THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Horry County Circuit Court
Benjamin H. Culbertson, Circuit Court Judge

Appellate No. 2019-000413

Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated.....Appellants

v.

McCabe, Trotter & Beverly, P.C. and Gold Crown ManagementCompany.....Defendants

of which

McCabe, Trotter & Beverly, P.C. is.....Respondent

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP2602974

PLAINTIFF(S)		DEFENDANT(S)	
Karl Hager Bowers Caravelle LLC Susan Welborn Robert Singelton Teresa Singleton	Caravelle Resort Association Inc Erik Arnold Jay Welborn Terri Hager	Mccabe Trotter & Beverly PC	Gold Crown Management Company Inc
Submitted by: Clerk Of Court		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

Motion to Dismiss by defendant McCabe, Trotter & Beverly, PC is GRANTED.
Plaintiff's Motion for Temporary Injunction is DENIED.

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

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STATE OF SOUTH CAROLINA COUNTY OF HORRY Karl & Terri Hager, Robert Singleton, Jay & Susan Welborn, Erik Arnold, and Bowers Caravelle, LLC, derivatively and on behalf of Caravelle Resort Association, Inc. and on behalf of themselves and those similarly situated, Plaintiffs, v. McCabe, Trotter & Beverly, P.C. and Gold Crown Management Company, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-26-2974 **ORDER ON PLAINTIFFS' MOTION TO RECONSIDER AND WRITTEN ORDER GRANTING MTB'S MOTION TO DISMISS THE AMENDED COMPLAINT**

This matter came before me on Plaintiffs' SCRCP 59(e) Motion to Reconsider filed regarding the Form 4 Order granting Defendant McCabe, Trotter & Beverly, P.C.'s ("MTB") Motion to Dismiss (filed August 1, 2018). The Court grants Plaintiffs' Motion to Reconsider to the extent it seeks an explanation of the dismissal and includes the basis for the ruling below. The Court denies the Motion to the extent it asks the Court to change its decision on MTB's Motion to Dismiss. For the reasons set forth below, this Court GRANTS MTB's Motion to Dismiss with prejudice.

Procedure

Plaintiffs filed the Complaint on May 14, 2018. MTB filed an Answer and Motion to Dismiss pursuant to SCRCP 12(b)(6) on June 6, 2018. The Court set a hearing for the Motion to Dismiss to take place on June 20, 2018. On June 18, 2018, Plaintiffs filed an Amended Complaint, which made the original Motion to Dismiss moot.

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On June 20, 2018, MTB filed an Answer and Motion to Dismiss the Amended Complaint under SCRCP 12(b)(6). A hearing took place in Conway, South Carolina on July 31, 2018. Counsel for MTB and Plaintiffs presented oral argument. On August 1, 2018, the Court issued a Form 4 Order granting MTB's Motion to Dismiss the Amended Complaint.[1] On August 9, 2018, Plaintiffs filed the subject Motion to Reconsider. A hearing took place on January 22, 2018 in Conway, and counsel for MTB and Plaintiffs presented oral argument.

Plaintiffs request a formal Order setting forth the basis of the dismissal of their claims against MTB under SCRCP 52(a) and ask the Court to reconsider its decision to grant the Motion to Dismiss under SCRCP 59(e). Under SCRCP 59(e), a party may file a motion asking the court to alter or amend a judgment no more than ten days following the receipt of the written order on the judgment. SCRCP 52(a), in actions tried without a jury, the court shall set forth findings of facts and conclusions of law. Plaintiffs moved within ten days after the Court issued the Form 4 Order granting MTB's Motion to Dismiss. Therefore, the Court, in its discretion, amends its ruling to include the findings of fact and conclusions of law below.

Facts

Plaintiffs are owners of certain units in the Caravelle Resort ("Caravelle") condominium complex in Myrtle Beach, South Carolina. Plaintiffs filed this action as individuals and derivatively on behalf of the Caravelle Resort Association, Inc. ("HOA"). The Amended Complaint also contains class action allegations for claims brought on behalf of all owners of units at Caravelle.

[1] The Form 4 Order also denied Plaintiff's Motion for a Temporary Injunction, but that is not at issue with respect to this Order.

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Caravelle is subject to a Master Deed and Bylaws (collectively, "governing documents"), filed as Exhibits 1 and 2, respectively, to the Amended Complaint. Among other things, the governing documents establish the HOA and provide that every owner of units in Caravelle is a member of the it subject to the governing documents. The owners collectively purchased an HO-6 insurance policy through Lloyd's of London as the governing documents require. Ex. 3 to the Am. Compl. The policy covers all 346 units separately, and each owner is a named insured under the policy.

At all times pertinent to this case, MTB served as counsel for the HOA, and Defendant Gold Crown Management Company, Inc. ("Gold Crown") served as the HOA's property manager. Hurricane Matthew struck South Carolina on October 8, 2016, causing significant damage to many units at Caravelle. Plaintiffs allege that following the storm, the HOA's Board ("Board") decided, without appropriate authority or permission, to remove owners' personal property from their units and store them in the parking garage of the HOA as part of the damage control and repair process. The HOA also entered into a contract with Commercial Disaster Recovery, LLC f/d/a Delta Restoration, LLC ("Delta") to handle the process of removing the owners' items from their units and perform other repair/restoration work related to damage Caravelle suffered in the Hurricane. Various problems ensued with respect to the storage and handling of the removed personal property.

Plaintiffs take issue with the removal of their personal property from certain units and with various elements of the handling of the restoration process. They allege the entering of certain units and removal of owners' personal property was improper and contrary to the governing documents. Plaintiffs also say owners were not properly notified of the decision to enter their units and remove property and that they were wrongfully also prevented from entering their units and inspecting their

property following its removal. According to Plaintiffs, various elements of the personal property removed from their units was lost, damaged, stolen or otherwise destroyed.

In or about February 2017, the Board made the decision to gut the entire building, remove owners' belongings, and hire third parties to remodel and remediate damaged units. During the remediation process, personal property removed from owners' units was stored in the development's parking garage across the street, which was turned into a make-shift storage unit. Plaintiffs say the Board did not consult with owners as the governing documents required prior to making these decisions and take issue with the decisions. The Amended Complaint says "MTB and/or Gold Crown" failed to take adequate steps to protect owners' personal belongings, which were not secure from environmental hazards or theft.

Other issues in the Amended Complaint relate to problems with the claims made on an HO-6 insurance Policy Lloyd's of London issued insuring each owner for dwelling, personal property and loss of use with limits of $25,000 per unit. Plaintiffs cite letter(s) from MTB sent as counsel for the HOA to Lloyd's taken in the course of trying to assist in the handling of the insurance issues.

Plaintiffs also take issue with certain charges the HOA levied to recover costs incurred as a result of storing the owners' belongings and otherwise taking steps in the repair/remediation process. According to Plaintiffs, the HOA charged owners with a "content manipulation fee" that was improper, unlawful and not in accordance with the governing documents. Similarly, Plaintiffs take issue with charges by the HOA for a "soft goods package." This related to replacement of certain items lost or destroyed by the Hurricane and/or while in storage by Delta. The HOA charged owners for the soft goods package, and Plaintiffs allege "Gold Crown and/or MTB" misrepresented the damage to certain units in order to justify this charge. Plaintiffs also say "Gold Crown and/or MTB"

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wrongfully asserted claims against owners in order to strongarm them into paying the contents manipulation fee and soft goods package.

The Amended Complaint alleges the following causes of action against MTB: (1) professional negligence (personally and derivatively); (2) breach of fiduciary duty (derivatively); (3) aiding and abetting breach of fiduciary duty (derivatively); (4) fraud (personally); and (5) conversion (personally). Plaintiffs submitted the (Amended) Affidavit of Thomas Pendarvis with the Amended Complaint in an effort to comply with S.C. Code § 15-36-100.

Motion to Dismiss Standard

SCRCP 12(b)(6) provides that a defendant may move for dismissal based on the plaintiff's failure to state facts sufficient to constitute a cause of action. *See also* Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In considering a 12(b)(6) motion, "the trial court must base its ruling *solely* upon allegations set forth on the face of the complaint." Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (emphasis added); *see also* Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987); and Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). A copy of any plat, photograph, diagram, document or other paper which is an exhibit to a pleading is part thereof for all purposes if a copy is attached to such pleading. SCRCP 10(c).

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). The court should not grant a 12(b)(6) motion if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Id. The question is whether, in the light most

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favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

The Court notes that Plaintiffs' Amended Complaint is at issue here. Plaintiffs initially filed an original Complaint, which MTB moved to dismiss. Rule 15 allowed Plaintiffs to amend the Complaint once as a matter of right within thirty days. They did so two days before the hearing for the Motion to Dismiss the Complaint by filing the subject Amended Complaint in an apparent attempt to address alleged deficiencies in the original Complaint (as noted in MTB's Motion to Dismiss the Complaint). Even on this second try, Plaintiffs fail to allege facts sufficient to state a claim for any of the causes of action alleged against MTB in the Amended Complaint.

Conclusions of Law

Plaintiffs bring claims against MTB individually and derivatively on behalf of the HOA. All the claims are based on activities MTB took as lawyers for the HOA. Plaintiffs have not alleged that MTB took any action outside the scope of its representation of the HOA. Plaintiffs just take issue with MTB's representation of the HOA.

However, Plaintiffs (individual owners of units) have no standing to bring a legal malpractice claim against MTB because the firm did not represent them. Further, MTB is not liable to Plaintiffs, who are third parties MTB did not represent, for actions the firm took within the course and scope of its representation of the HOA. Plaintiffs' individual claims against MTB fail as a result.

The gravamen of Plaintiffs' claims is the loss of their personal property and other damages the individual owners incurred. While the Amended Complaint references damages the HOA incurred, the pleading contains only conclusory language in this regard. It lacks any facts showing how the HOA has been damaged by anything MTB did or failed to do. Without facts showing how

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the HOA has been damaged, there is no basis for any derivative cause of action against MTB by the Plaintiffs on behalf of the HOA.

1. Claims Against MTB Personally

a. Legal Malpractice

To survive a Rule 12(b)(6) motion, a plaintiff in a legal malpractice action must allege the following elements: (1) existence of a lawyer-client relationship; (2) a breach of duty by the lawyer; (3) damage to the client and (4) proximate causation of the client's damage by the breach. Stokes - Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016). A plaintiff asserting a legal malpractice claim against a lawyer must first establish the existence of an attorney-client relationship between the lawyer defendant and the plaintiff. The Law of Legal Malpractice in South Carolina (S.C. Bar- CLE Division 2017). The failure to allege the existence of a lawyer-client relationship is fatal to a complaint alleging legal malpractice. Id.

The Amended Complaint plainly states MTB represented the HOA. Am. Compl., para. 7. The pleading goes to great lengths in attempts to craft language supporting a claim by individual owners for legal malpractice against MTB. This includes allegations that MTB "provided legal advice to owners such that owners could reasonably believe MTB was representing them as well." Am. Compl., para. 8. However, this is not sufficient to allege the first fundamental element of a legal malpractice claim, the existence of a lawyer-client relationship, to establish a cause of action by the individual Plaintiffs against MTB.

As is clear from the factual allegations in the Amended Complaint and material filed with it, MTB represented the HOA, not the individual owners, and the individual owners claim they have been damaged as a result. While MTB interacted with the owners and took other action as counsel

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for the HOA, there is no allegation or support for one in anything filed with the Amended Complaint, that MTB represented the individual owners. In fact, it is clear MTB did not, as it acted only as counsel for the HOA. The failure to allege the existence of an attorney-client relationship between MTB and the Plaintiffs is fatal to their legal malpractice claim against MTB.

Additionally, South Carolina law provides that lawyers are immune from liability to third parties arising from the performance of professional activities as a lawyer on behalf of and with the knowledge of the client. Stiles v. Ontario, 318 S.C. 297, 458 S.E.2d 601 (1995). *See also* Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). The purpose of this is to encourage zealous representation of client without fear of lawsuits by disgruntled opposing parties. Gaar v. NMB Realty Co., 287 S.C. 525 (Ct. App. 1986). The only exception to these generally recognized principles is the context of a beneficiary of a will. Rydde v. Morris, 318 S.C. 643, 675 S.E.2d 431 (2009); *see also* Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 875 (2009) discussed in detail below.

Based on the allegations in the Amended Complaint and material filed with it, all actions MTB took of which Plaintiffs complain were taken as lawyers for the HOA in the scope of the firm's representation of the HOA. The Amended Complaint does not allege MTB took any action outside the scope of its representation of the HOA. MTB is therefore immune from liability to the individual owners for legal malpractice for such actions.

While no South Carolina appellate court has directly addressed the issue, a majority of jurisdictions adhere to the rule that a lawyer acting as counsel for a corporation owes a duty of care solely to the corporation and not its individual shareholders, officers or directors. The Law of Legal Malpractice in S.C., p. 60 (S.C. Bar- CLE Division 2017); *see also* Bovee v. Gravel, 174 Vt. 486, 811

A.2d 137 (Vt. 2002). To determine otherwise would create basically unlimited liability for corporate counsel to individual shareholders. Applying this principle, this Court holds that MTB did not owe a duty of care to individual unit owners for actions taken in its capacity as counsel for the HOA. Thus, Plaintiffs individual claims for legal malpractice against MTB fail as pled because Plaintiffs cannot show the existence of a lawyer-client relationship between MTB and the individual owners.

Finally, under S.C. Code § 15-36-100, *et seq.*, complaints alleging professional negligence against certain South Carolina professional defendants must include an affidavit of an expert witness setting forth the basis for at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. S.C. Code § 15-36-100(B). A complaint that does not include the contemporaneous filing of a sufficient expert affidavit is subject to dismissal for failure to state a claim. S.C. Code § 15-36-100(C)(1).

Plaintiffs' filed an Affidavit of Thomas Pendarvis (a South Carolina lawyer) with the Complaint and an Amended Affidavit with the Amended Complaint. The Amended Affidavit maintains that in Mr. Pendarvis' opinion, MTB was professionally negligent. However, Mr. Pendarvis' Affidavit states that MTB represented the HOA and recognizes that MTB did not represent the individual owners. The Affidavit takes issue with advice MTB gave the HOA and actions MTB took as counsel for the HOA. These actions and advice form the factual basis of Mr. Pendarvis' opinion that MTB was professionally negligent.

However, the Affidavit fails to state the existence of an attorney-client relationship between MTB and any of the individual owners, which is the first and necessary requirement to showing a cause of action for professional negligence by the individual Plaintiffs against MTB. Therefore, the Affidavit fails to meet the requirements of S.C. Code § 15-36-100 necessary to support a cause of

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action of professional negligence by the individual Plaintiffs against MTB. The Amended Complaint is subject to dismissal under S.C. Code § 15-36-100(C)(1).

b. Fraud

In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recovery. Kahn Const. Co. v. S.C. Nat. Bank of Cha., 275 S.C. 381, 271 S.E.2d 414 (1980). Failure to allege any of these elements is fatal to recovery. Id. and Hooters of Am. v. Phillips, 39 F.Supp. 2d 582 (D.S.C. 2998); Kiriakides v. Atlas Food Sys. & Servs., Inc., 338 S.C. 572, 527 S.E.2d 371 (Ct. App. 2000). Specifically, the complaint must set forth sufficient facts to show that each of the nine elements is present or the complaint will be "facially defective." Mutual Sav. & Loan Assoc. v. McKenzie, 274 S.C. 630, 266 S.E.2d 423 (1980).

The Amended Complaint recites the elements of a fraud cause of action. However, the pleading fails to state *facts* sufficient to support a cause of action of fraud versus MTB for various reasons. The majority representations of which Plaintiffs complain were made by "Gold Crown and/or MTB." The Amended Complaint references (and includes by way of exhibits) certain letters from MTB to individual Caravelle owners. However, the pleading does not state what in these letters was false, much less what false statement they contain that MTB *knew* was false or was made with reckless disregard for the truth.

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The only representation in the Amended Complaint Plaintiffs allege "was patently false" was a statement in an April 20, 2017, letter from Gold Crown to individual owners. This letter is plainly from Gold Crown and is not from MTB. On its face, there is no indication MTB was in any way involved with the letter. The Amended Complaint fails to specify a material false statement MTB made with knowledge of the falsity or reckless disregard for the truth. Neither does the Amended Complaint specify a material false statement by MTB on which Plaintiffs detrimentally relied.

Further, nothing in the Amended Complaint alleges MTB took any action outside the scope of its representation of the HOA, even with respect to the fraud cause of action. No South Carolina authority provides for such a claim against MTB under the facts as alleged. Therefore, the Amended Complaint fails to state facts sufficient to constitute a cause of action for fraud against MTB.

c. Conversion

Conversion is the unauthorized assumption and exercise of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Austin v. Independent Life and Acc. Ins. Co., 296 S.C. 156, 370 S.E.2d 918 (Ct. App. 1988) *citing* Steele v. Victory Savings Bank, 368 SE.2d 91 Ct. App. 1998). A cause of action for conversion is comprised of the following elements: (1) an interest by the plaintiff by the thing converted; (2) the defendant converted the property to his or her own use and (3) the use was without plaintiff's permission. The Elements Civil Causes of Action, 5th Ed., S.C. Bar, p. 121 (2015).

The Amended Complaint does not plead facts supporting a conversion cause of action against MTB. Plaintiffs base this claim on the theory that "Gold Crown and/or MTB" directed Delta to remove owners' belongings from their units and that "Gold Crown and/or MTB" denied owners access to the property. They also say "Gold Crown and/or MTB," exercised dominion and control

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over owners' belongings (*see* Am. Compl. paras. 144 – 147) and that "Gold Crown or MTB, without the permission of the owners, required Delta to remove the items from these Owners' units to either throw away, recycle or re-sell the items." Am. Compl., para. 68.

However, alleging that "Gold Crown or MTB" took certain action that forms the basis of a claim for conversion is insufficient to allege that *MTB* converted any property Plaintiffs owned. The facts alleged in the Amended Complaint, in the light most favorable to the Plaintiffs, show only that the HOA and/or Delta handled the property at issue. Even if it was at MTB's direction, this does not amount to a claim for conversion by MTB because the firm, as alleged, never possessed, controlled or retained the benefit of any of Plaintiffs' personal property. Even if taken as true, the only facts alleged supporting conversion are that the HOA and/or Delta (not MTB) disposed of Plaintiffs' personal property.

Further, there is no allegation that MTB was acting outside its scope as lawyers for the HOA, and thus it is immune from liability for these actions to the Plaintiffs who MTB did not represent. Plaintiffs cite Stiles v. Ontario for the proposition that MTB may be liable to Plaintiffs for conversion. 318 S.C. 297, 457 S.E.2d 601 (1995). Plaintiffs' reliance on Stiles is misplaced. That case stands for the proposition that lawyer may be liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client. Id. Plaintiffs here have not alleged conspiracy against MTB.

Moreover, Plaintiffs have not alleged or stated facts showing that MTB breached an independent duty to the individual owners, or did anything outside the scope of its representation of the HOA. Even if Stiles relates to a cause of action for conversion, which it does not, its principle is inapplicable here. All of MTB's actions were taken in the course of representing the HOA, and

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therefore the firm is immune from liability to persons it did not represent for damages arising out of MTB's representation of the HOA. The cause of action for conversion against MTB therefore fails as pled.

2. Derivative Causes of Action

Plaintiffs also bring causes of action under a derivative theory pursuant to SCRCP 23(b)(1), for legal malpractice, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. "In South Carolina, the authority to direct the business affairs of a corporation is delegated to the board of directors, not the shareholders." Carolina First Corp. v. Whittle, 343 S.C. 176, 185, 539 S.E.2d 402, 407 (Ct. App. 2000). Individual shareholders may not directly sue corporate directors for losses suffered by the corporation. Babb v. Rothrock, 303 S.C. 462, 410 S.E.2d 418 (1991). "An action seeking to remedy a loss to the corporation is generally a derivative one." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001).

Rule 23(b)(1) provides for derivative actions by shareholders to enforce a right of a corporation where the corporation has failed to enforce a right which it may properly assert. A derivative claim is where a plaintiff, who is a member of the company, brings a claim in the right of the company when the company will not bring the claim for itself. Johnson v. Baldwin, 221 S.C. 141, 69 S.E.2d 585 (1952) and Gary v. Matthews, 148 S.C. 125, 145 S.E. 702. (1928). The stockholder in a derivative action is only a nominal plaintiff, the company being the real party interest. Id. and Ward v. Atlas Constr. Co. Inc., 276 S.C. 346, 278 S.E.2d 621 (1981).

Rule 23(b)(1) has heightened and particularized pleading requirements intended to allow the court to perform a gatekeeping function to prevent the unrestrained use of derivative actions. Patterson v. Witter, 418 S.C. 66, 791 S.E.2d 294 (Ct. App. 2016). "A derivative action that does

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not meet the pleading requirements of Rule 23(b)(1) is properly dismissed under Rule 12(b)(6)." Clearwater Tr. v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006). The authority to direct business and affairs of a corporation is delegated to the board of directors, not the shareholders. Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct. App. 2000).

A derivative action is, in essence, a challenge to the board's managerial authority. Whittle, 343 S.C. 176 (2000). It is a suit where shareholders attempt to recover for losses the corporation has suffered. Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001). A shareholder's suit is derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder. Id. and Hite v. Thomas & Howard Co., 305 S.C. 358, 409 S.E.2d 340 (1991). A derivative action is not the proper means for recovery of damages by an individual member of a company. A shareholder's derivative suit is an action in equity, and a party is not entitled to a jury trial as a matter of right for derivative causes of action. Pelfrey v. Bank of Greer, 270 S.C. 691, 244 S.E.2d 315 (1978) *quoting* Collier v. Green, 244 S.C. 367, 137 S.E.2d 277 and Lucken v. Wichman, 5 S.C. 411 (1874).

a. No Damages to the HOA

Plaintiffs claims, at their core, relate to and arise out of their loss of personal property and other damages the individual owners incurred resulting from actions the HOA and Gold Crown took. Plaintiffs do not seek recovery for losses the HOA has incurred, but for losses they individually suffered. The Amended Complaint attempts to plead around these problems.

First, it lumps the actions of Gold Crown and MTB together with allegations such as "Gold Crown and/or MTB's actions have caused the Association to be exposed to liability of the Owners" (para. 88), and "the damages owned [sic] to the association to the Owners is a 'common expense'

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essentially causing the Owners to owe money to themselves (para. 89). However, this does not state facts sufficient to show what MTB actually is alleged to have wrongly done. As pled, Gold Crown *or* MTB is responsible for the bad act(s) at issue.

Next, the Amended Complaint alleges the HOA incurred damages as a result of this negligence. These include attorney's fees charged to the Association, additional fees charged by Gold Crown to the Association and an HO-6 Management Fee charged to the Association. *See* Am. Compl., para 109. This Court is unsure how these amounts could be "damages" caused by MTB's alleged acts/omissions. This listing of alleged damages is merely the use of conclusory statements that the HOA was damaged, and the pleading lacks actual facts supporting a claim that the HOA was damaged by anything MTB did or failed to do. In short, the Amended Complaint contains no *facts* showing how the HOA has been damaged by MTB's alleged acts/omissions.

It is clear the only real damages alleged are damages to the individual owners for the loss of their personal property and various charges they have been assessed by the HOA. The Plaintiffs' individual losses are the only possible damages existing under the facts and allegations as pled. In order to prevail on any of the Plaintiffs' derivative causes of action alleged (negligence, breach of fiduciary duty and aiding and abetting breach of fiduciary duty), Plaintiffs must allege that they, as members of the HOA, are seeking recovery for damages the HOA has incurred when the HOA refuses to pursue the claim itself.

Despite using certain key words, Plaintiffs' claims here all arise out of their loss of personal property, not any loss the HOA incurred. Plaintiffs' derivative causes of action therefore fails to meet the heightened pleading requirements of SCRCP 23(b)(1). Their derivative causes of action alleged in the Amended Complaint all fail as pled as a result.

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b. Expert Affidavit Fails to Support Derivative Claim

The Amended Complaint includes a derivative cause of action for legal malpractice as well, which means the Plaintiffs are seeking recovery for the HOA for damages the HOA incurred proximately caused by MTB's negligence in the course of its representation of the HOA. However, Plaintiffs' expert Affidavit fails to state a negligent act or omission of MTB to support a cause of action for professional malpractice on a derivative theory.

While the Affidavit refers to generic "damages" MTB's actions caused the HOA, it is clear the real damages at issue are the individual Plaintiffs' loss of their personal property and other damges the individual owners allegedlyincurred. The Affidavit does not state what "financial losses" the HOA has suffered. This is not sufficient to set forth a negligent act or omission of MTB on a derivative theory, as damages are a necessary element of a negligence cause of action. The Amended Complaint is therefore subject to dismissal under SCRCP 12(b)(6) for failure to file a sufficient expert affidavit under S.C. Code § 15-36-100.

c. No Derivative Malpractice Claim

MHC

Plaintiffs' derivative claims against MTB are also akin to an assignment of ~~assignment of~~ a malpractice claim to the individual Plaintiffs, which South Carolina law precludes. Skipper v. Ace Prop. & Cas. Ins. Co., 413 S.C. 33, 775 S.E.2d 37 (2015). This is a matter of public policy in light of the unique and confidential personal nature of the relationship between a lawyer and her client. The Law of Legal Malpractice in S.C., S.C. Bar (2017); ~~*see also* Goodley v. Wank & Wank, Inc., 133 Cal. Rptr. 83 (Cal. Ct. App. 1976). Generally, the filing of a legal malpractice action results in the waiver of the attorney-client privilege. SCRPC 1.6(b)(6); The Law of Legal Malpractice in S.C., S.C. Bar (2017); *see also* Picadilly, Inc. v. Raikos, 582 N.E.2d 338, (Ind. 1991).~~

MHC

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Assigning a legal malpractice claim places the defendant lawyer in the untenable position of having to defend claims resulting from its communications with its client without being able to discuss those communications (which the client has not waived). Once the case is assigned, the client loses control over the disclosure of confidential information, which the lawyer may reveal as necessary to establish the defense. The Law of Legal Malpractice in S.C. (2017) ~~citing Picadilly, *supra*.~~ The client is relegated to observing from the sidelines as the assignee pursues the lawyer. This erodes the principles fostered by the duty of confidentiality. Id. This is a primary reason legal malpractice claims in South Carolina are not assignable. Skipper v. Ace, *supra*.

Filing a malpractice action as a derivative claim similarly places the defendant lawyer in a precarious and untenable position because the lawyer must defend herself, but the client has not waived the privilege. California precludes derivative legal malpractice claims. Its courts have based this on the same reasoning as the South Carolina courts that have precluded the assignment legal malpractice claims.

~~The primary issue relates to the attorney-client relationship in the context of a derivative action by shareholders against a company's lawyers. The corporation, not the shareholder, holds the attorney-client privilege in a situation where a lawyer represents a company. NFL Properties, Inc. v. Superior Court, 65 Cal.App.4th 100, 75 Cal.Rptr.2d 893 (1998). Shareholders do not enjoy access to privileged information merely cause the lawyers' actions also benefit them, nor do shareholders own the right~~ to waive the attorney-client privilege ~~simply by filing an action on the company's behalf. Id. Thus, the filing of a derivative action does not result in the corporation's waiver of the privilege. Id., *see also* Pacific Tel. & Tel. Co. v. Fink, 141 Cal.App.2d 332, 296 P.2d 843 (1956). Because of this, a derivative lawsuit against a corporation's outside counsel has the dangerous~~

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~~potential for robbing the lawyer-defendant of the only means he or she may have to mount a meaningful defense, as the lawyer must preserve the attorney-client privilege while trying to show that her representation of the client was not negligent. Kracht v. Perrin, Gartland & Doyle, 219 Cal.App.3d 1019, 268 Cal.Rptr. 673 (1990).~~

It is impossible for a lawyer to mount a defense in a shareholder derivative action alleging a breach of duty to a corporate client, where, by the very nature of the action, the lawyer is foreclosed (in the absence of any waiver by the corporation client) from disclosing the communications which are alleges to constitute a breach of that duty. That is exactly the case here, where the Plaintiffs' claims against MTB are all based on alleged advice the firm provided its client, the HOA. Thus, in order to defend itself at all, MTB must disclose correspondence with its client, the HOA. However, the HOA has not waived the attorney-client privilege.

Allowing a derivative claim against MTB here would be akin to allowing the assignment of the HOA's legal malpractice claim. This Court applies the same principle and precludes Plaintiffs' attempt to bring a legal malpractice action as a derivative claim against MTB on behalf of the HOA. The Amended Complaint therefore fails to state facts sufficient to constitute a derivative claim on behalf of the HOA against MTB for any of the causes of action alleged.

3. Third-Party Beneficiaries

Plaintiffs maintain MTB is liable to them as individual owners because they are third-party beneficiaries to MTB's contract to represent the HOA. Plaintiffs cite Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014) and Sentry Select v. Maybank, Opinion No. 27806 (S.C. 2018) to support their claim in this regard. Plaintiffs' reliance on these cases is misplaced. Fabian stands for the proposition that South Carolina recognizes a cause of action against a lawyer by a third-party

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beneficiary of a will or estate planning document against a lawyer whose drafting error defeats or diminishes the client's intent. 410 S.C. 475, 765 S.E.2d 132 (2014). The Court reasoned that where the client is deceased, imposing an avenue for recourse in the beneficiary of a will is effectively enforcing the client's intent.

That is not the situation here. First, Fabian only extended a cause of action to a third-party beneficiary in the estate planning and will context. It did not extend lawyer immunity to third-parties for any other purpose. Further, MTB's client here is the HOA. The HOA is not deceased and is certainly able to pursue recourse against MTB if the HOA believes MTB provided it negligent advice.

Sentry v. Maybank dealt with an insurance carrier's ability to pursue a claim for legal malpractice a lawyer committed while representing the carrier's insured. The facts in that case were that a law firm the insurer hired to represent its insured failed to respond to Requests to Admit, essentially admitting to liability of the insured. The Court's limited holding in that case was: (1) an insurer may maintain a direct malpractice action against counsel hired to represent its insured where the insurance company has a duty to defend and (2) the insurer may only recover for the attorney's breach of duty to his client when the insurer proves the breach is the proximate cause of damage to the insurer. If the interests of the client are the slightest bit inconsistent with the insurer's interest, there can be no liability of the attorney to the insurer. Sentry v. Maybank, *supra*. The Court in Sentry expressly limited the scope of its ruling to situations dealing with insurers and law firms they retain on behalf of their insureds.

This case does not involve allegations by an insurer against a law firm hired to represent its insured. Thus, Sentry does not apply to create any potential cause of action by the individual Plaintiffs against MTB for actions MTB took during the course of representing the HOA. Further, under the

reasoning of Fabian and Sentry, the proper method for Plaintiffs to pursue this sort of claim against MTB would be through a derivative action. As detailed above, Plaintiffs' derivative claims against the firm fail as pled.

4. Real Parties at Interest

The Court notes Plaintiffs have filed a separate action seeking recovery for damages arising out of the same facts and circumstances at issue here against Lloyd's of London and Delta, Hager, et al. v. Lloyd's of London, et al., C/A 2018-CP-26-2871. Plaintiffs have not sued the HOA. There are avenues for Plaintiffs to pursue if they believe they have been wronged, but the Amended Complaint fails to plead facts sufficient to state facts to support and claim alleged against MTB, individually or derivatively.

Conclusion

For the reasons stated above, the Amended Complaint fails to state facts sufficient to constitute any cause of action alleged against MTB, individually and/or derivatively, and therefore, the Court grants MTB's Motion to Dismiss the Amended Complaint. Plaintiffs' claims against MTB are therefore DISMISSED WITH PREJUDICE pursuant to SCRCP 12(b)(6).

IT IS SO ORDERED.

March 6, 2019

Conway, South Carolina

Benjamin H. Culbertson
Circuit Court Judge

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	2148	7/31/2018
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

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

Brian C. Gambrell 810 Dutch Square Blvd Suite 112 Columbia, SC 29210

Andrew W. Countryman 321 Wingo Way Suite 102 Mount Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Renee N. Elvis - Clerk of Court

Court Reporter: Grace Hurley

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2018 Aug 01 12:01 PM - HORRY - COMMON PLEAS - CASE#2018CP2602974

ELECTRONICALLY FILED - 2018 Aug 01 12:01 PM - HORRY - COMMON PLEAS - CASE#2018CP2602974

Horry Common Pleas

Case Caption: Karl Hager , plaintiff, et al VS Mccabe Trotter & Beverly PC , defendant, et al

Case Number: 2018CP2602974

Type: Order/Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP2602974

Karl Hager Bowers Caravelle Llc Susan Welborn Robert Singelton	Caravelle Resort Association Inc Erik Arnold Jay Welborn Terri Hager	Mccabe Trotter & Beverly Pc	Gold Crown Management Company Inc
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by: Clerk Of Court		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

Defendant McCabe, Trotter & Beverly, PC Motion to Dismiss is WITHDRAWN.

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2148 Judge Code	6/19/2018 Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

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For Clerk of Court Office Use Only

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

Brian C. Gambrell 810 Dutch Square Blvd Suite 112 Columbia, SC 29210

Andrew W. Countryman 321 Wingo Way Suite 102 Mount Pleasant, SC 29464
Teresa L. White 104 Haddonfield Lane Cary, NC 27513

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Renee N. Elvis - Clerk of Court

Court Reporter: Bobbi J. Fisher

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Horry Common Pleas

Case Caption: Karl Hager , plaintiff, et al VS Mccabe Trotter & Beverly PC , defendant, et al

Case Number: 2018CP2602974

Type: Order/Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

ELECTRONICALLY FILED - 2018 May 14 1:01 PM - HORRY - COMMON PLEAS - CASE#2018CP2602974

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Karl & Terri Hager; Robert Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated, Plaintiffs, vs. McCabe Trotter & Beverly, PC and Gold Crown Management Company, Inc. Defendants.	Case No. 2018-CP-26-_____ **SUMMONS** **JURY TRIAL DEMANDED**

TO DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the attorney for the aforesaid Plaintiff, the Law Firm of Jason E. Taylor, P.C., 810 Dutch Square Blvd, Suite 112, Columbia, SC 29210 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, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.
/s/ Brian C. Gambrell
810 Dutch Square Blvd, Suite 112
Columbia, SC 29210
Telephone: (800) 351-3008
Facsimile: (803) 610-1931
bgambrell@jasonetaylor.com

Jason E. Taylor (SC Bar #102581)
Lawrence B. Serbin (SC Bar #102569)
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Columbia, South Carolina
May 14, 2018

ELECTRONICALLY FILED - 2018 May 14 1:01 PM - HORRY - COMMON PLEAS - CASE#2018CP260974

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Karl & Terri Hager; Robert Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated, Plaintiffs, vs. McCabe Trotter & Beverly, PC and Gold Crown Management Company, Inc. Defendants.	Case No. 2018-CP-26-_____ **VERIFIED COMPLAINT** **JURY TRIAL DEMANDED**

TO: DEFENDANTS NAMED ABOVE

The Plaintiffs named above, complaining of the Defendant herein, would respectfully show unto the Court:

PARTIES

1. Plaintiffs Karl & Terri Hager; Robert Singleton and Bowers Caravelle, LLC (hereinafter "the Owners"); are residents as follows;

   a. Karl & Terri Hager are residents of Virginia;

   b. Robert Singleton is a resident of South Carolina;

   c. Jay & Susan Welborn;

   d. Erik Arnold is a resident of Georgia; and

   e. Bowers Caravelle LLC is a limited liability company organized under the laws of Maryland;

2. The Owners file this action on behalf of themselves in their individual capacities,

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derivatively as shareholders of Caravelle Resort Owners Association, Inc., and also behalf of all others similarly situated.

3. The Caravelle Resort Owners Association, Inc. (hereinafter "the Association") is a horizontal property regime organized and existing under the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, *et. seq.* The South Carolina Horizontal Property Act is hereby incorporated by reference.

4. The Association consists of 346 resident units and three commercial units. The potential members of the Plaintiff Class include the owners of all residential units and specifically excludes the commercial units. Hereinafter, the words "unit" or "units" only refers to the residential units of the Association.

5. Defendant McCabe Trotter & Beverly, PC (hereinafter "MTB") is a professional corporation organized under the laws of State of South Carolina and doing business in the various counties including Horry County.

6. At all times relevant herein, MTB are and/or held themselves out to be the attorneys for the Association.

7. Defendant Gold Crown Management, Inc. (hereinafter "Gold Crown") does business within the several countries of South Carolina including Horry County.

8. At all times relevant herein, Gold Crown is the management company for the Association.

JURISDICTION & VENUE

9. This Court has subject-matter jurisdiction, pursuant to South Carolina Constitution Article V § 11, over the claims in this lawsuit.

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10. This Court has personal jurisdiction because the events giving rise to the matter in controversy occurred within the State of South Carolina.

11. Venue is proper in this Court because the events alleged herein occurred in the County of Horry.

CLASS ALLEGATIONS

12. Pursuant to Rule 23(a), SCRCP, Owners seek certification as a class action because the class of plaintiffs are so numerous that joinder of all members is impracticable, there are questions of law and fact common to the class; the claims of the representative parties are typical of the entire class, injunctive relief is sought, and the damages for the causes of action exceed one hundred dollars for each member of the class.

13. There are common questions of law or fact common to the Defendants including, *inter alia*:

a. Did the Board of the Association have the authority to enter into an agreement with Commercial Disaster Recover, LLC f/d/a Delta Restoration LLC (hereinafter "Delta") to remove Owners' personal items from their units and store the Owners' personal belongings in the parking garage of the Association;

b. Did the Board of the Association have the authority to enter into an agreement with Lloyd's of London regarding the payment for the removal the Owners' personal belongings for the Owners' units?

c. Did the Board of the Association have the duty to monitor or supervise Delta's handling or storage of the Owners' personal belongings in the parking garage of the Association?

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d. Did the Board of the Association have the authority under the Master Deed to enter Owners' units to remove their personal belongings?

e. Did the Board of the Association have the authority under the Master Deed to act as the agent of the Owners under the Owners' HO-6 policies?

f. Is the attempt to categorize the demand for payments for "soft goods" and/or "content manipulation fee" as an assessment an *ultra vires* act?

g. Is the attempt to collect payments for "soft goods" and/or "content manipulation fee" by threatening to terminate services an *ultra vires* act?

h. Is the attempt to collect payments by including charges for "soft goods" on certificates used for real estate closings an *ultra vires* act?

i. Did the Board of the Association have the authority under the Master Deed to enter into a contract with construction companies to gut the entire building without specific approval from the Owners?

j. Did MTB commit acts of professional negligence by advising the Board of the Association it had the authority to do subparts a-i?

k. Did MTB commit an act of professional negligence by disallowing Owners to replace the Board of Director at the February 17, 2018?

l. Did MTB breach its fiduciary duties to the Association that the Board of Association had the authority to do subparts a-i?

m. Did Gold Crown breach its fiduciary duties to the Association by advising and/or assisting the Board of the Association to do subparts a-i?

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n. Did Gold Crown commit an act of negligence by advising and/or assisting the Board of the Association to do subparts a-i?

o. Did Gold Crown breach its fiduciary duties in managing the Association's money since 2016?

14. The claims asserted by Owners in the instant action are typical of the claims against the Defendants.

15. Pursuant to SCRCP 23, the prosecution of separate actions against members of the Defendants would create a risk of inconsistent or varying adjudications with respect to individual members Plaintiff Class.

16. Pursuant to SCRCP 23, the prosecution of separate actions against each member of the Defendants, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

17. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable.

18. Furthermore, as the damages suffered by individual Plaintiff Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Plaintiff Class to individually redress the wrongs done to them by Defendants.

19. There will be no difficultly in the management of this action as a class action.

20. Pursuant to Rule 23(b)(1), the Owners also bring this as a derivative action against MTB and Gold Crown.

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21. The Owners have sent numerous letters to the Board of Directors, Gold Crown and MTB to resolve the matters alleged herein. These letters include the following:

a. Demand letter from counsel dated April 20, 2018 to the Board of Directors;

b. Correspondence and emails from Mr. & Mrs. Hager: letter to the Board via Gold Crown dated January 26, 2018 regarding the disposal and theft of belongings; the Board dated February 28, 2018 regarding content manipulation fee and theft of belongings;

c. Correspondence and emails from Ms. Campbell: letter to Board via Gold Crown dated April 10, 2018 regarding content manipulation fee; email dated to MTB and Gold Crown regarding content manipulation fee dated April 30, 2018 disputing the content manipulation fee; phone call to Gold Crown on May 3, 2018 regarding the content manipulation fee; email from Gold Crown on May 3, 2018 regarding the content manipulation fee; email to May 4, 2018 to MTB regarding the content manipulation fee; fax to MTB dated May 5, 2018 disputing the content manipulation fee;

d. Correspondence and emails from Mr. Bowers: email dated March 23, 2017 demanding immediate return of personal belongings; letter to MTB dated April 26, 2017 regarding storage of belongings; notice to MTB dated July 5, 2017 regarding looting of belongings in storage; notice to Gold Crown dated September 5, 2017 regarding police report filed regarding stolen belongings; notice to MTB dated December 29, 2017 regarding disposal of belongings; email dated February 23, 2018 to Gold Crown regarding failure to return PTAC;

e. Demand made in person by Mr. Bowers at the Board Meeting on February 17, 2018 meeting of the Association

f. Amended Demand for Dispute Resolution sent to the Association, the Board and Gold Crown dated January 8, 2018;

22. The Board of Directors has refused to fire Gold Crown or MTB despite these repeated demands.

23. To the contrary, Gold Crown and MTB have continued and/or accelerated their unlawful acts towards the Owners.

FACTUAL ALLEGATIONS

24. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

25. Owners collectively purchased a HO-6 insurance policy from Lloyd's of London as required by Article 11, Section 2 of the Master Deed of the Association. A full copy of the Master Deed is attached hereto as Exhibit 1, and is incorporated herein by reference.

26. The HO-6 policy purports to insure each Owner for dwelling, personal property and loss of use with a blanket property limit of $25,000 per unit.

27. The Lloyd's HO-6 policy covers all 346 units separately with each unit's owner as a named insured on a separate policy.

28. A single representative copy of the full Lloyd's HO-6 policy is attached to as Exhibit 2, and is incorporated herein by reference.

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29. Neither the Master Deed nor the Lloyd's HO-6 policy appoints or lists the Association, its management, or the Association's attorneys as either agents of the Owners or as additional named insureds.

30. The Master Deed appoints the Association as the agent and/or insurance trustee for the Owners under Article 11, Section 1 and Article 12, Section 2 only for the purposes of insurance that covers the entire regime and common elements. It does not do so for the purposes of the HO-6 policy required by Article 11, Section 2.

31. Hurricane Matthew struck South Carolina on or about October 8, 2016 and caused significant damage to the Association's property as well as damage to some—but not all—of the individual units.

32. The Board of the Association (hereinafter "Board"), without either authority from the Master Deed or the Owners, made the decision to remove the Owners' personal property from their Units and store the Owners' personal property in the parking garage of the Association.

33. The Board was advised to take the *ultra vires* action of removal of Owners' belongings from their units by MTB and Gold Crown.

34. The Board, again without authority from or the consent the Owners, obligated the Owners to a contract with Delta to store their belongings in the Association's parking garage.

35. Owners were not allowed by Gold Crown or MTB inspect their belongings, to remove their own belongings, or make their own arrangements for the storage of their own belongings.

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36. Owners were not allowed to come onto the Caravelle property by Gold Crown or MTB to inspect their own units to determine the scope of repairs. To the contrary, Gold Crown and/or MTB repeatedly informed the Owners would not be allowed onto the property for any reason.

37. The Board did not consult the Owners as required by the Master Deed with regards to the decision to extensively remodel and/or remediate the Owners' Units.

38. Upon information and belief, the Board by and through Gold Crown did not obtain multiple estimates for the repair costs as required by various provisions of the Master Deed.

39. Owners were not allowed a sufficient time to inspect their own belongings to determine what could be salvaged once Delta and/or Lloyd's determined that the Owners' belongings could not be salvaged.

40. Delta and/or Delta's employees were allowed by Gold Crown and/or MTB to sort through Owners' belongings to take what they wanted instead of returning the items to the Owners. The items unwanted by Delta and/or Delta's employees were then disposed of by Delta without the permission of Owners.

41. Gold Crown and/or MTB concealed from the Owners the true condition of Owners' belongings.

42. Neither Gold Crown nor MTB performed testing to determine whether Owners' belongings were contaminated despite numerous representations that Owners' belongings were unsafe due to contamination.

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43. Gold Crown's and/or MTB's failure to properly safeguard and protect the Owners' belongings have caused the owners to lose an amount of those belongings in an amount to be determined by the trier of fact by a combination of poor environment and/or theft.

44. MTB and/or Gold Crown knew or should have known that the Owners' belongings were not secure from either environmental hazards or theft.

45. Upon information and belief, Delta returned some items to certain Owners' units. Gold Crown or MTB, without the permission of the Owners, required Delta to remove the items from these Owners' units to either throw away, recycle or re-sell the items.

46. Lloyds specifically warned MTB and/or Gold Crown about the inadequacies of Delta's storage arrangements. Neither MTB nor Gold Crown took adequate steps to protect Owners' personal belongings.

47. Delta has disposed of the items remaining in the parking garage at the direction of Gold Crown and/or MTB without Owners' being allowed a reasonable amount of time to inspect or make alternate arrangements.

48. MTB's and/or Gold Crown's failure to safeguard the Owners' belongings have caused hardships on the Owners as they are forced to use portions of their HO-6 insurance coverage to replace their lost or stolen belongings in addition to the necessary repairs to their units and/or recover for lost rental income.

49. Gold Crown and/or MTB then advised the Association to charge the Owners' a fee called "content manipulation fee." The "content manipulation fee" was purportedly incurred by the Association as a result of the storage of Owners' belongings.

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50. The "content manipulation fee" has been improperly and unlawfully characterized by MTB and/or Gold Crown as an assessment.

51. Gold Crown and/or MTB have pursued Owners for repayment for a service the Owners neither wanted nor agreed to receive.

52. Gold Crown and/or MTB have also charged and/or advised the Association to charge the Owners for a package of goods called "soft goods." The Owners' purchased the "soft goods package" to replace items allegedly destroyed by Hurricane Matthew but some of these items were lost and/or destroyed while in storage by Delta.

53. Gold Crown and/or MTB misrepresented the amount of damage done to Owners' soft goods to justify the sale of a "soft goods package" to certain Owners.

54. Gold Crown and/or MTB also misrepresented to the Owners the nature and manner in which the Owners were refurnish their units in order to sell the "soft goods package" in order to achieve "uniformity."

55. Gold Crown and/or MTB have asserted claims against Owners that have sought to sell their Units at closing in order to strong arm Owners into paying the unlawful "content manipulation fee" or the exaggerated "soft goods package."

56. Gold Crown and/or MTB have also threatened to terminate the utilities to Owners' units to extort payments from Owners for either/both "content manipulation fee" or the "soft goods package" even neither are properly characterized as an assessment under the Master Deed.

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57. Gold Crown and/or MTB has also engaged in a pattern and practice of conduct regarding expenditures and collections while the Association was closed and/or Units were being gutted.

58. In particular, Gold Crown and/or MTB expended funds for services that were unnecessary/unused. For example, the Association paid a $50,000.00fee to unknown person or persons for "HO-6 Administration;" $52,030.04 for cable television; $17.149.86 for internet access, etc.

59. Gold Crown and/or MTB also in receipt of $523,243.62 from the Owners for "Content Manipulation" and $1,231.683.84 for "soft goods" while expending $327,612.87 for "Content Manipulation' and $1,104.687.35 for "soft goods."

FOR A FIRST CAUSE OF ACTION
Against McCabe Trotter & Beverly, PC
DERIVATIVELY & PERSONALLY
PROFESSIONAL NEGLIGENCE

60. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

61. MTB had an attorney client relationship with the Association at all times relevant herein.

62. MTB represented to third parties that it had an attorney client relationship with the Owners.

63. MTB advised the Association it had the authority to enter the Owners' Units to remove their belongings and/or authorize Delta to enter the Owners' Units to remove their belongings.

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64. The Association was advised by MTB to store the Owners' belongings in the parking garage rather than allow Owners to retrieve their own belongings.

65. MTB negotiated with Lloyds' on behalf of the Owners—without the Owners' permission—to share the cost of storing Owners' personal belongings.

66. MTB advised the Association to assert improper claims against the Owners for recovery

67. MTB assumed a duty towards the Owners by actively negotiating on the Owners behalf with Lloyds and other third parties.

68. MTB failed to monitor and/or take such action as was necessary to protect the Association and Owners from Delta's conduct in regards to the storage of Owners' belongings.

69. MTB also advised the Association to illegal assert claims for "content manipulation" and/or "soft goods" as assessments under the Master Deed.

70. MTB also advised the Association to assert these claims as charges to be collected at real estate closings.

71. The aforementioned acts all constitute breaches of the standard of care owned by MTB to the Association and derivatively to the Owners.

72. The aforementioned acts also constitute breaches of the standard of care owned by MTB to the Owners individually.

73. As a result of aforesaid, each Plaintiff Class member, including Owners, have suffered actual damages, consequential damages, plus attorneys' and costs.

74. These breaches of the standard of care proximately caused damages to the Association and the Owners in an amount to be determined by the trier of fact.

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FOR A SECOND CAUSE OF ACTION
Against McCabe Trotter & Beverly, PC
DERIVATIVELY
BREACH OF FIDUCIARY DUTY

75. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

76. MTB owes a fiduciary duty to the Association.

77. MTB has breached those fiduciary duties as alleged herein.

78. MTB's breach of their fiduciary duties to the Association are the direct and proximate cause of damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
Against Gold Crown
DERIVATIVELY
BREACH OF FIDUCIARY DUTY

79. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

80. Gold Crown owes a fiduciary duty to the Association.

81. Gold Crown has breached those fiduciary duties as alleged herein.

82. Gold Crown's breach of their fiduciary duties to the Association are the direct and proximate cause of damages in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
Against Gold Crown & McCabe Trotter & Beverly, P.C.
DERIVATIVELY & PERSONALLY
FRAUD

83. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

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84. Gold Crown and MTB made numerous representations to the Owners, *inter alia:*

a. regarding the necessity of the removal of Owners' personal belongings;

b. the method of testing and/or storage of Owners' personal belongings;

c. the protection of Owners' personal belongings from environmental damage and/or theft; and/or

d. the necessity of disposal of allegedly contamination of Owners' personal belongings;

85. These representations by Gold Crown and MTB were materially false.

86. Gold Crown and MTB knew or should have known these representations were false.

87. Gold Crown and MTB knew or had a reckless disregard for the truth or falsity of their representations.

88. Gold Crown and MTB intended for these representations to be relied upon by the Owners.

89. The Owners were ignorant of the falsity of the representations made by Gold Crown and MTB regarding the scope and necessity of the removal and storage of their personal belongings.

90. Owners were forced to rely upon the representations made by Gold Crown and MTB regarding the removal and storage of their personal belongings.

91. That as a result of aforesaid, the Owners have suffered actual damages including, *inter alia*, the value of the Owners lost/destroyed/disposed of personal belongings, cost of

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substitute performance, and other such actual, consequential, and special damages as may be awarded by the jury including prejudgment interest, post judgment interests, fees and costs.

92. Plaintiff is also entitled to punitive damages as the result of Gold Crown's and MTB's willful, wanton and/or reckless conduct.

FOR A FIFTH CAUSE OF ACTION
Against Gold Crown & McCabe Trotter & Beverly, P.C.
DERIVATIVELY & PERSONALLY
CONVERSION

93. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

94. Owners have an interest in all of their personal belongings that were kept in their individual units.

95. Gold Crown and/or MTB Delta directed Delta to remove the Owners' belongings without the permission from the Owners' units.

96. Owners did not give authority to either Gold Crown, MTB or Delta to remove their belongings from the Owners' units.

97. Delta was purportedly paid by Lloyd's and the Association at the direction of Gold Crown and/or MTB to preserve and protect Plaintiff Class's belongings.

98. Gold Crown and/or MTB denied Owners access to the property of the Association and prevented the Owners from removing and securing their own belongings.

99. The Association, by and through Gold Crown and/or MTB, exercised dominion and control over Owners' belongings.

100. Delta and/or persons employed by Delta converted Owners' belongings to their own use without the permission of the Owners.

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101. As a result of aforesaid, Owners have suffered damages in an amount to be determined by the trier of fact.

102. Owners are entitled to punitive damages because Gold Crown's and/or MTB's actions were done recklessly and with conscious indifference to the rights of the Owners.

FOR A FOURTH CAUSE OF ACTION
Against Gold Crown
NEGLIGENCE

103. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

104. Gold Crown holds itself out to be a professional management company which "specializes" in homeowners associations.

105. Gold Crown also holds itself out as "Accredited Association Management Company" by the Community Association Institute.

106. As a result, Gold Crown has voluntarily adopted a set of duties to the Association which include, *inter alia:*

a. Comply with current standards or practices as may be established from time to time by CAI subject to all federal, state, and local laws, ordinances, and regulations in which the Manager practices.

b. Act in the best interest of the client; refrain from making inaccurate or misleading representations or statements to a prospective client; not knowingly misrepresent facts to benefit the Manager.

c. Undertake only those engagements that they can reasonably expect to perform with professional competence.

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d. Exercise due care and perform planning and supervision as specified in the written management agreement, job description or duly adopted Board policies.

e. Disclose all relationships in writing to the client regarding any actual, potential or perceived conflict of interest between the Manger and other vendors.

f. Provide written disclosure of any compensation, gratuity or other form of remuneration from individuals or companies who act or may act on behalf of the client.

g. Insure that homeowners receive timely notice as required by state statutes or legal documents and protect their right of appeal.

h. Disclose to the client the extent of fidelity or other contractually required insurance carried on behalf of the Manager and/or client and any subsequent changes in coverage, which occur during the Manager's engagement if the amount is lower than the contract amount requires.

i. See that the funds held for the client by the Manager are in separate accounts, are not misappropriated, and are returned to the client at the end of the Manager's engagement; Prepare and furnish to the client accurate and timely financial reports in accordance with the terms of the management agreement, job description or duly adopted Board policies.

j. Recognize the original records, files and books held by the Manager are the property of the client to be returned to the client at the end of the Manager's engagement; maintain the duty of confidentiality to all current and former clients.

k. Shall conduct themselves in a professional manner at all times.

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107. Gold Crown has violated one or more of the preceding duties by failing to exercise due care.

108. Gold Crown's failed to exercise even slight care to safeguard Owners' belongings. As a result, Gold Crown is liable to Owners for punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Owners, on behalf of the Plaintiff Class, pray that judgment be rendered against the Defendants as follows:

a. For actual damages, compensatory damages, and consequential damages as may be proven at trial;

b. For prejudgment interest, post judgment interest, and costs;

c. For punitive damages in an amount as may be awarded by the finder of fact, and

d. For such other and further relief as the Court may deem just and proper.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.
/s/ Brian C. Gambrell
Brian C. Gambrell (SC Bar # 68253)
810 Dutch Square Blvd, Suite 112
Columbia, SC 29210
Telephone: (800) 351-3008
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bgambrell@jasonetaylor.com

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Attorneys for the Plaintiff

Columbia, South Carolina
May 14, 2018

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VERIFICATION

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, _____, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.

_____
Plaintiff

SWORN AND SUBSCRIBED TO BEFORE ME on this _____ day of May, 2018 to certify which witness my hand and seal.

_____
Notary Public
State of _____

My commission expires_____

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The Law Offices of
JASON E. TAYLOR P.C.

April 20, 2018

VIA REGULAR & CERTIFIED MAIL
The Caravelle Resort Owners Association, Inc.
Attn: Board of Directors
c/o John K. Reyelt
1805 Oak Street
Myrtle Beach, SC 29577

RE: Demand

Dear Board of Directors:

This letter is on behalf of owners Kris Cayton, Kevin & Sandra Conrad, Marlene Edwards, Jeison Flores, Judie Goldman, Stephanie Gore, Karl & Terri Hager, Sue Kurobasa, Ron Motsinger, Stan Robinson, Robin Serna and others on behalf of themselves and other similarly situated owners. This letter constitutes the attempt by the above-listed member/shareholders ("the Owners") of The Caravelle Resort Owners Association, Inc. (herein "the Association") to resolve this matter pursuant to Rule 23(b)(1) of the South Carolina Rules of Civil Procedure.

The Owners demand the Board bring an action in the name of the association against its management company, Gold Crown Management, Inc. ("Gold Crown"), and its attorneys, McCabe Trotter & Beverly, P.C. ("MTB") for various acts of professional negligence, breach of fiduciary duty, and aiding/abetting a breach of fiduciary duty with respect to the removal, storage, disposal and replacement of the belongings of the members by the Association. This action needs to be filed no later than May 16, 2018.

These acts stem from the decision by the Board, by and through either Gold Crown and/or MTB, to enter each Owners' units and remove their belongings (characterized as "soft goods" and "hard goods") from the units, and move them to the parking garage. These actions were without authority under the Association's Covenants or By-laws. This also relates to both Gold Crown and MTB's failure to cooperate with the demand for alternate dispute resolution (ADR) demanded previously by my clients.

p. (800) 351-3008
f. (828) 327-9008

Mailing address:
PO Box 2688 Hickory, NC 28603
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The Board's designated agent, Gold Crown, has manifestly failed in its fiduciary duties to the Association, in numerous regards by authorizing the removal of the Owners' belongings, unilaterally deciding what belongings to dispose; storing the Owners' belongings in the garage; failing to properly safeguard the Owners' belongings from either weather or theft; and/or failing to supervise the security and remediation contractors. Furthermore, the Association has no authority to "maintain uniformity" by deciding on how to replace the Owners' personal goods.

Gold Crown was aided and abetted in their breaches of their fiduciary duties by MTB. Furthermore, MTB has separately violated its own fiduciary duties to the Association by consistently misrepresenting both law and fact to the various insurance companies involved; in advising the Association to pursue reimbursement for the removal/storage from the Owners through a "Content Manipulation Fee;" and enabling non-owners to remain on the Board of Directors contrary to the Restrictive Covenants & Bylaws. The Association should also pursue an action for malpractice against MTB to the extent MTB's advice has exposed the Association to liability in tort or contract in regards to the loss, destruction, theft, and/or damage of the Owners' belongings.

The failure to file an action against Gold Crown and/or MTB by May 16, 2018 will result in this group of owners filing an action in the form of a derivative action.

Sincerely,

Brian C. Gambrell

CC: Caravelle Owners

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Karl & Terri Hager; Robert Singleton; Jay & Susan Welborn; Erik Arnold; and BOWERS CARAVELLE LLC; derivatively on behalf of CARAVELLE RESORT ASSOCIATION, INC and on behalf of themselves and those similarly situated, Plaintiffs, vs. MCCABE TROTTER & BEVERLY, PC and GOLD CROWN MANAGEMENT COMPANY, INC., Defendants.	Case No. 2018-CP-26-_____ **EXPERT AFFIDAVIT OF THOMAS A. PENDARVIS, J.D.**

STATE OF SOUTH CAROLINA)
) SS:
COUNTY OF BEAUFORT)

Personally appeared before me, Thomas A. Pendarvis, who, first being duly sworn, says:

1. It is my expert opinion, held to a reasonable degree of professional certainty based upon my review of available evidence and draft Verified Complaint, that the lawyers at the defendant law firm committed at least one act of professional negligence proximately causing financial damages to the Plaintiffs, including the individual Association members, including Karl & Terri Hager; Robert Singleton; Jay & Susan Welborn; Erik Arnold; to BOWERS CARAVELLE LLC; and to CARAVELLE RESORT ASSOCIATION, INC. (collectively "the Plaintiffs"), as more particularly set forth below.

2. Lawyers were practicing law at the relevant time under the auspices of MCCABE

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TROTTER & BEVERLY, PC ("McCabe Trotter" or "the McCabe Trotter lawyers").

3. The McCabe Trotter lawyers represented CARAVELLE RESORT ASSOCIATION, INC. ("Caravelle Resorts"), which is a horizontal property regime charged with the management of property known as "The Caravelle Resort" located 6900 N. Ocean Blvd., Myrtle Beach, South Carolina.

4. The McCabe Trotter lawyers had, among other duties, a professional duty as lawyers representing Caravelle Resorts and its Board of Directors ("the Board"), to, among other things, duties to protect the interests of Caravelle Resorts and its members, provide competent representation, including, but not limited to,

a. Provide competent advice and representation;

b. Use the legal knowledge, skill, thoroughness, and preparation reasonably necessary in the circumstances;

c. Maintain the standard of care, which required the McCabe Trotter lawyers to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the legal profession; and

d. By otherwise acting to protect Caravelle Resorts' and its members' interests.

5. The McCabe Trotter lawyers failed to perform their duties and were professionally negligent in multiple ways, including but not limited to:

a. Advising the Board that it had the authority to enter into an agreement with COMMERCIAL DISASTER RECOVER, LLC f/d/a DELTA RESTORATION, LLC ("Delta Restoration") to remove the individual owners' personal items from their units and store

the owners' personal belongings in Caravelle Resorts' parking garage, when the governing corporate documents and other authority did not provide that authority.

b. Advising the Board that it had the authority to enter into an agreement with Lloyd's of London regarding the payment for the removal the Owners' personal belongings for the Owners' units, when the governing corporate documents and other authority did not provide that authority.

c. Advising the Board that it had the authority or that it could delegate authority under the Master Deed to enter Owners' units to remove their personal belongings, when the governing corporate documents and other authority did not provide that authority.

d. Advising the Board that it had the authority under the Master Deed to act as the agent of the Owners under the Owners' HO-6 policies, when the governing corporate documents and other authority did not provide that authority.

e. Advising the Board that it could categorize the demand for payments for "soft goods" and/or "content manipulation fee" as an assessment was within their authority, when such acts are clearly outside of the available authority and constitute *ultra vires* acts.

f. Advising the Board that it could attempt to collect payments from the owners for "soft goods" and/or "content manipulation fee" by threatening to terminate the utilities to the owners' units, when such acts are clearly outside of the available authority and constitute *ultra vires* acts.

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g. Advising the Board that it could attempt to collect payments from the owners by including charges for "soft goods" on certificates used for real estate closings, when such acts are clearly outside of the available authority and constitute *ultra vires* acts.

h. Advising the Board that it had the authority under the Master Deed to enter into a contract with construction companies to gut the entire building without specific approval from the unit owners, when such acts are clearly outside of the available authority and constitute *ultra vires* acts.

i. Advising the Board to prevent the owners in February 17, 2018, from electing all new members to replace the Board.

6. The available evidence indicates that the McCabe Trotter lawyers were negligent, failed to meet the standard of care, and thereby breached their professional duties to Plaintiffs, by, among other things, failing to provide competent representation, including, but not limited to, each of the acts or omissions identified above.

7. The available evidence indicates that the Board accepted and followed the advice provided by the McCabe Trotter lawyers, and also would have accepted and followed the appropriate advice from the McCabe Trotter lawyers that should have been reasonably provided by the McCabe Trotter lawyers to meet the standard of care and thereby satisfy their professional and fiduciary duties.

8. It is my opinion based upon the available evidence, that as a direct and proximate result of the McCabe Trotter lawyers' acts and omissions, Caravelle Resorts and its members, including Plaintiffs, sustained financial damages.

9. In my opinion, had the McCabe Trotter lawyers met the standard of care, more

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likely than not, Caravelle Resorts and its members, including Plaintiffs, would not have suffered financial losses.

10. I am a lawyer licensed to practice law in South Carolina and in Georgia since 1992. I am a Diplomate in the AMERICAN BOARD OF PROFESSIONAL LIABILITY ATTORNEYS (ABPLA) and received a Board Certification in Legal Malpractice from the ABPLA. I have represented many dozens of clients on investigating and pursuing professional liability claims against lawyers. I have testified as an expert on lawyers' professional obligations to clients and others, including issues of the existence of attorney-client relationships and fiduciary duties, the nature and scope of attorneys' ethical, professional, legal, and fiduciary duties in particular situations, the applicable standard of care and whether the lawyer breached it, and whether damages were proximately caused by the breaches asserted. I have assisted the South Carolina Bar in drafting proposed revisions to the South Carolina Rules of Professional Conduct, based on the American Bar Association's Model Rules of Professional Conduct, which was adopted by the South Carolina Supreme Court as the ethical standards for lawyers in our state. Dozens of lawyers have consulted and retained me for guidance on ethical matters, and I have assisted lawyers in responding to disciplinary complaints. My curriculum vitae is attached as Exhibit 1.

11. I have been retained by Brian C. Gambrell with THE LAW OFFICES OF JASON E. TAYLOR, P.C. as an expert witness in this matter.

12. In rendering my opinion, I have reviewed the available evidence of the kinds of factual sources and legal authorities customarily relied upon by experts in the field of legal ethics, lawyer malpractice, and the liability of lawyers and law firms. I have had access to the factual materials available, including the following:

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a. Draft Verified Complaint provided on May 13, 2018.

b. Revised caption for the Verified Complaint provided on May 14, 2018.

c. Numerous items of correspondence with or from the Association comprising of 103 pages.

d. Minutes from a special meeting of the Board held on December 7, 2016.

e. Minutes from a meeting of the Board held on March 1, 2017.

f. Minutes from a meeting of the Board held on April 28, 2017.

g. Minutes from a meeting of the Board held on May 12, 2017.

h. Minutes from a meeting of the Board held on May 18, 2017.

i. Minutes from a meeting of the Board held on May 26, 2017.

j. Minutes from a meeting of the Board held on August 15, 2017.

k. Minutes from a meeting of the Board held on September 20, 2017.

l. McCabe Trotter lawyer letter to Turner Padget, dated April 28, 2017.

m. McCabe Trotter lawyer letter to counsel for owner dated August 2, 2017.

n. McCabe Trotter lawyer letter to owner, Robin Serena, dated January 12, 2018.

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The Affiant further sayeth not.

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis, Affiant

SWORN to before me this 14 day of May, 2018

(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires 12-7-2019.

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VERIFICATION

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, Erik Arnold, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.

Plaintiff

SWORN AND SUBSCRIBED TO BEFORE ME on this 14th day of May, 2018 to certify which witness my hand and seal.

Notary Public
State of GEORGIA

My commission expires OCT. 1 2020

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VERIFICATION

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, Peter Kem Bowers d.b.a. Bowers Carovel/Kelly, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.

Plaintiff

SWORN AND SUBSCRIBED TO BEFORE ME on this May 14 day of May, 2018 to certify which witness my hand and seal.

TORE MELSOM
NOTARY PUBLIC
ANNE ARUNDEL COUNTY
MARYLAND
My Commission Expires 4-18-2021

Notary Public
State of

My commission expires

COUNTY OF HORRY)

I, KARL JEFFERSON HAGER, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.

Plaintiff

SWORN AND SUBSCRIBED TO BEFORE ME on this 14 day of May, 2018 to certify which witness my hand and seal.

Alice F East

Notary Public

State of Virginia

My commission expires 5/31/22

ALICE F. EAST NOTARY PUBLIC REG. # 155854 COMMONWEALTH OF VIRGINIA

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ELECTRONICALLY FILED - 2018 May 14 1:01 PM - HORRY - COMMON PLEAS - CASE#2018CP2602974

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VERIFICATION

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, JAY A. WEBSTER, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.

Plaintiff

SWORN AND SUBSCRIBED TO BEFORE ME
on this 14 day of May, 2018 to certify which witness my hand and seal.

Notary Public
State of Military Justice

NOTARY PUBLIC
Office of the Staff Judge Advocate
Title 10 United States Code Section 1044(A)

My commission expires Military Justice Privilege

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ELECTRONICALLY FILED - 2018 Jun 06 4:31 PM - HORRY - COMMON PLEAS - CASE#2018CP260297

STATE OF SOUTH CAROLINA COUNTY OF HORRY Karl & Terri Hager, Robert Singleton, Jay & Susan Welborn, Erik Arnold, and Bowers Caravelle, LLC, derivatively and on behalf of Caravelle Resort Association, Inc. and on behalf of themselves and those similarly situated, Plaintiffs, v. McCabe, Trotter & Beverly, P.C. and Gold Crown Management Company, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-26-2974 **ANSWER OF DEFENDANT MCCABE, TROTTER & BEVERLY, P.C.** (Jury Trial Demanded)

Defendant McCabe, Trotter & Beverly, P.C. ("MTB"), responds to the Plaintiffs' Complaint as follows:

1. MTB denies all allegations not specifically admitted in this Answer.

2. Upon information and belief, MTB admits paragraph 1.

3. In response to paragraph 2, MTB denies the owners are proper Plaintiffs, individually, derivatively, or as a class, against MTB.

4. In response to paragraph 3, MTB admits only that Caravelle Resort Owners Association, Inc. is a horizontal property regime organized and existing under South Carolina law.

5. In response to paragraph 4, MTB admits only that, upon information and belief, the Association is comprised of 346 residential units and 3 commercial units. MTB denies all remaining allegations in paragraph 4.

6. MTB Admits paragraph 5.

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7. In response to paragraph 6, MTB admits only that it represented the Association, and the scope and duration of the representation was defined by agreement between MTB and the Association. MTB did not represent any of the Plaintiffs, who have no basis to pursue claims against MTB.

8. Upon information and belief, MTB admits paragraph 7.

9. In response to paragraph 8, MTB admits only that, upon information and belief, Gold Crown served as property manager for the Association pursuant to an agreement.

10. Paragraphs 9 – 11 state conclusions of law to which MTB is not required to respond. At this time, MTB does not contest venue.

11. MTB denies paragraphs 12 – 20, including all subparts.

12. MTB denies paragraphs 21 – 22 as stated, including all subparts.

13. MTB denies paragraph 23.

14. In response to paragraph 24, MTB realleges all preceding paragraphs as if repeated here verbatim.

15. MTB denies paragraph 25 – 27. Exhibit 1 to the Complaint is the Verification of Karl Hager, not a copy of the policy.

16. MTB denies paragraph 28. Exhibit 2 to the Complaint is the Verification of Erik Arnold, not a "single representative copy of the full Lloyd's HO-6 policy."

17. MTB denies paragraphs 29 – 30.

18. In response to paragraph 31, MTB admits only that, upon information and belief, Hurricane Matthew caused significant damage to the property.

19. MTB denies paragraph 32 as stated.

20. MTB denies paragraph 33 to the extent it is directed towards MTB..

21. MTB denies paragraph 34 as stated.

22. MTB denies paragraphs 35 – 36 to the extent they are directed towards MTB.

23. MTB is without knowledge and information sufficient to form a belief as to paragraphs 37 – 39 and therefore denies them.

24. MTB denies paragraphs 40 – 59 to the extent those paragraphs are directed towards MTB.

25. In response to paragraph 60, MTB realleges all preceding paragraphs as if repeated here verbatim.

26. In response to paragraph 61, MTB only admits it represented the Association pursuant to the specific terms of the firm's agreement with the Association. MTB did not represent the Plaintiffs.

27. MTB denies paragraphs 62 – 74.

28. In response to paragraph 75, MTB realleges all preceding paragraphs as if repeated here verbatim.

29. In response to paragraph 76, MTB admits only that it owes certain duties under the law to its clients, including the Association. MTB denies paragraph 76 to the extent it is inconsistent with this.

30. MTB denies paragraphs 77 – 78.

31. In response to paragraph 79, MTB realleges all preceding paragraphs as if repeated here verbatim.

32. Paragraphs 80 – 82 are not directed towards MTB, thus it is not required to respond.

33. In response to paragraph 83, MTB realleges all preceding paragraphs as if repeated here verbatim.

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34. MTB denies paragraphs 84 – 92 to the extent they are directed towards MTB.

35. In response to paragraph 93, MTB realleges all preceding paragraphs as if repeated here verbatim.

36. MTB denies paragraph 94 as stated.

37. MTB denies paragraphs 95 – 102 to the extent they are directed towards MTB.

38. In response to paragraph 103, MTB realleges all preceding paragraphs as if repeated here verbatim.

39. MTB denies paragraphs 104 – 108 are not directed towards MTB, thus it is not required to respond.

40. MTB denies the prayer for relief, that comprising the remainder of the Complaint.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Failure to State a Claim)

41. The Complaint fails to state facts sufficient to constitute a cause of action against MTB, and the Court should therefore dismiss it pursuant to SCRCP 12(b)(6).

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(S.C. Code § 15-36-100)

42. Plaintiffs' expert affidavit filed with the Complaint fails to meet the requirements of S.C. Code § 15-36-100, and the Court should therefore dismiss the Complaint. MTB also raises any other defense provided for in the S.C. Frivolous Proceedings Act, S.C. Code § 15-36-10, et seq. MTB maintains this Complaint is frivolous, and the firm should recover costs and attorney's fees associated with responding to it.

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FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Judgmental Immunity)

43. MTB is not liable to Plaintiffs, third parties whom MTB did not represent, for actions taken in the course of representing its client.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Proximate Cause)

44. Nothing MTB did or failed to do proximately caused any damage to Plaintiffs.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Intervening/Superseding Acts of Others)

45. Any alleged injuries Plaintiffs sustained were or may have been caused in whole or in part by the acts or omissions of persons other than MTB, over whom MTB had no control, or by superseding intervention of causes outside MTB's control.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Failure to Serve)

46. Plaintiffs have failed to perfect service of the Summons and Complaint on MTB.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Estoppel)

47. Plaintiffs should be estopped in equity from recovery against MTB.

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FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Punitive Damages Unconstitutional)

48. Plaintiffs' claim for punitive damages violates the Constitutions of South Carolina and the United States, and such claim should be barred and/or limited appropriately.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Abandonment)

49. The Plaintiffs are barred from recovery against MTB to the extent they abandoned the property allegedly converted.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Duty)

50. MTB did not owe any fiduciary or other duty to the Plaintiffs that could serve as a basis for their claims against MTB.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Unclean Hands)

51. The Plaintiffs are barred from recovery against the Defendants because they have or may have unclean hands.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Adherence to Standard of Care)

52. At all times relevant to this action, MTB acted within the standard of care applicable to it as lawyers.

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FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Failure to Mitigate)

53. Plaintiffs have failed to mitigate their alleged damages as the law requires.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Waiver)

54. The doctrine of waiver applies and bars Plaintiffs from recovery against MTB.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Privity)

55. MTB did not represent Plaintiffs. There is no privity between them that could serve as the basis for Plaintiffs' claims against MTB under the law.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Standing)

56. Plaintiffs lack standing necessary to pursue a claim against MTB.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Contributory/Comparative Negligence)

57. The Court should bar Plaintiffs from recovery to the extent they were negligent under the doctrines of contributory/comparative negligence applicable under South Carolina law.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Reservation and Non-waiver)

58. MTB reserves any additional and further defenses as may be revealed by information obtained during discovery and investigation and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully responded to the Complaint, MTB prays that this Court dismiss Plaintiffs' claims with prejudice, award costs of this action and other such other further relief as it deems just and proper. MTB demands a jury trial.

Respectfully submitted,

By: /s/ Andrew W. Countryman
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Lawyers for Defendant McCabe, Trotter & Beverly, P.C.

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ELECTRONICALLY FILED - 2018 Jun 06 4:26 PM - HORRY - COMMON PLEAS - CASE#2018CP2602974

STATE OF SOUTH CAROLINA COUNTY OF HORRY Karl & Terri Hager, Robert Singleton, Jay & Susan Welborn, Erik Arnold, and Bowers Caravelle, LLC, derivatively and on behalf of Caravelle Resort Association, Inc. and on behalf of themselves and those similarly situated, Plaintiffs, v. McCabe, Trotter & Beverly, P.C. and Gold Crown Management Company, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-26-2974 **MOTION TO DISMISS OF DEFENDANT MCCABE, TROTTER & BEVERLY, P.C.**

Defendant McCabe, Trotter & Beverly, P.C. ("MTB") submits this Motion to Dismiss the Complaint pursuant to SCRCP 12(b)(6). MTB shows the Court the following:

Bottom Line

This is a claim by individual members of a homeowners' association against the law firm that represented the association and the property manager that worked as the association's agent managing the property. The Complaint purports to be a derivative class action under SCRCP 23(b)(1). The Complaint maintains causes of action sounding in professional negligence against MTB, the law firm that represented the association. Plaintiff's Complaint fails to state facts sufficient to constitute a derivative cause of action because the only damages alleged are to the individual owners, not the association. Further, the expert affidavit Plaintiffs filed to support the Complaint to comport with S.C. Code § 15-36-100 fails for numerous reasons as discussed below.

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The causes of action for fraud and conversion are completely baseless, and the Complaint fails to state facts sufficient to constitute such claims against MTB.

Background

The individual Plaintiffs are owners of units in the Caravelle Resort condominium complex in Myrtle Beach. Compl. para. 4. The complex is subject to certain governing documents, including a Master Deed recorded on February 21, 2006, in the Horry County Register of Deeds, book 3052, p. 361. The Master Deed is referenced in and incorporated into the Complaint. Compl., para. 25. MTB is a law firm based in Columbia that represented the Caravelle Resort Owners' Association, Inc. ("HOA"). Id. at para. 5 – 6. Defendant Gold Crown Management, Inc. served as the property manager for the HOA. Id. para. 7 – 8.

The issues at bear arise out of action the HOA took to protect owners' property following Hurricane Matthew in 2016. The Complaint alleges the HOA's Board decided, without appropriate authority or permission, to remove owners' personal property from their units and store them in the parking garage of the HOA. Id. para. 31 – 32. The Complaint says MTB advised the Board to take such action and prevented owners from inspecting their belongings or making their own arrangements for the protection of the belongings. Id. at para. 35.

According to the Complaint, the owners collectively purchased an HO-6 insurance policy with Lloyd's of London purporting to insure each owner for dwelling, personal property and loss of use with limits of $25,000 per unit. Id. at para. 25 – 26. The Master Deed establishes the HOA and provides that every owner is a member of the HOA. Art. VII, Sec. 7.3. The Master Deed specifically provides that acceptance of a deed or other conveyance of an interest in a unit at the property constitutes ratification and acceptance of the provisions in the Master Deed. Id. Sec. 17.8.

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Section 7.5 of the Master Deed gives the HOA the responsibility of maintaining and keeping the common elements of the regime in good repair. The Master Deed also gives the HOA the authority to retain a managing agent for the regime. Art. VII, Sec. 7.1.

ARTICLE VII

PROPERTY OWNERS' ASSOCIATION, BOARD OF DIRECTORS, AND MANAGER

Section 7.1. Property Owners' Association, Board of Directors, and Manager. The Regime shall be administered by a Property Owners' Association, which Association shall be an incorporated association which shall act by and through a Board of Directors elected as herein provided. The Association may employ a managing agent ("Manager") for the Regime.

Accordingly, the HOA retained Gold Crown to serve as its managing agent. See also Compl., para. 8.

The HOA bylaws also give the HOA Board the power and responsibility of providing for the upkeep and maintenance of the common elements, as well as hiring personnel necessary to do that. Art. II of bylaws incorporated and/or filed with the Compl.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

c. Providing for the operation, care, upkeep, maintenance, and replacement of all the Common Elements;

d. Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Elements and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

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The Master Deed also gives the HOA Board the right to access individual units for the purpose of maintaining, repairing or replacing common elements, as well as the right of immediate access for making emergency repairs within the unit. Art. 9.6

> **Section 9.6. Right of Access.** The Board shall have the right of access to each Unit during reasonable hours and with reasonable notice for maintaining, repairing, or replacing any Common Elements located within or accessible through the Unit, and the right of immediate access for making emergency repairs within the Unit necessary to prevent damage to the Common Elements or to another Unit, including the right to enter a Unit for pest or rodent control. This easement and right of access may be exercised by the Board, by its agents and employees, or by the manager to whom the responsibility of maintaining has been delegated. To facilitate entry in the vent of any such emergency, the Owner of each Residential Unit, if required by the Board, shall deposit, under the control of the Board or its designee, a key to such Unit. Damages resulting to any Unit because of such maintenance and repairs shall be corrected promptly at the expense of the Association.

Further, the Master Deed gives the HOA Board the responsibility of applying the proceeds of casualty insurance for the repair and reconstruction of regime property in the event of a loss. Sec. 12.1. If the regime insurance proceeds to not cover the loss, the owners are responsible for any deficiency as a common expense. Id., Sec. 12.1(c).

The Complaint maintains the HOA entered into an agreement with Commercial Disaster Recovery, LLC f/d/a Delta Restoration, LLC ("Delta") to remove owners' personal items from their units and store them in the HOA parking garage. Id. at para. 13(a) and para. 34. The Complaint alleges owners were not allowed sufficient time to inspect their belongings to determine what could be salvaged once Delta determined certain belongings were unsalvageable, and that Delta then disposed of certain items without the owners' permission. Id. at para. 39 – 40.

Plaintiffs claim "Gold Crown and/or MTB" failed to properly safeguard and protect owners' belongings, which caused losses for those individual owners. Id. at para. 43. The Complaint also

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alleges that "Gold Crown and/or MTB" advised the HOA to charge owners a content manipulation fee incurred by the HOA as a result of having to store the owners' belongings. Id. at para. 49.

Further, Plaintiffs say "Gold Crown and/or MTB" charged and/or advised the HOA to charge owners for a package of goods called "soft goods" to replace certain items damages in the hurricane. Id. at para. 52. According to the Complaint, "Gold Crown and/or MTB" misrepresented the amount of damage to the owners' soft goods to justify the sale of the "soft goods" package to the owners. Id. at para. 54. The Complaint goes on to allege "Gold Crown and/or MTB" have wrongfully asserted claims against owners to strongarm them into paying the content manipulation fee and soft goods package. Id. at para. 55. It also alleges "Gold Crown and/or MTB" threatened to terminate the utilities of the owners who refused to pay and wrongfully characterized these amounts as "assessments." Id. at para. 56.

The Complaint alleges the individual owners have suffered damages as a result of these actions. "Gold Crown's and/or MTB's failure to properly safeguard and protect the Owners' belongings have caused the owners to lose an amount of those belongings in an amount [sic] to be determined by the trier of fact. . ." Id. at para. 43. According to Plaintiffs, they have been forced to use proceeds from the HO-6 policy to replace their lost or stolen property. The Complaint states the following causes of action against MTB: (1) Professional Negligence; (2) Breach of Fiduciary Duty; (3) Fraud; and (4) Conversion.

Standard of Review

SCRCP 12(b)(6) provides that a defendant may move for dismissal based on the plaintiff's failure to state facts sufficient to constitute a cause of action. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In considering a 12(b)(6) motion, "the trial court must base its ruling

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solely upon allegations set forth on the face of the complaint." Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (emphasis added); see also Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) and Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001).

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). The court should not grant a 12(b)(6) motion if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Id. The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

Argument

1. Individual Plaintiffs have no claim against MTB.

To survive a rule 12(b)(6) motion, a plaintiff in a legal malpractice action must allege the following elements: (1) existence of a lawyer-client relationship; (2) a breach of duty by the lawyer; (3) damage to the client and (4) proximate causation of the client's damage by the breach. Stokes - Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016). A plaintiff asserting a legal malpractice claim against a lawyer must first establish the existence of an attorney-client relationship between the lawyer defendant and the plaintiff. The Law of Legal Malpractice in South Carolina (S.C. Bar- CLE Division 2017). In fact, the failure to allege the existence of a lawyer-client relationship is fatal to a complaint alleging legal malpractice. Id.

Along these same lines, South Carolina law also provides that lawyers are immune from liability to third parties arising from the performance of professional activities as a lawyer on behalf

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of and with the knowledge of the client. Stiles v. Ontario, 318 S.C. 297, 458 S.E.2d 601 (1995). *See also* Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). The purpose of this is to encourage zealous representation of client without fear of lawsuits by disgruntled opposing parties. Gaar v. NMB Realty Co., 287 S.C. 525 (Ct. App. 1986). The only exception to these generally recognized principles is the context of a beneficiary of a will. Rydde v. Morris, 318 S.C. 643, 675 S.E.2d 431 (2009).

While no South Carolina appellate court has directly addressed the issue, a majority of jurisdictions adhere to the rule that a lawyer acting as counsel for a corporation owes a duty of care solely to the corporation and not its individual shareholders, officers or directors. The Law of Legal Malpractice in S.C., p. 60 (S.C. Bar- CLE Division 2017); *see also* Bovee v. Gravel, 174 Vt. 486, 811 A.2d 137 (Vt. 2002). To determine otherwise would create basically unlimited liability for corporate counsel to individual shareholders.

The Complaint alleges MTB represented and/or held itself out as representing the HOA. Nowhere does the Complaint allege MTB represented any of the individual Plaintiffs. Further, all of MTB's actions about which Plaintiffs complain were taken in the firm's capacity as counsel for the HOA. In other words, the Complaint does not allege MTB took any action outside the scope of its role as lawyers for the HOA. The Complaint does not allege MTB had a lawyer-client relationship with any of the Plaintiffs, so the claims arising out of professional negligence fail. Moreover, all of MTB's alleged actions at issue were taken in the course of representing the HOA, MTB's client. The firm is immune from liability to third parties for such actions. Therefore, Plaintiffs' claims fail as pled, and MTB is entitled to a dismissal with prejudice.

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2. Derivative Cause of Action

Plaintiffs also include class action allegations in the Complaint under a derivative theory pursuant to SCRCP 23(b)(1). This rule provides for derivative actions by shareholders to enforce a right of a corporation where the corporation has failed to enforce a right which it may properly assert. Rule 23(b)(1) has heightened and particularized pleading requirements intended to allow the court to perform a gatekeeping function to prevent the unrestrained use of derivative actions. Patterson v. Witter, 418 S.C. 66, 791 S.E.2d 294 (Ct. App. 2016).

The authority to direct business and affairs of a corporation is delegated to the board of directors, not the shareholders. Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct. App. 2000). A derivative action is, in essence, a challenge to the board's managerial authority. Whittle, 343 S.C. 176 (2000). It is a suit where shareholders attempt to recover for losses the corporation has suffered. Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001). "A shareholder's suit is derivative if the gravamen of his complaint is an injury to the corporate and not to the individual interest of the shareholder." Id. and Hite v. Thomas & Howard Co., 305 S.C. 358, 409 S.E.2d 340 (1991). A derivative action is not the proper means for recovery of damages by an individual member of a company. In practical terms, a derivative action is where shareholders sue on behalf of a company for damages the company has incurred. That is not at all the case here. Plaintiffs seek recovery for damages they incurred individually, not damages to the HOA.

Plaintiffs here purport to establish a class of members of the HOA who have been individually damaged by way of losing certain elements of personal property as a result of the actions of the HOA Board. The Complaint only alleges damages by the individual Plaintiffs, not the HOA. In fact, the Complaint lacks any mention of damages to the HOA. This is not at all sufficient to allege a derivative

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cause of action because there is zero allegation that the HOA was damaged. "A derivative action that does not meet the pleading requirements of Rule 23(b)(1) is properly dismissed under Rule 12(b)(6)." Clearwater Tr. v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006). Again, the pleading requirements applicable to a derivative action are heightened and particularized. Plaintiffs have failed to meet them here, and the Court should dismiss Plaintiff's Complaint with prejudice.

