith inquiry into the reasonableness/legality of collecting a gate pass fee, by failing to adhere to the MBRHOA master deed and bylaws, and to adhere to each regimes' master deed and bylaws, the MBRHOA and the named directors, (and unnamed directors) have breached their fiduciary duty.

98. That upon information and belief, the MBRHOA engaged in self-dealing transacting business, by and through its directors, for its own benefit rather than for the benefit of the individual homeowners.

99. The South Carolina Non-Profit Corporation Act, Section 33-31-830, sets forth standards for director conduct, and that upon information the conduct more fully described herein violates said standards such that the director conduct may be characterized as reckless.

100. As a direct and proximate result of the breach of fiduciary duties by the MBRHOA and the individual board members, Plaintiffs and the Class, have been financially harmed to include over $1,000,000.00 (One Million Dollars) of improperly collected gate pass fees.

101. That the plaintiffs are entitled to a judgment against MBRHOA and the individual board members for all actual, direct, indirect, resulting and consequential damages proximately caused by the breach of their fiduciary and other non-delegable duties, as well as punitive damages, in an amount to be proven at trial.

FOR A SECOND CAUSE OF ACTION

(Negligence/gross negligence against all defendants)

102. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

103. That "MBRHOA", "Board of Directors", "named and unnamed" directors, "Association" and "John Doe" defendants shall hereinafter be deemed collectively, "Defendants".

104. That MBRHOA and the individual board members have a duty to the individuals which own a unit located at Myrtle Beach Resorts.

105. That MBRHOA and the individual board members have a duty to conduct affairs in a manner consistent with sound business practice.

106. That MBRHOA breached said duty by failing to utilize business judgment in voting favorably to initiate and later increase the gate pass fee.

107. That upon information and belief, the creation and subsequent increase in the gate pass fee was negligent or reckless/grossly negligent as evidenced by: (1) the failure to heed counsel's advice regarding the legality of the transaction; (2) the board's own admission that it could not justify raising the fee; (3) the master board's awareness of its' lack of authority to impede the home owners easement of ingress and egress and parking; (4) the arbitrary amount by which the gate pass fee was raised to; (5) the lack of any evidentiary support regarding the need to raise the fee; (6) the eventually claimed purpose of raising the fee versus the later stated purpose of raising the fee; (7) the failure to account for manner of use of the gate pass fee; and (8) the significant increase in reserve funds with no designated purpose.

108. That MBRHOA, by and through the acts and omissions of the individual board members, breached duties owed to the individual home owner, and that such conduct and lack of conduct did not comport with reasonable business judgment.

109. That as a proximate result of the initiation of the gate pass fee and the raising of the cost of the gate pass fee, the individual home owners have suffered damages.

110. As a direct and proximate result of the breach of duties by the MBRHOA and the individual board members, Plaintiffs and the class, have been financially harmed to include over $1,000,000.00 (One Million Dollars) of improperly collected gate pass fees.

111. That the plaintiffs are entitled to a judgment against MBRHOA and the individual board members for all actual, direct, indirect, resulting and consequential damages proximately caused by such negligence or gross negligence, as well as punitive damages, in an amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION

(Breach of contract/covenant against all defendants)

112. The Plaintiffs hereby incorporate each and every allegation contained above as if set forth herein verbatim.

113. That "MBRHOA", "Board of Directors", "named and unnamed" directors, "Association" and "John Doe" defendants shall hereinafter be deemed collectively, "Defendants".

114. That MBRHOA, through its directors, violated the master deed and bylaws of each of the four regimes by initiating the gate pass fee and by raising the cost of the gate pass fee.

115. That MBRHOA, through its directors violated the MBRHOA master deed and bylaws by initiating the gate pass fee and by raising the cost of the gate pass fee.

116. That the master and bylaws of MBRHOA is a covenant between the individual unit owners and MBRHOA. That MBRHOA is bound by the contents of the agreement and damages the individual where it fails to comply with the covenant.

117. That the MBRHOA Master Deed, Article V, Covenant for Assessments, sets forth the manner and procedure for assessment of unit owners for the purpose of paying for common expenses.

118. That upon information and belief, to the extent the gate pass fee has been utilized for the purpose of paying common expenses, defendants have breached the covenant by collecting a "fee" rather than utilizing the proscribed method in the master deed and bylaws which establishes the manner in which the MBRHOA may assess the homeowners.

119. That upon information and belief, the master deed and bylaws of MBRHOA do not contain any language which permits the Association or its Board of Directors to diminish or interfere with Plaintiffs' easement to parking lots and ingress/egress of the roads and pathways. And further, that the Association master deed and bylaws do not grant to the Association or its board any power to tax Occupants for use of the roads and parkways or for entry onto the premises.

120. That MBRHOA, by and through its Directors, named and unnamed, have breached the covenant and deeds and restrictions by failing to adhere to the required practices for assessments and by failing to adhere to easements which run with the land more fully delineated in the master deeds and bylaws of each of the regimes.

121. That MBRHOA, by and through its Board of Directors, named and unnamed, have damaged the individual Plaintiffs by raising revenue through improper methods/avenues.

122. That the plaintiffs are entitled to a judgment against MBRHOA and the individual board members for all damages consequent to the breach of the covenant to include repayment of the gate pass fee, other actual damages, punitive damages, attorney fees, costs and such other damage which may be proven at trial.

123. That the Plaintiffs are entitled to injunctive relief to include an accounting.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson hereby pray unto this honorable court for the following relief: (1) approval of the class action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure to include the recognition of Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson as representatives for the purpose of bringing said class action on behalf of the individuals owning a unit(s) in Myrtle Beach Resort; (2) for an award of damages against all Defendants to include actual damages, punitive damages, attorney fees, costs; and (3) for injunctive relief to include an accounting; (4) for such other and further relief as the justice may require.

RESPECTFULLY SUBMITTED BY:

THE BRITTAIN LAW FIRM, P.A.

A. Preston Brittain, Esq.
SC Bar #73707
Thomas C. Brittain, Esq.
SC Bar # 00893
4614 Oleander Drive
Myrtle Beach, SC 29577
843-449-8562 (O)
On behalf of Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffery Richardson.

February 26, 2016

Myrtle Beach, SC

ATTACHMENT "A"

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May 28, 2015

Via Certified Mail # 70103090000002174587
and Via Email: sgs@patrickandstathos.com

Mr. Sam G. Stathos, Esq.
Patrick & Stathos, LLC
412 North Poplar Drive
Surfside Beach, SC 29575

Via Certified Mail and Return Receipt Request # 70103090000002174594

Phil Cox, President of Myrtle Beach Resort HOA
5905 S. Kings Highway
Myrtle Beach, SC 29575

Myrtle Beach Resort HOA Master Board

Re: Breach of Fiduciary Duty/Breach of Loyalty

Dear Mr. Stathos and Mr. Cox,

Please be advised that I have been retained by numerous homeowners (hereinafter "clients" or "homeowners") to represent them regarding potential claims against the Myrtle Beach Resort HOA and individual board members regarding breach of fiduciary duties. The purpose of this letter is provide Myrtle Beach Resort HOA with information discovered by various homeowners involving questionable practices by KA Diehl, Allegiant Food and Beverage, LLC, Myrtle Beach Resort Vacations, and certain board members. Based upon the information contained herein, Myrtle Beach Resort HOA board has an obligation to provide the homeowners with information and to purse an action at law against several parties.

Please understand that my clients intend to unveil the full truth about the following: (1) undisclosed conflicts of interest between board members and vendors; (2) failure to bill Allegiant Food and Beverage, LLC utilities for a period of three years; (3) failing to procure realistic bids

for contracts; (4) MBRV giving preferential treatment to board members based on voting record; (5) negligent hiring of managers by KA Diehl; (6) charging homeowners overtime for Services staff in contravention of contract provisions; (7) failing to properly monitor or account funds paid to watchmen Services; (8) interested parties involved in the election process; (9) failing to properly report proxy votes prior to election; (10) failing to provide homeowners their due portion of commission from real estate sales; (11) failing to notify homeowners of compromised unit privacy; and (12) failing to abide by the master deed and by-laws as relates to providing board members with information and other such protocol.

Please take note of what is alleged and what is known. In recent past, certain board members have threatened defamation suits against homeowners and board members who levied complaints and asked questions – a very unfortunate trend. Trust that my clients seek not defame but to bring to light a pattern of perceived abuses. They have plowed through without the benefit of information which they are entitled to obtain (review). This letter sets forth numerous instances some of perceived poor judgment, breach of loyalty, and misconduct. In some instances, there are only allegations; in other instances there are known facts – witnessed or documented.

I. LAW

South Carolina courts recognize that a fiduciary relationship exists between homeowner associations and the individual homeowners. As a result, the homeowner association boards are yoked with the responsibility to conduct business using sound business judgment that is loyal to the homeowner. This duty of loyalty extends to the association board and to individual board members. Courts recognize that associations should investigate the propriety of pursuing lawsuits on behalf of homeowners to protect the home owner from diminution in the value of their home and such other threats to the community as a whole. *Murphy v. Yacht Cove Homeowners' Association*, 345, S.E.2d 709 (1986). The duty of loyalty creates a broad obligation that empowers the homeowner and requires thoughtful conduct from those entrusted with the power of governance.

II. Breach of Loyalty

a. History/Facts

Myrtle Beach Resort Vacations (or "MBRV") is the largest rental and sales vendor associated with Myrtle Beach Resort HOA. Upon information, MBRV and Allegiant Food and

Beverage, LLC are owned and operated by the same persons. Recently, Jim Perkins learned that the master board (and KA Diehl) had failed to require Allegiant Food and Beverage, LLC to pay utilities for a period of three years.

A cursory look at those who have served on the board (or other regime boards) or currently serve on the board coupled with present/past affiliations with interested parties is concerning. The following individuals are currently serving on the Myrtle Beach Resort HOA Master Board: Phil Cox, Wayne Urban, William Cameron, and Kay Gregor. Other regime board members to include: Ken Perkins and Walter Jordan from the "B board," Freddie Brown and Chuck Pakosta from the "A Building board". Past board members include: Stanley Jordan, Ken Perkins, Ralph Jump, and Mel Gritt (Five Seasons). Upon information, Phil Cox, Stanley Jordan, Ralph Jump, Walter Jordan and Ken Perkins either currently have or have had during terms of service a contractual relationship with Myrtle Beach Resort Vacations.

Upon information, Phil Cox still derives some financial benefit from his past affiliation with Myrtle Beach Resort Vacations. His connection with the MBRV and or Allegiant Food and Beverage, LLC has been largely concealed to the homeowners. Upon information, his interest has in MBRV and Allegiant Food and Beverage, LLC, has impaired his ability to be a fiduciary to homeowners and impacted his ability to exercise sound business judgment in affairs concering MBRV and Allegiant. His devotion to these entities is not singular. Cox, Jump, Walter Jordan, Wayne Urban, Freddie Brown, Mel Gritt, and Chuck Pokosta have all stated that whatever was good for Allegiant Food and Beverage, LLC was good for Myrtle Beach Resort HOA.

In fact, Phil Cox's relationship with these entities and whether he should abstain from voting on matters related to them has been discussed with counsel. Upon information, counsel for the Myrtle Beach Resort HOA master board properly opined that Cox should refrain from voting on Allegiant Food and Beverage, LLC/MBRV related matters. Since that time, Cox has stated that he would not refrain from voting on Allegiant Food and Beverage, LLC/MBRV related matters.

The history/facts above clearly reflect Cox not only has a conflict of interest, but that he is prepared to openly resist any effort, unless Court ordered, to require him to properly perform his duties as a board member. His blatant devotion to Allegiant Food and Beverage, LLC led him to first vote to forgive more than $60,000.00 of utilities bills owed to his fiduciaries.

Upon information, the annual audit has never disclosed any conflict of interest.

III. PREFERENTIAL TREATMENT AND ELECTIONS

a. History/Background

Leading up to the election date of April 25, 2015, and including the date of the election itself, there were concerns that Five Seasons would not muster sufficient votes to reach a quorum of 51%. Jackie Cleckler of TAN representing 42 units sought election to the Five Seasons board.

b. Results

Despite Cleckler commanding 42 votes of a near non-quorum race, Cleckler was defeated. This mathematical improbability raises question about the integrity of the election.

c. Preferential Treatment

Upon information, certain board members have been given priority treatment regarding rental of their units. Specifically, certain board members' units have received premium listing on the vendor's website without payment for the same. Upon information, this preferential treatment is part of a spoken or unspoken reward for voting favorably with vendors.

Upon information, leading up to the most recent board elections MBRV campaigned to secure votes for the following individuals: Ralph Jump, Walter Jordan, and Norma Bennz. Upon information, voicemails were left seeking proxies because Jump and Jordan individuals were "rental friendly" and "worked good with MBRV" in the past. Upon information, they went so far as to craft campaign signs for these individuals. Vendors inclined to campaign must disclose the reason for such favoritism so that voters can make an educated decision. Regardless of the propriety of vendor involvement in HOA campaigning, vendors spending money/time to campaign for proxies is in and of itself revealing.

d. Conflict

KA Diehl understood that certain candidates did not support KA Diehl. MBRV certainly knew which candidates would blindly support MBRV. Further, it is worrisome that KA Diehl and MBRV conducted the elections, to wit, collected and counted votes. KA Diehl and MBRV had an interest in the election results and should not have been involved without some other oversight.

IV. INSURANCE CONTRACTS

Upon information, for a period of several years, and likely upon the advice of KA Diehl, the master board failed to seek bids for insurance brokers. Instead, the board obligated home owners to pay higher premiums. After investigating the matter, it was discovered that there was familial

relationship between the owner of the insurance broker agency and a KA Diehl CEO. In fact, for some period of time the two businesses operated out of the same building. Further, that this information was not disclosed to the board or to the homeowners. Further upon information and belief, that had other brokers been consulted Myrtle Beach Resorts HOA would have saved thousands of dollars annually. This has become most apparent through Renaissance Tower and Ocean Front Spa board who broke off the relationship, bid brokers, and received comparable insurance for roughly $50,000.00 less per year.

V. KA DIEHL

Has the board violated its fiduciary duty as relates to its continued relationship with KA Diehl? The board has failed to even consider bids from other management companies. Upon information and belief, KA Diehl during management negotiation contracts for the year 2015 was significantly higher than other reputable companies. This is concerning considering some questionable conduct.

Upon information KA Diehl is responsible for providing Services. This is provided through Watchmen Services – a KA Diehl affiliate (upon information). One of the important functions of the Services program is to collect funds for parking. Upon information, this heavily cash operation has been negligently operated and/or accounted for resulting in funds being misplaced. Upon information, KA Diehl owns Watchmen Services.

According to its agreement with Myrtle Beach Resort HOA, Watchmen Services is permitted to invoice Myrtle Beach Resort HOA for employee overtime. Upon information, KA Diehl has charged Myrtle Beach Resort HOA for overtime arising from Watchmen Services, and failed to pay the employee their due earnings. According to an employee, on numerous occasions Services personnel worked overtime hours and reported such without ever receiving the income. Upon information, Myrtle Beach Resort HOA was billed for those hours.

Upon information, KA Diehl also retained employees that were being compensated for hours which they did not work. This was discovered and proven to satisfaction of both the board and KA Diehl. Despite such information, 3 of 5 board members agreed with KA Diehl that no genuine disciplinary action specific to the wrongdoers occur.

Upon information, KA Diehl is responsible for collecting a percentage of commission from condominium sales. Specifically, the homeowners should receive 10% percent of the

commission per sale. Upon information, this duty has been neglected costing the homeowners money.

Upon information, KA Diehl is responsible for hiring and assigning property managers to manage MYRTLE BEACH RESORT HOA affairs. Upon information, KA Diehl recently hired and assigned to MYRTLE BEACH RESORT HOA, Glenn (Rusty) Magill. Since the hiring of Rusty, my clients have learned that Rusty has been involved in litigation regarding his last appointment of a similar nature to the one here. Further, upon information, my clients have learned that he has had difficulty managing his own financial affairs, i.e. filed for bankruptcy in the State of NC. When Rusty's credentials were first raised, KA Diehl claimed that they did not routinely conduct background checks for potential employees, but later stated that KA Diehl was aware of Rusty's recent past inadequacies, but chose to hire him anyways. There is great concern over the hiring itself and great concern regarding KA Diehl's choice not to disclose such information to the board prior to placing here.

Upon information, Darla Donovan, Senior Community Manager, a KA Diehl employee voluntarily left her post, but has returned. She left under suspicion that certain vendors had not been properly invoiced on her watch. KA Diehl has either falsely blamed Donovan or returned her to her post knowing the recent mistakes.

VI. RESOLUTION

The board has an obligation to provide/make available financial information and contracts. It is a fiduciary duty, and one that has been largely ignored. After all, the contracts exist for the benefit of the homeowner. Upon information, numerous requests for information sent to the board have been denied and that certain members, in denying the request, actually cited obligations owed to the vendors. This is worrisome. Please make all such information available for copy for such that the homeowners may perform their own audit of board action. That the results of the audit be recognized, disclosed and retribution made.

Further, my clients seek redress of all issues involving KA Diehl. Therefore, the board shall bring suit to address the lost commissions, negligent hiring, lost revenue from parking spaces, repayment of overtime billing, etc.

Further, the homeowners request that all conflicts be disclosed and that such board members abstain from voting on conflicted matters. Finally, that a new election to be conducted

by an independent third party – after full disclosure of conflicts of interest, and the findings of our independent audit.

With kind regards, I am
Sincerely yours,

THE BRITTAIN LAW FIRM, PA

A. Preston Brittain

ATTACHMENT "B"

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August 21, 2015

Via Email: sgs@patrickandstathos.com

Mr. Sam G. Stathos, Esq.
Patrick & Stathos, LLC
412 North Poplar Drive
Surfside Beach, SC 29575

Re: K.A. Diehl and Associates, Inc. vs. James Perkins, Colleen Perkins, a/k/a Colleen Franke Perkins, Mark Dos Santos, Errol Dos Santos, Nancy Moore, William Moore, and Steve Dame / Civil Action No.: 2015-CP-26-05573

Dear Sam:

As you are aware, K.A. Diehl and Associates, Inc., has sued individual homeowners for defamation and tortious interference with a contractual relationship. To date, my clients have not been contacted by Myrtle Beach Resort Master Board (hereinafter "MBR") regarding this appalling filing, and so, one purpose of this letter is to ascertain what actions, if any, MBR is prepared to take to protect its homeowners.

This letter is also a call to action seeking MBR to do all things including the bringing of suit to address that which certain homeowners have repeatedly brought to light. To date, no effort has been made to address serious matters including the failures to pay homeowners (or regimes) their share of parking fees, adequately address questions about conflicts of interest, to utilize sound business judgment in procuring contracts with vendors (to follow acceptable business protocol for the same) to pay homeowners their portion of commission from unit sales and such other matters brought to your attention by these very fine homeowners. Conversely, their efforts have been met with being apprised of duties owed to vendors, threats, and now a lawsuit. At this stage, the individual homeowners are left with no other recourse than to take such legal action as is necessary to protect the homeowners. Should you determine to heed the call to action, please contact me immediately, as time is of the essence.

Sincerely Yours,
THE BRITTAIN LAW FIRM, PA

A. Preston Brittain, Esq.

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August 21, 2015

Via Email: sgs@patrickandstathos.com

Mr. Sam G. Stathos, Esq.
Patrick & Stathos, LLC
412 North Poplar Drive
Surfside Beach, SC 29575

Re: K.A. Diehl and Associates, Inc. vs. James Perkins, Colleen Perkins a/k/a/ Colleen Franke Perkins, Mark Dos Santos, Errol Dos Santos, Nancy Moore, William Moore, and Steve Dame
Civil Action No.: 2015-CP-26-05573

Dear Sam:

As you are aware, K.A. Diehl and Associates, Inc., has sued two Ocean Front Spa Horizontal Property Regime board members, Nancy Moore and Jim Perkins and several other individual homeowners for defamation and tortious interference with a contractual relationship. To date, my clients have not been contacted by Ocean Front Spa (hereinafter "OFS") or the Myrtle Beach Resort Horizontal Property Regime (hereinafter "MBR") regarding this appalling filing, and so, one purpose of this letter is to ascertain what actions, if any, OFS is prepared to take to protect its board members and homeowners.

Another purpose of this letter is to urge you to bring suit against the Myrtle Beach Resort Master Board for: (1) failure to provide OFS its portion of the parking fee; (2) failure to obey/require use of sound business judgment relating to procurement of (a) security contracts; (b) insurance contracts; and (c) management contracts; (3) provide accounting or in-depth financial audit in the wake of failure to invoice Allegiant for utilities; (4) to provide or require provision of homeowners portion of commission from real estate sales; (5) to abide by master deed and by-laws; and (6) to properly account/insure a reliable method for accounting for funds paid to Watchman Services.

These very fine concerned homeowners have been prevented from speaking out about their concerns. They have been threatened with a lawsuit and now sued. Still, they believe the matters above must be addressed and will ask a Court to permit them to pursue the same unless

OFS reveals to the homeowners its intention to bring such action to protect the interest of the homeowners. Time is of the essence.

The final purpose of this letter is to recapitulate the election debacle. First, by way of background, recall that the candidates had concerns leading up to the election. The concerns stemmed from vendor participation and inequitable access to the homeowners.

Second, the bylaws were not followed with respect to the proxies. The process for proxy voting was intentionally ignored permitting proxy votes to be returned two (2) days prior to election (and some even turned in the day of the election) rather than fifteen (15) days ahead of time.

Third, the audit revealed additional problems, including discrepancies between the K.A. Diehl Voter Spreadsheet and the "sign-in" sheet and that numerous votes were unaccounted for. Also, the audit revealed that at least one person owning multiple units did not receive the proper amount of votes. Further, homeowners witnessed a non-unit owner cast multiple ballots and the audit revealed he was not a designated proxy (which is a violation of a number rules). Finally, one person confirmed that he sent in a proxy package – showed up to vote – received the proxy package back (which he destroyed per instruction) and the audit revealed, his proxy package was contained in the ballot box. All of this is very concerning – and any one issue – is sufficient for a re-vote, but all of these matters taken together clearly require a new election.

Given that OFS has continued to exclude Nancy Moore and Jim Perkins from their rightful board participation, and given that these homeowner concerns remain unaddressed, the homeowners presume that OFS will fail to take action to correct its own affairs or address the MBR / K.A. Diehl matters and that K.A. Diehl is now claiming any correspondence with you is attorney client privileged. Should OFS elect to take action (file suit/revote) then please alert me at once, otherwise the individuals intend to take matters into their own hands by pursuing an action on behalf of the homeowners.

With kind regards, I am
Sincerely Yours,

THE BRITTAIN LAW FIRM, PA

A. Preston Brittain, Esq.

ATTACHMENT "C"

---------- Forwarded message ----------
From: **Mark dos Santos** <markedossantos@gmail.com>
Date: Sat, Jan 9, 2016 at 11:43 PM
Subject: Gate Passes Fees and Security Fees
To: Bill Cameron <cameronwdc@sc.rr.com>, Kay McGregor <deerfoot35@aol.com>, Phil Cox <rvspc@yahoo.com>, Wayne Urban <waynembhpr@yahoo.com>, Walter & Linda Jordan <walter.lindajordan@comcast.net>, Ralph Jump <ralphjump@fuse.net>, Walter Jordan <wajordan48@comcast.net>
Cc: Alan & Madell Rohulich <golden@stny.rr.com>, Alan Bolton <alanbolton@windstream.net>, Angela Wowk <kwow2001@yahoo.com>, Bill Fletcher <fletch197735@gmail.com>, Billy Moore <billy_nancy@hotmail.com>, Brian Webb <baziz@mac.com>, Calvert And Benetta Andrews <benetta2009@hotmail.com>, Cathy Cameron <ccameronphd@sc.rr.com>, Chris Kelly <kastco@aol.com>, Cindy Woolfert <woolfort3@hotmail.com>, Colleen Franke <cfrankeperkins@aol.com>, David & Deborah Vera <dvera1@msn.com>, Desiree Steffen <dsteffen002@cinci.rr.com>, Dwight Nicholas <dwight_nicholas@comcast.net>, Errol Dos Santos <erroldos@aol.com>, Gayle Scott <gscottphar@cox.net>, George Williams <geowill@optonline.net>, Greg Agee <greg@colonialequip.com>, Hollie White <hawcma@yahoo.com>, James And Peggy O'Neill <jimmyoneill@fuse.net>, Jeff & Maria Fulcher <jeff_94501@yahoo.com>, Jim Beuten <jrbeuten@verizon.net>, Jim Perkins <MBRJimPerkins@aol.com>, Joe And Barb Domagala <beach_rentals@yahoo.com>, Joey Hammet <sandyfeet@beachboyzrentals.com>, John and Ellen Lewis <ellenlewis39@yahoo.com>, John And Mary Joe Ciccarelli <miciccarei@gmail.com>, Joseph and Barbara Domagala <barbaradomagala@hotmail.com>, Karen Pastor <rentals@myrtlebeachvrbo.net>, Keith Marroon <kmarroon@hvc.rr.com>, Keri Dos Santos <mdossan@yahoo.com>, Kevin Nicely <konicley@yahoo.com>, Kirk Thomas <kirkt@embarqmail.com>, Lisa Rohrer <vrb0181@aol.com>, Marian And Dudley Dalton <dudleydalton@msn.com>, Mark dos Santos <markedossantos@outlook.com>, Marvin Zepf <marv7man@nycap.rr.com>, Mary Ann Newman <marfilns@yahoo.com>, Matthew Brandt <mebakb@comcast.net>, Michael And Lori Preisler <preisler@allstate.com>, Michele Boehm <myrtlebchcondo@aol.com>, Michelle Williams <michelew@optonline.net>, Mike And Lillian Hall <mhall0791@charter.net>, Monty & Phyllis Taylor <gymgoer26@carolina.rr.com>, "Mr. & Mrs. Bissette" <bissette@triad.rr.com>, "Mr. & Mrs. Robert Russell" <fran_195@comcast.net>, "Mr. & Mrs. Strother Adams" <adams27@hotmail.com>, "Mr. & Mrs. Ted Eighmie" <bestinvt1@usa.net>, "Mr. & Mrs. Tracey Meadows" <meadowscondo@suddenlink.net>, Nancy Moore <nancyl.moore@outlook.com>, Nanette Thomas <luvs2sing@embarqmail.com>, Neil And Sharon Jewell <jewelsatthebeach@yahoo.com>, Nicholas Ramos <s.somarrealty@verizon.net>, Norma Benz <mbrcondo@gmail.com>, Patricia Dixon <patnduck@yadtel.net>, Paul And Elaine Grochowsky <myrtlebeach329@gmail.com>, Phyllis Slaven <slavenpc@fuse.net>, Roy and Yasmine Cramer <vcramer23@gmail.com>, Sam And Joyce Fanning <sassygal51@frontier.com>, Sandy & Kevin Segriff <sansea66@hotmail.com>, Sandy Shears <ggshrs@aol.com>, Sharon Crummett <bowlingblonde@aol.com>, Sharon Pulaski <sap286@aol.com>, Stanley Jordan <sjordan90@cfl.rr.com>, Steve And Andrea Dame <A_dame1@yahoo.com>, Steven Riggsbee <briggsbee1@gmail.com>, Sung Hong <hwahong50@gmail.com>, Terry White <twhitemyrbsc@gmail.com>, Thomas Davis <B406MBR@aol.com>, Tom And Kathy Sturges <b204condo@bex.net>, Tony And Sue Camaloni <barb1716@nc.rr.com>, Vince Robleto <myrtlebeachresorts@hotmail.com>, Wayne And Gloria Provost <glo1827@aol.com>, William And Lynette Reynolds <lnr702@aol.com>, Wilna Eury <wilna.eury@att.net>, Sandy Welch <oceanmtnrentals@att.net>, Richard & Wendy Burdett 1816 RT <MBRtower1816@aol.com>, Douglas dos Santos <dougleszz@aol.com>, Stanley Jordan <stanjor@comcast.net>, Kelly dos Santos <kdpd3330@aol.com>, Ron Burner <chief444@comcast.net>, Jeff Richardson <jlr5456@yahoo.com>, Denny Sassa <densassa@yahoo.com>, Joseph Kantor <jmkantor@msn.com>, Mick Fahy <mcfahy@rochester.rr.com>, Marian Creamer West <mwestiski@bellsouth.net>, Mara Richardson <mkr59@yahoo.com>, Mike <71spirdo@gmail.com>

Walter, Ralph, Bill,

I sent you a couple emails regarding the gate pass issue in December and you have not replied. I request your response immediately.

I am now also including Wayne Urban and Phil Cox on the Master Board.

Wayne, Phil, Walter, Ralph, Bill - please respond.

I am also now copying a number of homeowners as I believe they also need to know the answer to the following related issues:

1) Gate Passes Revenue Issue:

During the last HOA meeting, the issue of the gate passes was raised - as you know, **the HOA and management companies have collected >$1.3M in gate pass fees (approximate $1,333 per unit) from 2008 through September 2015 alone** (see attached MBR HOA Income Statements) - this does not include the gate pass fees collected from the homeowners prior to 2008 or since September as you still haven't posted the 2015 financials for October -December as they are late (this is another issue that needs to be address - financials not being posted in a timely manner). As you know, transacting of gate passes at the gate has been the cause of significant delays for ingress to the resort during peak seasons, and we are paying for the hours of Watchman Services Security guards who are standing around collected gate pass money. Per the MBR HOA "Gate Pass Resolution", the purpose of the gate passes is to "generate funds to offset annual costs for Security services and road and parking lot repairs" - 1) My understanding is that we already pay dues for this, 2) It appears we are paying these additional fees to pay for security hours, many of which are being spent collecting the fees, 3) Per the OFS (and other regime) Master Deed, occupants are already granted a right to parking, egress and ingress, so under what authority is the HOA demanding these additional money from the homeowner?

Per Artide III, paragraph 5 of the Master Deed of the OFS (attached), the Declarant granted an easement (rights) for vehicular parking within the Regime together with an easement for ingress and egress for access to and from such parking, i.e., "Parking spaces shall not be reserved solely for the use of Occupants or any particular Apartment nor shall they be numbered. Further, Declarant hereby reserves unto itself (including the right to grant to others) **and grants to all Occupants and visitors of the Regime an easement for vehicular parking upon the parking spaces within the Regime, together with an easement for ingress and egress for access to and from such parking."**

How / under what authority is the HOA demanding money for gate passes when we already have a right to our parking, ingress and egress?

My understanding is that if occupants do not pay these fees, their vehicles will be ticketed and/or towed by KA Diehl / "Watchman Services" - is this correct? If so, it would appear we are being forced to pay the gate pass fees under threat of the material damage caused by having our car towed. Please explain how this policy is NOT in contravention / violation of our Master Deed. If you cannot provide valid explanation and justification, I request and demand that you reimburse the homeowners for all gate pass fees paid over the last 10 years, and cease collection of gate passes immediately.

2) Security Contract Issue:

During the last meeting, neither the board nor KA Diehl were able to produce the Security contract when asked, and when we pressed Jack Boselli, he said we no longer have the contract and that we are "on a month to month" - this seems very strange. Please explain what this means and confirm whether we have a contract, and if we don't, when and under what circumstances and for what reason was our security contract ever cancelled? As security is the single largest line expenditure of the MBR HOA (approximately $500K per year), I certainly hope we have a contract that was negotiated with a longer term than monthly.

Also, I do not recall our security services ever being put out to bid - has the board ever sought competitive bids for security, or has it only been sole-sourced to KA Diehl / Watchman Services? I would find it deeply troubling if the latter is the case.

Thank you.

-Mark

404-886-6263

9 Attachments

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00743
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	AMENDED SUMMONS (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:09
CLERK OF COURT

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended Verified Shareholders' Derivative Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the Plaintiff's attorneys, Thomas C. Brittain and A. Preston Brittain, The Brittain Law Firm, P.A., at 4614 Oleander Drive, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina, on the 29th, day of February, 2016.

RESPECTFULLY SUBMITTED BY:

THE BRITTAIN LAW FIRM, P.A.

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On behalf of Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeff Richardson.

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STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00743**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	**AMENDED VERIFIED SHAREHOLDERS'DERIVATIVE COMPLAINT** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:09

NOW COMES THOMAS C. BRITTAIN AND PRESTON BRITTAIN, on behalf of the Plaintiffs, Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson (hereinafter referred to as "Plaintiffs" collectively), seeking a derivation shareholder action against K.A. Diehl and Associates, Inc., The Myrtle Beach Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Homeowners Association, Inc., (hereinafter "Defendants").

PARTIES AND JURISDICTION

1. That Plaintiff Nancy Moore, ("Nancy Moore") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
2. That Plaintiff William Moore, ("William Moore") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
3. That Plaintiff Steven Dame, ("Dame") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
4. That Plaintiff Mark Dos Santos, ("Mark Dos Santos") is a resident of the State of Georgia and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
5. That Plaintiff Jim Perkins, ("Perkins") is a resident of the State of Nevada and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
6. That Plaintiff Colleen Franke, ("Franke") is a resident of the State of Nevada and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
7. That Plaintiff Errol Dos Santos, ("Errol Dos Santos") is a resident of the State of New York and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
8. That Plaintiff Jeffrey Richardson, ("Richardson") is a resident of the State of South Carolina and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.

9. The Defendant, The Myrtle Beach Resort Homeowners Association, Inc. (hereinafter "MBRHOA" OR "HOA"), is a non-profit corporation, organized and existing under the laws of the State of South Carolina and doing business in Horry County, South Carolina.

10. The Defendant MBRHOA, is an umbrella association comprised of a board of directors with one representative from each of the four independent regimes: Myrtle Beach Resort Horizontal Property Regime, Inc., Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc., and Renaissance Tower Horizontal Property Regime.

11. The MBRHOA was created as an umbrella or "Master Association" as evidenced by its filing with the S.C. Secretary of State on April 30, 1987 and as governed by Declaration of Covenants, Conditions and Restrictions filed April 25, 1991 in Deed Book 145 at Page 329 ("HOA Declaration").

12. The Defendant K.A. Diehl and Associates Inc., (hereinafter "K.A. Diehl") is a property management company, incorporated under the laws of the State of South Carolina doing business in the State of South Carolina, County of Horry.

13. That, upon information and belief, Defendant Phil Cox currently serves on the Master Board in his capacity as Secretary of the MBRHOA, and is a citizen and resident of the State of South Carolina, County of Horry.

14. That, upon information and belief, Defendant Wayne Urban currently serves in his capacity as President of the MBRHOA, and is a citizen and resident of the State of Ohio.

15. That, upon information and belief, Defendant Bill Cameron served in his capacity as Vice President of the Ocean Front Spa and the MBRHOA until his recent resignation, and is a citizen and resident of the State of South Carolina, County of Horry.

16. That, upon information and belief, Defendant Walter Jordan currently serves in his capacity as President of the MBRHOA and Ocean Front Spa and is a citizen and resident of the State of Virginia.

17. That, upon information and belief, Defendant Stanley Jordan previously served on the MBRHOA, and is a citizen and resident of the State of Florida.

18. That, upon information and belief, Defendant Ken Perkins previously served on the MBRHOA and is a citizen and resident of the State of West Virginia.

19. The John Doe Defendants include past Board of Directors for The Myrtle Beach Resort Homeowners Association, Inc. That Plaintiffs anticipate discovering the identity of relevant John Doe past board members of MBRHOA.

20. That, upon information and belief, Defendant Wayne Urban currently serves in his capacity as President of the MBRHOA, and is a citizen and resident of the State of Ohio.

21. The following individuals are currently serving on the MBRHOA Master Board: Phil Cox, Wayne Urban, Walter Jordan and Kay Gregor. That Defendant William Cameron recently resigned from the board.

22. That Defendant Wayne Urban currently serves in his capacity as President of the MBRHOA.

23. That Defendant Phil Cox currently serves on the Master Board in his capacity as Secretary of the MBRHOA.

24. That Defendant Walter Jordan currently serves in his capacity as President of the MBRHOA and Ocean Front Spa.

25. That Defendant Stanley Jordan previously served on the MBRHOA.

26. Plaintiffs Nancy and William Moore own Units 403, 106, and 511 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

27. That Plaintiff Nancy Moore serves as Treasurer on the Ocean Front Spa HOA.

28. Plaintiffs Jim Perkins and Colleen Franke own Units 109, 201, 251, 301, 304, 305, 421 and 546 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

29. That Plaintiff Jim Perkins serves as a director on the Ocean Front Spa HOA.

30. Plaintiff Steven Dame owns Units 328 and 330 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common

areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

31. Plaintiff Mark Dos Santos owns Unit #101 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

32. Plaintiff Errol Dos Santos owns Unit 322 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

33. Jeffrey Richardson owns Units 210, 308, and 245 at Ocean Front Spa and is, pursuant to the Master Deed and/or ByLaws, a member of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

34. Plaintiff Jeffrey Richardson owns Units 2211, 1406, 315, 203, 302, 311, 501, 604 and 314 at Renaissance Tower, and is, pursuant to the Master Deed and/or ByLaws, a member of the Renaissance Tower Horizontal Property Regime, which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

35. That Plaintiff, Jeffrey Richardson is currently serving as President of Renaissance Tower Horizontal Property Regime.

36. That jurisdiction and venue is proper in County of Horry, State of South Carolina.

ADDITIONAL FACTS AND ALLEGATIONS

37. By virtue of their ownership of a condominium unit, and pursuant to the South Carolina Non-profit Corporation Act the common law of South Carolina, and the OFS master deed and by-laws OFS and its board of directors owes to the individual plaintiffs a fiduciary duty, which must be heeded in conducting affairs on behalf of the individual homeowners.

38. That South Carolina courts recognize that a fiduciary relationship exists between homeowner associations and the individual homeowners. As a result, the homeowner association boards are yoked with the responsibility to conduct business using sound business judgment that is loyal to the homeowner.

39. That South Carolina courts impose a duty of loyalty which extends to the association board and to individual board members. Further, courts recognize that associations should investigate the propriety of pursuing lawsuits on behalf of homeowners to protect

the home owner from diminution in the value of their home and such other threats to the community as a whole. *Murphy v. Yacht Cove Homeowners' Association*, 345, S.E.2d 709 (1986).

40. That upon information and belief, the duty of loyalty creates a broad obligation that empowers the homeowner and requires thoughtful conduct from those entrusted with the power of governance.

41. That the Plaintiffs, by virtue of their memberships in the MBRHOA, are members of a non-profit corporation.

42. Upon information and belief, there are over 950 units that comprise Myrtle Beach Resort.

43. Upon information and belief, the homeowners possess these units for various purposes including: 1) full-time residence; 2) part-time residence; or 3) rental / investment. That as a result of these various purposes of ownership, the owners are particularly susceptible to unfair dealings.

44. Allegiant Food and Beverage, LLC is the largest commercial vendor conducting business at the resort.

45. That Allegiant Food and Beverage, Inc. provides commercial services to many of the common areas of the Myrtle Beach Resort.

46. That Myrtle Beach Resort Vacation is the largest rental sales vendor associated with MBRHOA.

47. That upon information and belief, Allegiant Food and Beverage and Myrtle Beach Resort Vacation are affiliated companies.

48. That, upon information and belief, MBRV and the Master Board entered into a lease agreement whereby in exchange for the opportunity to have a physical presence about the

property and to conduct business there upon, MBRV is required to pay 2% of rental commission or a base rate to the Master Board/Association.

49. Upon information, Phil Cox, Stanley Jordan, Ralph Jump, Walter Jordan and Ken Perkins either currently have or have had during terms of service a contractual relationship with Myrtle Beach Resort Vacations, wherein MBRV would rent unit(s) owed by the Board Members.

50. Upon information, Phil Cox still derives some financial benefit from his past affiliation with Myrtle Beach Resort Vacations. His connection with the MBRV and or Allegiant Food and Beverage, LLC remains undisclosed to the homeowners.

51. Upon information, Cox's interest in MBRV and Allegiant Food and Beverage, LLC, has compromised his fiduciary relationship with homeowners and impeded his ability to exercise sound business judgment in affairs concerning MBRV and Allegiant.

52. Upon information and belief, Phil Cox's relationship with these entities and whether he should abstain from voting on matters related to them has been discussed with HOA counsel. Upon information, counsel for the Myrtle Beach Resort HOA master board opined, in writing, that Cox should refrain from voting on Allegiant Food and Beverage, LLC/MBRV related matters.

53. Upon information and belief, Cox stated at a subsequent meeting that he would not refrain from voting on Allegiant Food and Beverage, LLC/MBRV related matters.

54. Upon information and belief, the following OFS and Master Board directors have or had during their term of service a contractual relationship with MBRV:

    a. Master Board: Phil Cox, and Stanley Jordan;

    b. OFS Board: Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill.

55. Upon information and belief, Phil Cox, Wayne Urban, Stanley Jordan, Ken Perkins, Ralph Jump, and Bill Cameron during each one's respective term of service upon the Master Board failed to use ordinary business judgment in making decisions regarding: entering into contracts with KA Diehl; seeking competitive bids for insurance; seeking competitive bids for property management and security services; maintaining correct and complete books, records, and accounting; making books, records, and accounting available to homeowners; disclosing conflicts of interest (except Bill Cameron and Wayne Urban – no conflict).

56. Upon information and belief, Walter Jordan, Ray Coghill, Stanley Jordan, and Bill Cameron during each one's respective term of service upon the OFS Board failed to use ordinary business judgment in making decisions regarding: entering into contracts with KA Diehl; seeking competitive bids for insurance; seeking competitive bids for property management and security services; maintaining correct and complete books, records, and accounting; making books, records, and accounting available to homeowners; disclosing conflicts of interest; and failing to disclose compromised unit privacy to homeowners.

57. Upon information, certain board members have accepted priority treatment regarding rental of their units by MBRV. Specifically, upon information and belief, certain board members' units have received premium listing on the vendor's website without payment for the same.

58. Upon information, during recent board elections, MBRV campaigned for certain board members with a history of voting in a MBRV favorable manner. That, upon information and belief, "robo" calls were made to numerous homeowners seeking their support for such candidates.

59. That K.A. Diehl, according to its own mistaken admission, believed that all of the other non-MBRV supported candidates would vote for a change in property management.

60. That K.A. Diehl, despite this now known vested interest, managed the election – received proxy votes and permitted proxy votes to be submitted in a manner that violated the ByLaws of OFS.

61. Upon information, K.A. Diehl and the MBRHOA failed to invoice Allegiant Food and Beverage for its use of utilities.

62. Upon information, KA Diehl provided kickbacks to certain board members to include not invoicing said board members for storage fees. That this practice ceases upon Plaintiff Jim Perkins and Nancy Moore's insistence.

63. Upon information and belief, MBRV/Allegient has been permitted to receive gate passes from KA Diehl without having to pay for said passes.

64. Upon information and belief, after discovery of this near $60,000.00 "mistake," directors Phil Cox and Wayne Urban originally voted to forgive the debt and not invoice Allegiant.

65. Plaintiff Mark Dos Santos, acting alone, repeatedly sought information contained in contracts between the MBRHOA and vendors. His requests were refused. That, upon information and belief, rather than provide contracts, the board of directors provided Mr. Santos with an outline indicating the importance of protecting the vendor rights.

66. Upon information, for a period of several years, K.A. Diehl and the Master Board failed to seek competitive bids for insurance brokers.

67. Upon information, MBRHOA's failure to procure competitive bids obligated homeowners to pay higher premiums and brokerage rates.

68. Upon information, the Master Board and OFS entered into an agreement with KA Diehl that permitted KA Diehl to utilize ADP Barlow as the insurance broker responsible for obtaining competitive bids, despite each board having knowledge that K.A. Diehl's CEO, Robert Barlow is married to Robin Barlow, the owner of ADP Barlow.

69. That upon information and belief, KA Diehl never utilized any other brokers and subjected the homeowners to higher brokerage fees and more costly insurance.

70. That upon information, the amount of economic harm of such failure is apparent through Renaissance Tower's procurement of insurance. That upon information and belief, Renaissance Tower's board of directors broke off the relationship with ADP Barlow, bid brokers competitively, and received comparable insurance paying approximately $35,000.00 less for insurance and brokerage services. That upon information and belief, Lloyds of London provides insurance for the Master Board, OFS and Renaissance Tower.

71. That upon information and belief, KA Diehl, OFS, and the Master Board had knowledge of the Renaissance Tower savings, but chose to employ ADP Barlow instead.

72. That upon information and belief, the Master Board and OFS board entered into new agreements in 2014 which modify the insurance language and clearly require multiple broker bids.

73. That upon information and belief, KA Diehl, despite this, would have failed to obtain legitimate multiple bids for the OFS regime if not for the conduct of board members Jim Perkins and Nancy Moore who contacted CWS Insurance themselves to provide bids.

74. That upon information and belief, KA Diehl has not provided the Five Seasons Regime or Myrtle Beach Resort Horizontal Property Regime with additional bids or shared with the respective boards the potential savings.

75. Upon information and belief, the Master Board permitted K.A. Diehl to participate in the Request For Proposal (RFP) process, and was ultimately selected to manage the Master Board despite its more costly bid than other reputable property management companies.

76. That Plaintiff Nancy Moore, serving as Treasurer of the Ocean Front Spa, learned information that led her to believe that certain sales commissions were either not properly accounted for or paid.

77. That, upon information and belief, K.A. Diehl was responsible to insure that the sales commissions were properly accounted for and paid.

78. That upon information and belief, MBRV is required to pay to MBRHOA 2% rental commissions or a base rate in the event 2% of the rental commissions does not exceed a certain amount.

79. That upon information and belief, MBRHOA has the right to request rental commission income from MBRV, but that it has failed obtain the same.

80. That upon information and belief, K.A. Diehl has not requested the rental commission income from MBRV on behalf of MBRHOA.

81. That upon information and belief, that while the financial statements prepared by KA Diehl reflect 2% rental income paid monthly by MBRV, MBRV does not actually pay 2% rental income, but instead pays the base rate.

82. That upon information and belief, 2% of MBRV's rental commissions would exceed the base rate. That regardless of whether it actually exceeds the base rate, K.A. Diehl and MBRHOA were negligent in not pursuing information regarding the same.

83. That in 2013 it became apparent to directors of OFS that all OFS unit owners privacy had been compromised. Upon information and belief, a master key had been provided to outside contractors to include security staff and custodial staff.

84. That upon information and belief, the OFS board concealed this information from the OFS homeowners.

85. That the individual plaintiffs, having learned reliable pieces of information, acted proper in seeking to discover more information and ascertain the truth.

86. On May 28, 2015, numerous homeowners enumerated concerns regarding actions by the HOA and certain board of directors for the purposes of seeking to discover the truth about the following: (1) undisclosed conflicts of interest between board members and vendors; (2) failure to bill Allegiant Food and Beverage, LLC utilities for a period of three years; (3) failing to procure realistic bids for contracts; (4) MBRV giving preferential treatment to board members based on voting record; (5) negligent hiring of managers by K.A. Diehl; (6) charging homeowners overtime for Services staff in contravention of contract provisions; (7) failing to properly monitor or account funds paid to Watchmen Services; (8) interested parties involved in the election process; (9) failing to properly report proxy votes prior to election; (10) failing to provide homeowners their due portion of commission from real estate sales; (11) failing to notify homeowners of compromised unit privacy; and (12) failing to abide by the master deed and by-laws as relates to providing board members with information and other such protocol.

87. In the same letter, plaintiffs reiterated that their past attempts to bring to light these various issues were not only fruitless but met with threats of suit.

88. That rather than engage the homeowners, the boards turned over the letter to KA Diehl which became the basis for suit against the individual homeowners.

89. On July 23, 2015, K.A. Diehl filed suit against individuals homeowners alleging defamation, amongst other claims, containing information from said letter.

90. That upon information and belief, such suit was an attempt to prevent the homeowners from disseminating the truth about K.A. Diehl's handling of the insurance contracts and failure to invoice Allegiant for utilities. That upon insurance and belief it was a SLAPP suit.

91. That upon information and belief, K.A. Diehl initially, in 2007, managed Renaissance Tower, Ocean Front Spa, Five Seasons, and Myrtle Beach Resort HPR, and the Myrtle Beach Resort HOA which encompassed all regimes and the Master Board.

92. That upon information and belief the management agreement between K.A. Diehl and MBRHOA was modified in December of 2012.

93. Upon information and belief, the December 2012 agreement included modifications one of which was a two year term with an auto-renewal.

94. That, upon information and belief, the management agreement was modified in 2014.

95. That, upon information and belief, pursuant to the 2014 management agreement, K.A. Diehl is required to: manage accounts; manage contracts with vendors; procure competitive bids using multiple brokers for insurance; procure competitive bids for security and manage common areas; receive, review and approve invoices; and advise the board on administrative tasks such as elections.

96. That the individual homeowners pay assessments that fund the MBRHOA for the purpose of providing services for the common elements. That the MBRHOA is tasked with

procuring insurance, maintaining common areas, providing cable, etc. as is more fully set forth in the Master Deed.

97. That the homeowners, including the defendants that have been subjected to plaintiff's SLAPP suit, pay assessments through their regimes to the MBRHOA which provides funds to acquire the services of K.A. Diehl.

98. That the agreements between the MBRHOA and K.A. Diehl are for the benefit of the homeowners.

99. That, upon information and belief, K.A. Diehl continues to manage MBRHOA, subject to the 2014 management contract.

100. That, upon information and belief, pursuant to said agreement, K.A. Diehl is required to: prepare an annual budget; administer insurance and other contracts; manage accounts, and such other tasks as enumerated in the agreement.

101. That, upon information and belief, each regime pays a monthly assessment to fund the MBRHOA for the purpose of providing services for the common elements. That MBRHOA is tasked with procuring insurance, maintaining common areas, providing security, etc. as is more fully set forth in the Association Master Deed and Bylaws.

102. That, upon information and belief, the property management agreement between the MBRHOA and K.A. Diehl is for the benefit of the homeowners.

CONFLICT ALLEGATIONS

103. That in April of 2014 defendant Jim Perkins was elected to serve on the MBRHOA.

104. That Jim Perkins and Nancy Moore serve as Directors on the OFS Board.

105. That during Perkins term of service on the MBRHOA, he learned of information which led him to believe that there was a business relationship between board member Phil Cox and the largest vendor – Allegiant Food and Beverage, LLC (hereinafter "Allegiant" or "Allegiant Food and Beverage") / Myrtle Beach Resort Vacations (hereinafter "MBRV").

106. That upon information and belief, certain MBRHOA members maintain business relationships with MBRV.

107. That upon information and belief, several MBRHOA board members revised the Allegiant Food and Beverage vendor agreement in October of 2013, signing said agreement before a vote by the MBRHOA board of directors.

108. That upon information and belief, the agreement granted to Allegiant Food and Beverage to maintain the commercial lease for a period of six years before the board would even consider other vendor bids. Further, that during the final year of the agreement, when bids are permitted, Allegiant Food and Beverage gets a right of first refusal.

109. That upon information and belief, board directors have increasingly permitted Allegiant Food and Beverage / MBRV to appropriate MBR amenities for non-homeowners and non-Occupants.

110. That the conflict of interest subject matter was eventually raised at a board meeting and discussed with counsel, Sam Stathos, who identified a conflict and opined that directors with such conflict, including Phil Cox should refrain from voting on Allegiant and MBRV matters (Attachment "A" Attorney Stathos Letter).

111. That despite Attorney Stathos' opinion letter, Phil Cox refused to abstain from voting on MBRV related matters.

112. Upon information and belief, the following MBRHOA directors have or had during their term of service a contractual relationship with MBRV:

a. Master Board: Phil Cox, Ken Perkins, and Stanley Jordan.

113. That upon information and belief, MBRV has been provided gate passes without being invoiced for the same. That the gate pass fees generate over $280,000.00 per year.

INVOICE ALLEGATIONS

114. That in May of 2014, Jim Perkins, in his capacity as a director sought out the agreements between Allegiant Food and Beverage and the MBRHOA, and so obtained a copy of the same. (Attachment "B" Allegiant Food and Beverage Agreement).

115. That the agreement clearly required vendor Allegiant Food and Beverage to pay for utilities.

116. That defendant Jim Perkins discovered that K.A. Diehl had failed to invoice Allegiant Food and Beverage utilities.

117. That the failure to invoice Allegiant Food and Beverage utilities was an egregious error that would have cost the homeowners approximately $60,000.00, if Jim Perkins had not discovered the same and required action for repayment of the full amount.

118. That upon information and belief, Allegiant Food and Beverage, through owner Bobby Jones, began reimbursing the utilities immediately after Perkins's discovery, but had only paid approximately $30,000.00 of the approximately $60,000.00 owed to MBRHOA. (See Attachment "C").

119. That the MBRHOA board directors discussed KA Diehl and the Master Boards' failure to invoice Allegiant and during the meeting directors Phil Cox and Wayne Urban initially voted to forgive the debt rather than seek to recoup the lost funds.

120. That ultimately the MBRHOA voted to pursue the funds, such that an agreement with Allegiant was reached. That Allegiant is scheduled to repay the remaining funds over a period of years, and that such reimbursement is presumably ongoing.

121. That neither KA Diehl or MBRHOA disclosed this failure to invoice to the homeowners at large until the individual defendants shared their concerns.

122. That upon information and belief, K.A. Diehl attempted to address the matter by blaming the mistake on unclear language from the previous commercial lease agreement.

123. That, upon information and belief, the November 2009 Commercial Lease Agreement between MBRHOA and Allegiant Food and Beverage is clear. That, upon information and belief, it contains a section "3. Utilities" that states "Tenant [Allegiant] shall arrange and pay for the use of utilities...including, but not limited to, water, electricity, gas, sewer and telephone." (Attachment "D" November 2009 Commercial Lease Agreement).

124. Further, upon information and belief, MBRV has been permitted to take gate passes without being invoiced for the same.

125. That upon information and belief, despite admitting this error, K.A. Diehl sued the individual defendants who brought this truth to light.

DISCLOSURE ALLEGATIONS

126. That several homeowners began asking questions about KA Diehl's management of the property and about MBRHOA's failure to investigate concerning information.

127. That defendant, Mark Dos Santos, was among those who began to seek information from both the MBRHOA and from K.A. Diehl. That defendant, Mark Dos Santos, specifically requested the contracts between the MBRHOA and its numerous vendors.

128. That defendant, Mark Dos Santos, sent numerous emails to the plaintiff inquiring about important matters.

129. That upon information and belief, the defendant, Mark Dos Santos, and others, received negative responses to include: threats of suit, and vendors' rights pamphlets.

130. That upon information and belief, defendant William Moore requested in writing a financial audit.

131. That the individual Defendants, through counsel, requested a financial audit of the records of the corporation.

132. That Defendants, through counsel, sent letters to the MBRHOA seeking investigation and action.

133. That upon information and belief, directors from the MBRHOA provided these letters to KA Diehl rather than providing the financial audit.

134. That shortly thereafter, KA Diehl brought suit against the individual homeowner defendants.

INSURANCE ALLEGATIONS

135. That upon information and belief, since 2008 K.A. Diehl has been obligated to procure insurance for the MBRHOA and all four regimes.

136. That upon information and belief, K.A. Diehl failed to procure competitive insurance broker bids relying instead solely upon ADP Barlow Insurance Co.

137. That upon information and belief, former CEO of K.A. Diehl, Rob Barlow, was at the time married to the owner of ADP Barlow Insurance, Robin Barlow.

138. That upon and belief, the failure to procure competitive bids cost the collective homeowners substantial money, and thus, the individual defendants ascertainable sums of money annually.

139. That upon information and belief the relationship between K.A. Diehl and ADP Barlow Insurance was eventually disclosed to the Master Board, but not to the homeowners at large.

140. Upon information and belief, when the property management contracts were reconfigured in December of 2012, K.A. Diehl's disclosure of the relationship did not obviate its contractual and ethical obligation to procure competitive bids and comparable brokerage fees.

141. That upon information and belief, K.A. Diehl's failure to utilize multiple brokers to procure competitive bids subjected homeowners to higher premiums and broker fees and charges.

COMMISSIONS / RENTALS ALLEGATIONS

142. That defendant Nancy Moore, serving as Treasurer of the Ocean Front Spa, learned information that led her to believe that certain sales commissions were not being properly accounted for or paid.

143. That K.A. Diehl was responsible to insure that the sales commissions were properly accounted for and paid.

144. That upon information and belief, MBRV is required to pay to MBRHOA 2% rental commissions or a base rate in the event 2% of the rental commissions does not exceed the base rate.

145. That upon information and belief, MBRHOA has the right to request rental commission income from MBRV, but that it has failed obtain the same.

146. That upon information and belief, K.A. Diehl has not requested the rental commission income from MBRV on behalf of MBRHOA.

147. That upon information and belief, the financial statements prepared by KA Diehl reflect 2% rental income paid monthly by MBRV.

148. That upon information and belief, MBRV does not actually pay 2% rental income, but instead pays the base rate.

149. That upon information and belief, 2% of MBRV's rental commissions would exceed the base rate. That regardless of whether the rental commissions actually exceed the same, K.A. Diehl and MBRHOA were negligent in not pursuing information regarding the same.

SECURITY SERVICES

150. That upon information and belief, K.A. Diehl provides security services through Watchmen Services.

151. That upon information and belief, in December of 2009, K.A. Diehl retained itself to provide certain security services at the resort.

152. That upon information and belief, the signatures of the security services agreement contain only K.A. Diehl employees and agents. (Attachment "E" Security Services Agreement 2009)

153. That upon information and belief, pursuant to the agreement, K.A. Diehl is required to provide qualified employees to secure the resort and operate the front gate, which includes collecting parking fees.

154. That upon information and belief, there is an inherent conflict of interest with K.A. Diehl's management of the property and provision of security services.

155. That upon information and belief, the compensation schedule permits K.A. Diehl's Chief of Security to effectually determine whether MBRHOA or K.A. Diehl is responsible for Watchmen Security employee overtime.

156. That upon information and belief, in 2013 security services cost over $400,000.00.

157. That upon information and belief, in 2013 the MBRHOA paid for over 700 hours of employee overtime. (Attachment "F" Watchmen Services Payment Information 2013).

158. That upon information and belief, KA Diehl maintains an unreliable system for logging employee hours.

159. That upon information and belief, KA Diehl maintains an unreliable system for collection of parking fees.

160. That upon information and belief K.A. Diehl has hired employees that are not qualified.

161. That upon information and belief, the Master Board has permitted K.A. Diehl to maintain involvement in the security service bidding process or permitted K.A. Diehl to view competitors' bids.

162. That upon information and belief, K.A. Diehl has usurped this opportunity to insure that Watchmen Services obtains the contract.

NEGLIGENT HIRING ALLEGATIONS

163. That K.A. Diehl hired Rusty Magill to serve as manager for OFS HOA.

164. That upon information and belief, North Carolina Bankruptcy Court thoroughly examined Rusty Magill's management of a beach condominium rental business. In so doing, the Court found, among other unfortunate findings, that Magill had "grossly mismanaged" the business. (Attachment "G", US Bankruptcy Court Order, Eastern District of North Carolina).

165. That several of the individual defendants, having learned of this information, questioned K.A. Diehl about whether the Rusty Magill whom KA Diehl had hired was in fact the same Rusty Magill whom had been discussed in bankruptcy Order.

166. That several of the individual defendants learned from Rusty Magill that K.A. Diehl had advertised and procured Rusty Magill through a Craigs List posting.

167. That several of the individual defendants questioned KA Diehl's hiring process.

168. That upon information and belief, KA Diehl initially ignored the inquiries, and has never adequately addressed the decision to hire Rusty Magill.

169. That upon information and belief, KA Diehl has failed to hire qualified security personnel.

170. That upon information and belief, K.A. Diehl employed Joseph M. Depace whom had previously pled guilty to receiving stolen property, a 3rd degree crime. (Attachment "H").

171. That upon information and belief, Joseph M. Depace was recently arrested for impersonating law enforcement. (Attachment "I").

172. That several defendants, in good faith, have sought information and explanations from K.A. Diehl and the MBRHOA about the above matters.

173. That the defendants continued to ask questions, hired counsel, created a private Facebook page, and blog to begin a dialogue with other homeowners who were concerned about the allegations above and other such allegations.

174. That upon information and belief, K.A. Diehl, in an effort to quiet the defendants, and to prevent dissemination and further discovery of the truth sued the defendants for defamation, civil conspiracy, tortious interference with contractual relationships and interference with prospective contractual relationships.

DERIVATIVE SHAREHOLDER/CLASS ALLEGATIONS

175. That Plaintiffs incorporate each and every allegation set forth in the preceding paragraphs above as if specifically reiterated herein.

176. Upon information and belief, one or more homeowners have brought concerns to the MBRHOA and various board members regarding the MBRHOA and board of directors' failure to use ordinary business judgment in conducting affairs.

177. Upon information and belief, one or more homeowners have brought concerns to the MBRHOA and various board members regarding the MBRHOA and board of directors' failure to abide by the MBRHOA Master Deed and ByLaws.

178. Upon information and belief, one or more homeowners have brought concerns of the nature described in this pleading to the attention of the MBRHOA and the individual

board of directors, their managers, and their agents, and through them, have demanded that action be taken against the at-fault parties and/or that the improprieties be corrected.

179. On May 28, 2015, numerous homeowners enumerated concerns regarding actions by the HOA and certain board of directors for the purposes of seeking to discover the truth about the following: (1) undisclosed conflicts of interest between board members and vendors; (2) failure to bill Allegiant Food and Beverage, LLC utilities for a period of three years; (3) failing to procure realistic bids for contracts; (4) MBRV giving preferential treatment to board members based on voting record; (5) negligent hiring of managers by K.A. Diehl; (6) charging homeowners overtime for Services staff in contravention of contract provisions; (7) failing to properly monitor or account funds paid to Watchmen Services; (8) interested parties involved in the election process; (9) failing to properly report proxy votes prior to election; (10) failing to provide homeowners their due portion of commission from real estate sales; (11) failing to notify homeowners of compromised unit privacy; and (12) failing to abide by the master deed and by-laws as relates to providing board members with information and other such protocol. Exhibit A.

180. That on August 21, 2015, the concerned homeowners sent a letter to OFS and to MBRHOA seeking redress of substantially the same matters. Exhibit B.

181. That the homeowners have made numerous requests for information, for relief from poor management, ineffective and cumbersome practices of defendants, by way of email.

182. The inquires and demands of the homeowners have been ignored or rejected in that the MBRHOA and board of directors have failed to take action other than to deny matters and threaten to retaliate with legal action.

183. Further or additional demand upon the Board and the Association to bring an action or to seek alternative remedy would be futile and would serve no useful purpose.

184. That the Master Board and its directors firm in their position have denied to the treasurer of OFS/plaintiff, Nancy Moore access to information under claiming attorney-client privilege.

185. Accordingly, Plaintiffs bring this derivative shareholder action pursuant to Rule 23(b)(1) SCRCP on behalf of themselves and all those similarly situated, being any and all persons and or entities owning a unit within the MBRHOA and thereby owning an undivided interest in the common elements, and business activity of the MBRHOA (hereinafter the "Class" "Shareholders" or "Members").

186. The South Carolina Non-Profit Corporation Act, Section 33-31-630, provides for authority for shareholders to bring derivative suits against the Association.

187. As representatives of the Class defined herein, the Plaintiffs seek to recover injunctive relief and monetary relief from the MBRHOA and the present and past board of directors, named and John Does, for breach of fiduciary duty relating to business conduct.

188. As representatives of the Class defined herein, the Plaintiffs seek to recover injunctive relief and monetary relief from K.A. Diehl for breach of contract, breach of contract accompanied by a fraudulent act, negligence/gross negligence.

189. The Class does not include any former owner of a unit in the Regime.

190. The Class is sufficiently numerous that joinder of all members is impractical.

191. Plaintiffs will fairly and adequately protect the interests of the Class as Class Representatives. The interests of the Class Representatives are coincident with and not

antagonist to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

192. There are questions of law and fact common to the Class. Common questions of law include the liability of MBRHOA, the named directors for the MBRHOA Board for, among other things as more particularly described below, breach of fiduciary duty, and whether these wrongful acts or omissions of the MBRHOA and the named directors caused or will cause the Class to suffer damages. Other common questions of law include liability of defendants including that of K.A. Diehl for its various acts and omissions including negligence, and breach of contract.

193. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant hereto, were charged with duties as members of the board of directors. Each Class member has been or will be similarly injured by the Defendants' wrongful and/or negligent acts or omissions in breach of fiduciary duties, such that the interest of the Plaintiffs as Class representatives, are consistent with those of the members of the Class.

194. Plaintiffs envision no unusual difficulty in the management of this litigation as a class action. Certification of this action as a class action under Rule 23(b)(1) of the South Carolina Rules of Civil Procedure is appropriate.

195. Plaintiffs and all shareholders have been and will continue to be harmed by such conduct of the MBRHOA, the named directors, the John Doe directors and KA Diehl.

A.

FOR A FIRST CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY AGAINST THE MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC., AND BOARD DIRECTORS PHIL COX, WAYNE URBAN, STANLEY JORDAN, BILL CAMERON, KEN PERKINS, WALTER JORDAN,

AND JOHN DOE BOARD DIRECTORS OF MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.)

196. Plaintiffs incorporate each and every allegation set forth in the preceding paragraphs as if specifically reiterated herein.

197. That for the purpose of section "A" of this action, the term "Defendants" is meant to refer to The Myrtle Beach Resort Homeowners Association, Inc., the named directors of MBRHOA and the John Doe past directors of MBRHOA. Further, that all actions or omissions referred to intend to reference conduct by individuals serving in their capacity as directors and thereby conducting business as MBRHOA.

198. The Defendants owe to the Plaintiffs and all other unit owners, a fiduciary duty to place the interests of the unit owners and the four regimes above the interests of the individual board member.

199. The Defendants owe a duty of loyalty requiring directors to prohibit from self-dealing.

200. The Defendants owe a duty of loyalty requiring directors to furnish to the plaintiffs and all other unit owners information including contractual agreements with vendors.

201. Article VI of ByLaws requires books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member.

202. The Defendants owe a duty of loyalty requiring directors to abstain from voting on matters where a conflict of interest between his or her benefit conflicts with that of plaintiffs.

203. That Defendants' have acted in a manner in consistent with S.C. Code Ann. Section 33-31-831.

204. The Defendants have the fiduciary duty to investigate and initiate suits on behalf of the homeowners when appropriate.

205. Defendants failed to disclose conflicts.

206. Defendants failed to refrain from voting when conflicts of interest arose.

207. Defendants initiated a policy to charge the homeowners a gate pass fee in contravention of the master deed and bylaws. Upon information and belief, Defendants were John Doe Defendants, whose identity is currently unknown to Plaintiffs.

208. That Defendants failed to provide homeowners with records, books, and accounts when requested and further failed to make the same available.

209. That the Defendants contracted with K.A. Diehl in manners detrimental to the homeowners and even permitted K.A. Diehl to enter into contracts for the master board where K.A. Diehl was the service provider. (See attached Exhibit "F", agreement by only K.A. Diehl Representatives).

210. That the Defendants breached their duty of loyalty to the homeowners when it entered into an agreement with KA Diehl in December of 2012 wherein it agreed to permit KA Diehl to utilize exclusively ADP Barlow as its insurance broker.

211. Defendant Master Board failed to initiate investigation of the propriety of bringing suit against K.A. Diehl for: material breach of contract; failing to procure competitive insurance bids; failing to procure competitive security bids; failing to properly account for the improperly collected gate pass funds; negligent hiring; failure to invoice Allegiant Food and Beverage; mismanagement of security services; mismanagement of rental and sales commission; failure obtain a reliable audit of expenditures, and failure to advise against the improper gate pass scheme.

212. That the Defendant MBRHOA through its directors' breached its/their fiduciary duty proximately causing economic harm to the all MBRHOA shareholders thereby entitling them to an award of actual damages.

213. That the Master Board MBRHOA and its directors' breach of fiduciary duty is in some instances of a gross and wanton nature entitling the class to an award of actual and punitive damages.

214. That class has suffered substantial economic harm to include the following: depravation of payment of utilities for so many years as discovery may reveal and interest from the same; higher premium rates for insurance; higher property management rates; higher security services rates; loss of gate pass revenue; loss of rental commission and loss of sales commission.

215. That the Defendants' actions and omissions, more fully described above, are such that they violate the standards set forth in S.C. Code Ann. Section 33-31-830, and thereby may be characterized as reckless.

216. That the shareholders/class are entitled to actual damages, punitive damages and injunctive relief to include an "Accounting."

B.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE AGAINST K.A. DIEHL)

217. The Class hereby incorporates each and every allegation of this pleading as if set forth herein verbatim.

218. That shareholders bringing said action on behalf of all members of the resort (class/shareholders/homeowners/members) assert this claim of negligence because its Master Board and directors thereof have failed to bring the same.

219. That pursuant to Rule 23(b) of the South Carolina Rules of Civil Procedure, a shareholder maintains the right to enforce or bring such action which the corporation has failed to bring.

220. That the Defendant, K.A. Diehl, has a duty and obligation to perform its managerial responsibilities in a reasonable manner.

221. That K.A. Diehl's management of the resort is for the benefit of the homeowners and not for the benefit of any individual board members, and certainly not a passe-partout for self-dealing.

222. That K.A. Diehl's management of the resort is also for the benefit of the Master Board, who relies upon K.A. Diehl to manage property affairs and to advise said directors in fulfillment of their duties and obligations.

223. That K.A. Diehl breached said duty of care owed to the class and to the Master Board in one or more of the following particulars:

a. failure to invoice Allegiant Food and Beverage for utilities;

b. failure to invoice MBRV for the improper gate pass fee;

c. failure to procure multiple brokers for selection of insurance contracts;

d. failure to refrain from participation in RFP process regarding hiring of property management company;

e. failure to refrain from participation in the Master Board's procurement of security services despite its own interest;

f. failure to procure legitimate bids for outside services;

g. failure to advise as to the impropriety of initiating a gate pass fees;

h. failure to advise the master board to return the improper gate pass fee back to the homeowners;

i. failure to abide by the master association's master deed and bylaws;

j. failure to disclose conflicts of interest between board members and vendors or to advise that board members abstain from voting or disclose the same;

k. failure to properly account and collect commissions from MBRV sales and rentals;

l. failure to notify homeowners of compromised unit privacy;

m. failure to properly account for hours worked by Watchmen Services staff;

n. failure to properly account or have a reliable method for accounting the collection of the improper parking fees;

o. failure to use the ordinary degree of care in hiring staff.

224. That K.A. Diehl's negligent acts and omissions were the proximate cause of damages suffered by the shareholders/class.

225. That K.A. Diehl's acts and omissions were grossly negligent and wanton such that the shareholders/class are entitled to recover actual damages and punitive damages.

FOR A THIRD CAUSE OF ACTION
(BREACH OF CONTRACT AGAINST K.A. DIEHL)

226. The shareholders/class hereby incorporate each and every allegation of this pleading as if set forth herein verbatim.

227. That MBRHOA and K.A. Diehl have a business relationship dating back to 2007.

228. That MBRHOA and K.A. Diehl have always maintained an agreement which memorialized each parties duties and obligations.

229. That upon information and belief, pursuant to these agreements, K.A. Diehl has always been required to procure contracts of insurance for the Master Board.

230. That upon information and belief, KA Diehl always intended to use exclusively, Robin Barlow of ADP Barlow for procuring insurance and by doing so, materially breached the agreement when it failed to procure competitive rates and over-charged for brokerage services.

231. That upon information and belief, pursuant to these agreements, K.A. Diehl has maintained the obligation to prepare a budget for the Master Board.

232. That upon information and belief, pursuant to these agreements, K.A. Diehl has maintained the obligation to manage accounts to include tasks such as invoicing vendors.

233. That upon information and belief, pursuant to these agreements, K.A. Diehl has maintained the obligation to administer such rights and obligations as the Master Board may have with various contractual agreements with vendors.

234. That upon information and belief, K.A. Diehl has breached said agreements in one of more of the following particulars: not invoicing Allegiant Food and Beverage for its share of certain utilities, not procuring competitive insurance contracts, subjecting the homeowners to higher payment for brokerage services; not properly accounting rental and sales commissions, and not procuring competitive contracts for management or security services.

235. That K.A. Diehl breached its security services agreement by: failing to hire qualified personnel, maintain proper equipment, properly account for the improper gate pass fees, and account for security services staff hours.

236. That the shareholders/class, as a result of such material breach of contract, suffered actual damages of an economic nature to include special or consequential damages.

237. That the shareholders are entitled to recover said damages resulting from KA Diehl's breach of contract on behalf of the MBRHOA.

FOR A FOURTH CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT AGAINST K.A. DIEHL)

238. The class/shareholders incorporate each and every allegation of this pleading as if set forth herein verbatim.

239. That upon information and belief, MBRHOA and K.A. Diehl have a business relationship dating back to 2007.

240. That, upon information and belief, MBRHOA and K.A. Diehl have always maintained an agreement which memorialized each parties duties and obligations.

241. That upon information and belief, pursuant to these agreements, K.A. Diehl has maintained the obligation to prepare a budget for the Master Board.

242. That upon information and belief, pursuant to these agreements, K.A. Diehl has always been required to procure contracts of insurance for the Master Board.

243. That upon information and belief, KA Diehl always intended to use exclusively, Robin Barlow of ADP Barlow for procuring insurance and by doing so, materially breached the agreement when it failed to procure competitive rates and over-charged for brokerage services.

244. That upon information and belief, pursuant to these agreements, K.A. Diehl has maintained the obligation to manage accounts to include tasks such as invoicing vendors.

245. That upon information and belief, pursuant to these agreements, K.A. Diehl has maintained the obligation to administer such rights and obligations as the Master Board may have with various contractual agreements with vendors.

246. That upon information and belief, K.A. Diehl has breached said agreements in one of more of the following particulars: failing to utilize multiple brokers to procure insurance contracts, failing to procure competitive contracts for insurance, management and security services; and failing to invoice Allegiant Food and Beverage and MBRV.

247. That upon information and belief, KA Diehl's material breach of contract was by design, with dishonesty, and with the intent to deal unfairly.

248. That upon information and belief, KA Diehl's conduct in failing to require MBRV to pay for the improper gate pass fees was an intentional and dishonest act.

249. That upon information and belief, KA Diehl's involvement in the RFP/bid processes for security services and property management was unfair and dishonest conduct.

250. That upon information and belief, KA Diehl's breach of contract was accompanied by its repeated self-dealing whereby it procured insurance by use of ADP Barlow (exclusively).

251. That upon information and belief, KA Diehl never intended to utilize any broker other than ADP Barlow.

252. That in 2012, during one of the contract renewals with KA Diehl, KA Diehl disclosed its use of ADP Barlow and the marital relationship between the two companies, CEO, Robert Barlow and Owner, Robin Barlow. That KA Diehl promised to present to the Master Board competitive insurance rates.

253. That implicit in the agreement is that the brokerage rates would likewise be competitive.

254. That KA Diehl repeatedly subjected homeowners to higher premiums and brokerage rates as result of this self-dealing.

255. That upon information, the damages of such failure is most apparent through Renaissance Tower whose board of directors broke off the relationship, bid brokers competitively, and received comparable insurance paying approximately $35,000.00 less for insurance and brokerage services. That upon information and belief, Lloyds of London provides insurance for the Master Board, OFS and Renaissance Tower.

256. That upon information and belief, KA Diehl, had knowledge of the Renaissance Tower savings, but chose to employ ADP Barlow instead.

257. That upon information and belief, both boards entered into new management agreements in 2014 which modify the insurance language and clearly require multiple broker bids.

258. That upon information and belief, KA Diehl would have failed to obtain legitimate multiple bids in 2015 for the OFS regime if not for the conduct of board members Jim Perkins and Nancy Moore who independently contacted CWS Insurance to provide bids.

259. That upon information and belief, KA Diehl has not provided the Five Seasons or Myrtle Beach Resort Horizontal Property Regime with additional bids or shared with the respective boards the potential savings.

260. That the shareholders/class, as a result of the breach, suffered actual damages of an economic nature to include special or consequential damages.

261. That upon information and belief, the shareholders/class are entitled to an award of actual damages and punitive damages.

PRAYER FOR RELIEF

A.

(PLAINTIFFS DERIVATIVE SHAREHOLDER SUIT ON BEHALF OF THE MEMBERS OF THE MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC. AGAINST THE MYRTLE BEACH HOMEOWNERS ASSOCIATION, INC., AND BOARD DIRECTORS PHIL COX, WAYNE URBAN, STANLEY JORDAN, WALTER JORDAN, BILL CAMERON, KEN PERKINS, AND JOHN DOE PAST BOARD DIRECTORS OF THE MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.)

WHEREFORE, Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson hereby pray unto this honorable court for the following relief: (1) approval of the derivative shareholder action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure to include the recognition of Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson as representatives for the purpose of bringing said derivative action on behalf of MBRHOA; (2) for an award of damages against the Defendants above listed to include actual damages, punitive damages, attorney fees, costs; and (3) for injunctive relief to include an accounting; (4) for such other and further relief as the justice may require.

PRAYER FOR RELIEF

B.

(PLAINTIFFS DERIVATIVE SHAREHOLDER SUIT ON BEHALF OF THE MEMBERS OF MBRHOA AGAINST DEFENDANT K.A. DIEHL AND ASSOCIATES, INC.)

WHEREFORE, Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson hereby pray unto this honorable court for the following relief: (1) approval of the derivative shareholder action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure to include the recognition of Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson as representatives for the purpose of bringing said derivative action on behalf of MBRHOA; (2) for an award of damages against K.A. Diehl and Associates, Inc. to include actual damages, punitive damages, attorney fees, costs; and (3) for injunctive relief to include an accounting; (4) for such other and further relief as the justice may require.

RESPECTFULLY SUBMITTED BY:

THE BRITTAIN LAW FIRM, P.A.

A. Preston Brittain, Esq.
SC Bar #73707
Thomas C. Brittain, Esq
SC Bar # 00893
4614 Oleander Drive
Myrtle Beach, SC 29577
843-449-8562 (O)
843-449-6148 (F)

On behalf of Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson

February 29th, 2016
Myrtle Beach, SC

ATTACHEMENT "A"

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June 4, 2014

Darla Donovan, CMCA, AMS
Senior Community Manager
K.A. Diehl, AAMC
11822 Hwy 17 Bypass South
Murrells Inlet, SC 29576

Re: Myrtle Beach Resort Homeowners' Association, Inc. ("Master Association")

Dear Darla:

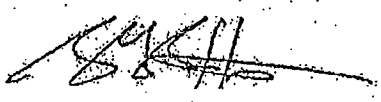
I am writing pursuant to your request that our firm address an issue on behalf of the Master Association regarding conflict of interest. Specifically, the issue is whether a conflict of interest exists for a director that sits on the board of the Master Association who is in a contractual relationship with a Master Association approved food and beverage and rental contractor, such as Allegiant Food & Beverage, LLC ("Food & Beverage") and Allegiant Property Management, LLC ("Property Management"), and must vote on issues that affect the subject contractors.

The governing document for the Master Association is the Declaration of Covenants, Conditions and Restrictions filed April 25, 1991 ("Declaration"). The Declaration does not provide express guidance as to conflict of interest issues, however, as a non-profit corporation the Master Association is subject to the applicable statute. Therefore, pursuant to the South Carolina Nonprofit Corporation Act, specifically S.C. Code § 33-31-831, a conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. If a director of the Master Association has a direct interest in either Food & Beverage or Property Management, then there is a conflict of interest. A direct interest may be deemed to be a contractual relationship with the companies before the Master Association that can result in the director receiving something of value. An indirect interest is one where a director has a material interest in the other entity or is a general partner in that entity, or a director, officer or trustee of the entity that is a party to the transaction.

In my opinion, if either Food and Beverage or Property Management matters are before the Master Association and a director has a contractual relationship with either company, then that director has a conflict of interest on such matters. In that event, the director's interest must be disclosed so that the remaining directors can address the matter at hand pursuant to the statute. In conclusion, a conflict of interest does not itself prevent the Master Association from addressing a matter since the statute provides a mechanism for a board to function and to authorize and approve decisions when a conflict of interest is presented.

If you require any further clarification on this matter please let me know.

Sincerely,



Sam G. Stathos

SGS/

cc: Myrtle Beach Resort Homeowners' Association, Inc.

ATTACHEMENT "B"

CONTRACT ALLEGIANT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AGREEMENT

THIS AGREEMENT, made and entered into as of the 12th day of November, 2009, by and between THE MYRTLE BEACH RESORT HOMEOWNERS" ASSOCIATION, INC., a South Carolina corporation (hereinafter the "Association") and ALLEGIANT PROPERTY MANAGEMENT, LLC, a North Carolina limited liability company (hereinafter referred to as "Allegiant")doing business as Myrtle Beach Resort Vacations.

WITNESSETH

WHEREAS, the Association has determined it to be in the best interest of the homeowners at The Myrtle Beach Resort to enter into an Agreement that results in one rental agent whereby the Association will receive a royalty on all rental and sales activity conducted at the Resort and whereby Association will obtain ownership of Commercial Unit D within the Five Seasons Centre Council of Co-owners, and

WHEREAS, Allegiant has made certain promises and has committed to certain undertakings, as more particularly set out herein, as an inducement to the Association to enter into this Agreement, and,

WHEREAS, The Association and Allegiant respectively desire to enter into this Agreement which will be effective January 1, 2010,

NOW THEREFORE in consideration of Five Dollars ($5.00), and the mutual covenants given herein, the receipt and sufficiency of such consideration being hereby acknowledged, the parties agree to as follows:

SECTION A: Rental Management Agreement

1. Association agrees to facilitate solicitation by Allegiant of the homeowners at the Myrtle Beach Resort to enter into Rental Management Agreements ("RMAs") with Allegiant, provided Allegiant 's form of RMA is reasonable in light of the then current industry standards and the management fee expressed as a % of the Rental Revenue has been approved by the Association. Any changes to the types or amounts of Additional Charges from Exhibit "A" shall be approved by the Association prior to implementation.
2. The term "Gross Rental Revenue" is defined as the total of Rent, Departure Cleaning, Linen Service, Processing Fees, and Resort Fees.
3. The initial term of this Agreement shall be effective as of January 1, 2010 and shall continue in effect through December 31, 2014. The Association shall have the option to buyout the remainder of this

1

Agreement from Allegiant for a sum of $150,000 and the terms stated in the Contract of Sale executed with Allegiant for Commercial Unit D in the Five Seasons Centre as well as the terms in paragraph 3 of this Agreement related to the Assignment of Rental Management Agreements, providing Association has given notice to Allegiant of its intent to exercise its buyout option, which must be exercised on or before August 31, 2012. In the event Association does not exercise its buyout, provided that Allegiant has complied with the terms of the lease, and provided that neither party has advised the other by August 31, 2014 that they do not wish to extend or renegotiate this Agreement, the term of this lease shall extend an additional five (5) years commencing January 1, 2015 and ending December 31, 2019. Subsequent terms of this agreement shall be in automatic renewals in five (5) year increments provided neither party has advised the other by August 31st of the final year of a term that they wish to terminate or renegotiate the Agreement. At any time prior to August 31st of the final year of any term of this Agreement the Association shall have the right to test the market place to determine the potential value of the Agreement at that time. However Allegiant shall have a right of first refusal for the Agreement unless Association has notified Allegiant by August 31st of that year that they wish to terminate the agreement. Upon termination of this Agreement, all incidental contracts, "800" telephone numbers, use of internet websites using the name Myrtle Beach Resort, except for the website using Myrtle-Beach-Resort, if and only if this Agreement is terminated prior to December 31, 2019, use of Association logos, related services including rental histories of Association RMA's, and licenses incidental to the rental program at the Myrtle Beach Resort shall be assigned by Allegiant to the Association or its designee. The disposition of the Rental Management Agreements (RMA's) shall be in accordance with paragraph 4. SECTION A of this Agreement. All other internet assets, as listed in Exhibit "B", brought to this Agreement from Allegiant shall return to Allegiant at any termination of this agreement.

4. Effective with the execution of this agreement and the payment of the monies due upon execution of this contract, the Association shall transfer, set over, and assign to Allegiant all existing RMA's (approximately 216) owned by the Association for administration by Allegiant. These RMA's, between the incumbent agent Myrtle Beach Vacation Rentals and Myrtle Beach Resort owners, are to be assigned to the Association or its agent effective January 1, 2010 in accordance with their present Agreement. This assignment shall include all rental reservations booked or in the process of being booked, for the calendar years of 2010 and beyond. Allegiant brings their own RMA's (Approximately 160) with them into this Agreement. If Allegiant is successful in increasing the total number of RMA's managed under this Agreement, the additional RMA's shall be assigned between the Association and Allegiant in proportion to the number actually brought into the Agreement on January 1, 2010. If the number decreases from the total number of RMA's as of January 1, 2010, any decrease shall be considered to have come from the number brought to the Agreement by Allegiant. Should this decrease occur, any

additions of RMA's from that point shall be considered as Allegiant RMA's until such time as the original total has once again been met. At the end of the second term on December 31, 2019 all RMA's shall be considered to be Association RMA's at that time and thereafter. If there is a termination of the contract prior to December 31, 2019, the RMA's shall be separated according to the apportionment of the RMA's, as described above, at the time of the termination.

5. Association shall turn over to Allegiant the existing "800" telephone lines serving the Myrtle Beach Resort and responsibility for payment of these services effective 1/1/2010. Association shall grant to Allegiant an exclusive license to use any of its registered logos for the duration of the contract.

6. In consideration of the assignments and licenses above, Allegiant shall agree and pay to the Association in good and sufficient funds as follows:

   A. Upon the execution of the contract, a credit of Seventy-two Thousand Five Hundred Dollars ($72,500.00) shall be applied toward the Association's purchase of Commercial Unit D of the Five Seasons Centre from Allegiant. Allegiant also agrees to fund the cost of a new sign (design provided by Tyson Signs in 2008 and approved by the Association at its Annual Meeting in April 2008) to be placed at the entrance of the Myrtle Beach Resort by May 31, 2009.

   B. On the anniversary date of this contract in 2011, the sum of Seventy Four Thousand Six Hundred Seventy-five dollars ($74,675.00) in cash.

   C. By January 10, 2011 a sum equal to 2% of Gross Rental Revenues from January 1, 2010 through December 31, 2010 that are in excess of $3,625,000.

   D. On the anniversary date of this agreement in 2012, the sum of Seventy Six Thousand Nine Hundred Fifteen Dollars and Twenty-five cents ($76,915.25).

   E. By January 10, 2012 a sum equal to 2% of Gross Rental Revenues from January 1, 2011 through December 31, 2011 that are in excess of $3,733,750.00

   F. By January 10, 2013 a sum equal to 2% of Gross Rental Revenues from January 1, 2012 through December 31, 2012 that are in excess of $3,845,762.50

7. If the Association has not exercised its buyout option, Commencing February 10, 2013 and continuing on the 10th day of each succeeding month through the duration of this Agreement and any extension of this Agreement, Allegiant shall pay Association an amount equaling Two Percent (2%) percent of Gross Rental Revenues received for the preceding month. However, in no event shall the annual payment for

2013 be less than Seventy-nine Thousand Two Hundred and Twenty-two Dollars and Seventy-one Cents ($79,222.71) "the minimum annual payment". In each successive year the minimum annual payment shall increase by 3.0 %. In any year the 2% of Gross Rental Revenue does not equal the minimum annual amount, then Allegiant will pay such deficit so that each annual payment shall equal "the minimum annual payment" as provided for herein and such deficit shall be paid by Allegiant to the Association no later than January 10 for the immediately preceding payment year.

8. Allegiant agrees to pay Association a ten (10%) percent late fee for payments received ten (10) or more days after their due date. This shall apply to any payments due under this Agreement.

9. In the event, during the term of this Agreement, there is a decrease in gross annual rental revenue when compared to previous "Agreement year", and where such decrease is caused by a qualifying force majeure (including fire, flood, weather related evacuation, war, riot, or insurrection) "the minimum annual payment" requirement provided for herein, shall be reduced for the Agreement year of such qualifying force majeure event as hereinafter provided for that year. A "qualifying force majeure event" shall occur when greater than fifteen (15%) percent of the rental units under contract with Allegiant are uninhabitable as a result of such a force majeure during the period from May 15 through September 15 ("prime season") of any given Agreement year. In the event of such a force majeure event, the minimum annual payment shall be reduced by a fraction of the minimum annual payment, which said fraction shall be determined as follows:

   A. The numerator shall be the total number of unit days that such qualifying units are uninhabitable, and the denominator shall be the total unit days under contract with Allegiant for the applicable "prime season". It is understood and agreed that such adjustment and minimum annual payment shall only apply if the percentage rent provided for herein is less than the minimum annual payment as adjusted herein and only to the extent that there is a decrease in gross annual rental revenue when compared to the previous year.

10. Commencing February 10, 2010 Allegiant shall also furnish the Association with a written statement, certified by Allegiant to be correct, showing the amount of gross rental revenue from the beginning of the current year to the end of the previous calendar month or any portion thereof.

Allegiant agrees to make such portions of their books and records available to the Association, or its designated representative, as may be necessary or desired (at the sole discretion of the Association) in respect to the percentage leases as set out herein. This will include, without limitation, accommodation tax records. If

Allegiant shall not make payment of any money due hereunder or otherwise perform any of the terms hereof, and Allegiant fails to make such payment or remediate such performance within ten (10) days from mailing from the mailing of a written notice from the Association)or within a reasonable period of time if such cure cannot reasonably be implemented within a ten (10) day period), or if Allegiant shall be adjudicated bankrupt or make assignment for the benefit of creditors or if the assets of Allegiant shall be sold under execution or other legal process, such event shall constitute an event of default under this Section A. Upon occurrence of an uncured fault, the Association may, at its option, terminate this agreement and/or sue Allegiant for damages. If either party shall default under the terms of this Section A, such defaulting party agrees to pay all reasonable attorney fees and costs incurred by the non-defaulting party and enforcing the obligations of the defaulting party under this Section A: Rental Management Agreement.

SECTION B: Lease of Rental Management And Resale Space

The Association will lease to the Allegiant the rental management, sales, and Homeowners' Association space now utilized in the office building at 5905 Highway 17 South, Horry County. This space is estimated at 3,400 square feet.

1. The term of this leasehold shall be Five (5) years commencing January 1, 2010 and terminating at midnight on December 31, 2014. Allegiant shall have the option to extend this leasehold an additional five (5) years terminating December 31, 2019 s provided Allegiant notify Association of its intent to exercise such option by August 31, 2014. In the event Association exercises it buyout option with Allegiant related to rental management services, it shall also constitute notice to Allegiant that this leasehold shall also terminate as of December 31, 2012. Subsequent terms of this agreement shall be in automatic renewals in five (5) year increments provided neither party has advised the other by August 31st of the final year of a term that they wish to terminate or renegotiate the Agreement.
2. The rental fee for this space shall be Fifty One Thousand Dollars ($51,000.00) annually paid in monthly installments due in advance on the 1st of each month. This rental fee shall be increased by three percent (3.0 %) at the beginning of each subsequent calendar year under this Agreement.
3. Allegiant agrees to pay Association a ten (10%) percent late fee for payments received ten (10) or more days after their due date. This shall apply to any payments due under this Agreement.
4. Allegiant shall arrange and pay for the use of utilities furnished to the leased premises during the term of this Lease Agreement, including but not limited to, water, electricity, gas, sewer, and telephone. Allegiant agrees to pay one-third of the monthly maintenance fees for the Resort telephone system ($216.67). Allegiant agrees to manage and pay for the VCTV system that inserts a video stream for viewing on Channel 3, the Myrtle Beach Resort Channel of the TimeWarner cable system.

5. Maintenance of the interior leased space including all plumbing, heating, electrical and air conditioning shall be the responsibility of Allegiant. Maintenance and the maintenance of the exterior shall be the responsibility of the Association. Allegiant shall, at its own expense, keep and maintain the premises in good order and repair during the term of this Lease Agreement, and shall surrender same to the Association at the expiration or earlier termination of this Lease Agreement in as good condition as when received, normal wear and tear excepted.
6. All repairs, replacements, and renewals shall be at least equal in quality, materials, and workmanship to that which originally existed on the leased property. Allegiant shall indemnify the Association against all costs, expenses, liabilities, losses, damages, suits, claims, and demands, including reasonable attorney's fees, because of the failure of Allegiant to comply with the foregoing. Allegiant shall not, in any event, cause or permit any waste, damage, or injury to the leased property.
7. The Association shall be under no liability for damages to Allegiant due to the discontinuance of heat, air conditioning, electricity, water, or of any other service provided by or through the Association, or of any other services provided by or through the Association, or for loss of profit whether caused by the foregoing, rain, water, force majeure, or otherwise.
8. The Association reserves the right to enter on the premises at reasonable times to inspect same.
9. Allegiant agrees to pay reasonable cost of garbage collection and disposal as provided by the Association. Provided, however, Allegiant is solely responsible for collecting and transporting garbage from office area to the dumpster to be provided by the Association, the location of which is to be designated by the Association.
10. All ad valorem taxes, assessments, liens or charges on the land or improvements now located thereon, and all obligations secured by mortgage or other liens that may be against or levied upon the demised premises shall be properly paid by the Association when due. All taxes on the personal property owned or leased by Allegiant, as well as all business licenses required for the operation of its business, shall be paid by Allegiant.

11. During the entire term of the lease agreement, Allegiant shall, at the expense of Allegiant, secure and maintain such personal property insurance as it may determine upon all personal property owned or leased by Allegiant and located upon the leased premises, at the expense of Allegiant. Allegiant shall, at the expense of Allegiant, secure and maintain during the entire term of this Lease, general liability insurance policy (or policies) upon the leased premises in an amount that totals no less than Two Million and 00/100 Dollars ($2,000,000.00) for each occurrence and a Five Million and 00/100 Dollars Umbrella policy. Said general liability insurance policy (or policies) shall be procured with an insurance company licensed to do business in the State of South Carolina and shall be procured by Allegiant in,

such manner as to include the Association and all individual horizontal property regimes as additional insured. Allegiant shall promptly furnish copies of said policies of insurance to the Association and shall direct and instruct the insuring company to mail duplicate notices of premiums due from time to time to said policies of insurance to the Association at the address designated by the Association.

12. Allegiant, at its sole expense, shall comply with all laws, orders, and regulations of federal, state and municipal authorities, and with any direction of any public officer, pursuant to the law, which impose any duty upon the Association or Allegiant with respect to the leased property. Allegiant, at its sole expense, shall obtain all licenses or permits which may be required by the conduct of its business within the terms of this Lease Agreement, or for the making of repairs, alterations, improvements, or additions, if permitted by the Association. Allegiant shall comply with the requirements of all polices of public liability, fire, and all other types of insurance at any time in force with respect to the buildings and other improvements on the leased property.

13. Allegiant shall, on the last day of the last term, or upon the sooner termination of the term, peaceably and quietly surrender the leased property to the Association, in as good condition and repair as at the commencement of the term, including replacements, additions, or improvements constructed, erected, added, or placed thereon by Allegiant with the Association's consent, with the natural wear and tear thereof excepted.

14. If the premises are wholly or partially destroyed by fire or other casualty, through no fault of Allegiant, rental shall abate in proportion to the loss of use. The Association shall, to the extent of available insurance proceeds, promptly restore the structure to substantially the same condition as existed before damage or destruction, whereupon full rental shall resume.

15. If the whole of the demised premises, or such portion thereof as will make the leased property unsuitable for the purposes herein listed, is condemned for any public use or purpose by any legally constituted authority, then in either of such events; this Lease shall cease from the time when possession is taken by such public authority, and rental shall be accounted for between the Association and Allegiant as of the date of the surrender of possession. Such termination shall be without prejudice to the rights of either the Association or Allegiant to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither the Association nor Allegiant shall have any rights in or to any award made to the other by the condemning authority.

16. If Allegiant shall be in default in the payment of any rent due hereunder or in the performance of any conditions hereof, and shall it fail to correct and rectify any such default within ten (10) days from the mailing of a written notice thereof from the Association, or if Allegiant shall be adjudicated bankrupt or make any assignment for the benefit of creditors, or; if the interest of Allegiant therein shall be sold

under execution or other legal process, the Association may enter into said premises and repossess the same as if this Lease had not been made and shall thereupon have the right to cure this Lease, without prejudice, however, to the right of entry to the Association to recover all rent due to the time of such entry. If Allegiant shall fail to fulfill any agreement stated in this Lease, or fail to pay any portion of the rent, or vacate the leased premises prior to the expiration of the lease term, the Association may terminate this lease, and all rents due and which would become due during the remainder of the lease term, shall immediately become due and payable, provided, however, Allegiant shall have a ten (10) day right to cure any such default. If either party should default under the terms of this agreement, such defaulting party agrees to pay all reasonable attorney's fees and court costs incurred by the non-defaulting party in enforcing the obligations of the defaulting party under this Lease Agreement

17. The Association shall be responsible for real property taxes and general fire and extended casualty insurance on the building. Allegiant shall be responsible for all personal property, business licenses, income or other taxes, that relate to the conduct of its business on the demised premises. Allegiant shall also be responsible for insuring its personal property. Each party shall maintain adequate liability insurance, worker's compensation insurance and other insurance, in reasonable and adequate amounts, and either party may require the other party to produce evidence of coverage upon reasonable request.
18. No permanent improvements, alterations, or additions to the premises shall be made by Allegiant without the express written consent of the Association. All improvements and additions made and permanently attached to the premises, including without limitation, any partitions, carpets, lighting fixtures, doors, hardware, shelves, counters, cabinets, and all other permanent improvements and fixtures, shall remain with the premises, and shall be surrendered to the Association at the expiration or earlier termination of this Lease Agreement.

SECTION C: Linen Storage, Maid Service, Commercial Laundry Area Rental

1. The Association controls and hereby leases to Allegiant certain linen storage and maid service areas shown on Exhibit "B" as well as a commercial laundry at The Myrtle Beach Resort Ocean Front Spa for the sum of One Thousand Fifty Dollars ($1,050.00) per month, payable monthly in advance with the first payment being due on or before January 1, 2010. (Allocated as follows: $675.00 for commercial laundry and $375.00 for 8 linen storage and maid service areas, 5 in the Renaissance Tower, 2 in the Ocean Front Spa and 1 in the Horizontal Property Regime). This amount shall have an annual three percent (3.0 %) increase on January 1st of every year for the duration of this Agreement and any extensions. If at any time during a term of this agreement a Regime increases the rental rates of its storage areas to the Association, Allegiant the payment under this section shall immediately be amended

to include that increase in rental rates.

2. The term of this leasehold shall be Five (5) years commencing January 1, 2010, and terminating at midnight on December 31, 2014. Allegiant shall have the option to extend this leasehold an additional five (5) years terminating December 31, 2019 provided Allegiant notify Association of its intent to exercise such option by August 31, 2014. In the event Association exercises it buyout option with Allegiant related to rental management services it shall also constitute notice to Allegiant that this leasehold shall also terminate as of December 31, 2012. Subsequent terms of this agreement shall be in automatic renewals in five (5) year increments provided neither party has advised the other by August 31st of the final year of a term that they wish to terminate or renegotiate the Agreement.

SECTION D: Miscellaneous

1. The leases herein shall be subject and subordinate at all times to the lien of existing mortgages and of mortgages which hereafter may be made a lien of the leased property by Association. Although no instrument or act on the part of Allegiant shall be necessary to effectuate such subordination, Allegiant will, nevertheless, execute and deliver such further instruments subordination this lien to the lien of any mortgages as may be desired by the mortgagee.
2. Allegiant covenants not to compete (outside the scope of this Agreement) in any way, shape or form in respect to rentals at the Myrtle Beach Resort during the term of this Lease Agreement, and for a period of one and one half (11/2) years beyond such term, unless this agreement is terminated by the Association prior to December 31, 2019.
3. Allegiant agrees to have each of its employees who handle money in any respect covered by employee dishonesty coverage in an amount no less than One Hundred Thousand and 00/100 Dollars ($100,000.00). Further, any employee of Allegiant who is a signatory on any of Allegiant's bank accounts shall be bonded in an amount no less than One Million and 00/100 Dollars ($1,000,000.00).
4. Employees, guests and invitees of Allegiant shall abide by all parking regulations and traffic rules established by the Association.
5. Allegiant shall undertake no on-site advertising with respect to its use of the office space without the prior written consent of the Association, which consent shall not be unreasonably withheld.
6. Allegiant shall split with the Association, on a 50/50 basis, the cost of the American Hospitality Association's summer program to provide children's activities at the Resort and the cost to provide the Saturday evening reception on the Annual Homeowners' Meetings weekend each year.
7. In the event the Association must proceed with legal action against the current vendor, Myrtle Beach Vacation Rentals (MBVR), in order to enforce the non-compete clause in the existing Agreement

between Association and MBVR, Allegiant agrees to indemnify the Association for all expenses Associated with that action.

8. In the event the Association must proceed with legal action against MBVR in order to enforce the assignment of the current RMA's to the Association or its Agent, Allegiant agrees to reimburse Association for 50% of the legal fees required for that legal action.

IN WITNESS WHEREOF, the Association and Allegiant subscribed their names and affixed their seals the day and year first above written.

WITNESSES:

ASSOCIATION:

MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.

By: _____
Stanley Jordan, President

ALLEGIANT PROPERTY
MANAGEMENT, LLC

By: _____
Robert Jones, Managing Member

Exhibit "A"

Additional Charges

Departure Cleaning: Units will be cleaned by our Housekeeping Department after departure. Departure cleaning charges are as follows:
1 Bedroom Units - $50
2 Bedroom Units - $60
3 Bedroom Units - $70

Linen Service: Condos are provided with linen and towels, etc. for $50 per stay (3 BRs are $70).

Processing Fee: $30.00

Damage Waiver: $6 per Day
Click here for Details

Destination Fee: $1/Night

Resort Fee: 4% of Rent Only

Optional Features/Charges
Daily Maid Service is available for $19.95/night.
Travel Insurance (Click here for details)

Myrtle Beach Resort Home Page

Exhibit "B"

ASSETS BELONGING TO ALLEGIANT

Toll-Free Numbers

800-845-0629
888-627-3767
866-484-5175
866-863-0762
888-826-4018
888-826-3981

Domains

charmingcancun.com
discovermyrtlebeachrestaurants.com
exploremiamibeach.com
funbeachvacations.com
hawaiianstays.com
mb4fun.com
mbforfun.com
mbfourfun.com
mbr4fun.com
mbresortcondos.com
mbresortvacations.com
mbrho.com
mbseniors.com
myrtlebeachattractionsonline.com
myrtlebeachbikeweeklive.com
myrtlebeachentertainmentlive.com
myrtlebeachgolfinsider.com
myrtlebeachhotdeals.com
myrtlebeach-living.com
myrtlebeachrealestatenow.com
myrtle-beach-resort.com
myrtlebeachresortcondos.com
myrtlebeachresorthomeowners.com
myrtlebeachresortrentals.com
myrtlebeachresortsales.com
myrtlebeachresortvacations.mobi
myrtlebeachresortvacationservices.com
myrtlebeachvacationcondos.com
playmb.com
resortmb.com
resortvacationservices.com
virginiabeachescapes.com

1callmaint.com - Expires on 10-Sep-2010
onecallmaint.com - Expires on 10-Sep-2010

ATTACHEMENT "C"

K.A. DIEHL

Myrtle Beach Resort Homeowners Assoc., Inc.
Operating Income Statement
08/31/2014

c/o K.A. Diehl
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Current Period Budget	Current Period Variance	Year To Date Actual	Year To Date Budget	Year To Date Variance	Yearly Budget
	INCOME							
4001	Regular Assessments	$ 96,030.80	$ 96,035	$ (4.20)	$ 768,246.40	$ 768,280	$ (33.60)	$ 1,152,423
4002	Reserve Funding	(12,137.00)	(12,137)	0.00	(97,096.00)	(97,096)	0.00	(145,644)
4040	Sales Commissions	612.31	417	195.31	5,900.93	3,336	2,564.93	5,000
4041	Rental/Lease Income	0.00	83	(83.00)	214.75	664	(449.25)	1,000
4042	MBRV Sales Office Rent	4,783.41	4,784	(0.59)	38,267.25	38,272	(4.75)	57,410
4043	MBRV 2% Rental Commission	13,621.72	14,688	(1,066.28)	65,132.70	62,016	3,116.70	81,600
4044	MBRV Food & Beverage Lease	11,880.36	11,880	0.36	95,042.88	95,040	2.88	106,923
4052	Vending Income	0.00	83	(83.00)	956.64	664	292.64	1,000
4058	Gate Income	14,532.50	9,992	4,540.50	98,295.00	79,936	18,359.00	119,906
4060	Storage Rm Lease Income	881.79	1,181	(299.21)	8,104.29	9,448	(1,343.71)	14,177
4064	Utility Reimbursement	0.00	0	0.00	3,650.00	0	3,650.00	0
4083	Water and Sewer Reimbursement	7,523.47	0	7,523.47	7,523.47	0	7,523.47	0
4120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
4149	Common Element Inc	14,532.50	9,992	4,540.50	98,295.00	79,936	18,359.00	119,906
	Total Income	$ 152,261.86	$ 136,998	$ 15,263.86	$ 1,092,535.09	$ 1,040,496	$ 52,039.09	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 0.00	$ 1,025	$ 1,025.00	$ 563.97	$ 8,200	$ 7,636.03	$ 12,300
5001	Office Supplies & Expenses	104.28	417	312.72	2,461.89	3,336	874.11	5,000
5002	Printing Expense	1,116.74	833	(283.74)	11,652.33	6,664	(4,988.33)	10,000
5003	Postage	53.05	267	213.95	2,208.72	2,136	(72.72)	3,200
5009	Board Meeting Expense	0.00	678	678.00	3,887.56	5,424	1,536.44	8,133
5015	Legal Services	0.00	83	83.00	1,900.00	664	(1,236.00)	1,000
5017	Management Services	8,025.00	8,145	120.00	64,200.00	65,160	960.00	97,734
5020	Consulting Services Other	1,050.00	1,050	0.00	8,400.00	8,400	0.00	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,664.63	4,177	512.37	29,884.85	33,416	3,531.15	50,119
5034	Licenses & Permits	0.00	0	0.00	425.00	1,500	1,075.00	1,500
5039	Property Taxes	0.00	0	0.00	457.47	0	(457.47)	50,500
5049	Operating Contingency	0.00	417	417.00	0.00	3,336	3,336.00	5,000
	General & Administrative Total	$ 14,013.70	$ 17,092	$ 3,078.30	$ 128,891.79	$ 141,086	$ 12,194.21	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 674.16	$ 2,917	$ 2,242.84	$ 19,758.25	$ 23,336	$ 3,577.75	$ 35,000
6004	Lazy River Staff	6,208.59	2,359	(3,849.59)	26,727.03	18,872	(7,855.03)	28,305
6006	Mileage Reimbursement	0.00	17	17.00	268.80	136	(132.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	7,069.51	7,000	(69.51)	10,500
6030	Fire Alarm & Sprinkler Maint	163.49	203	39.51	1,361.88	1,624	262.12	2,433
6031	HVAC System Maint	41.42	250	208.58	1,650.19	2,000	349.81	3,000
6034	TV Repair & Replacement	0.00	21	21.00	0.00	168	168.00	250
6036	Interior Pest Control	212.75	233	20.25	1,664.80	1,864	199.20	2,800
6038	Termite Treatment	310.00	41	(269.00)	585.00	328	(257.00)	490
6039	Nuisance Control	2,491.67	192	(2,299.67)	3,833.36	1,536	(2,297.36)	2,300
6041	Janitorial Supplies	879.29	542	(337.29)	4,148.95	4,336	187.05	6,500
6080	Grounds Staff	2,083.53	4,690	2,606.47	27,539.55	37,520	9,980.45	56,280
6099	Golf Cart Repair MBR	150.95	83	(67.95)	597.44	664	66.56	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	15,000.00	15,000	0.00	22,500
6152	Landscape Maint	1,166.81	1,679	512.19	22,431.56	13,432	(8,999.56)	20,145
6159	Lake Maintenance	420.00	458	38.00	3,929.57	3,664	(265.57)	5,500
6185	Pool/Spa Supplies	2,384.99	2,250	(134.99)	16,505.28	18,000	1,494.72	27,000
6186	Pool/Spa Maintenance	284.99	1,250	965.01	8,061.10	10,000	1,938.90	15,000
6241	Watchmen Services	41,101.09	39,867	(1,234.09)	315,195.70	318,936	3,740.30	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,000	(121.88)	1,500
6244	Watchman Supplies	1,431.29	1,042	(389.29)	6,901.43	8,336	1,434.57	12,500
	Repairs & Maintenance Total	$ 62,999.45	$ 60,969	$ (2,030.45)	$ 484,351.28	$ 487,752	$ 3,400.72	$ 731,603

c/o K.A. Diehl
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Current Period Budget	Variance	Year To Date Actual	Year To Date Budget	Variance	Yearly Budget
	INCOME							
4001	Regular Assessments	$ 96,030.80	$ 96,035	$ (4.20)	$ 864,277.20	$ 864,315	$ (37.80)	$ 1,152,423
4002	Reserve Funding	(12,137.00)	(12,137)	0.00	(109,233.00)	(109,233)	0.00	(145,644)
4040	Sales Commissions	471.00	417	54.00	6,371.93	3,753	2,618.93	5,000
4041	Rental/Lease Income	(214.75)	83	(297.75)	0.00	747	(747.00)	1,000
4042	MBRV Sales Office Rent	4,783.41	4,784	(0.59)	43,050.66	43,056	(5.34)	57,410
4043	MBRV 2% Rental Commission	7,002.15	13,056	(6,053.85)	72,134.85	75,072	(2,937.15)	81,600
4044	MBRV Food & Beverage Lease	11,880.36	11,883	(2.64)	106,923.24	106,923	0.24	106,923
4052	Vending Income	214.75	83	131.75	1,171.39	747	424.39	1,000
4058	Gate Income	20,607.50	9,992	10,615.50	118,902.50	89,928	28,974.50	119,906
4060	Storage Rm Lease Income	881.79	1,181	(299.21)	8,986.08	10,629	(1,642.92)	14,177
4064	Utility Reimbursement	4,115.37	0	4,115.37	7,765.37	0	7,765.37	0
4083	Water and Sewer Reimbursement	4,382.77	0	4,382.77	11,906.24	0	11,906.24	0
4120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
4149	Common Element Inc	20,607.50	9,992	10,615.50	118,902.50	89,928	28,974.50	119,906
	Total Income	$ 158,625.65	$ 135,369	$ 23,256.65	$ 1,251,160.74	$ 1,175,865	$ 75,295.74	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 0.00	$ 1,025	$ 1,025.00	$ 563.97	$ 9,225	$ 8,661.03	$ 12,300
5001	Office Supplies & Expenses	247.19	417	169.81	2,709.08	3,753	1,043.92	5,000
5002	Printing Expense	1,232.54	833	(399.54)	12,884.87	7,497	(5,387.87)	10,000
5003	Postage	160.31	267	106.69	2,369.03	2,403	33.97	3,200
5009	Board Meeting Expense	581.05	678	96.95	4,468.61	6,102	1,633.39	8,133
5015	Legal Services	0.00	83	83.00	1,900.00	747	(1,153.00)	1,000
5017	Management Services	8,025.00	8,145	120.00	72,225.00	73,305	1,080.00	97,734
5020	Consulting Services Other	1,050.00	1,050	0.00	9,450.00	9,450	0.00	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,664.63	4,177	512.37	33,549.48	37,593	4,043.52	50,119
5034	Licenses & Permits	13.01	0	(13.01)	438.01	1,500	1,061.99	1,500
5039	Property Taxes	(2,472.01)	0	2,472.01	(2,014.54)	0	2,014.54	50,500
5049	Operating Contingency	0.00	417	417.00	0.00	3,753	3,753.00	5,000
	General & Administrative Total	$ 12,501.72	$ 17,092	$ 4,590.28	$ 141,393.51	$ 158,178	$ 16,784.49	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 1,952.76	$ 2,917	$ 964.24	$ 21,711.01	$ 26,253	$ 4,541.99	$ 35,000
6004	Lazy River Staff	3,139.51	2,359	(780.51)	29,866.54	21,231	(8,635.54)	28,305
6006	Mileage Reimbursement	0.00	17	17.00	268.80	153	(115.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	8,188.94	7,875	(313.94)	10,500
6030	Fire Alarm & Sprinkler Maint	163.50	203	39.50	1,525.38	1,827	301.62	2,433
6031	HVAC System Maint	(780.41)	250	1,030.41	869.78	2,250	1,380.22	3,000
6034	TV Repair & Replacement	0.00	21	21.00	0.00	189	189.00	250
6036	Interior Pest Control	212.75	233	20.25	1,877.55	2,097	219.45	2,800
6038	Termite Treatment	0.00	41	41.00	585.00	369	(216.00)	490
6039	Nuisance Control	(2,108.33)	192	2,300.33	1,725.03	1,728	2.97	2,300
6041	Janitorial Supplies	518.96	542	23.04	4,667.91	4,878	210.09	6,500
6080	Grounds Staff	3,856.07	4,690	833.93	31,395.62	42,210	10,814.38	56,280
6099	Golf Cart Repair MBR	1,958.39	83	(1,875.39)	2,555.83	747	(1,808.83)	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	16,875.00	16,875	0.00	22,500
6152	Landscape Maint	406.59	1,679	1,272.41	22,838.15	15,111	(7,727.15)	20,145
6159	Lake Maintenance	556.85	458	(98.85)	4,486.42	4,122	(364.42)	5,500
6185	Pool/Spa Supplies	2,059.04	2,250	190.96	18,564.32	20,250	1,685.68	27,000
6186	Pool/Spa Maintenance	1,781.64	1,250	(531.64)	9,842.74	11,250	1,407.26	15,000
6241	Watchmen Services	40,061.93	39,867	(194.93)	355,257.63	358,803	3,545.37	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,125	3.12	1,500
6244	Watchman Supplies	173.11	1,042	868.89	7,074.54	9,378	2,303.46	12,500
	Repairs & Maintenance Total	$ 56,946.79	$ 60,969	$ 4,022.21	$ 541,298.07	$ 548,721	$ 7,422.93	$ 731,603