3. Plaintiff's Expert Affidavit fails to meet the requirements of S.C. Code § 15-36-100.

Plaintiffs submitted the Affidavit of Thomas Pendarvis in an attempt to satisfy S.C. Code § 15-36-100. The statute is part of the South Carolina Frivolous Proceedings Act. It provides that a complaint alleging professional negligence against South Carolina professionals (including lawyers) must be accompanied by an affidavit of an expert witness specifying a negligent act or omission and the factual basis for each claim.

As detailed above, a claim of professional negligence against a lawyer must include allegations of: (1) the existence of a lawyer-client relationship; (2) a breach of duty by the lawyer; (3) damage to the client and (4) proximate causation of the client's damage by the breach. Stokes -Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016). Mr. Pendarvis' Affidavit plainly states MTB represented "CARAVELLE RESORT ASSOCIATION, INC." Affidavit, para. 3. The Affidavit does not allege MTB had any client-lawyer relationship with any of the individual Plaintiffs. Instead, the Affidavit spuriously says MTB had nebulous "duties" to the Plaintiffs, who were members of the HOA, without stating a basis for any such duty. This is not enough to show a client-lawyer relationship between MTB and any of the Plaintiffs sufficient to support a claim for legal malpractice against the firm.

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The Affidavit goes on to confirm this, as all of MTB's actions about which the Affidavit complains were taken in the course of and as counsel for HOA. These actions include: (1) *advising the Board* it had authority to enter into the agreement with Delta (para. 5(a)); (2) *advising the Board* it has the authority to enter into an agreement with Lloyd's. . . (para. 5(b)); (3) *advising the Board* it had the authority to remove owners' personal property from units (para. 5(c)); (4) *advising the Board* it had the authority to act as the agent of the Owners under the HO-6 policies (para. 5(d)); (5) *advising the Board* it could categorize the demand for payments for soft goods and/or content manipulation fees as an assessment (para. 5(e)); (6) *advising the Board* it could attempt to collect payments from owners for soft goods and/or content manipulation fees by threatening to terminate utilities (para. 5(f)); (7) *advising the Board* it could attempt to collect payments by including charges for soft goods on certificates used for real estate closings (para. 5(g)); (8) *advising the Board* it had authority to enter into a contract with construction companies to gut the building without specific approval from owners (para. 5(h)) and (9) *advising the Board* to prevent owners from electing new members to replace old ones in February 2018 (para. 5(i)).

Each and every one of these allegations relates to MTB's advice it gave to the Board, not the individual Plaintiffs who are third parties to whom MTB does not owe a duty of care in the course of its representation of the HOA. Further, the Affidavit does not state MTB's scope of work, which would be necessary to support a claim that the advice MTB gave was bad. The Affidavit appears to merely assume MTB provided certain advice to the HOA, then makes the blanket assertion that the advice was wrong. Certainly, a lawyer cannot, under any amount of scrutiny, sufficiently state another lawyer was negligent in providing advice without having a basis to state what the advice was.

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While creatively written, the Affidavit merely states that MTB gave advice to the HOA, not the Plaintiffs. There is nothing in the Affidavit supporting a claim that MTB owed independent duties to or represented the Plaintiffs. Despite Mr. Pendarvis' general assertions in the Affidavit that MTB was "negligent," the Affidavit fails to set forth actual facts sufficient to show a single negligent act or omission that could serve as the basis of Plaintiffs' claim of professional negligence against the firm. The Affidavit therefore fails to meet the requirements of S.C. Code § 15-36-100, and the Court should therefore dismiss the Complaint.

4. MTB did not owe Plaintiffs any fiduciary duty.

One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation. Rest. (2nd) Torts §874 (1979). A fiduciary relationship exists when one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of one reposing the confidence. SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). The existence of a fiduciary relationship is a question of law for the court. Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (2011).

The attorney-client relationship is fiduciary in nature, as lawyers owe their clients a fiduciary duty not to act in a manner adverse to the client's interest. Id. Our courts have examined whether a fiduciary relationship exists in a number of contexts, but never between a lawyer for a corporation and the corporation's members. Without direct precedent, the question is whether the Complaint alleges that the Plaintiffs reposed any special trust and confidence in MTB. *See* O'Shea v. Lesser, 308 S.C. 10, 416 S.E.2d 629 (1992). The Complaint simply states MTB represented the HOA. It does not say anything at all about any relationship between MTB and the Plaintiffs. It contains no allegation

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of facts showing that the Plaintiffs reposed any special trust in MTB that could serve as the basis for a fiduciary relationship.

Further, a claim for breach of fiduciary and a claim for legal malpractice are duplicative if they arise out of the same factual allegations. RFT Mgmt. Co., LLC v. Tinsley & Adams, LLP, 399 S.C. 322, 732 S.E.2d. 166 (2012). When both claims of breach of fiduciary duty and legal malpractice are based on the same facts or arose from the same duty, the claim for breach of fiduciary duty is duplicative, and the plaintiff is limited to pursuing its legal malpractice claim. Id. The judicial preference is for legal malpractice as the required cause of action, not breach of fiduciary duty. Viera v. Simpson, 2015 WL 1299959 (D.S.C. 2015) citing Meador v. Albanese Law Office, 2010 WL 3807163 (N.D.N.Y. Sept. 23, 2010).

Here, the Complaint contains a single set of facts followed by "shot gun" allegations against MTB. With no attorney-client relationship between the Plaintiffs and MTB, Plaintiffs try to plead something that will stick. They fail in trying to do so with a breach of fiduciary duty cause of action because (a) the Complaint contains no facts showing the existence of a special relationship between MTB and the Plaintiffs that could serve as the basis of a fiduciary duty and (b) the fiduciary duty claim is rolled into the legal malpractice claim which fails for the reasons discussed above. The Court should dismiss the Complaint accordingly.

5. Fraud

The Complaint, brazenly and with no factual support, alleges a cause of action of fraud against MTB. In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth

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or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recovery. Kahn Const. Co. v. S.C. Nat. Bank of Cha., 275 S.C. 381, 271 S.E.2d 414 (1980). Failure to allege any of these elements is fatal to recovery. Id. and Hooters of Am. v. Phillips, 39 F.Supp. 2d 582 (D.S.C. 2998); Kiriakides v. Atlas Food Sys. & Servs., Inc., 338 S.C. 572, 527 S.E.2d 371 (Ct. App. 2000). Specifically, the Complaint must set forth sufficient facts to show that each of the nine elements is present or the Complaint will be "facially defective." Mutual Sav. & Loan Assoc. v. McKenzie, 274 S.C. 630, 266 S.E.2d 423 (1980).

The Complaint fails to state facts sufficient to constitute a cause of action of fraud versus MTB for various reasons. First, there is no factual allegation that MTB made any representation at all to the Plaintiffs. The only allegation is that MTB gave advice to the HOA Board. To sufficiently plead a fraud cause of action, Plaintiffs must allege MTB made some false representation to *them*. The Complaint does not do so and is fatally defective as a result.

Similarly, the Complaint fails to state facts supporting any of the other elements of fraud against MTB. Plainly read, the Complaint discusses correspondence the Board and/or Gold Crown made to them. While the Plaintiffs generically seem to argue that MTB provided advice to the Board about certain items, there is not even the allegation that the firm represented *anything* to Plaintiffs, much less that they relied on any representation MTB made. The Complaint fails to state facts sufficient to constitute a cause of action for fraud against MTB, and the Court should dismiss it with prejudice.

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6. Conversion

Conversion is the unauthorized assumption and exercise of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Austin v. Independent Life and Acc. Ins. Co., 296 S.C. 156, 370 S.E.2d 918 (Ct. App. 1988) citing Steele v. Victory Savings Bank, 368 SE.2d 91 Ct. App. 1998). A cause of action for conversion is comprised of the following elements: (1) an interest by the plaintiff by the thing converted; (2) the defendant converted the property to his or her own use and (3) the use was without plaintiff's permission. The Elements Civil Causes of Action, 5th Ed., S.C. Bar, p. 121 (2015).

The Complaint by no stretch of the imagination, pleads facts supporting a conversion cause of action against MTB, and the inclusion of that claim is frivolous to the level of being sanctionable. The conversion cause of action is based on the theory that "Gold Crown and/or MTB" directed Delta to remove owners' belongings from their units and that "Gold Crown and/or MTB" denied owners access to the property. It also says the HOA, "by and through Gold Crown and/or MTB," exercised dominion and control over owners' belongings. Compl. paras. 94 – 102. The Complaint contains no allegation that MTB converted any property Plaintiffs owned nor facts showing this. To the contrary, the facts and allegations in the Complaint show that the HOA and/or Delta handled the property at issue. Even if it was at MTB's direction, this does not amount to a claim for conversion because it, as alleged, never possessed or controlled any of Plaintiffs' property.

Suing a lawyer is a serious endeavor, and especially so to accuse a lawyer of conversion. Under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. Runyon v. Wright, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be sanctioned for filing a pleading,

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motion, or other paper in bad faith whether or not there is good ground to support it. Id. The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith.

While a lawyer does not have a duty to consult with a potential defendant prior to filing suit, before alleging conversion against an attorney for misappropriation of client funds or legal malpractice, a reasonable investigation is necessary. Ex Parte Gregory, 378 S.C. 430, 663 S.E.2d 46 (2008). This certainly would certainly apply to a conversion cause of action as well. Here, there is no basis for the allegation of conversion against MTB based on the facts in the Complaint. Even if taken as true, the only facts supporting conversion are that the HOA and/or Delta disposed of Plaintiffs' personal property. There is no support in the factual allegations for turning this into a conversion claim against MTB, and it certainly does not appear Plaintiffs reasonably investigated this claim before filing suit against MTB for conversion.

MTB therefore asks the Court to dismiss the Complaint with prejudice and award costs and attorney's fees for filing a frivolous claim of conversion against the firm.

7. Factual allegations against "Gold Crown and/or MTB" are insufficient.

All the pertinent allegations in the Complaint discussing what actually happened place responsibility on "Gold Crown and/or MTB." The Complaint never once directly says what MTB allegedly did that could amount to a cause of action by the Plaintiffs, in any capacity, against the firm. The only thing the Complaint definitively alleges MTB did was represent the HOA. The Plaintiffs'

issues are all with actions the HOA/Board took, not MTB. Nonspecific facts followed by blanket allegations do not make a sufficient Complaint.

8. Failure to Serve

Plaintiffs have not served MTB with the Complaint. The Court should dismiss it if Plaintiff fails to timely perfect service under the rules.

Conclusion

The Complaint fails to state facts sufficient to constitute any cause of action alleged against MTB under SCRCP 12(b)(6). Even if taken as true, the allegations in the Complaint fail to state a basis for a derivative claim because the only damages sought are for losses the individual Plaintiffs, not the HOA, suffered. Further, the facts as pled provide no basis for any other cause of action pled against MTB. The firm did not represent the Plaintiffs, and the client-lawyer relationship that is the first element to bringing a professional negligence claim is clearly lacking. Along those same lines, all the actions about which Plaintiffs complain are actions MTB allegedly took during the course of its representation of the HOA, not the Plaintiffs. MTB is immune from liability to Plaintiffs, who the firm did not represent, for any such action.

Plaintiffs' expert Affidavit is also deficient because it fails to state any facts sufficient to state a single negligent act or omission of the law firm Defendant. The Court should therefore dismiss the Complaint with prejudice under S.C. Code § 15-36-100.

Finally, there is absolutely no basis in fact for fraud or conversion causes of action against MTB. Including those in Plaintiffs' shotgun approach is beyond the pale and entitles MTB to a dismissal with prejudice and recovery of costs and attorney's fees associated with having to respond to these baseless allegations.

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Therefore, MTB asks this Court to dismiss Plaintiffs' Complaint with prejudice and award costs and attorney's fees, as well as other relief as the Court deems appropriate.

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated, Plaintiffs, vs. McCabe Trotter & Beverly, PC and Gold Crown Management Company, Inc. Defendants.	Case No. 2018-CP-26-2974 **AMENDED SUMMONS** **JURY TRIAL DEMANDED**

TO DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the attorney for the aforesaid Plaintiff, the Law Firm of Jason E. Taylor, P.C., 810 Dutch Square Blvd, Suite 112, Columbia, SC 29210 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, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.
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Columbia, South Carolina
June 18, 2018

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated, Plaintiffs, vs. McCabe Trotter & Beverly, PC and Gold Crown Management Company, Inc. Defendants.	Case No. 2018-CP-26-2974 **AMENDED VERIFIED COMPLAINT** **JURY TRIAL DEMANDED**

TO: DEFENDANTS NAMED ABOVE

The Plaintiffs named above, complaining of the Defendant herein, would respectfully show unto the Court:

PARTIES

1. Plaintiffs Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle, LLC (hereinafter "the Owners"); are residents as follows;

   a. Karl & Terri Hager are residents of Virginia;

   b. Robert Singleton & Teresa Singleton are residents of South Carolina;

   c. Jay & Susan Welborn are residents of South Carolina;

   d. Erik Arnold is a resident of Georgia; and

   e. Bowers Caravelle LLC is a limited liability company organized under the laws of Maryland.

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2. The Owners file this action on behalf of themselves in their individual capacities, derivatively as shareholders of Caravelle Resort Owners Association, Inc., and also behalf of all others similarly situated.

3. The Caravelle Resort Owners Association, Inc. (hereinafter "the Association") is a horizontal property regime organized and existing under the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, *et. seq.* The South Carolina Horizontal Property Act is hereby incorporated by reference.

4. The Association consists of 346 resident units and three commercial units. The potential members of the Plaintiff Class include the owners of all residential units and specifically excludes the commercial units. Hereinafter, the words "unit" or "units" only refers to the residential units of the Association.

5. The members of the Association share all common expenses, and each members is required to pay their proportional share of all common expenses pursuant to the Master Deed, Bylaws, and S.C. Code Ann. § 27-31-190 of the South Carolina Horizontal Property Act.

6. Defendant McCabe Trotter & Beverly, PC (hereinafter "MTB") is a professional corporation organized under the laws of the State of South Carolina and doing business in the various counties including Horry County.

7. At all times relevant herein, MTB are and/or held themselves out to be the attorneys for the Association.

8. At all times relevant herein, MTB has also provided legal advice to the Owners such that Owners could reasonably believe that MTB was representing them as well.

9. At all times relevant herein, MTB has represented the Owners' personal interest

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to third parties such that Owners could reasonably believe that MTB was representing Owners as well.

10. Defendant Gold Crown Management, Inc. (hereinafter "Gold Crown") does business within several counties of South Carolina including Horry County.

11. At all times relevant herein, Gold Crown is the management company for the Association.

12. At all times relevant herein, MTB has also held itself out as the attorney for Gold Crown.

13. At all times relevant herein, Owners as the shareholders of the Association are third party beneficiaries of the Association's contracts with MTB and Gold Crown.

JURISDICTION & VENUE

14. This Court has subject-matter jurisdiction, pursuant to South Carolina Constitution Article V § 11, over the claims in this lawsuit.

15. This Court has personal jurisdiction because the events giving rise to the matter in controversy occurred within the State of South Carolina.

16. Venue is proper in this Court because the events alleged herein occurred in the County of Horry.

CLASS ALLEGATIONS

17. Pursuant to Rule 23(a), SCRCP, Owners seek certification as a class action because the class of plaintiffs are so numerous that joinder of all members is impracticable, there are questions of law and fact common to the class; the claims of the representative parties are

typical of the entire class, injunctive relief is sought, and the damages for the causes of action exceed one hundred dollars for each member of the class.

18. There are common questions of law or fact common to the Defendants including, *inter alia*:

a. Did the Board of the Association have the authority to enter into an agreement with Commercial Disaster Recovery, LLC f/d/a Delta Restoration LLC (hereinafter "Delta") to remove Owners' personal items from their units and store the Owners' personal belongings in the parking garage of the Association;

b. Did the Board of the Association have the authority to enter into an agreement with Lloyd's of London regarding the payment for the removal the Owners' personal belongings for the Owners' units?

c. Did the Board of the Association have the duty to monitor or supervise Delta's handling or storage of the Owners' personal belongings in the parking garage of the Association?

d. Did the Board of the Association have the authority under the Master Deed to enter Owners' units to remove their personal belongings?

e. Did the Board of the Association have the authority under the Master Deed to act as the agent of the Owners under the Owners' HO-6 policies?

f. Is the attempt to categorize the demand for payments for "soft goods" and/or "content manipulation fee" as an assessment an *ultra vires* act?

g. Is the attempt to collect payments for "soft goods" and/or "content manipulation fee" by threatening to terminate utility services an *ultra vires* act?

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h. Is the attempt to collect payments by including charges for "soft goods" on certificates used for real estate closings an *ultra vires* act?

i. Did the Board of the Association have the authority under the Master Deed to enter into a contract with construction companies to gut the entire building without specific approval from the Owners?

j. Did MTB establish an attorney-client relationship with the Owners?

k. Did MTB commit acts of professional negligence by advising the Board of the Association it had the authority to do subparts a-j?

l. Did MTB commit an act of professional negligence by disallowing Owners to replace the Board of Director at the February 17, 2018 owners' annual meeting?

m. Did MTB commit an act of professional negligence by failing to disclose a material conflict as a result of its simultaneous representation of the Association, the Owners, and/or Gold Crown?

n. Did MTB breach its fiduciary duties to the Association that the Board of Association had the authority to do subparts a-j?

o. Did MTB properly disclose conflicts of interest it had with the Association, Gold Crown, and the Owners?

p. Did Gold Crown breach its fiduciary duties to the Association by advising and/or assisting the Board of the Association to do subparts a-j?

q. Did Gold Crown commit an act of negligence by advising and/or assisting the Board of the Association to do subparts a-j?

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r. Did Gold Crown breach its fiduciary duties in managing the Association's money since 2016.

19. The claims asserted by Owners in the instant action are typical of the claims against the Defendants.

20. Pursuant to SCRCP 23, the prosecution of separate actions against members of the Defendants would create a risk of inconsistent or varying adjudications with respect to individual members Plaintiff Class.

21. Pursuant to SCRCP 23, the prosecution of separate actions against each member of the Defendants, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

22. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable.

23. Furthermore, as the damages suffered by individual Plaintiff Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Plaintiff Class to individually redress the wrongs done to them by Defendants.

24. There will be no difficultly in the management of this action as a class action.

25. Pursuant to Rule 23(b)(1), the Owners also bring this as a derivative action against MTB and Gold Crown.

26. The Owners have sent numerous letters to the Board of Directors, Gold Crown and MTB to resolve the matters alleged herein. These letters include the following:

a. Demand letter from counsel dated April 20, 2018 to the Board of Directors;

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b. Correspondence and emails from Mr. & Mrs. Hager: letter to the Board via Gold Crown dated January 26, 2018 regarding the disposal and theft of belongings; the Board dated February 28, 2018 regarding content manipulation fee and theft of belongings;

c. Correspondence and emails from Mary Campbell: letter to Board via Gold Crown dated April 10, 2018 regarding content manipulation fee; email dated to MTB and Gold Crown regarding content manipulation fee dated April 30, 2018 disputing the content manipulation fee; phone call to Gold Crown on May 3, 2018 regarding the content manipulation fee; email from Gold Crown on May 3, 2018 regarding the content manipulation fee; email to May 4, 2018 to MTB regarding the content manipulation fee; fax to MTB dated May 5, 2018 disputing the content manipulation fee;

d. Correspondence and emails from Mr. Bowers: email dated March 23, 2017 demanding immediate return of personal belongings; letter to MTB dated April 26, 2017 regarding storage of belongings; notice to MTB dated July 5, 2017 regarding looting of belongings in storage; notice to Gold Crown dated September 5, 2017 regarding police report filed regarding stolen belongings; notice to MTB dated December 29, 2017 regarding disposal of belongings; email dated February 23, 2018 to Gold Crown regarding failure to return PTAC;

e. Demand made in person by Mr. Bowers at the Board Meeting on February 17, 2018 meeting of the Association; and/or

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f. Amended Demand for Dispute Resolution sent to the Association, the Board and Gold Crown dated January 8, 2018;

27. The Board of Directors has refused to fire Gold Crown or MTB despite these repeated demands.

28. To the contrary, Gold Crown and MTB have continued and/or accelerated their unlawful acts towards the Owners.

FACTUAL ALLEGATIONS

29. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

30. Owners collectively purchased a HO-6 insurance policy from Lloyd's of London as required by Article 11, Section 2 of the Master Deed of the Association. A full copy of the Master Deed is attached hereto as Exhibit 1, and is incorporated herein by reference. A full copy of the By-Laws is attached hereto as Exhibit 2, and is incorporated hereby by reference.

31. The HO-6 policy purports to insure each Owner for dwelling, personal property and loss of use with a blanket property limit of $25,000 per unit.

32. The Lloyd's HO-6 policy covers all 346 units separately with each unit's owner as a named insured on a separate policy.

33. A single representative copy of the full Lloyd's HO-6 policy is attached to as Exhibit 3, and is incorporated herein by reference.

34. Neither the Master Deed nor the Lloyd's HO-6 policy appoints or lists the Association, its management, or the Association's attorneys as either agents of the Owners or as additional named insureds.

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35. The Master Deed appoints the Association as the agent and/or insurance trustee for the Owners under Article 11, Section 1 and Article 12, Section 2 only for the purposes of insurance that covers the entire regime and common elements. It does not do so for the purposes of the HO-6 policy required by Article 11, Section 2.

36. Hurricane Matthew struck South Carolina on or about October 8, 2016 and caused significant damage to the Association's property as well as damage to some—but not all—of the individual units.

37. On or about October 17, 2016, Gold Crown first informed the Owners that a "vast majority" of the units within the Association had suffered damage as a result of Hurricane Matthew.

38. The Board of the Association (hereinafter "Board"), without either authority from the Master Deed or the Owners, made the decision to remove the Owners' personal property from their Units and store the Owners' personal property in the parking garage of the Association.

39. The Board contracted Commercial Disaster Recovery, LLC f/d/a Delta Restoration LLC (hereinafter "Delta") to handle the process of removing the Owners' items from their units.

40. The Board was advised to take the *ultra vires* action of removal of Owners' belongings from their units, including entering a contract with Delta, by MTB and Gold Crown.

41. The Board, again without authority from or the consent the Owners, obligated the Owners to a contract with Delta to store the Owners' belongings in the Association's parking garage.

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42. The Board, by and through the advice of MTB and/or Gold Crown, made the decision to close the HOA to rentals on or about October 31, 2016.

43. The Board is empowered to enter an Owner's unit to make "emergency repairs to prevent damage to the Common Elements or to another Unit" under Article IX, Section 6 of the Master Deed. It is unreasonable to advise the Board to enter the Units for the purpose of removing belongings as "an emergency."

44. Upon information and belief, the Board, by and through the advice of MTB and/or Gold Crown, made the decision to remove Owners' belongings. Owners were not notified in advance of the removal of their personal belongings from their unit.

45. Upon further information and belief, the packing and storage of materials continued through the middle of January 2017.

46. Owners were not allowed by Gold Crown or MTB inspect their belongings, to remove their own belongings, or make their own separate arrangements for the storage of their own belongings after October 31, 2017.

47. Owners were not allowed to come onto the Caravelle property by Gold Crown and/or MTB to inspect their own units to determine the scope of repairs.

48. To the contrary, Gold Crown and/or MTB repeatedly informed the Owners they would not be allowed onto the property for any reason.

49. The Board, by and through the advice of MTB and/or Gold Crown, made the decision to gut the entire building.

50. The decisions to gut the entire building and remove the owners' belongings were communicated to the Owners on or about February 6, 2017.

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51. The Board did not consult with the Owners as required by the Master Deed with regards to the decision to extensively remodel and/or remediate the Owners' Units.

52. Upon information and belief, the Board by and through Gold Crown did not obtain multiple estimates for the repair costs as required by various provisions of the Master Deed.

53. On April 20, 2017, Gold Crown sent a letter to the Owners wherein Gold Crown represented to the Owners that the Board and/or the Association was the "insurance trustee" for Owners' HO-6 policy. This statement is patently false. This letter incorporated by reference and is attached hereto as Exhibit 4.

54. MTB and/or Gold Crown knew or should have known that the Owners' belongings were not secure from either environmental hazards or theft.

55. On April 28, 2017, J. Ryan Oates—an attorney with MTB—mailed a letter to an attorney representing Lloyds informing said attorney that the storage solution was unacceptable. Additionally, this letter inquired as to coverages available under the Lloyd's policy on behalf of the Homeowners. This letter is incorporated by reference and attached hereto as Exhibit 5.

56. On June 27, 2017, J. Ryan Oates sent a letter directly all Owners stating Lloyd's had made the decision to dispose of all soft goods because the cost of cleaning them of mold was "cost prohibitive." Oates then continues to provide legal advice to the Owners concerning the nature and extent of the Owners' coverage under their HO-6 policy and the possibility of returning the Owners' soft goods to their units. Oates also assures the owners that their hard goods are safe. This letter is incorporated by reference and attached hereto as Exhibit 6.

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57. On August 2, 2017, J. Ryan Oates sent another letter to the attorney representing Lloyd's. That letter makes numerous claims regarding the inadequacies of Lloyd's adjustment of the Owners' claims under the Owners' HO-6 policy and failing to secure the Owners belongings. In particular, this letter threatens to hold Lloyd's and its independent adjuster "accountable for that failure" on behalf of the members. This letter is incorporated by reference and attached hereto as Exhibit 7.

58. On August 9, 2017, J. Ryan Oates mailed a letter directly to each Owner claiming that all soft goods had been tested and deemed contaminated. Oates further states these contaminated items were disposed of by Delta. However, Oates assured the Owners that "hard" goods would be cleaned and returned to the Owners' units. This letter also reiterates that Owners would not be allowed onto the property to inspect their own belongings. This letter is incorporated by reference and attached hereto as Exhibit 8.

59. On December 13, 2017, Gold Crown sent a letter directly to the Owners stating that all hard goods had been contaminated while in storage and would need to be disposed of by January 8, 2018. This provided the owners with only 26 days (including the holidays of Christmas and New Year) to compete any review of their belongings. Gold Crown offered to contact a local moving company on behalf of the Owners to move their belongings to a new storage facility if the Owner responded by January 5, 2018. This letter is incorporated by reference and attached hereto as Exhibit 9.

60. On January 25, 2018, Gold Crown informed the Owners that the local moving company refused to handle the Owners' remaining hard goods because of fear of contamination, and that all other local moving companies had refused to move the hard goods for the same

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reason. Gold Crown gave the Owners a deadline of February 3, 2018 whether to decide to remove or dispose of their items. The Owners would not be allowed to inspect their belongings before February 19, 2018 when the parking garage would be opened for Owners. Owners had to remove their belonging by March 1, 2018. Gold Crown stated that hard goods would be disposed of beginning on February 3, 2018 if the Owners who did not respond by the deadline. That letter also stated, contrary to the December 13, 2017 letter that all "old" soft goods had already been disposed. This letter is incorporated by reference and attached hereto as Exhibit 10.

61. Owners were not allowed a sufficient time to inspect their own belongings to determine what could be salvaged once Delta and/or Lloyd's informed the Owners' belongings could not be salvaged.

62. Owners could reasonably construe the letters from J. Ryan Oates to the Owners as rendering personal legal advice to the Owners in addition to stating the position of the Association.

63. Owners could reasonably construe the letters from J. Ryan Oates to Lloyd's as representing the personal legal interests of the Owners.

64. Delta and/or Delta's employees were allowed by Gold Crown and/or MTB to sort through Owners' belongings to take what they wanted instead of returning the items to the Owners. The items unwanted by Delta and/or Delta's employees were then disposed of by Delta without the permission of Owners.

65. Gold Crown and/or MTB concealed from the Owners the true condition of Owners' belongings.

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66. Neither Gold Crown nor MTB performed testing to determine whether Owners' belongings were contaminated despite numerous representations by Gold Crown and/or MTB that the Owners' belongings were unsafe due to contamination.

67. Gold Crown's and/or MTB's failure to properly safeguard and protect the Owners' belongings have caused the owners to lose an amount of those belongings in an amount to be determined by the trier of fact by a combination of poor environment and/or theft.

68. Upon information and belief, Delta returned some items to certain Owners' units. Gold Crown or MTB, without the permission of the Owners, required Delta to remove the items from these Owners' units to either throw away, recycle or re-sell the items.

69. Lloyd's specifically warned MTB and/or Gold Crown about the inadequacies of Delta's storage arrangements. Neither MTB nor Gold Crown took adequate steps to protect Owners' personal belongings.

70. Delta has disposed of the items remaining in the parking garage at the direction of Gold Crown and/or MTB without Owners' being allowed a reasonable amount of time to inspect or make alternate arrangements.

71. MTB's and/or Gold Crown's failure to safeguard the Owners' belongings have caused hardships on the Owners as they are forced to use portions of their HO-6 insurance coverage to replace their lost or stolen belongings in addition to the necessary repairs to their units and/or recover for lost rental income.

72. Gold Crown and/or MTB then advised the Association to charge the Owners' a "content manipulation fee." The "content manipulation fee" was purportedly incurred by the Association as a result of the storage of Owners' belongings.

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73. The "content manipulation fee" has been improperly and unlawfully characterized by MTB and/or Gold Crown as an assessment.

74. The "content manipulation fee" has been improperly and unlawfully collected by MTB and/or Gold Crown against the Owners.

75. Gold Crown and/or MTB have pursued Owners for repayment for a service the Owners neither wanted nor agreed to receive.

76. Gold Crown and/or MTB have also charged and/or advised the Association to charge certain Owners for a package of goods called "soft goods." These Owners' purchased the "soft goods package" to replace items allegedly destroyed by Hurricane Matthew, but some of these items were lost and/or destroyed while in storage by Delta. Additionally, certain items have not been delivered by Gold Crown.

77. Gold Crown and/or MTB misrepresented the amount of damage done to Owners' soft goods to justify the sale of a "soft goods package" to certain Owners.

78. Gold Crown and/or MTB also misrepresented to the Owners the nature and manner in which the Owners were required to refurnish their units in order to sell the "soft goods package" in order to achieve "uniformity."

79. Gold Crown and/or MTB have asserted claims against Owners that have sought to sell their Units at closing in order to strong arm Owners into paying the unlawful "content manipulation fee" or the exaggerated "soft goods package."

80. Gold Crown and/or MTB have also threatened to terminate the utilities to Owners' units to extort payments from Owners for either/both "content manipulation fee" or the

"soft goods package" even though neither are properly characterized as an assessment under the Master Deed.

81. Gold Crown and/or MTB has also engaged in a pattern and practice of conduct regarding expenditures and collections while the Association was closed and/or Units were being gutted.

82. In particular, Gold Crown and/or MTB expended funds for services that were unnecessary/unused. For example, the Association paid a $50,000.00 fee to unknown person or persons for "HO-6 Administration;" $52,030.04 for cable television; $17.149.86 for internet access, etc.

83. Gold Crown and/or MTB are also in receipt of $523,243.62 from the Owners for "Content Manipulation" and $1,231.683.84 for "soft goods" while expending $327,612.87 for "Content Manipulation' and $1,104.687.35 for "soft goods."

84. Gold Crown and/or MTB also advised the Board to purchase the most current HO-6 policy with the Association as the named insured instead of having each individual owner as the named insured as required by the Master Deed.

85. Gold Crown and/or MTB also advised the Board to continue to collect insurance funds from the Owners that have opted out of the Association joint HO-6 policy and purchased their own individual policies

86. As the process continued to drag out, owners expressed their frustration toward Gold Crown by using online review services.

87. The owners that posted negative reviews received letters from MTB on behalf of Gold Crown demanding the owner "Cease and Desist Defamatory Comments." One such letter is

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dated January 12, 2018 from J. Ryan Oates to Owner Robin Serna. Thus, MTB has held itself out as representing Gold Crown while simultaneously representing the Association and the Owners. This letter is incorporated by reference and attached hereto as Exhibit 11.

88. As a result of all of this aforesaid, Gold Crown and/or MTB's actions have caused the Association to be exposed to liability to the Owners.

89. Additionally, the damages owned by Association to the Owners is a "common expense" essentially causing the Owners to owe money to themselves.

FOR A FIRST CAUSE OF ACTION
Against McCabe Trotter & Beverly, PC
DERIVATIVELY & PERSONALLY
PROFESSIONAL NEGLIGENCE

90. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

91. MTB had an attorney client relationship with the Association at all times relevant herein.

92. MTB represented to third parties that it had an attorney client relationship with the Owners.

93. MTB advised the Association it had the authority to enter the Owners' Units to remove their belongings and/or authorize Delta to enter the Owners' Units to remove their belongings.

94. The Association was advised by MTB to store the Owners' belongings in the parking garage rather than allow Owners to retrieve their own belongings.

95. MTB negotiated with Lloyd's on behalf of the Owners—without the Owners' permission—to share the cost of storing Owners' personal belongings.

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96. MTB advised the Association to assert improper claims against the Owners for recovery.

97. MTB represented to the Owners that it (MTB) represented Gold Crown in issues relating to Owners' expressions of dissatisfaction of Gold Crown's service to the Association.

98. MTB assumed a duty towards the Owners by actively negotiating on the Owners' behalf with Lloyd's and other third parties.

99. MTB also rendered legal advice to the Owners thereby reasonably creating in the minds of the Owners that MTB represented the Owners individually as well.

100. MTB voluntarily undertook a duty to represent Owners' personal interests to relevant third parties—Delta Restoration for example—which could reasonably considered as creating an attorney-client relationship.

101. MTB knew or should have known that the Association had no right to unilaterally enter the Owners' units and remove their personal belongings.

102. MTB failed to advise the Association to monitor and/or take such action as was necessary to protect the Association and Owners from Delta's conduct in regards to the storage of Owners' belongings.

103. MTB knew or should have known of Delta's improper and/or inadequate conduct in regards to the storage of Owners' belongings.

104. MTB also advised the Association to illegally assert claims for "content manipulation" and/or "soft goods" as assessments under the Master Deed.

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105. MTB knew or should have known Gold Crown is improperly asserting claims against Owners for "content manipulation" and/or "soft goods" assessments under the Master Deed thereby facilitating and/or abetting Gold Crown's unauthorized practice of law.

106. MTB also advised the Association to assert these claims as charges to be collected at real estate closings and/or it had actual knowledge that Gold Crown was asserting these claims as charges.

107. The aforementioned acts all constitute breaches of the standard of care owned by MTB to the Association and derivatively to the Owners.

108. The aforementioned acts also constitute breaches of the standard of care owned by MTB to the Owners individually.

109. As a result of aforesaid, the Association has suffered damages actual damages, consequential damages, plus attorneys' fees and costs. These damages include, *inter alia*, attorneys' fees charged to the Association by MTB, HO-6 "management fee" incurred by the Association, additional fees charged by Gold Crown to the Association, and other such damages as may be proved to the trier of fact.

110. As a result of aforesaid, each Plaintiff Class member, including Owners, have also suffered actual damages, consequential damages, plus attorneys' fees and costs.

111. These breaches of the standard of care proximately caused damages to the Association and the Owners in an amount to be determined by the trier of fact.

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FOR A SECOND CAUSE OF ACTION
Against McCabe Trotter & Beverly, PC
DERIVATIVELY
BREACH OF FIDUCIARY DUTY

112. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

113. MTB owes a fiduciary duty to the Association.

114. MTB has breached those fiduciary duties as alleged herein.

115. MTB's breach of their fiduciary duties to the Association are the direct and proximate cause of damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
Against Gold Crown
DERIVATIVELY
BREACH OF FIDUCIARY DUTY

116. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

117. Gold Crown owes a fiduciary duty to the Association.

118. Gold Crown has breached those fiduciary duties as alleged herein.

119. Gold Crown's breach of their fiduciary duties to the Association are the direct and proximate cause of damages in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
Against Gold Crown & McCabe Trotter & Beverly, P.C.
DERIVATIVELY
Aiding & Abetting Breach of Fiduciary Duty

120. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

121. Gold Crown and MTB owe fiduciary duties to the Association.

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122. Gold Crown and MTB have breached their fiduciary duties to the Association.

123. Gold Crown knew and participated in MTB's breaches of its fiduciary duties to the Association.

124. MTB knew and participated in Gold Crown's breaches of its fiduciary duties to the Association.

125. As a result, the Association has suffered damages in an amount to be determined by the trier of fact.

FOR A FIFTH CAUSE OF ACTION
Against Gold Crown & McCabe Trotter & Beverly, P.C.
PERSONALLY
FRAUD

126. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

127. Gold Crown and MTB made numerous representations to the Owners, *inter alia:*

a. regarding the necessity of the removal of Owners' personal belongings;

b. the method of testing and/or storage of Owners' personal belongings;

c. the protection of Owners' personal belongings from environmental damage and/or theft; and/or

d. the necessity of disposal of alleged contamination of Owners' personal belongings;

128. These representations by Gold Crown and MTB were materially false.

129. Gold Crown and MTB knew or should have known these representations were false.

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130. Gold Crown and MTB knew or had a reckless disregard for the truth or falsity of their representations.

131. Gold Crown and MTB intended for these representations to be relied upon by the Owners.

132. The Owners were ignorant of the falsity of the representations made by Gold Crown and MTB regarding the scope and necessity of the removal and storage of their personal belongings.

133. The Owners were forced to rely upon the representations made by Gold Crown and MTB regarding the removal and storage of their personal belongings.

134. That as a result of aforesaid, the Owners have suffered actual damages including, *inter alia*, the value of the Owners lost/destroyed/disposed of personal belongings, cost of substitute performance, and other such actual, consequential, and special damages as may be awarded by the jury including prejudgment interest, post judgment interests, fees and costs.

135. Owners are also entitled to punitive damages as the result of Gold Crown's and MTB's willful, wanton and/or reckless conduct.

FOR A SIXTH CAUSE OF ACTION
Against Gold Crown & McCabe Trotter & Beverly, P.C.
PERSONALLY
CONVERSION

136. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

137. Owners have an interest in all of their personal belongings that were kept in their individual units.

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138. Gold Crown and/or MTB directed Delta to remove the Owners' belongings without the permission from the Owners' units.

139. Owners did not give authority to either Gold Crown, MTB or Delta to remove their belongings from the Owners' units.

140. The exercise of control over Owners' belongings was unauthorized by the Owners.

141. The removal of Owners' personal property was an *ultra vires* act.

142. Delta was Gold Crown and/or MTB's agent for this *ultra vires* act.

143. Delta was purportedly paid by Lloyd's at the direction of Gold Crown and/or MTB to remove and store the Owners' belongings.

144. Gold Crown and/or MTB denied Owners access to the property of the Owners and prevented the Owners from removing and securing their own belongings.

145. Gold Crown and/or MTB exercised dominion and control over Owners' belongings without the Owners' permission.

146. The Owners belongings have been altered by Gold Crown and/or MTB.

147. Owners have been excluded from their personal belongings by Gold Crown and/or MTB.

148. As a result of aforesaid, the Owners have suffered damages in an amount to be determined by the trier of fact.

149. Owners are entitled to punitive damages because Gold Crown's and/or MTB's actions were done recklessly and with conscious indifference to the rights of the Owners.

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FOR A SEVENTH CAUSE OF ACTION
Against Gold Crown
DERIVATIVELY & PERSONALLY
NEGLIGENCE

150. Each and every allegation contained in the preceding paragraphs is reiterated as if repeated verbatim to the extent it is not inconsistent with this cause of action.

151. Gold Crown holds itself out to be a professional management company which "specializes" in homeowners associations.

152. Gold Crown also holds itself out as "Accredited Association Management Company" by the Community Association Institute.

153. As a result, Gold Crown has voluntarily adopted a set of duties to the Association which include, *inter alia:*

a. Comply with current standards or practices as may be established from time to time by Community Association Institute subject to all federal, state, and local laws, ordinances, and regulations in which the Manager practices.

b. Act in the best interest of the client; refrain from making inaccurate or misleading representations or statements to a prospective client; not knowingly misrepresent facts to benefit the Manager.

c. Undertake only those engagements that they can reasonably expect to perform with professional competence.

d. Exercise due care and perform planning and supervision as specified in the written management agreement, job description or duly adopted Board policies.

e. Disclose all relationships in writing to the client regarding any actual, potential or perceived conflict of interest between the Manger and other vendors.

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f. Provide written disclosure of any compensation, gratuity or other form of remuneration from individuals or companies who act or may act on behalf of the client.

g. Insure that homeowners receive timely notice as required by state statutes or legal documents and protect their right of appeal.

h. Disclose to the client the extent of fidelity or other contractually required insurance carried on behalf of the Manager and/or client and any subsequent changes in coverage, which occur during the Manager's engagement if the amount is lower than the contract amount requires.

i. See that the funds held for the client by the Manager are in separate accounts, are not misappropriated, and are returned to the client at the end of the Manager's engagement; Prepare and furnish to the client accurate and timely financial reports in accordance with the terms of the management agreement, job description or duly adopted Board policies.

j. Recognize the original records, files and books held by the Manager are the property of the client to be returned to the client at the end of the Manager's engagement; maintain the duty of confidentiality to all current and former clients.

k. Shall conduct themselves in a professional manner at all times.

154. Gold Crown has violated one or more of the preceding duties by failing to exercise due care.

155. As a result, the Association has suffered damages in an amount to be determined by the trier of fact.

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156. As a result, the Owners have suffered damage in an amount to be determined by the trier of fact.

157. Gold Crown's failed to exercise even slight care to safeguard Owners' belongings. As a result, Gold Crown is liable to Owners for punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Owners, on behalf of themselves, the Plaintiff Class, and the Association pray that judgment be rendered against the Defendants as follows:

a. For actual damages, compensatory damages, and consequential damages as may be proven at trial;

b. For prejudgment interest, post judgment interest, and costs;

c. For punitive damages in an amount as may be awarded by the finder of fact, and

d. For such other and further relief as the Court may deem just and proper.

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Columbia, South Carolina
June 18, 2018

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Karl & Terri Hager; Robert Singleton; Jay & Susan Welborn; Erik Arnold; and BOWERS CARAVELLE LLC; derivatively on behalf of CARAVELLE RESORT ASSOCIATION, INC and on behalf of themselves and those similarly situated, Plaintiffs, vs. MCCABE TROTTER & BEVERLY, PC and GOLD CROWN MANAGEMENT COMPANY, INC., Defendants.	Case No. 2018-CP-26-02974 **EXPERT AFFIDAVIT OF THOMAS A. PENDARVIS, J.D.**

STATE OF SOUTH CAROLINA)
) SS:
COUNTY OF BEAUFORT)

Personally appeared before me, Thomas A. Pendarvis, who, first being duly sworn, says:

1. It is my expert opinion, held to a reasonable degree of professional certainty based upon my review of available evidence and Verified Complaint, that the lawyers at the defendant law firm committed at least one act of professional negligence proximately causing financial damages to the Plaintiffs, including the individual Association members, including Karl & Terri Hager; Robert Singleton; Jay & Susan Welborn; Erik Arnold; to BOWERS CARAVELLE LLC; and to CARAVELLE RESORT ASSOCIATION, INC. (collectively "the Plaintiffs"), as more particularly set forth below.

2. Lawyers were practicing law at the relevant time under the auspices of MCCABE

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TROTTER & BEVERLY, PC ("McCabe Trotter" or "McCabe Trotter lawyers").

3. The McCabe Trotter lawyers represented CARAVELLE RESORT ASSOCIATION, INC. ("Caravelle Resorts"), which is a horizontal property regime charged with the management of property known as "The Caravelle Resort" located 6900 N. Ocean Blvd., Myrtle Beach, South Carolina.

4. The McCabe Trotter lawyers had, among other duties, professional duties as lawyers representing Caravelle Resorts and its Board of Directors ("the Board"), to, among other things, protect the interests of Caravelle Resorts and its members, provide competent representation, including, but not limited to,

a. Provide competent advice and representation;

b. Use the legal knowledge, skill, thoroughness, and preparation reasonably necessary in the circumstances;

c. Maintain the standard of care, which required the McCabe Trotter lawyers to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the legal profession; and

d. By otherwise acting to protect Caravelle Resorts' and its members' interests.

5. The McCabe Trotter lawyers failed to perform their duties and were professionally negligent in multiple ways, including but not limited to:

a. Advising the Board that it had the authority to enter into an agreement with COMMERCIAL DISASTER RECOVER, LLC f/d/a DELTA RESTORATION, LLC ("Delta Restoration") to remove the individual owners' personal items from their units and store

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the owners' personal belongings in Caravelle Resorts' parking garage, when the governing corporate documents and other authority did not provide that authority.

b. Advising the Board that it had the authority to enter into an agreement with Lloyd's of London regarding the payment for the removal the Owners' personal belongings for the Owners' units, when the governing corporate documents and other authority did not provide that authority.

c. Advising the Board that it had the authority or that it could delegate authority under the Master Deed to enter Owners' units to remove their personal belongings, when the governing corporate documents and other authority did not provide that authority.

d. Advising the Board that it had the authority under the Master Deed to act as the agent of the Owners under the Owners' HO-6 policies, when the governing corporate documents and other authority did not provide that authority.

e. Advising the Board that it could categorize the demand for payments for "soft goods" and/or "content manipulation fee" as an assessment was within their authority, when such acts are clearly outside of the available authority and constitute *ultra vires* acts.

f. Advising the Board that it could attempt to collect payments from the owners for "soft goods" and/or "content manipulation fee" by threatening to terminate the utilities to the owners' units, when such acts are clearly outside of the available authority and constitute *ultra vires* acts.

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g. Advising the Board that it could attempt to collect payments from the owners by including charges for "soft goods" on certificates used for real estate closings, when such acts are clearly outside of the available authority and constitute *ultra vires* acts.

h. Advising the Board that it had the authority under the Master Deed to enter into a contract with construction companies to gut the entire building without specific approval from the unit owners, when such acts are clearly outside of the available authority and constitute *ultra vires* acts.

i. Advising the Board to prevent the owners in February 17, 2018, from electing all new members to replace the Board.

j. Failing to disclose, and if possible, obtain informed consent for the concurrent conflict of interest between the McCabe Trotter lawyers based on their long-term relationship with Goal Crown on substantially related matters, on the one hand, and the Association on the other.

k. Taking positions defending GOLD CROWN that were adverse to Owners of units and Members of the Association.

l. Threatening Owners and Members of the Association with a lawsuit on behalf of GOLD CROWN on matters directly related to action concerning the Owners' units.

m. Representing to third parties, including Lloyd's of London, that they were representing the Owners and had the authority to get to negotiate on their behalf.

n.

6. The available evidence indicates that the McCabe Trotter lawyers were negligent, failed to meet the standard of care, and thereby breached their professional duties to Plaintiffs, by,

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among other things, failing to provide competent representation, including, but not limited to, each of the acts or omissions identified above.

7. The available evidence indicates that the Board accepted and followed the advice provided by the McCabe Trotter lawyers, and also would have accepted and followed the appropriate advice from the McCabe Trotter lawyers that should have been reasonably provided by the McCabe Trotter lawyers to meet the standard of care and thereby satisfy their professional and fiduciary duties.

o. The available evidence indicates that the McCabe Trotter lawyers sent a letter on January 12, 2018, to Robin Serna, who is an Owner of one of the subject Units, taking positions defending GOLD CROWN and threatening a lawsuit for alleged defamation and tortious interference with contract that were adverse to Robin Serna.

p. The available evidence indicates that the McCabe Trotter lawyers sent a letter threatening Owners and Members of the Association with a lawsuit on behalf of GOLD CROWN on matters directly related to action concerning the Owners' units.

q. The available evidence indicates that the McCabe Trotter lawyers sent letters to the Owners that the McCabe Trotter lawyers that read as though they were providing legal advice, but the letters did not expressly state that they were not providing personal legal advice to the Owners in addition to informing the Owners of the position of Board of Directors for the Association. In other words, the McCabe Trotter lawyers in dealing with the Owners did not explain that the Association was there only client and that they were not representing the Owners, when they knew or reasonably should have known

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that they were advising the Association to take action adverse to the interests of all the Owners and the Association.

8. It is my opinion based upon the available evidence, that as a direct and proximate result of the McCabe Trotter lawyers' acts and omissions, Caravelle Resorts and its members, including Plaintiffs, sustained financial damages.

9. In my opinion, had the McCabe Trotter lawyers met the standard of care, more likely than not, Caravelle Resorts and its members, including Plaintiffs, would not have suffered financial losses.

10. I am a lawyer licensed to practice law in South Carolina and in Georgia since 1992. I am a Diplomate in the AMERICAN BOARD OF PROFESSIONAL LIABILITY ATTORNEYS (ABPLA) and received a Board Certification in Legal Malpractice from the ABPLA. I have represented many dozens of clients on investigating and pursuing professional liability claims against lawyers. I have testified as an expert on lawyers' professional obligations to clients and others, including issues of the existence of attorney-client relationships and fiduciary duties, the nature and scope of attorneys' ethical, professional, legal, and fiduciary duties in particular situations, the applicable standard of care and whether the lawyer breached it, and whether damages were proximately caused by the breaches asserted. I have assisted the South Carolina Bar in drafting proposed revisions to the South Carolina Rules of Professional Conduct, based on the American Bar Association's Model Rules of Professional Conduct, which was adopted by the South Carolina Supreme Court as the ethical standards for lawyers in our state. Dozens of lawyers have consulted and retained me for guidance on ethical matters, and I have assisted lawyers in responding to disciplinary complaints. My curriculum vitae is attached as Exhibit 1.

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11. I have been retained by Brian C. Gambrell with THE LAW OFFICES OF JASON E. TAYLOR, P.C. as an expert witness in this matter.

12. In rendering my opinion, I have reviewed the available evidence of the kinds of factual sources and legal authorities customarily relied upon by experts in the field of legal ethics, lawyer malpractice, and the liability of lawyers and law firms. I have had access to the factual materials available, including the following:

a. Draft Verified Complaint provided on May 13, 2018.

b. Revised caption for the Verified Complaint provided on May 14, 2018.

c. Numerous items of correspondence with or from the Association comprising of 103 pages.

d. Minutes from a special meeting of the Board held on December 7, 2016.

e. Minutes from a meeting of the Board held on March 1, 2017.

f. Minutes from a meeting of the Board held on April 28, 2017.

g. Minutes from a meeting of the Board held on May 12, 2017.

h. Minutes from a meeting of the Board held on May 18, 2017.

i. Minutes from a meeting of the Board held on May 26, 2017.

j. Minutes from a meeting of the Board held on August 15, 2017.

k. Minutes from a meeting of the Board held on September 20, 2017.

l. McCabe Trotter lawyer letter to Turner Padget, dated April 28, 2017.

m. Letter dated June 27, 2018 from J. Ryan Oates, Esq. with MCCABE, TROTTER & BEVERLY, PC to all Owners.

n. McCabe Trotter lawyer letter to counsel for owner dated August 2, 2017.

o. Letter dated August 9, 2017, from J. Ryan Oates, Esq. with McCABE, TROTTER & BEVERLY, PC to all Owners.

p. Letter dated January 12, 2018 from J. Ryan Oates, Esq. with McCABE, TROTTER & BEVERLY, PC to Robin Serna, who is an Owner.

q. Email thread dated for February 6 – 7, 2017, between Hannah Damore, CMCA, AMS, who is or was the Community Manager for Caravelle Resort, and the Caravelle Homeowners.

r. Letter from dated August 9, 2018 from J. Ryan Oates, Esq. WITH McCABE, TROTTER & BEVERLY, PC to Caravelle Unit Owners.

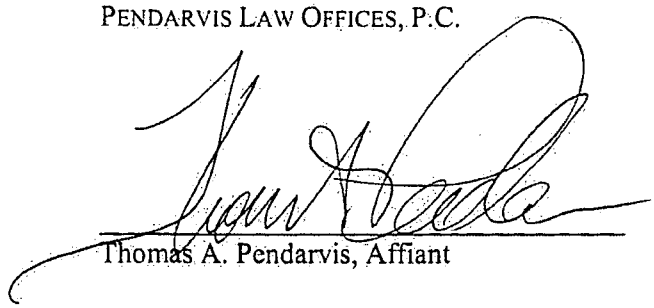
s. Letter dated January 25, 2018, from the Board of Directors for Caravelle Resort Owners Association, Inc. to the Caravelle Owners.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY. SIGNATURE BLOCK ON FOLLOWING PAGE

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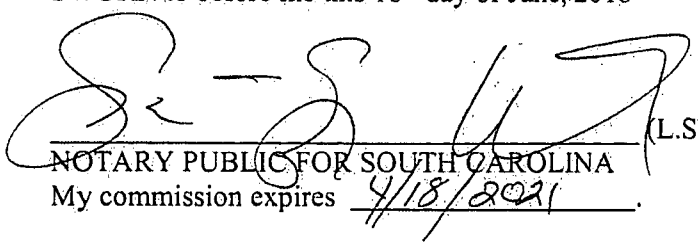
The Affiant further sayeth not.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis, Affiant

SWORN to before me this 18th day of June, 2018



(L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires 4/18/2021.

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EXHIBIT 1

CURRICULUM VITAE

THOMAS A. PENDARVIS, J.D.

BORN:

Augusta, Georgia, 1961

FAMILY:

Elizabeth Ann Pendarvis (wife)

A. Miciah Pendarvis (daughter, age 17)

Camille S. Pendarvis (daughter, age 15)

Tallie C. Pendarvis (daughter, age 12)

EDUCATION:

University of South Carolina, School of Law
Graduated May 1992
Juris Doctor

University of Georgia, School of Business
Graduated August 1984
Bachelor of Business Administration

Westside High School, Augusta, Georgia
Graduated 1979

EMPLOYMENT:

PENDARVIS LAW OFFICES, P.C.
Owner / President (May 2004 - present)

LEWIS, BABCOCK & HAWKINS, L.L.P.
Law Clerk (May 1990 - May 1992)
Associate (June 1992 - March 1997)
Partner (April 1997 - April 2004)

PENDARVIS CHEVROLET-OLDS CO., INC.
Shareholder / General Manager (1984 -1989)

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BOARD CERTIFICATIONS:

American Board of Professional Liability Attorneys
Board Certified in Legal Malpractice (2011 - present)

ORGANIZATIONS:

American Bar Association (1992 - present)
Torts and Insurance Practice Section (1993 - present)
Litigation Section (1993 - present)
Lawyers' Professional Liability Consortium (2006 - present)

Association of Trial Lawyers of America (1992 - 2007)
Professional Negligence

American Association of Justice (2007 - present)
Professional Negligence

Beaufort County Bar Association (2004 - present)

Ducks Unlimited (intermittent 1985 - present)

State Bar of Georgia (1992 - present)

National Wild Turkey Federation (intermittent 1984 - present)

Richland County Bar Association (1992 - 2004)

Rotary Club, Sea Island - Beaufort (March 2005 - 2009; inactive status)

South Carolina Bar (1992 - present)
Torts and Insurance Practice Section Council (2006-2008)
Professional Responsibility Committee (2009 - 2014; 2016 - present)
Professional Liability Committee (2014 - 2016)

South Carolina Trial Lawyers Association (1992 - 2008)

South Carolina Association of Ethics Counsel (2008 - present)

South Carolina Association of Justice (2008 - present)

South Carolina Trial Lawyers Association Student Chapter (1990 -1992)

United States Court of Appeals for the Eleventh Judicial Circuit (1997 - present)

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United States Court of Appeals for the Fourth Judicial Circuit (1992 - present)

United States Court of Appeals for the Ninth Judicial Circuit (2002 - present)

United States Court of Federal Claims (1997 - present)

United States District Court for the District of South Carolina (1993 - present)

United States District Court for the Middle District of Georgia (1995 - present)

United States District Court for the Northern District of Georgia (1995 - present)

United States District Court for the Southern District of Florida (1992 - present)

University of Georgia Martial Arts Club
President & Resident Black Belt (1981 - 1984)

University of South Carolina Environmental Law Journal
Member (1991 - 1992)

HONORS:

University of South Carolina School of Law Dean's List (Fall 1990, Spring 1991, Fall 1992)

University of South Carolina School of Law President's List (Spring1992)

LECTURES / OTHER:

Moot Court Judge University of South Carolina School of Law (Fall 1995 - Fall 1997)

St. Mary's Hospital, Athens, Georgia (March 9, 2002) (Survivor 2002: The Litigation Labyrinth: Tips to Avoid Needless Professional Negligence Claims)

South Carolina Bar (March 2004) (Electronic Discovery)

South Carolina Trial Lawyers Association (August 2005) (Digital Discovery For the Trial Lawyer)

South Carolina Trial Lawyers Association (August 2006) (Paperless Office)

South Carolina Trial Lawyers Association (August 2007) (Legal Malpractice

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Claims)

South Carolina Bar (February 2007) (Ethical Issues to Consider in Avoiding Legal Malpractice Claims)

South Carolina Bar (December 2008) (Ethical Rules and Principles to Consider to Minimize Legal Malpractice Exposure)

South Carolina Association of Justice (August 2009) (Better Than The Bailout, Faster Than A Speeding Bullet: CaseMap and Other Case Management Programs)

South Carolina Bar (February 2011) (20/20: An Optimal View of 2010 – Current Issues in Professional Responsibility: Lawyers Leaving Law Firms and What Constitutes the Client 's File)

South Carolina Association of Justice (August 2012) (Avoiding Legal Malpractice Traps in Litigation)

South Carolina Bar (October 2012) (Deposition Essentials: Ethics in Witness Preparation and Deposition Conduct)

South Carolina Association of Ethics Counsel (January 2013) (Overview of Lawyer's Duty to Report Professional Misconduct by Other Lawyers: The Lawyer 's Whistle-Blower Rule)

South Carolina Association of Justice (August 2013) (Digital Law Practice: So You Want to Go Paperless.....)

South Carolina Association of Ethics Counsel (January 2014) (Lawyer's Professional
Responsibility / Joint or Vicarious Liability for Co-Counsel's Errors – "Fee Splitting")

South Carolina Bar (February 2014) (Lawyer's Professional Responsibility / Joint or Vicarious Liability for Co-Counsel 's Errors – "Fee Splitting")

South Carolina Bar (May 2014) (Deposition Essentials: Ethics in Witness Preparation and Deposition Conduct)

South Carolina Association of Justice (August 2014) (Ethics Update & Co-Counsel Tips)

South Carolina Association of Ethics Counsel (January 2015) (Just What Are You Doing?: Defining and Limiting the Scope of the Representation)

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Richardson, Patrick, law firm CLE (April 2015) (Just What Are You Doing?: Defining and Limiting the Scope of the Representation)
Inaugural CLE Program- (May 2015) (Law Firm Technology)

South Carolina Association of Justice (August 2015) (Just What Are You Doing?: Defining and Limiting the Scope of the Representation)

South Carolina Bar (September 2015) (Lawyer's Duty to Report Professional Misconduct by Other Lawyers: The Lawyer's Whistle-Blower Rule.)

South Carolina Bar (February 2016) (Torts Update – Ethics Panel)

South Carolina School of Law (March 2016) (Technology For a Paperless Small Law Firm)

South Carolina Association of Justice (August 2016) (Grieving from Grievance: "Don't Threaten Me with a Good Time at ODC")

South Carolina Bar (January 2017) ((Its Better in Beaufort CLE: "Deposition Essentials: Ethics in Witness Preparation and Deposition Conduct")

South Carolina School of Law (January 2018) (Technology For a Paperless Small Law Firm)

South Carolina School of Law (March 2018) (CaseMap - A Litigation Solution)

South Carolina Bar (January 2017) ((Its Better in Beaufort CLE: (March 2018) (Technology For a Paperless Small Law Firm)

BAR ADMISSIONS:

South Carolina Supreme Court
South Carolina Court of Appeals
Delaware Supreme Court
United States District Court for the District of South Carolina
United States District Court for the Southern District of Florida
United States Court of Appeals for the Fourth Circuit
United States Court of Appeals for the Eleventh Circuit
United States Court of Appeals for the Ninth Circuit

May 7, 2018

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VERIFICATION

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, Erik Arnold, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.

Plaintiff

SWORN AND SUBSCRIBED TO BEFORE ME on this 18th day of June, 2018 to certify which witness my hand and seal.

Notary Public
State of GEORGIA

My commission expires Oct 1, 2020

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VERIFICATION

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

I, Peter Kevin Bowers, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.

Plaintiff

SWORN AND SUBSCRIBED TO BEFORE ME on this 18th day of June, 2018 to certify which witness my hand and seal.

Notary Public
State of _____

TORE MELSOM
NOTARY PUBLIC
ANNE ARUNDEL COUNTY
MARYLAND
My Commission Expires 4-18-2021

My commission expires _____

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VERIFICATION

STATE OF ~~SOUTH CAROLINA~~ Virginia)
)
COUNTY OF ~~HORRY~~ Pulaski)

I, KARL J HAGER, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.

Plaintiff

ALICE F. EAST NOTARY PUBLIC REG. # 155854 COMMONWEALTH OF VIRGINIA

SWORN AND SUBSCRIBED TO BEFORE ME on this 15 day of June, 2018 to certify which witness my hand and seal.

Notary Public
State of Virginia

My commission expires 5/31/22

VERIFICATION

STATE OF SOUTH CAROLINA)
)
COUNTY OF ~~HORRY~~ Sumter)

I, JAY A. WELBORN, have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressed stated otherwise, are within my personal knowledge and are true and correct.

Plaintiff

SWORN AND SUBSCRIBED TO BEFORE ME on this 18th day of June, 2018 to certify which witness my hand and seal.

Christine M. Herrera
Notary Public
State of South Carolina

My commission expires 16 Aug 26

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EXHIBIT 1

COPY

THIS AGREEMENT CONTAINS A BINDING, IRREVOCABLE AGREEMENT TO ARBITRATE AND IS SUBJECT TO ARBITRATION PURSUANT TO TITLE 15, CHAPTER 48 (UNIFORM ARBITRATION ACT) OF THE CODE OF LAWS OF SOUTH CAROLINA

MASTER DEED

OF

THE CARAVELLE RESORT

HORIZONTAL PROPERTY REGIME

FILED
HORRY COUNTY, S.C.
2006 FEB 21 PM 2:58
REGISTRAR OF DEEDS

Prepared by
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578

3052-361

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EXHIBIT 2

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EXHIBIT E

TO

MASTER DEED OF THE CARAVELLE RESORT

HORIZONTAL PROPERTY REGIME

THE BYLAWS OF THE CARAVELLE RESORT OWNERS ASSOCIATION, INC.

THE BYLAWS OF THE CARAVELLE RESORT OWNERS ASSOCIATION, INC. are promulgated pursuant to the Horizontal Property Act of South Carolina, Chapter 31, Title 27, Code of Laws of South Carolina, 1976, as amended, and as may be further amended from time to time (the "Act") for the purposes of governing the The Caravelle Resort Horizontal Property Regime (the "Regime") and for the administration of the Regime. All terms not defined in these Bylaws shall have the meaning set out in the Act or the Master Deed dated February 20, 2006 from BEACHFRONT CONVERSIONS, LLC, a South Carolina Limited Liability Company, as Grantor, with all Exhibits incorporated therein and all amendments thereto (the "Master Deed")

ARTICLE I

ASSOCIATION OF PROPERTY OWNERS

Section 1.1 Name. The name of the Association shall be The Caravelle Resort Owners' Association, Inc. (the "Association"). The Association is a non-profit corporation organized pursuant to the South Carolina Nonprofit Corporation Act of 1994, Chapter 31, Title 33, Code of Laws of South Carolina, 1976, as amended (the "Nonprofit Act").

Section 1.2 Membership. Each Property Owner shall be a member of the Association. A person who holds a mortgage on a Unit as security for payment of a debt shall not be a member entitled to exercise the rights of Property Owner unless such person holds a proxy conferring such rights.

Section 1.3 Quorum. The presence in person or by proxy of Property Owners owning one-third of the Percentage Interest in the Common Elements shall constitute a quorum for the transaction of business at meetings of the Association.

Section 1.4 Voting. A Property Owner's voting rights and the vote required to adopt decisions is as set out in Article VII of the Master Deed. Votes can be cast only at meetings of the Association convened in accordance with the Bylaws and the Act; and, in the absence of a valid proxy, an individual shall act in his own behalf, a corporation shall act by any officer thereof, a partnership shall act by any general partner thereof, an association shall act by any associate thereof, a limited liability company shall act by its manager, or, if the company has no manager, by any member, and a trust shall act by any trustee thereof. When any Unit is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, partner in partnership, or any other manner or joint or common ownership, one

person or entity shall be designated the voting member to bind all the others. Written notice of such designation shall be delivered to the Secretary of the Association prior to the exercise of a vote by joint owners. All votes appurtenant to a single Unit must be cast together and may not be split.

Section 1.5 Proxies. Each Property Owner entitled to vote may vote in person or by proxy at any meetings of the Association. Each proxy shall be executed in writing by the Property Owner or by his duly authorized attorney-in-fact, dated as of its execution, and shall be filed with the Secretary of the Board. No proxy shall confer authority to vote at any meeting other than the next meeting, or adjournment thereof, held after the date on which the proxy was executed.

Section 1.6 Consents. Any action that may be taken by a vote of the Property Owners may also be taken by written consent to such action signed by all Property Owners entitled to vote, or, in the case of Units owned by two or more Property Owners, by the designated voting Property Owner.

Section 1.7 Annual Meetings. An annual meeting of the Association shall be held in the fall of each year, or at such other time as may be determined by the Board of Directors. Any business which is appropriate for action of the Owners may be transacted at an annual meeting.

Section 1.8 Special Meetings. Special meetings of the Association may be called at any time by the President of the Board or by a majority of the Board and shall be called upon the written request of Property Owners owning ten percent (10%) of the Percentage Interest in the Common Elements. Only such business as is stated in the notice of meeting shall be transacted at a special meeting, unless all Property Owners entitled to vote waive notice of any additional business.

Section 1.9 Notice of Meetings. Written notice of every annual or special meeting of the Association stating the time, date, and place of the meeting shall be given to every Property Owner entitled to vote not fewer than ten (10) nor more than sixty (60) days in advance of the meeting. The notice should specify a description of any matter that must be approved by the Property Owners as specified in Section 33-31-705 of the Nonprofit Act, as amended. All notices of special meetings shall describe the business proposed to be taken at the meeting. Failure to give proper notice of a meeting of the Property Owners shall not invalidate any action taken at such meeting unless (1) a Property Owner entitled to vote who is present but was not given proper notice objects at such meeting, in which case the matter to which such Property Owner objects shall not be taken up or (2) a Property Owner entitled to vote who is not present and was not given proper notice objects within thirty (30) days following such meeting, in which case, the action to which such Property Owner objects shall be void.

Section 1.10 Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Property Owner may, in writing, waive notice of any meeting either before or after such meeting. Attendance at an annual meeting by a Property Owner, whether in person or by proxy, shall be deemed waiver by such Property Owner of notice of the time, date, and place thereof unless such Property Owner specifically objects to the lack of

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proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted unless objection to lack of notice is raised before the business to which proper notice was not given is put to a vote.

Section 1.11 Place of Meeting. All meetings of the Association shall be held upon the Regime Property or at such other convenient place as the President of the Board, or a majority of the Directors, may direct.

Section 1.12 Adjournment. Any meeting of the Association may be adjourned from time to time for periods not exceeding thirty (30) days by vote of Property Owners holding a majority of the vote represented at such meeting, regardless of whether a quorum is present. Any business that could properly be transacted at the original session of a meeting may be transacted at an adjourned session, and no additional notice of adjourned sessions shall be required.

Section 1.13 Order of Business. The order of business at all meetings of the Property Owners shall be as follows:

1. Roll call and certifying of proxies;
2. Proof of proper notice of the meeting or waiver of notice;
3. Reading of minutes of preceding meeting;
4. Report of the Board of Directors;
5. Reports of officers;
6. Reports of committees;
7. Report of Manager;
8. Presentation of budget;
9. Election of directors (when required)
10. Unfinished business; and
11. New business.

Section 1.14 Minutes of Meeting. The Secretary of the Board shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Association. Such minutes shall be made available for examination and copying by any Property Owner at any reasonable time.

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ARTICLE II

BOARD OF DIRECTORS OF THE ASSOCIATION

Section 2.1 Form of Administration. The Association shall be an incorporated body and shall act by and through its Board. Initially, the number of directors on the Board shall be three (3); in subsequent years, the number of directors shall be set by the Board at three (3), five (5), or seven (7), members, as the Board deems appropriate.

Section 2.2 Powers and Duties. The Board shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Master Deed, the Permitted Encumbrances, and these Bylaws directed to be done and exercised exclusively by the Property Owners.

The Board shall delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the Manager, if any, which might arise between meetings of the Board.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

a. Preparation and adoption of an annual budget pursuant to Article V in which there shall be established the contribution of each Property Owner to the Common Expenses;

b. Making assessments to defray the Common Expenses (including, without limitation, utility expenses as set forth in Section 6.1.h of the Master Deed), establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment (Unless otherwise determined by the Board, the annual assessment against the proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for such month.);

c. Providing for the operation, care, upkeep, maintenance, and replacement of all the Common Elements;

d. Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Elements and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

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e. Collecting the assessments, depositing the proceeds thereof in a bank depository, which it shall approve, and using the proceeds to administer the Association;

f. Making and amending Rules and Regulations;

g. Opening of bank accounts on behalf of the Association and designating the signatories required;

h. Making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Elements in accordance with the other provisions of the Master Deed and the Bylaws after damage or destruction by fire or other casualty;

i. Enforcing by legal means the provisions of the Master Deed, the Bylaws, and the Rules and Regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the owners concerning the Association;

j. Obtaining and carrying insurance against casualties and liabilities, as provided in the Master Deed, and paying the premium cost thereof;

k. Paying the cost of all services rendered to the Association or its members and not chargeable to owners;

l. Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The books and vouchers accrediting the entries thereupon shall be available for examination by the owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board for the general knowledge of the owners. All books and records shall be kept in accordance with generally accepted accounting practices;

m. Make available to any prospective purchaser of a Residential Unit, any Property Owner of a Residential Unit, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any Residential Unit current copies of the Master Deed, the Articles of Incorporation, the Bylaws, Rules and Regulations governing the Residential Unit, and all other books, records, and financial statements of the Association that the Board deems appropriate; and

n. Permit by easement or otherwise utility suppliers to use designated portions of the Common Elements reasonably necessary to the ongoing development or operation of the Property.

o. The Association may borrow money for the purpose of repair or restoration of the Common Elements, or for the purpose of funding budgetary shortfalls, without the approval of the Property Owners, and in connection with such borrowing the Association shall have the power to pledge assessments and reserve accounts to secure such borrowing; provided, however, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association in that fiscal year, the Board shall first obtain the approval of Property Owners owning more than fifty percent (50%) of the amount of the Percentage Interest in the Common Elements either by vote or by proxy at a special meeting in which a quorum is present.

p. Collect and pay, on behalf of all Owners, the utility, insurance, maintenance, repair and replacement expenses and other amounts owed under the Parking Easement.

q. Take all action for and on behalf all Owners in any all matters arising under the Parking Easement.

r. To apply for and authorize a change of zoning of the Property of the Regime to a Planned Unit Development zoning classification pursuant to the zoning ordinance of the City of Myrtle Beach

Section 2.3 Election and Term. Until such earlier time as the Grantor, its successors or assigns, renounces its Board appointment rights and notifies the Board of Directors of the Association to such effect, Grantor, its successors and assigns, shall have the right to designate and select the persons who shall serve as members of each Board of Directors of the Association until the later of the following two events (i) the Grantor, its successors or assigns, no longer owns at least one (1) or more Units or (ii) December 31, 2016 (the "Developer Control Term"). During the Developer Control Term, Grantor, its successors or assigns, shall solely be entitled to designate and select persons to serve on the Board of Directors of the Association by designating in writing the to the Secretary of the Association who shall serve as Directors on the Board of Directors. Such Grantor appointed Directors shall serve at the Grantor's discretion and the Grantor, its successors or assigns, shall have the right to remove such Directors serving on said Board of Directors by notifying the Secretary of the Association and replacing such person or persons with another person or persons to act and serve in their place for the remainder of the Developer Control Term or until removed by the Grantor. Furthermore, upon the death, incapacity, or resignation of a Grantor appointed Director during the Developer Control Period, the Grantor shall appoint a person to fill such vacancy for the remainder of the Developer Control Term or until removal by the Grantor.

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Upon the expiration of the Developer Control Period, the Board of Directors shall call a special meeting of the members to elect a new Board. The Developer appointed Directors shall serve until the newly elected Directors take office. After the expiration of the Developer Control Period, Directors shall serve three-year terms.

In addition to the Directors appointed by the Grantor and/or elected by the members under the preceding paragraphs, the Owners of the Commercial Units shall by collective vote and agreement designate and appoint a representative to serve as an additional *ex officio* Director. Such representative shall not be entitled to vote on issues before the Board, but shall receive notice of any and all Board meetings and all other matters before the Board and shall be entitled to attend and express opinions on any and all issues raised at all meetings and shall be entitled to the same rights of inspection regarding financial and other information at the disposal of the Board.

Section 2.4 Removal. Following the expiration of the Developer Control Period, a Director may be removed from office with or without cause by the affirmative vote of Property Owners holding two-thirds (2/3) of the Percentage Interest in the Common Elements. The unexpired portion of the term of any Director so removed shall be filled by a new Director by the remaining members of the Board.

Section 2.5 Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by the Property Owners shall be filled by a new Director elected by the affirmative vote of a majority of the remaining Directors even though such remaining Directors do not constitute a quorum.

Section 2.6 Voting. Each Director shall have one (1) vote on all matters acted upon by the Board of Directors. The vote of a Director shall be cast only by such Director personally at a meeting of the Board of Directors convened in accordance with these Bylaws. Proxies shall not be permitted in any vote of the Board of Directors. The affirmative vote of a simple majority of the Directors present at the time of a vote, if a quorum is present at such time, shall be sufficient for any action unless otherwise specified in these Bylaws.

Section 2.7 Quorum. A majority of Directors shall constitute a quorum for the transaction of business.

Section 2.8 Consents. Any action that may be taken by a vote of the Board of Directors may also be taken by written consent to such action signed by all Directors.

Section 2.9 Regular Meetings. A meeting of the Board of Directors shall be held during each fiscal year immediately following the annual meeting of the Association and such regular meeting dates as the Directors shall desire shall be fixed after the annual meeting of the Property Owners by mutual agreement of the Directors present at such meeting. Any business that is appropriate for action of the Board of Directors may be transacted at any duly called meeting of the Directors.

Section 2.10 Special Meetings. Special Meetings of the Board of Directors may be called from time to time by the President of the Association and shall be called upon the written

request of two (2) of the Directors. Any business may be transacted at a special meeting if called upon two (2) days notice.

Section 2.11 Notice of Meetings. Except for the annual meeting, written notice of every regular or special meeting of the Board of Directors stating the time, date, and place of the meeting shall be given to every Director and officer not fewer than two (2) nor more than ten (10) days in advance of the meeting. Failure to give proper notice of a meeting of the Board of Directors shall not invalidate any action taken at such meeting unless (1) a Director who was present but was not given proper notice objects at such meeting, in which case the matter to which such Director objects shall not be taken up, or (2) a Director who is not present and was not given proper notice objects in writing to the lack of proper notice within thirty (30) days following such meeting, in which case the action to which such Director objects shall be void.

Section 2.12 Waiver of Notice. Waiver of notice of a meeting of the Board of Directors shall be deemed the equivalent of proper notice. Any director may, in writing, waive notice of any meeting of the Board of Directors either before or after such meeting. Attendance at a meeting by a Director shall be deemed waived by such Director of notice of the time, date, and place thereof unless such Director specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted unless objection to lack of notice of all business transacted is raised before the business in which proper notice was not given is put to a vote. If the notice is waived in advance of a special meeting of the Board of Directors, such waiver shall apply only to such matter transacted at the special meeting which has been communicated in advance to the Director who has waived notice.

Section 2.13 Place of Meeting. All meetings of the Board of Directors shall be held upon the Property or at such other convenient place as the Board of Directors may direct. Meetings may be conducted by conference telephone.

Section 2.14 Minutes of Meetings. The Secretary of the Board shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Board of Directors. A copy of such minutes shall be distributed to each Board Member within thirty (30) days following each meeting, and all such minutes shall be made available for examination and copying by Property Owner at any reasonable time.

Section 2.15 Compensation. The Directors shall serve without compensation, but shall be entitled to reimbursement by the Association for expenses incurred in the conduct of their duties.

Section 2.16 Executive Session. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

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ARTICLE III

OFFICERS OF THE ASSOCIATION

Section 3.1 Designation. The Board shall have a President and a Secretary, who shall serve respectively as the presiding officer and record keeper for the Board. Offices may be filled by the same individual. The Board may elect such other officers as it deems appropriate. The officers shall have the authority, powers, duties, and responsibilities provided by these Bylaws, or, to the extent not so provided, by the Board of Directors.

Section 3.2 Election and Term. Officers of the Board shall be elected by the Board of Directors following each annual meeting of the Board of Directors and at such other times as may be required to fill vacancies in any office. All officers shall serve until their successors have been elected and assumed office unless sooner removed as hereinafter provided. An officer may be reelected to any number of terms.

Section 3.3 Removal. Any officer may be removed from office at any time with or without cause by the Board of Directors.

Section 3.4 President. The President shall be a member of the Board and shall preside at all meetings of the Association and the Board. He shall have all of the general powers and duties which are usually vested in a board chairman, including, but not limited to, the power to appoint committees from among the Property Owners from time to time as he may, in his discretion, deem appropriate to assist in the conduct of the affairs of the Board or the Association.

Section 3.5 Manager Representative. As noted in Section 2.2, the Board of Directors shall select one of its members to act as Manager Representative.

Section 3.6 Secretary. The Secretary, who need not be a member of the Board, shall prepare and keep, or cause to be prepared and kept, the minutes of all meetings of the Property Owners and the Board, and shall have charge of such books and papers as the Board may direct.

Section 3.7 Treasurer. The Board may elect a Treasurer, who need not be a member of the Board. The Treasurer shall have custody of, and responsibility for, Association funds and securities and shall keep the financial records and books of account for the Association. If a Manager is employed as hereinafter provided, custody of Association funds and securities and responsibility for maintaining full and accurate accounts of all receipts and disbursements may be delegated to the manager if the Board so determines, but in such case, the Board shall verify the amount of Association funds and securities in the custody of the Manager and review and reconcile the accounts maintained by the Manager at such intervals as may be determined by the Board of Directors.

Section 3.8 Compensation. All Directors and others shall serve without compensation but shall be entitled to reimbursement by the Association for expenses incurred in the conduct of their duties.

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ARTICLE IV

MANAGER

Section 4.1 Employment. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize (the "Manager"). The Board may delegate to the managing agent or manager, subject to the Board's supervision, all the powers granted to the Board by these Bylaws, other than the powers set forth in subparagraphs a, b, f, g and i ,of Section 2.2 of these Bylaws. Grantor, or an affiliate of Grantor, may be employed as managing agent or manager.

Section 4.2 Term. No management contract may have a term in excess of three (3) years and each contract must permit termination by either party without cause and without termination fee on ninety (90) days or less written notice.

Section 4.3 Financial Interest. The Manager shall not contract with himself, or with any person or entity related to him, except in accordance with Section 5.9.e requiring written board approval.

ARTICLE V

FINANCES

Section 5.1 Fiscal Year. The fiscal year of the Association shall end December 31 unless the Board of Directors shall otherwise determine.

Section 5.2 Budget. The Board, with the assistance of the Manager, shall prepare, adopt, and present, or cause to be prepared and presented, to the Property Owners at their annual meeting an annual budget (the "Budget") for the Regime for the next fiscal year. The budget as adopted by the Board shall set forth with particularity the anticipated Common Expenses for the fiscal year, together with the amount of reasonable reserves for the payment of future Common Expenses and contingencies.

Section 5.3 Approval of Budget. The Budget, as adopted by the Board, shall be deemed approved by the Property Owners at the annual meeting unless amended upon the motion and an affirmative vote of Property Owners holding two-thirds (2/3rds) of the Percentage Interest in the Common Elements. The Budget presented by the Board, and as amended by the Property Owners, if amendments are made, shall become the budget of the Regime for the fiscal year. The terms and the provisions of the Budget shall be binding upon the Property Owners and the Board until its terms are amended by action of the Board duly presented to a special meeting of Property Owners. At which time the new amended Budget presented by the Board shall then take effect unless amended at such special meeting upon the motion and an affirmative vote of Property Owners holding two-thirds (2/3rds) of the Percentage Interest in the Common Elements.

Section 5.4 Regular Assessments. The funds required by the Budget shall be collected by the Board from the Property Owners in proportion to their respective interests in the Common Elements in equal monthly or quarterly assessments as the Board of Directors may determine ("Regular Assessments")

Section 5.5 Special Assessments. The funds required from time to time to pay any Common Expenses which are not covered by the Budget but which are approved by a majority of the Property Owners shall be collected from the Property Owners by the Board of Directors in such installments as the Property Owners shall determine ("Special Assessments")

Section 5.6 Individual Assessments. Any payments to the Association which one or more, but fewer than all, of the Property Owners shall be obligated to make pursuant to the terms of the Act, the Master Deed, or these Bylaws shall be due upon demand and shall be collected by the Board as individual assessments ("Individual Assessments")

Section 5.7 Collection. Property Owners shall be personally liable for all assessments and shall pay the same promptly when due. In its discretion, the Board of Directors may take appropriate action to establish reasonable late payment penalties, to collect by suit, foreclosure, or other lawful method any overdue assessment. If any overdue assessment is collected by an attorney or by action at law, the Property Owners owing the same shall be required to pay all reasonable costs of collection, including attorney's fees.

Section 5.8 Penalty. A penalty may be assessed for assessments not paid in accordance with the provisions set forth in the Master Deed.

Section 5.9 Accounts. The following management standards of performance will be followed, unless the Board, by resolution, specifically determines otherwise:

a. accrual accounting, as defined by generally accepted accounting principles, shall be employed;

b. accounting and controls should conform to established American Institute of Certified Public Accountants (AICPA) guidelines and principles; (A segregation of accounting duties should be maintained and disbursements by check shall require two (2) signatures. Cash disbursements shall be limited to amounts of Twenty-five ($25.00) Dollars and under.);

c. cash accounts of the Association shall not be commingled with any other accounts;

d. no remuneration shall be accepted by the Manager from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

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e. any financial or other interest which the Manager may have in any firm providing goods or services to the Association shall be disclosed promptly to, and approved in writing by, the Board for each and every transaction with that firm; and

f. commencing at the end of the month in which the first Residential Unit is sold and closed, quarterly financial reports shall be prepared for the Association containing:

(i) an income statement reflecting all income and expense activity for the preceding three (3) months on an accrual basis;

(ii) an account activity statement reflecting all receipt and disbursement activity for the preceding three (3) months on an accrual basis;

(iii) an account status report reflecting the status of all accounts in an actual versus approved budget format with a Budget report reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or ten (10%) percent of a major budget category (as distinct from a specified line item in an expanded chart of accounts)

(iv) a balance sheet of an accounting date which is the last day of the month closest in time to three (3) months from the date of closing of the first sale of a Residential Unit in the Regime, and an operating statement for the period from the date of the first closing to the said accounting date, which shall be distributed within sixty (60) days after the accounting date;

(v) a balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year; and

(vi) a delinquency report listing all Property Owners who have been delinquent during the preceding three (3) month period in paying the monthly installments of assessments and who remain delinquent at the time of the report and describing the status of any action to collect such installments which remain delinquent. A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month.

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Section 5.10 Payments. The Board shall provide for payment of all debts of the Association from the funds collected from Property Owners. Expenditures specifically approved in the Budget may be paid without further approval unless the Board of Directors shall otherwise determine. All other expenditures which are in excess of an amount to be determined by the Board of Directors shall be reviewed and approved by the Secretary of the Board of Directors before payment is made. Unless the Manager is authorized by the Board of Directors to draw checks upon the account of the Association, any check or request for withdrawals drawn upon any account of the Association shall be signed by the Chairman and the Secretary or by any two (2) officers of the Association designated by the Board of Directors. The Board of Directors may also authorize the Manager to make disbursements from the petty cash fund, if any.

Section 5.11 Bonding. The Board may secure a fidelity bond in an amount of not less than Ten Thousand ($10,000.00) Dollars covering every individual authorized to withdraw funds from any checking or savings account maintained by the Association. The cost of the bond shall be a Common Expense.

ARTICLE VI

MAINTENANCE AND IMPROVEMENTS

Section 6.1 Maintenance by Manager. At the direction of the Board of Directors, the Manager or the Board of Directors shall provide for the maintenance, repair, and replacement of the Common Elements.

Section 6.2 Maintenance by Property Owners. The Units shall be maintained in good condition and repair by their respective Property Owners. Each Property Owner shall also provide for the routine cleaning of all Limited Common Elements reserved for the use of each Unit.

Section 6.3 Default by Property Owner. In the event that any Property Owner fails to perform the maintenance required of him by these Bylaws or by any lawful Regulation, and such failure creates or permits a condition which is hazardous to life, health, or property, or which unreasonably interferes with the rights of another Property Owner, or which substantially detracts from the value or appearance of the Regime Property, the Board of Directors shall, after giving such Property Owner reasonable notice and opportunity to perform such maintenance, cause such maintenance to be performed, and charge all reasonable expenses of so doing to such Property Owner by an individual Assessment.

Section 6.4 Expenses. The expenses of all maintenance, repair, and replacement provided by the Manager or the Board of Directors, including losses by storm, fire, or other casualty insured by the Association, shall be Common Expenses, except that when such expenses are not fully reimbursed by insurance proceeds and when they are necessitated by (1) the failure of a Property Owner to perform the maintenance required by these Bylaws or by any lawful Regulation or (2) the willful act, neglect, or abuse of a Property Owner, they shall be charged to such Property Owner as an Individual Assessment.

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Section 6.5 Improvements. The Board of Directors shall provide for the making of such improvements and additions to the Common Elements as may be approved from time to time by a vote of the Property Owners at an annual or special meeting of the Property Owners. .

ARTICLE VII

RESTRICTIONS AND REGULATIONS

Section 7.1 Restrictions. The use of the Regime Property shall be subject to the restrictions set forth in the Master Deed and to the following Rules and Regulations.

Section 7.2 Rules and Regulations. In accordance with Section 5.3.b of the Master Deed, the Board shall adopt and amend from time to time such reasonable rules and regulations ("Rules and Regulations") governing the operation and use of the Regime Property as it may deem necessary or desirable, provided, however, any such Rules or Regulations which purport to diminish, abrogate or in any way affect the Commercial Unit, including the Limited Common Elements appurtenant thereto or other rights reserved or granted herein in favor of the Grantor or the Owner of the Commercial Unit, its successors and assigns, relative to the Units, Commercial Unit, Common Elements, or any other portion of the Regime Property, shall not be binding upon the Grantor and/or the Commercial Unit Owner, whichever the case may be, its successors and assigns, unless and until the affected Grantor and/or Commercial Unit Owner consents in writing to the same. Furthermore, Rules and Regulations shall not discriminate against persons who are delegates pursuant to Section 5.3.a of the Master Deed. It shall be necessary to publish newly adopted Regulations or the amendment or repeal of existing Regulations, and no Property Owner shall be bound by any newly adopted Regulation or any amendment or repeal of an existing Regulation until a copy of the same has been delivered to him.