K.A. DIEHL

CFS Myrtle Beach Resort Homeowners Assoc, Inc
Operating Income Statement
10/31/2014

c/o K.A. Diehl
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Budget	Variance	Year To Date Actual	Budget	Variance	Yearly Budget
	INCOME							
4001	Regular Assessments	$ 96,030.80	$ 96,035	$ (4.20)	$ 960,308.00	$ 960,350	$ (42.00)	$ 1,152,423
4002	Reserve Funding	(12,137.00)	(12,137)	0.00	(121,370.00)	(121,370)	0.00	(145,644)
4040	Sales Commissions	978.98	417	561.98	7,350.91	4,170	3,180.91	5,000
4041	Rental/Lease Income	0.00	83	(83.00)	0.00	830	(830.00)	1,000
4042	MBRV Sales Office Rent	4,783.41	4,784	(0.59)	47,834.07	47,840	(5.93)	57,410
4043	MBRV 2% Rental Commission	3,361.37	3,264	97.37	75,496.22	78,336	(2,839.78)	81,600
4044	MBRV Food & Beverage Lease	0.00	0	0.00	106,923.24	106,923	0.24	106,923
4052	Vending Income	0.00	83	(83.00)	1,171.39	830	341.39	1,000
4058	Gate Income	14,190.00	9,992	4,198.00	133,092.50	99,920	33,172.50	119,906
4060	Storage Rm Lease Income	131.79	1,181	(1,049.21)	9,117.87	11,810	(2,692.13)	14,177
4084	Utility Reimbursement	0.00	0	0.00	7,765.37	0	7,765.37	0
4083	Water and Sewer Reimbursement	3,430.35	0	3,430.35	15,336.59	0	15,336.59	0
4120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
4149	Common Element Inc	14,190.00	9,992	4,198.00	133,092.50	99,920	33,172.50	119,906
4199	Miscellaneous Income	5.43	0	5.43	5.43	0	5.43	0
	Total Income	$ 124,965.13	$ 113,694	$ 11,271.13	$ 1,376,125.87	$ 1,289,559	$ 86,566.87	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 0.00	$ 1,025	$ 1,025.00	$ 563.97	$ 10,250	$ 9,686.03	$ 12,300
5001	Office Supplies & Expenses	282.44	417	134.56	2,991.52	4,170	1,178.48	5,000
5002	Printing Expense	627.69	833	205.31	13,512.56	8,330	(5,182.56)	10,000
5003	Postage	58.90	267	208.10	2,427.93	2,670	242.07	3,200
5009	Board Meeting Expense	280.06	678	397.94	4,748.67	6,780	2,031.33	8,133
5015	Legal Services	0.00	83	83.00	1,900.00	830	(1,070.00)	1,000
5017	Management Services	8,025.00	8,145	120.00	80,250.00	81,450	1,200.00	97,734
5020	Consulting Services Other	1,050.00	1,050	0.00	10,500.00	10,500	0.00	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,664.83	4,177	512.37	37,214.11	41,770	4,555.89	50,119
5034	Licenses & Permits	0.00	0	0.00	438.01	1,500	1,061.99	1,500
5039	Property Taxes	0.00	0	0.00	(2,014.54)	0	2,014.54	50,500
5049	Operating Contingency	0.00	417	417.00	0.00	4,170	4,170.00	5,000
	General & Administrative Total	$ 13,988.72	$ 17,092	$ 3,103.28	$ 155,382.23	$ 175,270	$ 19,887.77	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 3,572.52	$ 2,917	$ (655.52)	$ 25,283.53	$ 20,170	$ 3,886.47	$ 35,000
6004	Lazy River Staff	684.50	2,359	1,674.50	30,551.04	23,590	(6,961.04)	28,305
6008	Mileage Reimbursement	0.00	17	17.00	268.80	170	(98.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	9,308.37	8,750	(558.37)	10,500
6030	Fire Alarm & Sprinkler Maint	593.50	203	(390.50)	2,118.88	2,030	(88.88)	2,433
6031	HVAC System Maint	41.42	250	208.58	911.20	2,500	1,588.80	3,000
6034	TV Repair & Replacement	0.00	21	21.00	0.00	210	210.00	250
6036	Interior Pest Control	212.75	233	20.25	2,090.30	2,330	239.70	2,800
6038	Termite Treatment	0.00	41	41.00	585.00	410	(175.00)	490
6039	Nuisance Control	191.67	192	0.33	1,916.70	1,920	3.30	2,300
6041	Janitorial Supplies	365.17	542	176.83	5,033.08	5,420	386.92	6,500
6080	Grounds Staff	4,407.81	4,690	282.19	35,803.43	46,900	11,096.57	56,280
6099	Golf Cart Repair MBR	853.29	83	(770.29)	3,409.12	830	(2,579.12)	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	18,750.00	18,750	0.00	22,500
6152	Landscape Maint	360.57	1,679	1,318.43	23,198.72	16,790	(6,408.72)	20,145
6159	Lake Maintenance	420.00	458	38.00	4,906.42	4,580	(326.42)	5,500
6185	Pool/Spa Supplies	1,392.85	2,250	857.15	19,957.17	22,500	2,542.83	27,000
6186	Pool/Spa Maintenance	224.70	1,250	1,025.30	10,067.44	12,500	2,432.56	15,000
6241	Watchmen Services	36,706.62	39,867	3,160.38	391,964.25	398,670	6,705.75	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,250	128.12	1,500
6244	Watchman Supplies	547.30	1,042	494.70	7,621.84	10,420	2,798.16	12,500
	Repairs & Maintenance Total	$ 53,569.10	$ 60,969	$ 7,399.90	$ 594,867.17	$ 609,690	$ 14,822.83	$ 731,603

K.A. DIEHL

0134 Myrtle Beach Resort Homeowners Association
Operating Income Statement
11/30/2014

c/o K.A. Diehl
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Budget	Variance	Year to Date Actual	Budget	Variance	Yearly Budget
	INCOME							
4001	Regular Assessments	$ 96,030.80	$ 96,035	$ (4.20)	$ 1,056,338.80	$ 1,056,385	$ (46.20)	$ 1,152,423
4002	Reserve Funding	(12,137.00)	(12,137)	0.00	(133,507.00)	(133,507)	0.00	(145,644)
4040	Sales Commissions	189.00	417	(228.00)	7,539.91	4,587	2,952.91	5,000
4041	Rental/Lease Income	0.00	83	(83.00)	0.00	913	(913.00)	1,000
4042	MBRV Sales Office Rent	4,783.41	4,784	(0.59)	52,617.48	52,824	(6.52)	57,410
4043	MBRV 2% Rental Commission	1,819.56	1,632	187.56	77,315.78	79,968	(2,652.22)	81,600
4044	MBRV Food & Beverage Lease	0.00	0	0.00	106,923.24	106,923	0.24	106,923
4052	Vending Income	0.00	83	(83.00)	1,171.39	913	258.39	1,000
4058	Gate Income	6,377.50	9,992	(3,614.50)	139,470.00	109,912	29,558.00	119,906
4060	Storage Rm Lease Income	806.79	1,181	(374.21)	9,924.66	12,991	(3,066.34)	14,177
4063	Trash Removal Reimbursement	3,376.00	0	3,376.00	3,376.00	0	3,376.00	0
4064	Utility Reimbursement	6,161.92	0	6,161.92	13,927.29	0	13,927.29	0
4083	Water and Sewer Reimbursement	763.00	0	763.00	16,099.59	0	16,099.59	0
4120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
4149	Common Element Inc	6,377.50	9,992	(3,614.50)	139,470.00	109,912	29,558.00	119,906
4199	Miscellaneous Income	0.00	0	0.00	5.43	0	5.43	0
	Total Income	$ 114,548.48	$ 112,062	$ 2,486.48	$ 1,490,874.35	$ 1,401,621	$ 89,053.35	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 31.85	$ 1,025	$ 993.15	$ 595.82	$ 11,275	$ 10,679.18	$ 12,300
5001	Office Supplies & Expenses	110.14	417	306.86	3,101.66	4,587	1,485.34	5,000
5002	Printing Expense	1,039.56	833	(206.56)	14,552.12	9,163	(5,389.12)	10,000
5003	Postage	24.00	267	243.00	2,451.93	2,937	485.07	3,200
5009	Board Meeting Expense	489.97	678	188.03	5,238.64	7,458	2,219.36	8,133
5015	Legal Services	0.00	83	83.00	1,900.00	913	(987.00)	1,000
5017	Management Services	8,025.00	8,145	120.00	88,275.00	89,595	1,320.00	97,734
5020	Consulting Services Other	1,050.00	1,050	0.00	11,550.00	11,550	0.00	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,864.63	4,177	512.37	40,878.74	45,947	5,068.26	50,119
5034	Licenses & Permits	0.00	0	0.00	438.01	1,500	1,061.99	1,500
5039	Property Taxes	0.00	0	0.00	(2,014.54)	0	2,014.54	50,500
5049	Operating Contingency	0.00	417	417.00	0.00	4,587	4,587.00	5,000
	General & Administrative Total	$ 14,435.15	$ 17,092	$ 2,656.85	$ 169,817.38	$ 192,362	$ 22,544.62	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 1,216.89	$ 2,917	$ 1,700.11	$ 25,500.42	$ 32,087	$ 6,586.58	$ 35,000
6004	Lazy River Staff	684.50	2,359	1,674.50	31,235.54	25,949	(5,286.54)	28,305
6006	Mileage Reimbursement	0.00	17	17.00	268.80	187	(81.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	10,427.80	9,625	(802.80)	10,500
6030	Fire Alarm & Sprinkler Maint	163.50	203	39.50	2,282.38	2,233	(49.38)	2,433
6031	HVAC System Maint	41.42	250	208.58	952.62	2,750	1,797.38	3,000
6034	TV Repair & Replacement	0.00	21	21.00	0.00	231	231.00	250
6036	Interior Pest Control	212.75	233	20.25	2,303.05	2,563	259.95	2,800
6038	Termite Treatment	0.00	41	41.00	585.00	451	(134.00)	490
6039	Nuisance Control	191.67	192	0.33	2,108.37	2,112	3.63	2,300
6041	Janitorial Supplies	171.37	542	370.63	5,204.45	5,962	757.55	6,500
6080	Grounds Staff	7,523.34	4,690	(2,833.34)	43,326.77	51,590	8,263.23	56,280
6099	Golf Cart Repair MBR	388.99	83	(305.99)	3,796.11	913	(2,883.11)	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	20,625.00	20,625	0.00	22,500
6152	Landscape Maint	2,219.00	1,679	(540.00)	25,417.72	18,469	(6,948.72)	20,145
6159	Lake Maintenance	420.00	458	38.00	5,328.42	5,038	(288.42)	5,500
6185	Pool/Spa Supplies	90.95	2,250	2,159.05	20,048.12	24,750	4,701.88	27,000
6186	Pool/Spa Maintenance	1,015.58	1,250	234.44	11,083.00	13,750	2,667.00	15,000
6241	Watchmen Services	36,856.55	39,867	3,010.45	428,820.80	438,537	9,716.20	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,375	253.12	1,500
6244	Watchman Supplies	159.62	1,042	882.38	7,781.48	11,462	3,680.54	12,500
	Repairs & Maintenance Total	$ 54,348.54	$ 60,969	$ 6,620.46	$ 649,215.71	$ 670,659	$ 21,443.29	$ 731,603

K.A. DIEHL

Grand Strand Myrtle Beach Resort Homeowners Assoc Inc
Operating Income Statement
For the 12 Months Ending December 31, 2014

) K.A. Diehl
O. Box 15159, 5905 S. Kings
yrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Current Period Budget	Current Period Variance	Year to Date Actual	Year to Date Budget	Year to Date Variance	Yearly Budget
	INCOME							
)01	Regular Assessments	$ 96,030.80	$ 96,038	$ (7.20)	$ 1,152,369.60	$ 1,152,423	$ (53.40)	$ 1,152,423
)02	Reserve Funding	(12,137.00)	(12,137)	0.00	(145,644.00)	(145,644)	0.00	(145,644)
)40	Sales Commissions	531.00	413	118.00	8,070.91	5,000	3,070.91	5,000
)41	Rental/Lease Income	0.00	87	(87.00)	0.00	1,000	(1,000.00)	1,000
)42	MBRV Sales Office Rent	4,783.41	4,786	(2.59)	57,400.89	57,410	(9.11)	57,410
)43	MBRV 2% Rental Commission	4,082.55	1,632	2,450.55	81,398.33	81,600	(201.67)	81,600
)44	MBRV Food & Beverage Lease	0.00	0	0.00	106,923.24	106,923	0.24	106,923
052	Vending Income	0.00	87	(87.00)	1,171.39	1,000	171.39	1,000
058	Gate Income	3,102.50	9,994	(6,891.50)	142,572.50	119,906	22,666.50	119,906
060	Storage Rm Lease Income	806.79	1,186	(379.21)	10,731.45	14,177	(3,445.55)	14,177
063	Trash Removal Reimbursement	1,541.00	0	1,541.00	4,917.00	0	4,917.00	0
064	Utility Reimbursement	0.00	0	0.00	13,927.29	0	13,927.29	0
083	Water and Sewer Reimbursement	909.00	0	909.00	17,008.59	0	17,008.59	0
120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
149	Common Element Inc	3,102.50	9,994	(6,891.50)	142,572.50	119,906	22,666.50	119,906
199	Miscellaneous Income	0.00	0	0.00	5.43	0	5.43	0
	Total Income	$ 102,752.55	$ 112,080	$ (9,327.45)	$ 1,593,426.90	$ 1,513,701	$ 79,725.90	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 200.00	$ 1,025	$ 825.00	$ 795.82	$ 12,300	$ 11,504.18	$ 12,300
5001	Office Supplies & Expenses	670.76	413	(257.76)	3,772.42	5,000	1,227.58	5,000
5002	Printing Expense	1,121.42	837	(284.42)	15,673.54	10,000	(5,673.54)	10,000
5003	Postage	573.80	263	(310.80)	3,025.73	3,200	174.27	3,200
5009	Board Meeting Expense	50.00	675	625.00	5,288.64	8,133	2,844.36	8,133
5015	Legal Services	0.00	87	87.00	1,900.00	1,000	(900.00)	1,000
5017	Management Services	8,025.00	8,139	114.00	96,300.00	97,734	1,434.00	97,734
5020	Consulting Services Other	1,050.00	1,045	(5.00)	12,600.00	12,595	(5.00)	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,664.63	4,172	507.37	44,543.37	50,119	5,575.63	50,119
5034	Licenses & Permits	0.00	0	0.00	438.01	1,500	1,061.99	1,500
5037	Income Taxes	14,000.00	0	(14,000.00)	14,000.00	0	(14,000.00)	0
5038	State Income Tax	3,000.00	0	(3,000.00)	3,000.00	0	(3,000.00)	0
5039	Property Taxes	54,211.34	50,500	(3,711.34)	52,196.80	50,500	(1,696.80)	50,500
5049	Operating Contingency	0.00	413	413.00	0.00	5,000	5,000.00	5,000
	General & Administrative Total	$ 86,566.95	$ 67,569	$ (18,997.95)	$ 256,384.33	$ 259,931	$ 3,546.67	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 10,152.60	$ 2,913	$ (7,239.60)	$ 36,653.02	$ 35,000	$ (1,653.02)	$ 35,000
6004	Lazy River Staff	497.00	2,356	1,859.00	31,732.54	28,305	(3,427.54)	28,305
6006	Mileage Reimbursement	0.00	13	13.00	268.80	200	(68.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	11,547.23	10,500	(1,047.23)	10,500
6030	Fire Alarm & Sprinkler Maint	163.50	200	36.50	2,445.88	2,433	(12.88)	2,433
6031	HVAC System Maint	538.42	250	(288.42)	1,491.04	3,000	1,508.96	3,000
6034	TV Repair & Replacement	0.00	19	19.00	0.00	250	250.00	250
6036	Interior Pest Control	212.75	237	24.25	2,515.80	2,800	284.20	2,800
6038	Termite Treatment	0.00	39	39.00	585.00	490	(95.00)	490
6039	Nuisance Control	191.67	188	(3.67)	2,300.04	2,300	(0.04)	2,300
6041	Janitorial Supplies	213.99	538	324.01	5,418.44	6,500	1,081.56	6,500
6080	Grounds Staff	11,724.90	4,690	(7,034.90)	55,051.67	56,280	1,228.33	56,280
6099	Golf Cart Repair MBR	186.51	87	(99.51)	3,982.62	1,000	(2,982.62)	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	22,500.00	22,500	0.00	22,500
6152	Landscape Maint	302.40	1,676	1,373.60	25,720.12	20,145	(5,575.12)	20,145
6159	Lake Maintenance	420.00	462	42.00	5,746.42	5,500	(246.42)	5,500
6185	Pool/Spa Supplies	487.84	2,250	1,762.16	20,535.96	27,000	6,464.04	27,000
6186	Pool/Spa Maintenance	909.50	1,250	340.50	11,992.50	15,000	3,007.50	15,000
6241	Watchmen Services	48,804.74	39,863	(8,941.74)	477,625.54	478,400	774.46	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,500	378.12	1,500
6244	Watchman Supplies	352.50	1,038	685.50	8,133.96	12,500	4,366.04	12,500
	Repairs & Maintenance Total	$ 78,152.75	$ 60,944	$ (17,208.75)	$ 727,368.46	$ 731,603	$ 4,234.54	$ 731,603

ATTACHEMENT "D"

STATE OF SOUTH CAROLINA)

) COMMERCIAL LEASE AGREEMENT

COUNTY OF HORRY)

THIS AGREEMENT, made and entered into as of the 4th day of November, 2009, by and between THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC., a South Carolina corporation (hereinafter the "Association") and ALLEGIANT FOOD & BEVERAGE, LLC, a North Carolina limited liability company (hereinafter referred to as "Tenant").

WITNESSETH

WHEREAS, the Association owns certain commercial property at The Myrtle Beach Resort, as is more particularly set out below; and

WHEREAS, the Association further has the authority to lease other commercial areas owned or controlled by other Homeowners' Associations at The Myrtle Beach Resort, as more particularly set out below; and

WHEREAS, the Association has determined it to be in the best interest of the homeowners at The Myrtle Beach Resort to enter into an Agreement providing for a consolidated operation of the food and beverage and other commercial activities, including gift shop and convenience store, all as is more particularly set out below; and

WHEREAS, Tenant has made certain promises and has committed to certain undertakings, as more particularly set out herein, as an inducement to the Association to enter into this Agreement.

NOW THEREFORE, in consideration of Five Dollars ($5.00), and the mutual covenants given herein, the receipt and sufficiency of such consideration being hereby acknowledged, the parties agree to as follows:

I. COMMERCIAL AREAS OWNED BY THE ASSOCIATION HEREWITH LEASED TO TENANT

The Association owns the following commercial property and agrees to lease these properties to the tenant for operation:

A. Cabana Bar and lot consisting of approximately 3.03 acres (Also known as Cabana Lot, 5905 S. Kings Hwy., Myrtle Beach, SC 29575. The Tenant may use and occupy the leased property for entertainment

or food service or any other lawful purpose approved in writing by the Association. Tenant agrees that bands/entertainment will be geared to a family type audience. Tenant also agrees and warrants that there will be no loud or disturbing noise on the premises. Tenant warrants that there will be no cover charge or admission fees levied by Tenant, except as approved by Association.

B. Ocean front portion of the first floor of The Renaissance Tower of The Myrtle Beach Resort being a portion of commercial Unit A and consisting of approximately 1,600 square feet (Deli area, also known as Unit A, 5905 S. Kings Hwy., Myrtle Beach, SC 29575). The Tenant may use and occupy the leased property for the operation of a delicatessen or similar food service operation, or such other lawful purpose approved in writing by the Association.

C. Ocean front portion of the first floor of The Renaissance Tower of The Myrtle Beach Resort being a portion of commercial Unit A and consisting of approximately 700 square feet (formerly "Gift Shop" area). The Tenant may use and occupy the leased property for the operation of a delicatessen or similar food service operation, or such other lawful purpose approved in writing by the Association.

D. Commercial Unit E, of the Renaissance Tower of the Myrtle Beach Resort, commonly known as the "General Store". The Tenant may use and occupy the leased property for a General Store or for such other lawful purpose approved in writing by the Association.

E. Commercial Unit B of the Ocean Front Spa of the Myrtle Beach Resort, commonly referred to as the "Snack Bar". Tenant may use and occupy the leased property for a snack bar or any lawful purpose approved in writing by the Association.

F. "Snack Bar" located at Myrtle Beach Resort Horizontal Property Regime and owned by that Association. Tenant may use and occupy the leased property for a snack bar or any lawful purpose approved in writing by the Association.

G. Snack Bar located in the Lazy River/Waterpark area of the Horizontal Property. Tenant may use and occupy the leased property for a snack bar or any lawful purpose approved in writing by the Association.

In addition to the above, the Tenant agrees to abide by all reasonable rules and regulations of the

Association as well as the rules and regulations of the Alcoholic Beverage Control Commission, the individual horizontal property regimes upon which such leased property is located, and any other governing authority. Tenant, and its employees, guests and invitees, shall adhere to all parking regulations and traffic rules established by the Association or the individual horizontal property regimes.

Tenant agrees and warrants that it will undertake no advertising or respections in the premises, unless consented to in advance by Association.

It is anticipated that the leased space and the extent of operations of the Tenant may be modified from time to time by mutual written consent of the Association and Tenant. The parties agree to negotiate and act in good faith with one another in an attempt to provide a consolidated operation of food, beverage and other commercial activities, including gift shop and convenience store operations, all in a manner that will be in the best interest of the homeowners at The Myrtle Beach Resort.

II. HOURS OF OPERATION.

It is the intent of all parties that the food, beverage and retail operations at Myrtle Beach Resort be profitable for the Tenant and provides a quality experience for the owners and guests. Therefore, it is agreed that the Tenant will provide adequate food, beverage and retail service on a year round basis as is more specifically set forth below. Any operation after 11:00 P.M. shall be permitted only with the advance written consent of the Association.

Tenant will meet with management, or other Association designated contacts, on a regular basis to review operating schedules and events, and will, to the extent possible, operate in coordination with other resort operations. Any changes to operating hours must be approved in writing by Association.

LOCATION	"Off Season" Hours	"In Season" Hours
Cabana Bar	closed	11AM until 11PM
Deli	7AM until 7PM	7AM until 11PM

Convenience Store	7AM until 7PM	11AM until 11PM
"A" Building Pool Shack	closed	11AM until 5PM
Oceanfront Spa Snack Bar	9AM until 2PM January through March	closed
Water Park Snack Bar	11AM until 5PM only during times Water Park is open	10AM until 7PM

* "In Season" is defined as the period of time from Memorial Day weekend through Labor Day Weekend; plus "Bike Weeks" (Myrtle Beach Harley Davidson Spring and Fall Rallies and Atlantic Beach Bike Fest; dates for these may vary from year to year) and Spring Break Weeks. "Off Season" means and includes all times not designated as "In Season."

III. TERM.

The term for this Lease shall be for a period of five (5) years commencing January 1, 2010 and ending December 31, 2014. Provided that Tenant has complied with the terms of the lease, this lease shall automatically extend for additional five (5) year periods unless either party notifies the other of a desire to terminate or re-negotiate the contract by August 31st of the last year of any term. The Association shall maintain the right to test the market place via negotiations with other parties at any time during the final year of each term, however Tenant shall have the right of first refusal to match any Agreement the Association may obtain with other parties. The Association shall have the option to buy out the remainder of this Agreement from Tenant as of December 31, 2012 for the amount of Two Hundred Thousand Dollars ($200,000.00) upon providing notice of termination on or before August 31, 2012.

IV. RENT.

A. Tenant shall pay the Association annexed annual rent of Ninety-Five Thousand Dollars ($95,000.00) for 2010, with an annual Three percent (3.0%) increase on January 1st of every year for the duration of this Agreement.

B. The annual rent shall be payable in advance in nine (9) equal monthly installments with the first installment due on January 1 of each year and with subsequent monthly installments due on the first day of each succeeding month until the annual rent is paid in full.

C. In addition to the fixed rent set out above, the Tenant shall pay to the Association any increase in insurance premiums incurred by the Association as a result of the operations of the Tenant from any portion of this property.

Tenant shall pay ten percent (10%) late charge on any payment not received by the Association within ten (10) days of the date, which it is otherwise due.

If Tenant is in default of its obligation to pay rent, the Association shall have a lien upon all personal property, equipment, and trade fixtures located upon the leased premises. If the Association asserts such a lien and/or levies for distress, the Tenant agrees not to remove or permit the removal of such property until all defaults have been cured.

V. MAINTENANCE OF PREMISES

Tenant shall, at its own expense, keep and maintain the premises and all equipment now or hereafter located on or affixed to the premises, including without limitation permanent equipment and fixtures, in good order and repair during the term of this Lease Agreement and shall surrender same to the Association at the expiration or earlier termination of this Lease Agreement in as good condition as they were when received (or subsequently improved or altered), normal wear and tear excepted.

All repairs, replacements and renewals shall be at least equal in quality of materials and workmanship to that which originally existed on the leased property. The Association shall in no event be required to

make any repair, alteration, or improvement to the leased property except as specifically provided for herein. The Tenant shall indemnify the Association against all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims, and demands, including reasonable attorney's fees, because of Tenant's failure to comply with the foregoing.

Any improvements, alterations, and additions to the premises by the Tenant shall be made only at Tenant's expense, in good and workmanlike manner and in accordance with plans and specifications, which have been previously approved in writing by the Association. Association reserves the right to approve any contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, evidence of financial responsibility, permits, licenses, and insurance to be provided by the contractor.

All improvements and additions made by the Tenant and permanently attached to the premises, including without limitation all venting partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets, counters, ceiling and all other permanent improvements and fixtures, including trade fixtures of any kind, shall remain with the premises and shall be surrendered to the Association at the expiration or earlier termination of this Lease Agreement.

The parties agree that any and all items on the premises at the time of the commencement of this Lease Agreement and attached to the premises by any means are fixtures that shall remain with the premises and be rendered to the Association at the termination of this Lease Agreement, including without limitation the following: Two wall air conditioning units located in the Cabana Bar, a three-compartment sink and a handsink located in the Cabana Bar, the hood, exhaust, and fire suppression system located in the Cabana and any and all cabinetry, shelving, counters, and sinks located anywhere upon any of the leased premises.

Tenant shall not, in any event, cause or permit any waste, damage or injury to the leased property.

Association shall be under no liability for damages to the Tenant due to the discontinuance of heat, air conditioning, electricity, water, or of any other service provided by Association or for loss or damage to property of Tenant caused by rain, water, or otherwise, Provided, however, if the loss is insured, the Association will use reasonable efforts to recover any appropriate loss for Tenant, but is under no liability to do so.

The Tenant agrees and acknowledges that it has been afforded ample time to inspect the premises and further agrees to accept the premises "as is."

VI. SIGNAGE

EXTERIOR SIGNS.

At its sole expense, Tenant shall install a Sign, displaying the Tenant's business trade name, on the storefront of the leased premises. If the Association requests the Tenant shall also install at its sole expense an under canopy sign displaying the Tenant's business trade name. All signs erected by Tenant must comply with the Association's sign criteria and with all applicable laws, rules, and ordinances passed by any governmental Agency. Tenant shall not erect any signs whose design and appearance have not first been approved in writing by the Association. Tenant shall at its sole expense obtain any permits or licenses required by any governmental authorities for any signs erected by the Tenant. Tenant agrees to indemnify the Association and hold it harmless from any claims, costs, or damages arising in any way from the erection, maintenance, existence, or removal of any signage. Upon vacating the leased premises, the Tenant shall at its sole expense remove any sign erected by Tenant and to promptly repair any damage caused by the removal.

Tenant agrees not to erect any other sign, decal, awning, advertisement, antenna, satellite dish, or other structure or object on the exterior of the leased premises without first obtaining the written approval of the Association.

INTERIOR SIGNS AND DISPLAYS AND WINDOW DISPLAYS

All interior signs and displays and window displays shall be tasteful, prepared in a professional manner, and in keeping with the character and standards of the Myrtle Beach Resort as determined by the Association in its sole discretion. No hand lettered signs or displays shall be permitted. The Tenant agrees to remove any nonconforming sign or display, as determined by the Association, upon request by the Association.

VII. OTHER PROVISIONS

1. ENTRY ON PREMISES BY ASSOCIATION. Association reserves the right to enter on the premises at any reasonable time to inspect the premises.

2. BUSINESS RECORDS. The Tenant agrees to make all sales and financial records pertaining to all its operations on the premises available on an annual basis by the 31st day of January following the preceding year by forwarding copies to the association's management agent.

3. UTILITIES. The Tenant shall arrange and pay for the use of utilities furnished to the demised premises during the term of this Lease including, but not limited to, water, electricity, gas, sewer and telephone.

Tenant agrees to pay reasonable pro-rata cost of garbage collection and disposal as provided by Association. Provided, however, Tenant is solely responsible for collecting and transporting garbage to a dumpster to be provided by Association, the location of which is to be designated by Association.

4. TAXES AND ASSESSMENTS. All ad valorem taxes, assessments, liens or charges on the land or improvements now located thereon, and all obligations secured by millage or other liens that may be against or levied upon the demised premises shall be properly paid by Association when due. All taxes on property owned by Tenant, as well as all business licenses required by Tenant for the operation of its business, shall be paid by Tenant.

5. INSURANCE. During the entire term of this Lease, the Tenant shall, at the Tenant's sole expense, secure and maintain such personal property insurance as it may determine upon all personal property owned by Tenant and located upon the leased premises, at the expense of Tenant. The Tenant shall, at the expense of the Tenant, secure and maintain during the entire term of its Lease, public liability insurance upon, and in respect to, the leased premises in an amount not no less than Two Million ($2,000,000.00) Dollars for each occurrence and an Umbrella Policy of not less than Five Million ($5,000,000.00) Dollars, and said public liability insurance shall be procured with an insurance company licensed to do business in the State of South Carolina and shall be procured by the Tenant in such manner as to include The Myrtle Beach Resort Homeowners Association and all individual horizontal property regimes as additional insured's. Tenant shall promptly furnish copies to Association policies of insurance for Association and shall direct and instruct the insuring company to mail

duplicate notices or premium statements from time to time under said policies of insurance to the Association at the address designated by the Association.

6. NO SET-OFF OR ABATEMENTS OF RENT. The Tenant shall not be entitled under any circumstances to withhold rent payments or to set off rent payments for any reason whatsoever. The Tenant further agrees that it shall not be entitled to any abatement of rent unless the Myrtle Beach Resort is closed for more than ten (10) consecutive days during the period beginning with the Memorial Day weekend and ending with the Labor Day weekend.

In the event, during the term of this Agreement the Myrtle Beach Resort is closed for more than ten (10) consecutive days during the period beginning with the Memorial Day weekend and ending with Labor Day weekend, the annual rental payment shall be reduced as hereinafter provided. The minimum annual payment shall be reduced by the number of days the Myrtle Beach Resort is closed divided by the number of days between Memorial Day and Labor Day.

7. COMPLIANCE WITH APPLICABLE LAWS. The Tenant, at its sole expense, shall comply with all laws, orders, and regulations of federal, state, and municipal authorities, and with any direction of any public officer, pursuant to the law, which impose any duty upon the Association or the Tenant with respect to the leased property. The Tenant, at its sole expense, shall obtain all licenses or permits which may be required by the conduct of its business within the terms of this Lease, or for the making of repairs, alterations, improvements, or additions, if permitted by Association. The Tenant shall comply with the requirements of all policies of public liability, fire, and all other types of insurance at any time in force with respect to the buildings and other improvements on the leased property.

8. TENANT TO MAKE GOLF PACKAGES AND OTHER PROMOTIONAL OFFERS AVAILABLE TO ALL UNIT OWNERS AND GUESTS AT THE MYRTLE BEACH RESORT. The Tenant agrees to extend any services, sales, and promotional offers made by the Tenant while on the Premises to all guests and owners at the Myrtle Beach Resort on equal terms. This Section includes without limitation any offers for golf packages and other off-premises activities offered by the Tenant.

9. TENANT TO PROVIDE SECURITY. The Tenant shall provide, at its sole expense, adequate security for all activities conducted by the Tenant on the leased premises.

10. SURRENDER OF PREMISES AND OPTION TO PURCHASE PERSONALTY. The Tenant shall on the last day of the term, or upon the sooner termination of the term, peaceably and quietly surrender the leased property to the Association, in as good condition and repair as at the commencement of the term, including replacements, or additions, or improvements constructed, erected, added, or placed thereon by the Tenant with Associations consent, with the natural wear and tear thereof excepted.

The Tenant hereby grants to the Association an option to purchase at the termination of this lease, any movable trade fixtures, furniture, equipment, and personal property of every nature and kind owned by the Tenant and utilized in the operation of the business transacted on the property. The option price shall be the cost of the item or items less cumulative book depreciation at the time this option is exercisable. Association shall have thirty (30) days within which to decide whether it wishes to exercise its option to purchase said personal property at the expiration of this Lease.

If the Tenant fails to remove any personal property, equipment, or movable trade fixtures from the premises within ten days of being notified by the Association that it does not intend to exercise its option, then the Association may in its discretion do one of the following: 1) The Association may deem the property to have been abandoned by the Tenant, and the Association shall have right to dispose of the property as it sees fit, or 2) the Association may have the property removed and may recover from the Tenant the costs of removing the property.

11. DESTRUCTION OF PREMISES. If at any time during the term of this Lease, the leased premises should be damaged by fire or other major casualty, not the fault of Tenant, and if the cost of repairing the damage does not exceed twenty-five percent (25%) of the value of the premises herein leased, then the Association shall as soon as practicable repair the damage caused by said fire or other casualty. If, however, the damage should exceed twenty-five percent (25%) of the value of the premises herein leased, then Association shall have the option of either restoring said premises as set out above or terminating this Lease as of the date of said fire or other casualty. In no event shall the Tenant be entitled to an abatement of rent unless the Myrtle Beach Resort is closed for more than ten consecutive days during the period beginning with the Memorial Day weekend and ending with the Labor Day Weekend.

If, during the period beginning with the Memorial Day weekend and ending with the Labor Day

weekend the leased premises shall be rendered uninhabitable for more than ten consecutive days by damage which is not the fault of Tenant, the rent shall be abated from the eleventh day following the date of the event rendering the premises uninhabitable to the date of completion of the restoration of the premises. Such abatement shall be proportionate to the loss of occupancy sustained in respect to the revenue generated by that portion of the leased premises. If the damage is so extensive as to amount practically to the total destruction of the entire leased premises, either Tenant or Association shall have the right to cancel this Lease by giving written notice and rental shall be apportioned to the date of the damage.

12. DEFAULT. If Tenant shall default in the terms of this Agreement, Tenant agrees to pay all reasonable attorney's fees and costs incurred by the Association in enforcing the obligations of the Tenant under this Agreement.

13. DECLARATION OF GOVERNING LAW. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina.

14. SUBORDINATION TO EXISTING AND FUTURE MORTGAGES. This Lease shall be subject and subordinate at all times to the lien of existing mortgages and of mortgages which hereafter may be made a lien of the leased property. Although no instrument or act on the part of the Tenant shall be necessary to effectuate such subordination, the Tenant will, nevertheless, execute and deliver such further instruments subordinating this lien to the lien of any mortgages as may be desired by the mortgagee. The Tenant hereby appoints the Association, its attorney-in-fact, irrevocably to execute and deliver any such instrument for the Tenant.

15. WAIVER. Failure of either party to insist upon strict performance of any covenant or condition of this Lease in anyone or more instances shall not be construed as a waiver for the future of any such covenant or condition, but the same shall be and remain in full force and effect.

16. BINDING EFFECT. The covenants, terms, conditions, provisions, and undertakings in this Lease, or in any renewals thereof, shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto, as if they were in every case named and expressed, and shall be considered as covenants running with the land; and, wherever reference is made to either of the parties hereto, it shall be held to include and apply also to the heirs,

executors, administrators, successors, and assigns of such party, as if in each and every case so expressed.

17. ENTIRE AGREEMENT, MODIFICATION, SEVERABILITY. This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

18. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT. Tenant agrees to indemnify and save Association harmless except in the event of gross negligence on the part of Association, its employees, or agents, against any and all claims, demands, damages, costs and expenses, including reasonable attorney's fees for the defense thereof, arising in any way from the leasing of the aforesaid premises to the Tenant or from the conduct or management of any business operated by the Tenant in or on the Demised Premises or from any breach or default on the part of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to the terms of this Lease Agreement, including any work done in respect to improvements to be performed by Tenant, or from any act of negligence of Tenant, Tenant's agent, contractors, sub contractors, servants, employees, sublessee, concessionaires, or licensees in or about the Demised Premises. In case of any action or proceeding brought against the Association by reason of any such claim, upon notice from Association, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Association.

All property kept, stored, or maintained in the Demised Premises shall be so kept, stored or maintained at the sole risk of Tenant.

Tenant agrees to pay and discharge any mechanic's, material men's or other liens against the Demised Premises or Association's interest therein claimed in respect to any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or upon the request of Tenant, provided that Tenant may contest such lien or claim upon promptly securing the discharge of the leased premises from the lien by the filing of a written undertaking as provided by statute, or upon furnishing to

Association such indemnification as the Association may reasonably require for the final payment and discharge of the lien, together with the costs and expenses of defending the same. If the Tenant fails to secure the discharge of the leased premises from any such lien within ten days of the filing of the lien, or fails to furnish the Association within ten days of demand by the Association with such indemnification as the Association may require for the final payment and discharge of the lien, then Association may release the lien by any means allowed by law, and the Tenant shall reimburse the Association for all costs and expenses incurred by the Association in procuring the release of the lien, including attorney's fees, plus interest at the rate of prime plus four per cent on any sum paid by the Association.

Nothing contained in the Lease Agreement shall be so construed as to in any way as to subject Association's interest in the Demised Premises to any such lien.

Association shall not be liable to Tenant, and Tenant hereby agrees to hold Association harmless, for any damage occasioned by plumbing, electrical, gas, water, steam or other utility pipes, systems, and facilities or by the bursting, stopping, leaking or running of any tank, closet, waste or other pipes in or about which they are a part, nor from any damage occasioned by water being upon or coming through the roof, vent, windows, doors, or otherwise.

19. ASSIGNMENT. Tenant may not assign this Lease or sublease any portion of this property without the express written consent of the Association, which may be withheld for any reason.

(This Section Left Blank Intentionally)

IN WITNESS WHEREOF, the Association and Tenant subscribed their names and affixed their seals the day and year first above written.

WITNESSES:

ASSOCIATION:

MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.

By: _____
Mel Renkey, Sr. Community Manager

ALLEGIANT FOOD &
BEVERAGE, LLC

By: _____
Robert Jones, Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ADDENDUM TO COMMERCIAL LEASE AGREEMENT

THIS ADDENDUM TO AGREEMENT, made and entered into as of the [illegible] day of October, 2013, (hereinafter referred to as "Addendum"), by and between THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC., a South Carolina corporation, (hereinafter referred to as "Association") and ALLEGIANT FOOD & BEVERAGE, LLC, a North Carolina Limited Liability Company, (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, the Association and the Tenant have heretofore entered into a Commercial Lease Agreement dated November 1, 2003, (hereinafter referred to as "Agreement") for the leasing of certain commercial property located at the Myrtle Beach Resort providing for a consolidated operation of the food and beverage and other commercial activities, including gift shop and convenience as more particularly set forth in the Agreement that is incorporated herein by reference; and

WHEREAS, the undersigned parties to the Commercial Lease Agreement have amicably agreed to amend the aforesaid Agreement and to further memorialize the same by entering into this Addendum;

NOW, THEREFORE, in consideration of Five Dollars ($5.00) and the mutual covenants given herein, the receipt and sufficiency of such consideration being hereby acknowledged, the parties agree to the Addendum of the the aforesaid Agreement as follows:

1. H. HOURS OF OPERATION

LOCATION:	Off Season Hours	In Season Hours
Cabana Bar (The Quarterdeck)	11AM until 10PM or later based upon occupancy *	11AM until 12AM
Deli (The Galley)	8AM until 3PM *	8AM until 11PM
Convenience Store	24AM until 11PM	
"A" Building Food Shack	10AM until 7PM *	
Water Park Snack Bar	10AM until 5PM *	

*Weather permitting

In Season shall continue to be defined as set forth in the Agreement that being the period of time from Memorial Day weekend through Labor Day Weekends plus "Bike Weeks" (Myrtle Beach Harley Davidson Spring and Fall rallies and Atlantic Beach Bike Fest, dates for these may vary from year to year); Spring Break weeks and Holidays;

Off Season shall also be defined as set forth in the Agreement that means and includes all times not designated as "In Season".

2. The Tenant shall consider lowering the off season menu to accommodate winter residents.

3. The noise level at the Cabana Bar (The Quarterdeck) shall be monitored two times per night by security and security shall keep a written log as to such monitoring which shall take place when there is music being played by a band or otherwise.

4. The Tenant hereby agrees that it shall pay the sum of $39,835.00 that shall be allocated as follows:

A. The Tenant shall remodel the space the Cabana Bar (The Quarterdeck) and the Tenant shall further be responsible for the cost of the remodel in the sum of $15,790.00. The Tenant agrees that such remodel will be completed between October and December, 2013.

B. The Tenant agrees to bear the entire cost and host the annual homeowner's dinner for the annual meeting in April of each year as previously provided, so long as the Tenant remains under contract with the Association. The costs of the annual dinner is estimated at approximately $3,000.00 per year for a 6 year period with an approximate total of $18,000.00 in costs.

C. The Tenant shall replace all of the carpeting inside the Rental Office Building located outside of the Security Gate, with the Tenant bearing 100% of the cost that shall be completed within the calendar year of 2014 at an estimated cost of $6,045.00.

5. The Association shall absorb the cost of replacing the existing flooring in the kitchen, bar and storage areas of the Cabana Bar (The Quarterdeck) at an estimated cost of $15,872.00.

6. The Association hereby agrees to waive its right contained in the current Agreement which allows the Association by August 31, 2014 to seek alternative proposals that the Tenant would then have to match.

7. The expiration date of the Agreement shall be December 31, 2019. The Association shall maintain the right to test the market place via negotiations with other parties at any time during the final year of the Agreement which is 2019, however, the Tenant shall have the right of first refusal to match any Agreement the Association may obtain from other parties.

8. All other terms and conditions set forth in the original Commercial Lease Agreement dated November 11, 2009, shall be in full force and effect until the termination date of December 31, 2019, including the 3% increase in

annual rent per year on January 1st of every year for the duration of the Agreement. Furthermore, the Tenant agrees to make available all sales and financial records pertaining to all its operations on the premises on an annual basis by the 31st day of March following the preceding year by forwarding copies to the Association's Managing Agent. - was this in the previous edition?

IN WITNESS WHEREOF, the Association and Allegiant subscribed their names and affixed their seals the day and year first above written.

WITNESSES:

ASSOCIATION:

MYRTLE BEACH RESORT

HOMEOWNERS' ASSOCIATION, INC.

By: _____

Stanley Jordan, President

ATTEST:

_____

Phil Cox, Secretary

ALLEGIANT FOOD & BEVERAGE, LLC

By: _____

Robert Jones, Managing Manager

ATTACHEMENT "E"

KA. DIEHL & ASSOCIATES, INC
SECURITY SERVICES CONTRACT

THIS AGREEMENT, made as of this 7th day of December, 2009, by and between the MYTRLE BEACH RESORT HOMEOWNERS' ASSOCIATION, a Not for Profit Corporation of the State of South Carolina, (hereinafter "ASSOCIATION") and K.A. DIEHL & ASSOCIATES, INC a South Carolina Corporation, mailing address at 11740 Highway 17 Bypass South, Murrells Inlet, SC 29576, (hereinafter referred to as "KAD").

WITNESSETH: In consideration of the agreements herein contained, to be performed by the parties hereto, and of the payments hereinafter agreed to be made, it is mutually agreed as follows:

1. KAD will perform all work in connection with the security services at the Myrtle Beach Resort on behalf of ASSOCIATION located in Myrtle Beach, South Carolina (the "Property") under the terms as stated in this contract document.

2. KAD will furnish qualified, uniformed personnel, equipment, labor, insurance, and other accessories and services necessary to perform said officers services in accordance with pricing in "contract document". Badges shall clearly state either the word "Security" or the officers rank across the center bar. Hats shall prominently display the words Security Officer across the front and all jackets shall prominently display the words Security Officer across the shoulders. All officers shall have successfully passed a background check conducted by SLED, and all officers shall have been properly trained, certified and will be properly supervised. KAD shall provide substitute officers to cover for planned or unplanned absences.

3. All equipment, mutually agreed upon by KAD and ASSOCIATION, paid for by KAD will be the property of KAD and, upon termination or expiration of contract, will remain the property of KAD, and similarly for equipment paid for by ASSOCIATION.

4. ASSOCIATION will furnish or reimburse KAD for all consumable accessories and supplies, as may be necessary for regular use and non-transferable to other properties, such as access passes, daily logs, phone lists, markers, stickers, etc.

5. KAD agrees to perform all services related to security, as mutually agreed by KAD and ASSOCIATION, based upon the General Scope of Services, attached hereto as part of Exhibit A, and as further described in Supplemental Guidelines to be prepared separately based upon Association guidelines for access, parking, etc.

6. Pricing for services is outlined in the Cost Proposal, attached hereto as part of Exhibit A. It is hereby acknowledged by KAD that KAD will supply at no additional cost all uniforms, licenses, vacation, and bonuses to key personnel.

7. KAD shall pay all wages and applicable employment taxes and maintain Workers' Compensation Insurance for all of its employees. Pay periods shall run from the 1st to the 15th and from the 16th to last day of each month. Paydays shall be on the 5th and 20th of each Month. If the 5th or 20th is a Saturday, the payday shall be the preceding Friday and if the 5th or 20th fall on a Sunday, the payday shall fall on the following Monday.

8. The term "contract documents" means and will consist of this document, including Exhibit A, correspondence if any, and SLED License and Insurance Certificate.

The "contract documents" enumerated above are hereby made part of this contract and are physically attached hereto and by execution of this Contract the ASSOCIATION and KAD acknowledge that they have examined and are familiar with the contents of the said "contract documents".

9. ASSOCIATION agrees to pay KAD in current funds for the performance of the Contract, subject to additions and deductions contained in the "contract documents" in such amounts as required by the "contract documents". Billing will correspond with KAD payroll periods.

10. Payment shall be made within 10 days of the invoice date. A service charge of 1-1/2% per month (18% per annum), shall be applied to invoices not paid within thirty days of the invoice date.

11. This contract shall commence at 10:30 pm on December 31, 2009 and continue through and including December 31, 2011. Thereafter, this contract will renew for successive 2-year terms, with the inclusion of an increase as decided annually by the Myrtle Beach Resort HOA, Board of Directors, to compensate for personnel pay increases. Either party may give notice of their intent not to renew 90 days prior to the end of any contract term.

12. KAD and ASSOCIATION hereby agree that the level of services, including hours to be provided by KAD, are as set forth in General Scope of Services. Based on holidays, bike weeks and other additional shift requirements within the Property these hours could increase as determined by and based upon the needs of ASSOCIATION.

13. In the event of sole negligence on the part of KAD its employees, agents or sub-contractors, KAD shall be liable for any damage caused by KAD to any property of ASSOCIATION or that of any occupant, agent, or invitee of ASSOCIATION and shall promptly repair any such damage.

14. Notwithstanding that joint or concurrent liability may be imposed upon ASSOCIATION by statue, ordinance, rule, regulation, order or court decision, KAD shall, notwithstanding any insurance furnished pursuant hereto or otherwise, indemnify, protect, defend and hold harmless ASSOCIATION from and against any and all liability, fines, suits, claims, obligations, damages, losses, penalties, demand, actions and judgments, and costs and reasonable expenses of any kind or nature (including reasonable attorney's fees), by anyone whomsoever, due to or arising out of:

a. any work or thing done in, on or about the Property or any part thereof by KAD or anyone claiming through or under KAD or the respective employees, agents, licensees, servants or subtenants of KAD or any such person;

b. any air, land, water or other pollution caused by KAD;

c. any negligence or wrongful act or omission on the part of KAD or any person claiming through or under KAD or the respective employees, agents, licensees, invitees, or servants of KAD or any such person;

d. any accident or injury to any person (including death) or damage to property (including loss of property) occurring in, or on the Property or any part thereof, except for accidents or injury to any person or damages to property caused by any negligence or wrongful act or omission on the part of ASSOCIATION;

e. any failure on the part of KAD to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Contract on its part to be performed or complied with; and

15. Cancellation:

a. ASSOCIATION and KAD reserve the right to cancel this Agreement, with or without cause, upon thirty (30) days' written notice to the other party. Notice for KAD under this Agreement shall be sent, via certified mail, to K. A. Diehl & Associates, Inc., 11740 Highway 17 Bypass, Murrells Inlet, SC 29576. Notice for MBR HOA shall be sent certified mail to MBRHOA 5905 S. King's Hwy, Myrtle Beach, SC 29575. The date the notice is postmarked shall serve as the beginning of the thirty (30) day notice period.

b. Upon termination of this Agreement, KAD shall promptly account for and deliver to ASSOCIATION, or such person or entity designated, materials, supplies, equipment, keys, and records (including electronic media) pertaining to this Agreement.

(This space left blank intentionally)

Initial KAD

Initial ASSOC

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their proper corporate offices and their proper corporate seals to be affixed hereto the day and year as indicated in the acknowledgements attached hereto and made a part hereto.

WITNESS: MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION

By: _____ By: _____
Mel Ronkey-Sr Community Manager

WITNESS: K.A. DIEHL & ASSOCIATES

By: _____ By: _____
Eric Ault, Director of Property Services

Exhibit A

General Scope of Services

KAD will provide personnel for the purpose of:

Manning the front gate house; Monitoring and controlling vehicle access to the property; Distributing temporary access passes in accordance with Association guidelines; Patrolling designated areas within the Property; Distributing miscellaneous items to homeowners and Management as may be required by Management or requested by Association; Receiving, processing, responding to complaints and emergency calls as necessary; additional services, specific to the Property, as mutually agreed by KAD and Association.

Specific guidelines and procedures for performing all services will be established and documented in a cooperative effort between both KAD and ASSOCIATION. KAD shall obtain whatever SLED and Horry County certifications are necessary for the officers at the Myrtle Beach Resort to continue to be able to write tickets and make arrests in the same manner as done currently.

Employees are the contracted employees of KAD. The addition or termination of security employees at the Myrtle Beach Resort, with the exception of the Chief of Security, currently Mr. Woody Perry, must be made with the recommendation of the Chief of Security . . ., and the approval of the Community Manager of the MBR HOA, currently Mel Rankey. Any changes to the Chief of Security's position or pay shall be recommended by the Community Manager and approved by the MBRHOA Board of Directors. In the event of a termination or expiration of this contract the MBRHOA maintains a right of first refusal for all KAD personnel assigned to Myrtle Beach Resort. This refusal includes the right for the MBRHOA to hire another contractor to provide these services, and the right to transfer the employees assigned by KAD from the employment of KAD to employment by the new contractor effective on the termination or expiration of this contract.

The Chief of Security will normally have the final say on all operating issues except those that require the expenditure of funds, in which case the approval of the Community Manager is required. If the KAD administrator and the Chief of Security disagree on any operating issues, they will jointly present their case to the Community Manager who will consult with the Board of Directors, if deemed necessary, and make a decision. If the Community manager has not consulted with the Board and either party disagrees with the decision of the Community Manager, they shall notify the Community Manager of their desire for the Board to be consulted and the Community Manager shall involve the Board in a final decision on the matter.

KAD guarantees that sufficient work force will be available to MBR HOA during Bike Weeks and if not, KAD will reimburse MBR HOA for any additional expenses required to provide adequate force in the event KAD should fail to do so.

All officers assigned to Patrol duties will be trained in the use of handcuffs, chemical sprays, and baton.

All officers assigned to Gate duties will be trained in the use of chemical sprays.

All officers assigned to the property will be trained in, and authorized by SLED to, execute arrest powers and write citations on the property.

The costs associated with all certification training for SLED and for use of weapons and chemicals shall be borne by KAD. On site training required for familiarizing an employee with the premises and procedure unique to Myrtle Beach Resort shall be borne by the Association.

KAD shall provide officers for Patrol Shifts who are fully capable, both in training and physical abilities, of apprehending individuals who are violating the law and who choose not to cooperate with security officers.

If the Chief of Security has provided KAD with at least five days notice of the need for additional Personnel and KAD has failed to provide an officer fitting the description in the previous paragraph, KAD shall bear the costs of all overtime required to fill the personnel needs as requested by the Chief of Security. Any disputes as to the question of "fully capable" shall be adjudicated through the appeal process outlined above with respect to operating issues. In the event of sickness or injury of an officer, the five days notice required shall not apply and KAD will be required to furnish personnel or pay the additional premium time required to backfill for the officer.

KAD employees providing the services herein described will be assigned without regard to race, color, creed, sex, national origin, handicap conditions, and/or covered veteran status for which employees are protected in their terms and conditions of employment by Federal, State, Or Municipal law, or Executive Orders and Regulations governing the conduct of contractors with Federal, State, or Municipal Governments.

Cost Proposal

The total compensation to which KAD shall be entitled during the term of the agreement shall consist of fees for man hours to cover shifts established by ASSOCIATION in conjunction with our management team. Such compensation represents the overhead expenses of theKAD and fees for Uniforms, Supplies and Licensing Fees are included in our Price. KAD hourly compensation also includes vacation, some overtime, as described above, and bonuses paid to the full time staff.

Any site-based staff required by ASSOCIATION will be provided to ASSOCIATION. K.A. DIEHL will be responsible for advertising, pre-employment testing, background checks, benefits administration, and payroll administration for this staff as well as Wage and Hour reporting, EEOC claims administration and SLED training. For this service we will charge a man hour rate as follows:

Supervisor (Chief) Rate:	$28.00
Assistant Supervisor (Lt) Rate:	$15.50
Sgt Rate	$15.00
Officer III Rate	$14.50
Officer II Rate	$14.00
Officer I Rate	$13.50
Staff Rate	$13.00

These rates are subject to change annually based on the actual hourly rate paid to each staff member or with the addition of new staff members

KAD will make available to all full-time staff, health benefits as part of KAD's group policy. It is understood that ASSOCIATION will be responsible for 70% of the cost of these benefits to each employee assigned to the Property, while the individual will be responsible for the remaining 30%.