Section 7.3 Enforcement. The Board shall enforce the terms of the Act, the Nonprofit Act, the Master Deed, these Bylaws, and the Regulations promulgated pursuant hereto by taking prompt and appropriate action to correct any violations. In addition to any other remedy to which the Association or any Property Owner may be entitled, the Board of Directors may impose against a Property Owner reasonable fines not to exceed an amount per day to be determined annually by the Board of Directors and consistently applied for any violation of the terms of the Act, the Master Deed, these Bylaws, or of the Regulations promulgated pursuant hereto. Such fines shall be collected as Individual Assessments. Each day during which a violation occurs or continues may be deemed a separate offense.

Section 7.4 Responsibility of Property Owners. Each Property Owner shall be deemed responsible for the conduct of members of his household and his tenants, agents, guests, and pets, but the responsibility of the Property Owner shall not relieve any member of his household or any of his tenants, agents, or guests for any liability to the Association or to a Property Owner for the acts of such member, tenant, agent, guest, or pet.

Section 7.5 Fines. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Property Owner, and to suspend a Property Owner's right to vote or to use the common elements for violation of any duty imposed

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under the Act, the Nonprofit Act, the Master Deed, these Bylaws, or any Rules and Regulations duly adopted under the Bylaws; provided, however, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Unit.

Section 7.6 Additional Enforcement Rights. Notwithstanding anything to the contrary contained in the Master Deed or Bylaws, the Association, acting through the Board, may elect to enforce any provision of the Master Deed, these Bylaws, or the Rules and Regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of Parking Rules and Regulations, as provided below) or by suit at law or in equity to enjoin any violation or to recover monetary damages, or both, without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Property Owner or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees, actually incurred.

ARTICLE VIII

LIABILITIES AND INDEMNIFICATION

Section 8.1 Liability of Association. The Caravelle Resort Owners Association, Inc. is a South Carolina nonprofit corporation. No member of the Association, by virtue of membership alone, is or shall be liable for the debts or torts of the Association.

Section 8.2 Indemnification Among Property Owners. Each Property Owner shall be entitled to contribution from and indemnification by every other Property Owner to the extent that such Property Owner discharges or is required to discharge any portion of any liability of the Association in excess of such Property Owner's proportionate share of such liability, except that no Property Owner shall be required to provide contribution or indemnification on account of a liability which was due and payable prior to the time such Property Owner became a Property Owner.

Section 8.3 Liability of Directors and Officers. No Director or officer of the Association shall be liable to any Property Owner for any decision, action, or omission made or performed by such Director or officer in the course of his duties unless such Director or officer acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Act, the Master Deed, the Permitted Encumbrances, or these Bylaws.

Section 8.4 Indemnification of Directors and Officers. The Association shall indemnify and defend each Director and each officer of the Association from any liability claimed or imposed against him by reason of his position or actions as a Director or any officer of the Association if all the following conditions are satisfied:

(1) Such Director or officer is not required to bear such liability by the terms of the Act, the Master Deed, or these Bylaws;

(2) Such Director or officer gives the Association adequate notice of the claim or imposition of liability or permit the Association reasonable opportunity to defend against the same; and

(3) Such Director or officer cooperates with the Association in defending against the liability. The expenses of indemnifying a Director or an officer shall be a Common Expense. The Board may obtain insurance to provide in whole or in part for this indemnification, and the cost of such insurance shall be a Common Expense.

ARTICLE IX

ATTESTATIONS AND CERTIFICATIONS

Section 9.1 Attestation of Documents. The presence of the signature of the Secretary or an Assistant Secretary of the Board on any contract, conveyance, or any other document executed on behalf of the Association by another officer of the Association shall attest:

(1) That the officer of the Association executing the document does, in fact, occupy the official position indicated, that one in such position is duly authorized to execute such document on behalf of the Association, and that the signature of such officer subscribed on the document is genuine; and

(2) That the execution of the document on behalf of the Association has been duly authorized.

Section 9.2 Certification of Documents. When any document relating to the Regime Property or the Association is certified as authentic by the Secretary or an Assistant Secretary of the Association, a third party, without the knowledge or reason known to the contrary, may rely on such document; as being what it purports to be.

Section 9.3 Certification of Actions and Facts. When there is executed by the Secretary a written statement setting forth (1) actions taken by the Association or by the Board or (2) facts relating to the Regime Property or the Association as determined by the Board, a third party, without the knowledge or reason to know the contrary, may rely on such statement as factually true and correct.

Section 9.4 Absence of Seal. The absence of the seal of the Association from any contract, conveyance, or other document executed on behalf of the Association shall not impair the validity of such contract, conveyance, or document or of an action taken pursuant thereto or in reliance thereon, but the person relying on the same shall bear the burden of establishing that the execution of the same was duly authorized and accomplished on behalf of the Association.

ARTICLE X

AMENDMENTS

Section 10.1 Procedure. Subject to the Master Deed, and specifically to the rights of Grantor as set forth in Article XIV of the Master Deed thereof, these Bylaws may be amended from time to time by resolution adopted by the affirmative vote of the Property Owners holding

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two-thirds (2/3rds) of the Percentage Interest in the Common Elements. No amendment to these Bylaws shall be effective unless and until filed of record as an amendment to the Master Deed.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Record of Ownership. Any person who acquires title to a Unit shall promptly inform the Board of his or her identity and the date upon and manner in which title was acquired. The Board shall maintain a record of the names of all Property Owners and of the dates upon which they acquired title to their Units.

Section 11.2 Notification of Transfer. A Property Owner shall promptly notify the Board of a proposed transfer of title to his Unit setting forth the closing date and the name and address of the transferee.

Section 11.3 Notices. All notices shall be sent in accordance with the Nonprofit Act. Any notices or documents deposited postage prepaid and addressed to the last known owner of a Unit at his last known address shall be deemed delivered to the Property Owner of such Unit, unless the Property Owner has previously specified to the Board of Directors in writing another address for delivery of such notices and documents. Any notices or document addressed to the Board of Directors shall be deemed to be given when such notice is deposited postage prepaid in the United States Mail addressed to such Director at his address as it appears in the records of the Association.

Section 11.4 Waiver. No provision of these Bylaws or of the Regulations promulgated pursuant hereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

Section 11.5 Conflicts. In the event of any conflict between these Bylaws and the Regulations, these Bylaws and the Act, or the Nonprofit Act, or the Master Deed, the Act, the Nonprofit Act, or the Master Deed shall control, as appropriate. In the event of a conflict between these Bylaws and the Regulations, these Bylaws shall control.

Section 11.6 Severability. The provisions of these Bylaws are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder hereof.

Section 11.7 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision hereof.

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Section 11.8 Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall include the plural and vice versa, whenever the context requires or permits.

Adopted this 20th of February, 2006 by the Incorporator:

BEACHFRONT CONVERSIONS, LLC

By: _____
Kevin L. Warren
Its: Manager

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EXHIBIT F
PLOT PLAN

That survey/plat entitled Topographic Survey of Lots 8 & 9, Block 4-CP and Lots 1, 2, 3, 4, 5, & 6, Block 5-CP, Cane Patch Section, City of Myrtle Beach, Horry County, South Carolina prepared for Beachfront Conversions, LLC by Donald E. Thomas of Robert L. Bellamy & Associates, Inc. dated December 30, 2005 and last revised February 10, 2006 and recorded February 21, 2006 in Plat Book 211 at Page 248 in the land records of Horry County, South Carolina, which is incorporated into this Master Deed by reference thereto.

EXHIBIT G
THE PLANS

Those floor plans and elevations comprised of Sheet Numbers A1 through A16 and Sheet Numbers A18 through A21 of those certain plans entitled "Horizontal Property Regime Caravelle Resort, 6900 N. Ocean Blvd. Myrtle Beach, South Carolina", prepared by Pegram Associates, Inc., dated September, 2005, recorded February 21, 2006 in Condominium Plat Book F at Page 93, in the land records of Horry County, South Carolina, which are incorporated into this Master Deed by reference thereto.

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EXHIBIT H

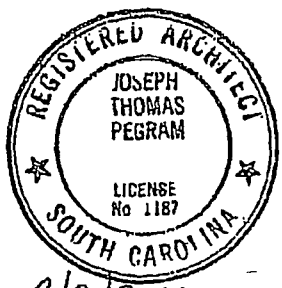
ARCHITECT'S CERTIFICATE

Pursuant to Code Section 27-31-110, South Carolina Code of Laws, 1976, as amended, I hereby certify that, in my professional opinion, and to the best of my knowledge, the Plans attached as "Exhibit G" of The Caravelle Resort Horizontal Property Regime do depict the dimensions, area, square footage and locations of the Units and Common Elements, both limited and general of the Regime, as-built and existing within reasonable construction tolerances.

PEGRAM ASSOCIATES, INC.

By: J. T. Pegram, President

(seal)



Date: 2/8/2006

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EXHIBIT I

PHASE II CHART

In addition to the Property hereby submitted as Phase I, up to one (1) additional phase may be added as Phase II. If and when such additional Phase is added, the total statutory value of all phases submitted and constituting Caravelle Resort Horizontal Property Regime at that time and the percentage interest of each Unit may be determined. To determine the percentage interest of each Unit, utilize a formula with the statutory value of each Unit set forth in the chart below as the numerator with the total statutory value of Caravelle Resort Horizontal Property Regime at that time (including the Phase being submitted) as the denominator. The resulting fraction shall then be expressed as a percentage rounded to the nearest .00000001.

The percentage as determined above shall be the percentage of undivided interest appurtenant to each Unit in Phase II, in the event the Grantor, its successors or assigns, elect in accordance with the provisions of the Master Deed to which this Exhibit is attached, to proceed with the development of Phase II. In that event, as of the date of recording of the amendment incorporating such additional Phase, the percentage interest appurtenant to each Unit in Phase I and such subsequent Phase in the Common Elements will automatically be the percentage to be set forth in a chart, which Grantor must record as part of its election to construct such subsequent Phase. Said percentage shall be determined by the ratio of the statutory value of the individual Unit as the same bears to the statutory value of the whole property. Provided, however, the assigned values to be reflected in the chart for Units in Phase II must be the values provided in the following chart depending on the type of Unit involved as follows:

Type	Statutory Value
Efficiency	Not less than 1.75 Nor more than 2.0
One Bedroom UNITS	Not less than 2.0 Nor more than 2.5
Standard Two Bedroom UNITS	Not less than 2.5 Nor more than 2.75
Deluxe Two Bedroom UNITS	Not less than 2.75 Nor more than 3.0
Three Bedroom UNITS	Not less than 3.0 Nor more than 4.0
Deluxe Three Bedroom UNITS	Not less than 4.0 Nor more than 5.0

Four Bedroom UNITS	Not less than 5.0 Nor more than 6.0
Deluxe Four Bedroom UNITS	Not less than 6.0 Nor more than 7.0
One or more Commercial Unit C-1	Not less than 3.0 Nor more than 8.0

The Grantor may construct in Phase II any possible combination of efficiency, one bedroom, two bedroom, three bedroom or four bedroom Units described above, provided that Grantor at the time of recording its election specifies in the chart amending this Exhibit I the percentage of interest of each Unit in Phase I and Phase II using the values of the different types of Units assigned above.

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MASTER DEED

OF

THE CARAVELLE RESORT
HORIZONTAL PROPERTY REGIME

THIS MASTER DEED is made, published, and declared by BEACHFRONT CONVERSIONS, LLC, a South Carolina limited liability Company (the "Grantor"), pursuant to the Horizontal Property Act of South Carolina, Title 27, Chapter 31, of the Code of Laws of South Carolina 1976 (2004 Supp.) (the "Act") for the purpose of creating a Horizontal Property Regime and establishing certain easements, covenants, and restrictions to run with the land, this 20th day of February, 2006.

ARTICLE I

ESTABLISHMENT OF HORIZONTAL REGIME

Section 1.1 Creation of Regime. The purpose of this Master Deed is to establish, pursuant to the Horizontal Property Act of the State of South Carolina, a horizontal property regime to be known as The Caravelle Resort Horizontal Property Regime. The Grantor, as the sole owner in fee simple of the land and improvements and of the easements all of which are hereinafter described, by filing of record this Master Deed, does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the lands, buildings and easements hereinbelow described, together with all other improvements thereon, including all easements, rights and appurtenances thereto belonging, to a Horizontal Property Regime under the Act and that such property shall be hereafter owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all the easements, terms, provisions, covenants, obligations liens, and restrictions of this Master Deed, the Permitted Encumbrances and the Act.

Section 1.2 Concise Description of the Regime. The Regime consists of:

a. The land described in the attached **EXHIBIT A-1**, which is incorporated herein and made a part and parcel hereof ("Land");

PURSUANT TO S. C. CODE ANN. SECTION 48-39-330 (2004 SUPP.), GRANTOR DISCLOSES TO THE PURCHASER OF ANY UNIT THAT THE LAND ON WHICH THE PROJECT IS CONSTRUCTED OR A PORTION THEREOF IS OR MAY BE SUBJECT TO STATUTORY REGULATION IMPOSED BY THE SOUTH CAROLINA COASTAL ZONE ACT OF 1977, S.C. CODE ANN. SECTIONS 48-39-10 ET. SEQ. (2004 SUPP.), AS AMENDED BY THE SOUTH CAROLINA BEACH MANAGEMENT ACT, S.C. CODE ANN. SECTION 48-39-270 ET. SEQ. (2004 SUPP.), HEREINAFTER COLLECTIVELY CALLED "THE COASTAL CONTROL ACTS." THE COASTAL CONTROL ACTS INVOLVE, AND MAY SUBJECT THE PROPERTY TO, THE CREATION AND EXISTENCE OF INTERIM AND FINAL BASELINES, SETBACK LINES, THE VELOCITY ZONE AND

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AN EROSION RATE, ALL AS IS MORE FULLY DEFINED IN THE COASTAL CONTROL ACTS. PART OR ALL OF THE PROJECT IS OR MAY BE LOCATED SEAWARD OF THE SETBACK LINE, THE MINIMUM SETBACK LINE OR INTERIM BASELINE, AND HAS AN EROSION RATE, ALL AS DETERMINED BY THE SOUTH CAROLINA COASTAL COUNCIL, N/K/A OFFICE OF OCEAN COASTAL RESOURCE MANAGEMENT. ALL OR PART OF THE PROJECT IS OR MAY BE WITHIN THE VELOCITY ZONE AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THE COASTAL CONTROL ACTS MAY ALSO RESTRICT AN OWNER'S (OR PROPERTY OWNERS' ASSOCIATION'S) RIGHT TO BUILD, REPAIR OR REBUILD STRUCTURES ON THE LAND. NO STRUCTURE MAY BE CONSTRUCTED SEAWARD OF THE SETBACK LINE WITHOUT A PERMIT ISSUED BY THE SOUTH CAROLINA COASTAL COUNCIL, N/K/A OFFICE OF OCEAN COASTAL RESOURCE MANAGEMENT. PURSUANT TO THE COASTAL CONTROL ACTS, THE LOCATIONS OF THE BASELINES AND INTERIM AND FINAL SETBACK LINES ARE SUBJECT TO CHANGE. THE METHODOLOGY UTILIZED IN DETERMINING THE EXACT LOCATION OF THE SETBACK LINES AND BASELINES ON THE PROPERTY AND THE CURRENTLY APPLICABLE EROSION RATE MAY BE OBTAINED FROM THE SOUTH CAROLINA COASTAL COUNCIL, N/K/A OFFICE OF OCEAN COASTAL RESOURCE MANAGEMENT. THE METHODOLOGY DESCRIBED ABOVE MUST BE UTILIZED IN A CASE-BY-CASE, PROPERTY-BY-PROPERTY MANNER IN ORDER FOR AN EXACT, SURVEYED DETERMINATION TO BE MADE OF THE LOCATION OF THE BASELINES AND SETBACK LINES. GRANTOR MAKES NO REPRESENTATION TO THE PURCHASER OF ANY UNIT CONCERNING THE LOCATION OF SUCH BASELINES, SETBACK LINES, OR THE VELOCITY ZONE, THE EFFECT OF SUCH REGULATION ON THE PROJECT, OR THE ACCURACY OF THE FOREGOING DISCLOSURE. THIS INFORMATION IS SHOWN WITH MORE PARTICULARITY ON THAT CERTAIN PLAT ENTITLED TOPOGRAPHIC SURVEY OF LOTS 8 AND 9, BLOCK 4-CP AND LOTS 1, 2, 3, 4, 5, & 6, BLOCK 5-CP, CANE PATCH SECTION, CITY OF MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA PREPARED FOR BEACHFRONT CONVERSIONS, LLC BY DONALD E. THOMAS OF ROBERT L. BELLAMY & ASSOCIATES, INC. DATED DECEMBER 30, 2005 AND LAST REVISED FEBRUARY 10, 2006 AND FURTHER IDENTIFIED AND REFERENCED ON THE ATTACHED EXHIBIT F WHICH IS INCORPORATED HEREIN BY SUCH REFERENCE.

PURSUANT TO SECTION 27-31-100(f), SOUTH CAROLINA CODE ANNOTATED, 1976 (2004 SUPP.), NOTICE IS GIVEN THAT ALL ACTIVITIES ON OR OVER AND ALL USES OF ANY SUBMERGED LAND OR OTHER CRITICAL AREAS ARE SUBJECT TO THE JURISDICTION OF THE SOUTH CAROLINA COASTAL COUNCIL, N/K/A OFFICE OF OCEAN COASTAL RESOURCE MANAGEMENT, INCLUDING BUT NOT LIMITED TO THE REQUIREMENTS THAT ANY ACTIVITY OR USE MUST BE

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AUTHORIZED BY THE SOUTH CAROLINA COASTAL COUNCIL, N/K/A OFFICE OF OCEAN COASTAL RESOURCE MANAGEMENT. ANY OWNER IS LIABLE TO THE EXTENT OF HIS OWNERSHIP AND FOR ANY DAMAGES TO, ANY INAPPROPRIATE OR UNPERMITTED USES OF, AND ANY DUTIES OR RESPONSIBILITIES CONCERNING ANY SUBMERGED LAND, COASTAL WATERS, OR ANY OTHER CRITICAL AREA;

b. The buildings and pool complex located on the Land containing three hundred and forty-three (343) residential units consisting of a two bedroom unit, one bedroom units, efficiencies, and studios together with six (6) commercial units, a roof top pool, outdoor pools, spas, and pool decks, exercise room, trash chutes, janitorial and storage closets, stairwells, elevators, maintenance and equipment rooms, fire and machinery rooms, telephone room, pool equipment vaults, and an on site parking garage (collectively, the "Building");

c. Recreational amenities, landscaping, and all other improvements located on the Land; and

d. All right, title, interests, and obligations of the Grantor in and to the Parking Easement (as hereinafter defined) that initially grants a moveable parking easement over that property, together with the improvements located thereon, described in the attached **EXHIBIT A-2** which is incorporated herein by reference.

The general locations of the buildings are shown on the Plot Plan (as hereinafter defined). The Regime may be unilaterally expanded by Grantor, its successors and assigns, as set forth in Section 1.3 and Article XIV.

Section 1.3 Additional Stage. In addition to the lands with improvements described in Section 1.2, Grantor reserves the right to acquire and submit additional land and improvements (new or existing) and to submit the same to the Regime as a second stage of the Regime as contemplated by S.C. Code Ann. Section 27-31-100(g), as that code section or the Act may be amended from time to time. Grantor retains the right, but not the obligation, through and including December 31, 2016, to unilaterally add the second stage of the development by amendment to this Master Deed according to the following plan:

a. The additional stage will have five hundred or less residential units. It may have certain reception areas, storage areas, janitorial closets and related areas that are added to Commercial Unit C-1 (as that unit is hereinafter defined).

b. Grantor must elect to add the second stage on or before December 31, 2016, which election shall be evidenced by an amendment to this Master Deed by Grantor, or its successors and assigns, submitting the additional property to the Regime;

c. The additional Common Elements will be the land, building, parking structure (if

any), fixtures, landscaping, parking, improvements, driveways, and sidewalks constituting the addition to the Regime. The land shall consist of any combination of oceanfront, second and/or third row lots of real property located in the Cane Patch Section of the City of Myrtle Beach and such additional easements as are necessary or desirable, in the discretion of Declarant, for parking, amenities or other incidents to condominium development. No amenities will be added unless, prior to the submission of the second stage, such amenities are described to the Phase I unit owners and are approved by a vote of the Unit Owners holding more than fifty percent (50%) of the Percentage Interest in the Regime, as a capital improvement to the Regime pursuant to Section 5.8; and

d. The chart attached as **EXHIBIT I** demonstrates examples of the percentage interest in the Common Elements of each original unit owner at both stages of development.

For convenience, the first stage of development referred to in Section 1.2 is sometimes referred to as Phase I and the second stage of development referred to in this Section 1.3 is sometimes referred to as Phase II. The Grantor shall be under no obligation to construct or submit Phase II. Should Phase II be constructed and submitted, the Grantor shall not be required to construct any additional Phase or Phases. The construction and submission of Phase II shall be at the sole option of the Grantor, its successors and assigns.

Phase II shall be depicted on a map or plat showing the boundaries of the Phase and the location thereon of all improvements, amenities, parking, etc. Phase I and Phase II, as constructed and submitted, shall constitute the entirety of the Regime, and the Regime, the Association and the Owners of Units shall not acquire any rights as to any properties not depicted thereon and specifically submitted to the provisions of this Master Deed. The Plans and all other Exhibits attached hereto, incorporated herein and/or associated herewith which depict or refer to any Phase which has not been specifically made a part hereof by amendment as herein provided shall be of no force or effect until such Phase has been incorporated herein by amendment. No such site plan shall constitute a warranty or representation that any additional Phase will be constructed or submitted or that any amenity is or will be constructed or submitted. All of the rights, easements and reservations set forth above or elsewhere in this Master Deed relative to submission of an additional Phase, shall inure to the benefit of the Grantor, and the successors and assigns of the Grantor.

Any or all of the special rights and obligations of Grantor may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein and, provided further, no such transfer shall be effective unless it is in a written instrument signed by Grantor and duly recorded in the public records of Horry County, South Carolina. Specifically, Grantor reserves the right to assign the right to develop and submit Phase II and the units created therein, to a separate entity or entities, without assigning Grantor's other rights reserved hereunder.

Notwithstanding any provisions contained in the Master Deed to the contrary, so long as construction and initial sale of Phase II Units shall continue, it shall be expressly permissible for

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Grantor, its successors or assigns, and any builder approved by one or more of them to maintain and to carry on upon portions of the Common Elements such facilities and activities as, in the sole opinion of any one or more of them may be reasonably required, convenient, or incidental to the construction or sale of the Units within such subsequent Phase, including, but not limited to, business offices, signs, model units, and sales offices, and Grantor, its successor or assigns, and any builder approved by one or more of them shall have an easement for access to such facilities.

ARTICLE II

DEFINITIONS

Section 2.1 Definitions. Unless the context requires otherwise, the following shall apply in this Master Deed:

a. "Act" shall mean and refer to the Horizontal Property Act of South Carolina, Chapter 31, Title 27, Code of Laws of South Carolina, 1976 (2004 Supp.).

b. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of The Caravelle Resort Owners Association, Inc., as amended, and filed with the South Carolina Secretary of State. A copy of the initial proposed Articles is attached as **EXHIBIT D**.

c. "Assessment" or "Assessments" shall mean and refer to a Property Owner's share of the Common Expenses assessed against such Property Owner and his or her Unit from time to time in the manner hereinafter provided.

d. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of The Caravelle Resort Owners Association, Inc.; and "Director" or "Directors" shall mean a member or members of the Board.

e. "Building" shall mean and refer to the buildings, including, without limitation, the Out Building (as defined below), constructed on the land described in **EXHIBIT A-1** and containing the Units, Common Elements, and other improvements described in this Master Deed. The Building is more fully described in **Sections 1.2b. and 3.2.**

f. "Bylaws" shall mean and refer to the bylaws, as amended, specifying the system of administration of The Caravelle Resort Owners Association, Inc. and specifying the system for administration of the Regime Property. A copy of the initial Bylaws is attached as **EXHIBIT E.**

g. "Commercial Unit" shall mean and refer to those certain apartments (as that term is used in the Act) to be used for commercial purposes which apartments are more fully described in **Section 3.4.**

h. "Common Elements" shall mean and refer to both the General Common Elements and Limited Common Elements, shall include all portions of the Regime Property

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not included within the Units; "Common Elements" is more fully defined in **Section 3.6.**

i. "Common Expenses" shall mean and refer to actual and estimated common expenses as defined in **Section 6.1.**

j. "**EXHIBIT**" means an exhibit attached to this Master Deed.

k. "General Common Elements" shall mean and refer to all Regime Property exclusive of Units and Limited Common Elements; "General Common Elements" are more fully defined in **Section 3.6.a.**

l. "Grantor" shall mean and refer to Beachfront Conversions, LLC, a limited liability company organized under the laws of the State of South Carolina and any person it may designate of record as the successor Grantor to it.

m. "Limited Common Elements" shall mean and refer to those special Common Elements designated as appurtenant to and reserved for the exclusive use of a specific Unit, or several specific Units, and are more fully defined in **Section 3.6.b.**

n. "Manager" shall mean and refer to the agent retained by the Board pursuant to Article IV of the Bylaws.

o. "Master Deed" shall mean and refer to this Master Deed, with all **EXHIBITS** and shall mean and refer to all amendments to this Master Deed.

p. "of record" shall mean filed of record with office of the Register of Deeds for Horry County, South Carolina.

q. "Out Building" that separate two story building shown on the Plot Plan and the Plans which is located between Ocean Boulevard and the on-site parking garage and is connected by a portico and which comprises a portion of the Building which is presently being used primarily as a restaurant and banquet facility and which consists of a portion of Commercial Unit C-6 and a portion of the limited common elements to Commercial Unit C-1 which is presently being used as a telephone switch and equipment room.

r. "Parking Easement" that Condominium Parking Easement with Unilateral Right to Relocate dated February 20, 2006 and recorded February 21, 2006 in Deed Book 3052 at Page 344, in the land records of Horry County, South Carolina which grants parking rights to the Regime which is further described and set forth in **Section 9.10.**

r. "Percentage Interest" shall mean and refer to the percentage of undivided interest each Property Owner owns as a tenant in common in the Common Elements. The Percentage Interest for each of the Units is set forth on **EXHIBIT C.**

s. "Permitted Encumbrances" shall mean and refer to the matters set forth on **EXHIBIT B** which is incorporated herein by reference..

t. "Plans" shall mean and refer to the set of floor plans of the Building prepared for Beachfront Conversions, LLC which are more particularly referenced and identified in the attached **EXHIBIT G**. The attached **EXHIBIT G**, and such Plans as referenced and identified in the attached **EXHIBIT G**, are incorporated into this Master Deed by reference.

u. "Plot Plan" shall mean and refer to the plot plan and floor elevations as set forth in that survey which is more fully described on the attached **EXHIBIT F**. The attached **EXHIBIT F**, and such Plot Plan as referenced and identified in the attached **EXHIBIT F**, are incorporated into this Master Deed by reference.

v. "Property" or "Regime Property" shall have the meaning set forth in **Section 3.1.**

w. "Property Owners" or "Owners" shall mean and refer to persons, firms, corporations, partnerships, limited liability companies, associations, trusts, or other legal entities, or any combination thereof, who or which own a Unit of record.

x. "Property Owners' Association" or "Association" shall mean the incorporated association of Property Owners more fully described in **Section 7.1.**

y. "Regime" means The Caravelle Resort Horizontal Property Regime created by this Master Deed and the Act and includes the property described in **Sections 1.2 and 3.1.**

z. "Residential Unit" shall mean one of the three hundred and forty-three (343) apartments (as that term is used in the Act) reserved exclusively for residential use and more fully described in **Section 3.3.** A Residential Unit shall be referred to by using the word "Unit" followed by the number assigned to that unit in **Section 3.3.**

aa. "**Section**" means a section of this Master Deed.

bb. "Unit" shall mean and refer to an apartment (as that term is defined by the Act) and shall mean a part of the Regime Property intended for independent use. There are two types of "Units" (or "apartments" as that term is used in the Act) in the Regime – three hundred and forty-three (343) Units intended for residential use, which are referred to in this Master Deed as "Residential Units", and six (6) Units consisting of a number of commercial areas intended for commercial use, referred to in this Master Deed as the "Commercial Units".

ARTICLE III

THE REGIME PROPERTY

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Section 3.1 Regime Property. The term "Regime Property" shall mean and refer to all of the Land described on **EXHIBIT A-1**, the Building, the improvements, the landscaping, and all the other improvements on the Land described in **EXHIBIT A-1** and **Section 1.2**, together with all easements and other rights appurtenant to the Land described on **EXHIBIT A-1** including without limitation, the Parking Easement. Regime Property shall also include all land, improvements, and easements hereafter acquired by or added to the Regime. Regime Property shall be acquired and held subject to this Master Deed, the Bylaws, the Permitted Encumbrances, and the Act.

Section 3.2 Building. The Plot Plan and the Plans referenced in the attached **EXHIBIT F** and **EXHIBIT G** show the horizontal and vertical location of the buildings, pools, amenities, pool bar cabana, and parking garage that constitute the Building. The Plans show graphically the dimensions, area, and location of each Unit within the Building, and the dimension, area, and location of Common Elements affording access to each Unit. The Building contains three hundred and forty-three (343) Residential Units and six (6) Commercial Units. The Building contains fourteen floors of Units designated on the Plans and within the Building as the "First Floor", "Second Floor", "Third Floor", "Fourth Floor", "Fifth Floor", "Sixth Floor", "Seventh Floor", "Eighth Floor", "Ninth Floor", "Tenth Floor", "Eleventh Floor", "Twelfth Floor", "Fourteenth Floor", and "Fifteenth Floor" with there being no thirteenth floor. For purposes of this Master Deed, and as shown in the Plans, the actual thirteenth floor of the Building is designated the Fourteenth Floor and the actual fourteenth floor of the Building is designated the Fifteenth Floor. For purposes of this Master Deed and the Regime, the elevations shown on the Plot Plan for floors 13 and 14 shall apply to Fourteenth Floor and the Fifteen Floor, respectively.

Section 3.3 Residential Units. There are three hundred and forty-three (343) Residential Units in the Building individually designated, located, and shown on the Plans as 111, 112, 114, 116, 118, 119, 120, 121, 122, 123, 124, 125, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 214, 216, 218, 219, 220, 221, 222, 223, 224, 225, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 314, 316, 318, 319, 320, 321, 322, 323, 324, 325, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 414, 416, 418, 419, 420, 421, 422, 423, 424, 425, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 734, 735, 737, 738, 739, 740, 741, 742, 743, 744, 745, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443,

1444, 1445, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544 and 1545. Access to the Residential Units is through doorways, open hallways, General Common Elements, and Limited Common Elements of the Commercial Unit as shown on the Plans.

A. "A" Units

Units 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509 and 1510 are located on the Seventh through the Fifteenth Floors. Each of these Oceanview Suites has a total area of approximately 519 square feet.

B. "B-1" Units

Units 611, 711, 811, 911, 1011, 1111, 1211, 1411, and 1511 are located on the Sixth through Fifteenth Floors. Each of these Oceanfront Deluxe Suites has a total area of approximately 627 square feet.

C. "B-2" Units

Units 211, 311, and 411 are located on the Second, Third and Fourth Floors. Each of these Oceanfront Deluxe Suites has a total area of approximately 744 square feet.

D. "B-3" Unit

Unit 111 is located on the First Floor. This Oceanfront Deluxe Suite has a total area of approximately 744 square feet.

D. "B-4" Unit

Unit 511 is located on the Fifth Floor. This Oceanfront Deluxe Suite has a total area of approximately 627 square feet.

E. "C-1-A" Units

Units 612, 712, 812, 912, 1012, 1112, 1212, 1412, and 1512 are located on the Sixth through the Fifteenth Floors. Each of these Oceanfront Efficiencies has a total area of approximately 350 square feet.

F. "C-1-B" Units

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Units 613, 713, 813, 913, 1013, 1113, 1213, 1413 and 1513 are located on the Sixth through Fifteenth Floors. Each of these Oceanfront Efficiencies has a total area of approximately 372 square feet.

G. "C-1-C" Units

Units 614, 714, 814, 914, 1014, 1114, 1214, 1414 and 1514 are located on the Sixth through Fifteenth Floors. Each of these Oceanfront Efficiencies has a total area of approximately 390 square feet.

H. "C-1-D" Units

Units 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, and 625 are located on the Sixth Floor. Each of these Units has a total area of approximately 398 square feet.

I. "C-1-E" Units

Units 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, and 525 are located on the Fifth Floor. Each of these Oceanfront Efficiencies have total area of approximately 398 square feet.

J. "C-1-F" Unit

Unit 512 is located on the Fifth Floor. This Oceanfront Efficiency has a total area of approximately 350 square feet.

K. "C-1-G" Unit

Unit 513 is located on the Fifth Floor. This Oceanfront Efficiency has a total area of approximately 372 square feet.

L. "C-1-H" Unit

Unit 514 is located on the Fifth Floor. This Oceanview Efficiency has a total area of approximately 390 square feet.

M. "C-2-A" Units

Units 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 601, 602, 603, 604, 605, 606, 607, 608, 609 and 610 are located on the Fifth and Sixth Floors. Each of these Oceanfront Efficiencies has a total area ranging from approximately 505 to 529 square feet.

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N. "C-2-B" Unit

Units 401, 402, 403, 404, 405, 406, 407, 408, 409, and 410 are located on the Fourth Floor. Each of these Oceanview Efficiencies has a total area ranging from approximately 507 to 525 square feet.

O. "C-2-C" Units

Units 201, 202, 203, 204, 205 [206] 207, 209, 301, 302, 303, 304, 305, 306, 307, and 309 are located on the Second and Third Floor. Each of these Oceanview Efficiencies have a total area ranging from approximately 507 to 525 square feet.

P. "C-2-D" Units

Units 208, 210, 308 and 310 are located on the Second and Third Floors. Each of these Oceanview Efficiencies has an area of approximately 507 square feet.

Q. "C-6-A" Units

Units 218, 219, 220, 221, 222, 223, 224, 225, 318, 319, 320, 321, 322, 323, 324, 325, 418, 419, 420, 421, 422, 423, 424 and 425 are located on the Second, Third and Fourth Floors. Each of these Oceanfront Efficiencies has a total area of approximately 455 square feet.

R. "C-6-B" Units

~~Units~~ 118, 119, 120, 121, 122, 123, 124, and 125 are located on the First Floor. Each of these Oceanfront Efficiencies has a total area of approximately 455 square feet.

S. "D-1" Units

Units 734, 737, 738, 739, 740, 741, 742, 743, 744, 745, 834, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 934, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 1034, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1134, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545 are located on the Seventh through Fifteenth Floors. Each of these Oceanfront Suites has a total area ranging from approximately 600 to 625 square feet.

T. "D-2" Units

Units 835, 935, 1035, 1135 are located on the Eighth through the Eleventh Floors. Each of these Oceanfront Suites has a total area of approximately 600 square feet.

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U. "E" Unit

Unit 735 is located on the Seventh Floor. This Oceanfront Two Bedroom Suite has a total area of approximately 1200 square feet.

V. "F" Units

Units 715, 815, 915, 1015, 1115, 1215, 1415, 1515 are located on the Seventh through the Fifteenth Floors. Each of these Oceanfront Studios has a total area of approximately 444 square feet.

W. "G" Units

Units 112, 114, 116, 212, 214, 216, 312, 314, 316, 412, 414, and 416 are located on the First through the Fourth Floors. Each of these Oceanfront Jacuzzi Suites has a total area of approximately 978 square feet.

Section 3.4 Commercial Units. There are six (6) apartments (as that term is used in the Act) in the Regime which are designated as Commercial Units C-1, C-2, C-3, C-4, C-5, and C-6 on the Plans (such apartments being referred to in this Master Deed as the "Commercial Units"). The Commercial Unit C-1 is currently being used as an office and consists of an area of approximately 538 square feet on the First Floor as identified on the Plans. The Commercial Unit C-2 is presently being used as a game room and consists of an area of approximately 972 square feet on the First Floor as identified on the Plans. The Commercial Unit C-3 is presently being used as an ice cream shop and consists of an area of approximately 972 square feet on the First Floor as identified on the Plans. The Commercial Unit C-4 is presently being used as an office and consists of an area of approximately 537 square feet on the First Floor as identified on the Plans. The Commercial Unit C-5 is presently being used as a commercial guest laundry and consists of an area of approximately 513 square feet on the First Floor as identified in the Plans. The Commercial Unit C-6 is presently being used as a restaurant and pool bar and consists of an area of approximately 8374 square feet of space within the Out Building as shown on Sheet Number A2 of the Plans and an additional approximate 378 square foot pool bar cabana located on the First Floor pool deck (the "Pool Bar Cabana") which may be relocated to the C-6 Relocation Area as shown and identified on Sheet Number A1 of the Plans pursuant to the terms and conditions set forth in **Section 4.8**. Access to the areas comprising the Commercial Units is shown through doorways, open hallways, General Common Elements, and Limited Common Elements of the Commercial Unit as shown on the Plans.

Section 3.5 Boundaries of Units. Each Unit is composed of the interior cubic space, fixtures, appliances, furnishings, walls, floors, ceilings, and building material enclosed within the following boundaries:

a. The upper boundaries of the Units shall extend to the unfinished interior surfaces of the unfinished sheet rock or other ceiling. The lower boundary of the Unit shall extend to the unfinished surface of the structural slab constituting the floor.

b. The perimetrical boundaries of the Unit shall extend to the unfinished interior

surfaces of the perimeter walls of the Unit, excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the undecorated and/or unfinished inner surfaces of the ceilings of each Unit, and further excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of all interior load bearing walls and components and/or unfinished bearing partitions, and further excluding all dropped ceilings (but not ceiling tiles), pipes, ducts, wires, conduits and other facilities running through any interior wall or partition for the furnishing of utility services to Unit, Common Elements and Limited Common Elements.

c. Each Unit shall also encompass and include, and each Property Owner shall be responsible for maintenance and repair of the following: (i) the doorways, windows, vents, and other non-structural elements in the walls, floor, and ceilings of the Unit which are regarded as enclosures of space; (ii) the doors (including any screen doors) opening into the Unit and into any storage area integral to the Unit, including the frames, casings, hinges, handles, and other fixtures which are part of the doors; (iii) the window glasses, screens, frames, and casings which are part of the window openings of the Unit; (iv) the plumbing, wiring, and mechanical vents that exclusively serve the Unit; (v) the appliances, air conditioning, and heating units, (including the condenser and all piping, wiring and attachments), hot water heaters, lavatories, bathtubs, toilets, carpeting, floor covering, trim finished surface of ceilings and walls, wiring, insulation, and other fixtures, furnishings, and building materials which are part of the Unit when delivered to the initial Property Owner subject to any required pro-rations pursuant to Section 4.3; and (vi) all appurtenances which are integral and exclusive to the Unit, including, but not limited to, lamps attached to the exterior of the Unit and water and sewer pipes within the Unit and exclusively serving the Unit.

Section 3.6 Common Elements. The Common Elements include all of the Property submitted to condominium ownership that is not included within the Units. The roof pool, indoor pools, outdoor pools, first floor poolside rest rooms, exercise room, and general landscaping are Common Elements. The Plot Plan and the Plans graphically depict, to the extent reasonably possible, the areas encompassing the Common Elements.

a. General Common Elements. The General Common Elements shall include, without limitation, the following:

i. Except for the Units and such portions reserved as Limited Common Elements, all land within the boundaries of the Regime Property, together with all easements, rights, and hereditaments appurtenant thereto.

ii. All improvements, exclusive of the Units and Limited Common Elements as identified on the Plans and in this Master Deed, erected upon the Land including, without limitation, those shown on the Plans as: (a) the exercise

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room and basement; (b) the roof top pool are on the eighth floor and all other landscaping located within and around the Building; (c) mechanisms, vents, and equipment constituting the trash chutes; (d) the roof or roof elements covering the Building; (e) the exterior surfaces of the Building, including all stucco, whether over reinforced concrete masonry or otherwise, including those limited exterior areas having plywood or other materials over masonry or aluminum studs; (f) the pipes, wires, conduits, pumps, motors, air handling vents, materials, and equipment, and other equipment installed to provide utility service to the Units (but not to disburse such services throughout the Unit) or to portions of the Common Elements; (g) the entire parking garage within the Building and other parking areas, except where noted, ramps, street signs, oceanfront wood walks and showers, light poles, interior signage, fences, concrete walks and decks, all concrete or asphalt paving, brick pavers, bulkheads, irrigation wells and systems, landscaping, storm drainage features, the grassed and other storm water retention areas, catch basins, and drainage pipes; (h) the foundations, pilings, and structural members, subflooring, girders, beams, supports, load bearing interior walls, and interior walls enclosing pipe chases and utility installations serving more than one Unit; (i) all pools, whirlpools/spas, and all pool equipment, including pool heaters, and pool equipment/pump rooms; (j) all corridors, elevator lobbies, exterior railings, exterior lattice, and all stairs and stair wells, all elevator equipment rooms, the 4 main elevators, and all elevator workings and equipment; (k) all electrical, and mechanical systems located outside of the Units (excluding the telephone system) and all electrical and mechanical systems located within the Units or within areas designated on the Plans as limited common element to a particular Unit (excluding the telephone system) provided any such system serves more than one Unit as well as all fire, mechanical and electrical rooms excluding those rooms marked on the Plans as Commercial Units or as limited common elements to any Commercial Unit; (l) fire pump rooms and fire monitor rooms and all portions and aspects of the fire prevention and extinguishment systems; (m) all dune walkovers and showers; (n) any fountains; and (o) all other elements rationally of common use or not either a Unit or a Limited Common Element.

iii. All parking rights and parking improvements for the benefit of the Regime, Association, and Owners set forth in the Parking Easement but subject to the terms, conditions, and obligations of such Parking Easement.

iv. General Common Elements shall also include common elements added by the Board pursuant to **Section 5.8.**

b. Limited Common Elements.

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i. The Limited Common Elements shall include those special elements designated for the exclusive use of a specific Unit. The Limited Common Elements include all water, power, electricity, plumbing, gas, and sewage lines within the walls providing service exclusively to the Unit; provided, however that the portion of said lines located in a common compartment for, or installation of, such lines shall be Common Elements as described above. In the case of Residential Units, the Limited Common Elements include the private balconies adjoining the Residential Units.

ii. In the case of the Commercial Unit C-1, those cross hatched areas on all floors identified on the Plans as Limited Common to Commercial Unit C-1, including janitorial closets, storage closets, telephone room, and certain chute closets, are Limited Common Elements for Commercial Unit C-1. The Limited Common Elements for Commercial Unit C-1 also include the roof top space, but not the roof, and the space on and around the parapets and upper walls of the Building, but not the walls themselves, for purposes of locating and affixing one or more communications towers, antenna arrays, and/or other similar communications equipment (collectively, "Tower Facilities") together with space within the emergency generator room and other room(s) located on the roof tops of the Building for purposes of locating communications equipment so long as the location of such equipment does not interfere with the integrity of the roof and the use of all utility conduits, the emergency generator room and boiler room for their intended purposes (the "Roof Top Limited Common Element"). In connection with the Roof Top Limited Common Element, the Grantor grants in favor of the Owner of Commercial Unit C-1, the exclusive right, as an appurtenance to Commercial Unit C-1, to grant such additional leases, licenses and or easements as are necessary in the discretion of such Owner in order to transfer the rights to construct and maintain Tower Facilities to third parties, subject to the limitations set forth above. The Grantor further hereby grants to the Owner of the Commercial Unit C-1 an exclusive, transferable, commercially useable appurtenant easement to maintain lines, utility conduits and a vehicle with a generator to provide electricity and phone service to the roof top Tower Facilities during time of power shortage or power outage, and there is granted along all conduits and the upper exterior walls of the Building and of the elevator machine room on the roof of the Building, an appurtenant easement to maintain and service utilities for the Tower Facilities equipment.

iii. In the case of the Commercial Unit C-6, the cross hatched area on the pool deck as shown on Sheet Number A1 of the Plans and identified as Limited Common to Commercial Unit C-6 ("Pool Kiosk Limited Common Element") and the patio and planters extending from the Outbuilding as shown on Sheet Number A2 of the Plans and identified as Limited Common to Commercial Unit C-6 ("Patio Limited Common Element") are Limited Common Element to Commercial Unit C-6. Notwithstanding

the provisions of Sections 5.4 and 5.7 hereinbelow, the Owner of Commercial Unit C-6 may use such areas for the commercial purposes of such Owner and may in its sole direction, and at its sole expense, cause the concrete planters located upon the Patio Limited Common Element to be removed or relocated.

Section 3.7 Values. Statutory values are fixed for the sole purpose of complying with the Act and shall not prevent each Property Owner from fixing a different circumstantial value to his or her Unit in all types of acts or contracts. The assigned statutory value of all of the Property submitted to condominium ownership in the Regime is 734.60 statutory units. The statutory value of each Unit is set forth on **EXHIBIT C**.

ARTICLE IV

UNITS: OWNERSHIP AND USE

Section 4.1 **Ownership of Units.** Each Unit, together with its undivided interest in the Common Elements, shall constitute a separate parcel of real property and each Property Owner shall be entitled to exclusive ownership and possession of his, her, their or its Unit, subject to: (i) the provisions of this Master Deed and the easements, restrictions, covenants, and encumbrances set forth herein; (ii) the Permitted Encumbrances, and (iii) the Bylaws, as they may be amended from time to time, together with the Rules and Regulations that may be adopted by the Board pursuant to the Bylaws.

Section 4.2 **Legal Description.** Each Residential Unit may be sufficiently described for purposes of deeds, mortgages, leases, and other conveyances by referring to the Residential Unit number in Section 3.3 and by reciting that it is part of The Caravelle Resort Horizontal Property Regime. Each Commercial Unit may be sufficiently described for purposes of deeds, mortgages, leases, and other conveyances by reference to the Commercial Unit number and by specifying that it is a part of The Caravelle Resort Horizontal Property Regime. The conveyance of an individual Unit shall be deemed to convey the undivided interest in Common Elements appurtenant to that Unit. The ownership of an undivided interest in Common Elements appurtenant to a Unit shall be inseparable from the Unit, and no such undivided interest may be conveyed or encumbered except as an appurtenance to the Unit.

Section 4.3 **Maintenance and Repair.** Every Property Owner shall be responsible at his own expense for maintaining, repairing, and decorating all walls, ceilings, and floors of his Unit. Every Owner must perform promptly all maintenance and repair work within his Unit which, if omitted, would affect the Regime Property in its entirety or any part belonging to other Owners, and shall be expressly responsible for the damages and liability which his failure to do so may engender. In addition to those items set forth in Section 3.5c., the Owner of each Unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, sewage and sanitary service to his Unit and which may now or hereafter be situated in his Unit. Where the air conditioning and heating equipment, stoves, refrigerators, fans, or other

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appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, sewage and sanitary service serve both a Unit and Common Elements, the cost of the maintenance, repair, and replacement shall be pro-rated between the Unit and the Association. Such Owner shall further be responsible and liable for maintenance, repair and replacement of any and all window glass, including the glass of any sliding glass doors; walls, exterior surfaces of all interior ceilings and floors; interior painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his Unit. Wherever the maintenance, repair and replacement of any items for which the Owner of a Unit is obligated to maintain, repair or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association, or the Insurance Trustee hereinafter designated, shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner of such Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The balcony floor, the walls facing the balcony, and any balcony railings attached thereto shall be maintained by the Association as a Common Expense. No Owner shall take any action which will alter the exterior appearance of the Building or cause any damage to the surface of the balcony floor. Should the Owner fail to provide the maintenance and/or repairs as required, the Association shall have the right to enter the Unit to accomplish same at the sole cost and expense of the Owner and said cost and expense shall be charged against the Owner, including the expense of making a key should Owner fail to deposit a key with the Association pursuant to the requirements of **Section 9.6**. Any such costs and expenses shall become a lien on the Unit in like manner as an assessment.

Section 4.4 Modification of a Unit. No Owner of a Residential Unit shall do any work or make any addition, improvement, structural modification, or alteration of his, her, their, or its Unit, nor shall any Owner of a Residential Unit alter the appearance of any external door, window, vent, flue, or other external element of his, her, their, or its Residential Unit without obtaining prior written approval of the Grantor and the Board. In the case of changes to be approved by the Board, written notice of any intended modification, addition, improvement, painting, or alteration shall be given to the Board, setting forth details and requesting approval. The Board shall consider the request and decide whether approval shall be granted. The Board may require the deposit of funds sufficient in the sole discretion of the Board to defray all costs, including attorney's fees, of modifying this Master Deed and recording such modification. The Board shall advise the Owner of its decision in writing within ninety (90) days from receipt of the request. Nothing in this section shall relieve any Owner from obtaining approval for alterations required by other applicable covenants, restrictions, or by any governmental authority. No Owner shall undertake to modify, alter, improve, paint, or repair any portion of the Common Elements. The independent right of Grantor to approve changes shall lapse on March 1, 2016. Notwithstanding the foregoing, the Owners of the Commercial Units shall have the right, without the consent or permission of the Board of Directors of the Association or the Grantor, to make such changes and alterations to non-structural components of the Commercial Units as it or they may unilaterally desire and neither the Association, the Grantor, the Board of Directors or any other Owner shall have the right to object thereto. Further notwithstanding the foregoing, the

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Owners of the Commercial Units shall have the right, without the consent or permission of the Board of Directors of the Association or the Grantor, to make such changes and alterations to structural and nonstructural components of the Commercial Units (including walls in between Commercial Units) as it or they may unilaterally desire and neither the Association, the Grantor, the Board of Directors or any other Owner shall have the right to object thereto, provided such Owner(s) provides a certification from a licensed structural engineer that such structural alteration will not adversely affect the structural integrity of the Building.

Section 4.5 Use Restrictions. The Residential Units shall be used for residential purposes only; provided, however, an Owner may rent his or her Unit on any basis so long as he or she does not use the Unit itself for the business of renting, including, without limitation, to dispense keys, to book rentals, or to otherwise act as the office for renting the Unit itself or for renting any other property, which conduct is expressly prohibited. It shall be the responsibility of each Owner to prevent the development of any unclean, illegal, unhealthy, unsightly, or unkempt condition in his or her Unit. No Residential Unit shall be used in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Unit that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, offensive, or illegal activity shall be carried on in any Unit, nor shall anything be done therein tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Unit. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, illegal, or of a nature as may diminish or destroy the enjoyment of the Property. Notwithstanding the above, so long as Grantor shall retain any interest in any Residential Unit, it may utilize a Residential Unit or Units owned by it, from time to time, for sales offices, models, reception rooms, hospitality rooms and/or other usages for the purpose of selling and marketing Residential Units in the Regime. Nothing herein shall be construed to limit the commercial or business activities that may be conducted on, through or about the Commercial Units or the Limited Common Elements appurtenant thereto; the same may be used for all legal commercial purposes. The restrictions contained in this Section 4.5 may not be amended without the consent of all of the Owners of the Commercial Units.

Section 4.6 Time Sharing of Units. No Owners shall engage in or permit time share ownership of a Residential Unit.

Section 4.7 No Combination or Subdivision of Unit. No Unit may be divided or subdivided into a smaller Unit or smaller Units than as shown on the Plans referenced and identified on the attached **EXHIBIT G** which are incorporated herein by reference, nor shall any Unit, or portion thereof, be added to or incorporated into any other Unit. Notwithstanding anything in this Master Deed to the contrary, the Owners of the Commercial Units may lease portions of each Commercial Unit to one or more third parties but shall at all times remain directly responsible for all obligations as the Owner of such partially leased Commercial Unit under the terms and conditions of this Master Deed.

Section 4.8 Relocation of the Commercial Unit C-6 Pool Bar Cabana. In the event

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the Pool Bar Cabana, consisting of a portion of Commercial Unit C-6, and being located Oceanside on the First Floor pool deck, suffers a casualty loss and cannot be repaired and/or rebuilt in its existing location, the Association shall cause such facility to be rebuilt elsewhere on the pool deck in such place identified on Sheet Number A-1 of the Plans as the C-6 Relocation Area (the "Pool Bar Relocation Area"). In the event of such relocation, the Association, at its sole cost and expense, but using any available casualty insurance proceeds and reserves, shall restore the original cabana pool bar area for use as a pool deck and cause the small lazy river on the pool deck to be closed and filled in (if such pool has not already been closed and filled in for use as a pool deck pursuant to Section 5.9) and shall build a new Pool Bar Cabana to substantially the same specifications as the original Pool Bar Cabana within such Pool Bar Relocation Area. Notwithstanding the Association's obligations with respect to the aforementioned restoration work, site work and reconstruction of the improvements, including the costs of running new utilities to the Pool Bar Relocation Area, the Owner of Commercial Unit C-6 shall be responsible for the replacement and repair of all furniture, fixtures, equipment, and other contents within the cabana pool bar. In the event governmental ordinances and regulations prevent the reconstruction of the pool bar in the relocation area to substantially the same specifications as the existing pool bar, the Association shall modify such specifications with the approval of the Owner of Commercial Unit C-6 as is necessary to complete such facility in accordance with such governmental ordinances and regulations including, if necessary, the construction of temporary facilities and/or utility hookups for mobile bar service within such Pool Bar Relocation Area should permanent facilities not be permitted.

Section 4.9 No Amendment Without Grantor's Consent. The provisions of this Article IV may not be amended without the consent of the Grantor.

ARTICLE V

COMMON ELEMENTS: OWNERSHIP AND USE

Section 5.1 Ownership of Common Elements. The Owners shall own the General Common Elements and Limited Common Elements as tenants in common. The Percentage Interest appurtenant to each Unit has been determined by finding the percentage equivalent to the value of the individual Unit in relation to the value of all Units and is set forth on **EXHIBIT C.**

Section 5.2 Appurtenance of Percentage Interest. The Percentage Interest in the General Common Elements and the Limited Common Elements cannot be separated or partitioned from the Unit to which it appertains and shall be automatically conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the deed or other instrument of conveyance,

Section 5.3 Use of General Common Elements. Every Owner shall have a right and easement of ingress and egress, and a right of use and enjoyment in and to the General Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

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a. Any Property Owner may delegate his or her right of enjoyment to the members of his or her family, business, and social invitees and an Owner shall be deemed to have made such a delegation to guests occupying his or her Unit for rent. Persons using the Common Elements by delegation shall be subject to the same Rules and Regulations as may from time to time be imposed upon Owners pursuant to Section 7.2 of the Association's Bylaws.

b. The right of the Board, pursuant to the Bylaws, to adopt reasonable Rules and Regulations concerning access to and use of the Common Elements;

c. The right of the Board, subject to the Bylaws, to suspend a Property Owner's voting rights and the right to use any of the facilities for any period during which any assessment of the Association against that Property Owner's Unit remains unpaid, and for any infraction by a Property Owner of the Board's Rules and Regulations;

d. The right of Grantor, with regard to the Common Elements, to grant easements in and to the Common Elements to any public agency, authority, or utility, or other entity, for such purposes (including, without limitation, utilities, cable, and telephone service) as benefits only the Common Elements or portions thereof or any Unit or Units in the Regime;

e. The right of the Board, pursuant to the Bylaws, to dedicate or transfer all or any portion of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association at an annual meeting or at a meeting called for that purpose;

f. The Permitted Encumbrances; and

g. The use restrictions set forth in Section 5.4.

This Section 5.3 may not be amended without the written consent of Grantor.

Section 5.4 Use Restrictions. The Common Elements, excluding the Limited Common Elements for the Commercial Units, shall be used for residential, recreational, and such related purposes as may be more particularly set forth in this Master Deed. Except as otherwise permitted by easements reserved or granted within or prior to this Master Deed, there shall be no commercial activities in or on the General Common Elements or the Limited Common Elements of any Residential Unit, including, but not limited to, operation of rental management services, key pick up and drop off, front desk, concierge, the furnishing of cable, movie, internet, wireless broadband, and telephone services to Residential Units, shops, stores, sales, vending, gaming machines if permitted by law, cell towers, guest laundries, restaurant, lounge, ice cream shop, pool/snack bar, game room, real estate sales, accommodations, health spa, night clubs or any combination of such uses. Only the Owners of the Commercial Units shall be entitled to conduct commercial activities on the Regime Property which shall be generally limited to those areas of the Commercial Units or Limited Common Elements for the Commercial Units except as otherwise permitted by specific easement granted within or prior to this Master Deed. As used

herein, commercial activity does not include use of Common Elements for family or private gatherings, cookouts, picnics, or parties subject to specific Rules and Regulations for such as may be, from time to time, adopted by the Board. The foregoing restriction on commercial activities in this Section 5.4 may not be amended without the consent of all the Owners of the Commercial Units and the Grantor, their successors and assigns.

Section 5.5 Limited Common Elements. Ownership of each Unit shall entitle the Property Owner thereof to the exclusive use of the Limited Common Elements reserved for such Unit. This exclusive use of a Limited Common Element to a Residential Unit may be delegated by a Property Owner as set forth in Section 5.3.a. Exclusive use of the Limited Common Elements to the Commercial Units may be delegated as set forth hereafter.

a. Rooftop Limited Common Element. The Owner of Commercial Unit C-1 shall be entitled to exclusively use the Rooftop Limited Common Element for purposes of locating and affixing one or more communications towers, antenna arrays, and/or other communications equipment so long as such fixtures and equipment do not negatively and materially affect the integrity of the roof or other structural component of the Building. Notwithstanding the existence of the Rooftop Limited Common Element, the Association shall have full access to the roof in and around such communications equipment which may hereafter be located on the rooftop so as to make any necessary repairs or replacements to the roof and to further access the roof and all other General Common Elements located on or around the roof. The Owner of Commercial Unit C-1 shall be responsible for any costs associated with the repair and replacement of any communications fixtures and equipment located within the Rooftop Limited Common Element. As the roof, parapet walls, and equipments rooms shall remain a General Common Element, the Association shall be responsible for the repair and maintenance of such items. Any damage caused by the installation of roof top communications fixtures and/or equipment to the roof and other General Common Elements shall be repaired by the Owner of Commercial Unit C-1. The Owner of Commercial Unit C-1 may freely delegate use of the Rooftop Limited Common Element to its designated employees, agents, lessees, and independent contractors to specifically include the right to enter into communications site lease agreements with third parties granting such use.

b. Other Commercial Unit C-1 Limited Common Elements. The Owner of Commercial Unit C-1 shall be entitled to use and exclusively delegate the use of all Limited Common Elements appurtenant to Commercial Unit C-1 to its employees, agents, contractors, and assigns for any commercial purposes of such Owner, including, without limitation, purposes of operating a property management business within the Building and for vending. The trash chutes for the Building are designated as General Common Elements and are within rooms which are designated as Limited Common Elements to the Commercial Unit. The Owner of Commercial Unit C-1 may restrict access to such rooms served by such trash chutes, however, in the event of such restricted access, the Owner of Commercial Unit C-1 must continue to make trash disposal available to all Unit

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Owners, and their guests, at convenient times and on all floors of the Building served by such trash chutes.

c. Pool Kiosk and Patio Limited Common Elements. The Owner of Commercial Unit C-6 shall be entitled to exclusively use the Pool Kiosk Limited Common Element for the purpose of placing a kiosk in such area for the sale/rental of towels and other pool and beach related items and to conduct sundry and other retail sales to the Owners, their guests, and the public and to exclusively use the Patio Limited Common Element for the purpose of outdoor seating, landscaping, and the retail sale and consumption of food and beverages to/by the Owners, their guests, and the public which is ancillary to its operations within Commercial Unit C-6.

d. As an appurtenance to all the Commercial Units, Grantor hereby grants to the Owners of the Commercial Units the perpetual, nonexclusive right of access over and across all pool decks, sun decks and pool areas, hallways, now existing or hereinafter construction, for the purpose of conducting room service and/or the sale of food, beverage, and resort retail items such as suntan lotions, swim apparel, and the like. In accordance with the requirements of **Section 5.4** hereinabove, neither the Association, nor the Owner of any Residential Unit or other third party may solict or sell such items upon the Common Elements.

Section 5.6 Operation and Maintenance. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements (including all Limited Common Elements except certain Limited Common Elements which may be designated the responsibility of certain Owners), including those portions thereof which contribute to the support of the Building, and all conduits, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility services to the Units and said Common Elements, and should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage. All maintenance, replacement and repairs to the Common Elements shall meet or exceed the quality of the original construction including all components thereof.

It shall further be the obligation of the Association to perform the major repairs and replacements for which reserves have been established at successive intervals not longer than in accordance with the anticipated useful life of each such portion of the Common Elements, as reasonably determined by the Board of Directors of the Association. The Board of Directors of Association may, however, cause such repairs and replacements to be undertaken at shorter intervals.

The expenses incurred for such purpose shall be assessed as Common Expenses except in the case of the negligence of a Property Owner or his tenants or guests, and in the event of such negligence, such expenses, or a portion thereof, may be assessed as an individual assessment pursuant to the terms of Article VI hereof.

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The provisions of this Section 5.6 may not be amended without the express written consent of the Grantor.

Section 5.7 **Modification to Common Elements.** The Association shall not make or cause to be made alterations or improvements to the Common Elements which prejudice the rights of the Owner of any Unit, unless such Owner's written consent has been obtained; provided however, the making of such alterations and improvements must first be approved by the Board of Directors of the Association, and, except as hereinafter provided, the cost of the alterations or improvements shall be assessed as a Common Expense to be collected from all of the Owners of Units according to their Percentage Interests set out in EXHIBIT C of the Master Deed. Where any alterations and improvements are exclusively or substantially exclusively for the benefit of the Property Owner or Owners of a Unit or Units requesting the same, then the cost of such alterations and improvements shall be assessed against and collected solely from the Owner or Owners of the Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

Section 5.8 **Subsequently Added Common Elements.** If approved by the Owners of in excess of fifty percent (50%) ownership of the Percentage Interests in the Common Elements of the Regime, the Board may assess each Unit according to its Percentage Interest in the Common Elements of the Regime for the purpose of acquiring additional Common Elements. All Common Elements so acquired must comply with the use restrictions of Section 5.4 and the other provisions of this Master Deed.

Section 5.9 **Closure of the Small Lazy River Pool.** Notwithstanding anything else in this Master Deed and the Bylaws to the contrary, the Board by simple majority vote shall have the right and authority to close that small lazy river pool which is shown on Sheet Number A-1 of the Plans as that pool which is partially within the C-6 Relocation Area. Upon such closure, the Board shall cause such pool to be filled in and the pool deck restored where such pool formerly existed at the Association's sole cost and expense.

ARTICLE VI

COMMON EXPENSES

Section 6.1 **Enumeration of Common Expenses.** The Association is given the duty and authority to administer the operation and management of the Regime Property and to incur, for the mutual benefit of all of the Owners of Units, costs and expenses which will be continuing or nonrecurring costs (including without limitation, charges for utilities which are commonly metered), as the case may be, which costs and expenses are sometimes herein referred to as "Common Expenses". Except as otherwise provided herein, Common Expenses shall include the following actual and estimated expenses:

a. Expenses incurred in operating, maintaining, improving, repairing, and replacing the Common Elements (except where such responsibility is specifically assigned to a particular Owner), including, without limitation, landscaping, hallways, the indoor, outdoor, and rooftop swimming pools, the kiddie pool, lazy river, and

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other pool amenities.

b. Expenses incurred in obtaining loans on behalf of the Association, including, without limitation, the repayment of principal and interest in Association indebtedness.

c. Expenses incurred in administering the affairs of the Association including salaries, wages, and any compensation paid to a managing agent for such purpose.

d. Expenses incurred in providing public liability insurance, hazard insurance, or other insurance adequate to cover the Regime Property, exclusive of Unit contents and furnishings, as provided in Article XI of this Master Deed.

e. Contributions to provide sufficient reserves to create a general reserve to operate and maintain the Regime Property and to administer the affairs of the Association.

f. Contributions to provide sufficient reserves to make such major repairs or replacements to the Common Elements as may be required from time to time, including, without limitation, a reserve to paint the exterior of the Building and to waterproof the exterior of the Building on a regular basis.

g. Any other costs related to the operation of the Regime Property or administration of the affairs of Association which are declared by this Master Deed, the Bylaws, or any amendment thereto to be Common Expenses, and any valid charge against the Regime Property as a whole.

h. In the case of each Unit, each Property Owner of a Unit, by acceptance of the deed to the unit, agrees, in accordance with S.C. Code Ann. §27-31-190, to pay for electricity, cable, water, and sewer used by the entire Regime as a Common Expense. Certain portions of Commercial Unit C-6 located within the Outbuilding, however, are separately metered for gas, and all such expenses resulting from the provision of gas to Commercial Unit C-6 shall be paid directly by the Owner of such Commercial Unit. Notwithstanding the foregoing, all other utilities used by Commercial Unit C-6 shall constitute a Common Expense of the Regime.

i. Upon the initial sale of each Unit by the Grantor, each Owner purchasing such Unit from the Grantor shall pay over to the Association an amount equal to the amount of the regular, monthly assessment applicable to such Unit, together with a special capital contribution equal to the amount of two (2) months of regular dues, and an advance insurance assessment sufficient to pay the Owner's share of insurance for one year.

j. All expenses of the Association, as the successor-in-interest to the grantee under the Parking Easement, which are imposed by such Parking Easement including without limitation, all utilities (including trash removal) and security costs and all

costs related to insuring, maintaining, repairing and replacing the parking improvements, as the same may be relocated from time to time, pursuant to the terms and conditions of the Parking Easement.

Section 6.2 Assessments. To provide the funds necessary for such proper operation and management, the Association heretofore has been granted the right to make, levy and collect assessments against the Owners of all Units. In furtherance of said grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the Regime Property, the following provisions shall be operative and binding upon the Owners of all Units, to-wit:

a. All assessments levied against the Owners of Units and said Units, including the Association should it own any Unit, shall be uniform and, unless specifically otherwise provided for in this Master Deed, the assessments made by the Association shall be in such proportion so that the amount of assessment levied against each Owner of a Unit shall bear in relation to such Owner's Percentage Interest in the undivided interest of all the Owners in the Common Elements appurtenant to all Units as set forth in **EXHIBIT C.**

b. The assessment levied against the Owner of each Unit and his Unit shall be payable in annual, quarterly or monthly installments, or in such other installments and at such times as may be determined by the Board of Directors of the Association.

c. The Board of Directors of the Association, in establishing said annual budget for the operation, management and maintenance of the Regime Property shall include therein a sum to be collected and maintained as a reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace and/or conduct major repairs upon, structural elements and mechanical equipment constituting a part of the Common Elements as well as the replacement of personal property and amenities which may constitute a portion of the Common Elements held for the joint use and benefit of all of the Owners of all Units. The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors so as to accrue and maintain at all times a sum necessary for replacement and/or major repair of said Common Elements based on the anticipated useful life of each portion of the Common Elements. The amount collected and allocated to the reserve fund for replacements from time to time shall be maintained in a separate account by the Association, although nothing herein contained shall limit the Association from applying any monies in such reserve fund for replacements to meet other needs or requirements of the Association in operating or managing the Regime Property in the event of emergencies, or in the event that the sums collected from the Owners of Units are insufficient to meet the then fiscal financial requirements of the Association, but it shall not be a requirement that those monies be used for such latter purposes, as a separate assessment may be levied therefor if deemed to be preferable by the

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Board of Directors of the Association in the sole discretion of said Board of Directors.

d. The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the Regime Property, shall include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Owners of Units, as a result of emergencies or for other reason placing financial stress upon the Association.

e. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Regime Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Master Deed and the Articles of Incorporation and By-Laws of the Association and as the monies for any assessment are paid to the Association by any Owner of a Unit the same may be commingled with the monies paid to the Association by the other Owners of Units. Although all funds and other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Unit.

f. The payment of any assessment or installment thereof due to the Association shall be in default if such assessment, or any installment thereof, is not paid to the Association on or before the due date for such payment. When in default, the Board of Directors may accelerate the remaining installments of the annual assessment upon notice thereof to the Unit Owner, whereupon the entire unpaid balance of the annual assessment shall become due upon the date stated in the notice, which shall not be less than ten (10) days after the date of the notice. In the event any assessment, installment, or accelerated installment is not paid within twenty (20) days after its due date, the Association, through its Board of Directors, may proceed to enforce and collect the assessment against the Unit Owner owing the same in any manner provided for by the Act, including the rights of foreclosure and sale. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the rate of eighteen (18%) percent per annum until such delinquent assessment or installment thereof, and all interest due thereon, have been paid to the Association. Further, a late fee of $50.00 shall be assessed for each installment not paid within thirty (30) days after the due date thereof.

Section 6.3 Liability of Owner. The Owner or Owners of each Unit shall be personally liable to the Association for the payment of all assessments, regular or special, which

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may be levied by the Association while such person or persons are Owner(s) of a Unit in the Regime. In the event that any Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Owner or Owners of any Unit shall be personally liable for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not. No Owner of a Unit may exempt himself from liability for any assessment levied against such Owner and his Unit by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of the Unit, or in any other manner.

Section 6.4 Right to Terminate Service. RECOGNIZING THAT A PORTION OF THE COMMON EXPENSES REPRESENTED BY THE ASSESSMENTS LEVIED AND COLLECTED BY THE ASSOCIATION IS ATTRIBUTABLE TO COMMONLY METERED ELECTRICAL UTILITIES USED AND CONSUMED BY EACH UNIT OWNER, INSTEAD OF EACH UNIT HAVING A SEPARATE ELECTRICAL METER FOR EACH UNIT, AND RECOGNIZING THAT TO ALLOW A UNIT OWNER TO CONTINUE USING SUCH ELECTRICAL UTILITIES DURING THE TIME SUCH UNIT OWNER IS IN DEFAULT OF SUCH ASSESSMENTS IS PATENTLY UNFAIR TO ALL OTHER UNIT OWNERS WHO ARE PAYING FOR THE DELINQUENT UNIT OWNER'S ELECTRICITY, THE ASSOCIATION IS HEREBY GRANTED THE RIGHT, AT ANY TIME ANY ASSESSMENT, INSTALLMENT OR ACCELERATED INSTALLMENT IS NOT PAID WITHIN TWENTY (20) DAYS AFTER ITS DUE DATE, TO TERMINATE ELECTRICAL UTILITY SERVICE TO THE DELINQUENT OWNER'S UNIT. THE ASSOCIATION SHALL HAVE THE RIGHT TO CONTINUE TO DENY SUCH UNIT AND THE OWNER THEREOF ELECTRICAL UTILITIES UNTIL SUCH TIMES AS THE DELINQUENT OWNER HAS PAID ALL ASSESSMENTS WHICH ARE DUE AND PAYABLE, PLUS INTEREST, COST AND ATTORNEY'S FEES.

Section 6.5 Lien for Assessments. Recognizing that the necessity for providing proper operation and management of the Regime Property entails the continuing payment of costs and expenses therefore, which results in benefit to all of the Owners of Units, and that the payment of such common expense represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of the Owner of each Unit, the Association is hereby granted a lien upon such Unit and its appurtenant undivided interest in the Common Elements, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each Unit, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing the lien upon said Unit and its appurtenant undivided interest in the Common Elements. The lien granted to the Association may be foreclosed in the same manner as mortgages may be foreclosed in the State of South Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to rental from the Owner of any Unit from the date on which the payment of any assessment or installment thereof became delinquent and shall be entitled to the appointment of a receiver for said Unit. The rental required to be paid shall be equal to the rental charged on comparable types

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of Unit along the Grand Strand of South Carolina. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the legal rate as set out hereinbefore on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, is hereby placed on notice of the lien granted to the Association, and shall acquire such interest in any Unit expressly subject to such lien, to the fullest extent permitted by applicable law.

Section 6.6 Notice of Lien. The lien herein granted to the Association shall be effective from and after the time of recording in the Public Records of Horry County, South Carolina, a claim of lien stating the description of the Unit encumbered thereby, the name of the record Owner, the amount due and the date when due, and the lien shall continue in effect until all sums secured by said lien, as herein provided, shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The claim of lien filed by the Association shall be subordinate to the lien of any mortgage or any other lien recorded prior to the time of recording of the Association's claim of lien.

Section 6.7 Foreclosure of Unit. In the event that any person, firm or corporation shall acquire title to any Unit and its appurtenant undivided interest in Common Elements by virtue of any foreclosure or judicial sale, such person, firm or corporation so acquiring title shall only be liable and obligated for assessments as shall accrue and become due and payable for said Unit and its appurtenant undivided interest in Common Elements subsequent to the date of acquisition of such title, and shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title subject to the lien of any assessment by the Association representing an apportionment of taxes or special assessments levied by taxing authorities against the Regime Property in its entirety. In the event of the acquisition of title to a Unit by foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Units as a part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

Section 6.8 Sale of Unit. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with other provisions of this Master Deed, the Association, upon written request of the Owner of such Unit, shall furnish to the proposed purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Unit. Such statement shall be executed by any officer or Manager of the Association and any purchaser or mortgagee may rely upon such statement in concluding the proposed purchase or mortgage

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transaction, and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged at the time when payment of any assessment by the Owner of said Unit and such Unit due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association) then the proceeds of such purchase or mortgage proceeds, shall be applied by the purchaser or mortgagee first to payment of any then delinquent assessment or installment thereof due to the Association before the payment of any proceeds of purchase or mortgage proceeds to the Owner of any Unit who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure and proceeding by foreclosure to attempt to effect such collection shall not be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing to it.

Section 6.9. Grantor Right to Supplement Actual Expenses. Notwithstanding anything in this Master Deed to the contrary, it is declared that until one (1) year after the date of the initial conveyance to a grantee of a Unit, Grantor shall have the option of: (i) being exempt from the assessment created herein and that the Grantor shall pay on an as needed basis to the Association in lieu of such assessment such sums which shall in the aggregate equal the amount of actual operating expenses for the period of such assessment less an amount equal to the total assessments made by the Association against Owners of Units other than those owned by Grantor for such period or (ii) being subject to such assessments for each Unit owned by Grantor during such one (1) year period on the same basis as all other Unit Owners. Commencing upon the expiration of the one (1) year period described above, the Grantor shall be subject to assessments as provided for in this Master Deed so that it will pay assessments on the same basis provided for under this Master Deed as the same are paid by other Unit Owners. Notwithstanding the foregoing, Grantor may elect to pay assessments on unsold Units in the same manner as other Owners in lieu of paying the operating deficit as provided above.

Section 6.10 Records. The Board or any manager which it employs shall keep accurate and detailed records, in chronological order, of receipts and disbursements connected with the operation, administration, maintenance, repair, and replacement of the Regime Property. Such records, together with the vouchers authorizing payment, shall be available for examination by the Property Owners at convenient hours on working days, upon fourteen (14) days advance written notice.

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ARTICLE VII

PROPERTY OWNERS' ASSOCIATION, BOARD OF DIRECTORS, AND MANAGER

Section 7.1. Property Owners' Association, Board of Directors, and Manager. The Regime shall be administered by a Property Owners' Association, which Association shall be an incorporated association which shall act by and through a Board of Directors elected as herein provided. The Association may employ a managing agent ("Manager") for the Regime.

Section 7.2 Voting. On all matters relating to the Regime upon which a vote of the Property Owners is required, each Property Owner shall be entitled to cast the number of votes equal to his or her Percentage Interest in the Common Elements; provided, however, the election of the Board is subject to the provisions contained in **Section 2.3** of the Bylaws. When any Unit is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, one person or entity shall be designated the voting Property Owner to bind all the others. Written notice of such designation shall be delivered to the Secretary of the Board prior to the exercise of a vote by joint owners. The Secretary shall keep the written notice on file, which notice shall be valid until receipt by the Secretary of a different written notice. The Percentage Interest of Property Owners for each Unit is set out in **EXHIBIT C**. At any meeting at which a quorum is present, the affirmative vote of the Property Owners owning more than fifty percent (50.0%) of the amount of Percentage Interest in the Common Elements which is represented at the meeting by Owner presence or by proxy shall be required to adopt decisions submitted to the Property Owners for a vote pursuant to this Master Deed or pursuant to the Bylaws; unless, however, the Master Deed or Bylaws require a greater percentage for a particular act or decision, and except as otherwise provided in Article XIV hereof.

Section 7.3 Incorporation. The Grantor (prior to the election of the first Board of Directors) shall incorporate the Association as a South Carolina Nonprofit Corporation, and in such event:

a. each Property Owner shall be a member of the corporation;

b. the Bylaws referred to in **Section 7.4** shall be adopted as the Bylaws of the corporation;

c. the Articles of Incorporation shall be similar to the Articles attached as **EXHIBIT D** and shall not contain provisions inconsistent with this Master Deed. The Articles may be amended as provided under South Carolina law;

d. the name of the corporation shall be The Caravelle Resort Owners Association, Inc. (the "Association") and

e. the Association, acting through the Board, shall have all of the powers, rights, and obligations of nonprofit corporations organized under the laws

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of the State of South Carolina, including, but not limited to, the power to borrow money and mortgage its property.

Section 7.4 Bylaws and Regulations. The Association and the administration of the Regime shall be governed by: (a) this Master Deed; (b) the Permitted Encumbrances; (c) the Bylaws attached as **EXHIBIT E**, as amended; and (d) any Rules and Regulations adopted pursuant to the Bylaws. The Bylaws may be modified and amended only in the manner set forth in the Bylaws.

Section 7.5 Responsibility of Association. The Association shall maintain and keep in good repair the Common Elements. The duty includes, without limitation, the maintenance and repair of the nine story parking garage building, the rooftop swimming pool, the outdoor swimming pool complex, the fountains, any retention ponds, the roof, roof surfaces, roof systems, downspouts, all exterior building surfaces, all hallways, all corridors, all elevators including the service elevator), the trash chute, and all utility lines, pipes, glass, conduits, and systems that are a part of the Common Elements. The maintenance of the Common Elements includes, without limitation, maintenance, repair, and replacement, at the Association's sole cost and expense, of all trees, fences, shrubs, grass, dunes, streets, parking spaces, walks, and other improvements situated on the land constituting the Regime, subject to the insurance and casualty loss provisions of this Master Deed.

Section 7.6 Registry of Owners and Mortgagees. The Association shall at all times maintain a register setting forth the names of the Owners of all of the Units, and in the event of the sale or transfer of any Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Unit together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Unit. The holder of any mortgage or mortgages upon any Unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Unit, and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same. In consideration of the privacy of the Unit Owners, the Association shall not release the contents of the register to any person, even if such person is a Unit Owner, unless required to do so by law, including the Act and the Nonprofit Corporation Act.

ARTICLE VIII

CONDEMNATION

Section 8.1 Rights of Property Owners. If any portion of the Regime Property is condemned by any authority having the power of eminent domain, each Property Owner shall be entitled to receive notice of such condemnation and to participate in the proceedings incident thereto unless otherwise prohibited by law. Each Owner shall be entitled to an individual award to be determined by the value of his interest in the portion or portions of the Regime Property condemned.

Section 8.2 Duties of Association. In the event that any award is received by the

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Association on account of condemnation of any portion or portions of the Common Elements, the Board of Directors shall promptly call a special meeting of the Association to determine whether any condemned portion of the Common Elements shall be replaced. If the Association determines to replace any condemned portion of the Common Elements, the Board of Directors shall provide for the replacement of such portions in the same manner as if such portions had been destroyed by casualty.

ARTICLE IX

EASEMENTS, COVENANTS, AND RESTRICTIONS

The Units and Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions, and covenants prescribed and established herein, governing the use of said Units and Common Elements and setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements, and said Units and Common Elements are further declared to be subject to the restrictions, easements, conditions, limitations, and other appurtenances or encumbrances now of record effecting the Land, the Building, and other improvements thereon including, without limitation, the Parking Easement and the other Permitted Encumbrances.

Section 9.1 Use of Property. Each Property Owner shall be entitled to the exclusive ownership and possession of the interest conveyed by his deed to a Unit or interest therein and may use his or her Unit and the Common Elements to the extent permitted by his or her deed in accordance with this Master Deed. In order to protect the Common Elements, preserve the property values of the community created by this Master Deed, retain the benefits and protection of Property Owners provided by the Rules and Regulations adopted from time to time by the Board of Directors of the Association, and to provide for the orderly administration of the Regime, each Unit of The Caravelle Resort Horizontal Property Regime shall be subject to the following restrictions and covenants, which shall be covenants running with the land. Each Property Owner, his successors and assigns, shall comply with these covenants and restrictions, and with the Rules and Regulations adopted by the Board of Directors to carry out the purpose of these restrictions and covenants. The Board shall adopt reasonable penalties for the violation of its Rules and Regulations. Each Property Owner shall be responsible for the conduct of his or her tenants, guests, agents, and members of his or her household. Such restrictions and covenants are as follows:

a. The use restrictions set forth elsewhere in this Master Deed, including, without limitation, Articles IV and V of the Master Deed.

b. No "For Sale" or "For Rent" signs, advertising, or other displays shall be maintained or permitted on any part of the Regime Property except at such location and in such form as shall be determined by the Board or as otherwise permitted by easements reserved or granted within this Master Deed.

c. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Board, except as

herein expressly provided. The temporary storage and placement of janitorial and and maids carts by the Owner of Comemrcial Unit C-1 upon the Common Elements shall not constitute a violation of this provision. The use and the covering of the interior surfaces of windows, whether by draperies, shades, or other items visible on the exterior of the Building, shall be subject to the Rules and Regulations of the Board.

d. Nothing shall be done or kept in any Residential Unit or in the Common Elements which will increase the rate of insurance on the Building, Regime Property, or contents thereof without the prior written consent of the Board. No Property Owner shall permit anything to be done or kept in his Unit or in the Common Elements that will result in the cancellation of any insurance maintained by the Regime or which would be in violation of any law.

e. Property Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Buildings and no flag, sign, kite, awning, canopy, shutter, radio, or television antenna (except as installed as of the date this Master Deed is recorded or except as thereafter installed by Grantor or the Owner of the Commercial Unit) shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Board.

f. Upon the express written consent of the Board, certain household pets may be kept in Units, subject to Rules and Regulations adopted by the Board, which Rules and Regulations may exclude any kind of pet by type or category, provided that permitted household pets are not kept, bred, or maintained for any commercial purpose; and provided further that any authorized pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days written notice from the Board.

g. Nothing shall be done in any Unit or in, on, or to the Common Elements which would impair the structural integrity of the Building or which would structurally change the Building except as constructed or altered by or with the permission of the Grantor or the Board.

h. Each Property Owner and the Association hereby waives and releases any and all claims which he, she, or it may have against any other Property Owner, the Association, the Board, members of the Board, the Grantor, and their respective employees and agents for damage to the Common Elements, the Unit, or to any personal property located in the Unit or Common Elements caused by fire or other casualty or any act or omission referred to in subparagraph i below, to the extent that such damage is covered by fire or other form of hazard insurance maintained by Property Owner for the benefit of Property Owner.

i. If the act or omission of a Property Owner, or of a member of his family, a household pet, guest, tenant, occupant, or visitor of such Property Owner, shall

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cause damage to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs, or replacements shall be required which would otherwise be at the Common Expense, then such Unit Property Owner shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the Board, to the extent such payment is not waived or released under the provisions of subparagraph h above.

j. Any release or waiver referred to in subparagraph h and i hereof shall be valid only if such release or waiver does not affect the rights of the insured under the applicable insurance policy to recover thereunder.

k. No Property Owner shall overload the electric wiring in the Building or operate any machines, appliances, accessories, or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others. Nor shall any Property Owner connect any machine, appliance, accessories, or equipment to the heating, cooling, or plumbing systems, without the prior written consent of the Board. Notwithstanding anything herein to the contrary, the owner of the Commercial Unit shall be entitled to operate and maintain its laundry facilities and other commercial equipment and machinery as currently constituted.

l. This Article shall not be construed to prevent or prohibit a Property Owner from maintaining his personal professional library, keeping his personal business or professional records or accounts, handling his personal business or professional telephone calls (other than Unit rental management calls), or conferring from time to time with business or professional associates, clients, or customers in his Unit.

m. Any vehicles parked on any part of the Regime Property must be operable, must have valid current license tags, and must be moved at least once a month. There shall be no automotive repair or maintenance performed on vehicles on the Property.

n. No skateboarding or rollerblading shall be allowed anywhere on the Property.

o. No Owner, other than the Owner of the Commercial Unit in connection with the Roof Top Common Element, shall install any receiving or transmitting device which requires any exterior protrusion whatsoever, nor shall any antennae, satellite dish or other receiving or transmitting device be located on any balcony. Further, no clotheslines shall be placed or maintained on the exterior of any Unit (including on any balconies or porches). In addition, for the purpose of aesthetic harmony, all window treatments shall include a uniform white backing which shall be visible from the exterior of the Unit. All balconies and porches which are Limited Common Elements shall be maintained in a neat and orderly appearance by the Owner of the Unit for which its use is intended. Balconies shall not be used for storage. To prevent unsightly conditions within the Regime Property, nothing shall be kept and maintained on or within any balconies and porches except normal patio furniture.

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Section 9.2 **Future Easements.** Provided that the Board determines it to be in the best interest of all the Property Owners, the Board may hereafter grant easements for the benefit of the Regime Property and the Property Owners. Each Property Owner, by acceptance of the deed or lease to his Unit, does hereby grant to the Board of Directors an irrevocable power of attorney to execute, deliver, and record, for and in the name of each Property Owner, such instruments as may be necessary and proper to the granting of such easements.

Section 9.3 **Utility Easements.** Each Property Owner shall have a non-exclusive easement appurtenant to his or her Unit for the use in common with other Property Owners of all pipes, wires, ducts, flues, cables, conduits, public utility lines, and other Common Elements, if any, located in any other Unit or within the Common Elements and serving his Unit. Each Unit shall be subject to an easement in favor of the owners of all other Units to use the pipes, wires, ducts, flues, cables, conduits, public utility lines, and other Common Elements located in such Unit which serves other Units. The Regime Property is subject to utility easements for installation, operation, and maintenance of electric and telephone and television distribution lines, water, and sewer lines, and the Board of Directors may grant additional easements and relocate existing easements for installation of any type of utilities.

Grantor hereby reserves, for the benefit of itself, its successors and assigns, the alienable, transferable and perpetual rights and easement, as well as the power and authority to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person or company upon, over, under and across all or any portion of the Common Elements for constructing, installing, replacing, repairing, operating, maintaining and using all necessary or convenient utilities including, but not limited to easements for master television antenna, television cable systems, wireless broadband systems, electricity, water, sewer and/or telephone systems. Such easements may be granted or accepted by Grantor with respect to the Common Elements without notice or consent by the Association or Unit Owners. Telephone, internet access, wireless broadband access, televisions, cable access, and in room movie service may be provided to the Regime by the Owner of the Commercial Unit, its successors and assigns.