K.A. DIEHL WATCHMEN SERVICES

(As presented to the Board; September 2009)
It is our goal to provide "*security services*" and our mission shall be:
To be the premier Community Association security services company in all aspects, especially in maintaining common properties, providing a secure environment, preserving a quality natural setting, meeting members' needs for community services, maintaining and enhancing property values, and fostering a spirit of community for all members.
In our attempt to develop and institutionalize a better customer service model, Department heads have worked on putting together a Service Commitment statement, which serves as a mission for our whole security organization and Core Values and Service Basics that reflect that commitment. After several meetings and many hours, we have arrived at the commitment, values, and basics that we feel separates us from a mediocre organization and makes us superior. What we have developed is exemplified by K.A. Diehl employees every day. We do feel that constant reinforcement of our commitment, values, and service basics will only improve our already superior performance.
Therefore, the following procedure will be followed:

- Supervisors will be responsible to review with their personnel the Service commitment, Core Value Service, Basic and Specials note as designated by the Director of Security and the Association Personnel Manual.

Our Core Values:

- We are empowered to ensure complete member satisfaction.
- Our Service Commitment is embraced and executed by each employee.
- We will demonstrate genuine respect for one another—ladies and gentlemen serving ladies and gentlemen.
- Communication at all levels is how we succeed.
- We anticipate members' needs to create a seamless and personalized experience.
- Protection of our natural environment and the Association's assets is the responsibility of every employee.
- Each employee is an ambassador of K. A. Diehl and the Association.
- All employees use the proper greetings, verbiage and phone etiquette at all times.
- We maintain a professional appearance through proper and appropriate grooming standards and standard uniforms.
- A clean, uncluttered, well organized and efficient workplace is the responsibility of every employee.

Our Service Basics:

Empowerment

- Understand the difference between what is right and what is wrong....

Service

- Anticipate the customers' needs.
- Follow through on the service details like making eye contact, approaching the customer as he/she approaches you, providing a map or an escort.
- Keep your heart in your work. Develop a personal commitment to excellence.

Differences

- Value individualism, creativity and specialization since these make the whole better.
- Accept and respect differences.

Communication Skills

- Demonstrate genuine caring and service for others
- Be approachable and friendly.
- Seek first to understand, then to be understood. Listen carefully. Speak slowly. Ask questions.
- Keep the communication loop flowing.
- We are all one service team.

The Property

- Understand your connectedness to the Association. The resort, regimes, guests, town and wildlife are all an integral part, just like you.
- Actively represent the Association. Promote goodwill.
- Seek the best interests of the Association.
- Be a good steward of the Association's assets and a benefit to the Properties habitat.

Etiquette

- Use pleasantries like "please", "thank you", "my pleasure", and "you're welcome".
- Use the member's name. Introduce yourself.
- Answer the phone..., Respond "on their time."

Personal

- Come to work with a well-groomed, neat appearance, appropriate & complete uniform.
- Respect each other. If you see a mess clean it up. If you get it out, put it back. If you turn it on, turn it off. Pick up litter. This goes for personal work areas the corporate work areas and the entire property.

BASIC FUNCTIONS-SECURITY

The basic functions of the K.A. Diehl security services include;

Controlling access to the property by assuring all persons passing through the gates have a reason to pass and have authorization as promulgated by the Vehicle Access policy set by the Board of Directors.

- Patrol all properties and enforce the Covenants, and Rules and Regulations. The method of gaining compliance with these guidelines is through engineering, education, and punitive enforcement as necessary.
- Providing quality of life customer service type services to members. Such services include checking vacant properties, changing member's tires, providing medical assists, and responding to all service requests within the realm of responsibility of Watchmen.
- Inspecting the entire property and member's properties for safety exposures.
- Providing officers for special events and activities.

ACCESS CONTROL

A primary function of K.A. Diehl security services is access control or allowing authorized individuals on the property and keeping unauthorized people out. Typical actions regarding this control include:

- Ensuring that all members, contractors, employees, and renters have and display the proper access credentials.
- Identifying all visitors and assuring that they have the necessary passes.
- Ensuring that pass access restrictions are understood and when necessary enforced.
- Monitor Parking Passes to Ensure they are Appropriately Displayed at all Time and Issue Warnings and/or Violations as outlined in Association Operation Manual.

PATROL

Patrol officers observe a wide variety of persons and locations; they report a large amount of information to K.A. DIEHL administration. This information, when properly reviewed and analyzed, provides an invaluable insight into the operation of the Association's security program. Hazards are reported and deficiencies in the asset protection guidelines are highlighted so that changes in procedures can be made. Our patrols are almost exclusively motorized with time out of patrol vehicles to check parking lots for passes, to answer calls, to enforce parking rules, to provide officers at special events, and to give particular attention to problem or directed patrol areas.

The entire property should be patrolled at least twice per shift and all aspects of the environment should be carefully observed. When anything out of the ordinary occurs, the Officers should evaluate the situation and take necessary steps as outlined by Myrtle Beach Resort policy and procedure manual.

The common items an officer on patrol should look for include:

- Doors, windows, or other openings that are not secure;
- Suspicious persons, vehicles, or circumstances (improper access);
- Disorder or unusual activity-disorderly youths, noise, vehicular annoyances; and
- Hazardous conditions-such as water or other fluid leaks, fire hazards, and malfunctioning equipment.

ESCORTS

In our effort to provide premier customer service it oftentimes becomes necessary to provide escorts for property owner guests, contractors, people with disabilities, and/or children. The actual reasons for such escort duty is myriad, but, any reasonable request is honored, whenever possible.

INSPECTIONS AND SPECIAL ASSIGNMENTS

Inspection activities include commercial and employee pass verification, property owner and renter guest pass verification, checking for hazards, and other safety reviews.

Officers also serve as messengers, communications coordinators, and at times as necessary as chauffeurs.

SECURITY ORGANIZATION

One of the basic tasks of an officer is to determine how many posts are required to provide the service expected and to protect the assets of the organization.

An officer's post is defined as any location or combination of activities for which a trained human being is necessary. This definition includes three key concepts:

- A location or combination of activities.
- Necessary human being. (*see description below*)
- Training and competence to accomplish the required activities.

LOCATION OR COMBINATION OF ACTIVITIES

The stationary or "fixed post" and the roving patrol represent the location or combination of activities in the first concept of estimating personnel requirements.

NECESSARY HUMAN BEING

The following activities, characteristics, and capabilities may be regarded as attributes requiring a human being:

- Ability to discriminate among events, persons, circumstances or physical objects based on complex and varying criteria.
- Ability to conduct rational dialogue with other persons face to face or on the phone and discern necessary action based on that communication;
- Ability to exercise judgment to determine a logical course of mental or physical activity in response to circumstances that may vary randomly.

Duties outlined in our Basic Function require all the above criteria defining the need for a human being on post.

TRAINING AND COMPETENCY

To assure that officers have the knowledge necessary to perform their basic functions much time is expended on training functions.

Training Modules
(Typical examples)

Subject	Orientation	Quarterly	Monthly	Weekly	Daily	Yearly
Phone Etiquette	XXX		XXX			
Decal/Pass System	XXX	XXX				
Computer Usage	XXX		XXX			
Customer Service	XXX			XXX		
Service Basics	XXX				XXX	
Covenants	XXX	XXX				
Gate House Operations	XXX	XXX				
Bomb Threats	XXX	XXX				
Verbal communications	XXX			XXX		
Report Writing	XXX	XXX				
Patrol Function	XXX	XXX				
Ticket writing	XXX					
Anger Management	XXX					XXX
Harassment/Discrimination	XXX					XXX
Performance Management Plan	XXX	XXX				
Employee Handbook	XXX					
Sled Certification	XXX					
Safety Issues-General	XXX*					
Safety Issues-Heat Stress	XXX*					XXX
Safety Issues-Driving	XXX*					XXX
Safety Issues-CPR/AED	XXX*					XXX
Safety Issues-Electrical	XXX*					XXX
Safety Issues-Fire	XXX*					XXX
Safety Issues-Housekeeping	XXX*					XXX
Safety Issues-Slips, Trips, Falls	XXX*					XXX
Safety Issues-Workplace Violence	XXX*					XXX
Safety Issues-Managing Stress	XXX*					XXX
Safety Issues-Your Heart Matters	XXX*					XXX
Safety Issues-Ergonomics	XXX*					XXX
Safety Issues-Back Injuries	XXX*					XXX

*Briefly mentioned at orientation but a major OJT component

KAD is committed to ongoing review and refinement of our training criteria for all staff. The curriculum and specific training methods and material is updated on a regular basis, with the specific intent of exceeding that required by SLED.

E.C.A.
Initial KAD

Initial ASSOC

ATTACHEMENT "F"

Nancy:

Below is Jack's calculations on the hours for Watchmen's Services. The total amount spent for Watchmen's Services is on the December 31, 2013 financials on the Master website. If you want each month broken down you will find it on the Operating Income Statement under GL#6241 on the Master website.

Darla Donovan, CMCA, AMS

Senior Community Manager

K.A. Diehl, AAMC

An Accredited Association Management Company

(Direct Dial: (843) 828-1300

(Direct Fax: (843) 357-4153

(Corporate fax line (843) 828-8021

*Email: Darla.Donovan@KADiehl.com

ÿ www.KADiehl.com

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www.kadiehl.com

From: Jack Boselli

Sent: Wednesday, February 19, 2014 11:19 AM

To: Darla Donovan

Cc: Julie Watson; Eric Ault; Vicki Gallagher

Subject: Watchmen Hours

Importance: High

Darla,

It is my understanding that the MBR Master Board has approved the distribution of the # of watchmen hours for 2013. Please see the following information:

Regular Hours	25,665.00
Overtime Hours	730.50
Holiday	1,036.00
Sick/Personal	296.00
Vacation	1,024.00
Bonus	558.00
Total	29,309.50

Thanks and have a great day!

Jack Boselli

Chief Executive Officer

ATTACHEMENT "G"

SO ORDERED.

SIGNED this 11 day of December,2013.

Stephani W. Humrickhouse
Stephani W. Humrickhouse
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION

IN RE:	CASE NO.
CROC, LLC,	13-05146-8-SWH
DEBTOR	

ORDER ALLOWING MOTION TO CONVERT OR DISMISS

This matter came before the court on motion of the bankruptcy administrator to convert or dismiss this chapter 11 case for cause pursuant to 11 U.S.C. § 1112(b)(4). Memoranda supportive of the bankruptcy administrator's motion were filed by creditors SRS, North Carolina Property, LLC ("SRS") and Stephen R. Smith ("Smith"), Donald Wray ("Wray"), and EOS Properties, LLC ("EOS"). The debtor objects to the motion. Hearings on the motion took place on October 17 and November 7, 2013, in Raleigh, North Carolina, after which the court afforded the parties an additional opportunity to file supplemental memoranda. The matter is now ripe for disposition, and for the reasons that follow, the court will convert the case for cause pursuant to § 1112(b)(4).

BACKGROUND

The debtor is a beach condominium unit rental business with two employees; the debtor's owner-operator, Glenn Magill ("Magill"), and his son, who lived in one of the condo units (through October 2013) as the on-site manager. The debtor owns a total of twelve condominium units within

the Bodie Island Resort, located in Nags Head, North Carolina. Though the usage allocations change from time-to-time, at present, eight of the condos are designated as long-term rentals and four are used for short-term vacation rental. The debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on August 15, 2013.

On August 29 and September 12, 2013, Magill testified for the debtor at an emergency hearing for the use of cash collateral. In response to and consequence of Magill's testimony, the Bankruptcy Administrator ("BA") moved to dismiss or convert the debtor's case for cause under multiple provisions of § 1112(b)(4): specifically, the BA urges conversion or dismissal on four separate grounds; the likelihood of substantial and continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; gross mismanagement of the estate; the debtor's failure to maintain appropriate insurance; and the debtor's post-petition payments for debts or services rendered pre-petition. SRS, Smith, Wray and EOS filed memoranda supporting the BA's motion to convert or dismiss. Creditor EOS also filed a memorandum outlining the specific bases upon which it contends the debtor's case should be converted to Chapter 7.

In addition, the memoranda filed by the BA and other creditors assert their collective belief that the debtor's plan is not feasible. The debtor filed a plan on November 13, 2013, which attempted to address its creditors' efforts to preclude cramdown, but developments since that filing

indicate that the debtor is unlikely to succeed with its effort[1] to include an impaired accepting class. In light of the court's determination that cause exists to convert the case, the court need not address the feasibility of the debtor's plan.

I. Grounds to Convert or Dismiss Pursuant to 11 U.S.C. § 1112(b)(4)

A. Diminution of Estate and Absence of Likelihood of Rehabilitation

Among the statutory grounds providing cause for conversion or dismissal is the "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). The BA contends that dismissal on this ground is warranted by at least three factual bases: First, the testimony of Jack Lightbody, a real estate witness, that "the property is in a diminished state and in need of immediate attention, metal is rusting, stucco has water damage, only one pool is in operation, buildings need new paint, a crack in the pool needs to be sealed, the entrance sign needs to be replaced, property is in general disrepair and overall not aesthetically pleasing." BA's Mem. in Support of Mot. to Dismiss or Convert ("BA's Mem.") at ¶ 1(a). Next, the BA argues that the debtor "does not generate enough income to satisfy debts and pay for expenses including homeowner's dues and assessments associated with the property." Id. Finally, the BA notes that the debtor, as the owner of 12 units, has "failed to pay the homeowner's association for past dues and/or assessments, which has resulted in the property falling into disrepair and caused a hardship on the homeowner's association." Id. At the hearing on November 4, 2013, Mike Milam, chairman of the finance committee of the Bodie Island

[1] At one point, the debtor thought that secured creditor Donald Wray might vote in favor of the debtor's plan, but Wray is in support of dismissal or conversion. The debtor then represented that creditor Jon T. Gonzales would be the sole impaired class voting in favor of the debtor's plan, but the Gonzales claim is now assigned to creditor EOS.

Homeowners Association ("HOA"), testified that the debtor had not made payment to the HOA since June 2012, for 2012 dues. Milam estimated the debtor's dues shortfall to be approximately $40,000, which he characterized as a hardship that impacts the HOA's ability to provide maintenance services.

In response, the debtor did not address testimony regarding the physical condition of the property in any detail, except to state that there is "no evidence that the property is declining in value" and that "the property is being properly maintained." Debtor's Resp. to BA's Mot. at 6-7. The debtor notes of its relationship with the HOA that "the Debtor and the HOA are in conflict with each other," which the debtor attributes in part to the HOA's lack of cooperation in producing evidence of insurance (discussed below). There are, however, other areas of conflict as well, as illustrated by the debtor's objection to the HOA's claim of $75,855.20, and its assertion that it holds an offsetting claim of $174,554.53, as well as certain statutes of limitation defenses which will, the debtor states, warrant disallowance in full of the HOA claim.

Beyond those points, the testimonial evidence and filings are (comparatively) sparse with regard to whether there is a literal, physical component to any loss to or diminution of the estate. The court recognizes that the BA's concerns under § 1112(b)(4)(A) go beyond the physical condition of the property, but the court believes those concerns fit more comfortably into the context of gross mismanagement, discussed below. Accordingly, based on the limited testimony of the HOA representative and the debtor's skimpy response, the court concludes only that the property of the estate is in less than optimal condition. The court does not at this time believe that failures of maintenance and upkeep rise to the level of "substantial or continuing loss or diminution."

B. Gross Mismanagement of the Estate

The court shall convert or dismiss a case if the court finds "gross mismanagement of the estate." 11 U.S.C. § 1112(b)(4)(B). The BA asserts that the debtor's varying testimony over three hearings (on the motion to dismiss and the motion to use cash collateral) establishes his general lack of familiarity with, and understanding of,[2] the debtor's income and expenses. In addition, by the BA's calculations, information provided by Magill with respect to the nature of the leases[3] (month-to-month, long or short term, etc.) results in monthly collections of $5,900 in long-term rent money. In contrast, the BA says, the projections advanced by the debtor at the hearing predict collections of $8,400 per month at full capacity. BA's Mem. at ¶ 1(b).

The debtor responded with two memoranda, the affidavit of Magill, and a collection of documents in support of the affidavit, including utility bills and portions of the HOA's insurance policy. The court thoroughly reviewed all of the testimony and documentation offered in opposition to the motion. The court concludes that these sources, taken together, establish the debtor's managerial shortcomings to be so extensive and pervasive that conversion or dismissal is necessary based on § 1112(b)(4)(B) alone.

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[2] Magill's testimony with respect to the number of units that were short-term as opposed to long-term rentals differed from one hearing to the next, and that factual discrepancy was among several factors initially cited by the BA as catalysts for her concerns about mismanagement of the estate. Magill subsequently explained in his memorandum that at the time of the first hearing, there were five vacation and six long-term rentals; during the short period of time between that hearing and the next, he re-designated a vacation rental as long-term, such that there was no inconsistency, but rather a change. The court accepts this explanation as plausible.

[3] The BA clarifies further that the debtor did not provide to the BA the lease agreement for Unit 301, that the lease agreement for Unit 310 was set to expire on 11/30/13, and that there is no current lease agreement that the BA knows of for Unit 102, which was occupied by Magill's son.

The debtor's own testimony reflects a wholly inappropriate fluidity between the debtor and Bodie Island LLC, which is another entity held solely by Magill. The details are unclear, but it is evident that the Bodie Island entity is used (at least in part, and at least sometimes) to receive the debtor's rents and deposits, and then pay those receivables out to Magill (and, perhaps, others). See Magill Aff. ¶ 5; see also Magill Aff. Ex. F p. 3 (indicating the debtor's cash on hand, with a portion attributable to "BI"); Ex. F p. 4 (entitled "Exhibit B" and allocating the debtor's vacation rental income to both the debtor and to Bodie Island LLC). Compounding the obvious problems inherent in this sort of arrangement is the fact that "most" of the debtor's long term tenants (it is unclear how many) do not have checking accounts, according to Magill. These tenants pay monthly rent, in amounts ranging from $1,000 to $1,200, in cash. Given these longstanding financial ambiguities, there are so very few solid, verifiable benchmarks – financial, operational, or otherwise – to go by that even the task of establishing where to *start* in pinpointing the exact nature of the debtor's business difficulties is, in itself, difficult. The court does not believe the debtor intended for its business practices to be virtually indecipherable, but suspects that to Magill's way of thinking, the debtor's current system "works" if one is fully immersed in its quirks and vagaries. This approach, however, clearly did *not* work prior to bankruptcy, and cannot be maintained going forward.

On this same note, a review of the utility bills appended to Magill's affidavit shows that out of bills for seven of the twelve units, four bills (for units 101, 102, 303, and 304) identify the customer as Croc LLC; three others (units 103, 301, and 305) list the customer as Glenn E. Magill, Jr. Magill Aff. ¶ 7, Ex. I. Did the debtor pay utility bills that were not even its own debts to pay, and were instead the debts of Magill? So it appears, although again, the debtor's lack of bookkeeping and accounting standards raises doubts. What is abundantly clear is that the debtor

does not grasp the significance of Croc, LLC operating as a distinct business entity, and an entity in bankruptcy, at that.[4]

These utility bills were included by the debtor in response to the BA's contention that the debtor "made post-petition payments for debts and/or services rendered pre-petition." Magill explained that the bills were due on September 30, 2013, and that he paid them because he "believed that I needed to pay those bills to keep the electricity running for the condominium units and that those expenses were ordinary and necessary business expenses." Magill Aff. ¶ 7. Every utility bill includes a past due amount and an indication that a percentage of the past due amount was paid during the preceding month.[5] Aside from the clear indication that the bills were paid for pre-petition debt and/or services, these bills reflect the debtor's month-to-month struggle simply to maintain electrical service to the units.

These difficulties notwithstanding, Magill's affidavit and the debtor's forecasts together paint an optimistic picture of the debtor's expected income and expenses going forward. These projections, however, have no stated and assessable bases. The debtor states that it will raise all rents in 2014, yet articulated no rationale for expecting success in doing so. The debtor's "2014

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[4] The debtor filed a motion on September 4, 2013, for authorization to refund certain deposits received by it for vacations that were subsequently cancelled, but as creditor EOS and the BA then noted in objections filed on September 23, 2013, it appears that those monies – as well as others – were in fact received by Bodie Island LLC. See Magill Aff. Ex. F p. 4 (entitled Exhibit B and listing vacation rental income, allocated to both the debtor and to Bodie Island LLC, and deducting McFadden deposit of $670.50 from Bodie Island).

[5] Except for Unit 301, as to which no previous (September 5) payment was made. The bill for Unit 301 differs from the others in that it includes no usage history prior to September, though it does include a previous amount due of $102.55, plus a "deposit installment" of $75 and usage charges for September, totaling $348.51. The amount was billed to Magill, not to Croc, LLC. Unit 301 is the unit for which Magill accepted a discounted rate of $800 per month because "the air conditioning did not work."

Projected Condo expenses" omits reference to its legal fees, tax obligations other than occupancy taxes, management fees, and credit card fees. It also stipulates that long-term tenants pay their own electric bills even though the bills appended to the affidavit included at least one bill for a unit designated by the debtor as long-term.[6]

Going forward, the debtor estimated housekeeping fees for four vacation units at $180 a month, or $2,160 a year. Magill Aff. Ex. H. However, the debtor's profit and loss statement for the two weeks of August 16-31, 2013 reflects a housekeeping cost of $540. Magill Aff. Ex. F p. 12. Another accounting of receipts and expenses, this for the period of August 28 to September 12, 2013, lists housekeeping costs ($60 per clean) at $1,080. Magill Aff. Ex. A. The accounting for the following two-week period, September 15 to 30, 2013, sets out two weeks' worth of housekeeping expenses at $840. Magill Aff. Ex. B. And, the accounting for the four week period after that, October 1 to 31, 2013, sets out four weeks' worth of housekeeping expenses at $1,200. Magill Aff. Ex. C. So, on the one hand, the debtor's operating budgets for a total of eight weeks reflect actual costs of $3,120 for housekeeping, or a total of $3,680 for ten weeks if the slightly overlapping period of August 16-31 is included. Then, on the other hand, there is the debtor's forecast of $180 per month in housekeeping fees for 2014. The numbers cannot be reconciled or explained, even though these are the accountings prepared for use in this bankruptcy case, where accuracy and verifiability are paramount.[7]

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[6] The debtor paid utility bills on September 8 for units including Unit 301, a long-term unit. The debtor's payment for two other long-term units may reflect their former status as a short-term rental (Unit 101) and as Magill's son's unit (Unit 102).

[7] The court understands and has considered the seasonal nature of the debtor's business which impacts the consistency of the need for housekeeping. Notwithstanding that, the debtor has not offered a verifiable basis for its projections.

The court is not unsympathetic to the difficulties of operating a residential rental business. Magill's efforts to keep many balls in the air and his evident flexibility and creativity in attempting to achieve the highest and best use of the properties (long-term, short-term, payment options, etc.) are useful, laudable traits. However, they do not carry the day in the face of creditors' legitimate competing interests, and against the overwhelming and compelling evidence that the business of the debtor is grossly mismanaged. The debtor's method of doing business over the past years renders it utterly unable to provide for its creditors and the court a clear, understandable, and transparent accounting of its use of cash and receipts, and for its outlays for expenditures. The court will convert this case to a case under Chapter 7 based upon the debtor's gross mismanagement of the estate within the meaning of § 1112(b)(4)(B), which will afford a trustee the opportunity to unravel and make sense of the debtor's finances.

C. Failure to Maintain Appropriate Insurance

Cause to dismiss or convert exists upon a debtor's "failure to maintain appropriate insurance that poses a risk to the estate or to the public." 11 U.S.C. § 1112(b)(4)(C). The BA contends, and the debtor does not contest, that the only insurance policy currently in effect on the properties is held by Bodie Island Resorts, which is the homeowners' association ("HOA"). The BA maintains that there is no general liability policy in the name of the debtor. The chairman of the HOA's finance committee, Mark Milam, testified that the insurance policy maintained by the resort covers only the common areas of the complex and outside structures. Further, he testified that "most if not all current homeowners maintain separate general liability policies." BA's Mem. at ¶ 1(c).

The debtor acknowledges in response that he has "had some challenges in producing the Declarations for the insurance policies," but states that insurance has been in place since the filing

of the petition. According to the debtor, the policies "are in the name of the HOA." Debtor's Response at 3. In his affidavit, Magill responds to the BA's contention that the debtor has no general liability insurance on the property by stating that "[i]n reference to insurance, attached as EXHIBIT D are documents evidencing casualty and liability insurance." Magill Aff. at ¶ 9. The documents included in Exhibit D are portions of policies maintained by the HOA.

It appears that there is no general liability policy on the property, that there is no insurance policy in the name of the debtor, and that the debtor is unaware of these facts and the significance of them. Magill appears to believe that the HOA's insurance policy is to the debtor's benefit, which is all the more incongruous given the debtor's ongoing dispute with the HOA and failure to pay the dues owing to it. The court concludes that the debtor's property lacks appropriate insurance and, on that ground alone, sufficient cause exists to convert or dismiss.

D. Failure to Satisfy Reporting Requirements

Finally, the BA argues that cause to convert or dismiss exists under 11 U.S.C. § 1112(b)(4)(F), which provides that 'cause' includes a debtor's "unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter." Specifically, the BA cites the debtor's testimony of October 17, 2013, that there are three professionals "currently working on the debtor's behalf," including special counsel for the debtor, a real estate agent, and an accountant. BA's Mem. at ¶ 1(d). However, the BA notes, that the debtor did not file an application seeking to employ special counsel until October 25, 2013; further, the BA notes, as of November 11, 2013 (the date on which the BA filed the supplement to the motion to convert or dismiss), neither the real estate agent nor the accountant had been

employed, despite the BA's request at the September 11, 2013 hearing for the use of cash collateral. Finally, the BA states that the debtor failed to file federal income tax returns for 2011 or 2012.

In response, the debtor states in his affidavit, with respect to records, that "I am properly maintaining books and records for the Debtor." Magill Aff. ¶ 11. The debtor filed a motion to employ Hersey C. Quinn as accountant on October 21, 2013, which was allowed without objection on November 18, 2013. At the hearing on October 17, 2013, the debtor testified that Mr. Quinn was "working on" the 2012 taxes and acknowledged that the 2011 taxes also had not been filed. The debtor applied to employ Phillip H. Hayes as special counsel on October 25, 2013, after testifying at the hearing on October 17, 2013, that Mr. Hayes already was acting as its attorney, was working on a lawsuit against creditors EOS, SRS and Smith, and was owed $5,000. The debtor applied on November 12, 2013 to employ Geraldine J. Holcomb of Coldwell Banker Seaside Realty, after testifying at the hearing on October 17 that Ms. Holcomb was the debtor's realtor. As for unfiled taxes, Magill testified that the debtor did not list the IRS as a creditor, does not owe any federal taxes, and is not in default. The recently filed plan and disclosure statement do include IRS and NC Department of Revenue tax claims as part of an unimpaired Class 3, but indicates that these entities do not have claims.

In light of all the above, the court concludes that the debtor's approach to filing requirements, whether imposed as part of bankruptcy procedure or federal tax law, is consistent with other managerial practices in that the debtor either does not understand or lacks the proper regard for requirements that actually apply to it. In the court's view, the odds of the debtor's tax obligations to the federal and state governments simply zeroing out are, in all probability, zero. Thus it remains uncertain whether the debtor will have additional claims to contend with or should

instead expect a refund of tax overpayment. These reporting failures add to the court's certainty that conversion of the case is appropriate.

II. Conversion on Grounds of Lack of Feasibility or Confirmability

In light of the court's conclusion that the BA and secured creditors have established ample bases for conversion or dismissal, and that conversion is in the best interest of creditors, there is no reason to discuss additional and alternative grounds for conversion.

CONCLUSION

The BA has established ample cause to dismiss or convert within the meaning of 11 U.S.C. § 1112(b)(4)(B), and also, separately and independently, under 11 U.S.C. § 1112(b)(4)(C). The court's consideration of factors set out in §§ 1112(b)(4)(A) and (F) also support conversion or dismissal, though they would not independently require either action. This case cannot proceed under the ill-fitting auspices of a Chapter 11 plan, and the interests of the creditors and the estate are best served by conversion of the case to a liquidation under Chapter 7 so that the financial affairs of the debtor can be properly sorted.

For the foregoing reasons, the debtor's Chapter 11 case is hereby CONVERTED to a case under Chapter 7.

SO ORDERED.

END OF DOCUMENT

ATTACHEMENT "H"

PRESS RELEASE

October 12, 2007

Sussex County Prosecutor David J. Weaver announced the sentencing of Joseph M. Depace, who appeared before the Honorable Thomas J. Critchley, Jr., JSC at the Sussex County Courthouse in Newton on October 12, 2007.

Depace, age 43, of Hamburg, NJ was sentenced to two years probation. He was ordered to serve 20 days in the Sheriff's Labor Assistance Program (the plea agreement called for 364 days in the Keogh-Dwyer Correctional Facility) and perform 100 hours of community service. He must pay restitution in the amount of $3,285.00. He must pay total fines and penalties of $155.00 and submit a DNA sample at his expense.

He pled guilty on August 9, 2007 to receiving stolen property, a 3rd degree crime.

Between September 1, 2006 and December 9, 2006 in Hardyston Township, the defendant took several portable radios belonging to the Hardyston First Aid Squad. On or about September 19, 2006 in Vernon Township, he burglarized two condominiums and took LCD television sets. He also took a communication radio from Mountain Creek Park

Depace was represented by Evan Nappen, Esq. and the State was represented by Assistant Prosecutor Robert L. Klingenburg.

ATTACHEMENT "I"

HORRY COUNTY
SHERIFF'S OFFICE

Horry County
Committed to Excellence

MAIN OFFICE DETENTION NEWS & EVENTS

Currently: Detention » Daily Bookings and Releases

Last Name:
Depace

Booking Date:

Release Date:

Search Reset Form

Disclaimer:

This website contains information obtained on individuals who were booked at the J. Reuben Long Detention Center or by the City of North Myrtle Beach, Horry County cannot validate the accuracy of the information and is not responsible for any inaccuracies that may be posted.

Data last collected @ 9/16/2015 6:07 PM

Showing 1 results on your search for Last Name: Depace

Name	Ethnicity /Sex	DOB /Age	Booking Date	Release Date	Booking # /Arresting Agency
DEPACE, JOSEPH MICHAEL MYRTLE BEACH, SC 29588	AMERICAN (US) MALE	06/16/1964 51 years old	9/16/2015 8:34 AM	Still Incarcerated	HC09161548729 SLED
- IMPERSONATING LAW ENFORCEMENT OFFICER / Pre-Trial / $1,500.00					

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00743
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	)	VERIFICATION (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:10
FILED
CLERK OF COURT

That, JEFFREY RICHARDSON, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

SWORN to and Subscribed before me:

STATE OF SC
COUNTY OF Cherokee

Patricia D Ramsey
NOTARY PUBLIC
My commission expires:

PATRICIA D RAMSEY
NOTARY PUBLIC
MY COMM. EXP.
08/02/19
SOUTH CAROLINA

AFFIANT:

JEFFREY RICHARDSON
DATED: 2/24/16

COPY

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00743**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	**VERIFICATION** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:10
CLERK OF COURT

That, MARK DOS SANTOS, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

SWORN to and Subscribed before me:

STATE OF Georgia
COUNTY OF Cherokee

NOTARY PUBLIC
My commission expires: [illegible]

KENNETH MITCHELL NOTARY PUBLIC CHEROKEE COUNTY GEORGIA EXPIRES March 11, 2016

AFFIANT:

MARK DOS SANTOS
DATED: 2/27/16

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00743
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	VERIFICATION (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:10
RE-FILED IN OFFICE
CLERK OF COURT

That, STEVEN DAME, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

SWORN to and Subscribed before me:

STATE OF South Carolina
COUNTY OF Horry

Miranda E Bymide
NOTARY PUBLIC
My commission expires: May 9, 2023

AFFIANT:

STEVEN DAME
DATED: 2-2-16

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00743
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	)	VERIFICATION (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:10
CLERK OF COURT

That, WILLIAM MOORE, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

SWORN to and Subscribed before me:

STATE OF South Carolina
COUNTY OF Horry

Miranda E Byside
NOTARY PUBLIC
My commission expires: May 9, 2023

AFFIANT:

William Moore
WILLIAM MOORE
DATED: 2/25/2016

COPY

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	)	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00743**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	)	**VERIFICATION** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:10
CLERK OF COURT

That, NANCY MOORE, being duly sworn, says that she is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of her knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

SWORN to and Subscribed before me:

STATE OF South Carolina
COUNTY OF Horry

Miranda E Bynside
NOTARY PUBLIC
My commission expires: May 9, 2023

AFFIANT:

Nancy Moore
NANCY MOORE
DATED: 2/25/16

COPY

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00743**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	**VERIFICATION** (JURY TRIAL REQUESTED)

2016 FEB 29 PM 1:10

That, JIM PERKINS, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

JENNIFER ROY
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 05-98956-1
MY APPT. EXPIRES MAY 1, 2017

SWORN to and Subscribed before me:

STATE OF NEVADA
COUNTY OF CLARK

NOTARY PUBLIC
My commission expires: 5-1-17

AFFIANT:

JIM PERKINS
DATED: 2-25-16

COPY

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	)	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00743**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	)	**VERIFICATION** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:10
CLERK OF COURT

That, COLLEEN FRANKE, a/k/a COLLEEN FRANKE PERKINS, being duly sworn, says that she is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of her knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

JENNIFER ROY
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 05-99950-1
MY APPT. EXPIRES MAY 1, 2017

SWORN to and Subscribed before me:

STATE OF NEVADA
COUNTY OF CLARK

NOTARY PUBLIC
My commission expires: 5.1.17

AFFIANT:

COLLEEN FRANKE
DATED: 2-25-16

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00743
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders, Plaintiffs, vs. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., Defendants.	)	VERIFICATION (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:10
CLERK OF COURT

That, ERROL DOS SANTOS, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

SWORN to and Subscribed before me:

STATE OF New York
COUNTY OF Suffolk

NOTARY PUBLIC
My commission expires: 2/23/2019

AFFIANT:

Errol dos Santos
ERROL DOS SANTOS
DATED: 2/25/16

LOUIS G FIGURITO
NOTARY PUBLIC - STATE OF NEW YORK
REGISTRATION NO. 01FI6320000
QUALIFIED IN SUFFOLK COUNTY
COMM. EXPIRES FEBRUARY 23, 2019

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00744
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	**AMENDED SUMMONS** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:08
FILED IN THE OFFICE OF THE
CLERK OF COURT

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended Verified Shareholders' Derivative Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the Plaintiffs' attorneys, Thomas C. Brittain and A. Preston Brittain, The Brittain Law Firm, P.A., at 4614 Oleander Drive, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time

aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina, on the 29th of February, 2016.

RESPECTFULLY SUBMITTED BY:

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On behalf of Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson

COPY

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00744**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	**AMENDED VERIFIED SHAREHOLDERS' DERIVATIVE COMPLAINT** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:08
MELANIE WILKINSON
CLERK OF COURT

NOW COMES THOMAS C. BRITTAIN AND PRESTON BRITTAIN, on behalf of the Plaintiffs, Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson (hereinafter referred to as "Plaintiffs" collectively), seeking a derivation shareholder action on behalf of Ocean Front Spa Horizontal Property Regime, Inc., against Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association,

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

PARTIES AND JURISDICTION

1. That Plaintiff Nancy Moore, ("Nancy Moore") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
2. That Plaintiff William Moore, ("William Moore") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
3. That Plaintiff Steven Dame, ("Dame") an owner of real property located in Myrtle Beach Resort, is a citizen and resident of the State of South Carolina, County of Horry.
4. That Plaintiff Mark Dos Santos, ("Mark Dos Santos") is a resident of the State of Georgia and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
5. That Plaintiff Jim Perkins, ("Perkins") is a resident of the State of Nevada and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.
6. That Plaintiff Colleen Franke, ("Franke") is a resident of the State of Nevada and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.

7. That Plaintiff Errol Dos Santos, ("Errol Dos Santos") is a resident of the State of New York and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.

8. That Plaintiff Jeffrey Richardson, ("Richardson") is a resident of the State of South Carolina and an owner of real property located in Myrtle Beach Resort in the State of South Carolina, County of Horry.

9. That Defendant The Myrtle Beach Resort Homeowners Association, Inc., ("MBRHOA") is a non-profit corporation, organized and existing under the laws of the State of South Carolina and doing business in Horry County, South Carolina.

10. The MBRHOA was created as an umbrella or "Master Association" as evidenced by its filing with the S.C. Secretary of State on April 30, 1987 and as governed by Declaration of Covenants, Conditions and Restrictions filed April 25, 1991 in Deed Book 145 at Page 329 ("HOA Declaration").

11. That Defendant MBRHOA, is an umbrella association comprised of a board of directors with one representative from each of the four independent regimes: Myrtle Beach Resort Horizontal Property Regime, Inc., Myrtle Beach Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Five Seasons Centre Council of Co-Owners, Inc. and Renaissance Tower Horizontal Property Regime.

12. The Defendant Ocean Front Spa Horizontal Property Regime, Inc. is a non-profit corporation, organized and existing under the laws of the State of South Carolina and doing business in Horry County, South Carolina.

13. The Defendant Ocean Front Spa Horizontal Property Regime, Inc. (hereinafter "OFS" or "OFS Board") is charged with administering the affairs of Myrtle Beach Resort Ocean

Front Spa Horizontal Property Regime, a condominium resort within Horry County, South Carolina.

14. The Defendant K.A. Diehl and Associates Inc., (hereinafter "K.A. Diehl") is a property management company, incorporated under the laws of the State of South Carolina doing business in the State of South Carolina, County of Horry.

15. That, upon information and belief, Defendant Phil Cox currently serves on the Master Board in his capacity as Secretary of the MBRHOA, and is a citizen and resident of the State of South Carolina, County of Horry.

16. That, upon information and belief, Defendant Bill Cameron served in his capacity as Vice President of the Ocean Front Spa and the MBRHOA until his recent resignation, and is a citizen and resident of the State of South Carolina, County of Horry.

17. That, upon information and belief, Defendant Walter Jordan currently serves in his capacity as President of the Ocean Front Spa and the MBRHOA and is a citizen and resident of the State of Virginia.

18. That, upon information and belief, Defendant Ralph Jump currently serves in his capacity as Vice President of Ocean Front Spa Board, and is a citizen and resident of the State of Kentucky.

19. That, upon information and belief, Defendant Stanley Jordan previously served on the MBRHOA, and is a citizen and resident of the State of Florida.

20. That, upon information and belief, Defendant Ray Coghill previously served on the Ocean Front Spa Board, and is a citizen and resident of the State of Kentucky.

21. That, upon information and belief, Defendant Wayne Urban currently serves in his capacity as President of the MBRHOA, and is a citizen and resident of the State of Ohio.

22. That Defendant Ken Perkins previously served on The Myrtle Beach Resort Homeowners Association, Inc., and upon information and belief, is a citizen and resident of the State of West Virginia.

23. The following individuals are currently serving on the MBRHOA Master Board: Phil Cox, Wayne Urban, Walter Jordan, and Kay Gregor.

24. That Defendant Phil Cox currently serves on the Master Board in his capacity as Secretary of the MBRHOA.

25. That Defendant Walter Jordan currently serves in his capacity as President of the MBRHOA and Ocean Front Spa.

26. That Defendant Ralph Jump currently serves in his capacity as Vice President of Ocean Front Spa Board.

27. That Defendant Stanley Jordan previously served on the MBRHOA.

28. That Defendant Ray Coghill previously served on the Ocean Front Spa Board.

29. That Defendant Wayne Urban currently serves in his capacity as President of the MBRHOA.

30. The John Doe Defendants include two categories of unidentified persons: past Board of Directors of Ocean Front Spa Horizontal Property Regime, Inc. and past Board of Directors for The Myrtle Beach Resort Homeowners Association, Inc. That Plaintiffs anticipate discovering the identity of relevant John Doe past board members of MBRHOA and OFS.

31. Plaintiffs Nancy and William Moore own Units 403, 106, and 511 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with

management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

32. That Plaintiff Nancy Moore serves as Treasurer on the Ocean Front Spa HOA.

33. Plaintiffs Jim Perkins and Colleen Franke own Units 109, 201, 251, 301, 304, 305, 421 and 546 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

34. That Plaintiff Jim Perkins serves as a director on the Ocean Front Spa HOA.

35. Plaintiff Steven Dame owns Units 328 and 330 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

36. Plaintiff Mark Dos Santos owns Unit #101 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa

Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

37. Plaintiff Errol Dos Santos owns Unit 322 at Ocean Front Spa and are, pursuant to the Master Deed and/or ByLaws, members of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

38. Jeffrey Richardson owns Units 210, 308, and 245 at Ocean Front Spa and is, pursuant to the Master Deed and/or ByLaws, a member of the Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime, Inc., which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws, members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

39. Plaintiff Jeffrey Richardson owns Units 2211, 1406, 315, 203, 302, 311, 501, 604 and 314 at Renaissance Tower, and is, pursuant to the Master Deed and/or ByLaws, a member of the Renaissance Tower Horizontal Property Regime, which is charged with management of the Regime, and further by virtue of the Master Deed and/or ByLaws,

members of The Myrtle Beach Resort Homeowners' Association, Inc., which is charged with maintenance of common areas for the purpose of providing utilities, cable, refuse collection, and other such common needs as set forth in Master Deed.

40. That jurisdiction and venue is proper in County of Horry, State of South Carolina.

FACTS

41. By virtue of their ownership of a condominium unit, and pursuant to the South Carolina Non-profit Corporation Act the common law of South Carolina, and the OFS master deed and by-laws OFS and its Board of Directors owes to the individual plaintiffs a fiduciary duty, which must be heeded in conducting affairs on behalf of the individual homeowners.

42. By virtue of their ownership of a condominium unit, and pursuant to the South Carolina Non-profit Corporation Act the common law of South Carolina, and the OFS master deed and by-laws OFS and its Board of Directors owes to the individual plaintiffs a fiduciary duty, which must be heeded in conducting affairs on behalf of the individual homeowners.

43. That South Carolina courts recognize that a fiduciary relationship exists between homeowner associations and the individual homeowners. As a result, the homeowner association boards are yoked with the responsibility to conduct business using sound business judgment that is loyal to the homeowner.

44. That South Carolina courts impose a duty of loyalty which extends to the association board and to individual board members. Further, courts recognize that associations should investigate the propriety of pursuing lawsuits on behalf of homeowners to protect the home owner from diminution in the value of their home and such other threats to the

community as a whole. *Murphy v. Yacht Cove Homeowners' Association*, 345, S.E.2d 709 (1986).

45. That upon information and belief, the duty of loyalty creates a broad obligation that empowers the homeowner and requires thoughtful conduct from those entrusted with the power of governance.

46. That the Plaintiffs, by virtue of their memberships in the OFS HOA, are members of a non-profit corporation.

47. Upon information and belief, there are over 950 units that comprise Myrtle Beach Resort, 267 of which are located within what is known as the Ocean Front Spa.

48. Upon information and belief, the homeowners possess these units for various purposes including: 1) full-time residence; 2) part-time residence; or 3) rental / investment. That as a result of these various purposes of ownership, the owners are particularly susceptible to unfair dealings.

49. Allegiant Food and Beverage, LLC is the largest commercial vendor conducting business at the resort.

50. That Allegiant Food and Beverage, Inc. provides commercial services to many of the common areas of the Myrtle Beach Resort.

51. That Myrtle Beach Resort Vacation is the largest rental sales vendor associated with MBRHOA.

52. That upon information and belief, Allegiant Food and Beverage and Myrtle Beach Resort Vacation are affiliated companies.

53. That, upon information and belief, MBRV and the Master Board entered into a lease agreement whereby in exchange for the opportunity to have a physical presence about the

property and to conduct business there upon, MBRV is required to pay 2% of rental commission or a base rate to the Master Board/Association.

54. Upon information, Phil Cox, Stanley Jordan, Ralph Jump, Walter Jordan and Ken Perkins either currently have or have had during terms of service a contractual relationship with Myrtle Beach Resort Vacations, wherein MBRV would rent unit(s) owed by the Board Members.

55. Upon information, Phil Cox still derives some financial benefit from his past affiliation with Myrtle Beach Resort Vacations. His connection with the MBRV and or Allegiant Food and Beverage, LLC remains undisclosed to the homeowners.

56. Upon information, Cox's interest in MBRV and Allegiant Food and Beverage, LLC, has compromised his fiduciary relationship with homeowners and impeded his ability to exercise sound business judgment in affairs concerning MBRV and Allegiant.

57. Upon information and belief, Phil Cox's relationship with these entities and whether he should abstain from voting on matters related to them has been discussed with HOA counsel. Upon information, counsel for the Myrtle Beach Resort HOA master board opined, in writing, that Cox should refrain from voting on Allegiant Food and Beverage, LLC/MBRV related matters.

58. Upon information and belief, Cox stated at a subsequent meeting that he would not refrain from voting on Allegiant Food and Beverage, LLC/MBRV related matters.

59. Upon information and belief, MBRV has not been required to pay for the improper parking pass passes.

60. Upon information and belief, the following OFS Board directors have or had during their term of service a contractual relationship with MBRV: Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill.

61. Upon information and belief, Walter Jordan, Ray Coghill, Stanley Jordan, and Bill Cameron during each one's respective term of service upon the OFS Board failed to use ordinary business judgment in making decisions regarding: entering into contracts with KA Diehl; seeking competitive bids for insurance; seeking competitive bids for property management and security services; maintaining correct and complete books, records, and accounting; making books, records, and accounting available to homeowners; disclosing conflicts of interest; abiding by OFS master deed and bylaws, and failing to disclose compromised unit privacy to homeowners.

62. Upon information, certain board members have accepted priority treatment regarding rental of their units by MBRV. Specifically, upon information and belief, certain board members' units have received premium listing on the vendor's website without payment for the same.

63. Upon information, during recent board elections, MBRV campaigned for certain board members with a history of voting in a MBRV favorable manner. That, upon information and belief, "robo" calls were made to numerous homeowners seeking their support for such candidates.

64. That K.A. Diehl, according to its own mistaken admission, believed that all of the other non-MBRV supported candidates would vote for a change in property management.

65. That K.A. Diehl, despite this now known vested interest, managed the election – received proxy votes and permitted proxy votes to be submitted in a manner that violated the ByLaws of OFS.

66. Upon information, the Master Board and OFS entered into an agreement with KA Diehl that permitted KA Diehl to utilize ADP Barlow as the insurance broker responsible for obtaining competitive bids, despite each Board having knowledge that K.A. Diehl's CEO, Robert Barlow is married to Robin Barlow, the owner of ADP Barlow.

67. That upon information and belief, KA Diehl never utilized any other brokers and subjected the homeowners to higher brokerage fees and more costly insurance.

68. That upon information, the amount of economic harm of such failure is apparent through another Myrtle Beach Resort regimes' procurement of insurance. That upon information and belief, Renaissance Tower's board of directors broke off the relationship with ADP Barlow, bid brokers competitively, and received comparable insurance paying approximately $35,000.00 less for insurance and brokerage services. That upon information and belief, Lloyds of London provides insurance for the Master Board, OFS and Renaissance Tower.

69. That upon information and belief, KA Diehl, OFS, and the Master Board had knowledge of the Renaissance Tower savings, but chose to employ ADP Barlow instead.

70. That upon information and belief, the Master Board and OFS board entered into new agreements in 2014 which modify the insurance language and clearly require multiple broker bids.

71. That upon information and belief, KA Diehl, despite this, would have failed to obtain legitimate multiple bids for the OFS regime if not for the conduct of Mark Dos Santos

and board members Jim Perkins and Nancy Moore who contacted CWS Insurance themselves to provide bids.

72. That upon information and belief, KA Diehl has not provided the Five Seasons Regime or Myrtle Beach Resort Horizontal Property Regime with additional bids or shared with the respective boards the potential savings.

73. That upon information and belief, the OFS master deed and bylaws requires the board to bid out insurance in three year terms. That upon information and belief, OFS and K.A. Diehl failed to do so.

74. That in 2013 it became apparent to directors of OFS that all OFS unit owners privacy had been compromised. Upon information and belief, a master key had been provided to outside contractors to include security staff and custodial staff.

75. That upon information and belief, the OFS board concealed this information from the OFS homeowners.

76. That upon information and belief, K.A. Diehl initially, in 2007, managed Renaissance Tower, Ocean Front Spa, Five Seasons, and Myrtle Beach Resort HPR, and the Myrtle Beach Resort HOA which encompassed all regimes and the Master Board.

77. That upon information and belief the management agreement between K.A. Diehl and MBRHOA was modified in December of 2012.

78. Upon information and belief, the December 2012 agreement included modifications one of which was a two year term with an auto-renewal.

79. That, upon information and belief, the management agreement was modified in 2014.

80. That, upon information and belief, pursuant to the 2014 management agreement, K.A. Diehl is required to: manage accounts; manage contracts with vendors; procure

competitive bids using multiple brokers for insurance; procure competitive bids for security and manage common areas; receive, review and approve invoices; and advise the Board on administrative tasks such as elections.

81. That the individual homeowners pay assessments that fund the MBRHOA for the purpose of providing services for the common elements. That the MBRHOA is tasked with procuring insurance, maintaining common areas, providing cable, etc. as is more fully set forth in the Master Deed.

82. That the homeowners, including the defendants that have been subjected to plaintiff's SLAPP suit, pay assessments through their regimes to the MBRHOA which provides funds to acquire the services of K.A. Diehl.

83. That the agreements between the MBRHOA and K.A. Diehl are for the benefit of the homeowners.

84. That, upon information and belief, K.A. Diehl continues to manage OFS, subject to the 2014 management contract.

85. That, upon information and belief, pursuant to said agreement, K.A. Diehl is required to: prepare an annual budget; administer insurance and other contracts; manage accounts, and such other tasks as enumerated in the agreement.

86. That, upon information and belief, the individual homeowners pay assessments that fund the OFS HOA for the purpose of providing services for the common elements. That the OFS Board is tasked with procuring insurance, maintaining common areas, providing cable, etc. as is more fully set forth in the Association Master Deed and Bylaws.

87. That, upon information and belief, the homeowners, including the defendants that have been subjected to plaintiff's SLAPP suit, pay assessments through their regimes to the OFS which provides funds to acquire the services of K.A. Diehl.

88. That, upon information and belief, the agreements between the OFS and K.A. Diehl are for the benefit of the homeowners.

CONFLICT ALLEGATIONS

89. That in April of 2014 defendant Jim Perkins was elected to serve on the MBRHOA.

90. That Jim Perkins and Nancy Moore serve as directors on the OFS Board.

91. That during Perkins term of service on the MBRHOA, he learned of information which led him to believe that there was a business relationship between board member Phil Cox and the largest vendor – Allegiant Food and Beverage, LLC (hereinafter "Allegiant" or "Allegiant Food and Beverage") / Myrtle Beach Resort Vacations (hereinafter "MBRV").

92. That upon information and belief, certain OFS / MBRHOA members maintain business relationships with MBRV.

93. That upon information and belief, several MBRHOA board members revised the Allegiant Food and Beverage vendor agreement in October of 2013, signing said agreement before a vote by the MBRHOA board of directors.

94. That upon information and belief, the agreement granted to Allegiant Food and Beverage to maintain the commercial lease for a period of six years before the Board would even consider other vendor bids. Further, that during the final year of the agreement, when bids are permitted, Allegiant Food and Beverage gets a right of first refusal.

95. That upon information and belief, board directors have increasingly permitted Allegiant Food and Beverage / MBRV to appropriate amenities for non-homeowners and non-Occupants.

96. That the conflict of interest subject matter was eventually raised at a board meeting and discussed with counsel, Sam Stathos, who identified a conflict and opined that directors with such conflict, including Phil Cox should refrain from voting on Allegiant and MBRV matters (Attachment "A" Attorney Stathos Letter).

97. That despite Attorney Stathos' opinion letter, Phil Cox refused to abstain from voting on MBRV related matters.

98. Upon information and belief, the following OFS and Master Board directors have or had during their term of service a contractual relationship with MBRV:

a. Master Board: Phil Cox, and Stanley Jordan;

b. OFS Board: Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill.

INVOICE ALLEGATIONS

99. That in May of 2014, Jim Perkins, in his capacity as a director sought out the agreements between Allegiant Food and Beverage and the MBRHOA, and so obtained a copy of the same. (Attachment "B" Allegiant Food and Beverage Agreement).

100. That the agreement clearly required vendor Allegiant Food and Beverage to pay for utilities.

101. That defendant Jim Perkins discovered that K.A. Diehl had failed to invoice Allegiant Food and Beverage utilities.

102. That the failure to invoice Allegiant Food and Beverage utilities was an egregious error that would have cost the homeowners approximately $60,000.00, if Jim Perkins had not discovered the same and required action for repayment of the full amount.

103. That upon information and belief, Allegiant Food and Beverage, through owner Bobby Jones, began reimbursing the utilities immediately after Perkins's discovery, but had only paid approximately $30,000.00 of the approximately $60,000.00 owed to MBRHOA. (See Attachment "C").

104. That the MBRHOA board directors discussed KA Diehl and the Master Boards' failure to invoice Allegiant and during the meeting directors Phil Cox and Wayne Urban initially voted to forgive the debt rather than seek to recoup the lost funds.

105. That ultimately the MBRHOA voted to pursue the funds, such that an agreement with Allegiant was reached. That Allegiant is scheduled to repay the remaining funds over a period of years, and that such reimbursement is presumably ongoing.

106. That neither KA Diehl or MBRHOA disclosed this failure to invoice to the homeowners at large until the individual defendants shared their concerns.

107. That upon information and belief, K.A. Diehl attempted to address the matter by blaming the mistake on unclear language from the previous commercial lease agreement.

108. That, upon information and belief, the November 2009 Commercial Lease Agreement between MBRHOA and Allegiant Food and Beverage is clear. That, upon information and belief, it contains a section "3. Utilities" that states "Tenant [Allegiant] shall arrange and pay for the use of utilities...including, but not limited to, water, electricity, gas, sewer and telephone." (Attachment "D" November 2009 Commercial Lease Agreement).

109. That upon information and belief, K.A. Diehl failed to invoice MBRV for improper gate passes. That MBRHOA collected $280,000.00 in gate pass revenue in 2015 and 2014, and approximately $140,000.00 for the previous years dating back to 2007.

DISCLOSURE ALLEGATIONS

110. That several homeowners began asking questions about KA Diehl's management of the property and about MBRHOA's failure to investigate concerning information.

111. That defendant, Mark Dos Santos, was among those who began to seek information from both the MBRHOA and from K.A. Diehl. That defendant, Mark Dos Santos, specifically requested the contracts between the MBRHOA and its numerous vendors.

112. That defendant, Mark Dos Santos, sent numerous emails to the plaintiff inquiring about important matters.

113. That upon information and belief, the defendant, Mark Dos Santos, and others, received negative responses to include: threats of suit, and vendors' rights pamphlets.

114. That upon information and belief, at the April 2015 OFS annual meeting, a non-defendant homeowner, Alan Bolton, requested that the OFS Board permit a financial audit.

115. That upon information and belief, the OFS Board agreed that they would vote to support such an audit, but failed to do so.

116. That upon information and belief, defendant William Moore requested in writing a financial audit.

117. That the individual Defendants, through counsel, requested a financial audit of the records of the corporation.

118. That Defendants, through counsel, sent letters to the MBRHOA and to OFS board seeking investigation and action.

119. That upon information and belief, directors from the MBRHOA and OFS provided these letters to KA Diehl rather than providing the financial audit.

120. That shortly thereafter, KA Diehl brought suit against the individual homeowner defendants.

INSURANCE ALLEGATIONS

121. That upon information and belief, since 2008 K.A. Diehl has been obligated to procure insurance for the MBRHOA and all four regimes.