Pursuant to this provision, Grantor hereby grants for the benefit of itself, its successors and assigns, a non-exclusive, perpetual easement as an appurtenance to the Commercial Unit for the purpose of providing telephone, cable television, internet access, wireless broadband internet service, movie and other communication systems to the Regime; and, all of the terms and conditions of this Master Deed are made subject to the terms of that Easement. Pursuant to the terms of said Easement and related agreements, all wiring and other fixtures and equipment used for the purposes of providing telephone, cable television, internet access, wireless broadband internet service, movie and other communications systems to the project, are and shall remain the property of the Association, subject to a non-exclusive, perpetual easement in favor of the Owner of the Commercial Unit, its successors and assigns. Notwithstanding the foregoing, the telephone switchboard equipment located on the second floor of the Outbuilding and shown on the Plans as Limited Common to Commercial Unit C-1 and all telephone communication lines running to all of the Units within the Building is, and shall remain, the property of the Owner of the Commercial Unit C-1, its successors or assigns. Such telephone equipment room and all telephone conduit within the Building is and shall be a Limited Common Element appurtenant to

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Commercial Unit C-1 for the exclusive use and benefit of the Owner of Commercial Unit C-1.

Section 9.4 **Covenant to Comply with Restrictions and Obligations.** Each Property Owner, by acceptance of a deed, lease, or tenancy to a Unit, ratifies and covenants to observe, on behalf of himself, his heirs, successors, and assigns, this Master Deed, the Bylaws, the Permitted Encumbrances, and the decisions, resolutions, rules, and regulations of the Association, Board, or their representatives, as lawfully amended from time to time.

In addition to the remedies set forth in Article XVI, a violation of any rule or regulation adopted by the Board or the breach of any covenant or provision herein this Master Deed contained shall, in addition to any other rights provided for in the Act, this Master Deed, or the Bylaws, give the Board the right: (a) to enter upon the Unit or any portion of the Property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Property Owner, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions hereof; and neither the Board nor the officers, employees, or agents thereof shall thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate, or remedy by appropriate legal proceedings, either by law or in equity, the continuance of any breach; or to take possession of such Property Owner's interest in the property and to maintain an action for disposal of such property in the manner provided by law.

Provided, however, that except in cases of emergency where damage to persons or property is threatened, the Board shall not take any such action unless (a) it has first given notice to the Property Owner alleged to have violated any restriction, condition, or regulation adopted by the Board or to be in breach of any covenant or provision and regulation adopted by the Board; and (b) the Board shall have determined such allegations to be true; and (c) the Property Owner shall not have desisted from such violation or breach or shall not have taken steps as shall be necessary to correct such violation or breach within such reasonable period of time as determined by the Board and communicated to the Property Owner. Any and all costs and expenses incurred by the Board in the exercise of its authority as granted in this Section 9.4, including, but not limited to, court costs, reasonable attorney's fees as determined by a court of competent jurisdiction, and cost of labor and materials shall be paid by the Property Owner in violation, and, until paid by such Property Owner shall constitute a lien on the interest of such Property Owner in the Property, which lien may be perfected and foreclosed in the manner provided herein or by the Act with respect to liens for failure to pay a share of the Common Expenses.

Furthermore, if the Property Owner refuses to come to the hearing or if, after hearing and finding as aforesaid and failure of the Property Owner to desist from such violation or to take such corrective action as may be required, the Board shall have the power to issue to the defaulting Property Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Property Owner to continue as a Property Owner and to continue to occupy, use, or control his Unit and thereupon an action in equity may be filed by the Board against the defaulting Property Owner for a decree declaring the termination of the defaulting Property Owner's right to occupy, use, or control the Unit owned by him on account of the violation of a rule or breach of covenant or provision as aforesaid and ordering that all right, title, and interest of the Property Owner in the Property shall be sold at a judicial sale upon such notice and terms

as the court shall establish, except that the court shall enjoin and restrain the defaulting Property Owner from reacquiring his interest at such judicial sale or by virtue of the exercise of any right of redemption which may be established, and except that the court shall direct that any existing first mortgage be retired out of the proceeds of such judicial sale.

The proceeds of any such judicial sale shall first be paid to discharge court costs, reasonable attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Property Owner in said decree. Any balance of proceeds after the satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Property Owner. Upon the confirmation of such sale, the purchaser at the judicial sale shall thereupon be entitled to a deed to the Unit and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession and it shall be a condition of any sale, and the decree shall so provide, that the purchaser shall take the interest in the Property sold subject to this Master Deed.

Section 9.5. Encroachments. If any portion of the Common Elements now encroaches upon any Unit or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of (a) the settling of the Building, (b) the repair, alteration, or reconstruction of the Common Elements made by or with the consent of the Counsel, (c) the repair or reconstruction of a Unit following damage by fire or other casualty, or (d) condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Property remains subject to the Act and this Master Deed.

Section 9.6. Right of Access. The Board shall have the right of access to each Unit during reasonable hours and with reasonable notice for maintaining, repairing, or replacing any Common Elements located within or accessible through the Unit, and the right of immediate access for making emergency repairs within the Unit necessary to prevent damage to the Common Elements or to another Unit, including the right to enter a Unit for pest or rodent control. This easement and right of access may be exercised by the Board, by its agents and employees, or by the manager to whom the responsibility of maintaining has been delegated. To facilitate entry in the vent of any such emergency, the Owner of each Residential Unit, if required by the Board, shall deposit, under the control of the Board or its designee, a key to such Unit. Damages resulting to any Unit because of such maintenance and repairs shall be corrected promptly at the expense of the Association.

Section 9.7 Construction, Sales and Use Easement. The Regime Property shall be subject to a non-exclusive licensable easement reserved in favor of Grantor and granted in favor of the Owner of Commercial Unit C-1, and their employees, agents, lessees, independent contractors, and invitees for ingress, egress, construction, and occupation of the Regime Property for purposes of exhibiting, renting, and selling the Units and other real estate in the vicinity of the Regime Property as well as to perform ancillary commercial services for the benefit of Owners and the occupants of the Units.

Section 9.8 Sign Easement. As an appurtenance to Commercial Unit C-1, Grantor hereby grants to the Owner of Commercial Unit C-1, and its designated employees, agents,

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lessees, and independent contractors, a perpetual, commercially useable, exclusive easement to construct, erect, operate, inspect, maintain, repair, replace and/or remove display signage over, under, upon, and through the Common Elements, and to place "For Sale" or "For Rent" signs on or outside any unsold or unoccupied Units, and to otherwise place advertising, directional, and/or informational signs, advertising racks, information centers, touch screens, or other form of print and media distribution system of any type on or within any part of the Limited Common Elements appurtenant to Commercial Unit C-1 and the General Common Elements consisting of the lobby areas, hallways, passageways, pool decks and parking areas of the Building. The Owner of Commercial Unit C-1 shall have the exclusive right to control any moveable type located upon any signage within the Regime.

Section 9.9 Rooftop Access Easement. As an appurtenance to Commercial Unit C-1, Grantor hereby grants to the Owner of Commercial Unit C-1, and its designated employees, agents, lessees, and independent contractors, a perpetual, commercially useable, exclusive easement to access the Rooftop Limited Common Element area and to construct, erect, affix, operate, inspect, maintain, repair, replace and/or remove utility line and conduits, communications lines, towers, fixtures, and other equipment on the roof and elsewhere within the General Common Elements of the Building as necessary to serve the Owner's use of the Rooftop Limited Common Element for communications. The Owner of the Commercial Unit together with its designated employees, agents, lessees, and independent contractors, shall have a non-exclusive alienable and divisible commercial easement in gross and a non-exclusive alienable and divisible easement appurtenant to the Commercial Unit to run telephone, utility, and other communications lines including wires, cable, fiber optic lines, and other transmittal equipment and to use in common with other Property Owners of all pipes, wires, ducts, flues, cables, conduits, public utility lines, and other Common Elements, if any, located in any other Unit or the Common Elements to access and serve Commercial Unit C-1 including the Rooftop Limited Common Element to such Commercial Unit. Each Unit shall be subject to the above described easements in favor of the Owner of Commercial Unit C-1 and its designated employees, agents, lessees, and independent contractors, to use the pipes, wires, ducts, flues, cables, conduits, public utility lines, and other Common Elements located in such Unit which serves Commercial Unit C-1, including the Rooftop Limited Common Element appurtenant to Commercial Unit C-1.

Section 9.10 Parking Easement. A portion of the parking for the Regime shall be provided pursuant to that certain Condominium Parking Easement Grant with Unilateral Right to Relocate, dated February 20, 2006, recorded of record on February 21, 2006 in Deed Book 3052, at page 344 (the "Parking Easement"). Each Owner consents to the terms, conditions, and limitations of the Parking Easement, and agrees, by acceptance of a deed, to be bound by the terms, conditions, and limitations of the Parking Easement as that instrument may be amended from time to time, including without limitation, the limitation on private or direct rights of action by individual Unit Owners and the obligation, through the Regime, to pay the costs of maintenance, insurance, replacement, utilities, taxes, and upkeep on a prorata share of the present parking improvements and of any replacement parking that may be substituted for the existing parking improvements in accordance with the terms and conditions of the Parking Easement. Pursuant to the Parking Easement, certain parking for the Regime may be relocated to another location within one quarter of a mile from the Regime, the relocation to be in the sole and

absolute discretion of the Grantor under the Parking Easement, subject to the terms, conditions, and limitations set forth in the Parking Easement. Neither the Owners, nor the Board of Directors of the Association shall be required to consent to or approve such relocation.

Section 9.11 Encroachment Easement. If any portion of the Common Elements now encroaches upon any Unit or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements as a result of the construction or repair of any portion of the Building or if any such encroachment shall occur hereafter as a result of settlement or shifting of the Building or otherwise, a valid easement for the encroachment and for the maintenance of the same, so long as the Building stands, shall exist. In the event any portion of the Building, any Unit, any adjoining Unit, or any adjoining Common Elements shall be partially or totally destroyed as the result of fire or other casualty or as the result of condemnation or eminent domain proceedings and the reconstructed portion of the Building, Unit, or part of the Common Elements encroaches upon any Unit or over any Unit, or upon any portion of the Common Elements due to such reconstruction, the reconstruction shall be permitted and valid easements for such encroachments and maintenance thereof shall exist so long as the Building shall stand.

Section 9.12 Reservation of Easement to Complete Renovations. For a period extending for three (3) years from the recording date of this Master Deed, Grantor reserves for itself, and its agents and contractors, an easement to access, temporarily close, and to run new utility cables and to perform any construction, renovation and/or maintenance work on any and all portions of the Building, including all Common Elements, all Limited Common Elements, and Units, for the purpose of completing its renovation obligations set forth in the original Unit sales contracts with the original Property Owners and to complete any other improvements or renovations to the Regime Property at Grantor's discretion.

Section 9.13 Pool and Deck Amenities Easement. As an appurtenance to Commercial Unit C-1, Grantor hereby grants to the Owner of Commercial Unit C-1, a perpetual, commercially useable, exclusive easement to permit the owners, occupants and guests staying at certain off-site overnight accommodations (the "Adjacent Units") to make use of certain pool and sundeck amenities located within the Regime upon the terms and conditions contained herein. The Adjacent Units shall be limited to only those certain rental accommodations located within any oceanfront or second row condominium resort or hotel/motel located on Ocean Boulevard in Myrtle Beach, South Carolina between between 68th Avenue North and 71st Avenue North, as now existing or hereafter constructed.

The easement hereby granted shall be for the nonexclusive use and enjoyment of all of the pool decks, swimming pools, spas and other pool and ground level sun deck amenities of the Regime (the "Regime Pool and Deck Amenities"). In consideration for the grant of such easement, the Owner of Commercial Unit C-1 shall pay to the Association an annual fee in an amount equal to the product of the annual cost of maintaining, repairing and replacing the Regime Pool and Deck Amenities[1] and a fraction. The numerator of the fraction shall be the number of Adjacent Units,

[1] The annual cost of maintaining, repairing and replacing the Regime Pool and Deck Amenities shall be determined each year by the Board of Directors of the Association as of December 31 and shall be forwarded to the Owner of Commercial Unit C-1 prior to May 1 of the following year. Such cost shall inlcude the cost of all chemicals,

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if any, designated by the Owner of Commercial Unit C-1 as a permitted user of the Regime Pool and Deck Amenities (the "Permitted Units"). The number of Permitted Units, if any, shall be determined by the Owner of Commercial Unit C-1 and submitted to the Board of Directors of the Association each year on the first day of July. The denominator of the fraction shall be sum of the number of Residential Units within the Regime and the number of Permitted Units. The fee shall be due on or before July 15th of each year, beginning July 15, 2006. At no time may the number of Permitted Units exceed one hundred fifty (150) without the prior written consent of the Board of Directors of the Association.

Use of the Regime Pool and Deck Amenities by the occupants and guests of Permitted Units pursuant to this grant between the hours of 9:30 p.m. and 8:30 a.m. is expressly prohibited. Use of the Regime Pool and Deck Amenities pursuant to this grant shall also be subject such reasonable rules and regulations as the Association may impose from time to time for the safety and identification of all persons using the Regime Pool and Deck Amenities and for the maintenance and upkeep of the facilities. Use of the Regime Pool and Deck Amenities pursuant to this grant shall also be limited by such seasonal closures, inclement weather, and other reasonable closures deemed appropriate by the Board of Directors of the Association for all persons using the Regime Pool and Deck Amenities.

Any and all objections or disputes concerning the easement herein granted shall be resolved exclusively in accordance with the Alternative Dispute Resolution procedures set forth in Article XVIII hereinbelow. Additionally, unless an objection concerning such easement is raised within twelve (12) months of the July 1st designation and determination of the number of Permitted Units and the Annual Pool Maintenance Cost, any and all claims or dispuites concerning the easement for such year shall be forever waived.

Section 9.13. Access Panel Easement. The Association shall have an easement for ingress/egress through Residential Units 201, 301, 401 and 501 in order to gain access to those certain access panels within such units leading to the crawl space between the boundary of such units and the exterior west wall of the Building in order to maintain, repair and replace the lighting fixtures and other Common Elements located therein.

ARTICLE X

LIENS

Section 10.1 Attachment. No lien arising subsequent to the recording of this Master Deed, or while any portion of Regime Property remains subject to the Act, shall be effective against the Regime Property. During such period that the Regime Property remains subject to the Act, liens or encumbrances shall arise or be created in the Units and Common Elements appurtenant thereto in the same manner and under the same conditions and in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; provided that no labor performed or materials

resurfacing and sealing needs, maintennace of motors and pumps, pool monitoring and testing, and the replacement and repair of poolside furniture (the "Annual Pool Maintenance Cost").

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furnished with the consent or at the request of a Property Owner, his or her agent, contractor, or subcontractor shall be the basis for the filing of a mechanic's or materialman's lien against any property (including the Unit) of any other Property Owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by each and every Property Owner should the need for emergency repairs arise. Labor performed or materials furnished for the Common Elements, if duly authorized by the Association, the Manager, or the Board of Directors in accordance with the Act, this Master Deed, or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Property Owner, and shall be the basis for the filing of a mechanic's or materialman's lien against each of the Units and may be discharged as provided in **Section 10.2** of this Article.

Section 10.2 Discharge. In the event a lien against two or more Units becomes effective, the respective Property Owners may remove their Unit from the lien by payment of the fractional or proportional amounts attributable to each of the Units affected. Such individual payment shall be computed by reference to the Percentage Interest appearing in this Master Deed. Subsequent to any such payment, discharge, or other satisfaction, the Unit and the percentage of undivided interest in the Common Elements appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his or her rights against any Unit (and the percentage of undivided interest in the Common Elements appurtenant thereto) with respect to which such lien is not paid, satisfied, or discharged.

Section 10.3 Taxes. Taxes, assessments, and other charges of the State of South Carolina, of any political subdivision, of any special improvement district, or of any other taxing or assessing authority may be assessed against and collected on each Unit, which shall be carried on the tax books as separate and distinct entities for that purpose, and not on the Common Elements, the Building, or the Regime Property as a whole. Any tax levied and payable on all or any portion of the Common Elements shall apply and be assessable only against each Unit in accordance with each Unit's Percentage Interest in the Common Elements. No forfeiture or sale of the Building or any portion of the Regime Property for delinquent taxes, assessments, or charges shall ever divest or in anywise affect the title to an individual Unit so long as taxes, assessments, and charges on the individual Unit are currently paid.

Section 10.4 Apportionment of Tax or Special Assessment if Levied and Assessed Against the Regime Property as a Whole. In the event that any taxing authority having jurisdiction over the Regime Property shall levy or assess any tax or special assessment against the Regime Property, as a whole, as opposed to levying and assessing such tax or special assessment against each Unit and its appurtenant undivided interest in Common Elements as now provided by law, then such tax or special assessment so levied shall be paid as a Common Expense by the Association, and any taxes or special assessments which are to be so levied shall be included, wherever possible, in the estimated annual budget of the Association, or shall be separately levied and collected as an assessment by the Association against all of the Owners of all Units and said Units if not included in said annual budget. The amount of any tax or special assessment paid or to be paid by the Association in the event that such tax or special assessment is levied against the Regime Property, as a whole, instead of against each separate Unit and its appurtenant undivided interest in Common Elements shall be apportioned among the Owners of

all Units in accordance with each Unit's Percentage Interest in the Common Elements. Notwithstanding the above, if the taxes levied against the Regime Property as a whole, but the taxing authority has apportioned the tax separately amongst the Units, then the Association shall assess the Owners of each Unit in accordance with such taxing jurisdiction's apportionment.

All personal property taxes levied or assessed against personal property owned by the Association shall be paid by the Association and shall be included as a Common Expense in the annual budget of the Association.

ARTICLE XI

INSURANCE

Section 11.1 Insurance Coverage to be Maintained by the Association.

The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Regime and the said Regime, meaning the Units and Common Elements, to-wit:

A. Casualty insurance covering all of the Units and Common Elements (excluding the Parking Easement) in an amount equal to the insurance replacement value thereof, exclusive of excavation and foundation costs, as determined annually by the insurance carrier, such coverage to afford protection against (i) loss or damage by fire or other hazards covered by the standard extended coverage or other perils endorsements; and (ii) such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to buildings similar in construction, location and use to the Regime, including but not limited to vandalism, malicious mischief, windstorm, wind driven rain damage, water damage, and flood damage, if reasonably available.

B. Public liability and property damage insurance in such amounts and in such form as shall be required by the Association to protect the Association and the Owners of all Units, including but not limited to, water damage, legal liability, hired automobile, non-owned automobile and off premises employee coverage.

C. Worker's Compensation insurance to meet the requirements of law.

D. Casualty, liability, and such other insurance required to be maintained by the Association under the Parking Easement as the successor-in-interest to the grantee thereunder.

E. Such other insurance coverage, other than title insurance, as the Board of Directors of the Association, in its sole discretion may determine from time to time to be in the best interest of the Association and the Owners of all of the Units.

All liability insurance maintained by the Association shall contain cross liability endorsements to cover liability of all Owners of Units as a group as to each Unit Owner.

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The cost of obtaining the insurance coverage authorized above is declared to be a Common Expense, as are all other fees and expenses incurred which may be necessary or incidental to carrying out the provisions hereof. All policies of casualty insurance covering the Regime shall provide for the insurance proceeds covering any loss to be payable to the Insurance Trustee named as hereinafter provided, or to its successor, and the insurance proceeds from any casualty loss shall be held for the use and benefit of the Association and all of the Owners of all Units and their respective mortgagees, as their interests may appear, and such insurance proceeds shall be applied or distributed in the manner herein provided. The Board of Directors of the Association is hereby declared to be "Insurance Trustee" and is appointed as authorized agent for all of the Owners of all Units for the purpose of negotiating and agreeing to a settlement as to the value and extent of any loss which may be covered under any policy of casualty insurance, and is granted full right and authority to execute in favor of any insurer a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.

The Board may establish reasonable deductibles for each category of insurance and may establish reasonable reserves for such deductibles. All hazard insurance policies obtained by the Board shall provide for the issuance of Certificates of Insurance by the insurance company or its agent to each Property Owner. Each certificate shall evidence the issuance of the Master Policy and shall indicate the amount of insurance covering the Building within which the respective Unit is located. If a Unit is mortgaged, a certificate of Insurance shall be issued to the mortgagee bearing a standard mortgagee endorsement, if requested.

If obtainable, all hazard insurance policies upon the Regime Property shall include provisions waiving: (i) any rights of the insurer to subrogation against the Association, its agents and employees, and against the individual Property Owners and their servants, agents, and guests and (ii) any rights of the insurer to contribution from hazard insurance purchased by the Property Owners upon the contents and furnishings of their Units.

Section 11.2 Insurance by Property Owner. Each Property Owner shall be responsible for obtaining, and shall obtain an HO-6 policy or other suitable policy approved by the Association, at his or her sole expense, insurance covering the personal property, fixtures, decorations, and furnishings within his or her own Unit, and the additions and improvements made by him or her to the Unit. Each Owner shall be responsible for obtaining, and shall obtain, at his or her own expense, insurance covering his or her liability for the safety of the premises within his or her Unit. If obtainable, all such insurance policies shall include, however, provision or endorsement waiving (i) any right of the insurer to subrogation to claims against the Association and against individual Owners, as well as their agents, servants, employees, and guests and (ii) any right of the insurer to contribution or proration because of the master hazard policy. A current copy of all insurance required by this provision shall be filed with the Association or its manager.

Section 11.3 Directors and Officers Insurance. The Board of Directors, as it deems appropriate, may obtain officers and directors insurance coverage.

Section 11.4 Substitution of Insurance Trustee. The Board, in its discretion, may decline to serve as Insurance Trustee and may appoint in its place any financial institution that is qualified and willing to act as Trustee and which also has offices in Georgetown or Horry County. Any substitute Insurance Trustee appointed by the Board shall succeed to all of the

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powers and responsibilities vested in the Board as Insurance Trustee under the terms of this Master Deed.

Section 11.5 Public Liability Insurance. The Board shall also obtain a public liability policy covering the Common Elements, the Association, and the Property Owners for all damage or injury caused by the negligence of the Association, the Board, or any of its Property Owners or agents. The public liability policy shall have at least a One Million ($1,000,000) Dollar single person limit as respects bodily injury and property damage, at least a Three Million ($3,000,000) Dollar limit per occurrence, if reasonably available, and at least a Five Hundred Thousand ($500,000) Dollar minimum property damage limit.

Section 11.6 Workmen's Compensation Insurance. The Board of Directors, as necessary, shall obtain Workmen's Compensation Insurance to meet the requirements of law.

Section 11.7 Premiums. Premiums for all insurance on the Common Elements shall be Common Expenses of the Association. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

ARTICLE XII

RECONSTRUCTION AND REPAIR

Section 12.1 Reconstruction. In the event of casualty loss, condemnation, or damage to the Regime Property, the Board of Directors shall be responsible for applying the proceeds of all casualty insurance or condemnation to the repair or reconstruction of the Regime Property in accordance with the provisions of this Article. Provided reconstruction and repair is permitted by applicable law, reconstruction or repair shall be mandatory for any casualty, loss, or damage to the Regime Property occurring before December 31, 2021 ("Mandatory Reconstruction Period") and, thereafter, reconstruction or repair shall be mandatory unless two-thirds (2/3) or more of the Regime Property is destroyed, condemned, or substantially damaged. After the Mandatory Reconstruction Period, if two-thirds (2/3) or more of the Regime Property is destroyed, condemned, or substantially damaged, the condemnation proceeds or insurance indemnity received by the Board, unless otherwise unanimously agreed upon by the Property Owners, shall be distributed jointly in proportion to their respective interest in the Common Elements. The remaining portion of the Regime Property shall be subject to any action for partition at the suit of any Property Owner or lienor as if owned in common. In the event of suit for partition, the net proceeds of sale, together with the net proceeds of condemnation or insurance policies, shall be considered one fund and distributed pro rata among all Property Owners and their mortgagees jointly, in proportion to their respective interest in Common Elements. If any casualty, loss, or damage occurs to the Regime Property prior to the expiration of the Mandatory Reconstruction Period, and thereafter, if less than two-thirds (2/3) of the Regime Property is destroyed, condemned, or substantially damaged, and if reconstruction and repair is allowed by applicable law, the Regime Property shall be reconstructed or repaired in the following manner:

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a. Any reconstruction or repair must follow substantially the original plans and specifications of the Regime Property unless the Property Owners holding seventy-five (75%) percent or more of the total Percentage Interest in the Common Elements and their mortgagees, if any, vote to adopt different plans and specifications and all Property Owners whose Units are affected by the alterations unanimously consent.

b. The Board shall promptly obtain estimates of the cost required to restore the damaged property to its condition before the casualty occurred. Such costs may include professional fees and premiums for bonds as the Board of Directors deems necessary.

c. If the damage to the Regime Property is not insured or if the amount of the loss is within the deductible provisions of the insurance policy or if the proceeds of insurance or condemnation are insufficient to cover the cost of reconstruction or repair, the deficiency shall be a Common Expense of all Property Owners; provided, however, any such deficiency resulting from damage to the Regime Property as a result of the neglect, willful act, or abuse of the Regime Property by any Property Owner or his or her guests shall be charged to such Property Owner as an individual assessment.

d. The insurance or condemnation proceeds received by the Board and any special assessment collected to cover a deficiency in such proceeds shall constitute a construction fund from which the Board shall disburse payment of the costs of reconstruction and repair. It shall be presumed that the first disbursements from the construction fund are insurance or condemnation proceeds; and if there remains a balance in the fund after payment of all costs of reconstruction and repair, it shall be distributed to any Property Owners who paid special assessments in proportion to their payments. Any balance remaining after such distribution shall be that of the Association and shall be distributed as directed by the Board based on Percentage Interests.

Section 12.2 Insurance Proceeds. In the event of casualty loss to the Regime Property, all insurance proceeds indemnifying the loss or damage shall be paid to the Board as Insurance Trustee. The Board of Directors, acting as Insurance Trustee, shall receive and hold all insurance proceeds in trust for the purpose stated in this Article, and for the benefit of the Association, the Property Owners, and their respective mortgagees in the following shares:

a. Insurance proceeds paid on account of loss or damage to the Common Elements only shall be held in the same proportion as the undivided interest in the Common Elements which are appurtenant to each of the Units.

b. Insurance proceeds paid on account of loss or damage to less than all of the Units, when the damage is to be restored, shall be held for the Property Owners of the damaged Units in proportion to the costs of repairing each damaged Unit.

c. Insurance proceeds paid when the Regime Property is not to be restored shall be held for the benefit of all Property Owners, the share of each being equal to the undivided share in Common Elements and appurtenant to his Unit.

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In the event a certificate of insurance has been issued to a Property Owner bearing a mortgagee endorsement, the share of the Property Owner shall be held in trust for the mortgagee and the Property Owner, as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except for insurance proceeds paid jointly to the Property Owners and their respective mortgagees pursuant to the provisions of this Master Deed.

Section 12.3 **Adjustment.** Each Property Owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association, subject to the rights of mortgagees of such Property Owners.

ARTICLE XIII

TERMINATION

Section 13.1 Casualty or Condemnation. If after the expiration of the Mandatory Reconstruction Period two-thirds (2/3) or more of the Regime Property is substantially destroyed or taken by condemnation, or if reconstruction and repair of the Regime Property is not economically or legally feasible after catastrophic loss or substantial condemnation, the Regime Property may be removed from the provisions of this Master Deed and the Horizontal Property Act in accordance with Article XII above.

Section 13.2 Voluntary Termination. This Horizontal Property Regime may also be terminated, removing the Regime Property from the provisions of this Master Deed and the Act, if the record Property Owners of title to the Units and the record owners of mortgages upon each Unit agree in a written instrument to termination unanimously or in such percentage as may be required for termination by the Act, as may be amended from time to time. Termination shall become effective upon recordation of such written instrument, duly executed by the requisite number of Property Owners and mortgagees.

Section 13.3 Ownership after Termination. After termination of this Horizontal Property Regime, the Property Owners shall own the Regime Property as tenants in common in undivided shares and the holders of mortgages and liens upon the Units shall have mortgages and liens upon the respective undivided common interests of the Owners. The undivided share of each tenant in common shall be the same as his undivided interests in Common Elements prior to termination. Any asset of the Association, any funds held by the Board of Directors, and any insurance proceeds shall also be the property of the former Property Owners and tenants in common in the same undivided shares as their interest in Common Elements prior to termination. The costs incurred by the Board of Directors in connection with the termination shall be considered a Common Expense.

Section 13.4 Partition. After termination, the Regime Property shall be subject to an action for partition by any Property Owner or any lienor, in which event the net proceeds from the judicial sale shall be divided among all Property Owners in proportion to their respective interests in Common Elements and paid to each Owner and mortgagee.

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ARTICLE XIV

AMENDMENTS

Section 14.1 Limitations on Amendment. This Master Deed and the Bylaws may be amended pursuant to, and in accordance with the procedures set forth below, except in the following instances: i) any alteration in the Percentage Interest of ownership in the Common Elements appurtenant to each Unit, or alteration of the basis for apportionment of assessments which may be levied by the Association in accordance with the provisions hereof, in which said instances consent of all of the Owners of all Units and their respective mortgagees shall be required, ii) any alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Grantor, which said rights and privileges granted and reserved unto the said Grantor shall only be altered, amended or modified with the express written consent of the said Grantor, its successors and assigns, and iii) any alteration to the rights or privileges granted or reserved hereunder in favor of the Commercial Unit and the Owner thereof which are granted thereto, reserved herein, exclusively for the benefit of the Commercial Unit and the Owner thereof, which said rights and privileges granted and reserved exclusively unto the said Commercial Unit and the Owner thereof shall only be altered, amended, modified or further granted only with the express written consent of the Owner of the Commercial Unit.

Section 14.2 Procedure for Amendment. An amendment or amendments to this Master Deed and Bylaws may be proposed by the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by the Members of the Association owning greater than fifty percent (50%) of the Percentage Interest in the Common Elements to the Regime Property, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to the Master Deed being proposed by said Board of Directors or members of the Association, such proposed amendment or amendments shall be transmitted to the President or Secretary of the Association, in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each Association member written or printed notice of such Special Meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than sixty (60) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail addressed to the member at his postal address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. At such meeting, the amendment or amendments proposed must be approved by the affirmative vote of the Property Owners holding two-thirds (2/3rds) of the Percentage Interest in the Common Elements as set forth in **EXHIBIT C** in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments of this Master Deed and Bylaws shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted, and the original or an executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Public Records of Horry County, South Carolina, within thirty (30) days from the date on which the same became effective, such amendment or amendments to

specifically refer to the recording data identifying the Master Deed. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to all of the Owners of all Units and mailed to the mortgagees listed in the registry required to be maintained by **Section 7.6** hereof, but delivery and mailing of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting. Furthermore, no amendment to this Master Deed shall be adopted which would operate to affect the validity or priority of any mortgage held by a mortgagee or which would alter, amend or modify in any manner whatsoever the rights, powers and privileges granted and reserved herein in favor of any mortgagee or in favor of Grantor without the written consent of all such mortgagees or Grantor as the case may be.

Section 14.3 Grantor's Right to Amend. The Grantor further reserves the right to make changes or amendments in this Master Deed, without the consent of any Unit Owners or their mortgagees, to correct typographical, scrivener's or similar errors or to make a change required by an institutional lender, provided that any such correction or amendment shall not adversely affect the Percentage Interest of any Owner or Owners in the Common Elements set forth in **EXHIBIT C**. Such change or amendment may be made by the recording of an appropriate document in the Office of the Register of Deeds for Horry County executed by the Grantor.

Section 14.4 Phase II. Section 1.3 sets forth the Grantor's right to amend the Master Deed to add Phase II. In connection with the addition of Phase II, Grantor reserves the right to relocate any surface parking, traffic lanes, fences, gates, pool decking, and landscaping on the ground level of Phase I.

Section 14.5 Recording. No amendments to this Master Deed shall be effective unless and until placed of record.

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ARTICLE XV

GRANTOR

Section 15.1 Reserved Rights of Grantor. Until such earlier time as the Grantor, its successors or assigns, renounces its Board appointment rights and notifies the Board of Directors of the Association to such effect, Grantor, its successors and assigns, shall have the right to designate and select the persons who shall serve as members of each Board of Directors of the Association until the later of the following two events (i) the Grantor, its successors or assigns, no longer owns at least one (1) or more Units or (ii) December 31, 2016. Whenever Grantor, its successors or assigns, shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of the Association, and Grantor, its successors or assigns, shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Grantor need not be an Owner of a Unit.

Section 15.2 Successors and Assigns of Grantor. The rights of Grantor reserved by Grantor under this Master Deed, including the Bylaws of the Association, may be assigned by Grantor to the Grantor's lender, or to any other subsequent developer of the project and their successors and assigns. Notwithstanding any else to the contrary, the right of the Grantor, its successors and assigns, to assign its rights under this Master Deed, may not be amended, terminated, or modified without the written consent of the Grantor and the Grantor's lender and any subsequent present assignee which must be recorded. Any purported attempt to amend, terminate, or modify such Grantor right to assign shall be null and void without such recorded written consent. Such written consent must be attached to any amendment to this Master Deed which modifies the right of Grantor, its lender, or subsequent assignee(s), to assign Grantor rights under this paragraph for such amendment to be effective. Any representative of Grantor serving on the Board of Directors of the Association shall not be required to disqualify himself upon any vote from any management contract or other matter between Grantor and the Association where the Grantor may have a pecuniary or other interest. Similarly, Grantor, as a member of the Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other matter between Grantor and the Association where Grantor may have a pecuniary or other interest.

ARTICLE XVI

REMEDIES IN EVENT OF DEFAULT

The Owner or Owners of each Unit shall be governed by and shall comply with the provisions of this Master Deed, and the Articles of Incorporation and the Bylaws of the Association and its Rules and Regulations as any of the same are now constituted or as they may be adopted and/or amended from time to time. In addition to the remedies set forth in Article IX, a default by the Owner or Owners of any Unit shall entitle the Association or the Owner or

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Owners of other Unit or Units to the following relief subject to the mandatory arbitration provisions set forth in Article XVIII:

a. Failure to comply with any of the terms of this Master Deed or other restrictions and regulations contained in the Articles of Incorporation, Bylaws of the Association, or its Rules and Regulations, shall be grounds for relief which may include without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof and which relief may be sought by the Association, or, if appropriate, by an aggrieved Owner of a Unit.

b. The Owner or Owners of each Unit shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his or their act, neglect or carelessness, or by that of any member of his or their family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

c. In any proceeding arising because of an alleged default by the Owner of any Unit, the Association, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the court or arbitrator. In any proceeding arising because of an alleged breach of the restrictions on commercial activity set forth in Articles IV and V, the Owner of the Commercial Unit, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the court or arbitrator.

d. The failure of the Association or of the Owner of a Unit to enforce any right, provision, covenant, or condition which may be granted by this Master Deed or other above mentioned documents shall not constitute a waiver of the right of the Association or of the Owner of a Unit to enforce such right, provision, covenant or condition in the future.

e. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Unit pursuant to any terms, provisions, covenants or conditions of this Master Deed or other above mentioned documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies or to preclude the person thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such person at law or in equity.

f. The failure of the Grantor, to enforce any right, privilege, covenant or condition which may be granted it by this Master Deed or other above mentioned

documents shall not constitute waiver of the right to thereafter enforce such right, provision, covenant or condition in the future.

ARTICLE XVII

MISCELLANEOUS

Section 17.1 Application. All Property Owners, guests, family members, tenants, or any other person who may in any manner use the Regime Property or any part thereof shall be subject to the Act, the Permitted Encumbrances, this Master Deed, the Bylaws, and the Rules and Regulations. All present or future Owners, tenants or other persons who use the facilities of the Regime Property in any manner are subject to the provisions of this Master Deed and all documents appurtenant hereto and incorporated herewith, and the mere acquisition or rental of any Unit or the mere act of occupancy of any Unit, shall signify that the provisions of this Master Deed are accepted and ratified in all respects.

Section 17.2 Compliance. Each Property Owner shall comply strictly with the Permitted Encumbrances, the Bylaws, and with the administrative Rules and Regulations adopted pursuant thereto, as either of the same may be amended from time to time, and with the covenants, conditions, and restrictions set forth in this Master Deed or in the deed to the Unit of such Property Owner.

Section 17.3 Waiver. No provisions hereof shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

Section 17.4 Conflicts. This Master Deed is intended to comply with the mandatory requirements of the Act and in the event that any of the provisions hereof conflict with the mandatory provisions of the Act, the Act shall control.

Section 17.5 Severability. The provisions of this Master Deed are severable, and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder hereof.

Section 17.6 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Master Deed or the intent of any provisions hereof.

Section 17.7 Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter and the singular and the plural whenever the context requires or permits.

Section 17.8 Acceptance of a Deed to a Unit. The acceptance of a deed of conveyance, the entering into a lease, or any other occupancy or use of a Unit shall constitute (i) an acceptance and ratification of the provisions of the Master Deed by such Property Owner, tenant, or occupant and (ii) the acknowledgment by the Property Owner, tenant, or occupant that the Grantor makes no implied or express warranties relating to the Unit or to the Common

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Elements except for such warranties as are contained in the general warranty deed conveying the same or in the contract of sale between Grantor and the Property Owner.

Section 17.9 Assignment of Warranties. All contractual warranties running in favor of Grantor in connection with the refurbishing or construction of Building and Units and installation of material, equipment, and appliances therein shall accrue to the benefit of and are hereby assigned to the respective Property Owners or the Association as appropriate.

Section 17.10 Failure to Enforce. No terms, obligations, covenants, conditions, restrictions, rules, regulations, or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.

Section 17.11 Rule Against Perpetuities. If any of the terms, covenants, or rights created by this Master Deed shall be void or unlawful for violation of the rule against perpetuities or any analogous statutory or common law provision, then such provision shall continue for a period of ninety (90) years from the filing date of this Master Deed.

Section 17.12 Governing Law This Master Deed shall be governed by the Laws of South Carolina.

ARTICLE XVIII

ALTERNATIVE DISPUTE RESOLUTION

Section 18.1 Definitions Applicable to this Article.

a. Bound Party. Includes: Grantor; all Owners; the Association and its officers, directors, and committee members, including any corporation or other entity formed to serve as the Association; all persons and entities subject to this Master Deed; any person or entity not otherwise subject to this Master Deed who agrees to submit to this Article; any person or entity that now has or hereafter acquires any interest in a Unit; the developer of the Regime; any person or entity that has previously or hereafter supplies (directly or indirectly) labor, materials, design services, equipment or other things of value in connection with the construction or maintenance of any Unit or Common Element in the Regime; any heir, successor, delegatee or assignee of any person or entity listed in this paragraph.

b. Claim. Refers to any claim, grievance or dispute arising out of or relating to: (1) the interpretation, application, or enforcement of this Master Deed, including all documents attached thereto or incorporated by reference therein; (2) the rights, obligations, and duties of any Bound Party under the Master Deed, including all documents attached thereto or incorporated by reference therein; or (3) the design, construction, sale, maintenance, habitability of, or condition of any Unit, Common Element, or other improvement within the Regime, except that the following shall not be considered a Claim unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2 of

this Article ("Exempt Claims"): (i) any suit by the Association to collect assessments or other amounts due from any Owner of a Unit; (ii) any suit between Unit Owners, which does not include Grantor or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Master Deed; (iii) any suit in which any indispensable party is not a Bound Party; (iv) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Master Deed or the Bylaws; and (v) any suit by an Owner of a Commercial Unit to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to enforce the use restrictions within Article IV and V of this Master Deed.

c. Claimant. A Bound Party asserting a Claim.

d. Respondent. A Bound Party against whom a Claim is made.

Section 18.2 Mandatory Dispute Resolution Procedures for Claims. Notwithstanding the remedies set forth elsewhere in this Master Deed, all Claims other than Exempt Claims shall be resolved using the following procedures:

a. Notice: Any Claimant having a Claim against a Respondent, other than an Exempt Claim, shall notify each Respondent in writing of the Claim ("Notice") stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Master Deed, By-Laws, the Articles, or rules or other authority out of which the Claim arises; (3) what Claimant wants Respondent to do or not to do to resolve the Claim; and (4) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

b. Negotiation: (1) Each Claimant and Respondent (each, individually, a "Party" and collectively, the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation; (2) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board of Directors of the Association may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

c. Mediation: (1) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations") Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices

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of the South Carolina Circuit Court Rules of Alternative Dispute Resolution (the "Rules") regarding mediation. In the case of conflict between the Rules and the provisions of this Section, the provisions of this Section shall govern; (2) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings; (3) If the Parties do not settle the Claim within 30 days after the appointment of a mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated; (4) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

d. Final and Binding Arbitration: (1) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration set forth in Section 18.4 below or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings; (2) This **Section 18.2d.** is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of South Carolina. The arbitration award ("Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of South Carolina.

THIS ARBITRATION PROVISION IS EXPRESSLY INTENDED TO BENEFIT AND BE ENFORCEABLE BY EACH BOUND PARTY WHETHER OR NOT SUCH PERSON OR ENTITY IS BOUND BY THIS ARBITRATION PROVISION. ANY ATTEMPT BY ANY SUCH PERSON OR ENTITY TO ENFORCE THIS ARBITRATION PROVISION SHALL CONSTITUTE CONCLUSIVE CONSENT TO BE BOUND HEREBY.

ALL CLAIMANTS HEREBY SUBMIT TO IN PERSONAM JURISDICTION OF THE STATE OF SOUTH CAROLINA AND AGREE

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THAT ITS CLAIMS SHALL BE DETERMINED BY AN ARBITRATOR AS PROVIDED HEREIN IN THE STATE OF SOUTH CAROLINA AND HEREBY WAIVE ALL OBJECTIONS TO VENUE. ALL MATTERS ARISING HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH THE LAW AND PRACTICE OF SOUTH CAROLINA AND CLAIMANT AGREES THAT ANY SERVICE OF PROCESS MAY BE ACCOMPLISHED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AT THE CLAIMANTS' LAST KNOWN HOME ADDRESS OR ANY OTHER METHOD ALLOWED IN THE STATE OF SOUTH CAROLINA OR CLAIMANTS' HOME STATE.

ALL CLAIMS AND CAUSES OF ACTION OF ALL PERSONS AND ENTITIES ENTITLED TO ENFORCE (OR BOUND BY) THIS ARBITRATION PROVISION SHALL BE ASSERTED IN A SINGLE ARBITRATION PROCEEDING, AND MULTIPLE PARTIES MAY BE JOINED IN THE ARBITRATION PROCEEDING SO THAT ALL DISPUTES MAY BE RESOLVED IN ONE FORUM. NO CLAIM OR CAUSE OF ACTION MAY BE ASSERTED THAT WOULD BE BARRED BY THE STATUTE OF LIMITATIONS OR THE STATUTE OF REPOSE.

e. Allocation of Costs of Resolving Claims: (1) Each Party shall bear all of its own costs incurred prior to and during the proceedings described in **Sections 18.2a., 18.2b., and 18.2c.** of this Article, including the fees of its attorney or other representatives. Each Party shall share equally all charges rendered by the mediator(s) pursuant to **Section 18.2c.**; (2) Each Party shall bear all of its own costs (including the fees of its attorney or other representative, incurred after the Termination of Mediation under **Section 18.2c.** and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in **Section 18.2e**; (3) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such costs to he borne equally by all such Claimants.

Section 18.3 Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation, or mediation in accordance with **Sections 18.2c. or 18.2d.** and any Party thereafter fails to abide by the terms of such agreement or if following arbitration any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in **Section 18.2.** In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

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Section 18.4 Rules of Arbitration.

The parties agree that the Arbitration referenced in this Master Deed shall be conducted pursuant to the terms of the South Carolina Uniform Arbitration Act, SC Code Sections 15-48-10, et seq., and any amendment thereto, except as such terms may be modified and supplemented by the following Rules of Arbitration and elsewhere in this Master Deed:

a. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all Parties plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration. ("Arbitration Notice").

b. Claimant shall select an arbitrator ("Party Appointed Arbitrator") and shall notify Respondent of same no later than 5 days after transmission of the Arbitration Notice. Respondent shall within 15 days of receipt of the Arbitration Notice notify Claimant of the name of its Party Appointed Arbitrator. Except for the circumstance noted further in this paragraph, regardless of the number of Claimants and Respondents in any given arbitration the Claimants collectively and the Respondents collectively shall be entitled to only one Party Appointed Arbitrators for all Claimants and only one Party Appointed Arbitrators for all Respondents. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If Claimant(s) or Respondent(s) fails to appoint a Party Appointed Arbitrator as set forth above, the party, i.e., Claimant or Respondent, that has already selected its Party Appointed Arbitrator shall select an additional Neutral in place of the missing Party Appointed Arbitrator. The Bound Parties agree that in the case of multiple Claimants or multiple Respondents, the failure of the Claimants or Respondents to agree upon their respective Party Appointed Arbitrator within the time constraints provide in this paragraph shall constitute a failure to appoint a Party Appointed Arbitrator thereby entitling the other party to the appointment of an additional Neutral in place of the missing Party Appointed Arbitrator. Consequently the Bound Parties understand and agree that it is in their best interests to reach agreement on their designation of their respective Party Appointed Arbitrator appointment.

c. If due to the failure of the Party Appointed Arbitrators to agree on a Neutral the Panel is not selected under Rule b. above within 45 days from the date of the Arbitration Notice, Claimant or Respondent may through such proceedings as are appropriate and necessary move the Court of Common Pleas for Horry County, South Carolina for the appointment of one Neutral ("Appointed Neutral") and, upon appointment notify the Appointed Neutral and all Claimant(s) and Respondent(s) in writing of such appointment.

d. The Party Appointed Arbitrators plus the Neutral or Appointed Neutral shall hereinafter be referred to as the "Arbitrators" who shall select one of them to

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serve as a chairperson ("Chair").

e. No person may serve as a Neutral or as an Appointed Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration.

f. The Chair, shall fix the date, time and place for the hearing which must be held no less than ten (10) but no more that thirty (30) days of the appointment of the Chair. The hearing shall take place in Myrtle Beach, South Carolina, unless otherwise agreed by the Claimant and Respondent.

g. Any Claimant or Respondent may be represented by an attorney or other authorized representative throughout the arbitration, proceedings.

h. All persons who, in the judgment of the Arbitrators, have a direct interest in the arbitration are entitled to attend hearings.

i. There shall be no stenographic record of the proceedings as a part of the Arbitration. However should any Party desire to create a stenographic record of the proceedings, it may do so at its own expense. Under no circumstances shall such expense be assessed against the Claimant or Respondent in any award of fees or costs. Further, any stenographer employed to create such a stenographic record shall be directed, at the time of hiring, by the party hiring such stenographer to provide to the Claimant and Respondent a copy of such record upon demand at the expense of the party seeking such copy.

j. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment most fairly and expeditiously permit the full presentation of the evidence and arguments of the Bound Parties.

k. The Claimant and Respondent may offer such evidence as is relevant and material to the Claim and shall produce such additional evidence as the Arbitrators may deem necessary to an understanding and determination of the Claim. The Arbitrators shall be the sole judge of the relevance and materiality of any evidence offered and conformity to the legal rules of evidence shall not be necessary. The Arbitrators shall be authorized and required to administer oaths to witnesses.

l. The Arbitrators shall declare the hearings closed when satisfied the record is complete.

m. There will be no post-hearing briefs.

n. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Claimant and Respondent. The Award shall be in writing, shall be signed by the Chair and acknowledged before a notary public. If the Arbitrators

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believe an opinion is necessary, it shall be in summary form.

o. All procedural, evidentiary and other decisions of the Panel and the Award shall be by majority vote of the Arbitrators.

p. Each Party agrees to accept as legal delivery of the Award, the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

q. The legal principles of res judicata and collateral estoppel shall be applicable to any arbitration Award. Any arbitration Award may be confirmed and enforced in any court of jurisdiction.

TO THE EXTENT THAT ANY ACTION, CLAIM, SUIT, OR PROCEEDING ON, ARISING OUT OF OR IN ANY MANNER RELATED TO THIS MASTER DEED, OR ANY SUBSEQUENT AMENDMENT THERETO, OR THE CONDUCT OF THE RELATIONSHIP BETWEEN THE GRANTOR, GRANTEE, ASSOCIATION, AND/OR THE PROPERTY OWNERS, THEIR SUCCESSORS AND ASSIGNS, IN CONNECTION WITH THIS MASTER DEED IS AN EXEMPT CLAIM OR IS DETERMINED TO NOT BE SUBJECT TO THE ARBITRATION PROVISIONS SET FORTH HEREIN, ALL BOUND PARTIES, BY ACCEPTANCE OF A DEED UNDER THIS MASTER DEED, ON BEHALF OF THEMSELVES AND THEIR SUCCESSORS AND ASSIGNS, WAIVE TRIAL BY JURY and agree that the prevailing party in any litigation relating to this Master Deed, and any subsequent amendment thereto, or the conduct of the relationship between the Grantor, Grantee, Association, and/or Property Owner, their successors and assigns, in connection with this Master Deed, shall be entitled to recover its reasonable attorney's fees from the other party for all matters, including, but not limited to, appeals.

ARTICLE XIX

CONDITION OF BUILDING AND RESERVES FOR REPLACEMENT

Grantor hereby discloses, and by acceptance of a deed conveying a Unit, each Owner of a Unit hereby acknowledges, that the Building comprising the Regime Property was constructed in phases between approximately 1952 to 1996 by persons other than Grantor. The Building and its Common Elements were inspected by BES Engineering, LLC (the "Engineering Inspector"), at the request of the Grantor. The Engineering Inspector issued an engineering report dated May 19, 2005 and last revised February 15, 2006 (the "Engineer's Report"). A copy of the resulting Engineer's Report has been made available to all Owners or potential Owners prior to the purchase of a Unit. Grantor has made an initial contribution in the amount of $1,500,000.00 to the Association as reserves for replacements and repairs of components of the Building to help insure that adequate reserves for such repairs and replacements are available and that the Building and improvements, on the date submitted to this Master Deed, are in good condition, taking into consideration the reserves for repairs and the fact that each of the Common Elements have a remaining useful life on such date.

By acceptance of a deed to a Unit within the Regime, each Owner of Unit acknowledges that he/she/it has had an opportunity to review the Engineer's Report as well as to make any inspections of the Unit or Building as he/she/it deems necessary. EACH OWNER WARRANTS, ACKNOWLEDGES AND AGREES WITH GRANTOR THAT THE UNITS AND HAVE BEEN ACCEPTED IN AN "AS IS" CONDITION AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON BEHALF OF THE GRANTOR, INCLUDING WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR INTENDED PURPOSE. GRANTOR EXPRESSLY DISCLAIMS AND WILL NOT BE RESPONSIBLE FOR ANY MOLD, MILDEW OR OTHER PROBLEMS RELATED TO OCEAN FRONT CLIMATIC CONDITIONS, MOISTURE INTRUSION, OR ANY LOSS OR DAMAGE OF ANY NATURE CAUSED BY OR RELATED TO THE FOREGOING.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Grantor has caused this Master Deed of The Caravelle Resort Horizontal Property Regime to be executed the day and year first above written.

WITNESSES:

BEACHFRONT CONVERSIONS, LLC

By: Kevin Warren
Its: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named BEACHFRONT CONVERSIONS, LLC, a South Carolina limited liability Company, by its Kevin Warren, its Manager, sign, seal, and as its act and deed deliver the within written Master Deed of The Caravelle Resort Horizontal Property Regime and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

Sworn to before me this 20th
day of February, 2006

(L.S.)
Notary Public for South Carolina

My Commission Expires: 9/9/2009.

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LIST OF EXHIBITS

EXHIBIT A-1	Land Description
EXHIBIT A-2	Initial Parking Easement Premises Description
EXHIBIT B	Permitted Exceptions
EXHIBIT C	Percentage Interest
EXHIBIT D	Nonprofit Corporation Articles of Incorporation
EXHIBIT E	Bylaws
EXHIBIT F	Plot Plan
EXHIBIT G	Plans
EXHIBIT H	Architect's Certificate
EXHIBIT I	Phase II Chart
EXHIBIT J	Surveyor's Certificate

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EXHIBIT A-1

LAND DESCRIPTION

All and singular, those certain pieces, parcels, or lots of land, together with improvements thereon, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, and being more particularly described as Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6) of Block Five-CP (5-CP) of the Cane Patch Section on a plat entitled plat entitled Topographic Survey of Lots 8 &9, Block 4-CP and Lots 1, 2, 3, 4, 5, & 6, Block 5-CP, Cane Patch Section, City of Myrtle Beach, Horry County, South Carolina prepared for Beachfront Conversions, LLC by Donald E. Thomas of Robert L. Bellamy & Associates, Inc. dated December 30, 2005 and last revised February 10, 2006 and recorded February 21, 2006 in Plat Book 211 at Page 248 in the land records of Horry County, South Carolina, reference to which is craved as forming a part of these presents.

TMS #174-03-04-023

This being the same property conveyed to Beachfront Conversions, LLC by Caravelle Properties, a South Carolina limited partnership by deed dated February 20, 2006 and recorded February 2-21, 2006 in Deed Book 3052 at Page 340 in the Office of the Register of Deeds for Horry County, South Carolina.

BEACH MANAGEMENT ACT DISCLOSURE:

THIS PROPERTY IS SUBJECT TO REGULATION OF USE BY THE COASTAL MANAGEMENT ACT, SECTION 48-39-10, ET SEQ., S. C. CODE OF LAWS, AS AMENDED, AND PART OF THIS PROPERTY IS SEAWARD OF THE SETBACK LINE ESTABLISHED BY THE ACT. THIS INFORMATION IS SHOWN WITH PARTICULARITY ON THE PLOT PLAN DESCRIBED ON EXHIBIT F TO THIS MASTER DEED, WHICH SHOWS SEAWARD CORNERS OF STRUCTURES AND THE ANNUAL EROSION RATE AT -68 FEET PER YEAR.

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EXHIBIT A-2

INITIAL PARKING EASEMENT PREMISES

All that land, together with improvements thereon, identified as the "Initial Relocatable Parking Easement Premises" on that plat entitled Topographic Survey Of Lots 8 & 9, Block 4-CP And Lots 1, 2, 3, 4, 5, & 6, Block 5-CP, Cane Patch Section, City Of Myrtle Beach, Horry County, South Carolina prepared for Beachfront Conversions, LLC by Donald E. Thomas of Robert L. Bellamy & Associates, Inc. dated December 30, 2005 and last revised February 10,. 2006 and recorded February 21, 2006 in Plat Book 211 at Page 248 in the land records of Horry County, South Carolina (the "Regime Survey"), reference to which is craved as forming a part of these presents.

Such "Initial Relocatable Parking Easement Premises" is situate lying,. and being at Myrtle Beach, School District Thirteen (13), Horry County, South Carolina and covers Lots Number Eight (8), and Nine (9) and that portion of Lot Seven (7) on which a stair tower is located as shown on the Regime Survey of Block Four-CP (4-CP) of the Cane Patch Section with such lots being identified and shown on a map of the Cane Patch Section of Myrtle Beach prepared by T. M. Jordan, Engineer, dated April, 1946 and recorded in Plat Book 9, at page 5.

TMS # 174-03-04-008
174-03-04-009
174-03-04-010

This being the same initial relocatable easement premises identified in that parking easement conveyed to Beachfront Conversions, LLC by Caravelle Properties, a South Carolina limited partnership pursuant to a Condominium Parking Easement with Unilateral Right to Relocate dated February 20, 2006 and recorded February 21, 2006 in Deed Book 3052 at Page 344, in the land records of Horry County, South Carolina (the "Parking Easement").

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EXHIBIT B

PERMITTED EXCEPTIONS

1. Taxes and assessments for the year 2006, and subsequent years, which are a lien but are not yet due and payable.

2. This Master Deed for The Caravelle Resort Horizontal Property Regime (the "Master Deed") and the related Bylaws (the "Bylaws") and any amendments or supplements thereto;

3. Licenses and easements for utilities servicing the Property and drainage easements of record which may affect the Property;

4. Zoning laws and other ordinances of the City of Myrtle Beach and all other local, state, and federal ordinances, laws, and regulations as applicable;

5. The littoral rights of others, if any, to use the waters of the Atlantic Ocean;

6. Any right or title of the Federal Government to title of land below the mean high water mark of the Atlantic Ocean;

7. Such survey matters as set forth in the Plot Plan referenced hereto in the attached EXHIBIT F and incorporated herein by such reference;

8. Setback lines (which are subject to change) and limitations on the right to build, rebuild or repair structures as set forth in South Carolina Code Section 48-39-10 through 48-39-370, Code of Laws of South Carolina, 1976, as amended. You may not be able to repair, build or rebuild residential structures on your property;

9. The rights, if any, of the public acquired by the previous adverse use or by virtue of local custom with respect to the special nature of seaside beaches, to use any part of the land seaward of the natural line of vegetation or the extreme highwater line, as a public beach or recreation area;

10. Terms and conditions of that certain Condominium Parking Easement Grant with Unilateral Right to Relocate as set forth in that certain instrument dated February 20, 2006 and recorded 2-21-06 in Deed Book 3052 at page 344, in the Office of the Register of Deeds for Horry County, including, without limitation the unilateral right of the Grantor to relocate the parking easement premises.

11. Covenants, conditions, reservations and restrictions as set forth in the records of the Office of the RMC for Horry County, South Carolina, as follows:

    a) Lot 1, Block 5-CP, Deed Book 88 at page 265
    b) Lot 2, Block 5-CP, Deed Book 73 at page 441,
    c) Lot 3, Block 5-CP, Deed Book 73 at page 434,

d) Lot 4, Block 5-CP, Deed Book 74 at page 315,
e) Lot 5, Block 5-CP, Deed Book 93 at page 31; and
f) Lot 6, Block 5-CP, Deed Book 84 at page 170.

12. Cable Communications Easement by and between "Caravelle Tower" and Time Warner Entertainment-Advance/Newhouse Partnership, dated June 10, 1999 and recorded June 22, 1999 in Deed Book 2157 at page 923, in the Office of the RMC for Horry County, South Carolina.

13. Cable Communications Easement by and between Caravelle Resort and Time Warner Entertainment-Advance/Newhouse Partnership, dated April 29, 1999 and recorded May 7, 1999 in Deed Book 2143 at page 337, in the Office of the RMC for Horry County, South Carolina.

14. Topographic and As-Built Survey of the Caravelle Resort Motel prepared for Pegram Associates, Inc. by Sur-Tech, Incorporated dated February 17, 1988 and last revised December 12, 1989 and recorded June 5, 1990 in Plat Book 107 at page 197 in the Office of the RMC for Horry County, South Carolina, which reveals the following:

a) Power poles with electric overhead lights along the North Ocean Boulevard boundary of the property;
b) Underground utility installations along the adjacent rights of way;
c) Wood walk, concrete curbing, sidewalks and parking spaces encroach from the premises into adjacent beach access and rights of way; and
d) City of Myrtle Beach 50 yard setback line, SC Coastal Council 40 year setback line, SC Coastal Council Baseline and No Construction Line.

15. Rights of control and of the State of South Carolina as provided in Title 48, Chapter 31, (Coastal Tidelands and Wet Lands Act) of the South Carolina Code of Laws, 1976, as amended.

16. Subject to interest created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or by Title 48, Chapter 39, of the South Carolina Code of Laws, 1976, as amended, or any regulations promulgated pursuant to said state or federal laws.

17. Title to any portion of the property lying between the high and low water marks of the Atlantic Ocean.

18. Survey of The Caravelle Resort Horizontal Property Regime prepared for Beachfront Conversions, LLC, by Robert L. Bellamy & Associates, Inc., dated December 30, 2005 and last revised February 10, 2006 and recorded in Plat Book 211 at page 348, records of the Office of the Register of Deeds for Horry County, South Carolina reveals the following:

a) Encroachment of sign/sign planter along the North Ocean Boulevard

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boundary of the subject property;

b) Encroachment of sidewalk at Western corner of subject property;

c) Boardwalk, 36.4' planter, concrete pavers and wood deck encroach onto adjoining property between the subject property and the Atlantic Ocean;

d) Encroachment of the Oceanfront six story building and snack bar onto the City of Myrtle Beach 50 year setback line;

e) Encroachment of sidewalk and encroachment of snack bar into DHEC OCRM setback lines;

f) Underground utility lines and installations in adjacent rights of way; and

g) Power poles with electric overhead lights along the North Ocean Boulevard boundary of the subject property.

h) City of Myrtle Beach 50 yard setback line, SC Coastal Council 40 year setback line, SC Coastal Council Baseline and No Construction Line.

<u>As to the Initial Parking Easement Premises set forth in Parking Easement Only:</u>

12. Covenants, conditions, reservations and restrictions as set forth in that certain Deed of Myrtle Beach Farms Company, dated July 16, 1949 and recorded September 27, 1949 in Deed Book 67 at page 235, records of the Office of the RMC for Horry County, South Carolina.

13. Covenants, conditions, reservations and restrictions as set forth in that certain Deed of Myrtle Beach Farms Company dated June 14, 1949 and recorded August 6, 1949 in Deed Book 66 at page 145, records of the Office of the RMC for Horry County, South Carolina.

14. Covenants, conditions, reservations and restrictions as set forth in that certain Deed of Myrtle Beach Farms Company dated May 19, 1949 and recorded July 12, 1949 in Deed Book 66 at page 35, records of the Office of the RMC for Horry County.

15. Distribution Right of Way given by Caravelle Properties, a South Carolina Limited Partnership to South Carolina Public Service Authority, dated December 16, 1996 and recorded December 31, 1996 in Deed Book 1911 at page 192, in the Office of the RMC for Horry County, South Carolina.

16. Boundary/As-Built Survey prepared for Caravelle Resort by Powell Associates of NMB, Inc., dated August 8, 1996 and recorded June 18, 1997 in Plat Book 148 at page 143, in the Office of the RMC for Horry County, South Carolina, reveals the following:

a) Power poles with overhead electric lines traversing the subject property from adjacent private lots and adjacent rights of way;

b) Concrete walls encroaching from the premises onto adjacent rights of way;

c) Chain link fence and wood fence along the southern and western property line;

d) Eight (8") inch concrete wall along rear of lots 7 and 8; and
e) Underground utility lines in adjacent rights of way.
f) 20' Proposed Re-location SCPSA Utility Easement

17. Survey of The Caravelle Resort Horizontal Property Regime prepared for Beachfront Conversions, LLC, by Robert L. Bellamy & Associates, Inc., dated December 30, 2005 and last revised February 10, 2006 and recorded in Plat Book 211 at page 148, in the Office of the Register of Deeds for Horry County, South Carolina, reveals the following:

a) Power poles with overhead electric lines traversing the premises from adjacent private lots and adjacent rights of way;
b) Concrete block wall encroaching on subject property from adjoining Lot 7, Block 4-CP;
c) Curbing, portions of stairwell and garage entrance encroaching upon adjoining Lot 7, Block 4-CP;
d) Underground utility lines in adjacent rights of way.

18. Terms and conditions of that certain Condominium Parking Easement Grant with Unilateral Right to Relocate as set forth in that certain instrument dated February 20, 2006 and recorded in Deed Book 3052 at page 344, in the Office of the Register of Deeds for Horry County, South Carolina, including, without limitation, the unilateral right of the Grantor to relocate the parking easement premises described therein.

19. Inability of ingress/egress from the Parking Easement Premises over adjoining Lot 7, Block 4-CP.

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EXHIBIT C
PERCENTAGE INTEREST

(NOTE: "Value" as shown herein is set forth for the sole purpose of establishing Percentage Interests pursuant to the Act. It does not relate to sales price or future property value of the Residential or Commercial Units.)

Unit No.	Type of Unit	Statutory Value	Percentage Interest
111	B-3	2.5	0.00340321
112	G	3.0	0.00408386
114	G	3.0	0.00408386
116	G	3.0	0.00408386
118	C-6-B	1.85	0.00251838
119	C-6-B	1.85	0.00251838
120	C-6-B	1.85	0.00251838
121	C-6-B	1.85	0.00251838
122	C-6-B	1.85	0.00251838
123	C-6-B	1.85	0.00251838
124	C-6-B	1.85	0.00251838
125	C-6-B	1.85	0.00251838
201	C-2-C	1.75	0.00238225
202	C-2-C	1.75	0.00238225
203	C-2-C	1.75	0.00238225
204	C-2-C	1.75	0.00238225
205	C-2-C	1.75	0.00238225
206	C-2-C	1.75	0.00238225
207	C-2-C	1.75	0.00238225
208	C-2-D	1.75	0.00238225
209	C-2-C	1.75	0.00238225
210	C-2-D	1.75	0.00238225
211	B-2	2.5	0.00340321
212	G	3.0	0.00408386
214	G	3.0	0.00408386
216	G	3.0	0.00408386
218	C-6-A	1.85	0.00251838
219	C-6-A	1.85	0.00251838
220	C-6-A	1.85	0.00251838
221	C-6-A	1.85	0.00251838
222	C-6-A	1.85	0.00251838
223	C-6-A	1.85	0.00251838
224	C-6-A	1.85	0.00251838
225	C-6-A	1.85	0.00251838
301	C-2-C	1.75	0.00238225
302	C-2-C	1.75	0.00238225
303	C-2-C	1.75	0.00238225

304	C-2-C	1.75	0.00238225
305	C-2-C	1.75	0.00238225
306	C-2-C	1.75	0.00238225
307	C-2-C	1.75	0.00238225
308	C-2-D	1.75	0.00238225
309	C-2-C	1.75	0.00238225
310	C-2-D	1.75	0.00238225
311	B-2	2.5	0.00340321
312	G	3.0	0.00408386
314	G	3.0	0.00408386
316	G	3.0	0.00408386
318	C-6-A	1.85	0.00251838
319	C-6-A	1.85	0.00251838
320	C-6-A	1.85	0.00251838
321	C-6-A	1.85	0.00251838
322	C-6-A	1.85	0.00251838
323	C-6-A	1.85	0.00251838
324	C-6-A	1.85	0.00251838
325	C-6-A	1.85	0.00251838
401	C-2-B	1.75	0.00238225
402	C-2-B	1.75	0.00238225
403	C-2-B	1.75	0.00238225
404	C-2-B	1.75	0.00238225
405	C-2-B	1.75	0.00238225
406	C-2-B	1.75	0.00238225
407	C-2-B	1.75	0.00238225
408	C-2-B	1.75	0.00238225
409	C-2-B	1.75	0.00238225
410	C-2-B	1.75	0.00238225
411	B-2	2.5	0.00340321
412	G	3.0	0.00408386
414	G	3.0	0.00408386
416	G	3.0	0.00408386
418	C-6-A	1.85	0.00251838
419	C-6-A	1.85	0.00251838
420	C-6-A	1.85	0.00251838
421	C-6-A	1.85	0.00251838
422	C-6-A	1.85	0.00251838
423	C-6-A	1.85	0.00251838
424	C-6-A	1.85	0.00251838
425	C-6-A	1.85	0.00251838
501	C-2-A	1.75	0.00238225
502	C-2-A	1.75	0.00238225
503	C-2-A	1.75	0.00238225
504	C-2-A	1.75	0.00238225

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505	C-2-A	1.75	0.00238225
506	C-2-A	1.75	0.00238225
507	C-2-A	1.75	0.00238225
508	C-2-A	1.75	0.00238225
509	C-2-A	1.75	0.00238225
510	C-2-A	1.75	0.00238225
511	B-4	2.5	0.00340321
512	C-1-F	1.8	0.00245031
513	C-1-G	1.8	0.00245031
514	C-1-H	1.8	0.00245031
515	C-1-E	1.8	0.00245031
516	C-1-E	1.8	0.00245031
517	C-1-E	1.8	0.00245031
518	C-1-E	1.8	0.00245031
519	C-1-E	1.8	0.00245031
520	C-1-E	1.8	0.00245031
521	C-1-E	1.8	0.00245031
522	C-1-E	1.8	0.00245031
523	C-1-E	1.8	0.00245031
524	C-1-E	1.8	0.00245031
525	C-1-E	1.8	0.00245031
601	C-2-A	1.75	0.00238225
602	C-2-A	1.75	0.00238225
603	C-2-A	1.75	0.00238225
604	C-2-A	1.75	0.00238225
605	C-2-A	1.75	0.00238225
606	C-2-A	1.75	0.00238225
607	C-2-A	1.75	0.00238225
608	C-2-A	1.75	0.00238225
609	C-2-A	1.75	0.00238225
610	C-2-A	1.75	0.00238225
611	B-1	2.5	0.00340321
612	C-1-A	1.8	0.00245031
613	C-1-B	1.8	0.00245031
614	C-1-C	1.8	0.00245031
615	C-1-D	1.8	0.00245031
616	C-1-D	1.8	0.00245031
617	C-1-D	1.8	0.00245031
618	C-1-D	1.8	0.00245031
619	C-1-D	1.8	0.00245031
620	C-1-D	1.8	0.00245031
621	C-1-D	1.8	0.00245031
622	C-1-D	1.8	0.00245031
623	C-1-D	1.8	0.00245031
624	C-1-D	1.8	0.00245031

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625	C-1-D	1.8	0.00245031
701	A	2.0	0.00272257
702	A	2.0	0.00272257
703	A	2.0	0.00272257
704	A	2.0	0.00272257
705	A	2.0	0.00272257
706	A	2.0	0.00272257
707	A	2.0	0.00272257
708	A	2.0	0.00272257
709	A	2.0	0.00272257
710	A	2.0	0.00272257
711	B-1	2.5	0.00340321
712	C-1-A	1.8	0.00245031
713	C-1-B	1.8	0.00245031
714	C-1-C	1.8	0.00245031
715	F	1.6	0.00217806
734	D-1	2.4	0.00326708
735	E	2.9	0.00394773
737	D-1	2.4	0.00326708
738	D-1	2.4	0.00326708
739	D-1	2.4	0.00326708
740	D-1	2.4	0.00326708
741	D-1	2.4	0.00326708
742	D-1	2.4	0.00326708
743	D-1	2.4	0.00326708
744	D-1	2.4	0.00326708
745	D-1	2.4	0.00326708
801	A	2.0	0.00272257
802	A	2.0	0.00272257
803	A	2.0	0.00272257
804	A	2.0	0.00272257
805	A	2.0	0.00272257
806	A	2.0	0.00272257
807	A	2.0	0.00272257
808	A	2.0	0.00272257
809	A	2.0	0.00272257
810	A	2.0	0.00272257
811	B-1	2.5	0.00340321
812	C-1-A	1.8	0.00245031
813	C-1-B	1.8	0.00245031
814	C-1-C	1.8	0.00245031
815	F	1.6	0.00217806
834	D-1	2.4	0.00326708
835	D-2	2.4	0.00326708
836	D-1	2.4	0.00326708

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837	D-1	2.4	0.00326708
838	D-1	2.4	0.00326708
839	D-1	2.4	0.00326708
840	D-1	2.4	0.00326708
841	D-1	2.4	0.00326708
842	D-1	2.4	0.00326708
843	D-1	2.4	0.00326708
844	D-1	2.4	0.00326708
845	D-1	2.4	0.00326708
901	A	2.0	0.00272257
902	A	2.0	0.00272257
903	A	2.0	0.00272257
904	A	2.0	0.00272257
905	A	2.0	0.00272257
906	A	2.0	0.00272257
907	A	2.0	0.00272257
908	A	2.0	0.00272257
909	A	2.0	0.00272257
910	A	2.0	0.00272257
911	B-1	2.5	0.00340321
912	C-1-A	1.8	0.00245031
913	C-1-B	1.8	0.00245031
914	C-1-C	1.8	0.00245031
915	F	1.6	0.00217806
934	D-1	2.4	0.00326708
935	D-2	2.4	0.00326708
936	D-1	2.4	0.00326708
937	D-1	2.4	0.00326708
938	D-1	2.4	0.00326708
939	D-1	2.4	0.00326708
940	D-1	2.4	0.00326708
941	D-1	2.4	0.00326708
942	D-1	2.4	0.00326708
943	D-1	2.4	0.00326708
944	D-1	2.4	0.00326708
945	D-1	2.4	0.00326708
1001	A	2.0	0.00272257
1002	A	2.0	0.00272257
1003	A	2.0	0.00272257
1004	A	2.0	0.00272257
1005	A	2.0	0.00272257
1006	A	2.0	0.00272257
1007	A	2.0	0.00272257
1008	A	2.0	0.00272257
1009	A	2.0	0.00272257

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1010	A	2.0	0.00272257
1011	B-1	2.5	0.00340321
1012	C-1-A	1.8	0.00245031
1013	C-1-B	1.8	0.00245031
1014	C-1-C	1.8	0.00245031
1015	F	1.6	0.00217806
1034	D-1	2.4	0.00326708
1035	D-2	2.4	0.00326708
1036	D-1	2.4	0.00326708
1037	D-1	2.4	0.00326708
1038	D-1	2.4	0.00326708
1039	D-1	2.4	0.00326708
1040	D-1	2.4	0.00326708
1041	D-1	2.4	0.00326708
1042	D-1	2.4	0.00326708
1043	D-1	2.4	0.00326708
1044	D-1	2.4	0.00326708
1045	D-1	2.4	0.00326708
1101	A	2.0	0.00272257
1102	A	2.0	0.00272257
1103	A	2.0	0.00272257
1104	A	2.0	0.00272257
1105	A	2.0	0.00272257
1106	A	2.0	0.00272257
1107	A	2.0	0.00272257
1108	A	2.0	0.00272257
1109	A	2.0	0.00272257
1110	A	2.0	0.00272257
1111	B-1	2.5	0.00340321
1112	C-1-A	1.8	0.00245031
1113	C-1-B	1.8	0.00245031
1114	C-1-C	1.8	0.00245031
1115	F	1.6	0.00217806
1134	D-1	2.4	0.00326708
1135	D-2	2.4	0.00326708
1136	D-1	2.4	0.00326708
1137	D-1	2.4	0.00326708
1138	D-1	2.4	0.00326708
1139	D-1	2.4	0.00326708
1140	D-1	2.4	0.00326708
1141	D-1	2.4	0.00326708
1142	D-1	2.4	0.00326708
1143	D-1	2.4	0.00326708
1144	D-1	2.4	0.00326708
1145	D-1	2.4	0.00326708

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1201	A	2.0	0.00272257
1202	A	2.0	0.00272257
1203	A	2.0	0.00272257
1204	A	2.0	0.00272257
1205	A	2.0	0.00272257
1206	A	2.0	0.00272257
1207	A	2.0	0.00272257
1208	A	2.0	0.00272257
1209	A	2.0	0.00272257
1210	A	2.0	0.00272257
1211	B-1	2.5	0.00340321
1212	C-1-A	1.8	0.00245031
1213	C-1-B	1.8	0.00245031
1214	C-1-C	1.8	0.00245031
1215	F	1.6	0.00217806
1234	D-1	2.4	0.00326708
1235	D-1	2.4	0.00326708
1236	D-1	2.4	0.00326708
1237	D-1	2.4	0.00326708
1238	D-1	2.4	0.00326708
1239	D-1	2.4	0.00326708
1240	D-1	2.4	0.00326708
1241	D-1	2.4	0.00326708
1242	D-1	2.4	0.00326708
1243	D-1	2.4	0.00326708
1244	D-1	2.4	0.00326708
1245	D-1	2.4	0.00326708
1401	A	2.0	0.00272257
1402	A	2.0	0.00272257
1403	A	2.0	0.00272257
1404	A	2.0	0.00272257
1405	A	2.0	0.00272257
1406	A	2.0	0.00272257
1407	A	2.0	0.00272257
1408	A	2.0	0.00272257
1409	A	2.0	0.00272257
1410	A	2.0	0.00272257
1411	B-1	2.5	0.00340321
1412	C-1-A	1.8	0.00245031
1413	C-1-B	1.8	0.00245031
1414	C-1-C	1.8	0.00245031
1415	F	1.6	0.00217806
1434	D-1	2.4	0.00326708
1435	D-1	2.4	0.00326708
1436	D-1	2.4	0.00326708

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1437	D-1	2.4	0.00326708
1438	D-1	2.4	0.00326708
1439	D-1	2.4	0.00326708
1440	D-1	2.4	0.00326708
1441	D-1	2.4	0.00326708
1442	D-1	2.4	0.00326708
1443	D-1	2.4	0.00326708
1444	D-1	2.4	0.00326708
1445	D-1	2.4	0.00326708
1501	A	2.0	0.00272257
1502	A	2.0	0.00272257
1503	A	2.0	0.00272257
1504	A	2.0	0.00272257
1505	A	2.0	0.00272257
1506	A	2.0	0.00272257
1507	A	2.0	0.00272257
1508	A	2.0	0.00272257
1509	A	2.0	0.00272257
1510	A	2.0	0.00272257
1511	B-1	2.5	0.00340321
1512	C-1-A	1.8	0.00245031
1513	C-1-B	1.8	0.00245031
1514	C-1-C	1.8	0.00245031
1515	F	1.6	0.00217806
1534	D-1	2.4	0.00326708
1535	D-1	2.4	0.00326708
1536	D-1	2.4	0.00326708
1537	D-1	2.4	0.00326708
1538	D-1	2.4	0.00326708
1539	D-1	2.4	0.00326708
1540	D-1	2.4	0.00326708
1541	D-1	2.4	0.00326708
1542	D-1	2.4	0.00326708
1543	D-1	2.4	0.00326708
1544	D-1	2.4	0.00326708
1545	D-1	2.4	0.00326708
Commercial Unit	C-1	2.0	0.00272257
Commercial Unit	C-2	4.0	0.00544514
Commercial Unit	C-3	4.0	0.00544514
Commercial Unit	C-4	2.0	0.00272257
Commercial Unit	C-5	2.0	0.00272257
Commercial Unit	C-6	8.0	0.01089028

Exhibit "D"

See attached

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CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

FEB 0 1 2006

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the nonprofit corporation is The Caravelle Resort Owners Association, Inc.

2. The initial registered office of the nonprofit corporation is 6900 N. Ocean Blvd. (Street Address)
Myrtle Beach, Horry County, SC 29572
(City / County / State / Zip Code)

The name of the registered agent of the nonprofit corporation at that office is
Kevin L. Warren (Print Name)

I hereby consent to the appointment as registered agent of the corporation.
(Agent's Signature)

3. Check "a", "b", or "c" whichever is applicable. Check only one box:

a. ☐ The nonprofit corporation is a public benefit corporation.

b. ☐ The nonprofit corporation is a religious corporation.

c. ☑ The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b", whichever is applicable:

a. ☑ This corporation will have members.

b. ☐ This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is
6900 N. Ocean Blvd, Myrtle Beach, Horry County, SC 29572
(Street Address / City / County / State / Zip Code)

6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated

060201-0032 FILED: 02/01/2006
CARAVELLE RESORT OWNERS ASSOCIATION, INC. THE
Filing Fee: $25.00 ORIG
Mark Hammond South Carolina Secretary of State

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exclusively for such purposes.

b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. ☑ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form)

9. The name and address of each incorporator is as follows (only one is required)

Beachfront Conversions, LLC, 6900 N. Ocean Blvd., Myrtle Beach, SC 29572
Name Address Zip Code

Name Address Zip Code

Name Address Zip Code

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

n/a
Name (Only if named in articles) Signature of director

Name (Only if named in articles) Signature of director

Name (Only if named in articles) Signature of director

11. Each incorporator must sign the articles.

Beachfront Conversions, LLC
Signature of Incorporator
By:
Signature of Incorporator Kevin L. Warren
Its: Manager
Signature of Incorporator

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The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of Incorporation, Nonprofit Corporation

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

CARAVELLE RESORT OWNERS ASSOCIATION, INC. THE, a nonprofit corporation duly organized under the laws of the State of South Carolina on February 1st, 2006, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed a Declaration and Petition for Incorporation of a nonprofit corporation for Religious, Educational, Social, Fraternal, Charitable, or other eleemosynary purpose.

Now, therefore, I Mark Hammond, Secretary of State, by virtue of the authority in me vested by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto, do hereby declare the organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto.

Given under my Hand and the Great Seal of the State of South Carolina this 1st day of February, 2006.

Mark Hammond

Mark Hammond, Secretary of State

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EXHIBIT E

TO

MASTER DEED OF THE CARAVELLE RESORT

HORIZONTAL PROPERTY REGIME

THE BYLAWS OF THE CARAVELLE RESORT OWNERS ASSOCIATION, INC.

THE BYLAWS OF THE CARAVELLE RESORT OWNERS ASSOCIATION, INC. are promulgated pursuant to the Horizontal Property Act of South Carolina, Chapter 31, Title 27, Code of Laws of South Carolina, 1976, as amended, and as may be further amended from time to time (the "Act") for the purposes of governing the The Caravelle Resort Horizontal Property Regime (the "Regime") and for the administration of the Regime. All terms not defined in these Bylaws shall have the meaning set out in the Act or the Master Deed dated February 20, 2006 from BEACHFRONT CONVERSIONS, LLC, a South Carolina Limited Liability Company, as Grantor, with all Exhibits incorporated therein and all amendments thereto (the "Master Deed")

ARTICLE I

ASSOCIATION OF PROPERTY OWNERS

Section 1.1 Name. The name of the Association shall be The Caravelle Resort Owners' Association, Inc. (the "Association"). The Association is a non-profit corporation organized pursuant to the South Carolina Nonprofit Corporation Act of 1994, Chapter 31, Title 33, Code of Laws of South Carolina, 1976, as amended (the "Nonprofit Act").

Section 1.2 Membership. Each Property Owner shall be a member of the Association. A person who holds a mortgage on a Unit as security for payment of a debt shall not be a member entitled to exercise the rights of Property Owner unless such person holds a proxy conferring such rights.

Section 1.3 Quorum. The presence in person or by proxy of Property Owners owning one-third of the Percentage Interest in the Common Elements shall constitute a quorum for the transaction of business at meetings of the Association.

Section 1.4 Voting. A Property Owner's voting rights and the vote required to adopt decisions is as set out in Article VII of the Master Deed. Votes can be cast only at meetings of the Association convened in accordance with the Bylaws and the Act; and, in the absence of a valid proxy, an individual shall act in his own behalf, a corporation shall act by any officer thereof, a partnership shall act by any general partner thereof, an association shall act by any associate thereof, a limited liability company shall act by its manager, or, if the company has no manager, by any member, and a trust shall act by any trustee thereof. When any Unit is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, partner in partnership, or any other manner or joint or common ownership, one

person or entity shall be designated the voting member to bind all the others. Written notice of such designation shall be delivered to the Secretary of the Association prior to the exercise of a vote by joint owners. All votes appurtenant to a single Unit must be cast together and may not be split.

Section 1.5 Proxies. Each Property Owner entitled to vote may vote in person or by proxy at any meetings of the Association. Each proxy shall be executed in writing by the Property Owner or by his duly authorized attorney-in-fact, dated as of its execution, and shall be filed with the Secretary of the Board. No proxy shall confer authority to vote at any meeting other than the next meeting, or adjournment thereof, held after the date on which the proxy was executed.

Section 1.6 Consents. Any action that may be taken by a vote of the Property Owners may also be taken by written consent to such action signed by all Property Owners entitled to vote, or, in the case of Units owned by two or more Property Owners, by the designated voting Property Owner.

Section 1.7 Annual Meetings. An annual meeting of the Association shall be held in the fall of each year, or at such other time as may be determined by the Board of Directors. Any business which is appropriate for action of the Owners may be transacted at an annual meeting.

Section 1.8 Special Meetings. Special meetings of the Association may be called at any time by the President of the Board or by a majority of the Board and shall be called upon the written request of Property Owners owning ten percent (10%) of the Percentage Interest in the Common Elements. Only such business as is stated in the notice of meeting shall be transacted at a special meeting, unless all Property Owners entitled to vote waive notice of any additional business.

Section 1.9 Notice of Meetings. Written notice of every annual or special meeting of the Association stating the time, date, and place of the meeting shall be given to every Property Owner entitled to vote not fewer than ten (10) nor more than sixty (60) days in advance of the meeting. The notice should specify a description of any matter that must be approved by the Property Owners as specified in Section 33-31-705 of the Nonprofit Act, as amended. All notices of special meetings shall describe the business proposed to be taken at the meeting. Failure to give proper notice of a meeting of the Property Owners shall not invalidate any action taken at such meeting unless (1) a Property Owner entitled to vote who is present but was not given proper notice objects at such meeting, in which case the matter to which such Property Owner objects shall not be taken up or (2) a Property Owner entitled to vote who is not present and was not given proper notice objects within thirty (30) days following such meeting, in which case, the action to which such Property Owner objects shall be void.

Section 1.10 Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Property Owner may, in writing, waive notice of any meeting either before or after such meeting. Attendance at an annual meeting by a Property Owner, whether in person or by proxy, shall be deemed waiver by such Property Owner of notice of the time, date, and place thereof unless such Property Owner specifically objects to the lack of

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proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted unless objection to lack of notice is raised before the business to which proper notice was not given is put to a vote.

Section 1.11 Place of Meeting. All meetings of the Association shall be held upon the Regime Property or at such other convenient place as the President of the Board, or a majority of the Directors, may direct.

Section 1.12 Adjournment. Any meeting of the Association may be adjourned from time to time for periods not exceeding thirty (30) days by vote of Property Owners holding a majority of the vote represented at such meeting, regardless of whether a quorum is present. Any business that could properly be transacted at the original session of a meeting may be transacted at an adjourned session, and no additional notice of adjourned sessions shall be required.

Section 1.13 Order of Business. The order of business at all meetings of the Property Owners shall be as follows:

1. Roll call and certifying of proxies;
2. Proof of proper notice of the meeting or waiver of notice;
3. Reading of minutes of preceding meeting;
4. Report of the Board of Directors;
5. Reports of officers;
6. Reports of committees;
7. Report of Manager;
8. Presentation of budget;
9. Election of directors (when required)
10. Unfinished business; and
11. New business.

Section 1.14 Minutes of Meeting. The Secretary of the Board shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Association. Such minutes shall be made available for examination and copying by any Property Owner at any reasonable time.

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ARTICLE II

BOARD OF DIRECTORS OF THE ASSOCIATION

Section 2.1 Form of Administration. The Association shall be an incorporated body and shall act by and through its Board. Initially, the number of directors on the Board shall be three (3); in subsequent years, the number of directors shall be set by the Board at three (3), five (5), or seven (7), members, as the Board deems appropriate.

Section 2.2 Powers and Duties. The Board shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Master Deed, the Permitted Encumbrances, and these Bylaws directed to be done and exercised exclusively by the Property Owners.