122. That upon information and belief, K.A. Diehl failed to procure competitive insurance broker bids relying instead solely upon ADP Barlow Insurance Co.

123. That upon information and belief, former CEO of K.A. Diehl, Rob Barlow, was at the time married to the owner of ADP Barlow Insurance, Robin Barlow.

124. That upon and belief, the failure to procure competitive bids cost the collective homeowners substantial money, and thus, the individual defendants ascertainable sums of money annually.

125. That K.A. Diehl and OFS bid insurance annually rather than abiding by the OFS master deed and bylaws which requires procuring bids in the three year increments.

126. That upon information and belief the relationship between K.A. Diehl and ADP Barlow Insurance was eventually disclosed to OFS and the Master Board, but not to the homeowners at large.

127. Upon information and belief, when the property management contracts were reconfigured in December of 2012, K.A. Diehl's disclosure of the relationship did not obviate its contractual and ethical obligation to procure competitive bids and comparable brokerage fees.

128. That upon information and belief, K.A. Diehl's failure to utilize multiple brokers to procure competitive bids subjected homeowners to higher premiums and broker fees and charges.

SECURITY SERVICES

129. That upon information and belief, K.A. Diehl provides security services through Watchmen Services.

130. That upon information and belief, in December of 2009, K.A. Diehl retained itself to provide certain security services at the resort.

131. That upon information and belief, the signatures of the security services agreement contain only K.A. Diehl employees and agents. (Attachment "E" Security Services Agreement 2009)

132. That upon information and belief, pursuant to the agreement, K.A. Diehl is required to provide qualified employees to secure the resort and operate the front gate, which includes collecting parking fees.

133. That upon information and belief, there is an inherent conflict of interest with K.A. Diehl's management of the property and provision of security services.

134. That upon information and belief, the compensation schedule permits K.A. Diehl's Chief of Security to effectually determine whether MBRHOA or K.A. Diehl is responsible for Watchmen Security employee overtime.

135. That upon information and belief, in 2013 security services cost over $400,000.00.

136. That upon information and belief, in 2013 the MBRHOA paid for over 700 hours of employee overtime. (Attachment "F" Watchmen Services Payment Information 2013).

137. That upon information and belief, KA Diehl maintains an unreliable system for logging employee hours.

138. That upon information and belief, KA Diehl maintains an unreliable system for collection of parking fees.

139. That upon information and belief K.A. Diehl has hired employees that are not qualified.

140. That upon information and belief, the Master Board has permitted K.A. Diehl to maintain involvement in the security service bidding process or permitted K.A. Diehl to view competitors bids.

141. That upon information and belief, K.A. Diehl has usurped this opportunity to insure that Watchmen Services obtains the contract.

NEGLIGENT HIRING ALLEGATIONS

142. That K.A. Diehl hired Rusty Magill to serve as manager for OFS HOA.

143. That upon information and belief, North Carolina Bankruptcy Court thoroughly examined Rusty Magill's management of a beach condominium rental business. In so doing, the Court found, among other unfortunate findings, that Magill had "grossly mismanaged" the business. (Attachment "G", US Bankruptcy Court Order, Eastern District of North Carolina).

144. That several of the individual defendants, having learned of this information, questioned K.A. Diehl about whether the Rusty Magill whom KA Diehl had hired was in fact the same Rusty Magill whom had been discussed in bankruptcy Order.

145. That several of the individual defendants learned from Rusty Magill that K.A. Diehl had advertised and procured Rusty Magill through a Craigs List posting.

146. That several of the individual defendants questioned KA Diehl's hiring process.

147. That upon information and belief, KA Diehl initially ignored the inquiries, and has never adequately addressed the decision to hire Rusty Magill.

148. That upon information and belief, KA Diehl has failed to hire qualified security personnel.

149. That upon information and belief, K.A. Diehl employed Joseph M. Depace whom had previously pled guilty to receiving stolen property, a 3rd degree crime. (Attachment "H").

150. That upon information and belief, Joseph M. Depace was recently arrested for impersonating law enforcement. (Attachment "I").

151. That several defendants, in good faith, have sought information and explanations from K.A. Diehl and the MBRHOA about the above matters.

152. That the defendants continued to ask questions, hired counsel, created a private Facebook page, and blog to begin a dialogue with other homeowners who were concerned about the allegations above and other such allegations.

153. That upon information and belief, K.A. Diehl's failure to obtain competitive bids for the purpose of usurping the business opportunity for a sister company or company

owned by a spouse, was a deceptive practice that affects the individual defendants and the public, at large, and thus violated the South Carolina Unfair Trade Practices Act.

DERIVATIVE SHAREHOLDER/CLASS ALLEGATIONS

154. That Plaintiffs incorporate each and every allegation set forth above as if specifically reiterated herein.

155. Upon information and belief, one or more homeowners have brought concerns to the OFS and MBRHOA and various board members regarding the OFS HOA and board of directors' failure to use ordinary business judgment in conducting affairs.

156. Upon information and belief, one or more homeowners have brought concerns to the OFS HOA and various board members regarding the OFS HOA and board of directors' failure to abide by the Master Deed and ByLaws.

157. Upon information and belief, one or more homeowners have brought concerns of nature described herein, to the attention of the OFS HOA, individual board of directors, their managers, and their agents, and through them, have demanded that action be taken against the at-fault parties and/or that the improprieties be corrected.

158. The demand of the homeowners have been ignored or rejected in that the OFS individual Board of Directors have failed to take action other than to deny matters and threaten to retaliate with legal action.

159. On May 28, 2015, numerous homeowners enumerated concerns regarding actions by the HOA and certain board of directors for the purposes of seeking to discover the truth about the following: (1) undisclosed conflicts of interest between board members and vendors; (2) failure to bill Allegiant Food and Beverage, LLC utilities for a period of

three years; (3) failing to procure competitive bids for contracts; (4) MBRV giving preferential treatment to board members based on voting record; (5) negligent hiring of managers by K.A. Diehl; (6) charging homeowners overtime for Services staff in contravention of contract provisions; (7) failing to properly monitor or account funds paid to Watchmen Services; (8) interested parties involved in the election process; (9) failing to properly report proxy votes prior to election; (10) failing to provide homeowners their due portion of commission from real estate sales; (11) failing to notify homeowners of compromised unit privacy; and (12) failing to abide by the master deed and by-laws as relates to providing board members with information and other such protocol.

160. In the same letter, plaintiffs reiterated that their past attempts to bring to light these various issues were not only fruitless but met with threats of suit.

161. That rather than engage the homeowners, the boards turned over the letter to KA Diehl which became the basis for suit against the individual homeowners.

162. On July 23, 2015, K.A. Diehl, in fact, filed suit against individual homeowners alleging defamation, amongst other claims, containing information from said letter.

163. That upon information and belief, such suit was an attempt to prevent the homeowners from disseminating the truth about K.A. Diehl's handling of the insurance contracts and failure to invoice Allegiant for utilities. That upon information and belief it was a SLAPP suit.

164. That Plaintiffs sent an additional letter on August 21, 2015 seeking OFS to address a myriad of issues, but that Plaintiffs received no response.

165. That in January of 2016, counsel for Plaintiffs sent a letter to the counsel for OFS and MBRHOA seeking redress of the gate pass issue, but received no response.

166. That OFS board members and K.A. Diehl representatives have precluded OFS director and treasurer Nancy Moore from obtaining information pertinent to the performance of her duties as a treasurer claiming that the parties are "in litigation" and therefore she is not entitled to the information. That given this position, it is abundantly clear that any additional efforts to reconcile would be futile.

167. Upon information and belief, further or additional demand upon OFS and the individual defendants to bring an action or to seek alternative remedy would be futile and would serve no useful purpose.

168. Accordingly, the Plaintiffs bring this action pursuant to Rule 23(b)(1) SCRCP on behalf of themselves and all those similarly situated, being any and all persons and or entities owning a unit within the OFSHOA and thereby owning an undivided interest in the common elements, and business activity of the OFSHOA (hereinafter the "Class").

169. The South Carolina Non-Profit Corporation Act, Section 33-31-630, provides for authority for shareholders to bring derivative suits against the Association.

170. As representatives of the Class or shareholders defined herein, the Plaintiffs (hereinafter "class" "shareholders" or "members") seek to recover injunctive relief and monetary relief from OFS and the named board of directors of OFS and unnamed or John Doe directors of OFS for breach of fiduciary duty.

171. As representatives of the Class or shareholders defined herein, the Plaintiffs (hereinafter "class" "shareholders" or "members") seek to recover monetary relief from K.A. Diehl and Associates Inc., for breach of contract, breach of contract accompanied by a fraudulent act, and negligence/gross negligence, with respect to K.A. Diehl's role in bringing about harm OFS.

172. As representatives of the Class or shareholders defined herein, the Plaintiffs (hereinafter "class" "shareholders" or "members") seek to recover injunctive relief and monetary relief from MBRHOA, its board of directors, including John Doe past directors, for negligence/gross negligence, with respect to its implementation of the gate pass policy which harmed OFS.

173. The Class does not include any former owner of a unit in the Regime.

174. The Class is sufficiently numerous that joinder of all members is impractical.

175. Plaintiffs will fairly and adequately protect the interests of the Class as Class Representatives. The interests of the Class Representatives are coincident with and not antagonist to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

176. There are questions of law and fact common to the Class. Common questions of law include the liability of all defendants for among other things as more particularly described below, breach of fiduciary duty, and whether these wrongful acts or omissions of all such parties caused or will cause the Class to suffer damages.

177. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant hereto, were charged with duties as members of the board of directors. Each Class member has been or will be similarly injured by K.A. Diehl, OFS HOA and the individual defendants' wrongful and/or negligent acts or omissions in breach of fiduciary duties, such that the interest of the Plaintiffs' as Class representative, are consistent with those of the members of the Class.

178. Plaintiffs envision no unusual difficulty in the management of this derivative shareholder action. Certification of this action as a shareholder derivative action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

A.

FOR A FIRST CAUSE OF ACTION

(BREACH OF FIDUCIARY DUTY AGAINST OCEAN FRONT SPA HORIZONTAL PROPERTY REGIME, INC. AND OFS BOARD DIRECTORS WALTER JORDAN, RALPH JUMP, RAY COGHILL, STANLEY JORDAN, BILL CAMERON, AND JOHN DOE PAST BOARD DIRECTORS FOR OCEAN FRONT SPA HORIZONTAL PROPERTY REGIME, INC.)

179. Plaintiffs incorporate each and every allegation set forth in the preceding paragraphs above as if specifically reiterated herein.

180. That for the purposes of section "**A.**" OFSHOA, OFS, OFS Board of Directors, directors, individual directors, past directors, and John Doe past directors of OFS shall all be referred to as "Defendants."

181. As the governing board for the homeowners which own property in the Ocean Front Spa Resort, OFS Board (hereinafter "OFS") Defendants owe to the Plaintiffs and all other unit owners, a fiduciary duty to place the interests of the Plaintiffs and the regime above the interests of the individual board member.

182. Defendants owe a duty of loyalty requiring directors to refrain from self-dealing.

183. Defendants owe a duty of loyalty requiring directors to furnish to the plaintiffs and all other unit owners information including contractual agreements with vendors.

184. Defendants have a duty of loyalty requiring directors to abstain from voting on matters where a conflict of interest between his benefit conflicts with that of Plaintiff.

185. Article XVII of the OFS Bylaws requires OFS to maintain complete and correct books and records of accounts.

186. Article VI of ByLaws requires books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member.

187. Defendants have the fiduciary duty to investigate and initiate suits on behalf of the homeowners when appropriate.

188. Defendants have a fiduciary duty to abide by the master deed and bylaws of OFS HOA.

189. That upon information and belief, the Defendants have breached their fiduciary obligations in numerous manners, all of which have harmed OFS.

190. That upon information and belief Defendant OFS HOA and the individual named director defendants (past and present) failed to disclose conflicts of interest.

191. That upon information and belief Defendants and K.A. Diehl failed to refrain from participation in business matters where conflicts of interest existed. That Defendants voted on matters where its vote impacted businesses with which it had dealings.

192. That upon information and belief, Defendants failed to abide the master deed and bylaws, specifically regarding making information available and bidding of insurance policies.

193. That upon information and belief Defendants failed to initiate investigation of the propriety of bringing suit against K.A. Diehl for: failing to procure competitive insurance bids; procure competitive security bids; properly account for the improper gate pass revenue; negligent hiring; failure to invoice Allegiant Food and Beverage;

mismanagement of security services, mismanagement of rental and sales commission, and failure obtain a reliable audit of expenditures; failure to properly manage elections; and failure to investigate or properly initiate suit against Renaissance Tower.

194. That upon information and belief Defendants OFS and OFS directors failed to initiate investigation of the propriety of bringing suit against the MBRHOA and its directors for: properly account for the improper gate pass revenue; challenge / investigate the initiation and continuation of the improper gate pass fee; recoup portion of the improper gate pass fee.

195. That Defendants' breach of fiduciary duty proximately caused economic harm to OFS HOA.

196. That Shareholders have suffered substantial economic harm to include the following: depravation of payment of utilities for so many years as discovery may reveal and interest from the same; higher premium rates for insurance; higher property management rates, loss of improper gate pass revenue; loss of rental commission; loss of sales commission; higher HOA assessments and attorney fees from suit against Renaissance Tower.

197. That Plaintiffs are entitled to injunctive relief to include an "Accounting."

B.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT AGAINST K.A. DIEHL)

198. The shareholders hereby incorporate each and every allegation of this pleading as if set forth herein verbatim.

199. That the shareholders hereby assert an action sounding in contract against K.A. Diehl, and do so on behalf of the defendant OFS whom failed to take such action against K.A. Diehl.

200. That pursuant to Rule 23(b) of the South Carolina Rules of Civil Procedure, a shareholder maintains the right to enforce or bring such action against both the corporation where the corporation has failed to enforce such right or take such proper action.

201. That upon information and belief, OFS and K.A. Diehl have a business relationship dating back to 2007.

202. That upon information and belief, OFS and K.A. Diehl have always maintained an agreement which memorialized each parties duties and obligations.

203. That upon information and belief, pursuant to these agreements, K.A. Diehl has always been required to procure contracts of insurance for OFS by attaining bids from multiple brokers and any agreement to the contrary would be innately contrary to best interest of the homeowners.

204. That upon information and belief, pursuant to these agreements, K.A. Diehl has maintained the obligation to prepare a budget for OFS.

205. That upon information and belief, pursuant to these agreements, K.A. Diehl has maintained the obligation to manage accounts to include tasks such as invoicing vendors.

206. That upon information and belief, pursuant to these agreements, K.A. Diehl has maintained the obligation to administer such rights and obligations as OFS may have with various contractual agreements with vendors.

207. That upon information and belief, K.A. Diehl has breached said agreements in one of more of the following particulars: failing to invoice Allegiant Food and Beverage for its share of certain utilities, failing to acquire for the OFS homeowners their portion of the improper parking fees; failing to advise against the initiation of the improper parking fee; not utilizing multiple brokers to procure insurance contracts; not following OFS master deed and bylaws regarding the bidding of insurance; not requiring due process for filing of suit against Renaissance Towers; not properly accounting rental and sales commissions; and not procuring competitive contracts for management or security services.

208. That the shareholders, as a result of the breach of contract, suffered actual damages of an economic nature to include special or consequential damages.

209. That the shareholders are entitled to recover said damages resulting from KA Diehl's breach of contract.

FOR A THIRD CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT AGAINST K.A. DIEHL)

210. The shareholders incorporate each and every allegation of this pleading as if set forth herein verbatim.

211. That the shareholders hereby assert an action sounding in contract against K.A. Diehl, and do so on behalf of the defendant OFS whom failed to take such action against K.A. Diehl.

212. That pursuant to Rule 23(b) of the South Carolina Rules of Civil Procedure, a shareholder maintains the right to enforce or bring such action against both the

corporation where the corporation has failed to enforce such right or take such proper action.

213. That upon information and belief, OFS HOA and K.A. Diehl have a business relationship dating back to 2007.

214. That upon information and belief, OFS HOA and K.A. Diehl have always maintained an agreement which memorialized each parties duties and obligations.

215. That upon information and belief, pursuant to these agreements, K.A. Diehl has always been required to procure contracts of insurance for OFS.

216. That upon information and belief, KA Diehl and OFS entered into a contractual agreement whereby KA Diehl would provide competitive bids of insurance. Further, upon information, this agreement disclosed a marital relationship between Robin Barlow, the owner of ADP Barlow, and Robert Barlow, the CEO of KA Diehl.

217. That upon information and belief pursuant to the 2012 management contract, KA Diehl was still obligated to obtain for OFS competitive insurance bids but could utilize ADP Barlow for the same.

218. That upon information and belief, KA Diehl never used any other company to procure insurance bids despite non-competitive rates and higher brokerage rates.

219. That upon information and belief, KA Diehl bid insurance annually rather than in three year increments in direct contravention of the OFS master deed and bylaws.

220. That upon information and belief, KA Diehl never intended to use any other company to procure insurance bids despite non-competitive rates and higher brokerage rates.

221. That upon information and belief, K.A. Diehl has breached said agreements in one of more of the following particulars: failing to utilize multiple brokers to procure insurance contracts; failing to procure competitive contracts for management or security services; failing to invoice MBRV for improper gate passes; failing to refrain from participation in the RFP process.

222. That upon information and belief, KA Diehl's in breaching the contract did so by design, with dishonesty, and with the intent to deal unfairly.

223. That upon information and belief, KA Diehl's material breach of contract was by design, with dishonesty, and with the intent to deal unfairly.

224. That upon information and belief, KA Diehl's conduct in failing to require MBRV to pay for the improper gate pass fees was an intentional and dishonest act.

225. That upon information and belief, KA Diehl's involvement in the RFP/bid processes for security services and property management was unfair and dishonest conduct.

226. That upon information and belief, KA Diehl's breach of contract was accompanied by its repeated self-dealing whereby it procured insurance by use of ADP Barlow (exclusively).

227. That the shareholders, as a result of the breach, suffered actual damages of an economic nature to include special or consequential damages.

228. That upon information and belief, the shareholders are entitled to an award of actual damages and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE AGAINST K.A. DIEHL)

229. The Class hereby incorporates each and every allegation of this pleading as if set forth herein verbatim.

230. That shareholders bringing said action on behalf of all members of the resort (class/shareholders/homeowners/members) assert this claim of negligence because OFS and its directors thereof have failed to bring the same.

231. That pursuant to Rule 23(b) of the South Carolina Rules of Civil Procedure, a shareholder maintains the right to enforce or bring such action against both the corporation where the corporation has failed to enforce such right or take such proper action.

232. That the Defendant, K.A. Diehl, has a duty and obligation to perform its managerial responsibilities in a reasonable manner.

233. That K.A. Diehl's management of the resort is for the benefit of the homeowners and not for the benefit of any individual board members, rather than a passe-partout for self-dealing.

234. That K.A. Diehl's management of the resort is also for the benefit of OFS, who relies upon K.A. Diehl to manage property affairs and to advise said directors in fulfillment of their duties and obligations.

235. That K.A. Diehl breached said duty of care owed to the class and to OFS in one or more of the following particulars:

a. failure to invoice Allegiant Food and Beverage for utilities;

b. failure to procure multiple brokers for selection of insurance contracts;

c. failing to advise that OFS follow its master deed and bylaws regarding procuring insurance bids in three year increments;

d. failing to bid insurance per the OFS master deed and bylaws;

e. failure to refrain from participation in RFP process regarding hiring of property management company;

f. failure to refrain from participation in OFS's procurement of security services despite its own interest;

g. failure to require parking fees to be returned to the regimes;

h. failing to advise against the parking fee policy;

i. failure to disclose conflicts of interest between board members and vendors or to advise that board members abstain from voting or disclose the same;

j. failure to property account and collect commissions from MBRV sales and rentals;

k. failing to require MBRV to pay its share for the improper gate passes;

l. failure to notify homeowners of compromised unit privacy;

m. failure to properly account for hours worked by Watchmen Services staff;

n. failure to properly account or have a reliable method for accounting the collection of parking fees;

o. failure to follow the bylaws regarding the collection of proxy votes;

p. failure to properly manage the OFS directors election;

q. failure to use the ordinary degree of care in hiring staff.

236. That K.A. Diehl's negligent acts and omissions were the proximate cause of damages suffered by the shareholders.

237. That K.A. Diehl's acts and omissions were grossly negligent and wanton such that the shareholders are entitled to recover actual damages and punitive damages.

C.

FOR A FIFTH CAUSE OF ACTION

(NEGLIGENCE/GROSS NEGLIGENCE AGAINST MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC., MBRHOA DIRECTORS PHIL COX, BILL CAMERON, STANLEY JORDAN, WAYNE URBAN, WALTER JORDAN, KEN PERKINS, AND JOHN DOE PAST BOARD DIRECTORS OF MYRTLE BEACH RESORT HORIZONTAL PROPERTY REGIME, INC.,)

238. Plaintiffs hereby incorporate each and every allegation contained in the preceding paragraphs as if set forth herein verbatim.

239. That for the purpose of section "C" MBRHOA, MBRHOA Board of Directors, directors, past board of directors, John Doe past board of directors, Bill Cameron, Phil Cox, Stanley Jordan, Wayne Urban, and Ken Perkins, shall be referred to "Defendants".

240. That shareholders bringing said action on behalf of all members of the resort (shareholders/homeowners/members) assert this claim of negligence because OFS and its directors thereof have failed to bring the same.

241. That pursuant to Rule 23(b) of the South Carolina Rules of Civil Procedure, a shareholder maintains the right to enforce or bring such action against both the corporation where the corporation has failed to enforce such right or take such proper action.

242. That the Defendants have a duty and obligation to transact business on behalf of MBRHOA in a manner consistent with MBRHOA covenants.

243. That the Defendants, have a duty and obligation to transact business in a manner consistent with the covenants and conveyances granted to the four regimes, including that of Plaintiff, OFSHOA shareholders.

244. That the Defendants have violated said duty by implementing a policy inconsistent with the property rights of all homeowners including the homeowners owning a unit at Ocean Front Spa. That all homeowners at MBR have suffered individual damages, but that those damages are not sought in this action. The individual damages are sought on behalf of the individuals in a companion class action suit.

245. That the shareholders, in this action, seek to recover on behalf of Ocean Front Spa its due portion of the improper gate pass fee, which upon information and belief, has never been provided to Ocean Front Spa.

246. That upon information and belief, the Defendants implemented a gate pass scheme wherein they set out to charge individual homeowners and other "Occupants" $5.00 to enter the premises. ("Occupant" defined in all master deeds and bylaws to include visitors, and renters).

247. That upon information and belief, the Defendants originally implemented the scheme to cover expenses for an MBR owned common element, the "Lazy River."

248. Upon information and belief, the gate pass policy, was and is, a tax or fee rather than an assessment and was therefore not permissible.

249. Upon information and belief, the gate pass policy was revisited by Defendants on November 3, 2013 wherein the policy was revised and increased to $10.00 per gate pass.

250. That upon information and belief, Defendants were advised, by counsel, that the gate pass fee was improper because it could not be justified.

251. That upon information and belief, Defendants disregarded counsels advice and passed the policy at its increased level to "reduce" regime assessments.

252. That upon information and belief, Defendants did not decrease OFS assessments.

253. That upon information and belief, Defendants breached their duty to OFS regime in one or more of the following manners: implementing the gate pass policy, continuing the policy, increasing the gate pass fee, and failing to reduce OFS assessments.

254. That Defendants breach of duty caused OFS regime economic harm in the way of improper and artificially higher assessments.

255. That Defendants breach of duty was the direct and proximate cause of the financial harm suffered by OFS entitling Plaintiff shareholders to an award of actual damages.

256. That upon information and belief, defendants conduct in disregarding counsel's advice was reckless and wanton and thereby grossly negligent, entitling Plaintiffs to an award of punitive damages.

PRAYER FOR RELIEF

A.

(PLAINTIFFS DERIVATIVE SHAREHOLDER SUIT ON BEHALF OF THE MEMBERS OF OCEAN FRONT SPA AGAINST OCEAN FRONT SPA HORIZONTAL PROPERTY REGIME, INC., WALTER JORDAN, RALPH JUMP, RAY COGHILL, STANLEY JORDAN, BILL CAMERON, AND JOHN DOE PAST BOARD DIRECTORS OF OCEAN FRONT SPA HORIZONTAL PROPERTY REGIME, INC.)

WHEREFORE, Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson hereby pray unto this honorable court for the following relief: (1) approval of the derivative shareholder action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure to include the recognition of Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson as representatives for the purpose of bringing said derivative action on

behalf of OFS; (2) for an award of damages against the Defendants above listed to include actual damages, attorney fees, costs; and (3) for injunctive relief to include an accounting; (4) for such other and further relief as the justice may require.

PRAYER FOR RELIEF

B.

(PLAINTIFFS DERIVATIVE SHAREHOLDER SUIT ON BEHALF OF THE MEMBERS OF OCEAN FRONT SPA AGAINST DEFENDANT K.A. DIEHL AND ASSOCIATES INC.)

WHEREFORE, Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson hereby pray unto this honorable court for the following relief: (1) approval of the derivative shareholder action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure to include the recognition of Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson as representatives for the purpose of bringing said derivative action on behalf of OFS; (2) for an award of damages against K.A. Diehl and Associates, Inc. to include actual damages, punitive damages, attorney fees, costs; and (3) for injunctive relief to include an accounting; (4) for such other and further relief as the justice may require.

PRAYER FOR RELIEF

C.

(PLAINTIFFS DERIVATIVE SHAREHOLDER SUIT ON BEHALF OF THE MEMBERS OF OCEAN FRONT SPA AGAINST DEFENDANTS THE MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC., PHIL COX, BILL CAMERON, STANLEY JORDAN, WAYNE URBAN, KEN PERKINS, WALTER JORDAN, AND JOHN DOE

PAST BOARD DIRECTORS OF THE MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.)

WHEREFORE, Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson hereby pray unto this honorable court for the following relief: (1) approval of the derivative shareholder action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure to include the recognition of Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeff Richardson as representatives for the purpose of bringing said derivative action on behalf of OFS; (2) for an award of damages against above listed Defendants to include actual damages, punitive damages, attorney fees, costs; and (3) for injunctive relief to include an accounting; (4) for such other and further relief as the justice may require.

RESPECTFULLY SUBMITTED BY:

THE BRITTAIN LAW FIRM, P.A.

A. Preston Brittain, Esq.
SC Bar #73707
Thomas C. Brittain, Esq
SC Bar # 00893
4614 Oleander Drive
Myrtle Beach, SC 29577
843-449-8562 (O)
843-449-6148 (F)

On behalf of Plaintiffs Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson

February 29th, 2016

Myrtle Beach, SC

ATTACHEMENT "A"

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Writer's e-mail: sgs@patrickandstathos.com

June 4, 2014

Darla Donovan, CMCA, AMS
Senior Community Manager
K.A. Diehl, AAMC
11822 Hwy 17 Bypass South
Murrells Inlet, SC 29576

Re: Myrtle Beach Resort Homeowners' Association, Inc. ("Master Association")

Dear Darla:

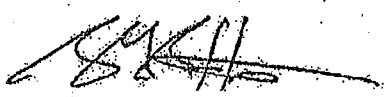
I am writing pursuant to your request that our firm address an issue on behalf of the Master Association regarding conflict of interest. Specifically, the issue is whether a conflict of interest exists for a director that sits on the board of the Master Association who is in a contractual relationship with a Master Association approved food and beverage and rental contractor, such as Allegiant Food & Beverage, LLC ("Food & Beverage") and Allegiant Property Management, LLC ("Property Management"), and must vote on issues that affect the subject contractors.

The governing document for the Master Association is the Declaration of Covenants, Conditions and Restrictions filed April 25, 1991 ("Declaration"). The Declaration does not provide express guidance as to conflict of interest issues, however, as a non-profit corporation the Master Association is subject to the applicable statute. Therefore, pursuant to the South Carolina Nonprofit Corporation Act, specifically S.C. Code § 33-31-831, a conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. If a director of the Master Association has a direct interest in either Food & Beverage or Property Management, then there is a conflict of interest. A direct interest may be deemed to be a contractual relationship with the companies before the Master Association that can result in the director receiving something of value. An indirect interest is one where a director has a material interest in the other entity or is a general partner in that entity, or a director, officer or trustee of the entity that is a party to the transaction.

In my opinion, if either Food and Beverage or Property Management matters are before the Master Association and a director has a contractual relationship with either company, then that director has a conflict of interest on such matters. In that event, the director's interest must be disclosed so that the remaining directors can address the matter at hand pursuant to the statute. In conclusion, a conflict of interest does not itself prevent the Master Association from addressing a matter since the statute provides a mechanism for a board to function and to authorize and approve decisions when a conflict of interest is presented.

If you require any further clarification on this matter please let me know.

Sincerely,



Sam G. Stathos

SGS/

cc: Myrtle Beach Resort Homeowners' Association, Inc.

ATTACHEMENT "B"

CONTRACT ALLEGIANT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AGREEMENT

THIS AGREEMENT, made and entered into as of the 12th day of November, 2009, by and between THE MYRTLE BEACH RESORT HOMEOWNERS" ASSOCIATION, INC., a South Carolina corporation (hereinafter the "Association") and ALLEGIANT PROPERTY MANAGEMENT, LLC, a North Carolina limited liability company (hereinafter referred to as "Allegiant")doing business as Myrtle Beach Resort Vacations.

WITNESSETH

WHEREAS, the Association has determined it to be in the best interest of the homeowners at The Myrtle Beach Resort to enter into an Agreement that results in one rental agent whereby the Association will receive a royalty on all rental and sales activity conducted at the Resort and whereby Association will obtain ownership of Commercial Unit D within the Five Seasons Centre Council of Co-owners, and

WHEREAS, Allegiant has made certain promises and has committed to certain undertakings, as more particularly set out herein, as an inducement to the Association to enter into this Agreement, and,

WHEREAS, The Association and Allegiant respectively desire to enter into this Agreement which will be effective January 1, 2010,

NOW THEREFORE in consideration of Five Dollars ($5.00), and the mutual covenants given herein, the receipt and sufficiency of such consideration being hereby acknowledged, the parties agree to as follows:

SECTION A: Rental Management Agreement

1. Association agrees to facilitate solicitation by Allegiant of the homeowners at the Myrtle Beach Resort to enter into Rental Management Agreements ("RMAs") with Allegiant, provided Allegiant 's form of RMA is reasonable in light of the then current industry standards and the management fee expressed as a % of the Rental Revenue has been approved by the Association. Any changes to the types or amounts of Additional Charges from Exhibit "A" shall be approved by the Association prior to implementation.
2. The term "Gross Rental Revenue" is defined as the total of Rent, Departure Cleaning, Linen Service, Processing Fees, and Resort Fees.
3. The initial term of this Agreement shall be effective as of January 1, 2010 and shall continue in effect through December 31, 2014. The Association shall have the option to buyout the remainder of this

1

Agreement from Allegiant for a sum of $150,000 and the terms stated in the Contract of Sale executed with Allegiant for Commercial Unit D in the Five Seasons Centre as well as the terms in paragraph 3 of this Agreement related to the Assignment of Rental Management Agreements, providing Association has given notice to Allegiant of its intent to exercise its buyout option, which must be exercised on or before August 31, 2012. In the event Association does not exercise its buyout, provided that Allegiant has complied with the terms of the lease, and provided that neither party has advised the other by August 31, 2014 that they do not wish to extend or renegotiate this Agreement, the term of this lease shall extend an additional five (5) years commencing January 1, 2015 and ending December 31, 2019. Subsequent terms of this agreement shall be in automatic renewals in five (5) year increments provided neither party has advised the other by August 31st of the final year of a term that they wish to terminate or renegotiate the Agreement. At any time prior to August 31st of the final year of any term of this Agreement the Association shall have the right to test the market place to determine the potential value of the Agreement at that time. However Allegiant shall have a right of first refusal for the Agreement unless Association has notified Allegiant by August 31st of that year that they wish to terminate the agreement. Upon termination of this Agreement, all incidental contracts, "800" telephone numbers, use of internet websites using the name Myrtle Beach Resort, except for the website using Myrtle-Beach-Resort, if and only if this Agreement is terminated prior to December 31, 2019, use of Association logos, related services including rental histories of Association RMA's, and licenses incidental to the rental program at the Myrtle Beach Resort shall be assigned by Allegiant to the Association or its designee. The disposition of the Rental Management Agreements (RMA's) shall be in accordance with paragraph 4. SECTION A of this Agreement. All other internet assets, as listed in Exhibit "B", brought to this Agreement from Allegiant shall return to Allegiant at any termination of this agreement.

4. Effective with the execution of this agreement and the payment of the monies due upon execution of this contract, the Association shall transfer, set over, and assign to Allegiant all existing RMA's (approximately 216) owned by the Association for administration by Allegiant. These RMA's, between the incumbent agent Myrtle Beach Vacation Rentals and Myrtle Beach Resort owners, are to be assigned to the Association or its agent effective January 1, 2010 in accordance with their present Agreement. This assignment shall include all rental reservations booked or in the process of being booked, for the calendar years of 2010 and beyond. Allegiant brings their own RMA's (Approximately 160) with them into this Agreement. If Allegiant is successful in increasing the total number of RMA's managed under this Agreement, the additional RMA's shall be assigned between the Association and Allegiant in proportion to the number actually brought into the Agreement on January 1, 2010. If the number decreases from the total number of RMA's as of January 1, 2010, any decrease shall be considered to have come from the number brought to the Agreement by Allegiant. Should this decrease occur, any

additions of RMA's from that point shall be considered as Allegiant RMA's until such time as the original total has once again been met. At the end of the second term on December 31, 2019 all RMA's shall be considered to be Association RMA's at that time and thereafter. If there is a termination of the contract prior to December 31, 2019, the RMA's shall be separated according to the apportionment of the RMA's, as described above, at the time of the termination.

5. Association shall turn over to Allegiant the existing "800" telephone lines serving the Myrtle Beach Resort and responsibility for payment of these services effective 1/1/2010. Association shall grant to Allegiant an exclusive license to use any of its registered logos for the duration of the contract.

6. In consideration of the assignments and licenses above, Allegiant shall agree and pay to the Association in good and sufficient funds as follows:

   A. Upon the execution of the contract, a credit of Seventy-two Thousand Five Hundred Dollars ($72,500.00) shall be applied toward the Association's purchase of Commercial Unit D of the Five Seasons Centre from Allegiant. Allegiant also agrees to fund the cost of a new sign (design provided by Tyson Signs in 2008 and approved by the Association at its Annual Meeting in April 2008) to be placed at the entrance of the Myrtle Beach Resort by May 31, 2009.

   B. On the anniversary date of this contract in 2011, the sum of Seventy Four Thousand Six Hundred Seventy-five dollars ($74,675.00) in cash.

   C. By January 10, 2011 a sum equal to 2% of Gross Rental Revenues from January 1, 2010 through December 31, 2010 that are in excess of $3,625,000.

   D. On the anniversary date of this agreement in 2012, the sum of Seventy Six Thousand Nine Hundred Fifteen Dollars and Twenty-five cents ($76,915.25).

   E. By January 10, 2012 a sum equal to 2% of Gross Rental Revenues from January 1, 2011 through December 31, 2011 that are in excess of $3,733,750.00

   F. By January 10, 2013 a sum equal to 2% of Gross Rental Revenues from January 1, 2012 through December 31, 2012 that are in excess of $3,845,762.50

7. If the Association has not exercised its buyout option, Commencing February 10, 2013 and continuing on the 10th day of each succeeding month through the duration of this Agreement and any extension of this Agreement, Allegiant shall pay Association an amount equaling Two Percent (2%) percent of Gross Rental Revenues received for the preceding month. However, in no event shall the annual payment for

2013 be less than Seventy-nine Thousand Two Hundred and Twenty-two Dollars and Seventy-one Cents ($79,222.71) "the minimum annual payment". In each successive year the minimum annual payment shall increase by 3.0 %. In any year the 2% of Gross Rental Revenue does not equal the minimum annual amount, then Allegiant will pay such deficit so that each annual payment shall equal "the minimum annual payment" as provided for herein and such deficit shall be paid by Allegiant to the Association no later than January 10 for the immediately preceding payment year.

8. Allegiant agrees to pay Association a ten (10%) percent late fee for payments received ten (10) or more days after their due date. This shall apply to any payments due under this Agreement.

9. In the event, during the term of this Agreement, there is a decrease in gross annual rental revenue when compared to previous "Agreement year", and where such decrease is caused by a qualifying force majeure (including fire, flood, weather related evacuation, war, riot, or insurrection) "the minimum annual payment" requirement provided for herein, shall be reduced for the Agreement year of such qualifying force majeure event as hereinafter provided for that year. A "qualifying force majeure event" shall occur when greater than fifteen (15%) percent of the rental units under contract with Allegiant are uninhabitable as a result of such a force majeure during the period from May 15 through September 15 ("prime season") of any given Agreement year. In the event of such a force majeure event, the minimum annual payment shall be reduced by a fraction of the minimum annual payment, which said fraction shall be determined as follows:

   A. The numerator shall be the total number of unit days that such qualifying units are uninhabitable, and the denominator shall be the total unit days under contract with Allegiant for the applicable "prime season". It is understood and agreed that such adjustment and minimum annual payment shall only apply if the percentage rent provided for herein is less than the minimum annual payment as adjusted herein and only to the extent that there is a decrease in gross annual rental revenue when compared to the previous year.

10. Commencing February 10, 2010 Allegiant shall also furnish the Association with a written statement, certified by Allegiant to be correct, showing the amount of gross rental revenue from the beginning of the current year to the end of the previous calendar month or any portion thereof.

Allegiant agrees to make such portions of their books and records available to the Association, or its designated representative, as may be necessary or desired (at the sole discretion of the Association) in respect to the percentage leases as set out herein. This will include, without limitation, accommodation tax records. If

Allegiant shall not make payment of any money due hereunder or otherwise perform any of the terms hereof, and Allegiant fails to make such payment or remediate such performance within ten (10) days from mailing from the mailing of a written notice from the Association)or within a reasonable period of time if such cure cannot reasonably be implemented within a ten (10) day period), or if Allegiant shall be adjudicated bankrupt or make assignment for the benefit of creditors or if the assets of Allegiant shall be sold under execution or other legal process, such event shall constitute an event of default under this Section A. Upon occurrence of an uncured fault, the Association may, at its option, terminate this agreement and/or sue Allegiant for damages. If either party shall default under the terms of this Section A, such defaulting party agrees to pay all reasonable attorney fees and costs incurred by the non-defaulting party and enforcing the obligations of the defaulting party under this Section A: Rental Management Agreement.

SECTION B: Lease of Rental Management And Resale Space

The Association will lease to the Allegiant the rental management, sales, and Homeowners' Association space now utilized in the office building at 5905 Highway 17 South, Horry County. This space is estimated at 3,400 square feet.

1. The term of this leasehold shall be Five (5) years commencing January 1, 2010 and terminating at midnight on December 31, 2014. Allegiant shall have the option to extend this leasehold an additional five (5) years terminating December 31, 2019 s provided Allegiant notify Association of its intent to exercise such option by August 31, 2014. In the event Association exercises it buyout option with Allegiant related to rental management services, it shall also constitute notice to Allegiant that this leasehold shall also terminate as of December 31, 2012. Subsequent terms of this agreement shall be in automatic renewals in five (5) year increments provided neither party has advised the other by August 31st of the final year of a term that they wish to terminate or renegotiate the Agreement.
2. The rental fee for this space shall be Fifty One Thousand Dollars ($51,000.00) annually paid in monthly installments due in advance on the 1st of each month. This rental fee shall be increased by three percent (3,0 %) at the beginning of each subsequent calendar year under this Agreement.
3. Allegiant agrees to pay Association a ten (10%) percent late fee for payments received ten (10) or more days after their due date. This shall apply to any payments due under this Agreement.
4. Allegiant shall arrange and pay for the use of utilities furnished to the leased premises during the term of this Lease Agreement, including but not limited to, water, electricity, gas, sewer, and telephone. Allegiant agrees to pay one-third of the monthly maintenance fees for the Resort telephone system ($216.67). Allegiant agrees to manage and pay for the VCTV system that inserts a video stream for viewing on Channel 3, the Myrtle Beach Resort Channel of the TimeWarner cable system.

5. Maintenance of the interior leased space including all plumbing, heating, electrical and air conditioning shall be the responsibility of Allegiant. Maintenance and the maintenance of the exterior shall be the responsibility of the Association. Allegiant shall, at its own expense, keep and maintain the premises in good order and repair during the term of this Lease Agreement, and shall surrender same to the Association at the expiration or earlier termination of this Lease Agreement in as good condition as when received, normal wear and tear excepted.
6. All repairs, replacements, and renewals shall be at least equal in quality, materials, and workmanship to that which originally existed on the leased property. Allegiant shall indemnify the Association against all costs, expenses, liabilities, losses, damages, suits, claims, and demands, including reasonable attorney's fees, because of the failure of Allegiant to comply with the foregoing. Allegiant shall not, in any event, cause or permit any waste, damage, or injury to the leased property.
7. The Association shall be under no liability for damages to Allegiant due to the discontinuance of heat, air conditioning, electricity, water, or of any other service provided by or through the Association, or of any other services provided by or through the Association, or for loss of profit whether caused by the foregoing, rain, water, force majeure, or otherwise.
8. The Association reserves the right to enter on the premises at reasonable times to inspect same.
9. Allegiant agrees to pay reasonable cost of garbage collection and disposal as provided by the Association. Provided, however, Allegiant is solely responsible for collecting and transporting garbage from office area to the dumpster to be provided by the Association, the location of which is to be designated by the Association.
10. All ad valorem taxes, assessments, liens or charges on the land or improvements now located thereon, and all obligations secured by mortgage or other liens that may be against or levied upon the demised premises shall be properly paid by the Association when due. All taxes on the personal property owned or leased by Allegiant, as well as all business licenses required for the operation of its business, shall be paid by Allegiant.

11. During the entire term of the lease agreement, Allegiant shall, at the expense of Allegiant, secure and maintain such personal property insurance as it may determine upon all personal property owned or leased by Allegiant and located upon the leased premises, at the expense of Allegiant. Allegiant shall, at the expense of Allegiant, secure and maintain during the entire term of this Lease, general liability insurance policy (or policies) upon the leased premises in an amount that totals no less than Two Million and 00/100 Dollars ($2,000,000.00) for each occurrence and a Five Million and 00/100 Dollars Umbrella policy. Said general liability insurance policy (or policies) shall be procured with an insurance company licensed to do business in the State of South Carolina and shall be procured by Allegiant in,

such manner as to include the Association and all individual horizontal property regimes as additional insured. Allegiant shall promptly furnish copies of said policies of insurance to the Association and shall direct and instruct the insuring company to mail duplicate notices of premiums due from time to time to said policies of insurance to the Association at the address designated by the Association.

12. Allegiant, at its sole expense, shall comply with all laws, orders, and regulations of federal, state and municipal authorities, and with any direction of any public officer, pursuant to the law, which impose any duty upon the Association or Allegiant with respect to the leased property. Allegiant, at its sole expense, shall obtain all licenses or permits which may be required by the conduct of its business within the terms of this Lease Agreement, or for the making of repairs, alterations, improvements, or additions, if permitted by the Association. Allegiant shall comply with the requirements of all polices of public liability, fire, and all other types of insurance at any time in force with respect to the buildings and other improvements on the leased property.

13. Allegiant shall, on the last day of the last term, or upon the sooner termination of the term, peaceably and quietly surrender the leased property to the Association, in as good condition and repair as at the commencement of the term, including replacements, additions, or improvements constructed, erected, added, or placed thereon by Allegiant with the Association's consent, with the natural wear and tear thereof excepted.

14. If the premises are wholly or partially destroyed by fire or other casualty, through no fault of Allegiant, rental shall abate in proportion to the loss of use. The Association shall, to the extent of available insurance proceeds, promptly restore the structure to substantially the same condition as existed before damage or destruction, whereupon full rental shall resume.

15. If the whole of the demised premises, or such portion thereof as will make the leased property unsuitable for the purposes herein listed, is condemned for any public use or purpose by any legally constituted authority, then in either of such events, this Lease shall cease from the time when possession is taken by such public authority, and rental shall be accounted for between the Association and Allegiant as of the date of the surrender of possession. Such termination shall be without prejudice to the rights of either the Association or Allegiant to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither the Association nor Allegiant shall have any rights in or to any award made to the other by the condemning authority.

16. If Allegiant shall be in default in the payment of any rent due hereunder or in the performance of any conditions hereof, and shall it fail to correct and rectify any such default within ten (10) days from the mailing of a written notice thereof from the Association, or if Allegiant shall be adjudicated bankrupt or make any assignment for the benefit of creditors, or; if the interest of Allegiant therein shall be sold

under execution or other legal process, the Association may enter into said premises and repossess the same as if this Lease had not been made and shall thereupon have the right to cure this Lease, without prejudice, however, to the right of entry to the Association to recover all rent due to the time of such entry. If Allegiant shall fail to fulfill any agreement stated in this Lease, or fail to pay any portion of the rent, or vacate the leased premises prior to the expiration of the lease term, the Association may terminate this lease, and all rents due and which would become due during the remainder of the lease term, shall immediately become due and payable, provided, however, Allegiant shall have a ten (10) day right to cure any such default. If either party should default under the terms of this agreement, such defaulting party agrees to pay all reasonable attorney's fees and court costs incurred by the non-defaulting party in enforcing the obligations of the defaulting party under this Lease Agreement

17. The Association shall be responsible for real property taxes and general fire and extended casualty insurance on the building. Allegiant shall be responsible for all personal property, business licenses, income or other taxes, that relate to the conduct of its business on the demised premises. Allegiant shall also be responsible for insuring its personal property. Each party shall maintain adequate liability insurance, worker's compensation insurance and other insurance, in reasonable and adequate amounts, and either party may require the other party to produce evidence of coverage upon reasonable request.
18. No permanent improvements, alterations, or additions to the premises shall be made by Allegiant without the express written consent of the Association. All improvements and additions made and permanently attached to the premises, including without limitation, any partitions, carpets, lighting fixtures, doors, hardware, shelves, counters, cabinets, and all other permanent improvements and fixtures, shall remain with the premises, and shall be surrendered to the Association at the expiration or earlier termination of this Lease Agreement.

SECTION C: Linen Storage, Maid Service, Commercial Laundry Area Rental

1. The Association controls and hereby leases to Allegiant certain linen storage and maid service areas shown on Exhibit "B" as well as a commercial laundry at The Myrtle Beach Resort Ocean Front Spa for the sum of One Thousand Fifty Dollars ($1,050.00) per month, payable monthly in advance with the first payment being due on or before January 1, 2010. (Allocated as follows: $675.00 for commercial laundry and $375.00 for 8 linen storage and maid service areas, 5 in the Renaissance Tower, 2 in the Ocean Front Spa and 1 in the Horizontal Property Regime). This amount shall have an annual three percent (3.0 %) increase on January 1st of every year for the duration of this Agreement and any extensions. If at any time during a term of this agreement a Regime increases the rental rates of its storage areas to the Association, Allegiant the payment under this section shall immediately be amended

to include that increase in rental rates.

2. The term of this leasehold shall be Five (5) years commencing January 1, 2010, and terminating at midnight on December 31, 2014. Allegiant shall have the option to extend this leasehold an additional five (5) years terminating December 31, 2019 provided Allegiant notify Association of its intent to exercise such option by August 31, 2014. In the event Association exercises it buyout option with Allegiant related to rental management services it shall also constitute notice to Allegiant that this leasehold shall also terminate as of December 31, 2012. Subsequent terms of this agreement shall be in automatic renewals in five (5) year increments provided neither party has advised the other by August 31st of the final year of a term that they wish to terminate or renegotiate the Agreement.

SECTION D: Miscellaneous

1. The leases herein shall be subject and subordinate at all times to the lien of existing mortgages and of mortgages which hereafter may be made a lien of the leased property by Association. Although no instrument or act on the part of Allegiant shall be necessary to effectuate such subordination, Allegiant will, nevertheless, execute and deliver such further instruments subordination this lien to the lien of any mortgages as may be desired by the mortgagee.
2. Allegiant covenants not to compete (outside the scope of this Agreement) in any way, shape or form in respect to rentals at the Myrtle Beach Resort during the term of this Lease Agreement, and for a period of one and one half (11/2) years beyond such term, unless this agreement is terminated by the Association prior to December 31, 2019.
3. Allegiant agrees to have each of its employees who handle money in any respect covered by employee dishonesty coverage in an amount no less than One Hundred Thousand and 00/100 Dollars ($100,000.00). Further, any employee of Allegiant who is a signatory on any of Allegiant's bank accounts shall be bonded in an amount no less than One Million and 00/100 Dollars ($1,000,000.00).
4. Employees, guests and invitees of Allegiant shall abide by all parking regulations and traffic rules established by the Association.
5. Allegiant shall undertake no on-site advertising with respect to its use of the office space without the prior written consent of the Association, which consent shall not be unreasonably withheld.
6. Allegiant shall split with the Association, on a 50/50 basis, the cost of the American Hospitality Association's summer program to provide children's activities at the Resort and the cost to provide the Saturday evening reception on the Annual Homeowners' Meetings weekend each year.
7. In the event the Association must proceed with legal action against the current vendor, Myrtle Beach Vacation Rentals (MBVR), in order to enforce the non-compete clause in the existing Agreement

between Association and MBVR, Allegiant agrees to indemnify the Association for all expenses Associated with that action.

8. In the event the Association must proceed with legal action against MBVR in order to enforce the assignment of the current RMA's to the Association or its Agent, Allegiant agrees to reimburse Association for 50% of the legal fees required for that legal action.

IN WITNESS WHEREOF, the Association and Allegiant subscribed their names and affixed their seals the day and year first above written.

WITNESSES:

ASSOCIATION:

MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.

By: _____
Stanley Jordan, President

ALLEGIANT PROPERTY
MANAGEMENT, LLC

By: _____
Robert Jones, Managing Member

Exhibit "A"

Additional Charges

Departure Cleaning: Units will be cleaned by our Housekeeping Department after departure. Departure cleaning charges are as follows:
1 Bedroom Units - $50
2 Bedroom Units - $60
3 Bedroom Units - $70

Linen Service: Condos are provided with linen and towels, etc. for $50 per stay (3 BRs are $70).

Processing Fee: $30.00

Damage Waiver: $6 per Day
Click here for Details

Destination Fee: $1/Night

Resort Fee: 4% of Rent Only

Optional Features/Charges
Daily Maid Service is available for $19.95/night.
Travel Insurance (Click here for details)

Myrtle Beach Resort Home Page

Exhibit "B"

ASSETS BELONGING TO ALLEGIANT

Toll-Free Numbers

800-845-0629
888-627-3767
866-484-5175
866-863-0762
888-826-4018
888-826-3981

Domains

charmingcancun.com
discovermyrtlebeachrestaurants.com
exploremiamibeach.com
funbeachvacations.com
hawaiianstays.com
mb4fun.com
mbforfun.com
mbfourfun.com
mbr4fun.com
mbresortcondos.com
mbresortvacations.com
mbrho.com
mbseniors.com
myrtlebeachattractionsonline.com
myrtlebeachbikeweeklive.com
myrtlebeachentertainmentlive.com
myrtlebeachgolfinsider.com
myrtlebeachhotdeals.com
myrtlebeach-living.com
myrtlebeachrealestatenow.com
myrtle-beach-resort.com
myrtlebeachresortcondos.com
myrtlebeachresorthomeowners.com
myrtlebeachresortrentals.com
myrtlebeachresortsales.com
myrtlebeachresortvacations.mobi
myrtlebeachresortvacationservices.com
myrtlebeachvacationcondos.com
playmb.com
resortmb.com
resortvacationservices.com
virginiabeachescapes.com

1callmaint.com - Expires on 10-Sep-2010
onecallmaint.com - Expires on 10-Sep-2010

ATTACHEMENT "C"

K.A. DIEHL

Myrtle Beach Resort Homeowners Assoc., Inc.
Operating Income Statement
08/31/2014

c/o K.A. Diehl
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Current Period Budget	Variance	Year To Date Actual	Year To Date Budget	Variance	Yearly Budget
	INCOME							
4001	Regular Assessments	$ 96,030.80	$ 96,035	$ (4.20)	$ 768,246.40	$ 768,280	$ (33.60)	$ 1,152,423
4002	Reserve Funding	(12,137.00)	(12,137)	0.00	(97,096.00)	(97,096)	0.00	(145,644)
4040	Sales Commissions	612.31	417	195.31	5,900.93	3,336	2,564.93	5,000
4041	Rental/Lease Income	0.00	83	(83.00)	214.75	664	(449.25)	1,000
4042	MBRV Sales Office Rent	4,783.41	4,784	(0.59)	38,267.25	38,272	(4.75)	57,410
4043	MBRV 2% Rental Commission	13,621.72	14,688	(1,066.28)	65,132.70	62,016	3,116.70	81,600
4044	MBRV Food & Beverage Lease	11,880.36	11,880	0.36	95,042.88	95,040	2.88	106,923
4052	Vending Income	0.00	83	(83.00)	956.64	664	292.64	1,000
4058	Gate Income	14,532.50	9,992	4,540.50	98,295.00	79,936	18,359.00	119,906
4060	Storage Rm Lease Income	881.79	1,181	(299.21)	8,104.29	9,448	(1,343.71)	14,177
4064	Utility Reimbursement	0.00	0	0.00	3,650.00	0	3,650.00	0
4083	Water and Sewer Reimbursement	7,523.47	0	7,523.47	7,523.47	0	7,523.47	0
4120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
4149	Common Element Inc	14,532.50	9,992	4,540.50	98,295.00	79,936	18,359.00	119,906
	Total Income	$ 152,261.86	$ 136,998	$ 15,263.86	$ 1,092,535.09	$ 1,040,496	$ 52,039.09	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 0.00	$ 1,025	$ 1,025.00	$ 563.97	$ 8,200	$ 7,636.03	$ 12,300
5001	Office Supplies & Expenses	104.28	417	312.72	2,461.89	3,336	874.11	5,000
5002	Printing Expense	1,116.74	833	(283.74)	11,652.33	6,664	(4,988.33)	10,000
5003	Postage	53.05	267	213.95	2,208.72	2,136	(72.72)	3,200
5009	Board Meeting Expense	0.00	678	678.00	3,887.56	5,424	1,536.44	8,133
5015	Legal Services	0.00	83	83.00	1,900.00	664	(1,236.00)	1,000
5017	Management Services	8,025.00	8,145	120.00	64,200.00	65,160	960.00	97,734
5020	Consulting Services Other	1,050.00	1,050	0.00	8,400.00	8,400	0.00	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,664.63	4,177	512.37	29,884.85	33,416	3,531.15	50,119
5034	Licenses & Permits	0.00	0	0.00	425.00	1,500	1,075.00	1,500
5039	Property Taxes	0.00	0	0.00	457.47	0	(457.47)	50,500
5049	Operating Contingency	0.00	417	417.00	0.00	3,336	3,336.00	5,000
	General & Administrative Total	$ 14,013.70	$ 17,092	$ 3,078.30	$ 128,891.79	$ 141,086	$ 12,194.21	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 674.16	$ 2,917	$ 2,242.84	$ 19,758.25	$ 23,336	$ 3,577.75	$ 35,000
6004	Lazy River Staff	6,208.59	2,359	(3,849.59)	26,727.03	18,872	(7,855.03)	28,305
6006	Mileage Reimbursement	0.00	17	17.00	268.80	136	(132.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	7,069.51	7,000	(69.51)	10,500
6030	Fire Alarm & Sprinkler Maint	163.49	203	39.51	1,361.88	1,624	262.12	2,433
6031	HVAC System Maint	41.42	250	208.58	1,650.19	2,000	349.81	3,000
6034	TV Repair & Replacement	0.00	21	21.00	0.00	168	168.00	250
6036	Interior Pest Control	212.75	233	20.25	1,664.80	1,864	199.20	2,800
6038	Termite Treatment	310.00	41	(269.00)	585.00	328	(257.00)	490
6039	Nuisance Control	2,491.67	192	(2,299.67)	3,833.36	1,536	(2,297.36)	2,300
6041	Janitorial Supplies	879.29	542	(337.29)	4,148.95	4,336	187.05	6,500
6080	Grounds Staff	2,083.53	4,690	2,606.47	27,539.55	37,520	9,980.45	56,280
6099	Golf Cart Repair MBR	150.95	83	(67.95)	597.44	664	66.56	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	15,000.00	15,000	0.00	22,500
6152	Landscape Maint	1,166.81	1,679	512.19	22,431.56	13,432	(8,999.56)	20,145
6159	Lake Maintenance	420.00	458	38.00	3,929.57	3,664	(265.57)	5,500
6185	Pool/Spa Supplies	2,384.99	2,250	(134.99)	16,505.28	18,000	1,494.72	27,000
6186	Pool/Spa Maintenance	284.99	1,250	965.01	8,061.10	10,000	1,938.90	15,000
6241	Watchmen Services	41,101.09	39,867	(1,234.09)	315,195.70	318,936	3,740.30	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,000	(121.88)	1,500
6244	Watchman Supplies	1,431.29	1,042	(389.29)	6,901.43	8,336	1,434.57	12,500
	Repairs & Maintenance Total	$ 62,999.45	$ 60,969	$ (2,030.45)	$ 484,351.28	$ 487,752	$ 3,400.72	$ 731,603

K.A. DIEHL

0137 Myrtle Beach Resort Homeowners Assoc., Inc.
Operating Income Statement
09/30/2014

c/o K.A. Diehl
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Current Period Budget	Current Period Variance	Year To Date Actual	Year To Date Budget	Year To Date Variance	Yearly Budget
	INCOME							
4001	Regular Assessments	$ 96,030.80	$ 96,035	$ (4.20)	$ 864,277.20	$ 864,315	$ (37.80)	$ 1,152,423
4002	Reserve Funding	(12,137.00)	(12,137)	0.00	(109,233.00)	(109,233)	0.00	(145,644)
4040	Sales Commissions	471.00	417	54.00	6,371.93	3,753	2,618.93	5,000
4041	Rental/Lease Income	(214.75)	83	(297.75)	0.00	747	(747.00)	1,000
4042	MBRV Sales Office Rent	4,783.41	4,784	(0.59)	43,050.66	43,056	(5.34)	57,410
4043	MBRV 2% Rental Commission	7,002.15	13,056	(6,053.85)	72,134.85	75,072	(2,937.15)	81,600
4044	MBRV Food & Beverage Lease	11,880.36	11,883	(2.64)	106,923.24	106,923	0.24	106,923
4052	Vending Income	214.75	83	131.75	1,171.39	747	424.39	1,000
4058	Gate Income	20,607.50	9,992	10,615.50	118,902.50	89,928	28,974.50	119,906
4060	Storage Rm Lease Income	881.79	1,181	(299.21)	8,986.08	10,629	(1,642.92)	14,177
4064	Utility Reimbursement	4,115.37	0	4,115.37	7,765.37	0	7,765.37	0
4083	Water and Sewer Reimbursement	4,382.77	0	4,382.77	11,906.24	0	11,906.24	0
4120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
4149	Common Element Inc	20,607.50	9,992	10,615.50	118,902.50	89,928	28,974.50	119,906
	Total Income	$ 158,625.65	$ 135,369	$ 23,256.65	$ 1,251,160.74	$ 1,175,865	$ 75,295.74	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 0.00	$ 1,025	$ 1,025.00	$ 563.97	$ 9,225	$ 8,661.03	$ 12,300
5001	Office Supplies & Expenses	247.19	417	169.81	2,709.08	3,753	1,043.92	5,000
5002	Printing Expense	1,232.54	833	(399.54)	12,884.87	7,497	(5,387.87)	10,000
5003	Postage	160.31	267	106.69	2,369.03	2,403	33.97	3,200
5009	Board Meeting Expense	581.05	678	96.95	4,468.61	6,102	1,633.39	8,133
5015	Legal Services	0.00	83	83.00	1,900.00	747	(1,153.00)	1,000
5017	Management Services	8,025.00	8,145	120.00	72,225.00	73,305	1,080.00	97,734
5020	Consulting Services Other	1,050.00	1,050	0.00	9,450.00	9,450	0.00	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,664.63	4,177	512.37	33,549.48	37,593	4,043.52	50,119
5034	Licenses & Permits	13.01	0	(13.01)	438.01	1,500	1,061.99	1,500
5039	Property Taxes	(2,472.01)	0	2,472.01	(2,014.54)	0	2,014.54	50,500
5049	Operating Contingency	0.00	417	417.00	0.00	3,753	3,753.00	5,000
	General & Administrative Total	$ 12,501.72	$ 17,092	$ 4,590.28	$ 141,393.51	$ 158,178	$ 16,784.49	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 1,952.76	$ 2,917	$ 964.24	$ 21,711.01	$ 26,253	$ 4,541.99	$ 35,000
6004	Lazy River Staff	3,139.51	2,359	(780.51)	29,866.54	21,231	(8,635.54)	28,305
6006	Mileage Reimbursement	0.00	17	17.00	268.80	153	(115.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	8,188.94	7,875	(313.94)	10,500
6030	Fire Alarm & Sprinkler Maint	163.50	203	39.50	1,525.38	1,827	301.62	2,433
6031	HVAC System Maint	(780.41)	250	1,030.41	869.78	2,250	1,380.22	3,000
6034	TV Repair & Replacement	0.00	21	21.00	0.00	189	189.00	250
6036	Interior Pest Control	212.75	233	20.25	1,877.55	2,097	219.45	2,800
6038	Termite Treatment	0.00	41	41.00	585.00	369	(216.00)	490
6039	Nuisance Control	(2,108.33)	192	2,300.33	1,725.03	1,728	2.97	2,300
6041	Janitorial Supplies	518.96	542	23.04	4,667.91	4,878	210.09	6,500
6080	Grounds Staff	3,856.07	4,690	833.93	31,395.62	42,210	10,814.38	56,280
6099	Golf Cart Repair MBR	1,958.39	83	(1,875.39)	2,555.83	747	(1,808.83)	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	16,875.00	16,875	0.00	22,500
6152	Landscape Maint	406.59	1,679	1,272.41	22,838.15	15,111	(7,727.15)	20,145
6159	Lake Maintenance	556.85	458	(98.85)	4,486.42	4,122	(364.42)	5,500
6185	Pool/Spa Supplies	2,059.04	2,250	190.96	18,564.32	20,250	1,685.68	27,000
6186	Pool/Spa Maintenance	1,781.64	1,250	(531.64)	9,842.74	11,250	1,407.26	15,000
6241	Watchmen Services	40,061.93	39,867	(194.93)	355,257.63	358,803	3,545.37	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,125	3.12	1,500
6244	Watchman Supplies	173.11	1,042	868.89	7,074.54	9,378	2,303.46	12,500
	Repairs & Maintenance Total	$ 56,946.79	$ 60,969	$ 4,022.21	$ 541,298.07	$ 548,721	$ 7,422.93	$ 731,603

K.A. DIEHL

0137 Myrtle Beach Resort Homeowners Assoc, Inc
Operating Income Statement
10/31/2014

c/o K.A. Diehl
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Budget	Variance	Year-to-Date Actual	Budget	Variance	Yearly Budget
	INCOME							
4001	Regular Assessments	$ 96,030.80	$ 96,035	$ (4.20)	$ 960,308.00	$ 960,350	$ (42.00)	$ 1,152,423
4002	Reserve Funding	(12,137.00)	(12,137)	0.00	(121,370.00)	(121,370)	0.00	(145,644)
4040	Sales Commissions	978.98	417	561.98	7,350.91	4,170	3,180.91	5,000
4041	Rental/Lease Income	0.00	83	(83.00)	0.00	830	(830.00)	1,000
4042	MBRV Sales Office Rent	4,783.41	4,784	(0.59)	47,834.07	47,840	(5.93)	57,410
4043	MBRV 2% Rental Commission	3,361.37	3,264	97.37	75,496.22	78,336	(2,839.78)	81,600
4044	MBRV Food & Beverage Lease	0.00	0	0.00	106,923.24	106,923	0.24	106,923
4052	Vending Income	0.00	83	(83.00)	1,171.39	830	341.39	1,000
4058	Gate Income	14,190.00	9,992	4,198.00	133,092.50	99,920	33,172.50	119,906
4060	Storage Rm Lease Income	131.79	1,181	(1,049.21)	9,117.87	11,810	(2,692.13)	14,177
4064	Utility Reimbursement	0.00	0	0.00	7,765.37	0	7,765.37	0
4083	Water and Sewer Reimbursement	3,430.35	0	3,430.35	15,336.59	0	15,336.59	0
4120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
4149	Common Element Inc	14,190.00	9,992	4,198.00	133,092.50	99,920	33,172.50	119,906
4199	Miscellaneous Income	5.43	0	5.43	5.43	0	5.43	0
	Total Income	$ 124,965.13	$ 113,694	$ 11,271.13	$ 1,376,125.87	$ 1,289,559	$ 86,566.87	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 0.00	$ 1,025	$ 1,025.00	$ 563.97	$ 10,250	$ 9,686.03	$ 12,300
5001	Office Supplies & Expenses	282.44	417	134.56	2,991.52	4,170	1,178.48	5,000
5002	Printing Expense	627.69	833	205.31	13,512.56	8,330	(5,182.56)	10,000
5003	Postage	58.90	267	208.10	2,427.93	2,670	242.07	3,200
5009	Board Meeting Expense	280.06	678	397.94	4,748.67	6,780	2,031.33	8,133
5015	Legal Services	0.00	83	83.00	1,900.00	830	(1,070.00)	1,000
5017	Management Services	8,025.00	8,145	120.00	80,250.00	81,450	1,200.00	97,734
5020	Consulting Services Other	1,050.00	1,050	0.00	10,500.00	10,500	0.00	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,664.63	4,177	512.37	37,214.11	41,770	4,555.89	50,119
5034	Licenses & Permits	0.00	0	0.00	438.01	1,500	1,061.99	1,500
5039	Property Taxes	0.00	0	0.00	(2,014.54)	0	2,014.54	50,500
5049	Operating Contingency	0.00	417	417.00	0.00	4,170	4,170.00	5,000
	General & Administrative Total	$ 13,988.72	$ 17,092	$ 3,103.28	$ 155,382.23	$ 175,270	$ 19,887.77	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 3,572.52	$ 2,917	$ (655.52)	$ 25,283.53	$ 29,170	$ 3,886.47	$ 35,000
6004	Lazy River Staff	684.50	2,359	1,674.50	30,561.04	23,590	(6,961.04)	28,305
6008	Mileage Reimbursement	0.00	17	17.00	268.80	170	(98.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	9,308.37	8,750	(558.37)	10,500
6030	Fire Alarm & Sprinkler Maint	593.50	203	(390.50)	2,118.88	2,030	(88.88)	2,433
6031	HVAC System Maint	41.42	250	208.58	911.20	2,500	1,588.80	3,000
6034	TV Repair & Replacement	0.00	21	21.00	0.00	210	210.00	250
6036	Interior Pest Control	212.75	233	20.25	2,090.30	2,330	239.70	2,800
6038	Termite Treatment	0.00	41	41.00	585.00	410	(175.00)	490
6039	Nuisance Control	191.67	192	0.33	1,916.70	1,920	3.30	2,300
6041	Janitorial Supplies	365.17	542	176.83	5,033.08	5,420	386.92	6,500
6080	Grounds Staff	4,407.81	4,690	282.19	35,803.43	46,900	11,096.57	56,280
6099	Golf Cart Repair MBR	853.29	83	(770.29)	3,409.12	830	(2,579.12)	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	18,750.00	18,750	0.00	22,500
6152	Landscape Maint	360.57	1,679	1,318.43	23,198.72	16,790	(6,408.72)	20,145
6159	Lake Maintenance	420.00	458	38.00	4,906.42	4,580	(326.42)	5,500
6185	Pool/Spa Supplies	1,392.85	2,250	857.15	19,957.17	22,500	2,542.83	27,000
6186	Pool/Spa Maintenance	224.70	1,250	1,025.30	10,067.44	12,500	2,432.56	15,000
6241	Watchmen Services	36,706.62	39,867	3,160.38	391,964.25	398,670	6,705.75	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,250	128.12	1,500
6244	Watchman Supplies	547.30	1,042	494.70	7,621.84	10,420	2,798.16	12,500
	Repairs & Maintenance Total	$ 53,569.10	$ 60,969	$ 7,399.90	$ 594,867.17	$ 609,690	$ 14,822.83	$ 731,603

K.A. DIEHL

2014 Myrtle Beach Resort Homeowners Assoc, Inc
Operating Income Statement
11/30/2014

12/10/2014 5:38 PM Page: 1

c/o K.A. Diehl
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Current Period Budget	Current Period Variance	Year To Date Actual	Year To Date Budget	Year To Date Variance	Yearly Budget
	INCOME							
4001	Regular Assessments	$ 96,030.80	$ 96,035	$ (4.20)	$ 1,056,338.80	$ 1,056,385	$ (46.20)	$ 1,152,423
4002	Reserve Funding	(12,137.00)	(12,137)	0.00	(133,507.00)	(133,507)	0.00	(145,644)
4040	Sales Commissions	189.00	417	(228.00)	7,539.91	4,587	2,952.91	5,000
4041	Rental/Lease Income	0.00	83	(83.00)	0.00	913	(913.00)	1,000
4042	MBRV Sales Office Rent	4,783.41	4,784	(0.59)	52,617.48	52,624	(6.52)	57,410
4043	MBRV 2% Rental Commission	1,819.56	1,632	187.56	77,315.78	79,968	(2,652.22)	81,600
4044	MBRV Food & Beverage Lease	0.00	0	0.00	106,923.24	106,923	0.24	106,923
4052	Vending Income	0.00	83	(83.00)	1,171.39	913	258.39	1,000
4058	Gate Income	6,377.50	9,992	(3,614.50)	139,470.00	109,912	29,558.00	119,906
4060	Storage Rm Lease Income	806.79	1,181	(374.21)	9,924.66	12,991	(3,066.34)	14,177
4063	Trash Removal Reimbursement	3,376.00	0	3,376.00	3,376.00	0	3,376.00	0
4064	Utility Reimbursement	6,161.92	0	6,161.92	13,927.29	0	13,927.29	0
4083	Water and Sewer Reimbursement	763.00	0	763.00	16,099.59	0	16,099.59	0
4120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
4149	Common Element Inc	6,377.50	9,992	(3,614.50)	139,470.00	109,912	29,558.00	119,906
4199	Miscellaneous Income	0.00	0	0.00	5.43	0	5.43	0
	Total Income	$ 114,548.48	$ 112,062	$ 2,486.48	$ 1,490,674.35	$ 1,401,621	$ 89,053.35	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 31.85	$ 1,025	$ 993.15	$ 596.82	$ 11,275	$ 10,679.18	$ 12,300
5001	Office Supplies & Expenses	110.14	417	306.86	3,101.66	4,587	1,485.34	5,000
5002	Printing Expense	1,039.56	833	(206.56)	14,552.12	9,163	(5,389.12)	10,000
5003	Postage	24.00	267	243.00	2,451.93	2,937	485.07	3,200
5009	Board Meeting Expense	489.97	678	188.03	5,238.64	7,458	2,219.36	8,133
5015	Legal Services	0.00	83	83.00	1,900.00	913	(987.00)	1,000
5017	Management Services	8,025.00	8,145	120.00	88,275.00	89,595	1,320.00	97,734
5020	Consulting Services Other	1,050.00	1,050	0.00	11,550.00	11,550	0.00	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,664.63	4,177	512.37	40,678.74	45,947	5,068.26	50,119
5034	Licenses & Permits	0.00	0	0.00	438.01	1,500	1,061.99	1,500
5039	Property Taxes	0.00	0	0.00	(2,014.54)	0	2,014.54	50,500
5049	Operating Contingency	0.00	417	417.00	0.00	4,587	4,587.00	5,000
	General & Administrative Total	$ 14,435.15	$ 17,092	$ 2,656.85	$ 169,817.38	$ 192,362	$ 22,544.62	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 1,216.89	$ 2,917	$ 1,700.11	$ 26,500.42	$ 32,087	$ 5,586.58	$ 35,000
6004	Lazy River Staff	684.50	2,359	1,674.50	31,235.54	25,949	(5,286.54)	28,305
6006	Mileage Reimbursement	0.00	17	17.00	268.80	187	(81.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	10,427.80	9,625	(802.80)	10,500
6030	Fire Alarm & Sprinkler Maint	163.50	203	39.50	2,282.38	2,233	(49.38)	2,433
6031	HVAC System Maint	41.42	250	208.58	952.62	2,750	1,797.38	3,000
6034	TV Repair & Replacement	0.00	21	21.00	0.00	231	231.00	250
6036	Interior Pest Control	212.75	233	20.25	2,303.05	2,563	259.95	2,800
6038	Termite Treatment	0.00	41	41.00	585.00	451	(134.00)	490
6039	Nuisance Control	191.67	192	0.33	2,108.37	2,112	3.63	2,300
6041	Janitorial Supplies	171.37	542	370.63	5,204.45	5,962	757.55	6,500
6080	Grounds Staff	7,523.34	4,690	(2,833.34)	43,326.77	51,590	8,263.23	56,280
6099	Golf Cart Repair MBR	388.99	83	(305.99)	3,796.11	913	(2,883.11)	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	20,625.00	20,625	0.00	22,500
6152	Landscape Maint	2,219.00	1,679	(540.00)	25,417.72	18,469	(6,948.72)	20,145
6159	Lake Maintenance	420.00	458	38.00	5,326.42	5,038	(288.42)	5,500
6185	Pool/Spa Supplies	90.95	2,250	2,159.05	20,048.12	24,750	4,701.88	27,000
6186	Pool/Spa Maintenance	1,015.56	1,250	234.44	11,083.00	13,750	2,667.00	15,000
6241	Watchmen Services	38,856.55	39,867	3,010.45	428,820.80	438,537	9,716.20	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,375	253.12	1,500
6244	Watchman Supplies	159.62	1,042	882.38	7,781.46	11,462	3,680.54	12,500
	Repairs & Maintenance Total	$ 54,348.54	$ 60,969	$ 6,620.46	$ 649,215.71	$ 670,659	$ 21,443.29	$ 731,603

c/o K.A. Diehl
P.O. Box 15159, 5905 S. Kings
Myrtle Beach SC 29587

K.A. Diehl
Community Management
Specialists

	Description	Current Period Actual	Current Period Budget	Current Period Variance	Year To Date Actual	Year To Date Budget	Year To Date Variance	Yearly Budget
	INCOME							
1001	Regular Assessments	$ 96,030.80	$ 96,038	$ (7.20)	$ 1,152,369.60	$ 1,152,423	$ (53.40)	$ 1,152,423
1002	Reserve Funding	(12,137.00)	(12,137)	0.00	(145,644.00)	(145,644)	0.00	(145,644)
1040	Sales Commissions	531.00	413	118.00	8,070.91	5,000	3,070.91	5,000
1041	Rental/Lease Income	0.00	87	(87.00)	0.00	1,000	(1,000.00)	1,000
1042	MBRV Sales Office Rent	4,783.41	4,786	(2.59)	57,400.89	57,410	(9.11)	57,410
1043	MBRV 2% Rental Commission	4,082.55	1,632	2,450.55	81,398.33	81,600	(201.67)	81,600
1044	MBRV Food & Beverage Lease	0.00	0	0.00	106,923.24	106,923	0.24	106,923
1052	Vending Income	0.00	87	(87.00)	1,171.39	1,000	171.39	1,000
1058	Gate Income	3,102.50	9,994	(6,891.50)	142,572.50	119,906	22,666.50	119,906
1060	Storage Rm Lease Income	806.79	1,186	(379.21)	10,731.45	14,177	(3,445.55)	14,177
1063	Trash Removal Reimbursement	1,541.00	0	1,541.00	4,917.00	0	4,917.00	0
1064	Utility Reimbursement	0.00	0	0.00	13,927.29	0	13,927.29	0
1083	Water and Sewer Reimbursement	909.00	0	909.00	17,008.59	0	17,008.59	0
4120	Interest Income-Operating	0.00	0	0.00	1.78	0	1.78	0
4149	Common Element Inc	3,102.50	9,994	(6,891.50)	142,572.50	119,906	22,666.50	119,906
4199	Miscellaneous Income	0.00	0	0.00	5.43	0	5.43	0
	Total Income	$ 102,752.55	$ 112,080	$ (9,327.45)	$ 1,593,426.90	$ 1,513,701	$ 79,725.90	$ 1,513,701
	EXPENSES							
	General & Administrative							
5000	General & Administrative	$ 200.00	$ 1,025	$ 825.00	$ 795.82	$ 12,300	$ 11,504.18	$ 12,300
5001	Office Supplies & Expenses	670.76	413	(257.76)	3,772.42	5,000	1,227.58	5,000
5002	Printing Expense	1,121.42	837	(284.42)	15,673.54	10,000	(5,673.54)	10,000
5003	Postage	573.80	263	(310.80)	3,025.73	3,200	174.27	3,200
5009	Board Meeting Expense	50.00	675	625.00	5,288.64	8,133	2,844.36	8,133
5015	Legal Services	0.00	87	87.00	1,900.00	1,000	(900.00)	1,000
5017	Management Services	8,025.00	8,139	114.00	96,300.00	97,734	1,434.00	97,734
5020	Consulting Services Other	1,050.00	1,045	(5.00)	12,600.00	12,595	(5.00)	12,595
5021	Audit/Tax Preparation Services	0.00	0	0.00	2,850.00	2,850	0.00	2,850
5023	Insurance Expense	3,664.63	4,172	507.37	44,643.37	50,119	5,575.63	50,119
5034	Licenses & Permits	0.00	0	0.00	438.01	1,500	1,061.99	1,500
5037	Income Taxes	14,000.00	0	(14,000.00)	14,000.00	0	(14,000.00)	0
5038	State Income Tax	3,000.00	0	(3,000.00)	3,000.00	0	(3,000.00)	0
5039	Property Taxes	54,211.34	50,500	(3,711.34)	52,196.80	50,500	(1,696.80)	50,500
5049	Operating Contingency	0.00	413	413.00	0.00	5,000	5,000.00	5,000
	General & Administrative Total	$ 86,566.95	$ 67,569	$ (18,997.95)	$ 256,384.33	$ 259,931	$ 3,546.67	$ 259,931
	Repairs & Maintenance							
6000	General Maintenance	$ 10,152.60	$ 2,913	$ (7,239.60)	$ 36,653.02	$ 35,000	$ (1,653.02)	$ 35,000
6004	Lazy River Staff	497.00	2,356	1,859.00	31,732.54	28,305	(3,427.54)	28,305
6006	Mileage Reimbursement	0.00	13	13.00	268.80	200	(68.80)	200
6021	Golf Cart Expense	1,119.43	875	(244.43)	11,547.23	10,500	(1,047.23)	10,500
6030	Fire Alarm & Sprinkler Maint	163.50	200	36.50	2,445.88	2,433	(12.88)	2,433
6031	HVAC System Maint	538.42	250	(288.42)	1,491.04	3,000	1,508.96	3,000
6034	TV Repair & Replacement	0.00	19	19.00	0.00	250	250.00	250
6036	Interior Pest Control	212.75	237	24.25	2,515.80	2,800	284.20	2,800
6038	Termite Treatment	0.00	39	39.00	585.00	490	(95.00)	490
6039	Nuisance Control	191.67	188	(3.67)	2,300.04	2,300	(0.04)	2,300
6041	Janitorial Supplies	213.99	538	324.01	5,418.44	6,500	1,081.56	6,500
6080	Grounds Staff	11,724.90	4,690	(7,034.90)	55,051.67	56,280	1,228.33	56,280
6099	Golf Cart Repair MBR	186.51	87	(99.51)	3,982.62	1,000	(2,982.62)	1,000
6151	Contract Landscape Maintenance	1,875.00	1,875	0.00	22,500.00	22,500	0.00	22,500
6152	Landscape Maint	302.40	1,676	1,373.60	25,720.12	20,145	(5,575.12)	20,145
6159	Lake Maintenance	420.00	462	42.00	5,746.42	5,500	(246.42)	5,500
6185	Pool/Spa Supplies	487.84	2,250	1,762.16	20,535.96	27,000	6,464.04	27,000
6186	Pool/Spa Maintenance	909.50	1,250	340.50	11,992.50	15,000	3,007.50	15,000
6241	Watchmen Services	48,804.74	39,863	(8,941.74)	477,625.54	478,400	774.46	478,400
6243	Watchman Uniforms	0.00	125	125.00	1,121.88	1,500	378.12	1,500
6244	Watchman Supplies	352.50	1,038	685.50	8,133.96	12,500	4,366.04	12,500
	Repairs & Maintenance Total	$ 78,152.75	$ 60,944	$ (17,208.75)	$ 727,368.46	$ 731,603	$ 4,234.54	$ 731,603

ATTACHEMENT "D"

STATE OF SOUTH CAROLINA)

) COMMERCIAL LEASE AGREEMENT

COUNTY OF HORRY)

THIS AGREEMENT, made and entered into as of the 24th day of November, 2009, by and between THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC., a South Carolina corporation (hereinafter the "Association") and ALLEGIANT FOOD & BEVERAGE, LLC, a North Carolina limited liability company (hereinafter referred to as "Tenant").

WITNESSETH

WHEREAS, the Association owns certain commercial property at The Myrtle Beach Resort, as is more particularly set out below; and

WHEREAS, the Association further has the authority to lease other commercial areas owned or controlled by other Homeowners' Associations at The Myrtle Beach Resort, as more particularly set out below; and

WHEREAS, the Association has determined it to be in the best interest of the homeowners at The Myrtle Beach Resort to enter into an Agreement providing for a consolidated operation of the food and beverage and other commercial activities, including gift shop and convenience store, all as is more particularly set out below; and

WHEREAS, Tenant has made certain promises and has committed to certain undertakings, as more particularly set out herein, as an inducement to the Association to enter into this Agreement.

NOW THEREFORE, in consideration of Five Dollars ($5.00), and the mutual covenants given herein, the receipt and sufficiency of such consideration being hereby acknowledged, the parties agree to as follows:

I. COMMERCIAL AREAS OWNED BY THE ASSOCIATION HEREWITH LEASED TO TENANT

The Association owns the following commercial property and agrees to lease these properties to the tenant for operation:

A. Cabana Bar and lot consisting of approximately .303 acres (Also known as Cabana Lot, 5905 S. Kings Hwy., Myrtle Beach, SC 29575. The Tenant may use and occupy the leased property for entertainment

or food service or any other lawful purpose approved in writing by the Association. Tenant agrees that bands/entertainment will be geared to a family type audience. Tenant also agrees and warrants that there will be no loud or disturbing noise on the premises. Tenant warrants that there will be no cover charge or admission fees levied by Tenant, except as approved by Association.

B. Ocean front portion of the first floor of The Renaissance Tower of The Myrtle Beach Resort being a portion of commercial Unit A and consisting of approximately 1,600 square feet (Deli area, also known as Unit A, 5905 S. Kings Hwy., Myrtle Beach, SC 29575). The Tenant may use and occupy the leased property for the operation of a delicatessen or similar food service operation, or such other lawful purpose approved in writing by the Association.

C. Ocean front portion of the first floor of The Renaissance Tower of The Myrtle Beach Resort being a portion of commercial Unit A and consisting of approximately 700 square feet (formerly "Gift Shop" area). The Tenant may use and occupy the leased property for the operation of a delicatessen or similar food service operation, or such other lawful purpose approved in writing by the Association.

D. Commercial Unit D, of the Renaissance Tower of the Myrtle Beach Resort, commonly known as the "General Store". The Tenant may use and occupy the leased property for a General Store or for such other lawful purpose approved in writing by the Association.

E. Commercial Unit B, of the Ocean Front Spa of the Myrtle Beach Resort, commonly referred to as the "Snack Bar". Tenant may use and occupy the leased property for a snack bar or any lawful purpose approved in writing by the Association.

F. "Snack Bar" located at Myrtle Beach Resort Horizontal Property Regime and owned by that Association. Tenant may use and occupy the leased property for a snack bar or any lawful purpose approved in writing by the Association.

G. Snack Bar located in the Lazy River/Water park area of the Horizontal Property. Tenant may use and occupy the leased property for a snack bar or any lawful purpose approved in writing by the Association.

In addition to the above, the Tenant agrees to abide by all reasonable rules and regulations of the

Association as well as the rules and regulations of the Alcoholic Beverage Control Commission, the individual horizontal property regimes upon which such leased property is located, and any other governing authority. Tenant, and its employees, guests and invitees, shall adhere to all parking regulations and traffic rules established by the Association or the individual horizontal property regimes.

Tenant agrees and warrants that it will undertake no advertising in respect to its use of premises unless consented to in advance by Association.

It is anticipated that the leased space and the extent of operations of the Tenant may be modified from time to time by mutual written consent of the Association and Tenant. The parties agree to negotiate and act in good faith with one another in an attempt to provide a consolidated operation of food, beverage and other commercial activities, including gift shop and convenience store operations, all in a manner that will be in the best interest of the homeowners at The Myrtle Beach Resort.

II. HOURS OF OPERATION.

It is the intent of all parties that the food, beverage and retail operations at Myrtle Beach Resort be profitable for the Tenant and provides a quality experience for the owners and guests. Therefore, it is agreed that the Tenant will provide adequate food, beverage and retail service on a year round basis as is more specifically set forth below. Any operation after 11:00 P.M. shall be permitted only with the advance written consent of the Association.

Tenant will meet with management, or other Association designated contacts, on a regular basis to review operating schedules and events, and will, to the extent possible, operate in coordination with other resort operations. Any changes to operating hours must be approved in writing by Association.

LOCATION	"Off Season" Hours	"In Season" Hours
Cabana Bar	closed	11AM until 11PM
Deli	7AM until 7PM	7AM until 11PM

Convenience Store	7AM until 7PM	11AM until 11PM
"A" Building Pool Shack	closed	11AM until 5PM
Oceanfront Spa Snack Bar	9AM until 2PM January through March	closed
Water Park Snack Bar	11AM until 5PM only during times Water Park is open	10AM until 7PM

* "In Season" is defined as the period of time from Memorial Day weekend through Labor Day Weekend, plus "Bike Weeks" (Myrtle Beach Harley Davidson Spring and Fall rallies and Atlantic Beach Bike fest; dates for these may vary from year to year) and Spring Break Weeks. "Off Season" means and includes all times not designated as "In Season."

III. TERM.

The term for this Lease shall be for a period of five (5) years commencing January 1, 2010 and ending December 31, 2014. Provided that Tenant has complied with the terms of the lease, this lease shall automatically extend for additional five (5) year periods unless either party notifies the other of a desire to terminate or re-negotiate the contract by August 31st of the last year of any term. The Association shall maintain the right to test the market place via negotiations with other parties at any time during the final year of the current term however tenant shall have the right to refuse to match any Agreement the Association may obtain with other parties. The Association shall have the option to buy out the remainder of this Agreement for tenant as of December 31, 2012 for the amount of Two Hundred Thousand Dollars ($200,000.00) upon providing notice of cancellation on or before August 31, 2012.

IV. RENT.

A. Tenant shall pay the Association a fixed annual rent of Ninety Five Thousand Dollars ($95,000.00) for 2010 with an annual three percent (3.01%) increase on January 1st for every year for the duration of this Agreement.

B. The annual rent shall be payable in advance in nine (9) equal monthly installments with the first installment due on January 1 of each year and with subsequent monthly installments due on the first day of each succeeding month until the annual rent is paid in full.

C. In addition to the fixed rent set out above, the Tenant shall pay to the Association any increase in insurance premiums incurred by the Association as a result of the operations of the Tenant from any portion of this property.

Tenant shall pay ten percent (10%) late charge on any payment not received by the Association within ten (10) days of the date, which it is otherwise due.

If Tenant is in default of its obligation to pay rent, the Association shall have a lien upon all personal property, equipment, and trade fixtures located upon the leased premises. If the Association asserts such a lien and/or levies for distress, the Tenant agrees not to remove or permit the removal of such property until all defaults have been cured.

V. MAINTENANCE OF PREMISES

Tenant shall, at its own expense, keep and maintain the premises and all equipment now or hereafter located on or affixed to the premises, including without limitation permanent equipment and fixtures, in good order and repair during the term of this Lease Agreement and shall surrender same to the Association at the expiration or earlier termination of this Lease Agreement in as good condition as they were when received (or subsequently improved or altered), normal wear and tear excepted.

All repairs, replacements and renewals shall be at least equal in quality of materials and workmanship to that which originally existed on the leased property. The Association shall in no event be required to

make any repair, alteration, or improvement to the leased property except as specifically provided for herein. The Tenant shall indemnify the Association against all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims, and demands, including reasonable attorney's fees, because of Tenant's failure to comply with the foregoing.

Any improvements, alterations and additions to the premises by the Tenant shall be made only at Tenant's expense, in good and workmanlike manner and in accordance with plans and specifications, which have been previously approved in writing by the Association. Association reserves the right to approve any contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, evidence of financial responsibility, permits, licenses, and insurance to be provided by the contractor.

All improvements and additions made by the Tenant and permanently attached to the premises, including without limitation all venting partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets, counters, ceiling and all other permanent improvements and fixtures, including trade fixtures of any kind, shall remain with the premises and shall be surrendered to the Association at the expiration or earlier termination of this Lease Agreement.

The parties agree that any and all items on the premises at the time of the commencement of this Lease Agreement and attached to the premises by any means are fixtures that shall remain with the premises and be rendered to the Association at the termination of this Lease Agreement, including, without limitation the following: Two wall air conditioning units located in the Cabana Bar; a three-compartment sink and a hand sink located in the Cabana Bar; the hood, exhaust, and fire suppression system located in the Cabana and any and all cabinetry, shelving, counters, and sinks located anywhere upon any of the leased premises.

Tenant shall not, in any event, cause or permit any waste, damage or injury to the leased property.

Association shall be under no liability for damages to the Tenant due to the discontinuance of heat, air conditioning, electricity, water, or of any other service provided by Association or for loss or damage to property of Tenant caused by rain, water, or otherwise, Provided, however, if the loss is insured, the Association will use reasonable efforts to recover any appropriate loss for Tenant, but is under no liability to do so.

The Tenant agrees and acknowledges that it has been afforded ample time to inspect the premises and further agrees to accept the premises "as is."

VI. SIGNAGE

EXTERIOR SIGNS.

At its sole expense, Tenant shall install a Sign, displaying the Tenant's business trade name, on the storefront of the leased premises. If the Association requests the Tenant shall also install at its sole expense an under canopy sign displaying the Tenant's business trade name. All signs erected by Tenant must comply with the Association's sign criteria and with all applicable laws, rules, and ordinances passed by any governmental Agency. Tenant shall not erect any signs whose design and appearance have not first been approved in writing by the Association. Tenant shall at its sole expense obtain any permits or licenses required by any governmental authorities for any signs erected by the Tenant. Tenant agrees to indemnify the Association and hold it harmless from any claims, costs, or damages arising in any way from the erection, maintenance, existence, or removal of any signage. Upon vacating the leased premises, the Tenant shall at its sole expense remove any signs erected by Tenant and to promptly repair any damage caused by the removal.

Tenant agrees not to erect any other sign, decal, awning, advertisement, antenna, satellite dish, or other structure or object on the exterior of the leased premises without first obtaining the written approval of the Association.

INTERIOR SIGNS AND DISPLAYS AND WINDOW DISPLAYS

All interior signs and displays and window displays shall be tasteful, prepared in a professional manner, and in keeping with the character and standards of the Myrtle Beach Resort as determined by the Association in its sole discretion. No hand lettered signs or displays shall be permitted. The Tenant agrees to remove any nonconforming sign or display, as determined by the Association, upon request by the Association.

VII. OTHER PROVISIONS

1. ENTRY ON PREMISES BY ASSOCIATION. Association reserves the right to enter on the premises at any reasonable time to inspect the premises.

2. BUSINESS RECORDS. The Tenant agrees to make all sales and financial records pertaining to all its operations on the premises available on an annual basis by the 31st day of January following the preceding year by forwarding copies to the association's managing agent.

3. UTILITIES. The Tenant shall arrange and pay for the use of utilities furnished to the demised premises during the term of this lease including but not limited to water, electricity, gas, sewer and telephone.

Tenant agrees to pay reasonable pro rata cost of garbage collection and disposal as provided by Association. Provided, however, Tenant is solely responsible for collecting and transporting garbage to a dumpster to be provided by Association, the location of which is to be designated by Association.

4. TAXES AND ASSESSMENTS. All ad valorem taxes, assessments, liens or charges on the land or improvements now located thereon, and all obligations secured by mortgage or other liens that may be against or levied upon the demised premises shall be properly paid by Association when due. All taxes on property owned by Tenant, as well as all business licenses required by Tenant for the operation of its business, shall be paid by Tenant.

5. INSURANCE. During the entire term of this Lease, the Tenant shall, at the Tenant's sole expense, secure and maintain such personal property insurance as it may determine upon all personal property owned by Tenant and located upon the leased premises, at the expense of Tenant. The Tenant shall, at the expense of the Tenant, secure and maintain during the entire term of its Lease, public liability insurance upon, and in respect to, the leased premises in an amount of no less than Two Million ($2,000,000.00) Dollars for each occurrence and an Umbrella Policy of not less than Five Million ($5,000,000.00) Dollars, and said public liability insurance shall be procured with an insurance company licensed to do business in the State of South Carolina and shall be procured by the Tenant in such manner as to include The Myrtle Beach Resort Homeowners Association and all individual horizontal property regimes as additional insured's. Tenant shall promptly furnish copies of said policies of insurance to Association and shall direct and instruct the insuring company to mail

duplicate notices of premiums due from time to time under said policies of insurance to the Association at the address designated by the Association.

6. NO SET-OFF OR ABATEMENTS OF RENT. The Tenant shall not be entitled under any circumstances to withhold rent payments or to set off rent payments for any reason whatsoever. The Tenant further agrees that it shall not be entitled to any abatement of rent unless the Myrtle Beach Resort is closed for more than ten (10) consecutive days during the period beginning with the Memorial Day weekend and ending with the Labor Day weekend.

In the event, during the term of this Agreement the Myrtle Beach Resort is closed for more than ten (10) consecutive days during the period beginning with the Memorial Day weekend and ending with Labor Day weekend, the annual rental payment shall be reduced as hereinafter provided. The minimum annual payment shall be reduced by the number of days the Myrtle Beach Resort is closed, divided by the number of days between Memorial Day and Labor Day.

7. COMPLIANCE WITH APPLICABLE LAWS. The Tenant, at its sole expense, shall comply with all laws, orders, and regulations of federal, state, and municipal authorities, and with any direction of any public officer, pursuant to the law, which impose any duty upon the Association or the Tenant with respect to the leased property. The Tenant, at its sole expense, shall obtain all licenses or permits which may be required by the conduct of its business within the terms of this Lease, or for the making of repairs, alterations, improvements, or additions, if permitted by Association. The Tenant shall comply with the requirements of all policies of public liability, fire, and all other types of insurance at any time in force with respect to the buildings and other improvements on the leased property.

8. TENANT TO MAKE GOLF PACKAGES AND OTHER PROMOTIONAL OFFERS AVAILABLE TO ALL UNIT OWNERS AND GUESTS AT THE MYRTLE BEACH RESORT. The Tenant agrees to extend any services, sales, and promotional offers made by the Tenant while on the Premises to all guests and owners at the Myrtle Beach Resort on equal terms. This Section includes without limitation any offers for golf packages and other off-premises activities offered by the Tenant.

9. TENANT TO PROVIDE SECURITY. The Tenant shall provide, at its sole expense, adequate security for all activities conducted by the Tenant on the leased premises.

10. SURRENDER OF PREMISES AND OPTION TO PURCHASE PERSONALTY. The Tenant shall on the last day of the term, or upon the sooner termination of the term, peaceably and quietly surrender the leased property to the Association, in as good condition and repair as at the commencement of the term, including replacements, or additions, or improvements constructed, erected, added, or placed thereon by the Tenant with Association's consent, with the natural wear and tear thereof excepted.

The Tenant hereby grants to the Association an option to purchase at the termination of this lease, any movable trade fixtures, furniture, equipment, and personal property of every nature and kind owned by the Tenant and utilized in the operation of the business transacted on the property. The option price shall be the cost of the item or items less cumulative book depreciation at the time this option is exercisable. Association shall have thirty (30) days within which to decide whether it wishes to exercise its option to purchase said personal property at the expiration of this Lease.

If the Tenant fails to remove any personal property, equipment, or movable trade fixtures from the premises within ten days of being notified by the Association that it does not intend to exercise its option, then the Association may in its discretion do one of the following: 1) The Association may deem the property to have been abandoned by the Tenant, and the Association shall have right to dispose of the property as it sees fit; or 2) the Association may have the property removed and may recover from the Tenant the costs of removing the property.

11. DESTRUCTION OF PREMISES. If at any time during the term of this Lease, the leased premises should be damaged by fire or other major casualty, not the fault of Tenant, and if the cost of repairing the damage does not exceed twenty-five percent (25%) of the value of the premises herein leased, then the Association shall as soon as practicable repair the damage caused by said fire or other casualty. If, however, the damage should exceed twenty-five percent (25%) of the value of the premises herein leased, then Association shall have the option of either restoring said premises as set out above or terminating this Lease as of the date of said fire or other casualty. In no event shall the Tenant be entitled to an abatement of rent unless the Myrtle Beach Resort is closed for more than ten consecutive days during the period beginning with the Memorial Day weekend and ending with the Labor Day Weekend.

If, during the period beginning with the Memorial Day weekend and ending with the Labor Day

weekend the leased premises shall be rendered uninhabitable for more than ten consecutive days by damage which is not the fault of Tenant, the rent shall be abated from the eleventh day following the date of the event rendering the premises uninhabitable to the date of completion of the restoration of the premises. Such abatement shall be proportionate to the loss of occupancy sustained in respect to the revenue generated by that portion of the leased premises. If the damage is so extensive as to an amount practically to the total destruction of the entire leased premises, either Tenant or Association shall have the right to cancel this Lease by giving written notice and rental shall be apportioned to the date of the damage.

12. DEFAULT. If Tenant shall default in the terms of this Agreement, Tenant agrees to pay all reasonable attorney's fees and costs incurred by the Association in enforcing the obligations of the Tenant under this Agreement.

13. DECLARATION OF GOVERNING LAW. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina

14. SUBORDINATION TO EXISTING AND FUTURE MORTGAGES. This Lease shall be subject and subordinate at all times to the lien of existing mortgages and of mortgages which hereafter may be made a lien of the leased property. Although no instrument or act on the part of the Tenant shall be necessary to effectuate such subordination, the Tenant will, nevertheless, execute and deliver such further instruments subordinating this lien to the lien of any mortgages as may be desired by the mortgagee. The Tenant hereby appoints the Association, its attorney-in-fact, irrevocably to execute and deliver any such instrument for the Tenant.

15. WAIVER. Failure of either party to insist upon strict performance of any covenant or condition of this Lease in anyone or more instances shall not be constituted as a waiver for the future of any such covenant or condition, but the same shall be and remain in full force and effect.

16. BINDING EFFECT. The covenants, terms, conditions, provisions, and undertakings in this Lease, or in any renewals thereof, shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto, as if they were in every case named and expressed, and shall be considered as covenants running with the land, and, wherever reference is made to either of the parties hereto, it shall be held to include and apply also to the heirs,

executors, administrators, successors, and assigns of such party, as if in each and every case so expressed.

17. ENTIRE AGREEMENT, MODIFICATION, SEVERABILITY. This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

18. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT. Tenant agrees to indemnify and save Association harmless except in the event of gross negligence on the part of Association, its employees, or agents, against any and all claims, demands, damages, costs and expenses, including reasonable attorney's fees for the defense thereof, arising in any way from the leasing of the aforesaid premises to the Tenant or from the conduct or management of any business operated by the Tenant in or on the Demised Premises or from any breach or default on the part of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to the terms of this Lease Agreement, including any work done in respect to improvements to be performed by Tenant, or from any act of negligence of Tenant, Tenant's agent, contractors, sub-contractors, servants, employees, sublease, concessionaires, or licensees in or about the Demised Premises. In case of any action or proceeding brought against the Association by reason of any such claim, upon notice from Association, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Association.

All property kept, stored, or maintained in the Demised Premises shall be so kept, stored or maintained at the sole risk of Tenant.

Tenant agrees to pay and discharge any mechanic's, material men's or other liens against the Demised Premises or Association's interest therein claimed in respect to any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or upon the request of Tenant, provided that Tenant may contest such lien or claim upon promptly securing the discharge of the leased premises from the lien by the filing of a written undertaking as provided by statute, or upon furnishing to

Association such indemnification as the Association may reasonably require for the final payment and discharge of the lien, together with the costs and expenses of defending the same. If the Tenant fails to secure the discharge of the leased premises from any such lien within ten days of the filing of the lien, or fails to furnish the Association within ten days of demand by the Association with such indemnification as the Association may require for the final payment and discharge of the lien, then Association may release the lien by any means allowed by law, and the Tenant shall reimburse the Association for all costs and expenses incurred by the Association in procuring the release of the lien, including attorney's fees, plus interest at the rate of prime plus four per cent on any sum paid by the Association.

Nothing contained in the Lease Agreement shall be so construed as to in any way as to subject Association's interest in the Demised Premises to any such lien.

Association shall not be liable to Tenant, and Tenant hereby agrees to hold Association harmless, for any damage occasioned by plumbing, electrical, gas, water, steam or other utility pipes, systems, and facilities or by the bursting, stopping, leaking or running of any tank, closet, waste, or other pipes in or about which they are a part, nor, from any damage occasioned by water being upon or coming through the roof, vent, windows, doors, or otherwise.

19. ASSIGNMENT. Tenant may not assign this Lease or sublease any portion of this property without the express written consent of the Association, which may be withheld for any reason.

(This Section Left Blank Intentionally)

IN WITNESS WHEREOF, the Association and Tenant subscribed their names and affixed their seals the day and year first above written.

WITNESSES:

ASSOCIATION:

MYRTLE BEACH RESORT HOMEOWNERS ASSOCIATION, INC.

By: _____
Mel Renkey, Sr. Community Manager

ALLEGIANT FOOD & BEVERAGE, LLC

By: _____
Robert Jones, Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ADDENDUM TO COMMERCIAL
LEASE AGREEMENT

THIS ADDENDUM TO AGREEMENT, made and entered into as of the 21st day of October, 2013, (hereinafter referred to as "Addendum"), by and between THE MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION, INC., a South Carolina corporation, (hereinafter referred to as "Association") and ALLEGIANT FOOD & BEVERAGE, LLC., a North Carolina Limited Liability Company, (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, the Association and the Tenant have heretofore entered into a Commercial Lease Agreement dated November 11, 2009, (hereinafter referred to as "Agreement") for the leasing of certain commercial property located at the Myrtle Beach Resort providing for a consolidated operation of the food and beverage and other commercial activities, including gift shop and convenience as more particularly set forth in the Agreement that is incorporated herein by reference; and

WHEREAS, the undersigned parties to the Commercial Lease Agreement have amicably agreed to amend the aforesaid Agreement and to further memorialize the same by entering into this Addendum;

NOW, THEREFORE, in consideration of Five Dollars ($5.00) and the mutual covenants given herein, the receipt and sufficiency of such consideration being hereby acknowledged, the parties agree to the Addendum of the the aforesaid Agreement as follows:

1. II. HOURS OF OPERATION

LOCATION:	Off Season Hours	In Season Hours
Cabana Bar (The Quarterdeck)	11AM until 10PM or later based upon occupancy *	11AM until 2AM
Deli (The Galley)	8AM until 3PM *	8AM until 11PM
Convenience Store	9AM until 11PM	
"A" Building Pool Shack	10AM until 7PM *	
Water Park Snack Bar	10AM until 5PM *	

*Weather permitting

In Season shall continue to be defined as set forth in the Agreement that being the period of time from Memorial Day weekend through Labor Day Weekends plus "Bike Weeks" (Myrtle Beach Harley Davidson Spring and Fall rallies and Atlantic Beach Bike Fest; dates for these may vary from year to year); Spring Break weeks and Holidays,

Off Season shall also be defined as set forth in the Agreement that means and includes all times not designated as "In Season".

2. The Tenant shall consider lowering the off season menu to accommodate winter residents.

3. The noise level at the Cabana Bar (The Quarterdeck) shall be monitored two times per night by security and security shall keep a written log as to such monitoring which shall take place when there is music being played by a band or otherwise.

4. The Tenant hereby agrees that it shall pay the sum of $39,835.00 that shall be allocated as follows:

A. The Tenant shall remodel the space the Cabana Bar (The Quarterdeck) and the Tenant shall further be responsible for the cost of the remodel in the sum of $15,790.00. The Tenant agrees that such remodel will be completed between October and December, 2013.

B. The Tenant agrees to bear the entire cost and host the annual homeowner's dinner for the annual meeting in April of each year as previously provided, so long as the Tenant remains under contract with the Association. The costs of the annual dinner is estimated at approximately $3,000.00 per year for a 6 year period with an approximate total of $18,000.00 in costs.

C. The Tenant shall replace all of the carpeting inside the Rental Office Building located outside of the Security Gate, with the Tenant bearing 100% of the cost that shall be completed within the calendar year of 2014 at an estimated cost of $6,045.00.

5. The Association shall absorb the cost of replacing the existing flooring in the kitchen, bar and storage areas of the Cabana Bar (The Quarterdeck) at an estimated cost of $15,872.00.

6. The Association hereby agrees to waive its right contained in the current Agreement which allows the Association by August 31, 2014 to seek alternative proposals that the Tenant would then have to match.

7. The expiration date of the Agreement shall be December 31, 2019. The Association shall maintain the right to test the market place via negotiations with other parties at any time during the final year of the Agreement which is 2019, however, the Tenant shall have the right of first refusal to match any Agreement the Association may obtain from other parties.

8. All other terms and conditions set forth in the original Commercial Lease Agreement dated November 11, 2009, shall be in full force and effect until the termination date of December 31, 2019, including the 3% increase in

annual rent per year on January 1st of every year for the duration of the Agreement. Furthermore, the Tenant agrees to make available all sales and financial records pertaining to all its operations on the premises on an annual basis by the 31st day of March following the preceding year by forwarding copies to the Association's Managing Agent.

was this in the previous contract?

IN WITNESS WHEREOF, the Association and Allegiant subscribed their names and affixed their seals the day and year first above written.

WITNESSES:

ASSOCIATION:

MYRTLE BEACH RESORT

HOMEOWNERS' ASSOCIATION, INC.

By: _____

Stanley Jordan, President

ATTEST:

_____

Phil Cox, Secretary

ALLEGIANT FOOD & BEVERAGE, LLC

By: _____

Robert Jones, Managing Manager

ATTACHEMENT "E"

K.A. DIEHL & ASSOCIATES, INC
SECURITY SERVICES CONTRACT

THIS AGREEMENT, made as of this 7th day of December, 2009, by and between the MYTRLE BEACH RESORT HOMEOWNERS' ASSOCIATION, a Not for Profit Corporation of the State of South Carolina, (hereinafter "ASSOCIATION") and K.A. DIEHL & ASSOCIATES, INC a South Carolina Corporation, mailing address at 11740 Highway 17 Bypass South, Murrells Inlet, SC 29576, (hereinafter referred to as "KAD").

WITNESSETH: In consideration of the agreements herein contained, to be performed by the parties hereto, and of the payments hereinafter agreed to be made, it is mutually agreed as follows:

1. KAD will perform all work in connection with the security services at the Myrtle Beach Resort on behalf of ASSOCIATION located in Myrtle Beach, South Carolina (the "Property") under the terms as stated in this contract document.

2. KAD will furnish qualified, uniformed personnel, equipment, labor, insurance, and other accessories and services necessary to perform said officers services in accordance with pricing in "contract document". Badges shall clearly state either the word "Security" or the officers rank across the center bar. Hats shall prominently display the words Security Officer across the front and all jackets shall prominently display the words Security Officer across the shoulders. All officers shall have successfully passed a background check conducted by SLED, and all officers shall have been properly trained, certified and will be properly supervised. KAD shall provide substitute officers to cover for planned or unplanned absences.

3. All equipment, mutually agreed upon by KAD and ASSOCIATION, paid for by KAD will be the property of KAD and, upon termination or expiration of contract, will remain the property of KAD, and similarly for equipment paid for by ASSOCIATION.

4. ASSOCIATION will furnish (or reimburse KAD for) all consumable accessories and supplies, as may be necessary for regular use and non-transferable to other properties, such as access passes, daily logs, phone lists, markers, stickers, etc.

5. KAD agrees to perform all services related to security, as mutually agreed by KAD and ASSOCIATION, based upon the General Scope of Services, attached hereto as part of Exhibit A, and as further described in Supplemental Guidelines to be prepared separately based upon Association guidelines for access, parking, etc.

6. Pricing for services is outlined in the Cost Proposal, attached hereto as part of Exhibit A. It is hereby acknowledged by KAD that KAD will supply at no additional cost all uniforms, licenses, vacation, and bonuses to key personnel.

7. KAD shall pay all wages and applicable employment taxes and maintain Workers' Compensation Insurance for all of its employees. Pay periods shall run from the 1st to the 15th and from the 16th to last day of each month. Paydays shall be on the 5th and 20th of each Month. If the 5th or 20th is a Saturday, the payday shall be the preceding Friday and if the 5th or 20th fall on a Sunday, the payday shall fall on the following Monday.

8. The term "contract documents" means and will consist of this document, including Exhibit A, correspondence if any, and SLED License and Insurance Certificate.

The "contract documents" enumerated above are hereby made part of this contract and are physically attached hereto and by execution of this Contract the ASSOCIATION and KAD acknowledge that they have examined and are familiar with the contents of the said "contract documents".

9. ASSOCIATION agrees to pay KAD in current funds for the performance of the Contract, subject to additions and deductions contained in the "contract documents" in such amounts as required by the "contract documents". Billing will correspond with KAD payroll periods.

10. Payment shall be made within 10 days of the invoice date. A service charge of 1-1/2% per month (18% per annum), shall be applied to invoices not paid within thirty days of the invoice date.

11. This contract shall commence at 10:30 pm on December 31, 2009 and continue through and including December 31, 2011. Thereafter, this contract will renew for successive 2-year terms, with the inclusion of an increase as decided annually by the Myrtle Beach Resort HOA Board of Directors to compensate for personnel pay increases. Either party may give notice of their intent not to renew 90 days prior to the end of any contract term.

12. KAD and ASSOCIATION hereby agree that the level of services, including hours to be provided by KAD, are as set forth in General Scope of Services. Based on holidays, bike weeks and other additional shift requirements within the Property these hours could increase as determined by and based upon the needs of ASSOCIATION.

13. In the event of sole negligence on the part of KAD its employees, agents or sub-contractors, KAD shall be liable for any damage caused by KAD to any property of ASSOCIATION or that of any occupant, agent, or invitee of ASSOCIATION and shall promptly repair any such damage.

14. Notwithstanding that joint or concurrent liability may be imposed upon ASSOCIATION by statue, ordinance, rule, regulation, order or court decision, KAD shall, notwithstanding any insurance furnished pursuant hereto or otherwise, indemnify, protect, defend and hold harmless ASSOCIATION from and against any and all liability, fines, suits, claims, obligations, damages, losses, penalties, demand, actions and judgments, and costs and reasonable expenses of any kind or nature (including reasonable attorney's fees), by anyone whomsoever, due to or arising out of:

a. any work or thing done in, on or about the Property or any part thereof by KAD or anyone claiming through or under KAD or the respective employees, agents, licensees, servants or subtenants of KAD or any such person;

b. any air, land, water or other pollution caused by KAD;

c. any negligence or wrongful act or omission on the part of KAD or any person claiming through or under KAD or the respective employees, agents, licensees, invitees, or servants of KAD or any such person;

d. any accident or injury to any person (including death) or damage to property (including loss of property) occurring in or on the Property or any part thereof, except for accidents or injury to any person or damage to property caused by any negligence or wrongful act or omission on the part of ASSOCIATION;

e. any failure on the part of KAD to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Contract on its part to be performed or complied with; and

15. Cancellation:

a. ASSOCIATION and KAD reserve the right to cancel this Agreement, with or without cause, upon thirty (30) days' written notice to the other party. Notice for KAD under this Agreement shall be sent, via certified mail, to K. A. Diehl & Associates, Inc., 11740 Highway 17 Bypass, Murrells Inlet, SC 29576. Notice for MBR HOA shall be sent certified mail to MBRHOA 5905 S. King's Hwy, Myrtle Beach, SC 29575. The date the notice is postmarked shall serve as the beginning of the thirty (30) day notice period.

b. Upon termination of this Agreement, KAD shall promptly account for and deliver to ASSOCIATION, or such person or entity designated, materials, supplies, equipment, keys, and records (including electronic media) pertaining to this Agreement.