The Board shall delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the Manager, if any, which might arise between meetings of the Board.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

a. Preparation and adoption of an annual budget pursuant to Article V in which there shall be established the contribution of each Property Owner to the Common Expenses;

b. Making assessments to defray the Common Expenses (including, without limitation, utility expenses as set forth in **Section 6.1.h** of the Master Deed), establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment (Unless otherwise determined by the Board, the annual assessment against the proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for such month.);

c. Providing for the operation, care, upkeep, maintenance, and replacement of all the Common Elements;

d. Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Elements and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

e. Collecting the assessments, depositing the proceeds thereof in a bank depository, which it shall approve, and using the proceeds to administer the Association;

f. Making and amending Rules and Regulations;

g. Opening of bank accounts on behalf of the Association and designating the signatories required;

h. Making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Elements in accordance with the other provisions of the Master Deed and the Bylaws after damage or destruction by fire or other casualty;

i. Enforcing by legal means the provisions of the Master Deed, the Bylaws, and the Rules and Regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the owners concerning the Association;

j. Obtaining and carrying insurance against casualties and liabilities, as provided in the Master Deed, and paying the premium cost thereof;

k. Paying the cost of all services rendered to the Association or its members and not chargeable to owners;

l. Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The books and vouchers accrediting the entries thereupon shall be available for examination by the owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board for the general knowledge of the owners. All books and records shall be kept in accordance with generally accepted accounting practices;

m. Make available to any prospective purchaser of a Residential Unit, any Property Owner of a Residential Unit, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any Residential Unit current copies of the Master Deed, the Articles of Incorporation, the Bylaws, Rules and Regulations governing the Residential Unit, and all other books, records, and financial statements of the Association that the Board deems appropriate; and

n. Permit by easement or otherwise utility suppliers to use designated portions of the Common Elements reasonably necessary to the ongoing development or operation of the Property.

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o. The Association may borrow money for the purpose of repair or restoration of the Common Elements, or for the purpose of funding budgetary shortfalls, without the approval of the Property Owners, and in connection with such borrowing the Association shall have the power to pledge assessments and reserve accounts to secure such borrowing; provided, however, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association in that fiscal year, the Board shall first obtain the approval of Property Owners owning more than fifty percent (50%) of the amount of the Percentage Interest in the Common Elements either by vote or by proxy at a special meeting in which a quorum is present.

p. Collect and pay, on behalf of all Owners, the utility, insurance, maintenance, repair and replacement expenses and other amounts owed under the Parking Easement.

q. Take all action for and on behalf all Owners in any all matters arising under the Parking Easement.

r. To apply for and authorize a change of zoning of the Property of the Regime to a Planned Unit Development zoning classification pursuant to the zoning ordinance of the City of Myrtle Beach

Section 2.3 Election and Term. Until such earlier time as the Grantor, its successors or assigns, renounces its Board appointment rights and notifies the Board of Directors of the Association to such effect, Grantor, its successors and assigns, shall have the right to designate and select the persons who shall serve as members of each Board of Directors of the Association until the later of the following two events (i) the Grantor, its successors or assigns, no longer owns at least one (1) or more Units or (ii) December 31, 2016 (the "Developer Control Term"). During the Developer Control Term, Grantor, its successors or assigns, shall solely be entitled to designate and select persons to serve on the Board of Directors of the Association by designating in writing the to the Secretary of the Association who shall serve as Directors on the Board of Directors. Such Grantor appointed Directors shall serve at the Grantor's discretion and the Grantor, its successors or assigns, shall have the right to remove such Directors serving on said Board of Directors by notifying the Secretary of the Association and replacing such person or persons with another person or persons to act and serve in their place for the remainder of the Developer Control Term or until removed by the Grantor. Furthermore, upon the death, incapacity, or resignation of a Grantor appointed Director during the Developer Control Period, the Grantor shall appoint a person to fill such vacancy for the remainder of the Developer Control Term or until removal by the Grantor.

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Upon the expiration of the Developer Control Period, the Board of Directors shall call a special meeting of the members to elect a new Board. The Developer appointed Directors shall serve until the newly elected Directors take office. After the expiration of the Developer Control Period, Directors shall serve three-year terms.

In addition to the Directors appointed by the Grantor and/or elected by the members under the preceding paragraphs, the Owners of the Commercial Units shall by collective vote and agreement designate and appoint a representative to serve as an additional *ex officio* Director. Such representative shall not be entitled to vote on issues before the Board, but shall receive notice of any and all Board meetings and all other matters before the Board and shall be entitled to attend and express opinions on any and all issues raised at all meetings and shall be entitled to the same rights of inspection regarding financial and other information at the disposal of the Board.

Section 2.4 Removal. Following the expiration of the Developer Control Period, a Director may be removed from office with or without cause by the affirmative vote of Property Owners holding two-thirds (2/3) of the Percentage Interest in the Common Elements. The unexpired portion of the term of any Director so removed shall be filled by a new Director by the remaining members of the Board.

Section 2.5 Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by the Property Owners shall be filled by a new Director elected by the affirmative vote of a majority of the remaining Directors even though such remaining Directors do not constitute a quorum.

Section 2.6 Voting. Each Director shall have one (1) vote on all matters acted upon by the Board of Directors. The vote of a Director shall be cast only by such Director personally at a meeting of the Board of Directors convened in accordance with these Bylaws. Proxies shall not be permitted in any vote of the Board of Directors. The affirmative vote of a simple majority of the Directors present at the time of a vote, if a quorum is present at such time, shall be sufficient for any action unless otherwise specified in these Bylaws.

Section 2.7 Quorum. A majority of Directors shall constitute a quorum for the transaction of business.

Section 2.8 Consents. Any action that may be taken by a vote of the Board of Directors may also be taken by written consent to such action signed by all Directors.

Section 2.9 Regular Meetings. A meeting of the Board of Directors shall be held during each fiscal year immediately following the annual meeting of the Association and such regular meeting dates as the Directors shall desire shall be fixed after the annual meeting of the Property Owners by mutual agreement of the Directors present at such meeting. Any business that is appropriate for action of the Board of Directors may be transacted at any duly called meeting of the Directors.

Section 2.10 Special Meetings. Special Meetings of the Board of Directors may be called from time to time by the President of the Association and shall be called upon the written

request of two (2) of the Directors. Any business may be transacted at a special meeting if called upon two (2) days notice.

Section 2.11 Notice of Meetings. Except for the annual meeting, written notice of every regular or special meeting of the Board of Directors stating the time, date, and place of the meeting shall be given to every Director and officer not fewer than two (2) nor more than ten (10) days in advance of the meeting. Failure to give proper notice of a meeting of the Board of Directors shall not invalidate any action taken at such meeting unless (1) a Director who was present but was not given proper notice objects at such meeting, in which case the matter to which such Director objects shall not be taken up, or (2) a Director who is not present and was not given proper notice objects in writing to the lack of proper notice within thirty (30) days following such meeting, in which case the action to which such Director objects shall be void.

Section 2.12 Waiver of Notice. Waiver of notice of a meeting of the Board of Directors shall be deemed the equivalent of proper notice. Any director may, in writing, waive notice of any meeting of the Board of Directors either before or after such meeting. Attendance at a meeting by a Director shall be deemed waived by such Director of notice of the time, date, and place thereof unless such Director specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted unless objection to lack of notice of all business transacted is raised before the business in which proper notice was not given is put to a vote. If the notice is waived in advance of a special meeting of the Board of Directors, such waiver shall apply only to such matter transacted at the special meeting which has been communicated in advance to the Director who has waived notice.

Section 2.13 Place of Meeting. All meetings of the Board of Directors shall be held upon the Property or at such other convenient place as the Board of Directors may direct. Meetings may be conducted by conference telephone.

Section 2.14 Minutes of Meetings. The Secretary of the Board shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Board of Directors. A copy of such minutes shall be distributed to each Board Member within thirty (30) days following each meeting, and all such minutes shall be made available for examination and copying by Property Owner at any reasonable time.

Section 2.15 Compensation. The Directors shall serve without compensation, but shall be entitled to reimbursement by the Association for expenses incurred in the conduct of their duties.

Section 2.16 Executive Session. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

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ARTICLE III

OFFICERS OF THE ASSOCIATION

Section 3.1 Designation. The Board shall have a President and a Secretary, who shall serve respectively as the presiding officer and record keeper for the Board. Offices may be filled by the same individual. The Board may elect such other officers as it deems appropriate. The officers shall have the authority, powers, duties, and responsibilities provided by these Bylaws, or, to the extent not so provided, by the Board of Directors.

Section 3.2 Election and Term. Officers of the Board shall be elected by the Board of Directors following each annual meeting of the Board of Directors and at such other times as may be required to fill vacancies in any office. All officers shall serve until their successors have been elected and assumed office unless sooner removed as hereinafter provided. An officer may be reelected to any number of terms.

Section 3.3 Removal. Any officer may be removed from office at any time with or without cause by the Board of Directors.

Section 3.4 President. The President shall be a member of the Board and shall preside at all meetings of the Association and the Board. He shall have all of the general powers and duties which are usually vested in a board chairman, including, but not limited to, the power to appoint committees from among the Property Owners from time to time as he may, in his discretion, deem appropriate to assist in the conduct of the affairs of the Board or the Association.

Section 3.5 Manager Representative. As noted in Section 2.2, the Board of Directors shall select one of its members to act as Manager Representative.

Section 3.6 Secretary. The Secretary, who need not be a member of the Board, shall prepare and keep, or cause to be prepared and kept, the minutes of all meetings of the Property Owners and the Board, and shall have charge of such books and papers as the Board may direct.

Section 3.7 Treasurer. The Board may elect a Treasurer, who need not be a member of the Board. The Treasurer shall have custody of, and responsibility for, Association funds and securities and shall keep the financial records and books of account for the Association. If a Manager is employed as hereinafter provided, custody of Association funds and securities and responsibility for maintaining full and accurate accounts of all receipts and disbursements may be delegated to the manager if the Board so determines, but in such case, the Board shall verify the amount of Association funds and securities in the custody of the Manager and review and reconcile the accounts maintained by the Manager at such intervals as may be determined by the Board of Directors.

Section 3.8 Compensation. All Directors and others shall serve without compensation but shall be entitled to reimbursement by the Association for expenses incurred in the conduct of their duties.

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ARTICLE IV

MANAGER

Section 4.1 Employment. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize (the "Manager"). The Board may delegate to the managing agent or manager, subject to the Board's supervision, all the powers granted to the Board by these Bylaws, other than the powers set forth in subparagraphs a, b, f, g and i ,of Section 2.2 of these Bylaws. Grantor, or an affiliate of Grantor, may be employed as managing agent or manager.

Section 4.2 Term. No management contract may have a term in excess of three (3) years and each contract must permit termination by either party without cause and without termination fee on ninety (90) days or less written notice.

Section 4.3 Financial Interest. The Manager shall not contract with himself, or with any person or entity related to him, except in accordance with Section 5.9.e requiring written board approval.

ARTICLE V

FINANCES

Section 5.1 Fiscal Year. The fiscal year of the Association shall end December 31 unless the Board of Directors shall otherwise determine.

Section 5.2 Budget. The Board, with the assistance of the Manager, shall prepare, adopt, and present, or cause to be prepared and presented, to the Property Owners at their annual meeting an annual budget (the "Budget") for the Regime for the next fiscal year. The budget as adopted by the Board shall set forth with particularity the anticipated Common Expenses for the fiscal year, together with the amount of reasonable reserves for the payment of future Common Expenses and contingencies.

Section 5.3 Approval of Budget. The Budget, as adopted by the Board, shall be deemed approved by the Property Owners at the annual meeting unless amended upon the motion and an affirmative vote of Property Owners holding two-thirds (2/3rds) of the Percentage Interest in the Common Elements. The Budget presented by the Board, and as amended by the Property Owners, if amendments are made, shall become the budget of the Regime for the fiscal year. The terms and the provisions of the Budget shall be binding upon the Property Owners and the Board until its terms are amended by action of the Board duly presented to a special meeting of Property Owners. At which time the new amended Budget presented by the Board shall then take effect unless amended at such special meeting upon the motion and an affirmative vote of Property Owners holding two-thirds (2/3rds) of the Percentage Interest in the Common Elements.

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Section 5.4 Regular Assessments. The funds required by the Budget shall be collected by the Board from the Property Owners in proportion to their respective interests in the Common Elements in equal monthly or quarterly assessments as the Board of Directors may determine ("Regular Assessments")

Section 5.5 Special Assessments. The funds required from time to time to pay any Common Expenses which are not covered by the Budget but which are approved by a majority of the Property Owners shall be collected from the Property Owners by the Board of Directors in such installments as the Property Owners shall determine ("Special Assessments")

Section 5.6 Individual Assessments. Any payments to the Association which one or more, but fewer than all, of the Property Owners shall be obligated to make pursuant to the terms of the Act, the Master Deed, or these Bylaws shall be due upon demand and shall be collected by the Board as individual assessments ("Individual Assessments")

Section 5.7 Collection. Property Owners shall be personally liable for all assessments and shall pay the same promptly when due. In its discretion, the Board of Directors may take appropriate action to establish reasonable late payment penalties, to collect by suit, foreclosure, or other lawful method any overdue assessment. If any overdue assessment is collected by an attorney or by action at law, the Property Owners owing the same shall be required to pay all reasonable costs of collection, including attorney's fees.

Section 5.8 Penalty. A penalty may be assessed for assessments not paid in accordance with the provisions set forth in the Master Deed.

Section 5.9 Accounts. The following management standards of performance will be followed, unless the Board, by resolution, specifically determines otherwise:

a. accrual accounting, as defined by generally accepted accounting principles, shall be employed;

b. accounting and controls should conform to established American Institute of Certified Public Accountants (AICPA) guidelines and principles; (A segregation of accounting duties should be maintained and disbursements by check shall require two (2) signatures. Cash disbursements shall be limited to amounts of Twenty-five ($25.00) Dollars and under.);

c. cash accounts of the Association shall not be commingled with any other accounts;

d. no remuneration shall be accepted by the Manager from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

e. any financial or other interest which the Manager may have in any firm providing goods or services to the Association shall be disclosed promptly to, and approved in writing by, the Board for each and every transaction with that firm; and

f. commencing at the end of the month in which the first Residential Unit is sold and closed, quarterly financial reports shall be prepared for the Association containing:

(i) an income statement reflecting all income and expense activity for the preceding three (3) months on an accrual basis;

(ii) an account activity statement reflecting all receipt and disbursement activity for the preceding three (3) months on an accrual basis;

(iii) an account status report reflecting the status of all accounts in an actual versus approved budget format with a Budget report reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or ten (10%) percent of a major budget category (as distinct from a specified line item in an expanded chart of accounts)

(iv) a balance sheet of an accounting date which is the last day of the month closest in time to three (3) months from the date of closing of the first sale of a Residential Unit in the Regime, and an operating statement for the period from the date of the first closing to the said accounting date, which shall be distributed within sixty (60) days after the accounting date;

(v) a balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year; and

(vi) a delinquency report listing all Property Owners who have been delinquent during the preceding three (3) month period in paying the monthly installments of assessments and who remain delinquent at the time of the report and describing the status of any action to collect such installments which remain delinquent. A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month.

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Section 5.10 Payments. The Board shall provide for payment of all debts of the Association from the funds collected from Property Owners. Expenditures specifically approved in the Budget may be paid without further approval unless the Board of Directors shall otherwise determine. All other expenditures which are in excess of an amount to be determined by the Board of Directors shall be reviewed and approved by the Secretary of the Board of Directors before payment is made. Unless the Manager is authorized by the Board of Directors to draw checks upon the account of the Association, any check or request for withdrawals drawn upon any account of the Association shall be signed by the Chairman and the Secretary or by any two (2) officers of the Association designated by the Board of Directors. The Board of Directors may also authorize the Manager to make disbursements from the petty cash fund, if any.

Section 5.11 Bonding. The Board may secure a fidelity bond in an amount of not less than Ten Thousand ($10,000.00) Dollars covering every individual authorized to withdraw funds from any checking or savings account maintained by the Association. The cost of the bond shall be a Common Expense.

ARTICLE VI

MAINTENANCE AND IMPROVEMENTS

Section 6.1 Maintenance by Manager. At the direction of the Board of Directors, the Manager or the Board of Directors shall provide for the maintenance, repair, and replacement of the Common Elements.

Section 6.2 Maintenance by Property Owners. The Units shall be maintained in good condition and repair by their respective Property Owners. Each Property Owner shall also provide for the routine cleaning of all Limited Common Elements reserved for the use of each Unit.

Section 6.3 Default by Property Owner. In the event that any Property Owner fails to perform the maintenance required of him by these Bylaws or by any lawful Regulation, and such failure creates or permits a condition which is hazardous to life, health, or property, or which unreasonably interferes with the rights of another Property Owner, or which substantially detracts from the value or appearance of the Regime Property, the Board of Directors shall, after giving such Property Owner reasonable notice and opportunity to perform such maintenance, cause such maintenance to be performed, and charge all reasonable expenses of so doing to such Property Owner by an individual Assessment.

Section 6.4 Expenses. The expenses of all maintenance, repair, and replacement provided by the Manager or the Board of Directors, including losses by storm, fire, or other casualty insured by the Association, shall be Common Expenses, except that when such expenses are not fully reimbursed by insurance proceeds and when they are necessitated by (1) the failure of a Property Owner to perform the maintenance required by these Bylaws or by any lawful Regulation or (2) the willful act, neglect, or abuse of a Property Owner, they shall be charged to such Property Owner as an Individual Assessment.

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Section 6.5 Improvements. The Board of Directors shall provide for the making of such improvements and additions to the Common Elements as may be approved from time to time by a vote of the Property Owners at an annual or special meeting of the Property Owners. .

ARTICLE VII

RESTRICTIONS AND REGULATIONS

Section 7.1 Restrictions. The use of the Regime Property shall be subject to the restrictions set forth in the Master Deed and to the following Rules and Regulations.

Section 7.2 Rules and Regulations. In accordance with Section 5.3.b of the Master Deed, the Board shall adopt and amend from time to time such reasonable rules and regulations ("Rules and Regulations") governing the operation and use of the Regime Property as it may deem necessary or desirable, provided, however, any such Rules or Regulations which purport to diminish, abrogate or in any way affect the Commercial Unit, including the Limited Common Elements appurtenant thereto or other rights reserved or granted herein in favor of the Grantor or the Owner of the Commercial Unit, its successors and assigns, relative to the Units, Commercial Unit, Common Elements, or any other portion of the Regime Property, shall not be binding upon the Grantor and/or the Commercial Unit Owner, whichever the case may be, its successors and assigns, unless and until the affected Grantor and/or Commercial Unit Owner consents in writing to the same. Furthermore, Rules and Regulations shall not discriminate against persons who are delegates pursuant to Section 5.3.a of the Master Deed. It shall be necessary to publish newly adopted Regulations or the amendment or repeal of existing Regulations, and no Property Owner shall be bound by any newly adopted Regulation or any amendment or repeal of an existing Regulation until a copy of the same has been delivered to him.

Section 7.3 Enforcement. The Board shall enforce the terms of the Act, the Nonprofit Act, the Master Deed, these Bylaws, and the Regulations promulgated pursuant hereto by taking prompt and appropriate action to correct any violations. In addition to any other remedy to which the Association or any Property Owner may be entitled, the Board of Directors may impose against a Property Owner reasonable fines not to exceed an amount per day to be determined annually by the Board of Directors and consistently applied for any violation of the terms of the Act, the Master Deed, these Bylaws, or of the Regulations promulgated pursuant hereto. Such fines shall be collected as Individual Assessments. Each day during which a violation occurs or continues may be deemed a separate offense.

Section 7.4 Responsibility of Property Owners. Each Property Owner shall be deemed responsible for the conduct of members of his household and his tenants, agents, guests, and pets, but the responsibility of the Property Owner shall not relieve any member of his household or any of his tenants, agents, or guests for any liability to the Association or to a Property Owner for the acts of such member, tenant, agent, guest, or pet.

Section 7.5 Fines. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Property Owner, and to suspend a Property Owner's right to vote or to use the common elements for violation of any duty imposed

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under the Act, the Nonprofit Act, the Master Deed, these Bylaws, or any Rules and Regulations duly adopted under the Bylaws; provided, however, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Unit.

Section 7.6 Additional Enforcement Rights. Notwithstanding anything to the contrary contained in the Master Deed or Bylaws, the Association, acting through the Board, may elect to enforce any provision of the Master Deed, these Bylaws, or the Rules and Regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of Parking Rules and Regulations, as provided below) or by suit at law or in equity to enjoin any violation or to recover monetary damages, or both, without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Property Owner or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees, actually incurred.

ARTICLE VIII

LIABILITIES AND INDEMNIFICATION

Section 8.1 Liability of Association. The Caravelle Resort Owners Association, Inc. is a South Carolina nonprofit corporation. No member of the Association, by virtue of membership alone, is or shall be liable for the debts or torts of the Association.

Section 8.2 Indemnification Among Property Owners. Each Property Owner shall be entitled to contribution from and indemnification by every other Property Owner to the extent that such Property Owner discharges or is required to discharge any portion of any liability of the Association in excess of such Property Owner's proportionate share of such liability, except that no Property Owner shall be required to provide contribution or indemnification on account of a liability which was due and payable prior to the time such Property Owner became a Property Owner.

Section 8.3 Liability of Directors and Officers. No Director or officer of the Association shall be liable to any Property Owner for any decision, action, or omission made or performed by such Director or officer in the course of his duties unless such Director or officer acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Act, the Master Deed, the Permitted Encumbrances, or these Bylaws.

Section 8.4 Indemnification of Directors and Officers. The Association shall indemnify and defend each Director and each officer of the Association from any liability claimed or imposed against him by reason of his position or actions as a Director or any officer of the Association if all the following conditions are satisfied:

(1) Such Director or officer is not required to bear such liability by the terms of the Act, the Master Deed, or these Bylaws;

(2) Such Director or officer gives the Association adequate notice of the claim or imposition of liability or permit the Association reasonable opportunity to defend against the same; and

(3) Such Director or officer cooperates with the Association in defending against the liability. The expenses of indemnifying a Director or an officer shall be a Common Expense. The Board may obtain insurance to provide in whole or in part for this indemnification, and the cost of such insurance shall be a Common Expense.

ARTICLE IX

ATTESTATIONS AND CERTIFICATIONS

Section 9.1 Attestation of Documents. The presence of the signature of the Secretary or an Assistant Secretary of the Board on any contract, conveyance, or any other document executed on behalf of the Association by another officer of the Association shall attest:

(1) That the officer of the Association executing the document does, in fact, occupy the official position indicated, that one in such position is duly authorized to execute such document on behalf of the Association, and that the signature of such officer subscribed on the document is genuine; and

(2) That the execution of the document on behalf of the Association has been duly authorized.

Section 9.2 Certification of Documents. When any document relating to the Regime Property or the Association is certified as authentic by the Secretary or an Assistant Secretary of the Association, a third party, without the knowledge or reason known to the contrary, may rely on such document; as being what it purports to be.

Section 9.3 Certification of Actions and Facts. When there is executed by the Secretary a written statement setting forth (1) actions taken by the Association or by the Board or (2) facts relating to the Regime Property or the Association as determined by the Board, a third party, without the knowledge or reason to know the contrary, may rely on such statement as factually true and correct.

Section 9.4 Absence of Seal. The absence of the seal of the Association from any contract, conveyance, or other document executed on behalf of the Association shall not impair the validity of such contract, conveyance, or document or of an action taken pursuant thereto or in reliance thereon, but the person relying on the same shall bear the burden of establishing that the execution of the same was duly authorized and accomplished on behalf of the Association.

ARTICLE X

AMENDMENTS

Section 10.1 Procedure. Subject to the Master Deed, and specifically to the rights of Grantor as set forth in Article XIV of the Master Deed thereof, these Bylaws may be amended from time to time by resolution adopted by the affirmative vote of the Property Owners holding

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two-thirds (2/3rds) of the Percentage Interest in the Common Elements. No amendment to these Bylaws shall be effective unless and until filed of record as an amendment to the Master Deed.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Record of Ownership. Any person who acquires title to a Unit shall promptly inform the Board of his or her identity and the date upon and manner in which title was acquired. The Board shall maintain a record of the names of all Property Owners and of the dates upon which they acquired title to their Units.

Section 11.2 Notification of Transfer. A Property Owner shall promptly notify the Board of a proposed transfer of title to his Unit setting forth the closing date and the name and address of the transferee.

Section 11.3 Notices. All notices shall be sent in accordance with the Nonprofit Act. Any notices or documents deposited postage prepaid and addressed to the last known owner of a Unit at his last known address shall be deemed delivered to the Property Owner of such Unit, unless the Property Owner has previously specified to the Board of Directors in writing another address for delivery of such notices and documents. Any notices or document addressed to the Board of Directors shall be deemed to be given when such notice is deposited postage prepaid in the United States Mail addressed to such Director at his address as it appears in the records of the Association.

Section 11.4 Waiver. No provision of these Bylaws or of the Regulations promulgated pursuant hereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

Section 11.5 Conflicts. In the event of any conflict between these Bylaws and the Regulations, these Bylaws and the Act, or the Nonprofit Act, or the Master Deed, the Act, the Nonprofit Act, or the Master Deed shall control, as appropriate. In the event of a conflict between these Bylaws and the Regulations, these Bylaws shall control.

Section 11.6 Severability. The provisions of these Bylaws are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder hereof.

Section 11.7 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision hereof.

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Section 11.8 Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall include the plural and vice versa, whenever the context requires or permits.

Adopted this 20th of February, 2006 by the Incorporator:

BEACHFRONT CONVERSIONS, LLC

By: _____
Kevin L. Warren
Its: Manager

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EXHIBIT F
PLOT PLAN

That survey/plat entitled Topographic Survey of Lots 8 & 9, Block 4-CP and Lots 1, 2, 3, 4, 5, & 6, Block 5-CP, Cane Patch Section, City of Myrtle Beach, Horry County, South Carolina prepared for Beachfront Conversions, LLC by Donald E. Thomas of Robert L. Bellamy & Associates, Inc. dated December 30, 2005 and last revised February 10, 2006 and recorded February 21, 2006 in Plat Book 211 at Page 248 in the land records of Horry County, South Carolina, which is incorporated into this Master Deed by reference thereto.

EXHIBIT G
THE PLANS

Those floor plans and elevations comprised of Sheet Numbers A1 through A16 and Sheet Numbers A18 through A21 of those certain plans entitled "Horizontal Property Regime Caravelle Resort, 6900 N. Ocean Blvd. Myrtle Beach, South Carolina", prepared by Pegram Associates, Inc., dated September, 2005, recorded February 21, 2006 in Condominium Plat Book F at Page 93, in the land records of Horry County, South Carolina, which are incorporated into this Master Deed by reference thereto.

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EXHIBIT H

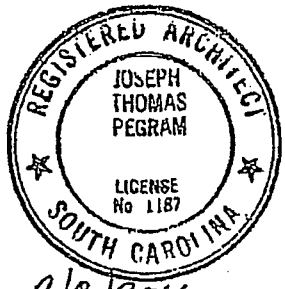
ARCHITECT'S CERTIFICATE

Pursuant to Code Section 27-31-110, South Carolina Code of Laws, 1976, as amended, I hereby certify that, in my professional opinion, and to the best of my knowledge, the Plans attached as "Exhibit G" of The Caravelle Resort Horizontal Property Regime do depict the dimensions, area, square footage and locations of the Units and Common Elements, both limited and general of the Regime, as-built and existing within reasonable construction tolerances.

PEGRAM ASSOCIATES, INC.

By: J. T. Pegram, President

(seal)



Date: 2/8/2006

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EXHIBIT I

PHASE II CHART

In addition to the Property hereby submitted as Phase I, up to one (1) additional phase may be added as Phase II. If and when such additional Phase is added, the total statutory value of all phases submitted and constituting Caravelle Resort Horizontal Property Regime at that time and the percentage interest of each Unit may be determined. To determine the percentage interest of each Unit, utilize a formula with the statutory value of each Unit set forth in the chart below as the numerator with the total statutory value of Caravelle Resort Horizontal Property Regime at that time (including the Phase being submitted) as the denominator. The resulting fraction shall then be expressed as a percentage rounded to the nearest .00000001.

The percentage as determined above shall be the percentage of undivided interest appurtenant to each Unit in Phase II, in the event the Grantor, its successors or assigns, elect in accordance with the provisions of the Master Deed to which this Exhibit is attached, to proceed with the development of Phase II. In that event, as of the date of recording of the amendment incorporating such additional Phase, the percentage interest appurtenant to each Unit in Phase I and such subsequent Phase in the Common Elements will automatically be the percentage to be set forth in a chart, which Grantor must record as part of its election to construct such subsequent Phase. Said percentage shall be determined by the ratio of the statutory value of the individual Unit as the same bears to the statutory value of the whole property. Provided, however, the assigned values to be reflected in the chart for Units in Phase II must be the values provided in the following chart depending on the type of Unit involved as follows:

Type	Statutory Value
Efficiency	Not less than 1.75 Nor more than 2.0
One Bedroom UNITS	Not less than 2.0 Nor more than 2.5
Standard Two Bedroom UNITS	Not less than 2.5 Nor more than 2.75
Deluxe Two Bedroom UNITS	Not less than 2.75 Nor more than 3.0
Three Bedroom UNITS	Not less than 3.0 Nor more than 4.0
Deluxe Three Bedroom UNITS	Not less than 4.0 Nor more than 5.0

Four Bedroom UNITS	Not less than 5.0 Nor more than 6.0
Deluxe Four Bedroom UNITS	Not less than 6.0 Nor more than 7.0
One or more Commercial Unit C-1	Not less than 3.0 Nor more than 8.0

The Grantor may construct in Phase II any possible combination of efficiency, one bedroom, two bedroom, three bedroom or four bedroom Units described above, provided that Grantor at the time of recording its election specifies in the chart amending this Exhibit I the percentage of interest of each Unit in Phase I and Phase II using the values of the different types of Units assigned above.

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EXHIBIT J

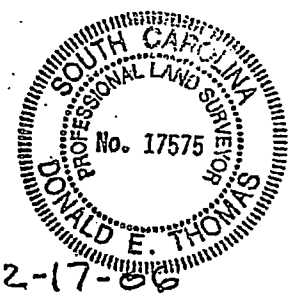
SURVEYOR'S CERTIFICATE

Pursuant to Code Section 27-31-110, South Carolina Code of Laws, 1976, as amended, I hereby certify that, in my professional opinion, and to the best of my knowledge, the Survey, referred in the Master Deed as the Plot Plan and further described on the attached "EXHIBIT F" of The Caravelle Resort Horizontal Property Regime does depict the dimensions, area, elevations, square footage and locations of the buildings, comprising the Building, the Units and Common Elements of the Regime, as-built and existing within reasonable construction tolerances.

ROBERT L. BELLAMY & ASSOCIATES, INC.

By: _____
Donald E. Thomas
SC PLS #17575

(SEAL)



Date: 2-17-06

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EXHIBIT 2

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EXHIBIT E

TO

MASTER DEED OF THE CARAVELLE RESORT

HORIZONTAL PROPERTY REGIME

THE BYLAWS OF THE CARAVELLE RESORT OWNERS ASSOCIATION, INC.

THE BYLAWS OF THE CARAVELLE RESORT OWNERS ASSOCIATION, INC. are promulgated pursuant to the Horizontal Property Act of South Carolina, Chapter 31, Title 27, Code of Laws of South Carolina, 1976, as amended, and as may be further amended from time to time (the "Act") for the purposes of governing the The Caravelle Resort Horizontal Property Regime (the "Regime") and for the administration of the Regime. All terms not defined in these Bylaws shall have the meaning set out in the Act or the Master Deed dated February 20, 2006 from BEACHFRONT CONVERSIONS, LLC, a South Carolina Limited Liability Company, as Grantor, with all Exhibits incorporated therein and all amendments thereto (the "Master Deed")

ARTICLE I

ASSOCIATION OF PROPERTY OWNERS

Section 1.1 Name. The name of the Association shall be The Caravelle Resort Owners' Association, Inc. (the "Association"). The Association is a non-profit corporation organized pursuant to the South Carolina Nonprofit Corporation Act of 1994, Chapter 31, Title 33, Code of Laws of South Carolina, 1976, as amended (the "Nonprofit Act").

Section 1.2 Membership. Each Property Owner shall be a member of the Association. A person who holds a mortgage on a Unit as security for payment of a debt shall not be a member entitled to exercise the rights of Property Owner unless such person holds a proxy conferring such rights.

Section 1.3 Quorum. The presence in person or by proxy of Property Owners owning one-third of the Percentage Interest in the Common Elements shall constitute a quorum for the transaction of business at meetings of the Association.

Section 1.4 Voting. A Property Owner's voting rights and the vote required to adopt decisions is as set out in Article VII of the Master Deed. Votes can be cast only at meetings of the Association convened in accordance with the Bylaws and the Act; and, in the absence of a valid proxy, an individual shall act in his own behalf, a corporation shall act by any officer thereof, a partnership shall act by any general partner thereof, an association shall act by any associate thereof, a limited liability company shall act by its manager, or, if the company has no manager, by any member, and a trust shall act by any trustee thereof. When any Unit is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, partner in partnership, or any other manner or joint or common ownership, one

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person or entity shall be designated the voting member to bind all the others. Written notice of such designation shall be delivered to the Secretary of the Association prior to the exercise of a vote by joint owners. All votes appurtenant to a single Unit must be cast together and may not be split.

Section 1.5 Proxies. Each Property Owner entitled to vote may vote in person or by proxy at any meetings of the Association. Each proxy shall be executed in writing by the Property Owner or by his duly authorized attorney-in-fact, dated as of its execution, and shall be filed with the Secretary of the Board. No proxy shall confer authority to vote at any meeting other than the next meeting, or adjournment thereof, held after the date on which the proxy was executed.

Section 1.6 Consents. Any action that may be taken by a vote of the Property Owners may also be taken by written consent to such action signed by all Property Owners entitled to vote, or, in the case of Units owned by two or more Property Owners, by the designated voting Property Owner.

Section 1.7 Annual Meetings. An annual meeting of the Association shall be held in the fall of each year, or at such other time as may be determined by the Board of Directors. Any business which is appropriate for action of the Owners may be transacted at an annual meeting.

Section 1.8 Special Meetings. Special meetings of the Association may be called at any time by the President of the Board or by a majority of the Board and shall be called upon the written request of Property Owners owning ten percent (10%) of the Percentage Interest in the Common Elements. Only such business as is stated in the notice of meeting shall be transacted at a special meeting, unless all Property Owners entitled to vote waive notice of any additional business.

Section 1.9 Notice of Meetings. Written notice of every annual or special meeting of the Association stating the time, date, and place of the meeting shall be given to every Property Owner entitled to vote not fewer than ten (10) nor more than sixty (60) days in advance of the meeting. The notice should specify a description of any matter that must be approved by the Property Owners as specified in Section 33-31-705 of the Nonprofit Act, as amended. All notices of special meetings shall describe the business proposed to be taken at the meeting. Failure to give proper notice of a meeting of the Property Owners shall not invalidate any action taken at such meeting unless (1) a Property Owner entitled to vote who is present but was not given proper notice objects at such meeting, in which case the matter to which such Property Owner objects shall not be taken up or (2) a Property Owner entitled to vote who is not present and was not given proper notice objects within thirty (30) days following such meeting, in which case, the action to which such Property Owner objects shall be void.

Section 1.10 Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Property Owner may, in writing, waive notice of any meeting either before or after such meeting. Attendance at an annual meeting by a Property Owner, whether in person or by proxy, shall be deemed waiver by such Property Owner of notice of the time, date, and place thereof unless such Property Owner specifically objects to the lack of

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proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted unless objection to lack of notice is raised before the business to which proper notice was not given is put to a vote.

Section 1.11 Place of Meeting. All meetings of the Association shall be held upon the Regime Property or at such other convenient place as the President of the Board, or a majority of the Directors, may direct.

Section 1.12 Adjournment. Any meeting of the Association may be adjourned from time to time for periods not exceeding thirty (30) days by vote of Property Owners holding a majority of the vote represented at such meeting, regardless of whether a quorum is present. Any business that could properly be transacted at the original session of a meeting may be transacted at an adjourned session, and no additional notice of adjourned sessions shall be required.

Section 1.13 Order of Business. The order of business at all meetings of the Property Owners shall be as follows:

1. Roll call and certifying of proxies;
2. Proof of proper notice of the meeting or waiver of notice;
3. Reading of minutes of preceding meeting;
4. Report of the Board of Directors;
5. Reports of officers;
6. Reports of committees;
7. Report of Manager;
8. Presentation of budget;
9. Election of directors (when required)
10. Unfinished business; and
11. New business.

Section 1.14 Minutes of Meeting. The Secretary of the Board shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Association. Such minutes shall be made available for examination and copying by any Property Owner at any reasonable time.

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ARTICLE II

BOARD OF DIRECTORS OF THE ASSOCIATION

Section 2.1 Form of Administration. The Association shall be an incorporated body and shall act by and through its Board. Initially, the number of directors on the Board shall be three (3); in subsequent years, the number of directors shall be set by the Board at three (3), five (5), or seven (7), members, as the Board deems appropriate.

Section 2.2 Powers and Duties. The Board shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Master Deed, the Permitted Encumbrances, and these Bylaws directed to be done and exercised exclusively by the Property Owners.

The Board shall delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the Manager, if any, which might arise between meetings of the Board.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

a. Preparation and adoption of an annual budget pursuant to Article V in which there shall be established the contribution of each Property Owner to the Common Expenses;

b. Making assessments to defray the Common Expenses (including, without limitation, utility expenses as set forth in Section 6.1.h of the Master Deed), establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment (Unless otherwise determined by the Board, the annual assessment against the proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for such month.);

c. Providing for the operation, care, upkeep, maintenance, and replacement of all the Common Elements;

d. Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Elements and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

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e. Collecting the assessments, depositing the proceeds thereof in a bank depository, which it shall approve, and using the proceeds to administer the Association;

f. Making and amending Rules and Regulations;

g. Opening of bank accounts on behalf of the Association and designating the signatories required;

h. Making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Elements in accordance with the other provisions of the Master Deed and the Bylaws after damage or destruction by fire or other casualty;

i. Enforcing by legal means the provisions of the Master Deed, the Bylaws, and the Rules and Regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the owners concerning the Association;

j. Obtaining and carrying insurance against casualties and liabilities, as provided in the Master Deed, and paying the premium cost thereof;

k. Paying the cost of all services rendered to the Association or its members and not chargeable to owners;

l. Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The books and vouchers accrediting the entries thereupon shall be available for examination by the owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board for the general knowledge of the owners. All books and records shall be kept in accordance with generally accepted accounting practices;

m. Make available to any prospective purchaser of a Residential Unit, any Property Owner of a Residential Unit, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any Residential Unit current copies of the Master Deed, the Articles of Incorporation, the Bylaws, Rules and Regulations governing the Residential Unit, and all other books, records, and financial statements of the Association that the Board deems appropriate; and

n. Permit by easement or otherwise utility suppliers to use designated portions of the Common Elements reasonably necessary to the ongoing development or operation of the Property.

o. The Association may borrow money for the purpose of repair or restoration of the Common Elements, or for the purpose of funding budgetary shortfalls, without the approval of the Property Owners, and in connection with such borrowing the Association shall have the power to pledge assessments and reserve accounts to secure such borrowing; provided, however, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association in that fiscal year, the Board shall first obtain the approval of Property Owners owning more than fifty percent (50%) of the amount of the Percentage Interest in the Common Elements either by vote or by proxy at a special meeting in which a quorum is present.

p. Collect and pay, on behalf of all Owners, the utility, insurance, maintenance, repair and replacement expenses and other amounts owed under the Parking Easement.

q. Take all action for and on behalf all Owners in any all matters arising under the Parking Easement.

r. To apply for and authorize a change of zoning of the Property of the Regime to a Planned Unit Development zoning classification pursuant to the zoning ordinance of the City of Myrtle Beach

Section 2.3 Election and Term. Until such earlier time as the Grantor, its successors or assigns, renounces its Board appointment rights and notifies the Board of Directors of the Association to such effect, Grantor, its successors and assigns, shall have the right to designate and select the persons who shall serve as members of each Board of Directors of the Association until the later of the following two events (i) the Grantor, its successors or assigns, no longer owns at least one (1) or more Units or (ii) December 31, 2016 (the "Developer Control Term"). During the Developer Control Term, Grantor, its successors or assigns, shall solely be entitled to designate and select persons to serve on the Board of Directors of the Association by designating in writing the to the Secretary of the Association who shall serve as Directors on the Board of Directors. Such Grantor appointed Directors shall serve at the Grantor's discretion and the Grantor, its successors or assigns, shall have the right to remove such Directors serving on said Board of Directors by notifying the Secretary of the Association and replacing such person or persons with another person or persons to act and serve in their place for the remainder of the Developer Control Term or until removed by the Grantor. Furthermore, upon the death, incapacity, or resignation of a Grantor appointed Director during the Developer Control Period, the Grantor shall appoint a person to fill such vacancy for the remainder of the Developer Control Term or until removal by the Grantor.

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Upon the expiration of the Developer Control Period, the Board of Directors shall call a special meeting of the members to elect a new Board. The Developer appointed Directors shall serve until the newly elected Directors take office. After the expiration of the Developer Control Period, Directors shall serve three-year terms.

In addition to the Directors appointed by the Grantor and/or elected by the members under the preceding paragraphs, the Owners of the Commercial Units shall by collective vote and agreement designate and appoint a representative to serve as an additional *ex officio* Director. Such representative shall not be entitled to vote on issues before the Board, but shall receive notice of any and all Board meetings and all other matters before the Board and shall be entitled to attend and express opinions on any and all issues raised at all meetings and shall be entitled to the same rights of inspection regarding financial and other information at the disposal of the Board.

Section 2.4 Removal. Following the expiration of the Developer Control Period, a Director may be removed from office with or without cause by the affirmative vote of Property Owners holding two-thirds (2/3) of the Percentage Interest in the Common Elements. The unexpired portion of the term of any Director so removed shall be filled by a new Director by the remaining members of the Board.

Section 2.5 Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by the Property Owners shall be filled by a new Director elected by the affirmative vote of a majority of the remaining Directors even though such remaining Directors do not constitute a quorum.

Section 2.6 Voting. Each Director shall have one (1) vote on all matters acted upon by the Board of Directors. The vote of a Director shall be cast only by such Director personally at a meeting of the Board of Directors convened in accordance with these Bylaws. Proxies shall not be permitted in any vote of the Board of Directors. The affirmative vote of a simple majority of the Directors present at the time of a vote, if a quorum is present at such time, shall be sufficient for any action unless otherwise specified in these Bylaws.

Section 2.7 Quorum. A majority of Directors shall constitute a quorum for the transaction of business.

Section 2.8 Consents. Any action that may be taken by a vote of the Board of Directors may also be taken by written consent to such action signed by all Directors.

Section 2.9 Regular Meetings. A meeting of the Board of Directors shall be held during each fiscal year immediately following the annual meeting of the Association and such regular meeting dates as the Directors shall desire shall be fixed after the annual meeting of the Property Owners by mutual agreement of the Directors present at such meeting. Any business that is appropriate for action of the Board of Directors may be transacted at any duly called meeting of the Directors.

Section 2.10 Special Meetings. Special Meetings of the Board of Directors may be called from time to time by the President of the Association and shall be called upon the written

request of two (2) of the Directors. Any business may be transacted at a special meeting if called upon two (2) days notice.

Section 2.11 Notice of Meetings. Except for the annual meeting, written notice of every regular or special meeting of the Board of Directors stating the time, date, and place of the meeting shall be given to every Director and officer not fewer than two (2) nor more than ten (10) days in advance of the meeting. Failure to give proper notice of a meeting of the Board of Directors shall not invalidate any action taken at such meeting unless (1) a Director who was present but was not given proper notice objects at such meeting, in which case the matter to which such Director objects shall not be taken up, or (2) a Director who is not present and was not given proper notice objects in writing to the lack of proper notice within thirty (30) days following such meeting, in which case the action to which such Director objects shall be void.

Section 2.12 Waiver of Notice. Waiver of notice of a meeting of the Board of Directors shall be deemed the equivalent of proper notice. Any director may, in writing, waive notice of any meeting of the Board of Directors either before or after such meeting. Attendance at a meeting by a Director shall be deemed waived by such Director of notice of the time, date, and place thereof unless such Director specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted unless objection to lack of notice of all business transacted is raised before the business in which proper notice was not given is put to a vote. If the notice is waived in advance of a special meeting of the Board of Directors, such waiver shall apply only to such matter transacted at the special meeting which has been communicated in advance to the Director who has waived notice.

Section 2.13 Place of Meeting. All meetings of the Board of Directors shall be held upon the Property or at such other convenient place as the Board of Directors may direct. Meetings may be conducted by conference telephone.

Section 2.14 Minutes of Meetings. The Secretary of the Board shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Board of Directors. A copy of such minutes shall be distributed to each Board Member within thirty (30) days following each meeting, and all such minutes shall be made available for examination and copying by Property Owner at any reasonable time.

Section 2.15 Compensation. The Directors shall serve without compensation, but shall be entitled to reimbursement by the Association for expenses incurred in the conduct of their duties.

Section 2.16 Executive Session. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

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ARTICLE III

OFFICERS OF THE ASSOCIATION

Section 3.1 Designation. The Board shall have a President and a Secretary, who shall serve respectively as the presiding officer and record keeper for the Board. Offices may be filled by the same individual. The Board may elect such other officers as it deems appropriate. The officers shall have the authority, powers, duties, and responsibilities provided by these Bylaws, or, to the extent not so provided, by the Board of Directors.

Section 3.2 Election and Term. Officers of the Board shall be elected by the Board of Directors following each annual meeting of the Board of Directors and at such other times as may be required to fill vacancies in any office. All officers shall serve until their successors have been elected and assumed office unless sooner removed as hereinafter provided. An officer may be reelected to any number of terms.

Section 3.3 Removal. Any officer may be removed from office at any time with or without cause by the Board of Directors.

Section 3.4 President. The President shall be a member of the Board and shall preside at all meetings of the Association and the Board. He shall have all of the general powers and duties which are usually vested in a board chairman, including, but not limited to, the power to appoint committees from among the Property Owners from time to time as he may, in his discretion, deem appropriate to assist in the conduct of the affairs of the Board or the Association.

Section 3.5 Manager Representative. As noted in Section 2.2, the Board of Directors shall select one of its members to act as Manager Representative.

Section 3.6 Secretary. The Secretary, who need not be a member of the Board, shall prepare and keep, or cause to be prepared and kept, the minutes of all meetings of the Property Owners and the Board, and shall have charge of such books and papers as the Board may direct.

Section 3.7 Treasurer. The Board may elect a Treasurer, who need not be a member of the Board. The Treasurer shall have custody of, and responsibility for, Association funds and securities and shall keep the financial records and books of account for the Association. If a Manager is employed as hereinafter provided, custody of Association funds and securities and responsibility for maintaining full and accurate accounts of all receipts and disbursements may be delegated to the manager if the Board so determines, but in such case, the Board shall verify the amount of Association funds and securities in the custody of the Manager and review and reconcile the accounts maintained by the Manager at such intervals as may be determined by the Board of Directors.

Section 3.8 Compensation. All Directors and others shall serve without compensation but shall be entitled to reimbursement by the Association for expenses incurred in the conduct of their duties.

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ARTICLE IV

MANAGER

Section 4.1 Employment. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize (the "Manager"). The Board may delegate to the managing agent or manager, subject to the Board's supervision, all the powers granted to the Board by these Bylaws, other than the powers set forth in subparagraphs a, b, f, g and i ,of Section 2.2 of these Bylaws. Grantor, or an affiliate of Grantor, may be employed as managing agent or manager.

Section 4.2 Term. No management contract may have a term in excess of three (3) years and each contract must permit termination by either party without cause and without termination fee on ninety (90) days or less written notice.

Section 4.3 Financial Interest. The Manager shall not contract with himself, or with any person or entity related to him, except in accordance with Section 5.9.e requiring written board approval.

ARTICLE V

FINANCES

Section 5.1 Fiscal Year. The fiscal year of the Association shall end December 31 unless the Board of Directors shall otherwise determine.

Section 5.2 Budget. The Board, with the assistance of the Manager, shall prepare, adopt, and present, or cause to be prepared and presented, to the Property Owners at their annual meeting an annual budget (the "Budget") for the Regime for the next fiscal year. The budget as adopted by the Board shall set forth with particularity the anticipated Common Expenses for the fiscal year, together with the amount of reasonable reserves for the payment of future Common Expenses and contingencies.

Section 5.3 Approval of Budget. The Budget, as adopted by the Board, shall be deemed approved by the Property Owners at the annual meeting unless amended upon the motion and an affirmative vote of Property Owners holding two-thirds (2/3rds) of the Percentage Interest in the Common Elements. The Budget presented by the Board, and as amended by the Property Owners, if amendments are made, shall become the budget of the Regime for the fiscal year. The terms and the provisions of the Budget shall be binding upon the Property Owners and the Board until its terms are amended by action of the Board duly presented to a special meeting of Property Owners. At which time the new amended Budget presented by the Board shall then take effect unless amended at such special meeting upon the motion and an affirmative vote of Property Owners holding two-thirds (2/3rds) of the Percentage Interest in the Common Elements.

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Section 5.4 Regular Assessments. The funds required by the Budget shall be collected by the Board from the Property Owners in proportion to their respective interests in the Common Elements in equal monthly or quarterly assessments as the Board of Directors may determine ("Regular Assessments")

Section 5.5 Special Assessments. The funds required from time to time to pay any Common Expenses which are not covered by the Budget but which are approved by a majority of the Property Owners shall be collected from the Property Owners by the Board of Directors in such installments as the Property Owners shall determine ("Special Assessments")

Section 5.6 Individual Assessments. Any payments to the Association which one or more, but fewer than all, of the Property Owners shall be obligated to make pursuant to the terms of the Act, the Master Deed, or these Bylaws shall be due upon demand and shall be collected by the Board as individual assessments ("Individual Assessments")

Section 5.7 Collection. Property Owners shall be personally liable for all assessments and shall pay the same promptly when due. In its discretion, the Board of Directors may take appropriate action to establish reasonable late payment penalties, to collect by suit, foreclosure, or other lawful method any overdue assessment. If any overdue assessment is collected by an attorney or by action at law, the Property Owners owing the same shall be required to pay all reasonable costs of collection, including attorney's fees.

Section 5.8 Penalty. A penalty may be assessed for assessments not paid in accordance with the provisions set forth in the Master Deed.

Section 5.9 Accounts. The following management standards of performance will be followed, unless the Board, by resolution, specifically determines otherwise:

a. accrual accounting, as defined by generally accepted accounting principles, shall be employed;

b. accounting and controls should conform to established American Institute of Certified Public Accountants (AICPA) guidelines and principles; (A segregation of accounting duties should be maintained and disbursements by check shall require two (2) signatures. Cash disbursements shall be limited to amounts of Twenty-five ($25.00) Dollars and under.);

c. cash accounts of the Association shall not be commingled with any other accounts;

d. no remuneration shall be accepted by the Manager from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

e. any financial or other interest which the Manager may have in any firm providing goods or services to the Association shall be disclosed promptly to, and approved in writing by, the Board for each and every transaction with that firm; and

f. commencing at the end of the month in which the first Residential Unit is sold and closed, quarterly financial reports shall be prepared for the Association containing:

(i) an income statement reflecting all income and expense activity for the preceding three (3) months on an accrual basis;

(ii) an account activity statement reflecting all receipt and disbursement activity for the preceding three (3) months on an accrual basis;

(iii) an account status report reflecting the status of all accounts in an actual versus approved budget format with a Budget report reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or ten (10%) percent of a major budget category (as distinct from a specified line item in an expanded chart of accounts)

(iv) a balance sheet of an accounting date which is the last day of the month closest in time to three (3) months from the date of closing of the first sale of a Residential Unit in the Regime, and an operating statement for the period from the date of the first closing to the said accounting date, which shall be distributed within sixty (60) days after the accounting date;

(v) a balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year; and

(vi) a delinquency report listing all Property Owners who have been delinquent during the preceding three (3) month period in paying the monthly installments of assessments and who remain delinquent at the time of the report and describing the status of any action to collect such installments which remain delinquent. A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month.

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Section 5.10 Payments. The Board shall provide for payment of all debts of the Association from the funds collected from Property Owners. Expenditures specifically approved in the Budget may be paid without further approval unless the Board of Directors shall otherwise determine. All other expenditures which are in excess of an amount to be determined by the Board of Directors shall be reviewed and approved by the Secretary of the Board of Directors before payment is made. Unless the Manager is authorized by the Board of Directors to draw checks upon the account of the Association, any check or request for withdrawals drawn upon any account of the Association shall be signed by the Chairman and the Secretary or by any two (2) officers of the Association designated by the Board of Directors. The Board of Directors may also authorize the Manager to make disbursements from the petty cash fund, if any.

Section 5.11 Bonding. The Board may secure a fidelity bond in an amount of not less than Ten Thousand ($10,000.00) Dollars covering every individual authorized to withdraw funds from any checking or savings account maintained by the Association. The cost of the bond shall be a Common Expense.

ARTICLE VI

MAINTENANCE AND IMPROVEMENTS

Section 6.1 Maintenance by Manager. At the direction of the Board of Directors, the Manager or the Board of Directors shall provide for the maintenance, repair, and replacement of the Common Elements.

Section 6.2 Maintenance by Property Owners. The Units shall be maintained in good condition and repair by their respective Property Owners. Each Property Owner shall also provide for the routine cleaning of all Limited Common Elements reserved for the use of each Unit.

Section 6.3 Default by Property Owner. In the event that any Property Owner fails to perform the maintenance required of him by these Bylaws or by any lawful Regulation, and such failure creates or permits a condition which is hazardous to life, health, or property, or which unreasonably interferes with the rights of another Property Owner, or which substantially detracts from the value or appearance of the Regime Property, the Board of Directors shall, after giving such Property Owner reasonable notice and opportunity to perform such maintenance, cause such maintenance to be performed, and charge all reasonable expenses of so doing to such Property Owner by an individual Assessment.

Section 6.4 Expenses. The expenses of all maintenance, repair, and replacement provided by the Manager or the Board of Directors, including losses by storm, fire, or other casualty insured by the Association, shall be Common Expenses, except that when such expenses are not fully reimbursed by insurance proceeds and when they are necessitated by (1) the failure of a Property Owner to perform the maintenance required by these Bylaws or by any lawful Regulation or (2) the willful act, neglect, or abuse of a Property Owner, they shall be charged to such Property Owner as an Individual Assessment.

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Section 6.5 Improvements. The Board of Directors shall provide for the making of such improvements and additions to the Common Elements as may be approved from time to time by a vote of the Property Owners at an annual or special meeting of the Property Owners. .

ARTICLE VII

RESTRICTIONS AND REGULATIONS

Section 7.1 Restrictions. The use of the Regime Property shall be subject to the restrictions set forth in the Master Deed and to the following Rules and Regulations.

Section 7.2 Rules and Regulations. In accordance with Section 5.3.b of the Master Deed, the Board shall adopt and amend from time to time such reasonable rules and regulations ("Rules and Regulations") governing the operation and use of the Regime Property as it may deem necessary or desirable, provided, however, any such Rules or Regulations which purport to diminish, abrogate or in any way affect the Commercial Unit, including the Limited Common Elements appurtenant thereto or other rights reserved or granted herein in favor of the Grantor or the Owner of the Commercial Unit, its successors and assigns, relative to the Units, Commercial Unit, Common Elements, or any other portion of the Regime Property, shall not be binding upon the Grantor and/or the Commercial Unit Owner, whichever the case may be, its successors and assigns, unless and until the affected Grantor and/or Commercial Unit Owner consents in writing to the same. Furthermore, Rules and Regulations shall not discriminate against persons who are delegates pursuant to Section 5.3.a of the Master Deed. It shall be necessary to publish newly adopted Regulations or the amendment or repeal of existing Regulations, and no Property Owner shall be bound by any newly adopted Regulation or any amendment or repeal of an existing Regulation until a copy of the same has been delivered to him.

Section 7.3 Enforcement. The Board shall enforce the terms of the Act, the Nonprofit Act, the Master Deed, these Bylaws, and the Regulations promulgated pursuant hereto by taking prompt and appropriate action to correct any violations. In addition to any other remedy to which the Association or any Property Owner may be entitled, the Board of Directors may impose against a Property Owner reasonable fines not to exceed an amount per day to be determined annually by the Board of Directors and consistently applied for any violation of the terms of the Act, the Master Deed, these Bylaws, or of the Regulations promulgated pursuant hereto. Such fines shall be collected as Individual Assessments. Each day during which a violation occurs or continues may be deemed a separate offense.

Section 7.4 Responsibility of Property Owners. Each Property Owner shall be deemed responsible for the conduct of members of his household and his tenants, agents, guests, and pets, but the responsibility of the Property Owner shall not relieve any member of his household or any of his tenants, agents, or guests for any liability to the Association or to a Property Owner for the acts of such member, tenant, agent, guest, or pet.

Section 7.5 Fines. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Property Owner, and to suspend a Property Owner's right to vote or to use the common elements for violation of any duty imposed

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under the Act, the Nonprofit Act, the Master Deed, these Bylaws, or any Rules and Regulations duly adopted under the Bylaws; provided, however, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Unit.

Section 7.6 Additional Enforcement Rights. Notwithstanding anything to the contrary contained in the Master Deed or Bylaws, the Association, acting through the Board, may elect to enforce any provision of the Master Deed, these Bylaws, or the Rules and Regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of Parking Rules and Regulations, as provided below) or by suit at law or in equity to enjoin any violation or to recover monetary damages, or both, without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Property Owner or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees, actually incurred.

ARTICLE VIII

LIABILITIES AND INDEMNIFICATION

Section 8.1 Liability of Association. The Caravelle Resort Owners Association, Inc. is a South Carolina nonprofit corporation. No member of the Association, by virtue of membership alone, is or shall be liable for the debts or torts of the Association.

Section 8.2 Indemnification Among Property Owners. Each Property Owner shall be entitled to contribution from and indemnification by every other Property Owner to the extent that such Property Owner discharges or is required to discharge any portion of any liability of the Association in excess of such Property Owner's proportionate share of such liability, except that no Property Owner shall be required to provide contribution or indemnification on account of a liability which was due and payable prior to the time such Property Owner became a Property Owner.

Section 8.3 Liability of Directors and Officers. No Director or officer of the Association shall be liable to any Property Owner for any decision, action, or omission made or performed by such Director or officer in the course of his duties unless such Director or officer acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Act, the Master Deed, the Permitted Encumbrances, or these Bylaws.

Section 8.4 Indemnification of Directors and Officers. The Association shall indemnify and defend each Director and each officer of the Association from any liability claimed or imposed against him by reason of his position or actions as a Director or any officer of the Association if all the following conditions are satisfied:

(1) Such Director or officer is not required to bear such liability by the terms of the Act, the Master Deed, or these Bylaws;

(2) Such Director or officer gives the Association adequate notice of the claim or imposition of liability or permit the Association reasonable opportunity to defend against the same; and

(3) Such Director or officer cooperates with the Association in defending against the liability. The expenses of indemnifying a Director or an officer shall be a Common Expense. The Board may obtain insurance to provide in whole or in part for this indemnification, and the cost of such insurance shall be a Common Expense.

ARTICLE IX

ATTESTATIONS AND CERTIFICATIONS

Section 9.1 Attestation of Documents. The presence of the signature of the Secretary or an Assistant Secretary of the Board on any contract, conveyance, or any other document executed on behalf of the Association by another officer of the Association shall attest:

(1) That the officer of the Association executing the document does, in fact, occupy the official position indicated, that one in such position is duly authorized to execute such document on behalf of the Association, and that the signature of such officer subscribed on the document is genuine; and

(2) That the execution of the document on behalf of the Association has been duly authorized.

Section 9.2 Certification of Documents. When any document relating to the Regime Property or the Association is certified as authentic by the Secretary or an Assistant Secretary of the Association, a third party, without the knowledge or reason known to the contrary, may rely on such document; as being what it purports to be.

Section 9.3 Certification of Actions and Facts. When there is executed by the Secretary a written statement setting forth (1) actions taken by the Association or by the Board or (2) facts relating to the Regime Property or the Association as determined by the Board, a third party, without the knowledge or reason to know the contrary, may rely on such statement as factually true and correct.

Section 9.4 Absence of Seal. The absence of the seal of the Association from any contract, conveyance, or other document executed on behalf of the Association shall not impair the validity of such contract, conveyance, or document or of an action taken pursuant thereto or in reliance thereon, but the person relying on the same shall bear the burden of establishing that the execution of the same was duly authorized and accomplished on behalf of the Association.

ARTICLE X

AMENDMENTS

Section 10.1 Procedure. Subject to the Master Deed, and specifically to the rights of Grantor as set forth in Article XIV of the Master Deed thereof, these Bylaws may be amended from time to time by resolution adopted by the affirmative vote of the Property Owners holding

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two-thirds (2/3rds) of the Percentage Interest in the Common Elements. No amendment to these Bylaws shall be effective unless and until filed of record as an amendment to the Master Deed.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Record of Ownership. Any person who acquires title to a Unit shall promptly inform the Board of his or her identity and the date upon and manner in which title was acquired. The Board shall maintain a record of the names of all Property Owners and of the dates upon which they acquired title to their Units.

Section 11.2 Notification of Transfer. A Property Owner shall promptly notify the Board of a proposed transfer of title to his Unit setting forth the closing date and the name and address of the transferee.

Section 11.3 Notices. All notices shall be sent in accordance with the Nonprofit Act. Any notices or documents deposited postage prepaid and addressed to the last known owner of a Unit at his last known address shall be deemed delivered to the Property Owner of such Unit, unless the Property Owner has previously specified to the Board of Directors in writing another address for delivery of such notices and documents. Any notices or document addressed to the Board of Directors shall be deemed to be given when such notice is deposited postage prepaid in the United States Mail addressed to such Director at his address as it appears in the records of the Association.

Section 11.4 Waiver. No provision of these Bylaws or of the Regulations promulgated pursuant hereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

Section 11.5 Conflicts. In the event of any conflict between these Bylaws and the Regulations, these Bylaws and the Act, or the Nonprofit Act, or the Master Deed, the Act, the Nonprofit Act, or the Master Deed shall control, as appropriate. In the event of a conflict between these Bylaws and the Regulations, these Bylaws shall control.

Section 11.6 Severability. The provisions of these Bylaws are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder hereof.

Section 11.7 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision hereof.

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Section 11.8 Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall include the plural and vice versa, whenever the context requires or permits.

Adopted this 20th of February, 2006 by the Incorporator:

BEACHFRONT CONVERSIONS, LLC

By: _____
Kevin L. Warren
Its: Manager

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EXHIBIT F
PLOT PLAN

That survey/plat entitled Topographic Survey of Lots 8 & 9, Block 4-CP and Lots 1, 2, 3, 4, 5, & 6, Block 5-CP, Cane Patch Section, City of Myrtle Beach, Horry County, South Carolina prepared for Beachfront Conversions, LLC by Donald E. Thomas of Robert L. Bellamy & Associates, Inc. dated December 30, 2005 and last revised February 10, 2006 and recorded February 21, 2006 in Plat Book 211 at Page 248 in the land records of Horry County, South Carolina, which is incorporated into this Master Deed by reference thereto.

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EXHIBIT G
THE PLANS

Those floor plans and elevations comprised of Sheet Numbers A1 through A16 and Sheet Numbers A18 through A21 of those certain plans entitled "Horizontal Property Regime Caravelle Resort, 6900 N. Ocean Blvd. Myrtle Beach, South Carolina", prepared by Pegram Associates, Inc., dated September, 2005, recorded February 21, 2006 in Condominium Plat Book F at Page 93, in the land records of Horry County, South Carolina, which are incorporated into this Master Deed by reference thereto.

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EXHIBIT H

ARCHITECT'S CERTIFICATE

Pursuant to Code Section 27-31-110, South Carolina Code of Laws, 1976, as amended, I hereby certify that, in my professional opinion, and to the best of my knowledge, the Plans attached as "Exhibit G" of The Caravelle Resort Horizontal Property Regime do depict the dimensions, area, square footage and locations of the Units and Common Elements, both limited and general of the Regime, as-built and existing within reasonable construction tolerances.

PEGRAM ASSOCIATES, INC.

By: J. T. Pegram, President

(seal)

REGISTERED ARCHITECT
JOSEPH THOMAS PEGRAM
LICENSE No 1187
SOUTH CAROLINA

Date: 2/8/2006

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EXHIBIT I

PHASE II CHART

In addition to the Property hereby submitted as Phase I, up to one (1) additional phase may be added as Phase II. If and when such additional Phase is added, the total statutory value of all phases submitted and constituting Caravelle Resort Horizontal Property Regime at that time and the percentage interest of each Unit may be determined. To determine the percentage interest of each Unit, utilize a formula with the statutory value of each Unit set forth in the chart below as the numerator with the total statutory value of Caravelle Resort Horizontal Property Regime at that time (including the Phase being submitted) as the denominator. The resulting fraction shall then be expressed as a percentage rounded to the nearest .00000001.

The percentage as determined above shall be the percentage of undivided interest appurtenant to each Unit in Phase II, in the event the Grantor, its successors or assigns, elect in accordance with the provisions of the Master Deed to which this Exhibit is attached, to proceed with the development of Phase II. In that event, as of the date of recording of the amendment incorporating such additional Phase, the percentage interest appurtenant to each Unit in Phase I and such subsequent Phase in the Common Elements will automatically be the percentage to be set forth in a chart, which Grantor must record as part of its election to construct such subsequent Phase. Said percentage shall be determined by the ratio of the statutory value of the individual Unit as the same bears to the statutory value of the whole property. Provided, however, the assigned values to be reflected in the chart for Units in Phase II must be the values provided in the following chart depending on the type of Unit involved as follows:

Type	Statutory Value
Efficiency	Not less than 1.75 Nor more than 2.0
One Bedroom UNITS	Not less than 2.0 Nor more than 2.5
Standard Two Bedroom UNITS	Not less than 2.5 Nor more than 2.75
Deluxe Two Bedroom UNITS	Not less than 2.75 Nor more than 3.0
Three Bedroom UNITS	Not less than 3.0 Nor more than 4.0
Deluxe Three Bedroom UNITS	Not less than 4.0 Nor more than 5.0

Four Bedroom UNITS	Not less than 5.0 Nor more than 6.0
Deluxe Four Bedroom UNITS	Not less than 6.0 Nor more than 7.0
One or more Commercial Unit C-1	Not less than 3.0 Nor more than 8.0

The Grantor may construct in Phase II any possible combination of efficiency, one bedroom, two bedroom, three bedroom or four bedroom Units described above, provided that Grantor at the time of recording its election specifies in the chart amending this Exhibit I the percentage of interest of each Unit in Phase I and Phase II using the values of the different types of Units assigned above.

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EXHIBIT 3

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This Declaration Page is attached to and forms part of Certificate provisions
(Form SLC-3 USA NMA 2868) Authority Ref# B0429BA1500357 Certificate #516518 R- 2

1. INSURED & MAILING ADDRESS
Hager, Karl

P.O. Box 204

Belspring VA 24058

RESIDENCE PREMISES
#206 Caravelle Resort

Property Address
6900 North Ocean Blvd
Myrtle Beach, SC 29572

2. EFFECTIVE from 01/01/2016 to 01/01/2017 Both days at 12:01 a.m. standard time at the residence premises shown above.

3. Insurance is effective with Certain Underwriters at Lloyd's, London.
Percentage: 100%

4. SECTION I-PROPERTY	BLANKET PROPERTY LIMIT	COINSURANCE
Coverage A Dwelling	$ 25,000.00	100%
Coverage C Personal Property	Included Above	100%
Coverage D Loss of Use	Included Above	100%
SECTION II-PERSONAL LIABILITY		
Coverage E Personal Liability	$ 500,000.00	N/A
Coverage F Medical Payments	$ 1,000.00	N/A

Loss Assessment: $5,000 excluding Loss Assessment due to deductible selected by the Board of Directors for the Master Policy

5. SPECIAL CONDITIONS: Section I Deductible - $1,000 each and every loss

6. COVERAGE FORMS:

		PREMIUM: $	265.00
		FEE: $	3.00
Form SLC-3 USA	Policy Jacket	TAX: $	16.08
HO 00 06 10 00	Homeowners 6 Unit Owners Form	TOTAL: $	284.08
HO 06 A 06 15	Homeowners 6 Amendatory Endorsement		
HO 04 90 10 00	Personal Property Replacement Cost Loss Settlement		
HO 17 32 10 00	Unit-Owners Coverage A Special Coverage		
HO 04 54 06 94	Earthquake		
HO 06 B 01 99	Wind-Driven Rain Endorsement for Coverage C		
HO 17 33 10 00	Unit-Owners Rental to Others		
HO 06 F 08 99	Storm Shutter or Windstorm Protective Device Exclusion		
LMA 3100	Sanction Limitation and Exclusion Clause		
B&W-HO6-ALE	Limit of Insurance-Additional Living Expenses Sublimit		

7. SERVICE OF SUIT may be made upon: Mendes & Mount, 750 7th Avenue, New York, New York, 10019-6829

POLICY CHANGES? BB&T-Puckett, Scheetz and Hogan (855) 241-9704
1359 21st Avenue North, Suite 105, Myrtle Beach, SC 29577

By: *A. Kasey Vaughn*
Authorized Representative and
Lloyd's of London Correspondent
Burns & Wilcox, 800 Arendell Street,
Suite 200, Morehead City, NC 28557

SLC-3 USA

THIS COMPANY HAS BEEN APPROVED BY THE DIRECTOR OR HIS DESIGNEE OF THE SOUTH CAROLINA DEPARTMENT OF INSURANCE TO WRITE BUSINESS IN THIS STATE AS AN ELIGIBLE SURPLUS LINES INSURER, BUT IT IS NOT AFFORDED GUARANTY FUND PROTECTION.

Lloyd's, London

This Insurance is effected with Insurance Company(s) as noted herein.

This Certificate is issued in accordance with the limited authorization granted to the Correspondent by Company(s) and in consideration of the premium specified herein, Company(s) do hereby bind themselves each for his own part, and not one for another, their heirs, executors and administrators.

The Assured is requested to read this certificate, and if not correct, return it immediately to the Correspondent for appropriate alteration.

In the event of claim under this certificate, please notify the following Correspondent:

Burns & Wilcox Ltd.
A KAUFMAN GROUP COMPANY

SLC-3 USA

ROA 286

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HOMEOWNERS 6 – UNIT-OWNERS FORM

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

A. In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We", "us" and "our" refer to the Company providing this insurance.

B. In addition, certain words and phrases are defined as follows:

1. "Aircraft Liability", "Hovercraft Liability", "Motor Vehicle Liability" and "Watercraft Liability", subject to the provisions in **b.** below, mean the following:

a. Liability for "bodily injury" or "property damage" arising out of the:

(1) Ownership of such vehicle or craft by an "insured";

(2) Maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;

(3) Entrustment of such vehicle or craft by an "insured" to any person;

(4) Failure to supervise or negligent supervision of any person involving such vehicle or craft by an "insured"; or

(5) Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.

b. For the purpose of this definition:

(1) Aircraft means any contrivance used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo;

(2) Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;

(3) Watercraft means a craft principally designed to be propelled on or in water by wind, engine power or electric motor; and

(4) Motor vehicle means a "motor vehicle" as defined in **7.** below.

2. "Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.

3. "Business" means:

a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or

b. Any other activity engaged in for money or other compensation, except the following:

(1) One or more activities, not described in **(2)** through **(4)** below, for which no "insured" receives more than $2,000 in total compensation for the 12 months before the beginning of the policy period;

(2) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;

(3) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or

(4) The rendering of home day care services to a relative of an "insured".

4. "Employee" means an employee of an "insured", or an employee leased to an "insured" by a labor leasing firm under an agreement between an "insured" and the labor leasing firm, whose duties are other than those performed by a "residence employee".

5. "Insured" means:

a. You and residents of your household who are:

(1) Your relatives; or

(2) Other persons under the age of 21 and in the care of any person named above;

b. A student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:

(1) 24 and your relative; or

(2) 21 and in your care or the care of a person described in **a.(1)** above; or

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c. Under Section II:

(1) With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in **a.** or **b.** above. "Insured" does not mean a person or organization using or having custody of these animals or watercraft in the course of any "business" or without consent of the owner; or

(2) With respect to a "motor vehicle" to which this policy applies:

(a) Persons while engaged in your employ or that of any person included in **a.** or **b.** above; or

(b) Other persons using the vehicle on an "insured location" with your consent.

Under both Sections I and II, when the word an immediately precedes the word "insured", the words an "insured" together mean one or more "insureds".

6. "Insured location" means:

a. The "residence premises";

b. The part of other premises, other structures and grounds used by you as a residence; and

(1) Which is shown in the Declarations; or

(2) Which is acquired by you during the policy period for your use as a residence;

c. Any premises used by you in connection with a premises described in **a.** and **b.** above;

d. Any part of a premises:

(1) Not owned by an "insured"; and

(2) Where an "insured" is temporarily residing;

e. Vacant land, other than farm land, owned by or rented to an "insured";

f. Land owned by or rented to an "insured" on which a one, two, three or four family dwelling is being built as a residence for an "insured";

g. Individual or family cemetery plots or burial vaults of an "insured"; or

h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

7. "Motor vehicle" means:

a. A self-propelled land or amphibious vehicle; or

b. Any trailer or semitrailer which is being carried on, towed by or hitched for towing by a vehicle described in **a.** above.

8. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

a. "Bodily injury"; or

b. "Property damage".

9. "Property damage" means physical injury to, destruction of, or loss of use of tangible property.

10. "Residence employee" means:

a. An employee of an "insured", or an employee leased to an "insured" by a labor leasing firm, under an agreement between an "insured" and the labor leasing firm, whose duties are related to the maintenance or use of the "residence premises", including household or domestic services; or

b. One who performs similar duties elsewhere not related to the "business" of an "insured".

A "residence employee" does not include a temporary employee who is furnished to an "insured" to substitute for a permanent "residence employee" on leave or to meet seasonal or short-term workload conditions.

11. "Residence premises" means the unit where you reside shown as the "residence premises" in the Declarations.

DEDUCTIBLE

Unless otherwise noted in this policy, the following deductible provision applies:

Subject to the policy limits that apply, we will pay only that part of the total of all loss payable under Section I that exceeds the deductible amount shown in the Declarations.

SECTION I – PROPERTY COVERAGES

A. Coverage A – Dwelling

1. We cover:

a. The alterations, appliances, fixtures and improvements which are part of the building contained within the "residence premises";

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b. Items of real property which pertain exclusively to the "residence premises";

c. Property which is your insurance responsibility under a corporation or association of property owners agreement; or

d. Structures owned solely by you, other than the "residence premises", at the location of the "residence premises".

2. We do not cover:

a. Land, including land on which the "residence premises", real property or structures are located;

b. Structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage;

c. Structures from which any "business" is conducted; or

d. Structures used to store "business" property. However, we do cover a structure that contains "business" property solely owned by an "insured" or a tenant of the dwelling provided that "business" property does not include gaseous or liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.

B. Coverage C – Personal Property

1. Covered Property

We cover personal property owned or used by an "insured" while it is anywhere in the world. After a loss and at your request, we will cover personal property owned by:

a. Others while the property is on the part of the "residence premises" occupied by an "insured"; or

b. A guest or a "residence employee", while the property is in any residence occupied by an "insured".

2. Limit For Property At Other Residences

Our limit of liability for personal property usually located at an "insured's" residence, other than the "residence premises", is 10% of the limit of liability for Coverage **C**, or $1,000, whichever is greater. However, this limitation does not apply to personal property:

a. Moved from the "residence premises" because it is being repaired, renovated or rebuilt and is not fit to live in or store property in; or

b. In a newly acquired principal residence for 30 days from the time you begin to move the property there.

3. Special Limits Of Liability

The special limit for each category shown below is the total limit for each loss for all property in that category. These special limits do not increase the Coverage **C** limit of liability.

a. $200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.

b. $1,500 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists.

This limit includes the cost to research, replace or restore the information from the lost or damaged material.

c. $1,500 on watercraft of all types, including their trailers, furnishings, equipment and outboard engines or motors.

d. $1,500 on trailers or semitrailers not used with watercraft of all types.

e. $1,500 for loss by theft of jewelry, watches, furs, precious and semiprecious stones.

f. $2,500 for loss by theft of firearms and related equipment.

g. $2,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.

h. $2,500 on property, on the "residence premises", used primarily for "business" purposes.

i. $500 on property, away from the "residence premises", used primarily for "business" purposes. However, this limit does not apply to loss to electronic apparatus and other property described in Categories **j.** and **k.** below.

j. $1,500 on electronic apparatus and accessories, while in or upon a "motor vehicle", but only if the apparatus is equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.

Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described in this Category **j.**

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k. $1,500 on electronic apparatus and accessories used primarily for "business" while away from the "residence premises" and not in or upon a "motor vehicle". The apparatus must be equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.

Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described in this Category **k.**

4. Property Not Covered

We do not cover:

a. Articles separately described and specifically insured, regardless of the limit for which they are insured, in this or other insurance;

b. Animals, birds or fish;

c. "Motor vehicles".

(1) This includes:

(a) Their accessories, equipment and parts; or

(b) Electronic apparatus and accessories designed to be operated solely by power from the electrical system of the "motor vehicle". Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described above.

The exclusion of property described in **(a)** and **(b)** above applies only while such property is in or upon the "motor vehicle".

(2) We do cover "motor vehicles" not required to be registered for use on public roads or property which are:

(a) Used solely to service an "insured's" residence; or

(b) Designed to assist the handicapped;

d. Aircraft meaning any contrivance used or designed for flight including any parts whether or not attached to the aircraft.

We do cover model or hobby aircraft not used or designed to carry people or cargo;

e. Hovercraft and parts. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;

f. Property of roomers, boarders and other tenants, except property of roomers and boarders related to an "insured";

g. Property in an apartment regularly rented or held for rental to others by an "insured";

h. Property rented or held for rental to others off the "residence premises";

i. "Business" data, including such data stored in:

(1) Books of account, drawings or other paper records; or

(2) Computers and related equipment.

We do cover the cost of blank recording or storage media, and of prerecorded computer programs available on the retail market;

j. Credit cards, electronic fund transfer cards or access devices used solely for deposit, withdrawal or transfer of funds except as provided in **D.6.** Credit Card, Electronic Fund Transfer Card Or Access Device; Forgery And Counterfeit Money under Section I – Property Coverages; or

k. Water or steam.

C. Coverage D – Loss Of Use

The limit of liability for Coverage **D** is the total limit for the coverages in **1.** Additional Living Expense, **2.** Fair Rental Value and **3.** Civil Authority Prohibits Use below.

1. Additional Living Expense

If a loss by a Peril Insured Against under this policy to covered property or the building containing the property makes the "residence premises" not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

2. Fair Rental Value

If a loss covered under Section I makes that part of the "residence premises" rented to others or held for rental by you not fit to live in, we cover the fair rental value of such premises less any expenses that do not continue while it is not fit to live in.

Payment will be for the shortest time required to repair or replace such premises.

3. Civil Authority Prohibits Use

If a civil authority prohibits you from use of the "residence premises" as a result of direct damage to neighboring premises by a Peril Insured Against, we cover the loss as provided in **1.** Additional Living Expense and **2.** Fair Rental Value above for no more than two weeks.

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4. Loss Or Expense Not Covered

We do not cover loss or expense due to cancellation of a lease or agreement.

The periods of time under **1.** Additional Living Expense, **2.** Fair Rental Value and **3.** Civil Authority Prohibits Use above are not limited by expiration of this policy.

D. Additional Coverages

1. Debris Removal

a. We will pay your reasonable expense for the removal of:

(1) Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or

(2) Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit is available for such expense.

b. We will also pay your reasonable expense, up to $1,000, for the removal from the "residence premises" of:

(1) Tree(s) you solely own felled by the peril of Windstorm or Hail or Weight of Ice, Snow or Sleet; or

(2) A neighbor's tree(s) felled by a Peril Insured Against under Coverage **C;**

provided the tree(s) damage(s) a covered structure.

The $1,000 limit is the most we will pay in any one loss regardless of the number of fallen trees. No more than $500 of this limit will be paid for the removal of any one tree.

This coverage is additional insurance.

2. Reasonable Repairs

a. We will pay the reasonable cost incurred by you for the necessary measures taken solely to protect covered property that is damaged by a Peril Insured Against from further damage.

b. If the measures taken involve repair to other damaged property, we will only pay if that property is covered under this policy and the damage is caused by a Peril Insured Against. This coverage does not:

(1) Increase the limit of liability that applies to the covered property; or

(2) Relieve you of your duties, in case of a loss to covered property, described in **B.4.** under Section **I** – Conditions.

3. Trees, Shrubs And Other Plants

We cover trees, shrubs, plants or lawns, you solely own at the location of the "residence premises", for loss caused by the following Perils Insured Against:

a. Fire or Lightning;

b. Explosion;

c. Riot or Civil Commotion;

d. Aircraft;

e. Vehicles not owned or operated by a resident of the "residence premises";

f. Vandalism or Malicious Mischief; or

g. Theft.

We will pay up to 10% of the limit of liability that applies to Coverage **C** for all trees, shrubs, plants or lawns. No more than $500 of this limit will be paid for any one tree, shrub or plant. We do not cover property grown for "business" purposes.

This coverage is additional insurance.

4. Fire Department Service Charge

We will pay up to $500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

5. Property Removed

We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed.

This coverage does not change the limit of liability that applies to the property being removed.

6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money

a. We will pay up to $500 for:

(1) The legal obligation of an "insured" to pay because of the theft or unauthorized use of credit cards issued to or registered in an "insured's" name;

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(2) Loss resulting from theft or unauthorized use of an electronic fund transfer card or access device used for deposit, withdrawal or transfer of funds, issued to or registered in an "insured's" name;

(3) Loss to an "insured" caused by forgery or alteration of any check or negotiable instrument; and

(4) Loss to an "insured" through acceptance in good faith of counterfeit United States or Canadian paper currency.

All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated is considered to be one loss.

This coverage is additional insurance. No deductible applies to this coverage.

b. We do not cover:

(1) Use of a credit card, electronic fund transfer card or access device:

(a) By a resident of your household;

(b) By a person who has been entrusted with either type of card or access device; or

(c) If an "insured" has not complied with all terms and conditions under which the cards are issued or the devices accessed; or

(2) Loss arising out of "business" use or dishonesty of an "insured".

c. If the coverage in **a.** above applies, the following defense provisions also apply:

(1) We may investigate and settle any claim or suit that we decide is appropriate. Our duty to defend a claim or suit ends when the amount we pay for the loss equals our limit of liability.

(2) If a suit is brought against an "insured" for liability under **a.(1)** or **(2)** above, we will provide a defense at our expense by counsel of our choice.

(3) We have the option to defend at our expense an "insured" or an "insured's" bank against any suit for the enforcement of payment under **a.(3)** above.

7. Loss Assessment

a. We will pay up to $1,000 for your share of loss assessment charged during the policy period against you, as owner or tenant of the "residence premises", by a corporation or association of property owners. The assessment must be made as a result of direct loss to property, owned by all members collectively, of the type that would be covered by this policy if owned by you, caused by a Peril Insured Against under Coverage **A,** other than:

(1) Earthquake; or

(2) Land shock waves or tremors before, during or after a volcanic eruption.

The limit of $1,000 is the most we will pay with respect to any one loss, regardless of the number of assessments. We will only apply one deductible, per unit, to the total amount of any one loss to the property described above, regardless of the number of assessments.

b. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

c. Paragraph **P.** Policy Period under Section **I** – Conditions does not apply to this coverage.

This coverage is additional insurance.

8. Collapse

a. With respect to this Additional Coverage:

(1) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.

(2) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.

(3) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building.

(4) A building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

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b. We insure for direct physical loss to covered property involving collapse of a building or any part of a building if the collapse was caused by one or more of the following:

(1) The Perils Insured Against named under Coverage **C;**

(2) Decay that is hidden from view, unless the presence of such decay is known to an "insured" prior to collapse;

(3) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an "insured" prior to collapse;

(4) Weight of contents, equipment, animals or people;

(5) Weight of rain which collects on a roof; or

(6) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

c. Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under **b.(2)** through **(6)** above, unless the loss is a direct result of the collapse of a building or any part of a building.

d. This coverage does not increase the limit of liability that applies to the damaged covered property.

9. Glass Or Safety Glazing Material

a. We cover:

(1) The breakage of glass or safety glazing material which is part of a building, storm door or storm window and covered under Coverage **A;**

(2) The breakage of glass or safety glazing material which is part of a building, storm door or storm window and covered under Coverage **A** when caused directly by earth movement; and

(3) The direct physical loss to covered property caused solely by the pieces, fragments or splinters of broken glass or safety glazing material which is part of a building, storm door or storm window.

b. This coverage does not include loss:

(1) To covered property which results because the glass or safety glazing material has been broken, except as provided in **a.(3)** above; or

(2) To the "residence premises" if the building containing the "residence premises" has been vacant for more than 60 consecutive days immediately before the loss, except when the breakage results directly from earth movement as provided in **a.(2)** above. A building being constructed is not considered vacant.

c. This coverage does not increase the limit of liability that applies to the damaged property.

10. Ordinance Or Law

a. You may use up to 10% of the limit of liability that applies to Coverage **A** for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:

(1) The construction, demolition, remodeling, renovation or repair of that part of property covered under Coverage **A** damaged by a Peril Insured Against;

(2) The demolition and reconstruction of the undamaged part of property covered under Coverage **A,** when that property must be totally demolished because of damage by a Peril Insured Against to another part of that property covered under Coverage **A;** or

(3) The remodeling, removal or replacement of the portion of the undamaged part of property covered under Coverage **A** necessary to complete the remodeling, repair or replacement of that part of the property covered under Coverage **A** damaged by a Peril Insured Against.

b. You may use all or part of this ordinance or law coverage to pay for the increased costs you incur to remove debris resulting from the construction, demolition, remodeling, renovation, repair or replacement of property as stated in **a.** above.

c. We do not cover:

(1) The loss in value to any property covered under Coverage **A** due to the requirements of any ordinance or law; or

(2) The costs to comply with any ordinance or law which requires any "insured" or others, to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants in or on any property covered under Coverage **A.**

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Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

This coverage is additional insurance.

11. Grave Markers

We will pay up to $5,000 for grave markers, including mausoleums, away from the "residence premises" for loss caused by a Peril Insured Against.

This coverage does not increase the limits of liability that apply to the damaged covered property.

SECTION I – PERILS INSURED AGAINST

We insure for direct physical loss to the property described in Coverages **A** and **C** caused by any of the following perils unless the loss is excluded in Section I – Exclusions.

1. Fire Or Lightning

2. Windstorm Or Hail

This peril includes loss to watercraft of all types and their trailers, furnishings, equipment, and outboard engines or motors, only while inside a fully enclosed building.

This peril does not include loss to the inside of a building or the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

3. Explosion

4. Riot Or Civil Commotion

5. Aircraft

This peril includes self-propelled missiles and spacecraft.