(This space left blank intentionally)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their proper corporate offices and their proper corporate seals to be affixed hereto the day and year as indicated in the acknowledgements attached hereto and made a part hereto.

WITNESS: MYRTLE BEACH RESORT HOMEOWNERS' ASSOCIATION

By: _____ By: _____
Mel Ronkey-Sr Community Manager

WITNESS: K.A. DIEHL & ASSOCIATES

By: _____ By: _____
Eric Aulf, Director of Property Services

Exhibit A

General Scope of Services

KAD will provide personnel for the purpose of:

Manning the front gate house; Monitoring and controlling vehicle access to the property; Distributing temporary access passes in accordance with Association guidelines; Patrolling designated areas within the Property; Distributing miscellaneous items to homeowners and Management as may be required by Management or requested by Association; Receiving, processing, responding to complaints and emergency calls as necessary; additional services, specific to the Property, as mutually agreed by KAD and Association.

Specific guidelines and procedures for performing all services will be established and documented in a cooperative effort between both KAD and ASSOCIATION. KAD shall obtain whatever SLED and Horry County certifications are necessary for the officers at the Myrtle Beach Resort to continue to be able to write tickets and make arrests in the same manner as done currently.

Employees are the contracted employees of KAD. The addition or termination of security employees at the Myrtle Beach Resort, with the exception of the Chief of Security, currently Mr. Woody Perry, must be made with the recommendation of the Chief of Security . . ., and the approval of the Community Manager of the MBR HOA, currently Mel Rerikey. Any changes to the Chief of Security's position or pay shall be recommended by the Community Manager and approved by the MBRHOA Board of Directors. In the event of a termination or expiration of this contract the MBRHOA maintains a right of first refusal for all KAD personnel assigned to Myrtle Beach Resort. This refusal includes the right for the MBRHOA to hire another contractor to provide these services and the right to transfer the employees assigned byKAD from the employment of KAD to employment by the new contractor effective on the termination or expiration or this contract.

The Chief of Security will normally have the final say on all operating issues except those that require the expenditure of funds, in which case the approval of the Community Manager is required. If the KAD administrator and the Chief of Security disagree on any operating issues, they will jointly present their case to the Community Manager who will consult with the Board of Directors, if deemed necessary, and make a decision. If the Community manager has not consulted with the Board and either party disagrees with the decision of the Community Manager, they shall notify the Community Manager of their desire for the Board to be consulted and the Community Manager shall involve the Board in a final decision on the matter.

KAD guarantees that sufficient work force will be available to MBR HOA during Bike Weeks and if not, KAD will reimburse MBR HOA for any additional expenses required to provide adequate force in the event KAD should fail to do so.

All officers assigned to Patrol duties will be trained in the use of handcuffs, chemical sprays, and baton.

All officers assigned to Gate duties will be trained in the use of chemical sprays.

All officers assigned to the property will be trained in, and authorized by SLED to, execute arrest powers and write citations on the property.

The costs associated with all certification training for SLED and for use of weapons and chemicals shall be borne by KAD. On site training required for familiarizing an employee with the premises and procedure unique to Myrtle Beach Resort shal be borne by the Association.

KAD shall provide officers for Patrol Shifts who are fully capable, both in training and physical abilities, of apprehending individuals who are violating the law and who choose not to cooperate with security officers.

If the Chief of Security has provided KAD with at least five days notice of the need for additional Personnel and KAD has failed to provide an officer fitting the description in the previous paragraph, KAD shall bear the costs of all overtime required to fill the personnel needs as requested by the Chief of Security. Any disputes as to the question of "fully capable" shall be adjudicated through the appeal process outlined above with respect to operating issues. In the event of sickness or injury of an officer, the five days notice required shall not apply and KAD will be required to furnish personnel or pay the additional premium time required to backfill for the officer.

KAD employees providing the services herein described will be assigned without regard to race, color, creed, sex, national origin, handicap conditions, and/or covered veteran status for which employees are protected in their terms and conditions of employment by Federal, State, Or Municipal law, or Executive Orders and Regulations governing the conduct of contractors with Federal, State, or Municipal Governments.

Cost Proposal

The total compensation to which KAD shall be entitled during the term of the agreement shall consist of fees for man hours to cover shifts established by ASSOCIATION in conjunction with our management team. Such compensation represents the overhead expenses of theKAD and fees for Uniforms, Supplies and Licensing Fees are included in our Price. KAD hourly compensation also includes vacation, some overtime, as described above, and bonuses paid to the full time staff.

Any site-based staff required by ASSOCIATION will be provided to ASSOCIATION. K.A. DEHL will be responsible for advertising, pre-employment testing, background checks, benefits administration, and payroll administration for this staff as well as Wage and Hour reporting, EEOC claims administration and SLED training. For this service we will charge a man hour rate as follows:

Supervisor (Chief) Rate:	$28.00
Assistant Supervisor (Lt) Rate:	$15.50
Sgt Rate	$15.00
Officer III Rate	$14.50
Officer II Rate	$14.00
Officer I Rate	$13.50
Staff Rate	$13.00

These rates are subject to change annually based on the actual hourly rate paid to each staff member or with the addition of new staff members

KAD will make available to all full-time staff, health benefits as part of KAD's group policy. It is understood that ASSOCIATION will be responsible for 70% of the cost of these benefits to each employee assigned to the Property, while the individual will be responsible for the remaining 30%.

K.A. DIEHL WATCHMEN SERVICES

(As presented to the Board; September 2009)
It is our goal to provide *"security services"* and our mission shall be:
To be the premier Community Association security services company in all aspects, especially in maintaining common properties, providing a secure environment, preserving a quality natural setting, meeting members' needs for community services, maintaining and enhancing property values, and fostering a spirit of community for all members.
In our attempt to develop and institutionalize a better customer service model, Department heads have worked on putting together a Service Commitment statement, which serves as a mission for our whole security organization and Core Values and Service Basics that reflect that commitment. After several meetings and many hours, we have arrived at the commitment, values, and basics that we feel separates us from a mediocre organization and makes us superior. What we have developed is exemplified by K.A. Diehl employees every day. We do feel that constant reinforcement of our commitment, values, and service basics will only improve our already superior performance.
Therefore, the following procedure will be followed:

- Supervisors will be responsible to review with their personnel the Service commitment, Core Value Service, Basic and Specials note as designated by the Director of Security and the Association Personnel Manual.

Our Core Values:

- We are empowered to ensure complete member satisfaction.
- Our Service Commitment is embraced and executed by each employee.
- We will demonstrate genuine respect for one another—ladies and gentlemen serving ladies and gentlemen.
- Communication at all levels is how we succeed.
- We anticipate members' needs to create a seamless and personalized experience.
- Protection of our natural environment and the Association's assets is the responsibility of every employee.
- Each employee is an ambassador of K. A. Diehl and the Association.
- All employees use the proper greetings, verbiage and phone etiquette at all times.
- We maintain a professional appearance through proper and appropriate grooming standards and standard uniforms.
- A clean, uncluttered, well-organized and efficient workplace is the responsibility of every employee.

Our Service Basics:

Empowerment

- Understand the difference between what is right and what is wrong.....

Service

- Anticipate the customers' needs.
- Follow through on the service details like making eye contact, approaching the customer as he/she approaches you, providing a map or an escort.
- Keep your heart in your work. Develop a personal commitment to excellence.

Differences

- Value individualism, creativity and specialization since these make the whole better.
- Accept and respect differences.

Communication Skills

- Demonstrate genuine caring and service for others
- Be approachable and friendly.
- Seek first to understand, then to be understood. Listen carefully. Speak slowly. Ask questions.
- Keep the communication loop flowing.
- We are all one service team.

The Property

- Understand your connectedness to the Association. The resort, regimes, guests, town and wildlife are all an integral part, just like you.
- Actively represent the Association. Promote goodwill.
- Seek the best interests of the Association.
- Be a good steward of the Association's assets and a benefit to the Properties habitat.

Etiquette

- Use pleasantries like "please", "thank you", "my pleasure", and "you're welcome".
- Use the member's name. Introduce yourself.
- Answer the phone... Respond "on their dime."

Personal

- Come to work with a well-groomed, neat appearance, appropriate & complete uniform.
- Respect each other. If you see a mess clean it up. If you get it out, put it back. If you turn it on, turn it off. Pick up litter. This goes for personal work areas the corporate work areas and the entire property.

BASIC FUNCTIONS SECURITY

The basic functions of the K.A. Diehl security services include;

Controlling access to the property by assuring all persons passing through the gates have a reason to pass and have authorization as promulgated by the Vehicle Access policy set by the Board of Directors.

- Patrol all properties and enforce the Covenants, and Rules and Regulations. The method of gaining compliance with these guidelines is through engineering, education, and punitive enforcement as necessary.
- Providing quality of life customer service type services to members. Such services include checking vacant properties, changing member's tires, providing medical assists, and responding to all service requests within the realm of responsibility of Watchmen.
- Inspecting the entire property and member's properties for safety exposures.
- Providing officers for special events and activities.

ACCESS CONTROL

A primary function of K.A. Diehl security services is access control or allowing authorized individuals on the property and keeping unauthorized people out. Typical actions regarding this control include:

- Ensuring that all members, contractors, employees, and renters have and display the proper access credentials.
- Identifying all visitors and assuring that they have the necessary passes.
- Ensuring that pass access restrictions are understood and when necessary enforced.
- Monitor Parking Passes to Ensure they are Appropriately Displayed at all Time and Issue Warnings and/or Violations as outlined in Association Operation Manual.

PATROL

Patrol officers observe a wide variety of persons and locations; they report a large amount of information to K.A. DIEHL administration. This information, when properly reviewed and analyzed, provides an invaluable insight into the operation of the Association's security program. Hazards are reported and deficiencies in the asset protection guidelines are highlighted so that changes in procedures can be made. Our patrols are almost exclusively motorized with time out of patrol vehicles to check parking lots for passes, to answer calls, to enforce parking rules, to provide officers at special events, and to give particular attention to problem or directed patrol areas.

The entire property should be patrolled at least twice per shift and all aspects of the environment should be carefully observed. When anything out of the ordinary occurs, the Officers should evaluate the situation and take necessary steps as outlined by Myrtle Beach Resort policy and procedure manual.

The common items an officer on patrol should look for include:

- Doors, windows, or other openings that are not secure;
- Suspicious persons, vehicles, or circumstances (improper access);
- Disorder or unusual activity-disorderly youths, noise, vehicular annoyances; and
- Hazardous conditions-such as water or other fluid leaks, fire hazards, and malfunctioning equipment.

ESCORTS

In our effort to provide premier customer service it oftentimes becomes necessary to provide escorts for property owner guests, contractors, people with disabilities, and/or children. The actual reasons for such escort duty is myriad, but, any reasonable request is honored, whenever possible.

INSPECTIONS AND SPECIAL ASSIGNMENTS

Inspection activities include commercial and employee pass verification, property owner and renter guest pass verification, checking for hazards, and other safety reviews.

Officers also serve as messengers, communications coordinators, and at times as necessary as chauffeurs.

SECURITY ORGANIZATION

One of the basic tasks of an officer is to determine how many posts are required to provide the service expected and to protect the assets of the organization.

An officer's post is defined as any location or combination of activities for which a trained human being is necessary. This definition includes three key concepts:

- A location or combination of activities.
- Necessary human being. *(see description below)*
- Training and competence to accomplish the required activities.

LOCATION OR COMBINATION OF ACTIVITIES

The stationary or "fixed post" and the roving patrol represent the location or combination of activities in the first concept of estimating personnel requirements.

NECESSARY HUMAN BEING

The following activities, characteristics, and capabilities may be regarded as attributes requiring a human being:

- Ability to discriminate among events, persons, circumstances or physical objects based on complex and varying criteria.
- Ability to conduct rational dialogue with other persons face to face or on the phone and discern necessary action based on that communication;
- Ability to exercise judgment to determine a logical course of mental or physical activity in response to circumstances that may vary randomly.

Duties outlined in our Basic Function require all the above criteria defining the need for a human being on post.

TRAINING AND COMPETENCY

To assure that officers have the knowledge necessary to perform their basic functions much time is expended on training functions.

Training Modules
(Typical examples)

Subject	Orientation	Quarterly	Monthly	Weekly	Daily	Yearly
Phone Etiquette	XXX		XXX			
Decal/Pass System	XXX	XXX				
Computer Usage	XXX		XXX			
Customer Service	XXX			XXX		
Service Basics	XXX				XXX	
Covenants	XXX	XXX				
Gate House Operations	XXX	XXX				
Bomb Threats	XXX	XXX				
Verbal communications	XXX			XXX		
Report Writing	XXX	XXX				
Patrol Function	XXX	XXX				
Ticket writing	XXX					
Anger Management	XXX					XXX
Harassment/Discrimination	XXX					XXX
Performance Management Plan	XXX	XXX				
Employee Handbook	XXX					
Sled Certification	XXX					
Safety Issues-General	XXX*					
Safety Issues-Heat Stress	XXX*					XXX
Safety Issues-Driving	XXX*					XXX
Safety Issues-CPR/AED	XXX*					XXX
Safety Issues-Electrical	XXX*					XXX
Safety Issues-Fire	XXX*					XXX
Safety Issues-Housekeeping	XXX*					XXX
Safety Issues-Slips, Trips, Falls	XXX*					XXX
Safety Issues-Workplace Violence	XXX*					XXX
Safety Issues-Managing Stress	XXX*					XXX
Safety Issues-Your Heart Matters	XXX*					XXX
Safety Issues-Ergonomics	XXX*					XXX
Safety Issues-Back Injuries	XXX*					XXX

*Briefly mentioned at orientation but a major OJT component.

KAD is committed to ongoing review and refinement of our training criteria for all staff. The curriculum and specific training methods and material is updated on a regular basis, with the specific intent of exceeding that required by SLED.

E.C.A.
Initial KAD

Initial ASSOC

ATTACHEMENT "F"

Nancy:

Below is Jack's calculations on the hours for Watchmen's Services. The total amount spent for Watchmen's Services is on the December 31, 2013 financials on the Master website. If you want each month broken down you will find it on the Operating Income Statement under GL#6241 on the Master website.

Darla Donovan, CMCA, AMS

Senior Community Manager

K.A. Diehl, AAMC

An Accredited Association Management Company

(Direct Dial: (843) 828-1300

(Direct Fax: (843) 357-4153

(Corporate fax line (843) 828-8021

*Email: Darla.Donovan@KADiehl.com

ÿ www.KADiehl.com

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www.kadiehl.com

From: Jack Boselli

Sent: Wednesday, February 19, 2014 11:19 AM

To: Darla Donovan

Cc: Julie Watson; Eric Ault; Vicki Gallagher

Subject: Watchmen Hours

Importance: High

Darla,

It is my understanding that the MBR Master Board has approved the distribution of the # of watchmen hours for 2013. Please see the following information:

Regular Hours	25,665.00
Overtime Hours	730.50
Holiday	1,036.00
Sick/Personal	296.00
Vacation	1,024.00
Bonus	558.00
Total	29,309.50

Thanks and have a great day!

Jack Boselli

Chief Executive Officer

ATTACHEMENT "G"

SO ORDERED.

SIGNED this 11 day of December,2013.

Stephani W. Humrickhouse
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION

IN RE:	CASE NO.
CROC, LLC,	13-05146-8-SWH
DEBTOR	

ORDER ALLOWING MOTION TO CONVERT OR DISMISS

This matter came before the court on motion of the bankruptcy administrator to convert or dismiss this chapter 11 case for cause pursuant to 11 U.S.C. § 1112(b)(4). Memoranda supportive of the bankruptcy administrator's motion were filed by creditors SRS, North Carolina Property, LLC ("SRS") and Stephen R. Smith ("Smith"), Donald Wray ("Wray"), and EOS Properties, LLC ("EOS"). The debtor objects to the motion. Hearings on the motion took place on October 17 and November 7, 2013, in Raleigh, North Carolina, after which the court afforded the parties an additional opportunity to file supplemental memoranda. The matter is now ripe for disposition, and for the reasons that follow, the court will convert the case for cause pursuant to § 1112(b)(4).

BACKGROUND

The debtor is a beach condominium unit rental business with two employees; the debtor's owner-operator, Glenn Magill ("Magill"), and his son, who lived in one of the condo units (through October 2013) as the on-site manager. The debtor owns a total of twelve condominium units within

the Bodie Island Resort, located in Nags Head, North Carolina. Though the usage allocations change from time-to-time, at present, eight of the condos are designated as long-term rentals and four are used for short-term vacation rental. The debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on August 15, 2013.

On August 29 and September 12, 2013, Magill testified for the debtor at an emergency hearing for the use of cash collateral. In response to and consequence of Magill's testimony, the Bankruptcy Administrator ("BA") moved to dismiss or convert the debtor's case for cause under multiple provisions of § 1112(b)(4): specifically, the BA urges conversion or dismissal on four separate grounds; the likelihood of substantial and continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; gross mismanagement of the estate; the debtor's failure to maintain appropriate insurance; and the debtor's post-petition payments for debts or services rendered pre-petition. SRS, Smith, Wray and EOS filed memoranda supporting the BA's motion to convert or dismiss. Creditor EOS also filed a memorandum outlining the specific bases upon which it contends the debtor's case should be converted to Chapter 7.

In addition, the memoranda filed by the BA and other creditors assert their collective belief that the debtor's plan is not feasible. The debtor filed a plan on November 13, 2013, which attempted to address its creditors' efforts to preclude cramdown, but developments since that filing

indicate that the debtor is unlikely to succeed with its effort[1] to include an impaired accepting class. In light of the court's determination that cause exists to convert the case, the court need not address the feasibility of the debtor's plan.

I. Grounds to Convert or Dismiss Pursuant to 11 U.S.C. § 1112(b)(4)

A. Diminution of Estate and Absence of Likelihood of Rehabilitation

Among the statutory grounds providing cause for conversion or dismissal is the "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). The BA contends that dismissal on this ground is warranted by at least three factual bases: First, the testimony of Jack Lightbody, a real estate witness, that "the property is in a diminished state and in need of immediate attention, metal is rusting, stucco has water damage, only one pool is in operation, buildings need new paint, a crack in the pool needs to be sealed, the entrance sign needs to be replaced, property is in general disrepair and overall not aesthetically pleasing." BA's Mem. in Support of Mot. to Dismiss or Convert ("BA's Mem.") at ¶ 1(a). Next, the BA argues that the debtor "does not generate enough income to satisfy debts and pay for expenses including homeowner's dues and assessments associated with the property." Id. Finally, the BA notes that the debtor, as the owner of 12 units, has "failed to pay the homeowner's association for past dues and/or assessments, which has resulted in the property falling into disrepair and caused a hardship on the homeowner's association." Id. At the hearing on November 4, 2013, Mike Milam, chairman of the finance committee of the Bodie Island

[1] At one point, the debtor thought that secured creditor Donald Wray might vote in favor of the debtor's plan, but Wray is in support of dismissal or conversion. The debtor then represented that creditor Jon T. Gonzales would be the sole impaired class voting in favor of the debtor's plan, but the Gonzales claim is now assigned to creditor EOS.

Homeowners Association ("HOA"), testified that the debtor had not made payment to the HOA since June 2012, for 2012 dues. Milam estimated the debtor's dues shortfall to be approximately $40,000, which he characterized as a hardship that impacts the HOA's ability to provide maintenance services.

In response, the debtor did not address testimony regarding the physical condition of the property in any detail, except to state that there is "no evidence that the property is declining in value" and that "the property is being properly maintained." Debtor's Resp. to BA's Mot. at 6-7. The debtor notes of its relationship with the HOA that "the Debtor and the HOA are in conflict with each other," which the debtor attributes in part to the HOA's lack of cooperation in producing evidence of insurance (discussed below). There are, however, other areas of conflict as well, as illustrated by the debtor's objection to the HOA's claim of $75,855.20, and its assertion that it holds an offsetting claim of $174,554.53, as well as certain statutes of limitation defenses which will, the debtor states, warrant disallowance in full of the HOA claim.

Beyond those points, the testimonial evidence and filings are (comparatively) sparse with regard to whether there is a literal, physical component to any loss to or diminution of the estate. The court recognizes that the BA's concerns under § 1112(b)(4)(A) go beyond the physical condition of the property, but the court believes those concerns fit more comfortably into the context of gross mismanagement, discussed below. Accordingly, based on the limited testimony of the HOA representative and the debtor's skimpy response, the court concludes only that the property of the estate is in less than optimal condition. The court does not at this time believe that failures of maintenance and upkeep rise to the level of "substantial or continuing loss or diminution."

B. Gross Mismanagement of the Estate

The court shall convert or dismiss a case if the court finds "gross mismanagement of the estate." 11 U.S.C. § 1112(b)(4)(B). The BA asserts that the debtor's varying testimony over three hearings (on the motion to dismiss and the motion to use cash collateral) establishes his general lack of familiarity with, and understanding of,[2] the debtor's income and expenses. In addition, by the BA's calculations, information provided by Magill with respect to the nature of the leases[3] (month-to-month, long or short term, etc.) results in monthly collections of $5,900 in long-term rent money. In contrast, the BA says, the projections advanced by the debtor at the hearing predict collections of $8,400 per month at full capacity. BA's Mem. at ¶ 1(b).

The debtor responded with two memoranda, the affidavit of Magill, and a collection of documents in support of the affidavit, including utility bills and portions of the HOA's insurance policy. The court thoroughly reviewed all of the testimony and documentation offered in opposition to the motion. The court concludes that these sources, taken together, establish the debtor's managerial shortcomings to be so extensive and pervasive that conversion or dismissal is necessary based on § 1112(b)(4)(B) alone.

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[2] Magill's testimony with respect to the number of units that were short-term as opposed to long-term rentals differed from one hearing to the next, and that factual discrepancy was among several factors initially cited by the BA as catalysts for her concerns about mismanagement of the estate. Magill subsequently explained in his memorandum that at the time of the first hearing, there were five vacation and six long-term rentals; during the short period of time between that hearing and the next, he re-designated a vacation rental as long-term, such that there was no inconsistency, but rather a change. The court accepts this explanation as plausible.

[3] The BA clarifies further that the debtor did not provide to the BA the lease agreement for Unit 301, that the lease agreement for Unit 310 was set to expire on 11/30/13, and that there is no current lease agreement that the BA knows of for Unit 102, which was occupied by Magill's son.

The debtor's own testimony reflects a wholly inappropriate fluidity between the debtor and Bodie Island LLC, which is another entity held solely by Magill. The details are unclear, but it is evident that the Bodie Island entity is used (at least in part, and at least sometimes) to receive the debtor's rents and deposits, and then pay those receivables out to Magill (and, perhaps, others). See Magill Aff. ¶ 5; see also Magill Aff. Ex. F p. 3 (indicating the debtor's cash on hand, with a portion attributable to "BI"); Ex. F p. 4 (entitled "Exhibit B" and allocating the debtor's vacation rental income to both the debtor and to Bodie Island LLC). Compounding the obvious problems inherent in this sort of arrangement is the fact that "most" of the debtor's long term tenants (it is unclear how many) do not have checking accounts, according to Magill. These tenants pay monthly rent, in amounts ranging from $1,000 to $1,200, in cash. Given these longstanding financial ambiguities, there are so very few solid, verifiable benchmarks – financial, operational, or otherwise – to go by that even the task of establishing where to *start* in pinpointing the exact nature of the debtor's business difficulties is, in itself, difficult. The court does not believe the debtor intended for its business practices to be virtually indecipherable, but suspects that to Magill's way of thinking, the debtor's current system "works" if one is fully immersed in its quirks and vagaries. This approach, however, clearly did *not* work prior to bankruptcy, and cannot be maintained going forward.

On this same note, a review of the utility bills appended to Magill's affidavit shows that out of bills for seven of the twelve units, four bills (for units 101, 102, 303, and 304) identify the customer as Croc LLC; three others (units 103, 301, and 305) list the customer as Glenn E. Magill, Jr. Magill Aff. ¶ 7, Ex. I. Did the debtor pay utility bills that were not even its own debts to pay, and were instead the debts of Magill? So it appears, although again, the debtor's lack of bookkeeping and accounting standards raises doubts. What is abundantly clear is that the debtor

does not grasp the significance of Croc, LLC operating as a distinct business entity, and an entity in bankruptcy, at that.[4]

These utility bills were included by the debtor in response to the BA's contention that the debtor "made post-petition payments for debts and/or services rendered pre-petition." Magill explained that the bills were due on September 30, 2013, and that he paid them because he "believed that I needed to pay those bills to keep the electricity running for the condominium units and that those expenses were ordinary and necessary business expenses." Magill Aff. ¶ 7. Every utility bill includes a past due amount and an indication that a percentage of the past due amount was paid during the preceding month.[5] Aside from the clear indication that the bills were paid for pre-petition debt and/or services, these bills reflect the debtor's month-to-month struggle simply to maintain electrical service to the units.

These difficulties notwithstanding, Magill's affidavit and the debtor's forecasts together paint an optimistic picture of the debtor's expected income and expenses going forward. These projections, however, have no stated and assessable bases. The debtor states that it will raise all rents in 2014, yet articulated no rationale for expecting success in doing so. The debtor's "2014

[4] The debtor filed a motion on September 4, 2013, for authorization to refund certain deposits received by it for vacations that were subsequently cancelled, but as creditor EOS and the BA then noted in objections filed on September 23, 2013, it appears that those monies – as well as others – were in fact received by Bodie Island LLC. See Magill Aff. Ex. F p. 4 (entitled Exhibit B and listing vacation rental income, allocated to both the debtor and to Bodie Island LLC, and deducting McFadden deposit of $670.50 from Bodie Island).

[5] Except for Unit 301, as to which no previous (September 5) payment was made. The bill for Unit 301 differs from the others in that it includes no usage history prior to September, though it does include a previous amount due of $102.55, plus a "deposit installment" of $75 and usage charges for September, totaling $348.51. The amount was billed to Magill, not to Croc, LLC. Unit 301 is the unit for which Magill accepted a discounted rate of $800 per month because "the air conditioning did not work."

Projected Condo expenses" omits reference to its legal fees, tax obligations other than occupancy taxes, management fees, and credit card fees. It also stipulates that long-term tenants pay their own electric bills even though the bills appended to the affidavit included at least one bill for a unit designated by the debtor as long-term.[6]

Going forward, the debtor estimated housekeeping fees for four vacation units at $180 a month, or $2,160 a year. Magill Aff. Ex. H. However, the debtor's profit and loss statement for the two weeks of August 16-31, 2013 reflects a housekeeping cost of $540. Magill Aff. Ex. F p. 12. Another accounting of receipts and expenses, this for the period of August 28 to September 12, 2013, lists housekeeping costs ($60 per clean) at $1,080. Magill Aff. Ex. A. The accounting for the following two-week period, September 15 to 30, 2013, sets out two weeks' worth of housekeeping expenses at $840. Magill Aff. Ex. B. And, the accounting for the four week period after that, October 1 to 31, 2013, sets out four weeks' worth of housekeeping expenses at $1,200. Magill Aff. Ex. C. So, on the one hand, the debtor's operating budgets for a total of eight weeks reflect actual costs of $3,120 for housekeeping, or a total of $3,680 for ten weeks if the slightly overlapping period of August 16-31 is included. Then, on the other hand, there is the debtor's forecast of $180 per month in housekeeping fees for 2014. The numbers cannot be reconciled or explained, even though these are the accountings prepared for use in this bankruptcy case, where accuracy and verifiability are paramount.[7]

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[6] The debtor paid utility bills on September 8 for units including Unit 301, a long-term unit. The debtor's payment for two other long-term units may reflect their former status as a short-term rental (Unit 101) and as Magill's son's unit (Unit 102).

[7] The court understands and has considered the seasonal nature of the debtor's business which impacts the consistency of the need for housekeeping. Notwithstanding that, the debtor has not offered a verifiable basis for its projections.

The court is not unsympathetic to the difficulties of operating a residential rental business. Magill's efforts to keep many balls in the air and his evident flexibility and creativity in attempting to achieve the highest and best use of the properties (long-term, short-term, payment options, etc.) are useful, laudable traits. However, they do not carry the day in the face of creditors' legitimate competing interests, and against the overwhelming and compelling evidence that the business of the debtor is grossly mismanaged. The debtor's method of doing business over the past years renders it utterly unable to provide for its creditors and the court a clear, understandable, and transparent accounting of its use of cash and receipts, and for its outlays for expenditures. The court will convert this case to a case under Chapter 7 based upon the debtor's gross mismanagement of the estate within the meaning of § 1112(b)(4)(B), which will afford a trustee the opportunity to unravel and make sense of the debtor's finances.

C. Failure to Maintain Appropriate Insurance

Cause to dismiss or convert exists upon a debtor's "failure to maintain appropriate insurance that poses a risk to the estate or to the public." 11 U.S.C. § 1112(b)(4)(C). The BA contends, and the debtor does not contest, that the only insurance policy currently in effect on the properties is held by Bodie Island Resorts, which is the homeowners' association ("HOA"). The BA maintains that there is no general liability policy in the name of the debtor. The chairman of the HOA's finance committee, Mark Milam, testified that the insurance policy maintained by the resort covers only the common areas of the complex and outside structures. Further, he testified that "most if not all current homeowners maintain separate general liability policies." BA's Mem. at ¶ 1(c).

The debtor acknowledges in response that he has "had some challenges in producing the Declarations for the insurance policies," but states that insurance has been in place since the filing

of the petition. According to the debtor, the policies "are in the name of the HOA." Debtor's Response at 3. In his affidavit, Magill responds to the BA's contention that the debtor has no general liability insurance on the property by stating that "[i]n reference to insurance, attached as EXHIBIT D are documents evidencing casualty and liability insurance." Magill Aff. at ¶ 9. The documents included in Exhibit D are portions of policies maintained by the HOA.

It appears that there is no general liability policy on the property, that there is no insurance policy in the name of the debtor, and that the debtor is unaware of these facts and the significance of them. Magill appears to believe that the HOA's insurance policy is to the debtor's benefit, which is all the more incongruous given the debtor's ongoing dispute with the HOA and failure to pay the dues owing to it. The court concludes that the debtor's property lacks appropriate insurance and, on that ground alone, sufficient cause exists to convert or dismiss.

D. Failure to Satisfy Reporting Requirements

Finally, the BA argues that cause to convert or dismiss exists under 11 U.S.C. § 1112(b)(4)(F), which provides that 'cause' includes a debtor's "unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter." Specifically, the BA cites the debtor's testimony of October 17, 2013, that there are three professionals "currently working on the debtor's behalf," including special counsel for the debtor, a real estate agent, and an accountant. BA's Mem. at ¶ 1(d). However, the BA notes, that the debtor did not file an application seeking to employ special counsel until October 25, 2013; further, the BA notes, as of November 11, 2013 (the date on which the BA filed the supplement to the motion to convert or dismiss), neither the real estate agent nor the accountant had been

employed, despite the BA's request at the September 11, 2013 hearing for the use of cash collateral. Finally, the BA states that the debtor failed to file federal income tax returns for 2011 or 2012.

In response, the debtor states in his affidavit, with respect to records, that "I am properly maintaining books and records for the Debtor." Magill Aff. ¶ 11. The debtor filed a motion to employ Hersey C. Quinn as accountant on October 21, 2013, which was allowed without objection on November 18, 2013. At the hearing on October 17, 2013, the debtor testified that Mr. Quinn was "working on" the 2012 taxes and acknowledged that the 2011 taxes also had not been filed. The debtor applied to employ Phillip H. Hayes as special counsel on October 25, 2013, after testifying at the hearing on October 17, 2013, that Mr. Hayes already was acting as its attorney, was working on a lawsuit against creditors EOS, SRS and Smith, and was owed $5,000. The debtor applied on November 12, 2013 to employ Geraldine J. Holcomb of Coldwell Banker Seaside Realty, after testifying at the hearing on October 17 that Ms. Holcomb was the debtor's realtor. As for unfiled taxes, Magill testified that the debtor did not list the IRS as a creditor, does not owe any federal taxes, and is not in default. The recently filed plan and disclosure statement do include IRS and NC Department of Revenue tax claims as part of an unimpaired Class 3, but indicates that these entities do not have claims.

In light of all the above, the court concludes that the debtor's approach to filing requirements, whether imposed as part of bankruptcy procedure or federal tax law, is consistent with other managerial practices in that the debtor either does not understand or lacks the proper regard for requirements that actually apply to it. In the court's view, the odds of the debtor's tax obligations to the federal and state governments simply zeroing out are, in all probability, zero. Thus it remains uncertain whether the debtor will have additional claims to contend with or should

instead expect a refund of tax overpayment. These reporting failures add to the court's certainty that conversion of the case is appropriate.

II. Conversion on Grounds of Lack of Feasibility or Confirmability

In light of the court's conclusion that the BA and secured creditors have established ample bases for conversion or dismissal, and that conversion is in the best interest of creditors, there is no reason to discuss additional and alternative grounds for conversion.

CONCLUSION

The BA has established ample cause to dismiss or convert within the meaning of 11 U.S.C. § 1112(b)(4)(B), and also, separately and independently, under 11 U.S.C. § 1112(b)(4)(C). The court's consideration of factors set out in §§ 1112(b)(4)(A) and (F) also support conversion or dismissal, though they would not independently require either action. This case cannot proceed under the ill-fitting auspices of a Chapter 11 plan, and the interests of the creditors and the estate are best served by conversion of the case to a liquidation under Chapter 7 so that the financial affairs of the debtor can be properly sorted.

For the foregoing reasons, the debtor's Chapter 11 case is hereby **CONVERTED** to a case under Chapter 7.

SO ORDERED.

END OF DOCUMENT

ATTACHEMENT "H"

PRESS RELEASE

October 12, 2007

Sussex County Prosecutor David J. Weaver announced the sentencing of Joseph M. Depace, who appeared before the Honorable Thomas J. Critchley, Jr., JSC at the Sussex County Courthouse in Newton on October 12, 2007.

Depace, age 43, of Hamburg, NJ was sentenced to two years probation. He was ordered to serve 20 days in the Sheriff's Labor Assistance Program (the plea agreement called for 364 days in the Keogh-Dwyer Correctional Facility) and perform 100 hours of community service. He must pay restitution in the amount of $3,285.00. He must pay total fines and penalties of $155.00 and submit a DNA sample at his expense.

He pled guilty on August 9, 2007 to receiving stolen property, a 3rd degree crime.

Between September 1, 2006 and December 9, 2006 in Hardyston Township, the defendant took several portable radios belonging to the Hardyston First Aid Squad. On or about September 19, 2006 in Vernon Township, he burglarized two condominiums and took LCD television sets. He also took a communication radio from Mountain Creek Park

Depace was represented by Evan Nappen, Esq. and the State was represented by Assistant Prosecutor Robert L. Klingenburg.

ATTACHEMENT "I"

HORRY COUNTY
SHERIFF'S OFFICE

Horry County
Committed to Excellence

MAIN OFFICE DETENTION NEWS & EVENTS

Currently: Detention » Daily Bookings and Releases

Last Name:

Depace

Booking Date: Release Date:

Search Reset Form

Disclaimer:

This website contains information obtained on individuals who were booked at the J. Reuben Long Detention Center or by the City of North Myrtle Beach, Horry County cannot validate the accuracy of the information and is not responsible for any inaccuracies that may be posted.

Data last collected @ 9/16/2015 6:07 PM

Showing 1 results on your search for Last Name: Depace

Name	Ethnicity /Sex	DOB /Age	Booking Date	Release Date	Booking # /Arresting Agency
DEPACE, JOSEPH MICHAEL MYRTLE BEACH, SC 29588	AMERICAN (US) MALE	06/16/1964 51 years old	9/16/2015 8:34 AM	Still Incarcerated	HC09161548729 SLED
- IMPERSONATING LAW ENFORCEMENT OFFICER / Pre-Trial / $1,500.00					

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00744
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, Norma Benz, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	**VERIFICATION** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:09
CLERK OF COURT

That, JEFFREY RICHARDSON, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

~ signature on following page ~

SWORN to and Subscribed before me:

STATE OF SC
COUNTY OF Horry

Patricia D Ramsey

NOTARY PUBLIC
My commission expires: _____

PATRICIA D RAMSEY NOTARY PUBLIC MY COMM. EXP. 09/02/19 SOUTH CAROLINA

AFFIANT:

JEFFREY RICHARDSON
DATED: 2/27/16

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-0744
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, Norma Benz, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	VERIFICATION (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:09
CLERK OF COURT

That, MARK DOS SANTOS, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

~ signature on following page ~

SWORN to and Subscribed before me:

STATE OF Georgia
COUNTY OF Cherokee

NOTARY PUBLIC
My commission expires:

KENNETH MITCHELL NOTARY PUBLIC CHEROKEE COUNTY EXPIRES GEORGIA March 11, 2016

AFFIANT:

MARK DOS SANTOS
DATED: 2/27/16

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00744
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, Norma Benz, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	**VERIFICATION** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:09
CLERK OF COURT

That, STEVEN DAME, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

~ signature on following page ~

SWORN to and Subscribed before me:

STATE OF South Carolina
COUNTY OF Horry

Linda Raynard
NOTARY PUBLIC
My commission expires: May 9, 2025

AFFIANT:

STEVEN DAME
DATED: 2/25-16

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00744
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, Norma Benz, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners, Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	**VERIFICATION** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:09
CLERK OF COURT

That, WILLIAM MOORE, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

~ signature on following page ~

SWORN to and Subscribed before me:

STATE OF South Carolina
COUNTY OF Horry

Miranda Fabyanski
NOTARY PUBLIC
My commission expires: May 9, 2025

AFFIANT:

William Moore
WILLIAM MOORE
DATED: 2/25/2016

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-00744
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, Norma Benz, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	VERIFICATION (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:09
CLERK OF COURT

That, NANCY MOORE, being duly sworn, says that she is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of her knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

~ signature on following page ~

SWORN to and Subscribed before me:

STATE OF South Carolina
COUNTY OF Horry

Amanda L Bryant
NOTARY PUBLIC
My commission expires: May 9, 2023

AFFIANT:

Nancy Moore
NANCY MOORE
DATED: 2/25/16

COPY

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00744**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, Norma Benz, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	**VERIFICATION** (JURY TRIAL REQUESTED)

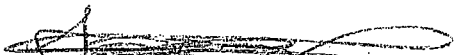
HORRY COUNTY
2016 FEB 29 PM 1:09
FILED
CLERK OF COURT

That, JIM PERKINS, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

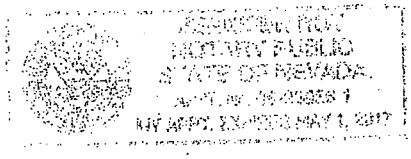
~ signature on following page ~

SWORN to and Subscribed before me:

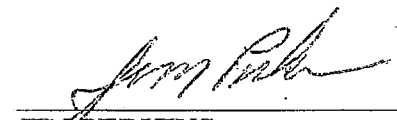
STATE OF NEVADA
COUNTY OF CLARK



NOTARY PUBLIC
My commission expires: 5-1-17



AFFIANT:



JIM PERKINS
DATED: 2-25-16

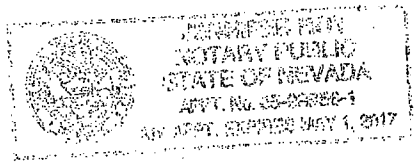
COPY

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **15TH JUDICIAL CIRCUIT** **Civil Action No.: 2016-CP-26-00744**
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, Norma Benz, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners, Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	**VERIFICATION** (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:09
CLERK OF COURT

That, COLLEEN FRANKE, a/k/a COLLEEN FRANKE PERKINS, being duly sworn, says that she is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of her knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

~ signature on following page ~



SWORN to and Subscribed before me:

STATE OF NEVADA
COUNTY OF CLARK

NOTARY PUBLIC
My commission expires: 5-1-17

AFFIANT:

COLLEEN FRANKE
DATED: 2-25-16

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-26-0744
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc. Plaintiffs, vs. Ocean Front Spa Horizontal Property Regime Inc., Walter Jordan, Ralph Jump, Ray Coghill, Norma Benz, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc., Defendants.	VERIFICATION (JURY TRIAL REQUESTED)

HORRY COUNTY
2016 FEB 29 PM 1:09
CLERK OF COURT

That, ERROL DOS SANTOS, being duly sworn, says that he is a Plaintiff herein, and has read the foregoing Verified Derivative Shareholders Complaint and knows the contents thereof, that the same is true of his knowledge, except as matters therein stated to be alleged on information and belief, and to those matters they believe them to be true.

~ signature on following page ~

SWORN to and Subscribed before me:

STATE OF New York
COUNTY OF Suffolk

Louis G Figurito
NOTARY PUBLIC
My commission expires: 2/23/2019

LOUIS G FIGURITO
NOTARY PUBLIC - STATE OF NEW YORK
REGISTRATION NO. 01FI6320000
QUALIFIED IN SUFFOLK COUNTY
COMM. EXPIRES FEBRUARY 23, 2019

AFFIANT:

Errol Dos Santos
ERROL DOS SANTOS
DATED: 2/25/16

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY)	**2016-CP-26-00673,00674, 00743, AND 00744**
JIM PERKINS, ET AL.,)	
Plaintiffs,)	**Transcript of Record**
)	(Motion to Enforce Settlement)
vs.)	
)	August 22, 2017
OCEAN FRONT SPA)	
HORIZONTAL PROPERTY)	
REGIME, ET AL.,)	
)	
Defendants.)	

B E F O R E:

Honorable William H. Seals, Jr.
Horry County Courthouse
Conway, South Carolina

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

A. Preston Brittain, Esquire
Attorney for Plaintiffs

Phillip A. Kilgore, Esquire
Alicia E. Thompson, Esquire
Attorney for Defendants

Kay H. Richardson
Circuit Court Reporter

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EXHIBITS

No.	ID	EV

(No exhibits were marked or admitted.)

(AUGUST 22, 2017 - 3:22 P.M.)

THE COURT: If you all will in introduce yourselves and who you represent?

MR. KILGORE: Your Honor, my name is Phillip Kilgore with the Ogletree firm. I represent quite a few of the defendants, almost too numerous to name. All of them except for K.A. Diehl, who is represented by Alicia Thompson with the McNair Firm.

MS. THOMPSON: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. BRITTAIN: Your Honor, Preston Brittain again on behalf of the plaintiffs in this case.

THE COURT: Ready when you are. How many motions do we have?

MR. KILGORE: Your Honor, we have four motions but they are essentially identical. I'm also mindful of the fact that you've been going for two hours and twenty minutes and I'm the last -- we're the last motion standing between you and that door, so we're gonna try to be as brief as we can. There are some serious issues and I know Your Honor understands that and respects that, so we are grateful for your time.

Your Honor, as I mentioned, I do represent the Myrtle Beach Resort Homeowners Association, the Ocean Front Spa Property Regime. I represent eight current or former board members, and for purposes of this motion, I'm going to refer

to them hereafter as the board defendants.

Just by way of preliminary remarks, there are some things I'm not gonna cover in this because this matter has been exhaustively briefed on both sides. There appears to be little dispute about the original motion, which addressed the requirements of Rule 23, again exhaustively briefed. I'd be happy to address it and the cases that apply to Rule 23. But, I think it would be helpful to Your Honor to boil the arguments down to what is in contention as it remains after the briefing has taken place.

Plaintiff's argument boils down to three assertions, one is that Rule 43(k) applies to the statement agreement that was reached after a mediation. The second assertion is that plaintiff's counsel's signature and my signature on the settlement agreement should be ignored. And the third assertion is that two of the plaintiffs did not personally sign the settlement agreement and therefore the signature of their lawyer should also be ignored.

The first assertion is contrary to the plain language of Rule 43(k) and is not supported by the cases. Rule 43(k) applies to agreements between counsel; it says so on its face. The whole rule is modified by that phrase, agreements of counsel are not enforceable. Moreover, the title of 43(k) refers to agreements of counsel. The whole rule concerns agreements between counsel.

The second assertion is absurd. If Your Honor looks at the settlement agreement, you'll see my signature on it and you'll see Mr. Brittain's signature on it. We signed in our capacities as attorneys for these clients. In this particular case, clients who happened to be missing or for other reasons.

The third assertion, Your Honor, is completely beside the point. That is the assertion that the signatures -- that the signatures at issue were Mr. Brittain for his clients or by -- Mr. Brittain signed on a line that said by their attorney. So, the agreement was signed by their agent. In fact, the last assertion that Plaintiffs Santos and Richards [sic] did not literally sign the agreement could be easily resolved by Your Honor. I suspect that knowing my esteemed counsel, he is not going to deny that he didn't have express authority to sign on behalf of their clients. And to me, Your Honor, and I think the cases would support that, that should be conclusive on this matter.

So, the basis for the motion is that this matter was thoroughly litigated, exhaustive discovery was taken place, a mediation took place with one of the finest mediators in the State of South Carolina, Karl Folkens. The claims were extensively vetted and the plaintiff's don't dispute those facts, and those are essential underpinnings for our Rule 23 motion to approve settlement. At the mediation, the matters were exhaustively negotiated at arm's length in an adversarial

setting. I don't mean that in a negative sense but clearly both sides were in there duking it out as best they could in protecting their own interest, which is what you want in a mediation. You want that kind of setting to iron out the best kind of settlement, one that as a mediator myself, everyone frequently says a mediation that nobody likes. In any event, the parties waived things like the risks, the complexity, the costs of not settling. And, I don't think the plaintiffs dispute those facts either. So, at the mediation, the settlement was reached, it was signed by or on behalf of all the plaintiffs and the terms were fair, Your Honor. So, this matter is ripe for this Court to issue preliminary approval. But I want to talk briefly about the terms of settlement so you have a sense of what the settlement involved. The essence of the case, the plaintiffs have alleged that my clients have breached their fiduciary duties, and the plaintiffs also allege that K.A. Diehl engaged in negligence and also breached duties related to their contractual undertakings. The settlement reflected a recognition of two realities. One is plaintiffs were gonna have trouble proving damages. The main point of contention was that this thing called a gate pass fee. Myrtle Beach Resort HOA charged a gate pass fee and had been for over 10 years for guest and renters when they enter the property, not to the homeowners but to the guests and renters and the fee was used to defray HOA costs. Our clients

contended that the fee was fair. The plaintiffs contended that it was not fair and was invalid. So, the settlement agreement established a framework to address this issue. The defendants agreed to pay monies to fund a binding arbitration on this very narrow issue, and the parties agreed that $15,000 per side was adequate to fund attorneys' fees for each side and that 10,000 was sufficient to fund the arbitrator's fees. The parties also agreed that 50,000 was a fair compensation to Mr. Brittain for his efforts in this matter and releases were signed releasing all the board defendants and all agents, notably K.A. Diehl. K.A. Diehl was an agent for both MBR HOA and Ocean Front Spas.

Your Honor, it's our contention that the standard for review of this should be set forth in a case *Nichols v. Divine Capital*, 785 S.E.2d 613, which holds that in South Carolina Jurisprudence settlement agreements are viewed as contracts. We also cite in our brief *Byrd v. Livingston*, which stands for the same proposition. So, we've got a contract that -- we've got a settlement agreement that the courts recognize as contract in the State of South Carolina, so it's the court's duty to enforce this contract according to *Nichols* regardless of its wisdom or folly, apparent unreasonableness or the parties' failure to guard their rights carefully. And there are a number of other recitations in both of those cases that set forth the standards for reviewing an agreement and a

particular settlement agreement.

I want to share with Your Honor a couple of other additional facts. This mediation involves a -- involved a number of parties and a number of lawyers. I think by my count maybe as many as nine lawyers and perhaps as many as, of course, K.A. Diehl and my two corporate nonprofit clients, and maybe eight plaintiffs and eight defendants on each side. It was quite an undertaking to pull this together. But on February 10, the parties all agreed with not on the mediator but May 1st as the date of the mediation. So, everybody agreed to it and everybody had time to get ready for it and everybody had time to arrange their schedules to be present. On April 26th, we learned that Mr. Richardson planned not to attend. As Your Honor knows from the briefing, I specifically asked plaintiffs' counsel would he have settlement authority and I was assured that he would. There was no mention of Mr. Santos being absent from the mediation. So, at the mediation, Your Honor, I've recited the cast of characters, quite a few people. It was -- I'm not sure I've been to a mediation with that many people in the room. So, it was quite an experience, but somewhere in the preliminary proceedings, we learned that Mr. Santos was not present. He did -- he had not shown up despite the substantial almost three-month notice about the mediation. Well, Mr. Santos had a choice. He could either proceed with the mediation by allowing his lawyer to act on

his behalf or he could -- because he was not present and had no reason, valid reason not to be present under the ADR rules, he would be obligated to pay sanctions under Rule 10 for failing to appeal. Well, he agreed to proceed. What choice did he have? And, he gave his lawyer the authority to act on his behalf. Moreover, Your Honor, Mr. Santos and Mr. Richardson participated in the mediation throughout. Mr. Santos even spoke up during the mediation -- I don't know for a fact whether Mr. Richardson was on the phone during the plenary session but clearly Mr. Santos and Mr. Richardson participated in phone calls and communication with their co-plaintiffs and their attorneys throughout the mediation.

Moreover, Your Honor, in the post mediation, there's some facts that I think Your Honor would find relevant to this motion. So, the mediation was on May 1st. On May 4, counsel for plaintiffs and myself had communications about the scope of arbitration, how is this going to work, not there's a problem with settlement but how is it going to work. On May 9, the defendants offered to take the lead on drafting the joint motion to approve the settlement. On May 10, plaintiffs' counsel agreed that we could do that, happy to do it. On June 2nd, I find out that plaintiffs want to seek to renegotiate the settlement agreement. And after a week, I communicated to counsel for plaintiffs that we were declining to renegotiate the agreement. It was almost two weeks later

that plaintiffs' counsel notified the defendants that they will oppose the motion to approve on the grounds of 43(k). That's seven weeks after the mediation. For the first time then we find out they are not gonna honor this agreement. So, we filed the motion approximately two weeks later.

So, Your Honor, as I indicated earlier, the plaintiffs' contentions are kind of basic. Rule 43(k) applies to all settlement agreements, not just settlement agreements that are between counsel but all settlement agreements. Let's just ignore the words between counsel, between attorneys, and let's pretend it doesn't exist and what we're gonna say is these cases apply to all settlement agreements in the State of South Carolina. He's also wanting Your Honor to adopt a view that all settlement agreements have to be reduced to writing and signed by the parties and their counsel. Now, I'm not gonna embarrass anybody else in this room but I can tell you the practice is not for all settlement agreements to be signed by counsel. I can -- numerous times I have been -- I'm a mediator myself and I have run into numerous lawyers who will say I'm not gonna sign the settlement agreement, my client is gonna sign the settlement agreement. An understandable thing considering I'm not asking that lawyer to sign an agreement between lawyers, I'm asking his clients and other counsel's clients to sign with an agreement with parties. The plaintiffs also contend that not all plaintiffs signed the

settlement agreements in this case and that he and I did not sign. Well, the response, Your Honor, I would give is that there are a couple of things that I pointed out before. The rule is very specific. The title to the rule is very specific. Now, there's this concept of the law that when the title is inconsistent with the content of the rule that you can disregard the title of the rule but there's nothing in the law that I'm aware of and I'll be glad to be corrected on this is if the title is consistent with the content of the rule, it can certainly be considered about the -- what the drafters had in mind. Moreover, the body of law on the issue are all cases before the 2009 amendment to Rule 43(k) that inserted the language at issue. Prior to 2009, 43(k) dealt with only three kinds of agreements of counsel. Those were agreements of counsel where there was in the form of a consent order, agreements of counsel in the form of a written stipulation, or agreements of counsel made in open court and noted on the record. The 2009 amendment added the agreements signed by counsel and their clients or counsel and the parties. Now, the primary case relied upon for this -- for plaintiffs' view is the *Farnsworth* case. And, if Your Honor would take note, when the *Farnsworth* court was quoting the rule, it emphasized the words between counsel. You can see it right in the case. Clearly, that meant something to the Supreme Court in the *Farnsworth* case. So, Your Honor, the lead case that they

relied on doesn't support them nor do the other cases which were all prior to 2009. Those cases did not involve this type of scenario that we're dealing with here. For example, the *Ashfort* case, which is cited by counsel in support. That was a classic case of agreement between counsel where attorneys advised the circuit court that -- excuse me, the circuit court that the case had been settled. And the *Buckley* case, also a 2006 case, this was an agreement, an alleged agreement that was reached in a family court case where the parties hadn't submitted the agreement for approval by the family court judge. They couldn't find the agreement. There was no way to know how to construe the terms of the agreement, so that case is clearly inapplicable here. I've already mentioned the *Farnsworth* case. The *Farnsworth* case was another classic agreement between counsel where one lawyer sends a letter to another lawyer and it's altered by a lawyer and signed by another lawyer. That was, that was an agreement between counsel. The *Calloway* case, Court of Appeals, 1997 case, relied upon by plaintiffs, there apparently the parties informed the court that the case had been settled. So, that was not an agreement between the parties; it was an agreement between counsel -- excuse me -- or a representation to the court that something had been settled, but that case is clearly inapplicable where. And then finally, the *Young* case, a 2001 case, where a lawyer communicates to another lawyer.

So, the 2009 amendments, Your Honor, it seems pretty obvious that the design behind those amendments was to fix the *Farnsworth* problem. Because there, one lawyer had sent a letter to another lawyer and that lawyer signed off on it but that was just an agreement between the lawyers, it was not an agreement between the parties. And so the 2009 amendment fixed that by requiring in that instance the parties have to sign. The design behind that is not to protect lawyers. The design behind that is to protect the parties from agreements that they're not mindful of or that they don't have their agents there representing their interest. It is not designed to protect the parties from agreements that they may reach between themselves.

I think an interesting observation was made in the *Inglese v. Beal* case by Judge Pieper, which I've cited in our brief. The policy behind this rule is to deter lawyers from being pulled into disputes otherwise between the clients of lawyers. But that's not the case here. Rule 43(k) is inapplicable to this situation.

Your Honor, I can't sit down without at least giving you an alternative argument that is if for some reason Your Honor finds that Rule 43(k) does apply, which I think is clearly inappropriate, the agreement does comply with Rule 43(k). It was signed by six of the eight plaintiffs, on behalf of Santos and Richardson by their attorney signing on the line that said

by his attorney. So, obviously, the attorney signed it as well. We can't pretend that Mr. Brittain's signature is not on the agreement. Clearly, he signed it, so that complies with Rule 43. Likewise, I signed on behalf of two of my clients that were missing. They're not repudiating this agreement. I had their authority. I had their express authority to sign for them and they are standing by this agreement. I signed on behalf of my two corporate nonprofit clients. I had to do that because, because a number of the members of the board, who would have to approve the settlement, were plaintiffs who were assuming these two nonprofits and were suing my clients. So, of the four board members for MBR, three of them were litigants. They were there for the duration of the mediation. In the case of Ocean Front Spas, four of the five were litigants and were present there at the mediation or I was there on behalf of Stanley Jordan. So, everybody was there, everybody was there either in person or with representation by an agent or their attorney. And so, I think the better approach to this thing is to ask ourselves, what about these signatures by Mr. Brittain? Well, clearly, an attorney can sign as an agent for his client. It's a better principal than an attorney/client relationship as a principal agent relationship. You don't find any cases on it anymore because everybody understands it. But, if you want to look it up, you can find it in the

Restatement of Agency, Section 1.01. That's I think at the very beginning. It's, as I said, a better principal that everybody recognizes. It's also a better principal that a principal will be responsible for contracts they executed in his name by his agent, and that doesn't just apply to corporate types of organizations, it could apply to individuals who have agents. So, Your Honor, we think there's actual authority for Mr. Brittain to sign on behalf of these but there's also a substantial amount of implied authority. First of all, these two individuals allowed their attorney to proceed with the mediation in their absence. They participated in the mediation by phone. And in the case of Mr. Santos, he spoke up. And, so when Mr. Brittain signed, it was -- it had to have been apparent and certainly was implied to the others that Mr. Brittain was signing with that authority. Mr. Santos, who was absent was represented by three lawyers at this mediation. Certainly, that's apparent authority that if he's so well represented at this mediation that when one of them signs on a line dedicated to his name that it was apparent to the rest of us that Mr. Brittain had that authority.