6. Vehicles

This peril does not include loss to a fence, driveway or walk caused by a vehicle owned or operated by a resident of the "residence premises".

7. Smoke

This peril means sudden and accidental damage from smoke, including the emission or puffback of smoke, soot, fumes or vapors from a boiler, furnace or related equipment.

This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. Vandalism Or Malicious Mischief

This peril does not include loss to property which pertains to the "residence premises", and any ensuing loss caused by any intentional and wrongful act committed in the course of the vandalism or malicious mischief, if the building containing the "residence premises" has been vacant for more than 60 consecutive days immediately before the loss. A building being constructed is not considered vacant.

9. Theft

a. This peril includes attempted theft and loss of property from a known place when it is likely that the property has been stolen.

b. This peril does not include loss caused by theft:

(1) Committed by an "insured";

(2) In or to a "residence premises" under construction, or of materials and supplies for use in the construction until the "residence premises" is finished and occupied;

(3) From that part of a "residence premises" rented by an "insured" to someone other than another "insured"; or

(4) That occurs away from the "residence premises" or the location of the "residence premises" of:

(a) Trailers, semitrailers and campers;

(b) Watercraft of all types, and their furnishings, equipment and outboard engines or motors; or

(c) Property while at any other residence owned by, rented to, or occupied by an "insured", except while an "insured" is temporarily living there. Property of an "insured" who is a student is covered while at the residence the student occupies to attend school as long as the student has been there at any time during the 60 days immediately before the loss.

10. Falling Objects

This peril does not include loss to the inside of a building or property contained in the building unless the roof or an outside wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. Weight Of Ice, Snow Or Sleet

This peril means weight of ice, snow or sleet which causes damage to a building or property contained in a building.

This peril does not include loss to an awning, fence, patio, pavement, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock.

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12. Accidental Discharge Or Overflow Of Water Or Steam

a. This peril means accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance. We also pay to tear out and replace any part of a building or other structure owned solely by you which is covered under Coverage **A** and at the location of the "residence premises", but only when necessary to repair the system or appliance from which the water or steam escaped. However, such tear out and replacement coverage only applies to other structures if the water or steam causes actual damage to a building owned solely by you at the location of the "residence premises".

b. This peril does not include loss:

(1) To or within the "residence premises", if the building containing the "residence premises" has been vacant for more than 60 consecutive days immediately before the loss. A building being constructed is not considered vacant;

(2) To the system or appliance from which the water or steam escaped;

(3) Caused by or resulting from freezing except as provided in Peril Insured Against **14.** Freezing;

(4) To or within the "residence premises" caused by accidental discharge or overflow which occurs away from the building where the "residence premises" is located; or

(5) Caused by mold, fungus or wet rot unless hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure.

c. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

d. Section I – Exclusion **3.** Water Damage, Paragraphs **a.** and **c.** that apply to surface water and water below the surface of the ground do not apply to loss by water covered under this peril.

13. Sudden And Accidental Tearing Apart, Cracking, Burning Or Bulging

This peril means sudden and accidental tearing apart, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

This peril does not include loss caused by or resulting from freezing except as provided in Peril Insured Against **14.** Freezing below.

14. Freezing

a. This peril means freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance but only if you have used reasonable care to:

(1) Maintain heat in the building; or

(2) Shut off the water supply and drain all systems and appliances of water.

However, if the building is protected by an automatic fire protective sprinkler system, you must use reasonable care to continue the water supply and maintain heat in the "residence premises" for coverage to apply.

b. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

15. Sudden And Accidental Damage From Artificially Generated Electrical Current

This peril does not include loss to tubes, transistors, electronic components or circuitry that are a part of appliances, fixtures, computers, home entertainment units or other types of electronic apparatus.

16. Volcanic Eruption

This peril does not include loss caused by earthquake, land shock waves or tremors.

SECTION I – EXCLUSIONS

We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

1. Ordinance Or Law

Ordinance Or Law means any ordinance or law:

a. Requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This Exclusion **1.a.** does not apply to the amount of coverage that may be provided for in **D.10.** Ordinance Or Law under Section I – Property Coverages;

b. The requirements of which result in a loss in value to property; or

c. Requiring any "insured" or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants.

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Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

This Exclusion **1.** applies whether or not the property has been physically damaged.

2. Earth Movement

Earth Movement means:

a. Earthquake, including land shock waves or tremors before, during or after a volcanic eruption;

b. Landslide, mudslide or mudflow;

c. Subsidence or sinkhole; or

d. Any other earth movement including earth sinking, rising or shifting;

caused by or resulting from human or animal forces or any act of nature unless direct loss by fire or explosion ensues and then we will pay only for the ensuing loss.

This Exclusion **2.** does not apply to loss by theft.

3. Water Damage

Water Damage means:

a. Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;

b. Water or water-borne material which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment; or

c. Water or water-borne material below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure;

caused by or resulting from human or animal forces or any act of nature.

Direct loss by fire, explosion or theft resulting from water damage is covered.

4. Power Failure

Power Failure means the failure of power or other utility service if the failure takes place off the "residence premises". But if the failure results in a loss, from a Peril Insured Against on the "residence premises", we will pay for the loss caused by that peril.

5. Neglect

Neglect means neglect of an "insured" to use all reasonable means to save and preserve property at and after the time of a loss.

6. War

War includes the following and any consequence of any of the following:

a. Undeclared war, civil war, insurrection, rebellion or revolution;

b. Warlike act by a military force or military personnel; or

c. Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

7. Nuclear Hazard

This Exclusion **7.** pertains to Nuclear Hazard to the extent set forth in **M.** Nuclear Hazard Clause under Section I – Conditions.

8. Intentional Loss

Intentional Loss means any loss arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss.

In the event of such loss, no "insured" is entitled to coverage, even "insureds" who did not commit or conspire to commit the act causing the loss.

9. Governmental Action

Governmental Action means the destruction, confiscation or seizure of property described in Coverage **A** or **C** by order of any governmental or public authority.

This exclusion does not apply to such acts ordered by any governmental or public authority that are taken at the time of a fire to prevent its spread, if the loss caused by fire would be covered under this policy.

SECTION I – CONDITIONS

A. Insurable Interest And Limit Of Liability

Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:

1. To an "insured" for more than the amount of such "insured's" interest at the time of loss; or

2. For more than the applicable limit of liability.

B. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

1. Give prompt notice to us or our agent;

2. Notify the police in case of loss by theft;

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3. Notify the credit card or electronic fund transfer card or access device company in case of loss under as provided for in **D.6.** Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I – Property Coverages;
4. Protect the property from further damage. If repairs to the property are required, you must:
   a. Make reasonable and necessary repairs to protect the property; and
   b. Keep an accurate record of repair expenses;
5. Cooperate with us in the investigation of a claim;
6. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
7. As often as we reasonably require:
   a. Show the damaged property;
   b. Provide us with records and documents we request and permit us to make copies; and
   c. Submit to examination under oath, while not in the presence of another "insured", and sign the same;
8. Send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
   a. The time and cause of loss;
   b. The interests of all "insureds" and all others in the property involved and all liens on the property;
   c. Other insurance which may cover the loss;
   d. Changes in title or occupancy of the property during the term of the policy;
   e. Specifications of damaged buildings and detailed repair estimates;
   f. The inventory of damaged personal property described in **6.** above;
   g. Receipts for additional living expenses incurred and records that support the fair rental value loss; and
   h. Evidence or affidavit that supports a claim under **D.6.** Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I – Property Coverages, stating the amount and cause of loss.

C. Loss Settlement

Covered property losses are settled as follows:

1. Personal property and grave markers, including mausoleums, at actual cash value at the time of loss but not more than the amount required to repair or replace.
2. Coverage **A** – Dwelling:
   a. If the damage is repaired or replaced within a reasonable time, at the actual cost to repair or replace;
   b. If the damage is not repaired or replaced within a reasonable time, at actual cash value but not more than the amount required to repair or replace.

   In this provision, the terms "repaired" or "replaced" do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in **D.10.** Ordinance Or Law under Section I – Property Coverages.

D. Loss To A Pair Or Set

In case of loss to a pair or set we may elect to:

1. Repair or replace any part to restore the pair or set to its value before the loss; or
2. Pay the difference between actual cash value of the property before and after the loss.

E. Appraisal

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

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F. Other Insurance And Service Agreement

1. If a loss covered by this policy is also covered by:
   a. Other insurance, except insurance in the name of a corporation or association of property owners, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss; or
   b. A service agreement, except a service agreement in the name of a corporation or association of property owners, this insurance is excess over any amounts payable under any such agreement. Service agreement means a service plan, property restoration plan, home warranty or other similar service warranty agreement, even if it is characterized as insurance.
2. If, at the time of loss, there is other insurance or a service agreement in the name of a corporation or association of property owners covering the same property covered by this policy, this insurance will be excess over the amount recoverable under such other insurance or service agreement.

G. Suit Against Us

No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within two years after the date of loss.

H. Our Option

If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with material or property of like kind and quality.

I. Loss Payment

We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

1. Reach an agreement with you;
2. There is an entry of a final judgment; or
3. There is a filing of an appraisal award with us.

J. Abandonment Of Property

We need not accept any property abandoned by an "insured".

K. Mortgage Clause

1. If a mortgagee is named in this policy, any loss payable under Coverage **A** will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.
2. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:
   a. Notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
   b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
   c. Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Paragraphs **E.** Appraisal, **G.** Suit Against Us and **I.** Loss Payment under Section I – Conditions also apply to the mortgagee.
3. If we decide to cancel or not to renew this policy, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.
4. If we pay the mortgagee for any loss and deny payment to you:
   a. We are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
   b. At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.
5. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

L. No Benefit To Bailee

We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

M. Nuclear Hazard Clause

1. "Nuclear Hazard" means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
2. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against.

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3. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

N. Recovered Property

If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned to or retained by you, the loss payment will be adjusted based on the amount you received for the recovered property.

O. Volcanic Eruption Period

One or more volcanic eruptions that occur within a 72 hour period will be considered as one volcanic eruption.

P. Policy Period

This policy applies only to loss which occurs during the policy period.

Q. Concealment Or Fraud

We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:

1. Intentionally concealed or misrepresented any material fact or circumstance;
2. Engaged in fraudulent conduct; or
3. Made false statements;

relating to this insurance.

R. Loss Payable Clause

If the Declarations show a loss payee for certain listed insured personal property, the definition of "insured" is changed to include that loss payee with respect to that property.

If we decide to cancel or not renew this policy, that loss payee will be notified in writing.

SECTION II – LIABILITY COVERAGES

A. Coverage E – Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" has been exhausted by payment of a judgment or settlement.

B. Coverage F – Medical Payments To Others

We will pay the necessary medical expenses that are incurred or medically ascertained within three years from the date of an accident causing "bodily injury". Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to you or regular residents of your household except "residence employees". As to others, this coverage applies only:

1. To a person on the "insured location" with the permission of an "insured"; or
2. To a person off the "insured location", if the "bodily injury":
   a. Arises out of a condition on the "insured location" or the ways immediately adjoining;
   b. Is caused by the activities of an "insured";
   c. Is caused by a "residence employee" in the course of the "residence employee's" employment by an "insured"; or
   d. Is caused by an animal owned by or in the care of an "insured".

SECTION II – EXCLUSIONS

A. "Motor Vehicle Liability"

1. Coverages **E** and **F** do not apply to any "motor vehicle liability" if, at the time and place of an "occurrence", the involved "motor vehicle":
   a. Is registered for use on public roads or property;
   b. Is not registered for use on public roads or property, but such registration is required by a law, or regulation issued by a government agency, for it to be used at the place of the "occurrence"; or
   c. Is being:
      (1) Operated in, or practicing for, any prearranged or organized race, speed contest or other competition;
      (2) Rented to others;

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(3) Used to carry persons or cargo for a charge; or

(4) Used for any "business" purpose except for a motorized golf cart while on a golfing facility.

2. If Exclusion **A.1.** does not apply, there is still no coverage for "motor vehicle liability" unless the "motor vehicle" is:

a. In dead storage on an "insured location";

b. Used solely to service an "insured's" residence;

c. Designed to assist the handicapped and, at the time of an "occurrence", it is:

(1) Being used to assist a handicapped person; or

(2) Parked on an "insured location";

d. Designed for recreational use off public roads and:

(1) Not owned by an "insured"; or

(2) Owned by an "insured" provided the "occurrence" takes place on an "insured location" as defined in Definitions **B.6.a., b., d., e.** or **h.**; or

e. A motorized golf cart that is owned by an "insured", designed to carry up to 4 persons, not built or modified after manufacture to exceed a speed of 25 miles per hour on level ground and, at the time of an "occurrence", is within the legal boundaries of:

(1) A golfing facility and is parked or stored there, or being used by an "insured" to:

(a) Play the game of golf or for other recreational or leisure activity allowed by the facility;

(b) Travel to or from an area where "motor vehicles" or golf carts are parked or stored; or

(c) Cross public roads at designated points to access other parts of the golfing facility; or

(2) A private residential community, including its public roads upon which a motorized golf cart can legally travel, which is subject to the authority of a property owners association and contains an "insured's" residence.

B. "Watercraft Liability"

1. Coverages **E** and **F** do not apply to any "watercraft liability" if, at the time of an "occurrence", the involved watercraft is being:

a. Operated in, or practicing for, any prearranged or organized race, speed contest or other competition. This exclusion does not apply to a sailing vessel or a predicted log cruise;

b. Rented to others;

c. Used to carry persons or cargo for a charge; or

d. Used for any "business" purpose.

2. If Exclusion **B.1.** does not apply, there is still no coverage for "watercraft liability" unless, at the time of the "occurrence", the watercraft:

a. Is stored;

b. Is a sailing vessel, with or without auxiliary power, that is:

(1) Less than 26 feet in overall length; or

(2) 26 feet or more in overall length and not owned by or rented to an "insured"; or

c. Is not a sailing vessel and is powered by:

(1) An inboard or inboard-outdrive engine or motor, including those that power a water jet pump, of:

(a) 50 horsepower or less and not owned by an "insured"; or

(b) More than 50 horsepower and not owned by or rented to an "insured"; or

(2) One or more outboard engines or motors with:

(a) 25 total horsepower or less;

(b) More than 25 horsepower if the outboard engine or motor is not owned by an "insured";

(c) More than 25 horsepower if the outboard engine or motor is owned by an "insured" who acquired it during the policy period; or

(d) More than 25 horsepower if the outboard engine or motor is owned by an "insured" who acquired it before the policy period, but only if:

(i) You declare them at policy inception; or

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(ii) Your intent to insure them is reported to us in writing within 45 days after you acquire them.

The coverages in **(c)** and **(d)** above apply for the policy period.

Horsepower means the maximum power rating assigned to the engine or motor by the manufacturer.

C. "Aircraft Liability"

This policy does not cover "aircraft liability".

D. "Hovercraft Liability"

This policy does not cover "hovercraft liability".

E. Coverage E – Personal Liability And Coverage F – Medical Payments To Others

Coverages **E** and **F** do not apply to the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":

a. Is of a different kind, quality or degree than initially expected or intended; or

b. Is sustained by a different person, entity, real or personal property, than initially expected or intended.

However, this Exclusion **E.1.** does not apply to "bodily injury" resulting from the use of reasonable force by an "insured" to protect persons or property;

2. "Business"

a. "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

This Exclusion **E.2.** applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

b. This Exclusion **E.2.** does not apply to:

(1) The rental or holding for rental of an "insured location";

(a) On an occasional basis if used only as a residence;

(b) In part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or

(c) In part, as an office, school, studio or private garage; and

(2) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;

3. Professional Services

"Bodily injury" or "property damage" arising out of the rendering of or failure to render professional services;

4. "Insured's" Premises Not An "Insured Location"

"Bodily injury" or "property damage" arising out of a premises:

a. Owned by an "insured";

b. Rented to an "insured"; or

c. Rented to others by an "insured";

that is not an "insured location";

5. War

"Bodily injury" or "property damage" caused directly or indirectly by war, including the following and any consequence of any of the following:

a. Undeclared war, civil war, insurrection, rebellion or revolution;

b. Warlike act by a military force or military personnel; or

c. Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental;

6. Communicable Disease

"Bodily injury" or "property damage" which arises out of the transmission of a communicable disease by an "insured";

7. Sexual Molestation, Corporal Punishment Or Physical Or Mental Abuse

"Bodily injury" or "property damage" arising out of sexual molestation, corporal punishment or physical or mental abuse; or

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8. Controlled Substance

"Bodily injury" or "property damage" arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a Controlled Substance as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled Substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.

Exclusions **A.** "Motor Vehicle Liability", **B.** "Watercraft Liability", **C.** "Aircraft Liability", **D.** "Hovercraft Liability" and **E.4.** "Insured's" Premises Not An "Insured Location" do not apply to "bodily injury" to a "residence employee" arising out of and in the course of the "residence employee's" employment by an "insured".

F. Coverage E – Personal Liability

Coverage **E** does not apply to:

1. Liability:

a. For any loss assessment charged against you as a member of an association, corporation or community of property owners, except as provided in **D.** Loss Assessment under Section **II** – Additional Coverages;

b. Under any contract or agreement entered into by an "insured". However, this exclusion does not apply to written contracts:

(1) That directly relate to the ownership, maintenance or use of an "insured location"; or

(2) Where the liability of others is assumed by you prior to an "occurrence";

unless excluded in **a.** above or elsewhere in this policy;

2. "Property damage" to property owned by an "insured". This includes costs or expenses incurred by an "insured" or others to repair, replace, enhance, restore or maintain such property to prevent injury to a person or damage to property of others, whether on or away from an "insured location";

3. "Property damage" to property rented to, occupied or used by or in the care of an "insured". This exclusion does not apply to "property damage" caused by fire, smoke or explosion;

4. "Bodily injury" to any person eligible to receive any benefits voluntarily provided or required to be provided by an "insured" under any:

a. Workers' compensation law;

b. Non-occupational disability law; or

c. Occupational disease law;

5. "Bodily injury" or "property damage" for which an "insured" under this policy:

a. Is also an insured under a nuclear energy liability policy issued by the:

(1) Nuclear Energy Liability Insurance Association;

(2) Mutual Atomic Energy Liability Underwriters;

(3) Nuclear Insurance Association of Canada;

or any of their successors; or

b. Would be an insured under such a policy but for the exhaustion of its limit of liability; or

6. "Bodily injury" to you or an "insured" as defined under Definitions **5.a.** or **b.**

This exclusion also applies to any claim made or suit brought against you or an "insured":

a. To repay; or

b. Share damages with;

another person who may be obligated to pay damages because of "bodily injury" to an "insured".

G. Coverage F – Medical Payments To Others

Coverage **F** does not apply to "bodily injury":

1. To a "residence employee" if the "bodily injury":

a. Occurs off the "insured location"; and

b. Does not arise out of or in the course of the "residence employee's" employment by an "insured";

2. To any person eligible to receive benefits voluntarily provided or required to be provided under any:

a. Workers' compensation law;

b. Non-occupational disability law; or

c. Occupational disease law;

3. From any:

a. Nuclear reaction;

b. Nuclear radiation; or

c. Radioactive contamination;

all whether controlled or uncontrolled or however caused; or

d. Any consequence of any of these; or

4. To any person, other than a "residence employee" of an "insured", regularly residing on any part of the "insured location".

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SECTION II – ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

A. Claim Expenses

We pay:

1. Expenses we incur and costs taxed against an "insured" in any suit we defend;
2. Premiums on bonds required in a suit we defend, but not for bond amounts more than the Coverage **E** limit of liability. We need not apply for or furnish any bond;
3. Reasonable expenses incurred by an "insured" at our request, including actual loss of earnings (but not loss of other income) up to $250 per day, for assisting us in the investigation or defense of a claim or suit; and
4. Interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

B. First Aid Expenses

We will pay expenses for first aid to others incurred by an "insured" for "bodily injury" covered under this policy. We will not pay for first aid to an "insured".

C. Damage To Property Of Others

1. We will pay, at replacement cost, up to $1,000 per "occurrence" for "property damage" to property of others caused by an "insured".
2. We will not pay for "property damage":
   a. To the extent of any amount recoverable under Section **I**;
   b. Caused intentionally by an "insured" who is 13 years of age or older;
   c. To property owned by an "insured";
   d. To property owned by or rented to a tenant of an "insured" or a resident in your household; or
   e. Arising out of:
      (1) A "business" engaged in by an "insured";
      (2) Any act or omission in connection with a premises owned, rented or controlled by an "insured", other than the "insured location"; or
      (3) The ownership, maintenance, occupancy, operation, use, loading or unloading of aircraft, hovercraft, watercraft or "motor vehicles".

      This exclusion **e.(3)** does not apply to a "motor vehicle" that:
      (a) Is designed for recreational use off public roads;
      (b) Is not owned by an "insured"; and
      (c) At the time of the "occurrence", is not required by law, or regulation issued by a government agency, to have been registered for it to be used on public roads or property.

D. Loss Assessment

1. We will pay up to $1,000 for your share of loss assessment charged against you, as owner or tenant of the "residence premises", during the policy period by a corporation or association of property owners, when the assessment is made as a result of:
   a. "Bodily injury" or "property damage" not excluded from coverage under Section **II** – Exclusions; or
   b. Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided such person:
      (1) Is elected by the members of a corporation or association of property owners; and
      (2) Serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.
2. Paragraph **I.** Policy Period under Section **II** – Conditions does not apply to this Loss Assessment Coverage.
3. Regardless of the number of assessments, the limit of $1,000 is the most we will pay for loss arising out of:
   a. One accident, including continuous or repeated exposure to substantially the same general harmful condition; or
   b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.
4. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

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SECTION II – CONDITIONS

A. Limit Of Liability

Our total liability under Coverage **E** for all damages resulting from any one "occurrence" will not be more than the Coverage **E** limit of liability shown in the Declarations. This limit is the same regardless of the number of "insureds", claims made or persons injured. All "bodily injury" and "property damage" resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions shall be considered to be the result of one "occurrence".

Our total liability under Coverage **F** for all medical expense payable for "bodily injury" to one person as the result of one accident will not be more than the Coverage **F** limit of liability shown in the Declarations.

B. Severability Of Insurance

This insurance applies separately to each "insured". This condition will not increase our limit of liability for any one "occurrence".

C. Duties After "Occurrence"

In case of an "occurrence", you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:

1. Give written notice to us or our agent as soon as is practical, which sets forth:
   a. The identity of the policy and the "named insured" shown in the Declarations;
   b. Reasonably available information on the time, place and circumstances of the "occurrence"; and
   c. Names and addresses of any claimants and witnesses;
2. Cooperate with us in the investigation, settlement or defense of any claim or suit;
3. Promptly forward to us every notice, demand, summons or other process relating to the "occurrence";
4. At our request, help us:
   a. To make settlement;
   b. To enforce any right of contribution or indemnity against any person or organization who may be liable to an "insured";
   c. With the conduct of suits and attend hearings and trials; and
   d. To secure and give evidence and obtain the attendance of witnesses;
5. With respect to **C.** Damage To Property Of Others under Section **II** – Additional Coverages, submit to us within 60 days after the loss, a sworn statement of loss and show the damaged property, if in an "insured's" control;
6. No "insured" shall, except at such "insured's" own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the "bodily injury".

D. Duties Of An Injured Person – Coverage F – Medical Payments To Others

1. The injured person or someone acting for the injured person will:
   a. Give us written proof of claim, under oath if required, as soon as is practical; and
   b. Authorize us to obtain copies of medical reports and records.
2. The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require.

E. Payment Of Claim – Coverage F – Medical Payments To Others

Payment under this coverage is not an admission of liability by an "insured" or us.

F. Suit Against Us

1. No action can be brought against us unless there has been full compliance with all of the terms under this Section **II.**
2. No one will have the right to join us as a party to any action against an "insured".
3. Also, no action with respect to Coverage **E** can be brought against us until the obligation of such "insured" has been determined by final judgment or agreement signed by us.

G. Bankruptcy Of An "Insured"

Bankruptcy or insolvency of an "insured" will not relieve us of our obligations under this policy.

H. Other Insurance

This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

I. Policy Period

This policy applies only to "bodily injury" or "property damage" which occurs during the policy period.

J. Concealment Or Fraud

We do not provide coverage to an "insured" who, whether before or after a loss, has:

1. Intentionally concealed or misrepresented any material fact or circumstance;

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HOMEOWNERS 6 (HO 00 06)
AMENDATORY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEFINITIONS

B. 12. "Blanket Property Limit" means the total limit of liability for all covered property under Section I – Property Coverages, Coverage A – Dwelling, Coverage C – Personal Property and Coverage D – Loss of Use. The "Blanket Property Limit" as shown on the SLC-3 USA for the "residence premises" is the most we will pay for a covered loss for each unit. This "Blanket Property Limit" applies in the aggregate for all coverages under Section I – Property Coverages for each unit including all Section I – Additional Coverages.

Section I – Property Coverages

Coverage C – Personal Property

Special Limits of Liability

Item c There is no coverage for watercraft, trailers or equipment including engines under this policy.
Item d There is no coverage for trailers of any kind.

Property Not Covered.

Item 2 is amended to **not cover** vehicles or conveyances that are not subject to motor vehicle registration which are used to service an "insured's" Residence but does cover conveyances designed for assisting the handicapped.

Coverage D – Loss of Use

Item 2 is amended to read: If a loss covered under this Section makes that part of the "residence premises" rented to others under a "written contract" by you not fit to live in, we cover the:

Fair Rental Value, meaning the fair rental value of that part of the "residence premises" rented to others under a "rental contract" by you less any expenses that do not continue while the premises is not fit to live in. A "rental contract" for the "residence premises" must be:

a. Written and made with a bona fide third party tenant (tenant must intend to personally occupy insured premises); and
b. a specific term (not including any renewal term contained in any "rental contract" unless tenant has exercised intent to renew prior to loss.
OR
c. for units in condominium buildings rented on a rotational (hotel-type) basis, the loss paid will be proportional to the percentage of units in the building actually rented during the time period insured premises is NOT FIT TO LIVE IN. For Example: if insured premises is damaged by a peril insured against and is not fit to live in for one week, and the condominium building is 100% rented, insured's lost rent would be 100% of one week's net rent; if the condominium building is 70% rented, insured's lost rent would be 70% of one week's net rent.

We do not cover any loss or expense due to cancellation of a "rental contract". We do not cover **Fair Rental Value** when the part of the "residence premises" rented to others by you is rented to a person or entity acting as your rental manager or agent. Payment will be for the shortest time required to repair or replace that part of the premises rented or held for rental.

Additional Coverages

Item 6 **Credit Card, Fund Transfer Card, Forgery and Counterfeit Money,** sub-limit of $500 is hereby deleted. There is no coverage afforded under this policy.

Item 7 The following condition is added: We will also **not** pay for your share of any **loss assessment** that results from:
a. A deductible in the policy of insurance purchased by the corporation or association of property owners.
b. Loss to property not covered under the insurance purchased by the corporation or association of property owners.
c. Loss to property caused directly or indirectly by flood, earthquake, or wind-driven rain.
d. Any part of an unpaid claim due to insolvency or financial condition of the insurance company providing the policy of insurance purchased by the corporation or association of property owners.
e. Charges made by any government body.
f. Loss to property caused directly or indirectly by Year 2000 and beyond electronic data recognition losses.

g. Mold, bacteria, virus, mildew, fungus, spores, microorganisms and organic pathogens.
h. War, Civil War and/or acts of terrorism.

We will pay only that part of your share of loss assessment that exceeds the deductible shown in the Declarations Page.

All other provisions of this policy apply.

Section I – Perils Insured Against

Item 2 **Windstorm or Hail**, is amended to **not** include loss to watercraft and their trailers, furnishings, equipment, and outboard engines or motors, because these items are not covered by this policy.

Item 8 **Vandalism or Malicious Mischief**, the following is added: vandalism committed by the "insured", "residence employee", or tenant or guest of "insured" is not covered.

Item 17 **Flood**, is hereby **added**. Flood meaning a general and temporary condition of partial or complete inundation of normally dry land arising from:

a. the overflow of inland or tidal waters;
b. the unusual and rapid accumulation or runoff of surface waters from any source;
c. mudslides which are proximately caused by flooding as defined in b. above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path or the current.

The collapse or subsidence of land along the shore of a beach or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which results in flooding as defined in '17 a.' above. A loss from a flood confined to the property on which your "residence premises" is located is not covered unless the flood is displaced over two acres. Flood coverage is **not** provided for personal property or equipment stored outside the "residence premises". In other words, there is no coverage for items left in storage units under the condominium building where the unit is located.

All other provisions of this policy apply.

Section I - Exclusions

Item 10 **Windstorm or Hail and Flood** is added as an additional exclusion for certain property defined as:

a. a structure, other than a building, including the supports and screens, with a roof-like covering of cloth, metal, fiberglass or plastic, whether or not the structure is attached to the building;
b. screens, including their supports, around a pool, patio or other area;
c. fences, property line and similar walls including seawalls;
d. a greenhouse, awnings, hothouse, slat-house, trails, pergola, cabana or any outdoor equipment used to service the "residence premises";
e. a structure, including the property in or on the structure, which is located in whole or part, in or over water.

All other provisions of this policy apply.

Section I – Conditions

Item A.1. Amended as follows: To an "insured" for more than the amount of such "insured's" interest at the time of loss, or for the person on deed who can supply proof of financial interest for the specific unit insured.

Item S The **Coinsurance Clause** is hereby added. It is hereby a condition of this policy that you shall at all times maintain insurance equivalent to 100% of the replacement cost of the property insured hereby, and that failing to do so shall be his or her own insurer to the extent of any deficit and insured shall bear a proportion of any loss accordingly.

All other provisions of this policy apply.

Section II – Exclusions

Item E 1. is replaced with the following:

1. **Expected or Intended Injury**: which is intended by or which may reasonably be expected to result from the intentional acts or omissions or criminal acts or omissions of one or more "insureds". This exclusion applies even if:
   a. the "insured" lacks the mental capacity to govern their own conduct;
   b. the "bodily injury" or "property damage" is of a different kind, quality or degree than intended or reasonably expected;

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c. the "bodily injury" or "property damage" is sustained by a different person or entity than intended or reasonably expected.
This exclusion applies regardless of whether or not one or more "injured" persons are actually charged in, or convicted of a crime.

Exclusions E-6 and E-7. are deleted and replaced with the following:

6. **Communicable Disease**: which arises out of the transmission of a **"communicable disease"** by an "insured" including, but not limited to AIDS. "Communicable disease" means an infectious disease transmissible from person to person by direct contact with an affected person or that person's bodily fluids.

7 **Sexual Molestation, Corporal Punishment or Physical or Mental Abuse**: which arises out of or resulting from the actual or threatened **sexual molestation**, corporal punishment or physical abuse, including assault & battery, or mental abuse by an "insured" or any other person nor do we have any duty to defend any suit against you seeking damages.

The following Exclusions are added:

9. arising out of athletic or **exercise equipment.**
10. arising out of any claim of or indemnification for **punitive or exemplary damages.** Punitive or exemplary damages also include any damages awarded pursuant to statute in the form of double, treble or other multiple damages in excess of compensatory damages. If suit is brought against the "insured" for a claim falling within coverage provided under the policy seeking both compensatory and punitive or exemplary damages, then the insurer will afford a defense to such action; however, the insurer will have no obligation to pay for any costs, interest or damages attributable to punitive or exemplary damages.
11. Arising out of any **animal** owned by or in the entrustment of "insured." This exclusion applies both on and off the "residence premises."
12. Arising out of **assault & battery** committed by "insured," any employee of "insured," or any other person. The failure to suppress or prevent assault & battery is further excluded.
13. Arising out of or resulting from, attributable or contributed to, or aggravated by the **subsidence of land** as a result of landslide, mudflow, earth sinking or shifting, resulting from operations of the named insured or any subcontractor of the named insured.
14. Arising out of any "occurrence" at or from any premises, site or location which is or was at anytime owned or occupied by, or rented or loaned to "insured" which resulted in:
    i. bodily injury arising out of the ingestion, inhalation or absorption **of lead** in any form;
    ii. property damage arising from any form of lead;
    iii. any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of lead; or
    iv. any loss, cost or expenses arising out of any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead.
15. Arising directly or indirectly out of any actual or alleged failure, malfunction or inadequacy of;
    i. any of the following, whether belonging to any insured or to others"
        a. **computer hardware**, including microprocessors;
        b. computer application software;
        c. computer operating systems and related software;
        d. computer networks;
        e. microprocessors (computer chips) not part of any computer system; or
        f. any other computerized or electronic equipment or components or
    ii. any other products, and any services, data functions that directly or indirectly use or rely upon, in any manner, any of the items listed above due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.
    or arising out of any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you to determine, rectify or test for, any potential or actual problems described above.
16. Arising out of any **home day care** services to a person or persons other than "insured," whether there is a monetary exchange or not.
17. Arising out of any **employment related practices**, including but not limited to wrongful termination, sexual harassment, unfair discrimination, or other hiring or employment practices.

All other provisions of this policy apply.

Section II – Liability Coverages

Premises Liability Limitation

Item A **Coverage E – Personal Liability** It is hereby understood and agreed upon that coverages afforded by this policy are limited to occurrences at the residence premises only as shown on the declarations page for this policy.

All other provisions of this policy apply.

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Section I and II-Conditions

Item E is hereby amended as follows: **Assignment** of this policy will not be valid unless we give our written consent. However, we hereby recognize transfer of deed showing financial interest as being acceptable.

Mandatory Additional Exclusions

Swimming Pool Liability Exclusion

This insurance does not apply to any loss, cost, damage, expense, injury, "bodily injury", or "property damage" which occurs:

a. in, at, or around a swimming pool, including, but not limited to, a diving board or slide, or
b. on or upon a swimming pool patio or deck

War and Civil War Exclusion Clause NMA 464 (1/1/38)

Notwithstanding anything to the contrary contained herein this policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or unserped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Radioactive Contamination Exclusion Clause – Physical Damage – Direct NMA 1191 (7/5/59)

This policy does not cover any loss or damage arising directly or indirectly from nuclear reaction, nuclear radiation or Radioactive contamination however such nuclear reaction, nuclear radiation or radioactive contamination may have been caused NEVERTHELESS if Fire is an insured peril and a Fire arises directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination any loss or damage arising directly from that Fire shall (subject to the provisions of the policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination arising directly and indirectly from that fire.

*Note-If Fire is not an insured peril under this policy the words "NEVERTHELESS" to the end of the clause do not apply and should be disregarded.

Nuclear Incident Exclusion Clause NMA 1256 (17/3/60)

I. Under any Liability Coverage, to injury, sickness, disease, death or destruction
   (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
   (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United State of America, or any agency thereof, with any person or organization.

II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
   (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
   (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
   (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

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IV. As used in this endorsement:
"hazardous properties" include radioactive, toxic or explosive properties: **"nuclear material"** means source material, special nuclear material or byproduct material; **"source material," special nuclear material,"** and **"byproduct material"** have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; **"spent fuel"** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; **"waste"** means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; **"nuclear facility"** means;

(a) any nuclear reactor,
(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
(c) any equipment or devise used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.

Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operation; **"nuclear reactor"** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word **"injury"** or **"destruction"** includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

Seepage & Pollution Exclusion Clause NMA 2340 (24/11/88)

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this policy), this Policy does not insure land (including but not limited to land on which the insured property is located), water or air, howsoever and wherever occurring, or any interest or rights therein.

SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION

Notwithstanding any provision to the contrary within the Policy of which this endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure:

(a) any loss, damage, cost or expense, or
(b) any increase in insured loss, damage, cost or expense, or
(c) any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instruction or request of, or by any agreement with, any court, government agency or any public, civil or military authority, or threat thereof, (and whether or not as a result of public or private litigation).

Which arises from any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof.

The term "any kind of seepage or any kind of pollution and/or contamination as used in this Endorsement includes (but is not limited to):

(a) seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a "hazardous substance" by the United States Environmental Protection Agency or as a "hazardous material: by the United States Department Of Transportation, or defined as a "toxic substance" by the Canadian Environmental Protection Act for the purposes of Part II of the Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any Federal, State, Provincial, Municipal or other law, ordinance or regulation; and
(b) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

DEBRIS REMOVAL ENDORSEMENT

This Endorsement contains provisions which may limit or prevent recovery under this policy for loss where costs or expenses DEBRIS REMOVAL are incurred. Nothing contained in this Endorsement shall override any Seepage and/or Pollution and/or Contamination Exclusion or any Radioactive Contamination Exclusion or any other Exclusion applicable to this policy.

Any provision within this Policy (or within any other Endorsement which forms part of this Policy) which insures debris removal is cancelled and replaced by the following:

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1. In the event of direct physical damage to or destruction of property, for which Underwriters hereon agree to pay, or which but for the appliances of a deductible or underlying amount they would agree to pay (herein after referred to as "Damage or Destruction"), this Policy also insures, within the Sum Insured, subject to the limitations and method of calculation below, and to all the other terms and conditions of the Policy, costs or expenses;

   (a) which are reasonably and necessarily incurred by the Assured in the removal, from the premises of the Assured at which the Damage or Destruction occurred, of debris which results from the Damage or Destruction; and
   (b) of which the Assured becomes aware and advises the amount thereof to Underwriters hereon within one year of the commencement of such Damage or Destruction.

2. In calculating the amount, if any, payable under this Policy for loss where costs or expenses for removal of debris are incurred by the Assured (subject to the limitations in paragraph 1 above):

   (a) the maximum amount of such costs or expenses that can be included in the method of calculation set out in (b) below shall be greater of Use $25,000 or 10% of the amount of the Damage or Destruction from which such costs or expenses result; and
   (b) the amount of such costs or expenses as limited in (a) above shall be added to:
      (i) the amount of the Damage or Destruction; and
      (ii) all other amounts of loss, which arise as a result of the same occurrence, and for which Underwriters hereon also agree to pay, or which but for the application of a deductible or underlying amount they would agree to pay; and

      the resulting sum shall be the amount to which any deductible or underlying amount to which this Policy is subject and the limit (or applicable sub-limit) of this Policy, shall be applied.

Electronic Date Recognition Exclusion Clause – NMA 2802 (17/12/1997)

This Policy does not cover any loss, damage, cost, claim or expense, whether preventative or remedial or otherwise. Directly or indirectly arising out of or relating to:

a. the calculation, comparison, differentiation sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, programmes or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not; or
b. any change, alteration, or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, programmes or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not.

This clause applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

MICROORGANISM EXCLUSION (ABSOLUTE) – LMA 5018 (14/09/2005)

This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This Exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This Exclusion replaces and supersedes any provision in the Policy that provides insurance, in whole or in part, for these matters.

Form approved by Lloyd's Market Association

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ASBESTOS ENDORSEMENT

A. This Policy only insures asbestos physically incorporated in an insured building or structure, and then only that part of the asbestos which has been physically damaged during the period of insurance by one of these Listed Perils:

fire; explosion; lightning; windstorm; hail; direct impact of vehicle, aircraft or vessel; riot or civil commotion, vandalism or malicious mischief; or accidental discharge of fire protective equipment.

This coverage is subject to each of the following specific limitations:

1. The said building or structure must be insured under this Policy for damage by that Listed Peril.
2. The Listed Peril must be the immediate, sole cause of the damage of the asbestos.
3. The Assured must report to Underwriters the existence and cost of the damage as soon as practicable after the Listed Peril first damaged the asbestos. However, this Policy does not insure any such damage first reported to the Underwriters more than 12 (twelve) months after the expiration, or termination, of the period of insurance.
4. Insurance under this Policy in respect of asbestos shall not include any sum relating to:

   (i) any faults in the design, manufacture or installation of the asbestos;

   (ii) asbestos not physically damaged by the Listed Peril including any governmental or regulatory authority direction or request of whatsoever nature relating to undamaged asbestos.

B. Except as set forth in the foregoing Section A, this Policy does not insure asbestos or any sum relating thereto.

14/09/2005
LMA5019
Form approved by Lloyd's Market Association

Avian Influenza and Sars Exclusion-LSW 1589 (03/06)

This Insurance does not cover any claim directly or indirectly caused by, happening through, in consequence of or contributed to by:

(i) Avian Influenza or any mutant variation thereof.

(ii) Severe Acute Respiratory Syndrome (SARS) and/or Atypical Pneumonia or any mutant variation thereof

This insurance also excludes any claim:

(i) arising from any fear or threat (whether actual or perceived) of such Avian influenza, SARS and/or Atypical Pneumonia

(ii) directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of such Avian influenza, SARS and/or Atypical Pneumonia.

If the underwriters allege that by reason of this exclusion, any claim is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

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Cyber Exclusion – NMA 2915 (25/01/01)

(1) **Electronic Data Endorsement B – Electronic Data Exclusion**
Notwithstanding any provisions to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

a. This policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of suck equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system of whatsoever nature. COMPTUER VIRUS includes but is not limited to 'Trojan Horses,' 'worms' and 'time or logic bombs.'

b. However, in the event that covered peril results from any of the matters described in paragraph (a.) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such covered peril.

(2) **Electronic Data Processing Media Valuation**
Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:
Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the blank media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However, this policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

Lead Contamination Exclusion

Notwithstanding anything contained in this policy to the contrary, it is agreed that the coverage afforded by any section of this policy does not apply to bodily injury, property damage or medical payments arising out of or caused directly or indirectly by the actual or alleged:

(1) exposure to or existence of lead, paint containing lead, or any other material or substance containing lead; or
(2) repair, removal, encapsulation, abatement, replacement or handling of lead, paint containing lead or any other material or substance containing lead;

whether or not the lead is or was at any time airborne, contained in a product, ingested, inhaled, transmitted in any fashion or found in any for whatsoever.

This exclusion also applies to any loss, cost, expense, or damage, whether direct or consequential, arising out of any;

(1) request, demand or order that any insured or others test for, monitor, clean up, remove, abate, contain, treat, or neutralize lead, paint containing lead or any other material or substance containing lead in any way respond to, or assess the effects of lead, or
(2) claim or suit relating to testing for, monitoring, clean up, removing, abating, containing, treating or neutralizing lead, paint containing lead, or any other material or substance containing lead or in any way responding to, or assessing the effects of lead.

Communicable Disease Exclusion

This Policy does not apply to "bodily injury," "personal injury," or "medical payments" arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

Pets Exclusion (Animal and Reptile Exclusion)

Coverage as afforded by this policy does not apply to any claim/suit or damages arising out of, and/or connected with, and/or caused by, and/or alleged to have been caused in whole or in part by an Animal or Reptile owned by, leased to, or in the care, custody or control of the Named Insured.

Amlin Bio Nuclear Exclusion Clause NMA 2962

CHEMICAL, BIOLOGICAL, AND NUCLEAR EXPLOSION OR CONTAMINATION EXCLUSION CLAUSE

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, this Policy excludes absolutely any loss, damage, cost, claim, expense, sum or other obligation of any kind or description directly or indirectly caused by, contributed to, resulting from, or arising out of or in connection with any pathogenic or poisonous chemical or biological material, or nuclear explosion, pollution or contamination, regardless of any other cause or event that contributes concurrently or in any sequence thereto.

This Policy also excludes absolutely any loss, damage, cost, claim, expense, sum, other obligation of any kind or description directly or indirectly caused by, contributed to, resulting from, or arising out of or in connection with any action taken to control, prevent, suppress, remove, dispose, abate, clean-up, decontaminate, retaliate or respond to any pathogenic or poisonous chemical or biological material, or nuclear explosion, pollution or contamination.

Terrorism Exclusion Clause – NMA2920 (08/10/2001)

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

10 Day Cancellation Clause – NMA 1331 (20/4/61)

NOTWITHSTANDING anything contained in this Insurance to the contrary this Insurance may be cancelled by the Assured at any time by written notice or by surrendering of this Contract of Insurance. This Insurance may also be cancelled by or on behalf of the Underwriters by delivering to the Assured, by registered, certified or other first class mail, at the Assured's address as shown in this Insurance, written notice stating when, not less than 10 days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Assured the Underwriters shall retain the customary short rate proportion of the premium hereon, except that if this insurance is on an adjustable basis the Underwriters shall receive the Earned Premium hereon or the customary short rate proportion of any Minimum Premium stipulated herein whichever is the greater.

If this insurance shall be cancelled by or on behalf of the Underwriters the Underwriters shall retain the pro rata proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the Earned Premium hereon or the pro rata proportion of any Minimum Premium stipulated herein whichever is the greater.

Payment or tender of any Unearned Premium by the Underwriters shall not be a condition precedent to the effectiveness of Cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

SERVICE OF SUIT CLAUSE (U.S.A.) 14/09/2005 LMA5020

This Service of Suit Clause will not be read to conflict with or override the obligations of the parties to arbitrate their disputes as provided for in any Arbitration provision within this Policy. This Clause is intended as an aid to compelling arbitration or enforcing such arbitration or

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arbitral award, not as an alternative to such Arbitration provision for resolving disputes arising out of this contract of insurance (or reinsurance).

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon Mendes & Mount, 750 Seventh Avenue, New York, New York 10019-6829, U.S.A., and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

Te above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

APPLICABLE LAW (U.S.A.) 14/09/2005 LMA5021

This Insurance shall be subject to the applicable state law to be determined by the court of competent jurisdiction as determined by the provisions of the Service of Suit Clause (U.S.A.)

LSW 1001 Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

Lloyd's Privacy Policy Statement – LSW1135B

UNDERWRITERS AT LLOYD'S, LONDON

We, the Certain Underwriters at Lloyds, London that have underwritten this insurance want you to understand how we protect the confidentiality of non-public personal information we collect about you.

INFORMATION WE COLLECT

We collect non-public personal information about you from the following sources:

a) Information we received from you on applications or other forms;
b) Information about your transactions with our affiliates, other third-parties or us; and
c) Information we receive from a consumer-reporting agency.

Information We Disclose

We do not disclose any non-public personal information about you to anyone except as it necessary in order to provide our products or services to you or otherwise as we require or permitted by law (e.g.: a subpoena, fraud investigation, regulatory reporting, etc.).

Confidentiality And Security

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We restrict access to non-public personal information about you to our employees, our affiliates' employees or others who need to know that information to service your account. We maintain physical, electronic, and procedural safeguards to protect your non-public personal information.

Contacting Us

If you have any questions about this privacy statement or would like to learn more about how we protect your privacy, please contact the agent/broker who handled this insurance.

You may write to us with your concerns about this notice: Burns & Wilcox., Attn: Stephanie Sparks, 800 Arendell Street, Suite 200, Morehead City, NC, 28557.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL PROPERTY REPLACEMENT COST LOSS SETTLEMENT

A. Eligible Property

1. Covered losses to the following property are settled at replacement cost at the time of the loss:
   a. Coverage **C**; and
   b. If covered in this policy:
      (1) Awnings, outdoor antennas and outdoor equipment; and
      (2) Carpeting and household appliances;

   whether or not attached to buildings.
2. This method of loss settlement will also apply to the following articles or classes of property if they are separately described and specifically insured in this policy and not subject to agreed value loss settlement:
   a. Jewelry;
   b. Furs and garments:
      (1) Trimmed with fur; or
      (2) Consisting principally of fur;
   c. Cameras, projection machines, films and related articles of equipment;
   d. Musical equipment and related articles of equipment;
   e. Silverware, silver-plated ware, goldware, gold-plated ware and pewterware, but excluding:
      (1) Pens or pencils;
      (2) Flasks;
      (2) Smoking implements; or
      (3) Jewelry; and
   f. Golfer's equipment meaning golf clubs, golf clothing and golf equipment.

Personal Property Replacement Cost loss settlement will not apply to other classes of property separately described and specifically insured.

B. Ineligible Property

Property listed below is not eligible for replacement cost loss settlement. Any loss will be settled at actual cash value at the time of loss but not more than the amount required to repair or replace.

1. Antiques, fine arts, paintings and similar articles of rarity or antiquity which cannot be replaced.
2. Memorabilia, souvenirs, collectors items and similar articles whose age or history contribute to their value.
3. Articles not maintained in good or workable condition.
4. Articles that are outdated or obsolete and are stored or not being used.

C. Replacement Cost Loss Settlement Condition

The following loss settlement condition applies to all property described in **A.** above:

1. We will pay no more than the least of the following amounts:
   a. Replacement cost at the time of loss without deduction for depreciation;
   b. The full cost of repair at the time of loss;
   c. The limit of liability that applies to Coverage **C**, if applicable;
   d. Any applicable special limits of liability stated in this policy; or
   e. For loss to any item described in **A.2.a. - f.** above, the limit of liability that applies to the item.
2. If the cost to repair or replace the property described in **A.** above is more than $500, we will pay no more than the actual cash value for the loss until the actual repair or replacement is complete.
3. You may make a claim for loss on an actual cash value basis and then make claim for any additional liability in accordance with this endorsement provided you notify us of your intent to do so within 180 days after the date of loss.

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNIT-OWNERS COVERAGE A SPECIAL COVERAGE

FORM HO 00 06 ONLY

SECTION I – PERILS INSURED AGAINST

For Coverage **A**, the Perils Insured Against are deleted and replaced by the following:

PERILS INSURED AGAINST

1. We insure against risk of direct physical loss to property described in Coverage **A.**
2. We do not insure, however, for loss:
   - **a.** Excluded under Section I – Exclusions;
   - **b.** Involving collapse, except as provided in **D.8.** Collapse under Section I – Property Coverages.
   - **c.** Caused by:
     - **(1)** Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This provision does not apply if you have used reasonable care to:
       - **(a)** Maintain heat in the building; or
       - **(b)** Shut off the water supply and drain all systems and appliances of water.

       However, if the building is protected by an automatic fire protective sprinkler system, you must use reasonable care to continue the water supply and maintain heat in the building for coverage to apply.

       For purposes of this provision a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment;
     - **(2)** Freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a:
       - **(a)** Fence, pavement, patio or swimming pool;
       - **(b)** Footing, foundation, bulkhead, wall, or any other structure or device, that supports all or part of a building or other structure;
       - **(c)** Retaining wall or bulkhead that does not support all or part of a building or other structure; or
       - **(d)** Pier, wharf or dock;
     - **(3)** Theft in or to a unit under construction, or of materials and supplies for use in the construction until the unit is finished and occupied;
     - **(4)** Vandalism and malicious mischief, and any ensuing loss caused by any intentional and wrongful act committed in the course of the vandalism or malicious mischief, if the building containing the "residence premises" has been vacant for more than 60 consecutive days immediately before the loss. A building being constructed is not considered vacant;
     - **(5)** Mold, fungus or wet rot. However, we do insure for loss caused by mold, fungus or wet rot that is hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure if such loss results from the accidental discharge or overflow of water or steam from within:
       - **(a)** A plumbing, heating, air conditioning or automatic fire protective sprinkler system, or a household appliance, on the "residence premises"; or
       - **(b)** A storm drain, or water, steam or sewer pipes, off the "residence premises".

       For the purpose of this provision, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment; or
     - **(6)** Any of the following:
       - **(a)** Wear and tear, marring, deterioration;
       - **(b)** Mechanical breakdown, latent defect, inherent vice, or any quality in property that causes it to damage or destroy itself;

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(c) Smog, rust or other corrosion or dry rot;

(d) Smoke from agricultural smudging or industrial operations;

(e) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril Insured Against named under Coverage **C** of this policy.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;

(f) Settling, shrinking, bulging or expansion, including resultant cracking, of bulkheads, pavements, patios, footings, foundations, walls, floors, roofs or ceilings;

(g) Birds, vermin, rodents, or insects; or

(h) Animals owned or kept by an "insured".

Exception To c.(6)

Unless the loss is otherwise excluded, we cover loss to property covered under Coverage **A** resulting from an accidental discharge or overflow of water or steam from within a:

(i) Storm drain, or water, steam or sewer pipe, off the "residence premises"; or

(ii) Plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance on the "residence premises". This includes the cost to tear out and replace any part of a building, or other structure owned solely by you, at the location of the "residence premises", but only when necessary to repair the system or appliance. However, such tear out and replacement coverage only applies to other structures if the water or steam causes actual damage to a building owned solely by you at the location of the "residence premises".

We do not cover loss to the system or appliance from which this water or steam escaped.

For the purposes of this provision, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, down spout or similar fixtures or equipment.

Section **I** – Exclusion **3.** Water Damage, Paragraphs **a.** and **c.** that apply to surface water and water below the surface of the ground, do not apply to loss by water covered under **c.(5)** and **(6)** above.

Under **2.b.** and **c.** above, any ensuing loss to property described in Coverage **A** not precluded by any other provision in this policy is covered.

SECTION I – EXCLUSIONS

The following exclusions are added:

We do not insure for loss to property described in Coverage **A** caused by any of the following. However, any ensuing loss to property described in Coverage **A** not precluded by any other provision in this policy is covered.

1. Weather conditions. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Section **I** – Exclusions, other than Exclusions **2.** and **3.** below, to produce the loss;

2. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body; or

3. Faulty, inadequate or defective:

a. Planning, zoning, development, surveying, siting;

b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

c. Materials used in repair, construction, renovation or remodeling; or

d. Maintenance;

of part or all of any property whether on or off the "residence premises".

All other provisions of this policy apply.

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POLICY NUMBER:

HOMEOWNERS
HO 04 54 06 94

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARTHQUAKE

1. For an additional premium, we insure for direct physical loss to property covered under Section I caused by earthquake including land shock waves or tremors before, during or after a volcanic eruption.

   One or more earthquake shocks that occur within a seventy-two hour period constitute a single earthquake.

2. **Special Deductible**

   The following deductible provision replaces any other deductible provision in this policy with respect to loss covered under this endorsement:

   We will pay only that part of the total of the loss for all Section I Property Coverages, except Coverage D – Loss of Use and the Additional Coverages, that exceeds the earthquake deductible stated in this endorsement.

   In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to ____%* of the limit of liability that applies to either Coverage A – Dwelling or Coverage C – Personal Property, whichever is greater, in the policy to which this endorsement is attached.

   The total deductible amount will not be less than $250.

3. **Special Exclusions**

   We do not cover loss resulting directly or indirectly from flood of any nature or tidal wave, whether caused by, resulting from, contributed to or aggravated by earthquake.

   The following exclusion applies ☐*
   does not apply ☐

   We do not cover loss to exterior masonry veneer. The value of exterior masonry veneer will be deducted before applying the deductible clause. For the purpose of this exclusion, stucco is not considered masonry veneer.

This coverage does not increase the limits of liability stated in this policy and does not include the cost of filling land.

The Section I – Earth Movement exclusion does not apply to loss caused by earthquake including land shock waves or tremors before, during or after a volcanic eruption.

If this policy includes either Special Personal Property Endorsement **HO 00 15** or Unit-Owners Coverage C Special Coverage Endorsement **HO 17 31,** then this endorsement does not apply to Coverage C. Earthquake Coverage for Coverage C is provided in **HO 00 15** and **HO 17 31.**

* Entries may be left blank if shown elsewhere in this policy for this coverage.

All other provisions of this policy apply.

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HOMEOWNERS 6
WIND-DRIVEN RAIN ENDORSEMENT FOR COVERAGE C

SECTION 1 – PERILS INSURED AGAINST

2. Windstorm or Hail is amended to read:

This peril **does** include loss to the property contained inside of the "residence premises" caused by rain, snow, sleet, sand or dust.

This peril does **not** include loss to watercraft and their trailers, furnishings, equipment, and outboard engines or motors.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNIT-OWNERS RENTAL TO OTHERS

FORM HO 00 06 ONLY

Coverage provided by this policy is extended to apply while the "residence premises" is regularly rented or held for rental to others.

SECTION I – PROPERTY COVERAGES

B. Coverage C – Personal Property

4. Property Not Covered

Paragraph **g.** is deleted and replaced by the following:

g. Property in an apartment, other than the "residence premises", regularly rented or held for rental to others by an "insured";

SECTION I – PERILS INSURED AGAINST

Under Peril **9.** Theft, Paragraph **b.(3)** is deleted.

SECTION I – EXCLUSIONS

The following exclusion is added:

Theft, from the "residence premises" of:

a. Money, bank notes, bullion, gold, goldware, gold-plated ware, silver, silverware, silver-plated ware, pewterware, platinum, platinumware, platinum-plated ware, coins, medals, scrip, stored value cards and smart cards;

b. Securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps regardless of the medium (such as paper or computer software) on which the material exists; or

c. Jewelry, watches, furs, precious and semiprecious stones.

SECTION II – EXCLUSIONS

Exclusion **E.2.** "Business" is deleted and replaced by the following:

2. "Business"

a. "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

b. This Exclusion **E.2.** applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

This Exclusion **E.2.** does not apply to the rental or holding for rental of the "residence premises".

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY PLEASE READ IT CAREFULLY.

STORM SHUTTER OR WINDSTORM PROTECTIVE DEVICES EXCLUSION

Coverage to any building or structure under this policy excludes loss caused by windstorm or hail to storm shutters or windstorm protective devices attached to the exterior of the building or structure.

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SANCTION LIMITATION AND EXCLUSION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

15/09/10
LMA3100

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMIT OF INSURANCE – ADDITIONAL LIVING EXPENSES SUBLIMIT

This endorsement modifies insurance provided under the following:

HOMEOWNERS 6 – UNIT-OWNERS FORM (HO 00 06 10 00)

This endorsement changes the policy effective on the inception date of the policy.

The following is added to **C. Coverage D – Loss of Use 1. Additional Living Expenses**

The maximum amount we will pay for Additional Living Expenses, due to a loss at a residence that is not the Insured's Primary Residence, in any one occurrence is $5,000.

All other terms and conditions remain unchanged.

2. Engaged in fraudulent conduct; or
3. Made false statements;

relating to this insurance.

SECTIONS I AND II – CONDITIONS

A. Liberalization Clause

If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

1. A subsequent edition of this policy; or
2. An amendatory endorsement.

B. Waiver Or Change Of Policy Provisions

A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

C. Cancellation

1. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
2. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. Proof of mailing will be sufficient proof of notice.
   a. When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.
   b. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.
   c. When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:
      (1) If there has been a material misrepresentation of fact which if known to us would have caused us not to issue the policy; or
      (2) If the risk has changed substantially since the policy was issued.

      This can be done by letting you know at least 30 days before the date cancellation takes effect.
   d. When this policy is written for a period of more than one year, we may cancel for any reason at anniversary by letting you know at least 30 days before the date cancellation takes effect.
3. When this policy is canceled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.
4. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

D. Nonrenewal

We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.

E. Assignment

Assignment of this policy will not be valid unless we give our written consent.

F. Subrogation

An "insured" may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an "insured" must sign and deliver all related papers and cooperate with us.

Subrogation does not apply to Coverage **F** or Paragraph **C.** Damage To Property Of Others under Section **II** – Additional Coverages.

G. Death

If any person named in the Declarations or the spouse, if a resident of the same household, dies, the following apply:

1. We insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the policy at the time of death; and
2. "Insured" includes:
   a. An "insured" who is a member of your household at the time of your death, but only while a resident of the "residence premises"; and
   b. With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

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CERTIFICATE PROVISIONS

1. **Signature Required.** This certificate shall not be valid unless signed by the Correspondent on the attached Declaration Page.

2. **Correspondent Not Insurer.** The Correspondent is not an Insurer hereunder and neither is nor shall be liable for any loss or claim whatsoever. The Insurers hereunder are those companies (hereinafter called the "Underwriters") whose names are shown on the Declarations Page.

3. **Cancellation.** If this certificate provides for cancellation and this certificate is cancelled after the inception date, earned premium must be paid for the time the insurance has been in force.

4. **LSW 1001 (Insurance) Several Liability Notice.** The subscribing Insurer's obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

5. **Assignment.** This certificate shall not be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.

6. **Attached Conditions Incorporated.** This certificate is made and accepted subject to all the provisions, conditions and warranties set forth herein, attached, or endorsed, all of which are to be considered as incorporated herein.

7. **Short Rate Cancellation.** If the attached provisions provide for cancellation, the table below will be used to calculate the short rate proportion of the premium when applicable under the terms of cancellation.

Short Rate Cancellation Table for Term of One Year

Days Insurance in Force	Per Cent of One Year Premium
1	5%
2	6
3 - 4	7
5 - 6	8
7 - 8	9
9 - 10	10
11 - 12	11
13 -14	12
15 - 16	13
17 - 18	14
19 - 20	15
21 - 22	16
23 - 25	17
26 - 29	18
30 - 32 (1 mo.)	19
33 - 36	20
37 - 40	21
41 - 43	22
44 - 47	23
48 - 51	24
52 - 54	25
55 - 58	26
59 - 62 (2 mos.)	27
63 - 65	28
66 - 69	29%
70 - 73	30
74 - 76	31
77 - 80	32
81 - 83	33
84 - 87	34
88 - 91 (3 mos.)	35
92 - 94	36
95 - 98	37
99 - 102	38
103 - 105	39
106 - 109	40
110 - 113	41
114 - 116	42
117 - 120	43
121 - 124 (4 mos.)	44
125 - 127	45
128 - 131	46
132 - 135	47
136 - 138	48
139 - 142	49
143 - 146	50
147 - 149	51
150 - 153 (5 mos.)	52
154 - 156	53%
157 - 160	54
161 - 164	55
165 - 167	56
168 - 171	57
172 - 175	58
176 - 178	59
179 - 182 (6 mos.)	60
183 - 187	61
188 - 191	62
192 - 196	63
197 - 200	64
201 - 205	65
206 - 209	66
210 - 214 (7 mos.)	67
215 - 218	68
219 - 223	69
224 - 228	70
229 - 232	71
233 - 237	72
238 - 241	73
242 - 246 (8 mos.)	74
247 - 250	75
251 - 255	76
256 - 260	77%
261 - 264	78
265 - 269	79
270 - 273 (9 mos.)	80
274 - 278	81
279 - 282	82
283 - 287	83
288 - 291	84
292 - 296	85
297 - 301	86
302 - 305 (10 mos.)	87
306 - 310	88
311 - 314	89
315 - 319	90
320 - 323	91
324 - 328	92
329 - 332	93
333 - 337 (11 mos.)	94
338 - 342	95
343 - 346	96
347 - 351	97
352 - 355	98
356 - 360	99
361 - 365 (12 mos.)	100

Rules applicable to insurance with terms less than or more than one year:

A. If insurance has been in force for one year or less, apply the short rate table for annual insurance to the full annual premium determined as for an insurance written for a term of one year.

B. If insurance has been in force for more than one year:
   1. Determine full annual premium as for insurance written for a term of one year.
   2. Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the policy was originally written.
   3. Add premium produced in accordance with items (1) and (2) to obtain Earned Premium during full period insurance has been in force.

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LLOYD'S

Lloyds, London Correspondent

March 1, 2016

Dear Unit-Owner,

Re: Your Condominium Unit-Owners Policy for **Caravelle Resort**

Attached is your **HOMEOWNERS 6 – UNIT-OWNERS** insurance renewal policy.

The value of your investment may be greater than the "blanket" policy limit negotiated by the Board of Directors on your behalf. Because of this, we want to allow you the opportunity to increase your policy limit.

Also, **your insurance policy requires you to insure 100%** of your combined dwelling responsibility, personal property and annual fair rental value or you become a **CO-INSURER.**

In the event of a hurricane or any other loss, we will be working with you by phone and email. If you need to increase your policy limit or change your contact information, please contact your local insurance agent now. We are unable to increase your limits during a hurricane or after a loss.

BB&T Puckett, Scheetz & Hogan

855-241-9704

The business of insuring your unit is important to us!!! That's why we've partnered with the best insurer for your coastal property for over 23 years: **Lloyd's of London!**

For over 300 years, Lloyd's of London has provided catastrophe coverage. They are built to last and have paid claims through Hurricanes Hugo, Andrew, and Katrina, as well as historical events like 9/11 and BP Oil Spill. As security for all U.S. policyholders, Lloyd's of London maintains a U.S. Trust Fund which totals more than $13 Billion!

843.213.2637

Burns & Wilcox . Lloyd's of London U.S. Representative . 800 Arendell St., Suite 200 , Morehead City, NC 28557

dwelling 5,000.00 169.00
content 10,000.00

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My Policy Limit Calculator

Dwelling Limit		Contents Limit		Annual Rental Income		Your Combined Total		HPR Purchased		I Need More (Below)
	(+)		(+)		(=)		(-)	25,000	(=)	

My Additional Premium Calculator

Limit	Premium	Limit	Premium	Limit	Premium	Limit	Premium
1,000	11.24	11,000	123.60	21,000	235.96	31,000	348.32
2,000	22.47	12,000	134.83	22,000	247.19	32,000	359.55
3,000	33.71	13,000	146.07	23,000	258.43	33,000	370.79
4,000	44.94	14,000	157.30	24,000	269.66	34,000	382.02
5,000	56.18	15,000	168.54	25,000	280.90	35,000	393.26
6,000	67.42	16,000	179.78	26,000	292.14	36,000	404.50
7,000	78.65	17,000	191.01	27,000	303.37	37,000	415.73
8,000	89.89	18,000	202.25	28,000	314.61	38,000	426.97
9,000	101.12	19,000	213.48	29,000	325.84	39,000	438.20
10,000	112.36	20,000	224.72	30,000	337.08	40,000	449.44

Considerations

DWELLING LIMIT. The replacement value of the real property you are responsible for insuring:

1. The **HPR Deductible(s)**. Your HPR has a $5,000 AOP Deductible. Your HPR windstorm deductible is 3% but no more than $75,000. A wind loss to just your unit means $75,000 loss.

2. Your additional responsibility as described in the **legal documents** of your HPR and/or statute.

PERSONAL PROPERTY LIMIT. The replacement value of your "personal property" includes all items not fixed or permanently installed like TV's or furniture. Over the years, some of these items have gone up in price, some down. Either way, these items add up very quickly.

LOSS OF USE (OR RENTS). The loss of "fair rental value" is very important, particularly in today's economy. If you are unable to rent your condominium unit, chances are you are still dependent on the rental income. So, you should base your "fair rental value" limit on a "worse case scenario" or 100% of your annual rental income. Unfortunately, this is where most owners underestimate their policy limits. Remember, you may still have to pay your mortgage even though you are unable to rent your unit.

Co-Insurance

YOUR POLICY TERMS: It is hereby a condition of this policy that you shall at all times maintain insurance equivalent to 100% of the replacement cost of the property insured hereby, and that failing to do so shall be his or her own insurer to the extent of any deficit and insured shall bear a proportion of any loss accordingly.

In other words, if you don't purchase 100% of "replacement value" of your combined dwelling, personal property and fair rental value, you:

1. Do not get indemnified 100% (returned to whole) for your covered loss; and
2. You become a CO-INSURER. Which means that to the extent of any difference, you will pay a proportionate share of the loss (plus your insurance policy deductible).

The purpose of this requirement is to ensure that you have enough protection in place to make you whole again after a catastrophe or other loss.

Co-Insurance Example

Your HPR commercial property insurance has a $5,000 deductible for water damage. In addition, you are responsible for insuring another $5,000 worth of improvements ($10,000 total for dwelling). You feel that $20,000 is enough insurance for your personal property and know your rental income was $25,000 in 2010. This means that your total 100% REPLACEMENT value is $55,000.

Example #1 (Not Enough Insurance)

$25,000	Limit Purchased
$55,000	Replacement Value
X	
$20,000	Insurable Loss
=======	
$ 9,000	**Insurance Payment** (Inadequate Coverage)

$25,000/$55,000 X $20,000 = $9,000 **(45%)**

Example #2 (Adequate Insurance)

$55,000	Limit Purchased
$55,000	Replacement Value
X	
$20,000	Insurable Loss
=======	
$20,000	**Insurance Payment** (Adequate Coverage)

$55,000/$55,000 X $20,000=$20,000 **(100%)**

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Burns & Wilcox Ltd.

A KAUFMAN GROUP COMPANY

HO6 Policy # _____ SC

Supplemental Excess Comprehensive Liability Application

ALL QUESTIONS MUST BE ANSWERED AND APPLICATION MUST BE SIGNED BY APPLICANT

Due to many requests to increase the unit-owners liability limit to $1,000,000 total, we are pleased to offer $500,000 excess liability (in addition to $500,000 provided by the HO6). To activate this additional coverage, you must return this application along with a check for $371 (In addition to Condominium Unit-Owners Policy Premium).

****Individual Named Insureds Only. Corporations, Partnerships, Trusts, LLC's are not eligible.**

1. Name of Applicant(s): _____
2. Profession/Occupation: Applicant: _____ Spouse: _____
3. Is any applicant or resident of the applicant's household a High Profile individual such as: Professional Athlete; Professional Race Car drivers; Entertainer; Media personality; Reporter; Author; Journalist; Coach in the NBA, NFL, MLB, NHL, or in College Division I Football or Basketball; Owner of a Professional sports team; CEO of a publicly traded company, or Director or Producer with major television or motion picture credits? Is any individual an elected or appointed public official at the State or Federal level, or a generally recognizable public figure? ☐ Yes ☐ No
4. Has the applicant or any resident of the applicant's household been convicted of a felony? ☐ Yes ☐ No
5. Mailing Address IF DIFFERENT from condominium unit owners policy (HO6):

   _____
6. Primary limit of liability insurance: $500,000 Excess limits requested: $500,000 excess of $500,000
7. Prior personal liability losses greater than $50,000 in the last 5 years? ☐ Yes ☐ No
8. If yes, for #7 above, list all liability losses attributable to Applicant(s) or any household residents in the past five (5) years.

Date of Loss	Amount Paid, Claimed or Reserved	Description of Event

Please answer all questions. Any questions left unanswered will void coverage:

	Submit to Company	Eligible
9. Is there a business exposure, including Day Care at location?	☐ Yes	☐ No
10. Are there any pets owned by insured or household member at location?	☐ Yes	☐ No
If, Yes, Type of Dog: _____ Bite History:	☐ Yes	☐ No
11. Is there currently, or, during the next 12 months, will there be any construction or renovations at location? If so, explain: _____	☐ Yes	☐ No

Location to be insured: Unit # _____ Name of Condo _____

Applicant Statement: The information given on this application is true and complete to the best of my knowledge. I understand that any omission or misstatement of fact in the information given, which if known would have caused declination of application, is grounds for voiding the policy.

1) I hereby apply for the Excess Liability Policy. I agree that completion of this application does not bind the Company.
2) I certify that this application is accurate and complete and shall from the basis of the contract should coverage be issued.

_____ _____

Signature of Applicant of Condominium Unit-Owner Date

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EXHIBIT 4

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THE CARAVELLE
RESORT OWNERS ASSOCIATION, INC

C/O Gold Crown Management, Inc. – 1805 Oak St., Myrtle Beach, SC 29577 – (843) 445-6007

April 20, 2017

Dear Caravelle Homeowner,

In late January of 2017 the HO6 carrier began issuing checks to the Caravelle membership that included allotments for loss of use as well as contents manipulation and soft goods. The checks sent by the HO6 carrier were sent prematurely without notification to the Association and Management Company. As the insurance trustee, the Association had a soft good replacement package constructed for each unit by a third party interior design firm. This soft goods package includes mattresses, drapery panels, wooden headboards, murphy beds (for applicable units), sofas (for applicable units), arm chairs (for applicable units), decorative bed pillows and assorted artwork. The Association requested the soft goods be replaced in a bulk order to reduce costs and ensure delivery of the soft goods to the units, cutting down on any possible delays. Without any prior notification to the Association or Management, the HO6 carrier sent checks to all homeowners that included the funds for the soft goods package as well as funds that are owed directly to Delta Response and Restoration for the manipulation of contents.

Soft Goods

The Board of Directors, along with the Association's legal counsel, has been evaluating the unfavorable position the HO6 carrier has put the membership in and has worked diligently to present the membership with an option to still ensure the delivery of the soft goods package to each unit.

Enclosed you will find a form titled "Permission/Request and Wavier Form". The purpose of this document is to allow you, the homeowner, to authorize/request the Association to purchase and deliver/install the soft goods package on your behalf. In return, you are agreeing that in exchange for this service you agree to pay the Association one hundred percent (100%) of the value of the soft goods package. This includes the seventy-five percent (75%) that has already been allotted (to be paid immediately) and the additional twenty-five (25%) that will be processed as a separate payment from Lloyd's of London/ Worley. **The first payment of the**

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seventy-five percent (75%) must be paid no later than April 30, 2017. The amount due for soft goods is outlined in the letter that was sent to you by the HO6 carrier. If you have any questions in regards to this amount please contact Hannah Damore at Gold Crown Management at 843-445-6007.

By failing to provide the Association with a Permission/ Request and Waiver Form you, the homeowner, are assuming all responsibility for the purchase and delivery/installation of soft goods for your unit. The Association will make no orders on your behalf. Please note that by failing to provide the Association with a Permission/ Request and Waiver Form you are also acknowledging that no soft goods deliveries are permitted until the property receives its final Certificate of Occupancy and the property reopens, no deliveries will be permitted before that time.

Contents Manipulation

All homeowners are responsible for returning the $2,000 that was allotted for contents manipulation to the Association. These funds are owed directly to Delta Response and Restoration for the manipulation of contents and is not negotiable. Homeowners that are not on the rental program have had their $1,000 deductible taken from this allotment until loss of use could be calculated, but are still responsible for paying the $2,000 to the Association.

All checks should be made out to Caravelle Resort Owners Association and should be mailed to the following address:

Caravelle Resort Owners Association
c/o Gold Crown Management
Attn: Hannah Damore
1805 Oak Street
Myrtle Beach, SC 29577

If you have any questions, please contact Hannah Damore with Gold Crown Management by phone at 843-445-6007 or by email at Hannah.damore@gold-crown.com.

Sincerely,

Board of Directors
Caravelle Resort Owners Association

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PERMISSION/REQUEST AND WAIVER FORM

I, _____, owner of Unit _____ within the Caravelle Resort (same Unit also bearing the address of _____), and also being a member of the Caravelle Resort Owners' Association, Inc., ("the Association"), do hereby grant unconditional permission and affirmatively request, as evidenced by my signature below, the Association to undertake to replace my personal property/soft goods, including but not limited to beds, bedding, mattresses, couches and other soft goods furniture, identified in the inventory completed by Delta Response and Restoration subsequent to Hurricane Matthew, a named storm event which took place in October 2016 and caused insurable damage to my Unit.

In exchange for the Association providing the services outlined above, I agree to pay to the Association one hundred percent (100%) of the value of the Soft Goods and Content Manipulation indemnity payment(s) paid to me by my HO6 insurance provider, Certain Underwriters Lloyd's of London ("Lloyd's) as administered and adjusted by Worley Claims Services ("Worley"). I have been provided the entire Content Manipulation indemnity payment and seventy-five percent (75%) of the Soft Goods indemnity payment will make payment to the Association of monies paid to me to date by **April 30, 2017** to enable the Association to place orders for soft goods materials. I further agree that Lloyd's owes and will make an additional payment to me equal to twenty-five percent (25%) of my Soft Goods loss at some point in the future in further adjustment of the claims outlined above. **I AGREE TO MAKE PAYMENT TO THE ASSOCIATION IN THE SAME AMOUNT AS LLOYD'S FUTURE 25% PAYMENT TO ME FOR THE REMAINDER OF THE SOFT GOODS INDEMNITY PAYMENT AND I AGREE THAT THE ASSOCIATION MAY COLLECT SAME FROM ME IN THE MANNER AS IT MAY COLLECT ASSESSMENTS FROM OWNERS DESCRIBED IN ARTICLE SIX (6) OF THE MASTER DEED CREATING THE HORIZONTAL PROPERY REGIME AND ASSOCIATION.**

Furthermore, *I agree to waive any and all claims, causes of action or lawsuits against the Association, its Directors, Agents and/or successors in connection with material selections or installation of soft goods materials.*

_____ _____

Owner/Member Date

EXHIBIT 5

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Physical Address:
140 Stoneridge Drive, Suite 650
Columbia, South Carolina 29210

Mailing Address:
Post Office Box 212069
Columbia, SC 29221

Locations in:
Mount Pleasant, SC
Myrtle Beach, SC

McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW
www.mccabetrotter.com
Phone: (803) 724-5000
Fax: (803) 724-5001

J. Ryan Oates
Associate

Ryan.oates@mccabetrotter.com

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April 28, 2017

Certain Underwrites at Lloyds
c/o Audra M. Byrd, Esquire
Turner Padget Graham & Laney, PA
2411 N. Oak Street, Suite 301
Myrtle Beach, SC 29577
VIA U.S. MAIL AND EMAIL:

RE: Deterioration of Soft Goods Storage Facility

Dear Ms. Byrd,

As you know, my firm represents the Caravelle Resort Owners' Association, Inc. ("the Association") in connection with the damage sustained to the resort as a result of Hurricane Matthew. As you may know, subsequent to the storm, the possessions of Certain Underwriters at Lloyds' ("Lloyds") policy holders were removed by Delta Response and Restoration ("Delta"). Those hard goods were inventoried and stored on a temporary basis in the Association's parking facility. The purpose of this letter is to inform Lloyds that the late spring and summer months will bring higher temperatures than the temporary storage facility was designed to control.

Please find enclosed an email from John Devechio, Jr., Delta's President. As you can see, Mr. Delvechio recommends a more suitable storage arrangement be determined. Mr. Delvechio states moving the hard goods which are intended to be clean and reused is necessary. We have asked Mr. Delvechio to evaluate alternatives for proper storage and will let Lloyds know the costs of same for inclusion under the HO6 portion of the Unit Owners' policies.

Additionally, please provide a listing of all items deemed to be covered by the HO6 policy as many homeowners have asked that the Association replace the soft goods for them. Please do not hesitate to contact me should you have any questions regarding same.

Sincerely,

J. Ryan Oates

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EXHIBIT 6

Physical Address:
140 Stoneridge Drive, Suite 650
Columbia, South Carolina 29210

Mailing Address:
Post Office Box 212069
Columbia, SC 29221

Locations in:
Mount Pleasant, SC
Myrtle Beach, SC

McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW
www.mccabetrotter.com
Phone: (803) 724-5000
Fax: (803) 724-5001

J. Ryan Oates
Shareholder

Ryan.oates@mccabetrotter.com

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2 copies Recvd

June 27, 2017

Caravelle Unit Owner
c/o Brett Cloutier, Association Administator
Gold Crown Management, Inc.
1805 Oak Street
Myrtle Beach, SC 29577
VIA EMAIL AND US MAIL

RE: Update on Soft Goods Storage

Dear Owner,

As you know, the Caravelle Resort Owners' Association, Inc. ("the Association") is in the midst of completing a significant restoration project subsequent to damage sustained to the common areas during Hurricane Matthew. Additionally, the Association must also complete repairs to the buildings' electrical system stemming from a May 5, 2017 fire which necessitated the reconstruction of the system's electrical buss panel which we anticipate will still take many more weeks. The building has temporary power but permanent power will not be restored, and a certificate of occupancy will not be issued by the City of Myrtle Beach, until after repairs are made to this system. As you may know, owners' items were removed from individual units during the restoration process to protect them from damage. We are approaching the time when those items are to be returned to the units and cleaned of any existing mold. However, the soft goods will not be cleaned because the HO6 carrier, Certain Underwriters at Lloyds London ("Lloyds"), made the decision that cleaning the soft goods was and is cost prohibitive. The purpose of this letter is to update you all with information pertaining to the return of owners' items to the units.

Unfortunately, the water damage sustained by the common areas and units at the Caravelle during the hurricane also damaged the owners' soft goods in a significant way. Owners' soft goods include, but are not limited to, items like mattresses, linens, draperies and sofas and/or upholstered chairs. The good news, however, is that the owners are insured against damage to soft goods. Reimbursement for this damage is part of the payment Lloyds has already made to the owners. In fact, according to Lloyds' recent letter to the owners, dated June 16, 2017, Lloyds has made a payment to the owners "in an amount equivalent to 75% of the cost to

replace the soft goods in the unit as quoted by Warren Hospitality and Commercial Interiors." The letter further draws a distinction between those owners who have asked the Association to complete soft goods repairs to the units and those who have not. For those who have, Lloyds will "recommend reimbursement of the balance of your order upon confirmation of the order from either [the owner] or the [Association]." The letter further states "if [the owner] did not order through the [Association], [Lloyds] consider[s] the prior payment an Actual Cash Value payment to settle the claim. For those [owners] who are replacing the soft goods [themselves], [Lloyds] will make further payment when [it] receives documentation from [the owner] for the cost to restore or replace the contents with similar quality goods when that cost exceeds [Lloyds] initial payment. If [an owner] had upgraded the quality of items in [his/her] unit prior to the hurricane, the policy would consider the cost of replacement of [the] upgraded product."

For those of you who have asked the Association to manage this process and provided the requisite waiver, funds and permission to authorize the Association to complete same, the Association will discard old soft goods items and notify Lloyds accordingly when the order has been placed so that you will receive the additional 25% reimbursement. At this time, there is no additional action needed by you. For those of you who have not provided the Association permission as outlined above, your personal items will be returned to your units and hard goods (i.e., silverware, dishes, wood furniture, etc.) will be cleaned of mold. However, the soft goods will not be cleaned because the costs associated with cleaning soft goods far outweigh the replacement costs and Lloyds was not willing to foot that bill.

The Board of Directors has exhausted all possible solutions to this issue and has concluded it does not own the soft goods and, therefore, cannot legally discard the items without permission/authorization. Thus, if you have not asked the Association to manage the soft goods process, your soft goods will be returned to your unit in the condition in which they were removed at the beginning of this process because you own them. That is important for two reasons: 1) your ability to receive full reimbursement for damaged soft goods may be impacted if you do not provide replacement receipts to Lloyds indicating expenses in excess of the funds Lloyds has already provided to you and 2) the soft goods themselves are contaminated with mold stemming from water intrusion and environmental conditions, including loss of power, in the immediate aftermath of the storm. The Association and its contractors have worked diligently to certify the units as mold free and the Association will not allow the common areas, including drywall, to become contaminated again with mold should some owners fail to adequately clean or remove the contaminated soft goods from their units. The Association will hold each owner accountable should conditions within their units cause damage to the common areas/elements. In addition, you may be exposed to liability, individually, to your neighboring unit owners should you leave contaminated soft goods in your unit and that mold infiltrates a neighboring unit.

The Association is certainly sensitive to non-resident owners' who also have not asked the Association to complete the soft goods replacement in their particular unit. Because the Association will be completing replacement for most owners, the Association offers to dispose of

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each unit's soft goods during the process of moving owners' items back into their units; a task the Association can complete without additional costs. However, if an owner, who is not participating in the replacement of soft goods through the Association, desires the Association to dispose of his/her soft goods, he/she must sign the attached waiver to relieve the Association of any liability connected to the disposal. This will insure contaminated soft goods are not replaced into your unit and protect the Association from exposure due to disposal of private property. The process of replacing stored items will begin for cleared floors on July 10, 2017. Therefore, **the Association must have your signed waiver by 5:00pm on Friday, July 7, 2017** in order to provide a complete list to the contractors doing the work.

Unfortunately, the Association cannot react to individual items on an individual unit basis. Once the replacement begins, the items will, wholesale, be replaced into your unit unless you authorize the Association to dispose of all soft goods within your unit. I hope this letter is sufficient to inform you all of the Association's position relative to the soft goods replacement; however, please do not hesitate to contact me should you have any questions regarding same.

With kind regards, I am,

Sincerely,

J. Ryan Oates

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WAIVER OF LIABILITY

I/We _____, being the owner(s) of Unit _____ located at the Caravelle Resort and being members of the Caravelle Resort Owners' Association, Inc., do hereby request the Association dispose of soft goods owned by me/us and housed within my/our condominium at the Caravelle Resort which were damaged as a result of Hurricane Matthew. I/We understand soft goods include but are not limited to mattresses, sofas, upholstered chairs, linens, draperies and other soft or cloth items. I/We, for myself/ourselves, waive and release the Caravelle Resort Owners' Association, Inc., its Directors, agents, assigns, contractors and employees of any liability whatsoever for disposal of soft goods. I/We have had the opportunity to review this waiver and release of liability and sign freely for and in consideration of the removal of soft goods in connection with the return of other personal items to my unit, the receipt and sufficiency of which is hereby acknowledged.

_____

Owner or authorized agent

_____

Owner

_____

Date

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EXHIBIT 7

Physical Address:
140 Stoneridge Drive, Suite 650
Columbia, South Carolina 29210

Mailing Address:
Post Office Box 212069
Columbia, SC 29221

Locations in:
Mount Pleasant, SC
Myrtle Beach, SC

McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW
www.mccabetrotter.com
Phone: (803) 724-5000
Fax: (803) 724-5001

J. Ryan Oates
Shareholder

Ryan.oates@mccabetrotter.com

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August 2, 2017

David R. Sligh, Esquire
Turner, Padget, Graham & Laney, P.A.
2411 N. Oak Street, Suite 301
Myrtle Beach, SC 29577
VIA US MAIL & EMAIL:

RE: The Caravelle Resort Owners' Association, Inc.
Hurricane Matthew Claim

Dear David,

As you know, this firm represents The Caravelle Resort Owners' Association, Inc., ("the Association"). As you are also aware, the Association and its members are in the process of restoring the common areas and units of the resort subsequent to damage sustained during Hurricane Matthew in October of 2016. Your client, Certain Underwriters at Lloyds London ("Lloyds"), provided an HO6 policy to the members covering the contents of their units. The purpose of this letter is to highlight significant concerns with the manner in which Lloyds and its third party claims administrator, Worley, have handled the owners' claims and the personal property contents of their units.

After the storm caused significant damage to the resort, including interior damage to the units themselves, Delta Response and Restoration ("Delta") provided emergency content manipulation and storage of the members' property which is insured by Lloyds. At a significant costs savings to Lloyds and because the restoration project would take place during the cooler months of the year, the Association allowed the members' personal property to be stored in the Association's parking garage as a temporary climate controlled facility. Delta cataloged, inventoried and photographed the interior contents of the units and moved the contents into the parking facility after preparing it to be a climate controlled environment.

Subsequently, the larger restoration project's scope drastically increased owing to the large number of units damaged by water in the storm, including damage to dry wall and interior finishes. Based on the larger scope of the project, the construction timeline necessarily increased. This office put Lloyds and Worley on notice as early as April 28, 2017, that the

storage facility, which represented a significant cost savings to Lloyds, would not be sufficient to properly condition the temporary storage facility during the summer months due to the high heat and humidity in the Myrtle Beach area. The Association further made Lloyds and Worley aware that Delta's recommendation was to move the items stored in the parking facility to a more permanent climate controlled facility to avoid potential damage which may result from soft and hard goods' exposure to the summer environment.

Based on your response, as early as May 1, 2017, Lloyds and Worley knew of Delta's recommendation and potential exacerbation of damage to its insureds' personal property. As of the date of this letter, neither Lloyds nor Worley have taken any steps to protect its insureds' contents. As a result of Lloyds' and Worley's failure, it is likely the members' contents experienced additional damage and may now be ruined. The Association and its members will expect Lloyds and/or Worley to be accountable for that failure.

On a related note, the Association has repeatedly made Lloyds and Worley aware of the need for security to guard its insureds' personal property. The Association has also repeatedly sent Lloyds and Worley invoices for security it had to procure on the members' behalf because of the failure of Lloyds and Worley to properly protect the members' items. Recently, the Association was made aware of potential theft from the storage facility. Again, the Association and its members expect Lloyds and/or Worley to be responsible for these potential losses.

Again, the Association takes this opportunity to remind Lloyds of its obligations to the members of the Association and requests Lloyds take the necessary steps to protect the personal property of Lloyds's insured clients. I hope this letter is sufficient to bring you up to speed on the Association's position relative to the storage and protection of member property; however, please do not hesitate to contact me should you have any questions regarding same.

With kind regards, I am,

Sincerely,

J. Ryan Oates

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EXHIBIT 8

Physical Address:
140 Stoneridge Drive, Suite 650
Columbia, South Carolina 29210

Mailing Address:
Post Office Box 212069
Columbia, SC 29221

Locations in:
Mount Pleasant, SC
Myrtle Beach, SC

McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW
www.mccabetrotter.com
Phone: (803) 724-5000
Fax: (803) 724-5001

J. Ryan Oates
Shareholder

Ryan.oates@mccabetrotter.com

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August 9, 2017

Caravelle Unit Owner
c/o Brett Cloutier, Association Administrator
Gold Crown Management, Inc.
1805 Oak Street
Myrtle Beach, SC 29577
VIA EMAIL

RE: Soft Goods Disposal/Storage

Dear Owner,

As you know, the Caravelle Resort Owners' Association, Inc. ("the Association") is in the midst of completing a significant restoration project subsequent to damage sustained to the common areas and Units during Hurricane Matthew. If you are receiving this letter, you have not provided authority to the Association to dispose of your personal soft goods items currently being stored in the Association's parking garage. You have also decided to manage your own soft goods replacement project. The purpose of this letter is to discuss options pertaining to owners' personal soft goods items.

As you may know, we are in the latter stages of the larger restoration project and anticipate delivery of the electrical components this week. We anticipate repairs to the damage caused by the electrical fire to be completed within the next three weeks. Also, the replacement of Owner items, other than soft goods, is scheduled to begin this week. In addition to managing that effort, the Association has asked an indoor air quality specialist to evaluate the soft goods which were removed from the Units back in October 2016. The specialist, today, advised the Association that all soft goods are contaminated and should not be returned on to any Caravelle property which has been restored and cleared of unacceptable levels of mold. Furthermore, the reintroduction of contaminated items into the Units would undo the work completed over the course of the larger restoration project. The Association will hold Owners responsible for any items that have been deemed contaminated, which are returned to a Unit by an Owner and later found to have caused damage or further contamination to Association property. An Owner may also be liable to a neighboring Unit Owner should he or she return contaminated soft goods to a Unit and, thereby, cause damage to neighboring Units.

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Importantly, these opinions pertain to soft goods only; hard goods will be cleaned and replaced in the Units. The only exception to this policy may be upholstered dining room chairs, to the extent they exist, may need to be kept out of Units. However, dining room chairs, once they are reupholstered may be cleaned and returned to the Units. Because you have not provided permission for the Association to dispose of your soft goods items, we can only assume you would like to retain possession of them for some unknown reason. Therefore, the Association identified Johnson's Moving and Storage ("Johnson's") to provide its services directly to Owners, at their costs, to move all soft goods items out of the parking garage and into a secured storage facility off site. Johnson's is owned by Richard Johnson and you can find Johnson's contact information below.

Unfortunately, the confines of the space in which the goods are stored prohibits multiple companies from accessing the storage area. Also, there are a large number of contractors still on site completing restoration and electrical work and multiple companies would exponentially increase the amount of time it would take to complete this process. Therefore, we need to limit the additional bodies in the confined space where this work has to be completed and multiple moving and/or storage companies will not be allowed on site. Also, there is no way for individual Owners to collect soft goods from the storage facility due to the amount of contractors already working in the area. The presence of individual owners on a construction site would be dangerous and it would also increase the costs of Delta's work if they were slowed down by having to react to owners requesting to take possession of soft goods. Therefore, owners cannot be allowed to retrieve these items individually.

Please note, each Owner will be responsible for contracting and paying Johnson's independently of the Association. ***To be clear, the Association will not pay the bill to move or store your soft goods nor will the Association or Gold Crown Management manage that process beyond providing the information contained in this letter.*** Attached please find a contract with Johnson's for you to use should you desire to move your soft goods. The Association would also like to reiterate that Delta Restoration will be completing the cleaning and replacement of Owner items beginning this week. During that process, should an Owner not wish to incur charges for moving and storing soft goods, Delta Restoration can dispose of contaminated goods without any extra cost to the Owners or the Association. If you would not individually like to be responsible for managing and paying for the moving and storing of your soft goods, please sign and return the attached waiver (which was previously provided for your consideration) by Wednesday, August 11, 2017 and your contaminated goods will be discarded. This is likely the best option as Owners have been reimbursed by their HO6 Policies already for their damaged soft goods. Ultimately, the soft goods cannot stay in the parking garage and the Association cannot pay to move and store them. Should you choose to move your soft goods with Johnson's please let us know by emailing Brett Cloutier with Gold Crown Management so that Delta can stage them for pick up by Johnson's.

Once the Owners' non-soft goods items have been cleaned and replaced in the Units, the Association's soft goods replacement is completed for owners who have asked the Association to complete that work and a Certificate of Occupancy is obtained from the city, you will be authorized to complete your individual soft goods replacement projects. However, the Association suggests you provide Gold Crown with the name of the company completing your soft goods work and contact information for your point of contact with that company so that if we are able to accommodate it, your company can be contacted and scheduled to have materials delivered to your Unit prior to the receipt of a Certificate of Occupancy. It is important to understand, Owners themselves will still not be allowed into the construction site, this would only apply to delivery from an outside company. This would provide Owners, not on the Association program or using a local outside company, better access once we receive a Certificate of Occupancy and are allowed by the City to reenter the Caravelle. The Association assumes several companies may be involved and that those companies likely will be working on multiple Units, even though they have been individually contracted by individual Owners. Another purpose of scheduling these companies is to be able to track their progress through the common areas to make sure they do not damage elevators, walls, flooring, etc., and, if they do, the Association will have the information needed to hold them accountable for that.

I hope this letter is sufficient to inform you all of the Association's position relative to the soft goods replacement, moving and storage; however, please do not hesitate to contact me should you have any questions regarding same.

With kind regards, I am,

Sincerely,

J. Ryan Oates

Richard Johnson
Johnson's Moving & Storage
715-B 15th Ave South
Surfside Beach, SC 29575
843-813-4113
800-957-2558

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THE CARAVELLE

RESORT OWNERS ASSOCIATION, INC

C/O Gold Crown Management, Inc. – 1805 Oak St., Myrtle Beach, SC 29577 – (843) 445-6007

SOFT GOOD DELIVERY INFORMATION

Caravelle Unit #: _____

Owner Name: _____

Name of Company Delivering Soft Goods: _____

Point of Contact from Company: _____

Address: _____

Phone Number: _____

Please return this by **Friday, August 11**:

Caravelle Resort Owners Association, Inc.
1805 Oak Street
Myrtle Beach, S.C. 29577
Fax: 843-916-0296
Email: Brett.Cloutier@gold-crown.com

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EXHIBIT 9

ELECTRONICALLY FILED - 2018 Jun 18 4:33 PM - HORRY - COMMON PLEAS - CASE#2018CP2602974

THE CARAVELLE
RESORT OWNERS ASSOCIATION, INC
C/O Gold Crown Management, Inc. – 1805 Oak St., Myrtle Beach, SC 29577 – (843) 445-6007

December 13, 2017

Dear Caravelle Owners:

We hope you and your family had a good Thanksgiving Holiday.

We have scheduled the Annual Meeting for Saturday, February 17, 2018, at the St. John Inn. In an effort to provide as much information about the project as possible the meeting is scheduled in February to ensure that the experts that performed the work would be present to answer questions from the membership. We will be sending out the legal notice of the meeting in the coming weeks.

We have all been extremely frustrated with the events that have impacted the process to re-open the Caravelle.

The failure of a stand pipe, causing a fire in the electrical room, destroyed an electrical bus bar, and created an additional three month delay, and then the water intrusion from Hurricane Irma in early September further delayed the work, and put back our completion time. The good news is that the restoration and remediation project continues to move forward at this time.

The last few months have been the most frustrating for all of us given the slow pace of work being performed on the building. However, the water intrusion issues and surface contamination were serious issues that needed to be dealt with in a precise manner, and required the development of a protocol ahead of the work. A structural engineer was retained to determine the source of water intrusion, and he is now working with contractors on a temporary plan of prevention pending the design and evaluation of a more permanent plan to fix the problem.

The environmental hygienist that was brought in to establish the protocol in connection with the surface contamination on the units affected by the water intrusion has concluded his work. We have successfully negotiated with the contractor to have the remediation performed at no cost to the Association. Beginning December 11th, the contractor will begin the remediation. We have been told the process will take 4 weeks.

Not the least of frustrating matters has been the lack of direction from the HO6 adjusters and the carriers regarding the return of the soft and hard goods to units. The insurance carriers and their adjusters authorized and instructed the placement of the items in the garage areas in the first place, and now our environmental hygienist has determined that the hard goods initially placed back in units were still contaminated even after the professional efforts of the remediation team to clean those items. Hence another reason for work stoppage. We have recently received letters from both the environmental hygienist and the remediation team recommending the Association not place any items back in the units which have been located in the garage.

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I know this does not come as welcome news; however, the Board believes it is important to follow the guidance the experts provided. Furthermore, and as we have discussed both in letter form and on the Q&A, this is exactly why the Board continually lobbied Mr. Cook, Worleys, the HO6 carrier and its attorneys to provide a more acceptable storage facility for the Owners' items. The Association had no ability or right to control the HO6 carrier's decisions or move the items off site. Regrettably, none of the above mentioned companies or individuals heeded the Board's or the experts' advice to move the items. The humid summer months and the severe weather experienced in Myrtle Beach over the late summer have combined to make the items unfit for reintroduction.

The Owners should make claims under their HO6 policies to be reimbursed for the items which will now need to be discarded. Mr. Cook is aware that Owners will begin making these claims and has asked Delta to develop a recommendation as to the suitability of returning the items. Delta has informed Mr. Cook that the items need to be discarded.

Now the Association must move forward and that means moving the items out of the garage. The Resort cannot fully operate without the use of its parking garage and, therefore, the Association will remove and dispose of all items beginning on Monday, January 8, 2018. It is recommended that reimbursement be sought through ***both*** the HO6 policies, by the Unit Owners, for the items being removed and discarded. Board Member Howard Ross has graciously volunteered to go through this process as an owner and post forms on the Q&A in the event anyone else has a question about the process.

Should any Owner wish to have their items in storage picked up and stored off site, Delta can arrange and stage items for pick up by Johnson's Moving and Storage at the individual Owners' expense, as was previously explained to owners. Individual items cannot be pulled out; this would be all contents or none. Unfortunately, the building cannot accommodate individual owner pick up from a logistical standpoint. Owners who wish to remove items though Johnson's must contract with Johnson's Moving and Storage and provide notification and a copy of the contract to Gold Crown no later than 5:00 pm on January 5, 2018 so that the Association can pass the information along to Delta. Importantly, if any owner does not respond by the deadline above, Delta will remove and dispose of the items associated with the Owners' unit. The Association will contact Johnson's on behalf of the owners once Delta has completed the removal of items so Johnson's can pick up individual owner items being moved to the secured storage site selected by the Owner.

No contaminated items will be allowed to re-enter units at the Caravelle, now or in the future. Doing so would not only put occupants' health at risk, it would pose a threat to neighboring units and property the Association must maintain. Obviously, reintroducing contamination to the units at the Caravelle carries with it exposure to significant liability, to the individual owner who reintroduced the contamination, from neighboring units and, potentially, the Association itself.

From all of us here at the Caravelle, we wish you a Merry Christmas, a Happy Holiday, and a joyous New Year.

Sincerely,

The Board of Directors of the Caravelle Resort Owner's Association

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EXHIBIT 10

THE CARAVELLE
RESORT OWNERS ASSOCIATION, INC
C/O Gold Crown Management, Inc. – 1805 Oak St., Myrtle Beach, SC 29577 – (843) 445-6007

ELECTRONICALLY FILED - 2018 Jun 18 4:33 PM - HORRY - COMMON PLEAS - CASE#2018CP2602974

January 25, 2018

Dear Caravelle Owner:

On January 22, 2018, we received a notification from The Johnson Moving Company stating that they were declining the previously agreed moving of hard goods for owners who wanted to retain their personal hard good items. Their action was based on the concern for their employees handling of these contaminated items. The company was also concerned about ill-treatment of their employees by some of the owners. We have since reached out to other moving venders and have not been able to find one due to the issue of contamination.

Therefore on January 24, 2018, The Caravelle Board and legal counsel discussed the removal of hard good items from the units and common areas. Examples of hard good items are appliances, TVs, etc. The priority is to move as quickly as possible to achieve the reopening of the building and units. We are forced now to move towards the removal and the disposal of all contents that go unclaimed.

The new soft goods are not part of this issue. The "old soft goods" were previously disposed of.

Without the removal of contents from the garage, the city will not issue a Certificate of Occupancy. Any delays, by any owner, will impact the property's ability to receive the Certificate of Occupancy and its ability to reopen for ALL owners.

Please accept this letter as notice of a requirement of you to acknowledge. We will begin disposing of all hard goods items beginning February 3, 2018, unless you instruct Gold Crown by email to brett.cloutier@gold-crown.com by noon Friday, February 2, 2018 of your intent to personally pick up your contents. Gold Crown will respond to notifications by sending an email confirmation by the next business day. If you do not receive this confirmation, please contact Gold Crown. Beginning on February 19, 2018, those owners that have notified Gold Crown of their intent to pick their items up will be allowed to enter the parking garage to remove your personal contents. Please set up an appointment with Gold Crown Management to do so. If you do give notice that you intend to pick up your items, but fail to remove them from the property by March 1, 2018, the Association will remove the items at the owners' expense.

We thank you in advance for your understanding.

Very Truly Yours,

The Board of Directors
Caravelle Resort Owners Association, Inc.

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EXHIBIT 11

Physical Address:
140 Stoneridge Drive, Suite 650
Columbia, South Carolina 29210

Mailing Address:
Post Office Box 212069
Columbia, SC 29221

Locations in:
Mount Pleasant, SC
Myrtle Beach, SC

McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW
www.mccabetrotter.com
Phone: (803) 724-5000
Fax: (803) 724-5001

J. Ryan Oates
Shareholder

Ryan.oates@mccabetrotter.com

ELECTRONICALLY FILED - 2018 Jun 18 4:33 PM - HORRY - COMMON PLEAS - CASE#2018CP260974

January 12, 2018

Robin Serna, Owner
Caravelle Resort Owners' Association, Inc.
VIA EMAIL: serna_robin@yahoo.com

RE: Cease and Desist Defamatory Comments

Dear Ms. Serna,

Please be advised I have been made aware of comments you have made on evaluation and/or rating sites such as Google Review regarding Gold Crown Management, Inc., its employees and its practices. While it is appropriate to provide your opinion, your comments cross the line and accuse Gold Crown of criminal wrong doing. Your accusations are based purely on conjecture and you have no evidentiary support whatsoever.

Specifically, you state "[t]hese people (in reference to Gold Crown employees) are Crooks (sic) & should be in jail for embezzling!!" Additionally, you accuse Gold Crown of writing themselves checks and paying bills without proper receipts and you provide no support for these statements at all. Accusations of this nature are very serious. Your comments are inappropriate and expose you to civil liability for defamation and tortious interference with a contractual relationship, among other causes of action. You are required to cease and desist of and from all defamatory communication immediately. If you continue to defame Gold Crown we will pursue all available remedies to bring your conduct into compliance with the law and compensate Gold Crown for damage stemming from your reckless statements.

I hope this letter is sufficient to bring you up to speed on this matter; however, should you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,

J. Ryan Oates

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Gold Crown Management

1805 N Oak St, Myrtle Beach, SC

1.7 12 reviews

Sort by: Most helpful

Robin Serna
5 reviews

a month ago

They don't even deserve 1 star. These people are Crooks & should be in jail for embezzling!! They manage my condo (not by my choice), and they are horrible!! Their accounting practices are unbelievable!! They write themselves checks for office supplies (without receipts for that matter), which is an overhead Expense & should be factored into their Mgmt fee to the HOA, as they manage many properties, as well as paid many other bills without proper backup/supporting documentation. Also, they have very poor customer service, very inflated fees, and terrible communication. They treat you as though you don't matter, even though you are paying their wages and refuse to provide you with information relating to your personal property. Believe me when I say...."avoid like the plague!!".

Helpful?

cheri evans
3 reviews

2 months ago

Almost two months ago an idiot van driver ran over an area near our home causing a huge ditch. We see sod trucks go by all the time but this area hasn't been fixed yet. We don't even get a reply back from Steve Turlock when it will be repaired. Our back bushes behind our units are so tall they are obstructing the street lights. I have heard from an employee that because I complain I am discussed negatively during office meetings. Extremely unprofessional!!!!!

Helpful?

ELECTRONICALLY FILED - 2018 Jun 06 4:31 PM - HORRY - COMMON PLEAS - CASE#2018CP260974

STATE OF SOUTH CAROLINA COUNTY OF HORRY Karl & Terri Hager, Robert Singleton, Jay & Susan Welborn, Erik Arnold, and Bowers Caravelle, LLC, derivatively and on behalf of Caravelle Resort Association, Inc. and on behalf of themselves and those similarly situated, Plaintiffs, v. McCabe, Trotter & Beverly, P.C. and Gold Crown Management Company, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-26-2974 **ANSWER OF DEFENDANT MCCABE, TROTTER & BEVERLY, P.C.** (Jury Trial Demanded)

Defendant McCabe, Trotter & Beverly, P.C. ("MTB"), responds to the Plaintiffs' Complaint as follows:

1. MTB denies all allegations not specifically admitted in this Answer.

2. Upon information and belief, MTB admits paragraph 1.

3. In response to paragraph 2, MTB denies the owners are proper Plaintiffs, individually, derivatively, or as a class, against MTB.

4. In response to paragraph 3, MTB admits only that Caravelle Resort Owners Association, Inc. is a horizontal property regime organized and existing under South Carolina law.

5. In response to paragraph 4, MTB admits only that, upon information and belief, the Association is comprised of 346 residential units and 3 commercial units. MTB denies all remaining allegations in paragraph 4.

6. MTB Admits paragraph 5.

7. In response to paragraph 6, MTB admits only that it represented the Association, and the scope and duration of the representation was defined by agreement between MTB and the Association. MTB did not represent any of the Plaintiffs, who have no basis to pursue claims against MTB.

8. Upon information and belief, MTB admits paragraph 7.

9. In response to paragraph 8, MTB admits only that, upon information and belief, Gold Crown served as property manager for the Association pursuant to an agreement.

10. Paragraphs 9 – 11 state conclusions of law to which MTB is not required to respond. At this time, MTB does not contest venue.

11. MTB denies paragraphs 12 – 20, including all subparts.

12. MTB denies paragraphs 21 – 22 as stated, including all subparts.

13. MTB denies paragraph 23.

14. In response to paragraph 24, MTB realleges all preceding paragraphs as if repeated here verbatim.

15. MTB denies paragraph 25 – 27. Exhibit 1 to the Complaint is the Verification of Karl Hager, not a copy of the policy.

16. MTB denies paragraph 28. Exhibit 2 to the Complaint is the Verification of Erik Arnold, not a "single representative copy of the full Lloyd's HO-6 policy."

17. MTB denies paragraphs 29 – 30.

18. In response to paragraph 31, MTB admits only that, upon information and belief, Hurricane Matthew caused significant damage to the property.

19. MTB denies paragraph 32 as stated.

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20. MTB denies paragraph 33 to the extent it is directed towards MTB..

21. MTB denies paragraph 34 as stated.

22. MTB denies paragraphs 35 – 36 to the extent they are directed towards MTB.

23. MTB is without knowledge and information sufficient to form a belief as to paragraphs 37 – 39 and therefore denies them.

24. MTB denies paragraphs 40 – 59 to the extent those paragraphs are directed towards MTB.

25. In response to paragraph 60, MTB realleges all preceding paragraphs as if repeated here verbatim.

26. In response to paragraph 61, MTB only admits it represented the Association pursuant to the specific terms of the firm's agreement with the Association. MTB did not represent the Plaintiffs.

27. MTB denies paragraphs 62 – 74.

28. In response to paragraph 75, MTB realleges all preceding paragraphs as if repeated here verbatim.

29. In response to paragraph 76, MTB admits only that it owes certain duties under the law to its clients, including the Association. MTB denies paragraph 76 to the extent it is inconsistent with this.

30. MTB denies paragraphs 77 – 78.

31. In response to paragraph 79, MTB realleges all preceding paragraphs as if repeated here verbatim.

32. Paragraphs 80 – 82 are not directed towards MTB, thus it is not required to respond.

33. In response to paragraph 83, MTB realleges all preceding paragraphs as if repeated here verbatim.

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34. MTB denies paragraphs 84 – 92 to the extent they are directed towards MTB.

35. In response to paragraph 93, MTB realleges all preceding paragraphs as if repeated here verbatim.

36. MTB denies paragraph 94 as stated.

37. MTB denies paragraphs 95 – 102 to the extent they are directed towards MTB.

38. In response to paragraph 103, MTB realleges all preceding paragraphs as if repeated here verbatim.

39. MTB denies paragraphs 104 – 108 are not directed towards MTB, thus it is not required to respond.

40. MTB denies the prayer for relief, that comprising the remainder of the Complaint.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Failure to State a Claim)

41. The Complaint fails to state facts sufficient to constitute a cause of action against MTB, and the Court should therefore dismiss it pursuant to SCRCP 12(b)(6).

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(S.C. Code § 15-36-100)

42. Plaintiffs' expert affidavit filed with the Complaint fails to meet the requirements of S.C. Code § 15-36-100, and the Court should therefore dismiss the Complaint. MTB also raises any other defense provided for in the S.C. Frivolous Proceedings Act, S.C. Code § 15-36-10, et seq. MTB maintains this Complaint is frivolous, and the firm should recover costs and attorney's fees associated with responding to it.

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FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Judgmental Immunity)

43. MTB is not liable to Plaintiffs, third parties whom MTB did not represent, for actions taken in the course of representing its client.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Proximate Cause)

44. Nothing MTB did or failed to do proximately caused any damage to Plaintiffs.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Intervening/Superseding Acts of Others)

45. Any alleged injuries Plaintiffs sustained were or may have been caused in whole or in part by the acts or omissions of persons other than MTB, over whom MTB had no control, or by superseding intervention of causes outside MTB's control.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Failure to Serve)

46. Plaintiffs have failed to perfect service of the Summons and Complaint on MTB.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Estoppel)

47. Plaintiffs should be estopped in equity from recovery against MTB.

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FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Punitive Damages Unconstitutional)

48. Plaintiffs' claim for punitive damages violates the Constitutions of South Carolina and the United States, and such claim should be barred and/or limited appropriately.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Abandonment)

49. The Plaintiffs are barred from recovery against MTB to the extent they abandoned the property allegedly converted.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Duty)

50. MTB did not owe any fiduciary or other duty to the Plaintiffs that could serve as a basis for their claims against MTB.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Unclean Hands)

51. The Plaintiffs are barred from recovery against the Defendants because they have or may have unclean hands.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Adherence to Standard of Care)

52. At all times relevant to this action, MTB acted within the standard of care applicable to it as lawyers.

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FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Failure to Mitigate)

53. Plaintiffs have failed to mitigate their alleged damages as the law requires.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Waiver)

54. The doctrine of waiver applies and bars Plaintiffs from recovery against MTB.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Privity)

55. MTB did not represent Plaintiffs. There is no privity between them that could serve as the basis for Plaintiffs' claims against MTB under the law.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Standing)

56. Plaintiffs lack standing necessary to pursue a claim against MTB.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Contributory/Comparative Negligence)

57. The Court should bar Plaintiffs from recovery to the extent they were negligent under the doctrines of contributory/comparative negligence applicable under South Carolina law.

FURTHER RESPONDING TO THE COMPLAINT AND AS AN AFFIRMATIVE DEFENSE:
(Reservation and Non-waiver)

58. MTB reserves any additional and further defenses as may be revealed by information obtained during discovery and investigation and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully responded to the Complaint, MTB prays that this Court dismiss Plaintiffs' claims with prejudice, award costs of this action and other such other further relief as it deems just and proper. MTB demands a jury trial.

Respectfully submitted,

By: /s/ Andrew W. Countryman
ANDREW W. COUNTRYMAN
State Bar No.: 72700
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com

And

ROBERT P. WOOD, ESQ.
Rogers, Townsend & Thomas, P.C.
1221 Main St., 14th Floor
P.O. Box 100200
Columbia, SC 29202-3200
Robert.Wood@rtt-law.com
803-744-1275

Lawyers for Defendant McCabe, Trotter & Beverly, P.C.

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ELECTRONICALLY FILED - 2018 Jun 20 11:32 AM - HORRY - COMMON PLEAS - CASE#2018CP260297

STATE OF SOUTH CAROLINA COUNTY OF HORRY Karl & Terri Hager, Robert Singleton, Jay & Susan Welborn, Erik Arnold, and Bowers Caravelle, LLC, derivatively and on behalf of Caravelle Resort Association, Inc. and on behalf of themselves and those similarly situated, Plaintiffs, v. McCabe, Trotter & Beverly, P.C. and Gold Crown Management Company, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-26-2974 **DEFENDANT MCCABE TROTTER'S MOTION TO DISMISS THE AMENDED COMPLAINT**

Defendant McCabe, Trotter & Beverly, P.C. ("MTB") submits this Motion to Dismiss the Amended Complaint pursuant to SCRCP 12(b)(6). Plaintiffs filed the initial Complaint alleging numerous causes of action against the Defendants. MTB filed a Motion to Dismiss the Complaint pursuant to SCRCP 12(b)(6). On the eve of the hearing of that Motion, Plaintiffs filed the Amended Complaint in an apparent attempt to correct the deficiencies in the Complaint identified in the initial Motion to Dismiss, which MTB incorporates herein by reference. Plaintiffs' attempt fails. Regardless of the tweaking of the language in the Complaint, the following are indisputably clear:

1. MTB represented the HOA. The firm never represented the Plaintiffs, and every action the firm took was in its capacity as lawyers for the HOA. Thus, the Plaintiffs cannot maintain a claim against MTB based in legal malpractice. Plaintiffs' Amended Complaint tries to get around this by alleging the "Owners could reasonably believe that MTB was representing them as well." This matters zero. The Amended Complaint fails to state facts

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sufficient to constitute a cause of action for legal malpractice because the facts as pled do not show the existence of an attorney-client relationship between MTB and the Plaintiffs.

2. Plaintiffs' claim as a derivative class of members of the HOA fails because the damages alleged are to the individual owners only. Namely, the property they allegedly lost and amounts they were allegedly wrongfully charged. A derivative claim is a suit where the basis of the complaint is injury to the company, not the individual members. Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001) and Hite v. Thomas & Howard Co., 305 S.C. 358, 409 S.E.2d 340 (1991). Here, the Plaintiffs' individual losses are the only possible damages existing under the facts and allegations as pled. Plaintiffs curiously try to get around this in the Amended Complaint by alleging "MTB's actions have caused the Association to be exposed to liability to the Owners." This statement has no factual basis (as pled) and is completely counterintuitive. The Amended Complaint also states "Additionally, the damages owned [sic?] by the Association to the Owners is a common expense essentially causing the owners to owe money to themselves." What does this even mean? It certainly does not provide an allegation, much less a factual basis, for a showing that the HOA incurred damages for which the owners (Plaintiffs here) now seek to recover by way of a derivative action. Finally, the Amended Complaint nebulously states, "As a result of the aforesaid, the Association has suffered actual damages, consequential damages, plus attorney's fees and costs." These include "attorney's fees charged by Gold Crown to the Association. . ." This is a baseless conclusory statement unsupported by any facts as pled and is a blatant attempt to get around what is clearly a deficient cause of action. This claim fails.

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3. Plaintiffs' claim for a derivative action is akin to an assignment of a legal malpractice claim, which South Carolina law precludes. Allowing Plaintiffs to proceed in this manner forces MTB into an impossible position of having to defend itself against allegations that it gave its client bad advice to its client. However, the client has not waived the attorney-client privilege.[1] This is the reason South Carolina precludes the assignment of legal malpractice claims, and the Court should dismiss Plaintiffs' "derivative" claim here accordingly.
4. Plaintiffs' expert affidavit filed to support the Amended Complaint under S.C. Code 15-26-100 is deficient and fails to satisfy the statutory requirements.
5. The other causes of action fail as pled under SCRCP 12(b)(6), which MTB will show the Court in more detail at a hearing and/or in future briefing as appropriate.
6. The causes of action for fraud and conversion against MTB are completely beyond the pale and unsupported by any semblance of fact. They are inappropriate attacks on the firm that have no place here. MTB asks Plaintiffs' counsel to voluntarily withdraw/dismiss these causes of action and advises that it will pursue sanctions as appropriate if this does not happen.

Therefore, MTB asks this Court to dismiss the Amended Complaint with prejudice and award costs, attorney's fees and other just relief as the Court deems proper.

[signature page to follow]

[1] The filing of a derivative action does not result in the waiver of the attorney-client privilege (*see* NFL Properties, Inc. v. Superior Court, 65 Cal.App.4th 100, 75 Cal.Rptr.2d 893 (1998)).

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	FIFTEENTH JUDICIAL CIRCUIT
	C/A NO.: 2018-CP-26-2974
Karl & Terri Hager, Robert Singleton, Jay & Susan Welborn, Erik Arnold, and Bowers Caravelle, LLC, derivatively and on behalf of Caravelle Resort Association, Inc. and on behalf of themselves and those similarly situated, Plaintiffs, v. McCabe, Trotter & Beverly, P.C. and Gold Crown Management Company, Inc., Defendants.	**SUPPLEMENT TO MOTION TO DISMISS OF DEFENDANT MCCABE, TROTTER & BEVERLY, P.C.**

Defendant McCabe, Trotter & Beverly, P.C. ("MTB"), adopting everything in its Motion to Dismiss filed June 6, 2018, submits this Supplement to its Motion to Dismiss.

Plaintiffs do not allege that MTB represented them. Plaintiffs admit the firm represented the Caravelle Resort Owners' Association, Inc.'s ("HOA"). Thus, Plaintiffs cannot bring direct claims against MTB for malpractice. In an apparent attempt to get around this fatal problem, Plaintiffs style their claim as a "derivative action" and seek to bring a claim on behalf of the HOA against MTB.

A derivative claim is where a plaintiff, who is a member of the company, brings a claim in the right of the company. Johnson v. Baldwin, 221 S.C. 141, 69 S.E.2d 585 (1952) and Gary v. Matthews, 148 S.C. 125, 145 S.E. 702. (1928). The stockholder in a derivative action is only a nominal plaintiff, the company being the real party interest. Id.; and Ward v. Atlas Constr. Co. Inc., 276 S.C. 346, 278 S.E.2d 621 (1981). As detailed in MTB's Motion to Dismiss, this claim fails because a derivative action is only for damages the corporation incurred, not individual owners as is

the situation here. In other words, the Plaintiffs seek to recover damages *they* incurred, not damages to the HOA. Thus, their attempt to sue in a derivative capacity fails.

Additionally, Plaintiffs' derivative claim against MTB is akin to an assignment of assignment of a malpractice claim to the individual Plaintiffs, and South Carolina law precludes assignment of legal malpractice claims. Skipper v. Ace Prop. & Cas. Ins. Co., 413 S.C. 33, 775 S.E.2d 37 (2015). This is a matter of public policy in light of the unique and confidential personal nature of the relationship between a lawyer and her client. The Law of Legal Malpractice in S.C., S.C. Bar (2017); *see also* Goodley v. Wank & Wank, Inc., 133 Cal. Rptr. 83 (Cal. Ct. App. 1976). Generally, the filing of a legal malpractice action results in the waiver of the attorney-client privilege. SCRPC 1.6(b)(6); The Law of Legal Malpractice in S.C., S.C. Bar (2017); *see also* Picadilly, Inc. v. Raikos, 582 N.E.2d 338, (Ind. 1991).

Assigning a legal malpractice claim places the defendant lawyer in the untenable position of having to defend claims resulting from its communications with its client without being able to discuss those communications (which the client has not waived). Once the case is assigned, the client loses control over the disclosure of confidential information, which the lawyer may reveal as necessary to establish the defense. The Law of Legal Malpractice in S.C. (2017) citing Picadilly, *supra*. The client is relegated to observing from the sidelines as the assignee pursues the lawyer. This erodes the principles fostered by the duty of confidentiality. Id. This is a primary reason legal malpractice claims in South Carolina are not assignable. Skipper v. Ace, *supra*.

Filing a malpractice action as a derivative claim does the same thing. It places the defendant lawyer in a precarious and untenable position because the lawyer must defend herself, but the client has not waived the privilege. California precludes derivative legal malpractice claims. Its courts have

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based this on the same reasoning as the South Carolina courts that have precluded the assignment legal malpractice claims.

The primary issue relates to the attorney-client relationship in the context of a derivative action by shareholders against a company's lawyers. The corporation, not the shareholder, holds the attorney-client privilege in a situation where a lawyer represents a company. NFL Properties, Inc. v. Superior Court, 65 Cal.App.4th 100, 75 Cal.Rptr.2d 893 (1998). Shareholders do not enjoy access to privileged information merely cause the lawyers' actions also benefit them, nor do shareholders own the right to waive the attorney-client privilege simply by filing an action on the company's behalf. Id. Thus, the filing of a derivative action does not result in the corporation's waiver of the privilege. Id., *see also* Pacific Tel. & Tel. Co. v. Fink, 141 Cal.App.2d 332, 296 P.2d 843 (1956). Because of this, a derivative lawsuit against a corporation's outside counsel has the dangerous potential for robbing the lawyer defendant of the only means he or she may have to mount a meaningful defense, as the lawyer must preserve the attorney-client privilege while trying to show that her representation of the client was not negligent. Kracht v. Perrin, Gartland & Doyle, 219 Cal.App.3d 1019, 268 Cal.Rptr. 673 (1990).

It is impossible for a lawyer to mount a defense in a shareholder derivative action alleging a breach of duty to a corporate client, where, by the very nature of the action, the lawyer is foreclosed (in the absence of any waiver by the corporation client) from disclosing the communications which are alleges to constitute a breach of that duty. That is exactly the case here, where the Plaintiffs' claims against MTB are all based on alleged advice the firm provided its client, the HOA. Thus, in order to defend itself at all, MTB must disclose correspondence with its client, the HOA. However, the HOA has not waived the attorney-client privilege.

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MTB is stuck, just as it would be in defending an assigned legal malpractice claim. This is the main reason South Carolina law precludes assignment of legal malpractice actions and why other courts preclude legal malpractice claims as derivative actions. This Court should apply the same rule here and dismiss Plaintiffs' purported derivative claim(s) against MTB as a matter of public policy.

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated, Plaintiffs, vs. McCabe Trotter & Beverly, PC and Gold Crown Management Company, Inc. Defendants.	Case No. 2018-CP-26-2974 **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT MCCABE TROTTER & BEVERLY, PC'S MOTION TO DISMISS**

Plaintiffs Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated hereby submit this memorandum in opposition to Defendant McCabe Trotter & Beverly, P.C.'s motion to dismiss.

LEGAL STANDARD

Generally, in considering a Rule 12(b)(6), SCRCP, motion to dismiss, the trial court must base its ruling solely upon allegations set forth on the face of the Complaint. Doe v. Greenville County Sch. Dist., 375 S.C. 63, 66, 651 S.E.2d 305, 307 (2007); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). A Rule 12(b)(6) motion is addressed solely to the sufficiency of the allegations in the complaint. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).A motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the allegations set forth in the Complaint and must presume all well-pled facts to be true. Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E.2d 538, 538-39 (2006); Overcash v. South Carolina Elec. and Gas Co., 364 S.C. 569, 614 S.E.2d 619 (2005). "[U]nder our current pleading rules only ultimate

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facts are required to be stated in pleadings. Ultimate facts are those which the evidence upon trial will prove, and not the evidence which will be required to prove those facts." Brown v. Inv. Mgmt. & Research, Inc., 323 S.C. 395, 400 n. 3, 475 S.E.2d 754, 756 n. 3 (1996). "A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009).

If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Clearwater Tr. v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). "Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Spence v. Spence, 368 S.C. 106, 116–17, 628 S.E.2d 869, 874 (2006). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). Further, dismissal under Rule 12(b)(6) is inappropriate if the pleadings raise a novel question of law. Chestnut v. AVX Corp., 413 S.C. 224, 228, 776 S.E.2d 82, 84 (2015); Madison v. Am. Home Prod. Corp., 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004)

ARGUMENT

I. PLAINTIFFS HAVE SET FORTH CLAIMS FOR ATTORNEY MALPRACTICE

A claimant in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and

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(4) proximate causation of the client's damages by the breach. Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 636, 760 S.E.2d 399, 407 (2014). All of these elements have been alleged in detail in Plaintiffs' amended complaint.

An attorney is required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession. Johnson v. Alexander, 413 S.C. 196, 201, 775 S.E.2d 697, 700 (2015); Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000)

1. Existence of Attorney-Client Relationship is question of fact.

Whether an attorney-client relationship exists is a question fact, and a question of fact precludes a motion to dismiss. Ellis v. Davidson, 358 S.C. 509, 523, 595 S.E.2d 817, 824 (Ct. App. 2004); McNair v. Rainsford, 330 S.C. 332, 343, 499 S.E.2d 488, 494 (Ct. App. 1998). In Ethics Advisory Opinion 91-03, the South Carolina Ethics Advisory Committee stated that "[i]n determining whether an attorney-client relationship existed . . . , the focus must be on the subjective expectations of the would-be clients, 'such that their individual belief and reliance are safeguarded.'" Glover v. Lieberman, 578 F. Supp 748 (N.D. Ga. 1983). B) An attorney-client relationship does not depend on the existence of a formal agreement or the payment of a legal fee. Ethics Adv. Op. 2006-11, North Carolina State Bar v. Sheffield, 326 S.E. 2d 320 (N.C. App. 1985). Specific examples of conduct that may give rise to an attorney-client relationship even in the absence of express agreement are "the giving of advice or assistance, or ... failing to negate the relationship when the advice or assistance is sought if the attorney is aware of the reliance on the relationship." Chavez v. State, 604 P.2d 1341 (Wyo. 1980).

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2. Plaintiffs have properly alleged an Attorney-Client relationship.

Plaintiffs have alleged two avenues by which MTB has established an attorney-client relationship: directly and indirectly. As a matter of law, either of these two methods are sufficient to survive a motion to dismiss.

A. Direct allegations

Plaintiffs have alleged that lawyers for MTB have undertaken representation of them in regards to their individual HO-6 policies. (Am. Compl. ¶¶ 53, 55, 56, 57) MTB's self-serving denials are not sufficient to support a motion to dismiss.

"A person attains the status of 'client' when that person seeks legal advice by communicating in confidence with an attorney for the purpose of obtaining such advice" Marshall v. Marshall, 282 S.C. 534, 539, 320 S.E.2d 44, 47 (Ct.App.1984). The Supreme Court has held that communicating about settlement options, communicated on a person's behalf on more than one occasion, and referred to that person as "my client" on at least one occasion, are enough to create an attorney-client relationship. In re Broome, 356 S.C. 302, 316, 589 S.E.2d 188, 195–96 (2003). Moreover, a signed retainer agreement is not essential to create such a relationship. Broome, supra. (Citing 7 Am.Jur.2d Attorneys at Law § 136 (2003). And the existence of a retainer is not in and of itself dispositive of whether an attorney is representing a client. In re Carter, 400 S.C. 170, 176, 733 S.E.2d 897, 900 (2012).

Plaintiffs have alleged MTB provided legal advice in the form of direct letters to Plaintiffs advising them of several different courses of action. (Am. Compl. ¶¶ 8, 9, 55, 56, 58, 62, 63) MTB also wrote letters to Plaintiffs' HO-6 carrier, Lloyd's, advocating coverage and seeking information on behalf of Plaintiffs. Exhibits 5, 6 and 7 to the Amended Complaint,

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which are incorporated therein, are examples how MTB provided legal services and advice to Plaintiffs.

Plaintiffs also can prove the existence of an attorney-client relationship by way voluntary assumption of duty. It is well established that South Carolina has adopted the voluntary assumption of duty doctrine as set forth in Restatement (Second) of Torts § 323. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 136, 638 S.E.2d 650, 657 (2006); Johnson v. Robert E. Lee Acad., Inc., 401 S.C. 500, 504–05, 737 S.E.2d 512, 513–14 (Ct. App. 2012) The content and meaning of the letters raise the issue of whether MTB has voluntarily assumed a duty of care towards the Owners in regards to their HO-6 policy and personal belongings.

B. Indirect allegations

Plaintiffs have also made indirect, derivative allegations which sustains their allegations of the existence of an attorney-client relationship.

South Carolina has abandoned the strict privity requirement in attorney malpractice actions. This shift was first set out in Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 529, 339 S.E.2d 887, 889 (Ct.App.1986), which held that an attorney can be liable to **those in privity with his client** "for injury allegedly arising out of the performance of his professional activities." (emphasis added). An attorney may also be subject to liability for a breach of a duty to a third party even though there is no attorney-client relationship between them. Moore v. Weinberg, 383 S.C. 583, 588, 681 S.E.2d 875, 878 (2009).

This move fully recognized by the Supreme Court in Fabian v. Lindsay, 410 S.C. 475, 491, 765 S.E.2d 132, 141 (2014) and recently reaffirmed by the Supreme Court in Sentry Select Ins. Co. v. Maybank Law Firm, LLC, No. 2016-001351, 2018 WL 2423694, at *2 (S.C. May 30,

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2018). Both Fabian and Select Sentry turn on the issue of whether the parties in question (a frustrated devisee and an insurance company) are the expected third party beneficiaries of the attorney-client relationship. In Fabian, the Supreme Court explained the determination of whether an attorney may be liable in tort to a plaintiff not in privity "is a matter of policy and involves the balancing of" the following factors: (1) the extent to which the transaction was intended to affect the plaintiff; (2) the foreseeability of harm to the plaintiff; (3) the degree of certainty that the plaintiff suffered injury; (4) the closeness of the connection between the defendant's conduct and the injury; (5) the policy of preventing future harm; and (6) whether the recognition of liability would impose an undue burden on the profession. Fabian 410 S.C. at 485, 765 S.E.2d at 137-38 (citing Lucas v. Hamm, 56 Cal.2d 583, 15 Cal.Rptr. 821, 364 P.2d 685, 687-88 (1961)(*en banc*)).

The Fabian factors are clearly applicable here. The relationship between the Association and the Plaintiffs is definitely contractual. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). It is unquestioned that the existence of the attorney-client relationship between the Association and the Plaintiffs was meant to directly benefit Plaintiffs as shareholders of the Association. Windsor Green Owners Ass'n v. Allied Signal, Inc., 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct.App.2004) As MTB must readily acknowledge, it has an ethical and fiduciary obligation towards the Association to provide competent legal advice in regards to covenant interpretation and enforcement. The direct benefit to Plaintiffs is a well-run Association which competently enforces the "governing documents," keeps property values high, protects their investment, etc.

The same can also be true for Plaintiffs who are co-owners within the Caravelle. MTB

admits in its answer that it has an attorney-client relationship with the HOA. (Am. Answer of MTB. ¶¶ 36, 38, 46, 49, 54.) It is also undisputed that the relationship between the Plaintiffs and the Association is described as "contractual." Queen's Grant, supra. Rule 1.13 of the South Carolina Rules of Professional Conduct recognizes that an attorney for an organization—like the HOA—also has duties to the organization's constituents like the shareholder Plaintiffs. Plaintiffs have also alleged that the Association has suffered damages separate and apart—to the extent that is possible under the Master Deed[1]—from the damages suffered by the Owners. (Am. Compl. ¶ 109.)

Plaintiffs have alleged breaches of duty owned by MTB to the Association. (Am. Compl. ¶¶ 101, 102, 103, 104, 105, 106, 107) The letters submitted by MTB to Lloyd's raise the question of fact on whose behalf was MTB negotiating and for what. Oates also recognizes that the Owners' belongings were under threat of destruction while unsecured or unprotected on the Association's property. The harm was surely foreseeable by MTB as Oates informs Lloyd's of the danger.

C. No "assignment" of any claim for malpractice.

MTB's assertion that Plaintiffs are asserting an "assigned" claim for malpractice is specious. The Association and the Owners are not "adversaries" as the Supreme Court has rejected as an assignment. Skipper v. ACE Prop. & Cas. Ins. Co., 413 S.C. 33, 37, 775 S.E.2d 37, 39–55 (2015). The putative plaintiff class consists of all of the owners of the Association. This class must share all expenses associated with the operation of the Association. Plaintiffs had to bring this case derivatively because the current board has refused—thus far—to do so for itself. Likewise, the current board has refused to retain different counsel for advice on whether to assert

[1] §§ 6.1 and 6.2 of Master Deed provide that all owners shall share all "Common Expenses."

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these malpractice cases itself. Therefore, Skipper or any other case regarding assignment simply does not apply.

D Attorney-client privilege does not belong to MTB.

Likewise, MTB's assertion it is unable to defend itself because of the "attorney client privilege" is a continuing problem of its own making. The attorney-client privilege belongs to the client and not the attorney, and may be waived only by the client. Wilson v. Preston, 378 S.C. 348, 359, 662 S.E.2d 580, 585 (2008). Yet, the attorney (still) for the Association is MTB. It is unclear what advice MTB is continuing to provide in regards to the Association in regards to the allegations of MTB's negligence. This is particularly true if MTB is advising the Association to assert the attorney-client privilege to shield MTB from a malpractice claim. However, this blatant conflict of interest is not grounds for a dismissal.

II. PLAINTIFFS HAVE PROPERLY ALLEGED CAUSE OF ACTION FOR CONVERSION.

Plaintiffs have properly alleged a cause of action for conversion. Conversion is defined as the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Moore v. Weinberg, 383 S.C. 583, 589, 681 S.E.2d 875, 878 (2009); SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property." Jenkins v. Few, 391 S.C. 209, 218, 705 S.E.2d 457, 461 (Ct.App.2010); Regions Bank v. Schmauch, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct.App.2003). A plaintiff may also prevail upon a claim for conversion by showing the unauthorized detention of the property, after a demand. Mackela v. Bentley, 365 S.C. 44, 48, 614 S.E.2d 648, 650 (Ct.App.2005). Moreover, the Supreme Court has ruled that an attorney can be

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sued for conversion and affirmative misrepresentations done on behalf of a client. Stiles v. Onorato, 318 S.C. 297, 299–300, 457 S.E.2d 601, 602 (1995).

Plaintiffs' complaint alleges in detail how MTB advised the Association to remove the Plaintiffs' belongings without authorization. (Am. Compl. ¶¶ 8, 9,44, 46, 47, 48, 54, 56, 58, 64, 65, 66, 67, 68, 69, 70, 136, 137, 138, 139, 140, 141, 152, 143, 144, 145, 146, 147, 148,149). Plaintiffs' complaint also alleges how the Plaintiffs' belongings were altered or destroyed. (Am. Compl. ¶¶ 76, 134, 146) These detailed allegations defeat MTB's motion to dismiss.

III. EXPERT AFFIAVIT COMPLIES WITH S.C. CODE ANN. § 15-36-100

The affidavit of Thomas Pendarvis, Plaintiffs' expert, complies with S.C. Code Ann. § 15-36-100. Mr. Pendarvis sets out his professional qualifications in paragraph 10 of his affidavit which clearly satisfies the requirement under S.C. Code Ann. § 15-36-100(A)(1) and (2). His curriculum vitae and the South Carolina Bar Member Directory website show that Mr. Pendarvis has practiced law for three of the last five years preceding the opinion. Mr. Pendarvis expresses his opinion as to the various breaches of the standard of care in paragraph seven of his affidavit.

Additionally, MTB's motion to dismiss fails to state "with specificity" how Mr. Pendarvis' affidavit is defective pursuant to S.C. Code Ann. § 15-36-100(E). MTB vaguely alleges Mr. Perdarvis' "affidavit filed to support the Amended Complaint under S.C. Code 15-26-100[sic] is deficient and fails to satisfy the statutory requirements." This clearly does not meet the "with specificity" requirement set out in the statute.

IV. PLAINTIFFS RESERVE RIGHT TO RESPOND TO ADDITIONAL GROUNDS

MTB's remaining grounds as it relates to other causes of action are stated as "will MTB will show the Court in more detail at a hearing and/or in future briefing as appropriate." This

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averment violates Rule 7(b) which requires a motion to state with "particularity the grounds therefor." Plaintiffs should be allowed to supplement this memorandum if MTB raises any additional grounds for their motion beyond those asserted in their filings.

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated, Plaintiffs, vs. McCabe Trotter & Beverly, PC and Gold Crown Management Company, Inc. Defendants.	Case No. 2018-CP-26-2974 **PLAINTIFFS' MOTION TO RECONSIDER PURSUANT TO RULE 59(e)**

Plaintiffs Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves hereby file this motion for the Court to reconsider its dismissal of their claims against Defendant McCabe, Trotter & Beverly, PC in their Amended Complaint by the Court.

This grounds for this motion are that the Court's Form 4 order does not set forth the basis of the Court's ruling in favor of Defendant pursuant to Rule 52(a) and Woodson v. DLI Properties, LLC, 406 S.C. 517, 526–27, 753 S.E.2d 428, 433 (2014). Moreover, there were causes of action alleged by Plaintiffs' Amended Complaint—Breach of Fiduciary Duty and Aiding/Abetting Breach of Fiduciary as examples—that was not even raised in Defendant's motion to dismiss. Finally, the Plaintiffs have brought the claim as a derivate action in the name of the corporation which Defendant admits they represent.

The reasons set for this motion will be set forth more fully in a separate memorandum to filed at the appropriate time.

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August 9, 2018

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated, Plaintiffs, vs. McCabe Trotter & Beverly, PC and Dold Drown Management Company, Inc. Defendants.	Case No. 2018-CP-26-2974 **ORDER GRANTING PLAINTIFFS' MOTION FOR RELIEF UNDER RULE 59(e)**

This matter came before me on January 22, 2019 by way of motion filed by Plaintiffs motion under Rule 59(e) for relief of the grant of Defendant McCabe Trotter & Beverly, PC's (MTB) motion to dismiss. For the reasons set forth herein, I GRANT Plaintiffs' motion for relief under Rule 59(e) and DENY MTB's to dismiss.

LEGAL STANDARD

A complaint must contain "a short and plain statement of the facts showing that the pleader is entitled to relief." Rule 8, SCRCP. A circuit court must deny a motion to dismiss under Rule 12(b)(6) "if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." Flateau v. Harrelson, 355 S.C. 197, 203, 584 S.E.2d 413, 415 (Ct. App. 2003). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

Generally, in considering a Rule 12(b)(6), SCRCP, motion to dismiss, the trial court must base its ruling solely upon allegations set forth on the face of the Complaint. Doe v. Greenville

County Sch. Dist., 375 S.C. 63, 66, 651 S.E.2d 305, 307 (2007); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). A Rule 12(b)(6) motion is addressed solely to the sufficiency of the allegations in the complaint. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).A motion to dismiss pursuant to Rule 12(b)(6) must presume all well-pled facts to be true. Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E.2d 538, 538-39 (2006); Overcash v. South Carolina Elec. and Gas Co., 364 S.C. 569, 614 S.E.2d 619 (2005).

("[A] complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever." Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). The purpose of a pleading is fair notice to the opponent and the court. Overcash, *supra*. South Carolina Rules of Civil Procedure do not necessarily require the technical or restrictive requirements of Code Pleading. Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 205, 723 S.E.2d 597, 604 (Ct.App.2012) "[U]nder our current pleading rules only ultimate facts are required to be stated in pleadings. Ultimate facts are those which the evidence upon trial will prove, and not the evidence which will be required to prove those facts." Brown v. Inv. Mgmt. & Research, Inc., 323 S.C. 395, 400 n. 3, 475 S.E.2d 754, 756 n. 3 (1996). "A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009).

If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Clearwater Tr. v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006); Baird v. Charleston County, 333 S.C. 519, 511

S.E.2d 69 (1999). "Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Spence v. Spence, 368 S.C. 106, 116–17, 628 S.E.2d 869, 874 (2006). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

Further, dismissal under Rule 12(b)(6) is inappropriate if the pleadings raise a novel question of law. Chestnut v. AVX Corp., 413 S.C. 224, 228, 776 S.E.2d 82, 84 (2015); Evans v. State, 344 S.C. 60, 68, 543 S.E.2d 547, 551 (2001). Madison v. Am. Home Prod. Corp., 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004)

CONCLUSIONS OF LAW

I. PLAINTIFFS HAVE PROPERLY ALLEGED A DERIVATIVE CAUSE OF ACTION

I find that Plaintiffs have properly alleged a derivative action against MTB. All factual issues are resolved in favor of the plaintiff on a motion to dismiss. Flateau, 355 S.C. at 203, 584 S.E.2d at 415

MTB raises the issue of damages. Plaintiffs have alleged separate damages between the Association and the owners individually. For instance, Plaintiffs have alleged individual damages for their lost property. The Association is alleged to have suffered damages as well. (Am. Complaint ¶¶ 81-83.) A motion to dismiss focuses on allegations, not proof.

MTB also argues that the signature of the communication on behalf of the Board alters this analysis. Plaintiffs' complaint alleges numerous actions by MTB. For instance:

> 53. On April 20, 2017, Gold Crown sent a letter to the Owners wherein Gold Crown represented to the Owners that the Board and/or the Association was the

"insurance trustee" for Owners' HO-6 policy. This statement is patently false. This letter incorporated by reference and is attached hereto as Exhibit 4.

59. On December 13, 2017, Gold Crown sent a letter directly to the Owners stating that all hard goods had been contaminated while in storage and would need to be disposed of by January 8, 2018. This provided the owners with only 26 days (including the holidays of Christmas and New Year) to compete any review of their belongings. Gold Crown offered to contact a local moving company on behalf of the Owners to move their belongings to a new storage facility if the Owner responded by January 5, 2018. This letter is incorporated by reference and attached hereto as Exhibit 9.

60. On January 25, 2018, Gold Crown informed the Owners that the local moving company refused to handle the Owners' remaining hard goods because of fear of contamination, and that all other local moving companies had refused to move the hard goods for the same reason. Gold Crown gave the Owners a deadline of February 3, 2018 whether to decide to remove or dispose of their items. The Owners would not be allowed to inspect their belongings before February 19, 2018 when the parking garage would be opened for Owners. Owners had to remove their belonging by March 1, 2018. Gold Crown stated that hard goods would be disposed of beginning on February 3, 2018 if the Owners who did not respond by the deadline. That letter also stated, contrary to the December 13, 2017 letter that all "old" soft goods had already been disposed. This letter is incorporated by reference and attached hereto as Exhibit 10.

64. Delta and/or Delta's employees were allowed by Gold Crown and/or MTB to sort through Owners' belongings to take what they wanted instead of returning the items to the Owners. The items unwanted by Delta and/or Delta's employees were then disposed of by Delta without the permission of Owners.

65. Gold Crown and/or MTB concealed from the Owners the true condition of Owners' belongings.

66. Neither Gold Crown nor MTB performed testing to determine whether Owners' belongings were contaminated despite numerous representations by Gold Crown and/or MTB that the Owners' belongings were unsafe due to contamination.

A factual dispute exists as to whether these communications on behalf of the Board were truthful and authorized. Plaintiffs have specifically alleged that these statements were false, and that MTB knew they were false. Examples of these allegations include paragraphs 53, 128, and 129 of the Amended Complaint.

Moreover, the existence and scope of an agency relationship are questions of fact. Holmes v. McKay, 334 S.C. 433, 439, 513 S.E.2d 851, 854 (Ct.App.1999). The extent of an agent's authority is also a question of fact. Hiott v. Guaranty Nat'l Ins. Co., 329 S.C. 522, 530, 496 S.E.2d 417, 421 (Ct.App.1997). It is also a question of fact as to whether an agent exceeded the scope of his or her authority. Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 86, 124 S.E.2d 602, 608 (1962). This is also a derivative action wherein these Plaintiffs are suing on behalf of the Association. Thus, the principal can always sue an agent for torts or breaches done by the agent in the principal's name. S.C. Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 187, 348 S.E.2d 617, 626 (Ct. App. 1986). Under the 12(b)(6) standard, this Court is required to presume the truth of Plaintiffs' allegations. Therefore, this Court DENIES MTB's motion to dismiss.

It is legally irrelevant that the letters were signed "on behalf of the board." "An agent's liability for his own tortious acts is unaffected by the fact that he acted in his representative capacity." Thomas v. Delta Enterprises, Inc., 302 S.C. 351, 352, 396 S.E.2d 122, 123 (Ct. App. 1990); Lawlor v. Scheper, 232 S.C. 94, 101 S.E.2d 269, 271 (1957); Gilbert v. Mid-South Machinery Co., Inc., 267 S.C. 211, 227 S.E.2d 189 (1976).

II. PLAINTIFFS HAVE PROPERLY ALLEGED ATTORNEY MALPRACTICE

A claimant in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 636, 760 S.E.2d 399, 407 (2014). All of these elements have been alleged in detail in Plaintiffs' amended complaint. (Am. Complaint ¶¶ 18, 34, 42, 43, 44, 46, 47,

48, 49, 53, 54, 55, 56, 57, 58, 62, 63, 72, 73, 74, 84, 85, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111)

An attorney is required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession. Johnson v. Alexander, 413 S.C. 196, 201, 775 S.E.2d 697, 700 (2015); Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000)

1. Existence of Attorney-Client Relationship is question of fact.

Whether an attorney-client relationship exists is a question fact, and a question of fact precludes a motion to dismiss. Ellis v. Davidson, 358 S.C. 509, 523, 595 S.E.2d 817, 824 (Ct. App. 2004); McNair v. Rainsford, 330 S.C. 332, 343, 499 S.E.2d 488, 494 (Ct. App. 1998). In Ethics Advisory Opinion 91-03, the South Carolina Ethics Advisory Committee stated that "[i]n determining whether an attorney-client relationship existed . . . , the focus must be on the subjective expectations of the would-be clients, 'such that their individual belief and reliance are safeguarded.'" Glover v. Lieberman, 578 F. Supp 748 (N.D. Ga. 1983). B) An attorney-client relationship does not depend on the existence of a formal agreement or the payment of a legal fee. Ethics Adv. Op. 2006-11, North Carolina State Bar v. Sheffield, 326 S.E. 2d 320 (N.C. App. 1985). Specific examples of conduct that may give rise to an attorney-client relationship even in the absence of express agreement are "the giving of advice or assistance, or ... failing to negate the relationship when the advice or assistance is sought if the attorney is aware of the reliance on the relationship." Chavez v. State, 604 P.2d 1341 (Wyo. 1980).

2. Plaintiffs have properly alleged an Attorney-Client relationship.

Plaintiffs have alleged two avenues by which MTB has established an attorney-client relationship: directly and indirectly. As a matter of law, either of these two methods are sufficient to survive a motion to dismiss.

A. Direct allegations

Plaintiffs have alleged that lawyers for MTB have undertaken representation of them in regards to their individual HO-6 policies. (Am. Compl. ¶¶ 53, 55, 56, 57) MTB's self-serving denials are not sufficient to support a motion to dismiss.

"A person attains the status of 'client' when that person seeks legal advice by communicating in confidence with an attorney for the purpose of obtaining such advice" Marshall v. Marshall, 282 S.C. 534, 539, 320 S.E.2d 44, 47 (Ct.App.1984). The Supreme Court has held that communicating about settlement options, communicated on a person's behalf on more than one occasion, and referred to that person as "my client" on at least one occasion, are enough to create an attorney-client relationship. In re Broome, 356 S.C. 302, 316, 589 S.E.2d 188, 195–96 (2003). Moreover, a signed retainer agreement is not essential to create such a relationship. Broome, supra. (Citing 7 Am.Jur.2d Attorneys at Law § 136 (2003). And the existence of a retainer is not in and of itself dispositive of whether an attorney is representing a client. In re Carter, 400 S.C. 170, 176, 733 S.E.2d 897, 900 (2012).

Plaintiffs have alleged MTB provided legal advice in the form of direct letters to Plaintiffs advising them of several different courses of action. (Am. Compl. ¶¶ 8, 9, 55, 56, 58, 62, 63) MTB also wrote letters to Plaintiffs' HO-6 carrier, Lloyd's, advocating coverage and seeking information on behalf of Plaintiffs. Exhibits 5, 6 and 7 to the Amended Complaint,

which are incorporated therein, are examples how MTB provided legal services and advice to Plaintiffs.

Plaintiffs also alleged the existence of an attorney-client relationship by way voluntary assumption of duty. It is well established that South Carolina has adopted the voluntary assumption of duty doctrine as set forth in Restatement (Second) of Torts § 323. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 136, 638 S.E.2d 650, 657 (2006); Johnson v. Robert E. Lee Acad., Inc., 401 S.C. 500, 504–05, 737 S.E.2d 512, 513–14 (Ct. App. 2012) The content and meaning of the letters raise the issue of whether MTB has voluntarily assumed a duty of care towards the Owners in regards to their HO-6 policy and personal belongings.

B. Indirect allegations

I also find that plaintiffs have also made indirect, derivative allegations which sustains their allegations of the existence of an attorney-client relationship.

South Carolina has abandoned the strict privity requirement in attorney malpractice actions. This shift was first set out in Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 529, 339 S.E.2d 887, 889 (Ct.App.1986), which held that an attorney can be liable to those in privity with his client "for injury allegedly arising out of the performance of his professional activities." An attorney may also be subject to liability for a breach of a duty to a third party even though there is no attorney-client relationship between them. Moore v. Weinberg, 383 S.C. 583, 588, 681 S.E.2d 875, 878 (2009).

This move fully recognized by the Supreme Court in Fabian v. Lindsay, 410 S.C. 475, 491, 765 S.E.2d 132, 141 (2014) and recently reaffirmed by the Supreme Court in Sentry Select Ins. Co. v. Maybank Law Firm, LLC, No. 2016-001351, 2018 WL 2423694, at *2 (S.C. May 30,

2018). Both Fabian and Select Sentry turn on the issue of whether the parties in question (a frustrated devisee and an insurance company) are the expected third party beneficiaries of the attorney-client relationship. In Fabian, the Supreme Court explained the determination of whether an attorney may be liable in tort to a plaintiff not in privity "is a matter of policy and involves the balancing of" the following factors: (1) the extent to which the transaction was intended to affect the plaintiff; (2) the foreseeability of harm to the plaintiff; (3) the degree of certainty that the plaintiff suffered injury; (4) the closeness of the connection between the defendant's conduct and the injury; (5) the policy of preventing future harm; and (6) whether the recognition of liability would impose an undue burden on the profession. Fabian 410 S.C. at 485, 765 S.E.2d at 137-38 (citing Lucas v. Hamm, 56 Cal.2d 583, 15 Cal.Rptr. 821, 364 P.2d 685, 687-88 (1961)(*en banc*)).

The Fabian factors are clearly applicable here. The relationship between the Association and the Plaintiffs is definitely contractual. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). It is unquestioned that the existence of the attorney-client relationship between the Association and the Plaintiffs was meant to directly benefit Plaintiffs as shareholders of the Association. Windsor Green Owners Ass'n v. Allied Signal, Inc., 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct.App.2004) As MTB must readily acknowledge, it has an ethical and fiduciary obligation towards the Association to provide competent legal advice in regards to covenant interpretation and enforcement. The direct benefit to Plaintiffs is a well-run Association which competently enforces the "governing documents," keeps property values high, protects their investment, etc.

The same can also be true for Plaintiffs who are co-owners within the Caravelle. MTB admits in its answer that it has an attorney-client relationship with the HOA. (Am. Answer of MTB. ¶¶ 36, 38, 46, 49, 54.) It is also undisputed that the relationship between the Plaintiffs and the Association is described as "contractual." Queen's Grant, supra. Rule 1.13 of the South Carolina Rules of Professional Conduct recognizes that an attorney for an organization—like the HOA—also has duties to the organization's constituents like the shareholder Plaintiffs. Plaintiffs have also alleged that the Association has suffered damages separate and apart—to the extent that is possible under the Master Deed —from the damages suffered by the Owners. (Am. Compl. ¶ 109.)

Plaintiffs have alleged breaches of duty owned by MTB to the Association. (Am. Compl. ¶¶ 101, 102, 103, 104, 105, 106, 107) The letters submitted by MTB to Lloyd's raise the question of fact on whose behalf was MTB negotiating and for what. Oates also recognizes that the Owners' belongings were under threat of destruction while unsecured or unprotected on the Association's property. The harm was surely foreseeable by MTB as Oates informs Lloyd's of the danger.

C. No "assignment" of any claim for malpractice.

MTB's assertion that Plaintiffs are asserting an "assigned" claim for malpractice is specious. The Association and the Owners are not "adversaries" as the Supreme Court has rejected as an assignment. Skipper v. ACE Prop. & Cas. Ins. Co., 413 S.C. 33, 37, 775 S.E.2d 37, 39–55 (2015). The putative plaintiff class consists of all of the owners of the Association. This class must share all expenses associated with the operation of the Association. Plaintiffs had to bring this case derivatively because the current board has refused—thus far—to do so for itself.

Likewise, the current board has refused to retain different counsel and assert this malpractice cases itself. Therefore, Skipper or any other case regarding assignment simply does not apply.

D Attorney-client privilege does not belong to MTB.

Likewise, MTB's assertion it is unable to defend itself because of the "attorney client privilege" is a continuing problem of its own making. The attorney-client privilege belongs to the client and not the attorney, and may be waived only by the client. Wilson v. Preston, 378 S.C. 348, 359, 662 S.E.2d 580, 585 (2008).

III. PLAINTIFFS HAVE PROPERLY ALLEGED FRAUD

I find that Plaintiffs have adequately and specifically alleged fraud. The Amended Complaint extensively alleged the various actions taken by MTB which constitute fraud. Paragraphs 37, 40, 42, 49-54 allege actions taken by MTB towards the Association and its members. The following paragraphs make even more specific allegations of fraudulent conduct:

> 64. Delta and/or Delta's employees were allowed by Gold Crown and/or MTB to sort through Owners' belongings to take what they wanted instead of returning the items to the Owners. The items unwanted by Delta and/or Delta's employees were then disposed of by Delta without the permission of Owners.
>
> 65. Gold Crown and/or MTB concealed from the Owners the true condition of Owners' belongings.
>
> 66. Neither Gold Crown nor MTB performed testing to determine whether Owners' belongings were contaminated despite numerous representations by Gold Crown and/or MTB that the Owners' belongings were unsafe due to contamination.

Paragraph 127 of the Amended Complaint specifically alleges that MTB made the following representations:

a. regarding the necessity of the removal of Owners' personal belongings;
b. the method of testing and/or storage of Owners' personal belongings;

c. the protection of Owners' personal belongings from environmental damage and/or theft; and/or
d. the necessity of disposal of alleged contamination of Owners' personal belongings;

IV. PLAINTIFFS HAVE PROPERLY ALLEGED CAUSE OF ACTION FOR CONVERSION.

Plaintiffs have properly alleged a cause of action for conversion. Conversion is defined as the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Moore v. Weinberg, 383 S.C. 583, 589, 681 S.E.2d 875, 878 (2009); SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property." Jenkins v. Few, 391 S.C. 209, 218, 705 S.E.2d 457, 461 (Ct.App.2010); Regions Bank v. Schmauch, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct.App.2003). A plaintiff may also prevail upon a claim for conversion by showing the unauthorized detention of the property, after a demand. Mackela v. Bentley, 365 S.C. 44, 48, 614 S.E.2d 648, 650 (Ct.App.2005). Moreover, the Supreme Court has ruled that an attorney can be sued for conversion and affirmative misrepresentations done on behalf of a client. Stiles v. Onorato, 318 S.C. 297, 299–300, 457 S.E.2d 601, 602 (1995).

Plaintiffs' complaint alleges in detail how MTB advised the Association to remove the Plaintiffs' belongings without authorization. (Am. Compl. ¶¶ 8, 9,44, 46, 47, 48, 54, 56, 58, 64, 65, 66, 67, 68, 69, 70, 136, 137, 138, 139, 140, 141, 152, 143, 144, 145, 146, 147, 148,149). Plaintiffs' complaint also alleges how the Plaintiffs' belongings were altered or destroyed. (Am. Compl. ¶¶ 76, 134, 146) These detailed allegations defeat MTB's motion to dismiss.

IV. ATTORNEY IMMUNITY DOES NOT PROECT RESPONDENT FROM CLAIMS FROM APPELLANTS

(1) an attorney, (2) acting on behalf of a client, and (3) with the knowledge of his client. Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C. 525, 339 S.E.2d 887, 889 (S.C. Ct. App. 1986).

Kozel v. Kozel, 299 F. Supp. 3d 737, 751–52 (D.S.C. 2018)

CONCLUSION

For the reasons set forth herein, this Court hereby GRANTS Plaintiffs' motion to reconsider under Rule 59(e) and DENIES MTB's motion to dismiss. .

The Honorable Benjamin H. Culbertson
Presiding Judge, Fifteenth Judicial Circuit

February_____, 2019

Certificate of Electronic Notification

Recipients
Brian Gambrell - Notification transmitted on 05-23-2018 06:19:18 PM.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Horry County Circuit Court
Benjamin H. Culbertson, Circuit Court Judge

Civil Action No. 2017-CP-40-06634

Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated.....Appellants

v.

McCabe Trotter & Beverly, PC and Gold Crown Management.....Defendants

of whom

McCabe Trotter & Beverly, PC is.....Respondents

NOTICE OF APPEAL

Appellants Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC pursuant to South Carolina Appellate Court Rule 203 hereby files their Notice of Appeal of the orders of the Honorable Benjamin H. Culbertson granting Respondent's motion to dismiss entered on August 1, 2018 and denying Appellants' motion for relief from judgment entered on March 6, 2019.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.

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Columbia, SC 29210
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Attorney for Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC

PROOF OF SERVICE

I, Brian Gambrell, an attorney for Appellants Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC do hereby certify that I served via U.S. Mail the Notice of Appeal on all opposing counsel on March 12, 2019.

Andrew W. Countryman, Esq.
Countryman Law Firm
131 Wingo Way, Suite 102
Mount Pleasant, SC 29464
Attorney for McCabe Trotter & Beverly, PC

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MAR 12 2019
SC Court of Appeals

Dominic A. Starr
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Myrtle Beach, SC 29578
Attorney for Gold Crown Management, Inc.



Brian Gambrell

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP2602974

PLAINTIFF(S)	DEFENDANT(S)		
Karl Hager Bowers Caravelle LLC Susan Welborn Robert Singelton Teresa Singleton	Caravelle Resort Association Inc Erik Arnold Jay Welborn Terri Hager	Mccabe Trotter & Beverly PC	Gold Crown Management Company Inc

Submitted by: Clerk Of Court

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

Motion to Dismiss by defendant McCabe, Trotter & Beverly, PC is GRANTED.
Plaintiff's Motion for Temporary Injunction is DENIED.

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

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RECEIVED
MAR 12 2019
SC Court of Appeals

Circuit Court Judge	2148 Judge Code	7/31/2018 Date

For Clerk of Court Office Use Only

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

Brian C. Gambrell 810 Dutch Square Blvd Suite 112 Columbia, SC 29210

Andrew W. Countryman 321 Wingo Way Suite 102 Mount Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Renee N. Elvis - Clerk of Court

Court Reporter: Grace Hurley

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Horry Common Pleas

Case Caption:	Karl Hager , plaintiff, et al VS Mccabe Trotter & Beverly PC , defendant, et al
Case Number:	2018CP2602974
Type:	Order/Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

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STATE OF SOUTH CAROLINA COUNTY OF HORRY Karl & Terri Hager, Robert Singleton, Jay & Susan Welborn, Erik Arnold, and Bowers Caravelle, LLC, derivatively and on behalf of Caravelle Resort Association, Inc. and on behalf of themselves and those similarly situated, Plaintiffs, v. McCabe, Trotter & Beverly, P.C. and Gold Crown Management Company, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-26-2974 **ORDER ON PLAINTIFFS' MOTION TO RECONSIDER AND WRITTEN ORDER GRANTING MTB'S MOTION TO DISMISS THE AMENDED COMPLAINT**

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SC Court of Appeals

This matter came before me on Plaintiffs' SCRCP 59(e) Motion to Reconsider filed regarding the Form 4 Order granting Defendant McCabe, Trotter & Beverly, P.C.'s ("MTB") Motion to Dismiss (filed August 1, 2018). The Court grants Plaintiffs' Motion to Reconsider to the extent it seeks an explanation of the dismissal and includes the basis for the ruling below. The Court denies the Motion to the extent it asks the Court to change its decision on MTB's Motion to Dismiss. For the reasons set forth below, this Court GRANTS MTB's Motion to Dismiss with prejudice.

Procedure

Plaintiffs filed the Complaint on May 14, 2018. MTB filed an Answer and Motion to Dismiss pursuant to SCRCP 12(b)(6) on June 6, 2018. The Court set a hearing for the Motion to Dismiss to take place on June 20, 2018. On June 18, 2018, Plaintiffs filed an Amended Complaint, which made the original Motion to Dismiss moot.

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On June 20, 2018, MTB filed an Answer and Motion to Dismiss the Amended Complaint under SCRCP 12(b)(6). A hearing took place in Conway, South Carolina on July 31, 2018. Counsel for MTB and Plaintiffs presented oral argument. On August 1, 2018, the Court issued a Form 4 Order granting MTB's Motion to Dismiss the Amended Complaint.[1] On August 9, 2018, Plaintiffs filed the subject Motion to Reconsider. A hearing took place on January 22, 2018 in Conway, and counsel for MTB and Plaintiffs presented oral argument.

Plaintiffs request a formal Order setting forth the basis of the dismissal of their claims against MTB under SCRCP 52(a) and ask the Court to reconsider its decision to grant the Motion to Dismiss under SCRCP 59(e). Under SCRCP 59(e), a party may file a motion asking the court to alter or amend a judgment no more than ten days following the receipt of the written order on the judgment. SCRCP 52(a), in actions tried without a jury, the court shall set forth findings of facts and conclusions of law. Plaintiffs moved within ten days after the Court issued the Form 4 Order granting MTB's Motion to Dismiss. Therefore, the Court, in its discretion, amends its ruling to include the findings of fact and conclusions of law below.

Facts

Plaintiffs are owners of certain units in the Caravelle Resort ("Caravelle") condominium complex in Myrtle Beach, South Carolina. Plaintiffs filed this action as individuals and derivatively on behalf of the Caravelle Resort Association, Inc. ("HOA"). The Amended Complaint also contains class action allegations for claims brought on behalf of all owners of units at Caravelle.

[1] The Form 4 Order also denied Plaintiff's Motion for a Temporary Injunction, but that is not at issue with respect to this Order.

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Caravelle is subject to a Master Deed and Bylaws (collectively, "governing documents"), filed as Exhibits 1 and 2, respectively, to the Amended Complaint. Among other things, the governing documents establish the HOA and provide that every owner of units in Caravelle is a member of the it subject to the governing documents. The owners collectively purchased an HO-6 insurance policy through Lloyd's of London as the governing documents require. Ex. 3 to the Am. Compl. The policy covers all 346 units separately, and each owner is a named insured under the policy.

At all times pertinent to this case, MTB served as counsel for the HOA, and Defendant Gold Crown Management Company, Inc. ("Gold Crown") served as the HOA's property manager. Hurricane Matthew struck South Carolina on October 8, 2016, causing significant damage to many units at Caravelle. Plaintiffs allege that following the storm, the HOA's Board ("Board") decided, without appropriate authority or permission, to remove owners' personal property from their units and store them in the parking garage of the HOA as part of the damage control and repair process. The HOA also entered into a contract with Commercial Disaster Recovery, LLC f/d/a Delta Restoration, LLC ("Delta") to handle the process of removing the owners' items from their units and perform other repair/restoration work related to damage Caravelle suffered in the Hurricane. Various problems ensued with respect to the storage and handling of the removed personal property.

Plaintiffs take issue with the removal of their personal property from certain units and with various elements of the handling of the restoration process. They allege the entering of certain units and removal of owners' personal property was improper and contrary to the governing documents. Plaintiffs also say owners were not properly notified of the decision to enter their units and remove property and that they were wrongfully also prevented from entering their units and inspecting their

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property following its removal. According to Plaintiffs, various elements of the personal property removed from their units was lost, damaged, stolen or otherwise destroyed.

In or about February 2017, the Board made the decision to gut the entire building, remove owners' belongings, and hire third parties to remodel and remediate damaged units. During the remediation process, personal property removed from owners' units was stored in the development's parking garage across the street, which was turned into a make-shift storage unit. Plaintiffs say the Board did not consult with owners as the governing documents required prior to making these decisions and take issue with the decisions. The Amended Complaint says "MTB and/or Gold Crown" failed to take adequate steps to protect owners' personal belongings, which were not secure from environmental hazards or theft.

Other issues in the Amended Complaint relate to problems with the claims made on an HO-6 insurance Policy Lloyd's of London issued insuring each owner for dwelling, personal property and loss of use with limits of $25,000 per unit. Plaintiffs cite letter(s) from MTB sent as counsel for the HOA to Lloyd's taken in the course of trying to assist in the handling of the insurance issues.

Plaintiffs also take issue with certain charges the HOA levied to recover costs incurred as a result of storing the owners' belongings and otherwise taking steps in the repair/remediation process. According to Plaintiffs, the HOA charged owners with a "content manipulation fee" that was improper, unlawful and not in accordance with the governing documents. Similarly, Plaintiffs take issue with charges by the HOA for a "soft goods package." This related to replacement of certain items lost or destroyed by the Hurricane and/or while in storage by Delta. The HOA charged owners for the soft goods package, and Plaintiffs allege "Gold Crown and/or MTB" misrepresented the damage to certain units in order to justify this charge. Plaintiffs also say "Gold Crown and/or MTB"

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wrongfully asserted claims against owners in order to strongarm them into paying the contents manipulation fee and soft goods package.

The Amended Complaint alleges the following causes of action against MTB: (1) professional negligence (personally and derivatively); (2) breach of fiduciary duty (derivatively); (3) aiding and abetting breach of fiduciary duty (derivatively); (4) fraud (personally); and (5) conversion (personally). Plaintiffs submitted the (Amended) Affidavit of Thomas Pendarvis with the Amended Complaint in an effort to comply with S.C. Code § 15-36-100.

Motion to Dismiss Standard

SCRCP 12(b)(6) provides that a defendant may move for dismissal based on the plaintiff's failure to state facts sufficient to constitute a cause of action. *See also* Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In considering a 12(b)(6) motion, "the trial court must base its ruling *solely* upon allegations set forth on the face of the complaint." Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (emphasis added); *see also* Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987); and Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). A copy of any plat, photograph, diagram, document or other paper which is an exhibit to a pleading is part thereof for all purposes if a copy is attached to such pleading. SCRCP 10(c).

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). The court should not grant a 12(b)(6) motion if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Id. The question is whether, in the light most

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favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

The Court notes that Plaintiffs' Amended Complaint is at issue here. Plaintiffs initially filed an original Complaint, which MTB moved to dismiss. Rule 15 allowed Plaintiffs to amend the Complaint once as a matter of right within thirty days. They did so two days before the hearing for the Motion to Dismiss the Complaint by filing the subject Amended Complaint in an apparent attempt to address alleged deficiencies in the original Complaint (as noted in MTB's Motion to Dismiss the Complaint). Even on this second try, Plaintiffs fail to allege facts sufficient to state a claim for any of the causes of action alleged against MTB in the Amended Complaint.

Conclusions of Law

Plaintiffs bring claims against MTB individually and derivatively on behalf of the HOA. All the claims are based on activities MTB took as lawyers for the HOA. Plaintiffs have not alleged that MTB took any action outside the scope of its representation of the HOA. Plaintiffs just take issue with MTB's representation of the HOA.

However, Plaintiffs (individual owners of units) have no standing to bring a legal malpractice claim against MTB because the firm did not represent them. Further, MTB is not liable to Plaintiffs, who are third parties MTB did not represent, for actions the firm took within the course and scope of its representation of the HOA. Plaintiffs' individual claims against MTB fail as a result.

The gravamen of Plaintiffs' claims is the loss of their personal property and other damages the individual owners incurred. While the Amended Complaint references damages the HOA incurred, the pleading contains only conclusory language in this regard. It lacks any facts showing how the HOA has been damaged by anything MTB did or failed to do. Without facts showing how

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the HOA has been damaged, there is no basis for any derivative cause of action against MTB by the Plaintiffs on behalf of the HOA.

1. Claims Against MTB Personally

a. Legal Malpractice

To survive a Rule 12(b)(6) motion, a plaintiff in a legal malpractice action must allege the following elements: (1) existence of a lawyer-client relationship; (2) a breach of duty by the lawyer; (3) damage to the client and (4) proximate causation of the client's damage by the breach. Stokes - Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016). A plaintiff asserting a legal malpractice claim against a lawyer must first establish the existence of an attorney-client relationship between the lawyer defendant and the plaintiff. The Law of Legal Malpractice in South Carolina (S.C. Bar- CLE Division 2017). The failure to allege the existence of a lawyer-client relationship is fatal to a complaint alleging legal malpractice. Id.

The Amended Complaint plainly states MTB represented the HOA. Am. Compl., para. 7. The pleading goes to great lengths in attempts to craft language supporting a claim by individual owners for legal malpractice against MTB. This includes allegations that MTB "provided legal advice to owners such that owners could reasonably believe MTB was representing them as well." Am. Compl., para. 8. However, this is not sufficient to allege the first fundamental element of a legal malpractice claim, the existence of a lawyer-client relationship, to establish a cause of action by the individual Plaintiffs against MTB.

As is clear from the factual allegations in the Amended Complaint and material filed with it, MTB represented the HOA, not the individual owners, and the individual owners claim they have been damaged as a result. While MTB interacted with the owners and took other action as counsel

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for the HOA, there is no allegation or support for one in anything filed with the Amended Complaint, that MTB represented the individual owners. In fact, it is clear MTB did not, as it acted only as counsel for the HOA. The failure to allege the existence of an attorney-client relationship between MTB and the Plaintiffs is fatal to their legal malpractice claim against MTB.

Additionally, South Carolina law provides that lawyers are immune from liability to third parties arising from the performance of professional activities as a lawyer on behalf of and with the knowledge of the client. Stiles v. Ontario, 318 S.C. 297, 458 S.E.2d 601 (1995). *See also* Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). The purpose of this is to encourage zealous representation of client without fear of lawsuits by disgruntled opposing parties. Gaar v. NMB Realty Co., 287 S.C. 525 (Ct. App. 1986). The only exception to these generally recognized principles is the context of a beneficiary of a will. Rydde v. Morris, 318 S.C. 643, 675 S.E.2d 431 (2009); *see also* Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 875 (2009) discussed in detail below.

Based on the allegations in the Amended Complaint and material filed with it, all actions MTB took of which Plaintiffs complain were taken as lawyers for the HOA in the scope of the firm's representation of the HOA. The Amended Complaint does not allege MTB took any action outside the scope of its representation of the HOA. MTB is therefore immune from liability to the individual owners for legal malpractice for such actions.

While no South Carolina appellate court has directly addressed the issue, a majority of jurisdictions adhere to the rule that a lawyer acting as counsel for a corporation owes a duty of care solely to the corporation and not its individual shareholders, officers or directors. The Law of Legal Malpractice in S.C., p. 60 (S.C. Bar- CLE Division 2017); *see also* Bovee v. Gravel, 174 Vt. 486, 811

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A.2d 137 (Vt. 2002). To determine otherwise would create basically unlimited liability for corporate counsel to individual shareholders. Applying this principle, this Court holds that MTB did not owe a duty of care to individual unit owners for actions taken in its capacity as counsel for the HOA. Thus, Plaintiffs individual claims for legal malpractice against MTB fail as pled because Plaintiffs cannot show the existence of a lawyer-client relationship between MTB and the individual owners.

Finally, under S.C. Code § 15-36-100, *et seq.*, complaints alleging professional negligence against certain South Carolina professional defendants must include an affidavit of an expert witness setting forth the basis for at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. S.C. Code § 15-36-100(B). A complaint that does not include the contemporaneous filing of a sufficient expert affidavit is subject to dismissal for failure to state a claim. S.C. Code § 15-36-100(C)(1).

Plaintiffs' filed an Affidavit of Thomas Pendarvis (a South Carolina lawyer) with the Complaint and an Amended Affidavit with the Amended Complaint. The Amended Affidavit maintains that in Mr. Pendarvis' opinion, MTB was professionally negligent. However, Mr. Pendarvis' Affidavit states that MTB represented the HOA and recognizes that MTB did not represent the individual owners. The Affidavit takes issue with advice MTB gave the HOA and actions MTB took as counsel for the HOA. These actions and advice form the factual basis of Mr. Pendarvis' opinion that MTB was professionally negligent.

However, the Affidavit fails to state the existence of an attorney-client relationship between MTB and any of the individual owners, which is the first and necessary requirement to showing a cause of action for professional negligence by the individual Plaintiffs against MTB. Therefore, the Affidavit fails to meet the requirements of S.C. Code § 15-36-100 necessary to support a cause of

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action of professional negligence by the individual Plaintiffs against MTB. The Amended Complaint is subject to dismissal under S.C. Code § 15-36-100(C)(1).

b. Fraud

In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recovery. Kahn Const. Co. v. S.C. Nat. Bank of Cha., 275 S.C. 381, 271 S.E.2d 414 (1980). Failure to allege any of these elements is fatal to recovery. Id. and Hooters of Am. v. Phillips, 39 F.Supp. 2d 582 (D.S.C. 2998); Kiriakides v. Atlas Food Sys. & Servs., Inc., 338 S.C. 572, 527 S.E.2d 371 (Ct. App. 2000). Specifically, the complaint must set forth sufficient facts to show that each of the nine elements is present or the complaint will be "facially defective." Mutual Sav. & Loan Assoc. v. McKenzie, 274 S.C. 630, 266 S.E.2d 423 (1980).

The Amended Complaint recites the elements of a fraud cause of action. However, the pleading fails to state *facts* sufficient to support a cause of action of fraud versus MTB for various reasons. The majority representations of which Plaintiffs complain were made by "Gold Crown and/or MTB." The Amended Complaint references (and includes by way of exhibits) certain letters from MTB to individual Caravelle owners. However, the pleading does not state what in these letters was false, much less what false statement they contain that MTB *knew* was false or was made with reckless disregard for the truth.

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The only representation in the Amended Complaint Plaintiffs allege "was patently false" was a statement in an April 20, 2017, letter from Gold Crown to individual owners. This letter is plainly from Gold Crown and is not from MTB. On its face, there is no indication MTB was in any way involved with the letter. The Amended Complaint fails to specify a material false statement MTB made with knowledge of the falsity or reckless disregard for the truth. Neither does the Amended Complaint specify a material false statement by MTB on which Plaintiffs detrimentally relied.