Mr. Richardson -- in the case of Mr. Richardson and in addition, Mr. Richardson was there for the entire prior weekend. There were annual meetings of Ocean Front Spas and Myrtle Beach Resort that were attended by quite a few people

and Mr. Richardson was there. So, if he's there and the thing has been scheduled for almost three months, and for whatever reason he's no longer there on the Monday -- the next following Monday, certainly it was apparent to the rest of us that in addition to his lawyer telling us that he had settlement authority that his lawyer also had apparent authority.

So, the reality is, Your Honor, is that 43(k) does not apply in all settlement agreements. It only applies to settlement agreements which are those between attorneys. And, Your Honor, we would contend that, again, the garden variety contract principals apply. The signatures in dispute were for those of counsel for plaintiff and it's beyond dispute that he was their agent. We think the better analysis is the *Nichols v. Divine Capital* case and the *Byrd v. Livingston* case. Both of these cases involve settlement agreements where Rule 43(k) is not even mentioned in either one of them. And in our view, Your Honor, we think that plaintiffs' position that Rule 43(k) should be applied to this case is inappropriate because at the very first level it is not an agreement by -- between attorneys and to rule otherwise would require Your Honor to simply ignore those two very important words that in the *Farnsworth* case, the Supreme Court deemed important enough to emphasize, for instance emphasis added, that meant something to the Supreme Court and it ought to mean something in the

case of this motion.

Thank you, Your Honor.

THE COURT: All right. Ms. Thompson, anything you want to add to it?

MS. THOMPSON: Your Honor, nothing to add on this motion ---

THE COURT: Mr. Brittain?

MR. BRITTAIN: Judge, if there's a torture chamber, maybe you ought to take me down there.

I understand the frustration from opposing counsel. We did work very hard to try to come to an agreement and came to -- would not dispute that. Would not dispute that my signature is affixed to it. Thankfully for you and for all of us here what Rule 43(k) has provided for the court is a mechanism to keep its nose out of the disputes. And it has very clearly set forth three parameters for this court to look at. If any one of these three conditions are faithfully fulfilled there is a valid enforceable agreement. Without those preconditions being met, we do not have an agreement that this court is permitted to enforce. Rule 403(k) requires that you either have a written stipulation or a consent order signed by counsel and entered into the record. We do not have that in this case. Or, Like I saw you do this morning, you did six or seven minor settlements. Those were, part two, made in open court and entered or noted upon the record, the

ones I saw you do this morning. Or, three, a written agreement, which is signed by counsel and their -- and the parties. What do we have? We have none of those three. What we do have is a written agreement. It was not signed by K.A. Diehl. K.A. Diehl was a party to this action that participated in that mediation. They did not sign the agreement. K.A. Diehl's counsel did not sign that agreement. Nothing they can do; they can't go back in time and change that fact. That is an absolute fact. They did not sign the agreement. I signed it on behalf of Mr. Santos. I signed it on behalf of Mr. Perkins. I did not sign it on my own behalf. Mr. Kilgore signed it on behalf of Ray Coghill. He did not sign it on his own behalf. So, we don't have the signatures of numerous counsel, in their capacity as counsel. We don't have the signature of one of the major parties to the action. And, so, when you take that and you apply it to Rule 43(k) and you go through the case law, and let me run through -- he touched on the cases -- we see them very differently. *Ashfort v. Palmetto*, Rule 43(k) applies to all settlement agreements; why wouldn't it apply here? *Buckley v. Shealy*, applies to mediation. *Farnsworth*, here's some language from *Farnsworth*, Davis claims that compliance with Rule 43(k) is not required because Rule 43(k) doesn't apply to a written settlement agreement that the parties admit was duly executed. We disagree says the court. It applies regardless of authority

to counsel and despite admission of a properly executed agreement. *State v. Muldrow*, words of a statute must be given their plan, ordinary meaning without result to settle or force construction to limit or expand the statute operation. The *Young v Cooler* case, 43(k) applied regardless of whether lawyers signed the agreement. It doesn't matter. I mean, this idea of it being just between counsel is -- no, no, *Farnsworth* clearly expanded that. In the amendment, which was added in 2009, the note to that amendment says, the amendment to Rule 43(k) provides a settlement agreement is also binding if the agreement is reduced to writing and signed by the parties and their counsel. It clearly sets forth what it requires. There's no question about it and the amendment states what the law is reflected to do, and it is to apply to this particular case. A settlement agreement, which is what we purported to have, which has to be signed by all of the parties and their counsel. No, it's not a fun argument to make, but if you look at it from the totality, it actually makes a lot of sense, because even the ADR rules, which they claim to be somehow violated, but even the ADR rules, 6(f) requires if there's an agreement at mediation, all parties must sign the agreement; again, we don't have that. And all their counsel must sign the agreement; again, we don't have that. The *Galloway* case even says, listen, sometimes this will produce an unfair -- what might seem like an unfair

result. Your Honor, and I can see them feel like this isn't fair to them. We signed this 11:45 at night after a long day of trying to get things situated and I can understand that they say this is a hardship. But what these cases have -- are telling you to do is to do exactly the opposite of what they're asking you to do which is to dig into who said what to what lawyer, what the mediator said to Mr. Brittain, and what Mr. Brittain said -- those are things that, thank the Lord, our state was clever enough to say, wait a minute, we've got a specific set of rules, and if we follow those rules, we got an agreement. But if we don't follow them, if we don't cross our T's and dot our I's, then we do not have a binding settlement agreement. And we must -- now, the other thing is -- all that negative, really, if we think about it. You know, if this case -- if you enforce it, it's over. It's done. If you don't, they might still win this case. They may end up paying nothing. So, the equities really aren't that much against them. And, the benefit of Rule 43(k) -- one of the great benefits of Rule 43(k) is that this rule keeps you from getting in the fray and it also keeps me from having to get crossways with my client. It keeps me from having to -- I didn't put a bunch of affidavits in to what my clients said because this rule protected me from having to do that. It protects me and it safeguards some of the great principals of our American Jurisprudence, attorney/client privilege, and a

confidentiality between a mediator and their attorney and mediator and the clients. Listen, I didn't actually attach it because it would've violated the attorney/client privilege to do so. I brought it with me and, if there's an understanding, I'd be happy to present it. But, I've got an email where Mr. Santos -- Mr. Santos wanted to be at this mediation ---

MR. KILGORE: Your Honor, I've got to object to something that's attorney/client privilege and he's -- he wants us to agree to a non-waiver with respect to everything else related to attorney/client privilege communications but he wants this one selected email. I think it would be improper ---

BY THE COURT:

THE COURT: I think I've heard enough anyway. I'll take it under advisement. I'll let you know soon. I mean, if you want to keep going, keep going, but I think I know where you're coming from and I certainly know where you're coming from.

MR. BRITTAIN: Okay.

THE COURT: I'll let you know something this week.

MR. BRITTAIN: Okay. Thank you, Your Honor.

MR. KILGORE: Thank you, Your Honor.

MS. THOMPSON: Thank you, Your Honor.

(ADJOURNED - 3:53 P.M.)

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of *Jim Perkins, et al. versus Ocean Front Spa, et al.*, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on August 22, 2017.

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

Kay H. Richardson
Official Court Reporter

March 5, 2018.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

CONSOLIDATED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

I. Introduction

Defendants in each of the above-captioned cases (C.A. Nos. 2016-CP-26-00673, 2016-CP-26-00674, 2016-CP-26-00743, and 2016-CP-26-00744) (collectively, the "Actions"), by and through their undersigned counsel and pursuant to Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), file this Consolidated Motion for Preliminary Approval of Settlement

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Agreement regarding the Actions ("Motion to Approve"). For the reasons set forth herein, Defendants request that the Court issue an Order granting this Motion.

II. Mediation and Negotiation History

After extensive arms-length negotiations by parties and their counsel through mediation, all Plaintiffs and Defendants (collectively, the "Parties") in the Actions have reached a settlement that resolves all claims in dispute. The Parties' agreement is reflected in the Settlement Agreement. **(Exhibit A.)**

Representative members of the Plaintiff classes who serve on the Board of Directors for Defendant Ocean Front Spa Horizontal Property Regime, Inc. ("OFS") subsequently ratified the settlement and affirmed their understanding that the Actions have been resolved fully and finally through Mediation. These Plaintiffs (Nancy Moore, Steven Dame and Jim Perkins), joined by the two other OFS Board Members, did so by providing official written notification on May 4, 2017, to over a hundred seventy of the putative class members (their constituents, who are fellow members of the OFS community) that they had been able to successfully "resolve [the] five lawsuits." (Affidavit of Walter Jordan (Exhibit A), **Exhibit B.)** In addition, shortly after the mediation, these Plaintiffs posted notices in the OFS building informing all residents that "The recent state court litigation between various homeowners in the Ocean Front Spa and its management company and others has been resolved between the parties to their mutual satisfaction via alternative dispute resolution that occurred on May 1." **(Affidavit of Walter Jordan (Exhibits B and C) Exhibit B.)**

III. Plaintiffs Richardson and Santos Attempt to Renege

Notwithstanding the class representatives' ratification of the settlement and the fact that every representative class member signed the Settlement Agreement (either personally or

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through counsel, with express permission), Plaintiffs' counsel has indicated that two Plaintiffs, Jeff Richardson ("Richardson") and Mark dos Santos ("Santos"), believe they are not bound by the Settlement Agreement. They take this position despite the fact that they both fully participated in the mediation negotiations that resulted in the Settlement Agreement.

It is anticipated that Plaintiffs Richardson and Santos will rely upon the fact that they were not physically present for the May 1, 2017, mediation as their basis to renege on the Settlement Agreement.[1] The mediation was set far in advance. Nevertheless, Plaintiff Richardson's attorney informed counsel for all the Parties on April 26, 2017, that Plaintiff Richardson would be unable to attend the mediation. On April 28, 2017, counsel for "Board Defendants"[2] asked, "Will you have settlement authority from Mr. Richardson?" to which counsel for Plaintiff Richardson responded, "I will. We are good to go." **(Exhibit C.)** On the day of the mediation, on information, Plaintiff Richardson participated in the mediation, having extensive discussions with his counsel throughout the day.

In the case of Santos, the Defendants had no forewarning that he would not be present. On the morning of May 1, 2017, counsel for Santos announced that he was not present. They assured the Defendants and their counsel that the case could be mediated in his absence. Santos actually participated in the mediation by phone, at one point offering his own rebuttal to remarks made by counsel for one of the Defendants.

In any event, the Settlement Agreement is signed by all Parties, either individually or, in the case of Plaintiffs Richardson and Santos, by their attorney to whom they had given authority.

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[1] It is unknown whether the other Plaintiffs intend to renege on the Settlement Agreement and, if so, on what basis. Due to the refusal of Plaintiffs Richardson and Santos to follow through with the Settlement Agreement, counsel for all Plaintiffs has stated he will have to oppose any motion to enforce.

[2] The Myrtle Beach Resort Homeowners Association, Inc., Ocean Front Spa Horizontal Property Regime, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, Ralph Jump, and Ray Coghill.

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All Parties invested substantial time and resources in conducting discovery to understand the cases, the issues, the risks and rewards. The Parties devoted more time preparing for the mediation. In the course of the lengthy mediation, the Parties expended substantial time and energy in exploring and, ultimately, reaching a negotiated settlement with the assistance of one of the preeminent and most well-respected mediators in our state. Notwithstanding their concurrence with a fully integrated Settlement Agreement, none of the Plaintiffs join in a Motion for Preliminary Approval. Accordingly, Defendants file this Motion jointly but without the consent of Plaintiffs.

IV. Litigation Background

Two separate class action lawsuits have been filed against certain Defendants in this Court: *Jim Perkins, et al. v. Ocean Front Spa Horizontal Property Regime, Inc.*, et al, C.A. No. 2016-CP-26-00673 ("OFS Class Action"); *Jim Perkins, et al. v. Myrtle Beach Resort Homeowners Association, Inc.*, C.A. No. 2016-CP-26-00674 ("MBR Class Action") (collectively, the "Class Actions"). Two separate derivative actions were filed against certain Defendants in this court; *Jim Perkins, et al. v. K.A. Diehl and Associates, Inc., et al.*, C.A. No. 2016-CP-26-00743 ("MBR Derivative Action"); and, *Jim Perkins, et al. v. Ocean Front Spa Horizontal Property Regime, Inc.*, C.A. No. 2016-CP-00744 ("OFS Derivative Action") (collectively, the "Derivative Actions").

In the OFS Class Action, Plaintiffs sought to certify a class consisting of "any and all persons and or entities owning a unit within the OFS HOA and thereby owning an undivided interest in the common elements, and business activity of the OFSHOA." ("OFS Class") OFS Class Action Amended Complaint ¶49. On behalf of the purported OFS Class, Plaintiffs allege in the OFS Class Action Amended Complaint that Defendants OFS, Bill Cameron, Walter

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Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past directors of OFS, breached their fiduciary duty to Plaintiffs and violated the standards set forth in the South Carolina Non-Profit Corporation Act, S.C. Code Ann. 33-31-830.

In the MBR Class Action, Plaintiffs sought to certify a class consisting of "any and all persons and or entities owning a unit within the MBRHOA and thereby owning an undivided interest in the common elements, and business activity of the MBRHOA." ("MBR Class") MBR Class Action Amended Complaint ¶49. On behalf of the purported MBR Class, Plaintiffs allege in the Amended MBR Class Action Complaint that Defendants The Myrtle Beach Resort Homeowners Association, Inc. ("MBR"), Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of MBR breached their fiduciary duty to Plaintiffs, acted negligently, and breached a covenant contained in the master deed and bylaws.

In the MBR Derivative Action, Plaintiffs have brought suit on behalf of a class of persons who own a unit in Myrtle Beach Resort, purportedly on behalf of nominal Defendant MBR, alleging that Defendants MBR and members of its Board of Directors (Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe Board Directors of MBR) breached their fiduciary duty to Plaintiffs, that Defendant FirstService Residential South Carolina, Inc., formerly known as K.A. Diehl & Associates, Inc. and incorrectly identified as K.A. Diehl and Associates, Inc. in the Derivative Actions ("K.A. Diehl"), acted negligently, that K.A. Diehl breached multiple contracts, and that K.A. Diehl breached multiple contracts accompanied with a fraudulent act.

In the OFS Derivative Action, Plaintiffs have brought suit on behalf of a class of persons who own a unit in Oceanfront Spa Horizontal Property Regime, purportedly on behalf of

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nominal Defendant OFS, alleging that Defendants, OFS, members of the OFS Board of Directors (Walter Jordan, Ralph Jump, Ray Coghill, and John Doe Past Board Directors for OFS), MBR, and members of the MBR Board of Directors (Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, and John Doe Past Board Directors of MBR), breached their fiduciary duty to Plaintiffs, that K.A. Diehl breached multiple contracts, that K.A. Diehl breached multiple contracts accompanied with a fraudulent act, and that K.A. Diehl acted negligently.

Each of the Actions include allegations regarding issues related to the management of MBR and OFS, oversight of management, and other actions of the Boards of Directors of OFS and/or MBR, including the approval, implementation, and collection of a "gate pass fee," and an increase in the "gate pass fee."

Defendants do not admit any liability to Plaintiffs, or to anyone else because of, or growing out of, matters set forth in the Actions. Defendants deny all of the materials allegations asserted by Plaintiffs in each of the Actions. For purposes of this Motion alone, Defendants do not object to the definition of the purported MBR Class or the OFS Class (collectively, "Classes") in the Class Actions, do not object to Plaintiffs' purported representation of classes of owners in the Derivative Actions and do not object to Plaintiffs' prior actions therein on behalf of all the purported Class members in the Actions.

V. Settlement

The Parties, through their counsel, have engaged in lengthy and vigorous settlement negotiations. Specifically, on May 1, 2017, the Parties participated in a thorough mediation in which the Parties examined all issues raised in the Actions and the benefits and risks associated with litigation. At all times, the Parties' negotiations were adversarial, non-collusive, and at arms' length, reflecting the contentious and adversarial nature of the Actions. Ultimately, each

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of the Parties recognized that further conduct of these Actions would likely be protracted and expensive, and that no Party has an assurance of a successful outcome. The Parties therefore concluded that it is desirable that the Actions be settled in the manner and upon the terms and conditions set forth in the Settlement Agreement. (*See* **Exhibit A**).

A. Release

Named Plaintiffs have agreed to release and forever discharge "Released Parties" from all "Claims," all as defined in the Settlement Agreement. (*See* **Exhibit A** at ¶¶ 4, 6). The release provisions of the Settlement Agreement agreed to by the Named Plaintiffs are as follows:

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

Defendants are Released Parties within the meaning of the Settlement Agreement. (Id.)

These terms apply to the Plaintiffs in the Actions. If the Court approves the Settlement Agreement, the scope of the release as to absent class members would apply to only the claims which were actually asserted or might have been asserted on behalf of absent class members in the Actions.

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B. Consideration for Release

In exchange for and in consideration of the promises set forth in the Settlement Agreement, Defendants promised to pay funds as follows:

1. Defendants will pay to Plaintiffs and Plaintiffs' attorney the sum of $15,000.00 to fund a binding arbitration of a declaratory judgment action to adjudicate whether the gate pass fee is proper.
2. Defendants will pay to The Board of Directors for the Myrtle Beach Resort Horizontal Property Regime and the Board of Directors for the Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime the sum of $15,000.00 to fund the defense of a binding arbitration of a declaratory judgment action to adjudicate whether the gate pass fee is proper.
3. Defendants will pay to Plaintiffs' attorney the sum of $5,000.00 to be held in trust by his law firm to pay an arbitrator to resolve the arbitration set forth above.

(*See* **Exhibit A** at ¶ 1).

C. Attorneys' Fees

As part of the Settlement Agreement, Defendants also agreed to pay Plaintiffs' counsel attorneys' fees equal to $50,000.00, such amount not being subject to income or employment tax withholding, but to be reported on a Form 1099. (*See* **Exhibit A** at ¶ 1(d)). Defendants seek Court approval of this amount in addition to the Consideration for Release described above.

IV. Settlement Notice

Defendants have prepared a proposed Settlement Notice (**Exhibit D.**) Although Plaintiffs' counsel does not join this Motion, Plaintiffs' counsel has not indicated an objection to the terms of the Notice.

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The Settlement Notice explains: (1) the terms of the Settlement Agreement; (2) how purported class members can opt-out or exclude themselves from the purported class; and (3) how to submit objections to the terms of the Settlement Agreement. The Defendants propose that the Settlement Notice be sent via email to members of the purported Classes, placed in a MBR and an OFS newsletter, discussed at special MBR and OFS Board meetings and subsequently included in the Board minutes, and posted on the MBR and OFS websites. These are the most practicable means of providing notice under the circumstances and comport with due process.

Significantly, Plaintiffs have already begun providing notice of the settlement to purported class members. On May 4, 2017, representative members of the Plaintiff classes who serve on the OFS Board of Directors provided written notice to their constituents (fellow OFS residents), in which the OFS Board Member Plaintiffs ratified the settlement and affirmed their understanding that the Actions have been resolved fully and finally through Mediation. **(Exhibit B.)** Plaintiffs provided this notice by (1) emailing a copy to what appears to most if not all OFS homeowners, and (2) posting the notice on all bulletin boards in the OFS building.

V. Argument

A. Defendants Ask the Court to Approve the Settlement Agreement

This Motion seeks preliminary approval of the Settlement Agreement, which would settle the four Actions which were filed pursuant to Rule 23 of the SCRCP. Pursuant to Rules 23(c) and 23 (b)(1) of the SCRCP, class and derivative actions may be settled only with court approval. In considering whether to approve a class action settlement, the South Carolina courts look to federal decisions interpreting Rule 23 of the Federal Rules of Civil Procedure, upon

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which South Carolina's version of Rule 23 is patterned. *See Salmonsen v. CGD, Inc.*, 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008).

The decision to grant approval of a class action settlement involves the Court's consideration of several factors, including: (1) the amount offered in settlement; (2) the risks inherent in continued litigation; (3) the extent of discovery completed and the stage of the proceeding when the settlement was reached; (4) the risk, complexity, expense, and likely duration of the litigation absent settlement; (5) the experience and views of class counsel; and (6) the response of class members to the Settlement. *Brunson v. Louisiana-Pac. Corp.*, 818 F. Supp. 2d 922, 926 (D.S.C. 2011). Under these factors, preliminary approval is warranted.

There is no dispute as to the complexity of the Actions, the inherent risks of continued litigation of the Actions, and the expense the Parties would incur in event the litigation continued. A mere review of the Complaints in each Action will confirm these factors. Moreover, the Actions have been pending for over one year and, during litigation, the Parties have conducted substantial discovery and engaged in extensive motion practice. After adequate discovery, the Parties prepared for and engaged in a lengthy mediation in which all issues were thoroughly examined through experienced counsel and a capable mediator.

As evidenced by the Settlement Agreement, the Parties have concluded as follows: (1) further litigation would likely be protracted and expensive, and no party has assurance of a successful outcome; (2) it is in their mutual best interest to settle their disputes at this time; (3) the core remaining issue in the case is whether the gate pass fee currently charged by MBR is authorized under the governing MBR documents and applicable law; (4) a declaratory proceeding in binding arbitration is the most cost-effective and appropriate manner of bringing final resolution to the remaining issues raised in the Actions; (5) this objective can be reached by

certain Defendants' agreement to provide funding for the binding arbitration; and (6) the amount of the funding provided in the Settlement Agreement is adequate for purposes of the prosecution and defense of the arbitration.

Counsel representing the Parties have substantial familiarity with subject matters of the Actions and have experience in litigating such matters. The Parties' attorneys have actively negotiated the terms of the settlement on behalf of all known individuals and entities involved based on their extensive experience in this area, considering all of the risks inherent with litigation. At all times, the Parties' attorneys have represented their clients' best interests in reaching the settlement. The terms of the Settlement Agreement provide an appropriate and fair means of resolving the disputes in the Actions. *See id.* ("[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.") (*quoting* Newberg & Conte, Newberg on Class Actions (3d ed. 1992) § 11.41.).

This motion has not been filed as a consent motion because of objections Plaintiffs Richardson and Santos have raised to the Settlement Agreement. Their objections are that they were not physically present at the mediation and did not actually sign the Settlement Agreement. The other Plaintiffs do not have these objections. Moreover, at least three of the Plaintiffs have subsequently ratified the Settlement Agreement. **(Exhibit B.)**

In any event, the objections of Plaintiffs Richardson and Santos are not proper. As indicated above, the Settlement Agreement was signed by their counsel with specific authority. It is not believed that they will now contend that their counsel did not have this authority.

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The South Carolina "Court-Annexed Alternative Dispute Resolution Rules" promulgated by the South Carolina Supreme Court ("ADR Rules") require that the "following persons shall physically attend a mediation settlement conference unless otherwise agreed to by the mediator and all parties …: … All individual parties." ADR Rule 6 (b). "If any person … subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may … impose upon that party any lawful sanctions." ADR Rule 10 (b).

Prior to the mediation, Plaintiffs Richardson and Santos essentially requested to be relieved of their obligation to attend the mediation. As a courtesy, the mediator and counsel for the Defendants agreed to this arrangement upon assurance that Plaintiffs Richardson and Santos had given settlement authority to their counsel. Plaintiffs Richardson and Santos participated in the mediation remotely. Counsel for these Plaintiffs, with their authority and in a capacity as agent, signed the Settlement Agreement on their behalf. The ADR Rules do not contemplate that a party, physically absent by agreement, can be relieved from the effects of a settlement the party entered at mediation under these circumstances.

B. Defendants Ask the Court to Approve the Proposed Settlement Notice

Rule 23(d)(2), SCRCP, provides that the "court may at any time impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended," such as "notice . . . of a proposed settlement . . . including notice to the absent persons that they may come in and present claims and defenses if they so desire." In the case of a class action, it is generally accepted that Rule 23(d)(2), SCRCP, requires notice of the settlement to the purported class. The notice should inform purported class members of the nature of the litigation, the general terms of the settlement, the right of any purported class member to appear and be heard at the fairness hearing, and an opportunity to opt-out.

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Here, the Settlement Notice (**Exhibit D**) meets all of these requirements. It identifies the Parties and describes the Actions in a straightforward matter; succinctly describes the essential terms of the Settlement Agreement; provides purported class members with information on how object to the terms of the Settlement Agreement or opt-out; and informs purported class member that if they do not opt out, they will be bound by the resulting judgment. In sum, the Settlement Notice provides the information necessary for purported class members and shareholders/members of MBR and OFS to make an informed decision regarding the Settlement Agreement.

Furthermore, sending the Settlement Notice via email to members of the purported Classes and to shareholders/members of MBR and OFS, placing the Settlement Notice in a MBR and an OFS newsletter, discussing the Settlement Notice at special MBR and OFS Board meetings and subsequently including the discussion in the board minutes, and posting the Settlement Notice on the MBR and the OFS websites are the most practicable means of providing notice under the circumstances and comports with due process. The Parties have access to each of these means of publication and ask this Court to find the proposed means of notice to Plaintiffs reasonable under the circumstances of the Actions. *See Salmonsen*, 377 S.C. at 458, 661 S.E.2d at 90 (Rule 23(d) provides a court discretion in determining how parties are notified of a proposed class settlement).

VI. Conclusion

For the reasons presented in this Motion, Defendants respectfully request that the Court enter an Order (1) preliminarily approving the attached Settlement Agreement; (2) approving the form and manner of the Settlement Notice; and (3) scheduling a Fairness Hearing to grant final

approval of the Parties' Settlement Agreement. A proposed order is attached hereto for the Court's consideration. **(Exhibit E)**

VII. Affirmation

The undersigned affirms that prior to filing the motion, they communicated, orally and in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion.

Respectfully submitted this 30th day of June, 2017.

	s/Phillip A. Kilgore Phillip A. Kilgore (S.C. Bar No. 3449) Lucas J. Asper (S.C. Bar No. 77902) 300 North Main Street, Suite 500 Greenville, South Carolina 29601 864.271.1300 (telephone) 864.235.4754 (facsimile) phillip.kilgore@ogletreedeakins.com lucas.asper@ogletreedeakins.com Attorneys for Defendants The Myrtle Beach Resort Homeowners Association, Inc., Ocean Front Spa Horizontal Property Regime, Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ralph Jump, Ray Coghill and Ken Perkins. Henrietta U. Golding, Esq. Henrietta U. Golding, Esq. Alicia E. Thompson, Esq. McNair Law Firm, P.A. Post Office Box 336 Myrtle Beach, SC 29578-0336 (843) 444-1107 (telephone) (843) 444-4729 (facsimile) Attorneys for Defendant FirstService Residential South Carolina, Inc., formerly known as K.A. Diehl & Associates, Inc.

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CONSOLIDATED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

EXHIBIT A

SETTLEMENT AGREEMENT

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

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

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

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

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

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

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

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

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

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

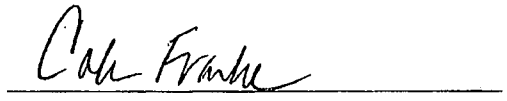
7. Plaintiffs agree that they will not make any statements, oral or written, which they know or reasonably should know to be a disparaging or negative comment about Defendants or their officers, directors, employees and agents, or otherwise detrimental to the reputation or goodwill of Defendants, and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

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

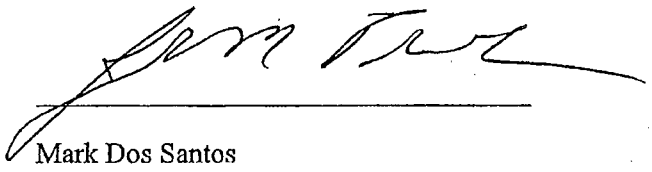
Agreed to this 1st Day of May, 2017.

Plaintiffs

Jim Perkins



Colleen Franke a/k/a Colleen Franke Perkins



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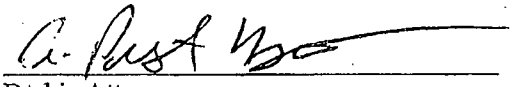
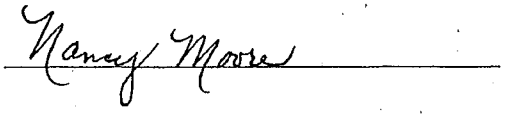
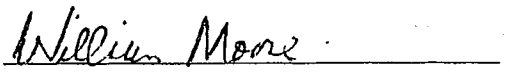


By his Attorney

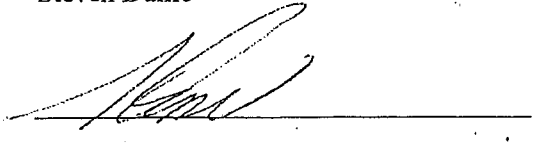
Nancy Moore



William Moore

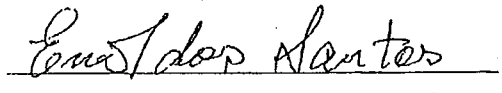


Steven Dame



ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

Errol Dos Santos



Jeffrey Richardson

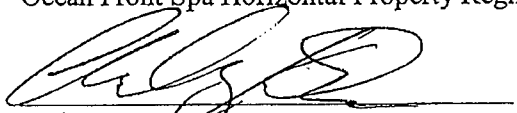
By his Attorney

Defendants

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

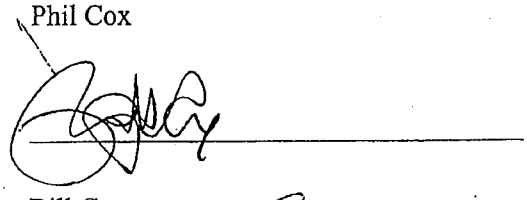
By its Attorney

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



By its Attorney

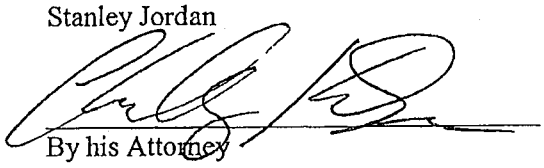
Phil Cox



Bill Cameron

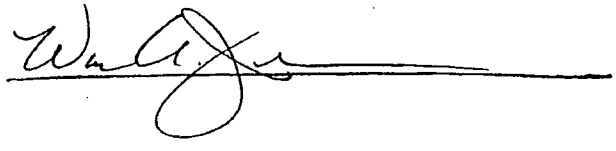
By his Attorney

Stanley Jordan



By his Attorney

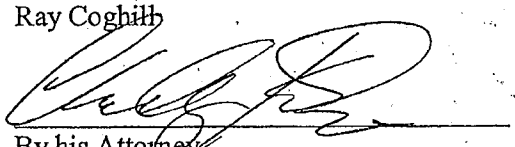
Walter Jordan



ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

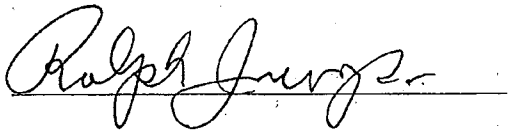
Ken Perkins

Ray Coghill

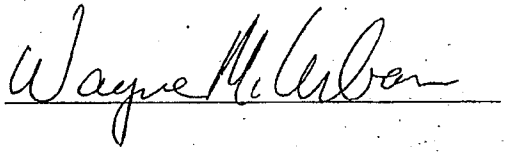


By his Attorney

Ralph Jump



Wayne Urban



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CONSOLIDATED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

EXHIBIT B

AFFIDAVIT OF WALTER JORDAN

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

AFFIDAVIT OF WALTER JORDAN

COMES NOW, Walter Jordan, who, after being duly sworn, deposes and says:

1. My name is Walter Jordan. I am an adult, of sound mind, competent to testify to all matters in this Affidavit.

2. The information in this Affidavit is based on my personal knowledge and is true and accurate to the best of my knowledge and belief.

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3. I live at 2311 Garrison Pl Road, Midlothian, VA 23112. I own units B216 and B219 at Ocean Front Spa ("OFS") at the Myrtle Beach Resort and reside there part of the year.

4. My email address is wjordan48@comcast.net.

5. On or about May 4, 2017, I received an email from email address MBRJimPerkins@aol.com. I am attaching a copy of the email to this affidavit as Exhibit A. The approximately 165 email addresses of the recipients of this email have been redacted for privacy reasons, but the original of the email will be made available to the court if needed.

6. I am attaching to this affidavit as Exhibit B a photograph I took of a notice posted on one of the bulletin boards in the OFS Building at the Myrtle Beach Resort. Identical notices were posted on all the bulletin boards in the OFS Building.

7. I personally observed the notices on all the bulletin boards beginning May 31, 2017, and the notice reflected in Exhibit B remained in place until June 20 or 21, 2017.

8. I believe these notices were first posted on or about May 5, 2017. The reason I believe this is because I received a text message from another OFS owner on that date with the attached photograph of a notice. Exhibit C. This notice is identical to the other notices I personally observed.

FURTHER AFFIANT SAYETH NOT.

[SIGNATURE PAGE FOLLOWS]

I swear under oath that the foregoing Affidavit is true to the best of my knowledge and belief.

Walter Jordan — 6-30-17 Date

SWORN TO and subscribed before me
This 30th day of June, 2017.

Lori Beth Williams
Notary Public for Virginia
My Commission Expires: 10/31/18

LORI BETH WILLIAMS NOTARY PUBLIC REG # 7580036 MY COMMISSION EXPIRES 10/31/2018 COMMONWEALTH OF VIRGINIA

30245035.1

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EXHIBIT A
TO
AFFIDAVIT OF WALTER JORDAN

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP260673

From: MBRJimPerkins@aol.com
Sent: Thursday, May 04, 2017 1:13 PM
To: REDACTED

To: REDACTED

Subject: RE: OFS (B-Building) Update

Myrtle Beach Resort Ocean Front Spa HPR

B Building Homeowners

May 4, 2017

Dear Homeowners:

Your Board Members desire transparency. As our term progresses, we believe that you will see a commitment to transparency. We also, like most, if not all of you, desired to put an end to much of the litigation. As you are aware, we resolved five lawsuits. Unfortunately, as a part of the resolution of the lawsuits, all parties agreed to keep certain terms quiet.

However, in keeping with the desire to be transparent, we are sharing with you that which we are permitted to. I am hopeful that this will address any concerns about the past, but more importantly clarify our path forward.

As a result of the settlement, FSR and the OFS Board have mutually decided to part ways. Of course, we were concerned about the welfare of the employees, and it is my understanding that FSR has graciously placed the 5 employees that served the OFS at other communities.

As a result of FSR and OFS parting ways, acquiring the services of a maintenance company was imperative. Fortunately, we were able to acquire three bids for the provision of maintenance, and your Board Members have hired Four Of A Kind maintenance company. They are already on site and are caring for the needs of our building.

The Board is considering an interim property management company to finish out the 2017 year. As with any transition, there will be some bumps. We ask that you be patient with us as we do our duty to get the interim management company in place for the remainder of this year. At the end of the year, we will be sending out RFP's for a property management company for a reasonable duration.

Thank you for your time and patience. Our goal is to make our Regime better in the future. If you have any questions, please contact us and we shall do our best to address your concerns.

On Behalf of Your Board of Directors,

Nancy Moore, President

Stanley Jordan, Vice President

Tracey Dorsey, Treasurer

Steve Dame, Secretary

Jim Perkins, Member at Large (MBR HOA Representative)

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EXHIBIT B
TO
AFFIDAVIT OF WALTER JORDAN

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

LAWSUIT UPDATE

The recent state court litigation between various homeowners in the Ocean Front Spa and its management company and others has been resolved between the parties to their mutual satisfaction via alternative dispute resolution that occurred on May 1. In the days and weeks ahead, the OFS Board will be announcing various changes involving, among other things, the management and maintenance of the building. Ocean Front Spa is a wonderful place to live for its residents and to visit for its guests. It's the ambition of the OFS Board to help make this wonderful community that much better as we go forward together into the future.

Negotiated by:

Nancy Moore, President

Steve Dame, Secretary

Jim Perkins, MBRHOA Representative

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EXHIBIT C
TO
AFFIDAVIT OF WALTER JORDAN

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

LAWSUIT UPDATE

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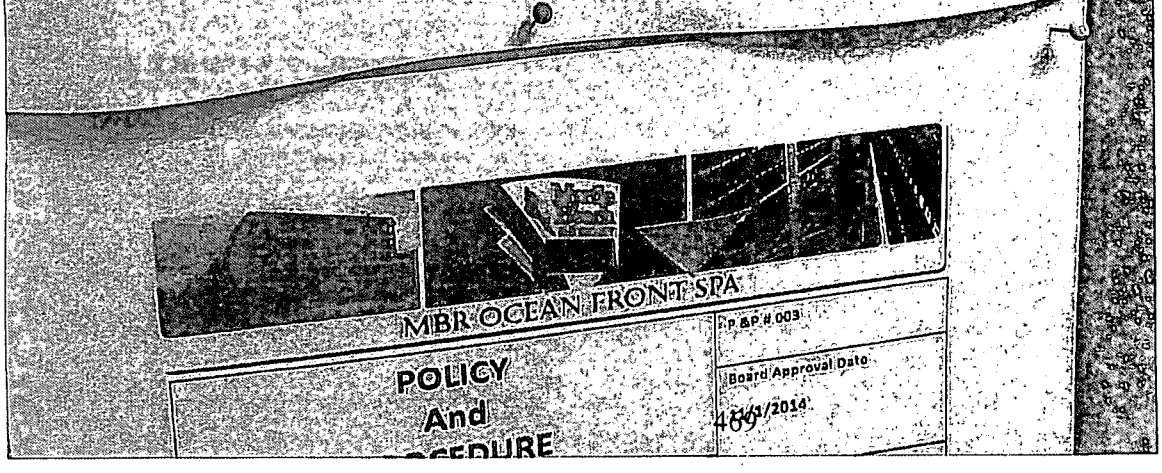
Negotiated by:

Nancy Moore, President

Steve Dame, Secretary

Jim Perkins, MBRHOA Representative



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CONSOLIDATED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

EXHIBIT C

APRIL 28, 2017 EMAIL EXCHANGE

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

From: Preston Brittain <preston@brittainlawfirm.com>
Sent: Friday, April 28, 2017 9:58 PM
To: Kilgore, Phillip
Cc: Golding, Henrietta; Buffington, Bobby; Christian Stegmaier; Natalia V. Ertseva-Thomas; Tommy Brittain; msmith@thompsonlaw.com; TTurman@thompsonlaw.com; cnickels@clawsonandstaubes.com; Stephanie L. Mascella; Thompson, Alicia; Coggins, Robert E.; Asper, Lucas J.
Subject: Re: Civil Action No. 2015-CP-26-5573/Claim No. PHCO15080916718/C&L File No. 001832-00104 Diehl v. James Perkins, et al. (1832-104)

I will. We are good to go.

Sent from my iPhone

On Apr 28, 2017, at 2:27 PM, Kilgore, Phillip <Phillip.Kilgore@ogletree.com> wrote:

> Preston
>
> I will have settlement authority from all of my clients. Will you have settlement authority from Mr. Richardson?
>
> **Phillip A. Kilgore | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**
> P.O. Box 2757 | Greenville, SC 29602 | Telephone: 864-271-1300 x240 | Fax: 864-235-4754 | Mobile: 864-982-2727
> phillip.kilgore@ogletreedeakins.com | www.ogletreedeakins.com

CONSOLIDATED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

EXHIBIT D

NOTICE OF PROPOSED SETTLEMENT

ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00673**
Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00674**
The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15th JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, and Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00743**
K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.,	)	
Defendants.	)	

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ELECTRONICALLY FILED - 2017 Jul 03 9:22 AM - HORRY - COMMON PLEAS - CASE#2016CP2600673

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**15TH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	
Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc.,	)	
Plaintiffs,	)	
v.	)	**Civil Action No.: 2016-CP-26-00744**
Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.,	)	
Defendants.	)	

NOTICE OF PROPOSED SETTLEMENT

This Notice May Affect Your Rights
Please read carefully!

TO:

ALL PERSONS WHO ARE OWNERS OF REAL PROPERTY LOCATED IN MYRTLE BEACH RESORT IN THE STATE OF SOUTH CAROLINA, COUNTY OF HORRY

1. WHY SHOULD I READ THIS NOTICE?

Several lawsuits which may affect your rights are pending in the South Carolina Court of Common Pleas, Fifteenth Judicial Circuit, County of Horry:

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(1) *Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated v. Ocean Front Spa Horizontal Property Regime, Inc., Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc.*, Civil Action No.: 2016-CP-26-00673 **("OFS Class Action");**

(2) *Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, on behalf of themselves and all other similarly situated v. The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.*, Civil Action No.: 2016-CP-26-00674 **("MBR Class Action") (the "OFS Class Action" and the "MBR Class Action" are collectively referred to as the "Class Actions");**

(3) *Jim Perkins, Colleen Franke a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dames, Errol Dos Santos, and Jeffrey Richardson individually in their capacity as derivative shareholders v. K.A. Diehl and Associates, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc.*, Civil Action No. 2016-CP-26-00743 **("MBR Derivative Action");** and

(4) *Jim Perkins, Colleen Franke, a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dame, Errol Dos Santos, and Jeffrey Richardson, individually in their capacity as derivative shareholders of Ocean Front Spa Horizontal Property Regime, Inc., v. Ocean Front Spa Horizontal Property Regime, Inc., Walter Jordan, Ralph Jump, Ray Coghill, John Doe past board directors of Ocean Front Spa Horizontal Property Regime, Inc., The Myrtle Beach Resort Homeowners Association, Inc., Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins, John Doe past board directors of The Myrtle Beach Resort Homeowners Association, Inc., and K.A. Diehl and Associates, Inc.* Civil Action No.: 2016-CP-26-00744 **("OFS Derivative Action") (the "MBR Derivative Action" and the "OFS Derivative Action" are collectively referred to as the "Derivative Actions")**

(The Class Actions and the Derivative Actions are collectively referred to as the "Actions.")

A proposed settlement has been reached in the Actions and has been conditionally approved by the Court. You have received this notice because you are thought to be someone who is a member of the Ocean Front Spa Horizontal Property Regime, Inc. ("OFS") and/or The Myrtle Beach Resort Homeowners Association, Inc. ("MBR"). If so, you are a potential member of the OFS Class and/or the MBR Class (defined below), and thus are among the class of those

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potentially eligible to benefit from the settlement ("Settlement Class"). If so, you also are in one or both classes of persons on whose behalf the Derivative Actions have been brought.

You should read this Notice to determine whether your rights are affected, the steps necessary to pursue your rights as a member of a Settlement Class and as a member of OFS/MBR, or whether to opt out of a Settlement Class.

In the OFS Class Action and the MBR Class Action, one or more people, called "Named Plaintiffs" (Jim Perkins, Colleen Franke a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dames, Errol Dos Santos, and Jeffrey Richardson), have sued on behalf of themselves and all others similarly situated who are thought to have similar claims.

In the Derivative Actions, one or more people, called "Derivative Plaintiffs" (Jim Perkins, Colleen Franke a/k/a Colleen Franke Perkins, Mark Dos Santos, Nancy Moore, William Moore, Steven Dames, Errol Dos Santos, and Jeffrey Richardson), are suing derivatively on behalf of MBR, OFS, themselves, and classes of persons on whose behalf the Derivative Actions have been brought.

The Court may consider those who are similarly situated collectively as a Settlement Class or individually as Settlement Class Members. One Court resolves the issues for all Class Members, except for those who "opt-out" from the Settlement Class. "Opt-Out" means an affirmative choice to be excluded from the Settlement Class and is discussed further below.

2. THE ACTIONS

A. Overview of the Actions and Plaintiffs' Claims

Two separate class action lawsuits have been filed against certain Defendants in this Court: the OFS Class Action and the MBR Class Action. Two separate derivative actions were filed against certain Defendants in this court: the MBR Derivative Action and the OFS Derivative Action.

In the OFS Class Action, Named Plaintiffs sought to certify a class consisting of "any and all persons and or entities owning a unit within the OFS HOA and thereby owning an undivided interest in the common elements, and business activity of the OFSHOA" ("OFS Class"). On behalf of the purported OFS Class, Named Plaintiffs allege in the OFS Class Action Amended Complaint that Defendants OFS, Bill Cameron, Walter Jordan, Ralph Jump, Stanley Jordan, Ray Coghill, and John Doe past directors of OFS, breached their fiduciary duty to Plaintiffs and Class Members and violated the standards set forth in the South Carolina Non-Profit Corporation Act, S.C. Code Ann. 33-31-830.

In the MBR Class Action, Named Plaintiffs sought to certify a class consisting of "any and all persons and or entities owning a unit within the MBRHOA and thereby owning an undivided interest in the common elements, and business activity of the MBRHOA" ("MBR Class"). On behalf of the purported MBR Class, Named Plaintiffs allege in the Amended MBR Class Action Complaint that Defendants MBR, Phil Cox, Bill Cameron, Stanley Jordan, Walter

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Jordan, Wayne Urban, Ken Perkins, and John Doe past board directors of MBR breached their fiduciary duty to Plaintiffs and Class Members, acted negligently, and breached a covenant contained in the master deed and bylaws.

In the MBR Derivative Action, Derivative Plaintiffs have brought suit, purportedly on behalf of nominal Defendant MBR, alleging that Defendants MBR and board of directors Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Walter Jordan, Ken Perkins, and John Doe Board of Directors of MBR, breached their fiduciary duty to nominal Defendant MBR, that Defendant FirstService Residential South Carolina, Inc., formerly known as K.A. Diehl & Associates, Inc. and incorrectly identified as K.A. Diehl and Associates, Inc. in the Derivative Actions ("K.A. Diehl") acted negligently, that K.A. Diehl breached multiple contracts, and that K.A. Diehl breached multiple contracts accompanied with a fraudulent act.

In the OFS Derivative Action, Plaintiffs have brought suit, purportedly on behalf of nominal Defendant OFS, alleging that Defendants OFS and OFS Board of Directors Walter Jordan, Ralph Jump, Ray Coghill, John Doe Past Board of Directors for OFS, MBR, Phil Cox, Bill Cameron, Stanley Jordan, Wayne Urban, Ken Perkins and John Doe Board of Directors of MBR, breached their fiduciary duty to nominal Defendant OFS, that K.A. Diehl breached multiple contracts, that K.A. Diehl breached multiple contracts accompanied with a fraudulent act, and that K.A. Diehl acted negligently.

Each of the Actions include numerous allegations regarding issues related to management of MBR and OFS, oversight of the management, and other actions of the Boards of Directors of OFS and/or MBR, including the approval, implementation, and collection of a "gate pass fee," and an increase in the "gate pass fee."

Defendants in the Class Actions explicitly deny any liability to either the OFS Class or the MBR Class. Defendants in the Derivative Actions explicitly deny any liability to either OFS or MBR for the claims brought derivatively.

Counsel for the Parties have conducted thorough investigations into the facts of the Actions for their respective clients, including conducting thorough discovery and extensive review of relevant documents, information, and data. The Parties, recognizing the risks inherent in litigation, have agreed to settlement of the Actions on the terms summarized in Section 7 below and laid out more fully in the Settlement Agreement and Release between Named Plaintiffs and Defendants on file with the Court.

Defendants in the Actions are willing to settle the Actions to avoid further expense as well as to dispose of burdensome and protracted litigation. If members of the Settlement Class opt out, however, Defendants, at their option, may void this settlement.

3. CLASS DEFINITION

For purposes of this settlement alone, Defendants do not object to the definition of the purported MBR Class or the OFS Class, do not object to Plaintiffs' purported representation of classes of owners in the Derivative Actions, do not object to Plaintiffs' actions herein on behalf

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of the Settlement Class or Settlement Class Members, and do not object to Plaintiffs' actions herein on behalf of nominal Defendants MBR and OFS in the Actions.

4. YOU ARE A MEMBER OF A CLASS

An agreement settling the Actions has been executed by Plaintiffs and Defendants. The terms of the proposed settlement (referred to in this Notice as "Proposed Settlement") are discussed in Section 7 below. As a potential member of the Settlement Class, you may participate in the hearing on the Proposed Settlement, and, if the Proposed Settlement is approved by the Court, you would receive the benefit of the Proposed Settlement.

However, as explained below, you may opt out of the Class Actions if you do not wish to participate in the hearing on the Proposed Settlement that is described below. If you opt out of the Class Actions, you may not benefit from the Proposed Settlement that is described below, but you may pursue any claims you may care to make by bringing a separate lawsuit on your own behalf, or you may do nothing if you so prefer. If you do not opt out of the Class Actions and the Proposed Settlement is approved, you will be bound by the terms of the Proposed Settlement.

5. NOTICE OF SETTLEMENT HEARING

You are hereby notified, pursuant to Rule 23(e) of the South Carolina Rules of Civil Procedure, that a hearing will be held on _____, 2017, at _____ _.m., before the Honorable Judge _____, in Courtroom No. _____ of the Horry County Courthouse, South Carolina, to determine whether the Proposed Settlement agreed to by the above-named parties is fair, reasonable, and adequate and whether it should be approved by the Court and judgment entered thereon. The hearing was scheduled by an Order of this Court dated _____, __, 2017.

The hearing may be adjourned by the Court from time to time by an announcement at the hearing, or at any adjournment thereof, without further notice.

6. YOUR RIGHTS MAY BE AFFECTED BY THE PROPOSED SETTLEMENT OF THIS ACTION

The giving of this Notice is not to be understood as expressing any opinion by the Court as to the merits of any of the claims or defenses asserted by any party herein and is for the sole purpose of informing all the members of the Settlement Class of the Proposed Settlement so that individual Settlement Class members may make whatever decisions they may deem appropriate for the protection of their interests.

7. PROPOSED SETTLEMENT

In summary, the Proposed Settlement will result in certain Defendants providing a sum of money to Plaintiffs and certain Regimes in MBR to fund an arbitration of a declaratory judgment action to adjudicate whether the gate pass fee currently charged by MBR is authorized under the governing MBR documents and applicable law. All Parties agree that the arbitration decision will be binding.

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The Parties agreed that a declaratory proceeding in binding arbitration on the core remaining issue in the Actions (whether the gate pass fee currently charged by MBR is authorized under the governing MBR documents and applicable law) is the most cost-effective, fair, and appropriate manner of bringing final resolution to the remaining issues raised in the Actions. They believed that this objective could be reached by certain Defendants' agreement to fund the binding arbitration.

The Proposed Settlement was reached at mediation and all Parties were represented by experienced counsel. If the Proposed Settlement is approved by the Court, the Proposed Settlement will act as: 1) a complete release of all claims by Named Plaintiffs against all Defendants; and 2) a complete release of all claims against all Defendants which were actually asserted or might have been asserted on behalf of an absent class members in the MBR Class Action, the OFS Class Action, the MBR Derivative Action and the OFS Derivative Action. Thereafter, final judgments of dismissal will be entered, with prejudice, as to the Actions, and Plaintiffs and all Settlement Class Members will be conclusively bound by such dismissal.

8. ATTORNEYS FOR PLAINTIFFS AND DEFENDANTS

The attorneys for the named Plaintiffs and Settlement Class are A. Preston Brittain and Thomas C. Brittain of The Brittain Law Firm, P.A., whose telephone numbers and addresses appear below. Any questions regarding their representation of the interests of Named Plaintiffs, Derivative Plaintiffs, and those similarly situated must be directed to them.

A. Preston Brittain, Esq.
Thomas C. Brittain, Esq.
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449-8562 (telephone)
(843) 497-6124 (facsimile)

Attorneys for Named Plaintiffs

The attorneys for Defendants Phillip A. Kilgore and Lucas J. Asper of Ogletree, Deakins, Nash, Smoak, & Stewart, P.C., and Henrietta U. Golding, Esq. and Alicia E. Thompson of McNair Law Firm, P.A., whose telephone numbers and addresses also appear below.

Phillip A. Kilgore, Esq.
Lucas J. Asper, Esq.
300 North Main Street, Suite 500
Greenville, South Carolina 29601
(864) 271-1300 (telephone)
(864) 235-4754 (facsimile)

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Attorneys for Defendants The Myrtle Beach Resort Homeowners Association, Inc., Ocean Front Spa Horizontal Property Regime, Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ralph Jump, Ray Coghill, Ken Perkins, John Doe past Board of Directors of Ocean Front Spa Horizontal Property Regime, Inc., and John Doe past Board of Directors for the Myrtle Beach Resort Homeowners Association, Inc.

Henrietta U. Golding, Esq.
Alicia E. Thompson, Esq.
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578-0336
(843) 444-1107
(843) 444-4729

Attorneys for Defendant K.A. Diehl

9. PROCEDURE FOR OPTING OUT OF THE SETTLEMENT CLASS OR FOR PRESENTING OBJECTIONS

Any member of the Settlement Class may appear and show cause, if he or she has any, why the Proposed Settlement should not be approved by the Court as fair, reasonable, and adequate, and why any of the Actions should not be dismissed on the merits, with prejudice. Any such member of the Settlement Class may also object to the allowance of the costs, expenses, and fees requested by Plaintiffs' counsel; provided that no such person shall be heard, and no papers or briefs shall be submitted by him or her to the Court, unless, on or before ten (10) days before the fairness hearing, he or she files a notice of intention to appear and a statement of the basis of his or her objections, together with a memorandum of authorities, with the Horry County Clerk of Court Melanie Huggins-Ward, 1301 Second Avenue, Conway, South Carolina 29526 and serves a copy on:

A. Preston Brittain, Esq. Thomas C. Brittain, Esq. The Brittain Law Firm, P.A. 4614 Oleander Drive Myrtle Beach, SC 29577 (843) 449-8562 (telephone) (843) 497-6124 (facsimile) Attorneys for Plaintiffs	Phillip A. Kilgore, Esq. Lucas J. Asper, Esq. 300 North Main Street, Suite 500 Greenville, South Carolina 29601 (864) 271-1300 (telephone) (864) 235-4754 (facsimile) Attorneys for Defendants The Myrtle Beach Resort Homeowners Association, Inc., Ocean Front Spa Horizontal Property Regime, Phil Cox, Bill Cameron, Stanley Jordan, Walter Jordan, Wayne Urban, Ralph Jump, Ray Coghill, Ken Perkins, John Doe past Board of Directors of Ocean Front Spa Horizontal Property Regime, Inc., and John Doe past Board of Directors for the Myrtle Beach Resort

	Homeowners Association, Inc. Henrietta U. Golding, Esq. Alicia E. Thompson, Esq. McNair Law Firm, P.A. Post Office Box 336 Myrtle Beach, SC 29578-0336 (843) 444-1107 (telephone) (843) 444-4729 (facsimile) Attorney for Defendant FirstService Residential South Carolina, Inc., formerly known as K.A. Diehl & Associates, Inc.

If you are entitled to be a member of the Settlement Class and want to opt out or exclude yourself from the Actions, you need to sign the attached Request for Exclusion and return it to the above attorneys on or before _____, 2017. If you opt out of the Settlement Class, you will not be able to participate in the Actions related to the Settlement Class, should there be one or more.

10. EXAMINATION OF PLEADINGS AND PAPERS

The references in this Notice to the Settlement Agreement and Release between Plaintiffs and Defendants and other papers are only summaries of those documents. The pleadings in the Actions are on file with the Clerk of Court, at the address stated above, and are available for inspection there. Copies of documents related to the Actions not on file with the Clerk of Court will be available for inspection by any Settlement Class Member and his or her attorney at the offices of Class Counsel during mutually agreeable business hours.

11. OBTAINING ADDITIONAL INFORMATION

You may direct inquiries to Class Counsel at the address listed above. **DO NOT CONTACT THE COURT.**

This Notice provides only a summary of matters regarding the case. You may also seek independent legal counsel as to your rights at your own personal expense.

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ATTACHMENT

REQUEST FOR EXCLUSION

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