Further, nothing in the Amended Complaint alleges MTB took any action outside the scope of its representation of the HOA, even with respect to the fraud cause of action. No South Carolina authority provides for such a claim against MTB under the facts as alleged. Therefore, the Amended Complaint fails to state facts sufficient to constitute a cause of action for fraud against MTB.

c. Conversion

Conversion is the unauthorized assumption and exercise of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Austin v. Independent Life and Acc. Ins. Co., 296 S.C. 156, 370 S.E.2d 918 (Ct. App. 1988) *citing* Steele v. Victory Savings Bank, 368 SE.2d 91 Ct. App. 1998). A cause of action for conversion is comprised of the following elements: (1) an interest by the plaintiff by the thing converted; (2) the defendant converted the property to his or her own use and (3) the use was without plaintiff's permission. The Elements Civil Causes of Action, 5th Ed., S.C. Bar, p. 121 (2015).

The Amended Complaint does not plead facts supporting a conversion cause of action against MTB. Plaintiffs base this claim on the theory that "Gold Crown and/or MTB" directed Delta to remove owners' belongings from their units and that "Gold Crown and/or MTB" denied owners access to the property. They also say "Gold Crown and/or MTB," exercised dominion and control

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over owners' belongings (*see* Am. Compl. paras. 144 – 147) and that "Gold Crown or MTB, without the permission of the owners, required Delta to remove the items from these Owners' units to either throw away, recycle or re-sell the items." Am. Compl., para. 68.

However, alleging that "Gold Crown or MTB" took certain action that forms the basis of a claim for conversion is insufficient to allege that *MTB* converted any property Plaintiffs owned. The facts alleged in the Amended Complaint, in the light most favorable to the Plaintiffs, show only that the HOA and/or Delta handled the property at issue. Even if it was at MTB's direction, this does not amount to a claim for conversion by MTB because the firm, as alleged, never possessed, controlled or retained the benefit of any of Plaintiffs' personal property. Even if taken as true, the only facts alleged supporting conversion are that the HOA and/or Delta (not MTB) disposed of Plaintiffs' personal property.

Further, there is no allegation that MTB was acting outside its scope as lawyers for the HOA, and thus it is immune from liability for these actions to the Plaintiffs who MTB did not represent. Plaintiffs cite Stiles v. Ontario for the proposition that MTB may be liable to Plaintiffs for conversion. 318 S.C. 297, 457 S.E.2d 601 (1995). Plaintiffs' reliance on Stiles is misplaced. That case stands for the proposition that lawyer may be liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client. Id. Plaintiffs here have not alleged conspiracy against MTB.

Moreover, Plaintiffs have not alleged or stated facts showing that MTB breached an independent duty to the individual owners, or did anything outside the scope of its representation of the HOA. Even if Stiles relates to a cause of action for conversion, which it does not, its principle is inapplicable here. All of MTB's actions were taken in the course of representing the HOA, and

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therefore the firm is immune from liability to persons it did not represent for damages arising out of MTB's representation of the HOA. The cause of action for conversion against MTB therefore fails as pled.

2. Derivative Causes of Action

Plaintiffs also bring causes of action under a derivative theory pursuant to SCRCP 23(b)(1), for legal malpractice, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. "In South Carolina, the authority to direct the business affairs of a corporation is delegated to the board of directors, not the shareholders." Carolina First Corp. v. Whittle, 343 S.C. 176, 185, 539 S.E.2d 402, 407 (Ct. App. 2000). Individual shareholders may not directly sue corporate directors for losses suffered by the corporation. Babb v. Rothrock, 303 S.C. 462, 410 S.E.2d 418 (1991). "An action seeking to remedy a loss to the corporation is generally a derivative one." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001).

Rule 23(b)(1) provides for derivative actions by shareholders to enforce a right of a corporation where the corporation has failed to enforce a right which it may properly assert. A derivative claim is where a plaintiff, who is a member of the company, brings a claim in the right of the company when the company will not bring the claim for itself. Johnson v. Baldwin, 221 S.C. 141, 69 S.E.2d 585 (1952) and Gary v. Matthews, 148 S.C. 125, 145 S.E. 702. (1928). The stockholder in a derivative action is only a nominal plaintiff, the company being the real party interest. Id. and Ward v. Atlas Constr. Co. Inc., 276 S.C. 346, 278 S.E.2d 621 (1981).

Rule 23(b)(1) has heightened and particularized pleading requirements intended to allow the court to perform a gatekeeping function to prevent the unrestrained use of derivative actions. Patterson v. Witter, 418 S.C. 66, 791 S.E.2d 294 (Ct. App. 2016). "A derivative action that does

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not meet the pleading requirements of Rule 23(b)(1) is properly dismissed under Rule 12(b)(6)." Clearwater Tr. v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006). The authority to direct business and affairs of a corporation is delegated to the board of directors, not the shareholders. Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct. App. 2000).

A derivative action is, in essence, a challenge to the board's managerial authority. Whittle, 343 S.C. 176 (2000). It is a suit where shareholders attempt to recover for losses the corporation has suffered. Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001). A shareholder's suit is derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder. Id. and Hite v. Thomas & Howard Co., 305 S.C. 358, 409 S.E.2d 340 (1991). A derivative action is not the proper means for recovery of damages by an individual member of a company. A shareholder's derivative suit is an action in equity, and a party is not entitled to a jury trial as a matter of right for derivative causes of action. Pelfrey v. Bank of Greer, 270 S.C. 691, 244 S.E.2d 315 (1978) *quoting* Collier v. Green, 244 S.C. 367, 137 S.E.2d 277 and Lucken v. Wichman, 5 S.C. 411 (1874).

a. No Damages to the HOA

Plaintiffs claims, at their core, relate to and arise out of their loss of personal property and other damages the individual owners incurred resulting from actions the HOA and Gold Crown took. Plaintiffs do not seek recovery for losses the HOA has incurred, but for losses they individually suffered. The Amended Complaint attempts to plead around these problems.

First, it lumps the actions of Gold Crown and MTB together with allegations such as "Gold Crown and/or MTB's actions have caused the Association to be exposed to liability of the Owners" (para. 88), and "the damages owned [sic] to the association to the Owners is a 'common expense'

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essentially causing the Owners to owe money to themselves (para. 89). However, this does not state facts sufficient to show what MTB actually is alleged to have wrongly done. As pled, Gold Crown *or* MTB is responsible for the bad act(s) at issue.

Next, the Amended Complaint alleges the HOA incurred damages as a result of this negligence. These include attorney's fees charged to the Association, additional fees charged by Gold Crown to the Association and an HO-6 Management Fee charged to the Association. *See* Am. Compl., para 109. This Court is unsure how these amounts could be "damages" caused by MTB's alleged acts/omissions. This listing of alleged damages is merely the use of conclusory statements that the HOA was damaged, and the pleading lacks actual facts supporting a claim that the HOA was damaged by anything MTB did or failed to do. In short, the Amended Complaint contains no *facts* showing how the HOA has been damaged by MTB's alleged acts/omissions.

It is clear the only real damages alleged are damages to the individual owners for the loss of their personal property and various charges they have been assessed by the HOA. The Plaintiffs' individual losses are the only possible damages existing under the facts and allegations as pled. In order to prevail on any of the Plaintiffs' derivative causes of action alleged (negligence, breach of fiduciary duty and aiding and abetting breach of fiduciary duty), Plaintiffs must allege that they, as members of the HOA, are seeking recovery for damages the HOA has incurred when the HOA refuses to pursue the claim itself.

Despite using certain key words, Plaintiffs' claims here all arise out of their loss of personal property, not any loss the HOA incurred. Plaintiffs' derivative causes of action therefore fails to meet the heightened pleading requirements of SCRCP 23(b)(1). Their derivative causes of action alleged in the Amended Complaint all fail as pled as a result.

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b. Expert Affidavit Fails to Support Derivative Claim

The Amended Complaint includes a derivative cause of action for legal malpractice as well, which means the Plaintiffs are seeking recovery for the HOA for damages the HOA incurred proximately caused by MTB's negligence in the course of its representation of the HOA. However, Plaintiffs' expert Affidavit fails to state a negligent act or omission of MTB to support a cause of action for professional malpractice on a derivative theory.

While the Affidavit refers to generic "damages" MTB's actions caused the HOA, it is clear the real damages at issue are the individual Plaintiffs' loss of their personal property and other damges the individual owners allegedlyincurred. The Affidavit does not state what "financial losses" the HOA has suffered. This is not sufficient to set forth a negligent act or omission of MTB on a derivative theory, as damages are a necessary element of a negligence cause of action. The Amended Complaint is therefore subject to dismissal under SCRCP 12(b)(6) for failure to file a sufficient expert affidavit under S.C. Code § 15-36-100.

c. No Derivative Malpractice Claim

Plaintiffs' derivative claims against MTB are also akin to an assignment of ~~assignment of~~ a malpractice claim to the individual Plaintiffs, which South Carolina law precludes. Skipper v. Ace Prop. & Cas. Ins. Co., 413 S.C. 33, 775 S.E.2d 37 (2015). This is a matter of public policy in light of the unique and confidential personal nature of the relationship between a lawyer and her client. The Law of Legal Malpractice in S.C., S.C. Bar (2017); ~~*see also* Goodley v. Wank & Wank, Inc., 133 Cal. Rptr. 83 (Cal. Ct. App. 1976). Generally, the filing of a legal malpractice action results in the waiver of the attorney-client privilege. SCRPC 1.6(b)(6); The Law of Legal Malpractice in S.C., S.C. Bar (2017); *see also* Picadilly, Inc. v. Raikos, 582 N.E.2d 338, (Ind. 1991).~~

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Assigning a legal malpractice claim places the defendant lawyer in the untenable position of having to defend claims resulting from its communications with its client without being able to discuss those communications (which the client has not waived). Once the case is assigned, the client loses control over the disclosure of confidential information, which the lawyer may reveal as necessary to establish the defense. The Law of Legal Malpractice in S.C. (2017) ~~citing Picadilly, *supra*.~~ The client is relegated to observing from the sidelines as the assignee pursues the lawyer. This erodes the principles fostered by the duty of confidentiality. Id. This is a primary reason legal malpractice claims in South Carolina are not assignable. Skipper v. Ace, *supra*.

Filing a malpractice action as a derivative claim similarly places the defendant lawyer in a precarious and untenable position because the lawyer must defend herself, but the client has not waived the privilege. California precludes derivative legal malpractice claims. Its courts have based this on the same reasoning as the South Carolina courts that have precluded the assignment legal malpractice claims.

~~The primary issue relates to the attorney-client relationship in the context of a derivative action by shareholders against a company's lawyers. The corporation, not the shareholder, holds the attorney-client privilege in a situation where a lawyer represents a company. NFL Properties, Inc. v. Superior Court, 65 Cal.App.4th 100, 75 Cal.Rptr.2d 893 (1998). Shareholders do not enjoy access to privileged information merely cause the lawyers' actions also benefit them, nor do shareholders own the right~~ to waive the attorney-client privilege ~~simply by filing an action on the company's behalf. Id. Thus, the filing of a derivative action does not result in the corporation's waiver of the privilege. Id., *see also* Pacific Tel. & Tel. Co. v. Fink, 141 Cal.App.2d 332, 296 P.2d 843 (1956). Because of this, a derivative lawsuit against a corporation's outside counsel has the dangerous~~

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~~potential for robbing the lawyer-defendant of the only means he or she may have to mount a meaningful defense, as the lawyer must preserve the attorney-client privilege while trying to show that her representation of the client was not negligent. Kracht v. Perrin, Gartland & Doyle, 219 Cal.App.3d 1019, 268 Cal.Rptr. 673 (1990).~~

It is impossible for a lawyer to mount a defense in a shareholder derivative action alleging a breach of duty to a corporate client, where, by the very nature of the action, the lawyer is foreclosed (in the absence of any waiver by the corporation client) from disclosing the communications which are alleges to constitute a breach of that duty. That is exactly the case here, where the Plaintiffs' claims against MTB are all based on alleged advice the firm provided its client, the HOA. Thus, in order to defend itself at all, MTB must disclose correspondence with its client, the HOA. However, the HOA has not waived the attorney-client privilege.

Allowing a derivative claim against MTB here would be akin to allowing the assignment of the HOA's legal malpractice claim. This Court applies the same principle and precludes Plaintiffs' attempt to bring a legal malpractice action as a derivative claim against MTB on behalf of the HOA. The Amended Complaint therefore fails to state facts sufficient to constitute a derivative claim on behalf of the HOA against MTB for any of the causes of action alleged.

3. Third-Party Beneficiaries

Plaintiffs maintain MTB is liable to them as individual owners because they are third-party beneficiaries to MTB's contract to represent the HOA. Plaintiffs cite Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014) and Sentry Select v. Maybank, Opinion No. 27806 (S.C. 2018) to support their claim in this regard. Plaintiffs' reliance on these cases is misplaced. Fabian stands for the proposition that South Carolina recognizes a cause of action against a lawyer by a third-party

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beneficiary of a will or estate planning document against a lawyer whose drafting error defeats or diminishes the client's intent. 410 S.C. 475, 765 S.E.2d 132 (2014). The Court reasoned that where the client is deceased, imposing an avenue for recourse in the beneficiary of a will is effectively enforcing the client's intent.

That is not the situation here. First, Fabian only extended a cause of action to a third-party beneficiary in the estate planning and will context. It did not extend lawyer immunity to third-parties for any other purpose. Further, MTB's client here is the HOA. The HOA is not deceased and is certainly able to pursue recourse against MTB if the HOA believes MTB provided it negligent advice.

Sentry v. Maybank dealt with an insurance carrier's ability to pursue a claim for legal malpractice a lawyer committed while representing the carrier's insured. The facts in that case were that a law firm the insurer hired to represent its insured failed to respond to Requests to Admit, essentially admitting to liability of the insured. The Court's limited holding in that case was: (1) an insurer may maintain a direct malpractice action against counsel hired to represent its insured where the insurance company has a duty to defend and (2) the insurer may only recover for the attorney's breach of duty to his client when the insurer proves the breach is the proximate cause of damage to the insurer. If the interests of the client are the slightest bit inconsistent with the insurer's interest, there can be no liability of the attorney to the insurer. Sentry v. Maybank, *supra*. The Court in Sentry expressly limited the scope of its ruling to situations dealing with insurers and law firms they retain on behalf of their insureds.

This case does not involve allegations by an insurer against a law firm hired to represent its insured. Thus, Sentry does not apply to create any potential cause of action by the individual Plaintiffs against MTB for actions MTB took during the course of representing the HOA. Further, under the

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reasoning of Fabian and Sentry, the proper method for Plaintiffs to pursue this sort of claim against MTB would be through a derivative action. As detailed above, Plaintiffs' derivative claims against the firm fail as pled.

4. Real Parties at Interest

The Court notes Plaintiffs have filed a separate action seeking recovery for damages arising out of the same facts and circumstances at issue here against Lloyd's of London and Delta, Hager, et al. v. Lloyd's of London, et al., C/A 2018-CP-26-2871. Plaintiffs have not sued the HOA. There are avenues for Plaintiffs to pursue if they believe they have been wronged, but the Amended Complaint fails to plead facts sufficient to state facts to support and claim alleged against MTB, individually or derivatively.

Conclusion

For the reasons stated above, the Amended Complaint fails to state facts sufficient to constitute any cause of action alleged against MTB, individually and/or derivatively, and therefore, the Court grants MTB's Motion to Dismiss the Amended Complaint. Plaintiffs' claims against MTB are therefore DISMISSED WITH PREJUDICE pursuant to SCRCP 12(b)(6).

IT IS SO ORDERED.

March 6, 2019

Conway, South Carolina

Benjamin H. Culbertson
Circuit Court Judge

Certificate of Electronic Notification

Recipients

Brian Gambrell - Notification transmitted on 05-23-2018 06:19:18 PM.

ELECTRONICALLY FILED - 2018 May 23 6:19 PM - HORRY - COMMON PLEAS - CASE#2018CP260297

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****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP2602974

Official File Stamp:	05-23-2018 06:18:57 PM
Court:	CIRCUIT COURT Common Pleas Horry
Case Caption:	Karl Hager , plaintiff, et al VS Mccabe Trotter & Beverly Pc , defendant, et al

Event(s):

Notice/Notice of Appearance

Filed by or on behalf of:

Andrew W. Countryman

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Brian C. Gambrell for Karl Hager, Robert Singelton, Terri Hager, Bowers Caravelle Llc, Erik Arnold, Susan Welborn, Jay Welborn

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Gold Crown Management Company Inc

Caravelle Resort Association Inc

Mccabe Trotter & Beverly Pc

Brian Gambrell

From:	Andrew Countryman <awc@countrymanlawfirm.com>
Sent:	Monday, January 28, 2019 10:42 AM
To:	Benjamin H. Culbertson
Cc:	bculbertson@sccourts.org; Brian Gambrell; Jason Taylor; Lawrence Serbin; Robert Herford; Dominic Starr; Robert P. Wood; Preston Brittain
Subject:	Hager v. MTB, et al., C/A 2018-CP-26-2974; Proposed Order
Attachments:	proposed Order on MTR.docx

Dear Judge Culbertson,

As you may recall, I represent Defendant McCabe, Trotter & Beverly, PC in this case. On 1/22/19, you denied Plaintiffs' Motion to Reconsider the granting of my Motion to Dismiss. I attach the proposed Order on that Motion as you requested. I copy all counsel of record. Thanks for your consideration, and please let me know if you need anything further from me on this.

Respectfully,

Andy
Andrew W. Countryman
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
843-253-4477
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*Certified S.C. Circuit Court Mediator

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February 22, 2019

The Hon. Benjamin H. Culbertson
P.O. Box 479
401 Cleland St.
Georgetown, SC 29442

Re: *Karl Hager, et al., v. McCabe, Trotter & Beverly, P.C., et al.*
C/A 2018-26-2974
CLF File: 00006 – 000051

Dear Judge Culbertson:

As you may recall, I represent Defendant McCabe, Trotter & Beverly, P.C. ("MTB") in this case. You granted MTB's Motion to Dismiss the Amended Complaint, and Plaintiffs filed a Motion to Reconsider. You heard that Motion at a hearing in Conway on January 22, 2019. You denied the Motion to Reconsider and clarified that dismissal was *with prejudice*. You issued a Form 4 and instructed me to submit a proposed formal Order via email, which I did on January 28, 2019.

I enclose a hard copy of that Order and can certainly send another copy electronically if necessary. I don't see where a formal Order has been entered and wanted to make sure you received my proposed Order. I am certainly happy to make any changes you require. Thanks for your consideration.

Most respectfully,

Andrew W. Countryman

AWC/sgc
Enclosure
cc: all counsel of record via U.S. mail (without enclosure)

XXXXXXXXX

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS	
COUNTY OF HORRY)	2018-CP-26-02974	
Karl Hager, et al.,	)	
	)	
Plaintiffs,	)	Transcript of Record
	)	
vs.	)	July 31, 2018
	)	
McCabe Trotter & Beverly, P.C., et al.,	)	
	)	
	)	
Defendants.	)	

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Brian C. Gambrell, Esquire
Attorney for Plaintiffs

Andrew W. Countryman, Esquire
Attorney for Defendant,
McCabe Trotter & Beverly, PC

Dominic Allen Starr, Esquire
Attorney for Defendant,
Gold Crown Management Company, Inc.

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

(There were no exhibits marked during the hearing.)

(On the record, July 31, 2018.)

THE COURT: 2018-CP-26-2974, Karl and Terri Hager and others versus McCabe Trotter and Beverly PC and Gold Crown Management Company, Inc. According to my roster, the matter is before the Court on a motion to dismiss and a motion for an injunction, what is it, a temporary injunction or preliminary injunction. Please give the court reporter your name and who you represent.

MR. COUNTRYMAN: I'm Andy Countryman. I represent the Defendant, McCabe Trotter and Beverly.

THE COURT: All right

MR. GAMBRELL: And I'm, and I'm Brian Gambrell. I represent the Plaintiffs.

THE COURT: All right.

MR. STARR: Your Honor, I'm Dominic Starr. I represent Defendant Gold Crown who's not a party to the motion to dismiss but, but I'll be responsive to the motion for injunction.

THE COURT: All right. I guess the motion to dismiss is dispositive of the other one, could be?

MR. COUNTRYMAN: Could be.

THE COURT: Okay.

MR. GAMBRELL: I hope not.

THE COURT: All right. And it was filed first I guess. So let's -- this is your motion, Mr. Countryman?

MR. COUNTRYMAN: It is, Your Honor.

THE COURT: All right. Let me hear from you.

MR. COUNTRYMAN: May it please the Court. Your Honor, you -- we were here in front of you on one of these similar motions a few weeks ago, but I'll give you, give you a brief recitation of the facts. I represent McCabe Trotter. They're a law firm in Columbia. McCabe Trotter serves as counsel currently and did at all times pertinent to this case as counsel for the Caravelle Resort Owners Association. Caravelle is a condo complex on Myrtle Beach.

In 2016 when the events at issue took place, McCabe Trotter represented the owners association, and I'll call it the HOA or the POA. Gold Crown is also a Defendant. Gold Crown was the property manager for the HOA. I understand that Gold Crown has recently been terminated, but its services will continue through the end of October of this year.

In fall of 2016, in October specifically, Hurricane Matthew struck the southeastern coast, caused significant damage to units at the Caravelle, and it's one of those high-rise buildings right on the beach. As a result of damage incurred at the property, the HOA in conjunction with Gold Crown, as I understand it, took certain measures to eliminate risk and to begin making repairs to the damaged units. Now, again, this complex is directly on the beach, and a lot of the units face the beach, and a lot of the windows were destroyed,

leaving the units exposed to the elements. There was a lot of moisture damage.

Now, a company called Delta Restoration came to town and was going around trying to sell its services to various folks who needed help repairing and restoring their properties. Delta came to Caravelle and told the owners association, "We need to start working on your property. We need to help restore it. We need to fix the water damage, test for mold damage, etcetera." Now, as I understand it, it was a time sensitive issue, and the owners association under a certain provision in the master deed decided to take emergency measures and it signed a contract with Delta providing Delta the authority and ability to go in and take out certain contents of individual units at the complex. Delta took those provisions, and those were things such as bedspreads, drapes, headboards, items such as that and other items of personal property, and they stored those items in the parking garage that's across the street from the development. Now, the garage is not conditioned, but they tried to create some kind of a space where the property wouldn't get destroyed and where it could be cleaned to the extent it could and otherwise handled properly.

Now, in the meantime, there's no evidence or allegation that McCabe Trotter was involved initially with this beginning process, and in fact, it wasn't. The board, the HOA decided

to hire Delta and then later came back to McCabe Trotter and said, "Let's work on this. Help us because we have some issues that are developing."

One of those issues that developed had to do with the insurance in place. Now, Lloyd's of London offered an insurance policy, an HO-6 policy to the owners, and long story short, the way that was handled, there were serious issues. Lloyd's ended up paying certain residents individually for their damages and then it was later determined that, "Well, no, we should've done that. We should have paid the HOA," so the HOA had to ask for that money back. It was a big mess, and they've actually sued Lloyd's of London in a separate case.

The repairs, the analysis, the assessment of the damage took longer than expected, and it was bleeding into the spring and summer months of 2017. Because the space where the property was held was not conditioned, there was a significant worry that the property would be ruined, and some of the property ended up being ruined. The crux of this case relates to the Plaintiffs' personal property, the owners of units at Caravelle, their personal property that was stored in this parking garage and allegedly stolen, damaged, and otherwise lost. The owners say that because of the actions of the Defendants their personal property was gone, and that's the crux of their damage.

The Plaintiffs have brought this lawsuit suing McCabe Trotter who was the law firm undisputedly for the owners association. Plaintiffs have caged this lawsuit as a professional negligence action. They brought it as individual parties and as a purported class action derivatively on behalf of the HOA.

Their claim fails for a number of reasons. Individually, there's no allegation that McCabe Trotter represented any of these individual owners, and in fact, it didn't. Now, I filed a motion to dismiss the initial complaint, and based on that, the specific allegation in the complaint that lacks any indication that McCabe Trotter represented the Plaintiffs themselves. Well, Plaintiffs' counsel on the eve of a hearing filed an amended complaint and it tries to address that, but it's not sufficient. The amended complaint includes language such as third-parties could have believed that McCabe Trotter represented the owners or the owners could have believed that McCabe Trotter represented them, but there's no allegation that any owner believed that McCabe Trotter represented them or that the firm actually did. Because of that, these individuals can't bring a lawsuit based in professional negligence against a law firm that did not represent them.

Now, the Plaintiffs also try to get around this by bringing a derivative suit. A derivative suit is where someone who's a member of a company sues on behalf of the

company for damages that a company incurs for which the company won't seek recovery for itself. Plaintiffs here have tried to make that allegation but it doesn't work because the damages the Plaintiffs seek are damages the individuals incurred, not damages the corporation, which here would be the HOA, incurred. In fact, the HOA is the one that has -- that hired McCabe Trotter and was trying to help fix all these issues. Now, whether they did it correctly is a separate issue, but there's no basis to claim that these individuals can bring a class action on behalf of the company because they don't have properly alleged damages, and again, those damages would have to be damages that the HOA incurred as a result of something McCabe Trotter did or did not do.

Now, I've made my motion to dismiss from a big picture perspective in that regard. Again, these individual Plaintiffs can't bring a claim against the law firm that didn't represent them. They can't bring a claim as a derivative matter because they don't allege damages on behalf of a company. I've also made the grounds that or allege the grounds that their expert affidavit fails, and if you look at the expert affidavit, it's a Thomas Pendarvis, with whom I'm very familiar. I like Thomas, and I was actually puzzled when I saw that he had filed an affidavit in this case. If you look at the affidavit, and actually, they filed two because after I filed my first motion to dismiss they thought that

maybe they should beef up the affidavit. Well, the affidavit contains allegations regarding advice McCabe Trotter gave the owners association, advice McCabe Trotter gave the board. The only thing at issue with respect to McCabe Trotter is advice it gave to its client, the HOA.

Now, as it stands, McCabe Trotter is in an untenable, impossible position because the attorney-client privilege applies to communications or the advice that McCabe Trotter gave to its client, the HOA. The HOA hasn't waived that, and McCabe Trotter is faced with trying to defend claims based solely about the advice it allegedly gave to the client. Now, substantively, the allegation is that McCabe Trotter improperly advised the board and/or Gold Crown to take certain measures with respect to hiring Delta, to storing the property and to handling the insurance aspect of the case, but again, those are privileged communications, the advice that McCabe Trotter gave is between its client and it. The Plaintiffs here are not McCabe Trotter's client, regardless of how they try to frame their complaint, and I think I'll rest with that, Your Honor, because all the allegations in the complaint and in the amended complaint arise out of the same facts, same defenses apply with respect to McCabe Trotter being immune to liability to a third-party for acts that McCabe Trotter took on behalf of its client. I'll only add that in regard to the privilege issue that I mentioned that South Carolina law

precludes the assignment of a legal malpractice claim for that very reason because assigning a legal malpractice claim puts a law firm or a lawyer in a position of having to discuss privileged information when the privilege has not been waived, and of course, the privilege here is the client's.

The other causes of action allege, frankly, fraud and conversion. There's nothing to substantiate those allegations in the complaint. The conversion aspect deals with the destruction or loss to the Plaintiffs' property. There's no allegation that McCabe Trotter actually took anyone's property or sold their property or destroyed it, and there's certainly no basis in fact as alleged in the amended complaint to support an allegation of fraud.

THE COURT: All right. Mr. Gambrell.

MR. GAMBRELL: Your Honor, we, we submitted a, a detailed memorandum. I believe I emailed it to you separately from the ECF. I, I don't agree, obviously, with Mr. Countryman's assessments of the facts. Obviously, the existence of an attorney-client relationship is a question of fact, not a question of law. We have alleged two different methodologies in which his -- which McCabe Trotter represented these Plaintiffs. Methodology one is that they were retained by the association to provide legal advice to the association. That legal advice then caused harm to my clients in a manner such that, like for example, the two cases that I cite particularly

in my brief and that I have ready to hand up, Your Honor, which is the one case you're well familiar with which is Fabian, if I can approach, Your Honor.

THE COURT: All right.

MR. COUNTRYMAN: Thank you.

MR. GAMBRELL: And I, and I did not, I did not print Select Insurance Company which just came out in May because it, it just basically cites Fabian, and in particular, Your Honor, I highlighted the, the particularly relevant portion of, of Fabian on page eight, and it's our argument that just like in Fabian and just like in Select Insurance that my class of owners, and I have some of the owners with us here again today, that my clients are the intended third-party beneficiaries of any contract between McCabe Trotter and the association, that even though there's a corporate forum, any losses sustained by the association are shared in common by the owners. In other words, you can't -- there's, there's nothing that the association can do. It doesn't operate as a business. It doesn't sell product. It doesn't do anything other than act as the governing structure of the association, and as part of that, any losses sustained by the association are then divvied up by a proportional share to the owners and they share that expense, and that would be regardless of what happened. Like for example, even the hurricane loss, they're, they're having to pay their assessments in order to, in order

to share that cost amongst themselves, and obviously, the rules and how they do that is set forth in the, in the restrictive covenants, the master deed that's attached to our complaint.

Secondly, Your Honor, that and we allege in particular on, on page 14 multiple paragraphs of 62, 63 and then on page 18, which is 92, 93, 99 and 104 on page 19 that McCabe Trotter -- the HO-6 policy is, in particular, the problem because the HO-6 policy is not a policy that was owned by the association. The association was not a named insured, but McCabe Trotter's attorney undertook to represent the association, I mean, the members' interest to that insurance policy without any authority from these, from these members, and in so doing, that's how they ended up with this storage scheme where they removed everyone's belongings, and one of the things that Mr. Countryman stated and I, I took issue and the complaint lays out kind of the timeline, the hurricane happens at the beginning of October. They tell the owners in about the middle of October that the building has suffered this damage and, "We've got to do something," but they don't tell them exactly what they're going to do and but they say, "We're not going to rent any more units, we're going to cut off any rentals."

THE COURT: You're saying McCabe Trotter told them this

MR. GAMBRELL: The board and but --

THE COURT: They told the board this.

MR. GAMBRELL: Told the board this and that, that McCabe Trotter was involved in this decision, and we allege that specifically in the complaint.

THE COURT: But I mean, what authority does McCabe Trotter have to do anything? Aren't they acting as agents for the board?

MR. GAMBRELL: They're providing legal advice on -- particularly on the next step, and this is the, the next step, Your Honor, that under that next theory that they -- the board specifically asks and we allege it and McCabe Trotter tells them that they can enter everyone's units and remove everyone's belongings and removing those belongings is the problem is that the board did not have the authority to enter the units and then by entering the units removed their belongings and then put them in storage, and we've attached to the complaint that there are multiple letters in which McCabe Trotter directly communicates with the members regarding the status of their belongings, the status of these HO-6 negotiations, that the -- tells them that they can't come get their belongings. There's, there's a lot in this complaint that talks about what exactly specifically they're telling the owners, and it's not clear on whose behalf they're even telling them. Are they telling it to them as, as members? Are they telling it to them as perhaps clients? The advice

that, that is being given is, is ambiguous. I mean, it's -- there's a lot in there that would be a real factual issue for a jury to dig into as far as exactly what was being told to who by who and when, and these -- and in particular there's a -- and this is set out actually in more detail in the -- in my motion for the injunction, Your Honor. It talks about the different covenant provisions that talk about when they can enter the units and under what conditions they can enter the units and then what needs to happen before they can enter the units, and in particular, there's a provision that says they're required to have written notice that they're going to take any actions which prejudice the owners' rights to use the common areas. Well, one of the particular things that happened during the course of this action is they gutted the entire building.

THE COURT: Now, when you say they, who are you talking? You're not talking about McCabe Trotter gutted the entire building.

MR. GAMBRELL: McCabe Trotter was involved in -- I mean, you have to understand that it's, it's not like your typical -- what we've alleged is not your typical attorney-client relationship meaning that the board comes to McCabe Trotter and says, "Can we do this." There's allegations in the complaint. There's correspondence that's attached that, that McCabe Trotter was not just involved in offering legal

opinions but they're offering management advice. They're involved in construction discussions. They're involved in --

THE COURT: But can they have any final decision on any issue or is that up to the association?

MR. GAMBRELL: That's up to the, that's up to the jury to determine what exactly what level of control that McCabe Trotter was exercising in this process.

THE COURT: Well, what legal authority do they have? What legal authority did McCabe Trotter have to go to a contractor and say knock out these walls without any approval from anyone else?

MR. GAMBRELL: That's a good question. We don't know. We've alleged -- I mean, we've got -- there's allegations that that was exactly happening and that they were not just saying, "Hey, can we do this?" They're saying, "Do do this." They're saying that -- they're involved in discussions with the structural engineer. They're involved with discussions on, on the, the mold remediation. They're involved, I mean, you know, obviously things that go -- and then they're telling the owners this. They're telling the owners, "Hey, you need to assert certain claims against Lloyd's because Lloyd's is who screwed this up, not us," and then Lloyd's is saying, "No, no, no. We told McCabe Trotter they had to do something about it," and all this correspondence is attached. There's allegations but there is also correspondence attached to the

complaint that shows this kind of chain of events in which McCabe Trotter is simply is not just sitting in their office waiting for the board to come to it and give it advice, but instead, they're actively involved in the, the running of the association, the management of the association and communicating with not just the owners but third parties like the structural engineer, like the HO-6 policy on, on behalf of the -- again, the association has no interest in the HO-6 policy. That policy was specifically owned by the owners to cover their internal contents, and so there's all these discussions about who knew what, when and how. So, Your Honor, at least as far as this motion to dismiss is concerned, we've set out those allegations. We've set out the allegations that beyond just the fact that McCabe Trotter did directly but also indirectly. There's also ample case law that says that if you're an intended third-party beneficiary of the agreement under, under Gaar for example, and things happen during the course of your representation that damage a third-party, and just like the, the owners, the -- that the attorney can be directly responsible. One of those situations that Gaar mentions specifically is conversion and that's exactly what we've alleged in this complaint with regards to the actions of McCabe Trotter. Understand that at specific incidence it's not the association telling the owners they can't come get their stuff, they can't come check on their

units, they can't to do these things, it's McCabe Trotter telling it to them partially directly from the board, but then also telling them what they can do in these same letters with respect to the Lloyd's policy. So I think it's one of the -- we've made the allegation in the complaint in regards to what exactly McCabe Trotter was doing, when they were doing it so that, that it at least creates an issue of fact, which and it's, and it's pled in the complaint. We've -- we have asserted properly the -- a direct cause of action for attorney malpractice and we've asserted an indirect or derivative cause of action for attorney malpractice. There's no, there's no assignment of the claim. They own it. They are the owners.

THE COURT: Well, I -- what is the malpractice? What did they do negligently?

MR. GAMBRELL: What they did negligently, Your Honor, was interpret the restrictive covenants. In their interpretation of the restrictive covenants they told the board that they could -- that their contractors, which could enter into the units, remove their belongings and then store those belongings in a parking garage and also -- and it's not clear, at some point they were telling the owners that they can't come get their belongings because I have emails from the, from the owners to McCabe Trotter and to the board saying, "Can we come get our stuff instead of paying this fee that you want to charge us to store our own belongings," and McCabe Trotter was

saying, "No, you can't. No, you can't. It's, it's a work zone. It's dangerous," and that's a, a real factual issue to about whether it was dangerous, was it, you know, were the --

THE COURT: No. The critical question for them is whether or not they're acting on behalf of the association or whether they're acting on behalf of themselves.

MR. GAMBRELL: Your Honor, at some points we think it's both, and we've alleged that it's both. We've alleged that, that at some points that they have exceeded whatever authority that they have under their rep agreement. Now, we haven't seen their rep agreement yet. So we don't know what the scope of their representation allegedly was, but we have attached ample -- we have attached and included as part of our complaint and, and made it as incorporated by reference kind of this well beyond just simply collection issues or well beyond just specifically advising the board on what it can and can't do, that it goes -- their actions go well beyond the scope of your average ordinary what they want to point, at what they want to paint as their very limited involvement. Our allegations is they had a very broad involvement not only on behalf of the association but on behalf of themselves, but even if their claim is only related to the association, Your Honor, which we don't allege that, we allege that they acted, they represented the owners particularly to the Lloyd's, to Lloyd's of London on the HO-6 policy, and those allegations

are in the complaint under -- I'll mention those paragraphs again if you've got the complaint up.

THE COURT: Well, I mean, every allegation I see deals with them advising the association to assert the claim.

MR. GAMBRELL: Right. If you'll go to -- on page 14.

THE COURT: Right.

MR. GAMBRELL: 61, 62, 63.

THE COURT: All right. 61, owners were not allowed a sufficient time to inspect their own belongings to determine what could be salvaged once Delta and/or --

MR. GAMBRELL: And then --

THE COURT: -- Lloyd's informed the owners' belongings could not be salvaged.

MR. GAMBRELL: 62.

THE COURT: All right. Owners could reasonably construe the letters from J. Ryan Oates to the owners as rendering personal legal advice to the owners. So, there again, they're still rendering advice as an attorney.

MR. GAMBRELL: To the owners, not to, not to the association but to the owners, which is a separate class, separate group of people. I mean, they -- the owners are, are members of the association.

THE COURT: But I mean, the owners know whether they've gone out and hired these attorneys or whether or not the -- they have not paid any legal fees and the attorneys are

representing the association.

MR. GAMBRELL: Your Honor, that's not the -- under -- you can create an attorney-client relationship without the exchanging of attorney's fee, without the exchange of the retainer even -- you can create an attorney-client relationship even if the lawyer doesn't even intend to create an attorney-client relationship. The question is whether an attorney-client relationship exists is if they've rendered advice and then the owners have acted on that advice, and that's exactly what --

THE COURT: So if an attorney walks up to me in the hallway and gives me advice and I haven't paid him, I haven't retained him, I haven't even asked for the advice, you're saying that is an attorney-client privilege relationship?

MR. GAMBRELL: That you, you have created an attorney-client relationship so that that's why you have to be very careful in your communications as a lawyer to a third-party. I mean, that's why we have those entire sets of rules talking about duties to third-party, duties to unrepresented parties is because there is -- the layperson does not understand the details or the vagarities of how you create or how you maintain an attorney-client relationship, and so whether an attorney-client relationship was created that's why it's an issue of fact. That's why that you have to -- that's why we put it in front of a jury to determine whether this exchange

of information, whether this exchange of advice and not only, not only to the owners themselves but understand that McCabe Trotter was also talking to Lloyd's of London on behalf of the owners. So they weren't just representing to this group of people. They were representing to a third-party group of people asserting claims on their behalf to Lloyd's. So it goes beyond just what the owners could reasonably believe was true but also what Lloyd's could reasonably believe was true under an apparent agency or an apparent authority type theory. So to this extent, Your Honor, understand this is not a motion for summary judgment. This is simply a motion to dismiss. Did I allege it, not -- it doesn't matter at this point for your, for your determination of whether of how much I could prove it. It's just a question of simply did I allege it, does the -- is the complaint set properly out the facts to constitute the cause of action not whether even Your Honor if you believe I can, I can succeed but whether have I alleged the cause of action and that's what I've done, and in particular, if you look over at -- and if you don't think 62 and 63 were clear enough, on page 18 under the first cause of action under paragraph 92 McCabe -- MTB represented to third parties that it had an attorney-client relationship with the owners. 93, that, I mean, it -- that advised that they had the authority to do it and then they did it enter into the, enter into the units, and then 95, paragraph 95, MTB

negotiated with Lloyd's on behalf of the owners without even the owners' permission to share this cost of storing owners belongings to be paid under at the -- not under a policy owned by the association but under a policy owned by the owners. So they obligated, they -- McCabe Trotter's communications obligated these owners to a contract with Lloyd's, I mean, with, with Delta to pay the storage costs to be paid in part by insurance owned by the owners. So, again, this is not just some sort of random legal advice that the board was just relying on. This was advice that the, the owners were relying on and this is advice that Lloyd's was relying on in order that they understood that these people were represented by MTB. So whether, whether I can prove it, whether 12 people believe it, that's not, that's not why we're here, and also to -- the complaint does set out the required elements for fraud and conversion. There is attached correspondence that talks about that where McCabe Trotter is, is saying that, you know, they're exercising dominion and control. No, they don't say the association says you can't come onto the property for any reason. It, it just says, "You can't come onto the property for any reason," and it -- that's bundled into this discussion of their policy language as far as what exactly are they asserting and on whose behalf are they asserting it.

THE COURT: All right. Anything in reply?

MR. COUNTRYMAN: If I could briefly respond, Your Honor,

to counsel's point regarding the allegations in the complaint as to legal malpractice, counsel started reading from the amended complaint at page 18, paragraph 92. Counsel did not read the prior paragraph which is paragraph 91. It states McCabe Trotter and Beverly had an attorney-client relationship with the association at all times relevant herein, and then the next paragraph talks about McCabe Trotter representing to third-parties that it had an attorney-client relationship with the owners themselves. The amended complaint never alleges once anywhere by any stretch of the imagination that McCabe Trotter had an attorney-client relationship with any of the individual owners. At best --

THE COURT: Well, why aren't they not third-party beneficiaries under the contract between the association and McCabe Trotter?

MR. COUNTRYMAN: That would mean that any shareholder of any company could have a legal malpractice claim against the lawyer for that company just because they didn't like the way something turned out. If I don't like the way Wal-Mart stock has gone --

THE COURT: No. If they committed -- not if they didn't like the way it turned out. We're just dealing with allegations of malpractice. Now, whether or not it's true, not true, that's another issue for another day. The question is is does a shareholder who is a third-party beneficiary have

a cause of action for legal malpractice when the attorney commits malpractice for the corporation.

MR. COUNTRYMAN: No, and I believe I've cited some case law to that effect in my initial motion to dismiss. Where shareholders attempt to recover for a loss like this it's usually a loss that the corporation has incurred. Here it's one that the individuals have incurred based on something a lawyer allegedly told the corporate board. This is not a third-party beneficiary contract situation like the one discussed in Fabian where these folks were direct beneficiaries of a contract that was solely intended to benefit them.

Now, again, this all comes down to the idea that McCabe Trotter is representing its client the owners association. The allegations in the complaint do not make the allegation that McCabe Trotter represented the owners. They creatively try to create the picture that, "We're going to show the jury that maybe there was a relationship," but they don't -- they miss the first step which is alleging that there was one in the first place, and they can't do that because it isn't true.

Counsel discussed a lot of correspondence that he filed with his various pleadings. All the letters they're from McCabe Trotter. You can read them. They all say to whomever they're sent, "We, the law firm, represent the owners association." They all say that. They don't say, "We

represent the owners," and yeah, McCabe Trotter was involved in trying to remedy this situation, but this was not a situation where McCabe Trotter represented the owners and they don't allege that, that that was the case.

Counsel asked the or Your Honor asked an interesting question about what McCabe Trotter's role is, what can it do and what can it not do. McCabe Trotter is the lawyer for the association. It can't do anything the association doesn't ask it to do, and there's no allegation in the amended complaint that McCabe Trotter acted outside the authority or scope of its representation with the association. I'm not sure where that came from, but there is no factual allegation about that in the complaint. Everything in the complaint and the expert affidavit filed with it relates to advice that McCabe Trotter gave the owners association. Also on a factual level the HO-6 policy was provided for, mandated in the master deed. The HOA paid for it and named these individuals as individual insureds.

THE COURT: All right. Well, there's 157 allegations in the complaint. So I'm going to have to go read the complaint whether or not, you know, I'm bound by the, the pleadings. So I have to take a look at that. I'll take that under advisement

MR. COUNTRYMAN: Thank you, Your Honor.

THE COURT: All right. Now, let me hear on the motion

for temporary injunction.

MR. GAMBRELL: Thank you, Your Honor. I'll wait for counsel to get in position. As Your Honor recalls and submitted with our, our motion and memorandum regards it, it -- this rolls into this issue of the storage of the owners' belongings. When the owners' belongings were taken from their units and stored, there was an agreement entered into by the association with the advice of McCabe Trotter and Gold Crown regarding the splitting of that cost, and allegedly that cost was agreed to be split by Lloyd's and either -- and an insurance company for the association or the association itself. When those costs were incurred the association created kind of whole cloth, nobody has yet taken -- we haven't done sufficient discovery to figure out where this -- the origin of this phrase, but it created what's called the content manipulation fee, in other words, the owners were responsible under agreements negotiated, not by them, to pay these storage costs while the association's contractors go in and gut the building in order to repair damaged common elements. At no point in time were the owners asked under and it's specifically set out, it's specifically set out, Your Honor, in our memorandum talking about the, the various provisions of the master deed that talk about at what point in time can the association unilaterally enter an owners unit and the provision that the association and their counsel and Gold

Crown have always relied on is a section under 9.6 which discusses the ability to enter into the units during reasonable hours in order to do reasonable maintenance, use, you know, spray pest control or whatever, and then the second part of that section of the covenant talks about and then they can enter in the unit on an emergency basis, in other words, that they can -- the scenario that I imagine that this provision was invented for was that a water main which is in the wall which, of course, the water main itself would be a common element has a pipe burst and so the association should be allowed to immediately go into a unit in order to correct that problem. As we set out in our motion for an injunction, the -- and also in all of our pleadings this timeline that the hurricane happens at the beginning of October and the, the items start being removed at the end -- at the beginning of November, in other words, 30 days, and they start telling the owners they can't come onto the property, they can't come to their units and they can't come get their stuff. So those threes actions imply at least to me or at least may be reasonably to a jury that the association was intending to prejudice the rights of the, of the owners to enter into their units and enter onto the property itself. In fact, they put up fences around the property and repeatedly told people, "You can't come, you can't come in." Well, under a different section of the covenants which talks about the common elements

itself there's a provision that says if there's damage, if a repair to the common element is required and it causes incidental damage to the owners, then that's the responsibility of the association not of the owner. In other words, if the wall is gushing, if there's a pipe that's burst, it starts gushing water, so long as it's not the fault of the owner, the association has to pay that as a common expense. Secondly, if there's a -- there -- that same paragraph discusses if there is a -- if -- if it's going to prejudice their rights to use the common elements then they need to obtain written permission of the owners, and no written permission was ever obtained through -- by -- from the owners to do anything. The board always acted under, under the advice of counsel to act in this unilateral emergency basis. So that's when all this -- these items were removed from the unit, put in storage and this content manipulation fee was created. Since the content manipulation fee was created, the association has attempted to recoup that charge against the owners. Some owners have paid, some of them haven't. Some of them have paid a portion, and what our injunction is seeking to do because we have asked for -- we have asserted this in class, in other words the entire class is the -- were the owners of the building at the time that the hurricane happened and all these events happened. I can provide a time range, basically October 1st of 2016, which

is roughly a day before the hurricane to some point when the -- I would say when the CO, when the certificate of occupancy was issued at the beginning of March of 2018, that that group of people is our class. These people are now facing various collection action attempts by the association through Gold Crown and/or McCabe Trotter. What we've simply asked is in our injunction is that the content manipulation fee portion that they're alleging that my people owe, in other -- however that figure -- whatever that figure is, however much is owed on a, on a balance sheet simply be taken off. If there are owners that are not paying their assessments as they are normally assessed then the association's attorney can file a lien and do what it needs to do only except for the respect to the content manipulation fee because what we don't want to happen are members of the class becoming subject to collection actions as they contest this, this fee. In other words, what would happen if Your Honor doesn't order the injunction, as potential Plaintiffs aren't paying the association starts taking collection actions against those specific people who object, then somehow we're going to end up in an ever-expanding group of, of, of suits as of course then each owner as they are liened and sued for owing content manipulation would then be asserting a defense that the amount is not properly owed. This is the forum to decide that at some point with finality later, but to determine -- for right now to say

all those claims are going to be held in abeyance while this, this action proceeds and that your -- and, and this Court eventually decides whether that fee was proper or not, that it would not --

THE COURT: But I mean, if they're not allowed to file a lien then how are they going to protect their interest?

MR. GAMBRELL: Well, again, only to the respect to the content manipulation fee.

THE COURT: Right. But let's find -- let's say you lose this lawsuit and they can charge the content manipulation fee but they couldn't file a lien for it, and so the person that owned the condo has already sold it, I mean, how is it going to protect them if they ultimately prevail unless and under a temporary injunction it's going to require the Plaintiffs to post a bond unless they're willing to post a bond for the full amount of the content manipulation fee.

MR. GAMBRELL: We can post a bond, Your Honor.

THE COURT: Okay

MR. GAMBRELL: So I mean, that's the -- at this point what -- all we're asking this Court to do as it relates to the content manipulation fee is simply not allow that fee to go forward as far as it relates to the collection against the owners because it's creating kind of this whirlwind of different, you know, each time that they send a letter then it creates an additional kind of motion in the ocean regarding

who can collect what against who.

I would point out, Your Honor, that they have submitted as Exhibit Five to their opposition a memorandum -- I mean, an affidavit of the current president, Linda Agostinis, and she says that no such action would take place unless an owner owes $2000. Well, to the owners that have not paid any of the content -- excuse me, the owners that haven't paid any of the content manipulation fee, that charge is exactly $2000. So to the extent that Ms. Agostinis' affidavit is important, relevant, informative, I think she's confirming that the association believes that this amount is where they would take action to terminate utilities, and I think the, I think the opposing counsel has focused too much on the termination of utilities portion. We're saying they, they shouldn't be able to take any collection action against that, and again, we would be willing to post a bond in order to secure that. We would need to know the exact amount of the unpaid content manipulation fee that's currently -- that the association's currently trying to collect from our class. That's the --

THE COURT: Or that will accrue prior to the end of this action.

MR. GAMBRELL: If the -- if that is proper to charge interest, I'm not sure. I don't know the covenants. I don't know if they, they can charge interest on that particular fee or not.

THE COURT: Well, I'm just talking about that in the event they prevail and then you've got a bond --

MR. GAMBRELL: The, the content manipulation fee is, is -- it's only getting smaller. It's not getting larger because all the items were ultimately disposed of or destroyed. There's nothing in the parking garage now that's in storage. In other words, any amount that was ever paid to Delta, who is the company that did all the storage, has, has come and gone. There's no, there's no incurring charges or recurring charges. It's --

THE COURT: So they're just trying to recoup what they've already paid?

MR. GAMBRELL: Correct.

THE COURT: Okay. Got you. All right. Mr. Countryman or --

MR. COUNTRYMAN: Yes, sir, Your Honor. Again, Andy Countryman for McCabe Trotter. Under the rules the standard for granting temporary injunction like this is showing of irreparable harm. If Your Honor will recall a few weeks ago, we were here before you to discuss Plaintiffs' motion for a temporary restraining order, and the basis for that restraining order was the threat that, as they called it, Gold Crown and/or MTB would terminate owners' utilities who failed to pay the content manipulation fee. That was an irreparable harm because of the approaching summer months, and without

proper electricity to condition the units, then their personal property would be at issue. That's not what we have here. Now, Plaintiff in this motion has broadened his scope and is not only asking for the preclusion of anyone or these two Defendants sending letters saying, "We're going to terminate your utilities," he's also asking for essentially key liability decisions in this case, and he's asking that -- this is what's befuddling to me. The issue is not McCabe Trotter. The issue is the HOA. The HOA could fire McCabe Trotter tomorrow and the HOA will still have the same claim for the content manipulation fee. McCabe Trotter is not the one pursuing such a claim. It's the HOA. The HOA is not even named as a Defendant with respect to this motion for an injunction. That's the party at issue.

Plaintiffs' counsel pointed to the president of the board's affidavit. Paragraph 12 of that affidavit says, [as read], "The association does not ask its legal counsel McCabe Trotter and Beverly to shut off power to the units generally nor would it do so in this case because the association asks Caravelle Properties LP," a separate company, "to perform such tasks." I've also submitted an affidavit of one of McCabe Trotter's lawyers Mr. Oates, who Plaintiffs' counsel referenced. McCabe Trotter through Mr. Oates has said, "We don't have any plans to terminate anyone's utilities. We have not been asked to do that. We wouldn't do that because that's

not within our scope of representation here."

So with those things in mind, I don't understand why McCabe Trotter is still a Defendant with respect to this motion, why is Plaintiff -- why are the Plaintiffs asking that McCabe Trotter be precluded from pursuing claims, much less terminating utilities when it's not the one behind it. The HOA is, and the HOA could, again, fire McCabe Trotter today, hire someone else and continue to pursue those same claims. The HOA could at its own volition terminate folks' utilities. There's no evidence that McCabe Trotter would do that. It says it wouldn't. You look at the motion, it cages everything as Gold Crown and/or McCabe Trotter. No one's threatening to terminate anyone's utilities at this point, and I also, I believe the affidavit discusses this policy or at least material attached to it, there's evidence before Your Honor and I can point it to it specifically, but the policy that the HOA determined to put in place, that being that certain owners' utilities could be terminated if their balance got to be to a certain extent, that was implemented in 2012, and we don't have this issue arise until today. No one's utilities have been turned off. No one is threatening at this point to terminate utilities. McCabe Trotter has told the Court in testimony through an affidavit that it's not going to do that. The board has said it is not going to ask McCabe Trotter to do that. McCabe Trotter should not be a subject of any order the

Court issues with respect to Plaintiffs' request for an injunction.

THE COURT: All right. Thank you.

MR. STARR: Your Honor, if I could briefly be heard.

THE COURT: Yes, sir.

MR. STARR: I, I won't repeat the arguments that Mr. Countryman made, although except to say, Your Honor, that, that we agree that this is -- this really is not a proper request for a motion -- for injunction anyway because this is not an irreparable harm issue. This is something that would allow them to make a claim for monetary damages, if this even happened, but, but that aside, Your Honor, with respect to Gold Crown, who I represent, there's a couple of things that I think would be good for the Court to know.

First of all, I counted during opposing counsel's argument in favor of his motion he referred to the association attempting to collect this money five times. That's who has this claim. He has not, for whatever reason, sued the association. They're not even a party in this litigation. When Your Honor reads the complaint to make your decision on the, on the motion to dismiss, you're, you're going to see ten or more paragraphs in there that make assertions against the association who, who isn't even a party in the case. Now, Gold Crown and, and you, you know how this works, Gold Crown is simply a property management company. All they have ever

done with their -- with respect to the Caravelle is act on behalf of the board and the association, the board's direction on behalf of the association. In the letters that, that counsel references in his motion for this injunction he says, for example, in paragraphs 14 and 16 that Gold Crown sent letters on behalf of the board. Those letters are attached, those are letters from the board. The only thing Gold Crown did as the property manager is mail them. There are letters on the board's letterhead from the board and they're signed by the, by the board president. Gold Crown simply does what the board directs them to do. So Gold Crown did send these letters out at the beginning of May. I can tell you a couple of additional things, and Your Honor, I just -- we just got involved in this case. I filed my answer on Friday to the complaint. So I don't -- I, I wasn't able to give you a brief for this argument today because I simply haven't had enough time to get into the file, but Gold Crown has been terminated as the property management company effective July 13th from the board, but pursuant to the agreement it's a 90-day window essentially to give the board time to hire a new property management company.

So Gold Crown is still technically the property management company until the middle of August, but we'll no longer be the property management company after that. The president of Gold -- and owner of Gold Crown has told me that

since those letters were sent out the first week of March, of March, I'm sorry, of May, one is attached in the, in the motion and with the exhibits, that no effort has ever -- there's been no follow up against anybody, no effort has ever been made to collect and Gold Crown would simply send another letter. It's all in the documentation, as Mr. Countryman said in the affidavit. There's a separate company that, that the association has retained to do those things. It's called Caravelle Properties L.P., and that company is the one who would pursue this, if it was even done, but our understanding is no one's pursuing it because we're in litigation now, and for, for those reasons they're not going to, but the motion itself today for the injunctive relief requested is not appropriate on its face because it's not irreparable harm, but separately it's a motion that's requesting something against two parties here, neither of whom have the authority or the ability to do the things that the request is being made with respect to.

THE COURT: All right. Anything in reply?

MR. GAMBRELL: Yes, sir. I'll hand these two up because they are, I think, probably the most pertinent and they were attached -- I don't have spare copies.

MR. COUNTRYMAN: I don't need one.

THE COURT: But I mean, can either -- can McCabe, Trotter and Beverly or Gold Crown Management Company pursue any

collection or any recourse for collection of the content manipulation fee without the direction of the association?

MR. GAMBRELL: We're not sure, Your Honor, and, and this is why. This what I'm about to hand up.

THE COURT: So you mean -- you're saying without approval from the association McCabe Trotter can call the power company and say, "Turn off the power," and they'll do it.

MR. GAMBRELL: We don't have a copy of their rep agreement. So we don't know what authority has been delegated, but if I can, Your Honor, Exhibits Two, Three and Five I want to hand up, and I would, I would draw your attention to Ms. Agostinis says that it's the board policy that power will not be turned off if $2,000 or more is in debt, and if you'll notice those two letters are sent by Gold Crown, one of which is asserting a claim for $1700, and the other is for an amount of $300, and the only collection attempt, the only reference, the only attempt of collection that's mentioned is 300 -- I mean, is, "We're going to turn off your power." So, Your Honor, I, I -- I'm not -- I'm not disputing counsel's claims that that's what they've been told, but Your Honor, that's what Gold Crown at least is telling it -- the owners of, of --

THE COURT: But they're, they're saying submit payment to Caravelle Resort Owners Association, Inc.

MR. GAMBRELL: Correct.

MR. STARR: But Your Honor, that's signed for the board of directors.

THE COURT: Yeah.

MR. GAMBRELL: But it's on Gold Crown's letterhead sent by Gold Crown. We don't -- and Ms. --

THE COURT: Yeah. Because care of Gold Crown. Gold Crown says, "We're the property manager."

MR. GAMBRELL: Ms. --

THE COURT: We're acting at the direction of the association.

MR. GAMBRELL: But Ms. Agostinis has just submitted an affidavit saying, "We don't do that unless it's $2,000." So did they send it on behalf of the board? Did they discuss it with the board because Ms. Agostinis in the affidavit submitted by opposing counsel says, "We don't do that unless $2,000 is in order." So did they really have the authority to do that. I think that that's at least the question that we don't know.

THE COURT: Well, why don't you have the association named as a Defendant?

MR. GAMBRELL: Your Honor, at this point, I mean, that is one of the possibilities of joining them as a Defendant. The association, essentially the reason why the owners haven't taken that step thus far is they're, in essence, suing themselves. I mean, they -- any, any amount that's owed by

the association is their costs. They split it. So and the board is saying, "Hey, every time we did something we relied on these two, these two entities. We relied on Gold Crown and we relied on McCabe Trotter to make the decision we made."

THE COURT: All right.

MR. GAMBRELL: So why sue yourself when you can sue the person that actually created the problem.

THE COURT: All right. I'm going to deny the motion for a temporary injunction. One's an attorney for the association. The other is property manager. I don't see where they've got the unilateral authority to do anything without the association's approval. The motion to dismiss I'm taking under advisement. I got to read the complaint and see what it says.

MR. COUNTRYMAN: Would you like any other material associated with that? I can --

THE COURT: No. That's got it.

MR. COUNTRYMAN: Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. STARR: Thank you, Your Honor.

(Adjourned.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, 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 Karl Hager, et al. versus McCabe Trotter & Beverly, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on July 31, 2018.

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

Grace L. Hurley

Grace L. Hurley, CVR-CM-M
Official Reporter

March 27, 2019.

XXXXXXXXX

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS	
COUNTY OF HORRY)	2018-CP-26-02974	
Karl Hager, et al.,	)	
	)	
Plaintiffs,	)	Transcript of Record
	)	
vs.	)	January 22, 2019
	)	
McCabe Trotter & Beverly, P.C., et al.,	)	
	)	
	)	
Defendants.	)	

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Brian C. Gambrell, Esquire
Attorney for Plaintiffs

Andrew W. Countryman, Esquire
Attorney for Defendant,
McCabe Trotter & Beverly, PC

Dominic Allen Starr, Esquire
Attorney for Defendant,
Gold Crown Management Company, Inc.

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

(There were no exhibits marked during the hearing.)

(On the record, January 22, 2019.)

THE COURT: All right. Next on my roster is 2018-CP-26-2974, Karl and Terri Hager and others versus McCabe Trotter and Beverly, P.C., and Gold Crown Management, Inc. According to my roster the matter is before the Court on a -- well, let's see, a motion to reconsider, a motion to dismiss and a motion for sanctions.

Please give the court reporter your names and who you represent.

MR. STARR: Your Honor, I'm Dominic Starr. I'm here representing Gold Crown Management Company and I'm, I'm the one who has the motion to dismiss that's currently pending.

THE COURT: All right.

MR. COUNTRYMAN: Your Honor, I'm Andy Countryman. I represent the Defendant, McCabe Trotter and Beverly, and it's my motion for sanctions pending before the Court today.

THE COURT: All right.

MR. GAMBRELL: And I'm Brian Gambrell and I have the motion to reconsider, Your Honor.

THE COURT: All right. Well, let me hear from you, I guess, first, Mr. Gambrell, on your motion to reconsider.

MR. GAMBRELL: Thank you Your Honor.

This Court had arguments on our -- on Mr. Countryman's motion to dismiss on multiple grounds and Your Honor on a Form 4 granted the Defendant's motion to dismiss under 12(b)(6).

However, the Form 4 does not or there was no subsequent order stating the grounds for the dismissal. Also under 12(b)(6), 12(b)(6) can either be granted with prejudice or without prejudice, and so for the purposes of error preservation and also for an appeal, I, I have to have reasons under the record or at least some basis to argue what the ruling was based on, and so without belaboring the point or beating this horse to death, I can either reargue the original motion, my defense to that or just briefly summarize why we believe the Court erred in the first place.

THE COURT: All right. So what does -- how do you think I erred?

MR. GAMBRELL: Well, Your Honor, we believe you erred because it was a 12(b)(6) motion, and a 12(b)(6) motion basically goes to the four corners of the complaint, did we allege what we've said we allege, and then if we, if we did, in other words if the allegations are sufficient to put the Defendants on notice as to the allegations that were contained within the complaint, then a 12(b)(6) motion should be denied. The courts -- there's --

THE COURT: Even if it's based upon something that you're not entitled to relief?

MR. GAMBRELL: Now, that goes to the, to the various legal theories that we then argued regarding his argument regarding attorney malpractice and then conversion. There

were, there were causes of action within the complaint that were not specifically argued either in motion, in his motion or his memorandum or before you regarding breach of fiduciary duty, aiding and abetting, breach of fiduciary duty. Those causes of actions were just simply no one ever mentioned them and they were never argued to you, but his motion sought to dismiss the entire complaint. Without -- also, we believe that we are -- what we did when we filed the complaint we argued that there was a derivative cause of action from the owners because they have a -- they are the third-party beneficiary of any relationship entered into by the association with its attorneys or its management company, and so because of that any harm that's done to the association they are, in essence, they are the association. They own a percentage interest by -- according to the master deed of the condominium. So in other words, any, any damage suffered by the condominium -- the association is really damage to themselves. There is no -- I think Mr. Countryman argued that there was some sort of assignment issue. There is no assignment. This is a, a non-profit corporation of which they are the shareholders. They suffer any loss, in fact, they suffer the loss in proportion to their percentage interest. So, in essence, what the Court would have you -- have us do is sue the association -- basically sue themselves in order to sue the attorneys or their management company for any harm

done to the association which is not -- which, in essence, they would be paying themselves to sue themselves. Furthermore, we also allege a direct contractual relationship assumed by McCabe Trotter and Beverly toward a third-party. Essentially, Your Honor, what happened is Hurricane Matthew hit. Each of the individual homeowners had an HO-6 policy which is an insurance policy to, to insure the interior of the condominiums, in other words between the floor and the ceiling and the walls -- between the walls of their personal goods.

As a result of the hurricane, some of the units were damaged, but not all the units. A decision was made by someone to have all the units vacate -- have all the units, have all the belongings removed, what we allege in a violation of the master deed, and all the belongings were placed in the garage of the association, and then this decision was then -- after it was done was communicated to the owners. The owners said, "Hey, we can come get our stuff." There are communications between Gold Crown and the, and the attorneys directly to the members saying, "No. You can't come get your own belongings." Furthermore, we alleged in the complaint that McCabe Trotter was then communicating directly with the HO-6 carrier, which is Lloyd's of London regarding policy decisions and regarding coverage decisions and also regarding payment for the removal and the storage.

McCabe Trotter -- the policy, the HO-6 policy is not a

policy of the association. It's a policy owned by the individual members. The association is not even a named insured, but McCabe Trotter undertook that duty to directly communicate, and attached to the complaint are several examples of those letters. So the, the owners whose belongings were then subsequently lost and destroyed argue in their complaint -- that we argue, excuse me, that McCabe Trotter voluntarily undertook representation of the owners individually because the association had no personal property in the garage. Everything that was covered by the HO-6 policy was purely owned by the members in their individual capacities, and so any communication between McCabe Trotter and the -- and Lloyd's of London was never on the benefit or on the behalf of the association, was on behalf of the individual members. The owner took this duty, and they ended up, we argue, that because of their representations between them and Lloyd's of London my clients were then subsequently hurt. Each owner roughly suffered somewhere between 10 and $15,000 worth of damage as their personal belongings were exposed, exposed to humidity, moisture and theft, and so it's our allegation that under the complaint that there's basically two theories of attorney malpractice. It's theory one, which is the derivative cause of action which no law was submitted to you saying that you can't do a derivative cause of action for an attorney malpractice, only that it was an assignment.

Nothing has been assigned at all, and then the second was a direct cause of action by the, by the owners, by the members themselves against McCabe Trotter for their involvement with the, the Lloyd's of London HO-6 policy, and then because the association -- there were -- then also representations made about how the goods were going to be kept and how the goods were going to be stored that -- and then the disallowance it was in a direct communication between McCabe Trotter and the owners that they could not disclaim any protection, they could not -- the association was saying you can't come get your belongings because it's quote, "an active worksite". We dispute that it was an active worksite, and we dispute that why shouldn't the owners have been allowed to come get their own personal belongings, but, in essence, that communication was sent by McCabe Trotter who theoretically was representing these people in regards to their own personal belongings as it related to it -- to their own HO-6 carrier, but they weren't allowed to come get their belongings in order to either mitigate their damages or to protect their belongings from damage or theft, and so that is why we asserted a conversion cause of action because McCabe Trotter -- McCabe Trotter engaged in an act of conversion when they exercised dominion and control either directly or by and through its nominal client, which is the association.

As, as I point out -- pointed out in my initial

memorandum, Your Honor, that the -- there's black letter law saying that a -- an attorney can be held liable for conversion done in a -- in conjunction or in connection with its client. If my recollection serves there were essentially two points you raised directly with me. Point one was the issue of how and when a party could become an attorney, in other words, did it require some sort of expressed or I hesitate to use the word meaningful, but was there a, an affirmative act by McCabe Trotter to establish the attorney-client relationship, and the existence of an attorney-client relationship is an issue of fact in South Carolina. It is not a matter of law. So even if you doubt whether that's possible, a jury could find that that's happened. There were letters that were attached to the complaint as exhibits which clearly show that there was communication by and from McCabe Trotter to Lloyd's of London that was on the behalf of the owners. In other words, that we, we allege that Mr. Oates, who is an attorney and a partner with McCabe Trotter, was affirmatively communicating with Lloyd's of London regarding its own policy and its policy decisions toward the owners over which the association had zero relationship. The only thing the association did in relation to the HO-6 policy was it gathered the money from the owners as part of its assessment payments and then wrote a joint check or wrote a collective check, if you will, from all the owners to pay for the policy. It is -- but whether that's

-- whether it is or it had some position in -- within the HO-6 policy is itself a matter of fact which, of course, would be subject to discovery. So, in other words, did we allege it and is it alleged to the point sufficiently to put the Defendant on notice of whether he had -- of what it is he's being accused and has to defend himself, and under 12(b)(6), we would argue yes, and also to deal with Your Honor's question of the conversion action, like I said, there is a -- there is a discussion of -- in -- if you'll bear with me, Your Honor. My -- I'm cold and my fingers are cold.

And I, I submitted this on Sunday, and it was approved, but yesterday was a holiday, but that the Supreme Court in Stiles v. Onorato, which is a 1995 decision, has ruled that an attorney can be sued for conversion and for affirmative misrepresentations done on behalf of a client, and that is exactly what we alleged as it relates to the, the goods owned by the owners. If you'll -- in the complaint, in particular in several paragraphs we talk about the, the owners' belongings, and in particular paragraphs 59, 60, 64, 65, 66, 67 and 68 we talk about that McCabe Trotter and Gold Crown was affirmatively communicating with the owners that their items were lost or destroyed, I mean, that their items were contaminated, and so therefore, therefore, are ineligible to be returned to their units, which would then, of course, be required to be replaced under the HO-6 policy. As we allege

in the complaint, the owners found their belongings up for sale on various -- on various websites, including one that's, I think, Myrtle Beach Furniture, Hotel Furniture.com, in which the items that were supposedly so contaminated they couldn't be returned --

THE COURT: Excuse me for interrupting, but this argument was made at the initial motion hearing?

MR. GAMBRELL: It was, Your Honor. It was made in my, my memorandum and also, and also to you.

THE COURT: As I recall, the initial motion hearing it had to do with the, the assessment that they charged that came on the letterhead. I don't -- I'll be the first to admit, I don't recall any argument ever being made that McCabe Trotter took furniture and sold it on eBay.

MR. GAMBRELL: Well, Your Honor, it's, it's in the complaint, and we discussed and I, I know I specifically argued, Your Honor, that there was these two derivative -- there was these two causes of action, that under the attorney malpractice there's a derivative cause of action and there's a direct cause of action.

THE COURT: For selling the unit owners' property that they claimed was damaged, that they took it, sold it on eBay and did what with the funds?

MR. GAMBRELL: We don't know. That those --

THE COURT: See, I don't recall that argument ever being

made. I may --

MR. COUNTRYMAN: That's the first I've heard of that, Your Honor. It's not in the complaint.

MR. GAMBRELL: It is in the complaint, Your Honor, that the items --

THE COURT: Well, no, I mean, but we, we appeared for the motion hearing and are you arguing something new that you did not argue at the first motion hearing because I don't recall that. If you made that argument at the first motion hearing, I apologize because I have never heard that argument before, and I have never seen an allegation that says McCabe Trotter took furniture, told the owners that it was damaged and then turned and sold it on eBay.

MR. GAMBRELL: Your Honor, we, we did argue it, and it is -- and I made copious references to the complaint regarding the communications that were made by McCabe Trotter to the owners regarding the status of their policy. That led into the assessment charge. This assessment charge that we talked about is the, the charge for storing the goods, in other words --

THE COURT: I remember that argument.

MR. GAMBRELL: So this was the, this was the --

THE COURT: But this is something different. You're telling me they took the stored -- they charged them an assessment for storing the furniture and then they sold their

furniture on eBay and kept the money.

MR. GAMBRELL: It, it is in the complaint, Your Honor.

MR. COUNTRYMAN: What paragraph, Brian?

THE COURT: Yeah.

MR. COUNTRYMAN: I don't see that anywhere in here.

MR. GAMBRELL: Unfortunately, I don't have a copy of the complaint.

THE COURT: Well, right here. Let's see. Would it be under the conversion?

MR. GAMBRELL: It, it would be in and around --

THE COURT: Conversion.

MR. GAMBRELL: Look at paragraph 67 and 68 in our -- do you mind if I sit down just for a moment?

THE COURT: No. That'll be 67 and 68, that's for the negligence.

MR. GAMBRELL: But all of these causes of action are incorporated.

THE COURT: 67, McCabe Trotter assumed a duty towards the owners by actively negotiating on the owner's behalf with Lloyd's of London. 68, McCabe Trotter failed to monitor or take such action as was necessary to protect the association and owners from Delta's conduct in regards to the storage of the belongings. 69, McCabe Trotter also advised the association to illegal assert claims for content manipulation and/or soft goods as assessments. I don't see anything about

taking the properties and selling them. Let me look down in the, in the conversion.

MR. COUNTRYMAN: Your Honor, counsel may be referring to the amended complaint. I just wanted to make sure the record's clear on that. Paragraph 68 references what Delta allegedly did or did not do.

THE COURT: Okay. I was looking at the complaint. Let me look at the amended complaint.

MR. COUNTRYMAN: It's on page 15 of the amended complaint, the paragraphs that counsel referenced, Your Honor.

THE COURT: Let's see. Amended summons and complaint, okay. I apologize. I was looking at the original. All right. It's on what page?

MR. COUNTRYMAN: Page 15, Your Honor.

MR. GAMBRELL: Paragraphs, particularly 67 and 68, which get into the very specific allegations in which I was just referring to.

THE COURT: All right. 67 saying that they failed to properly safeguard and protect the belongings, Delta returned some items to certain owners' units. Gold Crown and McCabe Trotter without permission required Delta to remove the items from the owners' units to either throw away, recycle or resell the items.

MR. GAMBRELL: Then that next paragraph.

THE COURT: I mean, you're saying, I, I get that you're

saying they failed to properly protect the items, but I'm looking to see where you say that they took them, they sold them and they kept the proceeds. All right. Go ahead.

MR. GAMBRELL: But essentially, Your Honor, we -- even if -- and I know there's a specific allegation regarding the Myrtle Beach Furniture .com because I remember fighting with the -- with Word when I made the site to their website, but essentially, Your Honor, that's, that's the basis for the conversion cause of action, that essentially that someone made the decision that these -- that and communicated to the owners that these goods were contaminated and they should not be allowed back in their units and that was communicated to the owners by both McCabe Trotter and by Gold Crown, not to jump necessarily ahead, but then the owners after this HO-6 policy payments were made found out and it's alleged in the complaint that these items were not contaminated and that they could have been returned but just either they had been lost, some of them had been stolen and the rest of it had been sold. So for 12(b)(6) it's not necessary at this juncture for the Court to believe if I could ever prove it, is did I allege it, and right there, Your Honor, is where I allege the specific, the specific factual predicates, in particular for the conversion cause of action, which, Your Honor, I know we specifically discussed the conversion cause of action.

THE COURT: Yeah. But I'm looking at the complaint.

MR. GAMBRELL: Go back to --

THE COURT: I'm looking under your conversion cause of action, sixth cause of action.

MR. GAMBRELL: Can I sit down just for a moment, Your Honor?

THE COURT: All right. All right. And I don't -- I mean, I basically -- the -- all right. Which paragraph do you want me to look at?

MR. GAMBRELL: Go into 59, starting at 59.

THE COURT: All right. Go ahead.

MR. GAMBRELL: Of -- but essentially, Your Honor, this is -- this begins the, the description of -- the factual description, the allegation regarding their exercise of dominion and control over the goods of -- that the owner -- of the owners' goods, and so then, I mean, that -- even if under 12(b)(6), I mean, one of the -- it can be without prejudice, Your Honor, in allowing us -- if you don't believe I've adequately alleged it, then I can go and re-edit the complaint in order to make those allegations sufficient for Your Honor to clearly understand what it is we're alleging. In other words, the Form 4 that we had didn't say with prejudice, without prejudice. If it's without prejudice, obviously, that gives me the opportunity to make these allegations even more clear, which I believe they are, I mean, I think they're, they're detailed and clear about what it is we're alleging

McCabe Trotter had done wrong, and I mean, they're -- all the facts that we alleged are in there.

So, Your Honor, so, I mean, that's the -- what I believe you got wrong was that we had two different theories. One was a direct kind of voluntary undertaking by McCabe Trotter, if you will, as it relates to Lloyd's of London and also the derivative cause of action for its misconduct or its bad advice to the association which caused the association to then exercise power and authority over the owners' individual goods. So, and so the association has damage as well as the owners. We -- one of the features of the amended complaint was to make clear that we are separating, that the owners' goods damages relates to the individual cause of action and that the association itself has suffered separate damages as well. So, Your Honor, that's why under the rule -- under -- we filed this motion for reconsideration so that we at least can either move forward with the complaint or understanding the basis of the ruling so that we can move forward with an appeal.

THE COURT: All right. All right. Mr. Starr, any argument one way or the other?

MR. STARR: Not on this motion, Your Honor.

THE COURT: Okay. All right, sir, Mr. Countryman.

MR. COUNTRYMAN: May it please the Court, Your Honor? Again, Andy Countryman. I represent McCabe Trotter and

Beverly.

I'm a little bit taken aback by this allegation that I've heard for the first time today that my client, a reputable law firm, stole and resold someone's items on eBay. That is certainly not in the complaint, it was never argued before and I've never heard that before today, and I frankly think that it's outrageous to make that accusation in your courtroom today.

I do want to address briefly some of his arguments, even though this is essentially rehashing what we argued back in July, there are two theories that Plaintiffs' counsel espouses, one is a direct theory by these individuals against McCabe Trotter. As we discussed at the hearing in July these folks don't have a basis to make that allegation against McCabe Trotter. They can't bring a claim against the lawyers for things the lawyers did while the lawyers were representing their clients, and we went over this in detail at the first hearing. If Your Honor looks at the language in the complaint and the amended complaint, neither one alleges that McCabe Trotter represented these individuals. There's creative language that takes great lengths to say, well, someone could have reasonably believed that, that McCabe Trotter represented these owners, but who cares about that? The only thing that matters is whether McCabe Trotter actually represented them or if those folks believed McCabe Trotter represented them and

the complaint doesn't allege that. The expert affidavit filed with the complaint, and again filed with the amended complaint, also doesn't allege that. It says that McCabe Trotter represented Caravelle, the board, the HOA. It never says McCabe Trotter represented these individuals. So we can throw out theory one. There's no theory on which this firm can be liable based on representing these individuals because they didn't. There's nothing based on legal malpractice that can hold water because there's no allegation in the complaint that McCabe Trotter represented these individuals. That allegation could have easily been made because I moved to dismiss the initial complaint. That was one of the grounds. In the amended complaint that wasn't corrected, but I'm sure it can be corrected because McCabe Trotter good and well represented the HOA. Everyone knew that, and while these folks may be unhappy with what happened, they knew McCabe Trotter didn't represent them.

As to the second theory, the derivative action, we talked in detail about how the basis of a derivative claim is when an organization will not bring a claim against someone for damages that the organization incurred, and therefore, individuals who are members of the organization who make a claim on the organization's behalf for those damages. Well, we talked about how all the damages at issue in this case are the individual owners' loss of personal property. There's no

damage to the association. Now, that was made clear in my motion to dismiss the complaint, and it wasn't clarified in the amended complaint. There's some creative language it throws in there, well, this caused damage to the association and maybe the association had to incur legal fees. Well, that's because Plaintiffs brought this lawsuit. The damages that are at issue in this case are the individual owner's loss of their personal property. They're upset that the HOA, through the management company, took their property out of their damaged units and stored it in this storage facility, then it was damaged, they didn't have it back, whatever issues happened there were certainly things that happened, but that's the crux of the case, these folks are upset that they lost their personal property. That doesn't create the basis for a derivative action. There's no allegation that holds any water whatsoever that the association incurred any damages. Those are the two main reasons as I recall correctly Your Honor dismissed the amended complaint back in July. You did issue a Form 4 order. I submitted a proposed formal order and am happy to do so, again, that details all the points of law on which I think the decision should be based and that details all the things that we discussed at the hearing.

Another thing I want to briefly point out that I think was important and I discussed this at our initial hearing is that all these allegations against McCabe Trotter and

specifically the ones under the conversion cause of action, they don't say that McCabe Trotter did something. They don't say McCabe Trotter took these folks' property, gained the benefit of it, maintained the property, sold it, got the money. The amended complaint generically says Gold Crown and/or McCabe Trotter. It throws out this allegation in a generic sense, which is insufficient, and it's also insufficient because it does not allege that McCabe Trotter retained the benefit of this material, of these goods. These folks are upset that they didn't have access to their material, their goods. Well, the amended complaint doesn't say that McCabe Trotter prevented them from doing that. It says Delta or Gold Crown through the direction of McCabe Trotter, and then it says, well, there's conversion because these folks couldn't get to their material. Well, it doesn't say that McCabe Trotter took the material because it didn't, and that's an outrageous allegation to accuse a law firm of essentially stealing and lying, and I think it's, frankly, not worthy of even being discussed in this court, but since I need to address it again I will turn the Court's attention to the lack of specificity in the amended complaint detailing facts sufficient to maintain a conversion cause of action against McCabe Trotter, and that same analysis applies to probably every one of Plaintiffs' causes of action which generically reference McCabe Trotter and/or Gold Crown. "We these owners

aren't happy with something that happened to us. We know that Gold Crown was involved because they were our point of contact. We think McCabe Trotter was involved, too. So we're just going to sue everyone and make a generic allegation," and that doesn't stand the sufficiency test even of Rule 12(b)(6). Again, we talked about all these things in detail at our hearing back in July, and unless Your Honor has any more questions for me, I'll rest.

THE COURT: All right. Anything in reply?

MR. GAMBRELL: Your Honor, I would, I would point you specifically to like, for example, paragraph 58 which talks about on August 9, 2017, J. Ryan Oates mailed a letter directly to the owner claiming that all soft goods had been tested and deemed contaminated. Oates further states the contaminated items were disposed of by Delta. However, Oates assured that the owners that the hard goods would be cleaned and returned to the owners' units, but it also reiterates that the owners would not be allowed onto the property to inspect their own belongings. This letter is incorporated by reference and attached herein as on Exhibit Eight. That on, on -- kind of moving down to discuss specifically what on paragraph 60 Gold Crown informed the owners that the local moving company refused to handle owners' remaining hard goods because of fear of contamination, and that all other local moving companies had refused to move the

hard goods for the same reason. Gold Crown gave the owners a deadline of February 3rd whether to decide to dispose or remove their belongings, and then under paragraph 62, the owners could reasonably construe the letters of J. Ryan Oates to the owners as rendering personal legal advice to the owners in addition to stating the position of the association. The owners could reasonably construe the letters from J. Ryan Oates to Lloyd's as representing the personal legal interests of the owners, at 64 that Delta and Delta's employees were allowed by Gold Crown and/or McCabe Trotter to sort through the owners' belongings, to take what they wanted instead of returning the items to the owners. The items were -- the items unwanted by Delta or Delta's employees were then disposed of by Delta without the permission of the owners, that Gold Crown and McCabe Trotter concealed from the owners the true condition of the belonging, that neither Gold Crown nor McCabe Trotter performed testing to determine whether the owners' belongings were contaminated despite numerous representations by Gold Crown or McCabe Trotter that the owners' belongings were, were unsafe due to, due to contamination and failure to safeguard that you've already referred to and, then, I mean, so I don't know how much more specifically we can allege the various cause of actions under 12(b)(6) regarding what McCabe Trotter did as it relates to the owners' personal belongings that were then disposed of

without their permission or consent, and reminding the Court this is a 12(b)(6) motion, not a summary judgment motion. I mean, there's no, there's no weighing of whether these facts are provable, whether there's any quantum of evidence, just simply whether the Court finds that there was a sufficient allegation to put the Defendants on notice to defend themselves, and that's what I argued before. It's what I'm arguing now, that essentially that the complaint sets this out, this chain of events, that the owners were represented by McCabe Trotter or that -- and that McCabe Trotter represented the owners' interests to a third-party, which is then Lloyd's of London. That's specifically alleged in the complaint. So that's why we believe, Your Honor, that the 12(b)(6) motion was granted in error and should be -- the complaint should allowed -- to, to be -- go forward. If the Court believes that the complaint is still not sufficiently alleging or if the owner -- I believe Mr. Countryman mentioned regarding the, the affidavit of Mr. Pendarvis, that Mr. Pendarvis be allowed to somewhat make clear his belief regarding the allegations in the complaint as well. We believe Mr. Pendarvis' affidavit clearly sets out the professional standard, his knowing of the professional standard and how McCabe Trotter violated that professional standard as it relates to the individuals and to the association. So, in essence, what I'm asking the Court for some understanding of where the Court wants us to go next

XXXXXXXXX

and that's the basis of our 59(e) motion.

THE COURT: All right. All right. I'm going to deny the motion to reconsider. However, I do see the need for a more elaborate order rather than the Form 4 order. So, Mr. Countryman, if you would prepare the order, and I did get one from you, but I thought better to have the hearing in open court rather than just going ahead and doing that --

MR. COUNTRYMAN: Sure.

THE COURT: -- that way from the prior one because -- and I can't remember in what fashion I got that order in, as in whether or not it, it, it evidenced my prior ruling, and I think what the reason I held off is because of the pending motion to reconsider. So if you could adjust it to say that it's being issued after this motion to reconsider, that I guess the motion to reconsider, even though I'm denying the relief sought by the Plaintiffs, I am granting their request to formalize my ruling with a written order.

MR. COUNTRYMAN: Yes, sir. And, and I think that's how I initially styled it --

THE COURT: Okay.

MR. COUNTRYMAN: -- was something to the effect of motion denying substantively but granting it to the extent he's asking for a formal order in particular.

THE COURT: Yeah. And we'll do it that way.

MR. COUNTRYMAN: Seven days acceptable?

the amount. So while I would have granted your motion for sanctions, I'm denying it due to the fact that you have not presented me with the amount for that. I don't know that you're entitled -- well, that's going to be my ruling, that I don't have a clear-cut amount. So I'm going to deny it.

MR. COUNTRYMAN: Thank you, Your Honor.

THE COURT: But I, but I'll agree to me when you came in and you said, "Look, we're not involved in this case anymore, we don't represent them anymore, I don't know why they're seeking release -- relief or an injunction against us," I agree, they should have dropped it at that time. All right. But I'm just -- will a Form 4 denying the motion for sanctions be sufficient?

MR. COUNTRYMAN: Yes, sir.

THE COURT: Okay. All right. All right. That's all on this case.

MR. COUNTRYMAN: Thank you, Your Honor.

THE COURT: Thank you.

(Adjourned.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, 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 Karl Hager, et al. versus McCabe Trotter & Beverly, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 22, 2019.

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

Grace L Hurley

Grace L. Hurley, CVR-CM-M

Official Reporter

March 27, 2019.

CERTIFICATE OF COUNSEL.

I, Brian C. Gambrell, the attorney for Appellants, do hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Brian C. Gambrell (SC Bar # 68253)

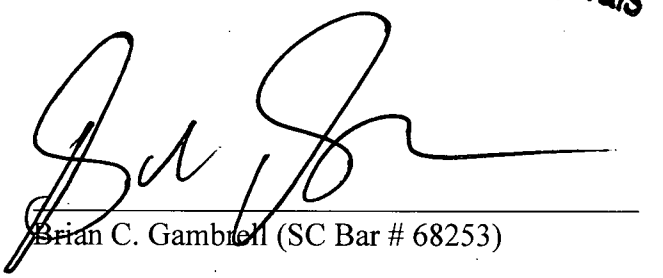
PROOF OF SERVICE

I, Brian C. Gambrell, the attorney for Appellant, do hereby certify that I served First class Mail the Record on Appeal on August 20, 2019.

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